



RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT

Testimony on Assembly Bill 985
Assembly Committee on Family Law
February 8, 2024

Chair Rozar and committee members,

Under current Wisconsin law, executing these documents necessitates the "presence" or "conscious presence" of witnesses, a term ambiguously interpreted to imply physical presence. Moreover, while remote notarization is broadly permissible in our state, estate planning documents remain an exception.

This bill seeks to resolve these ambiguities and exceptions by modernizing the process of witnessing and notarizing estate planning documents. It proposes to embrace the advancements in technology by allowing for remote witnessing and notarization, bringing our legal procedures in line with contemporary realities.

The prohibition of remote notarization for estate planning documents was initially set to allow time for developing comprehensive legislation. The time has come for this evolution. This bill, crafted in consultation with the State Bar of Wisconsin, thoughtfully balances the modernization of our processes with stringent procedural safeguards. These safeguards are designed to protect against fraud and undue influence, ensuring that the integrity of estate planning remains uncompromised.

In an era where technology connects us across distances, it is essential that our legal system adapts to accommodate these changes without sacrificing security and trust. This bill is a testament to our commitment to evolving with the times while maintaining the highest standards of legal practice.

I urge you to support this bill, recognizing it as a necessary step towards a more efficient, accessible, and secure legal process in the realm of estate planning. It's a forward-looking measure, aligning our legal procedures with the technological capabilities of our age, and most importantly, serving the best interests of our citizens.

Thank you for considering this critical update to our legal system.



JOAN BALLWEG

STATE SENATOR · 14TH SENATE DISTRICT

**Assembly Bill 985: Electronic and Remote Witnessing and Notarization of
Estate Planning Documents
Assembly Committee on Family Law
Testimony of Senator Joan Ballweg
February 8, 2024**

Thank you, Chair Rozar and members of the committee, for hearing this important legislation to give individuals the ability to use a remote witnessing and notarization process to execute certain estate planning documents and to declare a power of attorney for health care and power of attorney for finances and property.

Under current law, an individual executing certain estate planning documents are required to be in the "presence" or "conscious presence" of the witnesses. However, it is currently unclear whether such terms require the physical presence of the witnesses. Additionally, while Wisconsin law generally allows remote notarization, there is currently an exception for estate planning documents.

The prohibition of using remote notarization for estate planning documents was designed to provide sufficient time to develop coordinated legislation to allow for both remote witnessing and remote notarization of estate planning documents, which is what this bill accomplishes. This bill balances the modernization of the witnessing and notarization requirements for the execution of estate planning documents with robust procedural requirements to protect against fraud and undue influence when an individual wishes to take advantage of audio-video communication technology when executing such documents.

This bill was drafted in consultation with the State Bar of Wisconsin and it has the support of the Wisconsin Land Title Association. The senate companion bill, Senate Bill 898, was voted unanimously out of the Senate Committee on Government Operations earlier this week.

Thank you for your consideration. I am happy to answer any questions.

REAL PROPERTY, PROBATE & TRUST LAW SECTION

Date: February 8, 2024
To: Assembly Committee on Family Law
Re: AB 985– Electronic and Remote Witnessing and Notarization of Estate Planning Documents

The Real Property, Probate and Trust (RPPT) Section of the State Bar of Wisconsin supports AB 985 dealing with electronic and remote witnessing and notarization of estate planning documents. The RPPT Board would like to thank Representative Tusler and Senator Ballweg for sponsoring this important legislation.

While 2019 Wisconsin Act 125 generally allows for notarial acts to be performed remotely, there is currently an exception for estate planning documents. The prohibition of using remote notarization for estate planning documents was designed to provide sufficient time to develop coordinated legislation allowing both remote witnessing and remote notarization of estate planning documents. The purpose of the proposed legislation is to do just that by balancing modernization of the witnessing and notarization requirements for the execution of estate planning documents with robust procedural requirements to protect against fraud and undue influence when an individual wishes to take advantage of audio-video communication technology when executing such documents.

The procedural requirements, designed to ensure the integrity of the execution process when parties are remotely appearing simultaneously via audio-video communication technology, include:

- The person executing the documents and the remote witnesses must attest to being physically located in Wisconsin during the two-way, real-time audio-video communication.
- The remote witnesses and person executing the document must positively identify one another, and a visual sweep must be completed to confirm the presence of other persons.
- Unless personally known to the witnesses, the person executing the document shall display photo identification to the witnesses.
- The witnesses must be able to see the execution of the document, which may be signed in one or more counterparts.
- The audio-video communication technology used shall allow 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. This technology requirement shall not prevent a person with a hearing or sight impairment from executing a document if assistive technology or learned skills can be substituted and the person can actively participate in the signing in real time.
- The document being executed shall contain an acknowledgment that it is being executed pursuant to the new law.
- The execution process is supervised by an attorney in good standing licensed in Wisconsin, and such attorney completes an affidavit of compliance.

RPPT welcomes the opportunity to discuss AB 985 further and would appreciate your support of the legislation. If you have any questions, please contact Cale Battles, Government Relations Coordinator at the State Bar of Wisconsin, at cbattles@wisbar.org or (608) 695-5686.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.



STATE BAR OF WISCONSIN