

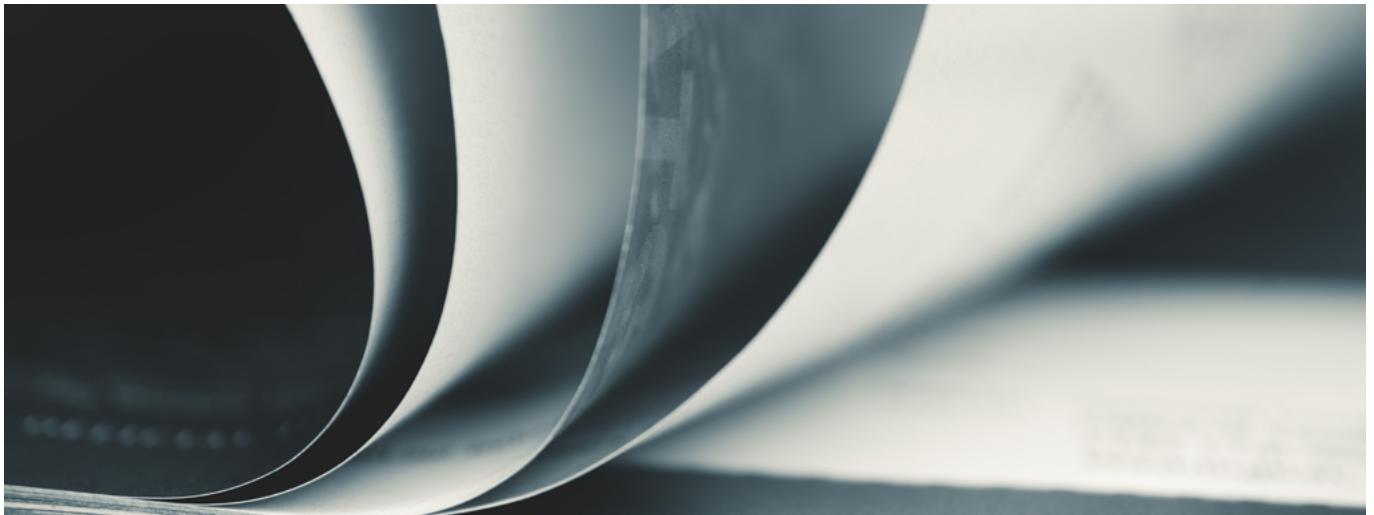
## INFORMATION SHEET

APRIL 2020

# Guidance note on executing NSW plans during COVID-19 restrictions

Restrictions imposed in response to COVID-19 have made it difficult to sign and witness deposited plans and strata plans that will be lodged for registration.

The plan process includes preparing a plan for lodgment, together with associated documents like strata by-laws and a section 88B instrument, and then arranging for all necessary consents and approvals. Signatures are required from various parties, from the surveyor to registered owners and mortgagees, as well as Councils and Prescribed Authorities. This guidance note clarifies how plans and associated plan documents can be validly executed in the current environment.



## Signing

All plan and associated plan documents, from an Administration Sheet and section 88B instrument to a Council consent, require an authorised signature. For registration purposes, this has meant wet signatures on paper documents, but in the current environment obtaining wet signatures from all parties may be difficult. In recognition of this, Schedule 1 of the Conveyancing Rules has been amended to temporarily allow land documents, including plans, to be signed under the *Electronic Transactions Act 2000*.

During the COVID-19 pandemic, signing can be achieved by electronic means.

There has been no change to the requirement for signing plans or associated documents but there are more options for how a signature can be applied. All plans and associated documents can continue to be wet signed or signed under an authority, like a power of attorney.

To be valid, the electronic signature must comply with the requirements of Division 2 of Part 2 of the *Electronic Transactions Act 2000*. An electronic signature will be taken to have met the requirements for a signature if it satisfies the requirements for –

1. **Identity** - a method is used to identify the person and to indicate the person's intention in respect of the information communicated, and
2. **Reliability** - the method used must be as reliable as appropriate for the purpose, and
3. **Consent** - the parties must agree to the use of electronic signatures and to the method used (for further detail see s 9 *Electronic Transactions Act 2000*).



As a way of identifying the signer and indicating their intention, a plan or associated document that has been signed electronically should include, near or above the electronic signature, words to the effect of:

*Electronic signature of me, [..insert name..] affixed by me, or at my direction, on [..insert date..]*

These words need not be included if a digital signing platform has been used that indicates that an electronic signature has been applied and the date when this occurred.

Before agreeing to accept an electronic signature, the parties should consider whether the method used is reliable and sufficient to ensure that the correct person is signing the document.

### Signing from different locations

Due to the current restrictions, not all parties may be in the same location, making it difficult to co-ordinate the necessary signatures. To overcome this, it will be acceptable during the COVID-19 pandemic for separate signed copies of the same document to be collated to form one document (or counterpart) with multiple signature pages.

When the plan is lodged with NSW Land Registry Services, the lodging party must verify that the correct version of all plan documents is lodged. Parties that have executed the plan documents should retain a copy for their own records.

### Witnessing via audio visual link

There may be some plan documents that require witnessing, such as the section 88B instrument or where a party signs under a power of attorney. There is doubt as to whether a signature witnessed via audio visual link can satisfy a legal requirement for an instrument to be signed 'in the presence of' a witness. *The Electronic Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020* provides that this type of remote witnessing is acceptable during the COVID-19 pandemic.

A person witnessing the signing of a document by audio visual link (the **witness**) must—

- a. see the person signing the document (the *signer*) sign the document in real time, and
- b. attest or otherwise confirm the signature was witnessed by signing the document or a copy of the document, and
- c. be reasonably satisfied the document the witness signs is the same document, or a true copy of the document signed by the signer, and
- d. endorse the document, or the copy of the document, with a statement—
  - i. specifying the method used to witness the signature of the signer, and
  - ii. that the document was witnessed in accordance with the Regulation.

An audio visual link in this context means technology that allows continuous and contemporaneous audio and visual communication between the signer and the witness at different places, including videoconferencing.

Clause 2, Schedule 1 of the *Electronic Transactions Regulation 2017* sets out more information about how a witness may confirm witnessing a signature in these circumstances.

### More information

For more information, email [ORG-Admin@customerservice.nsw.gov.au](mailto:ORG-Admin@customerservice.nsw.gov.au).