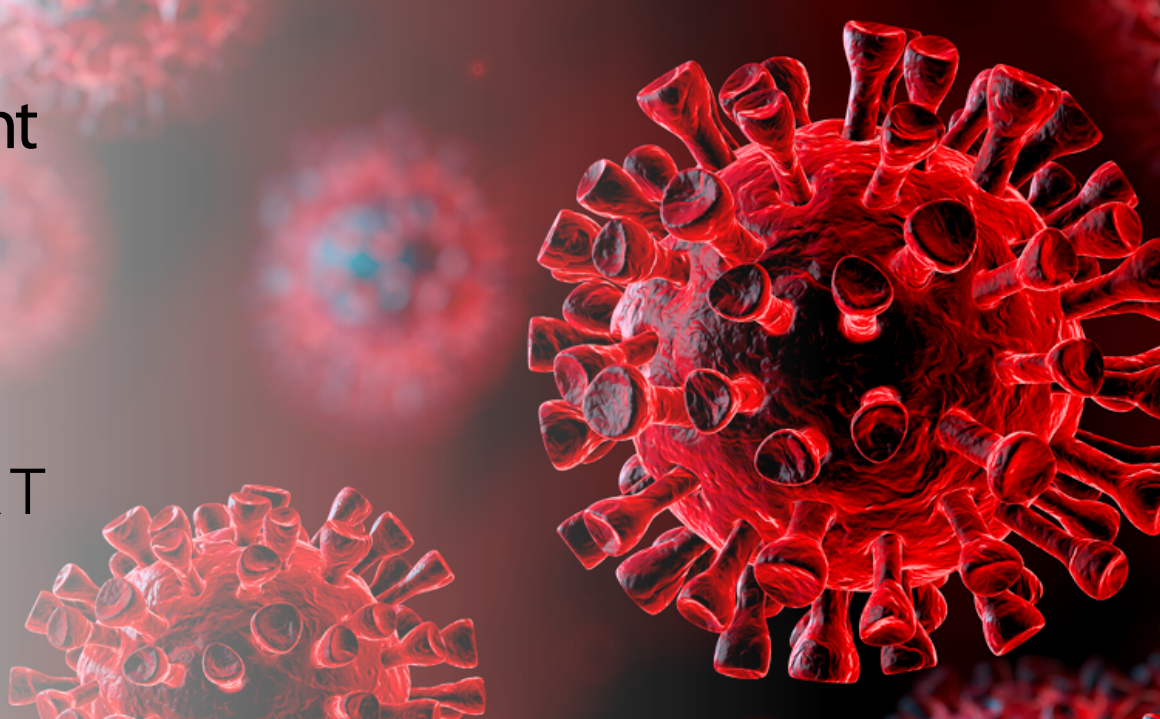


# TRUSTS & ESTATES LAW ALERT



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## COVID-19 creates new justification for electronic wills

With advances in technology, we are becoming more and more of a paperless society. Individuals and businesses in nearly every industry have found it economic and ecological to create and maintain documents electronically. To adjust to this new paperless landscape, some states have enacted laws to validate digitally signed documents.

Of course, these recent advancements in the law are not without some controversy. Indeed, many states do not yet permit wills or other estate planning documents to be executed electronically. Concerns about potential abuses have dissuaded some from supporting initiatives to legitimize the use of electronic wills. Some worry that electronic wills statutes will facilitate the practice of undue influence upon “vulnerable persons.”

With the outbreak of COVID-19, however, our society faces challenges that none of us could have expected – and no part of society is more drastically at risk than our medically vulnerable populations. Our government leaders at every level are providing important information guidelines – daily, it would seem – regarding social distancing and avoiding travel. Perhaps now more than ever, those who would create or change their estate plans should have the choice to do so electronically.

Florida is one of only four states that currently permit individuals to make electronic wills. Effective as of Jan. 1, 2020, Florida’s Electronic Documents Act permits individuals to create certain estate planning documents by electronic means. Electronic wills and similar testamentary documents will be permitted effective July 1, 2020. Under the Act, Florida has eliminated the longstanding requirement that witnesses to such documents be physically present with the maker of those documents at the time of

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execution. Instead, the Act permits the witnesses to be “virtually” present. The Act also sets forth the conditions by which estate planning documents can be notarized remotely by “registered online notaries.”

To address the concerns of the law’s detractors, online notaries must pose specific questions to potential document signors that are meant to identify vulnerable persons who, under the new law, cannot execute documents electronically. Potential signors who pass this hurdle will also be asked to verify certain personal information to confirm their identity. If those questions are answered successfully, the complete execution session will be recorded and preserved.

In anticipation of the Act, several in our Naples, Florida office are already registered as online notaries. Soon, Porter Wright will be able to offer remote online notarization and witnessing of estate planning documents to its Florida resident clients, wherever they may be located in the world. Additionally, we will be able to offer remote online notarization of other documents to clients regardless of their state of domicile or place of business. These timely efforts will allow us to assist clients who wish to execute estate planning and other documents while COVID-19 social distancing procedures are in place.

In the meantime, the members of our Estate Planning and Wealth Protection Group stand ready to address your estate planning needs. Even while working remotely, our attorneys are available to consult with you by phone, Skype or FaceTime. For your convenience and safety, we will transmit any documents you require electronically whenever possible.

For our clients who must meet with us in person to execute documents, we have established the following protocols:

- You are welcome to bring and use your own pens when signing documents in our office.
- Each of our conference rooms are equipped with hand sanitizer for use before and after circulating documents.
- We will minimize the circulation and exchange of physical documents to essential pages.
- While our notaries will ask you to show photo identification, we will refrain from handling your identification.
- We can and will take added precautions for our clients with significant health conditions. If you provide us with advance notice, we will be happy to use gloves and/or face masks to protect the health of our immunocompromised clients.

At Porter Wright, we’ve seen the resiliency in our communities to adapt to an ever-changing world. Our attorneys are there to help our clients navigate this new territory.

We remain inspired. Every day.