



Remote Signing Protocol

Requirements

1. Video Conferencing Capability¹

Lawyer will need to utilize a video conferencing capability (“VC”) that is easily accessible by their clients.

In light of the fact that some clients may not have video cameras on their computers the VC should be useable by the client on their cell phone (which will in all likelihood have a camera).

LDD has a recommended VC for lawyers who do not otherwise have a VC they are familiar with and would prefer to use. Please ensure that the video and sound quality of your VC are good and all of the parties can use it.

2. Document Scanning and Transmission

Clients will need to have access to a reliable document scanning capability in order to upload documents (via mobile phone) and transmit them to the lawyer. Lawyers should also ensure that documents can be couriered to clients if necessary.

Adobe Scan can be downloaded by the client to their mobile phone in order facilitate the scanning of documents and may be downloaded through the [Apple App Store](#) for IOS devices or the [Google Play Store](#) for Android devices. Documents scanned through Adobe Scan will be saved by Adobe as customer data². Please note that LDD makes no representation or warranty as to Adobe's assurance of data storage or retention. Lawyers should consider recommending that the client delete all copies of the scanned documentation after the lawyer confirms they have a copy.

3. Virtual Commissioning

The closing protocol discussed in this document relies on the statement of the Court of Queen’s Bench issued on March 25, 2020 in relation to commissioning affidavits by videoconference, in addition to the April 3, 2020 announcement of the Law Society of Alberta, “Guidance for Video Conference Witnessing and Commissioning of Documents Submitted to Land Titles for Registration,” which form part of the attached **Schedule A**.

¹ This video service is owned and operated by an independent, third-party service provider (the “Service”) and is provided “As Is”. LDD disclaims all warranties of any kind, express or implied, and makes no representations whatsoever as to your use of the Service. You are solely responsible for your and each end user’s use of the Service and shall abide by and ensure compliance with all laws in connection with your and each end user’s use of the Service including, but not limited to, laws related to recording (if and when available), intellectual property, privacy and export control.

² **Adobe: Where does customer data reside?**

Customer data is stored in Amazon S3 and Adobe designates which physical region individual customers’ data and servers will be located. Data replication for Amazon S3 data objects is done within the regional cluster where the data is stored and is not replicated to data center clusters in other regions. Adobe operates Creative Cloud out of three regions: United States, EU, and Asia Pacific. Example: By default, all data from Creative Cloud customers in the EU will have their cloud data stored in the AWS data center in the EU and that data will not be transferred to data centers outside the EU.



4. Electronic Signatures

The process described in item 5 below contemplates clients affixing wet signatures to paper documents. This process may evolve to the use of electronic signatures once this type of functionality can be factored into the procedure below.

5. Virtual Closing Procedure

Establish time for video conference with client at least 48 hours before closing to allow for time to courier documents if necessary.

Client to provide scanned copies of identification before scheduled video conference for lawyer's review.

Send electronic copies of documents to be reviewed with and/or signed by client in advance of the video conferencing meeting.

Lawyer meeting with client is required to have printed copies of affidavits and statutory declarations.

LDD will allow subscribers to post closing documents to client portal and client will click link to portal and answer 2 authentication questions to gain access to documents in portal.

Client downloads and prints paper copies of documents.

If you wish to make a recording of the video conference (or required to do so by your regulator), please follow the directions in our **User Guide**. A client consent to record the video conference has been prepared as a master document.

Lawyer reviews documents with client during video conference, ensuring that documents in possession of lawyer and client are the same, and both lawyer and client initial each page of their printed documents.

Lawyer witnesses/commissions wet signature of documents by client (see attached **Schedule B** for Video Conferencing check list).

Client scans signed documents and emails them to lawyer.

Lawyer compares scanned copy with copy lawyer reviewed affixes wet signature to applicable scanned and/or original copies of documents from client.



Schedule A – Client Identification and Verification and Video Conferencing Commissioning

Law Society of Alberta guidance as of April 3, 2020³

Guidance for Video Conference Witnessing and Commissioning of Documents Submitted to Land Titles for Registration

Physical personal attendance with clients while they sign or documents or swear affidavits is no longer feasible, nor is it in the public interest in light of the COVID-19 pandemic. Effective April 3, 2020, the Government of Alberta is temporarily permitting land titles documents to be witnessed remotely. [Read the official letter.](#) In addition, the new amendments permit lawyers to take a deponent's oath over two-way videoconferencing. The [Ministerial Order](#) is limited to situations in which a lawyer is the witness or is acting as a commissioner or notary in administering an oath while a deponent is signing an affidavit. The lawyer must be an active practicing and indemnified member of the Law Society of Alberta. The Minister's notice also states that lawyers are subject to the Law Society's client verification rules and oversight.

Please note that the documents that are submitted to Land Titles must still include originally executed documents and affidavits. The order permits remote execution, witnessing and administering an oath but lawyers will still be required to obtain the originally executed document from the client before submitting to Land Titles.

The jurat on the affidavits required by Land Titles has been amended to permit taking an oath via two-way video-conferencing with the deponent. The jurat also contemplates that the deponent will have provided evidence to the lawyer to permit the lawyer, acting as a commissioner or notary, to verify the deponent's identity and to confirm the contents of the document being executed.

The following is a summary of best practices for lawyers to follow when witnessing the execution of a document or taking an oath over a two-way video conference link. The goal of this advice is to ensure lawyers maintain high standards when identifying the client, and maintain the integrity of the process and the authenticity of the document.

Some appropriate safeguards include the following:

- Record the entire transaction and the signing of the documents through the video conferencing platform;
- Be aware of the risks associated with remote signing of documents and affidavits, including but not limited to:
 - Fraud;
 - Identity theft;
 - Undue influence;
 - Duress;
 - Lack of capacity;
 - Leaving the client without copies of the executed documents;

³ <https://www.lawsociety.ab.ca/guidance-for-video-conference-witnessing-and-commissioning-of-documents-submitted-to-land-titles-for-registration/>



- Failing to provide the client with an adequate opportunity to ask questions or request clarifying information about the documents they are executing.
- Manage risks by taking the following steps:
 - Obtain the client's written consent to proceed with the transaction by video conference and to have the meeting recorded;
 - Take all reasonable steps to confirm the identity of the person signing the documents:
 - Have the client send a copy of their identification to you before the online meeting. This may be required by a lender in the event the client is obtaining a mortgage, and lawyers should also check with lenders to confirm their instructions;
 - Confirm client identity with appropriate photo ID during the video conference, using current and valid government issued photo identification;
 - Make sure the identification is visible and legible over the video link, and matches what was sent before the meeting.
 - In all cases, review the front and back of the identification and compare the photo with the individual on the video to confirm the signing party's identity;
 - Obtain and retain an electronic copy of the front and back of the ID for the client file. Maintain the copy sent in advance as well as taking a screen shot of both sides of the identification during the video conference;
 - Follow the modified client verification rules set forth in the [Law Society's FAQ](#);
 - Consider whether there are any indicia of fraud and, if necessary, take additional steps to confirm identity or ask more detailed questions about the transaction;
 - Be alert to the fact that some people may attempt to use the current circumstances and resulting confusion as an opportunity to commit fraud or other illegal acts;
 - Assess whether there is a risk that the client may be subject to undue influence or duress. Determine if there are other individuals present at the remote location and, if so, ask them to introduce themselves. If there is a risk of undue influence or duress, consider whether it is possible to assist the client at this time without meeting in-person;
 - Confirm your client's understanding about the documents they are executing and provide adequate opportunity for them to ask questions during the video conference;
 - Observe others who may be physically in the room with the client during the execution and ensure that the client is alone for particularly sensitive documents where duress may be a relevant concern;
 - Ensure the client and lawyer each have complete and identical copies of the documents in front of them while connected by video technology. Each should review and compare the pages of the document package, to ensure all pages are identical, and initial the bottom right corner of each page as it is reviewed;
 - Obtain a photo or scan of the executed documents immediately following execution, and compare the signatures you ultimately receive with the signatures that you witnessed. The client may also transmit the document to the lawyer through a PDF application on a phone or iPad or may scan the document to the lawyer by email, preferably during the video conferencing session;
 - Ensure that the video and audio link are sufficiently strong and clear to permit the lawyer and client to clearly see and hear one another throughout the video conference, and to discuss and see the documents as they are being signed
 - Ensure the execution of documents takes place in a single video session during which the lawyer can see and hear the client at all times;



- Provide the client with a scanned copy of the final versions of the executed and sworn documents by email;
- Maintain detailed records, including the date, start and end time of the meeting, method of communication, identity of all present and minutes of the meeting. When acting as a witness, the lawyer will be required to swear an Affidavit of Execution detailing the circumstances that required remote signing and how risks were addressed. This may include a reference to the fact that the entire process was recorded on video and detailing where the video recording is kept.

When acting as a commissioner or notary, the lawyer and client should refer to [the process adopted by the Alberta Court of Queen's Bench](#) for the completion of affidavits, effective March 25, 2020.

When commissioning an affidavit by video conference, both the lawyer and the deponent need to have a full copy of the affidavit and all exhibits in front of them. Pages must be compared to ensure they are identical, and initialed. The lawyer must administer the appropriate oath or affirmation and watch the deponent sign the affidavit, after which the deponent will send the originally signed affidavit to the lawyer. The lawyer must again compare each page of the signed affidavit with what the lawyer reviewed during the video conference, and may commission or notarize the document only if satisfied the two copies are identical.

Affidavits should have a paragraph at the end of the body of the affidavit explaining that the deponent was not physically present before the commissioner but that they were linked by video. Jurats must be amended to ensure that users of the signed document (the court or LTO) are fully aware of the manner in which the document was signed. It is never permissible to complete an affidavit that suggests the affidavit was sworn at an in-person meeting between the deponent and the commissioner or notary when it was in fact taken by video.

When a lawyer receives the scanned documents from the client, the lawyer may sign as witness or may act as a commissioner for oaths or notary to complete an affidavit of execution sworn by a witness. When submitting documents, the lawyer must disclose whether execution was not performed in accordance with existing legislation that governs taking signatures and administering oaths. In other words, the lawyer is required to disclose when the client signed the documents remotely and the documents submitted to Land Titles should include an explanation of the circumstances surrounding the execution of the documents, the manner in which they were transmitted to the lawyer, and the manner in which the affidavit of execution was taken. The Ministerial Order outlines the required wording to be adopted in documents to be filed with Land Title.

Videoconference commissioning – Alberta Court of Queen's Bench on March 25⁴

With the approval of the Law Society of Alberta, until further notice, the following accommodations will be made for affidavits to be used in the Court of Queen's Bench of Alberta, subject always to the discretion of the Courts to apply the best evidence requirements to their use:

1. Any affidavit to be sworn using video technology must contain a paragraph at the end of the body of the affidavit describing that the deponent was not physically present before the

⁴ <https://albertacourts.ca/qb/resources/announcements/npp-remote-commissioning-of-affidavits>



commissioner, but was linked with the commissioner utilizing video technology and that the process described below for remote commissioning of affidavits was utilized.

2. While connected via video technology, the deponent must show the commissioner the front and back of the deponent's current government-issued photo identification and the commissioner must compare the video image of the deponent and information in the deponent's government-issued photo identity document to be reasonably satisfied that it is the same person and that the document is valid and current. The commissioner must also take a screenshot of the front and back of the deponent's government-issued photo identity document and retain it.
3. The commissioner and the deponent are both required to have a paper copy of the affidavit, including all exhibits, before each of them while connected via video technology.
4. The commissioner and the deponent must review each page of the affidavit and exhibits to verify that the pages are identical and if so, must initial each page in the lower right corner.
5. At the conclusion of the review, the commissioner will administer the oath, the deponent will state what needs to be said to swear or affirm the truth of the facts, and the commissioner must watch the deponent sign his or her name to the affidavit.
6. The deponent will then send the signed affidavit with exhibits electronically to the commissioner.
7. Before completing the affidavit, the commissioner must compare each page of the copy received from the deponent against the initialed copy that was before him or her in the video conference and may affix his or her name to the jurat only upon being satisfied that the two copies are identical.
8. The two copies will then be attached together with a certificate signed by the commissioner stating that the commissioner was satisfied that the process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and the commissioner to be physically present together.
9. The completed package would then be permitted to be filed.



Schedule B Video Conference Checklist

DATE AND TIME OF MEETING: _____

MEDIUM FOR MEETING: _____

FILE NUMBER: _____

START OF MEETING

- Test video and sound quality.
- Confirm client has signed consent to video recording
- Start video recording
- Have the client scan the entire room they are in to ensure no one else is in the room.

Any other parties present, and reason for presence: _____

- Have all parties introduce/identify themselves

Clients present: _____

Ask of clients:

- not to mute their audio at any time during the call.
- hold to camera ID that was previously provided and confirm that it is the client.
- Take a screenshot of the front and back of each client's ID and save the file.

DOCUMENTS

- Confirm the client has received and printed the following documents, including any exhibits to affidavits or statutory declarations.
[INCLUDE LIST OF DOCUMENTS SENT TO CLIENTS]
- Confirm that you have printed copies of all documents listed above.
- Review and explain each document, ensuring that:
 - the paper copies you and client have are the same
 - client has initialed the bottom right hand corner of each page of their copy
 - you have initialed the bottom right hand corner of each page of your copy



- Confirm client's understanding of the documents and provide sufficient opportunity for client to ask questions.
- Have client angle camera, if required, when signing so signing of documents can be witnessed.
- Have client hold documents to camera after signing to ensure signed correctly.

After all clients have signed any **affidavits** ask them (and obtain an affirmative response from all signatories):

- If sworn: "Do you swear that the contents of this affidavit as subscribed by you are true, so help you God?" or
- If affirmed: "Do you solemnly affirm and declare that the contents of this affidavit as subscribed by you are true?"
- After all clients have signed any **statutory declaration** ask them (and obtain an affirmative response from all signatories):

"Do you make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath?"

- Client to scan and e-mail signed documents to lawyer.
- Compare each page of the copy received from the deponent against the initialed copy that was before him or her in the video conference and may affix his or her name to the jurat only upon being satisfied that the two copies are identical.
- For each commissioned documents, commissioner shall combine their copy of the commissioned documents with client's scanned copy.

END OF MEETING

Confirm how client will be returning documents with wet ink signature.

- Courier
- Mail
- Other: _____