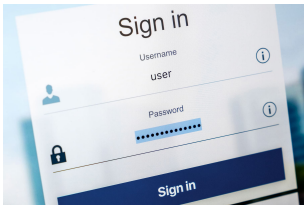

Kentucky Legislature Suspends In-Person Witnessing and Notarization Requirement for Estate Documents

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Tax Law Defined™ Blog

In the wake of the recent global pandemic, many clients have reached out to the Frost Brown Todd tax team and expressed a desire to create or update their estate plan. Before the COVID-19 outbreak, it was inconvenient for most clients to come into the office in order to execute their estate planning documents. Kentucky, like many states, has indefinitely closed in-person traffic for all non-life-sustaining businesses, including law offices; therefore, attorneys were at a loss on how to advise clients on drafting and revising estate documents due to the ordinary in-person witnessing and notarization requirement. Senate Bill 150, and similar bills from other states, now provides an avenue for "virtual" execution of all legal documents which ordinarily must be executed in person, thereby alleviating the problem surrounding estate document execution. *Frost Brown Todd is pleased to offer virtual execution services to all clients who wish to update their estate plan amid the national coronavirus crisis*.

Why Is it Necessary to Execute Estate Planning Documents in Person?

The law requires strict compliance with certain legal formalities when executing estate planning documents, including an individual's (1) Will, (2) Revocable Trust Agreement, (3) Power of Attorney and (4) Living Will Directive and Health Care Surrogate Designation. Any document which does not comport with the statutory requirements will not be accepted by a court or health care professional whether for probate processing or for health care decision purposes. Particularly pertaining to a will, any property which the individual attempted to disposed of in his or her improperly executed will must instead pass through intestate laws of their state of residence. Since many clients use a pour-over will in their estate plan (a will which creates a trust upon the decedent's death), an improperly

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executed will puts at risk any planning contained not only in the will, but also in their trust. Most states, including Kentucky, require a will to be executed by the testator *in the presence* of two witnesses. Additionally, our suite of estate planning documents ordinarily includes both a Power of Attorney as well as a Living Will Directive, both of which require witnessing and/or notarization.

The Problem Created by COVID-19

The crux of the issue that attorneys and clients faced before the enactment of Senate Bill 150 was the requirement that the testator must execute his/her will "in the presence of" the witnesses and the witnesses must also sign the will in the presence of one another. Since we are all trying our best to "stay healthy at home" as required by the governor's executive orders, any individual who wanted to create or update their estate plan was prevented from doing so because there was no mechanism in the law which recognized what we refer to as "virtual" or "remote" witnessing.

How the Kentucky State Legislature Helped Solve this Problem for Kentuckians in Senate Bill 150

In order to facilitate economic stability and continuity in this lockdown, Senate Bill 150 provides a mechanism for virtual witnessing and notarization of all legal documents, including estate planning documents. Particularly, the bill allows individuals who are not in the same physical location to be considered "in the presence of one another" if the individuals can communicate via a video teleconference to the same extent as if they were physically present in the same location. In addition, any document executed via video teleconference may be acknowledged and notarized in the same manner.

Video Teleconferencing and Remote Execution of Estate Planning Documents Available for Frost Brown Todd Clients

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Frost Brown Todd is now coordinating video conferencing with clients who wish to create or update their estate plan and so long as video conference execution is permissible in their state of residence. Many states have followed suit and passed similar bills to Senate Bill 150, so please reach out to our team even if you are not a Kentucky resident and would like to update your estate plan so that we can advise accordingly. We are pleased to offer this service to clients and encourage everyone to carefully review their current estate plan or take time to contemplate how they would like their affairs to be handled after they pass away if they currently do not have any estate plan drafted.

For more information please contact Shawna Corman or any attorney in Frost Brown Todd's Estate Planning & Administration practice group. For more tax-related updates, view our Tax Law Defined Blog.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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