

## Practice Directive Number 3 – Remote Execution of Wills via Electronic Means

(Enacted April 16, 2020)

(Amended August 7, 2020)

(Amended effective July 1, 2022)

### Law Society of Saskatchewan Practice Directive

#### Number 3

### Remote Execution of Wills Via Electronic Means

WHEREAS the Government of Saskatchewan has amended *The Wills Act, 1996* in a manner that modifies the requirements of how the execution of wills may be witnessed by lawyers to allow for the witnessing of signatures via electronic means;

AND WHEREAS in *The Wills Act, 1996*, ‘**electronic means**’ means an electronic means of communication that includes visual aspects by which a lawyer and the testator of a will and the witnesses are able to adequately 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:

- upon receipt of a signed but unwitnessed, or partially witnessed, non-holograph will from a testator, a lawyer must, before signing as a witness, complete a line by line comparison of that document against the document that the lawyer created and sent to the client to ensure that no unauthorized alterations have been made while the document has been in transit;
- where the lawyer did not draft the will and is acting as a witness only, and therefore has no document to compare the partially signed will against, the lawyer shall, before signing as a witness, communicate verbally, or through other means, the entire contents of the will to the testator during the meeting via electronic means to confirm the intentions of the testator;
- where the testator has made handwritten amendments or interlineations on the face of the will, the amendments/interlineations must be confirmed by the lawyer, word for word, with the testator during the meeting via electronic means;
- require that the testator and any witnesses to the will display photo identification, and ensure that they obtain a screen capture (or alternatively a photo of their screen) showing the face of the testator and any witnesses of the will 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 testator may be subject to undue influence or duress, including observing who else is physically in the room with the testator during the execution of the will. If there is such a risk, consider if you are able to assist the testator at this time without meeting in person;

- o Confirming the testator's understanding about the will they are executing and provide adequate opportunity for them to ask questions during the meeting carried out by electronic means; and
  - o Being alert to the fact that persons may attempt to use the execution of documents by electronic means 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 PD3 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 and detailing that the contents of the will were verified through line by line comparison or, where necessary, through recitation.

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