

WinckworthSherwood

The electronic execution of documents

The Law Society¹ and Land Registry² have both consolidated and updated their guidance on the execution of documents in light of COVID-19. Where under the Law of Property (Miscellaneous Provisions) Act 1989 (LP (MP) A) a contract for the sale of land (or other dispositions) must be in writing, this can be achieved with an electronic document (although care must be taken if the terms of a contract are set out in a string of emails or separate pdfs attachments. It will always be good practice to ensure that a single document - for example a pdf with all annexures/appendices incorporated - contains all of the terms of an agreement).

And although under the LP (MP) A a deed or a contract for the sale (or other dispositions) must be signed, the difficulty of obtaining a wet ink signature with so many people working from home has led to an increase in the use of electronic signatures. "Electronic signature" is not a legally defined term but encompasses several different forms of signature. These include a scanned wet ink signature electronically inserted into a document; typing one's name at the bottom of a document; or a computer-generated signature personal to the signee. (These forms of signature are different to a wet ink signature on an execution page which is then scanned - an electronic signature involves the document been "signed" without having being printed out first.)

The Law Commission Report dated 4 September 2019³ provided that an electronic signature can be used to

execute a document (including a deed) as long as the person signing the document intends to authenticate the document; and any formalities relating to the execution of that document are satisfied, eg that the signature be witnessed. The Land Registry requires that if an electronic signature is being used the witness will need to be in the same room as the signing party when they insert their electronic signature. The Law Society guidance is also that it is best practice to have a witness physically present rather than using a "virtual witness", who is present via video link software.

The Land Registry's updated guidance provides that they will accept electronic signatures for the signing of deeds, if all parties agree to it and the other requirements for executing a deed are met. The parties must be represented by conveyancers and must agree on an electronic signature platform - a signature cannot simply be inserted into a deed as a wet signature would be. The agreed platform is accessed securely via a password. The guidance allows for deeds to still be executed in counterpart, and for one to be signed electronically and one with a wet signature.

As an alternative, the Land Registry will also now accept most documents used for land registration⁴ that are executed under the Mercury procedure. Here each party prints out the signature page of the final agreed document to be signed and witnessed in pen, and then sends their lawyers a single email with a PDF of the executed page together with the PDF or Word version of the final agreed document.

¹"Execution of a document using an electronic signature" Law Society practice note updated May 2020 <https://www.lawsociety.org.uk/support-services/advice/practice-notes/execution-of-a-document-using-an-electronic-signature/> "HMLR Practice Guide 8 execution of deeds" updated 27 July 2020 <https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds>

²"HMLR Practice Guide 8 execution of deeds" updated 7 September 2020 <https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds#our-requirements>

³ See para 5.53 – 5.55 "Law commission electronic execution of documents" 2019 <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jx-ou24uy7q/uploads/2019/09/Electronic-Execution-Report.pdf>

⁴ transfers, deeds that effects one of the dispositions referred to in section 27(2) and (3) of the Land Registration Act 2002, (this includes the grant of leases greater than 7 years, easements, rentcharge, legal mortgage and legal charges), DS1s and DS3s, equivalent deeds in respect of unregistered land, power of attorney other than a lasting power of attorney.

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