

ELECTRONIC SIGNATURES

The coronavirus pandemic has meant that lawyers have adapted to help clients to progress transactions digitally, says Robert Botkai of Winckworth Sherwood.



Proper execution of documents is vital. Asking clients to sign remotely is not always without mishap. I did write to a client once asking him to sign where indicated in pencil. He signed in pencil and returned the document to me. Lesson learnt!

English law

The general rule of English law is that contracts may be made informally: in most cases, no writing or other form is necessary in order for the contract to be legally binding.

In order for a binding contract to be created, the key elements of offer, acceptance, consideration, intention to create legal relations and certainty of terms must be present.

In the absence of a statutory requirement concerning the form of a particular contract, the contract may be created with no structural formality.

This is why you will see legal correspondence headed with the expression "Subject to Contract", so that the recipient cannot claim that a legally binding contract has been effected.

We would, of course, advise that any contract you wish to enter into be in writing. When signing such a contract with an electronic signature, the parties should ensure that the type of signature used will be accepted as evidence in the event of subsequent dispute. However, UK law provides that an electronic signature is admissible in evidence in relation to any question as to the authenticity of the document.

E signatures

There are a range of methods by which a legal relationship can be created electronically.

Many forms of transaction are now conducted by

various types of electronic communications, such as email and website or app-based trading.

An electronic signature is capable in law of being used to execute a document (including a deed) provided that:

- the person signing the document intends to authenticate the document; and
- any formalities relating to execution of that document are satisfied. Examples of such formalities that might be required include that the signature be witnessed or that the signature be handwritten.

The courts have held various non-electronic forms as amounting to a valid signature, including signing with an "X". Electronic equivalents of these non-electronic forms of signature are likely to be recognised by a court as legally valid.

Deeds

Certain types of transaction can only be carried out by deed. These include:

- Land transfers
- Leases
- Guarantees such as a mortgage

There may be statutory requirements that stipulate how the deed must be executed and witnessed.

To enable transactions to be completed without the need for a physical meeting or the circulation of hard copy documents for execution, it is common in practice for deeds to be executed in a "virtual" form. This may involve sending a PDF copy but the signature pages to the deed will be printed and executed by the parties using manual, "wet-ink" signatures.

If the deed is executed by an individual or sole director, his or her signature must be witnessed. Practice is evolving whereby an electronic signature is witnessed but this must be genuinely observed and ultimately a court may have to decide whether a signature has been properly witnessed, so take advice on a case by case basis. It is likely that the witness and signatory must be in the same location when a deed is signed electronically. We are not



quite there with Zoom witnessing as yet!

An electronic signature should be capable of satisfying the requirement for signature in relation to a deed executed by a company.

Registration

A wet ink signature is still a requirement to register a transaction at the Land Registry. This would include any transfer of land or a lease with a term of seven years or more. In response to the COVID-19 pandemic the Land Registry has announced that it will, until further notice, accept a document with a scanned manuscript signature.

Conclusion

The law is trying to keep up with the digital revolution. In many cases, your supply contracts, commission operator agreements and even short leases can be signed electronically.

The Government has indicated that it will undertake a review on the laws relating to deeds and this is likely to encompass electronic signatures and witnessing but I doubt this is a high priority. And the law does not help with some of the challenges of working at home. I discovered that my home printer prints but does not scan double sided documents. Yours truly spent hours prostrate, trying to scan a completed deed of surrender. But at least I could take solace with a gin and tonic in the garden.

Keep safe everyone!

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