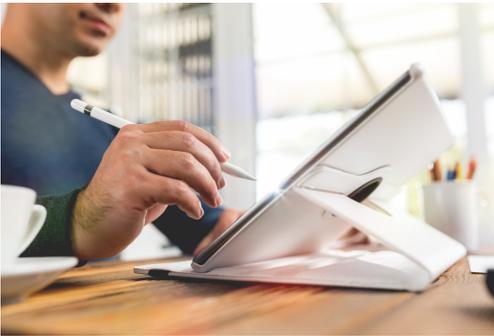


What We Know (and Don't Know) About Remote Witnessing and Notarizing and Electronic Wills and Notarization

June 21, 2021



The new normal for signing estate planning documents in Illinois that began with Governor Pritzker's March 26, 2020, Executive Order (No. 2020-14) is about to change. The Order authorized both the remote witnessing and the remote notarizing of documents, provided certain requirements were met. The Order was subsequently codified in the law (P.L. 101-640, 5 ILCS 175/95-20).

The Order made no provision for electronic Wills or electronic notarization, and remote presence differs from electronic documents and signatures. Remote witnessing and notarization occurs when the witness or notary is present via audio-visual communication. An electronic document is created and maintained in electronic form. An electronic signature is in an electronic form that uses established security procedures and is attached to an electronic record.

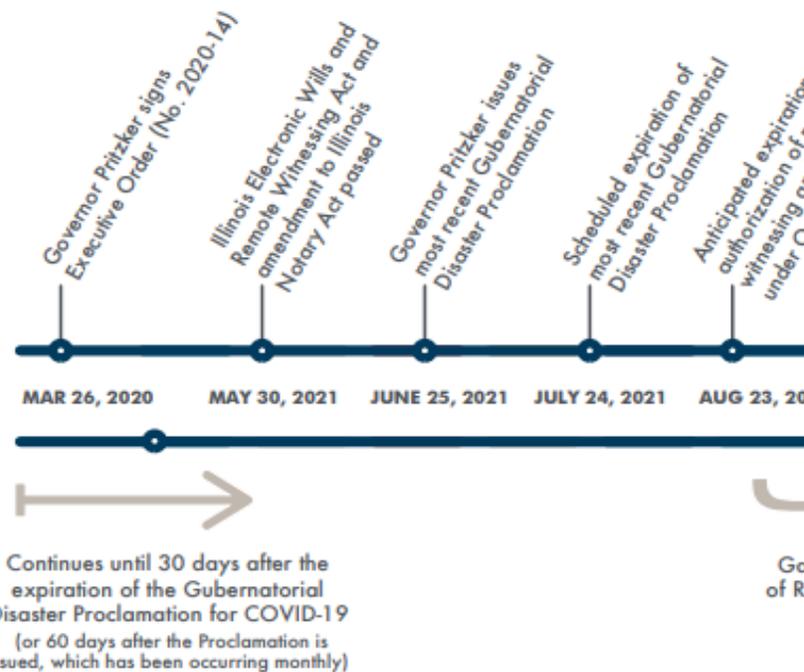
The Order, as codified in Sec. 95-20, is in effect until 30 days after the expiration of the Gubernatorial Disaster Proclamation for

COVID-19 (or 60 days after the Proclamation is issued, which has been occurring monthly). The Proclamation was last issued June 25, 2021, even though Illinois is now in Phase 5 of Restore Illinois and is fully open. While the Proclamation and Sec. 95-20 are still in effect and provide authorization for remote witnessing and notarization until August 23, 2021, the question to be answered is whether the authorization of remote witnessing and notarizing will continue after the Proclamation and Sec. 95-20 expire. The answer is yes, but there could be a gap in the authorization for remote notarizing.

The legislature passed and the Governor is expected to sign the Electronic Wills and Remote Witnesses Act (the "Wills Act") into law. The Wills Act provides that it takes effect upon becoming law. Thus, Illinois law will shortly permit both remote witnessing of Wills and electronic Wills. That being said, it will take time to develop best practices and risk management procedures to put the Wills Act into practice.

The legislature also passed and the Governor is expected to sign into law amendments to the Illinois Notary Act that provide for remote and electronic notarization of documents. Unlike the Wills Act, the amendments to the Notary Act do not become effective until January 1, 2022, at the earliest (some

provisions will not be effective until July 1, 2022, and none will be effective until the Secretary of State adopts rules to implement the Act). Here again, it will take time to develop best practices and risk management procedures to put the amendments into practice.



ISSUE: With the delayed effective date of the amendments to the Notary Act, both with respect to remote notarization and electronic notarization, there may be a gap in time between the sunset of the Order and the Proclamation and the effective date of the amended Notary Act

TAKE ACTION: Although Wills and Trust Agreements in Illinois do not require notarization, many practitioners include

notarization in Wills and Trust Agreements. Illinois Property Powers of Attorney require notarization. If the Proclamation and Sec. 95-20 expire before the amendments to the Notary Act are effective, consider removing notarizations from Wills and Revocable Trusts. Unfortunately, there is no simple fix for Powers of Attorney.

We are monitoring the renewal of the Proclamation and the continuation of Sec. 95-20. There is also the question of how to effectively manage risk in implementing electronic Wills and electronic notarization. This is a significant undertaking which will require appropriate technology, development of practices and procedures, and training. Our work on these issues is underway. Stay tuned.

If you have any questions, please don't hesitate to reach out to our [Fiduciary Advisory Services/Trust & Estates Group attorneys](#).