

# Revised Rules for Remote Signing of Wills

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Effective April 22<sup>nd</sup> and for the balance of the time that Ontario is under a State of Emergency, the rules relating to the remote signing of wills and powers of attorney have been revised. It is now possible for the testator to sign in the presence of two witnesses by way of an audio visual link but all three can sign identical copies of the will or power of attorney. The complete document will then be the documents signed by the testator him or herself and the separate documents signed by the witnesses, referred to as counterparts. If the two witnesses are together, then one additional counterpart will or power of attorney is necessary. If the witnesses are in two places, then they each sign a separate document or counterpart. One of the witnesses must still be a lawyer or licensed paralegal.

The change does not eliminate the need for actual original signatures, (sometimes called “wet” signatures) so some of the actual electronic remote signature approaches available for other transactions are not available. However the ability to use counterpart documents at least removes the need for the movement of the signed will from the testator to the witnesses and the timing issues associated with one or two courier deliveries. Also only one audio visual conference has to be arranged. It is still necessary to get the counterparts back together with the original drafting lawyer who then has to prepare an affidavit of execution to be sworn by one witness, and a separate affidavit to be sworn by the lawyer/paralegal witness setting out the way that the remote signing was carried out.

Because of the remaining need for the transporting of original signed will documents and the need for reliable audio visual equipment to carry out the signing, actual meetings of the client and the witnesses, observing proper social distancing requirements, still remains the preferred way of signing wills, even in the COVID-19 environment. However the amendment by the government of the Order in Council, at the urging of the Ontario Bar Association, does simplify the process and will make it more accessible.

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