

Signing and Witnessing Documents (Including E-Signing)

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In this period of uncertainty, many of us are facing challenges as we adapt to working on a remote basis, particularly where we may not have access to colleagues and normal working equipment such as printers and scanners. One of those challenges is how documents can be executed correctly to ensure they comply with the relevant requirements. This advisory serves as a useful reminder of the legal requirements when signing and witnessing documents, particularly with a focus on the execution of deeds and in what circumstances e-signatures can be used.

Executing a deed signed by two directors

While there appears to be no specific authority on the point, some practitioners take the view that when executing a document in accordance with *section 44(2)(a) of the CA 2006*, it is acceptable for the authorised signatories to sign separate engrossments of the document. For instance, this approach appears to be endorsed by the note on the electronic execution published in 2016 by a joint working party (JWP) of the Law Society Company Law Committee, the City of London Law Society (and approved by Mark Hapgood QC) and the 2019 paper on electronic signature.

However, the validity of this approach is not universally accepted by practitioners and, if the document in question needs to be registered with the Land Registry, registration may be refused where the document has been executed in this way.

Given the uncertainty on this issue, if it is not possible for two authorised signatories to sign the same execution copy of the document (for example, where they are based in different locations). The prudent approach is for the document to be executed by one director in the presence of a witness in accordance with *section 44(2)(b) of the CA 2006*.

Executing a deed signed by a director and/or individual and a witness: who can be a witness?

A party to a deed cannot be an attesting witness (*Freshfield v. Reed*¹ and *Seal v. Claridge*²).

There is no statutory requirement (either under the *LP(MP)A 1989* or the *CA 2006*) for the witness to be independent or disinterested. There is no prohibition on a signatory's spouse, co-habitee or civil partner from acting as a witness.

A witness needs to be 'credible'; this means 'competent' rather than 'independent' (*Log Book Loans Ltd. v. Office of Fair Trading*³).

However, given that the purpose of requiring a party's signature to be witnessed is to provide, if necessary, unbiased evidence of what was signed, by whom and when, independent witnessing should always be required as a matter of best practice.

¹ (1842) 9 M&W 404

² (1881) 7 QBD 516

³ [2011] UKUT 280 (AAC)

There is no apparent prohibition against a minor acting as a witness. However, it is generally advisable to avoid this or, at least, to ensure that any minor who acts as a witness is of sufficient maturity and understanding for their evidence to be regarded as reliable, should it later prove necessary to verify the circumstances surrounding the execution of the deed.

On the rare occasion that more than one deed is utilised to enact linked transactions, for the purposes of attestation, they should be treated as if they were one deed and the same recommendations apply. Therefore, parties who are signatories to one document should not witness the signature of another person on a connected document, even if they are not a signatory to that document.

E-signing

In September 2019, the Law Commission produced a report on electronic execution of documents (*Law Com No 386, 2019*). In this report, they concluded that 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 relevant formalities relating to the execution of that document are satisfied.

The Law Commission confirmed, however, a deed must be signed '*in the presence of a witness*' – this requirement requires the physical presence of that witness. This is the case even where both the person executing the deed and the witness are executing or attesting the document by using an electronic signature. They could not be certain that witnessing the signature via video link is sufficient.

What is considered to be a proper e-signature?

There is no statutory definition of "signed" or "signature" which applies generally.

The courts have, for example, held that the following non-electronic forms amount to valid signatures where there is a statutory requirement for a signature:

1. signing with an 'X';
2. signing with initials only;
3. using a stamp of a handwritten signature;
4. printing of a name;
5. signing with a mark, even where the party executing the mark can write; and
6. a description of the signatory, if sufficiently unambiguous, such as '*Servant to Mr. Sperling*'.

Electronic equivalents of these non-electronic forms of signature are likely to be recognised by a court as legally valid.

The courts have held that the following electronic forms amount to valid signatures (where the statute which requires a signature is silent as to whether an electronic signature is acceptable):

1. a name typed at the bottom of an email;
2. clicking an "I accept" tick box on a website; and
3. the header of a SWIFT message.

E-signing and the Land Registry

Whilst e-signing is accepted as a valid way to execute legal documents, including deeds, if the deed is to be used as evidence in a registration at the Land Registry, a different approach is taken.

The Land Registry set out their position on electronic signatures under their Practice Guide for executing Deeds and their further commentary. In summary, the Land Registry do not accept electronic signatures for deeds.

Whilst an electronic document with an electronic signature can be regarded as a properly executed deed if it complies with the relevant formalities, HM Land Registry will not accept an e-document with an e-signature as a dispositional deed for registration, unless it complies with the provisions of the *LRA 2002* and *rules 54A to D of the LRR 2003*.

The *section 91 LRA 2002* requirements are set out in *sub-section (3)*:

- (a) the document makes provisions for the time and date when it takes effect;
- (b) the document has the electronic signature of each person by whom it purports to be authenticated;
- (c) each electronic signature is certified; and
- (d) such other conditions, as rules may provide, are met.

Rule 54B of the LRR 2003 specifies the conditions referred to under *section 91 (3)(d)*:

- (a) the document purports to effect a kind of disposition which is specified in a notice given under *rule 54C*;
- (b) the document, each electronic signature which the document has and the certification of each electronic signature are in accordance with any requirements in such a notice; and,
- (c) such other conditions contained in the notice given under *rule 54C* as are appropriate to a document of that type.

Rule 54C states if the registrar is satisfied that adequate arrangements have been made or will be in place for dealing with documents in electronic form that purport to effect a disposition of a kind falling within *rule 54A* (i.e. electronic dispositions), he may, in such manner as he thinks appropriate, give notice publicising the fact.

The latest [notice under 54C](#) relates to digital mortgages only.

Sources:

Practical law: [Execution of deeds and documents: Witness requirement](#)

Land Registry: [Practice Guide 8: execution of deeds](#)

Land registry blog: [E-signatures](#)

Law Commission report: [Electronic execution](#)

Companies Act 2006

Law of Property (Miscellaneous Provisions) Act 1989

Land Registration Act 2002

Land Registration Rules 2003

QUERIES

This is an explanatory reference note produced for reference only. It should not be treated as legal advice on any specific situations. If any such advice is required, please contact your Katten attorney, or any of the following:



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