

# Estate Planning During the COVID-19 Pandemic – Challenges and Opportunities

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The COVID-19 pandemic continues to present estate planning challenges and opportunities for clients. On the one hand, social distancing measures are making it more difficult for clients to connect with their advisors and sign estate planning documents, which frequently require disinterested witnesses and notarization. On the other hand, ongoing market volatility and interest rates at all-time lows offer a rare opportunity to transfer wealth to the next generation in highly tax-efficient ways.

Below we describe a new Massachusetts law that allows Massachusetts-based clients to sign and notarize their estate planning documents remotely during the pandemic, and we highlight three common planning techniques that are especially effective in the current market environment.

## Virtual Notarization in Massachusetts

At the end of April, Massachusetts enacted a temporary virtual notarization law that effectively allows clients to sign their estate planning documents without leaving their homes until the state of emergency in Massachusetts is lifted. Instead of an in-person meeting, the signing ceremony – which must be overseen by a Massachusetts-licensed attorney – can take place over videoconference software, such as Zoom or Skype.

There are a few important caveats to keep in mind, however:

1. Documents can be notarized remotely under the new Massachusetts law only when the client is physically located in Massachusetts. Clients outside of Massachusetts may be able to take advantage of other states' virtual notarization laws.
2. Detailed and specific formalities must be followed by all the participants in order to make the remote notarization effective.
3. The law requires the supervising attorney to retain a copy of the videoconference for at least 10 years after the signing ceremony.
4. In certain circumstances clients will be advised to re-execute the documents in person after the state of emergency has been lifted.

If you would like to sign your estate planning documents remotely, please contact your Choate team to discuss possible options. Depending on your circumstances, your Choate attorney may recommend that you sign your documents by videoconference, or we may be able to assist you in coordinating alternate arrangements to have your documents witnessed and notarized safely in person.

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## Estate Planning Opportunities

The prolonged market downturn and historically low interest rates make three estate planning techniques significantly more attractive:

- 1. Lifetime gifts:** Until 2026, any person can give away up to \$11.58 million (and married couples can give double this amount) without incurring any gift tax. While market values remain low, now is a very good time to make large gifts to your family members, either outright or in trust. Large lifetime gifts offer two key tax benefits, namely (1) they “lock in” your gift and generation-skipping transfer (GST) tax exemptions before they are reduced in 2026 (if not sooner), and (2) they allow you to transfer assets out of your taxable estate at current reduced valuations.
- 2. GRATs:** Grantor retained annuity trusts are an especially attractive planning technique when asset values and interest rates are low, as is the case at present. In fact, the “hurdle” interest rate for GRATs funded in May is only 0.8%, which is historically low.

A GRAT is an irrevocable trust with a fixed term (generally between 2 and 10 years). During the GRAT term, the GRAT makes annuity payments back to the donor at a rate which returns to the donor the entire original funding amount plus statutory interest at the “hurdle” rate. As a result, there is no taxable gift when the GRAT is funded. At the end of the term, if the GRAT assets have appreciated above the “hurdle” rate, all of that appreciation passes tax-free to the donor’s chosen beneficiaries (usually the donor’s children).

- 3. Intra-family loans:** As interest rates have fallen, now is also a good time to consider intra-family loans. Like GRATs, intra-family loans are an effective way to shift the future appreciation on the loaned assets (including cash) down generations without making a gift. The interest rates used for intra-family loans are typically lower than commercial lending rates, which reduces the family member’s cost of borrowing. Like the “hurdle” rate for GRATs, the lending rates for intra-family loans are also at historic lows – both for new loans and to refinance existing loans that carry higher rates.

If you are interested in learning more about the new virtual notarization law in Massachusetts, or any of these estate planning techniques, please contact any member of the Choate Wealth Management team.

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For more guidance on issues related to the coronavirus pandemic, please visit our [COVID-19 resource center](#).