

Written Contract or Deed

For a contract to be enforceable, it must, amongst other things, be made in three forms

1. Oral
2. Written
3. Deeds

In all likelihood, contracts which can then be used are required by law, for a contract will be written “under seal” or as deeds.

A contract is made when both parties intend that it come into effect, which is typically evidenced by the agreement.

Deeds are used because of their advantages. The main advantage is that some additional evidence is required for the document to be a valid deed (this is known as **to be a deed** (this is known as the document is intended to be a deed).

A deed is only necessary for a number of transactions, including the following:

1. Transfers of land
2. Leases of land
3. Mortgages and charges
4. Sales by mortgage
5. Appointments
6. Powers of appointment
7. Gifts of tangible property
8. Releases and acknowledgments

A party may also insist on a requirement that a deed is given to both parties (despite a lack of consideration) or the benefit of the loan (the period within which the benefit of the loan must be brought).

Execution of Deeds

Certain deeds affect property and must be registered.

For a contract to be enforceable, it must be signed in the correct manner. Contracts can be made in three forms

In writing, the usual reason being to record the terms, which can then be used. Written contracts are however also sometimes made in writing and or a guarantee. Most contracts made in writing are known as “simple contracts”, however some will be made as deeds.

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A deed is only necessary for a number of transactions, including the following:

Deeds must be accompanied by delivery.

A party may also insist on a requirement that a deed is given to both parties (despite a lack of consideration) or the benefit of the loan (the period within which the benefit of the loan must be brought).

Registration

Certain deeds affect property and must be registered.

2019, the Land Registry has introduced a new form of registration of the deed. Deeds registered at the Land Registry are considered best practice for all deeds. On this basis, we will be using the new and property portfolio. For more information on Signing and Executing

Further information on the new form of registration can be found by consulting the practice guide [here](#) or by consulting a legal professional before drafting and executing any documents.

Counterparts

Simple contracts and deeds can be executed in counterparts. This means that each party to the contract will sign a separate copy of the same document. The signed copies will together form a single document. Simple contracts and deeds will typically contain a clause expressly allowing them to be executed in counterparts.

Electronic documents

Note that the practice of signing documents electronically is becoming increasingly common as an alternative to being “in writing” and “signed” in the traditional sense. As to how a person or company can validly sign a document electronically or a person attesting that a document is signed electronically, see our Guidance Note: Electronic Signatures for property documents by clicking [here](#) and our separate Guidance Note on Electronic Signatures for property documents.

Sample execution

Below is a range of sample clauses for use by individuals, companies, attorneys, partnerships and LLPs, which can be used for both simple contracts and deeds.

1. Individuals

For a contract to be validly executed by an individual, each individual must sign the document. Deeds must be signed by two or more individuals in the presence of a witness who attests the signature.

Set out are examples of clauses that may be used by individuals when signing either a simple contract or a deed.

Simple contract

Signed by <<Name>>

Deed

Signed as a deed by

as a Deed” as an acceptable form of wording for companies and limited liability partnerships, i.e. where a deed is required. Whilst deeds not required to be executed in counterparts, it is recommended that they do to follow these same execution formalities, it is recommended that they do to use the same form of attestation across all documents. For more information on Signing and Executing our attestation clauses below and across our loan documents, see our property specific Guidance Note: Formalities for executing documents [here](#).

Further information on the new form of registration can be found by consulting the practice guide [here](#). You are advised to consult a legal professional, before drafting and executing any documents to the Land Registry.

Simple contracts and deeds can be executed in counterparts. This means that each party to the contract will sign a separate copy of the same document. The signed copies will together form a single document. Simple contracts and deeds will typically contain a clause expressly allowing them to be executed in counterparts.

Signatures

Documents can be signed in electronic form and then signing them electronically is becoming increasingly common as an alternative to being “in writing” and “signed” in the traditional sense. As to how a person or company can validly sign a document electronically or a person attesting that a document is signed electronically, see our Guidance Note: Electronic Signatures for property documents by clicking [here](#) and our separate Guidance Note on Electronic Signatures for property documents.

Below is a range of sample clauses for use by individuals, companies, attorneys, partnerships and LLPs, which can be used for both simple contracts and deeds.

For a contract to be validly executed by an individual, each individual must sign the document. Deeds must be signed by two or more individuals in the presence of a witness who attests the signature.

Set out are examples of clauses that may be used by individuals when signing either a simple contract or a deed.

Signature:

<<Name>>
in the presence of:

Signature of witness _____

Name (in BLOCK CAPITALS) _____

Address _____

Note that the same person cannot be separately attested as a witness to the same deed. Each signatory must make an attestation that the deed is theirs. For example: "I, <<Name>>, do hereby certify that the above is a true and correct copy of the original deed signed by me and witnessed by A and B **both** in the presence of ...".

A party to a deed cannot act as a witness to another party to the deed and whilst this does not prevent a signatory from acting as a witness (if they are not a party to the deed), it is also advisable to make sure a witness is no younger than 18.

2. Companies

The procedure for signing documents by a company is found in either section 43 (simple contracts) or section 44 (deeds) of the Companies Act 2006.

Simple contracts

Section 43 states that a contract can be made by the company by writing under its common seal or on behalf of the company by any person acting under its authority. This will usually mean a director or other authorised signatory. The signatory must be prepared to show the relevant board minutes (or other evidence) evidencing who has authorised them to do so. Note that for important contracts, whilst not a statutory requirement, it is good practice to use the execution provisions for a deed (set out below), in order to ensure legal certainty or because for risk management reasons, companies often choose to use the deed provisions.

Signed by <<Name of Company>> _____

Deeds

Section 44(1) and section 44(2) of the Companies Act 2006 set out the alternatives for the execution of documents:

- by affixing the common seal;
- signature by two or more authorised signatories (this will usually be two directors or a director and secretary or a director and authorised signatory);
- signature by one authorised signatory in the presence of a witness who attests the signature.

A. Affixing the company seal

There is no statutory requirement for a company to have a company seal. Many companies today no longer have a company seal, its name must be engraved on the seal in legible characters.

The common seal was used by a company to execute a deed in the presence of the company secretary and one director, or two directors, or a director and the secretary, each describing themselves as 'secretary' and 'director' or 'director' and 'director'.

Most companies' articles of association authorise the affixing of the company seal to a deed in the presence of the company secretary and one director and the secretary. However, the protection of the Law of Property Act 1925 is limited to cases where the seal is affixed by a director and the secretary or two directors. Therefore, further evidence is required that the people affixing the seal are duly authorised by the company's articles of association and certified copies of board resolutions may be required.

Executed as a deed of the company by the common seal of the company on <<Company Name>> in the presence of:

Signature of Director

Signature of Director

Alternatively, a company may execute a deed either by using two authorised signatories or by a single director in the presence of the company secretary, they must both sign in both capacities. B and C

B. Signature by two authorised signatories

Executed as a deed of the company by <<Company Name>> acting by [a director and its secretary] [two directors]

Signature of Director

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<<Affix seal here>>

Alternatively, a company may execute a deed either by using two authorised signatories or by a single director in the presence of the company secretary, they must both sign in both capacities. B and C

B. Signature by two authorised signatories

Executed as a deed of the company by <<Company Name>> acting by [a director and its secretary] [two directors]

Signature of [Director]

C. Single director and witness

Executed as a deed by <<Company Name>> acting by a director in the presence of:

Signature of Director _____

Signature of witness _____

Name (in BLOCK CAPITALS) _____

Address _____

3. Attorneys

As an alternative to appointing an attorney, one person/entity can act on their behalf and to be present when the attorney to act on their behalf.

Powers of attorney are governed by the Enduring Powers of Attorney Act 1985 and the Mental Capacity Act 2005.

A power of attorney can be made for a specific purpose or general. If it is for a specific purpose you will need to ensure the attorney has the authority to enter into the transaction in question. A general power of attorney must follow the form set out in the Powers of Attorney Act 1971 (Schedule 1, section 10(1)).

An attorney **must** be a natural person (so an attorney cannot be a company). The donor (individual or company) must execute the power of attorney as if they were executing a deed. For a company, the power of attorney must be executed in accordance with the Companies Act 2006.

Note if a director wants to appoint an attorney to sign instead of him on behalf of a company, it is the **company** that appoints the attorney.

Execution of deeds

A. Attorneys v

An attorney who is (whether the donor is an individual or a corporation) either in the name of the donor (or in the name of the donor by [attorney's name]) (section 7 of the Powers of Attorney Act 1971; section 1 of the Powers of Property Act 1925). The following attestation should be used:

Signed as a deed by _____ (full name of individual or corporation) in the presence of:

e.g. _____

Signature of witness _____

Name (IN BLOCK CAPITALS) _____

Address _____

B. Corporate attorney

A corporate attorney can execute a deed in one of three ways.

It may execute using its common seal.

Executed as a deed by _____ seal of (name of corporate attorney) as attorney for (full name of individual or corporation) in the presence of:

Common seal of corporation _____

Signature of Director _____

Signature of [Director] _____

If the corporate attorney does not use its seal, it can execute by either of the following (section 44 of the Companies Act 2006).

Executed as a deed by _____ (attorney) acting by [a director and its secretary] [two directors] as attesting witnesses (individual or corporation)

Signature _____ [Director]

Signature _____ [Director][Secretary]

Executed as a deed by _____ (attorney) acting by a director as attorney for (full name of individual or corporation) in the presence of:

Signature _____ [Director]

the deed (whether the donor is an individual or a corporation) either in the name of the donor (or in the name of the donor by [attorney's name]) (section 7 of the Powers of Attorney Act 1971; section 1 of the Powers of Property Act 1925). The following attestation should be used:

Signed as a deed by _____ (full name of individual or corporation) in the presence of:

Attorney for John Smith/John Smith Ltd

one of three ways.

seal of (name of corporate attorney) as attorney for (full name of individual or corporation) in the presence of:

Common seal of corporation

Signature of Director

Signature of [Director]

If the corporate attorney does not use its seal, it can execute by either of the following (section 44 of the Companies Act 2006).

(attorney) acting by [a director and its secretary] [two directors] as attesting witnesses (individual or corporation)

[Director]

[Director][Secretary]

(attorney) acting by a director as attorney for (full name of individual or corporation) in the presence of:

[Director]

Signature of witness _____

Name (IN BLOCK CAPITALS) _____

Address _____

4. Partnerships

Simple contracts

An individual partner can bind the partnership by signature. Other partners will be bound if the partner has the requisite authority.

Signed by <<Name of Partner>> of <<Name of Partnership>>

Deeds

Unlike simple contracts, a partner does not have authority to sign a deed on behalf of a partnership unless expressly conferred by deed. Usually, to circumvent this, a partnership deed itself will usually confer a power of attorney on a partner to sign a deed on behalf of the partnership. The following attestation may be used:

Executed as a deed by <<Name of Partner>> as agent for and on behalf of <<Name of Partnership>> under power of attorney dated <<Date>> in the presence of:

Signature of Partner _____

Signature of witness _____

Name (in BLOCK CAPITALS) _____

Address _____

5. Limited Liability Partnerships

A limited liability partnership (LLP) is a legal entity, separate from its members, formed under section 1(2) of the Limited Liability Partnerships Act 2000.

Simple contracts

An LLP will be bound by any contract made by writing under its common seal or on behalf of the LLP by any person acting with its authority, usually a member of the LLP.

Signed by <<Name of LLP>>

Signed by <<Name of LLP>>

Deeds

Limited Liability Partnerships Regulations 2009 (SI 2009/1804) applies to limited liability partnerships, so they may execute deeds in accordance with the regulations modify s.1 of the Companies Act 2006 and the secretary, or any member of the limited liability partnership.

Companies Act 2006) Regulations 2009 (SI 2009/1804) applies to limited liability partnerships, so they may execute deeds in accordance with the regulations modify s.1 of the Companies Act 2006 so that the references to a director or secretary of a company are to be read as references to two members of the limited liability partnership (Regulation 4).

Therefore, either of the following methods may be used:

(without using a common seal) may be used:

Executed as a deed by two members:

Executed as a deed by two members:

Signature of Member

Signature of Member

OR

Executed as a deed by <<LLP Name>> acting by a member in the presence of:

Signature of Member

Signature of witness

Name (in BLOCK CAPITALS)

Address

6. Other bodies

This guidance note covers the most common execution provisions that are likely to be used most often. There are however other provisions that may need to execute contracts that are not

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