

# NY EXECUTIVE ORDER ALLOWS ESTATE PLANNING DOCUMENTS TO BE EXECUTED VIRTUALLY

*Hodgson Russ Trusts & Estates Alert*  
April 8, 2020

On April 7, 2020, Governor Andrew Cuomo issued Executive Order 202.14, which provides necessary flexibility for individuals to execute estate planning documents while still practicing social distancing.

Wills, lifetime trusts, health care proxies, and gift riders to a New York Power of Attorney can now be signed while safely limiting in-person contact. Rather than observe a person (the “principal”) sign documents in-person, the principal and witnesses to the estate planning documents may use video conference. Serving as a witness via video conference must be done in real-time: the principal cannot pre-record signing the documents. Once the principal signs, the signature page(s) must be electronically delivered (via fax or e-mail) to the witnesses. On the same day that the principal signs, the witnesses must sign the electronic copy and return electronically to the principal. In addition, the witnesses must sign the original signature pages, within 30 days after the date of execution.

The allowance of video conferencing for witnesses and the March 19, 2020 Executive Order which allows for “virtual notarization” of documents does not otherwise relax the formality in which estate planning documents must be executed. However, the use of video conferencing for witnesses (which is authorized until May 7, 2020, unless extended) and virtual notarization (which is authorized until April 29, 2020, unless extended) permits many New York estate planning documents to be fully executed from the safety of one’s home.

In addition, the April 7, 2020 Executive Order also modified Surrogate’s Court Procedure Act Section 1726 to permit any parent, legal guardian, legal custodian, or primary caretaker who works or volunteers in a health care facility or who reasonably believes that he or she may be exposed to COVID-19 to appoint a standby guardian for a disabled individual’s person and/or property. The designation of a standby guardian must still comply with Section 1726. Section 1726 requires the designation be made in writing in the presence of at least two witnesses, neither of whom are the standby guardian. The witnesses must also sign the designation. The ability to have witnesses sign via video conference does not apply to the designation of a standby guardian.

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We suggest that you reach out to Nathan Berti (626.218.7516), Thomas Collura (518.433.2443) or any member of the Trusts and Estates Practice if you have questions about executing estate planning documents during this period of social distancing.

Please check our Coronavirus Resource Center and our CARES Act page to access additional information related to these rapidly evolving topics.

If you received this alert from a third party or from visiting our website, and would like to be added to our Trusts & Estates Practice alert mailing list or any other of our mailing lists, please visit us at: <https://forms.hodgsonruss.net/sign-up-for-email-and-other-communications.html>.