Tennessee Relaxes Formalities of Will Execution

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Coronavirus Response Team
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Tennessee has joined the ranks of states allowing remote witnessing and notarization of wills and other estate planning documents. On April 9, 2020, Governor Lee signed Executive Order No. 26 (the "Order"). The Order suspends the "in person" requirement for will execution, the adherence to which is no longer possible due to social distancing requirements brought on by the COVID-19 pandemic. [1]

Tennessee Will Signing Statutory Requirement

Tennessee Code Annotated Section 32-1-104 sets forth the requirements for a validly executed will in Tennessee. The statute requires that the maker of the will (i.e., the "testator") sign the will in the presence of at least two witnesses, and for the attesting witnesses to sign the will in the presence of the testator and each other. In addition to the will, there is a separate "self-proving" affidavit that is attached to the end of the will that the witnesses sign. The self-proving affidavit must be notarized. Prior to COVID-19, the testator, witnesses and notary would typically gather in a conference room to execute the will and other estate planning documents. Social distancing restrictions have made that process impossible.

Governor's Executive Order No. 26

In recognition of that impossibility, the Order suspends the in-person requirement and allows for remote execution of wills and other estate planning documents by Tennessee residents.

Requirements for Remote Execution

Compliance with the Order requires the following:

- Execution of the will must take place by means of real time audio and visual communication where all parties can see and

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hear each other simultaneously. Skype, FaceTime, Zoom and WebEx are listed as permissible, but any videoconference technologies will suffice.

- All parties must be located in Tennessee.
- The notary public must be able to verify the identity of the party signing an instrument that will be notarized, and the witnesses must likewise be able to identify the testator signing the will.
- During the videoconference, the testator and witnesses must affirmatively identify the will and other estate planning documents being executed and witnessed.
- The parties must be able to see each other sign the will and other documents.
- Each estate planning document being executed must contain a provision stating that it "was executed in compliance with Executive Order No. 26 by Tennessee Governor Bill Lee, dated April 9, 2020."
- The execution, witnessing, and notarization of the will and other estate planning documents must be memorialized by either (i) signing the documents in counterpart originals during the videoconference, or (ii) having the testator execute the documents during the videoconference and then circulating the originals for execution by the witnesses and notary within a 10 day period.

Takeaway

This much-needed relief will enable Tennessee residents to engage in and complete their estate planning without having to wait for an end to social distancing. For more information please contact Richard J. Nickels or any attorney in Frost Brown Todd's Estate Planning & Administration practice group.

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[1] The scope of the Order is more expansive than just wills and estate planning documents. It also addresses deeds and "other legal documents" that generally require a witness's signature or notary acknowledgement.

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To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team, including a special team focusing on business funding options under the CARES Act. 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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