

The Powers of Attorney (Remote Witnessing) Amendment Regulations, 2020

Q&A

Q. What does *The Powers of Attorney Act, 2002* do?

A. *The Powers of Attorney Act, 2002* provides for the use of enduring or contingent powers of personal and property attorneys. These are powers of attorney that continue or commence when the grantor has lost capacity. The advantage of appointing an attorney is that it allows an individual to choose the person who will look after personal and financial affairs when he or she has lost capacity to do so. The Act establishes the powers and duties of personal and property attorneys, and additional duties are placed upon property attorneys by *The Trustee Act, 2009*, as trustee is defined to include a property attorney.

Q. What is the purpose of the Act?

A. The Act permits an individual to appoint an attorney to act in the individual's place when he or she has lost the capacity to do so.

Q. Who can grant an enduring power of attorney?

A. An adult who has the capacity to understand the nature and effect of the enduring power of attorney may grant an enduring power of attorney.

Q. What are the requirements of a valid enduring power of attorney?

A. An enduring power of attorney must be in writing and dated and signed by the grantor. The enduring power of attorney must then be witnessed by a lawyer or by two adult witnesses.

Q. What will these Regulations do?

A. The Regulations will allow a lawyer to witness a power of attorney remotely using audio-visual technology where the required conditions are met.

Q. Why is this required?

A. The Regulations allow the remote witnessing provisions created during the public emergency period to continue to apply outside an emergency period.

Q. Why do the Regulations only apply to powers of attorney witnessed by a lawyer?

A. The Regulations apply where the power of attorney is witnessed by a lawyer, as defined in *The Legislation Act*, to attempt to minimize some of the risks associated with video witnessing. There are concerns with respect to remote witnessing including the increased possibility of fraud, undue influence and duress, whether the individual has the capacity to sign the document and whether the individual had the ability to ask questions. Lawyers are required to be members of the Law Society of Saskatchewan or authorized to practice in accordance with clause 10(i) of *The Legal Profession Act, 1990*, and comply with the requirements set by the Society.