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## Electronic Signatures & Exchange of Documents

### REALTOR® Best Practices

In most respects, electronic signatures (e-signatures) are no different from wet signatures. You and/or your clients affix your name to an agreement in order to confirm that you have agreed to the terms set out in the document. Whether you do this with ink, with a stylus or with a digital signature is largely the same.

Where there are multiple parties to a contract (spouses, two individuals on title, etc.), all parties must sign individually, whether you prefer wet ink signatures or if you are making use of one of the e-signatures providers (Authentisign, DocuSign, Faltour, etc).

#### Witnesses | current situation in Saskatchewan

With e-signatures or wet ink signatures, it is a best practice to get a witness to the signatures. An added benefit when using many e-signatures providers is the ability to identify where and when the signature was put on the document via security certificates. Not all e-signature software provides security certificates when applying a signature to a document.

Programs and apps such as PDF Expert are not designed to provide digital security certificates when documents are signed. Although it can properly flatten and embed signatures into documents, it is not as secure as a digital certified software such as DocuSign.

It is important to note that the Saskatchewan Real Estate Commission legislation requires that **every service agreement must be in writing and executed in the presence of witnesses; this applies to agency agreements and offers to purchase**. That means the security certificate provided by credible e-signature providers are not yet recognized as the witness to the e-signature, as practiced in other provinces.

#### Hand Drawn vs. Stamp | what are they

A **hand drawn e-signature**, or wet signature is created by the signer's handwriting, electronically on a touch screen with either their finger or with the assistance of a stylus. Each signature will be different, just like an ink signature would be.

The **stamp e-signature**, or point and click involves the parties to the agreement picking their signature and initial style from a list of fonts and placing them on pre-defined areas of the document with the click of a mouse. The click is then recorded digitally with a security certificate.

#### Mandatory & Standard Forms | not the same rules

When it comes to e-signatures in Saskatchewan, **mandatory forms** - those developed and provided by the Saskatchewan Real Estate Commission for mandatory use by all registrants - are treated differently than **standard forms** - those developed and provided by your Association of Saskatchewan REALTORS® for use by its members: REALTORS®.

In the case of **mandatory forms, only the hand drawn e-signature is allowed** as per Bylaw 625:

*Where The Real Estate Act requires an agreement to include a written signature, the signature requirement will be satisfied by an electronic signature that is:*

- a) Originally created by a handwritten signature; and
- b) Digitized and embedded permanently in the agreement to which it pertains.

Both the hand drawn e-signature as well as the stamp e-signature can be used on **standard (non-mandatory) forms**.

## Authenticating Signatures | taking precautions

How do you translate your best practices for authenticating wet signatures and authenticating e-signatures? With both wet ink and e-signatures, fraud is always possible and a careful **REALTOR® takes precautions to check the identity of the clients.**

Take, for instance, the case of a married couple who may be using one e-mail address. While you cannot verify with certainty that each spouse has signed individually, you can develop a practice (e.g. asking questions about the content of documents to both spouses) which will help you confirm that both parties are aware and agreeable to the contents of an agreement. Keep in mind that this lack of certainty holds true for wet ink signatures as well, where you may not be physically present when the documents are signed. Keep a record of these conversations in your notes.

## Verifying Receipt of Documents | tips

When emailing documents to your clients or to other REALTORS® for either e-signing or wet ink signing, make use of practices that will assist you in verifying receipt.

- Make sure you have the correct email addresses for all clients. When you have more than two names on a document, email any required documents to all parties, unless the contract states otherwise. It is a good idea to **request a response to show that the email has been received.**
- Where time is of the essence, phone first to say the document is on its way, and request a confirmation of receipt.
- As a matter of client service, a REALTOR® can agree to provide copies of document sent to a designated address to other email addresses if one of the clients requests. However, it is the sending of the documents to the designated address that will be considered as the documents being received by all parties.
- When emailing multiple documents, send them separately so you can verify which documents have been received and which have not. **Include the document name and number of pages in the document in your email subject line.** Example: Contract of Purchase and Sale-84 Your Street-Amendment-2 pages).
- If the clients do not agree to have notification at only one address, make sure that all documentation is sent to all parties. Again, follow the practice of verifying receipt of the document by all parties.

## Conclusion

While e-signatures and exchange of documents may be new to your real estate practice, the steps to take to ensure agreements are signed properly do not differ much from wet ink signatures. Adopting risk reduction practices in either case, e-signatures or wet ink signatures, will allow you to mitigate risks and ensure a smooth transaction for you and your clients alike.

Always feel free to call your local or provincial real estate association should you have any inquiries or concerns; they will be more than happy to assist you.

*Thank you to the Alberta Real Estate Association for allowing use of their resources to produce this document. Collaboration rocks!*



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