

Insights

LAND REGISTRY & E-SIGNATURES – A MARRIAGE MADE IN LOCKDOWN

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SUMMARY

On 27 July 2020 the Land Registry in England & Wales updated its guidance to confirm that they will, for the foreseeable future, accept e-signed documents/deeds including on transactions that trigger a change to the register, subject to various conditions. This is a significant step forward for the sector, and comes off the back of a hard-fought campaign by lawyers, agents and industry bodies across real estate particularly during lockdown, but there is still more to achieve.

What are the terms and conditions?

Ignore the fine print at your peril! The documents that the Land Registry will now accept as e-signed are registrable dispositions (which class crucially includes leases of any length and transfers), powers of attorney (particularly popular as entrenched office based signing processes became impracticable during lockdown), discharges and assents for registered or unregistered land.

The main conditions that the Land Registry has imposed are as follows:

- all parties must agree to the use of e-signatures and an e-signing platform even where one or more of those parties choose to use a traditional wet ink method instead;
- all parties must have conveyancers acting for them;
- a conveyancer must be responsible for setting up and controlling the signing process through the platform; and
- a prescribed signing and dating process must be implemented through the chosen platform.

So far so good?

Whilst the Land Registry, as keeper of the keys to the registered kingdom, is anxious about an increased risk of fraud, these conditions create some challenges for the sector.

Firstly, it is disappointing that we cannot use e-signatures where a party is unrepresented, though this would not be a barrier if the transaction were a short term lease which didn't need to go to the Land Registry, (and one could argue that the current market trend is moving towards these shorter terms).

The main hurdle with the signing process, however, is the insistence that witnesses must use two factor authentication by providing both an email and mobile phone number, the latter for a one time password ("OTP"). Several of the most popular platforms on the market do not (yet) support this function without giving the witness full visibility of the documents (including the completed versions), which is far from ideal.

What next?

There is a suggestion that the Land Registry will revisit this guidance at the point where they feel able to accept qualified electronic signatures (a form of digital signature that verifies the signatory's identity before they sign), but we hope that any further change will serve to widen not limit the choice we are able to offer our clients: a divorce would be extremely unhelpful.

Whilst the sector has welcomed the Land Registry's move, the forward momentum must continue and at a renewed pace: a truly electronic conveyancing model for commercial and residential real estate is not yet on the horizon. Whilst we're pushing for change, could 2020 also be the year that we see video witnessing accepted or, better still, a rethink of the exclusion of security of tenure process prescribed by the ageing Landlord and Tenant Act 1954? Now that would make for quite the wedding reception!

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