

DIGITAL SIGNATURES TO DEEDS OF SALE AND THE NEW CODE OF CONDUCT

It has always been our contention that deeds of sale must be signed by hand, and that digital signatures to a deed of sale will not give rise to a binding contract. This is based primarily on the wording of section 2.1 of the Alienation of Land Act.

This contention does however come under continuous pressure due to the many methods we now have to place a digital signature on a document, and the need for increased speed and efficiency in doing business.

That our contention is correct however is supported by a minor amendment in the new Property Practitioners Code of Conduct that was published as part of the Regulations to the Property Practitioners Act. This law became binding on us on 1 February 2022. The part of the Code of Conduct that we are referring to is found in section [34.3.4.7.2](#) of the Regulations. This is the part of the Code of Conduct that deals with a Property Practitioners “Duty not to make misrepresentations or false statements or use harmful marketing techniques”.

In essence, the section states that no estate agent shall inform a seller of a property, of which the estate agent has a mandate, that they have obtained an offer to purchase the property, unless the offer is in writing and “has been signed by the offeror in manuscript”, albeit that the offer was subsequently emailed to the estate agent.

By the words “in manuscript” we understand the section to be requiring a handwritten signature and not a digital one.

This section (and the new Code of Conduct) therefore effectively prevents an estate agent from telling a seller about an offer unless the offer bears a handwritten signature.

The law also applies to offers made by sellers to buyers.

Please be aware of this new section in the Code of Conduct, and the provisions of the Alienation of Land Act, and err on the side of caution. Always get your deeds of sale signed by hand. It is not worth the risk of proceeding on a document that has been digitally signed when this might enable an unhappy buyer or seller to walk away from the sale at some point in the future before the transfer has been registered. It will also remove the risk that you might be subject to disciplinary proceedings for breaching this section of the Code of Conduct.