

U.S. Insight: Update on Virtual Witnessing (New York Executive Order 202.14) During The COVID-19 (Coronavirus) Pandemic (Updated: June 5, 2021)

In response to the COVID-19 (novel coronavirus) pandemic, New York State Governor Andrew Cuomo signed Executive Order 202.14 (the “Order”) on April 7, 2020, authorizing virtual witnessing for certain documents, including Wills and Trusts. The impacted statutes are Estates Powers and Trusts Law (EPTL) 3-2.1(a)(2), EPTL 3-2.1(a)(4) and EPTL 7-1.17, Public Health Law 2981(2)(a), Public Health Law 4201(3), Article 9 of the Real Property Law, and General Obligations Law 5-1514(9)(b). The Order is currently in effect until May 7, 2020.

The act of virtual witnessing allows individuals to attest to the validity of a signatory's identity over audio-visual technology. Pursuant to the guidelines issued in the Order, to complete the act of virtual witnessing over video conferencing technology, the signatory and the witness must fulfill the following conditions:

1. The person requesting that their signature be witnessed, if not personally known to the witnesses, must present valid photo ID to the witnesses during the video conference, not merely transmit it prior to or after;
2. The video conference must allow for direct interaction between the person and the witnesses, and the supervising attorney, if applicable (e.g. no pre-recorded videos of the person signing);
3. The witnesses must receive a legible copy of the signature page(s), which may be transmitted via fax or electronic means, on the same date that the pages are signed by the person;
4. The witnesses may sign the transmitted copy of the signature page(s) and transmit the same back to the person; and
5. The witnesses may repeat the witnessing of the original signature page(s) as of the date of execution, provided the witnesses receive such original signature pages together with the electronically witnessed copies within thirty days after the date of execution.

The standards for completing the act of witnessing over audio-visual technology are similar (but not identical) to the standards for virtual notarization which the Governor authorized in Executive Order 202.7 and further clarified in guidelines issued by the

New York Department of State on March 25 and March 31, 2020. Curtis' published update on those virtual notarization guidelines can be found [here](#).

UPDATE: Executive Orders allowing virtual witnessing have been issued monthly since the initial Executive Order, with the most recent renewal on June 5, 2021, which extends virtual witnessing through July 5, 2021.

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Please feel free to contact any of the persons listed below if you have any questions on this important development:



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