

A New and Safer Way to Create Your Plan: **Florida's electronic execution of estate planning documents**

In 2019, the Florida Legislature passed the Electronic Documents Act (the "Act"), which allows electronic signing, witnessing, and notarization of wills, trusts, and other estate planning documents. The Act became effective as of January 1, 2020, except the provisions with respect to electronic wills and trusts, which will become effective on July 1, 2020.

Due to the spread of COVID-19, the Act is certainly timely, and creates a safe alternative for the execution of estate planning documents when those provisions take effect on July 1. Until then, strict adherence to public safety guidelines should be regularly maintained to the extent possible during any execution of estate planning documents. As an example, for wills and trusts, witnesses can remain at a safe distance from the signor and from each other while still complying with statutory witness requirements, and the self-proving affidavit can be executed with a notary at a later date (see Florida Statute §732.503) in order to eliminate an extra person at the signing. Should the signor pass away before executing the self-proving affidavit, the witnesses would need to file an oath of witness with the appropriate court, but the will or trust would still be valid and enforceable.

Electronic Documents Act Overview

- All parties to a document execution can appear remotely.
- Document signing is coordinated by an "online notary" registered with the State of Florida.
- Electronic signatures are used on the estate planning documents (no hand-written signatures), and all parties must sign at the time of execution.
- Electronic wills or trusts must designate a "qualified custodian," who is charged with holding the electronic will until the time for filing with a probate court.

Safeguards in Place

Prior attempts to pass legislation similar to the Act failed due to concerns over fraud. As a result, the Act includes the following safeguards to limit this risk:

- Video Record Must be Stored. The online notary and qualified custodian must keep a full electronic record of the execution, including video and audio.
- "Online Notary" Required. Remote document executions cannot be performed by any notary – the notary must be registered with the State of Florida as an online notary following completion of a mandatory education course and must be bonded and insured.
- Protection of Vulnerable Adults. The signor must provide, to the satisfaction of the online notary, verbal answers to a series of questions, including whether they are acting voluntarily, whether they are of sound mind, and whether anyone assisted with arranging the video conference.