

Moving with the times: Land Registry announces changes to identity verification and signing of deeds

On Friday 1 May 2020, two temporary changes were announced by HM Land Registry (at <https://www.gov.uk/government/news/changes-to-identity-verification-and-signing-deeds>) in response to the ongoing pandemic. The changes come into effect from today, Monday 4 May 2020. The Practice Guides will be amended accordingly.

Signing of deeds

HMLR has announced that it **will** temporarily accept deeds which have been signed using the ‘Mercury signing approach’ (named after the decision in *R (on the application of Mercury Tax Group) v HMRC* [2008] EWHC 2721). In that case it was held that appending a signature page from an earlier draft did not amount to the valid execution of a document as a deed for the purposes of section 1(3) of the Law of Property (Miscellaneous Provisions) Act 1989).

Specifically, it will (for now, at least) be acceptable for registration purposes for a signature page to be: signed in pen (and witnessed); captured digitally (with a scanner or camera, so as to produce a PDF, JPEG or other appropriate copy of the page); and sent, along with the final agreed copy of the document under cover of a single email, by each party to their conveyancer. Notably, the announcement specifies that witnessing of signatures **must** be done in person, not by video call. The question of whether a deed can be witnessed remotely has been discussed recently by a number of our colleagues¹. Whilst the issue remains open for argument, this announcement would seem to offer some indication of the Land Registry’s view.

Land Registry Practice Guide 8: execution of deeds is expected to be updated today with further information.

¹ <https://www.falcon-chambers.com/publications/articles/witnessing-an-execution-what-does-s1-of-the-law-of-property-miscellaneous-p;>

<https://www.falcon-chambers.com/publications/articles/witnessing-deeds-in-the-age-of-social-distancing>

Identity verification

The second change relates to identity verification. HMLR usually requires identity verification checks to be carried out by ‘conveyancers’, as defined by section 217A of the Land Registration Rules 2003. Some, but not all, Chartered Legal Executives are conveyancers for these purposes.

However, from 4 May 2020, the range of people who can undertake verification is expanded to include:

- retired conveyancers, chartered legal executives, solicitors and barristers
- bank officials and regulated financial advisers
- medical doctors, dentists and veterinary surgeons
- chartered and certified accountants
- police officers and officers in the UK armed forces
- teachers and college and university teaching staff
- Members of Parliament and Welsh Assembly members
- UK civil servants of senior executive officer (SEO) grade or above
- Magistrates

The verification can be done by way of video call.

Further details are expected to be given later today in the new Land Registry Practice Guide 67A.

We applaud the fact that Land Registry is clearly striving hard to adapt its procedures to keep the property market moving. Mike Harlow, General Counsel, Deputy Chief Executive and Deputy Chief Land Registrar reminded us in a 1 May blog that:

“more than half the wealth of the nation is in our properties – over £7 trillion in England and Wales alone. We estimate that £1-1.5 trillion of debt is currently secured on that asset. Those numbers alone tell of the financial importance of property and the role it may play in bridging over the economic troubles ahead.”

Whilst any change to HMLR processes creates new possibilities for registration fraud (a concern which continues to delay the long promised and much debated move to e-conveyancing), these two announced changes will play a sensible role. They are likely to be relatively low risk, whilst making it easier for registered title conveyancing to continue in this new era of social distancing.

Importantly, transactions continue and must be able to take place as smoothly as possible. If nothing else, to facilitate the use of property as security for borrowing.

Janet Bignell QC

Imogen Dodds