

# Why electronic contracts and SignIT are the future of the property market

## Q Will esigning stand up in court?

A Yes. The Australian Electronic Transactions Act of 1999 (ETA) says that electronic executions of contracts are valid under common law as long as the signing party has authority and been identified properly.

Essentially, to prove esignature Validity under Commonwealth Law three things are required.

1. Verification of Identity: this is where iDfy, our Identity Verification App is market leading to identify the person and to indicate the person's intention in respect of the information communicated.
2. Reliability: a method used to create an electronic signature will not be held to a higher standard of reliability than similar non-electronic methods of signing remotely, such as scanned PDF signatures.
3. Consent: unconditional consent can be given by express consent or inferred by conduct. If not given, the esignature is not effective.

Electronic signatures have been taken to court both here in Australia and abroad and have been shown to be legally valid. For example:

1. The case of Lang v The Leasing Centre (Aust) Pty Limited & Anor [2014] VCC 910 - A good example of courts readily finding electronic signatures in contracts entered into by a business to be valid.
2. In Person v. Google, Inc. (US) - The court relied on proof of process as opposed to proof by the document itself to support defence.
3. Austral-Asia Freight v. Turner, (2013) FCCA 298 - The Court determined a series of email exchanges was sufficient to meet the requirements of "writing" and "to sign" under Victorian law. Held that an individual's email signature was sufficient to demonstrate their intention to be legally bound by the contents of their email.
4. Faulks v Cameron, (2004) 32 Fam LR 417; (2004) NTSC 61 - A court found a string of emails to be enforceable as a separation agreement between two spouses.
5. Getup Ltd v Electoral Commissioner, (2010) 268 ALR 797 - A method used to create an electronic signature will not be held to a higher standard of reliability than similar non-electronic methods of signing remotely, such as scanned PDF signatures.

And the profession is finally overcoming admissibility concerns with 61% of partners and principals in the InfoTrack/Lawyers Weekly survey confident that an electronic signature on a contract of sale would be enforceable should a dispute arise.

## Q How do you sign electronically?

A It's really simple. With our partner DocuSign, recipients of a document click a link to open the documents on an internet-enabled device (like a mobile phone, tablet, or computer). Tabs and simple instructions guide the user through the signing process, even adopting an electronic signature. The recipient clicks 'Finish' to save the signed document.

Each electronic signature is unique, documentable, encrypted, and tamper-proof. DocuSign ensures the confidentiality of all transactions and maintains a comprehensive audit trail of signing events so the vendor's representative can see progress and it is clear what time and by whom the document was signed.

## Q Does there need to be an actual physical signature somewhere to back any contracts up?

A No. An 'electronic signature' has been defined as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record. They have been used for esigning offer letters, sales contracts, permission slips, rental/lease agreements, liability waivers, financial documents, without the need for a physical signature on paper.

## Q Will there be push back from other parties involved in the conveyancing transaction process?

A No. Since the introduction of PEXA, the whole property market from real estate to conveyancers have welcomed the idea of an electronic exchange for property. This is what the ASX did for shares, now applied to the property market.

## Q Have electronic contracts and SignIT been tried and tested?

A Yes, and it worked really well. Recently, property lawyer Claire Martin from Kreisson completed Australia's first paperless property transaction in Australia using InfoTrack's eCOS and SignIT platform to sell her Dee Why apartment. You may have read about it in the AFR on 9 June 2016.

Using PEXA and our platform, Ms Martin received the money from her sale within 10 minutes of completion.

## Q How can technology increase my bottom line?

A Preparing and finalising a property Contract for Sale can typically take 4 to 7 weeks. According to the recent InfoTrack/Lawyers Weekly Transaction Technology survey of 413 legal professionals, a staggering 62% do not invoice clients until settlement. That's a long time to wait and can have a very negative effect on cash flow.

Electronic Contracts of Sale also mean easier amendments to contracts, a potential improvement in accuracy and a reduction in the chance of mistakes which all help your bottom line.

## Q How can technology increase my profitability?

A Electronic contracts increase the speed and efficiency of the contract of sale process, freeing up time spent on repetitive or tedious, low value high maintenance tasks including, compiling documents, searches and the like.

This means lawyers can focus on more challenging and engaging work, legal services are more accessible with lower fees and there are great savings for practitioners. It's a big plus for profitability.

And, most importantly the InfoTrack/Lawyers Weekly survey found that 62% of practitioners do not invoice clients until settlement. Again, a long time to wait to get paid and can have a very negative effect on cash flow.

## Q How can technology benefit my clients?

A Legal professionals believe faster, more efficient electronic contract exchange would lead to greater client satisfaction. In fact, 55% of respondents in the InfoTrack/Lawyers Weekly survey, believe that faster more efficient electronic contract of sale processing would increase client satisfaction.

47% of practitioners also believe there will be less human error with electronic contracts and 45% say it will be easier to amend contracts. This is especially true since there is only ever one version of the contract, which takes away the hassle and risk of error present when dealing with multiple versions of the contract.

It also means there is more flexibility for clients who do not need to visit their lawyer's office or even be in the same country to buy or sell property with no need for paper documents.

Properties will settle in less than half the usual time which means clients will receive their money or the keys to their property sooner.

