

Client Alert: Estate and Business Succession Planning During the Coronavirus Quarantine

10 Apr 2020

As efforts to contain the coronavirus continue throughout the United States and across the globe, Jackson & Campbell remains committed to the safety and well-being of our clients, employees, and the communities in which we live and work. Although our physical office is closed to the public, we continue to service new and existing clients - not just by offering advice as to estate planning matters, but also by preparing estate planning documents that can be executed remotely and are immediately legally effective.

Prior to the COVID-19 pandemic, our standard estate planning procedure involved at least two face-to-face meetings with clients: one to ascertain the client's goals and objectives, and another to supervise the execution of the documents we prepared to accomplish those goals and objectives. As a result of emergency legislation recently enacted by the Council of the District of Columbia, we are now able to conduct the entire process remotely, at least for the next 90 days, for clients who are physically present in D.C. at the time of execution of their wills or are D.C. residents. However, the extent of our direct interactions and our high quality of service remain the same.

Initial meetings with prospective clients or follow-up meetings with current clients can be performed via phone or video conferencing. The procedure for executing estate planning documents will vary depending on the type of documents being signed, the location of the client, the urgency of the matter, and whether it is safe for the client to be in the presence of witnesses.

Traditionally, in both the District of Columbia and Maryland, different estate planning documents have varying levels of signing and attestation requirements. In both jurisdictions, a last will and testament requires the testator to sign in the presence of two witnesses. Both jurisdictions also require two witnesses for health care directives. Maryland law requires two witnesses and a notary for financial powers of attorney. (Note that the Maryland General Assembly has passed a new Notary Act effective October 1, 2020 which will permit remote notarization. We do not yet know whether the law's effective date will be accelerated in light of the current situation.) The District of Columbia utilizes a statutory power of attorney form which requires notarization. While neither jurisdiction requires revocable trusts to be notarized, certain funding techniques (e.g., deeding real property to the trust) may require it. Ordinarily, we recommend that all estate documents be witnessed and notarized to provide assurance that they are legally valid and to ensure that they will be accepted in all jurisdictions.

In response to the outbreak, both the District of Columbia and Maryland have taken legal initiatives to address the difficulties imposed by these ordinary requirements.

On March 30, Maryland's Governor Larry Hogan issued [Executive Order Number 20-03-30-04](#) temporarily waiving the in-person requirement for notarizations. The decision allows individuals who perform "notarial acts" to conduct services with real-time visual communication devices after verifying their identification with a "government identification credential" such as a driver's license or passport. However, this order does not obviate the in-person witness requirement for wills, health care directives, or powers of attorney. If you are a Maryland resident and are able to supply two witnesses (after considering your individual risk factors and guidelines offered by the CDC and WHO), our office can provide hard copies of your documents and remotely walk you through their execution.

The emergency legislation enacted by the Council of the District of Columbia on April 7 authorizes the execution of Last

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Will and Testaments electronically. In order for an electronic will to be valid, the signing must meet the following requirements: 1) the testator must be physically present in DC or be a resident or domiciliary of DC; 2) two witnesses and the testator must be able to see and hear one another as the will is signed by each party; 3) the will must be readable as text (e.g., through Google Docs, Microsoft SharePoint, or DocuSign); 4) both witnesses must be physically present in the United States at the time of signing; and 5) either the (i) testator, (ii) a witness, or (iii) the supervising attorney licensed to practice in the District of Columbia must print the will and attach a signed attestation called a "Certified Paper Copy of Electronic Will". Notably, the legislation does not address the execution of other estate planning documents – though we hope this will be addressed at a later date. This legislation almost guarantees that we will be able to assist our DC clients in the execution of their wills. Other documents may require clients to provide witnesses or obtain a notary.

Despite the difficulties presented by the pandemic, effective estate planning can be accomplished even in quarantine. While we are all staying at home, this may be an ideal time to focus on your estate plan if you have not yet done so. For example, you may ask yourself 1) whether the named personal representatives (in your wills), trustees (in your trust), or agents (in your health care directives and powers of attorney) are suitable for the role and willing and able to serve; 2) whether you have experienced a major life change (e.g., death, divorce, marriage, change of residence, or acquisition of new assets); or 3) if your beneficiary designations have been updated.

While the novel coronavirus has undoubtedly highlighted the importance of having an estate plan in place, business owners should also be thinking about their business succession plans, which are often tied to the owner's individual estate plans. Many small businesses rely on the expertise of a small handful of owners or managers. It is imperative for such businesses to have a specific plan for how the business will operate should one or more of those persons be unable to perform her or his customary duties. Our business law group has deep expertise in helping small businesses develop succession plans to ensure their ongoing success during difficult times like these.

Similar to estate planning, this may be an ideal time for business owners to focus on their succession plans. In addition to the questions raised above with regard to your personal estate plan, you may ask 1) do my governing documents include Buy/Sell provisions; 2) if so, what are the triggering events for these provisions; 3) are there adequate employment agreements or policies in place to cover the situations we face and the responsibilities of management; or 4) are there policies in place to assure your clients and customers that your business has planned for the future. These are just a few questions that we stand ready to explore with you in order to provide answers and to put adequate agreements and policies in place. For any questions or concerns, please contact the author of this article or any member of the [Trusts and Estates Practice Group](#) or the [Business Law Practice Group](#).

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TAGGED: Business Law, Trusts and Estates, Council of the District of Columbia, COVID-19, Executive Order 20-03-30-04, estate planning, business succession