



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 following documents:

- Registrar-Genera’s Directive of April 1, 2020: “Witnessing documents under The Real Property Act during COVID-19 Pandemic”
- Law Society of Manitoba: “COVID-19 Update: Video Witnessing of Land Titles Documents”

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.



Extracts of these documents form part of the attached **Schedule A**. The guidelines apply only to the witnessing of documents pursuant to *The Real Property Act*, and do not apply to the following classes of documents, which must still be executed in some form of physical presence (including through a glass barrier) until further governmental guidance is issued on relation to these documents:

- Oaths or affirmations-Some instruments contain, or are accompanied by, oaths or affirmations which are governed by *The Manitoba Evidence Act*.
- Certain forms under The Homesteads Act-The forms required and execution of those forms are governed by *The Homesteads Act*.

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.

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 takes a screenshot of the front and back of each client's ID during video conference and saves the file.

Lawyer reviews documents with client during video conference, ensuring that documents in possession of lawyer and client are the same.

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

Client scans signed documents and emails them to lawyer, and returns signed originals by mail-courier.

Lawyer must complete the following forms:

DECLARATION OF A MANITOBA LAWYER WHO HAS WITNESSED DOCUMENTS BY ELECTRONIC MEANS

Cover letter to a District Registrar certifying circumstances of execution



Schedule A

Registrar-General's Directive of April 1, 2020: "Witnessing documents under The Real Property Act during COVID-19 Pandemic" (extract)³

In the event that the physical presence of a witness is not possible due to COVID-19 related public health requirements, as a temporary measure and pursuant to s.72.1(c) of The Real Property Act, District Registrars will accept instruments witnessed via video link provided that a letter signed by the witness meeting the following requirements accompanies all such instruments.

In the letter, the witness must identify:

1. How the executing party was provided with the instrument to be executed (e.g. regular mail, fax, email, etc.).
2. Why in person witnessing could not occur and video witnessing was required (e.g. Due to self-isolation, quarantine, to comply with social distancing orders).

and **certify** that:

1. The witness is satisfied as to the identity of the executing party either because:
 - a. The executing party is personally known to them; or
 - b. The identity of the executing party was proven to their satisfaction, together with details as to manner in which this satisfaction was achieved.
2. The signature was witnessed in a single session during which the witness observed the person signing the instrument and was able, at all times, to see and hear the person signing the instrument.
3. For all instruments generating separate signature pages (eTransfer, eMortgage, eDischarge):
 - a. prior to execution, the witness saw both the control image and 32 digit control number generated by the form and that these matched the control image and control number of the version of the form sent to the executing party; and
 - b. subsequent to execution, the witness saw both the control image and 32 digit control number of the executed signature page and that these matched the control image and control number of the form sent to the executing party.
4. For instruments which do not generate signature pages, but do require witnessing (e.g. Transfers utilizing Form 5P (Transfer Under Power of Sale, Transfer of Mortgage, Transfer of Leasehold Title, Transfer of Encumbrance), Postponements, Amending Agreements,

³ <https://teranetmanitoba.ca/wp-content/uploads/2020/04/20200401-Witnessing-documents-under-RPA-during-COVID-19.pdf>



Memorandums of Lease, Agreements to Renew, Amend or Extend Lease, Surrenders of Lease, Assignments of Caveats, Transfer of a Security Interest, Assignment of Builders' Lien):

- a. prior to execution, the witness saw the instrument in the possession of the executing party and confirmed to their satisfaction that it was the same instrument sent to the executing party; and
 - b. subsequent to execution, the witness saw the executed instrument in the possession of the executing party and confirmed to their satisfaction that it was the same instrument sent to the executing party.
5. Subsequent to execution, the original, signed copy of the instrument was received by the witness who verified that the content of the instrument received was identical to the instrument sent to the executing party (but for the addition of the executing party's signature and any other marking required to be made by the executing party) and then affixed their signature as witness.

Law Society of Manitoba: April 1, COVID-19 Update: Video Witnessing of Land Titles Documents⁴

The Law Society has been working with the Land Titles Office to find ways for lawyers to meet their professional obligations while ensuring that they, their staff and their clients remain safe. The witnessing requirements of The Real Property Act have posed a particular challenge.

In consultation with the Law Society, the Registrar-General of the LTO has now issued a Directive which will allow for the video witnessing of transfers and other instruments as a temporary accommodation in response to COVID-19 and until May 15, 2020 or as extended.

The Registrar-General's Directive outlines the required procedures. Read them carefully.

The RPA puts the onus on the witnessing lawyer to show that the identity of the person who signs the instrument has been proven to the lawyer's satisfaction. Video witnessing entails increased risk of fraud and identity theft, among other risks. As a result:

1. Best witnessing practice remains for the lawyer to be in the physical presence of the client when the document is executed, keeping in mind the physical distancing mandated by public health authorities.
2. Where risk of infection or other circumstances prevent the face-to-face meeting of lawyer and client, the next best alternative is to witness the document execution through a glass barrier, whether a glass door or partition wall, the door or window to the client's home, or the closed windows of a car.
3. Where neither of those options is possible, video witnessing in accordance with the Registrar-General's Directive is an available alternative. The Law Society acknowledges that, in these circumstances, it is not necessary that the lawyer be in the physical presence of the signing party when witnessing the signature, provided that the identity of the signing party can be

⁴ <https://lawsociety.mb.ca/covid-19-update-video-witnessing-of-land-titles-documents/>



confirmed and that due care is taken. In every case, the lawyer should complete and keep on file a Declaration of a Manitoba Lawyer who has Witnessed Documents by Electronic Means.

Note that the Registrar-General's Directive does not apply to oaths or affirmations governed by The Manitoba Evidence Act or forms under The Homesteads Act. Witnessing in the physical presence of the client or through a glass barrier will still be required for those documents.

Video witnessing is an authentication and signature process for document execution using audio-visual technology instead of face to face meetings. An example of video witnessing is a lawyer who meets with a client via Skype® or FaceTime® or a similar app and directs the client to sign the relevant legal document while the lawyer watches closely through video. The client then returns the original executed document to the lawyer who, upon receipt and once it is safe to do so, signs the document as a witness to the client's signature.

Use the Law Society's Video Conferencing Checklist to help manage your client meeting and reduce risk.

Most title insurers have responded to COVID-19 by offering title insurance coverage for lawyers and clients in the event of an allegation of fraud where execution of documents or client identification and verification have been conducted using virtual means. Some also offer a verification of ID facility which can be used to supplement, though not to substitute for, the verification of ID requirements of the Federation of Law Societies.

There are risks inherent in video witnessing. Assess and manage those risks by considering the following:

- Fraud and Identity Theft – Be alert for red flags of fraud or identity theft. Fraudsters will try to use the current circumstances and resulting confusion as an opportunity to commit fraud or other illegal acts. Be careful! For more information, check out these resources:
- Avoid a Claim blog post, Remote communication and fraud risks in real estate
- Federation of Law Societies' Risk Advisories for the Legal Profession resource, pages 2 – 4
- Duress and Undue Influence – Ask who is in the room and write down their names and relationship to the signatory. If they are absolutely required to be there to operate the technology, call the signatory on the telephone after the session so you can have a private



conversation. If there is a risk that the client may be subject to undue influence or duress, consider if you are able to assist the client at this time without meeting in person.

- Capacity – Confirm your client’s understanding about the documents they are executing and provide adequate opportunity for them to ask questions during the video conference.

In each case of video witnessing of documents, the lawyer’s risk assessment and management steps should be recorded and kept on file by completing the prescribed Declaration of a Manitoba Lawyer who has Witnessed Documents by Electronic Means.

Law Society of Manitoba: COVID-19 Update: New Orders Issues under the Emergency Measures Act (extract)⁵

Order on Suspension of In-Person Commissioning or Witnessing of Documents

This [Order](#) temporarily suspends the requirements for in person commissioning and witnessing of certain critical documents. It sets out steps required when taking an oath or witnessing the signing by video conferencing or through glass or plexiglass. The order is in effect **May 13, 2020 to October 1, 2020**. This order applies to:

- Wills;
- Powers of Attorney;
- Transfers or Mortgages under The Real Property Act;
- Homestead consents or releases;
- Health Care directives;
- Oaths, affirmations or statutory declarations under The Evidence Act.;

Stay tuned. The Law Society is creating several checklists to address the various statutory provisions to which the Order applies.

Also, the [Directive on Witnessing](#) documents under The Real Property Act during Covid-19 dated April 1, 2020 has been extended to July 14, 2020.

⁵ <https://lawsociety.mb.ca/covid-19-update-new-orders-issued-under-the-emergency-measures-act/>



Schedule B Video Conference Checklist

Before the video conference:

Review the Law Society of Manitoba FAQ's on:

- [Best practices for using video conferencing in providing legal advice or services](#)
- [How to identify or verify a client under the Anti-Money Laundering Rules when meeting by video conference](#)

During the video conference:

When conducting face-to-face client verification or document execution by video conference, stay alert to fraud risks. Keep the red flags of fraud in mind. For guidance on fraud risk avoidance, refer to LAWPro's Avoid a Claim blog post, [Remote communication and fraud risks in real estate](#) and pages 2 - 4 of the Federation of Law Societies Anti-Money Laundering and Terrorist Financing Group [Risk Advisories for the Profession](#).

Date:	
Client info:	
Time of meeting:	Start time: End time:
Method of communication:	Provide details:
Has the client consented to proceed in this manner?	Provide details:
Have you asked all individuals in the remote location to introduce themselves?	Name of all parties in remote location:
Ensure that there is no one else at the remote location who may be improperly influencing the client.	Provide details, if any:



Are audio and video feeds stable? Can you hear and see all parties?	Provide specifics, if any:
Do you need to conduct client ID (does not need to occur face-to-face) and/or client verification (generally must occur face-to-face)? Client ID: Documentation provided, if any? [] Client verification: <ul style="list-style-type: none">• Obtain identification document (ID Doc) prior to the online meeting if possible• Ask the client to show the original ID Doc during the video conference• Ensure you are reasonably satisfied that the ID Doc is valid and current• Compare the image in the ID Doc to the person on video to be reasonably satisfied that it is the same person	Type of document(s) reviewed: Provide details:
If executing documents remotely: <ul style="list-style-type: none">• How will you provide the client with copies of the document executed remotely?• Have you confirmed your clients' understanding about documents they are executing? *Make sure you provide adequate opportunity for them to ask questions	Provide specifics:
Have you kept detailed minutes of meeting?	
If applicable, has the consentor signed the Video Witnessing Certificate Form 32?	