



WSSFC 2024

Substantive Law Track – Session 4

Recent Changes to Estate Planning Laws

Presenters:

Catherine M. Prieb, Certus Legal Group, Ltd., Milwaukee

Mark A. Shiller, Certus Legal Group, Ltd., Milwaukee

About the Presenters...

Catherine M. Priebe is the co-founder of Certus Legal Group, Ltd., a boutique estate planning and business succession planning law firm with offices in Milwaukee and Madison. Ms. Priebe has extensive experience advising clients in all aspects of estate planning, business succession planning, gifting strategies, marital property issues, and probate and trust administration. She received her undergraduate degree, magna cum laude, from Marquette University and her law degree, cum laude, from the University of Wisconsin Law School. Ms. Priebe has received the Accredited Estate Planner[®] designation from the National Association of Estate Planners & Councils. Ms. Priebe is a frequent lecturer on estate planning, including continuing legal education courses for the State Bar of Wisconsin. She has also instructed the Estate Planning and Probate section of the Lawyering Skills Course at the University of Wisconsin Law School. Ms. Priebe is a fellow of the American College of Trust and Estate Counsel, Past Chairperson and Ex-Officio Member of the State Bar of Wisconsin Real Property, Probate & Trust Law Section Board of Directors, Past President of the Milwaukee Estate Planning Forum, and the former Vice Chair of the Milwaukee Bar Association's Estates and Trusts Section. She formerly co-chaired the State Bar of Wisconsin Remote Practice Committee and is also a member of the State Bar of Wisconsin and Wisconsin Bankers Association Joint Uniform Trust Code Study Group, Milwaukee Mid-Winter Estate Planning Clinic and Milwaukee Estate Planning Association, as well as Past President of the Association for Women Lawyers and the Association for Women Lawyers Foundation. Ms. Priebe is recognized as a Wisconsin Super Lawyer by Law & Politics Magazine and has consistently been included in the Trusts and Estates Section of Best Lawyers in America. She is very honored to have been selected as the 2022 "Lawyer of the Year" in Trusts and Estates for Milwaukee by Best Lawyers in America. Ms. Priebe is AV Preeminent[®] Peer Review Rated by Martindale Hubbell. She has also been ranked in Chambers High Net Worth: Private Wealth Law since 2017.

Mark Shiller concentrates his practice in the areas of estate planning, tax planning and business law and typically assists business owners, professionals, senior executives and other individuals, couples and families who appreciate his thoughtful and creative approaches to their often complicated personal, tax and financial planning challenges. More and more, this has involved fuller, multi-generational engagements with families of wealth – many of whom have closely-held business interests. Mark is the author of two well-received publications – the [Little Book of Estate Planning](#) and [How to Not Ruin Your Kids with Money](#). The former is a short and sweet consideration of many of the baseline questions that people have when pursuing estate planning and is updated annually. The latter is an in-depth exploration of how to manage the challenges of transitioning wealth generationally. You can access both by clicking on the links above, visiting [Aevitas Press's \(the publisher's\) website](#), or on [Amazon](#), [Audible](#), and many other retailers as to the latter. In the course of his practice, Mark assists clients in the preparation, design, and implementation of wills, revocable trusts, irrevocable trusts, charitable trusts, marital property agreements, powers of attorney and other estate planning techniques. These techniques are often used in combination to help clients achieve their goals while also reducing administrative hassles, avoiding taxes, and other benefits. Mark has been quoted in such publications as Smart Money, Worth and Investment News, and was an adjunct professor at the University of Wisconsin Law School where he taught business succession planning, and frequently speaks on estate planning topics. His presentations are on a wide variety of subjects – some made to groups of attorneys, accountants or other financial professionals, with others focused on business groups, conferences and the general public. His keynote associated with the book, How to Not Ruin Your Kids with Money, and related presentations are particularly engaging given Mark's unique, humorous-yet-educational speaking style and energy.

RECENT CHANGES TO ESTATE PLANNING LAWS

2024 Wisconsin Solo & Small Firm Conference
October 17, 2024

Attorney Mark A. Shiller
Certus Legal Group Ltd
10700 W. Research Drive, Suite 165
Milwaukee, Wisconsin 53226
(414) 939-8370
mshiller@certuslegalgroup.com
www.certuslegalgroup.com

Wisconsin Trust Code Trailer Bill

The Wisconsin Trust Code Trailer Bill was a joint effort of the RPPT Section of the Wisconsin State Bar and the Wisconsin Bankers Association – a similar structure to the one employed to bring the Uniform Trust Code to Wisconsin going back to 2014 and the resultant restatement of the Wisconsin Trust Code. Passed as Act 127 and then signed by Governor Evers on March 21, 2024. The Act was published the next day, on March 22, 2024, and became effective the following day, on March 23, 2024.

I. Subchapter I – General Provisions and Definitions

A. §701.0102 – Scope

1. The Trust Code applies to all trusts except those specifically excluded.
2. ABLE accounts have been added to the list of excluded types of accounts.
3. Under the Achieving a Better Life Experience (ABLE) Act, federal law allows for the establishment of tax-advantaged savings accounts for certain individuals with disabilities. Income from an account is tax-free when used for certain disability-related expenses. Under current state law, a Wisconsin resident may establish an ABLE account in another state, but Wisconsin does not have its own ABLE program. Senate Bill 668 (now 2023 Act 267) requires the Wisconsin DFI to implement a qualified ABLE program under s. 529A of the Internal Revenue Code, either independently or through a collaborative agreement with other states, allowing tax-exempt accounts for qualified expenses incurred by individuals with disabilities to be established under Wisconsin law.

B. §701.0103 – Definitions

1. Because of the adoption of the Uniform Powers of Appointment Act and the Uniform Trust Decanting Act, definitions have been added consistent with those uniform laws.

2. Who is a “qualified beneficiary” is redefined to be a beneficiary that, on the date the qualification is determined, is either a current beneficiary or a presumptive remainder beneficiary.

a. A “current beneficiary” is a distributee or permissible distributee of trust income or principal, or is the holder of a presently exercisable general power of appointment.

b. A “presumptive remainder beneficiary” means, ignoring a power of appointment other than a power that has been irrevocable exercised and notice of the exercise has been given to the trustee, a beneficiary who would fit any of the following three categories:

Category 1 – a distributee or permissible distributee of trust income or principal if the interests of any current beneficiary terminated without causing the trust to terminate.

Category 2 – a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

Category 3 – if the terms of the trust do not provide for its termination, a distributee or permissible distributee of trust income or principal if all the current beneficiaries of the trust were deceased or no longer exist. This situation is rare. Most trusts provide for a termination event.

c. Prior law addressed who has the rights of a qualified beneficiary when there is a charitable trust, animal trust, or trust with no ascertainable beneficiary, and the rights of the Wisconsin attorney general to act in those situations. The new law clarifies that only an “identified charitable organization” has the rights of a qualified beneficiary in a charitable trust. An animal protector has the rights of a qualified beneficiary in an animal trust. The person appointed to enforce a trust without an ascertainable beneficiary has the rights of qualified beneficiary. The attorney general only has the rights of a qualified beneficiary for a trust with a charitable interest that has its principal place of administration in Wisconsin and there is no identified charitable organization.

d. Note that an effort to provide greater clarity on who has the rights of a qualified beneficiary when a trust is a beneficiary was scuttled late in the process. Even so, the statute should be read, in the author’s opinion, that beneficiaries of such a trust would be the qualified beneficiaries of the trust and not the trustee of the trust. While the trustee would be entitled to notice – and practically

would have to receive notice of matters involving the trust – the trustee would not be a qualified beneficiary in the trustee’s fiduciary capacity.

C. §701.0109 – Methods of Notice; Waiver

Prior law identified how to give notice of an action or intended action or how to send a document under the Wisconsin Trust Code. Notices can be waived. The new law expands notice to address the right of a person to object. A right to object may be waived. The new law also addresses how to give notice to a trustee when more than one person is serving as trustee. In this situation, notice may be given to just one person serving as trustee, except if a corporate trustee or attorney is serving as one of the trustees, the corporate trustee or attorney trustee must be given notice.

D. §701.0111 – Nonjudicial Settlement Agreements

1. Use of nonjudicial settlement agreements (“NJSA”) to address contested or potentially contested trust matters has been one of the most impactful changes resulting from enactment of the Trust Code. Certain provisions of the Uniform Trust Code (and as adopted in the Wisconsin Trust Code of 2014) created some potential implications that suggested that court findings or determinations were required for some actions in an NJSA.
2. There are a number of changes in the Trailer Bill that are directed to clarifying that an NJSA can be used to do anything a court can do without court involvement. Court approval of the NJSA is therefore only necessary if an interested person or other person affected by the NJSA requests court approval.
3. The list of matters that can be addressed in an NJSA has been expanded to include the removal of a trustee and replacement with a suitable successor trustee, the modification of a trust, or the termination of a trust. This is more in the nature of a clarification as opposed to a change in the law, though.
4. An NJSA must be signed by all “interested persons.” Although some Wisconsin practitioners asked if this term could be more specifically defined, the study group decided not to further define the term because each trust administration is unique, and the list may change from one situation to another.
5. Notice of an NJSA is required to be given at least 30 days in advance of its effective date to the settlor, if living, the trustee, each trust protector, and each directing party. Notice is considered waived by any party who signs the NJSA.

E. New §701.0113 – Insurable Interest of Trustee

1. In 2010, the UTC added a provision addressing when a trustee has an insurable interest in an individual whose life is to be the subject of the insurance policy to be used to fund a trust. The original trust code study group chose not to include this provision in the original version of the Wisconsin Trust Code.
2. The ULC asked our trailer bill study group to reconsider adopting this provision. This new section adopts the uniform language. The effect is to limit the use of stranger owned life insurance when funding irrevocable life insurance trusts.

II. Subchapter III – Representation

A. §701.0302 – Representation by Powerholder of Certain Powers of Appointment.

1. Prior law allowed the holder of a general power of appointment to represent and bind the persons whose interests are subject to the power, if there was no conflict of interest.
2. The new law will allow the powerholder of a general power of appointment and the powerholder of a broad limited power of appointment to represent and bind all persons, including permissible appointees and takers in default, whose interests may be eliminated by the exercise or nonexercise of the power. Representation is permitted regardless of whether there is a conflict of interest. For purposes of this section, a general power of appointment does not include powers only exercisable in favor of the creditors of the powerholder, the creditors of the powerholder's estate, or both.
3. Furthermore, the powerholder of a non-general power of appointment, other than a broad limited power of appointment, may represent and bind the persons or class of persons whose interests may be limited by the exercise or nonexercised of the power. However, such representation is only permitted to the extent there is no conflict of interest between the powerholder and the person to be represented.
4. Whether there is a conflict of interest will be a question of fact that will vary in each trust administration.

B. §701.0303 – Representation by Fiduciaries, Parents, or a Person Appointed by a Trustee.

1. Certain fiduciaries are allowed to represent and bind an individual, the fiduciary entity, or the beneficiaries of the entity, if there is no conflict of interest. A trustee or a personal representative can represent and bind beneficiaries, except as to matters relating to the administration or distribution of the trust or estate. If there is no conflict of interest, parents can represent and bind their minor or unborn children.
2. The new law expands representation by a fiduciary or a parent.
3. A trustee may represent and bind the beneficiaries of a trust in all matters relating to the trust including matters relating to the administration of distribution of a trust if there is no conflict of interest.
4. Similarly, a personal representative may represent and bind a person interested in the estate in all matters relating to the estate if there is no conflict of interest.
5. Parents can now represent and bind the parent's minor or unborn children, such child's minor or unborn issue, and the minor and unborn issue of a deceased child, if there is no conflict of interest.
6. If an individual that is the subject of representation is eligible to be represented by more than one ancestor, the individual's nearest ancestor has priority to represent and bind such individual.

C. §701.0304 – Representation by Person having Substantially Identical Interest (Virtual Representation)

1. Prior law authorized a limited form of virtual representation. An individual who is a minor, incapacitated, or unborn, or a person whose identity or location is unknown and not reasonably ascertainable may be represented and bound by another person having a substantially identical interest with respect with respect to a particular question or dispute, but only if there is no conflict of interest.
2. The new law expands virtual representation to allow a presumptive remainder beneficiary to represent and bind a contingent successor remainder beneficiary or a more remote contingent successor beneficiary if there is no conflict of interest.
3. If the presumptive remainder beneficiary does not represent a more remote contingent beneficiary, then a contingent successor remainder beneficiary may represent and bind a more remote contingent successor remainder beneficiary.

4. Representation of the contingent successor remainder beneficiary or the more remote contingent successor remainder beneficiary is permitted regardless of whether the party to be represented lacks capacity.

Example: Assume you have a Marital Trust for the benefit of the surviving spouse, which distributes to the children after the spouse dies, and then distributes to the grandchildren, and then distributes to a community foundation. In this case the community foundation could be represented and bound by either the children or the grandchildren in an action involving the Marital Trust if there is no conflict of interest.

D. §701.0306 – Designated Representative

1. Current law does not specifically authorize the concept of drafting a designated representative to represent and bind the interests of a beneficiary, nor does current law specifically prohibit such drafting – although drafting to provide for one was always intended to be an option.
2. The new law allows for a designated representative to be nominated in a trust instrument and be given the power to represent and bind a beneficiary and receive any notice, information, accounting, or report. The trust instrument may also appoint a person with the power to nominate and appoint the designated representative. The conflict of interest exception does not apply to a designated representative.
3. A person appointed as a designated representative may not represent and bind a beneficiary while the person is serving as trustee.
4. A person who is a beneficiary cannot be a designated representative for another beneficiary unless either (i) the person was named by the settlor; or (ii) the person is the beneficiary’s spouse, or a grandparent or descendant of a grandparent of the beneficiary, or a grandparent or descendant of a grandparent of the beneficiary’s spouse.

E. §701.0308 – Liability of Representative.

This is a new section that addresses the standard of care that applies to a representative. The representative must act or elect not to act in good faith.

III. Creation, Validity, Modification, and Termination of Trust.

A. §701.0401 – Methods of Creating a Trust.

1. Prior to the enactment of the Wisconsin Trust Code, there was a question of whether you could create a trust without funding the trust with any assets. It was common to see revocable trusts drafted with a reference to

a funding page (Schedule A), which funded the trust with \$10 or \$20 or some other amount.

2. The Wisconsin Trust Code intended to permit “dry trusts.” A revocable trust can be funded with an intent to later fund the trust with the settlor’s assets. However, prior law did not specifically say this, and the trailer bill study group decided to clarify this issue.
3. The new law states that a trust may be created with a declaration of the intent to create a trust that will be later funded with the assets of the person who created the trust or by another person with legal authority to fund the trust. The person making the declaration is considered to have created the trust (the “settlor.”)

B. §701.0410 – Modification or Termination of Trust; Proceedings for Approval or Disapproval.

The new law modifies this provision to clarify that beneficiaries may not terminate or modify a special needs trust without the consent of the trustee or the approval of the court.

C. §701.0411 – Modification or Termination of Noncharitable Trust by Consent.

1. This section allows a trust to be modified with the consent of the settlor and all beneficiaries, with or without court approval, even if the modification is inconsistent with a material purpose of the trust. If the settlor is deceased or cannot consent, this section also permits the court, with the consent of all the beneficiaries, to (i) terminate a trust if the continuance of the trust is not necessary to achieve any material purpose of trust; or (ii) modify a trust if not inconsistent with a material purpose of the trust. If all the beneficiaries do not consent to a proposed modification or termination, the court may still approve the modification or termination if the trust could have been modified or terminated under this section and the interests of any beneficiary who does not consent will be adequately protected.
2. The new law adds a provision that says a special needs trust that is being modified or terminated with the consent of the settlor and all beneficiaries, must also have the consent of the trustee.
3. Any party proposing to modify a trust under this section must give notice of the proposed modification or termination to the settlor, if living, the trustee, each directing party and trust protector, and each beneficiary at least 30 days before the proposed effective date of the modification or termination.

D. §701.0414 and §701.0415 – Modification or Termination of Uneconomic Trust; Reformation to Correct Mistakes.

In §701.0414, the Wisconsin Trust Code empowers the trustee to terminate a trust with a value of less than \$100,000 if the trustee concludes the value of the trust property is insufficient to justify the cost of administration. The small termination amount is subject to adjustment every five years effective on July 1 based on changes in the Consumer Price Index for all urban consumers (CPI.) Adjustments are made based on the change in the CPI beginning from January 1, 2014. On 1/1/2014, the CPI was 233.916. On 1/1/2019, the CPI was 251.712, for a change of 7.6%, which increased the \$100,000 small trust termination amount to \$108,000 (rounded to the nearest \$1000) effective 7/1/2019. On 1/1/2024, the CPI was 308.417, for a change of 31.85% from the prior date. This means on 7/1/2024 the small trust termination amount increased to \$132,000.

E. §701.0416 – Modification or Termination to Achieve Settlor’s Tax Objectives.

This section previously allowed a court to modify a trust in a manner consistent with the settlor’s probable intent to achieve the settlor’s tax objectives, but did not specifically permit termination of the trust. The new law now specifically permits termination of a trust to achieve the settlor’s probable tax objectives – something that has been of great interest given the significant rise in the estate and gift tax exemption amount.

F. §701.0418 – Trustee’s power to appoint assets to a new trust.

When the Wisconsin Trust Code was passed, there was no uniform law on trust decanting. The original trust code study group crafted a “decanting statute” based on laws in other states – which proved to comport with much of the Uniform Trust Decanting Act which was adopted as subchapter XIII of the Wisconsin Trust Code, and repealing section 701.0418 as a result.

IV. Creditor’s Claims; Spendthrift and Discretionary Trusts.

A. §701.0505 – Creditor’s Claims against Settlor.

1. Current law allows a creditor to make claims against property of a settlor’s revocable trust and of a settlor’s irrevocable trust (that is not a special needs trust) if the trust instrument authorizes the trustee to make payments of income or principal to or for the benefit of the settlor.
2. Grantor trusts for income tax purposes sometimes are drafted with a provision that allows the trustee to pay and make distributions to pay the settlor’s income taxes related to the taxation of the grantor trust income. The new law says a settlor’s right to receive reimbursement for income

taxation arising from grantor trust treatment of the trust is not considered a right to income or principal for purposes of this section.

3. The trailer bill joint subcommittee had made significant progress on a domestic asset protection trust (“DAPT”), sometimes referred to as a self-settled trust. Because of the controversial nature of DAPTs more broadly, the Trailer Bill did not incorporate its draft language on this subject into the final legislation. See below for more information on the subject.

B. §701.0508 – Debts of Deceased Settlor.

1. Prior law allowed the trustee who has the power to pay the debts of a decedent to limit the period for a creditor to make a claim against a trust that holds the decedent’s assets by publishing a claims notice. The claims period is four months after the date of first publication of the notice. The claims limitation applies to creditors who are not known to the trustee. Prior law was not clear on the claims period that applies to known creditors, or whether a claims notice filed in a probate also applies to the administration of the decedent’s revocable trust. The new law restates this section and clarifies the period of limitations that applies to the debts of a decedent.
2. The general rule is that a claimant must assert a claim for payment of a decedent’s debt within the time for such claims under applicable law. A trustee of a trust that was revocable at the settlor’s death may shorten the time period and set a deadline for filing claims with the trustee by doing any of the following:
 - a. Publishing a legal claims notice. The deadline for a claim by any claimant who is not known to the trustee is four (4) months after the date of the first publication of the legal notice.
 - b. Giving actual notice to the potential claimant. The notice may include a copy of the legal notice and state that any claim by the potential claimant must be filed not later than 30 days after the actual notice or the 4-month deadline specified in the legal notice. If legal notice is not provided, the deadline shall be 4-months after the actual notice is provided to the potential claimant.
 - c. Publishing a legal notice but not providing actual notice to a potential claimant who is known to the trustee. The deadline for a claim in this situation is the later of the date that is one year from the date of the settlor’s death, or the deadline specified in the legal notice.

3. The shortened period of limitations does not apply to a tort claim, a claim based on a marital property agreement, a Wisconsin tax or unemployment or public benefits claim, funeral or administrative expenses, or a claim of the United States.
4. A claim is considered filed if notice of the claim is given to the trustee or filed with the court in a probate proceeding.
5. If no claim is filed within the applicable statute of limitations, the claim is barred and the claimant may not pursue a claim against the trustee, the trust property, or the recipients of the trust property.
6. The new law coordinates the creditor claim process with the probate process. If a legal notice has been published in a probate, the property of a trust that was revocable at the settlor's death shall be treated as property of the estate for the purposes of administering claims. The trustee shall be subject to the jurisdiction of the probate court. A personal representative shall provide notice to the trustee of any claims filed. A claim barred under ch. 859 may not be satisfied from property of a trust that was revocable at the settlor's death. If the revocable trust is not referenced in the deceased settlor's will, the trustee shall provide notice of the revocable trust to the personal representative.

C. §701.0509 - Procedures for Claims for Debts of a Deceased Settlor; Revocable Trusts.

While chapter 859 of Wisconsin statutes provides procedures for addressing claims in probate proceeding, neither the UTC nor the Wisconsin Trust Code addresses procedures for handling claims in a post-death revocable trust proceeding. The trailer bill study group decided to address how to handle claims made against a revocable trust after the settlor dies. The new law was not as simple as adopting ch. 859 and applying that statute to revocable trusts. Because chapter 859 is a court supervised process and the administration of revocable trusts post death is a trustee supervised process, the applicable procedures needed to be completely rewritten.

V. Revocable Trusts.

A. §701.0602 – Revocation or Amendment of Revocable Trust.

1. Prior law changed the presumption on whether a trust is revocable from irrevocable to revocable. Upon revocation, the Wisconsin Trust Code provided that the trust property shall be distributed as the settlor directs or the trust property shall be transferred to both spouses if the trust property is marital property.

2. The new law clarifies that there is a rebuttable presumption that the settlor may revoke or amend the trust.
3. The new law also clarifies that upon revocation, the trust property shall be transferred to the settlor or as the settlor directs, or if the trust property is marital, then the trust property shall be transferred to both spouses as marital property or as both spouses direct.

B. §701.0605 – Future Interests in Trust.

1. The Wisconsin Trust Code did not include a provision that was in prior law that addressed whether a beneficiary needed to survive a settlor to receive trust property after the settlor dies.
2. The new law adds a section that incorporates prior Wisconsin law to say that unless a contrary intention is found, a designated beneficiary's right to possession and enjoyment of trust property is contingent on the beneficiary surviving the settlor.

VI. Office of Trustee.

A. §701.0702 – Trustee's Bond.

Prior law did not allow the court to require a bond of a corporate trustee, or a religious, charitable, or educational corporation or society. The study group was not aware of why a bond could not be required of a religious, charitable, or educational corporation or society, and that possible exception was eliminated. Such a bond is discretionary by a court.

B. §701.0706 – Removal of Trustee.

1. In addition to possible trust modifications under subchapter IV that might result in the change of a trustee, this section allows a trustee to be removed by the court if (a) there has been a material breach of trust; (b) there is a lack of cooperation among co-trustees; (c) the trustee is unfit, unwilling to act, or persistently fails to administer the trust; or (d) all the qualified beneficiaries request a change and the court finds the removal best serves the interests of all beneficiaries, is not inconsistent with a material purpose of the trust, and there is a suitable successor trustee available to serve.
2. Practitioners have struggled with how to prove whether removal "best serves the interests of all of the beneficiaries." The study group decided this standard was not necessary, especially considering the powers to modify under subchapter IV, and eliminated this requirement.

3. The trailer bill modified §701.0704(2)(d) and permits a court to remove a trustee if (a) there has been a substantial change in circumstances or removal is requested by all the qualified beneficiaries; (b) the removal is not inconsistent with a material purpose of the trust; and (c) a suitable successor trustee is available.

C. §701.0707 – Delivery of Property by Former Trustee.

1. Prior law required a trustee who resigned or was removed to “expeditiously” transfer the trust property to the successor trustee. This requirement raised questions about whether a resigning or removed trustee could take reasonable steps like requiring a receipt and release or court approval before transferring property.
2. The trailer bill changes the delivery standard so that a resigning or removed trustee shall proceed within a “reasonable time” to deliver property to the successor, “subject to the right to retain a reasonable reserve for the payment of debts, expenses, and taxes.”

VII. Duties and Powers of Trustees, Directing Parties, and Trust Protectors.

A. §701.0802 – Duty of Loyalty.

1. Some larger trust companies offer their own proprietary services or products, like insurance or mutual funds. Under prior law, it was not clear if use of the services or products would breach the trustee’s duty of loyalty. Another issue discussed by the trailer bill study group involves the duty of confidentiality, which is incorporated into the duty of loyalty. Sometimes heirs at law or other interested persons threaten lawsuits because such a person believes they are a beneficiary under the terms of trust instrument. Under prior law, the duty of confidentiality might prevent the disclosure of a trust instrument to a person who is not a beneficiary of a trust.
2. The trailer bill allows a trust company acting in a fiduciary capacity to purchase a proprietary service or product provided that (1) the purchase otherwise complies with the prudent investor rule, (2) compensation for the service or product is reasonable, and (3) the trust instrument does not prohibit the purchase. If allowed, the compensation for the service or product may be in addition to the compensation the trust company is otherwise entitled to receive.
3. The trailer bill adds a new section that permits a trustee to release information, including a copy of the trust instrument, to any deceased settlor’s heirs at law or other person to prove the person is not a beneficiary of the trust. When doing so, the trustee must reasonably

believe that providing the disclosure will not harm the beneficiaries of the trust and will reduce the likelihood of litigation involving the trust.

B. §701.0808 – Powers to Direct; Directing Parties; §701.0818 – Trust Protectors; §701.0902 – Directed Trust Property

When the Wisconsin Trust Code was enacted, there was no uniform law on directed trusts or trust protectors. The initial trust code study group drafted provisions addressing directed trusts and trust protectors based on statutory law in other states. In 2017, the Uniform Law Commission promulgated the Uniform Directed Trust Act. This new uniform law was not included in the trailer bill, but a study group is being formed by the State Bar and the WBA to consider this uniform law. The uniform law will impact §§701.0808, 701.0818, and 701.0902 and may be enacted as a new subchapter of the Wisconsin Trust Code.

C. §701.0813 – Duty to Inform and Report.

1. Under prior law, the duty to inform and report only applied to trust beneficiaries and not to a settlor. In theory, it might be a breach of a trustee's duty of loyalty to disclose information about a trust to the settlor.
2. Prior law required disclosure of fee changes to all current beneficiaries of trusts whether or not the trust was created before July 1, 2014. The Wisconsin Trust Code eliminated the mandatory rule requiring disclosure of information to qualified beneficiaries in §701.0105 in furtherance of the intention of the original trust code study group that attorneys could draft around the duty to inform and report.
3. The drafting authority was intended to allow the creation of so-called "silent trusts" - trusts where a beneficiary might not be entitled to information regarding the existence of, and information related to, a trust for the benefit of that beneficiary. In response to the failure of certain financial institutions to recognize the effectiveness of such drafting, the Trailer Bill specifically authorizes silent trusts.
4. The trailer bill allows the trustee, upon request by the settlor, to send a copy of the trust instrument to the settlor. The new law also gives the trustee the discretion, but not a duty to do so, to provide information about the administration of the trust to the settlor.
5. The trailer bill permits a trustee to limit reporting to a qualified beneficiary of a specific amount or specific property to information only relating to that specific amount or property.

6. The provision requiring a trustee to notify all current beneficiaries of a change in compensation is no longer mandatory for trusts created before July 1, 2014.

D. §701.0816 – Specific Powers of Trustee.

The Wisconsin Trust Code did not specifically give the trustee the power to fund special needs trusts for an individual with a disability or to fund an ABLE account. Those powers only applied if granted in the trust instrument. The trailer bill gives the trustee the specific power to fund a “d4A” (individually drafted first person special needs trust) or a “d4C” trust (community pooled first party special needs trust.) The trailer bill also gives the trustee the power to fund an ABLE account for a beneficiary’s benefit.

VIII. Liability of Trustees and Rights of Persons Dealing with Trustee.

A. §701.1005 – Limitations of Action against Trustee.

1. §701.0109 permits a beneficiary to waive the right to receive information about a trust. The trailer bill study group discussed whether the waiver might extend the limitation period against a trustee for a breach of trust claim, and decided the limitation period should not be extended if a beneficiary chooses to waive the right to receive information. Prior law triggered the running of the limitation period only if the beneficiary received a “report.”
2. The trailer bill sets a one-year period of limitation to make a claim against a trustee for breach of trust measured from the earlier of the date on which the beneficiary waived the right to a report or the date on which the beneficiary was sent a report.
3. The trailer bill expands the triggering of the limitation period to include the sending of a report “or a record” to a beneficiary by the trustee. A record means any information that is inscribed on a tangible medium or that is stored in an electronic form and is retrievable.

IX. Uniform Principal and Income Act (Subchapter XI of the Wisconsin Trust Code)

Only definition changes were made to this subchapter. Also, the Uniform Law Commission has restated the uniform act on this subject, renaming it as the Uniform Fiduciary Income and Principal Act. The State Bar plans to form a study group to consider possible adoption of the restated uniform law or just amendments to subchapter XI.

X. Subchapter XIII - Uniform Trust Decanting Act (“UDTA”)

A. History of Prior Decanting Statute

When the Wisconsin Trust Code was initially drafted, other states had enacted laws to permit “decanting,” or the power to appoint assets to a new trust, as a new administrative tool that could be used to modify an existing irrevocable trust. At the time, there was no uniform law. The original trust code study group decided to draft a statute that authorized decanting – §701.0418, the trustee’s power to appoint assets to new trust. In 2015, the Uniform Law Commission approved the UTDA. The trailer bill repeals §701.0418 and replaces it with the UTDA (subchapter XIII.)

B. §701.1303 – Scope

Prior law did not specifically address the type of trusts that could be decanted. UTDA applies to all express trusts that are irrevocable or that are revocable by the settlor only with the consent of a trustee or third party holding an adverse interest. The UTDA does not apply to a revocable trust, a charitable trust, or a trust where the trust instrument prohibits its exercise.

C. §701.1304 – Fiduciary Duty

The UTDA requires an authorized fiduciary to act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust. If a trustee is directed to exercise the decanting power by another authorized fiduciary, the directed trustee shall have no liability for following the direction. The new law does not create or imply a duty to exercise the decanting power or to inform the beneficiaries about the UTDA.

D. §701.1305 – Application / Governing Law

1. The power to appoint applied to both trusts created before and after the July 1, 2014, effective date of the Wisconsin Trust Code. The UTDA also applies to a trust created before, on, or after the passage of the new law.
2. The Wisconsin UTDA will apply to a trust if:
 - a. The principal place of administration is Wisconsin, including a trust whose principal place of administration is changed to Wisconsin.
 - b. Wisconsin is the governing law for purposes of administration, construction of the terms, or determining the meaning or effect of the terms of the trust.

E. §701.1306 – Reasonable Reliance

This section allows a trustee or other fiduciary to rely on the validity of a prior decanting, whether that decanting was under the Wisconsin UTDA or under the laws of another state. A trustee or other person that reasonably relies on the validity of a prior decanting is not liable to any person for any action or failure to act because of the reliance.

F. §701.1307 – Notice of Exercise of Decanting Power

1. Under prior law, a trustee could decant by either providing notice to the qualified beneficiaries without objection or by petitioning the court for approval. Decanting by notice or by petitioning the court required 30-day advance notice to the qualified beneficiaries, each trust protector, each directing party, and the settlor of the first trust, if still living.
2. The UTDA says that the exercise of the decanting power is initiated by providing a notice to the settlor the first trust (if living), each qualified beneficiary of the first trust, each holder of a presently exercisable power of appointment, each person who has a right to remove or replace an authorized fiduciary, each directing party, trust protector, or other fiduciary of the first trust, each directing party, trust protector, or other authorized fiduciary of the second trust, and to the Attorney General if this is a trust with a charitable interest that requires notice to the Attorney General.
3. The notice must (a) specify the way the authorized fiduciary intends to exercise the power; (b) specify the proposed effective date; (c) include a copy of the first trust; and (d) include a copy of the second trust. The UTDA comments suggest the notice should identify the capacity in which the person is receiving the notice.
4. The decanting may become effective before the proposed effective date if all the parties receiving notice waive the period in a signed record.

G. §701.1309 – Court involvement

1. Under prior law, the trustee could elect to obtain court approval of the exercise of the decanting power or court approval could be required if any person receiving notice of the exercise objected to the decanting. Court approval required a petition to the court with at least 30 days advance notice.
2. Court involvement under the UTDA is initiated by an application filed with the court by the authorized fiduciary or any person receiving notice of the intent to exercise the decanting power.

3. Upon receipt of the application, the court may do any of the following:
 - a. Instruct the authorized fiduciary whether the decanting is permitted.
 - b. Appoint a special fiduciary to determine if the proposed decanting should be exercised.
 - c. Approve an exercise of the decanting power.
 - d. Determine if the proposed decanting is ineffective.
 - e. Determine if the savings provision of s. 701.1322 applies to save the decanting even if the proposed decanting does not comply with the requirements of the UTDA. If the savings provision does apply, the court may further instruct the trustee on how the savings provision applies.
 - f. Approve an increase in the fiduciary's compensation.
 - g. Approve a modification of the right to remove or replace a fiduciary.
 - h. Order any other relief to carry out the purposes of the UTDA.

H. §701.1310 – Formalities

Once the decanting period expires, the period is waived by all interested persons, or the court approves the exercise of the decanting power, the authorized fiduciary must effectuate the decanting by an additional signed record. The signed record must identify the first trust and the second trust, the property that is being transferred to the second trust, and the property that remains in the first trust. If the second trust is just a modification of the first trust, the trustee has the discretion to either treat the modified trust as a new trust or treat the modified trust as a continuation of the first trust. In such a case, the property would not need to be retitled and presumably a separate fiduciary income tax return would not need to be filed.

I. §701.1311 – Decanting Power under Expanded Distributive Discretion

1. Prior law included a detailed list of the permissible terms that could be changed pursuant to a decanting. Limitations on the exercise of the power were described in a separate section. The second trust could only grant a beneficiary a general or nongeneral power of appointment if the trustee of the first trust had expanded distributive discretion.

2. The UTDA omits the detailed list and authorizes the exercise of a decanting power to change the first trust, except the second trust may not do any of the following:
 - a. Include as a current beneficiary a person that is not a current beneficiary of the first trust.
 - b. Include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary or successor beneficiary of the first trust.
 - c. Reduce or eliminate a vested interest.
 - d. Fail to be a qualified special needs trust if the first trust is a qualified special needs trust.
3. Powers of appointment may be added to, omitted, or changed in the second trust. The UTDA permits the following:
 - a. Retaining a power of appointment granted in the first trust.
 - b. Omitting a power of appointment granted in the first trust, other than a presently exercisable general power of appointment.
 - c. Creating or modifying a power of appointment if the powerholder is a current beneficiary of the first trust.
 - d. Creating or modifying a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary, but only if the exercise is effective after the powerholder becomes a current beneficiary.
 - e. The power of appointment may be general or nongeneral. The class of permissible appointees may be broader than or different from the beneficiaries of the first trust.

J. §701.1312 – Decanting Power under Limited Distributive Discretion

1. Under prior law, if the trustee's power to invade income or principal was limited by a specific or ascertainable standard, the beneficiaries of the first trust must be the same as the beneficiaries of the second trust. This limitation created a problem where decanting was used to split the first trust into separate second trusts.

2. This problem is addressed by the UTDA. An authorized fiduciary that has limited distributive discretion may exercise the decanting power and create one or more second trusts if, in the aggregate, each beneficiary of the first trust is granted beneficial interests in the second trusts that are substantially similar to the beneficial interests in the first trust. This will permit a severance of the first trust into two or more second trusts.
3. The Study Group added an additional provision that allows an authorized fiduciary to grant to a beneficiary of the second trust a testamentary power of appointment exercisable in favor of the creditors of the beneficiary's estate, but only if the authorized fiduciary concludes the granting of such power will be unlikely to adversely affect the beneficial interest of the presumptive remainder beneficiaries of the first trust. This provision allows a first trust to be modified so that the trust assets will be included in the taxable estate of the beneficiary with the power to appoint and create a step-up in basis when that beneficiary dies.
4. When an authorized fiduciary has limited distributive discretion, the beneficial interests of the beneficiaries in the second trust must be substantially similar to the beneficiary's beneficial interest in the first trust. Example: If the first trust required termination of the trust at age 35 and the second trust permits withdrawals after age 35, this would be substantially similar. If the second trust changed the distribution age to 40, this would not be substantially similar. If the first trust required a direct distribution to a beneficiary, the second trust can allow a distribution to be paid for the benefit of a beneficiary if any of the following applies:
 - a. An amount distributable to a beneficiary is applied on behalf of the beneficiary, whether the beneficiary is under a legal disability.
 - b. An amount distributable to a beneficiary under a legal disability or to whom the trustee reasonably believes is incapacitated, may be paid as permitted under the Wisconsin Trust Code (for example to a parent, guardian, conservator per s. 701.0816(21)).
 - c. If the first trust permits distributions to be paid to a beneficiary in a certain way, the second trust can contain the same provisions.

K. §701.1313 – Trust for Beneficiary with Disability

1. Prior law permitted a first trust to be decanted to a second trust which is a trust for an individual with a disability (a special needs trust) whether the first trust is limited by an ascertainable standard, but only if the purpose of the change was to allow the beneficiary to qualify or continue to qualify to receive public assistance.

2. The UTDA includes a section devoted entirely to trusts for a beneficiary with a disability. A special-needs fiduciary may exercise the decanting power as if the fiduciary has expanded distributive discretion if all the following apply:
 - a. The second trust is a special-needs trust that benefits the beneficiary with a disability.
 - b. The special-needs fiduciary determines the exercise of the decanting power will further the purposes of the first trust.
 - c. If there are two or more second trusts, the second trusts in the aggregate grant each beneficiary of the first trust a substantially similar beneficial interest.
3. The following rules apply to second trusts for a beneficiary with a disability:
 - a. The second trust may be an account in a pooled d4C trust that includes the trust retention provisions permitted under the d4C rules.
 - b. The second trust may be a special needs trust with payback provisions complying with the reimbursement requirements under d4A or d4C.
 - c. The second trust may reduce or eliminate a vested interest of a beneficiary of the first trust.
 - d. If the special-needs fiduciary has limited distributive discretion, the second trusts in the aggregate must grant each other beneficiary of the first trust beneficial interests in the second trust that are substantially similar to the beneficiary's interests in the first trust.

L. §701.1314 – Protection of Charitable Interest

1. Prior law did not include a provision devoted to trusts with a charitable interest. The UTDA describes how trusts with a charitable interest may be decanted.
2. If the first trust contains a charitable interest, the second trust may not diminish the charitable interest, diminish the interest of an identified charitable organization that holds the charitable interest, alter any charitable purpose stated in the first trust, or alter any condition or restriction related to the charitable interest.

3. An exception applies if the charitable interest is part of a pooled special needs trust. A pooled special needs trust under d4C may alter the charitable interest.
4. The second trust must continue to be administered under Wisconsin law unless there is a specific approval of the change in the place of administration.

M. §701.1315 – Trust Limitation on Decanting

1. Prior law included a section limiting the exercise of the decanting power. The UTDA section is more limited in scope.
2. An authorized fiduciary may not exercise the decanting power if the first trust expressly prohibits its exercise.
3. Exercise of the decanting power is subject to any restriction in the first trust. The second trust is required to include any such restrictions in the second trust.
4. A general prohibition against amending or revoking the first trust, a spendthrift clause, or a clause restraining the transfer of a beneficiary's interest does not preclude the exercise of the decanting power.

N. §§701.1316, 701.1317, and 701.1318 – Change in Fiduciary Compensation; Relief from Liability and Indemnification; and Removal or Replacement of Authorized Fiduciary.

1. Prior law required court approval if the second trust adopted a provision that expanded or adopted an exculpatory provision relating to the trustee. The UTDA includes specific sections dealing with changes that would increase the compensation of an authorized fiduciary, relieve an authorized fiduciary from liability, or change the terms regarding removal or replacement of the authorized fiduciary.
2. If the first trust specifies the authorized fiduciary's compensation, the compensation cannot be increased without the consent of all the qualified beneficiaries, or the court approves.
3. A second trust may not relieve an authorized fiduciary from liability for breach of trust to an extent greater than provided by the first trust unless all qualified beneficiaries' consent, or the court approves.
4. The decanting power cannot be exercised to modify a provision in the first trust granting another person a power to remove or replace the fiduciary

unless (a) the person holding the power consents to the modification with respect to that person, (b) the person holding the power and the qualified beneficiaries of the second trust consent and the modification grants a similar power to another person, or (c) the court approves.

5. The change in compensation and change in removal and replacement provisions do not apply to pooled d4C special needs trusts.

O. §701.1319 – Tax Related Limitations

1. A more comprehensive section dealing with impermissible tax changes is included in the UTDA.
2. An authorized fiduciary is limited from making changes that would impact:
 - a. The marital deduction.
 - b. The charitable deduction.
 - c. A qualified minor's trust under IRC 2503(b).
 - d. A QSST.
 - e. Generation skipping transfer trusts.
 - f. Trusts impacting retirement plan benefits and the RMD requirements.
 - g. Grantor trusts.

P. §701.1320 – Duration of Second Trust

A second trust may have a different duration than the first trust subject to rules governing maximum perpetuity, accumulation, or suspension of the power of alienation.

Q. §701.1321 – Need to Distribute Not Required

An authorized fiduciary may exercise the decanting power whether under the first trust's distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution.

R. §701.1322 – Savings Provision

The UTDA includes a savings provision that says if the decanting power could be exercised but for a certain provision in the second trust, the improper provision in the second trust is void and the proper provision in the second trust is deemed included. If an authorized fiduciary of a second trust determines that this section applies, the authorized fiduciary of the second trust shall take corrective actions consistent with the fiduciary’s duties.

S. §701.1323 – Trust for Care of an Animal

The statute includes rules on how the decanting power may be exercised for a trust for the care of an animal.

T. §701.1325 – Settlor

Like prior law, a settlor of a first trust is deemed to be the settlor of the second trust. In determining the settlor’s intent with respect to the second trust, the intent of the settlor of the first trust and the authorized fiduciary of the second trust may be considered.

U. 701.1326 – Later Discovered Property

Like prior law, later discovered property of the first trust is deemed transferred to the second trust if the decanting power was intended to distribute all property or later discovered property of the first trust to the second trust.

V. §701.1327 – Obligations

Prior law did not address obligations of the first trust. The UTDA provides that obligations enforceable against property of the first trust are enforceable against the second trust to the extent the property was transferred to the second trust.

XI. Uniform Powers of Appointment Act (“UPOAA”) (Chapter 702)

The Trailer Bill adopted Wisconsin’s version of the UPOAA, by restating Wis. Stat. Chapter 702. Prior law in Wisconsin was like the UPOAA, so the adoption of the uniform law will not require much change in how lawyers draft powers of appointment and how powers of appointment are administered. You should note and familiarize yourself with the change in the classification of powers of appointment. Now, powers of appointment are classified as general powers of appointment, broad limited powers of appointment, and nongeneral powers of appointment. The new Chapter 702 applies to powers of appointment created before, on, or after the effective date of Act 127 (March 23, 2024.)

XII. Miscellaneous provisions

- A.** Technical corrections are made to chapters 711 and 766 regarding digital property to address its marital property classification and to authorize the use of a “consent instrument” to evidence the user’s consent to the disclosure of digital property to a then acting fiduciary.
- B.** A probate filing fee of \$250 is authorized for filing a petition to commence a judicial proceeding under the Wisconsin Trust Code. §814.66(1)(o).
- C.** Letters of trust will no longer be issued to a testamentary trustee. §856.29. A certificate of trust shall be sufficient evidence of the appointment of a testamentary trustee. The administration of a testamentary trust is governed by chapter 701. §865.08(6).
- D.** The attorney-client privilege is extended to a person acting as a fiduciary when the lawyer’s client is the fiduciary. §905.03(2m). This will clarify that the fiduciary exception to the attorney-client privilege does not apply in Wisconsin.

Domestic Asset Protection Trusts

As referenced above, the joint subcommittee of the State Bar and the WBA had considered inclusion of DAPT provisions in the Trailer Bill. Those two organizations are continuing to study the matter and have expanded the constituents to the process to include expanded input of other sections of the State Bar and other stakeholders.

At the end of 2023, a single practitioner drafted a DAPT statute that was introduced as Senate Bill 667. Several sections of the State Bar and other constituents objected to various aspects of the Bill. Even so, SB 667 was passed by the Assembly and the Senate. However, SB 667 was vetoed by the governor on March 29 accompanied by this very strong language:

I am vetoing this bill in its entirety because I object to allowing domestic asset preservation trusts to be created under Wisconsin law. I am concerned these trusts are likely to be a tool used by wealthy individuals to shield their assets from creditors while perpetuating dynastic, intergenerational transfers of wealth. The general, underlying principle of current trust law that prevents a settlor – someone who creates a trust – from being a beneficiary of said trust to receive asset protection from creditors is sound and informed by experience. Further, the bill provisions purportedly aimed at tempering some of the risks associated with these trusts are insufficient.

The governor’s veto message raises doubts on if a DAPT statute could be passed in Wisconsin under the current administration.

Selected National Recent Developments Impacting Estate Planning

I. Corporate Transparency Act

The Corporate Transparency Act (“CTA”) was enacted on January 1, 2021, but for which reporting requirements became effective on January 1, 2024 - unless an exemption applies.

II. Basis of Assets Held by Grantor Trust

The IRS issued Rev. Rul. 2023-2 that indicated that assets in a grantor trust will not receive an adjusted basis upon the grantor’s death if the assets are not included in the grantor’s estate for estate tax purposes. This has long been a topic of interest for the IRS, but received some more recent attention from legislators charging that such a basis adjustment was a tax abuse by wealthy families.

III. Proposed Regulations for Donor Advised Funds

Proposed regulations regarding taxes on taxable distributions from donor advised funds under I.R.C. §4966 were issued. Proposed Reg. §§53.4966-1 through -6, REG-142338-07, 88 FED. REG. 77922-77941. These are somewhat long in coming given that DAFs were first incorporated into the Internal Revenue Code as part of the Pension Protection Act of 2006 (enacted Aug. 17, 2006). In addition to some definitional clarifications, the Proposed Regulations do address what would be considered taxable expenditures subject to excise taxation. The sponsoring organization of the DAF is generally going to be the entity responsible for payment of such excise taxes.

IV. Apportionment of State Exclusion Amount - Minnesota

In *Estate of Anderson v. Commissioner of Revenue*, 2022 WL 17588033 (Minn. Tax Court Dec. 12, 2022), the Minnesota Tax Court required allocation of a portion of the Minnesota estate tax exclusion amount to non-Minnesota property. This created a Minnesota estate tax liability even though the total amount of Minnesota exemption available was greater than the value of Minnesota situs property of the decedent.

The Minnesota Tax Court stated that Minnesota could constitutionally collect a tax apportioned to out-of-state property because:

“ ‘It has long been the rule that States may refer to nontaxable out-of-State assets in setting their rates for taxable assets.’ . . . If all the Estate’s corpus had a Minnesota situs, for example, the [Minnesota tax] would be the same, but the apportionment ratio would be 1.00. . . . Conversely, if none of the Estate’s corpus had a Minnesota situs . . . the apportionment ratio would be zero and the resulting tax would be \$0.”

The decision is interesting in its reliance on the dormant Commerce Clause and the Commissioner’s recent loss in the fiduciary income tax environment. Regardless, this could be a signal as to how other states with estate taxes could approach apportionment.

V. CCA 202352018

On December 29, 2023, the IRS Office of Chief Counsel issued CCA 202352018. The question examined was what are the gift tax consequences to trust beneficiaries when a trustee of an irrevocable grantor trust modifies the trust, with the beneficiaries’ consent, to add a tax reimbursement clause that could reimburse the trust’s grantor for income tax attributable to the inclusion of the trust’s income in the grantor’s taxable income. The Chief Counsel concluded that such a modification would constitute a taxable gift by the trust beneficiaries as a relinquishment of a portion of the beneficiaries’ interest in the trust.

VI. 2024 Transfer Tax Related Inflation Adjustment Numbers

Rev. Proc. 2023-34 (Nov. 9, 2023) included the following inflation adjustments for 2024:

Gift tax annual exclusion – Increases from \$17,000 to \$18,000.

Annual exclusion gifts to non-citizen spouse – Increases from \$175,000 to \$185,000.

Notice of large gifts from foreign persons – Increases from \$18,567 to \$19,570.

Basic exclusion amount, Gift Exclusion and GST Exemption – All increase from \$12,920,000 to \$13,610,000.

Special use valuation under Section 2032A – Increases from \$1,310,000 to \$1,390,000.

Section 6166 “2 percent” interest limit on estate tax installment payouts – Increases from \$1,750,000 to \$1,850,000.

Estate Tax Exemption Over Time
2024 Exemption: \$13,610,000



* Future Projections Assume a 2% Inflation Factor

VII. 2024 National Election

The upcoming national elections will be followed with great interest by estate planners who work with clients impacted by the scheduled reduction in the estate and gift tax exemption. There are significant reasons, though, to anticipate that the primary structure in 2026 will go as scheduled regardless of which candidate wins the presidency or which party wins the House or the Senate.

RECENT CHANGES TO ESTATE PLANNING LAWS

REMOTE WITNESSING AND NOTARIZATION OF ESTATE PLANNING DOCUMENTS IN WISCONSIN

2024 Wisconsin Solo & Small Firm Conference
October 17, 2024

Attorney Catherine M. Priebe
Certus Legal Group Ltd
10700 W. Research Drive, Suite 165
Milwaukee, Wisconsin 53226
(414) 939-8373
cpriebe@certuslegalgroup.com
www.certuslegalgroup.com

Co-Author
Attorney Philip J. Miller
Husch Blackwell LLP
511 North Broadway, Suite 1100
Milwaukee, Wisconsin 53202-5502
(414) 978-5422
philip.miller@huschblackwell.com
www.huschblackwell.com

I. INTRODUCTION

In person witnessing and notarization of estate planning documents has always served to ensure the authenticity of a document when the testator, settlor, or principal is no longer able to confirm authenticity. The COVID-19 pandemic created a need to deviate from that. The challenge faced by state governments as they addressed that need has been how to introduce 21st century technology into the document execution process while keeping the safeguards necessary to ensuring the authenticity of each document and minimizing the opportunity for fraud, undue influence, or duress.

II. STATE REACTIONS TO THE PANDEMIC

- A. Executive Orders. In many states, the Governor signed an Executive Order altering the requirements for execution of estate planning documents. The legality and efficacy of such orders depends on the scope of emergency rule-making authority conferred by state law.
- B. Emergency Rule-Making. In some states, administrative departments (e.g. departments of health) or the state's highest court passed emergency rules.

- C. State Statutes. Due to the time required by the legislative process, creating statutory solutions was more of a long-term, permanent solution than an emergency solution.

III. WISCONSIN'S APPROACH

A. First Attempt - Emergency Supreme Court Rules

1. The Real Property, Probate and Trust Law Section of the State Bar of Wisconsin ("RPPT") petitioned the Wisconsin Supreme Court on April 29, 2020 requesting the issuance of emergency procedures for witnessing wills, codicils, powers of attorney for health care, and declarations to health care professionals during the COVID-19 pandemic.
2. The petition focused on interpreting "presence" and "conscious presence" as including the use of audiovisual communication technology.
3. The court declined to issue the requested Order, indicating that legislation would be required instead.

B. Second Attempt - Statutory Changes

1. The RPPT then formed a Remote Practice Committee tasked with coming up with a long-term, statutory solution.
2. 2023 Wisconsin Act 130 was enacted on March 21, 2024 and took effect on March 23, 2024.

C. What it Says and How it Works

1. Estate Planning Documents Defined - Wis. Stat. §140.147(1)
 - a. A will or codicil
 - b. A declaration of trust or other document creating a trust as provided in section 701.0401, or an amendment thereto
 - c. A certification of trust under 701.1013
 - d. A power of attorney for finances and property
 - e. A power of attorney for health care
 - f. A marital property agreement or amendment to a marital property agreement

- g. A written instrument evidencing a nonprobate transfer under sections 705.10, 705.15, 705.18, or 766.58(3)(f)
 - h. A declaration to health care professionals
 - i. An authorization for final disposition
 - j. An authorization for use and disclosure of protected health information (HIPAA authorization)
 - k. An instrument of disclaimer under 854.13
 - l. An instrument exercising a power of appointment under Chapter 702
2. Other Definitions
- a. Remotely located individual - an individual who is not in the physical presence of the notary public who performs a notarial act under new section 140.147.
 - b. Sign - with respect to a remotely located individual, the execution of an estate planning document that is required or intended to be executed in the presence of a notary public.
3. Uniform Requirements for all Estate Planning Documents
- a. 2-way, real-time audiovisual communication technology
 - (1) Zoom, Teams, Webex, Go To Meeting, and Facetime are all examples of 2-way, real-time audiovisual communication technology.
 - (2) The audiovisual communication technology must allow the parties to see, hear, and interact in real time. If any party has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that party to interact in real time. For example, sign language may be substituted for sound for a deaf person.
 - b. Must be supervised by an attorney in good standing licensed to practice law in Wisconsin. The supervising attorney may also serve as the notary public and one of the witnesses.

- c. All parties must attest to being physically located in Wisconsin during the 2-way, real-time audiovisual communication.
- d. The person signing (remotely located individual, testator, settlor, principal, etc.) and each remote witness must identify themselves. If the parties are not known to each other and the supervising attorney, each party must display a photo identification (e.g. driver's license, state-issued identification card, passport, military ID, etc.).
- e. The person signing (remotely located individual, testator, settlor, principal, etc.) must identify anyone else present in the same physical location and, if possible, make a visual sweep of the surroundings so that the supervising attorney, notary public, and witnesses can confirm the presence of any other person.
- f. The person signing must display the document, confirm the total number of pages, and the page number of the page on which that person's signature will be affixed.
- g. The person signing must declare to the supervising attorney, notary public, and/or witnesses that the person signing:
 - (1) is 18 years of age or older;
 - (2) that the document is the signer's will, codicil, trust, power of attorney, etc. (whichever applies); and
 - (3) that the document is being executed as a free and voluntary act.
- h. Where current law allows another person to assist the person signing or to sign in that person's name at that person's direction, those provisions of current law are retained.
- i. The document being signed must indicate that it is being executed pursuant to the applicable remote signing statute (see below).
- j. The supervising attorney, notary public, and each of the witnesses must be able to see the person signing actually sign the document. A view of the signer's head and shoulders, for example, is not sufficient, nor is a ceiling shot if the signer has to temporarily put down a phone or tablet to be able to sign the document.
- k. Transmission of the signed document, and counterparts versus compilation.

(1) Option 1 - Same Document

- (a) Option 1 only involves one original document or documents. The person signing or someone at the signer's direction delivers the document(s) personally or by U.S. mail or commercial courier to the supervising attorney, who then forwards the original document(s) to the notary public or first witness. In the case of witnessing, the first witness signs and forwards the document(s) to the second witness, who then signs and forwards the document(s) back to the supervising attorney.
- (b) Where the supervising attorney and an office assistant serve as the notary public and witnesses from the attorney's office, this is perhaps the easiest option because it only requires the remotely located signer to deliver the document(s) to the supervising attorney. The subsequent notarization and witnessing can all occur in the attorney's office.
- (c) If the supervising attorney meets with the signer at the signer's home or another location outside the attorney's office, the ability to have someone witness remotely eliminates the need to have the attorney bring a second witness with him or her, as well as for the signer to ask a friend or neighbor to act as a second witness.

(2) Option 2 - Copies of Signed Document

- (a) Option 2 starts out with one set of original documents and copies are made by the person signing *after* he/she signs. The person signing or someone at the signer's direction delivers the original signed document(s) personally or by U.S. mail or commercial courier to the supervising attorney, and delivers copies of the entire signed document(s) to the notary public and each witness, who then notarize and/or sign and forward the document(s) back to the supervising attorney.
- (b) The multiple documents together will constitute one original unless the supervising attorney, within a reasonable time after receiving the signed original

and signed copies, compiles the signed copies into the original by attaching the signature pages of the notary public and/or each remote witness to the signed original.

- (c) Option 2 might be used, for example, where the supervising attorney is working remotely and does not have the ability to print and mail originals but the client does. The client can receive a PDF by e-mail, print and sign it, then make copies and forward it as instructed. Option 2 should take less time than option 1 because the document does not have to go back to the supervising attorney before being sent to the notary public and witnesses.

(3) Option 3 - Counterpart Originals

- (a) In option 3 the notary public and each remote witness starts out with an identical counterparts of each document that the person signing has. During the signing, the person signing signs, and then the notary public and each remote witness notarizes or signs the counterparts in their possession. Once all the documents have been signed, the person signing, the notary public, and each remote witness delivers those documents personally or by U.S. mail or commercial courier to the supervising attorney.
- (b) The multiple documents together will constitute one original unless the supervising attorney, within a reasonable time after receiving the multiple documents, compiles them into one document by attaching the signature pages of the notary public and/or each remote witness to the document signed by the person signing.
- (c) This option seems preferable to option 2 because all parties are starting out with identical versions of the same document and it does not require the person signing to send anything to the notary public or witnesses - just to the supervising attorney.
- (d) Option 3 is also preferable to both options 1 and 2 in that the notary public and each remote witness are signing at the same time as the person signing and each is seeing the other sign. The added delay

of the notary public and each remote witness waiting to receive documents to sign is eliminated.

1. An affidavit of compliance must be completed by the supervising attorney and attached to the document.
 - (1) For the typical Wisconsin estate plan for a married couple, this means a separate affidavit of compliance for the trust and marital property agreement, and each will, power of attorney, HIPAA authorization, and other document.
 - (2) Each statute contains a sample affidavit, and all the affidavits are more or less identical.
 - (3) If a document, such as a power of attorney for finances and property, is going to be witnessed and notarized, section 140.147(6) specifically authorizes combining the information required by the separate affidavits into a single affidavit.
 - (4) In the case of a Will, the affidavit of compliance can also serve as a self-proving affidavit under Wis. Stat. §853.04(2).
 - (5) An affidavit of compliance may include other details regarding the document execution process, such as when a remotely located individual directs another person to sign on his or her behalf.
 - (6) See the attached sample affidavit of compliance for a Will in Appendix A.

IV. WITNESSING

- A. Remote witnesses must still meet all the same requirements as in-person witnesses for each estate planning document, such as being 18 or older, unrelated, etc.
- B. Remote witnesses should have photo identification and should be tech-savvy enough to be able to easily connect and interact using the 2-way, real-time audiovisual communication technology.
- C. If one or both remote witnesses are in a different location than the supervising attorney, consider a dry run with each witness or leave sufficient time to work out

all of the bugs before formally starting the remote signing process. For example, do not use the free version of Zoom that times out after one hour.

- D. If the signer or a witness is in an area with spotty cellular or internet service, make sure that the signing process will not be interrupted by a dropped signal. If presence or conscious presence is required during the signing process, a remote witness dropping off of a virtual signing has the same legal effect as a witness leaving the room during an in-person signing.

V. NOTARIZATION

A. RIN versus RON

1. On May 21, 2020, Wis. Stat. §140.145, Notarial act performed for remotely located individual, became law.
 - a. This section authorizes remote online notarization (“RON”) and uses electronic (digital) signatures.
 - b. This section does not apply to wills, codicils, testamentary trusts, living trusts and trust amendments not involving a transaction under section 137.11(15), powers of attorney not involving a transaction under section 137.11(15), marital property agreements, powers of attorney for health care, declarations to health care professionals, or HIPAA authorizations. These were specifically excluded to give the RPPT time to first study remote witnessing and ensure that traditional safeguards regarding the execution of estate planning documents would be preserved before remote notarization was also allowed.
 - c. RON was spearheaded by the Wisconsin Land Title Association and is most often used in connection with real estate transactions.
 - d. A limited power of attorney specifically executed to authorize an agent to execute a real estate transaction can be executed using RON instead of RIN. While it was generally understood this was always the case under RON, 2023 Wisconsin Act 129 providing further clarity was enacted on March 21, 2024 and took effect on March 23, 2024.
2. New section 140.147 authorizes remote ink (“RIN”) or “wet” signatures. This section only applies to estate planning documents as defined in 140.147(1).

3. RIN requires the remotely located individual to be located in Wisconsin during the signing. This requirement is different than under RON.
- B. Under RIN, the notary public must hold a current Wisconsin commission and be physically present in Wisconsin.

VI. THE STATUTES AND SUGGESTED LANGUAGE FOR DOCUMENTS

- A. 140.147 - Notarial act performed for remote execution of estate planning documents.

*Appearing before me on the _____ day of _____, 20____, via two-way, real-time audiovisual communication technology pursuant to Wis. Stat. §140.147, the above-named ****NAME**** executed the foregoing instrument and acknowledged the same.*

- B. 154.03(3) - “Presence” for purposes of signing a declaration to health care professionals includes the simultaneous remote appearance by 2-way, real-time audiovisual communication if all of the requirements are met.

The execution of this instrument was witnessed using two-way, real-time audiovisual communication technology pursuant to Wis. Stat. §154.03(3).

- C. 154.30(8m) - “Witnessed by” and “in the presence of” for purposes of signing an authorization for final disposition include the simultaneous remote appearance by 2-way, real-time audiovisual communication if all of the requirements are met.

The execution of this instrument was witnessed using two-way, real-time audiovisual communication technology pursuant to Wis. Stat. §154.30(8m).

- D. 155.10(3) - “In the presence of” for purposes of signing a power of attorney for health care includes the simultaneous remote appearance by 2-way, real-time audiovisual communication if all of the requirements are met.

The execution of this instrument was witnessed using two-way, real-time audiovisual communication technology pursuant to Wis. Stat. §155.10(3).

- E. 244.05(3) - A signature of the principal on a power of attorney for finances and property, or the signature of a person signing on behalf of the principal, is presumed to be genuine if the signing is witnessed by 2 witnesses via simultaneous remote appearance by 2-way, real-time audiovisual communication if all of the requirements are met.

The execution of this instrument was witnessed using two-way, real-time audiovisual communication technology pursuant to Wis. Stat. §244.05.

- F. 853.03(2)(c) - “Conscious presence” for purposes of the execution of a will or codicil includes the simultaneous remote appearance by 2-way, real-time audiovisual communication if all of the requirements are met.

Appearing before us, the undersigned, via two-way, real-time audiovisual communication technology pursuant to Wis. Stat. §853.03(2)(c), the foregoing instrument consisting of NUMBER (#) pages, including this/the-next page, was on the date hereof signed, sealed, published and declared by JANE DOE to be her Last Will and Testament. On that basis we have subscribed our names as witnesses hereto and we further certify that at the time of the execution of the foregoing Will, we believed JANE DOE to be of sound and disposing mind and memory.

- G. For purposes of uniformity, section 154.03(3)(e) was added to require that a witness to a declaration to health care professionals be 18 or older, and 154.30(8)(d)2. was added to require that anyone signing an authorization for final disposition for a declarant at the declarant’s express direction be 18 or older.

VII. USES AND CAUTIONS

- A. If a COVID resurgence or another pandemic ever requires complete isolation, remote witnessing and notarization will be used out of necessity.
- B. Even in circumstances in which only those most at risk are isolated during a health emergency, remote witnessing and notarization will likely be needed for clients at risk.
- C. Remote witnessing and notarization will be a cost-saving convenience for clients in remote areas who cannot or desire not to travel to their attorney for an in-person signing, as well as for those who may be physically frail or infirm and cannot easily travel any distance for an in-person signing.
- D. Consider when remote witnessing and notarization should not be used unless absolutely necessary.
1. When the estate plan does something out of the ordinary, such as disinherit a natural object of the testator’s or settlor’s bounty.
 2. When the testator/settlor/principal is a person with diminished capacity.
 3. Where the internet connection is unreliable and drops out or freezes during the meeting.

4. Where the remotely located individual is not tech-savvy or has difficulty participating in remote audio-visual communication.

VIII. HELPFUL TIPS

- A. Prepare template affidavits for each of your most common signing scenarios; eg., a joint revocable living trust.
- B. Prepare the affidavits of compliance in advance of the meeting. It will help you orchestrate the meeting in your mind, and help ensure that they are completed promptly after the documents are returned.
- C. Things to communicate to the client in advance of the meeting:
 1. The need to produce a driver's license if not all those involved are known to each other.
 2. The need to see the actual signing, not just head and shoulders.
 3. The need for those signing (client, witnesses, and notary) to remain in the room and in front of the camera for the entire process.
 4. The need to make a visual sweep of the room.
- D. Get all the attestations and declarations out of the way at the beginning if there are multiple documents being signed.
- E. Keep the order of remote witness 1 and remote witness 2 the same for all witnessed documents.
- F. Use a checklist to ensure compliance with the statutes and no missed steps.

IX. CONCLUSION

At first blush, remote witnessing and remote ink notarization of estate planning documents in Wisconsin appears burdensome. However, the uniform approach for all estate planning documents and the form affidavit provided in each statute should shorten the learning curve and, more importantly, should ensure the authenticity of each remotely-executed document.

APPENDIX A

STATE OF WISCONSIN)
) SS.
COUNTY OF MILWAUKEE)

The undersigned, being first duly sworn under oath, states as follows:

This Affidavit of Compliance is executed pursuant to Wis. Stats. §853.03(2)(c) to document the execution of the Last Will and Testament of John Doe via remote appearance by 2-way, real-time audiovisual communication technology on March 25, 2024.

1. The name and residential address of the testator is: John Doe, 9045 Woodruff Road, Woodruff WI 54568.
2. The name and business address of remote witness 1 is: Catherine M. Priebe, 10700 W. Research Drive, Suite 165, Milwaukee, WI 53226.
3. The name and business address of remote witness 2 is: Philip J. Miller, 511 North Broadway, Suite 1100, Milwaukee, WI 53202.
4. The address within the State of Wisconsin where the testator was physically located at the time the testator signed the will is: 9045 Woodruff Road, Woodruff WI 54568.
5. The address within the State of Wisconsin where remote witness 1 was physically located at the time the remote witness witnessed the testator’s execution of the will is: 10700 W. Research Drive, Suite 165, Milwaukee, WI 53226.
6. The address within the State of Wisconsin where remote witness 2 was physically located at the time the remote witness witnessed the testator’s execution of the will is: 511 North Broadway, Suite 1100, Milwaukee, WI 53202.
7. The testator and remote witness 1 were known to each other. Remote witness 1 and remote witness 2 were known to each other. The testator and remote witness 2 were not known to each other, therefore the testator and remote witness 2 each produced a current Wisconsin driver’s license to confirm his identity.
8. The testator declared that the testator is 18 years of age or older, that the document is the testator’s will, and that the document was being executed as the testator’s free and voluntary act.
9. Each of the remote witnesses and the supervising attorney were able to see the testator sign. The testator appeared to be 18 years of age or older and acting freely and voluntarily.
10. The audiovisual technology used for the signing process was Zoom.

11. The will was not signed in counterpart. The testator signed the will and delivered it to remote witness 2 by Federal Express, who then signed it and forwarded it to remote witness 1 by Federal Express. Remote witness 1 is also the supervising attorney.

12. The name, state bar number, and business address of the supervising attorney is: Catherine M. Priebe, SBN 1021649, 10700 W. Research Drive, Suite 165, Milwaukee, WI 53226.

Catherine M. Priebe

Subscribed and sworn to before me on
March 25, 2024 by Catherine M. Priebe.

Print Name: _____
Notary Public, State of Wisconsin
My Commission expires: _____

APPENDIX B

2023 Wisconsin Act 130 - See attached.

State of Wisconsin



2023 Senate Bill 898

Date of enactment: **March 21, 2024**

Date of publication*: **March 22, 2024**

2023 WISCONSIN ACT 130

AN ACT *to amend* 154.30 (8) (d) 2.; *to repeal and recreate* 244.05; and *to create* 140.147, 154.03 (1) (e), 154.03 (3), 154.30 (8m), 155.10 (3) and 853.03 (2) (c) of the statutes; **relating to:** electronic and remote witnessing and notarization of estate planning documents.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 140.147 of the statutes is created to read:

140.147 Notarial act performed for remote execution of estate planning documents. (1) In this section:

(a) “Estate planning document” means any of the following:

1. A will or a codicil.
2. A declaration of trust or other document creating a trust as provided in s. 701.0401 or an amendment to a declaration of trust or other document creating a trust.
3. A certification of trust as provided in s. 701.1013.
4. A power of attorney for finances and property.
5. A power of attorney for health care.
6. A marital property agreement or an amendment to a marital property agreement.
7. A written instrument evidencing a nonprobate transfer pursuant to s. 705.10, 705.15, 705.18, or 766.58 (3) (f).
8. A declaration to health care professionals.
9. An authorization for final disposition.
10. An authorization for use and disclosure of protected health information.
11. An instrument of disclaimer under s. 854.13.

12. An instrument exercising a power of appointment under ch. 702.

(b) “Remotely located individual” means an individual who is not in the physical presence of the notary public who performs the notarial act pursuant to this section.

(c) “Sign” means, with respect to a remotely located individual, the execution of an estate planning document that is required or intended to be executed in the presence of a notary public.

(2) (a) An estate planning document may not be denied legal effect or enforceability relating to a transaction solely because a notarial act was performed in compliance with this section.

(b) Except as provided in par. (a), this section shall not apply to, or impact the legal effect or enforceability of, any electronic records or electronic signatures governed by ch. 137.

(3) For purposes of signing an estate planning document, a remotely located individual may comply with s. 140.06 by appearing before a notary public via 2-way, real-time audiovisual communication technology if all of the following requirements are satisfied:

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication.”

(a) The signing is supervised by an attorney in good standing licensed to practice law in this state. The supervising attorney may serve as the notary public.

(b) The remotely located individual attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(c) The notary public attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(d) The remotely located individual positively confirms the remotely located individual's identity. If the remotely located individual is not personally known to the notary public and the supervising attorney, the remotely located individual shall provide satisfactory evidence of the remotely located individual's identity as provided in s. 140.07.

(e) The remotely located individual identifies anyone else present in the same physical location as the remotely located individual. If possible, the remotely located individual shall make a visual sweep of the remotely located individual's physical surroundings so that the notary public and the supervising attorney can confirm the presence of any other persons.

(f) The remotely located individual displays the estate planning document, confirms the total number of pages and the page number on which the remotely located individual's signature is to be affixed, and declares to the notary public and the supervising attorney that the remotely located individual is 18 years of age or older, that the document is the remotely located individual's estate planning document, and that the document is being executed as a voluntary act.

(g) The remotely located individual, or another individual 18 years of age or older authorized to sign on behalf of the remotely located individual at the express direction and in the physical presence of the remotely located individual, signs the estate planning document in a manner that allows the notary public and the supervising attorney to see the signing. If the estate planning document is signed by someone on behalf of the remotely located individual, the signing shall comply with s. 140.09.

(h) The audiovisual communication technology used allows communication by which a person is able to see, hear, and communicate in an interactive way with another person in real time using electronic means, except that if the remotely located individual, the notary public, or the supervising attorney has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that person to actively participate in the signing in real time.

(i) The estate planning document indicates that it is being executed pursuant to this section.

(j) One of the following occurs:

1. The remotely located individual, or another person at the direction of the remotely located individual, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original estate planning document to the supervising attorney within a reasonable time after the signing. The supervising attorney then personally delivers or transmits by U.S. mail or commercial courier service the entire signed original estate planning document to the notary public within a reasonable time. The notary public then performs the intended notarial act and forwards the entire original estate planning document by personal delivery or U.S. mail or commercial courier service to the supervising attorney within a reasonable time.

2. The remotely located individual, or another person at the direction of the remotely located individual, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original estate planning document to the supervising attorney within a reasonable time after the signing and transmits by facsimile or electronic means a legible copy of the entire signed estate planning document directly to the notary public within a reasonable time after the signing. The notary public then performs the intended notarial act and personally delivers or transmits by U.S. mail or commercial courier service the entire signed copy of the estate planning document to the supervising attorney within a reasonable time. The signed original and signed copy together shall constitute one original document unless the supervising attorney, within a reasonable time after receiving the signed original and signed copy, compiles the signed original and signed copy into one document by attaching the page or pages containing the notarial act to the original signed by or on behalf of the remotely located individual, in which case the compiled document shall constitute the original.

3. The remotely located individual, or another person at the express direction of the remotely located individual, and the notary public sign identical copies of the original estate planning document. The remotely located individual, or another person at the direction of the remotely located individual, and the notary public personally deliver or transmit by U.S. mail or commercial courier service the signed originals to the supervising attorney within a reasonable time after the signing and performance of the notarial act. All of the originals together shall constitute one document unless the supervising attorney, within a reasonable time after receiving all signed originals, compiles the originals into one document by attaching the page or pages containing the notarial act to the original signed by or on behalf of the remotely located individual, in which case the compiled document shall constitute the original.

(k) The supervising attorney completes and attaches to the estate planning document an affidavit of compliance that contains the following information:

1. The name and residential address of the remotely located individual.
2. The name and residential or business address of the notary public.
3. The address within the state where the remotely located individual was physically located at the time that the estate planning document was signed by the remotely located individual or another individual on behalf of the remotely located individual.
4. The address within the state where the notary public was physically located at the time the notary public witnessed the remotely located individual's signing of the estate planning document.
5. A statement that the remotely located individual and notary public were known to each other and the supervising attorney or a description of the form of identification used to confirm the identity of the remotely located individual.
6. The identity of anyone else present in the same physical location as the remotely located individual during the signing.
7. Confirmation that the remotely located individual declared that the remotely located individual is 18 years of age or older, that the document is the remotely located individual's estate planning document, and that the document was being executed as the remotely located individual's voluntary act.
8. Confirmation that the notary public and the supervising attorney were able to see the remotely located individual, or an individual 18 years of age or older at the express direction and in the physical presence of the remotely located individual, sign, and that the remotely located individual appeared to be 18 years of age or older and acting voluntarily.
9. A description of the audiovisual technology used for the signing process.
10. If the estate planning document was not signed in counterpart, a description of the method used to forward the estate planning document to the notary public and to the supervising attorney upon completion of the signing process.
11. If the estate planning document was signed in counterpart, a description of the method used to forward each counterpart to the supervising attorney and, if applicable, how and when the supervising attorney physically compiled the signed paper counterparts into a single document.
12. The name, state bar number, and business or residential address of the supervising attorney.
13. Any other information that the supervising attorney considers to be material with respect to the remotely located individual's capacity to sign a valid estate planning document, the remotely located individual's and

notary public's compliance with this section, or any other information that the supervising attorney deems relevant to the signing of the estate planning document.

(4) An affidavit of compliance completed and attached to the estate planning document pursuant to sub. (3) (k) shall serve as conclusive evidence that the estate planning document was executed in compliance with this section.

(5) An affidavit of compliance shall be in substantially the following form:

AFFIDAVIT OF COMPLIANCE

State of

County of

The undersigned, being first duly sworn under oath, states as follows:

This Affidavit of Compliance is executed pursuant to Wis. Stat. § 140.147 to document the signing of the [name of estate planning document] of [name of remotely located individual] via remote appearance by 2-way, real-time audiovisual communication technology on [date].

1. The name and residential address of the remotely located individual is
2. The name and [residential or business] address of the notary public is
3. The address within the state of Wisconsin where the remotely located individual was physically located at the time the remotely located individual signed the estate planning document is
4. The address within the state of Wisconsin where the notary public was physically located at the time the notary public witnessed the remotely located individual's signing of the estate planning document is
5. The remotely located individual and notary public were known to each other and to the supervising attorney. – OR – The remotely located individual and notary public were not known to each other and to the supervising attorney. The remotely located individual produced the following form of photo identification to confirm his or her identity:
....
6. The following persons were in the same physical location as the remotely located individual during the signing:
....
7. The remotely located individual declared that the remotely located individual is 18 years of age or older, that the document is the remotely located individual's [name of estate planning document], and that the document was being executed as the remotely located individual's voluntary act.
8. The notary public and the supervising attorney were able to see the remotely located individual sign or another individual on behalf of the remotely located individual sign. The remotely located individual appeared to be 18 years of age or older and acting voluntarily.

9. The audiovisual technology used for the signing process was

10. The estate planning document was not signed in counterpart. The following methods were used to forward the estate planning document to the notary public and to the supervising attorney after signing. – OR – The estate planning document was signed in counterpart. The following methods were used to forward each counterpart to the supervising attorney. [If applicable] – The supervising attorney physically compiled the signed paper counterparts into a single document containing the estate planning document, the signature of the remotely located individual, and the notarial act on [date] by [e.g., attaching page 7 from each counterpart signed by the notary public to the back of the estate planning document signed by the remotely located individual].

11. The name, state bar number, and [business or residential] address of the supervising attorney is

12. [Optional] Other information that the supervising attorney considers to be material is as follows:

.... (signature of supervising attorney)

Subscribed and sworn to before me on (date) by (name of supervising attorney).

.... (signature of notarial officer)

Stamp

.... (Title of office)

[My commission expires:]

(6) If a supervising attorney is required to complete an affidavit in order to execute an estate planning document pursuant to another provision of law, the information required in that affidavit may be combined with the information required in the affidavit of compliance into a single affidavit.

(7) For a notarial act performed under this section, the certificate of notarial act required under s. 140.15 may be in the following short form, if completed with the information required by s. 140.15 (1) and (2):

State of

County of

This record was virtually acknowledged before me pursuant to Wis. Stat. § 140.147 on (date) by (name(s) of individual(s)).

.... (signature of notarial officer)

Stamp

.... (Title of office)

[My commission expires:]

SECTION 2. 154.03 (1) (e) of the statutes is created to read:

154.03 (1) (e) Under the age of 18.

SECTION 3. 154.03 (3) of the statutes is created to read:

154.03 (3) For purposes of this section, “presence” includes the simultaneous remote appearance by 2–way, real–time audiovisual communication technology if all of the following conditions are satisfied:

(a) The signing is supervised by an attorney in good standing licensed by this state. The supervising attorney may serve as one of the remote witnesses.

(b) The declarant attests to being physically located in this state during the 2–way, real–time audiovisual communication.

(c) Each remote witness attests to being physically located in this state during the 2–way, real–time audiovisual communication.

(d) The declarant and each of the remote witnesses identify themselves. If the declarant and remote witnesses are not personally known to each other and to the supervising attorney, the declarant and each of the remote witnesses display photo identification.

(e) The declarant identifies anyone else present in the same physical location as the declarant and, if possible, the declarant makes a visual sweep of the declarant’s physical surroundings so that the supervising attorney and each remote witness can confirm the presence of any other person.

(f) The declarant displays the declaration to health care professionals, confirms the total number of pages and the page number of the page on which the declarant’s signature will be affixed, and declares to the remote witnesses and the supervising attorney all of the following:

1. That the declarant is 18 years of age or older.

2. That the document is a declaration to health care professionals.

3. That the document is being executed as a voluntary act.

(g) The declarant, or an individual 18 years of age or older at the express direction and in the physical presence of the declarant, dates and signs the declaration to health care professionals in a manner that allows each of the remote witnesses and the supervising attorney to see the execution.

(h) The audiovisual communication technology used allows communication by which a person is able to see, hear, and communicate in an interactive way with another person in real time using electronic means, except that if the declarant, a remote witness, or the supervising attorney has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that person to actively participate in the signing in real time.

(i) The declaration to health care professionals indicates that it is being executed pursuant to this subsection.

(j) One of the following occurs:

1. The declarant, or another person at the direction of the declarant, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original declaration to health care professionals to the supervising attorney within a reasonable time after execution. The supervising attorney then personally delivers or

transmits by U.S. mail or commercial courier service the entire signed original declaration to health care professionals to the remote witnesses within a reasonable time. The first remote witness to receive the original declaration to health care professionals signs and dates the original declaration to health care professionals as a witness and forwards the entire signed original declaration to health care professionals by personal delivery or U.S. mail or commercial courier service within a reasonable time to the 2nd remote witness, who signs and dates it as a witness and forwards the entire signed original declaration to health care professionals by personal delivery or U.S. mail or commercial courier service within a reasonable time to the supervising attorney.

2. The declarant, or another person at the direction of the declarant, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original declaration to health care professionals to the supervising attorney within a reasonable time after execution, and transmits by facsimile or electronic means a legible copy of the entire signed declaration to health care professionals directly to each remote witness within a reasonable time after execution. Each remote witness then signs the transmitted copy of the declaration to health care professionals as a witness and personally delivers or transmits by U.S. mail or commercial courier service the entire signed copy of the declaration to health care professionals to the supervising attorney within a reasonable time after witnessing. The signed original and signed copies together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving the signed original and signed copies, compiles the signed original and signed copies into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the declarant, in which case the compiled document shall constitute the original.

3. The declarant and each of the remote witnesses sign identical copies of the original. The declarant, or another person at the direction of the declarant, and each of the remote witnesses personally deliver or transmit by U.S. mail or commercial courier service the signed originals to the supervising attorney within a reasonable time after execution. All of the signed originals together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving all signed originals, compiles the originals into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the declarant, in which case the compiled document shall constitute the original.

(k) The supervising attorney completes an affidavit of compliance that contains the following information:

1. The name and residential address of the declarant.
2. The name and residential or business address of each remote witness.

3. The address within this state where the declarant was physically located at the time the declarant signed the declaration to health care professionals.

4. The address within this state where each remote witness was physically located at the time the remote witness witnessed the declarant's execution of the declaration to health care professionals.

5. A statement that the declarant and remote witnesses were all known to each other and the supervising attorney or a description of the form of photo identification used to confirm the identity of the declarant and each remote witness.

6. Confirmation that the declarant declared that the declarant is 18 years of age or older, that the document is the declarant's declaration to health care professionals, and that the document was being executed as the declarant's voluntary act.

7. Confirmation that each of the remote witnesses and the supervising attorney were able to see the declarant, or an individual 18 years of age or older at the express direction and in the physical presence of the declarant, sign, and that the declarant appeared to be 18 years of age or older and acting voluntarily.

8. A description of the audiovisual technology used for the signing process.

9. If the declaration to health care professionals was not signed in counterpart, a description of the method used to forward the declaration to health care professionals to each remote witness for signing and to the supervising attorney after signing.

10. If the declaration to health care professionals was signed in counterpart, a description of the method used to forward each counterpart to the supervising attorney and, if applicable, how and when the supervising attorney physically compiled the signed paper counterparts into a single document containing the declaration to health care professionals, the signature of the declarant, and the signatures of the remote witnesses.

11. The name, state bar number, and business or residential address of the supervising attorney.

12. Any other information that the supervising attorney considers to be material with respect to the declarant's capacity to sign a valid declaration to health care professionals, the declarant's and witnesses' compliance with this section, or any other information that the supervising attorney deems relevant to the execution of the declaration to health care professionals.

(L) The affidavit of compliance is attached to the declaration to health care professionals.

(m) An affidavit of compliance described in this subsection shall be substantially in the following form:

AFFIDAVIT OF COMPLIANCE

State of

County of

The undersigned, being first duly sworn under oath, states as follows:

This Affidavit of Compliance is executed pursuant to Wis. Stat. § 154.03 (3) to document the execution of the declaration to health care professionals of [name of declarant] via remote appearance by 2–way, real–time audiovisual communication technology on [date].

1. The name and residential address of the declarant is

2. The name and [residential or business] address of remote witness 1 is

3. The name and [residential or business] address of remote witness 2 is

4. The address within the state of Wisconsin where the declarant was physically located at the time the declarant signed the declaration to health care professionals is

5. The address within the state of Wisconsin where remote witness 1 was physically located at the time the remote witness witnessed the declarant’s execution of the declaration to health care professionals is

6. The address within the state of Wisconsin where remote witness 2 was physically located at the time the remote witness witnessed the declarant’s execution of the declaration to health care professionals is

7. The declarant and remote witnesses were all known to each other and to the supervising attorney. – OR – The declarant and remote witnesses were not all known to each other and to the supervising attorney. Each produced the following form of photo identification to confirm his or her identity:

....

8. The declarant declared that the declarant is 18 years of age or older, that the document is the declarant’s declaration to health care professionals, and that the document was being executed as the declarant’s voluntary act.

9. Each of the remote witnesses and the supervising attorney were able to see the declarant sign. The declarant appeared to be 18 years of age or older and acting voluntarily.

10. The audiovisual technology used for the signing process was

11. The declaration to health care professionals was not signed in counterpart. The following methods were used to forward the declaration to health care professionals to each remote witness for signing and to the supervising attorney after signing. – OR – The declaration to health care professionals was signed in counterpart. The following methods were used to forward each counterpart to the supervising attorney. [If applicable] – The supervising attorney physically compiled the signed paper counterparts into a single document containing the declaration to health care professionals, the signature of the declarant, and the signatures of the remote witnesses on [date] by [e.g., attaching page 7 from each counterpart signed by a remote witness to the back of the declaration to health care professionals signed by the declarant].

12. The name, state bar number, and [business or residential] address of the supervising attorney is

13. [Optional] Other information that the supervising attorney considers to be material is as follows:

.... (signature of supervising attorney)

Subscribed and sworn to before me on (date) by (name of supervising attorney).

.... (signature of notarial officer)

Stamp

.... (Title of office)

[My commission expires:]

SECTION 4. 154.30 (8) (d) 2. of the statutes is amended to read:

154.30 (8) (d) 2. Be signed and dated by the declarant, with the signature witnessed by 2 witnesses who each have attained age 18 and who are not related by blood, marriage, or adoption to the declarant, or acknowledged before a notary public. If the declarant is physically unable to sign an authorization for final disposition, the authorization shall be signed in the declarant’s name by an individual 18 years of age or older at the declarant’s express direction and in his or her physical presence; such a proxy signing shall take place or be acknowledged by the declarant in the presence of 2 witnesses or a notary public.

SECTION 5. 154.30 (8m) of the statutes is created to read:

154.30 (8m) REMOTE EXECUTION. For purposes of sub. (8) (d) 2., “witnessed by” and “in the presence of” include the simultaneous remote appearance by 2–way, real–time audiovisual communication technology if all of the following conditions are satisfied:

(a) The signing is supervised by an attorney in good standing licensed by this state. The supervising attorney may serve as one of the remote witnesses.

(b) The declarant attests to being physically located in this state during the 2–way, real–time audiovisual communication.

(c) Each remote witness attests to being physically located in this state during the 2–way, real–time audiovisual communication.

(d) The declarant and each of the remote witnesses identify themselves. If the declarant and remote witnesses are not personally known to each other and to the supervising attorney, the declarant and each of the remote witnesses display photo identification.

(e) The declarant identifies anyone else present in the same physical location as the declarant and, if possible, the declarant makes a visual sweep of the declarant’s physical surroundings so that the supervising attorney and each remote witness can confirm the presence of any other person.

(f) The declarant displays the authorization for final disposition, confirms the total number of pages and the page number of the page on which the declarant’s signa-

ture will be affixed, and declares to the remote witnesses and the supervising attorney all of the following:

1. That the declarant is 18 years of age or older.
2. That the document is an authorization for final disposition.
3. That the document is being executed as a voluntary act.

(g) The declarant, or an individual 18 years of age or older at the express direction and in the physical presence of the declarant, dates and signs the authorization for final disposition in a manner that allows each of the remote witnesses and the supervising attorney to see the execution.

(h) The audiovisual communication technology used allows communication by which a person is able to see, hear, and communicate in an interactive way with another person in real time using electronic means, except that if the declarant, a remote witness, or the supervising attorney has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that person to actively participate in the signing in real time.

(i) The authorization for final disposition indicates that it is being executed pursuant to this subsection.

(j) One of the following occurs:

1. The declarant, or another person at the direction of the declarant, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original authorization for final disposition to the supervising attorney within a reasonable time after execution. The supervising attorney then personally delivers or transmits by U.S. mail or commercial courier service the entire signed original authorization for final disposition to the remote witnesses within a reasonable time. The first remote witness to receive the original authorization for final disposition signs and dates the original authorization for final disposition as a witness and forwards the entire signed original authorization for final disposition by personal delivery or U.S. mail or commercial courier service within a reasonable time to the 2nd remote witness, who signs and dates it as a witness and forwards the entire signed original authorization for final disposition by personal delivery or U.S. mail or commercial courier service within a reasonable time to the supervising attorney.

2. The declarant, or another person at the direction of the declarant, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original authorization for final disposition to the supervising attorney within a reasonable time after execution, and transmits by facsimile or electronic means a legible copy of the entire signed authorization for final disposition directly to each remote witness within a reasonable time after execution. Each remote witness shall then sign the transmitted copy of the authorization for final disposition

as a witness and personally deliver or transmit by U.S. mail or commercial courier service the entire signed copy of the authorization for final disposition to the supervising attorney within a reasonable time after witnessing. The signed original and signed copies together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving the signed original and signed copies, compiles the signed original and signed copies into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the declarant, in which case the compiled document shall constitute the original.

3. The declarant and each of the remote witnesses sign identical copies of the original. The declarant, or another person at the direction of the declarant, and each of the remote witnesses personally deliver or transmit by U.S. mail or commercial courier service the signed originals to the supervising attorney within a reasonable time after execution. All of the signed originals together shall constitute one original document unless the supervising attorney, within a reasonable time after receiving all signed originals, compiles the originals into one document by attaching the signature pages of each remote witness to the original signed by the declarant, in which case the compiled document shall constitute the original.

(k) The supervising attorney completes an affidavit of compliance that contains the following information:

1. The name and residential address of the declarant.
2. The name and residential or business address of each remote witness.
3. The address within this state where the declarant was physically located at the time the declarant signed the authorization for final disposition.
4. The address within this state where each remote witness was physically located at the time the remote witness witnessed the declarant's execution of the authorization for final disposition.
5. A statement that the declarant and remote witnesses were all known to each other and the supervising attorney or a description of the form of photo identification used to confirm the identity of the declarant and each remote witness.

6. Confirmation that the declarant declared that the declarant is 18 years of age or older, that the document is the declarant's authorization for final disposition, and that the document was being executed as the declarant's voluntary act.

7. Confirmation that each of the remote witnesses and the supervising attorney were able to see the declarant, or an individual 18 years of age or older at the express direction and in the physical presence of the declarant, sign, and that the declarant appeared to be 18 years of age or older and acting voluntarily.

8. A description of the audiovisual technology used for the signing process.

9. If the authorization for final disposition was not signed in counterpart, a description of the method used to forward the authorization for final disposition to each remote witness for signing and to the supervising attorney after signing.

10. If the authorization for final disposition was signed in counterpart, a description of the method used to forward each counterpart to the supervising attorney and, if applicable, how and when the supervising attorney physically compiled the signed paper counterparts into a single document containing the authorization for final disposition, the signature of the declarant, and the signatures of the remote witnesses.

11. The name, state bar number, and business or residential address of the supervising attorney.

12. Any other information that the supervising attorney considers to be material with respect to the declarant's capacity to sign a valid authorization for final disposition, the declarant's and witnesses' compliance with this section, or any other information that the supervising attorney deems relevant to the execution of the authorization for final disposition.

(L) The affidavit of compliance is attached to the authorization for final disposition.

(m) An affidavit of compliance described in this subsection shall be substantially in the following form:

AFFIDAVIT OF COMPLIANCE

State of

County of

The undersigned, being first duly sworn under oath, states as follows:

This Affidavit of Compliance is executed pursuant to Wis. Stat. § 154.30 (8m) to document the execution of the authorization for final disposition of [name of declarant] via remote appearance by 2-way, real-time audiovisual communication technology on [date].

1. The name and residential address of the declarant is

2. The name and [residential or business] address of remote witness 1 is

3. The name and [residential or business] address of remote witness 2 is

4. The address within the state of Wisconsin where the declarant was physically located at the time the declarant signed the authorization for final disposition is

5. The address within the state of Wisconsin where remote witness 1 was physically located at the time the remote witness witnessed the declarant's execution of the authorization for final disposition is

6. The address within the state of Wisconsin where remote witness 2 was physically located at the time the remote witness witnessed the declarant's execution of the authorization for final disposition is

7. The declarant and remote witnesses were all known to each other and to the supervising attorney. – OR

– The declarant and remote witnesses were not all known to each other and to the supervising attorney. Each produced the following form of photo identification to confirm his or her identity:

....

8. The declarant declared that the declarant is 18 years of age or older, that the document is the declarant's authorization for final disposition, and that the document was executed as the declarant's voluntary act.

9. Each of the remote witnesses and the supervising attorney were able to see the declarant, or an individual 18 years of age or older at the express direction and in the physical presence of the declarant, sign. The declarant appeared to be 18 years of age or older and acting voluntarily.

10. The audiovisual technology used for the signing process was

11. The authorization for final disposition was not signed in counterpart. The following methods were used to forward the authorization for final disposition to each remote witness for signing and to the supervising attorney after signing. – OR – The authorization for final disposition was signed in counterpart. The following methods were used to forward each counterpart to the supervising attorney. [If applicable] – The supervising attorney physically compiled the signed paper counterparts into a single document containing the authorization for final disposition, the signature of the declarant, and the signatures of the remote witnesses on [date] by [e.g., attaching page 7 from each counterpart signed by a remote witness to the back of the authorization for final disposition signed by the declarant].

12. The name, state bar number, and [business or residential] address of the supervising attorney is

13. [Optional] Other information that the supervising attorney considers to be material is as follows:

.... (signature of supervising attorney)

Subscribed and sworn to before me on (date) by (name of supervising attorney).

.... (signature of notarial officer)

Stamp

.... (Title of office)

[My commission expires:]

SECTION 6. 155.10 (3) of the statutes is created to read:

155.10 (3) For purposes of sub. (1) (c), "in the presence of" includes the simultaneous remote appearance by 2-way, real-time audiovisual communication technology if all of the following conditions are satisfied:

(a) The signing is supervised by an attorney in good standing licensed by this state. The supervising attorney may serve as one of the remote witnesses.

(b) The principal attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(c) Each remote witness attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(d) The principal and each of the remote witnesses identify themselves. If the principal and remote witnesses are not personally known to each other and to the supervising attorney, the principal and each of the remote witnesses display photo identification.

(e) The principal identifies anyone else present in the same physical location as the principal and, if possible, the principal makes a visual sweep of the principal's physical surroundings so that the supervising attorney and each remote witness can confirm the presence of any other person.

(f) The principal displays the power of attorney for health care, confirms the total number of pages and the page number of the page on which the principal's signature will be affixed, and declares to the remote witnesses and the supervising attorney all of the following:

1. That the principal is 18 years of age or older.
2. That the document is the principal's power of attorney for health care.
3. That the document is being executed as a voluntary act.

(g) The principal, or an individual 18 years of age or older at the express direction and in the physical presence of the principal, dates and signs the power of attorney for health care in a manner that allows each of the remote witnesses and the supervising attorney to see the execution.

(h) The audiovisual communication technology used allows communication by which a person is able to see, hear, and communicate in an interactive way with another person in real time using electronic means, except that if the principal, a remote witness, or the supervising attorney has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that person to actively participate in the signing in real time.

(i) The power of attorney for health care indicates that it is being executed pursuant to this subsection.

(j) One of the following occurs:

1. The principal, or another person at the direction of the principal, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original power of attorney for health care to the supervising attorney within a reasonable time after execution. The supervising attorney then personally delivers or transmits by U.S. mail or commercial courier service the entire signed original power of attorney for health care to the remote witnesses within a reasonable time. The first remote witness to receive the original power of attorney for health care signs and dates the original power of attorney for health care as a witness and forwards the entire signed original power of attorney for health care by personal delivery or U.S. mail or commercial courier service

within a reasonable time to the 2nd remote witness, who signs and dates it as a witness and forwards the entire signed original power of attorney for health care by personal delivery or U.S. mail or commercial courier service within a reasonable time to the supervising attorney.

2. The principal, or another person at the direction of the principal, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original power of attorney for health care to the supervising attorney within a reasonable time after execution and transmits by facsimile or electronic means a legible copy of the entire signed power of attorney for health care directly to each remote witness within a reasonable time after execution. Each remote witness then signs the transmitted copy of the power of attorney for health care as a witness and personally delivers or transmits by U.S. mail or commercial courier service the entire signed copy of the power of attorney for health care to the supervising attorney within a reasonable time after witnessing. The signed original and signed copies together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving the signed original and signed copies, compiles the signed original and signed copies into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the principal, in which case the compiled document shall constitute the original.

3. The principal and each of the remote witnesses sign identical copies of the original. The principal, or another person at the direction of the principal, and each of the remote witnesses personally deliver or transmit by U.S. mail or commercial courier service the signed originals to the supervising attorney within a reasonable time after execution. All of the signed originals together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving all signed originals, compiles the originals into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the principal, in which case the compiled document shall constitute the original.

(k) The supervising attorney completes an affidavit of compliance that contains the following information:

1. The name and residential address of the principal.
2. The name and residential or business address of each remote witness.
3. The address within this state where the principal was physically located at the time the principal signed the power of attorney for health care.
4. The address within this state where each remote witness was physically located at the time the remote witness witnessed the principal's execution of the power of attorney for health care.
5. A statement that the principal and remote witnesses were all known to each other and the supervising attorney or a description of the form of photo identifica-

tion used to confirm the identity of the principal and each remote witness.

6. Confirmation that the principal declared that the principal is 18 years of age or older, that the document is the principal's power of attorney for health care, and that the document was being executed as the principal's voluntary act.

7. Confirmation that each of the remote witnesses and the supervising attorney were able to see the principal, or an individual 18 years of age or older at the express direction and in the physical presence of the principal, sign, and that the principal appeared to be 18 years of age or older and acting voluntarily.

8. A description of the audiovisual technology used for the signing process.

9. If the power of attorney for health care was not signed in counterpart, a description of the method used to forward the power of attorney for health care to each remote witness for signing and to the supervising attorney after signing.

10. If the power of attorney for health care was signed in counterpart, a description of the method used to forward each counterpart to the supervising attorney and, if applicable, how and when the supervising attorney physically compiled the signed paper counterparts into a single document containing the power of attorney for health care, the signature of the principal, and the signatures of the remote witnesses.

11. The name, state bar number, and business or residential address of the supervising attorney.

12. Any other information that the supervising attorney considers to be material with respect to the principal's capacity to sign a valid power of attorney for health care, the principal's and witnesses' compliance with this section, or any other information that the supervising attorney deems relevant to the execution of the power of attorney for health care.

(L) The affidavit of compliance is attached to the power of attorney for health care.

(m) An affidavit of compliance described in this subsection shall be substantially in the following form:

AFFIDAVIT OF COMPLIANCE

State of

County of

The undersigned, being first duly sworn under oath, states as follows:

This Affidavit of Compliance is executed pursuant to Wis. Stat. § 155.10 (3) to document the execution of the power of attorney for health care of [name of principal] via remote appearance by 2-way, real-time audiovisual communication technology on [date].

1. The name and residential address of the principal is

2. The name and [residential or business] address of remote witness 1 is

3. The name and [residential or business] address of remote witness 2 is

4. The address within the state of Wisconsin where the principal was physically located at the time the principal signed the power of attorney for health care is

5. The address within the state of Wisconsin where remote witness 1 was physically located at the time the remote witness witnessed the principal's execution of the power of attorney for health care is

6. The address within the state of Wisconsin where remote witness 2 was physically located at the time the remote witness witnessed the principal's execution of the power of attorney for health care is

7. The principal and remote witnesses were all known to each other and to the supervising attorney. – OR – The principal and remote witnesses were not all known to each other and to the supervising attorney. Each produced the following form of photo identification to confirm his or her identity:

....

8. The principal declared that the principal is 18 years of age or older, that the document is the principal's power of attorney for health care, and that the document was being executed as the principal's voluntary act.

9. Each of the remote witnesses and the supervising attorney were able to see the principal, or an individual 18 years of age or older at the express direction and in the physical presence of the principal, sign. The principal appeared to be 18 years of age or older and acting voluntarily.

10. The audiovisual technology used for the signing process was

11. The power of attorney for health care was not signed in counterpart. The following methods were used to forward the power of attorney for health care to each remote witness for signing and to the supervising attorney after signing. – OR – The power of attorney for health care was signed in counterpart. The following methods were used to forward each counterpart to the supervising attorney. [If applicable] – The supervising attorney physically compiled the signed paper counterparts into a single document containing the power of attorney for health care, the signature of the principal, and the signatures of the remote witnesses on [date] by [e.g., attaching page 7 from each counterpart signed by a remote witness to the back of the power of attorney for health care signed by the principal].

12. The name, state bar number, and business or residential address of the supervising attorney is

13. [Optional] Other information that the supervising attorney considers to be material is as follows:

.... (signature of supervising attorney)

Subscribed and sworn to before me on (date) by (name of supervising attorney).

.... (signature of notarial officer)

Stamp

.... (Title of office)

[My commission expires:]

SECTION 7. 244.05 of the statutes is repealed and recreated to read:

244.05 Execution of power of attorney. (1) To execute a power of attorney, the principal must sign the power of attorney, or an individual 18 years of age or older at the express direction and in the physical presence of the principal must sign the principal's name on the power of attorney.

(2) A signature of the principal, or the signature of an individual signing on behalf of the principal, on a power of attorney is presumed to be genuine if the principal makes an acknowledgment of the power of attorney before a notarial officer authorized under ch. 140 to take acknowledgments.

(3) A signature of the principal, or the signature of an individual signing on behalf of the principal, on a power of attorney is presumed to be genuine if the signing is witnessed by 2 witnesses via simultaneous remote appearance by 2-way, real-time audiovisual communication technology if all of the following conditions are satisfied:

(a) The signing is supervised by an attorney in good standing licensed by this state. The supervising attorney may serve as one of the remote witnesses.

(b) The principal attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(c) Each remote witness attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(d) The principal and each of the remote witnesses identify themselves. If the principal and remote witnesses are not personally known to each other and to the supervising attorney, the principal and each of the remote witnesses display photo identification.

(e) The principal identifies anyone else present in the same physical location as the principal and, if possible, the principal makes a visual sweep of the principal's physical surroundings so that the supervising attorney and each remote witness can confirm the presence of any other person.

(f) The principal displays the power of attorney, confirms the total number of pages and the page number of the page on which the principal's signature will be affixed, and declares to the remote witnesses and the supervising attorney all of the following:

1. That the principal is 18 years of age or older.
2. That the document is the principal's power of attorney.
3. That the document is being executed as a voluntary act.

(g) The principal, or another individual 18 years of age or older at the express direction and in the physical presence of the principal, signs the power of attorney in

a manner that allows each of the remote witnesses and the supervising attorney to see the execution.

(h) The audiovisual communication technology used allows communication by which a person is able to see, hear, and communicate in an interactive way with another person in real time using electronic means, except that if the principal, a remote witness, or the supervising attorney has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that person to actively participate in the signing in real time.

(i) The power of attorney indicates that it is being executed pursuant to this section.

(j) One of the following occurs:

1. The principal, or another person at the direction of the principal, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original power of attorney to the supervising attorney within a reasonable time after execution. The supervising attorney then personally delivers or transmits by U.S. mail or commercial courier service the entire signed original power of attorney to the remote witnesses within a reasonable time. The first remote witness to receive the original power of attorney signs the original power of attorney as a witness and forwards the entire signed original power of attorney by personal delivery or U.S. mail or commercial courier service within a reasonable time to the 2nd remote witness, who signs it as a witness and forwards the entire signed original power of attorney by personal delivery or U.S. mail or commercial courier service within a reasonable time to the supervising attorney.

2. The principal, or another person at the direction of the principal, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original power of attorney to the supervising attorney within a reasonable time after execution and transmits by facsimile or electronic means a legible copy of the entire signed power of attorney directly to each remote witness within a reasonable time after execution. Each remote witness then signs the transmitted copy of the power of attorney as a witness and personally delivers or transmits by U.S. mail or commercial courier service the entire signed copy of the power of attorney to the supervising attorney within a reasonable time after witnessing. The signed original and signed copies together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving the signed original and signed copies, compiles the signed original and signed copies into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the principal, in which case the compiled document shall constitute the original.

3. The principal and each of the remote witnesses sign identical copies of the original. The principal, or another person at the direction of the principal, and each of the remote witnesses personally deliver or transmit by

U.S. mail or commercial courier service the signed originals to the supervising attorney within a reasonable time after execution. All of the signed originals together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving all signed originals, compiles the originals into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the principal, in which case the compiled document shall constitute the original.

(k) The supervising attorney completes an affidavit of compliance that contains all of the following information:

1. The name and residential address of the principal.
2. The name and residential or business address of each remote witness.
3. The address within this state where the principal was physically located at the time the principal signed the power of attorney.
4. The address within this state where each remote witness was physically located at the time the remote witness witnessed the principal's execution of the power of attorney.
5. A statement that the principal and remote witnesses were all known to each other and the supervising attorney or a description of the form of photo identification used to confirm the identity of the principal and each remote witness.
6. Confirmation that the principal declared that the principal is 18 years of age or older, that the document is the principal's power of attorney, and that the document was being executed as the principal's voluntary act.
7. Confirmation that each of the remote witnesses and the supervising attorney were able to see the principal, or another individual 18 years of age or older at the express direction and in the physical presence of the principal, sign, and that the principal appeared to be 18 years of age or older and acting voluntarily.
8. A description of the audiovisual technology used for the signing process.
9. If the power of attorney was not signed in counterpart, a description of the method used to forward the power of attorney to each remote witness for signing and to the supervising attorney after signing.
10. If the power of attorney was signed in counterpart, a description of the method used to forward each counterpart to the supervising attorney and, if applicable, how and when the supervising attorney physically compiled the signed paper counterparts into a single document containing the power of attorney, the signature of the principal, and the signatures of the remote witnesses.
11. The name, state bar number, and business or residential address of the supervising attorney.
12. Any other information that the supervising attorney considers to be material with respect to the principal's capacity to sign a valid power of attorney, the principal's

and witnesses' compliance with this section, or any other information that the supervising attorney deems relevant to the execution of the power of attorney.

(L) The affidavit of compliance is attached to the power of attorney.

(m) An affidavit of compliance described in this subsection shall be substantially in the following form:

AFFIDAVIT OF COMPLIANCE

State of

County of

The undersigned, being first duly sworn under oath, states as follows:

This Affidavit of Compliance is executed pursuant to Wis. Stat. § 244.05 to document the execution of the power of attorney of [name of principal] via remote appearance by 2-way, real-time audiovisual communication technology on [date].

1. The name and residential address of the principal is
2. The name and [residential or business] address of remote witness 1 is
3. The name and [residential or business] address of remote witness 2 is
4. The address within the state of Wisconsin where the principal was physically located at the time the principal signed the power of attorney is
5. The address within the state of Wisconsin where remote witness 1 was physically located at the time the remote witness witnessed the principal's execution of the power of attorney is
6. The address within the state of Wisconsin where remote witness 2 was physically located at the time the remote witness witnessed the principal's execution of the power of attorney is
7. The principal and remote witnesses were all known to each other and to the supervising attorney. – OR – The principal and remote witnesses were not all known to each other and to the supervising attorney. Each produced the following form of photo identification to confirm his or her identity:

....

8. The principal declared that the principal is 18 years of age or older, that the document is the principal's power of attorney, and that the document was being executed as the principal's voluntary act.
9. Each of the remote witnesses and the supervising attorney were able to see the principal, or another individual 18 years of age or older at the express direction and in the physical presence of the principal, sign. The principal appeared to be 18 years of age or older and acting voluntarily.
10. The audiovisual technology used for the signing process was
11. The power of attorney was not signed in counterpart. The following methods were used to forward the power of attorney to each remote witness for signing and

to the supervising attorney after signing. – OR – The power of attorney was signed in counterpart. The following methods were used to forward each counterpart to the supervising attorney. [If applicable] – The supervising attorney physically compiled the signed paper counterparts into a single document containing the power of attorney, the signature of the principal, and the signatures of the remote witnesses on [date] by [e.g., attaching page 7 from each counterpart signed by a remote witness to the back of the power of attorney signed by the principal].

12. The name, state bar number, and business or residential address of the supervising attorney is

13. [Optional] Other information that the supervising attorney considers to be material is as follows:

.... (signature of supervising attorney)

Subscribed and sworn to before me on (date) by (name of supervising attorney).

.... (signature of notarial officer)

Stamp

.... (Title of office)

[My commission expires:]

SECTION 8. 853.03 (2) (c) of the statutes is created to read:

853.03 (2) (c) For purposes this subsection, “conscious presence” includes the simultaneous remote appearance by 2–way, real–time audiovisual communication technology if all of the following conditions are satisfied:

1. The signing is supervised by an attorney in good standing licensed by this state. The supervising attorney may serve as one of the remote witnesses.

2. The testator attests to being physically located in this state during the 2–way, real–time audiovisual communication.

3. Each remote witness attests to being physically located in this state during the 2–way, real–time audiovisual communication.

4. The testator and each of the remote witnesses identify themselves. If the testator and remote witnesses are not personally known to each other and to the supervising attorney, the testator and each of the remote witnesses display photo identification.

5. The testator identifies anyone else present in the same physical location as the testator and, if possible, the testator makes a visual sweep of the testator’s physical surroundings so that the supervising attorney and each remote witness can confirm the presence of any other person.

6. The testator displays the will, confirms the total number of pages and the page number of the page on which the testator’s signature will be affixed, and declares to the remote witnesses and the supervising attorney all of the following:

- a. That the testator is 18 years of age or older.
- b. That the document is the testator’s will.

c. That the document is being executed as a free and voluntary act.

7. The testator, the testator with the assistance of another person 18 years of age or older with the testator’s consent, or another person 18 years of age or older signing in the testator’s name at the testator’s direction and in the testator’s physical presence, executes the will in a manner that allows each of the remote witnesses and the supervising attorney to see the execution.

8. The audiovisual communication technology used allows communication by which a person is able to see, hear, and communicate in an interactive way with another person in real time using electronic means, except that if the testator, a remote witness, or the supervising attorney has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that person to actively participate in the signing in real time.

9. The will indicates that it is being executed pursuant to this section.

10. One of the following occurs:

a. The testator, or another person at the direction of the testator, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original will to the supervising attorney within a reasonable time after execution. The supervising attorney then personally delivers or transmits by U.S. mail or commercial courier service the entire signed original will to the remote witnesses within a reasonable time. The first remote witness to receive the original will signs the original will as a witness and forwards the entire signed original will by personal delivery or U.S. mail or commercial courier service within a reasonable time to the 2nd remote witness, who signs it as a witness and forwards the entire signed original will by personal delivery or U.S. mail or commercial courier service within a reasonable time to the supervising attorney.

b. The testator, or another person at the direction of the testator, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original will to the supervising attorney within a reasonable time after execution and transmits by facsimile or electronic means a legible copy of the entire signed original will directly to each remote witness within a reasonable time after execution. Each remote witness then signs the transmitted copy of the will as a witness and transmits the entire signed copy of the will by personal delivery or U.S. mail or commercial courier service to the supervising attorney within a reasonable time after witnessing. The signed original and signed copies together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving the signed original and signed copies, compiles the signed original and signed copies into one document by attaching the signature pages of each remote witness to the original signed

by or on behalf of the testator, in which case the compiled document shall constitute the original.

c. The testator and each of the remote witnesses sign identical copies of the original. The testator, or another person at the direction of the testator, and each of the remote witnesses personally deliver or transmit by U.S. mail or commercial courier service the signed originals to the supervising attorney within a reasonable time after execution. All of the signed originals together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving all signed originals, compiles the originals into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the testator, in which case the compiled document shall constitute the original.

11. The supervising attorney completes an affidavit of compliance that contains the following information:

- a. The name and residential address of the testator.
- b. The name and residential or business address of each remote witness.
- c. The address within this state where the testator was physically located at the time the testator signed the will.
- d. The address within this state where each remote witness was physically located at the time the remote witness witnessed the testator's execution of the will.
- e. A statement that the testator and remote witnesses were all known to each other and the supervising attorney or a description of the form of photo identification used to confirm the identity of the testator and each remote witness.
- f. Confirmation that the testator declared that the testator is 18 years of age or older, that the document is the testator's will, and that the document was being executed as the testator's free and voluntary act.
- g. Confirmation that each of the remote witnesses and the supervising attorney were able to see the testator, the testator with the assistance of another person 18 years of age or older with the testator's consent, or another person 18 years of age or older signing in the testator's name at the testator's direction and in the testator's physical presence, sign, and that the testator appeared to be 18 years of age or older and acting freely and voluntarily.
- h. A description of the audiovisual technology used for the signing process.
- i. If the will was not signed in counterpart, a description of the method used to forward the will to each remote witness for signing and to the supervising attorney after signing.
- j. If the will was signed in counterpart, a description of the method used to forward each counterpart to the supervising attorney and, if applicable, how and when the supervising attorney physically compiled the signed paper counterparts into a single document containing the will, the signature of the testator, and the signatures of the remote witnesses.

k. The name, state bar number, and business or residential address of the supervising attorney.

L. Any other information that the supervising attorney considers to be material with respect to the testator's capacity to sign a valid will, the testator's and witnesses' compliance with this section, or any other information that the supervising attorney deems relevant to the execution of the will.

12. The affidavit of compliance is attached to the will.

13. An affidavit of compliance executed in compliance with this section shall constitute a self-proving affidavit executed in compliance with s. 853.04 (2).

14. An affidavit of compliance described in this paragraph shall be substantially in the following form:

AFFIDAVIT OF COMPLIANCE

State of

County of

The undersigned, being first duly sworn under oath, states as follows:

This Affidavit of Compliance is executed pursuant to Wis. Stat. § 853.03 (2) (c) to document the execution of the will of [name of testator] via remote appearance by 2-way, real-time audiovisual communication technology on [date].

1. The name and residential address of the testator is
2. The name and [residential or business] address of remote witness 1 is
3. The name and [residential or business] address of remote witness 2 is
4. The address within the state of Wisconsin where the testator was physically located at the time the testator signed the will is
5. The address within the state of Wisconsin where remote witness 1 was physically located at the time the remote witness witnessed the testator's execution of the will is
6. The address within the state of Wisconsin where remote witness 2 was physically located at the time the remote witness witnessed the testator's execution of the will is

7. The testator and remote witnesses were all known to each other and to the supervising attorney. – OR – The testator and remote witnesses were not all known to each other and to the supervising attorney. Each produced the following form of photo identification to confirm his or her identity:

....

8. The testator declared that the testator is 18 years of age or older, that the document is the testator's will, and that the document was being executed as the testator's free and voluntary act.

9. Each of the remote witnesses and the supervising attorney were able to see the testator, the testator with the assistance of another person 18 years of age or older with

the testator’s consent, or another person 18 years of age or older signing in the testator’s name at the testator’s direction and in the testator’s physical presence, sign. The testator appeared to be 18 years of age or older and acting freely and voluntarily.

10. The audiovisual technology used for the signing process was

11. The will was not signed in counterpart. The following methods were used to forward the will to each remote witness for signing and to the supervising attorney after signing. – OR – The will was signed in counterpart. The following methods were used to forward each counterpart to the supervising attorney. [If applicable] – The supervising attorney physically compiled the signed paper counterparts into a single document containing the

will, the signature of the testator, and the signatures of the remote witnesses on [date] by [e.g., attaching page 7 from each counterpart signed by a remote witness to the back of the will signed by the testator].

12. The name, state bar number, and [business or residential] address of the supervising attorney is

13. [Optional] Other information that the supervising attorney considers to be material is as follows:

.... (signature of supervising attorney)

Subscribed and sworn to before me on (date) by (name of supervising attorney).

.... (signature of notarial officer)

Stamp

.... (Title of office)

[My commission expires:]