

But, Wait! It Has To Be Notarized...

April 16, 2020

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As people and businesses adapt during the COVID-19 crisis, an alternative means for having documents notarized has become important. Texas Governor Greg Abbott's Executive Order of March 13 (the "Disaster Declaration") and various "shelter in place" orders of most Texas counties require people to minimize in-person contact with one another, in effect prohibiting the traditional notarization process. In response, Governor Abbott suspended certain in person notarization requirements in limited situations. This client alert discusses this suspension. The relaxed requirements will likely not be as defensible as traditional notarization under some circumstances. Accordingly, the safest practice (where the date of physical execution does not have material legal consequences) might be to re-execute and notarize remotely-notarized documents in the traditional fashion once the Governor lifts the March 13 Disaster Declaration and applicable shelter in place orders have expired.

Governor Abbott's Directive. On April 8, 2020, Governor Abbott suspended requirements concerning the physical presence of a notary public for the execution of certain documents. Governor Abbott's notice of these relaxed requirements is not an "executive order," but instead a notice to the Texas Secretary of State, <https://www.sos.state.tx.us/statdoc/oog-temporary-suspension.shtml> (the "Notice"). The Disaster Declaration notes in pertinent part that the Governor may suspend "any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with a disaster." Pursuant to this, the Governor acted to suspend the rules requiring the physical appearance of a principal before a traditional notary with regard to the execution of certain estate planning documents.

Who is Involved: There are two types of notaries in Texas — a traditional notary and an online notary. This alert will not discuss the details, but each notary classification requires a separate license, with differing standards, documentation, and retention requirements. The newly relaxed requirements apply only to traditional notaries. The Governor's Notice does not change any requirements for online notaries.

What is Involved: Governor Abbott's Notice waives the physical presence requirement for traditional notaries allowing the identification process to be accomplished through two-way video conferencing using the method set forth in the Notice. Only the following documents may be notarized under the relaxed standard:

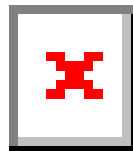
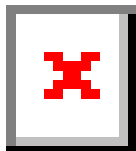
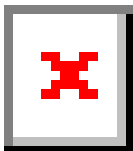
- Self-proving affidavits for Wills

- Statutory Durable Power of Attorney (financial)
- Medical Power of Attorney
- Directive to Physicians
- Oath of an executor or administrator, and
- Oath of guardian

The Governor reportedly considered a blanket authorization for remote notarization of any document, but ultimately denied such, apparently because of a concern for the potential for fraud and abuse, particularly concerning real estate documents.

The Governor's suspension of the in presence notary rules as set forth above expires with the expiration of the March 13 Disaster Declaration, as it may be extended.

In the event that you require execution of any of the above referenced estate planning documents during the time that the Governor's Disaster Declaration remains in place, please call one of our estate planning attorneys listed below and we will be happy to assist you in working through this situation so that you have a properly notarized document. Likewise, if you require notarization on a document other than one set forth above, please call us and we will assist you.



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