

# Update - Witnessing of Will and Powers of Attorney by Video

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On April 7th, the Ontario Government issued an Order in Council that allows for the remote signing of wills and powers of attorney while Ontario is under a state of emergency. This change offers an alternative to the traditional requirement for the valid signing of a will or power of attorney where the individual and two witnesses must be physically together when each of them sign. The Order in Council allows that a will or power of attorney can be validly signed if it is done by a form of audio video technology that allows the person making the will and 2 witnesses to be connected electronically and able to see the will or power of attorney being signed. Recording of the process is not specifically required but advisable and we will be recording all such processes wherever possible. For a valid video signing one of the witnesses must be a lawyer or licensed paralegal, effectively making it necessary to have a professional involved in the making of a will and power of attorney. Clients need to work together with professionals like the Estate Lawyers at Blaney McMurtry LLP from the beginning of the will planning process until the final signing to ensure that the most appropriate process is followed, and if a video signing process is chosen, that all of the steps including preparation and swearing of appropriate affidavits of execution are taken.

This development will be useful where it is necessary to have a will or power of attorney signed under circumstances where it is impossible due to quarantine or social distancing or self-isolation requirements to actually have the individual in the presence of two witnesses who otherwise qualify to witness such documents. Even though there may be other people in a residence, they may not be able to act as witnesses. For a will, a witness cannot be a beneficiary or the spouse of a beneficiary. For a power of attorney a witness cannot be the named attorney, the spouse or partner of the attorney or a child of the maker of the power of attorney.

The change in the rules for witnessing will allow for documents to be signed which otherwise might have been impossible to execute validly, but it is important to recognize the specific details that must be observed to ensure that this process is carried out validly. This material sets out basic steps that will be necessary but should in no way be taken as a complete outline of the process that will be necessary.

Most importantly, to be validly signed, the original will and power of attorney must eventually carry three signatures, that of the testator or maker of the will or power of attorney, and the signature of each of the witnesses. Electronic copies of the signatures will not be satisfactory. This will mean that once a will or power of attorney has been signed by the testator in the course of a video call, the original documents themselves must be sent to one witness, who must then sign, again on a video call with the other witness and the testator, and then the documents must again be sent to the second witness who signs in the same way on a third video call. It is clear that a video signing must be carefully thought through in order to be certain that the documents can be properly signed so that they cannot be challenged later.

Since access to a form of video conferencing is necessary to allow for remote signing, the person signing a will or power of attorney must have access to a computer or phone with camera capabilities and the ability to have the original signed documents sent to the witnesses. This may be an issue for some elderly people who are confined to a long term care or hospital facility but hopefully staff in such facilities would assist in providing hardware and assistance in obtaining couriers for delivery of documents. It can also be time consuming in moving documents physically to the witnesses. Because of this, there is a good reason to explore other more immediate options of having witnesses physically available, subject to the current social distancing rules of two metres of separation, in order to ensure that the document is signed on a more immediate basis. However, where actual physical presence is not possible, the video option will allow valid signing of documents.

We can assist by establishing and recording video calls among clients and one of our lawyers and a second witness and arranging for courier pickup and delivery, provided that the client has access to audio video equipment through a computer or cell phone with camera facilities.

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