

ESTATE PLANNING DOS AND DON'TS DURING A LOCKDOWN

During these unprecedented times, we expect that many of our clients are wondering about the status of their estate plans, and in particular whether it is possible to make changes to estate planning documents. We thought it would be helpful to list a few “Dos and Don’ts” to help you think through what can and cannot be done if you are sheltering in place.

CAN I CHANGE MY WILL?

Wills must be executed in accordance with extremely precise formalities. In Texas, a typed/printed will must be signed by the testator in the presence of two qualified, disinterested witnesses. To ease the probate process, a notary should be present as well, though this is not absolutely necessary.

Do not simply print and sign a will or codicil, whether drafted by an attorney or printed from an online resource, unless you are doing so in the presence of two qualified, disinterested witnesses who also sign the document. A typed/printed will that is not properly witnessed will not be valid.

Texas does permit a document that is wholly in the handwriting of the testator to be admitted to probate as the testator’s will. Consequently, if you would like to make a simple update to your will, it might be possible to do so with a document that you write out long-hand. Nevertheless, we strongly urge you to consult with your attorney before doing so. At a minimum, if you and your estate planning attorney decide a handwritten document is feasible, he or she can help craft the appropriate language.

CAN I CHANGE MY REVOCABLE TRUST?

Unless your revocable trust document specifically requires amendments to be notarized, you can probably amend your revocable trust with a typed/printed document. Again, we urge you to consult with your estate planning attorney before doing so. A trust instrument that is not notarized cannot be filed in deed records, which might be problematic in limited circumstances.

CAN I SIGN NEW FINANCIAL AND MEDICAL POWERS OF ATTORNEY?

Financial (Durable) powers of attorney must be notarized. Medical Powers of Attorney must be notarized OR witnessed by two disinterested witnesses. At this time, it would not be possible to execute new financial or medical powers of attorney without these formalities.

MIGHT THE PROCEDURES FOR EXECUTION CHANGE DURING THIS CRISIS?

Yes, other U.S. states are considering changes to their required formalities in light of this remarkable crisis. For example, some U.S. states are considering allowing notarizations by teleconference or simply eliminating certain formalities. No such changes have been implemented in the State of Texas, but we are watching developments closely.

WE ARE AVAILABLE TO HELP!

We are working remotely and are available to help if you have any questions about these difficult issues. Please don't hesitate to contact any of us if we can be of assistance.

CONTACTS:**William R. Mureiko**

214.969.1424

Bill.Mureiko@tklaw.com**Barbara B. Ferguson**

214.969.1481

Barbara.Ferguson@tklaw.com**Roger D. Aksamit**

713.951.5885

Roger.Aksamit@tklaw.com**R. Gordon Appleman**

817.347.1701

Gordon.Appleman@tklaw.com**Tyree Collier**

214.969.1409

Tyree.Collier@tklaw.com**P. Mike McCullough**

214.969.1476

Mike.McCullough@tklaw.com**Rust E. Reid**

214.969.1483

Rust.Reid@tklaw.com**Eric G. Reis**

214.969.1118

Eric.Reis@tklaw.com**Sarah G. Marks**

214.969.1228

Sarah.Marks@tklaw.com**Rachel Deming**

214.969.1284

Rachel.Deming@tklaw.com

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