

## **Remote Execution – Recent Law Society Guidance**

In the wake of the Covid-19 pandemic, the Law Society has issued guidance in relation to virtual execution of documents and the use of e-signatures. The practice note highlights that the current pandemic and subsequent social distancing rules and the lockdown have placed an increased focus on the ability to conduct non-face to face transactional closings, as traditional processes are unable to continue. As such, many are considering virtual execution of documents and the legality of such execution as a practical means of navigating the new territory in which we find ourselves. The note highlights three key areas summarised below: (1) Best Practice (2) Land Registry Requirements and (3) the Justice secretary's response to the Law Commission.

### **(1) Best Practice**

The note states that the law in this area has not been changed since the outbreak of the pandemic. However, the Law Society suggests that particular consideration be given to the following: agreement between both sides as to how the transaction should be managed, how identities are to be verified and authority checked, ensuring that relevant evidence is available, reporting back to parties once a transaction is closed.

It is possible to demonstrate physical presence while also maintaining social distancing with appropriate safeguards, although there are practical challenges. Other resources include recent articles on [Witnessing Deeds in the Age of Social Distancing](#), and [Witnessing an Execution: What Does s1 of the Law of Property \(Miscellaneous Provisions\) Act 1989 Require Today?](#) and the Law Societies best practice notes [Execution of documents by virtual means](#) and [Execution of a document using an electronic signature](#).

### **(2) Specific Land Registry COVID Requirements**

From May 2020 HM Land Registry will temporarily accept deeds that have been signed using the Mercury signing approach (named after the decision in R (on the application of Mercury Tax Group) v HMRC [2008] EWHC 2721, see: article [Moving with the times: Land Registry announces changes to identity verification and signing of deeds](#)). For land registration purposes, a signature page will need to be signed and witnessed in pen and then captured, with a scanner or a camera, to produce a PDF, JPEG or other suitable copy of the signed signature page. Each party sends a single email to their conveyancer to which is attached the final agreed copy of the document and the copy of the signed signature page. The government announcement, however, makes it clear that the witnessing of signatures must be carried out in person, not by video call.

### **(3) The Justice Secretary's response to the Law Commission**

In September 2019 the Law Commission's published its report titled: Electronic Execution of Documents. This confirmed that an electronic signature is capable in law of being used to execute documents (including deeds). However, there is yet to

be an authority on the point and in the absence of primary legislation, there remains an inconsistent approach to the use of electronic signatures. The Law Commission recommended a review of the law of deeds and suggested that the government may wish to consider codifying the law on electronic signatures in order to improve the accessibility of the law.

On 3 March 2020 Robert Buckland MP (lord chancellor and justice secretary) made a written statement to the Houses of Parliament responding to the Law Commission Report. He welcomed the work of the Law Commission and committed to a further review of the law of deeds. In relation to electronic signatures however, he considered there to be no need for primary legislation, suggesting that the existing framework is clear.

The full Law Society Guidance can be found at

<https://www.lawsociety.org.uk/support-services/advice/articles/position-on-virtual-execution-e-signature-during-coronavirus-covid-19-pandemic/>

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