

PRACTICE DIRECTIVES

Practice Directive Number 1 – Remote Execution of Certain Documents via Electronic Means

(Enacted March 25, 2020)
(Amended August 7, 2020)
(Amended effective July 1, 2022)
(Amended effective February 16, 2023)

Law Society of Saskatchewan Practice Directive

Number 1

Remote Execution of Certain Documents Via Electronic Means

WHEREAS the Government of Saskatchewan has amended *The Health Care Directives and Substitute Health Care Decision Makers Act, 2015*, *The Powers of Attorney Act, 2002*, *The Electronic Information and Documents Act, 2000* and *The Land Titles Regulations, 2001* to modify the requirements of how the execution of certain documents may be witnessed by lawyers to allow for the witnessing of signatures via electronic means;

AND WHEREAS ‘electronic means’ is defined in the relevant legislation as follows:

The Health Care Directives and Substitute Health Care Decision Makers Act, 2015:

‘**electronic means**’ means an electronic means of communication that includes visual aspects by which a lawyer and the person making the directive are able to adequately communicate with each other at all times during the course of their meeting.

The Powers of Attorney Act, 2002:

‘**electronic means**’ means an electronic means of communication that includes visual aspects by which a lawyer and the grantor of an enduring power of attorney are able to adequately communicate with each other at all times during the course of their meeting.

The Electronic Information and Documents Act, 2000

‘**electronic means**’ means an electronic means of communication that includes visual aspects by which a lawyer and the person providing the document are able to adequately communicate with each other at all times during the course of their meeting.

The Land Titles Regulations, 2001

“**electronic means**” means a real-time electronic means of communication that includes video and any other aspects by which a lawyer and the person signing the application are able to effectively communicate with each other at all times during the course of their meeting.

AND WHEREAS the Law Society of Saskatchewan is entitled to impose additional regulatory requirements in relation to the manner in which lawyers avail themselves of these remote witnessing provisions;

AND WHEREAS the Law Society of Saskatchewan is authorized to issue directives;

THE LAW SOCIETY OF SASKATCHEWAN HEREBY DIRECTS that lawyers who avail themselves of these remote witnessing provisions shall:

- require that any signator(s) display photo identification, and ensure that they obtain a screen capture (or alternatively a photo of their screen) showing the face of the signator(s) alongside their photo identification;

- manage risks associated with fraud, identity theft, undue influence, duress and potential lack of capacity by:

- o Considering whether there are red flags of fraud in the matter;

- o Assessing whether there is a risk that the client may be subject to undue influence or duress, including observing who else is physically in the room with the client during the execution of documents. If there is such a risk, consider if you are able to assist the client at this time without meeting in person;

- o Confirming your client's understanding about the documents they are executing and provide adequate opportunity for them to ask questions during the meeting carried out by electronic means.

- o Being alert to the fact that persons may attempt to use the execution of documents by electronic means and the related remote witnessing provisions as an opportunity to commit fraud or other illegal acts.

- amend any jurats as required to include the words "via electronic means" or other appropriate details to ensure that users of the signed document are fully aware of the manner in which the document was signed.

- prepare a written record, in Form PD1 prescribed by the Law Society of Saskatchewan to be retained by the Lawyer, detailing how the above noted risks associated with the execution of documents by electronic means were addressed.

Lawyers continue to be required to adhere to all Law Society of Saskatchewan Rules governing client identification and verification.

The Land Titles Regulations, 2001 pertaining to remote witnessing do not apply to lawyers from outside of Saskatchewan who are not members of the Law Society of Saskatchewan.