



New Approach & COVID19.

At New Approach Wills & Legal Services we are doing everything we can to keep our clients and ourselves safe.

- ✚ Telephone Consultations
- ✚ Zoom Meetings
- ✚ Currently closed to public (by appointment only in strictly limited circumstances)
- ✚ Office procedures COVID safe
- ✚ Laser printing (heat) of all documents
- ✚ COVID friendly signing and attestation procedures.

Government Guidance on Signing your will.

New legislation on making wills

The current law on making wills

The legislation ruling the making of wills in England and Wales is the [Wills Act 1837](#)

None of the existing relevant requirements are changed by the new law.

Section 9 of the Act sets out the requirements for making and witnessing a will as follows, and these requirements remain in force:

No will shall be valid unless -

- (a) it is in writing and signed by the testator or by some other person in his presence and by his direction; and
- (b) it appears that the testator intended by his signature to give effect to the will; and
- (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
- (d) each witness either attests and signs the will or acknowledges his signature in the presence of the testator (but not necessarily in the presence of any other witness), but no form of attestation shall be necessary.

The law also includes a number of other requirements. For example, that the person making the will 'has testamentary capacity' - that they know fully what they are doing and are able to express their intentions - and that they are not being unduly influenced by anyone.

For witnesses, the current law allows an executor to the will to be a witness but a beneficiary from the will (or their spouse/civil partner) cannot be a witness without the gift to them becoming void. 'Mature minors' are allowed to witness a will, but blind people cannot. There is a general assumption that a witness should have testamentary capacity.

Distanced witnessing - 'clear line of sight'

In the existing law a witness must have a 'clear line of sight' of the will-maker signing and understands that they are witnessing and acknowledging the signing of the document, for example if self-isolation or social distancing have prevented the signing and witnessing of a will by people in the same room.

The person making the will must have a clear line of sight of the witnesses signing the will to confirm they have witnessed the will-maker's signature (or someone signing on their behalf and at their direction).

The following scenarios would lead to a properly executed will during the pandemic within the existing law, provided that the will maker and the witnesses each have a clear line of sight:

- witnessing through a window or open door of a house or a vehicle
- witnessing from a corridor or adjacent room into a room with the door open
- witnessing outdoors from a short distance, for example in a garden

Video-witnessing

In the new law, all of the legislation set out above applies where a will is video-witnessed.

The type of video-conferencing or device used is not important, as long as the person making the will and their two witnesses each have a clear line of sight of the writing of the signature.

To reflect this, the will-maker could use the following example phrase:

'I first name, surname, wish to make a will of my own free will and sign it here before these witnesses, who are witnessing me doing this remotely'.

Witnessing pre-recorded videos will not be permissible - the witnesses must see the will being signed in real-time. The person making the will must be acting with capacity and in the absence of undue influence. If possible, the whole video-signing and witnessing process should be recorded and the recording retained. This may assist a court in the event of a will being challenged - both in terms of whether the will was made in a legally valid way, but also to try and detect any indications of undue influence, fraud or lack of capacity.

The following scenarios illustrate circumstances in which video-witnessing might be appropriately used:

Example 1:

the testator (T) is alone and witness one (W1) is physically present with witness two (W2). Together, W1 and W2 are on a two-way live-action video-conferencing link with T

Example 2:

T, W1 and W2 are all alone in separate locations and are connected by a three-way live-action video-conferencing link.

Example 3:

T is physically present with W1, and they are connected to W2 by a two-way live-action video-conferencing link.

Example 4:

T is physically present with a person signing the will on their behalf (and at their direction), and connected to W1 and W2 by two or three-way live-action video-conferencing (depending on whether W1 and W2 are in the same or separate locations)

Signing and witnessing a will by video-link

Signing and witnessing by video-link should follow a process such as this:

Stage 1:

- The person making the will ensures that their two witnesses can see them, each other and their actions.
- The will maker or the witnesses should ask for the making of the will to be recorded
- The will maker should hold the front page of the will document up to the camera to show the witnesses, and then to turn to the page they will be signing and hold this up as well.
- By law, the witnesses must see the will-maker (or someone signing at their direction, on their behalf) signing the will. Before signing, the will-maker should ensure that the witnesses can see them actually writing their signature on the will, not just their head and shoulders.
- If the witnesses do not know the person making the will they should ask for confirmation of the person's identity - such as a passport or driving licence.

Stage 2:

The witnesses should confirm that they can see, hear (unless they have a hearing impairment), acknowledge and understand their role in witnessing the signing of a legal document. Ideally, they should be physically present with each other but if this is not possible, they must be present at the same time by way of a two or three-way video-link.

Stage 3:

- The will document should then be taken to the two witnesses for them to sign, ideally within 24 hours. It must be the same document (see [Counterpart documents](#)).
- A longer period of time between the will-maker and witnesses signing the will may be unavoidable (for example if the document has to be posted) but it should be borne in mind that the longer this process takes the greater the potential for problems to arise.
- A will is fully validated only when testators (or someone at their direction) and both witnesses have signed it and either been

witnessed signing it or have acknowledged their signature to the testator. This means there is a risk that if the will-maker dies before the full process has taken place the partly completed will is not legally effective.

Stage 4:

The next stage is for the two witnesses to sign the will document – this will normally involve the person who has made the will seeing both the witnesses sign and acknowledge they have seen them sign.

- Both parties (the witness and the will maker) must be able to see and understand what is happening.
- The witnesses should hold up the will to the will maker to show them that they are signing it and should then sign it (again the will maker should see them writing their names, not just see their heads and shoulders).
- Alternatively, the witness should hold up the signed will so that the will maker can clearly see the signature and confirm to the will maker that it is their signature. They may wish to reiterate their intention, for example saying: “this is my signature, intended to give effect to my intention to make this will”.
- This session should be recorded if possible.

Stage 5:

- If the two witnesses are not physically present with each other when they sign then step 4 will need to take place twice, in both cases ensuring that the will maker and the other witness can clearly see and follow what is happening. While it is not a legal requirement for the two witnesses to sign in the presence of each other, it is good practice.

Consideration may be given to the drafting or amending of the attestation clause in a will where video-witnessing is used. The attestation clause is the part of the will that deals with the witnessing of the will makers signature. For video-witnessed wills it may be advisable to mention that virtual witnessing has occurred, along with details of whether a recording is available.



If you have any questions about this process you are advised to consult a solicitor or will-making professional.

Professional bodies, such as the Law Society and STEP, are expected to be issuing their own guidance to their members on this process, and any such material should be read alongside this guidance.

Electronic signatures

The Government has decided not to allow electronic signatures as part of this temporary legislation due to the risks of undue influence or fraud against the person making the will. These risks were identified by the Law Commission in its 2017 consultation paper on wills. The Law Commission is undertaking a law reform project which will include consideration of the possibility of allowing electronic wills in the future.

Counterpart documents

The term 'counterpart documents' refers to when two copies of the will are prepared, and while the will maker signs one document, the witnesses sign another copy of the same document. The two counterpart documents between them constitute one valid will.

The Government has decided against introducing counterpart wills as part of this temporary legislation. Although some authorities have adopted this reform to complement video-witnessing, the Government has decided against allowing it in England and Wales in the belief that the risks outweigh the benefits at this stage. Such risks include there being different versions of the will (with different contents), the witness signing the wrong document, and an increase in the risk of undue influence and fraud.

If all that seems a little complicated then we have some practical suggestions.

If you cannot leave your home and have concerns about how you can make a Will legally binding (it needs to be signed by two witnesses. Witnesses should not be related to you and not referred to, or in any way interested under the terms of the Will e.g. as executor or beneficiary or as husband or wife of an executor or beneficiary in the will.)

This can still be achieved if you are self-isolating.

If you can arrange for two independent witnesses, perhaps neighbours, who can physically see you and are both present at the same time, when you sign, then the formalities of proper execution will still be observed.

You can for example be a good distance apart as long as you and your witnesses can still physically see each other. If you have a garden then, weather dependent, that would be ideal.

One option could be for you and your chosen witnesses to sign on either side of a window or a glass door. Your signature could be clearly witnessed before being passed through the window or letter box for the

witnesses to sign in the testator's presence and in the presence of each other.

The Will still has to be passed between you for signature and the virus can stay on paper for up to 12 hours, we are told, so gloves should be worn. You will need to consider how the will is passed between you – perhaps being placed on something that can easily be pushed across a floor/garden.

The usual advised guidelines for Coronavirus should still be observed ie wash your hands thoroughly before you start the will signing process, wear gloves if you have them, and wash your hands thoroughly after signing.

Although it is usual and preferable for the testator and the witnesses to use the same pen, it would be understandable if all parties preferred to have their own pen in the current circumstances, and it is unlikely that it would present any difficulties in the future with proving that the Will was validly executed.

Documenting the signature/witnessing process, whether that be with photographic evidence or a video recording are additional measures which should be taken to help ensure that there can be no question about the validity of the Will signing process.

Once signed do not attach anything to the Will and keep it in safe place.

The above advice may be useful when signing your Lasting Power of Attorney.

Signing Your Lasting Power of Attorney (LPA)

The LPA must be signed by the people involved and in the correct order. If they don't, the Office of the Public Guardian (OPG) won't register it and your attorney(s) will be unable to use it.

It is essential that the forms are signed in the following order:

1. Donor (you).

If you cannot sign the LPA documents yourself, you will be given an extra sheet that a representative can sign on your behalf.

- If, for any reason you cannot sign the document, you can appoint someone to sign it on your behalf. There will be an extra sheet with the LPA, continuation sheet A3, that someone must sign for you. You must be present and must tell the person to sign. Two witnesses must watch when continuation sheet A3 is signed.
- You must sign:
 - Section 9
 - Any continuation sheets (you may have one or more copies of either continuation sheet 1 or 2)
 - The statement about life-sustaining treatment on page 6, if it is a Health and Welfare LPA

2. Donor's (your) witness.

Your signatures must be made and witnessed on the same date.

3. Certificate provider.

The certificate provider should sign the LPA form, section 10, as soon as possible, this could be on the same day you sign and must be within a year.

4. Attorney(s) and replacement attorney(s).

They should sign the LPA form, section 11, as soon as possible, after the certificate provider, which can be on the same day you sign and must be within a year. They can sign in any order but their signatures must be witnessed. You can't be a witness but your attorneys can be witnesses for each other.

5. Attorneys' witness(es).

Attorney and replacement attorney signatures must be made and witnessed on the same date.

Witnesses

Witnesses are impartial people aged at least 18 years who watch you and your attorneys (including any replacements) sign your LPA. Witnesses must then sign the LPA to confirm that they saw you and your attorneys sign it.

Your witnesses cannot be:

- One of your attorneys
- One of your replacement attorneys
- An employee of a trust corporation that you've named as an attorney or replacement attorney

The same person can witness both donor and attorney signatures, so long as they are not one of your attorneys. However, you don't have to use the same witness for all signatures.

Important - Once you have signed the LPA you cannot make any changes. If you do need to you will need to reprint the form and start again. If you send your LPA to the OPG with an incorrect signing order, you will have to complete some or all parts of it again and may incur additional fees.

People to Notify

Each person you would like to Notify needs to be sent their own LP3 form as found with your LPA document and these instructions. You will need enter the date you signed the LPA on this form and then send the form. On the form, there is explanation as to how the people you have chosen to notify can object to the LPA being registered, if they wish to. They have 3 weeks from the date they are notified to make known to the OPG these objections.

Check your LPA

You will find a checklist at the end of your LPA form which is very helpful. You should check that you have completed the LPA form before sending it to the OPG to register it.

The checklist will run through the following:

- The donor filled in sections 1 to 7
- The donor signed section 9 in the presence of a witness. The donor also signed any copies of continuation sheets 1 and 2 that were used, on the same date as signing section 9.
- The certificate provider signed section 10.
- All the attorneys and replacement attorneys signed section 11, in the presence of witness(es).
- Sections 9, 10 and 11 were signed in order. Section 9 must have been signed first, then section 10, then section 11. They can be dated the same day or different days. The donor or an attorney completed sections 12 to 15. If the attorneys are applying and were appointed 'jointly' (section 3), they have all signed section 15 of this form.
- You've paid the application fee or applied for a reduced fee. If you've applied for a reduced fee, you've included the required evidence and completed form LPA120A.
- If there were any people to notify in section 6, you've notified them using form LP3. You've not left out any of the pages of the LPA, even the ones where I didn't write anything or there were no boxes to fill in.

Registering your LPA

Once you are happy that your LPA has been signed correctly you must then send it, and where applicable, continuation sheets and LPA120 (reduce fee application form), to the OPG so that they can check and register it.

Send everything to:

**Office of the Public Guardian
PO Box 16185
Birmingham B2 2WH**



If you are applying to register the LPA, the OPG lets the attorneys know about the application. If an attorney is applying, the OPG tells you and any other attorneys. The OPG then processes the LPA and holds it for at least 4 weeks. The 4-week wait is set by law. It gives people time to raise concerns they have about the LPA: for example, if they think you're being forced into making it or that someone is committing fraud.

The OPG also uses the time to check that the LPA has been made correctly and there's nothing that would make it invalid or unworkable. If there is something that must be corrected before it can be registered the OPG will contact you.

The whole check and registering process take between 8 and 10 weeks (but can take longer if there are problems). The registered LPA document that OPG sends back to you is the same form that you filled in and sent to the OPG. However, it will have been officially stamped and now legally binding.

Why you should register your LPA now rather than later

You don't have to register your LPA once you've completed it, you can register it later, but it's a good idea to register it as soon as you can. Your attorneys can only use your LPA to make decisions on your behalf after the OPG has registered it and sent it back to you officially stamped.

If you register your LPA as soon as it is signed, the OPG can spot mistakes while they can still be changed. If there are any errors, you may have to fill in all or part of the LPA again. You can only do that if you still have mental capacity.

If you no longer have mental capacity, your attorneys can apply to register your LPA – however, it won't be possible to correct any errors. If there are mistakes, the OPG can't register the LPA and the LPA can't be used. Your attorneys, or someone else, will have to apply to the Court of Protection to get the power to make decisions on your behalf or get a declaration that the LPA can be treated as valid. This can be a long process and can cost a lot more than an LPA.

OUR PRICES.

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A legal document expressing your wishes regarding the distribution of your property and possessions, specifying executors, guardians, funeral wishes, specific gifts and residue.

£99.00

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The same as the above but mirrors your partners wishes, ideal for married couples.

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More complicated wills, complex wishes, multiple specific gifts, charitable bequests, provision for pets, exclusions, disinheritance etc.

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Protect your share of your most important asset against future care fees, ensure your children do not get disinherited, give the right to reside to your loved ones.

Includes mirror wills with property protection/flexible life interest trusts & Land Registry SEV documents.

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Lasting Power of Attorney

Lasting Powers of Attorney allow your attorney/s to act for you, to make decisions on your behalf, pay your bills or speak to doctors and other professionals.

There are two types of Lasting Power of Attorney;

Health & Welfare.

£249.00*

Property & Finance.

£249.00*

*An additional fee of c.£90 is payable to the Office of the Public Guardian to register each LPA.

Legal Document Storage

Includes free unlimited updates.

£50.00 pa.



New Approach Wills

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