

CLIENT ALERT

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MICHIGAN PASSES LAW ALLOWING REMOTE WITNESSES AND REMOTE NOTARIZATIONS

by Joan Cripe Skrzyniarz

Remote executions of estate planning documents are again allowed in Michigan through December 31, 2020. On November 5, 2020, Michigan's Governor signed 2020 PA 246, allowing remote witnessing, and 2020 PA 249, allowing remote notarizations. This applies to any document that is executed on or after April 30, 2020 through December 31, 2020.

In order to properly witness and sign estate planning documents under this legislation, the following parameters must be met, using two-way real-time audiovisual technology:

- The technology allows direct, contemporaneous interaction by sight and sound between the signer and the witnesses.
- The interaction between the signer and the witnesses is recorded and preserved by the signer for at least three years.
- The signer represents that they are physically in Michigan or that, if outside Michigan,
 - » the document is intended for filing with or relates to a matter before a court, governmental entity, public official, or other entity subject to Michigan's jurisdiction; or
 - » the matter involves property in Michigan or a transaction substantially connected with Michigan.
- The signer states what document they are executing during the interaction.
- Each title page and signature page being witnessed is shown to the witnesses in a manner that is legible to the witnesses and every page is numbered to reflect the page number and the total number of pages in the document.
- Each act of signing is captured closely enough for the witnesses to observe.
- The signer transmits a legible copy of the entire signed document by fax, mail, or electronic means to the witnesses within 72 hours of execution.
- The witnesses sign the transmitted copy of the document within 72 hours of receipt and return the signed copy to the signer by fax, mail, or electronic means.

In order to properly notarize estate planning documents under this legislation, the following parameters must be met, using two-way real-time audiovisual technology:

- The technology allows direct interaction between the individual, any witnesses, and the notary where all can communicate simultaneously by sight and sound.
- The technology can create an audio and visual recording of the complete notarial act that will be retained as a notarial record. MCL 55.286b(7)–(9).

- The person seeking notary services and any required witnesses present satisfactory evidence of identity to the notary during the video conference (if the person is not personally known to the notary).
- The person represents that they are physically in Michigan or that, if outside of Michigan,
 - » the record is intended for filing with or relates to a matter before a court, governmental entity, public official, or other entity subject to Michigan's jurisdiction; or
 - » the matter involves property in Michigan or a transaction substantially connected with Michigan; and
 - » the notary has no actual knowledge that making the statement or signing the record is prohibited by the laws of the jurisdiction of the person's location.
- The person, any witnesses, and the notary can put their signatures to the document so that any change or modification of the remote notarial act is tamper-evident.
- The person mails, faxes, or emails a legible copy of the entire signed document to the notary on the same date it was signed.
- Once the notary receives the document with all necessary signatures, the notary notarizes the document and transmits it back to the person seeking notarization.
- The official date and time of the notarization is the date and time when the notary witnesses the signature via two-way real-time audiovisual technology.

For more information, contact Joan Skrzyniarz.

ABOUT THE AUTHOR



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