

**DISCLAIMER:** The information contained in this document is not intended to form professional legal advice or legal opinion on any particular matter.

This guide has been prepared to assist licensees to ensure that electronic signatures obtained from clients and consumers are done safely and in compliance with the Electronic Transactions Act 2002. This includes signatures obtained on documents viewed on iPads.

Not all types of documents can be signed electronically. The Electronic Transactions Act 2002 provides exception for documents such as notices that are required to be given to the public, affidavits and statutory declarations, powers of attorney, wills, etc. which are still required to be in hard copy form.

However, Agreements for Sale and Purchase of Real Estate can be signed electronically. Section 24 of the Property Law Act 2007 states that contract for disposition of land is not enforceable unless (a) recorded in writing and (b) signed. The Electronic Transactions Act 2002 widens the definition of "writing" so that this legal requirement can be met using an electronic document provided the information is "readily accessible so as to be usable for subsequent reference" (s19). Section 22 of the Electronic Transactions Act provides that the legal requirement for signature can be met by electronic signature provided the signature adequately identifies the signatory, indicates their approval to the agreement and is reliable. The other party to the Agreement must also consent to the electronic signature.

This guide has been prepared on the basis of opinion received from Glaister Ennor to minimise the risk that the licensees may be exposed to in the event of a dispute as to the validity of an electronic signature.

## Background

Electronic signature means a method used to identify a person and to indicate that person's approval of that information where that information is in electronic form. The common form of signing electronic documents on iPads by using stylus (pointed pen for writing on computers) or by snipping (cut and paste of scanned script signature) falls under the category of electronic signature and hence the Electronic Transaction Act 2002 needs to be complied with.

Technology that may be covered under this Act is not specifically legislated for. It is how each technology functions that needs to be taken into account when considering the validity of an electronic signature.

The requirements for a valid and binding electronic signature are:

1. It identifies the signatory;
2. It indicates signatory approval of the agreement;
3. The other party has consented to the agreement being signed electronically;
4. The means of creating the signature is linked to the signatory (and not to anyone else);
5. The means of creating the signature is controlled only by the signatory; and
6. Any alteration to the electronic signature and the agreement itself is detectable.

## What to check before signing

1. Check that the text of document is in a non-alterable format e.g. locked PDF.
2. The parties should be identified by sighting appropriate identification.
3. A clause should be inserted into the document – for example: *"The parties consent to this agreement being in electronic form, being signed by either of them electronically and acknowledge that an electronic signature to this agreement is binding and valid."*
4. Bring the clause to the parties' attention and inform them that their electronic signature is binding and has the effect of approving the contents of the agreement in full.
5. Explain how the document will be handled by you after signing and what process will be in place to ensure that the document is not altered after signing and what backup storage system you have to ensure that the signed document is not lost.

6. Ensure each party reads and considers each page of the agreement.

*NB: If there is any indication that an electronic signature may not be reliable, then a hard copy document should be used for signing instead.*

#### **When signing**

1. Ensure the "WARNING" (immediately above where parties sign in the agreements) has been pointed out to the signatory and is clearly visible to them when they are affixing their signature.
2. The signatory's name should be inserted in the signing field. When signing for a company or trust, the signatories should add their title also ("director" or "trustee").
3. The signature should then be inserted or added by stylus to the document. The signatories must sign and initial themselves. The act of placing electronic signature must be performed by the signatory directly. Likewise, snipped signatures can only be added by the signatory. If a person other than the signatory inserts the signature, then that is not a valid signature. Agents should not assist in the affixing of the electronic signature to the document other than pointing out where the signature is required.

*NB: The method of creating the signature must be linked to the signatory only and be under the signatory's exclusive control. Any alteration to the electronic signature and the agreement must be detectable also. Electronic signature providers such as DocuSign and RightSignature are becoming a popular option as their technology provides a forum for securely signing documents online. REINZ is currently looking into developing e-signing software for eforms that complies with the requirements of the Electronic Transactions Act 2002.*

#### **After signing**

1. The completed document must be secured/locked to prevent any tampering. Any changes made to the electronic signature or the document can invalidate the signature.
2. The signed document should be immediately emailed to the signatory, stored on a device (such as a memory stick) and passed to the signatory or printed and handed to the signatory. If emailed, it is recommended that the person first accepts to the signed document being provided in an electronic form.

*NB: s132 of REAA 2008 requires licensees to give copies of contractual documents after a person signs as soon as practicable.*