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| **E-SIGNATURES AND E-SIGNING** **PLATFORMS** |
| **APSL/LPSLG WORKING GROUP PAPER** |
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# OBJECTIVES and remit OF THE WORKING GROUP

## Different types of electronic signature provide differing degrees of integrity and security. This working group has been formed to consider issues around the use of **"****standard" electronic signatures**[[2]](#footnote-2) created by **e-signing** **platforms** with a view to recommending best practice for **real estate** **transactions** making use of such platforms.

## This paper does not consider the use of AES (advanced electronic signatures) or QES (qualified electronic signatures) which are also often categorised as "digital signatures". Additional layers of security apply to the use of such signatures. Whilst some e-signing platforms have the capability, digital signatures are not commonly seen in England and Wales at the present time, although HM Land Registry's hope is that QES becomes more commonplace and the service providers of e-signing platforms tailor their use to conveyancing[[3]](#footnote-3).

## The law firms represented on this group all use the DocuSign e-signing platform and therefore Schedule 3 contains a detailed guide to a typical DocuSign workflow. However, the group has endeavoured to create protocols and recommendations that are provider neutral and applicable to most e-signing platforms with Schedule 4 listing some of the many platforms that are available. If you are able to provide equivalent workflow guides for any of the alternative e-signing platforms, please contact us.

## In addition to the desire to help facilitate the use of technology that will streamline the signing process for real estate transactions, the group has also considered the **security implications** of using e-signing platforms instead of "wet ink" signatures. Some platforms offer access authentication, which is a recognised method intended to protect against digital identity theft. See section 4.5.2 and paragraph 2.5.2 of Schedule 3.

## The group has not considered virtual closings (using the so-called *Mercury* protocol[[4]](#footnote-4)) nor has it looked at the use of other forms of electronic signatures, such as signatories pasting an image of their manuscript signature or typing their name into real estate documents, although clearly elements of this paper will apply to the use of such electronic signatures. These types of electronic signatures are generally regarded as less secure and efficient than those created by e-signing platforms and they do not comply with the Land Registry Requirements (see section 2.1.5), although additional actions can be taken to address some of the concerns that exist around their use[[5]](#footnote-5).

## Whilst agreed amongst a group of PSLs who are members of the LPSLG[[6]](#footnote-6)/APSL[[7]](#footnote-7), the protocols and recommendations set out in this paper do not represent an agreed best practice of any particular law firm which is represented on either of those groups. Neither does it preclude any such law firm from diverging from them either generally or in a particular case.

## If your transaction involves other practice areas, you may have to adapt this protocol to meet the requirements of those practice areas. This paper does not consider best practice in the context of a corporate, general commercial or finance transaction. For separate checklists prepared by PSLs specialising in these practice areas, please see Schedule 7.

# definitions

## Throughout this paper key words and phrases are highlighted in blue font and the following definitions apply:

### **Certificate of Completion** means the recorded audit trail of the entire signing process for an electronically signed document on an e-signing platform which will typically include the email addresses it was sent to, whether access authentication was used, the time the document was viewed and signed by signatories and witnesses, the IP addresses of the devices used and (if the recipient's device has location-tracking enabled) the GPS co-ordinates of the location of the devices at the time of e-signing (if these features are enabled on the e-signing platform);

### **Conveyancer** means an authorised person within the meaning of section 18 of the Legal Services Act 2007 who is entitled to provide the conveyancing services referred to in paragraphs 5(1)(a) and (b) of Schedule 2 to that Act, or a person carrying out those activities in the course of their duties as a public officer. It also includes an individual or body who employs or has among their managers such an authorised person who will undertake or supervise those conveyancing activities (rule 217A of the Land Registration Rules 2003)[[8]](#footnote-8);

### **Interim Certificate** means an in-process record of the audit trail of the electronic signing process generated by an e-signing platform prior to the document being completed by the Conveyancer controlling the signing process;

### **Land Registry Compliance Certificate** means a certificate from a Conveyancer[[9]](#footnote-9) in relation to any electronically signed Registrable Documents in the following form:

***I certify that, to the best of my knowledge and belief, the requirements set out in practice guide 8 for the execution of deeds using electronic signatures have been satisfied.***

### Appendix 3 of [Practice Guide 8](https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds#appendix-3) contains an example of an acceptable certificate;

### **Land Registry Requirements** mean HM Land Registry's requirements for electronic signatures set out in [section 13.3 of Practice Guide 8](https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds#electronic-signatures);

### **Non-****Registrable Documents** mean documents that are not Registrable Documents;

### **Practice Guide 8** means [HM Land Registry's Practice Guide 8: execution of deeds](https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds); and

### **Registrable Documents** mean the documents listed in [section 13.3 of Practice Guide 8](https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds#electronic-signatures) (updated 9 August 2021).

# CAN I USE AN E-SIGNING PLATFORM FOR MY TRANSACTION?

## In its 2019 report[[10]](#footnote-10) the Law Commission confirmed that an electronic signature is capable under **English law** of being used to execute documents (including deeds) provided that the signatory intends to authenticate the document in question and any relevant formalities are satisfied. Notwithstanding this endorsement, however, there are a number of situations in which it may not be appropriate to use electronic signatures and/or an e-signing platform.

## From **27 July 2020** until further notice HM Land Registry will accept for registration Registrable Documents that comply with the Land Registry Requirements.

## We have set out a checklist which includes the Land Registry Requirements and a brief summary of the **legal and practical constraints** on the use of electronic signatures in Schedule 1 and have included a non-exhaustive list of the types of documents which we consider are suitable (and not suitable) for electronic signature in Schedule 2. In view of the recognised difficulties of using electronic signatures and e-signing platforms where a signature is **witnessed**, particularly given HM Land Registry's requirement for access authentication to be used for witnesses in relation to Registrable Documents, we have included a separate paragraph on witnessing at section 5 of this paper. Schedule 3 contains a suggested guide to the workflow when using DocuSign[[11]](#footnote-11).

## Note that whilst it is permissible for different parties to use **different methods of execution**[[12]](#footnote-12) (e.g. one party signs electronically and another in "wet ink") provided the method and form of execution complies with legal and contractual requirements, where it is proposed to use an e-signing platform there are clear benefits of conducting the entire transaction through that e-signing platform (i.e. with all parties signing one document on the same platform and a Conveyancer acting for one of the parties dating it within that platform[[13]](#footnote-13)) including:

### speed and efficiency (for both signatories and solicitors);

### the generation of a Certificate of Completion; and

### the signed and dated document(s) being contained in a PDF that is coded to match that Certificate of Completion.

## If parties are intending to use different methods of execution, this can be done by way of counterparts. This includes cases where it is envisaged that the parties will use different means of applying an electronic signature. Issues have been experienced in practice where documents signed using one e-signing platform "lose" the electronic signatures if then uploaded to an alternative e-signing platform. Anecdotally, we understand that similar issues have also arisen where a signatory has simply inserted an image of their signature into a document. If a party has electronically signed a document other than through an e-signing platform, it will be important to ensure that each "signing" is supported by an appropriate audit trail[[14]](#footnote-14).

## HM Land Registry has indicated to APSL/LPSLG that the Land Registry Requirements do not need to be met in respect of counterparts that are not submitted for registration, although all parties to the document must be represented by a Conveyancer (see section 4.3.4 below).

# WHAT IS THE PROCESS FOR USING AN E-SIGNING PLATFORM?

## In this section we have set out a brief overview of the e-signing process. Each e-signing platform has different functionality and it is not possible to reflect all that detail within the confines of this paper. We have, however, set out suggested workflows for the DocuSign platform in Schedule 3.

## Whilst it is often the case that all the parties to a transaction will sign the document(s) within the same envelope, as noted above they may use different execution methods or there may be reasons requiring them to use different e-signing platforms or envelopes. If only one party uses electronic signatures or if each party follows separate electronic signing processes, this paper should be interpreted accordingly. Some of the issues considered in this paper will still be relevant and they will need to be discussed and agreed between solicitors in advance.

## **Step 1 – Consent**

### The client and all parties involved in the transaction need to consent to the use of electronic signatures and of an e-signing platform.

### Schedule 5 Part 1 includes some suggested drafting that law firms can send to their own clients explaining about the use of an e-signing platform.

### Best practice is to agree **"****signing/release instructions"** with the other side at an early stage of the transaction setting out who will control the signing process, how any documents are to be signed and dated[[15]](#footnote-15) and, if any of them are deeds, when they will be "delivered". Schedule 5 Part 2 sets out some template wording.

### HM Land Registry requires (with limited exceptions) that all parties to an electronically signed Registrable Document have Conveyancers acting for them[[16]](#footnote-16). Subject to the specified exceptions if any party isn't represented then electronic signatures cannot be used by any of the parties involved[[17]](#footnote-17). For Non-Registrable Documents, however, there is no reason why you could not use electronic signatures and an e-signing platform when dealing with an **unrepresented party**. As you would in a "wet ink" world, it is important that you inform the unrepresented party that you are not advising them in relation to the transaction and that if they have any queries regarding the documents that you are sending them or the transaction to which they relate, they should take independent legal advice immediately and certainly before signing. We recommend using the wording referred to in paragraph 2 of Schedule 6.

### An in-house solicitor who is a Conveyancer may control the signing process, provided all parties agree to this. However, it may not always be advisable to do so because of completion practicalities. Any such in-house solicitor must also be willing to provide a Land Registry Compliance Certificate in respect of any Registrable Documents.

## **Step 2 –** **Documents**

### You[[18]](#footnote-18) will need to upload your documents to the e-signing platform.

### E-signing platforms do not facilitate "partial" dating of documents within one electronic envelope. Accordingly **multiple** **documents** should only be included in the same envelope if it is intended for them to be completed/dated within the platform at the same time or, in the case of Non-Registrable Documents only, it is proposed to date them outside the platform[[19]](#footnote-19).

### It is, generally speaking, difficult to facilitate **"****last minute" amendments** (excluding filling in blanks[[20]](#footnote-20)) to documents within an e-signing platform save for minor manuscript style amendments which can be made using text boxes as noted in paragraph 2.10 of Schedule 3.

#### **Non-****Registrable Documents**

If last minute amendments are likely to be required post-signature then you may wish to consider only using the e-signing platform for the signing process leaving the dating (including completion of "blanks") and last minute amendments to be completed outside the platform[[21]](#footnote-21), albeit you would then lose the advantage of having the fully recorded audit trail that e-signing platforms provide. As always great care is needed if looking to make any "amendments" to documents after they have been signed by the parties. In view of the *Mercury*[[22]](#footnote-22)case, after a document has been signed, only the completion of blanks, minor or obvious corrections (e.g. correction of cross-references and typographical errors) and other non-material corrections should be made, in each case, with the authority of the parties. In all other cases re-execution is advised.

#### **Registrable Documents**

The Land Registry Requirements specify that a Conveyancer acting for one of the parties must date an electronically signed document within the e-signing platform. Therefore if last minute amendments are likely to be required post-signature for a Registrable Document it may be best to avoid the use of electronic signatures. Alternatively, if the parties are confident that the document can be electronically signed quickly, it may be possible to delay the signing until the document has been fully agreed.

## **Step 3 – Recipients**

### You[[23]](#footnote-23) will need to populate the e-signing platform with details (name and email address) of the recipients of the envelope. A recipient includes all those who need to be involved in the process (such as the parties' solicitors) as well as those actually electronically signing the document(s).

### Where "standard" electronic signatures are being used it is possible within some e-signing platforms to add in **"****access authentication"** for each recipient[[24]](#footnote-24) to provide an additional layer of security. The three most common options available are:

#### **an access code** – typically access codes are codes that you generate and provide to the recipient directly, outside of the e-signing platform;

#### **an SMS code** – SMS codes are generated by and provided to the recipient's mobile phone as a text message by the e-signing platform itself; and

#### **an automated phone call** – automated phone calls are made by the e-signing platform to the recipient's mobile phone or landline number and a code is played as part of the automated call.

In each case the recipient is required to input the code delivered to them before they are able to access the documents within the envelope. If the second or third option is selected it will be necessary for the recipient's mobile phone or landline number to be inputted into the e-signing platform and it may appear on the Certificate of Completion[[25]](#footnote-25).

### For **Registrable Documents**, HM Land Registry requires the use of access authentication for all signatories and witnesses who must receive a 6 digit one-time passcode sent to them by the e-signing platform by text, i.e. SMS. It is not possible to use the first and third options noted above in relation to Registrable Documents.

### In relation to **Non-****Registrable Documents** individual law firms are likely to take different views on the merits of access authentication. Some may strongly encourage or mandate its use. Others may consider that access authentication is only appropriate in specific circumstances or for specific types of transactions. This is a conversation that law firms will need to have when they are agreeing the signing/release instructions.

### Most e-signing platforms will allow you to specify a **signing order** – a signing order sets out the order in which recipients will receive the envelope. Where this is the case, best practice is to include the other party's solicitor as the first recipient of the envelope so that they can "approve" its content. As well as being included as the first recipient, some law firms acting for the other party may also want to be included as the penultimate recipient so that they can check the documents again after all signatories have signed and before completion is effected although this may not be necessary if, as part of the signing/release instructions, you have agreed to provide the other side with an Interim Certificate (see section 4.9). If you are proposing to complete the documents within the e-signing platform[[26]](#footnote-26) it is advisable (in almost all instances) to include yourself[[27]](#footnote-27) as the final recipient in the signing order with an action to perform on each of the documents. Once all recipients have completed their actions, your role will then be to fill in any blanks and effect completion of the document by dating it in accordance with the signing/release instructions that have been agreed with the other side.

## **Step 4 – Email and private messages**

### You will need to specify the email subject heading and the email message that all recipients of the envelope will receive.

### Some e-signing platforms will also allow you to include a "private" email or message to individual recipients, but note that even where labelled "private" in some cases those messages may still be visible to others involved in the transaction.

### For examples of messages that might be sent to particular recipients, see Schedule 6.

### Consider how best to record on your legal file the email message visible to all recipients and any private emails or messages.

## **Step 5 –** **Add fields**

### The next stage is to add the fields to the documents. These are the fields that the recipients are required to complete.

### Recipients may need to sign documents in multiple places if plans and other attachments need to be signed or initialled. They may also need to input information into text fields (e.g. a witness inserting their name, address and occupation).

### If you are intending to complete the documents within the e-signing platform, a field must be attributed to every single "blank" that will need to be filled in prior to or on completion. As has been noted in section 4.4.3 above, it is difficult to facilitate "last minute" amendments to documents within an e-signing platform save for minor manuscript style amendments which can be made using text boxes - see paragraph 2.10 of Schedule 3.

### **Care is needed with the "****dating" field** that is available in many e-signing platforms. Typically, they automatically pre-populate the date (and time) that the recipient performs their required actions which could have the effect of prematurely dating (and so completing) a document. Conversely, if a transaction is completed near to midnight but the person controlling the dating of the documents accesses the platform after midnight to activate dating the documents, the "automatic" date function would date the documents on the wrong day. To control the date that is applied to a document, best practice is to use text fields which allow the recipient to whom they are allocated to "type in" the correct date manually.

## **Step 6 –** **Sending the envelope and tracking its progress**

### Once the above steps have been completed, the envelope can be sent from the platform to the recipients.

### Recipients will receive an email containing a link from which they can open the envelope. Before they are able to move forward they may be required to accept a legal disclosure from the relevant e-signing platform in relation to GDPR. This is to advise them that their personal data will be visible to all recipients of the envelope (including those who have been set up to receive a copy of the completed document(s)) and retained within the systems of the e-signing platform and the law firms advising on the transaction. If access authentication has been enabled, they will also need to input the code that has been delivered to them.

### The recipient will be guided through the signing process. Once they have completed all their required actions they will click "Finish" (or "All items complete" or similar) and the envelope will move on to the next stage of the signing process.

### The sender of the envelope will be able to track its progress within the e-signing platform and identify if it is being held up at any point.

## **Step 7 – Interim Certificate**

### Once all signatories and any witnesses have electronically signed the documents, an Interim Certificate can be generated by most e-signing platforms. If a platform has this functionality, an Interim Certificate should be requested. It can be generated manually within the platform by the envelope sender and emailed to the other party's solicitor for checking or the other side's solicitor can be added as the penultimate recipient of the envelope and allocated the "receives a copy" action (or similar) so that they automatically receive a link to the "in progress" documents and to the Interim Certificate immediately before the envelope is sent to the final recipient to effect completion (assuming that it is intended to date the documents within the e-signing platform).

### This enables the other party's solicitor to check before completion that the required signatures have been applied in the correct order (e.g. that any witness has not signed ahead of the signatory whose signature they are witnessing) and if access authentication has been used.

## **Step 8 – Completion**

### Assuming that you will complete/date the documents within the e-signing platform and have nominated yourself[[28]](#footnote-28) to be the final recipient, once all earlier recipients in the signing order have completed their actions, you[[29]](#footnote-29) will receive the envelope to effect completion by filling in any blanks and dating the documents[[30]](#footnote-30). This should be effected in accordance with the signing/release instructions that have been agreed with the other party's solicitor. See Schedule 5Part 2for further details.

### If you are **exchanging contracts** for the sale of land by telephone where all parties have e-signed the contract using the same electronic envelope, none of the traditional Law Society Formulae will be relevant. Instead, you should consider whether any additional undertakings are needed in addition to the signing/release instructions that have already been agreed with the other party's solicitor. Where the contract has been electronically signed by the parties using separate electronic envelopes, you will need to vary, as appropriate, the undertakings provided for by Law Society Formula B.

### All those listed in the signing order[[31]](#footnote-31) will receive an email confirming that completion[[32]](#footnote-32), has taken place and allowing them to download the completed documents. They will also be able to access the Certificate of Completion unless that functionality has been disabled.

### Following completion of the documents within an envelope you must **promptly download (or** **obtain copies of) the** **documents and** **the related** **Certificate of Completion as separate PDFs** and file them into your firm's document management system (DMS). Individual firms will have their own retention settings for how long completed documents (and their related Certificates of Completion) will be held within the e-signing platform before being automatically deleted. Once they have been deleted from the e-signing platform, they will not be capable of being retrieved. Any client specific requirements regarding the holding of "hard copy" documents and uploading of completed documents to data rooms etc. must be adhered to and depending on your firm's document retention policy for documents filed into the DMS (which, in response to GDPR, can be for a short period) you may also wish to consider maintaining a physical deeds packet. Certificates of Completion should always be kept with the documents to which they relate in case of future dispute/as evidence in future due diligence exercises but HM Land Registry has confirmed that it does not require sight of them in relation to Registrable Documents, not least because if a Certificate of Completion was lodged with an application to register a Registrable Document it would be open to public inspection which could be problematic given the personal data that it might contain[[33]](#footnote-33).

### Certificates of Completion record, inter alia, the audit trail of the signing including the email addresses the documents were sent to, when fields were completed and the IP addresses of the devices that were used. It is important to bear in mind however that IP addresses and GPS co-ordinates (if enabled) are not always reliable and do not need to be reviewed. The key information to check in a Certificate of Completion is:

#### any witnesses signed after the signatory whose signature they witnessed;

#### signatories did not assign their signature tasks to others (because the "change signing responsibility" function was enabled, but this is unusual); and

#### in the case of a Registrable Document:

##### SMS authentication was applied for all signatories (including witnesses); and

##### the function "specify recipient" (which allows a recipient and not the Conveyancer controlling the signing process to allocate a signatory for the document) has not been used for signatories (although of course it can be used to enable signatories to specify their witness).

# WITNESSING[[34]](#footnote-34)

The "witnessing" of an individual's electronic signature brings with it some additional challenges. They are not new challenges but the advent of electronic signatures brings into sharper focus such issues as evidence, security and reliability than is perhaps ordinarily applied to witnessing in a "wet ink" world.

While there are usually alternatives to witnessing for corporate entities, witnessing may be unavoidable, e.g. where an individual or an individual attorney signs a deed. We have set out below the matters that we have identified as requiring particular consideration:

## **Who can act as a witness?**

### Witnesses should be over 18, not visually impaired and of sound mind. Ideally, they should not be a family member[[35]](#footnote-35). However, it will not invalidate the witnessing if a family member is the only person available to witness, provided they are neither party to nor a beneficiary of the documents being witnessed[[36]](#footnote-36).

### Unless the e-signing platform has "in-person" signing[[37]](#footnote-37) functionality, in order to sign and complete their details in the document, the witness will require their own email address and access to a device such as a mobile phone, tablet or computer.

## **Physical presence**

### The witness must be physically present and able to see the signatory adding their signature to the document on screen. In times when social distancing measures apply, this could mean that the witness observes the signing standing at an appropriate distance or even through a window, provided that it is possible for the witness to see clearly what the signatory is doing. Witnessing remotely by way of video call or similar is not acceptable.

### As recommended at paragraph 3 of Schedule 6 to this paper, best practice is to include a message to those recipients who need to sign in the presence of a witness explaining who can act as a witness and emphasising the need for the witness to be physically present.

### Where available, it is also best practice to add a "tooltip" or other informative to the signature field for any recipient required to sign in the presence of a witness e.g.:

*Your signature needs to be witnessed. Please do not sign this* *document unless your witness is physically present and able to observe you adding your signature to the* *document on screen.*

### Some firms may choose to seek additional comfort regarding the physical presence of the witness, although this is not a legal requirement. This is likely to take the form of the inclusion of a statement to that effect next to or beneath the signing block within the relevant document(s) for the witness to sign or initial. [Section 13.2 of Practice Guide 8](https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds#electronic-signatures) suggests (but does not require) the inclusion of the statement:

*I confirm that I was physically present when [name of signatory] signed this deed.*

## **HM** **Land Registry** **requirement for access authentication**

### The Land Registry Requirements require the use of access authentication for all witnesses (in addition to signatories) who must receive a 6 digit one-time passcode sent to them by the e-signing platform by text, i.e. SMS.

### Some e-signing platforms now have this functionality available for witnesses in their capacity as "witnesses" (note the Land Registry Requirements permit either the Conveyancer or the signatory whose signature is being witnessed to input witness details) as opposed to them being standard recipients of an envelope who are set up in the "signing order" to receive the envelope immediately after the signatory whose signature that they have witnessed[[38]](#footnote-38).

## **Confidentiality**

### Some e-signing platforms have document visibility settings so that the witness will only be able to view those documents in the envelope that the signatory will be signing in their presence.

### In other e-signing platforms all documents within an envelope sent to a witness are visible to that witness, including those documents they are not required to witness. In this case if your transaction involves multiple documents but only some of those require witnessing it might be appropriate to separate out those that require witnessing into a different envelope to the others.

### If confidentiality is a major concern then it may be worth considering whether alternative methods of signing are available that do not involve a witness (e.g. a limited company could look to sign by two directors rather than by a single director in the presence of a witness)[[39]](#footnote-39).

### There is a divergence of approach between e-signing platforms as to whether or not at the end of the signing process witnesses receive copies of the completed documents. In DocuSign witnesses set up using the "signs with witness" function will not receive notification of the completion of an envelope nor will they receive copies of the completed documents, but they do receive the notification and receive the documents if they are set up as direct recipients of the envelope.

# submitting electronically signed REGISTRABLE documents to HM Land Registry

## [Section 13.3 of Practice Guide 8](https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds#electronic-signatures) provides that either the Conveyancer lodging the application to register the Registrable Document at HM Land Registry or the Conveyancer who controlled the electronic signing process must provide a Land Registry Compliance Certificate in relation to those parties that have electronically signed. If different Conveyancers have controlled the electronic signing process in relation to their own clients, it may be that multiple Land Registry Compliance Certificates are produced. As has been noted elsewhere, Land Registry Compliance Certificates must be given in a separate letter or document indicating the name of the individual giving the certificate, the law firm they represent, the deed(s) for which the certificate is given and the date. It is not possible to provide a Land Registry Compliance Certificate via the notepad or the reply to requisition function within HM Land Registry's business e-services portal.

## Even if it has been agreed as part of the signing/release instructions between law firms that the Conveyancer who has controlled the electronic signing process will provide the Land Registry Compliance Certificate, where they are not the one who will be applying for registration, the Conveyancer applying for registration may still wish to ensure that they receive an Interim Certificate (see section 4.9 above) so that they can satisfy themselves that the Land Registry Requirements were met in respect of any Registrable Documents.

## In our view any Conveyancer who has controlled the electronic signing process on behalf of one or more electronically signing parties to a transaction should provide a Land Registry Compliance Certificate to the law firm that is making the application to HM Land Registry.

## When uploaded to HM Land Registry's business e-services portal, the electronically signed document can be certified as being a true copy of the original document. The Certificate of Completion must not be submitted with any application to HM Land Registry. This is expressly stated in [Section 13.3 of Practice Guide 8](https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds#electronic-signatures).

# powers of attorney[[40]](#footnote-40)

## **Execution of powers of attorney**

### A power of attorney under which the attorney will execute Registrable Documents may be signed electronically by the grantor provided that the Land Registry Requirements are met[[41]](#footnote-41). The grantor must be represented by a Conveyancer.

### A power of attorney that was signed electronically prior to 27 July 2020 is unlikely to meet Land Registry Requirements.

## **Execution of deed by attorney pursuant to power of attorney**

### A Registrable Document may be signed electronically by an attorney provided that the Land Registry Requirements are met.

### Either the grantor or the attorney must be represented by a Conveyancer, but they do not each need to be represented.

### If the power of attorney was signed electronically, a Land Registry Compliance Certificate will need to be given in relation to both the power of attorney and also the Registrable Document.

# electronic sealing

## **Companies Act bodies corporate**

### It is not currently considered possible for companies registered under the Companies Act to **seal** documents electronically.

### Section 45(2) of the Companies Act 2006 provides, in relation to a common seal, that the company's name must be "engraved" on the seal in legible characters. Failure to meet this requirement amounts to an offence.

### The Law Commission[[42]](#footnote-42) has expressed doubts about whether execution with a seal that leaves no physical impression on the deed would be sufficient to satisfy the requirement for "engraving".

## **Non-Companies Act bodies corporate**

### Electronic seals are most likely to be used by non-Companies Act bodies whose constitutions require the use of a common seal. Note that any electronic seal will have to be applied to documents by those bodies and not their lawyers.

### As a matter of law it is not clear whether electronic seals are a valid means of executing a document by a non-Companies Act body. We are not commenting on the validity of electronic sealing in this paper.

### Where use of an electronic seal is being considered, we would recommend a review of the body's constitutional documents or the Act of Parliament or Royal Charter that created the body to establish that they do not impose any restrictions on the use of electronic seals.

### We understand that some local authorities have been relying on section 7(A) of the Electronic Communications Act 2000[[43]](#footnote-43) in support of the validity of electronic seals, but there remains some concern as to whether an electronic seal has the same validity as a common seal. A suggested way of dealing with issues around validity is for a rider to be added to the body's constitution to state that a common seal may also mean an electronic representation of the actual, physical seal.

### For the time being, it appears that HM Land Registry may be willing to accept for registration Registrable Documents that have been electronically sealed by local authorities provided a certificate is lodged with the application signed by an individual Conveyancer employed by the local authority stating that the Registrable Document in question has been duly and properly executed in according with the local authority's constitution[[44]](#footnote-44):

*"I [name of conveyancer certifying] a conveyancer employed by [name of authority] certify that the transfer [or other deed submitted for registration] dated [date of deed] is made by the authority of the Council and has been duly and properly executed in accordance with the Council's constitution".*



Checklist for using electronic signatures for real estate documents

1. The Land Registry Requirements[[45]](#footnote-45) include:
   1. **All parties (with** **limited exceptions[[46]](#footnote-46)) are represented by a Conveyancer**.
   2. A **Conveyancer is responsible for setting up and controlling the signing process** through an e-signing platform.
   3. The **Conveyancer controlling the signing process populates the name, email address and mobile phone number of the signatories**. The details for a witness can be populated later either by the Conveyancer or the signatory provided this is done before the witness attests the documents.
   4. The **use of access authentication for all signatories and any witnesses** who must receive a 6 digit one-time passcode sent to them by the e-signing platform by text i.e. SMS.
   5. Once the signing process has been concluded, a **Conveyancer acting for one of the parties dates the** **documents** **within the e-signing** **platform**.
   6. Either the Conveyancer who lodges the application to register the electronically signed Registrable Document or the Conveyancer(s) who controlled the electronic signing process for the Registrable Document must provide a **Land Registry Compliance Certificate** that includes the statement:

*I certify that, to the best of my knowledge and belief, the requirements set out in* *practice guide 8 for the execution of deeds using electronic signatures have been satisfied*.

The Land Registry Compliance Certificate must be given in the Conveyancer's own name and not in the name of their firm.

* 1. Any **Certificate of Completion** must not be lodged with the application but it should be retained.

1. These requirements are in addition to the other considerations discussed elsewhere in this paper. Other constraints (some of which are practical rather than legal) include:
   1. All parties to the transaction and any lender that is financing the transaction must **consent to the use of electronic signatures**. A lender may have its own views on the security and reliability of electronic signatures and may not regard their use as appropriate even where the law allows it.
   2. Paragraph 3.1.6 of Part 1 of the UK Finance Mortgage Lenders' Handbook for Conveyancers which requires an instructed solicitor to check that the borrower's signature on any document being used to verify the borrower's identity matches the borrower's signature applied to the charge and any other documentation. In order to meet this requirement, when electronically signing the borrower must upload a PDF image of their handwritten signature to the e-signing platform instead of adopting an electronic signature style.
   3. Where it is not possible for usual **signing formalities** to be complied with. The signing formality that is likely to be the most problematic in practice is **witnessing** because of the need for the witness to be physically present. For further comment regarding the position of witnesses please see section 5 in the main body of this paper.
   4. Where a signing entity's **constitutional** **documents or internal policies** do not permit the use of electronic signatures.
   5. Where one or more of the contracting parties is an **overseas entity**. You will only be able to proceed with the use of electronic signatures if local counsel has advised that there are no concerns, and no local requirements or formalities, regarding the use of electronic signatures (whether relating to enforcement of judgments in the overseas jurisdiction or formalities around notarisation or registration etc.) and (if required) is willing to issue a due execution opinion[[47]](#footnote-47) in relation to the overseas entity executing the document using an electronic signature. In particular, please note that Scottish law advice should always be taken where there are Scottish entities or Scottish law documents.
   6. Where **contractual provisions** preclude the use of electronic signatures[[48]](#footnote-48).
   7. If the **place of signature** or the location of the document is important (e.g. for tax reasons), it may be preferable not to use electronic signing since it may not be clear where the e-signed document will be treated as having been signed or located.
   8. If there are a **number of** **documents** involved in your transaction, you might want to consider whether it is possible and/or appropriate for all of them to be electronically signed. If not and there are some documents where **wet ink signing is required**, that may negate the convenience and time savings of using electronic signing for the transaction.
2. Most commercial e-signing platforms have a **limit on the size (and** **number) of** **documents** that can be uploaded to an "envelope". Documents that typically exceed these limits are those which contain bulky specifications, technical documents and plans as annexures e.g. construction documents, agreements for lease and leases. In the absence of a technological solution to this problem, one workaround might be to split the contract documents into **multiple separate "****envelopes"**. You would first look to circulate the "bulky" supporting documents for the parties to review and accept by signing[[49]](#footnote-49). Thereafter, you would issue the main document for signing through the e-signing platform in the normal way. It is important that the main document makes reference to the supporting documents being incorporated so that it is clear which documents form part of the completed contract[[50]](#footnote-50).

Although there is no legal need for supporting documents that are incorporated by reference to be signed by the parties through the e-signing platform provided they can be correctly identified (e.g. by referring to the document name, author, any document number, version and date of issue or, alternatively, by "locking them down" in a data room), the advantage of having them signed within the e-signing platform is that it provides greater evidential certainty that they have not subsequently been changed.

In all circumstances following completion, it is recommended that for future reference a "bible" or similar is prepared and circulated to all parties containing a copy of the electronically signed main document and all the incorporated supporting documents including the e-signing platform's Certificate of Completion.



Types of real estate documents considered suitable/not suitable for electronic signature

Subject to due consideration having been given to the checklist at Schedule 1 and the documents listed in [HM Land Registry's Guidance: Accepted signatures](https://www.gov.uk/government/publications/signatures-accepted-by-hm-land-registry) published on 28 June 2021, the following represent non-exhaustive lists of common types of real estate documents which the working group consider are likely to be suitable (and not suitable) for electronic signature.

* 1. – Suitable for electronic signature and not subject to Land Registry Requirements

1. Agreement for lease, sale and surrender that will not be protected using an agreed notice[[51]](#footnote-51)
2. Assignment of non-registrable lease
3. Assured shorthold tenancy (ASTs) (provided non-registrable)
4. Building contract
5. Car parking licence[[52]](#footnote-52)
6. Collateral warranty
7. Declaration of trust
8. Deed of covenant
9. Deed of guarantee and deed of release of guarantee
10. Deed of rectification that does not effect a registrable disposition and will not be protected using an agreed notice – see footnote 51
11. Deed of release relating to a Non-Registrable Document that is not noted
12. Deed of surrender of lease that is not registered or noted
13. Deed of variation of lease (whether or not registered) that does not effect a registrable disposition (i.e. it is not a surrender and regrant and does not change the rights granted or excepted and reserved) and will not be protected using an agreed notice – see footnote 51
14. Development agreement
15. Exclusivity agreement
16. Facility agreement
17. Forward funding agreement
18. Forward sale/purchase agreement
19. Joint venture agreement
20. Land promotion agreement
21. Landlord and Tenant Act 1954 simple declaration[[53]](#footnote-53) - please see footnote
22. Landlord and Tenant Act 1954 statutory declaration[[54]](#footnote-54) - please see footnote
23. Licence to alter, assign, change use and/or underlet (unless incorporating a variation to be registered)
24. Licence to occupy[[55]](#footnote-55)
25. Non-disclosure agreement
26. Non-registrable lease (granted for a term of seven years or less with no requirement to register easements) [[56]](#footnote-56)
27. Novation agreement
28. Option agreement
29. Oversailing (and scaffolding etc.) licence
30. Property/Development management agreement
31. Professional appointment (usually construction related)
32. Property maintenance, operation and service contract
33. Rent deposit deed
34. Rent review memorandum
35. Section 38 / 278 highway agreement[[57]](#footnote-57)
36. Section 104 sewer adoption agreement
37. Section 106 planning agreements/unilateral undertaking[[58]](#footnote-58)
38. Side letter
39. Tenancy agreement (seven years or less, no easements)
40. Tenancy at will
41. Wayleave
    1. – Suitable for electronic signature provided Land Registry Requirements can be met
42. Deed of appointment/retirement of trustees[[59]](#footnote-59)
43. Deed of easement
44. Deed of postponement of registered charge (i.e. a deed of priority, deed of subordination or intercreditor deed)
45. Deed of rectification that effects a registrable disposition
46. Deed of release of covenants/rights of light and air/easements if the rights are registered or noted
47. Deed of substituted security
48. Deed of variation of charge
49. Deed of variation of registered lease (if the effect of the variation creates a registrable disposition, i.e. a surrender and regrant or changes the rights granted or excepted and reserved)
50. Deed or agreement to be protected using an agreed notice – see footnote 51
51. Discontinuous lease granted out of a registered title and discontinuous lease for a term of more than seven years when granted out of an unregistered title
52. Lease granted for a term of more than seven years
53. Lease granted for a term of seven years or less where there is a requirement to register easements
54. Legal charge/mortgage[[60]](#footnote-60) (and HM Land Registry forms DS1/DS3)
55. Power of attorney[[61]](#footnote-61)
56. Reversionary lease where the term takes effect more than three months after the date of the lease
57. Statement of truth made in support of HM Land Registry applications[[62]](#footnote-62)
58. Transfer of freehold interest in land
59. Transfer of registered lease or unregistered lease having more than seven years of the term unexpired (including surrender of registered or noted lease)
    1. – Not suitable for electronic signature
60. Lasting power of attorney[[63]](#footnote-63)
61. Any certificate or consent to dealing required by a restriction given by a non-conveyancer to HM Land Registry[[64]](#footnote-64)
62. The certificate required by a restriction in Form LL[[65]](#footnote-65)

Guide to DocuSign workflow

1. **PLATFORM, CONTROL OF PROCESS AND SIGNING ORDER**
   1. This workflow assumes that all parties will sign the document(s) using the same DocuSign envelope(s)[[66]](#footnote-66) and signing order(s). There is nothing preventing each law firm using its own envelope for its client[[67]](#footnote-67), but this makes the signing process less coordinated and the law firms involved in the transaction will need to agree the process. Reference in this workflow to Firm 1 is to the law firm controlling the process and to Firm 2 is to the law firm that is not controlling the process. All parts of the process mentioned below are effected within DocuSign unless otherwise stated. Some key actions are highlighted in blue font.
   2. You should access the DocuSign platform using a supported browser.
   3. **At the outset the** **firms should agree the** **DocuSign process for their** **transaction**.
   4. The agreement may cover (amongst other matters):
      1. the signing order (see paragraphs 1.5 to 1.7 of this Schedule 3);
      2. the details of recipients (and relevant DocuSign actions) that need to be included when creating the signing order;
      3. whether or not access authentication is to be used[[68]](#footnote-68);
      4. the content of any message that Firm 1 will give to the client of Firm 2;
      5. what fields each recipient will need to complete;
      6. what information is to be inserted into the blank spaces in the document(s);
      7. whether the law firms need to speak before the blanks are filled in and the document(s) dated – in practice it is expected that the law firms will agree that from the point of the first signature being applied, the document(s) will be held to the order of both law firms pending exchange/completion;
      8. whether the platform settings will allow the sent envelope to be corrected by adding or removing fields within the transaction document(s) or by adding additional documents to the envelope, should this be required (see the section in Schedule 5 Part 2 headed "Agreed process");
      9. in the case of Registrable Documents, who will provide the Land Registry Compliance Certificate and, where Firm 2 will be applying for registration, whether they wish to receive an Interim Certificate;[[69]](#footnote-69)
      10. in the case of deeds, when delivery will take place i.e. when the deed is dated by Firm 1;
      11. whether the documents are to be dated within the DocuSign platform[[70]](#footnote-70);
      12. whether non-signatory parties (such as a managing agent or a mailbox for a third party) should be included at the end of the signing order to receive a copy of the completed document(s); and
      13. that the Certificate of Completion will be provided to all recipients and any witnesses unless the witnesses sign using the "signs with witness" function.

Schedule 5 Part 2 sets out some suggested template wording for the agreement which it is envisaged will be contained within an email.

* 1. It is important that the law firms agree the signing order and, where in that order, each law firm is to be included. Firm 2 may wish to be included at the start to check that the document(s) uploaded to the envelope represent the final agreed version(s) and are all present and correct. Firm 2 may also want to be included just before the document(s) are dated, to check the document(s) have been properly executed although this may not be necessary if, as part of the signing/release instructions, Firm 1 has agreed to provide Firm 2 directly with an Interim Certificate prior to completion being effected.
  2. Firm 1 is usually included as the final recipient in the signing order to enter information into the blank spaces (e.g. dates, figures) and date the document(s). By ensuring that documents are completed within DocuSign, its audit trail benefits are maximised and the signing process will comply with Land Registry Requirements[[71]](#footnote-71).
  3. The flowchart included at the end of this Schedule is an example of how the signing order may work; it provides the alternative of the parties receiving the document(s) for signing at the same time (in parallel) or in sequence.
  4. **Also at the outset each** **firm should provide an email to their client explaining the** **DocuSign process**.
  5. Schedule 5 Part 1 within this paper sets out some suggested template wording for that email. The email may request that the client provides certain additional personal data required by the process such as a mobile phone number. An explanation should be given that this personal data may be visible to others involved in the transaction and will be held within the systems of DocuSign and the advising law firms.

1. **PROCESS EXAMPLE**

**The suggested order of events set out below is only an example and will be** **subject to agreement between the relevant** **law firms on a case by case basis.**

* 1. For most law firms, documents must first be saved locally onto the fee earner's PC or any shared drive in the law firm's network, then uploaded, although eventually it is hoped that it will be possible for them to link directly into their own DMS. A minority of law firms already have this functionality. For the purposes of GDPR and good housekeeping, locally saved documents should be deleted promptly once uploaded to DocuSign.
  2. **Firm 1 creates an envelope and uploads the agreed form** **document(s) with all plans and annexures appended** (which DocuSign converts to PDF format, if they are not already in PDF format). Note that DocuSign has a limit on the size of documents that can be uploaded to an "envelope" – currently set at:
     1. 25MB per document;
     2. 2,000 pages per document; and
     3. 200MB total envelope size.

The previous limit of 130 documents per envelope has been lifted, but a large number of documents may affect the signing performance of the envelope.

* 1. Only include more than one document in the same envelope if they will complete simultaneously, unless the intention is to date the documents outside DocuSign[[72]](#footnote-72). Separate envelopes may also be used if the documents are particularly bulky (see paragraph 3 of Schedule 1).
  2. One feature within DocuSign is the ability to set a document as a supplement. No fields are attached to a document that is set as a supplement (so there are no actions for a recipient to perform) but you can require the recipients of the envelope to view and accept the supplement.
  3. **Firm 1 adds the recipients (****setting a signing order), selects the action(s) that each one will take and includes the relevant fields for the uploaded** **document(s):**
     1. For each recipient (apart from a witness or where the specify recipient function is being used), Firm 1 must include their name, email address and (where SMS or automated phone call access authentication is to be utilised – see paragraph 2.5.2 of this Schedule 3) mobile phone or landline number (as applicable). If a corporate entity executes by two officers, each officer should be included as a separate recipient.
     2. DocuSign offers access authentication for recipients, including witnesses. This is an extra layer of security that requires the recipient to input an access code into the platform (like a password) to be able to access an envelope and its contents. Not all firms choose to use access codes, and it is up to each firm and client whether they wish to use this. If it is agreed that access codes are to be used, when preparing the envelope Firm 1 will enable the relevant access authentication for each recipient. As noted in section 4.5.3 in the main body of this paper only a 6 digit one-time passcode generated by and sent to the recipient by DocuSign by text i.e. SMS will comply with Land Registry Requirements. This is, therefore, the route that must be used for Registrable Documents.
     3. If the envelope has more than one recipient (as will often be the case), Firm 1 will set a signing order to ensure control over the order in which the document(s) are signed by the various recipients. As mentioned at paragraph 1.4 of this Schedule 3, the signing order should be agreed by the law firms at the outset of the transaction.
     4. Firm 1 will either add a generic email that will be seen by all recipients of the envelope or, by selecting the "Custom email and language for each recipient" option, emails tailored to each individual recipient.  Additionally a firm may also add, or include as an alternative, private messages[[73]](#footnote-73) for certain recipients (see paragraph 1.4 of this Schedule 3).  It is recommended that either a custom email or a private message or both are sent when Firm 1 sends documents, particularly when Firm 1 is sending documents directly to Firm 2's client or to an unrepresented party or where the actions "specify recipients" or "signs with witness" are allocated to a recipient. Please see Schedule 6 for some sample wording.
     5. Firm 1 will also choose the action for the recipient. **Needs to sign** is the default action[[74]](#footnote-74). Others likely to be of relevance include:
        1. **Specify recipients** – where the identity of a recipient is not known at the outset. For example it is not possible to confirm which signatory out of a pool of available signatories at the client will be the one to sign on the day. In that situation it is possible to add as a recipient the instructing officer/surveyor at the client and assign to them the action of "specifying" who the next recipient (typically the signatory) will be. They will be required to insert the name, email address (and mobile phone or landline number if SMS or automated phone call authentication is being used) of the recipient who will follow them in the signing order. Firm 2 might also want to specify the recipients for its client. Note that the 'specify recipient' function does not comply with Land Registry Requirements when used for signatories. See section 5.4 in the main body of this paper above.
        2. **Signs with witness** – self-explanatory. To be used if the recipient is a signatory who needs to sign in the presence of a witness. The signs with witness function (which when selected opens up a "witness group") allows the signatory to insert the name and email address (and mobile or landline number if SMS or automated phone call authentication is being used) of their witness as part of the signing process (select "Signer specifies a witness"), or this can be done by the Conveyancer where the witness' details are known in advance of the envelope being sent (select "Specify a witness"). For either situation, the Conveyancer setting up the envelope must include the "Add Identity Verification" option for both the signatory and the witness if SMS authentication is being used. Immediately after the signatory has signed, the witness will receive an email inviting them to sign and complete their details in the document. Note that all documents within an envelope sent to a witness are visible to that witness even those documents they are not required to witness unless the document visibility setting for witnesses has been enabled[[75]](#footnote-75). Unlike all other recipients of the envelope, witnesses will not receive a copy of the completed document(s) at the end of the signing process[[76]](#footnote-76).
        3. **CC (****Receives a copy)** – this is not an action per se. The recipient is typically listed at the end of the signing order to ensure that they receive a copy of the completed document(s) at the end of the DocuSign process. However it can be used at any point in the signing order so that the recipient can receive a copy of the "in progress" document and Interim Certificate for checking.
     6. Firm 1 will then move on to applying the relevant **fields** to the document(s) for each recipient. Fields inform the recipient what to do e.g. where to sign or to insert information. Each recipient is allocated a different colour by DocuSign which makes the process of adding the fields for individual recipients more user-friendly. If a recipient is in the signing order more than once, they must be named differently (e.g. "Firm 2 Initial Document Approval" and "Firm 2 Signing Approval") and each name will appear in a different colour.
     7. DocuSign offers many types of fields, however in practice it is likely that only a small number of the standard fields will be utilised:
        1. **Approve** – where a recipient is required to "approve" document(s). Typically this will be Firm 2. Although the "Approve" function will not leave any annotation or other mark on the document it will be noted as a completed action in the Certificate of Completion that is produced at the end of the DocuSign process. Where the "Approve" function is being used we would recommend that the "Approve" tag is added to each document within the envelope.
        2. **Initial** – where a recipient is required to initial. Note that although "initials" will appear and be visible on documents the detail of who has "initialled" a document (and the date/time of initialling etc.) will not be apparent from the Certificate of Completion that is produced at the end of the DocuSign process. If it is important to capture this information in the Certificate of Completion then the better option would be to require the relevant recipient to apply their signature instead.
        3. **Name** – self-explanatory. Will pre-populate with the information that has been inputted for the recipient. Accordingly please always take care to provide a recipient's full name at the stage that you are setting them up as a recipient rather than an abbreviated form.
        4. **Signature** – where a recipient needs to sign. In terms of applying a signature a recipient is afforded a couple of different options. They can elect to "draw" their own "signature", "upload" their own signature or "adopt" an electronic signature style. If the recipient has their own DocuSign account it is likely that they will already have set their own electronic signature. Care will be needed as to the choice of electronic signature where a specimen signature for a signatory is already held on record, a situation that can often be encountered in finance transactions[[77]](#footnote-77).
        5. **Text** – text boxes can be aligned and resized to fit the space available. Text boxes should be used where, for example, a date or address needs to be inserted. Text fields must be inserted in all blank spaces in the document(s) (e.g. in a lease context examples of the blanks that might need to be filled in on completion include term and rent commencement dates, rent review dates, break dates, Landlord and Tenant Act 1954 Act notice and declaration dates as well as the date of the lease itself on the front page and in the prescribed clauses). Where relevant a text field should also be inserted on the front page of a contract for the sale of land/an agreement for lease to allow for the inclusion of the time of exchange and the names of those conducting the exchange.
     8. **Be very careful with the dating of** **documents in** **DocuSign**. The law firms will not usually wanta document to be automatically dated when the last (or indeed any) recipient signs, so do not apply the **"****Date Signed"** field. To control the date applied to any document, use a text field for the date and assign responsibility (see paragraph 1.4 of this Schedule 3) for dating, usually to Firm 1[[78]](#footnote-78) as the last recipient after all the signatories have signed.
  4. If the envelope contains multiple documents but all the recipients do not need to see all the documents consider whether you should enable **document visibility** on the envelope so that recipients that do not have an action to perform on a document do not get to see it.
  5. **Once the above steps have been completed** **Firm 1 will send the envelope from the** **platform to the recipients:**
     1. If Firm 2 has been set as the first recipient with the "Approve" function then they will need to "approve" the contents of the envelope before it can move further on in the signing order.
     2. Each recipient will receive an email containing a link from which they can open the envelope. The recipient does not need to have a DocuSign account. They may be required to accept an **electronic record and signature disclosure** before they are able to move forward. This is a legal disclosure apropos GDPR advising them that their personal data will be visible to all recipients and retained within both DocuSign's and the advising law firms' systems. If access authentication has been enabled (see paragraph 2.5.2 of this Schedule 3) the recipient will also need to input any code(s) that have been sent to them.
     3. The system guides the recipient through what is a fairly straightforward signing process. The recipient may be asked to create a signature (see paragraph 2.5.7.4 of this Schedule 3). Note that in addition to being able to see the fields that they are to complete, recipients are also able to see fields that have been completed/filled out by recipients ahead of them in the signing order. They are not able to see the fields that have been inserted for recipients after them in the signing order to complete/fill in.
     4. Depending on the DocuSign settings applied, all recipients have the option of **"****voiding"** an envelope if they do not want to complete their allocated actions. If an envelope is voided it will not progress any further through the signing process. You can apply a setting so that any recipient who chooses to void an envelope is required to provide a reason for doing so.
     5. Assuming, however, that a recipient is happy to proceed once they have completed all of their required actions they will click "Finish" and the document(s) will move on to the next stage of the signing process.
     6. If Firm 2 has been set as the penultimate recipient with the "Approve" function then they will need to "approve" the due execution of the documents before the envelope moves on to Firm 1 for completion, but this will not be necessary if Firm 2 is added as a CC "receives a copy" before Firm 1 effects completion by filling in any blanks and dating the documents(s). See paragraph 2.8 of this Schedule 3 below.
  6. Provided the **Document Markup** feature has not been enabled within the settings (which we do not recommend for either Registrable Documents or Non-Registrable Documents), recipients are not able to modify an envelope.
  7. Until the first recipient has approved or signed the document, Firm 1 may **correct** any aspect of the envelope. Once one recipient has approved/signed a document, the document becomes locked and can no longer be changed and any signatures cannot be removed.
  8. Firm 1 can also use the **correct** function to add additional signatories and fields at any point prior to completion if minor manuscript style amendments are required to be made to documents prior to completion and they have been agreed by all the parties[[79]](#footnote-79), it is possible for Firm 1 to place text boxes containing "XXXXX" over any wording to be deleted and insert new text boxes containing the revised or additional wording required and provide for those changes to be initialled/signed (above, below or to the side) by Firm 1 at the point that completion is effected. Note that the content of these additional text boxes do not always appear in the completed document exactly where they were placed on the screen, which can be problematic when trying to strike through existing text.
  9. Depending on the settings applied, an envelope can be **voided** by Firm 1 or any recipient at any stage prior to all actions having been completed.
  10. For Registrable Documents, Firm 1 should email Firm 2 an **Interim Certificate** (accessed by choosing "History" from the drop down options available for the envelope) so that they can check that the signing process complies with Land Registry Requirements[[80]](#footnote-80). Alternatively, Firm 2 can be added in the signing order as a **CC "****receives a copy"** before Firm 1 so that they automatically receive a link to the "in process" document and the Interim Certificate immediately prior to Firm 1's action of dating the document.
  11. If it is intended to complete the document(s) within DocuSign[[81]](#footnote-81) and Firm 1 has nominated itself, last in the signing order, the envelope will make its way to **Firm 1 to effect completion by filling in any blanks and "****dating" the** **document(s)**. This should be effected in accordance with the process agreed with Firm 2 at the outset. Dating within DocuSign is ideal because of the audit trail benefits. If completion is to take place outside DocuSign then the document(s) will need to be downloaded by Firm 1 and completed using an appropriate PDF tool (the document may first need to be "flattened" to remove document security to achieve this) or wet ink, onto a printed copy[[82]](#footnote-82).
  12. All recipients (apart from witnesses when the **signs with witness** function has been used) will receive an email from DocuSign letting them know that completion has taken place. Depending on the size of the completed document(s) and Firm 1's DocuSign settings, the email will either attach the completed documents or contain a link from which the recipients can access the document(s) on DocuSign's system. The recipients may also be able to access the Certificate of Completion directly.
  13. Following completion of document(s) within an envelope, best practice is for Firm 1 and Firm 2 **promptly to download as separate PDFs the** **document(s) and** **the related** **Certificate of Completion[[83]](#footnote-83)** and save them to their respective DMS. The Certificate of Completion records the history of the document(s) to which it relates including the email addresses they were sent to, when fields were completed and the IP addresses of the devices that were used. Individual firms will have set their own timelines for how long completed documents (and their related Certificate of Completion) will be held within DocuSign. Once they have been deleted from DocuSign they will not be capable of being retrieved.
  14. Any client specific requirements regarding the holding of hard copy documents and uploading of completed documents to data rooms etc. should also be adhered to.

**ENVELOPE FLOWCHART**

(Indicative flowchart only. Refer to the main body of this paper for full details of all requirements.)

Firm 1 sends envelope

**EITHER** – no order set

**OR** – in sequence

Firm 1's client signs

Firm 2 may "approve" signed envelope or receive "in process" document and Interim Certificate for checking

Firm 1 and 2 may hold completion call

Firm 1 completes envelope

Completed envelope sent to all recipients apart from witnesses (if signs with witness function used)

Firm 2 approves envelope

Firm 2's client signs

Firm 1's client signs

Firm 2's client's witness signs

Firm 2's client signs

Firm 2's client's witness signs



E-signature platform providers[[84]](#footnote-84)

* AdobeSign
* Contractbook
* Docsketch
* DocuSign
* eSign Live
* Eversign
* FileInvite
* GetAccept
* HelloSign
* Infotrack
* KeepSolid Sign
* Legalesign
* Lightico
* Nitropro / Nitrosign
* OneSpan Sign
* PandaDoc
* RightSignature
* SecuredSigning
* Signable
* SignEasy
* SignNow
* SignRequest
* ValidSign
* Yoti Sign
* Zoho Sign



Signing/release instructions

* 1. – Suggested text for email to be sent to your client

The drafting below will need to be tailored according to your client's experience of using e-signing platforms.

**Subject: Using {*name of e-signing*** ***platform*} for {*insert description of matter***}

As discussed, for {*insert description of matter*} we will be using {*name of e-signing platform*} (the **"****Platform"**) to e-sign the following agreed form document(s):

* {specify document}
* {specify document}

We have already reported to you on the terms of these documents.

You will shortly receive an email from us via the Platform with a link to the document(s) to be signed by you.

{You will be prompted to request an SMS code (generated by the Platform) to be delivered to your mobile phone which you will be required to input before you are able to access the documents.}

{If this is the first time you have used the Platform}[[85]](#footnote-85) please create your signature {by adopting an electronic signature style} {uploading a PDF image of your handwritten signature}. Please follow the instructions provided to do this. Once you have signed the document(s), you should click "Finish". The signed documents will be held to the joint order of this firm and the {*insert description of party*}'s solicitors until {exchange} {completion} takes place.

{As you need to sign the document(s) in front of a witness, as part of the signing process you will be asked to provide the name, email address {and mobile phone number} of your witness. Please note that the witness will need to be physically present when you sign and must be able to see you adding your signature to the document(s) on screen. {To comply with social distancing measures, this could mean that the witness observes the signing at an appropriate distance or perhaps through the window of a house, conservatory or car.} The witnessing of your signature remotely by way of video call or similar is not acceptable. Immediately after you have signed the documents(s), your witness will be emailed asking them to sign and complete their details in the document(s) {and also sign a statement confirming their physical presence} using their own device, which they should do promptly.}

If you have any queries about the document(s), please contact me immediately, and before you sign the document(s).

Following {exchange}{completion}, you will automatically receive an email from the Platform advising that {exchange}{completion} has taken place. The completed document(s) and the certificate of completion which provides the audit trail of the signing process will be available for you to download[[86]](#footnote-86).

As a result of using the Platform, please note that your personal details including your email address, {mobile phone number}, IP address {and location of signing} will be visible to all parties involved in this transaction and that they will be held within the systems of the Platform and the law firms advising on the transaction.

{Please obtain consent from the witness regarding the visibility and holding of their personal data.}

* 1. – Suggested text for email to be sent to the other party

Best practice is to agree "signing/release instructions" with the other party at an early stage of the transaction setting out how any documents are to be signed and dated and, if any of them are deeds, when they will be "delivered". The drafting below is provided as a starting point to aid your discussions with the other side, although it will need to be tailored to the individual circumstances of your transaction.

**Subject:** **Electronic signing protocol for {*insert description of matter}***

In connection with {*insert description of matter*} (the **"****Transaction"**) we have agreed that the parties will use the {*name*} e-signing platform (the **"****Platform"**) to {sign} {execute} the following document{s}:

* {specify document}
* {specify document}

{Copies of the agreed forms of these documents are attached to this email.}

**Confirmation of recipient details**

{You have previously provided} {Please provide} us with the following details in respect of the recipient{s} for your client:

* Full name
* Role (e.g. signing as director, authorised signatory, etc.)
* Email address
* {Mobile phone number[[87]](#footnote-87)}

You confirm that {the}{each} recipient has been informed that these details will be visible to all parties involved in the Transaction and that they have consented to the retention of these details within the systems of {*name of e-**signing* *platform*} and the law firms advising on the Transaction.

{Where a recipient is being asked to nominate a witness, you confirm that they have been asked to obtain consent in similar terms from the witness regarding the visibility and holding of their personal data in connection with the Transaction. The signatory will need to enter the name, email address {and mobile phone number}[[88]](#footnote-88) of their witness. Immediately after the signatory has signed the document(s), the witness will be emailed (at the email address provided by the signatory) asking them to sign and complete their details in the document(s).}

**Agreed process**

1. {The}{Each} agreed form document will be uploaded by us to the Platform and circulated (within one envelope) in the following signing order:

| **Signing order** | **Recipient** | **Action** |
| --- | --- | --- |
| 1. | You | To review and approve the document(s) |
| 2. | {*Are the* *documents to be sent to the recipients for the parties at the same time or in a specified order?*} | {*Specify actions*} |
| 3. | {You | To review and approve the fully signed documents prior to completion} |
| 4. | Us | To insert agreed information into any blank spaces and effect completion of the document(s) by dating it/them within the Platform |

1. Within the envelope we will include the following message(s) addressed to your client's recipient{s}:

*{Insert the appropriate message(s). Refer to the suggested drafting in* *Schedule 6.}*

1. {The recipient{s} {and the witness{es}} will be prompted to request an SMS code (generated by the Platform) on their mobile phone{s} which they will be required to input before they are able to access the documents within the envelope[[89]](#footnote-89).}
2. The settings for the Platform allow us (but not you or any other recipients) to correct a sent envelope. We will notify you if any corrections are required to be made.
3. From the point at which the first signature is applied to the documents within the envelope, all documents held within the envelope will be held to our joint order pending their completion. You may download the signed but undated document(s) {which will be watermarked "in process"}[[90]](#footnote-90) in order to check that they have been correctly signed. Any downloads at this stage are permitted strictly on the condition that they are held to our joint order, the documents cannot be dated and you will not release them to any other party.
4. When the envelope is returned to us as the final recipient in the signing order, we will:
   1. {send you an interim certificate of completion so that you can satisfy yourself that the signing process met with the Land Registry's requirements for electronic signatures set out in section 13.3 of Practice Guide 8: execution of deeds;}
   2. {telephone you to agree that the Transaction document(s) can be dated};
   3. {insert agreed information into the relevant blank spaces and} date the Transaction documents within the Platform.

{Exchange} {Completion} {and delivery, if any of the documents are deeds,} will be effected when the Transaction documents are dated.

1. Following {exchange}{completion}, you and your client's recipient{s} {(but not any witnesses/including any witnesses)}[[91]](#footnote-91) will automatically receive an email from the Platform advising that {exchange}{completion} has taken place. The completed document(s) and the certificate of completion which provides the audit trail of the signing process will be available for you and them to download[[92]](#footnote-92).
2. {We will also provide you with a Land Registry certificate for the completed Transaction as required by section 13.3 of the Land Registry Practice Guide 8: execution of deeds.}

Examples of private messages to be sent to particular recipients

The following messages, or a combination of them (as appropriate), are recommended. They may need to be shortened if the e-signing platform limits the number of characters that can be used:

1. **To recipients not represented by your** **law firm (essentially other parties to** **transactions)[[93]](#footnote-93):**

*You are being sent* *document(s) for electronic signing. We understand that you have already been advised by your solicitor about this. If you have any queries about the* *document(s), you should contact your solicitor immediately, and before you electronically sign them. {Name of* *firm} is not advising you on any aspect of the* *document(s) or the related* *transaction nor on* *the use of the {name} e-signing* *platform.*

1. **To unrepresented recipients:**

*You are being sent* *document(s) for electronic signing.* *If you have any queries about the* *document(s), you should seek independent legal advice immediately, and before you electronically sign them. {Name of* *firm} is not advising you on any aspect of the* *document(s) or the related* *transaction nor on* *the use of the {name} e-signing* *platform.*

1. **Additional wording for recipients who are required to sign in the presence of a witness:**

*{For a number of the* *documents}, you are required to sign in the presence of a witness. You will need to provide the full name, email address {and mobile phone number} of your witness[[94]](#footnote-94). Immediately after you have signed the* *document(s) your witness will receive an email inviting them to sign and complete their details in the* *document(s). {Please let your witness know in advance that their personal details will be visible to all parties involved in this* *transaction and that they will be held within the systems of {name of e-signing* *platform} and the law* *firms advising on the* *transaction.}*

*Your witness will need to be physically present when you sign the* *document(s) and will need to observe you adding your signature to the* *documents "on* *screen". Witnessing by way of a video call or similar is not sufficient. Your witness should be over 18, not visually impaired and of sound mind. They must not be a party to the* *document(s) being witnessed (or a signatory for another entity that is party to the* *document(s)) or a beneficiary under it/them. They {may} {must not be} a family member [[95]](#footnote-95).*

1. **To witnesses (****if the e-signing** **platform facilitates witnesses receiving private messages):**

*Please follow the instructions to sign these* *documents as a witness. By inserting your e-signature and clicking on "**Finish", you will be confirming that you were in the physical presence of the signatory when they inserted their e-signature.*

*{Your personal details* *will* *be visible to* *all parties involved in this* *transaction and they will be held within the systems of {name of e-signing* *platform} and the law* *firms advising on the* *transaction.}*



Further resources

Checklist for Managing Electronic Signing Process on a Corporate or Commercial Transaction using an Online Platform published by a working group comprising PSLs from the Networking for Know-how Group available from [Practical Law](https://uk.practicallaw.thomsonreuters.com/w-029-4583) or [LexisPSL](https://www.lexisnexis.com/uk/lexispsl/bankingandfinance/document/281955/61X6-7C93-GXFD-80M8-00000-00/Checklist-for-managing-an-electronic-signing-process-on-a-corporate-or-commercial-transaction-using-an-online-platform-published) (subscription required).

Checklist for Managing Electronic Signing Process on a Finance Transaction using an Online Platform published by a working group comprising finance PSLs available from [Practical Law](https://uk.practicallaw.thomsonreuters.com/w-029-5288) or [LexisPSL](http://www.lexisnexis.com/uk/lexispsl/bankingandfinance/document/391288/61XJ-J9T3-GXFD-84RY-00000-00/Checklist-for-managing-an-electronic-signing-process-on-a-finance-transaction-using-an-online-platform-finalised) (subscription required).

1. This paper was originally published on 28 September 2020 but has been revised and updated to take account of changes in HM Land Registry practice and other developments in market practice. [↑](#footnote-ref-1)
2. Standard electronic signatures are sometimes referred to as "simple" electronic signatures. [↑](#footnote-ref-2)
3. See HM Land Registry blogs posted on [9 July 2020](https://hmlandregistry.blog.gov.uk/2020/07/09/electronic-signatures-in-conveyancing/) and [2 October 2020](https://hmlandregistry.blog.gov.uk/2020/10/02/the-developing-use-of-electronic-signatures/). [↑](#footnote-ref-3)
4. Mercury Tax Group (and another) v HMRC [2008] EWHC 2721. For further consideration of the issues surrounding Mercury and virtual closings please refer to the APSL/LPSLG Working Party Paper on Virtual Completions for Property Transactions dated April 2020. For HM Land Registry's requirements in relation to Mercury signatures, see section 12 of [**LR Practice Guide 8: execution of deeds**](https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds#mercury-signatures)**.** [↑](#footnote-ref-4)
5. See section 3.5 and footnote 14. [↑](#footnote-ref-5)
6. London Property Support Lawyers Group. [↑](#footnote-ref-6)
7. Association of Property Support Lawyers. [↑](#footnote-ref-7)
8. To come within the definition of "conveyancer" in rule 217A of the Land Registration Rules 2003 an individual must be authorised under the Legal Services Act 2007 to provide conveyancing services; in effect they must have a practising certificate. [↑](#footnote-ref-8)
9. The certificate can be given by any party's Conveyancer – it cannot be provided in the name of a firm – and lodged as a separate attachment or letter. The certificate needs to be dated and signed by an individual conveyancer, their full name and firm must be added and the deed or deeds for which the certificate is given must be specified. It is not possible for the Land Registry Compliance Certificate to be provided via the notepad or the reply to requisition function within HM Land Registry's business e-services portal. [↑](#footnote-ref-9)
10. "Electronic execution of documents" published 3 September 2019 (Law Com No 386). [↑](#footnote-ref-10)
11. Many different e-signing platforms are available. We would welcome offers of equivalent guides to cover the use of other platforms. [↑](#footnote-ref-11)
12. This is expressly permitted by HM Land Registry. See [section 13.5 of Practice Guide 8](https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds#electronic-signatures). [↑](#footnote-ref-12)
13. It is a Land Registry Requirement that a Conveyancer acting for one of the parties dates an electronically signed Registrable Document within the e-signing platform. [↑](#footnote-ref-13)
14. An email in the below or similar form should be used by a signatory when sending an electronically signed document back to their solicitor if an e-signing platform is not being used, which will need to be forwarded to the other party's solicitor. The purpose of the email is to provide an audit trail evidencing a clear intention on the part of the signatory to authenticate the document:

    "Dear {solicitor},

    Property: {Insert description}

    Document: {Insert type of document} between {list parties to document} (the "Document")

    I confirm that the Document {attached to this email} was electronically signed by me, {name}, in my capacity as {director/attorney} of {company name} on {date of signing}. {My signature was witnessed by {name of witness} who was physically present at the time.}

    {Sign off}.

    {Name of signatory}" [↑](#footnote-ref-14)
15. For Registrable Documents, it is a Land Registry Requirement that an electronically signed document is dated within the e-signing platform by a Conveyancer acting for one of the parties.. [↑](#footnote-ref-15)
16. The exceptions are that only the lender in the case of a mortgage, discharge or release; the personal representatives in the case of an assent; and the grantor in the case of a power of attorney need have Conveyancers acting for them. Note that where a Registrable Document (not being the power of attorney itself) is being signed by an attorney on behalf of a contracting entity "a conveyancer must be acting in respect of the execution, but it does not matter for the purposes of [the Land Registry Requirements] whether the conveyancer was instructed by the party or by the attorney". See [section 13.3 of Practice Guide 8](https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds#electronic-signatures). [↑](#footnote-ref-16)
17. This is also the case even if you are proposing to adopt a "mixed signing" where the unrepresented parties will be wet ink signing and the represented parties would like to use electronic signatures. Confirmation of HM Land Registry's position on this was added to [section 13.3 of Practice Guide 8](https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds#electronic-signatures) on 15 February 2021. [↑](#footnote-ref-17)
18. For Registrable Documents, a Conveyancer acting for one of the parties must do this. [↑](#footnote-ref-18)
19. Note however that some law firms are not comfortable with documents that that have been signed within an e-signing platform being dated outside it and may require both Registrable Documents and Non-Registrable Documents to be dated within the platform. [↑](#footnote-ref-19)
20. In the context of a lease, examples of the "blanks" that might need to be filled in on completion include term and rent commencement dates, rent review dates, break dates, Landlord and Tenant Act 1954 notice and declaration dates etc. [↑](#footnote-ref-20)
21. The documents, once signed, would need to be downloaded from the e-signing platform and then the dating (including completion of "blanks") and last minute amendments would either need to be dealt with on screen using an appropriate PDF tool (you may need to first "flatten" the document to remove document security to achieve this) or by the documents being printed and the information inserted by hand (effectively "wet ink"). [↑](#footnote-ref-21)
22. Mercury Tax Group (and another) v HMRC [2008] EWHC 2721. [↑](#footnote-ref-22)
23. For Registrable Documents, HM Land Registry requires that a Conveyancer must do this. [↑](#footnote-ref-23)
24. Other than, in certain e-signing platforms, witnesses where they have been allocated witness status within the platform and not set up as direct recipients. [↑](#footnote-ref-24)
25. Some recipients may object to their mobile phone or landline number being recorded in this way and this may therefore preclude the use of SMS codes/automated phone calls. [↑](#footnote-ref-25)
26. For Registrable Documents, HM Land Registry requires that a Conveyancer acting for one of the parties effects completion by dating them within the e-signing platform. [↑](#footnote-ref-26)
27. Or the relevant fee earner who is tasked with effecting formal legal completion of the documents. [↑](#footnote-ref-27)
28. Or the relevant fee earner who is tasked with effecting formal legal completion of the documents. [↑](#footnote-ref-28)
29. Or the relevant fee earner who is tasked with effecting formal legal completion of the documents. [↑](#footnote-ref-29)
30. For Registrable Documents, it is a Land Registry Requirement that a Conveyancer acting for one of the parties dates the document within the e-signing platform. [↑](#footnote-ref-30)
31. As is noted elsewhere in this paper, in certain e-signing platforms e.g. DocuSign, witnesses will not receive copies of the completed documents if the "sign with witness" function is used (albeit that witnesses may still be able to scroll through the documents and read them during the signing process. However, this is not true of all e-signing platforms so care is needed. If confidentiality is a major concern then it may be worth considering whether alternative methods of signing are available that do not involve a witness (e.g. a limited company could look to sign by two directors rather than by a single director in the presence of a witness). [↑](#footnote-ref-31)
32. In this context "completion" means completion by everyone of all allocated actions. It will not be legal completion if the documents are to be dated outside the e-signing platform. [↑](#footnote-ref-32)
33. In relation to Registrable Documents, HM Land Registry advise that the Conveyancers involved in the transaction retain the Certificate of Completion with their files. [↑](#footnote-ref-33)
34. Note that, although in this paper we use the expression "witnessing", the more accurate legal term is "attestation". Witnessing involves observing the execution of a document. Attestation involves the additional step of recording, on the document itself, that the witness has observed the execution. [↑](#footnote-ref-34)
35. Lenders often specify that a family member cannot act as a witness. [↑](#footnote-ref-35)
36. The other party's solicitor and any lender's solicitor must agree to family members acting as witnesses. [↑](#footnote-ref-36)
37. In-person signing does not comply with Land Registry Requirements. [↑](#footnote-ref-37)
38. At the time of publication of this paper AdobeSign, DocuSign (with an Enterprise Pro package and the option enabled by your account manager) and Yoti Sign have this functionality. As noted if the identity of the witness is known with certainty when the envelope is created, one option is for the Conveyancer to add the witness into the envelope as an additional signatory (immediately after the signatory whose signature they are witnessing) rather than providing for the signatory to nominate their own witness at the point of signing. This allows the Land Registry Requirements to be satisfied, but may create confidentiality issues (see section 5.4 below) and, of course, does not allow for any last minute changes in the identity of the witness. [↑](#footnote-ref-38)
39. Other steps could also be used to preserve confidentiality. For example, using "in-person" signing if that is available (but only for Non-Registrable Documents) and advising the signatory to carefully supervise the witness whilst they sign and ensure that the witness finishes signing in the signatory's presence. [↑](#footnote-ref-39)
40. Note lasting powers of attorney cannot be electronically signed. [↑](#footnote-ref-40)
41. Note that the general power of attorney must be executed as a deed. [↑](#footnote-ref-41)
42. See paragraph 3.5 of the Law Commission's Consultation Paper No. 143 Execution of Deeds and Documents by or on behalf of Bodies Corporate. [↑](#footnote-ref-42)
43. [Click here for a link to section 7(A) of the Electronic Communications Act 2000](https://www.legislation.gov.uk/ukpga/2000/7/section/7A) [↑](#footnote-ref-43)
44. See paragraph 1.2 of [HM Land Registry Practice Guide 80: Coronavirus (COVID-19): useful information for conveyancers](https://www.gov.uk/government/publications/coronavirus-covid-19-useful-information-for-conveyancers-pg80/practice-guide-80-coronavirus-covid-19-useful-information-for-conveyancers) version updated 27 August 2021. [↑](#footnote-ref-44)
45. The Law Society [response dated 17 July 2020](https://www.lawsociety.org.uk/campaigns/consultation-responses/proposed-practice-for-the-use-of-electronic-signatures-law-society-response) to draft practice guidance published by HM Land Registry considers some of the Land Registry Requirements. [↑](#footnote-ref-45)
46. The exceptions are that only the lender in the case of a mortgage, discharge or release; the personal representatives in the case of an assent; and the grantor in the case of a power of attorney need have Conveyancers acting for them. See [Section 13.3 of Practice Guide 8](https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds#electronic-signatures) and section 4.3.4 in the main body of this paper above. [↑](#footnote-ref-46)
47. Notwithstanding the general acceptability of electronically signed documents under English law, it is worth noting the current reluctance of some firms to provide **a "****due execution" opinion** in relation to such a document. Accordingly, if there is a need for a "due execution" opinion to be provided in relation to your transaction (this can often arise where finance and lenders are involved), electronic signing may not be the right choice. [↑](#footnote-ref-47)
48. It is rare for such restrictions to be included in real estate transaction documents. [↑](#footnote-ref-48)
49. It is as easy to insert a full signature as initials, and a full signature is recommended since the Certificate of Completion typically provides greater detail for the application of signatures than for initials. [↑](#footnote-ref-49)
50. This is, of course, a pre-requisite if your transaction involves a contract to create or dispose of an interest in land where you will need to ensure due compliance with section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. [↑](#footnote-ref-50)
51. [HM Land Registry's Guidance: Accepted signatures](https://www.gov.uk/government/publications/signatures-accepted-by-hm-land-registry) indicates protection by an agreed notice could be an issue if Land Registry Requirements haven't been followed in circumstances where the Registrar needs to be satisfied as to the validity of claim. . [↑](#footnote-ref-51)
52. This refers to a true licence, i.e. a personal right or permission that offers no security, given to a licensee by a licensor in respect of a licensor's property. [↑](#footnote-ref-52)
53. In the absence of clear legal authority and established market practice and given the importance of the exclusion process, a landlord's solicitor may require that a tenant must provide a statutory declaration or simple declaration that is signed in wet ink. Each law firm must develop its own policy on this issue. Note that it is not possible to administer a 1954 Act statutory declaration remotely. [↑](#footnote-ref-53)
54. See preceding footnote. [↑](#footnote-ref-54)
55. This refers to a true licence, i.e. a personal right or permission that offers no security, given to a licensee by a licensor in respect of a licensor's property. [↑](#footnote-ref-55)
56. Excluding reversionary leases where the term takes effect more than three months after the date of grant and all discontinuous leases granted out of a registered title and discontinuous leases for a term of more than seven years when granted out of an unregistered title. [↑](#footnote-ref-56)
57. Provided no party requires the agreement to be noted and provided the highway authority is able to execute electronically. See Schedule 1 and section 8.2 in the main body of this paper above. [↑](#footnote-ref-57)
58. Provided the local planning authority is able to execute electronically. See Schedule 1 and section 8.2 in the main body of this paper above. [↑](#footnote-ref-58)
59. All of the trustees must be represented by a Conveyancer. [↑](#footnote-ref-59)
60. Unless a digital mortgage which has been created, signed and dated electronically using HM Land Registry's digital mortgage service. [↑](#footnote-ref-60)
61. General powers of attorney (but not lasting powers of attorney) can be electronically signed. [Section 13.3.2 of Practice Guide 8](https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds#electronic-signatures) provides that only the grantor of a general power of attorney need be represented by a Conveyancer. See section 7 in the main body of this paper for further details. [↑](#footnote-ref-61)
62. A modified signing process that differs from the Land Registry Requirements must be followed. See section 3 [of LR Practice Guide 3: Statements of truth](https://www.gov.uk/government/publications/statements-of-truth/practice-guide-73-statements-of-truth#requirements-for-a-statement-of-truth). [↑](#footnote-ref-62)
63. See paragraphs 2.97 to 2.107 of the Law Commission's Report on the Electronic execution of documents published 3 September 2019 (Law Com No 386) and [section 13.4 of Practice Guide 8](https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds#electronic-signatures) [↑](#footnote-ref-63)
64. See paragraph 3.1.5.1 of [LR Practice Guide 19: Notices, restrictions and the protection of third party interests in the register](https://www.gov.uk/government/publications/notices-restrictions-and-the-protection-of-third-party-interests-in-the-register/practice-guide-19-notices-restrictions-and-the-protection-of-third-party-interests-in-the-register#restrictions). [↑](#footnote-ref-64)
65. See paragraph 3.1.5.5 of [LR Practice Guide 19: Notices, restrictions and the protection of third party interests in the register](https://www.gov.uk/government/publications/notices-restrictions-and-the-protection-of-third-party-interests-in-the-register/practice-guide-19-notices-restrictions-and-the-protection-of-third-party-interests-in-the-register#restrictions). [↑](#footnote-ref-65)
66. Separate envelopes are needed for the documents if they will complete at different times, unless the intention is to date the documents outside DocuSign. A separate envelope may also be needed if a particular document is too bulky (see paragraph 3 of Schedule 1). [↑](#footnote-ref-66)
67. Some clients undertaking volume transactions may insist on using their preferred platform for all transactions. [↑](#footnote-ref-67)
68. Access authentication and the generation of a 6 digit one-time passcode sent by the platform by text i.e. SMS to every signatory and witness is a Land Registry Requirement for Registrable Documents. [↑](#footnote-ref-68)
69. See paragraph 2.12 below. [↑](#footnote-ref-69)
70. This is a Land Registry Requirement for Registrable Documents. Note, however, that some law firms are not comfortable with documents that have been signed within an e-signing platform being dated outside it and may require both Registrable Documents and Non-Registrable Documents to be dated within the platform. [↑](#footnote-ref-70)
71. HM Land Registry requires a Conveyancer acting for one of the parties to date electronically signed Registrable Documents within the e-signing platform. [↑](#footnote-ref-71)
72. This is not an option for Registrable Documents. [↑](#footnote-ref-72)
73. Note that there is a 1,000 character limit for use of private messages within DocuSign; there is no character limit with the custom email option. [↑](#footnote-ref-73)
74. Note also to be used where you are sending the envelope to Firm 2 to "approve" its contents. Although the "Approve" function will not leave any annotation or other mark on the documents themselves it is a "field" that needs to be completed and it is therefore necessary to allocate Firm 2 the action "Needs to sign". [↑](#footnote-ref-74)
75. If your transaction involves multiple documents but only some of them require witnessing and the document visibility setting for witnesses has not been enabled, it might be appropriate to separate out those that require witnessing into a different envelope to the others. [↑](#footnote-ref-75)
76. Some firms may, in the alternative, use an "in-person" / same device approach where confidentiality is an issue, although this means that the witness details are not recorded in the Certificate of Completion. There is, therefore, less of an audit trail to assist in proving that the witness was a separate person to the signatory. And of course this route is not available in relation to Registrable Documents. [↑](#footnote-ref-76)
77. See also paragraph 2.2 of Schedule 1. [↑](#footnote-ref-77)
78. For Registrable Documents it must be Firm 1 or Firm 2 in order to satisfy Land Registry Requirements. [↑](#footnote-ref-78)
79. Taking into account the commentary made around post-signing amendments in Mercury Tax Group (and another) v HMRC [2008] EWHC 2721. [↑](#footnote-ref-79)
80. See section 4.10.5 in the main body of this paper for the key information to check in a Certificate of Completion. [↑](#footnote-ref-80)
81. HM Land Registry requires a Conveyancer acting for one of the parties to date electronically signed Registrable Documents within the e-signing platform. [↑](#footnote-ref-81)
82. Some law firms are not comfortable with documents that that have been signed within an e-signing platform being dated outside it and may require both Registrable Documents and Non-Registrable Documents to be dated within the platform. [↑](#footnote-ref-82)
83. If Firm 1's settings are such that the Certificate of Completion is not automatically available to Firm 2, then Firm 2 should ask Firm 1 to supply it. [↑](#footnote-ref-83)
84. Other providers may be available. They may not be able to meet the Land Registry Requirements. [↑](#footnote-ref-84)
85. Not all e-signing platforms save users' signatures. [↑](#footnote-ref-85)
86. This will depend on the settings of the e-signing platform. [↑](#footnote-ref-86)
87. Only required if you are utilising SMS access authentication. If access authentication is to be provided by automated phone call it is possible to provide a landline number as an alternative. [↑](#footnote-ref-87)
88. Adjust if an alternative method of access authentication is being enabled. [↑](#footnote-ref-88)
89. Required in relation to Registrable Documents. Adjust if an alternative method of access authentication is being enabled. [↑](#footnote-ref-89)
90. This will depend on the settings of the e-signing platform. [↑](#footnote-ref-90)
91. This will depend upon the functionality of the particular e-signing platform being used. [↑](#footnote-ref-91)
92. This will depend on the settings of the e-signing platform. [↑](#footnote-ref-92)
93. This is required as in the ordinary course you would not be emailing another solicitor's client directly. The wording of the message should be agreed with the other solicitor in advance and included in the signing/release instructions that you agree with them. [↑](#footnote-ref-93)
94. Adjust if an alternative method of access authentication is being enabled. The wording may also need to be adjusted if the witness is being added as a direct recipient of the envelope by the Conveyancer. [↑](#footnote-ref-94)
95. Choose the appropriate wording depending upon whether or not the other party's solicitor and any lender's solicitor agree to family members acting as witnesses. [↑](#footnote-ref-95)