

## Ontario Now Allowing Will and Powers of Attorney to be Witnessed Remotely

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Amid the uncertainty around COVID-19, many of our clients and business partners are updating or drafting new Wills and Powers of Attorney.

However, in Ontario, Wills and Powers of Attorney must be signed in the presence of two witnesses. Social distancing has added an element of difficulty to this process.

Fortunately, the Ontario Government has issued an [Order](#) that amends this requirement while Ontario is still in a declared state of emergency.

### THE ORDER

On or after April 7, 2020 and until Ontario is no longer under a declared state of emergency, a Will or a Power of Attorney will be valid if:

1. it is physically signed by the testator or grantor. Electronic signatures are not allowed;
2. it is witnessed by two individuals by any electronic method of communication in which the participants can see, hear and communicate with each other in real time;
3. at least one of the two witnesses is a lawyer or paralegal who is currently licensed by the Law Society of Ontario (the “**LSO Witness**”); and
4. the witnesses each sign an original duplicate of the document signed by the testator or grantor (which is called signing in counterpart).

All other legal formalities for signing a Will or a Power of Attorney must be satisfied.

## THE PROCESS

Originally, the Order did not allow for the Will or Power of Attorney to be signed in counterpart. This meant that the document being signed would have needed to be transferred from the testator or grantor to both witnesses.

Fortunately, the Ontario Government has now amended the Order to allow for signing in counterpart.

As a result, this is a summary of the process to sign these documents under this new framework:

1. The testator/grantor and both witnesses print original duplicates of the Will or Power of Attorney;
2. The testator/grantor, the LSO Witness and the other witness (the “**Non-LSO Witness**”) start a video conference, where each must be able to see, hear and communicate with each other in real time;
3. The testator/grantor and the witnesses should review each page of the document and confirm that each person’s document is an exact duplicate;
4. While both the LSO Witness and the Non-LSO Witness watch, the testator/grantor must initial each page of the document and then sign the document where applicable. Each time the testator/grantor initials or signs a page, he or she must show the initial and signature to the camera so both witnesses can see the initial or signature on the page;
5. Then, while both the LSO Witness and the testator/grantor watch, the Non-LSO Witness must initial each page of the document and then sign the document where applicable. Each time the Non-LSO Witness initials or signs a page, he or she must show the initial and signature to the camera so the LSO Witness and the testator/grantor can see the initial or signature on the page;
6. Then, while both the Non-LSO Witness and the testator/grantor watch, the LSO Witness must initial each page of the document and then sign the document where applicable. Each time the LSO Witness initials or signs a page, he or she must show the initial and signature to the camera so the Non-LSO Witness and the testator/grantor can see the initial or signature on the page;
7. The LSO Witness and the Non-LSO Witness will need to also sign an Affidavit of Execution, which will be attached to the original Will or Power of Attorney, and will confirm that he or she witnessed the signing of the Will in the presence of the testator/grantor by video conference. Usually an Affidavit of Execution is only required for witnessing of a Will signing. Because of the nature of virtual witnessing, we recommend the same be completed for witnessing the signing of Powers of Attorney.

Because there is less room for error and uncertainty when a person signs a Will or a Power of Attorney in-person, it should always be considered first.

However, if it is not safe to witness the signing of a Will or Power of Attorney in-person, this new process is the best way to ensure your estate planning and intentions are correctly and legally documented.

For further details about updating your, or drafting new, Wills or Powers of Attorney, please contact Alexander Levy at 416-860-8016 or [alevy@houserhenry.com](mailto:alevy@houserhenry.com).

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