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ELECTRONIC SIGNATURES and SALE OF IMMOVABLE PROPERTY

1. The Alienation of Land Act provides as follows in section 2(1) thereof:

2 (1) No alienation of land after the commencement of this section shall, subject to the provisions of section 28, be of any force or effect unless it is contained in a deed of alienation and signed by the parties thereto or by their agents acting on their written authority.

Therefore, for any offer to purchase relating to immovable property to be valid and binding it must comply with the above requirements of being in firstly writing and secondly signed

2. The question begging answer is, what constitutes “signature” and is it broad enough to include “electronic signature”

There is no definition of a signature of deeds and documents in our law. In general there is no particular mode or form required, provided the person intends it for his/her signature.

A cross or mark which may include a thumb print, is also acceptable provided it is done in the presence of a commissioner of oaths who attaches the full names of the person affixing the cross or mark (see regulation 3(2) of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963).

If a person suffers from physical defects, e.g. deafness, dumbness, blindness, then to protect him/herself a notary should affix a certificate that he/she read over and explained the deed/document and that the party understood and duly signed in his/her presence and that of the witnesses

If a party does not read or understand the language used then the notary should obtain an interpreter to explain the deed. The notary should add a certificate to this effect and also to the effect that the document was explained to the party who appeared to understand it. The interpreter should also sign and indicate that the document was interpreted by him/her. It is to be noted that if a statute requires a document to be executed in a certain way or before a certain person this must be strictly adhered to

3. The Electronic Communications Transactions Act (ECT Act) defines an electronic signature as “data (ie. an electronic representation of information in any form) which is attached to, incorporated in, or logically associated with other data and which is intended by the user to serve as his signature in an electronic environment where a physical signature is not possible.”

Where our law requires that contracts must be **in writing**, the ECT Act recognises that a data message may meet the requirements for being “in writing” and that where the **signature of a person** is required by law and such law does not specify the type of signature, the requirement is met if an advanced electronic signature is used, which establishes a valid and binding agreement.

This does not, however, mean that all electronic transactions will be legally binding. The following **exclusions** are expressly provided for the ECT Act, the first of which are of particular interest to the real estate environment:

- An agreement for the alienation of immovable property in terms of the Alienation of Land Act of 1981.
- An agreement for the long-term lease of immovable property in excess of 20 years in terms of the Alienation of Land Act of 1981.
- The execution, retention and presentation of a will or codicil as defined in the Wills Act of 1953.
- The execution of a bill of exchange as defined in the Bills of Exchange Act of 1964.

Therefore, there is a need for our law to adopt to changes demanded by modern society, but until such time as it does, an actual signature is necessary to construe a valid agreement and an electronic signature will not suffice