



As you consider your current estate planning needs in light of limitations on in-person meetings and consultations, Manier & Herod is pleased to report that Governor Bill Lee has made execution of wills, trust, and other legal documents possible without in-person interaction. See the summary of Governor Lee's order below. Manier & Herod is working with clients to update any estate planning needs or to assist in drafting their first estate planning documents. We can conduct meetings via video conference call or over the phone to assure that all of your questions are answered, and your estate plan is tailored to the needs and wishes of you and your family. Please contact [Steele Cantey](#) or [Tommy Estes](#) with any questions. Manier & Herod is ready to serve you while respecting and protecting your health and safety.

#### **REQUIRED DISCLAIMER**

This guidance is for general, educational purposes and not intended to be legal advice. Seek separate legal advice on your specific question. The legal analysis of your specific question depends on facts which might alter, or completely change, what you will read below. The below analysis covers only the execution of legal documents in Tennessee while Executive Order No. 26 remains effective.

#### **GOVERNOR LEE AUTHORIZES REMOTE EXECUTION OF LEGAL DOCUMENTS**

On Thursday, April 9, 2020, in an effort to facilitate the execution of estate planning documents and other legal documents during the ongoing state of emergency caused by the COVID-19 virus, Governor Bill Lee signed Executive Order No. 26 which modified certain rules concerning remote witnessing and remote notarization of legal documents. Executive Order No. 26 applies to the execution of trusts, wills, living wills, durable general powers of attorney, durable powers of attorney for health care, advance directives, deeds, and other legal documents and instruments that require witnesses or notarization.

Executive Order No. 26 will have the greatest impact on the execution of the Last Will and Testament. Prior to Executive Order No. 26, Tennessee law required that a Last Will and Testament, in order to be valid (with limited exceptions), must be executed in the presence of two attesting witnesses, and the witnesses themselves must also execute the Last Will and Testament in the presence of each other and the testator or testatrix. However, under Executive Order No. 26, the witnesses and the testator or testatrix may now properly execute a Last Will and Testament remotely by utilizing videoconference technology such as Skype, FaceTime, Zoom, WebEx, and other similar communication technologies that provide real-time audio and visual communication.



Additionally, Executive Order No. 26 will impact the notarization of legal documents and other instruments. Prior to Executive Order No. 26, Tennessee allowed online notarization of documents pursuant to the Tennessee Online Notary Public Act. However, the Tennessee Online Notary Public Act requires existing notaries public to apply with the Secretary of State for an online notary commission, contract with a third-party vendor that provides the technological support needed to perform online notarizations and abide by additional procedural and recordkeeping requirements. However, under Executive Order No. 26, a notary public is permitted to execute a counterpart to a legal document or instrument by utilizing videoconference technology in the same manner as witnesses to a Last Will and Testament.

While the COVID-19 virus has dramatically impacted the U.S. population and forced many states, including Tennessee, to institute "stay at home" orders, Executive Order No. 26 will modify the requirements for the proper execution of many legal documents and instruments and allow Tennesseans to execute their estate planning documents, real estate deeds, commercial instruments, and other legal documents from the comfort of their homes. As long as the execution of these documents follows certain procedures and the documents contain certain language required by the Order, the documents will carry the same weight as if they were executed in-person in the presence of witnesses or a notary public.