



April 17, 2020

Is it Possible to Set Up an Estate Plan in MA Without a Notary or Witnesses?

Executive Summary

Signing a will during the COVID-19 crisis in Massachusetts is very challenging because, unlike most states, Massachusetts has not authorized remote notaries or witnesses. A revocable trust, however, can be created and revised with only the signature of its donor (i.e. you). Transferring financial assets to a revocable trust can be a stop-gap estate planning measure to ensure your family's finances will not be disrupted should you become incapacitated or pass away.

A Will Substitute

Revocable trusts have long been referred to as "will substitutes" because they contain the estate plan's core terms such as the circumstances in which spouses and heirs receive assets. During the COVID-19 crisis, it has become very challenging to sign valid wills in Massachusetts because, unlike most states, remote witnesses and notaries are not authorized. A revocable trust, on the other hand, need only be signed by its donor in order to be valid. If the trust document will be recorded at the registry of deeds because it will own real estate, then a notary must be involved, but that can be taken care of separately if Massachusetts takes action to authorize remote signing or if not, once the crisis passes.

Peace of Mind and Practical Considerations

In a typical estate plan, a revocable trust is funded at your death via your will and, for certain assets such as retirement accounts and life insurance, via the beneficiary designation forms. Even before the COVID-19 crisis, transferring assets to a revocable trust during life made sense for a number of reasons. In addition to avoiding probate after your death, the trust assets are immediately available to trustees should you become incapacitated. Paying your bills from a funded trust is easy for a trustee because the trust owns the assets. On the other hand, the person you name in your power of attorney can only access your individual accounts by working with each financial institution separately. Moreover, by choosing trustees now you will ensure that your assets continue to be managed by someone you trust to look after your family's financial wellbeing after you are gone.

Holding your assets in a revocable trust does not affect your control over them, nor does it have any effect on your tax reporting. Trusts are also private documents whereas wills are accessible to the public, and trusts are more flexible and easier to update than wills. Transferring assets to the trust requires some additional steps such as opening a bank or investment account in its name. Most beneficiary designation forms can be completed without witnesses or notaries, so if desired those can be revised to transfer assets into the revocable trust at death. Some types of financial accounts can also be transferred into joint name without needing a notary, which would result in the asset passing automatically to



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your joint owner at your death without passing via your will. Similarly, some accounts can have a TOD (transfer on death) or POD (payable on death) designation, which designates the person to receive the asset at your death, also without involving your will.

Conclusion

We will let you know about any updates regarding Massachusetts authorizing remote witnesses and notaries but until that happens or the crisis passes, transferring financial assets to a revocable trust might be the best option for many. While it is not a comprehensive estate plan, it accomplishes many important goals such as preventing any financial disruptions for your family in the event of your incapacity or death.

ADDITIONAL RESOURCES

- [COVID-19 and Presidential Election Have Significant Effect on Estate Planning](#)
- [The CARES Act: Provisions that Affect Individuals and Families](#)
- [UPDATED: Treasury Department Extends April 15 Tax Filing and Payment Deadlines](#)
- [2020 Personal Tax Planning Update](#)
- [Changes for Retirement Accounts and 529 Plans Under the SECURE Act](#)

Please visit our [COVID-19 resource page](#) for additional resources related to COVID-19.

CONTACT US

For further information, please feel free to contact Hemenway & Barnes LLP's Private Client Group or the author of this alert:

Dennis R. Delaney
Partner, Chair Private Client Group
617.557.9722
ddelaney@hembar.com

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