

# Estate Planning in a Covid-19 World; A Primer on Important Estate Planning Documents and Execution Requirements

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Below is a brief summary of certain key estate planning documents and the formalities for execution of these documents. Based on an individual's circumstances, additional documents, such as a Trust or Supplemental Needs Trust, may also be used in conjunction with these documents.

Following the formalities of execution are paramount to ensure that your plan is effective. Electronic Notarization has not yet been approved in Pennsylvania, although the hope is that it will be soon.

To the extent that you have these important documents, please ensure that these documents are in a location known to and accessible by the appropriate parties, should the need arise. Keeping these documents in a safe deposit box, that only the creator has access to, can delay and complicate the retrieval of these documents and jeopardize the ability to act promptly.

See my other blog post entitled **COVID-19 Crisis can Breed Reason: Now is the Time to Create, Revise and/or Better Understand Your Estate Plan** and continue following our blog, <https://www.tuckerlaw.com/category/covid-19-answers-to-business-challenges/> for updates on this, electronic notarization and other helpful advice.

A Will:

Your Will only becomes operative at death. This document controls assets that you own that are not owned jointly with a right of survivorship, have a "transfer on death" or "pay on death" designation, or are governed by a beneficiary designation (naming someone other than your estate). The person that handles your affairs pursuant to the terms of your Will is your Executor. Your Will can also include provisions appointing a guardian of any children under the age of majority. Failure to appoint a guardian for your minor children could result in a Court's appointment of a caretaker that it, rather than you, finds suitable.

Your Will is valid if signed and dated, even if not witnessed and notarized. Ideally your Will would be witnessed and notarized to be "self-proving" and facilitate probate.

Financial Power of Attorney ("FPOA"):

Your FPOA appoints a substitute decision maker (your agent) to act on your behalf as it relates to financial matters (i.e. paying bills, entering into real estate transaction, etc.). Your FPOA is only effective during your lifetime. Your FPOA can spring into effect upon incapacity or be effective immediately at the creator's choosing. Pennsylvania law requires that certain powers be specifically set forth in this document. The FPOA also requires an important statutory notice signed by the creator, as well as an agent acknowledgment in the form required by statute. Individuals owning a business should also consider a business Power of Attorney. The party named as your FPOA may not be the person that you would choose to handle business transactions on your behalf.

Your FPOA must be signed in the presence of two independent witnesses (persons not named in the document or the notary) and notarized to be valid. (20 Pa.C.S. 5601).

Healthcare Power of Attorney (“HCPOA”):

?Much like your FPOA, your HCPOA appoints a substitute decision maker to act on your behalf as it relates to health care decisions (i.e. admission to a nursing facility). Your HCPOA is only effective during your lifetime and becomes effective when you are unable to make or communicate decisions yourself.

Your HCPOA must be signed and witnessed by two individuals over age 18. (20 Pa.C.S. 5452).

Living Will:

?Your Living Will sets forth your intentions as it relates to certain end-of-life care matters (i.e. do you want a feeding tube, do you want to donate your organs?) Putting these wishes in writing and discussing them with your HCPOA and other loved ones can prevent your family from speculating as to what your wishes may be and from the emotions that come with making such decisions on your behalf.

Your Living Will must be signed and witnessed by two individuals over age 18. (20 Pa.C.S. 5442).

Memorandum of Tangible Personal Property (“Memorandum”):

?Your Memorandum allows you to provide specific items of tangible personal property to certain individuals of your choosing (i.e. my diamond ring to my daughter, Jane or my autographed football to my son, Sam).

Your Memorandum of Tangible Personal Property must be signed and dated, and you may update it as often as you’d like so long as the original is kept with your Will and therefore easily located.

?Contact me to create, update or review your estate plan or if you have any concerns about executing documents in these uncertain times. We at Tucker Arensberg remain ready, willing and able to assist you while we work to navigate these times together.

Contact Brittany Holzer at [bholzer@tuckerlaw.com](mailto:bholzer@tuckerlaw.com)