

Electronic signatures

Why do documents require a signature?

English contractual law states for there to be a binding contract there must be an 'offer', 'proof of acceptance' and 'consideration'.

S2 of the Law of Property (Miscellaneous Provisions) Act 1989 provides that for the sale or disposition of an interest in land, a contract must:

- Be in writing;
- Incorporate all the agreed terms of the parties in one document, or where contracts are exchanged, in each document;
- Be **signed** by or on behalf of each party.

S52 of the Law of Property Act 1925 provides that where there is a transfer of land or an interest in land the disposition must be by deed. Dispositions by deed must be in writing, but in addition to the above, the signing of the deed must in some cases be witnessed.

Will an electronic signature fulfil these statutory requirements?

When the Electronic Communications Act 2000 came into force, following an EU directive, it stated that electronic signatures (and related certificates) will be admissible as evidence with regard to the authenticity or integrity of an electronic communication but it does not deal with the actual question of whether or not a document is valid if an electronic signature has been used.

Is there any case law or other guidance which might assist?

In Green (Liquidator of Stealth Construction Limited) v Ireland 2011, the 'signatures' to the e mails were of the parties' forenames only but the court held that this would be sufficient for a signature. In addition, the Law Society's guidance note on electronic signatures published in 2016 and the more recent Law Commission consultation on electronic execution (August 2018) both indicate that a contract or deed executed by an electronic signature is capable of satisfying the statutory requirements of being in writing and signed.

But...

If a transaction needs to be registered at the Land Registry, there is still a requirement for most transactions (for example transfers of land, grants of easement and grants of leases of 7 years or more) to have a 'wet ink' signature on the paper document.

Change is likely in the medium term as the Land Registry (Amendment) Rules 2018, which came into force on 6 April 2018, make provision for electronic documents and electronic signatures to be used once the Chief Land Registrar is satisfied that adequate arrangements are in place. It remains to be seen how long it will take to put the necessary arrangements in place. Until then, the Land Registry will still require a traditional "wet ink" signature.

Further information

This information sheet has been based on our understanding of the law as at March 2019. For further information please contact Kate Turnham on 01892 510000 or email at: kate.turnham@ts-p.co.uk

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