

Virtual Witnessing of Wills: A Welcome Change



Since 1837 the Law surrounding the execution of a will has required the will-maker to sign in the *physical* presence of at least two witnesses, who do not benefit under the will. The COVID-19 pandemic has understandably led to a surge in will writing but at the same time seen strict social distancing measures implemented that made the physical witnessing of a will very difficult, although not impossible as we have been advising clients. Nonetheless, the Government's recent announcement that wills witnessed *virtually* will be valid has been a welcome change and a reassuring step forward in these unprecedented times.

The Government have agreed to legalise the virtual witnessing of a will by two witnesses via video link, such as Zoom or Facetime. Although this will become law in September it will be backdated to 31 January 2020 and is set to expire in January 2022. This means that any wills virtually witnessed via video-link after 31 January 2020 should now be deemed valid. However the video and audio quality must be (or have been) sufficient to have 'clear line of sight' of the will being signed. Ideally the signing should be recorded but a pre-recorded video of signing is insufficient and the two witnesses must witness it in 'real time'.

A major caveat to the new measure is that where the will can be witnessed safely in the *physical* presence of two witnesses then it should be, especially because if the will-maker dies before the virtual witnesses can sign it will still not be valid. We have developed detailed guidance for our clients on how best to safely witness whilst physically present and would still advise that all clients try to do this if at all possible.

If virtual witnessing is the only option, the Government have issued helpful guidance and practical steps to follow:

1. The will-maker holds the first page and the signing page of the will up to the camera to show the two witnesses who confirm they can see and hear. The will-maker then signs in clear line of sight of the witnesses.

2. The two witnesses, who should be together or on a three-way video link, confirm they acknowledge and understand their role.
3. Following signature by the will-maker, the will should be delivered to the two witnesses, as soon as possible. This can be via post.
4. On receipt of the will, the witnesses hold the signing page of the will up to camera and show the will-maker who confirms they can see and hear. The witnesses then sign in clear line of sight of the will-maker. This step will need to be repeated for both witnesses if they are not physically present with each other.

It is also 'advised', although not required, that the will itself should make reference to the fact that virtual witnessing has occurred.

Whilst the impact of the pandemic on the practicalities of life has undoubtedly been the catalyst for this new measure change to legislation from 1837 is overdue and, even with its current expiry date, is very welcome. In the longer term the Government is set to consider wider reforms to the Law on creating Wills in response to a forthcoming Law Commission report and will hopefully be implementing further positive changes.

If you would like to create your will, make amendments to your existing will or enquire further into how the new measure could help you please contact us.



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