

COVID-19: QLD temporarily modifies the signing and witnessing requirements for certain documents (including deeds)

Source: [QLD legislation](#)

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Abstract:

With the requirement for social distancing and, in some cases, self-isolation and in the interest of public health and safety as a consequence of the COVID-19 pandemic, the QLD government made the [Justice Legislation \(COVID-19 Emergency Response – Documents and Oaths\) Regulation 2020 \(QLD\)](#) (“**Regulation**”) on 22 May 2020 (pursuant to sections 8 and 9 in the [COVID-19 Emergency Response Act 2020 \(QLD\)](#)) which temporarily modifies the normal requirements which apply to the making, signing and witnessing of:

- wills;
- enduring powers of attorney;
- advance health directives;
- affidavits;
- statutory declarations;
- oaths and affirmations;
- deeds;
- particular mortgages; and
- general powers of attorney.

The temporary modified requirements do not prevent these documents from being made, signed and witnessed in accordance with the existing requirements.

Relevantly, from a property perspective, we will deal with statutory declarations, general powers of attorney, deeds and particular mortgages:

Statutory declarations

Statutory declarations in person

The list of persons who can witness a statutory declaration other than by audio visual link (i.e. in person with wet ink on paper) has been extended to match the list of people who can witness the making and signing of a Commonwealth statutory declaration - see section 7 of the [Statutory Declarations Regulation 2018 \(Cth\)](#).

Statutory declarations by audio visual link

A statutory declaration can be witnessed by audio visual link (e.g. by using a videoconferencing platform such as Microsoft Teams or Zoom) if:

- the signatory’s oath or affirmation is administered by a “special witness” (see below)(“**special witness**”); and
- it is made, signed and witnessed in accordance with certain audio visual requirements (see below)(“**audio visual requirements**”).

A statutory declaration can be in electronic form and electronically signed if it is made, signed and witnessed in accordance with the audio visual requirements.

General powers of attorney

A general power of attorney which, for the purposes of the Regulation, includes a document revoking a general power of attorney (“**general POA**”):

- does not need to be sealed (or does not need to state that it is sealed); and
- can be in electronic form and electronically signed.

Individuals

A general POA for an individual can be witnessed by audio visual link if it is made, signed and witnessed in accordance with the audio visual requirements.

Corporations

A general POA for a corporation:

- does not require a witness; and
- may be signed for a corporation (with or without the seal of the corporation) by:
 - two directors of the corporation;
 - one director and one secretary of the corporation;
 - for a corporation that has only one director who is also the secretary of the corporation – that director; or
 - a lawfully authorised agent of the corporation.

If two or more persons are signing a general POA for a corporation, a person may sign a counterpart or a true copy of the general POA and it need not include the signature of any other person who is to sign the general POA.

Lodging in the land registry

If a general POA is to be lodged in the land registry:

- if the general POA is made in counterparts – each counterpart must be lodged in the land registry; and
- if the general POA or a counterpart of the general POA is in electronic form – a printed copy of the general POA or the counterpart, certified as a true copy, must be lodged.

If the principal signed the general POA in paper form, the registrar of titles may require the original.

Who is a special witness?

A special witness is defined in section 5 of the Regulation and includes:

- an Australian legal practitioner;
- a Justice of the peace (JP) or commissioner for declarations (CD) approved by the chief executive;
- a JP or CD employed by a law practice that prepared the document; and
- a notary public.

Audio visual requirements

The making and signing of a document can be witnessed by audio visual link if the following conditions are satisfied:

- The witness is a special witness.
- The audio visual link enables the witness to be satisfied that the signatory is signing the document.
- The witness observes the signatory signing the document in real time.
- The signatory signs each page of the document (this does not apply to a statutory declaration).
- The witness is satisfied that the signatory is freely and voluntarily signing the document.
- The witness takes reasonable steps to verify:
 - the identity of the signatory; and
 - that the name of the signatory matches the name of the signatory written on the document.
- Before confirming a document as the document witnessed, the witness must be satisfied that the document:
 - is the document signed by the signatory;
 - is a true copy of the document signed by the signatory (e.g. a scanned copy of the signed document sent electronically to the witness); or
 - if the document is a statutory declaration made using counterparts – that it is a counterpart of the statutory declaration signed by the signatory.
- The witness must confirm the document:
 - as soon as practicable after witnessing it (it does not have to be the same day); and
 - by signing each page of the document (this does not apply to a statutory declaration).
- After the witness confirms a document, the witness must give the document or a true copy of the document (including, if applicable, the original or a true copy of the special witness certificate), e.g. by scanning the document and emailing the scanned copy:
 - if the document is to be confirmed by another witness – to the other witness; or
 - otherwise – to the relevant person for the document, e.g. for a statutory declaration, it is the person making the declaration; for a general POA, it is the principal.

Signatory statement in statutory declarations

If the document is a statutory declaration, the signatory must state in the statutory declaration that:

- the declaration is made, signed and witnessed in accordance with the Regulation;
- the contents of the declaration are true or, if the contents of the declaration are stated on the basis of information and belief, those contents are true to the best of the knowledge of the person making the statement; and
- the signatory understands that a person who provides a false matter in the declaration commits an offence.

Special witness certificate for general POAs

If the document is a general POA, the witness must sign a certificate (which should be kept with the general POA) (“**special witness certificate**”) stating:

- that the document was signed and witnessed during the COVID-19 emergency period;
- that the document was signed and witnessed in accordance with the Regulation;
- the steps the witness took to verify the identity of the signatory;
- the process followed for signing and witnessing the document;
- that the witness is a special witness;
- if an audio visual recording was made of the signing or witnessing of the document; and
- any other matters that the witness considers relevant to the signing or witnessing of the document.

If two or more special witnesses witness a document by audio visual link:

- only 1 certificate is required; and
- only 1 special witness is required to sign that certificate.

From what date does a document signed and witnessed by audio visual link become effective?

A document which is made, signed and witnessed by audio visual link is effective from the date that the signatory signs the document (even if the witness confirms the document on a later date).

Lodging a document in the Land Registry

If a document is lodged in the land registry:

- the special witness certificate, if applicable, should also be lodged with the document; and
- if the signatory signed the document in paper form, the registrar of titles may require the original.

If a statutory declaration is made using counterparts:

- the counterpart confirmed by the witness should be kept with the counterpart signed by the signatory;
- the counterparts together constitute the statutory declaration; and
- the counterparts may be relied on as evidence of the statutory declaration.

Audio visual recordings

An audio visual recording of the signing or witnessing of a document can only be made with the consent of the signatory and the witness. An audio visual recording is not required and does not affect the validity of the document or the signing or witnessing of the document.

Do the signatory and the witness have to be in QLD when signing?

It would appear that they do not have to be physically located in QLD during the audio visual link. The Regulation only applies to documents being witnessed under the Regulation.

Deeds

A deed must:

- be in writing;
- contain a statement that it is a deed;
- be signed (see below); and
- be delivered (in accordance with section 47 of the [Property Law Act 1974 \(QLD\)](#)).

However, a deed does not need to be:

- written on paper or parchment. It can be in electronic form;
- an indenture (or need to state that it is an indenture); or
- sealed (or need to state that it is sealed).

Signing a deed

Regarding the signing of a deed:

- it can be signed electronically;
- an individual's signature does not need to be witnessed;
- the following persons may sign on behalf of a corporation (with or without the seal of the corporation):
 - two directors of the corporation;
 - one director and one secretary of the corporation; or
 - for a corporation that has only one director who is also the secretary of the corporation – that director; or
 - a lawfully authorised agent or attorney of the corporation; and
- a person may sign a counterpart or a true copy of the deed and it need not include the signature of any other party who is to sign the deed, e.g. if a deed is signed for a corporation by one director and one secretary, the director may sign one counterpart and the secretary may sign another counterpart.

Lodging in the land registry

If a deed is to be deposited in the land registry:

- if the deed is made in counterparts – each counterpart must be deposited in the land registry; and
- if the deed or a counterpart of the deed is in electronic form, a printed copy of the deed or counterpart, certified as a true copy, must be deposited in the land registry.

Particular mortgages

A mortgage can be electronically signed by the mortgagor and does not need to be witnessed if:

- a mortgage is electronically lodged under section 7 of the [Electronic Conveyancing National Law \(Queensland\)](#); and
- the mortgagee holds the mortgage signed by the mortgagor and it is on the same terms and conditions as the lodged mortgage and complies with section 11 of the [Property Law Act 1974 \(QLD\)](#).

How long will the Regulation be in effect?

The Regulation will expire on 31 December 2020 (the expiry date of the [COVID-19 Emergency Response Act 2020 \(QLD\)](#)).

Key takeaways

In Queensland, until 31 December 2020:

- statutory declarations and general POAs can be witnessed by audio visual link;
- statutory declarations, general POAs and deeds can be in electronic form and signed electronically;
- an individual's signature does not need to be witnessed in a deed; and
- statutory declarations, general POAs and deeds can comprise separately signed counterparts or true copies.