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Revolution or Evolution: Remote Online Notarization and Remote Witnesses … Oh My!

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I used to spend time with my grandmother, who was born in 1909 and lived through 2007, being regaled with her stories and all the changes in the world that she experienced. She would often remind me that I also had the same experience, just a different time period.

I am reminded of this over the last several years, in particular, because of the technology advances that have affected my legal career. When I started law school a bag full of nickels provided access to the best piece of technology needed: the copy machine! My first job in law school was in the law library re-shelving the books left strewn about.

My first job after law school was a judicial clerkship for a judge on the Illinois Appellate Court, First District. Before I finished my clerkship there was a grand experiment under way for research: using a computer connection to access Westlaw and Lexis. Those were the halcyon days of modems and dial-up services while using a dedicated terminal. While there were steady improvements to this type of legal research, it wasn't until 1998 that westlaw.com became a reality.[1]

Technology has allowed us to improve our practices and the legal services we provide to our clients. Yet, the law is slow to change. Perhaps as it should. Our probate codes are rooted in history. Why do we require witnesses to wills? Why do we publish for three weeks after the executor/administrator is appointed? We now have mandatory e-filing for all of our cases in Illinois state and federal court. Some counties have electronic orders.

So why don't we have remote notarization? And, why don't we allow witnesses on a remote basis? These are questions that now prevail given the fact that we are currently practicing in a COVID-19 world and direct access to our clients is, for the most part, prohibited, even if the legal field is an "essential business."

One answer, trite as it may be, is that the law is a slow adopter when it comes to technology. Another is, perhaps more appropriately, that the law is rooted in precedent and tradition. We publish in newspapers because they have been a reliable form of communication for a very long time, since before Abraham Lincoln was practicing law in Illinois! We require witnesses to wills because that was thought to be the only way to test and prove the reliability of the document after the testator was dead.

However, there have been recent advances in the way we apply technological advances to our law practices. A detailed analysis of history and development of estate planning history is beyond the purview of this article, but there are good resources on this subject, and even worthy of exploration![2] Briefly, however, before getting into a discussion of how our COVID-19 world has affected our practices, a review of recent laws related to electronic signatures and business transactions follows because it is important to track the timing.

The Illinois Electronic Commerce Security Act was enacted in 1998 and effective July 1, 1999.[3] This Act addressed issues arising from the burgeoning use of electronic commerce, and provided the basis for allowing businesses to rely on the electronic records created during transactions.[4] Besides providing definitions that allowed a writing to include electronic records, Illinois' Act established that an electronic signature would be the same as the traditional signature made with pen and ink.[5] Yet, there was some angst about the implementation of this Act and others such as the Uniform Electronic Signatures Act.[6]

Significantly, while the Illinois Electronic Commerce Security Act is an all-encompassing law, it does have its exceptions. Importantly for our purposes, this Act specifically does not apply to wills and trusts,[7] so we need to have wet signatures on these documents.

The Uniform Law Commission followed

Illinois' lead in 1999 and promulgated the Uniform Electronic Transactions Act (UETA). UETA applies where the parties to a transaction agree to handle the deal electronically. The objective of UETA is to make sure that transactions in the electronic marketplace are as enforceable as transactions memorialized on paper and with manual signatures, but without changing any of the substantive rules of law that apply.[8]

Not to be left behind, Congress got into the fray with the passage of the Electronic Signatures in Global and National Commerce Act, commonly known as E-SIGN, which was effective October 1, 2000.[9] This was the federal government's attempt to make sure that interstate commerce was protected by uniformity in standards for electronic signatures.

In 2010 the Uniform Laws Commission adopted a Revised Uniform Law on Notarial Acts (RULONA) in order to meet new changes including provisions to provide for the performance of notarial acts with respect to electronic records and signatures. Almost immediately there was a need for a newer version of this uniform law. Based on continued changes and trends in applicable technology, in 2018 the Uniform Laws Commission amended RULONA, coming up with RULONA 2018. The key change at this time was Section 14A that audio-visual technology and authorization of notarial acts using this technology. This also included authorizing remote notarization. Thus, RULONA 2018 was addressing the needs for remotely located persons, using communication and identity-proofing technology.

A 2018 US Treasury report, that took some time to complete, also made some strong findings and recommendations regarding electronic notarization:[10]

> Despite state-level progress toward wider recognition of electronic notarization, the absence of a broad statutory acceptance across the country and uneven standards for remote and electronic notarization implementation has created confusion for market participants, slowing adoption of digital advances in mortgage technology by limiting the ability for lenders to complete a digital mortgage with an eClosing. Non-uniform state rules create a cost barrier for electronic notarization system vendors developing their platforms and creates uncertainty for investors considering purchasing digital mortgages. *Footnote omitted.*
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> Treasury recommends that states yet to authorize electronic and remote online notarization pursue legislation to explicitly permit the application of this technology and the interstate recognition of remotely notarized documents. Treasury recommends that states align laws and regulations to further standardize notarization practices.
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> Treasury further recommends that Congress consider legislation to provide a minimum uniform national standard for electronic and remote online notarizations. Such legislation would facilitate, but not require, this component of a fully digital mortgage process and would provide a greater degree of legal certainty across the country. Federal legislation is not mutually exclusive with continued efforts at the state level to enact a framework governing the use of electronic methods for financial documents requiring notarization.

In 2019, after a little over a year of study and meetings, the Uniform Law Commission adopted the Uniform Electronic Wills Act. The E-Wills Act allows for a will that is readable as text when the testator electronically signs the document. This Act still contemplates the testator's signature being witnessed by two people who add their own electronic signatures. Adopting states can opt for a version of the E-Wills Act that requires the witnesses to be physically present with the testator at the time of signing, or for a version that allows remote witnessing. A separate article is needed to address the issues and questions relating to the prospects of enacting this uniform law in Illinois.

Executive Order in Response to COVID-19, Executive Order No. 14, Governor J.B. Pritzker, March 26, 2020

The goal in requesting relief from notary and witness rules from Governor Pritzker was to provide some ability to estate planning attorneys and clients. This may be the case, but let's first review what EO Order 14 provides.[11]

With regard to the requirement that a person has to appear before an Illinois notary in order for that person's signature to be notarized has been loosened. Pursuant to Section 1 of EO 2020-14 if the notary performs a remote notarization via two-way audio-video communication technology.

With regard to an act of witnessing that is required by Illinois law, Section 2 of EO 2020-14 allows remote witnessing to take place as long as two-way audio-video communication technology is used. There is a list of 10 requirements related to the technology and the process. This process, more or less, parrots the process described in Illinois Senate Bill 3698 introduced earlier this year and discussed below. Section 3 reasserts the prohibitions for use of electronic signatures on "certain documents" found in section 5-120(c) of the Illinois Electronic Commerce Security Act.[12] Amongst these requirements is that the audio-video communication must be recorded and saved for at least 3 years.[13] These are the prohibitions that electronic signatures on wills and trusts are not valid. Section 4 allows all of the listed documents to be signed in counterparts by the witnesses and the signatory. If the notary is going to certify the appearance of witnesses, then the notary must be presented with a fax or electronic copy of the signature pages on the same date as the document is signed by the signatory.

The Illinois Secretary of State issued guidelines to EO 2020-14 which serve to provide greater detail and background to the EO 2020-14. The guidance makes it clear that the authority under EO 2020-14 will end as soon as Gubernatorial Disaster Proclamation of March 9, 2020, is rescinded. The guidance also provides definitions and scope to EO 2020-14. For instance, audio-

video communication is a communication by which a person is able to see, hear and communicate with another person in real time using electronic means. There are no specific vendors or providers who can provide the equipment that meets the requirements for real time communication and recording.

During this time when businesses are running at skeletal strength and the need is immediate, there is a question as to how quickly one can collect and verify that they have the right hardware and software. Of course, we will eventually need to consider this when Illinois Senate Bill 3698 becomes law. That is, this bill or some version of it should be adopted by our lawmakers to help us stay up with technological advances and better serve our clients. One central question for law practices will be whether or not to have an employee do the training (likely not too difficult on-line), make sure they have the proper technology and are willing to comply with the storage requirements for the required journal and recording. The alternative is using a notary service and creating a working relationship with them so as to understand the ins and outs of doing remote notarizations when circumstances require it.

I am not a Constitutional scholar, nor am I a scholar of the powers an executive authority has to issue the executive orders by which we are constrained at this time. It certainly makes sense that we are in an emergency and our Governor is allowed in an emergency to enter orders to protect the public safety and health. In Illinois, authority for issuing such orders arise under the Illinois Emergency Management Agency Act, providing for emergency orders.[14] EO 2020-14 references sections 7(1),[15] 7(2)[16] an7(3)[17] and 7(12) as the basis for this action.[18] I did, however, do a quick check and found that executive orders made by Illinois governors do get and have been challenged, some even successfully.[19] I am not interested in challenging EO 2020 14. In fact, being an "essential business, I am grateful that in addressing all the issues being dealt with, that the Governor and his staff were able to react to the concerns and needs for remote notarization and witnessing. I am more concerned about a document being challenged by an aggrieved, interested person seeking a court order stating there is no authority to implement these changes. As we know, just defending such litigation in a post-mortem proceeding is expensive emotionally and monetarily, as well as extremely aggravating for the client family.

In addition, however, I believe there are some questions, the answers to which will be intensely fact-rich and somewhat speculative (which I won't try to answer in this article) that give rise to concerns that lawyers should be concerned about when considering undertaking the use of the now allowable remote witnesses and notarization. Some of these include:

1. What will the big box financial institutions require? Experience indicates some may be cooperative and other won't, and that it will be difficult to predict the circumstances that will arise, exigent or otherwise.
2. Will the big box institutions require their own standards beyond those set forth in EO 2020-14 and related guidance?
3. Who will ask to review the recording of the two-way communicating and signing? I.e., Big box institutions? Litigants? Will they have a court order? Will it be the aforementioned, aggrieved, interested person (i.e., heir/legatee/beneficiary)? Will it be evidence in litigation? Illinois' Senate Bill 3698 requires the notary to keep recordings for a period of 7 years.[20] EO 2020-14 requires the recording to be kept for only 3 years. Can there be a spoliation issue?
4. What is the standard of care for the notary exercising the authority allowed, when using a new technology? Senate Bill 3698 requires training.[21]
5. How are audio-visual recordings created and stored on the platform to be used during this time period?
6. What methods are being used to identify individuals and witnesses in the audio-visual recording?
7. What tamper-evident assurances are being provided regarding signed documents?
8. For real estate related transactions: what will title underwriters, agents, and financial institutions require to be comfortable with the technology being used and related security compliance procedures? What will be accepted by Fannie Mae and Freddie Mac? How will any of this affect funding steps related to real estate?
9. What will Errors & Omissions carriers for a notary cover?
10. Lastly, what will the legal malpractice carriers cover?

Creative Practices and Lessons from the Past: Illinois' First Curbside/Remote Will Signing?

In the 1930 Walker v. Walker[22] case the Illinois Supreme Court issued an opinion in what I imagine might be the first curbside, and somewhat remote, will signing in the State. In this case Mrs. Walker sat in the back seat while her son, Fred, drove her to a nearby residence in a Hupmobile sedan[23] where three witnesses were waiting to sign her will, which she had already signed.[24] This arrangement was, of course, prearranged by Fred.[25]

The car was parked in front of the one family house and Mrs. Walker remained seated in the car about 35 feet from the windows of the living room.[26] However, by all accounts, Mrs. Walker could see across the front yard into the house and through the windows, and the three witnesses standing in the house could also see Mrs. Walker sitting in the back seat of the Hupmobile.

Fred took the will inside the house and requested the witness signatures.[27] Before signing, one witness went out to the car to speak with Mrs. Walker to make sure the document was her will and that the signature was hers. However, the other two stayed in the house and watched, but could not hear anything.[28] Back in the house, the witness told the other witnesses that Mrs. Walker confirmed it was her will and signature, whereupon all three signed as witnesses.[29] The two witnesses who did not speak with Mrs. Walker both said they saw Mrs. Walker looking at them through the window when they were signing.[30]

After the signing, the witnesses went out to the car and Fred had possession of the will.[31] Fred gave the will to his mother and thanked the witnesses while his mother nodded her head in assent, saying she was

glad it was done.[32]

One other salient fact: the will made Fred the executor and "chief beneficiary."[33] Afterwards, Mrs. Walker died and Fred probated the will. Fred's three siblings challenged admission of the will to probate. After challenges pursued by Fred's three siblings, the probate court and circuit court admitted the will to probate with Judge Otto Kerner, Sr. convinced that the facts reflected enough to admit the decedent's will to probate.[34] The panel of Illinois Appellate Court justices agreed with Judge Kerner's ruling.[35]

However, without dissent the Illinois Supreme Court reversed the appellate court and circuit court.

In doing so, the Court was clearly influenced by the facts, when it held Mrs. Walker's nod of assent "cannot be construed as an acknowledgment of her execution of the will"[36] and further stated:

> There is nothing in the record showing that she saw the will from the time it was in Whitelaw's [i.e., witness] possession at the car until given to her by her son Fred. Neither is there any proof that she ever saw the signatures of the subscribing witnesses after they were affixed. What constitutes attestation in the presence of a testator has frequently been explained, and a general statement of the rule is that the testator must be so situated, both as to the will and the witnesses, that he may, if he chooses, see both in the act of attestation…All the authorities declare that the object of the law is to prevent fraud and imposition upon the testator or the substitution of a surreptitious will, and to effect that object it is necessary that the testator shall be able to see and know that the witnesses have affixed their names to the paper which he has signed and acknowledged as his will. *As we view the facts presented by this record, there was no way testatrix could have known of her own knowledge that her will was being signed by the three subscribing witnesses and that she had not been imposed upon.*[37]

We do have the potential to apply remote technology based on Governor Pritzker's EO 2020 No. 14. However, this still requires use of specialized hardware and software that may not be readily available. Thus, in appropriate circumstances there may be some creative ways to secure a client's signature on documents. Creativity is good, especially if the client appreciates the effort and is happy. However, we need to be mindful of making sure we don't put the health of the clients, our staff, and ourselves at risk. Further, as seen in the *Walker* case, we need to make sure all participants are fully aware of the process and what is taking place. Also, it is important the participants actively acknowledge this awareness to each other.

The development of technology has been moving along for commerce in general. We all have clients who are using it all the time in their businesses. Yet, while Illinois lawyers are on the cusp of more advancements, the failure to implement and adopt, through relevant legislation hasn't caught up to reality.

And, what a reality. All of our clients need and want our assistance. When the CODAVID-19 Crisis hit, we were all in the middle of providing assistance to any number of clients. Plus, new issues arise and clients in a senior residence facility can't be reached because they are in lock-down mode. Or, quite simply, a neighbor who is a client doesn't understand why she can't simply walk over and get the documents signed.

I am aware of a scenario from an out-of-state attorney who discussed something akin to the *Walker* curbside, or "drive-by," signing. The signing was held at the home of the client, but took place completely outside. Everyone was armed with, and used, their own pen, taking it with them when the signing was done. Everyone washed their hands before and after the signing. No one was supposed to touch the paper documents while signing. Thus, there were weights to hold the paper down so it wouldn't blow away. Everyone stood separately and apart, but everyone was observing and paying attention and able to talk to each other. First, the client moved in to sign and acknowledge her signature when facing the witnesses. After the client moved off, the witnesses moved to the table to sign, one by one, following the same process. Then the notary approached the documents, signed and stamped the documents with her seal. The notary immediately placed her seal in a plastic bag and sealed it. Later the notary removed the seal with gloves on and sterilized her stamp. The attorney overseeing this signing ceremony wore gloves when placing the completed documents into their own sealed bag. I am not sure how long these documents were quarantined, nor how they were effectively used to accomplish timely funding.

In the above scenario the client was basically available since she was living in her own home. The question is what to do with a client living in a residential facility that is in lock-down. The first choice would be to convince the facility management that signing the new documents is an "emergency" that requires special attention. Then, you have to get the documents to this client. Does the client have a computer and a printer? Will the management accept the emailed documents, print them and help the client follow the instructions for signing and witnesses? Are there available witnesses and a notary in the facility? Can the attorney, witnesses and notary be allowed entry to the vestibule of the building and allowed to watch the client sign the documents (previously snail-mailed to the client or graciously printed by the facility) who is on the other side of the locked door (hopefully made of glass as most are now-a-days)? In this manner you have the client's 'wet' signature on hard documents, with witnesses able to see the client sign. The signature page, witness page and notary page may need to be separate pages. If oral communication is not easily accomplished, does the client's handwritten notes on paper held up to the door satisfy the acknowledgement requirement? Presumably this scenario would satisfy Illinois' presence and attestation requirements and at least get a will admitted, with the clock starting on the right of any interested person to challenge the document.[38]

Another way to try and avoid some complications is to rely solely on a trust, which only needs to be signed by the candidate and does not require any

witnesses or notary.[39] You can also make it a declaration of trust, and identify all the assets that are to be held in trust by the trustee.[40] While a declaration of trust has historically been considered self-funded, there are some practical problems in simply relying on this long-term. This is primarily due to the 'big-box' financial institutions who won't understand and will resist a successor trustee simply taking over an account that doesn't have the trust name on it. Also, in more recent years we suffer from the Mendelson 'hangover' syndrome when many expressed shock and wonderment that a mere declaration of trust ownership was valid. This is what led to our statute requiring a deed to transfer real estate to a trustee.[41]

Keep in mind that when we are trying to get clients' documents signed as soon as possible, we are planning for the major "what if" scenario where the client doesn't survive until we can actually re-do the documents with everyone sitting around the table. Also, when we engage in actions that are outside the norm the question is whether or not to have a detailed "CYA" letter also signed by the client, in which it is clear there is no certainty how a court would rule if the document(s) were to be challenged. The final answer is to sign new amendments or documents after the current crises is over.

Is Relief Coming?

The Illinois E-Notary Task Force

The Illinois E-Notary Task Force is really the Notarization Task Force on Best Practices and Verification Standards to Implement Electronic Notarization.[42] The E-Notary Task Force held 8 meetings after its formation, from September 2018 to December 2019, before providing its report to the Governor and General Assembly.[43]

The recommendations made by the E-Notary Task Force's Report include:[44]

For the electronic signature and seal:

- The electronic notarization must be performed using audio-video communication;
- The notarial certificate must include language verifying the audio-video communication was used in the notarization;
- There must be independent verification of the electronic seal, signature and notarized document, and these must be tamper-evident;
- The notary should have a duty to keep the electronic signature and seal in their exclusive control, prohibit any access by a third party, and keep it secure when not used;
- The notary should be prohibited from selling or transferring personal information unless required to do so by law, legal process or government authorities;
- An electronic notary should be able to notarize any document authorized by the Illinois Notary Public Act.

The recommendations regarding security steps to be taken to protect the integrity of the notary's electronic signature included:[45]

The Secretary of State must pre-approve the technology vendors to make use minimum standards are met;

- The notary has to register the technology to be used;
- Notaries must register their electronic signature with the Secretary of State;
- Vendors should be required to follow industry standards;
- Industry standards to follow should be from the International Organization for Standardization (ISO) 27000 or National Institute of science and Technology (NIST);
- The notary should be required to keep an electronic journal of the completed notarizations;
- The journal and any voice or video recordings should be maintained for a minimum of 5 years, but no more than 10 years.

Senate Bill 3698 - Amendment to the Illinois Notary Act

On February 14, 2020, Senator Linda Holmes, who was a member of the E-Notary Task Force, filed Senate Bill 3698 to amend the Notary Public Act to allow for electronic notarization and electronic notaries public, including persons who are not physically in Illinois at the time the notarial act is taking place. In doing so it appears Senate Bill 3698 includes significant portions of RULONA 2018.

Significantly, SB 3698 allows an electronic notary public located in Illinois to perform an electronic notarial act for a remotely located person who is physically in Illinois or outside the State, as long as the person is not outside the United States.[46]

New Section 3-107 will require both a notary public and an electronic notary public to keep a journal of each notarial act or electronic notarial act. Section 3-107(b) requires the journal to contain numerous pieces of information:

Description of each act.

- If the act is electronically done it has to include "whether the electronic notarial act was performed using audio-video communication.
- The date and time of the notarization act.
- Whether it was a traditional notarial act or electronic notarial act.
- The type and title of the document, or a description of the document or electronic document.
- The printed name and address of each principal involved in the transaction or proceeding.
- Evidence of the identify of each principal, including for each:
  - A statement that the person is personally known to the notary public;
  - Notation of the type of identification document provided to the notary public;
  - A record of the identify verification made pursuant to Section 6A-103(d) (3) [i.e., recording of the electronic notarial act - if it is performed with audio-video communication];
  - Printed name and address of each witness swearing or affirming the person's identity;
  - When the witness is not personally known to the notary/ electronic notary, a description of the identification documents or verification provided to the notary.
- For electronic notarial acts the journal shall also include any audio-video recording that is the basis for satisfactory evidence of identify and a notation of the type of

identification presented as evidence.

- If a fee was charged and how much.

Section 3-107(c) further requires, among other matters, that the notary: keep the journal in their sole control; not give up copies or destroy the journal except for rule of law or court order or direction of the Secretary of State; keep access to the journal by password or other secure means of authentication; ensure the integrity, security and authenticity of the journal; keep and protect a backup of an electronic journal.[47]

Article 6A is all new and regulates the electronic notarial acts and forms, vendors, and the electronic notarization system as required by the Act and the rules adopted by the Secretary of State. The system must be password protected or otherwise use secure authentication. The system must be "tamper evident." Tamper Evident is a key term defined in SB 3689: "any change to an electronic document shall display evidence of the change."

Section 6A-104 requires that a recording be made of all electronic notarial acts, using audio-video communication. The notary must always inform all participants that there will be an electronic recording. Section 6A-104(d) recording must be kept for 7 years, "regardless of whether the electronic notarial act was actually completed."

It seems clear that Senate Bill 3698, or some version of this bill, should be passed by the Illinois legislature, if it is able to reconvene. The legislature should also consider adding terms that do not delay implementation of the bill until the later of January 1,2021, or adoption of regulations by the Secretary of State. While the Secretary of State had representatives on the E-Notary Task Force, it should be charged with moving as quickly as possible to create and adopt the regulations. In addition, the legislature should consider adding provisions to the Notary Act or elsewhere, as applicable, that ratifies the actions taken in reliance of EO 2020 No. 14 and the current Secretary of State guidelines.

Securing and Enabling Commerce Using Remote and Electronic Notarization Act

Yes, another SECURE Act. On March 18, 2020, Senators Mark Warner (D-VA) and Kevin Cramer (R-ND) introduced the Securing and Enabling Commerce Using Remote and Electronic Notarization Act (the SECURE Act), where it has already been read twice and referred to the Committee on the Judiciary. Overstatement or not, the quote attributed to Senator Cramer was, "Americans shouldn't have to risk their health or safety to execute important financial or legal documents, especially when they could do so from the safety of their own home."[48] Except for the current crises I wasn't aware how much risk I was putting clients in by having them leave their homes to visit my office to review and sign their final documents.

If it becomes law, the SECURE Notarization Act would authorize and establish minimum standards for electronic and remote notarizations that occur in or affect interstate commerce. It would authorize every notary in the US to perform remote online notarizations (RON's), require tamper-evident technology with notarizations, and provide fraud prevention in connection with interstate transactions.

The key to Senate Bill 3533 is that it allows a notary to notarize an electronic record if this record "occurs in or affects interstate commerce" as long it meets the requirements.[49] Senate Bill 3533 also provides that it will preempt any state law that does not meet the same standards as the Revised Uniform Law on Notarial Acts (approved in 2018 by the National Conference of Commissioners on Uniform State Laws) or the state law specifies procedures for electronic records and remote witnesses (i.e., "individuals not in the physical presence of a notary public at the time of notarization) that are consistent with the Act and do not give greater legal effect to specific technology.[50]

This legislation is promoted by the American Land Title Association (ALTA), Mortgage Bankers Association (MBA) and the National Association of Realtors (NAR).[51] The ALTA and the MBA had previously drafted their own model legislation in a desire to see uniformity on this issue rather than the different approaches taken by the states that have already passed legislation.[52]

We currently are in a remote world. Soon, we may be able to offer our clients the luxury of forgoing a visit to their attorney's office, staying home, or perhaps even remotely signing their documents while enjoying themselves on a remote beach.■

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1. Robert Ambrogi, *Westlaw's Days Are Numbered*, Law Sites, May 26, 2015, available at https://www.lawsites-blog.com/2015/05/westlaws-days-are-numbered.html.
2. Sandra D. Glazier, *Electronic Wills: Revolution, Evolution, or Devolution*, 44 Tax Management Estates, Gifts, and Trusts Journal (January 10, 2019), available at https://lipsonneilson.com/wp-content/uploads/2019/01/Bloomberg-Electronic-Wills-Jan-10-2019.pdf; Prefatory Note, Uniform Electronic Wills Act (September 30, 2019), National Conference of Commissioners on Uniform Laws, 2019.
3. 5 ILCS 175/1-101, et seq.
4. 5 ILCS 175/1-105(a).
5. 5 ILCS 175/120(a).
6. R. J. Robertson, Jr., Comment: *Does E-Sign Preempt the Illinois Electronic Commerce Security Act?*, 27 S. Ill. U. L. J. 129 (2000); Martin I. Behn, *The Illinois Electronic Commerce Security Act: Too Much Too Soon or Too Little Too Late?*, 24 S. ILL. U. L.J. 201 (2000); Derek Witte, Comment: *Avoiding The Un-Real Estate Deal: Has The Uniform Electronic Transactions Act Gone Too Far?*, 35 J. Marshall L. Rev. 311.
7. 5 ILCS 175/5-120(c).
8. Electronic Transactions Act Summary, Uniform Laws Commission, 1999.
9. 15 U.S.C. §§7001-7031 (2000).
10. *A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation*, U.S. Department of the Treasury, (2018, July) (**Report to President Donald J. Trump,** Executive Order 13772 on Core Principles for Regulating the United States Financial System) at 109, available at https://home.treasury.gov/news/press-releases/sm447.
11. Executive Order In Response to COVID-19, COVID-19 Executive Order No. 14, Governor J.B. Pritzker, March 26, 2020. Retrieved on March 26, 2020.
12. 5 ILCS 175/5-120(c).
13. COVID-19 Executive Order No. 12, Section 2b.
14. 20 ILCS 3305/7.
15. 20 ILCS 3305/7(1) To suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder or delay necessary action, including emergency purchases, by the Illinois Emergency Management Agency, in coping with the disaster.
16. 20 ILCS 3305/7(2) To utilize all available resources of the State government as reasonably necessary to cope with the disaster and of each political subdivision of the State.
17. 20 ILCS 3305/7(3) To transfer the direction, personnel or functions of State departments and agencies or units thereof for the purpose of performing or facilitating disaster response and recovery programs.
18. 20 ILCS 3305/7(12) Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services; and

perform and exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population.
19. See *Lunding v. Walker*, 65 Ill.2d 516, 359 N.E.2d 96 (1976); held that governor can only remove member of State Board of Elections for cause and that because of independent nature of Board, question of whether plaintiff's failure to file financial statement in compliance with executive order was sufficient 'neglect of duty' to justify governor's exercise of his removal power was judicially reviewable question.
20. S.B. 3698, section 6A-104(d).
21. S.B. 3698 section 2-1-2(b)(4).
22. *Walker v. Walker*, 342 Ill. 376, 174 N.E. 541 (1930).
23. The *Walker* opinion did not, of course, include a photo of the Humpmobile sedan in question. However, a brief history and photos can be found at https://www.dailykos.com/stories/2014/4/23/1294031/-History-101-The-Hupmobile.
24. *Id.* at 378-79.
25. *Id.* at 378.
26. *Id.* at 379.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.* at 380.
31. *Id.*
32. *Id.*
33. *Id.*, at 378.
34. Historical note: Judge Otto Kerner, Sr., who later served as Illinois' Attorney General in the 1930's and then on the Seventh Circuit Court of Appeals, was the father of Otto, Jr., who was Illinois' Governor from 1961-1968, before serving on the Seventh Circuit Court of Appeals, and then prosecuted for bribery, conspiracy and income tax evasion while serving as governor.
35. *Walker's Estate v. Walker*, 256 Ill. App. 218, (1st Dist. 1930).
36. *Id.*at 381.
37. *Id.*at 382-383. Emphasis added.
38. 755 ILCS 5/4-3 and 5/8-1.
39. Unless the client's trust owns or will own real estate in Florida. SeeFla. Stat. § 736.0403(1), (2):

> (1) A trust not created by will is validly created if the creation of the trust complies with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which, at the time of creation, the settlor was domiciled.
> (2) Notwithstanding subsection (1):
> (a)No trust or confidence of or in any messuages, lands, tenements, or hereditaments shall arise or result unless the trust complies with the provisions of s. 689.05.
> (b) The testamentary aspects of a revocable trust, executed by a settlor who is a domiciliary of this state at the time of execution, are invalid unless the trust instrument is executed by the settlor with the formalities required for the execution of a will in this state. For purposes of this subsection, the term "testamentary aspects" means those provisions of the trust instrument that dispose of the trust property on or after the death of the settlor other than to the settlor's estate.

40. See 760 ILCS 3/401(2) (Trust created by "declaration by the owner of property that the owner holds identifiable property as trustee."); Cf., 760 ILCS 3/115 (the Illinois Trust Code requires "The transfer of real property to a trust requires a transfer of legal title to the trustee evidenced by a written instrument of conveyance."); and Estate of Mendelson v. Mendelson, 2016 IL App (2d) 150084, 48 N.E.3d 891, replacing Estate of Mendelson v. Mendelson, 2015 IL App (2d) 150084.
41. *Id.*
42. It was established pursuant to Public Act 100-0440. See 5 ILCS 312/1-105.
43. Notarization Task Force on Best Practices and Verification Standards to Implement Electronic Notarization, Report to the Governor and General Assembly, December 2019. Retrieved, January 21, 2020.
5 ILCS 312/1-105(a)(2).
44. E-Notary Task Force Report at 19.
45. E-Notary Task Force Report at 21-22.
46. See Section 3-105, available at http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=108&GA=101&DocTypeId=SB&DocNum=3698&GAID=15&LegID=125690&SpecSess=&Session=.
47. Section 3-107(c).
48. Sens. Cramer, Warner Introduce Bipartisan Legislation to Allow Remote Online Notarizations Nationwide. March 19, 2020. https://www.warner.senate.gov/public/index.cfm/2020/3/sens-cramer-warner-introduce-bipartisan-legislation-to-allow-remote-online-notarizations-nationwide. Retrieved March 25, 2020.
49. S.B. 3533, Sections 3 and 4.
50. S.B. 3533, Sections 9.
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