

When are electronic signatures binding on sale of property agreements?

By [Steven Fisher](#)

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Rapid advances in technology, as well as more people working remotely and avoiding face-to-face meetings, has resulted in an increase in documents being signed electronically. When it comes to the signature of agreements of sale for immovable property, people are well advised to be cautious before putting their pens aside and embracing the various applications available for electronic signature of documents.



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In terms of chapter 1 of the Alienation of Land Act (ALA), in order for the sale of immovable property to be valid and binding, it must be contained in a written document signed by all parties or by their agents acting on their written authority.

The Electronic Communications and Transactions Act (ECTA) deals with electronic signature of documents, but it specifically states that it is not to be construed as giving validity to certain transactions, including “an agreement for alienation of immovable property as provided for in the Alienation of Land Act”.

It would therefore be fair to assume that our courts would hold that electronic signature of an agreement for the sale of immovable property would not be valid. This was, however, found not to be the case in the recent judgment handed down by the Eastern Cape High Court in *Borcherds and Another v Duxbury and Others*.

The respondents in the matter, being the sellers of an immovable property, sought to set aside a sale of immovable property agreement on various grounds, one of them being that the agreement was signed by them using an application used for electronic signature of documents. The sellers contended that by signing the agreement electronically, within the meaning of the ECTA the contract was of no force and effect as it did not satisfy the requirements of the ALA.

Taking into consideration that there was no evidence that the parties intended the sale of property to be an electronic transaction, in terms of the ECTA and that the words “sign” and “signed” are not defined in the ALA, the judge took a pragmatic approach and found that the sellers had signed the agreement as envisaged in the ALA with the intention of being bound to the contract as sellers, and accordingly held that with regard to the issue of signature, the agreement was valid and binding on the parties.

Each case of course depends on its own particular circumstances and facts, but until there is absolute clarity on the matter in the form an amendment to the relevant legislation, parties to the sale of an immovable property agreement should ensure that the agreement is signed in the old fashioned traditional sense. When in doubt, take your pen out.

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