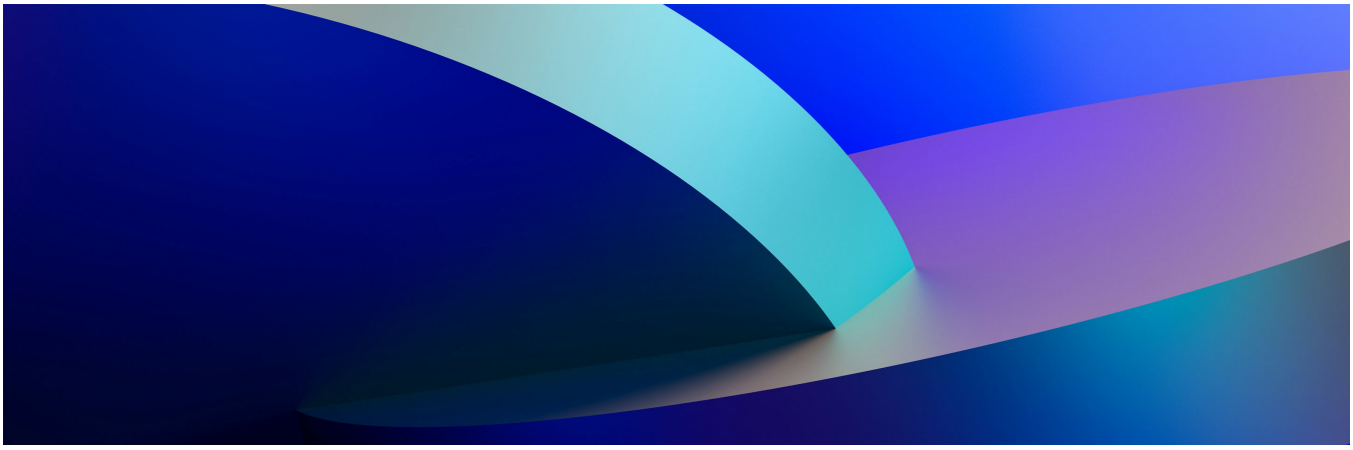


Electronic signatures in real estate documents in England & Wales

1. Which documents can use an electronic signature and take legal effect?

Generally, any document which does not need to be registered with the Land Registry or HMRC. This may include:

- Sale/Purchase agreements;
- Agreements for lease;
- Options/pre-emption agreements;
- Leases for a term of up to 7 years (where easements are not to be registered and subject to other limited exceptions);
- ASTs/Tenancies at will;
- Licences (to occupy, for alterations, underletting and assignment);
- Rent deposit deeds;
- Guarantees;
- Side letters;
- Wayleave agreements;
- Rent-review memos;
- Certificates of title; and
- NDAs/Exclusivity agreements.

2. Which documents cannot use electronic signatures and take legal effect and why?

The Land Registry requires wet ink signatures for documents sent to it for registering or noting. Therefore, the following documents cannot be executed electronically:

- Leases for a term of more than 7 years (or 3 years where easements are to be registered);
- Mortgages/charges;
- Discharge of mortgages/charges;

- Transfers; and
- Grant of easements.

The Land Registry has its own processes for the electronic discharge of mortgages/charges signed in wet ink.

HMRC requires wet ink signatures where stamp duty is payable, e.g. a stock transfer form.

3. What are the legal requirements for electronic signatures on documents?

Companies House operate an online filing service which allows most forms, notices and statements to be both signed and delivered to Companies House electronically. They do however have specific certifying requirements for documents being filed which have been signed electronically.

Otherwise, there are no additional legal requirements for an electronic signature of a Real Estate document beyond the requirements of the Land Registry and HMRC for wet ink signatures.

4. Are there any proposals to change the law relating to electronic signatures?

There are currently no plans to change the Land Registry or HMRC requirements for wet ink signatures.

However, a recent report confirmed that it was the Law Commission's view that a witnessed e-signature is a valid way of executing deeds provided the attesting witness is physically present with the signatory. The Government has subsequently endorsed their conclusions.

5. Are there any other factors which prevent documents being entered into in electronic format?

Possibly, if:

- the executing company's constitutional documents restrict or prevent it from signing electronically. While not common, this may exist and should be checked;
- the executing company executes documents by affixing a common seal. England and Wales do not currently have a framework in place to allow for electronic sealing of documents; or
- the document must be treated as executed in a jurisdiction outside of England and Wales. If the place of signature or jurisdiction has particular legal consequences, it may be better to have a physical signing.

Key Contacts



Marie Scott
London
Partner
Co-Head of Real Estate Practice



Chris D'Emanuele
London
Partner

Authors



Marie Scott
London
Partner
Co-Head of Real Estate Practice



Chris D'Emanuele
London
Partner

Alex Lane
Associate
left_cms