

Will Signing in a Senior Citizen Home

This is a new one for me (and probably everyone else). Client wants a will.

Easy. Except she lives in a senior citizen home that is currently closed to visitors. How on earth did I get this thing notarized?

The way I have always done it: ask for the names and addresses of a couple of witnesses ahead of time, to print them on the will. Conduct the signing, acting as notary.

Anticipating the objections, which have shown up regularly for the past few decades: yes, if you act as notary to a will signing, you will be a witness in the event of a will contest. That being said, as the drafting attorney you will be a witness **anyway**. The only down side to acting as notary to will signings is that there will be one less independent witness (i.e., instead of drafting attorney + notary + witnesses = 4, it will be drafting attorney/notary + witnesses = 3). I have yet to experience a will signing where that is even remotely likely to be an issue. However, if it **is** likely (the fairly rare case where there is an abnormal disposition of the estate + high likelihood of a will contest), sure, get an independent notary and consider videotaping the whole signing. But that is an exceedingly rare case.

Michael Koenecke, Texas

Call the center and see if they have a notary in house

Or what their current procedure is to get these important documents executed.

Also see if your state allows video notary

Erin M. Schmidt, Ohio

Someone on another listserv recommended having the notary (and witnesses) stand outside a window and witness the signing.

Marshall D. Chriswell, Pennsylvania

Sorry, that does not comply with the PA requirement that everyone be "in the presence" of the testator and each other as far as the witnesses are concerned. PA does have a statute permitting the attorney, if present and one of the witnesses, to then go to a notary who takes the acknowledgment of the witnessing attorney.

Miriam N. Jacobson, Pennsylvania

In Georgia, if you know the signature of the people whose signatures you are witnessing, you do not have to see them sign the document. I suggest having the lawyer take two witnesses from his office, have the testator sign the will after you have had a telephone conversation with him (her) to review the will, then lawyer and witnesses observe the testator sign the will through a glass door, have the witnesses sign and the lawyer act as notary outside the door so the testator can see the execution. Viola.

Robert "Robby" W. Hughes, Jr., Georgia

Just saw a local news story about a grand kid visiting his grandmother at a closed window. Saw each other, close to each other, spoke to phone.

Maybe have witness and notary outside, listen on phone.

Phil A. Taylor

I am interested about "in the presence". Here in Georgia, there is a "line of sight" rule. The witnesses must be able to see the testator sign (or the testator tell the witnesses he earlier signed and is reaffirming now) and the testator must be able to see the witnesses sign. No rule about same room, etc. Just be able to see. Not aware of that rule being tested as Vinny Gambino tested the

little, old lady witness in My Cousin Vinny. That said, if you can see each other, you are free to sign and witness.

Robert "Robby" W. Hughes, Jr.

I wonder if there is a provision in PA law for emergency situations where close contact or even being in the same room with the testator is impossible due to health concerns. You wouldn't need a pandemic (thankfully) to imagine a situation where that might have occurred in the past. It might be worth a bit of research.

Matthew J. Norris, California

Do you have to have it notarized?

Understand, I much, much, prefer to have wills notarized; in Florida we have self-proving affidavit; TX and Witnesses sign will, I then ask, Testator, and Wit 1 and Wit 2, do you swear or affirm that you, TX did sign your will and Wt 1 and Wit 2, that you did sign TX will as Witnesses, and that you all did sign in the presence of each other, everybody please say Yes. Yes. Yes. Yes. then they sign again, and it is notarized. It makes it easier to get it admitted.

Having said that: In a pinch I will not have it notarized; all that is required in Florida is testator signing will at the end and two witnesses signing in TX presence. I'll do this in an emergency, an emergency typically being where the person is dying and I can't get notary or independent witnesses.

I occasionally get blowback from other attorneys when they see this but screw them. There is NO requirement under Florida law that a will be notarized; yeah, yeah, it's better practice but I'd rather get signature of TX and witness on a will then go intestate. I'll testify if need be.

So, can you get TX and two witnesses to sign it? Any way you can supervise via video or thru a window and a cellphone? just to make sure that TX and Witnesses are all in the same room at the same time? Get the wet ink signatures on the will.

Ronald A Jones, Florida

Sorry, I just read more carefully and realized that it isn't Pennsylvania, but California where this is happening, if I understood correctly. So there could be a holographic will, avoiding the witness requirement, or the harmless error doctrine might apply to the will. That is, if there is no case law construing a situation where being in the same room with the testator is not feasible because of health concerns (which might merit some research).

Matthew J. Norris

To add to the chorus, are you sure a notarization is required for the will to be valid in California? In most states it isn't, and a quick search by me, not a CA lawyer, of some CA lawyer postings seem to indicate that a notarization isn't statutorily required. So, take that with a grain of salt, but I'd check the statute. For the states I've practiced in, the notary is for the (optional) self-proving affidavit, not the will itself.

You can provide the Will to her, with written instructions on how to execute it, and charge her with getting some witnesses/neighbors and executing it. Then, when this issue clears up, I'd volunteer to either do the self-proving affidavit with the testator/witnesses, or re-execute the whole thing in your office.

If notarization is required, then does your state allow remote online notarization with video service? Does the facility have a notary? They are usually loathe to do this type of thing, but may make an exception under the circumstances.

I prefer to supervise the execution myself and execute with a self-proving affidavit (and usually I'm the notary), but that isn't always feasible. A good but not perfect solution is better than no solution.

Cynthia V. Hall, Florida

Our "in the presence" rule is "sight and hearing." I would imagine you could open the window, or have a phone link while you watched through the window...

Richard J. Rutledge, Jr., North Carolina

The only will contest I've actually litigated, the notary was a lousy witness. I was able to tear her apart because, as a notary who notarizes most of my own wills, I "knew the drill." Whether you do it yourself or have another notarize, make sure that when a notary signs off on a certificate that says, "First being duly sworn..." they actually do a formal swearing and oath... In that case, the notary (a paralegal, no less) testified that she, in fact, never spoke a word during the whole will execution, just signed and stamped.

If you need a notary, or you use one as "best practice," make sure that they're actually following best practices.

Richard J. Rutledge, Jr.

California allows online and remote notarization. Here's one company, but there are many. Online Notary <https://www.docverify.com/Products/E-Notaries/Electronic-Notary-and-Remote-Notary-Platform/Electronic-Notary-California>

Scott I. Barer, California

You are right. Notaries make horrible witnesses. Most never check driver's licenses. Most do not swear a witness in before signing.

Robert "Robby" W. Hughes, Jr.

That is the advantage of the attorney acting as the notary: when I conduct a will signing, I always inform the testator(s) and witnesses beforehand that their signatures serve not only to witness the signings but as an affidavit. I use a standard template, going through various questions (see "Will Signing

Ceremony Forms" at <https://koeneckelaw.com/public/>), and make sure to swear the testator(s) and the witnesses in properly. And of course, I save an electronic copy of the signing ceremony in my records, as well as the notary book page.

Witnesses always find it terribly amusing when asked if the testator is of "sound mind." I caution them ahead of time that, if they were called into court after the person had died, and the judge asked them "Was Mr.

Doe of sound mind when he signed his will?", they probably would not find it appropriate to burst out laughing, so please consider that and answer accordingly. When using friends as witnesses, it is always a problem.

Michael A. Koenecke

Not mentioned is that in Texas we always ask if each witness is age 14 or over. That always gets chuckles.

My practice is to have testators initial each page and I have everyone sign in blue ink and the notary seal is green if using a rubber stamp.

After making copies, I affix with high quality, engraved, 'will' covers which have 'Last Will & Testament' printed on the outside, along with my name and location. For any powers of attorney, I use Southworth, 25% cotton-fiber, red-lined, water-marked paper and blue manuscript covers.

If you want to get fancy you can punch a hole in the upper left and thread colored-ribbon. UK wills I have seen have that. Also, you can use gold seal paper and emboss with an old-fashioned seal instead of using a rubber stamp.

Rob Robertson, Texas

Actually, that prompts Story Number Two, which I also customarily relate at will signings:

I was once in court, proving up a will (not one I drafted), where the self-proving affidavit said that "the testator and the witnesses are all over age 18." The judge said to me: "Mr. Koenecke, the self-proving affidavit does not state that the witnesses were over age 14." I replied, "Your Honor, it says they were

over 18; logically speaking, if they were over age 18, they were clearly over age 14." He replied: "I know that as well as you do. But that's not the language of the statute."

And so the judge rejected the SPA and required me to get a witness to prove up the will.

Yes, it was pretty ridiculous. But it's a good story to tell to emphasize why we make a point about adhering to the statutory requirements. Right there with you when it comes to making sure the original will is distinguishable from copies.

Michael A. Koenecke

Some states allow online notarization - witnesses can be other residents (as long as will is not being recorded in property records). The process is videotaped by online notary. We used to use VA online notaries until TX allowed it - other states can be used.

One of my colleagues makes everyone do a holographic will at her will seminars, - that way if something happens, they are not intestate. may consider this as a base option for now.

Murtaza Sutarwalla, Texas

I just did a signing at a Nursing Home, I spoke to them in advance, I did not have a mask,(which they wanted, as they did not have extras) but did have gloves, my notary and I wore bandanas as a mask and joked about being robbers, my client and spouse, my notary and I all only went to the room.

I left the Health Care Directive for the Ombudsman, asked for the POLST to be completed by the Doctor, but asked the nurse for one to go over with my client I recorded their answers and left it for the doctor (knowing the Nursing Home doctor will most likely just sign it), went okay.

Martha Jo Patterson, California

This reminds me, I still need to fix the audio on this...

<https://www.youtube.com/watch?v=OPZi0mRxXiM>

Richard J. Rutledge, Jr.,

The ombudsman is only required for Health Care Directives.

Martha Jo Patterson
