Emergency Use of Remote Online Notarization

Article
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Update: The Department of Financial Institutions (DFI) issued emergency guidance on remote notarizations last week. Such emergency guidance referenced certain types of estate planning documents and included citations to state statutes addressing certain types of estate planning documents. The Department has reconsidered its initial guidance and, as of March 20, 2020, has released revised emergency guidance omitting all references to estate planning documents and related statutes. Moreover, the execution of estate planning documents goes beyond notarization, including specific witness requirements and the need to assess capacity. Please keep these issues in mind when coordinating the execution of estate planning documents during these challenging times.

March 17, 2020 Announcement: Recently, noted in our March 3 article that Remote Online Notarization ("RON") will be permissible in Wisconsin in accordance with 2019 Wisconsin Act 125 which was signed into law on March 3, 2020. Under Act 125 certain rules were to be promulgated by the Wisconsin Department of Financial Institutions ("DFI") to approve notaries and otherwise govern the use of RON. These rules were not expected to be available until fall of 2020. However, due to the COVID-19 crisis, DFI has used its rulemaking authority to make RON available now. See "Emergency Guidance on Remote Notarization, March 17, 2020" below. DFI believes this can facilitate transactions and reduce the risks to participants during the COVID-19 crisis. If you use RON, we recommend that you work with title companies experienced in using the systems during this time.

Additionally, a word of caution, DFI implies in the emergency rule that RON can be used for the creation and execution of testamentary documents. Such as use would be expressly counter to an exception prohibiting such use that exists in the law as passed.

PROFESSIONALS

Joseph E. Tierney IV
Partner

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