The Wills Regulations

Q&A

Q. What does *The Wills Act, 1996* do?

A. *The Wills Act, 1996* sets out the rules that must be followed to make a will. In order for a will to be valid, the person making the will must be over 18. The will must be in writing and signed by the person making the will or by someone else on the testator's behalf at the testator's request. The signature of the testator must be witnessed by two people who also sign the will. There is an exception for holograph wills entirely in the handwriting of the testator, for which witnesses are not necessary.

Q. What is the purpose of the Act?

A. The Act permits an individual to determine how his or her estate will be distributed at the time of the testator' death.

Q. Who can create a will?

A. A person who is 18 or over and has the capacity to understand the effect of the nature and effect of the will. There are some exceptions for persons under 18 who are married or members of the armed service.

Q. What are the requirements of a valid will?

A. A will must be in writing and signed by the person making the will or by someone else on the testator's behalf at the testator's request. The signature of the testator must be witnessed by two people who also sign the will. There is an exception for holograph wills entirely in the handwriting of the testator, for which witnesses are not necessary.

Q. What will these Regulations do?

A. Where one of the two witnesses to the will is a lawyer, the Regulations will allow the will to be witnessed 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. Does this create an electronic will?

A. No. Wills are excluded from the operation of *The Electronic Information and Documents Act,* and must be in writing and signed by the testator and both witnesses in "wet ink". Pursuant to section 7 of the Act, the will must include the signature of the testator and also the signature of at least two witnesses.

Q. Can the testator's signature or either witness' signature be an electronic signature?

A. No. All of the signatures on a will must be "wet signatures". All aspects of wills, including the signing of wills are excluded from the operation of *The Electronic Information and Documents Act.* An image of a handwritten signature, for example by fax or scan, is an electronic signature and does not apply to a will.

Q. Can the testator or a witness acknowledge his or her signature after it is made?

A. The Act provides that the testator, or a witness, may acknowledge his or her signature after it is made. For example, a lawyer may either email the testator the will which they print out or provide a paper copy which the testator signs. The testator then returns the paper copy to the lawyer who remotely contacts the testator. The testator may acknowledge his or her signature via video before the lawyer and a second witness, following which the two witnesses may attest and sign the original will.

Q. Are there any other options for individuals who cannot access a lawyer through electronic communication?

A. The Act allows for holograph wills entirely in the handwriting of the testator, for which witnesses are not necessary. Individuals may choose to create their own will entirely in their handwriting if they do not have access to remote witnessing technology. The Law Society has also issued a practice directive that sets out how "curbside witnessing" can occur where an electronic means of communication is not an option.

Q. Why do the Regulations only apply to wills where one of the witnesses is a lawyer?

A. The Regulations apply where one of the two required witnesses is 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.