

Some Manitoba lawyers have asked about alternatives to the formal requirements for execution that are set out in *The Wills Act*. The Law Society can't advise you not to comply with the legislative requirements. However, Manitoba lawyers should look at the curative provisions in s. 23 of the Wills Act and also consider the option of remote witnessing.

I Wills Act – Curative Provision

Dispensation power

s. 23

Where, upon application, if the court is satisfied that a document or any writing on a document embodies

- (a) the testamentary intentions of a deceased; or
- (b) the intention of a deceased to revoke, alter or revive a will of the deceased or the testamentary intentions of the deceased embodied in a document other than a will;

the court may, notwithstanding that the document or writing was not executed in compliance with any or all of the formal requirements imposed by this Act, order that the document or writing, as the case may be, be fully effective as though it had been executed in compliance with all the formal requirements imposed by this Act as the will of the deceased or as the revocation, alteration or revival of the will of the deceased or of the testamentary intention embodied in that other document, as the case may be.

S.M. 1995, c. 12, s. 2.

Execution without witnesses:

For existing clients where you have previously met them and had an opportunity to do some assessment of their capacity, here are some options:

Mail, email or deliver a will prepared on the client's instructions.

Tell the client to initial all the pages of the will (as required under *The Court of Queen's Bench Surrogate Practices Act*), write in the date and initial that date and sign the will without witnesses.

You can then make arrangements to formally execute the will in the traditional manner once things return to normal.

And consider adding a clause that says something like "this will was executed by me during the COVID 19 pandemic. I have signed this will intending it to be My Last Will and Testament and to be admitted to probate and this represents my fixed and final intent with respect to my testamentary matters".

Ask the testator to email or write you and confirm that the will has been executed in the absence of witnesses and represents their testamentary intention.

For simple or short wills or codicils, have the client copy the will or codicil in their own handwriting and sign it as a holograph will or codicil.

Keep in mind that there may be additional challenges should someone contest the will on the basis of capacity or undue influence. As always, it is important to ensure that files are well-documented.

Lawyers should always attempt to comply with legislative requirements failing which they should use best efforts to see to it that a court may ultimately be able to determine the true wishes of a testator.

II Remote Witnessing

When you cannot meet with a client and personally supervise compliance with the formal execution requirements, you should consider the option of remote witnessing. On May 13, 2020 an [Order](#) was made by the government under *The Emergency Measures Act* and it deals with remote witnessing in the context of various statutory requirements including *The Wills Act*.

Tell the client about the usual statutory requirements for executing the Will.

Explain that an Order came into effect on May 13, 2020 as an emergency measure during this period of COVID-19 and that it suspends the formal requirement that

wills be executed in the presence of witnesses. The Order sets out how a lawyer may witness wills remotely whether by glass or plexiglass or by videoconference. The Order will remain in effect until October 1, 2020.

If the client wants to proceed, you must follow the specific steps set out in the Order. Read the Order carefully. To assist you, the Law Society has prepared a [checklist for remote witnessing of wills](#), based on the contents of the Order's schedule.

Powers of Attorney

While it is in effect, the referenced emergency Order also suspends the formal witnessing requirements set out in *The Powers of Attorney Act*. The Order outlines specific steps that must be taken when a lawyer uses remote witnessing whether by glass or plexiglass or by videoconference. Review the Order to familiarize yourself with the requirements. The Law Society has created a [Powers of Attorney checklist](#) to provide some assistance.

Health Care Directives

Manitoba Health Care directives do not have to be witnessed when the donor is the one signing the health care directive. However, where the donor asks another person to sign the directive on the donor's behalf, there are formal witnessing requirements set out in *The Health Care Directives Act*. The referenced emergency Order suspends those witnessing requirements and allows for remote witnessing but only if the specific steps outlined in the Order are taken. It is important to review the Order. To assist you, the Law Society has created a [Health Care Directives checklist](#).