

A Guide to Executing Estate Planning Documents in Uncertain Times

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We find ourselves in uncertain and unprecedented times. During the week of March 16th, I read both national, state, and local e-mails discussing methods for executing estate planning documents (which typically require witnesses, notaries, or both) while practicing social distancing. These e-mails also discussed potential or actual executive orders from governors' offices and emergency orders from state supreme courts. The purpose of this guide is to discuss execution of estate planning documents here in Texas absent some extraordinary governmental liberalization of execution requirements. The suggestions you'll read here are not just mine, but also those of many other lawyers, both in Texas and nationally. While I haven't listed them all, I thank them for their ideas.

This guide is a work-in-progress, and suggestions for improving the guide are welcome. You may e-mail me at bpargaman@snpalaw.com. As I update this guide, I'll post the latest version on the Resources page of my firm's website (www.snpalaw.com/Resources).

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What's the Fuss All About?

Estate planning documents seem to be like toilet paper. Most people don't even think about them until the prospect arises that they may need them but not have them. Then they're in a rush to get them.

Shortly after this guide was originally posted, Gov. Abbott issued [Executive Order GA-14](#) (on March 31st), which, while not initially called a "shelter-in-place order" by the Governor, was called the functional equivalent by news outlets. That order was superseded on April 17th by [Executive Order GA-16](#), which initiated a "strategic reopening" of the state. And that order was in turn superseded on April 27th by [Executive Order GA-18](#), which expanded the reopening

of services. None of these orders specifically lists legal services as "essential services," although the most recent order authorizes services (not just legal services) provided by an individual working alone in an office.

In the meantime, the Office of Court Administration, on behalf of our Supreme Court, issued a "Travel Authorization" for attorneys, advising us to set a good example, but recognizing that things such as client meetings may be unavoidable. Following the issuance of GA-14, an updated [Travel Authorization](#) was issued for attorneys and their staff on April 2nd. While I'm not sure about our courts' authority to override our governor's orders, I consider the travel authorization essentially a "get-out-of-jail-free" card.

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Even with the travel authorization, attorneys and their staff may be reluctant to meet with clients face-to-face due to concerns about virus transmission, especially since it's been established that an infected person may be able to transmit the virus while being asymptomatic. That makes it problematic for clients to get their estate planning documents executed without easy access to witnesses and notaries.

What follows is my effort to provide a document-by-document guide to the execution requirements for various documents, and suggestions for complying them.

Why Can't We Use DocuSign®?

DocuSign® is one of many services that provide for the execution of documents electronically through the use of digital signatures. I use it only as an example. There are a number of other services that facilitate the use of digital signatures, and the following comments apply to all of these services.

Generally, the electronic execution of documents through the use of digital signatures is authorized by the Texas Uniform Electronic Transactions Act, found in [Chapter 322](#) of the Business and Commerce Code. Because a complete discussion of UETA is well beyond the scope of this guide, I've posted my paper, *"Signing Without Signing: What Estate Planners Should Know About the Federal E-Sign Act and The Texas Uniform Electronic Transactions Act,"* on [the Resources page of my firm's website](#).¹

The conclusions I draw in that paper are that:

- UETA cannot be used to electronically execute wills and codicils because they are expressly excluded from application of the act.
- It's unclear whether UETA can be used to electronically execute financial powers of attorney because they do not fall within

UETA's definition of a "transaction" as relating to the conduct of "business, commercial, or governmental affairs" between two or more persons.

- Most advance medical directives (directives to physicians, out-of-hospital do-not-resuscitate orders, and medical powers of attorney) may be electronically executed, but not because of UETA. They're likely excluded from the application of that statute for the same reason that financial powers of attorney are excluded. As discussed below under the section titled **Advance Medical Directives**, since 2009, these documents may be executed electronically because of [Health & Safety Code Sec. 166.011](#). In addition, the declarant may sign before either two witnesses or one notary. However, if the medical directive is witnessed, the two witnesses will still need to be in the presence of the declarant. And right now, if you choose to use a notary, the declarant must still be in the notary's physical presence, or you must use the relatively new online notarization procedure.

Now let's move on to a document-by-document discussion of execution requirements.

Trusts

Let's start with trusts because they're the easiest to execute. The only execution requirement applicable to trusts (in Texas, at least) is that there be "written evidence of the trust's terms bearing the signature of the settlor or the settlor's authorized agent." See [Trust Code Sec. 112.004](#). While it is common to acknowledge the signatures of the settlor and trustee before a notary, that isn't required. In fact, the signature of the trustee, if different from the settlor, is not a statutory requirement. You can draft a revocable management trust for your client with as sophisticated provisions as you would like,

¹ Keep in mind that the paper was originally prepared in 2017, slightly updated in 2018 to discuss our online notary provisions passed the previous year, and further updated in March 2020

to discuss the 2019 adoption of the Uniform Electronic Wills Act by the Uniform Laws Commission.

and then the client may execute the typewritten revocable management trust without any further formalities. (See the suggestion of combining a revocable management trust with a holographic will following shortly.)

Wills

The most common will in Texas is a will that is signed by the testator and attested to by two witnesses. [Estates Code Sec. 251.051](#) contains the general rule that wills must be (1) in writing, (2) signed by the testator in person or by another person on behalf of the testator in the testator's presence at the testator's direction, and (3) attested by two or more witnesses who are at least 14.

However, [Sec. 251.052](#) contains an exception pertaining to "holographic" wills. It states that if the will is "written wholly in the testator's handwriting,"² witnesses are not required. Without citing authority, I'm confident that this references the testator's normal handwriting, be it cursive, printed, or otherwise. Technically, the statute doesn't require the will to be signed or dated, but it would be foolish to execute a holographic will without these elements. Some Texas cases have required a signature but stated that it may appear in the body of the will, rather than the end. The cases clearly do not require it to be dated, although that's clearly a good idea in case there end up being two wills. We want to know which is the most recent.

Note that there's nothing in the requirements for a valid will that involves a notary public. A notary is only required for a self-proving affidavit to a will. See [Estates Code Secs. 251.101, et seq.](#) While [Civ. Prac. & Rem. Code Sec. 132.001](#) generally authorizes the use of unsworn declarations in lieu of sworn declarations before notaries, [Estates Code Sec. 21.005](#) makes that

provision inapplicable to self-proving affidavits.

If the testator can get two witnesses to attest to the execution of the will in the testator's presence, you can e-mail a PDF of your regular will form to the testator with appropriate executions instructions. I'd suggest using the original "two-step" method of execution where the self-proving affidavit is completely separate from the attestation provisions. That way, once the will (but not the affidavit) is executed by the testator and two witnesses, if it's later convenient for them to gather before a notary, they can then complete and sign the self-proving affidavit.

Even a holographic will can be made self-proved at a later date once a notary is available. See [Estates Code Sec. 251.107](#).

While there's no particular reason to use anything other than your standard will form, **Attachment 1** is my "emergency" form that I sometimes have clients complete and sign before two witnesses "in a pinch" after our initial meeting while they're waiting for me to draft a more complete will.

If the client may not even have access to two witnesses, **Attachment 2** is a form that may be used to copy as a holographic will. It's a bare-bones form, but something like it is likely better than no will at all.

The last page of both attachments is a form of self-proving affidavit should a notary later become available.

And finally, here's a suggestion that might be helpful if your client is in need of more sophisticated planning.³ As noted above, there are no special execution requirements applicable to trusts other than the signature of the settlor. You can draft a typewritten revocable management trust for execution by the client at the same time that the client copies (in the client's handwriting) a

² In an April 4th email, Dianne Reis, an estate planning attorney and wife of current REPTL chair Eric Reis, shared a story passed along by a colleague. That lawyer had sent married clients instructions on how to prepare holographic wills when the husband replied that he was going to

have his wife handwrite his will, since her handwriting was much better than his. The moral? Make sure your instructions to clients are **very** detailed!

³ Thanks to Mickey Davis for this suggestion.

holographic will form you have prepared. The holographic will form found in Attachment 2 contains alternative language for a pourover to the revocable trust.

Financial Powers of Attorney

[Estates Code Sec. 751.0021](#) requires that in addition to the normal language about the power remaining effective in the event of disability or incapacity, a durable power of attorney must be (1) in writing, (2) signed by the principal or by another in the principal's conscious presence at the principal's direction, and (3) **acknowledged before a notary** by the principal or other person signing on behalf of the principal.

Frankly, I do not see a way around the notary requirement.⁴ Even if an online notary is available, current law appears to authorize online notaries to acknowledge only digital signatures, and it is unclear whether UETA can be used to execute a financial power of attorney electronically. Until this is clarified, a principal may find it difficult to impossible to get third parties to accept an electronically-executed financial power of attorney.⁵

Unsworn declarations do not appear to be a safe option for financial powers of attorney. As noted above, [Civ. Prac. & Rem. Code Sec. 132.001](#) generally authorizes the use of unsworn declarations in lieu of sworn declarations before notaries. [Estates Code Sec. 21.005](#) makes that provision inapplicable only for purposes of self-proving affidavits, not financial powers of attorney. But that doesn't

equate to permission to use an unsworn declaration on a financial power of attorney.

Sec. 132.001 allows the use of an unsworn declaration "in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law." That doesn't cover **acknowledgments**. In effect, it appears to apply only to jurats. While [Prop. Code Sec. 12.001](#) authorizes recording of instruments that have been "acknowledged, sworn to with a proper jurat, or proved according to law," that only applies to **recording** of documents by the county clerk. It does not affect the requirement of an acknowledgment to make a financial power of attorney durable.

Advance Medical Directives

[Ch. 166 of the Health & Safety Code](#) provides for certain advance medical directives such as directives to physicians, out-of-hospital do-not-resuscitate orders, and medical powers of attorney. When this chapter was originally enacted, each document had to be signed in the presence of two witnesses, at least one of which met the qualifications set forth in [Sec. 166.003](#). As noted above, in 2009, [H.B. 2585](#) amended these requirements to accomplish two goals. First, an advance medical directive could be executed before a notary public, in lieu of the two-witness requirement. Second, a digital or electronic signature could be used by the declarant, the witnesses, or the notary. A few years before, ADVault, Inc., a Dallas

⁴ For those interested in historical trivia, Texas durable powers of attorney executed between August 28, 1989, and August 31, 1993, had to be witnessed by two adults and filed of record in the county of the principal's residence. There was no express requirement that the principal's signature be acknowledged before a notary, but it would be difficult (if not impossible) to record the power without it.

⁵ [Civ. Prac. & Rem. Code Ch. 121](#) contains general rules about acknowledgments. Melissa Willms has pointed out that [Civ. Prac. & Rem. Code Sec. 121.006\(c\)](#) provides that a person may personally appear before a notary either by

(1) physically appearing before the notary or (2) appearing by an interactive two-way audio and video communication meeting the online notarization requirements found in Subchapter C, Chapter 406, Government Code, and rules adopted under that subchapter. Because the latter only apply to online notaries, and as noted above, online notaries may only be able to notarize electronically-signed documents, I'm hesitant to recommend that traditional notaries relying on statute as overriding the physical appearance requirement of the regulations under Ch. 406 applicable to traditional notaries.

company, had begun researching methods for the creation, storage, and retrieval of advance directives and quickly realized that UETA might not authorize electronic execution of these documents. That company was behind the 2009 amendments because it operates the website MyDirectives.com. The website (and its mobile app) allows consumers to “record their medical treatment wishes, preferences regarding palliative and hospice care, organ donation, and autopsy, and other critical personal information both on the device, and in the format, that is most convenient and comfortable for them.” The service is free to the consumer. The company makes its money by charging health plans to store the information, and by charging healthcare providers to access the information.⁶

This is not meant as an endorsement of ADVault or its website. I mention it only because it’s the only company I know of that occupies this space. There may very well be similar services provided by other companies.

Also note that the reason these medical directives may be executed electronically is solely because of the 2009 amendments to Ch. 166. It has nothing to do with UETA. If you prepare these documents for your client, they will need to be executed before either two witnesses or a notary. A remote online notarization will be available, should you have access to that capability, but only if the declarant electronically executes the documents.

Remote Notarization of “Wet” Signatures on Estate Planning Documents

More than a dozen states have temporarily relaxed the physical presence test for what we would call “traditional” notaries to allow documents to be notarized via a two-way audio/video conference through executive orders of their governors. In a few states, the same relief is coming

through court orders or legislation. If interested, the [National Notary Association](http://NationalNotaryAssociation.org) appears to be keeping track of the developments in each state. In addition, the American College of Trust and Counsel is maintaining a list available on the public side of its website. Go to www.actec.org, and scroll down the right side to ACTEC Latest News. You’ll see a link to [2020 Emergency Remote Notarization and Witness Orders](#).

One early example of such an order authorizing remote **notarization** is [Executive Order No. 202.7](#) issued March 19th by Gov. Cuomo of New York. In fact, Gov. Cuomo went even further on April 7th by issuing [Executive Order No. 202.14](#) that authorizes remote **witnessing** of wills (scroll to the end). (I believe that the authority of a New York governor while a disaster declaration is in effect is broader than the authority of a Texas governor.)

As noted above, absent a temporary order from the Governor, remote online notarization appears to be available in Texas only for electronic signatures (and only by notaries with the additional online notary commission), and electronic signatures may not work for some of our primary estate planning documents. The efforts to obtain executive orders would simply authorize remote notarization of “wet” signatures by “traditional” notaries through a two-way audio-video conference.

The extent of the powers that our Governor or Supreme Court may exercise through executive or emergency orders are **way beyond** the scope of this guide. My initial impression is that neither would have the ability to modify the statutory requirement that witnesses be in the presence of the testator at the time the witnesses sign, and the Texas cases holding that Texas follows the “conscious presence” test, rather than the “line-of-sight” test.⁷ Either of those still require

⁶ If you’re interested, at my invitation, Scott Brown, the president of ADVault, presented a paper titled *Digital Signatures on Advance Directives: How Do You Do That – And Why?* at TexasBarCLE’s 2012 Estate Planning and Drafting Course. It should be

available both at [TexasBarCLE’s online library](#) and to REPTL members in the CLE section of [REPTL’s website](#).

⁷ Under the “conscious presence” test, the testator must be able, with only a slight alteration of his or

relatively close proximity of the witnesses (although probably not closer than 6 feet).

Our notary laws are found in [Gov't Code Ch. 406](#). Long before the statutory authorization of remote online notarization of electronic signatures, the Secretary of State recognized the authority of any Texas notary to perform an electronic notarization. However, that electronic notarization had to meet all of the requirements of any other notarization, including the requirement that the signer **physically appear** before the notary. This physical presence requirement, however, is found in the Secretary's regulations (see [1 Texas Administrative Code Chapter 87](#)), **not Ch. 406 itself**.

Despite my disclaimer about not opining about the Governor's authority through executive orders, I've done a **minimal** amount of research. [Gov't Code Sec. 418.014](#) authorizes the Governor to declare a state of disaster if the Governor finds a disaster has occurred or that the occurrence or threat of disaster is imminent. That disaster declaration may only continue for thirty days unless renewed by the Governor. Gov. Abbott issued his original [COVID-19 disaster declaration](#) on March 13th, and [renewed that declaration](#) on April 12th (as I do the math, it's up for renewal again on May 12th). While the disaster declaration is in effect, [Gov't Code Sec. 418.016](#) authorizes the Governor to suspend **any regulatory statute** prescribing procedures for conduct of state business or **the rules of a state agency** if strict compliance with the rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.⁸ You've undoubtedly read about various Executive Orders issued by the Governor either shutting things down or reopening them up. The disaster declaration itself is not an executive order. Rather, while it remains in effect, it forms the basis of the Governor's authority to

issue the executive orders, or other orders suspending certain rules and statute.

Since the Secretary of State is appointed by the Governor and is in the Executive Branch, it appears to me that the Governor may issue an order suspending the regulatory requirement that a traditional notary be in the physical presence of the principal, allowing the remote notarization by any notary (not just an online notary) of "wet" signatures through a two-way video conference.

Towards that end, on March 24th, REPTL Chair Eric Reis sent letters to both the Governor's office and the Supreme Court requesting that traditional notaries be allowed to notarize documents through two-way audio/video conference. In addition to Eric, those involved in these efforts include Craig Hopper and Lauren Hunt, co-chairs of REPTL's Estate and Trust Legislative Affairs Committee, Clint Hackney (REPTL's lobbyist), and myself (REPTL has-been), with my apologies to the many others who've helped that I've failed to mention.⁹ Personally, I believe any relief had to come from the Governor's office, not our Supreme Court. BUT NONE OF OUR REQUESTS WOULD DO AWAY WITH THE "CONSCIOUS PRESENCE" TEST FOR WITNESSES. We don't think that requirement could be waived by executive or court order.¹⁰ Further, if remote **notarization** of a self-proving affidavit were successfully challenged in the future, the will itself would still be valid. A successful challenge to remote **witnessing** would invalidate the entire will.

Eventually, several of us commenced discussions with the Governor's office. The Governor's office let us know that they had concerns (apparently arising from the Secretary of State's office) about the potential for fraud and abuse that might arise through any blanket authorization for remote notarizations. It seems their primary concern

her position, to see the witnesses sign the will.

⁸ I hope that by now I've made clear my belief that "presence" requirement for notaries are purely regulatory, while "presence" requirements for witnesses are not.

⁹ We are also aware that other private attorneys had contacted the Governor's office, the Supreme Court, or both.

¹⁰ See footnote 8!

was in the real estate area. Therefore, their initial reaction was to temporarily suspend the requirement that the notary be in the physical presence of the signer (so that remote notarization would be available) only for our standard estate planning documents. In response, we also asked that the order be expanded to include oaths of executors, administrators, and guardians, since while county clerks appear to be accepting unsworn declarations for testimony in prove-up hearings and other documents that must be sworn to under the Estates Code, some are refusing to accept oaths with unsworn declarations due to the language of [Civ. Prac. & Rem. Code Sec. 132.001\(b\)](#).

At least partially as a result of REPTL's efforts, on April 8th, the Governor issued an order applicable to the following documents:

- A **self-proving affidavit** for a will made "before an officer authorized to administer oaths" under Estates Code [Sec. 251.104\(b\)](#) and [Sec. 251.1045\(a\)](#)
- **Financial powers of attorney** acknowledged "before an officer authorized under the laws of this state to" take acknowledgements to deed and administer oaths under Estates Code [Sec. 751.0021\(a\)\(4\)](#)
- The signature of a principal in a **medical power of attorney** under Health & Safety Code [Sec. 166.154\(b\)](#)
- The signature of a declarant in a **directive to physicians** "acknowledged before a notary public" under Health & Safety Code [Sec. 166.032\(b-1\)](#)
- An **oath of an executor or administrator** taken before "any person authorized to administer oaths under the laws of this state" under Estates Code [Sec. 305.054](#)
- An **oath of a guardian** "taken before any person authorized to administer oaths under the laws of this state" under Estates Code [Sec. 1105.052](#)

The Governor's website posted a [press release](#) accompanying the order on April 8th. On the evening of April 10th, the text of the order itself was posted in the notary public area of the Secretary of State's website at:

www.sos.state.tx.us/statdoc/oog-temporary-suspension.shtml

I have also included the text of the order in **Attachment 3**.

Two things to note. First, this is **not** an "executive order" like those issued in a number of other states. Gov. Abbott's March 13th [disaster declaration](#) notes that "any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor." The April 8th order is simply a notice to the Office of the Attorney general that the Governor has approved suspension of the rules requiring physical appearance before a notary as set forth in the order.

Second, note that the statutes listed in the order are references to specific subsections that specify what officer the affidavit, acknowledgement, or oath may be taken before. It's not clear to me that the Governor's order extends to self-proving affidavits for holographic wills. The two statutes relating to self-proving affidavits specifically mentioned in the order are for the one-step and two-step method of self-proving affidavits for **attested** wills. It does not mention a self-proving affidavit for a **holographic** will authorized by Estates Code Sec. 251.107. We asked the Governor's office about this omission after the order was first announced, and the response was that the text of Sec. 251.107 does not call for appearance before a notary public or any other officer. To the extent Sec. 251.107 incorporates such a requirement from Secs. 251.104(b) and 251.1045(a), the suspensions as to the latter two should cover the suspension under Sec. 251.107. I'm not sure that I agree with that analysis. I don't think the latter section "incorporates" appearance before an officer authorized to administer oaths from the former two sections. Rather, I think that requirement is inferred from the authorization in Sec. 251.107 to make a holographic will self-proved by affidavit of the testator. Before whom may that affidavit be made?

My bottom line is that if you use this suspension order to remotely notarize a self-proving affidavit on a holographic will, you do so at your own risk. However, either way, I view the suspension order as a “big win” for notarization of most estate planning documents.

The suspension order provides as follows:

- The notary must verify the identity of a person signing a document at the time the signature is taken using two-way video and audio conference technology.
- The notary may verify that identity either based on personal knowledge of the signing person, or based on the signing person’s presentation through the video conference of a government-issued ID, including a passport or driver’s license, that contains the signing person’s signature and photograph.
- The signing person must send a legible copy of the signed document by fax or email to the notary.
- The notary may then notarize the transmitted copy and send the notarized copy back to the signing person by fax or email, at which point the notarization is valid.

I read the order as requiring both transmission of the signed document to the notary and return of the notarized document to the signing person (both by fax or email) **during the two-way video and audio conference**. Many clients may not have access to a scanner or fax machine. I’ve been told that the free [Adobe Scan app](#) works great from your phone and yields much better quality than just taking a photo of a document. The client can scan his or her signature using the app and mail it to you. (I haven’t tested it myself yet.)

But also note that the suspension order does not contain a requirement that the video conference be recorded or that the recording be maintained for any particular period of time. That might be good practice for you, at least until the document is reexecuted in the physical presence of a notary, but it is not required. (Recording and

retention of same for a number of years is a requirement of many other states’ executive orders regarding remote notarization.)

These temporary rules last until the Governor terminates them or until [the March 13th disaster declaration](#) is lifted or expires (I assume whichever occurs first). As noted previously, and the declaration was [renewed on April 12th](#), and is up for renewal again on May 12th. Documents executed in accordance with the temporary rules while they remain in effect will remain valid after the termination of the temporary rules.

By the way, we learned that on April 9th, the Texas Land Title Association sent a letter to the Governor’s office requesting broader remote notarization authority for real estate documents. If they’re successful, I’ll report about it in a future update to this guide.

After the New York executive order on remote notarization was issued, the New York State Bar Association suggested modifications of notary forms taking advantage of its executive order. I have brazenly stolen their suggested modifications and modified them for use in Texas for self-proving affidavits, acknowledgements on financial powers of attorney, medical powers of attorney, directives to physicians, and oaths of executors, administrators, and guardians. You’ll find those suggested forms on **Attachment 4**.

Remote Notarization of “Wet” Signatures on Real Estate Documents

You might also be interested to know that on April 9th, the day after Gov. Abbott issued his suspension order, the Texas Land Title Association proposed to Gov. Abbott that he issue a broader order relating to remote notarizations designed to support real estate closings. You can read their announcement, and find links to the documents sent to the Governor, here:

www.tlta.com//TLTA/News_Articles/Breaking_News_TLTA_Proposes_Emergency_Executive_Action_Remote_Witnessing.aspx

On April 27th, Gov. Abbott granted the suspension order that TLTA requested (link to

press release [here](#)). You can download the order here:

gov.texas.gov/uploads/files/press/Office_of_the_Attorney_General_Guidance.pdf¹¹

The order suspends Civ. Prac. & Rem. Code [Sec. 121.006\(c\)\(1\)](#) (which otherwise requires physical appearance before a notary for an acknowledgment) to allow for the appearance before a notary via videoconference for the purpose of acknowledging “**real estate documents**.” (That term is not defined.) The suspension order contains many more requirements than the estate planning document suspension order. Among them are:

- The notary must use two-way audio-video communication technology allowing direct and contemporaneous interaction between the signing person and the notary by sight and sound.
- The notary must verify the identity of the signing person at the time of the signing. The notary may verify identity by:
 - personal knowledge of the signing person;
 - remote presentation of a government-issued ID containing the signature and photograph of the signing person; or
 - introduction of the signing person by oath of a credible witness who personally knows the signing person **and** the notary.
- During the two-way audio-video communication:
 - the notary and the signing person must attest to being physically located in Texas;
 - the signing person must affirmatively state what documents are being signed; and
 - the signing person’s act of signing must be close enough to the camera for the notary to clearly observe it.
- The notary must record and retain the two-way audio-video communication for two

years.

- The signing person must send the original signed documents by courier, U.S. Mail, or overnight carrier directly to the notary so that the notary may sign the documents and affix the notary’s seal.
- The official date and time of the notarization is when the notary witnessed the signing person signing the documents.
- The documents must include language substantially similar to the following

“This notarization involved the use of two-way audio-video communication pursuant to the suspension granted by the Office of the Governor on April 27, 2020, under section 418.016 of the Texas Government Code.”

- That language may be included in a notarial certificate, a jurat, or an acknowledgement.

The order then recites that the suspension was granted on April 27th, and remains in effect until May 30th, or the termination of the disaster declaration. Further, it directs county clerks to record documents acknowledged pursuant to this suspension order.

A copy of the real estate suspension order is found at **Attachment 5**. Note, if you have any questions about this suspension order after reading it and my summary, **please do not contact me**. I wasn’t involved in the request and have just been an observer. I really don’t know anything more than what I’ve reported in this section.

Execution Ceremony Protocols

First, to paraphrase Dr. Leonard “Bones” McCoy of the original Star Trek television series, “Dammit, Jim, I’m a lawyer, **NOT** a doctor!” Take everything that I write in this section with a grain of salt, and do your own due diligence in determining what execution protocols you may be comfortable with. I’m going to provide several points of view.

¹¹ If you downloaded a copy of this suspension order **prior to April 30th, download it again**. The original posted order contained a typo requiring documents to contain a statement that they were

executed pursuant to the April 24th suspension order. That date was corrected to April 27th in the revised order posted April 30th.

First, on March 26th, Prof. Gerry Beyer passed along to Glenn Karisch's Texas Probate email list an execution protocol that Bruce Stone, a former ACTEC president from Florida, had developed for his staff to follow while getting self-proved wills executed by clients. I'm including a slightly-edited version of that protocol for your consideration, but not with my endorsement. It appears a bit cumbersome to me, and I'm not sure whether Mr. Stone had any input from the medical community while developing the protocol. Nevertheless, here goes:

The following are instructions I [Bruce Stone] gave this morning to one of our paralegals who is going to a client's house to notarize will so that it will be self-proving. I am not a doctor or nurse, so these are the best I could come up with.

You must follow these protocols. You must assume that the paper is contaminated with the COVID-19 virus – especially because the testator and the witnesses will probably have touched it while signing. The fact that they may be wearing gloves while signing means absolutely nothing as to whether the surface of the paper itself is contaminated. Wearing gloves only helps to protect them – not you – from contamination.

Do NOT touch the paper under any circumstance unless you are wearing gloves which you must discard immediately after so that you do not touch your face inadvertently with the gloves. The only exception to this would be if you are able to wash your hands with soap and water both before and after touching the paper. That may not be possible if it's away from our office.

The paper must be lying on a flat surface, weighted down with something so that it won't blow away or move.

You must bring your own pen and do not allow anyone else to use your pen.

Assume that the tip of your pen is contaminated by coming into contact with virus on the surface of the paper, and immediately put the pen in a plastic baggie for sterilization later on, immediately after you take it out of the plastic baggie. Wash your

hands with soap and water both before removing the pen from the bag and after cleaning it. Leave the pen out to dry.

Touching your notary stamp to the paper could transfer any virus on the paper to your notary stamp. You must assume that it did pick up virus from the paper. So immediately place your notary stamp in a plastic baggie for sterilization later on, immediately after you take it out of the plastic baggie. Wash your hands with soap and water both before and after touching the notary seal when you remove it for cleaning.

No exceptions to these protocols. It's not worth risking your health or exposing others to the virus.

As to the original of the will, I think we would rather the client keep the original, with us asking where it will be kept and making a note of that, just as we do in the office. If we really have to take the original, the client should physically place the will in an envelope, and the client should place the envelope in a plastic bag supplied by you. You must then assume that the plastic bag is contaminated. This is why I do not like us keeping the original of any documents signed under these circumstances.

That's the end of Mr. Stone's suggested protocol. One thing that is clearly missing from it is any recommendation that the participants in the signing ceremony wear cloth face coverings, N95-grade or otherwise, [as now recommended by the CDC](#).

Second, in previous versions of this update I included recommendations from my mostly-retired former physician, which included guidance from the National Notary Association with recommendations for notaries performing face-to-face notarizations. That page contains an assortment of guidelines, primarily geared towards "window-separated signings" of closing documents. You may find many of these guidelines adaptable for your use. You can find them here:

www.nationalnotary.org/notary-bulletin/blog/2020/03/notaries-precautions-coronavirus

In those prior versions, I also included some guidelines that I came up with using common sense. But now, I have something better than my common sense guidelines to provide you!

The State Bar staff reached out to contacts at HHSC/DSHS¹² in early to mid-April to see if we could get at least some informal guidance on safe execution protocols. As they reviewed the request, it became apparent to them that any guidance they might provide would apply to all types of signings concerning the public in general. They decided that they would like to provide more “official” guidance (on their letterhead, no less) involving epidemiologists, with legal department review. We finally received that guidance on May 7th. Go to the DSHS COVID-19 Business page at:

www.dshs.texas.gov/coronavirus/business.aspx

Scroll down to the entry for “[t]hose needing to execute documents that require in-person signatures.” These are their recommendations:

- Maintain 6’ social distancing.
- Limit the number of people in the room to the bare minimum.

- If possible, conduct the meeting outside.
- Everyone should wear a cloth face covering **in addition to** social distancing.
- Avoid sharing pens, office supplies, and other equipment. If possible, use disposable pens so everyone has their own. Clean and disinfect shared pens and other shared supplies (if they’re not disposed of) before and after use.
- Disinfect surfaces, buttons, handles, knobs, and other frequently-touched items.
- Wash hands with soap and water for 20 seconds both before and after handling shared documents, pens, or other equipment.
- If soap and water aren’t available, use hand sanitizer with at least 60% alcohol.
- **Do not meet with others if you are sick or if someone else is sick.**

You’ll find a copy of the DSHS guidance at **Attachment 6**.

With that, I wish you good luck, and **very safe** travels (but only to the extent necessary per the OCA’s Travel Authorization for attorneys and their staff).

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¹² Texas Health and Human Services now consists of two agencies: the Texas Health and Human

Services Commission (HHSC) and the Texas Department of State Health Services (DSHS).

Attachment 1 – Emergency or Temporary Attested Will

AGAIN, THIS GUIDE IS FOR EDUCATIONAL PURPOSES ONLY. NOTHING IN THIS GUIDE CONSTITUTES LEGAL ADVICE BY THE AUTHOR OR HIS LAW FIRM, NOR DOES THIS GUIDE CREATE ANY ATTORNEY-CLIENT RELATIONSHIP.

This will is not meant to be a “permanent” will. It is provided without any representations as to the appropriateness of the will for your particular situation. However, in most situations, it will be better than having no will at all.

Keep in mind, however, that if you execute this “temporary” will, it will be just as effective as any other will until you replace it. Therefore, don’t delay consulting your legal advisor and executing a will designed to meet your specific desires and situation!

WILL

I, _____, a resident of _____ County, Texas, revoke all my prior wills and codicils and declare this to be my will.

Part One — Identification

1.1 **Spouse.** I have no spouse. [or] My spouse is _____ (“my spouse”).

1.2 **Children.** I have no children. [or] My children are _____, _____, and _____. All references in this will to “my children” are to them and to any children born to or adopted by me after the execution of this will.

Part Two — Disposition of Property

2.1 **Household, Personal Effects, and Automobiles.** If I leave a handwritten memorandum, signed and dated by me, I give all my interest in family use personal property in accordance with the memorandum. I give all my interest in family use personal property not disposed of by the memorandum to my spouse, if my spouse survives me, or, if my spouse does not survive me or I have no spouse, to my descendants who survive me, per stirpes, to be divided among them as they may agree, or, in the absence of an agreement within ninety days after my death, as the executors may determine.

2.2 **Residue.** I give all of my remaining property, including any lapsed gift (“my residuary estate”), as follows:

(A) **Gift to Spouse.** If my spouse survives me, I give my residuary estate to my spouse.

(B) **Gift to Children.** If my spouse does not survive me or I have no spouse and any descendant of mine survives me, I give my residuary estate to my descendants who survive me, per stirpes.

(C) **Contingent Gift.** If neither my spouse nor any descendant of mine survives me, I give my residuary estate to my heirs.

Part Three — Executors and Trustees

3.1 **Appointment of Executors and Trustees.** I appoint my spouse as sole independent executor of this will and my estate and as sole trustee of each trust created in this will. If for any reason and at any time my spouse is unable or unwilling to act or I have no spouse, I appoint _____ as sole independent executor of this will and my estate and as sole trustee of each trust created in this will. If for any reason and at any time neither my spouse, nor _____ is able and willing to act, I appoint _____ as sole independent executor of this will and my estate and as sole trustee of each trust created in this will.

3.2 **Independent Administration Without Bond.** No action shall be required in any court of probate jurisdiction ("probate court") in relation to the settlement of my estate other than the probating and recording of this will (and any codicil to this will) and the return of an inventory and list of claims of my estate, if required by law. The executors shall be independent of the supervision and direction of the probate court to the full extent permitted by law. Without first obtaining the approval of any court, the executors shall have all of the powers of independent executors under the laws of the State of Texas and, in addition, all the rights and powers granted in this will. No bond or other security shall be required of any executor.

3.3 **Powers of Successor Trustees; No Bond.** Any successor trustee shall have the same powers, rights and responsibilities as the original trustees. No bond or other security shall be required of any trustee.

3.4 **Resignation of Fiduciaries; Continuity of Authority.** Any fiduciary may resign without court action by giving at least thirty days' written notice by certified mail, return receipt requested, to each acting co-fiduciary, if any, and to each beneficiary entitled to receive a distribution from my estate, if an executor is resigning, or to each living income beneficiary of the trust from which the trustee is resigning, if a trustee is resigning. Until the effective date of the resignation, in the case of a resigning executor, or until the effective date of the appointment of a successor trustee, in the case of a resigning trustee, the acting fiduciaries shall continue to have and exercise all of the rights, privileges, powers, duties and immunities conferred upon the original fiduciaries in this will. Upon the effective date of the appointment of a successor trustee, that trustee shall become vested with the estate and title in and to the trust estate of the trust, and shall possess and execute all of the titles, rights, powers, privileges, duties and immunities conferred on the original trustees named in this will.

Part Four — Claims, Expenses, Taxes and Allocations

4.1 **Payment of Claims and Expenses.** Except as otherwise provided, all of the following items shall be paid by the executors out of my residuary estate, without apportionment or proration, and the executors shall not seek contribution toward or recovery of any of these payments:

(A) Claims allowable against my estate, including claims by any executor individually, but excluding nonrecourse claims unless the executors determine that the payment of a nonrecourse claim would be in the best interest of my estate. Claims may be extended and renewed. Unmatured claims (e.g., claims payable on a periodic basis) may be paid as they become due.

(B) Expenses of my last illness, funeral expenses, and expenses incurred in the administration of my estate.

The executors may apportion these items between income and principal in any manner that the executors, in their sole reasonable discretion, determine to be in the best interests of my estate.

4.2 **Payment of Taxes.** Except as otherwise provided, (i) all death taxes and (ii) generation-skipping transfer taxes on direct skips shall be paid by the executors out of my residuary estate, without apportionment or proration, and the executors shall not seek contribution toward or recovery of any of these payments. Death taxes may be deferred.

(A) Except to the extent other assets are insufficient, no (i) death taxes or (ii) generation-skipping transfer taxes on direct skips shall be charged against a distribution to my spouse.

(B) Any taxes imposed with respect to property, if any, which passes to the Disclaimer Trust shall be apportioned to that property. The portion of any taxes which the executors apportion to that property shall be the difference between the amount of any death taxes actually payable upon my death and the amount of any death taxes that would have been payable if that property had not been included in my taxable estate for death tax purposes. However, in applying this formula, the executors should make allowance for any specific tax allocations, credits, exemptions, exclusions or deductions granted by the law imposing the tax. Any determination made by the executors in good faith in accordance with these provisions shall be final and binding on all interested persons.

4.3 **Rights to Recovery.** Despite the preceding provisions, I do not waive, and the executors should enforce, all rights to recovery of any death taxes specified above which are imposed with respect to the following types of property:

(A) Any "appointive property" (meaning any property, or the transfer or receipt of any property, over which I have power of appointment).

(B) Any "marital deduction property" (meaning any property included in my gross estate under Section 2044 of the Code).

(C) Any "life estate property" (meaning any property included in my gross estate under Section 2036 of the Code).

Part Five — General Administrative Provisions

5.1 **Compensation.** Any executor or trustee is entitled to receive for services in that capacity reasonable compensation not exceeding the customary and usual compensation where the fiduciary services are performed. Any executor or trustee is entitled to reimbursement for all expenses incurred in the administration of my estate or any trust estate, including, among other expenses, compensation to agents or fees for professional services.

5.2 **Fiduciary Powers.** The executors, even if not necessary to pay debts of my estate, and the trustees shall have, but shall not be limited to, all of the powers of trustees under the Texas Trust Code, as amended, as it exists on the date of the exercise of any such power, except any powers that conflict with the terms of this will, which they may exercise in their uncontrolled discretion and judgment.

5.3 **Distribution Authority.** The executors and trustees shall have the following authority to make distributions from my estate and distributions of either income or principal from any trust

(whether during the term of or upon termination of the trust), which they may exercise in their sole discretion:

(A) The executors and trustees may make distributions in cash, in kind, in undivided interests, or in any other manner they deem advisable. The executors and trustees may determine the values of the assets to be distributed and allot these assets between the beneficiaries under this will without regard to any difference in the federal income tax bases of these assets. Any determination or allocation made in good faith by the executors or trustees shall be binding on all interested persons.

(B) The executors may make distributions directly from my estate (i) to the entitled beneficiary; (ii) in any manner provided by law for gifts or distributions to or for the benefit of minors, including, but not limited to, the Texas Uniform Transfers to Minors Act, so long as any distribution made pursuant to the Texas Uniform Transfers to Minors Act consists of property which qualifies as "custodial property" under that act; or (iii) in any manner provided by law for gifts or distributions to or for the benefit of persons under any other legal disability.

(C) The trustees may make distributions from any trust (i) in any manner described in Paragraph 5.3(B); (ii) to the person with whom a beneficiary under a legal disability resides or who has the care or custody of that beneficiary; (iii) to any account in a bank or savings institution in the name of the beneficiary or established solely for the benefit of the beneficiary; (iv) to the trustees of any trust established solely for the benefit of the beneficiary; (v) in any form of annuity; or (vi) by using, expending or applying a distribution for the benefit of the beneficiary.

5.4 **Transactions with Others.** The trustees shall not be disqualified to enter into any transaction on behalf of a trust solely because another party to the transaction is: (i) a trust (including another trust created in this will) of which a trustee is a trustee; (ii) a business controlled directly or indirectly by a beneficiary of my estate or any trust created in this will; (iii) a beneficiary of my estate or any trust created in this will acting in the beneficiary's own behalf; or (iv) an estate (including my estate) of which an executor is acting in any fiduciary capacity.

5.5 **Third Parties not Liable.** No person dealing with the executors or trustees shall be liable or responsible for the proper application or distribution of any money that may be paid to them as executors or as trustees. Each person dealing with them in either or both capacities shall be relieved from all responsibility to inquire into the validity, regularity or propriety of any sale or other disposition of any of the assets of my estate or of any of the assets of any trust created in this will.

5.6 **Tax Elections.** The executors and trustees shall make any tax elections that appear advisable and in the best interests of my estate, any trust, and the beneficiaries of either in order to minimize taxes and expenses. In determining the death and income tax liability of my estate or any trust, the decisions of the executors and trustees shall be binding and conclusive upon all interested persons in all matters. No adjustments shall be made (between income and principal) to compensate for the effect of any tax-related election on the interests of the beneficiaries or the amount of recovery of death taxes imposed on appointive property, marital deduction property, or life estate property.

5.7 **Powers Exercisable Wherever Necessary.** All powers granted to the executors or trustees shall be exercisable in the state or jurisdiction of my domicile at the time of my death,

as well as in any other state or jurisdiction where I may own property or owe debts at the time of my death.

5.8 **Spendthrift Provision.** While in the hands of the trustees, neither the principal of nor the income from any of the trusts created in this will shall be liable for the debts, contracts, or torts of any beneficiary, nor shall the trust estate be subject to any claim of any creditor of any beneficiary under any writ, process or proceeding, either at law or in equity. No beneficiary shall have the power to sell, assign, transfer, mortgage, pledge or encumber any interest of any kind in a trust created in this will. Any attempted sale, assignment, transfer, mortgage, pledge or encumbrance made by any beneficiary prior to actual receipt of trust income or principal shall be void.

5.9 **Fiduciary Liability.** Any executor or trustee may rely upon the written opinion of a competent attorney, any facts stated in any instrument in writing and believed true or any other evidence deemed sufficient. No executor or trustee serving without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith. No executor or trustee receiving compensation for services in that capacity shall be liable for any loss which may occur as a result of any actions taken or not taken by the executor or trustee if the executor or trustee has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates or trusts. No executor or trustee shall be liable for the acts, omissions or defaults of any other executor or trustee, ancillary trustee, agent or other person to whom duties may be properly delegated under the provisions of this will (except that any corporate fiduciary shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Part Six — Disclaimers, Disclaimer Trust, and Other Trusts

6.1 **Disclaimers.** If any property becomes payable to my estate or to the testamentary trustees as the result of a renunciation or disclaimer, or if a beneficiary of my estate or any trust created in this will renounces or disclaims any right, property or other interest in my estate or any trust, the property shall be distributed as follows:

(A) **Disclaimed Property Payable to Estate or Trustees.** If any property becomes payable to my estate or to the testamentary trustees as the result of a renunciation or disclaimer (the “disclaimed property”), I give the disclaimed property as follows:

(1) If the person renouncing or disclaiming the disclaimed property is my spouse, I give the disclaimed property to the trustees to be placed into the Disclaimer Trust and administered as provided in Paragraph 6.2. My spouse shall have no rights or powers with respect to the Disclaimer Trust that would cause my spouse’s disclaimer to fail to qualify as a qualified disclaimer (i) under Section 2518 of the Code or (ii) under applicable state law.

(2) If the person renouncing or disclaiming the disclaimed property is not my spouse, I give the disclaimed property in the same manner as if the person disclaiming the disclaimed property had predeceased me, and the disclaimed property had been made payable directly to my estate or the trustees, as the case may be.

(B) **Disclaimer of Outright Gift.** If my spouse disclaims any part of any property otherwise passing outright to my spouse, I give the disclaimed portion to the trustees to be placed into

the Disclaimer Trust and administered as provided in Paragraph 6.2. My spouse shall have no rights or powers with respect to the Disclaimer Trust that would cause my spouse's disclaimer to fail to qualify as a qualified disclaimer (i) under Section 2518 of the Code or (ii) under applicable state law.

(C) **Disclaimer of Disclaimer Trust.** If my spouse disclaims any part of the property passing to the Disclaimer Trust, I give the disclaimed portion in the same manner as if my spouse had predeceased me, and the disclaimed portion had passed under this will.

(D) **Other Disclaimers.** In the event a beneficiary of my estate or any trust created in this will renounces or disclaims any right, property or other interest in my estate or any trust, I give the renounced or disclaimed right, property or other interest ("the disclaimed property") under this will as follows:

(1) If the renunciation or disclaimer is a qualified disclaimer under Section 2518 of the Code, the disclaimed property shall pass as if the disclaimant had predeceased me.

(2) If the renunciation or disclaimer is not a qualified disclaimer under Section 2518 of the Code, the disclaimed property shall pass as if the disclaimant had died on the date of the renunciation or disclaimer.

6.2 **Disclaimer Trust.** The property, if any, passing to the trustees to be held in the Disclaimer Trust shall be administered for the benefit of my spouse and my descendants on the following terms, as well as on all other applicable terms of trust in this will:

(A) **Distributions to Spouse.** The trustees shall pay to or apply for the benefit of my spouse any amounts out of the net income and principal (if income is insufficient) of the trust as, in the sole reasonable discretion of the trustees, are necessary or advisable for my spouse's health, education, support or maintenance.

(B) **Distributions to Descendants.** In addition to any distributions to my spouse, the trustees may pay to or apply for the benefit of any of my descendants any amounts out of any remaining net income and principal of the trust (if income is insufficient) as, in the sole reasonable discretion of the trustees, are necessary or advisable for the health, education, support or maintenance of any of my descendants. In exercising their discretion, the trustees may make unequal distributions among my descendants at any time the trustees deem appropriate.

(C) **Final Distribution.** Upon my spouse's death, the trust estate, if any, shall pass as provided in Paragraph 2.2, applied as if my spouse had predeceased me and I had then died disposing of the property under this will.

6.3 **Contingent Trusts.** If any beneficiary of my estate or any trust created in this will is entitled to receive outright any property from my estate or from a trust (other than discretionary distributions of income and principal or distributions under the provisions of the exercise of a power of appointment, if any, granted in this will) and is under the age of twenty-one or is incompetent to handle the management of the property, the property shall be placed into a separate trust for the beneficiary administered on the following terms, as well as on all other applicable terms of trust in this will:

(A) **Distributions to the Beneficiary.** The trustees shall pay to or apply for the benefit of the beneficiary any amounts out of the net income and principal (if income is insufficient) of the trust as, in the sole reasonable discretion of the trustees, are necessary or advisable for the beneficiary's health, education, support or maintenance.

(B) **Delivery of Personal Effects.** The trustees may deliver any part of the trust estate which consists of family use personal property, if any, to the person having the care or custody of the beneficiary. That person's receipt shall be a complete release of the trustees with respect to the delivered property.

(C) **Termination.** The trust shall terminate upon the first to occur of (i) the beneficiary attaining the age of twenty-one years and regaining competency or (ii) the beneficiary's death.

(D) **Final Distribution.** Upon termination of the trust because of the beneficiary's age or competency, the trust estate, if any, shall be paid to the beneficiary outright. Upon termination of the trust because of the beneficiary's death, the trust estate shall pass to the personal representative of the beneficiary's estate to be distributed as a part of the beneficiary's estate. However, if the beneficiary dies without a will and no personal representative has been appointed for the beneficiary's estate, the trust estate may be paid to the beneficiary's then surviving heirs.

(E) **Miscellaneous.** No guardian of the beneficiary's estate nor any other person shall have the right to receive outright any property which would otherwise be held in trust as provided in this Paragraph.

Part Seven — Definitions; Rules

7.1 For purposes of this will and each trust created hereunder:

(A) A beneficiary shall not be considered to survive me if the beneficiary dies within sixty days of the date of my death. A beneficiary entitled to receive any portion of the trust estate of a trust upon its termination shall not be required to survive the termination of the trust for any time period as a condition to receiving a portion of the trust estate if the beneficiary is surviving at the time of the event causing the termination of the trust.

(B) The term "child" or "children" refers only to lawful sons and daughters of the person in question. The term "descendant" or "descendants" includes lawful, lineal descendants of the first, second or subsequent degree of the person in question, including descendants born subsequent to that person's death. The term "heirs" refers to those persons who would inherit the property in question from the person in question, assuming that the person in question had died intestate owning that property under the Texas laws of descent and distribution in effect at the time of that person's death. When the term "heirs" is used, the shares and proportions of taking shall be determined by Texas law. The term "then surviving heirs" refers to those persons who would be the heirs of the person in question if that person had died at the time of the event which entitles the heirs to delivery of the property in question.

(C) The following shall apply to Paragraph 7.1(B):

(1) A legally adopted child and the adopted child's descendants and legally adopted children shall be deemed descendants of the adopting parents and of

anyone who is by blood or adoption an ancestor of either of the adopting parents. However, a person who is twenty-one years of age or older when legally adopted shall **not** be deemed a descendant.

(2) In determining the heirs of a descendant of mine, all of my descendants shall be deemed to be heirs of the whole blood.

(3) In the event that (i) the parental rights of a person (the "former parent") with respect to a child have been terminated, and (ii) the child was adopted during the former parent's lifetime, the child shall be treated as born to or adopted by the adoptive parent, and not as born to or adopted by the former parent.

(D) References to the "Code" are to the United States Internal Revenue Code of 1986, as amended, and as it may be amended in the future.

(E) The term "death taxes" refers to all estate, inheritance and succession taxes, together with any interest and penalties (other than (i) any recapture of estate taxes under Section 2032A of the Code and (ii) any generation-skipping transfer taxes under Chapter 13 of the Code) imposed by reason of my death or of the transfer of property in that event.

(F) Wherever appropriate, the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice versa. The headings for each Paragraph in this will are for convenience only, and should not be construed substantively in determining my intent.

(G) The term "my estate" or "my property" means all my property of every nature and description, separate and community, real, personal and mixed, wherever located, and whether acquired before or after the execution of this will.

7.2 Except as specifically provided in this will, I do not exercise any power of appointment.

Part Nine — Guardians

8.1 If my spouse does not survive me, I appoint _____ as guardian of the person of any child of mine who is under a legal disability at the time of my death. If for any reason and at any time _____ is unable or unwilling to act, I appoint _____ as guardian. No bond or other security shall be required of any guardian. If any person named as guardian is not a resident of the state of which I am a resident at the time of my death, it is my desire that any child of mine who is under a legal disability move to the place where the named person is residing.

I declare that I have no agreement or contract with my spouse or any other person obligating me in any way as to the disposition of my property or obligating my spouse or any other person in any way as to the disposition which may be made by my spouse or any other person of any property taken under this will or any property owned by my spouse or any other person at the time of that person's death.

I declare this to be my will. I have signed my name to this will in the presence of the undersigned attesting witnesses, all of whom were present at the same time, each of whom signs this will at my request, in my presence and in the presence of each other. We have each signed this will on this ____ day of _____, 20____.

Testator

The undersigned, each being over eighteen years of age, declare that the testator declared to us that the foregoing instrument is the testator's will and the testator requested us to act as witnesses to the testator's will and signature. The testator then signed this will in our presence, all of us being present at the same time. We each declare that we believe the testator to be of sound mind and memory. At the testator's request, in the testator's presence, and in the presence of each other, we now sign our names as attesting witnesses on this ____ day of _____, 20____.

Witness

Witness

See the following page if a notary is, or later becomes, available to the testator and witnesses.

It is not necessary to complete and execute this page if no notary is available.

However, if a notary is available, completion and execution of this page will expedite the probate of this will.

Self-Proving Affidavit

THE STATE OF TEXAS §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____ and _____, known to me to be the testator and witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the testator declared to me and to the witnesses in my presence that this instrument is the testator's will, and that the testator had willingly made and executed it as the testator's free act and deed for the purposes therein expressed; and the witnesses, each on oath, stated to me, in the presence and hearing of the testator, that the testator had declared to them that this instrument is the testator's will, and that the testator executed the same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the testator and at the testator's request; that the testator was at that time eighteen years of age or over and was of sound mind; and that each of the witnesses was then at least eighteen years of age.

Testator

Witness

Witness

SUBSCRIBED AND SWORN TO before me by the testator and the witnesses on this ____ day of _____, 20____.

(Seal)

Notary Public, The State of Texas

Attachment 2 – Holographic Will Form

AGAIN, THIS GUIDE IS FOR EDUCATIONAL PURPOSES ONLY. NOTHING IN THIS GUIDE CONSTITUTES LEGAL ADVICE BY THE AUTHOR OR HIS LAW FIRM, NOR DOES THIS GUIDE CREATE ANY ATTORNEY-CLIENT RELATIONSHIP.

This will is not meant to be a “permanent” will. It is provided without any representations as to the appropriateness of the will for your particular situation. However, in most situations, it will be better than having no will at all. Keep in mind, however, that once executed, it will be just as effective as any other will until you replace it. Therefore, don’t delay consulting your legal advisor and executing a will designed to meet your specific desires and situation!

This document is only a form for you to follow. The actual will must be completely written in your normal handwriting. You should sign and date it at the end.

I, _____, a resident of _____ County, Texas, revoke all my prior wills and codicils and declare this to be my will.

If I am married and my spouse survives me, I give my entire estate to my spouse.

If I am not married or my spouse does not survive me, I give my entire estate to my descendants who survive me, per stirpes.

If neither my spouse nor any descendant of mine survives me, I give my entire estate to my heirs.

Use the following paragraph *INSTEAD OF* the previous three paragraphs if the purpose of the holographic will is to “pour over” the testator’s estate to a revocable trust with dispositive provisions executed by the testator the same day.

I give my entire estate to the acting trustees of the _____ Trust created by me by revocable trust agreement executed the same day as this will.

I appoint my spouse as independent executor of my estate. If I am not married or my spouse is unable or unwilling to act, I appoint _____ as independent executor of my estate. No action shall be required in any court other than the probating and recording of this will and the return of an inventory and list of claims, if required. No bond shall be required of any executor. Any executor shall have all of the powers granted to trustees under the Texas Trust Code.

If appropriate, the executor may make distributions in any manner provided by law for distributions for the benefit of minors or persons under any other legal disability, including the Texas Uniform Transfers to Minors Act.

If my spouse does not survive me, I appoint _____ as guardian of the person of any child of mine who is under a legal disability at the time of my death. If for any reason and at any time _____ is unable or unwilling to act, I appoint _____ as guardian. No bond or other security shall be required of any guardian.

Executed _____, 20____.

[Signature]

See the following page if a notary is, or later becomes, available to the testator.

It is not necessary to complete and execute this page if no notary is available.

However, if a notary is available, completion and execution of this page will expedite the probate of this will.

Self-Proving Affidavit

THE STATE OF TEXAS §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the testator whose name is subscribed to the annexed or foregoing instrument. The testator, being duly sworn, declared to me that this instrument is the testator's will, that it is written entirely in the testator's own handwriting, that the testator was eighteen years of age or over and was of sound mind when the will was executed, and that the testator has not revoked the will.

Testator

SUBSCRIBED AND SWORN TO before me by the testator on this ____ day of _____, 20____.

Notary Public, The State of Texas

(Seal)

Attachment 3 – Text of Gov. Abbott’s April 8th Order Temporarily Suspending Notary Physical Presence Requirement for Specified Documents

The Office of the Governor is in receipt of OAG’s¹³ request to temporarily suspend certain statutes concerning appearance before a notary public. OAG asserts that strict compliance with these laws could prevent, hinder, or delay efforts to cope with the COVID-19 disaster. Minimizing in-person contact with people who are not members of the same household is necessary to slow the spread of COVID-19. OAG has identified provisions that frustrate this public-health goal by arguably requiring in-person appearance before a notary public to execute a self-proved will, a durable power of attorney, a medical power of attorney, a directive to physician, or an oath of an executor, administrator, or guardian. OAG’s request would temporarily relax the in-person requirements to allow for appearance before a notary public via videoconference, avoiding the need for face-to-face contact during a pandemic.

In accordance with [section 418.016](#) of the Texas Government Code, and subject to the conditions set forth below, the Office of the Governor suspends the following statutes to the extent necessary to allow for appearance before a notary public via videoconference:

- TEX. ESTATES CODE [§ 251.104\(b\)](#)
- TEX. ESTATES CODE [§ 251.1045\(a\)](#)
- TEX. ESTATES CODE [§ 751.0021\(a\)\(4\)](#)
- TEX. HEALTH & SAFETY CODE [§ 166.154\(b\)](#)
- TEX. HEALTH & SAFETY CODE [§ 166.032\(b-1\)](#)
- TEX. ESTATES CODE [§ 305.054](#)
- TEX. ESTATES CODE [§ 1105.052](#)

The following conditions shall apply whenever this suspension is invoked:

- A notary public shall verify the identity of a person signing a document at the time the signature is taken by using two-way video and audio conference technology.
- A notary public may verify identity by personal knowledge of the signing person, or by analysis based on the signing person’s remote presentation of a government-issued identification credential, including a passport or driver’s license, that contains the signature and a photograph of the person.
- The signing person shall transmit by fax or electronic means a legible copy of the signed document to the notary public, who may notarize the transmitted copy and then transmit the notarized copy back to the signing person by fax or electronic means, at which point the notarization is valid.

This suspension, granted on April 8, 2020, is in effect until terminated by the Office of the Governor or until the [March 13, 2020 disaster declaration](#) is lifted or expires. Documents executed while this suspension is in effect, and in accordance with its terms, shall remain valid after the termination of this suspension.

¹³ OAG means Office of the Attorney General.

Attachment 4 – Sample Forms for Remotely-Notarized Self-Proving Affidavits, Acknowledgments, and Oaths

Form of self-proving affidavit for remotely-notarized attested will.

Self-Proving Affidavit

THE STATE OF TEXAS §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____ and _____, ***by way of two-way video and audio conference in accordance with Gov. Abbott's Order issued April 8, 2020, suspending the physical presence requirement applicable to a notary public for documents specified in the Order,*** known to me to be the testator and witnesses, respectively, ***or proved to me through [insert description of identity card or other document] displayed during the video conference,*** whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn ***and at the time being physically present in the State of Texas,***¹⁴ the testator declared to me and to the witnesses in my presence that this instrument is the testator's will, that the testator had willingly made and executed it as the testator's free act and deed for the purposes therein expressed, **; and the witnesses, each on oath, stated to me, in the presence and hearing of the testator, that the testator had declared to them that this instrument is the testator's will, and that the testator executed the same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the testator and at the testator's request; that the testator was at that time eighteen years of age or over and was of sound mind; and that each of the witnesses was then at least eighteen years of age. ***A legible copy of the signed will was transmitted to me during the video conference.***

Testator

Witness

Witness

SUBSCRIBED AND SWORN TO before me by the testator and the witnesses ***in the manner noted above*** on this ____ day of _____, 2020.

Notary Public, The State of Texas

(Seal)

¹⁴ The executive orders issued in many other states require that the person signing the documents be in the same state. This isn't a requirement under Gov. Abbott's suspension order, but it might still be a good idea to include it.

NOTE: GOV. ABBOTT'S SUSPENSION ORDER AUTHORIZING REMOTE NOTARIZATION OF SELF-PROVING AFFIDAVITS DOES NOT EXPRESSLY INCLUDE THOSE AFFIDAVITS FOR HOLOGRAPHIC WILLS UNDER ESTATES CODE SECTION 251.107. THEREFORE, DON'T USE THIS FORM UNLESS YOU'RE COMFORTABLE WITH THE POSSIBILITY THAT THE SELF-PROVING AFFIDAVIT MAY HAVE NO EFFECT. HOWEVER, THE HOLOGRAPHIC WILL ITSELF SHOULD STILL BE VALID.

Form of self-proving affidavit for remotely-notarized *holographic* will.

Self-Proving Affidavit

THE STATE OF TEXAS §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, *by way of two-way video and audio conference in accordance with Gov. Abbott's Order issued April 8, 2020, suspending the physical presence requirement applicable to a notary public for documents specified in the Order,* known to me to be the testator, *or proved to me through [insert description of identity card or other document] displayed during the video conference,* whose name is subscribed to the annexed or foregoing instrument. The testator, being duly sworn, declared to me *that at the time the testator was physically present in the State of Texas,*¹⁵ that this instrument is the testator's will, that it is written entirely in the testator's own handwriting, that the testator was eighteen years of age or over and was of sound mind when the will was executed, and that the testator has not revoked the will. *A legible copy of the signed will was transmitted to me during the video conference.*

Testator

SUBSCRIBED AND SWORN TO before me by the testator *in the manner noted above* on this ____ day of _____, 2020.

Notary Public, The State of Texas

(Seal)

¹⁵ See footnote 14.

Form of acknowledgment for remotely-notarized financial power of attorney, medical power of attorney, or directive to physicians.¹⁶

THE STATE OF TEXAS §

COUNTY OF _____ §

Before me, the undersigned notary public, on this day personally appeared _____, * **by way of two-way video and audio conference in accordance with Gov. Abbott's Order issued April 8, 2020, suspending the physical presence requirement applicable to a notary public for documents specified in the Order,** * known to me ***or proved to me through [insert description of identity card or other document] displayed during the video conference,** * to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that [s]he ***was at that time physically present in the State of Texas and** *¹⁷ executed the same for the purposes and consideration therein expressed. * **A legible copy of the signed instrument was transmitted to me during the video conference.** *

Given under my hand and seal of office this ____ day of ____, 2020.

Notary Public, The State of Texas

(Seal)

Form of jurat for oaths.

[Insert the normal style of the case and use the appropriate oath for the personal representative. Then use the following modified jurat.]

[Insert Style of Case]

SWORN TO AND SUBSCRIBED BEFORE ME on this ____ day of ____, 2020 by _____, * **who appeared before me by way of two-way video and audio conference in accordance with Gov. Abbott's Order issued April 8, 2020, suspending the physical presence requirement applicable to a notary public for documents specified in the Order, known to me or proved to me through [insert description of identity card or other document] displayed during the video conference, to be the person whose name is subscribed to the foregoing instrument and who acknowledged to me that [s]he was at that time physically present in the State of Texas.** ¹⁸ **A legible copy of the signed instrument was transmitted to me during the video conference** *.

Notary Public, The State of Texas

(Seal)

¹⁶ While the statutory forms utilize the short forms of acknowledgement, I've used the longer form promulgated by the Secretary of State (www.sos.state.tx.us/statdoc/forms/edinfo-sample-forms-9-19.pdf) because it seems more amenable to the extra language to be added.

¹⁷ Again, see footnote 14.

¹⁸ Again, see footnote 14.

Attachment 5 – Gov. Abbott’s April 27th Order Temporarily Suspending Notary Physical Presence Requirement for Real Estate Documents

Office of the Attorney General (OAG):

The Office of the Governor is in receipt of OAG’s request to temporarily suspend section 121.006(c)(1) of the Texas Civil Practice & Remedies Code. OAG asserts that strict compliance with this law could prevent, hinder, or delay efforts to cope with the COVID-19 disaster. Minimizing in-person contact with people who are not members of the same household is necessary to slow the spread of COVID-19. OAG explains that section 121.006(c)(1) could frustrate this public-health goal by requiring in-person appearance before a notary public to acknowledge certain real-estate instruments. OAG’s request would temporarily relax the in-person requirement to allow for appearance before a notary public via videoconference, avoiding the need for face-to-face contact during a pandemic.

In accordance with section 418.016 of the Texas Government Code, and subject to the conditions set forth below, the Office of the Governor suspends section 121.006(c)(1) of the Texas Civil Practice & Remedies Code to the extent necessary to allow for appearance before a notary public, for the purpose of acknowledging real-estate instruments, via videoconference. Nothing in this suspension shall prevent a traditional notarization or an online notarization under chapter 406 of the Texas Government Code.

The following conditions shall apply whenever this suspension is invoked:

- A notary public shall use two-way audio-video communication technology that allows for direct and contemporaneous interaction between a person signing a document and the notary public by sight and sound.
- A notary public shall verify the identity of a signatory at the time the signature is taken by using two-way audio-video communication technology. A notary public may verify identity by:
 - personal knowledge of the signatory;
 - analysis based on the signatory’s remote presentation of a government-issued identification credential, including a passport or driver’s license, that contains the signature and a photograph of the signatory, and is of sufficient quality to allow for identification; or
 - an introduction of the signatory by oath of a credible witness who personally knows the signatory, and who is personally known to the notary public.
- During the two-way audio-video communication:
 - the notary public shall attest to being physically located in Texas;
 - the signatory shall attest to being physically located in Texas;
 - the signatory shall affirmatively state what documents are being signed; and
 - the signatory’s act of signing shall be close enough to the camera for the notary public to observe it clearly.
- A recording of the two-way audio-video communication of the notarial act shall be kept by the notary public for two years from the date of the notarial act.
- The signatory shall send the original signed documents by courier, U.S. Mail, or overnight carrier directly to the notary public for the notary public to sign and to affix the official stamp or seal.
- The official date and time of the notarization shall be the date and time when the notary public witnessed the signatory signing the documents during the two-way audio-video communication.
- The documents shall include, whether in a notarial certificate, a jurat, or an acknowledgement, language substantially similar to the following: “This notarization involved the use of two-way audio-video communication pursuant to the suspension granted by the Office of the Governor on April 27, 2020, under section 418.016 of the Texas Government Code.”

This suspension, granted by the Office of the Governor on April 27, 2020, is in effect until the earlier of May 30, 2020, or the termination of the March 13, 2020 disaster declaration. Any document acknowledged while this suspension is in effect, and in accordance with its terms, shall be considered duly acknowledged and fully compliant with Texas law after the termination of this suspension. All county clerks in Texas shall accept for recording in the public records all documents signed and notarized by means of the two-way audio-video communication described in this suspension.

Attachment 6 – DSHS COVID-19: Interim Guidance on Executing Contracts and Other Documents Requiring In-Person Signatures



Texas Department of State Health Services

John Hellerstedt, M.D.
Commissioner

COVID-19: Interim Guidance on Executing Contracts and Other Documents Requiring In-Person Signatures

This guidance is based on the best information currently available and will be updated when appropriate. Please visit the [Texas Department of State Health Services](#) and the [Centers for Disease Control and Prevention](#) for updates.

Purpose

This guidance is intended to help individuals who need to sign document in-person, also known as “wet” signatures.

Recommended Actions for Obtaining In-Person Signatures

In cases in which signatures must be obtained in person, the following actions are recommended:

- Maintain social distancing by remaining at least 6 feet apart from others when possible.
- Limit the number of people in the room as much as possible.
- If possible, conduct the meeting outside.
- Wear a [cloth face covering](#) when in a room with others. Wearing face covering does not replace the need for social distancing.
- Avoid sharing pens, office supplies, and other equipment. If possible, provide disposable pens so all signees have their own. Clean and disinfect shared pens and other shared supplies before and after use.
- Disinfect surfaces, buttons, handles, knobs, and other frequently-touched items.
- Wash hands with soap and water for 20 seconds before and after handling shared documents, pens, or other equipment. Wash hands after the meeting.
- If no soap and water are available, use hand sanitizer with at least 60% alcohol.
- Do not meet with others if you are sick or if someone else is sick.

Information for Notaries

On April 9, 2020, Governor Greg Abbott [temporarily suspended certain statutes](#) concerning in-person appearances before a notary public, allowing signings to take place via videoconference. These statutes concern appearances before a notary public to execute a self-proved will, a durable power of attorney, a medical power of attorney, a directive to physician, or an oath of an executor, administrator, or guardian.

The following conditions apply whenever this suspension is invoked:

- A notary public shall verify the identity of a person signing a document at the time the signature is taken by using two-way video and audio conference technology.
- A notary public may verify identity by personal knowledge of the signing person, or by analysis based on the signing person's remote presentation of a government-issued identification credential, including a passport or driver's license, that contains the signature and a photograph of the person.
- The signing person shall transmit by fax or electronic means a legible copy of the signed document to the notary public, who may notarize the transmitted copy and then transmit the notarized copy back to the signing person by fax or electronic means, at which point the notarization is valid.

In some cases, however, it may not be possible to conduct signings via videoconference, or obtain electronic signatures, requiring that signatures be obtained in person.

General Guidance to Prevent COVID-19 Infection

- Wash hands with soap and water often for 20 seconds and encourage others to do the same.
- If no soap and water are available, use hand sanitizer with at least 60% alcohol.
- COVID-19 is spread through droplets in the air when people sneeze, cough, or talk. Cover coughs and sneezes with a tissue, then throw the tissue away.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Disinfect surfaces, buttons, handles, knobs, and other places touched often.
- Stay at least 6 feet away from others.
- Wear a cloth face covering in public settings.

Resources:

[DSHS Interim Guidance for Mail Handling](#)

[DSHS Information for Businesses and Employers](#)

[National Notary Association's Important Coronavirus Guidance for Signing Agents and Mobile Notaries](#)

Because the novel coronavirus (the virus that causes COVID-19) response is rapidly changing, this is interim guidance.

Reliable Information Sources

Find up-to-date novel coronavirus information at dshs.texas.gov/coronavirus, and on DSHS's Facebook, Twitter and Instagram at @TexasDSHS. Also visit the CDC's website at cdc.gov/coronavirus.