
Completing Your Estate Plan During COVID-19

Estate Planning may not be top of mind during a pandemic, but this critical protection is especially important to have in place during uncertain times. You may be wondering if it is even possible to meet with your attorney and execute your estate plan documents while the COVID-19 restrictions remain in place. The answer is yes, you can. Estate planning documents can be created, witnessed and notarized without any in-person meetings and from the comfort of your own home.

On April 8, 2020, Michigan Governor Gretchen Whitmer issued Executive Order 2020-41, referred to as the “Order,” which relaxes the witness and notary requirements for documents that would otherwise require in-person witnessing and/or notarization, such as estate planning documents. The Order will help ensure that necessary transactions and interactions may continue to occur during this time of crisis, without putting Michiganders’ and their families’ health at risk. This would include signing of Wills, Trusts, Certificates of Trust, Medical Durable Powers of Attorney, and General Durable Powers of Attorney, all of which normally are required to be signed in the presence of two witnesses and/or a notary. The Order states that any notarial act that is required under Michigan law, may be performed by two-way, real-time audiovisual technology, provided that certain requirements within the order are met. These requirements are as follows:

Notarization Requirements:

1. The two-way real-time audiovisual technology must allow direct interaction between the individual seeking the notary’s services, any witnesses, and the notary, wherein each can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization;
2. The two-way real-time audiovisual technology must be capable of creating an audio and visual recording of the complete notarial act and such recording must be made and retained as a notarial record;
3. The individual seeking the notary’s services, referred to as “principal”, must provide proof of identity (or be personally known) to the Notary Public during the videoconference. Proof of identification transmitted before or

after signing will not suffice. This is also true of any witnesses whose signatures are being notarized;

4. The principal must affirmatively represent to the Notary Public that the principal is either physically located in Michigan or, if the principal is physically located outside of Michigan, that (1) The document is intended for filing with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of this state; or (2) The document involves property located in the territorial jurisdiction of this state or a transaction substantially connected to this state;
5. If the principal is not physically located in Michigan and is signing the document under one of the exceptions provided, the Notary Public must have no actual knowledge that the principal's act of making the statement or signing the document is prohibited by the laws of the state in which the principal is physically located;
6. The principal, witnesses, and Notary Public must be able to sign the document in a way which ensures that any subsequent changes to the document are evident;
7. The original or a copy of the document being signed must be transmitted to the Notary Public on the same day in which the principal signs the document. When the Notary Public receives the signed document, he or she may notarize the document and return it to the principal; and
8. The official date and time of the notarization shall be the time and date of the videoconference during which the principal signed the document.

Witness Requirements:

1. The witness and the principal whose signature is to be witnessed, must utilize two-way real-time audiovisual technology, which must allow direct, contemporaneous interaction by both sight and sound between the witness and the principal;
2. The audiovisual method of communication must be capable of recording the signing process and a recording must be made and retained by the principal (or the principal's designee) for a period of at least three years, unless Michigan law requires a different period of retention;
3. The principal must affirmatively represent to the witness that the principal is either physically located in Michigan or, if the principal is physically located outside of Michigan, that (1) the document being signed is intended to be filed with a court, governmental entity, public official, or other entity subject to Michigan's jurisdiction or (2) the document involves property located in

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- Michigan or a transaction substantially connected to Michigan;
4. The principal must affirmatively state during the videoconference what document is being executed;
 5. The title page and signature page of the document being signed by the principal must be shown to the witness by way of the two-way audiovisual conference in such a manner that the pages are clearly legible to the witness;
 6. Each page of the document being signed must be numbered in such a manner that the page number and the total number of pages in the document is reflected;
 7. The act of signing must be sufficiently “up-close” for the witnesses to properly observe the act of signing; and
 8. The principal must transmit the signed document to the witnesses within 24 hours of signing and the witnesses must, in turn, sign the document attesting to the principal’s signature and return the signed copy to the principal within 24 hours of receipt.

With the above orders making accommodations for the standard notary and witness requirements, there is no better time to complete your estate plan. In fact, the COVID-19 pandemic presents many reasons to reevaluate or create your estate plan. Having an estate plan ensures protection for you and your loved ones. The attorneys at Maddin, Hauser, Roth and Heller, P.C. understand how important peace of mind is for you and your family. Contact our **Estate Planning attorneys** today to begin the process.