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SIGNING AND WITNESSING A DOCUMENT

Section 106 of the Registered Land Act provides for the attestation of documents lodged for registration at the Land Registry. When a document is lodged at the Land Registry, the Registrar of Lands must be satisfied that the document is legally and formally valid. One such requirement relates to the signing and witnessing of documents.

Signing by Individual

The document should be signed by each individual named in the document. The names of the parties in the signing clause should be identical to the ones stated in the instrument. The signature must be on the document itself in the space provided and the words of execution must name the signatory or otherwise make clear who has signed the document. The person signing the document must do so manually and in ink. The use of black or blue ballpoint or felt tips pens is recommended when signing. Facsimile and photocopy of signatures are not authorized by the Act.

Attestation by a witness

Each individual must sign "appear before a witness" who attests the signature. We look to see that a witness has signed the form, that their signature clearly records the witnessing of the signing of the form by each individual concerned, and that the name and designation of the witness appear in legible form on the forms. It is important that names and designation are complete and legible as this can help in locating and contacting witnesses by any party should any issue arise concerning the execution. The same witness may witness each individual signature, but each signature must be separately attested, unless it is absolutely clear by express wording on the face of the attestation that the witness is witnessing both or all signatures in the presence of the named signatories.

A party to the instrument cannot witness the signature of another party to the same instrument.

Making a Mark

Making one's mark on a document is treated as signing it

A person may be illiterate, unable to read a deed because of physical illness or disability, or unable to understand the deed because it is in a foreign language. However, if a person does not understand what they are signing for other reasons, they may not have capacity to sign.

If the person signing a form is not sufficiently literate to read it, the contents might be read over to them or the effect of the document fully explained.

If the signatory is physically impaired so as to be unable to read the document, they might have the document read out to them.

In each of the above cases, we recommend that the witness to the signature confirm that a proper procedure has been followed. The facts of the case can be recorded by way of an amendment to the certificate of identification clause "having been read over to him or her and having confirmed that they understand the content."

People signing in foreign characters or language

A signature in foreign characters still constitutes a valid signature. However, where any instrument is executed in foreign (ie non-Roman) characters, such as Arabic or Chinese characters, or language (non-English) we will require an English translation.

Execution by a company under its common seal

If the Registered Owner is a Corporation, it should follow section 106 (2) (b) of the Registered Land Act.

Under section 106, a company may:

- execute documents under seal

OR

- choose not to have a company seal and therefore execute documents without using a seal.

If **sealed with the common seal of the corporation**, signed by the secretary or other permanent officer and by a member of the board of directors, council or other governing body of the corporation.

If a company executes a document in accordance with s.106 (b) (i), as outlined above, persons dealing with the company can rely on the assumptions of regularity.

Most companies, however, have articles of association that authorise the affixing of the company seal to a document in the presence of people other than a director and the secretary.

Where a document is executed by a company affixing its seal in the presence of persons other than outlined above, we may call for evidence that the people attesting the affixing of the seal are duly authorised by the company's articles to do so. Where their authority also depends upon a decision by the directors of the company, we may in addition require a certified copy of the board resolution.

In the case of a corporation **not required by law to have a common seal**, signed by such persons authorised by any law or by the statute or charter of the corporation or, in the absence of any express provision, by the persons duly appointed in writing for that purpose by the corporation, **evidence of which appointment** has been produced to the satisfaction of the Registrar.

Execution where the director or secretary is also a company

A corporate director or secretary must act through the agency of a real person. That person is required to be physically present at the affixing of the seal and must then attest the affixing with their signature.

Administration orders

An administrator, appointed by the courts or the holder of a charge may be appointed to manage the affairs, business and property of a company. The property of the company remains vested in the company but the administrator is authorised to use the company's seal and to execute documents in the name and on behalf of the company.

Receivership

Chargees can appoint a receiver under section 73 of the RLA. Such a receiver has statutory power to execute leases or accept the surrender of leases as laid down in section 74. In general terms, a receiver is a person appointed by a particular creditor to collect and convert the assets of a company to pay the debt due to that creditor. The appointment of a receiver does not necessarily result in the liquidation of the company.

However, a debenture will usually contain an express power to appoint a receiver and give the receiver the right to sell or otherwise dispose of the company's property, with the power to execute in the name and on behalf of the company. The property owned by the corporation does not vest in the receiver but he or she becomes an Agent of the corporation with power to sell, mortgage, etc. The receiver owes primary duties to the appointing debenture holder, with secondary duties owed to the corporation and any other party with an interest in the equity of redemption.

Liquidation

A disposition made by a company in liquidation may be executed either by the liquidator affixing the common seal and signing the document to attest that the seal has been affixed in their presence, or by the liquidator signing the document in the name and on behalf of the company.

A liquidator may be appointed by a company in Voluntary Liquidation or by a Court. Notice of such a resolution or decision must be registered on the register. In general terms, the role of a liquidator is to collect and convert all the assets of a corporation and pay all the debts or an equal share of all the debts due to creditors.

A liquidator does not have an interest or role in continuing the business of a corporation. The legal estate of real property owned by the company in liquidation remains with the company during the liquidation process. As property usually remains vested in the company, although the liquidator has the power to sell the land as the agent of the company, the transfer must be made in the name of the company as transferor (in liquidation). The company directors can sign the transfer in the normal manner but the consent of the liquidator must be endorsed on the transfer form.

Any document involving a corporation which is in liquidation should be drawn in the name of the corporation. The liquidator can sign documents on behalf of the corporation by affixing the common seal, but may also execute without using the seal.

In every instance where a liquidator is executing a document to be lodged for registration, proof of appointment of the liquidator should be supplied.

Execution under a power of attorney

A power of attorney is a legal document by which one person (the donor) gives another person (the attorney) power to act on their behalf including signing documents. A document executed by an attorney will not be accepted for registration unless the power of attorney under which the attorney acts is lodged and noted in this Office.

A power of attorney will either be for a specific purpose or general. If it is for a specific purpose you will need to ensure that it contains clear authority to enter into the transaction in question, as powers of attorney are interpreted strictly. The prescribed form describes itself as a general power of attorney and states that the donor appoints the donee or the donees jointly or jointly and severally to be their attorney or attorneys in accordance with the section. As part of the registration process, the attestation by an attorney is checked to ensure that the attorney has the express power to carry out the intention of the instrument. In the execution it must be clear that the attorney is signing as an attorney.

Execution by a guardian appointed under the Mental Health Act

A guardian appointed by the Grand Court to act on behalf of a registered owner may execute documents.

Transfers executed by a judge or an officer of the court pursuant to a court order

If a court order has been made that directs a transfer or other document to be made but the registered proprietor (as a party to the proceedings) will not execute the transfer, the judge or another officer of the court may execute the transfer on their behalf. You should lodge a copy of the court order as evidence of correct execution and the execution clause should clearly refer to the court order (name of court, the case reference number and the date of the court order).

If a judge has signed the transfer, we do not expect their signature to be witnessed. Although a RL1, for example, is a prescribed form and provides for a witness to the executing party's signature, a transfer or other document executed by a judge pursuant to an order of the Court is arguably a transfer executed in accordance with the directions of the court.

However, if the transfer is executed by someone other than a judge such another third party, their signature must be witnessed in the usual way.

Counterparts

In most cases, the parties will execute the same transfer or other instrument, which is preferable in order to facilitate processing of the application. Instruments can, however, be executed in more parts than one. There is then the principal instrument and a counterpart or counterparts. Each counterpart must be identical.

This means, in the case of a RL1 where A and B transfer to C and D and the latter must also execute, the following would be acceptable.

- 1) A and B and C and D all sign the same RL1.
- 2) A and B both sign the same RL1; C and D either sign a counterpart RL1 or individually sign separate counterpart RL1s.
- 3) A and B each sign separate RL1s; C and D either sign a counterpart RL1 or individually sign separate counterpart RL1s.

Special arrangements

Certain financial institution that regularly executes discharges of charges and charges either using a form of execution particular to that organisation or a long-standing "power of attorney" may have a special arrangement with us where that form of execution is to be used when signing discharge of charges or charge instrument. Such an arrangement involves our approving the form of execution or the "power of attorney" for registration purposes. This should prevent us from continually having to raise requisitions about the validity of the execution or having to see a certified copy of the power of attorney. Please note, however, that we cannot guarantee being able to provide a special arrangement in every case.

Attestation/Witnessing of a Document

An individual signing a document must do so before one of the functionaries prescribed by section 107 of the RLA. The purpose of this is that someone independently can witness the act of signing and thereby acts as some form of validity that the documents was properly signed by the named individual.

Please see the Guidance notes on certificate of identification for full explanation.