

# VIRGINIA Lawyers Weekly



## Elder law firms turn to 'remote notarization'

By: Maura Mazurowski ○ April 13, 2020



The days of a client signing a power of attorney and other forms with an attorney and two witnesses sitting close by at the same table are over – at least for now.

In light of social distancing, firms practicing elder law have begun offering creative ways to have estate planning documents – including wills, medical directives and trusts – signed while ensuring safety amid the coronavirus pandemic.

Carolyn White, a Midlothian attorney, said her firm has begun a process of allowing clients to do “drive-up” document signings, which accommodates social distancing guidelines while also meeting the legal requirements set by the state.

“They sign their document in the car, we witness outside the car, there you go,” White said. “It’s subpar for client confidentiality, but as long as you have a line of sight and all necessary parties can see each other, it meets the requirements.”

Like many attorneys at this time, White has transitioned much of her work to phone calls and video conferencing. But in Virginia, a will signing must be witnessed by two competent individuals, plus the attorney.

Getting four people into the same room can be difficult in the age of social distancing – and White doesn’t anticipate business will slow anytime soon.

“We’ve definitely seen an uptick in traffic. My heart goes out to clients who are dealing with the double anxiety of getting these documents signed but not wanting to expose themselves to the outside world to do so,” White said.

This “double anxiety” is pertinent to White’s elderly clients, particularly those living in retirement homes. According to the Center for Disease Control and Prevention, individuals 65 years old and older are more susceptible to contracting the coronavirus. Nursing homes across the country have been instructed to limit visitors – if not shut down access entirely – as the pandemic ensues.



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— Midlothian attorney Carolyn White

Such liminary precautions create another difficulty for White’s work.

“We try to arrange for our clients [in nursing homes] to be placed in a room that has an exterior window that opens so we can pass documents back and forth,” White said. “So we stand outside while the resident is inside.”

But even maintaining distance through windows can be cause for concern, especially for retirement facilities that are already susceptible to coronavirus outbreak. Last week, Canterbury Rehabilitation & Healthcare Center outside Richmond was declared to have one of the nation's worst known coronavirus outbreaks. As of April 7, 92 in-house or hospitalized residents tested positive, the facility said in a statement, which was up from 41 the week before. The death toll at the facility was 32 as of April 7.

"We're dealing with an enemy here in COVID-19 that is extremely difficult to identify, extremely difficult to control, and despite the best efforts of the medical staff, of the testing community, of everybody involved, we're still seeing really significant spread," said Danny Avula, director of the Richmond and Henrico health districts, at a news conference.

The solution, it seems, is to eliminate in-person contact entirely and allow for elder law documents to be witnessed and signed via video conferencing applications, such as Skype or Zoom.

Which is exactly what the Virginia State Bar and the Virginia Academy of Elder Law Attorneys, or VAELA, are seeking to do.

"We've been working to see if we can't get something in place, at least for the duration of the emergency, that would give some specifics on how to do signings [via video conferencing] that would meet all the appropriate standards for the notarization and witnessing accounts," said Chris McCarthy, who also practices in Midlothian.

McCarthy said that, legislatively speaking, an order to authorize "remote notarization" is unlikely to pass. VAELA is therefore pursuing three different options: to add this amendment onto a bill going before the governor, to pursue emergency procedures through the Secretary of the Commonwealth or for the governor to issue another executive order.

"If I've got a client who's in the nursing home and they have video conferencing capabilities, then all the parties... Can see each other and go through the right steps to sign the document properly," McCarthy said. "It would meet the requirements even though not everybody's in the same place."

Other states, including Maryland and Massachusetts, have already passed measures that allow elder law documents to be certified through teleconference.

Though allowing remote notarizations during the pandemic would alleviate stressors on attorneys and clients alike, White noted that certain "digital divides" with clients could inhibit this process. For example, some clients live in rural areas with limited data access; others don't have access to video conferencing software.

However, a bigger concern is that, with millions of Virginians now working from home, whether or not internet providers will have the bandwidth to maintain a stable connection to allow signings via video conferencing to be done.

White said her firm has transitioned to methods of conference calls because their office phones and internet "kept crashing under the pressure."

"There is so much stress on the infrastructure of the internet at large right now that even in the metro areas, there's so much traffic going through the pipes that we're getting log jams, which degrades the quality of the connection," White said. "That's something our firm has been dealing with multiple times a day, every day."


McCarthy said that requests to authorize remote notarization have been submitted. VAELA is waiting to hear back on "any requirements that need to be worked through," he said.

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The image shows three overlapping covers of the 'Legal Matters' magazine. The left cover has a blue header and features the headline 'Can a court make your will? The insurance for your will'. The middle cover has a green header and features the headline 'Mortgage in my will? Don't be a victim'. The right cover has a red header and features the headline 'To address multiple behavior in the 21st century'.

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