



This periodic publication highlights developments and trends in trusts and estates from a practical viewpoint based on IPB's experience. This issue discusses a planning opportunity as well as legislative and regulatory developments in light of the pandemic. Our goal is to share our insights with wealth and philanthropy advisors, corporate fiduciaries, accountants and other advisors in a way that is accessible and actionable. We welcome feedback and additions to our mailing list (ipb@ipbtax.com).

GRATS ARE ON A ROLL

By Ken Jefferson

In our March 20, 2020 [client alert](#) "Planning Ideas for Challenging Times" we explained that one of several planning techniques that work well when interest rates are low is the grantor retained annuity trust (GRAT). GRATs are best for clients who have already used their gift and GST tax exemptions and want to make additional gifts to their children (or other individuals, excluding grandchildren) without paying gift tax. (GRATs are not good generation-skipping vehicles because of the estate tax inclusion period (ETIP) rule.) When a grantor transfers assets to a GRAT, she makes a taxable gift equal to the present value of the remainder interest, but generally the GRAT is structured so that the remainder interest has a value very close to zero (a "zeroed-out GRAT").

With the § 7520 rate at 0.6% this month, it's a good time to highlight short-term rolling GRATs. It is tempting to think of the § 7520 rate as something akin to a mortgage rate that you should hurry to "lock in" for as long as possible. Perhaps that strategy will work well where the asset being transferred to the GRAT is an interest in a closely held business likely to grow steadily over the course of the next 10 years – and if the grantor promises not to die during that time period. (If the grantor does not survive the fixed term, the assets will be included in her taxable estate. She is no worse off for having done the GRAT, but she is no better off, *i.e.*, it's a failed strategy.) But for clients with large marketable securities portfolios, short-term rolling GRATs generally are the way to go.

The beauty of short-term rolling GRATs (we typically recommend a term of 2 years) is that market volatility can be used to the client's advantage, *i.e.*, poor performance for a short period of time won't drag down the overall performance of the GRAT program. Studies have shown that even if the § 7520 rate ticks upward over time, the ability to capture market volatility outweighs the increased hurdle rate.

2-Year Rolling Grant Example:

- June 30, 2020** – Grantor transfers \$5 million of marketable securities to a 2-year zeroed out **GRAT 1** with the annuity payment increasing by 20% in the second year.
- June 30, 2021** – **GRAT 1** makes its 1st annuity payment to Grantor in the amount of \$2,293,788 (numbers rounded). Grantor creates **GRAT 2** and takes the \$2,293,788 payment and "rolls" it forward into **GRAT 2**.
- June 30, 2022** – **GRAT 1** makes its 2nd annuity payment to Grantor of \$2,752,546 and terminates.
 - **GRAT 2** makes its 1st annuity payment to Grantor in the amount of \$1,058,753 (assuming a 1% § 7520 rate at time of funding on June 30, 2021).
 - Grantor creates **GRAT 3** and rolls her **GRAT 1** and **GRAT 2** payments (aggregate amount of \$3,811,298) into **GRAT 3**. *(continued on page 2)*

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GRATS ARE ON A ROLL

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- June 30, 2023** – **GRAT 2** makes its 2nd annuity payment to Grantor in the amount of \$1,270,503 and terminates.
- **GRAT 3** makes its 1st annuity payment to Grantor in the amount of \$1,759,196.
 - Grantor creates **GRAT 4** and takes both the payments from **GRAT 2** and **GRAT 3** and rolls them into **GRAT 4**.

And so on for as long as Grantor wishes to continue the strategy.

Assuming a total return of 4.5% for the assets in the trust, the remainder beneficiaries would receive the following amounts free of gift tax during the first 5 years of the GRAT program (for an aggregate of \$820,216):

June 30, 2022 termination of GRAT 1 → \$310,571	June 30, 2024 termination of GRAT 3 → \$212,639
June 30, 2023 termination of GRAT 2 → \$127,974	June 30, 2025 termination of GRAT 4 → \$169,032



ALTERNATIVES TO IN-PERSON NOTARIZATION

By Kasey Place

The pandemic has made it a challenge to execute estate planning documents, with office closures and shelter-in-place rules making in-person signings a rarity. Under the circumstances, getting documents notarized can be particularly difficult. This article discusses alternatives when an in-person notary public is not readily available.

Omit the Notary Block: An often overlooked point is that not all testamentary documents must be notarized. Wills, for example, must be signed by the testator and two adult witnesses, but no notary is typically required for its validity. *See, e.g.,* VA Code § 64.2-403. Rather, the notary block makes the Will self-proving. The special affidavit included in a self-proving Will affirms the proper execution of the Will, without additional testimony from the witnesses in a probate proceeding after the testator’s death. A trust agreement usually doesn’t have to be notarized either, unless one is transferring real property. Delaware, for example, only requires the signatures of the Trustor and one disinterested witness or two credible witnesses. 12 Del. C. § 3545. In New York, a notary block is not necessary if two witnesses sign the agreement. EPTL § 7-1.17. In states that have adopted the Uniform Trust Code, the trust doesn’t have to be notarized, let alone in writing (although no attorney would ever advise that approach). UTC § 407. While having trust documents notarized is always a best practice because it creates a presumption that the signature is genuine, attorneys must be flexible in today’s environment.

The chart below describes notary requirements for estate planning documents in some states. Note that durable powers of attorney are the only documents that typically require notarization.

IS A NOTARY BLOCK REQUIRED?						
	Washington, D.C.	Maryland	Virginia	New York	Florida	Delaware
Will	No (DC Code § 18-103)	No (MD Estates & Trusts § 4-102)	No (VA Code § 64.2-403)	No (EPTL § 3-2.1)	No (FL Stat. § 732.502)	No (12 Del. C. § 202)
Revocable Trust	No (DC Code § 19-1304.02)	No (MD Estates & Trusts § 14.5-402)	No (VA Code § 64.2-720)	No (EPTL § 7-1.17)	No (FL Stat. § 736.0402)	No (12 Del. C. § 3545)
Health Care Power of Attorney	No (DC Code § 21-2205)	No (MD Health-Gen. Code § 5-602)	No (VA Code § 54.1-2983)	No (PBH § 2981)	No (FL Stat. § 765.202)	No (16 Del. C. § 2503)
Durable (Financial) Power of Attorney	Yes (DC Code § 21-2101(b))	Yes (MD Estates & Trusts § 17-110)	No* (VA Code § 64.2-1603)	Yes (GOB § 5-1501 B)	Yes (FL Stat. § 709.2105)	Yes (12 Del. C. § 49A-105)

*Acknowledgment is necessary for the Virginia power of attorney to be recordable and for a presumption that the signature is valid.

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ALTERNATIVES TO IN-PERSON NOTARIZATION

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Remote Online Notarization

Remote Online Notarization: If the notary block cannot be omitted, remote online notarization (“RON”) may be an option. RON refers to notarization using audiovisual technology rather than physical presence. Before the pandemic a number of states authorized RON, including Florida, Texas and Virginia. FL H.B. 409 (2019); TX HB 1217 (2017); VA HB 2318/SB 827 (2011). Now, as a result of the pandemic, the vast majority of states allow some form of RON, albeit on a temporary basis.

The RON process is not as simple as having the notary watch the principal sign via video call and later affixing a signature and seal to the original document after receiving it in the mail. States have specific requirements, which vary significantly.

Illinois and New York, for example, require that the principal be physically located in state at the time of signing. IL Sec. of State Guidance re: Executive Order 2020-14 ([See Guidance for Remote Notaries and Consumers](#)); NY Dep’t of State Guidance re: Executive Order 202.7 ([See Guidance to Notaries and Concerning Executive Order 202.7](#)). Notaries there are prohibited from performing RON services for out-of-state signatories.

Most states require the use of specific technology, and many require recording of the online notarization and storage of the video for a number of years. For example, in Michigan, the state must approve the software provider and the notary must retain video of the interaction for 10 years. Michigan Law on Notarial Acts, MCL 55.286(b).

In some states, a notary who performs RONS needs a special license or designation, or must notify the Secretary of State. *See, e.g.*, FL Stat. 117.225; MD Emergency Order 20-03-30-04. In other states, the notary must be an attorney or operate under an attorney’s supervision. *See, e.g.*, DE Eleventh Modification: State of Emergency Declaration ([See State of Delaware Eleventh State of Emergency](#)).

Out-of-State Remote Online Notarization: For clients located in a state that doesn’t authorize RONS or with a particularly burdensome process, it may be possible to take advantage of more favorable RON laws in a different state. For example, California law provides that “[a]ny certificate of acknowledgment taken in another place shall be sufficient in [California] if it is taken in accordance with the laws of the place where the acknowledgment is made.” CA Civil Code 1189(b). Therefore, a California client could have documents remotely notarized by an out-of-state notary, provided such state permits out-of-state signings.



RECENT TAX UPDATES

By Robert Daily

Congress and the IRS have been busy providing relief to those affected by the global pandemic. Here are a few pieces of tax guidance that may address a client’s tax conundrum resulting from the quarantine.

Relief to “Accidental Residents:” In [Revenue Procedure 2020-20](#), the IRS released favorable guidance for nonresidents who do not want to meet the substantial presence test in 2020 (and thus wanted to avoid being taxed as a U.S. resident). This helpful guidance allows nonresidents who quarantined in the U.S. to exclude a consecutive period of up to 60 days under the “Medical Exception” to the substantial presence test, provided that the consecutive period start on or after February 1 and before April 1.

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RECENT TAX UPDATES

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In [Revenue Procedure 2020-27](#), the IRS released favorable guidance for the opposite scenario: a U.S. citizen who is a resident of a foreign country but who quarantined outside of his or her country of residence. Rev. Proc. 2020-27 provides that the COVID-19 crisis was an adverse condition allowing U.S. citizens to take a partial exclusion from taxation under I.R.C § 911 if they return to their foreign country of residence before July 15.

IPB's [client alert](#) provides guidance for using these revenue procedures, such as to provide adequate documentation and satisfy any necessary procedural rules.

Individual Tax Relief in CARES Act: Phase III of Congress's response to the pandemic – The Coronavirus Aid, Relief, And Economic Security Act ("CARES Act") – provided a few items of relief for individuals:

- Removed AGI limitations for taxpayers who make cash contributions to certain charitable organizations (excluding private foundations and donor advised funds).
- Allowed taxpayers who do not itemize deductions to take up to a \$300 above-the-line deduction for certain cash charitable contributions made in 2020.
- Waived the required minimum distribution requirement for defined contribution plans such as 401(k)s and IRAs for the 2020 tax year.
- Pushed back the effective date of excess business loss provision in I.R.C § 461(l) until 2021, which means high-income taxpayers may now deduct any amount of losses attributable to a trade or business for tax years 2018 – 2020.

IPB's [client alert](#) provides insight into these provisions and the business tax provisions in the CARES Act.

Extended Deadline for Tax Returns and Payments: In [Notice 2020-23](#), the IRS extended the due date for almost every federal income tax return and federal tax payment that otherwise would have been due on or after April 1, 2020 and before July 15, 2020. This includes returns and payments for the following: individual income tax; corporate and partnership tax; estate and trust income tax; estate and generation-skipping transfer tax; information regarding beneficiaries acquiring property from a decedent; exempt organization business income tax; excise tax payments and filings for private foundations; and quarterly income tax payments.

The deadline for these returns and payments is now July 15, 2020. While this relief is automatic, some taxpayers may be able to extend the July 15 due date further by filing an extension form with the IRS. IPB's [client alert](#) provides more information about the [extended deadline](#) and favorable changes to the [IRS signature requirement](#).

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