The State of Maryland

Executive Department

ORDER
OF THE
GOVERNOR OF THE STATE OF MARYLAND

NUMBER 20-04-10-01

AUTHORIZING REMOTE WITNESSING AND ELECTRONIC SIGNING OF CERTAIN DOCUMENTS

WHEREAS, A state of emergency and catastrophic health emergency was proclaimed on March 5, 2020, and renewed on March 17, 2020, to control and prevent the spread of COVID-19 within the state, and the state of emergency and catastrophic health emergency still exists;

WHEREAS, COVID-19, a respiratory disease that spreads easily from person to person and may result in serious illness or death, is a public health catastrophe and has been confirmed throughout Maryland;

WHEREAS, To reduce the spread of and exposures to COVID-19, the U.S. Centers for Disease Control and Prevention and the Maryland Department of Health, consistent with the currently known and available scientific evidence and best practices, recommend social distancing;

WHEREAS, It is necessary and reasonable to prevent the transmission of the novel coronavirus in the state, and save lives, for individuals to refrain from congregating;

WHEREAS, It is necessary to protect the public health, welfare, or safety to suspend the effect of statutes, rules, or regulations that require personal interactions to execute certain documents; and

WHEREAS, To reduce the threat to human health caused by COVID-19 in Maryland, protect the health and safety of Maryland residents and save lives, it is necessary and reasonable to allow persons to use technology to remotely witness the execution of certain documents, instead of being physically present;

NOW, THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, INCLUDING BUT NOT LIMITED TO

TITLE 14 OF THE PUBLIC SAFETY ARTICLE, AND IN AN EFFORT TO CONTROL AND PREVENT THE SPREAD OF COVID-19 WITHIN THE STATE, DO HEREBY ORDER:

I. Definitions. As used herein:

a. "Electronic Presence" means the relationship of two or more individuals in different physical locations who can observe one another and communicate to the same extent as if the individuals were physically present in the same location.

b. "Electronic Signature" means a visible electronic mark attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

c. "ET" means the Estates & Trusts article of the Maryland Code.

d. "HG" means the Health-General article of the Maryland Code.

e. "Remote Witnessing" (and words of similar import) means to witness the execution of a document by a person who is in the Electronic Presence, but not the physical presence of the witness.

f. "Supervising Attorney" means an individual who has been admitted to practice law before the courts of this State and is in good standing.

II. Suspension of Certain In-Person Witnessing Requirements.

a. To the extent any part of ET § 4-102 requires a will to be attested and signed by witnesses in the physical presence of the testator or another person signing for the testator at the testator's express direction (the "Testator"), such part of ET § 4-102 is hereby suspended to the extent necessary to allow Remote Witnessing of wills in accordance with the conditions set forth in paragraph III below.

b. To the extent any part of ET § 17-110 requires a power of attorney to be attested and signed by witnesses in the physical presence of the principal or another person signing for the principal at the principal's express direction (the "Principal"), such part of ET § 17-110 is hereby suspended to the extent necessary to allow Remote Witnessing of powers of attorney in accordance with the conditions set forth in paragraph III below.

c. To the extent any part of HG § 5-602 requires a written advance directive to be subscribed by witnesses in the physical presence of the declarant or another person signing at the express direction of the declarant (the "Declarant"), such part of HG § 5-602 is hereby suspended to the extent necessary to allow Remote Witnessing of written advance directives in accordance with the conditions set forth in paragraph III below.

III. Conditions. The execution of a will, a power of attorney, or written advance directive (a "Document") by, respectively, a Testator, Principal, or Declarant (the "Signer")

may be Remotely Witnessed, provided that the following conditions are satisfied:

a. The witness shall be in the Electronic Presence of the Signer;

b. The witness shall be a resident of the State of Maryland and be physically located in the United States at the time the execution of the Document is witnessed;

c. The Signer and all witnesses shall be in the physical presence or Electronic Presence of one another and a Supervising Attorney, who shall not be one of the witnesses;

d. The Signer and witnesses physically shall sign one or more counterparts of the same Document, or affix their Electronic Signatures to it; and

e. The Supervising Attorney shall create a certified copy of the Document, which shall be deemed to be the original of the Document, and shall contain all pages of the Document, the original signatures or Electronic Signatures of the Signer and all witnesses, and a certification of the Supervising Attorney stating that:

    i. The Supervising Attorney took reasonable steps to verify:

        1. That the copy of the Document is a true, complete, and accurate copy of the Document signed by the Signer;

        2. That the signatures contained in the copy are either the original signatures or Electronic Signatures of the Signer and each of the witnesses;

        3. The identity of the Signer, and that the Signer was a resident or domiciliary of, or was physically located in, this State at the time the Signer signed the document; and

        4. The identify of each witness, and that the witness was a resident of this State at the time the witness signed the Document; and

    ii. The Document was remotely witnessed in reliance on the Order of the Governor of the State of Maryland Number 20-04-10-01, dated April 10, 2020, Authorizing Remote Witnessing and Electronic Signing of Certain Documents.

IV. Certain Requirements Unaffected. For avoidance of doubt, this Order does not:

a. Preclude the execution of Documents from being witnessed in-person, or alter any legal requirements applicable when a Document is witnessed in-person; or

b. Alter any legal requirements as to the number or qualification of witnesses required for the execution of any Document.

V. General Provisions.

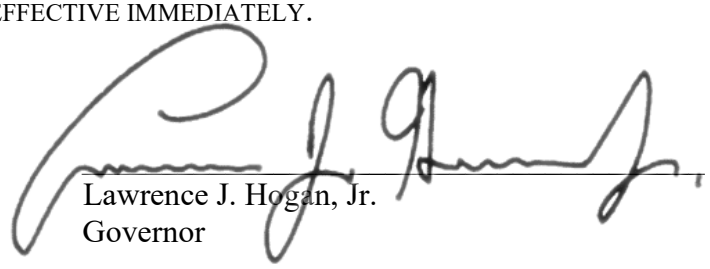
a. This Order remains effective until the state of emergency has been terminated and the proclamation of the catastrophic health emergency has been rescinded, or until rescinded, superseded, amended, or revised by additional orders.

b. The effect of any statute, rule, or regulation of an agency of the State or a political subdivision inconsistent with this order is hereby suspended.

c. The underlined paragraph headings in this Order are for convenience of reference only and shall not affect the interpretation of this Order.

d. If any provision of this Order or its application to any person, entity, or circumstance is held invalid by any court of competent jurisdiction, all other provisions or applications of the Order shall remain in effect to the extent possible without the invalid provision or application. To achieve this purpose, the provisions of this Order are severable.

ISSUED UNDER MY HAND THIS 10TH DAY OF APRIL, 2020, AND EFFECTIVE IMMEDIATELY.



Lawrence J. Hogan, Jr.
Governor