

SOME MUCH NEEDED ASSISTANCE FOR...

The 2020 Kentucky General Assembly among other acts, deeds and laws, has enacted some significant changes in the areas of estate planning and estate (probate) administration. What follows is a summary of just a few of these changes.

I. REMOTE WITNESSING OF WILLS.

Senate Bill 150 was designed to simplify the process of executing Last Wills and other testamentary documents in a safe context minimizing the dangers of the coronavirus and COVID-19 pandemic. This law basically provides that video presence (such as "Zoom" or "FaceTime") when properly followed is the equivalent of physical presence for purposes of the witnessing and notarization of testamentary documents and instruments. The law (in subsection 11) provides that for the purpose of complying with the law, rule, order or other requirements relating to the receipt of testimony or signature from any party or witness, or the acknowledgment or notarization of any document, for any legal purpose:

(a) individuals, whether acting for themselves or in a representative capacity, not in the same physical location shall be considered in the presence of one another if the individuals

can communicate via a video teleconference in real time to same extent as if they were physically present in the same location; and

(b) any document resulting from a video teleconference conducted in accordance with paragraph (a) of this subsection may be executed, acknowledged or notarized in counterparts which together shall be considered a single document.

This language was adopted from the Uniform Electronic Wills Act, some provisions of which were enacted last year.

II. KENTUCKY'S UNIFORM POWER OF ATTORNEY ACT.

Other major changes relate to Powers of Attorney under Kentucky law. There are updates to Chapter 457 of the Kentucky Revised Statute, incorporating further provisions of the Uniform Power of Attorney Act, making various changes:

2.1 There is a new statutory form Power of Attorney ("POA") that provides a form document which includes different subject matters so that the Principal (i.e., the person granting the POA to that other person

called an Agent) can chose and initial only the specific subject matters that he or she wants to grant to the Agent, or the Principal can initial "all preceding subjects" which will grant the agent widespread powers including all of the listed subject matters. Once a subject matter is initialed, there are sections of the Kentucky Revised Statutes that correspond to that subject matter. For instance, if a Principal initialed "real property", then KRS 457.270 provides a detailed listing of the Agent's real estate powers that are included by initialing the "real property" grant in the statutory form. This statutory form is an optional form, so traditional POA forms, including a Limited POA for specific real estate transactions are still allowed as long as the POA is in compliance with new KRS Chapter 457.

2.2 There is also a statutory form for confirming an Agent's authority under a POA. It provides a draft from for an Agent to certify that he or she is acting under a valid authority (of the POA). This form is not required under the statute, but is provided as a best practice as envisioned by the National Uniform Law Commission.

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