

TRADIE LAW FACT SHEET

Electronic Signatures



TRADIE PAY

OVERVIEW

As business affairs are increasingly conducted online, it is important that businesses understand how and when to use electronic signatures (**e-signatures**).

Under the Contracts and Commercial Law Act 2017 (CCLA), the general position is that an electronic signature is treated as legally equivalent to a written signature when determining a party's intention to be legally bound by an agreement of deed. However, the electronic signature must meet the necessary requirements.

What is an enforceable electronic signature?

To be considered *reliable as is appropriate*, an electronic signature must meet the following criteria:

- the creation of the e-signature must be linked to the signer and no other person;
- any alterations after the e-signature is made must be detectable;
- there must be a clear intention from the signer to sign the document; and
- the signature must be generated under the signer's full and total control with no duress or persuasion from any other person.

Where a signature is a legal requirement, an e-signature is only acceptable if the person receiving the electronic signature **consents** to receiving it electronically.

A document which has been signed electronically where the above criteria is met and reliably assures the integrity of the document, will constitute an original. To preserve the document's integrity, you should take proper steps to ensure the electronic original is not tampered with or changed following signing.

What can be signed electronically?

The **CCLA** allows most documents to be signed electronically, including:

- Sale and Purchase Agreements;
- Commercial Contracts;
- Employment Agreements;
- Leases; and
- Director and Shareholder Resolutions.

What cannot be signed electronically?

Under the CCLA, certain documents cannot be signed electronically. Some of the key exceptions include:

- affidavits, statutory declarations or other documents given on oath or affirmation;
- powers of attorney or enduring powers of attorney; and
- wills, codicils or other testamentary instruments.

These documents should be executed in person. An image of a signature that is simply inserted into a document will not be acceptable in any circumstances for Land and Information New Zealand (**LINZ**) transfer documents and A&I's.

If you are unable to make an in-person signing due to emergencies or health reasons, we can assist with the electronic signing of **LINZ** land transfer documents and Authorisation and Identity documents (**A&I**).

Can deeds be signed electronically?

Deeds can be signed electronically, but there are formalities (section 9 of the Property Law Act 2007) which must be considered.

Generally, a deed must be signed by two directors. In the case of two directors signing a deed, each director can sign using an e-signature. However, if a sole director is signing, their signature must be **in the presence** of a witness before the witness can sign themselves.

In compliance with this requirement, it is best practice for the witness to be physically present when observing the signing, although deeds witnessed remotely are **still valid**. Caution is recommended for contracts that are covered under the laws of another country, as they may not allow remote witnessing.

If you would like more advice about electronic signatures, please get in touch so we can help.

Contact:

E helpdesk@tradielaw.nz

W www.tradielaw.co.nz/contact

One of our team will be in touch to assist you within 24 hours.