

Completing real estate transactions when working remotely



Many of our [real estate](#) clients, have been contacting us requiring urgent help to manage the completion of transactions as we continue to work remotely and paper-free. Having invested in secure, cloud-based technology before the current lockdown, we have full functionality at home and are continuing to support our clients.

We have had the ability to use e-signatures and virtual closing for some time but this hasn't been adopted widely in the property sector so we are now helping our clients to adopt such technology and generally adopt a more digital approach to managing transactions by using data gathering and document automation applications and other available solutions such as DocuSign.

Practical issues:

- Not all documents can be signed electronically – statutory declarations for example may not be capable of being declared remotely (Law Society guidance appears to be in flux) so for our landlord and tenant clients the solution for a 1954 Act excluded tenancy (if at all possible) is to adopt the simple declaration route, which does not require witnessing in any way.
- For any documents requiring signature in the presence of an independent witness, current isolation measures make this difficult to achieve at all.
- Documents that are registrable at the Land Registry currently require wet-ink signatures – in this case we have no option but to fall back on physical documents and wet-ink signatures in some cases.
- Lenders often have stringent requirements, such as execution of documents before lawyers, which cannot

now be met. Novel solutions are being discussed and opined upon, but no-one wants to see the enforceability of documents entered into during this period being challenged at a later date.

- For some corporate clients, their governance can be another challenge to navigate, with entire boards working remotely.

Current solutions:

- Putting in place powers of attorney – this enables execution of documents without the two signatures and common seal which would otherwise have been required.
- New protocols for executing documents and closing a transaction – for example, where clients' offices have been closed and the documents cannot be printed or posted.
- Creative guidance for those signing and witnessing to incorporate social distancing measures, for example valid witnessing by a neighbour through a window
- Entering into holding documents which do not require wet-ink execution – allowing the final documentation to be completed at a later date.
- Re-structuring of key obligations in documents to reduce clients expose to risk.

Given the likelihood of a sustained period of restriction of movement, and to enable transactions to continue, we need all stakeholders (HM Land Registry and lenders in particular) to be looking at their procedures to allow for modifications.

This is a great opportunity for the industry to come together. We have been encouraged to see that our real estate professional support lawyers (PSLs), along with over 100 other PSLs representing 80 law firms, are working together to share knowledge, discuss work-arounds, agree drafting and lobby organisations. There is already a mind-set shift whereby people are willing to explore new ways of working and there is no doubt that some of these will become adopted permanently as we discover faster and more efficient ways to collaborate with clients and the wider property sector.

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