

A Guide to Executing Estate Planning Documents in Uncertain Times

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Those Governmental Orders...

- Most local shelter in place orders list legal services as essential businesses or services, but **only when necessary to assist in compliance with legally mandated activities**.
- The Governor's Executive Order GA-14 did not exempt legal services.
- Neither did EO GA-16. Nor EO GA-18.
 - But **any** services provided by an individual working alone in an office are authorized by the last order.
- But the Supreme Court, through its Office of Court Administration, has issued a "Travel Authorization" for attorneys and staff.
 - We should still set a good example and practice social distancing to the extent possible.
 - But we have permission to meet with clients if necessary.

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Most Estate Planning Documents Can't be Signed Electronically.

- The Texas Uniform Electronic Transactions Act expressly excludes its application to wills.
- Other documents must involve a “transaction” under TUETA. Essential elements require that the “transaction:”
 - Relate to the conduct of “business, commercial, or governmental affairs”
 - Between two or more persons.
- It's arguable whether financial powers of attorney constitute a “transaction.”
- Most medical directives would **not** constitute a “transaction,” but electronic execution is authorized by a separate statute in the Health & Safety Code.

EXECUTION REQUIREMENTS BY DOCUMENT

Trusts

- Must be in writing and
- Signed by the settlor or the settlor's authorized agent.
- No witnesses or notaries needed.
 - Execution by the trustee and acknowledgments before a notary are common (and preferred) but not required.

Attested Wills

- Most common type of will is an attested will with two witnesses.
 - The testator need not sign in the presence of the witnesses.
 - The witnesses need not sign in each other's presence.
 - But each witness must sign in the "conscious presence" of the testator.
- What does "conscious presence" mean?
 - More liberal than the "line of sight" test.
 - The testator must either actually see each witness sign, or must be able to do so with only a "slight physical exertion."
 - If the witnesses are in a separate conference room and the testator would have to get up out of his or her chair to see them, that's not "conscious presence."
- Note that no notary is needed for a valid attested will.

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