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4/10/2020

Governor Gavin Newsom  
1303 10th Street, Suite 1173  
Sacramento, CA 95814

Dear Governor Newsom:

We thank you for your leadership in establishing the safer-at-home order and for your executive order freeing the Chief Justice to enact emergency rules for our court systems.

On behalf of the many Trusts and Estate practitioners throughout California, we are concerned that attorneys cannot effectively provide critically needed services without risking their own health, that of notaries, and that of our clients and their families.

Trusts and Estate practitioners have been inundated because much of what we do involves planning for times of ill health and responding to emergency.

Many Californians are seeking our core services, which include the preparation of: 1) revocable trusts; 2) wills; 3) financial powers of attorney; 4) medical powers of attorney (Advance Healthcare Directives); and 5) grant deeds transferring real estate to trusts.

Many of us have successfully utilized real time video conferencing tools to meet with clients.

However, our area of law requires notarized signatures and/or the attestation of independent witnesses. For example, financial and medical powers of attorneys (Advanced Healthcare Directive) require the attestation of two independent witnesses or notarization. Wills require the attestation of two independent witness. Trust transfer deeds require notarization. California statutes do not allow for the use of newer electronic signature techniques or virtual meeting technologies.

As the leaders of the Estate Planning, Trust, and Probate section of the Bar Association of San Francisco, we support the efforts of the California Lawyers Association toward temporary emergency modification of the statutes governing notarization. During the duration of your safer-in-place order, we ask that you issue an emergency order *temporarily* allowing the personal appearance requirement for notarial acts to be met through the use of audio/video technology, with the notary and signer in different physical and/or geographical locations, and allow for all estate planning documents, including wills, to be notarized during this time (thus, eliminating the requirement for attesting witnesses for all documents for the duration of this time period).

Such an executive order would allow us to serve Californians while upholding your safer-at-home order and without endangering the health of the very Californians we are attempting to serve.

In the attachment to this letter, we outline a number of real scenarios that highlight the critical need for a solution to the problem. And for your reference, the following states have already issued emergency orders and/or guidance for remote e-Notarization:

- Alabama (3/26/20) (effective through duration of emergency declaration)
- Colorado (3/27/20) (effective for 30 days)
- Connecticut (3/23/20) (effective through 6/23/20)
- Iowa (3/22/20) (effective through duration of emergency declaration)
- Illinois (3/26/20) (effective through duration of emergency proclamation)
- Louisiana (3/26/20) (effective through duration of emergency order)
- Maryland (3/30/20) (effective through duration of emergency order)
- New Hampshire (3/23/20) (effective through duration of emergency order)
- New York (3/19/20) (effective through 4/18/20)
- Pennsylvania (3/25/20) (effective through duration of emergency order)
- Vermont (3/24/20) (effective for 180 days)



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- Washington (3/27/20) (effective through 04/26/20)
- Wisconsin (3/20/20) (until further notice)
- Wyoming (3/24/20) (effective through July 1st or end of emergency declaration)

Once again, we thank you for your strong leadership during this time, without which California would be in much more dire straits. We hope that you will consider our suggestion, along with the proposals issued by other local bar associations and the California Lawyers Associations, for solving this issue. We would be pleased to speak with you or your staff at any time about these ideas and methods for implementation.

Sincerely,

M. Brooke Wilson

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**Attachment -- Real Scenarios Illustrating the Impact of Personal Appearance  
Requirements**

Clients Who Have Contracted COVID-19 and Are At a Medical Facility Under Lockdown

One of our colleagues told us that she has a client in her 90s. The elderly client broke her hip last month and was hospitalized. The elderly client's nominated successor trustee was diagnosed with lung cancer and had recently contracted COVID-19. Two days before the local shelter-in-place order the elderly client had recovered sufficiently and was finally off the heavy-duty pain medication. The colleague, who is also a notary, went to the hospital to assist the client with updating her estate plan. However, the hospital was under lockdown and our colleague could not enter.

Another colleague has an elderly client at a Bay Area hospital with COVID-19 who is symptomatic. The elderly client had no estate plan prior to this crisis. The colleague said "We just prepared documents for an elderly client who is suffering from coronavirus. We shipped the documents to his son, who will deliver the packet to the hospital. Because we are unable to get a notary onsite at the hospital to formalize the documents, we instead inserted signature lines for two attested witnesses (i.e., the health care providers will likely sign as the attested witnesses). During this time, it would be helpful for the legislature to either do away with the notary requirement and allow attested witnesses; or, allow for video conferencing notarizations."

And another: "We have an elderly client whose husband passed last year and she was about to begin administering their joint trust. She has to sign notarized Certifications of Trusts for an administrative trust, her Survivor's Trust, and her husband's Bypass Trust. She has to go in person to obtain notarization and a medallion to transfer most of the trust assets. One solution is for her to resign and let her daughters serve as trustees. The daughters would then take the risk of interacting with institutions and cease seeing their mother for the duration of the crisis. Our client is a vibrant elder and I think this is a poor solution. It emphasizes elder's impotence in our current shelter-in-place circumstance."

### Medical and Other Frontline Personnel

Several of our members chimed in with stories about the challenges they were facing working with clients who are doctors, nurses, first responders, and those that work alongside them:

“I represent a doctor that is working in a public health clinic in SF and thus in clear and immediate danger. She wants to update her estate planning documents, but the lack of a clear exception for this situation is creating a challenge.”

“I have a client whose training is as an accountant. However, her current job is as the procurement officer for a local emergency service provider. In order to do her job effectively she has to be at the clinic even though she is not medical personnel. She really wants the peace of mind that her estate plan is in place for her sons.”

### Elderly Clients

An overwhelming number of responses came from our members trying to assist elderly clients:

“80-year old female client with multiple real properties to convey into trusts; could potentially have a son (age 55+) handle such under power of attorney, complication is that the conveyance is from one irrevocable trust to another; thus a power of attorney and action by trustee would cause problems for title company and face rejection by county recorder (as well as needless add to costs generating documents for PoA holder signature on the deeds and related real property tax documents). Exposure now to SARS-COV2 (covid-19) for the 80-year old female for 55+-year old son plus added costs in document preparation and approvals to clients because remote notarization not available.”

### Pregnant Clients



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One colleague states, “I have a pregnant client who understandably does not want any strangers near her.” Several colleagues have reported that they have pregnant clients who are seeking to update their estate plans or refinance given a loss of income. However, these clients cannot update their estate plans or complete the refinances that will keep them afloat without risk to their own health and that of their unborn children.

These stories are only a handful of the comments that we have received from member of our own section. We have also spoken with the leaders of trusts and estate sections in other local bar associations. All of us are struggling with how to assist our vulnerable clients during this time, and those that are operating on the front lines.

Sincerely,

Stuart Plunkett  
President, The Bar Association of San Francisco