

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 guidance which might assist?

The Law Society's guidance note on electronic signatures published in 2016 and the more recent Law Commission report on the electronic execution of documents (September 2019) approved by the Government in March 2020 all indicate that a contract or deed executed by an electronic signature is capable of satisfying the statutory requirements of being in writing and signed. The only caveat is that where a signature needs witnessing, the witness must still be physically present. Remote witnessing by video link is not sufficient.

Use of electronic signatures in practice

Prior to the pandemic, electronic signatures were not widely used in real estate because any transaction that needed to be registered at the Land Registry (for example transfers of land, grants of easement and grants of leases of 7 years or more) had to have a 'wet ink' signature on the paper document.

However, in response to the difficulties created by the pandemic the Land Registry will now accept documents for registration if they have been electronically signed by an electronic platform such as DocuSign or Adobe, provided a certificate is given that all the requirements set out in paragraph 13 of Land Registry Practice Guide 8 have been met. In particular, the Land Registry require that:

- All the parties agree to the use of electronic signatures and a platform in relation to the deed, even if they are not signing electronically themselves.

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- All the parties have conveyancers acting for them, except that only the lender in the case of a mortgage, discharge or release, the personal representatives in the case of an assent and the donor in the case of a power of attorney need have conveyancers acting for them. If any party is unrepresented (other than in the situations just outlined), including a party who is not signing themselves, electronic signatures cannot be used by any of the parties involved.
- Where a deed is to be signed electronically by a party's attorney, a conveyancer must be acting in respect of the execution, having been instructed to do so by either the party or by the attorney.
- A conveyancer is responsible for setting up and controlling the signing process through the platform. This means that we must know the names of all signatories (but not any witnesses) when we set up the signing process.
- One Time Passwords must be set up for all signatories and witnesses as an added level of security.
- Documents must be dated within the electronic platform which is being used.
- A certificate must be provided to the Land Registry that all its requirements for the use of electronic signatures have been met.

We have the ability to facilitate the electronic signature of documents using the DocuSign platform if required.

Further information

This information sheet has been based on our understanding of the law as at October 2021. For further information please contact Kate Turnham on 01892 510000 or email at:

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