



# The Law Society of Manitoba

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There are 6 regulations that allow remote witnessing of certain documents. Although the steps are similar in each, you should review the appropriate regulation before you begin. Check off requirements under each step as you proceed.

## Before you start:

- Provide the documents to your client in advance. If you are emailing the document for the client to print, specify that they be printed single-sided and not double-sided.
- Let your client know they will need to have their identifying documents available.

## **Checklist For Remote Witnessing**

File No.: \_\_\_\_\_

Client Name: \_\_\_\_\_

Document to be witnessed: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Date: \_\_\_\_\_

Time of meeting:                      Start time: \_\_\_\_\_                      End time: \_\_\_\_\_

## **Step 1 - Video Conference**

Video conference platform: \_\_\_\_\_

Client's Device: \_\_\_\_\_

Witness's device: \_\_\_\_\_

Client can be heard and seen: \_\_\_\_\_

Audio and Visual Feeds were stable (if not, explain):                      Yes: \_\_\_\_\_ No: \_\_\_\_\_

Names of everyone at remote location (including the person operating the client's device):

\_\_\_\_\_  
\_\_\_\_\_

Names of people with the witness (if any). *For remote witnessing of wills there must be two witnesses, one of whom is a practising Manitoba lawyer. For Power of Attorney and Real Property Act instruments, witness must be a practising Manitoba lawyer\*.*

\_\_\_\_\_

*\*see The Real Property Act Regulation 83/2021 (exception for mortgages witnessed by Financial Institution staff)*

**Step 2 - Proof of Identity**

(\*required unless client has previously provided proof of identity)

Client provides:

- a) one piece of current government-issued photo ID: \_\_\_\_\_  
 ID produced: \_\_\_\_\_ (e.g. driver's licence, passport)  
**Screenshot or record details** \_\_\_\_\_

**or**

b) two of the following:

- i) information from a reliable source with client name and address  
 Info produced: \_\_\_\_\_  
 (e.g. municipal tax statement, utility bill)  
**Screenshot or record details** \_\_\_\_\_
- ii) information from a reliable source with name and birth date:  
 Info produced: \_\_\_\_\_  
 (e.g. birth certificate, health card)  
**Screenshot or record details** \_\_\_\_\_
- iii) information that contains the client's name and confirms they have a deposit account or credit card or other loan account with a financial institution:  
 Info produced: \_\_\_\_\_  
 (e.g. credit card statement, bank statement, mortgage statement. Credit card or debit card is not enough)  
**Screenshot or record details** \_\_\_\_\_

*We recommend you take a screenshot where indicated so you can confirm proof of identity, Client holds up each piece of ID to the camera so a **screenshot** can be taken and saved to the file. You could also take a photo of the screen, use recording features in the video conferencing platform or write down detailed information from the document proving identity.*

**Step 3 - Confirm Understanding and Consent**

Witness is satisfied that:

- a) the client understands the nature, content and significance (capacity):  
 Yes: \_\_\_\_\_ No: \_\_\_\_\_
- b) the client is exercising their free will (no undue influence):  
 Yes: \_\_\_\_\_ No: \_\_\_\_\_

*You should always be satisfied that the client has capacity and is not unduly influenced, but remotely witnessed documents may be especially vulnerable to challenges on these points.*

#### **Step 4 - Obtain Copy and View Original**

Before the signing starts, witness must:

- a) have a physical or electronic copy of the document at hand: \_\_\_\_\_
- and**
- b) see each page of the document in the possession of the client. \_\_\_\_\_  
*(the client holds each of the pages up to the camera so witness can see it clearly)*

#### **Step 5 - Observe Signature**

Witness must see the document signed. \_\_\_\_\_  
*(This may require shifting the camera or the client's position)*

*For a **will**, two witnesses are required, one of whom is a practising lawyer, and the witnesses must be together in the same room while they observe the signing).*

*For an **oath, affidavit or statutory declaration**, witness must also hear the deponent/declarant swear or affirm. See Evidence Act CCSM E150 and Reg 78/2021.*

*For those rare circumstances where someone else (**a proxy**) signs for the client, consult the relevant regulations for additional steps).*

#### **Step 6 - Verify Signature**

Witness must see and verify the signature right after it is signed. Client must hold signature up to the camera. \_\_\_\_\_

**Screenshot required** \_\_\_\_\_

#### **Step 7 - Receive and Verify Original Paper Copy**

When the original/inked/wet document arrives back at the lawyer's office, witness must:

- a) Compare and confirm the returned inked original document is the same as the copy the witness has in their possession. \_\_\_\_\_
- b) Confirm the returned inked original document is the same document the witness saw in the client's possession at the video conference. \_\_\_\_\_
- c) Confirm the signature matches the signature the witness observed. \_\_\_\_\_  
*This is where the screen shot of the signature will be useful.*

**Step 8 - Sign Original**

- a) Witness must sign and date the returned inked original document. \_\_\_\_\_  
*(If the document is a will, the lawyer and the other witness who saw the signing must be together in the same room while they both sign as witnesses)*
  
- b) Witness must complete a written statement as to how identity was confirmed.  
\_\_\_\_\_  
*Consult saved screenshots to refresh your memory*

**Step 9 - Jurat and Certificates**

Witness must complete the appropriate jurat or certificate as included in the regulations:

\_\_\_\_\_

For *The Real Property Act* instruments, *The Homestead Act* documents, you must complete Form 32. If **any** document is to be presented for registration in Land Titles, it must be accompanied by a certificate in prescribed form, (Form 32) signed by the witness.

## **Remote Execution of Specific Documents**

### ***The Powers of Attorney Act***

### **[Remote Witnessing Regulation 80/2021](#)**

Things to know:

- Only enduring Powers of Attorney can be witnessed remotely.
- The witness must be a lawyer who is a member in good standing of the Law Society of Manitoba.
- Can be signed by Proxy (see regulations).
- Certificate of Remote Witness must be completed.

### **Certificate of Remote Witness**

[Power of Attorney signed by donor]

I, of the \_\_\_\_\_ of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_  
 \_\_\_\_\_ certify the following:

1. I am a member in good standing of the Law Society of Manitoba.
2. I was asked by \_\_\_\_\_ (the "donor") to witness the attached enduring power of attorney.
3. The donor proved their identity to me by means of \_\_\_\_\_.
4. On \_\_\_\_\_, I witnessed the donor sign the attached power of attorney by videoconferencing.
5. I am not the person to whom the power of attorney is granted (the "attorney") or the attorney's spouse or common-law partner.
6. I believe that the donor understood the nature and effect of the power of attorney and voluntarily signed it while being apart from the attorney.

## **Remote Execution of Specific Documents**

### ***The Wills Act CCSM c.W150***

### **[Remote Witnessing Regulation 81/2021](#)**

Things to know:

- One witness must be a lawyer who is a member in good standing of the Law Society of Manitoba.
- Both witnesses must be together in the same room while they observe the signing and again while they sign the returned inked original will.
- Wills executed remotely cannot be signed in counterparts. This is not the case in other provinces, so consult the Manitoba regulation.
- If the execution of a will is witnessed by videoconference, the lawyer acting as a witness must state that fact in the witness statement in the will.

### **Witness Statement**

SIGNED, PUBLISHED AND DECLARED by the above named Testator, as and for their Last Will and Testament, by videoconference on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_. At that time and date we were able to see and hear the Testator subscribe their name and we were able to see and hear each other as they did so. The Testator proved their identity by means of \_\_\_\_\_. Having received the original signed Last Will and Testament and believing it to be the document we saw the Testator sign, and now in each other's presence this \_\_\_\_ day of \_\_\_\_\_, at the \_\_\_\_\_ of \_\_\_\_\_, in the Province of Manitoba, we now subscribe our names as witnesses.

## **Remote Execution of Specific Documents**

### ***The Manitoba Evidence Act C.C.S.M. E150*** **[Remote Witnessing Regulation 78/2021](#)**

Things to know:

- Applies to remote witnessing of an oath, affirmation or statutory declaration.
- Witness can be a commissioner for oaths, a lawyer or a notary public or one of a list of other officials (see regulation).

The Witness must hear the deponent/declarant make the oath /affirmation as required by *The Evidence Act*.

If affirmed: I/you, A.B., do solemnly and sincerely affirm that the contents of this affidavit made and subscribed by me/you are true.

If sworn: I/you, A.B., swear that the contents of this affidavit made and subscribed by me/you are true. So help me/you God (witness should have a hand on an Old or New Testament).

### **Jurat**

Sworn (affirmed or declared) before me by videoconference on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at which time I saw and heard the deponent (declarant) swear (affirm or declare) this document and sign it. The deponent (declarant) proved their identity by means of \_\_\_\_\_.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, having received this originally executed document, I signed it. A Commissioner for Oaths, Notary Public, etc.

## **Remote Execution of Specific Documents**

### ***The Health Care Directives Act C.C.S.M. cH27***

#### **[Remote Witnessing Regulation 82/2021](#)**

Things to know:

- Health Care Directives do not need to be witnessed but this regulation applies to those rare circumstances where the Health Care Directive is signed by a proxy.

## **Remote Execution of Specific Documents**

### ***The Real Property Act C.C.S.M. c. R30***

#### **[Remote Witnessing Regulation 83/2021](#)**

Things to know:

- Only a lawyer who is a member in good standing of the Law Society of Manitoba can witness the execution of an instrument under The Real Property Act (there are exceptions for mortgages which can be witnessed remotely by an employee or officer of the financial institution).
- The witness or a person acting under the direction of the witness must send the instrument to the client in advance. Make note of this – you will need it for the certificate.
- If the instrument is a LTO document that generates separate signature pages (e.g. eTransfer, eMortgage or eDischarge), you must see and verify the control image and 32-digit control number generated by the electronic form (or any other security features in the approved form), and verify that they match the instrument you sent to the client. You should also see the control image while the instrument is being signed.
- If the instrument (or any other document) is to be going to be registered, you will need to complete and submit a certificate in the approved form (Form 32), signed by the witness.

See sample remote witness Form 32 Video-Witnessing Certificate  
<https://teranetmanitoba.ca/wp-content/uploads/2021/10/sample-video-witness-letters-en-RG-Approved.pdf>

## **Remote Execution of Specific Documents**

### ***The Homesteads Act C.C.S.M. c. H80***

### **[Remote Witnessing Regulation 79/2021](#)**

Things to know:

- Homesteads Act consent documents can be witnessed remotely by a practising Manitoba lawyer or by commissioner for oaths supervised by a practising Manitoba lawyer

### **Jurat**

Signed (sworn, affirmed or declared) before me by videoconference on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at which time I watched the person (deponent, declarant) sign (swear, affirm or declare) this document. The person (deponent, declarant) proved their identity by means of \_\_\_\_\_. On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, having received this originally executed document, I signed it as witness. A Commissioner for Oaths, Notary Public.

If a Homesteads Act document is going to be registered, it must be accompanied by a certificate in prescribed form (Form 32), signed by the witness. See sample remote witness Form 32 Video - Witnessing Certificate <https://teranetmanitoba.ca/wp-content/uploads/2021/10/sample-video-witness-letters-en-RG-Approved.pdf>