

Remote Execution of Documents: Lessons Learned from the Pandemic

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WHY ARE WE HERE?

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COVID-19 and Social Distancing

- Our clients still would like to execute estate planning documents.
- The typical will signing ceremony for a married couple involves five people sitting around a table together:
 - The husband and wife,
 - Two unrelated witnesses, and
 - A notary
- Yet “social distancing” and various governmental orders suggested we should avoid gatherings like this.
- So how do we get documents executed?

Most Estate Planning Documents Can't be Signed Electronically.

- The Texas Uniform Electronic Transactions Act expressly excludes its application to wills.
- Other documents must involve a “transaction” under TUETA. Essential elements define a “transaction” as:
 - Relating to the conduct of “business, commercial, or governmental affairs”
 - Between two or more persons.
- It's arguable whether financial powers of attorney constitute a “transaction.”
- Most medical directives would **not** constitute a “transaction,” but electronic execution is authorized by a separate statute in the Health & Safety Code.

EXECUTION REQUIREMENTS BY DOCUMENT

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Trusts

- Must be in writing and
- Signed by the settlor or the settlor's authorized agent.
- No witnesses or notaries needed.
 - Execution by the trustee and acknowledgments before a notary are common (and preferred) but not required.

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