

ESTATE PLANNING IN A PANDEMIC - A BRAVE NEW WORLD

BY BEN KINIRY, ESQ.

As you are aware, life has changed significantly since the outbreak of COVID-19. We have all had to adapt to this new environment, in both our home and businesses lives. All of us have gone through significant gyrations to continue with life as close to normal as possible. Even something as mundane as going to the store has become a much more complicated and somewhat uncomfortable experience.



This holds true for those of us who assist our clients with their legal issues. At the beginning of the pandemic, most of our team members moved their work-space from 6 Loudon Road into their homes. We all had to adapt to a new way of working with our clients and each other. The use of modern technology has made it possible for us to continue to provide quality legal services to our clients, albeit, from the comfort of our homes and with some assistance from technology, both old and new.

For me, the initial question was how are our existing clients, and those who have been thinking about becoming clients, going to react to the pandemic? To find out, I had to first inform our clients that we continue to be here to provide the same services, so about a month ago we sent out an email letting our clients know "We Are Here to Help." About a week went by and there was very little in way of a response. I started thinking that people are not as concerned about COVID-19 as I have been led to believe. Then, over the past few weeks, an escalating number of clients have been calling and asking for our assistance.

Some of the callers are former clients (we have not heard from for many years) desiring to make changes to their existing estate plans and others are new prospective clients. Perhaps they have been putting off making changes to or establishing an estate plan for some time and just have not made it a priority, which is what many of us do. Let's face it, under normal circumstances most of us do not sit around obsessing about our pending doom, but rather assume we have time to plan later. A pandemic, however, is the type of event that can turn the desire to establish an estate plan from a future plan, to a current priority for those who want to have control over their affairs in the event of a decline in their health or death. This goes to show that some legal issues may take a back seat during a pandemic, but one of them that is moved to the forefront of our minds is (or should be) estate planning.

In regards to existing clients, they seem to be reconsidering some of their critical decisions made previously, such as who will handle their finances and make their health care decisions when they become ill or incapacitated, or who do they ultimately want to benefit when they are gone. Seemingly, the pandemic has refocused some people to review their plans to make sure they truly represent their wishes (does your estate plan meet your current wishes?).

How Can we Establish Your Estate Plan in a Pandemic?

Given the stay-at-home order and the social distancing protocols, I think we can agree that none of us have strong desire to meet in person today. There is also the issue of executing your estate planning documents, which has historically required an in-person meeting in New Hampshire.

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How can we update or establish your estate plan? The short answer is, we do it the same as we have been doing for years, but now with the added virtual experience using available technology.

We start with a phone call (or email), which is clearly not new. We will send you the firm's questionnaire (this is how we collect key information about you) and ask that you return the completed questionnaire to us via regular mail or email (this is not new either).

Next, we hold an online, virtual meeting in which we can both hear and see each other. Just as in our in-person meetings, we hold a lengthy conversation in which we discuss all the important topics necessary to work out the details of establishing your estate plan. I utilize a white board during these meetings on which I write extensive notes concerning your estate plan. A photograph/screen shot of the notes is provided to our clients shortly thereafter through mail or email.

Ultimately, an estate plan is drafted based on the planning decisions made and then needs to be signed. Historically an in-person meeting is needed to meet the document's legal formalities for execution. Luckily, our Governor passed an emergency order allowing for remote notarization of documents. This allows us to conduct a virtual execution of a client's estate planning documents with the added benefit of not compromising anyone's health.

Once a virtual meeting date and time is set, we send the estate planning documents to our clients with stickers indicating where to sign and date. We then hold the virtual meeting on a video conferencing application called "Zoom." During the meeting, we review the estate plan together and all questions are answered. When it is time to sign the documents, two members of our team join the meeting to act as "witnesses" to the signing. Our clients then forward the documents to us for notarization (did I mention I am a notary public?) and for the witnesses' signatures.

Two issues: First, we don't know when the Governor's emergency order will terminate. Second, though the Governor's order allows for remote notarization, not all the legal details have been completely worked out and may not be for years to come. Given this, at a safe future date we will be having clients come into the office for a quick in-person re-signing of some of the documents, following the same procedures that were in place prior to the pandemic.

If you have been putting off updating (or establishing in the first place) your estate plan, I want to encourage you to take that next step and reach out to the firm to set up a virtual meeting for a free consultation. If you simply have questions, or even if you are not sure what questions to ask, I want to encourage you to contact us to set up a date and time for a good old fashion phone call. Stay safe.

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