

Missouri Governor Mike Parson Issues Executive Order 20-08, Temporarily Allowing Notary Publics to Notarize Official Documents Virtually

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On March 13, 2020, Governor Parson declared a state of emergency due to the spread of COVID-19 in Missouri. To further combat the spread of COVID-19, Governor Parson directed the Director of the Missouri Department of Health and Senior Services, Dr. Randall Williams, to issue a Stay At Home Order. This order became effective as of April 6, 2020.

During a time where estate planning is most wanted, this poses significant issues for wealth planning and those who wish to execute their estate planning documents quickly and efficiently during this uncertain time. Without implementation of a new law, it would be difficult to authenticate an estate plan in Missouri without a Notary Public present.

This also affects the real estate transaction community by triggering a massive halt to both potential buyers and sellers of residential and commercial real estate, due in part to uncertainties involving current financials, lending, and the market. Those who haven't invested are fearful of doing so with concerns on how the pandemic could affect property returns, even though construction is currently an exemption under the Stay At Home Order. Essential to the real estate transaction is the process of choosing a title company and complying with its requirements. This process often occurs months prior to closing and thus if a title company requires a Notary Public authenticate the transaction, it cannot move forward under the law as it stands.

Governor Parson combatted these inevitable issues with Executive Order 20-08 (the "Order"). The Order is effective as of April 6, 2020 and expires on May 15, 2020, unless it is extended by further order.

Under the Order, a Notary Public can notarize an official document through video conference and it will have the "same force, effect, and validity as any other notarial act performed in compliance with Missouri law." Mo. Exec. Order No. 20-08(1). There requirements under the Order are as follows:

The document must contain an acknowledgement stating the person executing the document (the "principal") before a Notary Public appeared remotely. *Id.* at 20-08(2).

The Notary Public must: (1) ensure the video conference is a live, interactive audio-visual communication between the principal, the Notary Public, and any other necessary persons; (2) ensure the video conference allows for observation, direct interaction, and communication at the time of signing; (3) record the exact time and software used to perform the notarization in addition to other required information, except for the signature of the principal; (4) be physically present in Missouri; and (5) state which county they are physically in. *Id.* at 20-08(5)-(7).

The principal must: (1) must display a valid photo ID during the video conference; (2) state affirmatively that he or she is physically situated in the State of Missouri; and (3) send a copy of the signed document to the Notary Public within five business days in the event that the document signed is a paper document. *Id.* at 20-08(3)-(4), (9)(a).

This is significant for estate planning, as the Order also temporarily waives the requirement of the physical presence of witnesses for estate planning documents. *Id.* at 20-08(9)(b). Instead, witnesses can appear via video conference as described *supra*. *Id.* Because of the Order, estate planning documents, such as wills, trusts, and powers of attorney, can be prepared by attorneys and executed pursuant to their clients' wishes in the midst of this pandemic. Clients can rest assured that their property will be disposed of at their death pursuant to their wishes, instead of by the laws of intestacy in Missouri. The Order provides much needed certainty during an uncertain time.

On the other hand, in real estate transactions, there are some title companies who are currently not approving of virtual notarizations, while others will allow it. Clients and real estate attorneys should be cognizant of title company requirements and ensure they are complying fully with those requirements.