

COVID-19 NEWS OF INTEREST

Estate Planning Developments in Light of COVID-19

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Virtual Execution of Documents

Many estate planning documents are required to be witnessed and/or notarized in order to be valid. In a series of Executive Orders, Governor Andrew M. Cuomo has authorized “virtual witnessing” and “virtual notarization” in New York State, subject to certain requirements, effective through May 7, 2020. These Executive Orders allow individuals to execute their estate planning documents at home without having to interact in person with any other individuals. Pursuant to these Executive Orders, any notarial act that is required under New York State law is authorized to be performed utilizing audio-video technology. In addition, where witnesses are required by statute for purposes of executing wills, lifetime trusts, instruments appointing a health-care agent, instruments related to disposing of one’s remains, recording instruments affecting real property and statutory gifts riders to statutory short form powers of attorney, such witnesses may perform using audio-video technology.

In Illinois, Governor J.B. Pritzker issued a similar Executive Order on March 26, 2020 authorizing “virtual witnessing” and “virtual notarization” for the duration of the Gubernatorial Disaster Proclamation related to COVID-19.

Many other states have issued similar orders so that individuals can continue their estate planning despite current circumstances.

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Planning Opportunities

As detailed in a previous client alert, the combination of the downturn in financial markets and the dramatic reduction in interest rates presents several planning opportunities, the goals of which are to transfer assets to children and more remote descendants at no or low gift and generation-skipping transfer (“GST”) tax cost. For individuals who have not fully utilized their available gift and GST tax exemption amounts, now may be a good time to consider doing so. Some additional estate planning techniques that are particularly attractive at this time include low interest rate loans, grantor retained annuity trusts (“GRATs”) and sales to grantor trusts. The IRS recently issued historically low interest rates for May 2020. For instance, the Applicable Federal Rate for use with a sale to a grantor trust or for an intra-family loan is: (i) 0.25% for a loan with a term of less than three years, (ii) 0.58% for a loan with a term of three years or more but less than nine years and (iii) 1.15% for a loan with a term of nine years or more. The Section 7520 “hurdle rate” for GRATs and certain split-interest trusts is 0.8%. If you have existing loans in place with higher interest rates, you may wish to consider refinancing those loans now to take advantage of the current low rates.

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Willkie has multidisciplinary teams working with clients to address coronavirus-related matters, including, for example, contractual analysis, litigation, restructuring, financing, employee benefits, SEC, other corporate-related matters, and CFTC and bank regulation. Please click [here](#) to access our publications addressing issues raised by the coronavirus. For advice regarding the coronavirus, please do not hesitate to reach out to your primary Willkie contacts.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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