

Title

COVID-19 and the non-notarial execution of wills in Massachusetts

Text

For a will to be properly executed in Massachusetts current law is that the signatures of the testator and the two witnesses need not be notarized. The two witnesses need not witness the testator sign. They need only receive the testator's oral acknowledgment. Each witness may sign outside the presence of the testator and of each other. Each may even hold off signing until after the testator has died. Only the testator's proxy, if any, must sign in the testator's presence. Massachusetts, in a radical departure from the norm, even declined to enact the UPC's § 2-502(a)(3)(A) reasonable-period-of-time-after-acknowledgment constraint which would regulate how long witnesses could hold off signing. Absent special facts, at least when it comes to executing Massachusetts wills, including wills with testamentary trust provisions, the absence of COVID-19 remote notarization and witnessing statutory authority should not be the end of the world. Caveat: The MUPC's official commentary to 190B §2-502 is inaccurate in that it does not acknowledge this critical textual deviation from the model statute.