

# Legal Alert

February 2016

## ELECTRONIC SIGNATURE OF DEEDS AND REAL ESTATE CONTRACTS – STILL A CONVOLUTED PROCESS.

Due to statutory requirements deeds and real estate contracts, to be legally effective, have to be signed by the parties. This is unlike non-real estate contracts which become legally binding as soon as they satisfy some of the basic rules relating to offer, acceptance, consideration and intention.

But what, if anything, qualifies as a statute-compliant signature for deeds and real estate contracts, other than the usual “wet-ink” signature on a paper document? Unfortunately, the law is currently unclear on this issue.

For instance, the Electronic Communications Act 2000 provides for regulations to be made to modify existing statutory provisions to enable electronic transactions. However, to date, no regulations have been made to clarify the statutory formalities relating to either land contracts or deeds generally. Nor has any official guidance come from the Land Registry as to what they would find acceptable, should they ever become aware that a document was signed other than by a wet-ink signature. Although section 91 of the LRA 2002, permits the Land Registry to set up a system permitting the registration of electronic deeds, no enabling regulations have yet been passed (save in relation to a system for electronic charges currently in beta testing).

Moreover, although the courts have, in general, taken a liberal approach to what amounts to a signature, they have not had to make any significant pronouncements in the context of the statutory regimes governing deeds or real estate contracts.

### THE “OPTION 1” METHOD FOR ELECTRONIC SIGNATURE

For electronic signatures, in extremis, the method of virtual or remote signature generally known as “Option 1” can be adopted. This method is believed by most lawyers to satisfy any requirement for a document to be signed and in writing.

In order to rely on Option 1 the following steps should be taken by the solicitor acting:

- Well in advance of exchange or completion (as the case may be), the approval of all other solicitors involved in the transaction should be sought to:
  - the proposed use of Option 1;
  - the precise details of how Option 1 is intended to operate; and
  - the precise details of how exchange (or completion) is subsequently to be effected.

These steps are necessary because use of Option 1 remains controversial and, moreover, there are many differing interpretations of precisely how Option 1 is supposed to work.

- Confirm that no signatory to the deed is a company that intends to execute the document by impressing its seal. It is thought that Option 1 doesn't work for traditional sealing.
- Send to the signatory an email with the final form of the document attached.
- Tell the signatory to print out the signature page, sign this page with a wet-ink signature and create a PDF of the signature page.
- The signatory should then return both the PDF and the final form of the entire document attached to the same email.

## EXCHANGE (OR COMPLETION)

Option 1 does NOT prescribe how exchange or completion (as the case may be) should be affected after the steps above have been taken.

However, sensible steps to take by the solicitors to achieve exchange or completion would seem to be as follows:

- Print out the attachments to the email (i.e. the final form of the entire document and the PDF signature page).
- Discard the blank signature page from the back of the print-out of the full document and attach in its place the print-out of the PDF signature page.
- Wording indicating that the document was created from an email (including sender, recipient and time received) should then be written on the resulting (paper) document. The (paper) document can then be dated in manuscript on exchange or completion (and delivered) in the usual way.

As seen above, Option 1 is a convoluted process and the moral is therefore that although documents can be completed "electronically" using Option 1, wherever possible deeds and real estate contracts should be executed by wet-ink signature on a complete paper version of the document.

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