

## Going digital? Changes to Wills and Lasting Powers of Attorney

The government have confirmed that Wills can now be witnessed, and certificate providers in Lasting Powers of Attorney (LPAs) can confirm a donors mental capacity (where appropriate), via video calls. The welcome changes have been introduced following the implementation of social distancing measures during COVID – 19 and the difficulties this caused testators and donors finalising their Wills and LPAs.

### Wills

Wills need to be signed by the testator in the presence of two witnesses who must then sign the Will in the presence of the testator and each other.

During the pandemic many countries, including Scotland, adapted their rules to allow witnessing to take place via a video call. The UK government were reluctant to follow suit due to concerns that vulnerable testators may not be protected and Wills may be amended, lost or damaged in transit between the testator and witnesses.

However, the UK government have since announced that Wills can now be witnessed digitally and this change will apply to Wills made between January 2020 and January 2022. The retrospective application ensures that Wills executed during the “lockdown” period are still valid.

The government are yet to produce any formal guidance on how to manage the potential impact on vulnerable testators or how to account for any changes that could be made to the Will when it is sent to the witnesses for signing. Our recommendations if you are acting as a witness are:

1. Ask for a copy of the Will to be sent to you in advance of the testator signing it – this way when you receive the Will you will know what the contents should be.
2. Ask the testator to read the Will out loud to you – this way you will know that they have full knowledge and understanding of the contents before they sign.
3. If you have concerns about the testators mental capacity or you think they may be being pressurised into signing the Will, you should not encourage them to sign and suggest that they speak to their solicitor or a medical professional.

4. As the Will passes from the testator to the witnesses there is a risk of it being lost or damaged and so where possible, deliver it in person or use a secure method of post such as a courier or special delivery. It is important to ensure that nothing is attached or stapled to the Will and that any staple is not removed.
5. Remember there will need to be three video calls – one for the testator to sign, one for the first witness to sign and one for the second witness to sign. Signatures should be clearly visible.
6. Make a note of the calls – if any queries are raised during the administration of the testators estate regarding the circumstances at the time the Will was signed, you will be contacted to provide a summary of events and so a short note of each call may be helpful, even if it is just bullet points saved on your computer.

Once the Will is fully signed, testators should check their Will carefully and make sure that it includes all of their wishes and that it has been executed properly. Obviously these recommendations do not completely solve the government's concerns, albeit they can help to minimise some of the potential risk.

### Lasting Powers of Attorney

For LPAs the government have been very clear that witnessing of donor and attorney signatures must still be done in person; although they will accept that a donor and a certificate provider can discuss the LPA via a video call to allow the certificate provider to check the donor has mental capacity and is not being pressurised into entering into the LPA.

In the case of both Wills and LPAs, digital signatures are not acceptable and will invalidate the documents if used.

If you have any questions regarding Wills or Lasting Powers of Attorney, please contact [Toni Recchia](#) or a member of the [Wealth Planning](#) Team who will be happy to assist.



Karen Methold  
Partner  
Head of Wealth Planning  
+44 (0)20 7689 7112  
[kmethold@rooks rider.co.uk](mailto:kmethold@rooks rider.co.uk)



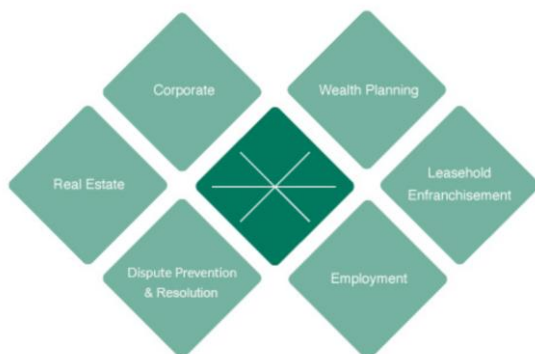
Toni Recchia  
Solicitor  
Wealth Planning  
+44 (0)20 7689 7185  
[trecchia@rooks rider.co.uk](mailto:trecchia@rooks rider.co.uk)



Robert Drysdale  
Associate  
Wealth Planning  
+44 (0)20 7689 7168  
[rdrysdale@rooks rider.co.uk](mailto:rdrysdale@rooks rider.co.uk)



Nicholas Jenkins  
Finance Partner and COFA  
Wealth Planning  
+44 (0)20 7689 7161  
[njenkins@rooks rider.co.uk](mailto:njenkins@rooks rider.co.uk)



Rooks Rider Solicitors LLP  
23 Austin Friars  
London ■ EC2N 2QP

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