

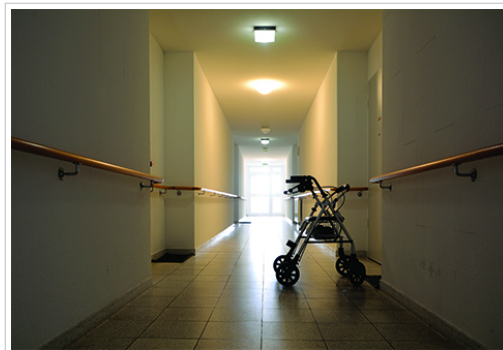
RHODE ISLAND Lawyers Weekly

Pandemic has T&E, elder bars hopping

By: Pat Murphy and Barry Bridges April 23, 2020

The coronavirus outbreak has trusts and estates and elder law attorneys working overtime to help clients navigate issues ranging from the updating of existing wills to the relocation of a loved one barred from a nursing home where he or she used to live.

"We have seen a substantial increase in requests for wills and health care proxies," said Gene M. Carlino, a T&E and probate lawyer in Johnston. "The existing life-threatening circumstances have forced many clients to consider their mortality as more than a mere technicality."



Carlino said his clients are largely focused on three issues: making sure the right beneficiaries get their assets upon their passing; making that happen conveniently, perhaps through trusts or joint accounts; and having in place the right health care decision-maker.

Since the onset of the health emergency, North Kingstown lawyer Kenneth R. Rampino has also noticed an uptick in inquiries related to estate planning, particularly with respect to wills, powers of attorney and health care proxies.

"People are concerned about getting their affairs in order," he said. "But at the same time they're nervous about meeting in person. So there's a tension there."

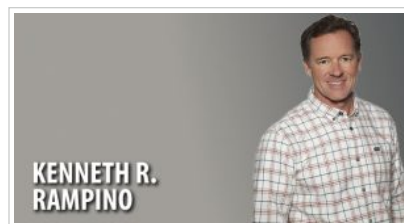
Rampino's estate planning practice is seeing more business from medical providers on the frontlines who are witnessing how the virus can impact them.

"They are inquiring about a range of documents, and many are at the age where they have children who could require guardianships. It's the type of thing they have been meaning to take care of, and now they have even more incentive to do so," he said.



"If things don't go back to normal and we aren't soon able to return to 'business as usual,' we'll need to figure out more long-term solutions."

— Kenneth R. Rampino, North Kingstown



Similarly, Gina M. Barry, who practices in Springfield, Massachusetts, reports that when the pandemic first hit she was swamped with work

drafting wills, trusts, powers of attorney and proxies for many of her health care worker clients.

"I was at the computer drafting from 6 o'clock in the morning to 11 o'clock at night," said Barry, who continues to see an increased demand for estate planning services.

"People who haven't planned at all want to plan. People who were taking their time are feeling more urgency to finish their plans. And people who have plans in place are making sure they're updated," she added.

Elder law attorney Patricia Keane Martin of Wellesley, Massachusetts, said the pandemic has her helping clients work through laundry lists of problems for which there are few precedents.

"It's been an onslaught of really practical calls as to what we do now in a crisis where there is no roadmap, nobody quite knows how to behave, and the rules are meaningless in some form or fashion," Martin said.

Remote notarization

One tool now available in Rhode Island to help minimize personal interactions in the age of COVID-19 is remote online notarization, or RON, a revised standard that Secretary of State Nellie M. GORBEA temporarily authorized on April 3.

The change was instituted in light of Gov. Gina Raimondo's Executive Order 20-13, which mandates that Rhode Islanders stay at home and only leave for essential tasks.

The new standard allows notaries public commissioned in Rhode Island to perform a notarization for a person not in their physical presence if the parties "can communicate simultaneously by sight and sound through an electronic device," and provided that the notary can "reasonably identify" the remotely located individual signing the documents.

Carlino credited the work of the Rhode Island Bar Association's Probate & Trust Committee, as well as local members of the National Academy of Elder Law Attorneys, for championing the change.

"In-person meetings are part of the nature of our practice, and we began looking at alternatives once we realized that they would be severely restricted," he said. "While the client and witnesses still need to be physically present for the 'signing ceremony,' RON allows the notary to participate remotely."

While probate and T&E attorneys welcome the development, some see potential problems in the execution.

"We've looked at the training videos, and I'm afraid it may be too complicated, particularly for the elderly," Rampino said.

He explained that while the hallmark of the process is camera functionality, the "identity proofing" aspect requires uploading documents, answering security questions based on consumer records, and manipulating signatures. That could prove a "bit too much" for senior clients who may no longer have credit files or maintain driver's licenses, he said.

"While we need to preserve the integrity of the notarial process, it has to be easy enough to actually use," Rampino added. "We are still trying to figure it out."

Another potential roadblock, Rampino said, is that users have to subscribe to one of several approved platforms, such as DocVerify or Pavaso, which entails a financial commitment. Also, considering that several states are implementing RON, it's difficult to reach those companies' customer support services.

More broadly, Carlino said he is aware that some may question the secretary of state's action in updating the "Standards of Conduct" for notaries, while attorneys in states such as Massachusetts wait for the Legislature to enact a similar measure.

"A concern may arise as to whether the secretary of state has lawful validity to make the change under the authority of the governor's executive order when laws are most properly enacted by the Legislature," Carlino said. "But we find ourselves in unusual times, and the procedure is to be interpreted consistent with current law. Plus, it is narrow, lasting only as long as the state of emergency."

However, while Carlino believes that remote notarizations are valid, he said best practices may dictate that documents be re-signed under normal circumstances if it's possible to reconvene the parties once the health crisis subsides.



Senior challenges

On the mind of many attorneys is the fact that remote executions are not an option for wills in Rhode Island. G.L. §33-5-5 requires that a will be "in writing" and signed by the testator in the physical presence of two witnesses.

With that lay of the land, creativity can be an asset.

"Logistically, things are difficult with social distancing. Remote notarization doesn't help us as much as one might think because everyone has to 'be in the room' when a will is signed," said Kristin N. Matsko of Providence's Orson & Brusini. "We've had people who are adamant about moving forward with the signing, so we did it in our parking lot with everyone staying in their cars, with their own documents, within each other's line of sight."

But her hands may be tied when elderly clients in nursing facilities need to execute documents.

"In that case we can't do anything, but we certainly have been drafting for everyone and will have everything ready for signatures once we can meet in person again," she said.

Considering the witnessing requirements, Matsko said remote notarization may be more helpful for real estate attorneys.

With the need to have documents in front of testators and witnesses, Carlino has chosen to transact business through a picture window for at least one of his nursing home clients.

"We are still doing in-office signings, but with a whole different protocol — distancing, not passing paper and pens — but at least the notary doesn't have to be in the room now," Carlino said.

Rampino agrees that acquiring needed signatures is among the pressing problems that estate planning attorneys are facing, especially for clients in communal living situations.

"If things don't go back to normal and we aren't soon able to return to 'business as usual,' we'll need to figure out more long-term solutions," he said.

According to Wellesley's Martin, for someone who wants to conduct estate planning after they've become ill, hospital quarantines are presenting challenges to communicating with clients and executing necessary documents. Moreover, she is seeing problems with the relocation of elderly patients who are recovering from coronavirus hospitalizations. With the virus so contagious, assisted living facilities may refuse to allow a resident to return upon his or her discharge, she said.

Meanwhile, Matsko is adjusting to the suddenly changed process of collecting the information needed for Medicaid applications.

"Normally that involves submitting around 200 pages of backup documentation, and now it's a matter of staying online and reading through a lot of emails," she said.

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