



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 may 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 public statements of the Nova Scotia Barristers' Society and the REGISTRAR GENERAL'S DIRECTIVE (COVID-19/ORIGINAL DOCUMENTATION), attached as **Schedule A**. Ensure correct "from" and "to" locations appear in the remote signing jurats (see User Guide for instructions).

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.

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.

Lawyer reviews documents with client during video conference and 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 and couriers signed documents to lawyer's office.

Lawyer affixes wet signature to applicable scanned and/or original copies of documents from client in order to complete witnessing/commissioning function.



Schedule A

Statement of the Nova Scotia Barristers' Society as of April 2³

Q: Can a lawyer use virtual commissioning?

A: Commissioning is governed by the Notaries and Commissioners Act and is not regulated by the NSBS. Although the law is evolving in this area, the best practice for commissioning documents remains for the lawyer who is acting as a commissioner to be in the physical presence of the deponent to commission the document(s).

However, as a result of COVID-19 and until further notice, lawyers may choose to commission via video conference. The best practice is for the client to provide their original document to the lawyer for execution. If this is not immediately possible, the lawyer should execute a printed electronic (scan or fax) copy and then later the original when it becomes possible.

The jurat of an affidavit is an important record and should accurately reflect the circumstances of the swearing/affirming. For example:

Sworn to/ Affirmed (circle one)
by videoconference
from _____ (location of affiant)
to _____ (location of lawyer taking oath)
this ____ day of _____ 2020

If you require identification to verify the identity of the affiant, you should have the affiant show you the front and back of their government issued identification. You should document the type of government ID produced and that you reviewed and verified the information. Learn more about extended validity periods for driver's licences in Nova Scotia.

If you do not have a true original, you should explain to the authority receiving the affidavit of the circumstances and seek their guidance.

If lawyers choose to use virtual commissioning, they should attempt to manage some of the risks associated with this practice as outlined below.

Managing the Risk of Virtual Commissioning:

If a lawyer chooses to use virtual commissioning, the lawyer must be alert to the risks of doing so, which may include the following issues:

- Fraud
- Identity theft
- Undue influence
- Duress
- Capacity
- Client left without copies of the documents executed remotely
- Client feels that they did not have an adequate opportunity to ask questions or request clarifying information about the documents they are executing.

³ <https://nsbs.org/covid-19-questions/>



To manage some of the risks, the lawyer must consider whether there are red flags of fraud in the matter. To review these red flags, see the Federation of Law Societies' Risk Advisories for the Legal Profession resource. You must assess whether there is a risk that the client may be subject to undue influence or duress. If there is such a risk, consider if you are able to assist the client at this time without meeting in person.

You must confirm your client's understanding about the documents they are executing and provide adequate opportunity for them to ask questions during the video conference.

A lawyer should also be alert to the fact that persons may attempt to use the current circumstances and resulting confusion as an opportunity to commit fraud or other illegal acts. Where lawyers choose to use virtual commissioning, they must be particularly alert to these red flags in order to ensure that they are not assisting, or being reckless in respect of any illegal activity.

REGISTRAR GENERAL'S DIRECTIVE (COVID-19/ORIGINAL DOCUMENTATION) on March 18:⁴

This Directive is being issued with respect to the interpretation of the term "original" for the purposes of the Land Registration Administration Regulations. During the period in which the Province of Nova Scotia is asking Nova Scotians to practice social distancing, the Office of the Registrar General will interpret the term to include a document displaying only one "wet" signature. For example, if a client were to execute a document in the lawyer's presence over skype or a similar application, the client could e-mail that document to the lawyer for printing and the lawyer would then apply his or her "wet" signature.

Documents executed in this fashion will suffice for the purposes of retaining documentation and registering documentation in paper format as required by the Regulations. Our Land Registration Offices have been instructed to receive and process documents containing the "wet" signature of only one individual. You must be satisfied that your client's "dry" signature was made by your client and you might consider asking them to e-mail you a copy contemporaneously with your conversation to make that confirmation.

I have had conversations with the Nova Scotia Barristers' Society and understand that they have issued updated information concerning the client identification rules as well as taking affidavits and oaths with non-face-to-face means that you will have to consider as well and those materials can be found at <https://nsbs.org/covid-19-questions/>. I have also had conversations with several title insurers and I understand that they are available for questions regarding restrictions contained in mortgage instructions for executing documents.

I wish to reiterate that we are limiting the interpretation to this emergency measure to protect your health and the health of your clients and to permit business to progress in the usual course as far as possible.

⁴ <https://novascotia.ca/sns/pdf/Registrar-Generals-Directive-COVID-19-Original-Documentation.pdf>



Schedule B Video Conference Checklist

DATE AND TIME OF MEETING: _____

MEDIUM FOR MEETING: _____

FILE NUMBER: _____

START OF MEETING

- ☐ Test video and sound quality.
- ☐ 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.

DOCUMENTS

- ☐ Confirm the client has received and printed the following documents:
[INCLUDE LIST OF DOCUMENTS SENT TO CLIENTS]
- ☐ Review and explain each document.
- ☐ 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?"

- ☐ Provide the client with a unique phrase or code to write in a particular place on each document.

Unique phrase / code given to clients: _____

END OF MEETING

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

- ☐ Scan
- ☐ Courier
- ☐ Mail
- ☐ Other: _____