



Are your Contracts Properly Signed?

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Contracts are a part of every day commercial life and it is vital that they be properly signed to reduce challenges about whether they are **legally binding**.

How do individuals sign?

An individual signing:

- an agreement needs to sign under their own name
- a deed needs to sign under their own name and have their signature **witnessed** by a third party adult who is not a party to the deed and that witness should print their name and address

It is also good practice for an individual's signature on any contract to be witnessed by a third party as this will be helpful in case there is a subsequent dispute about the authenticity of the individual's signature. If the document is especially important, the individual's signature should be witnessed by a solicitor or a justice of the peace.

How do companies sign?

Section 127(1) of the *Corporations Act* provides that a company may execute an agreement by any of the following methods:

- two directors of the company signing the document
- one director and one secretary of the company signing the document
- the sole director of the company signing the document
- the company affixing its common seal to the document (note: the affixing of the seal on the document must be signed/witnessed by any of the above three methods)

If the document is a deed, then the above also apply but the document should be clearly expressed to be executed as a deed.

It is highly recommended that parties obtain a **current ASIC company search** to verify that the director(s) and secretary are duly appointed.

Section 129(2) of the *Corporations Act* provides that a party may assume that any person who is a registered director or secretary of a company according to ASIC records:

- has been duly appointed
- has authority to execute a contract

Whilst Section 127 of the *Corporations Act* does not limit the way a company may sign an

agreement or a deed it is considered best practice to follow these requirements including because people will be able to rely on the relevant assumptions in Section 129 of the *Corporations Act* for dealings in relation to the company.

How do trusts sign?

As a trust is not a legal person, the trustee of the trust must execute any documents on behalf of the trust.

A trustee may be an **individual** or a **company**, in which case the above principles apply in relation to the execution of documents.

When signing though, the trustee must be expressed to be signing the document in its capacity as trustee of the trust (not in its own right).

To verify that the trustee has been duly appointed, you should check a certified copy of the trust deed (and any amendments).

How do partnerships sign?

A partnership is also not a legal person, thus the document must be signed by the individual partners either by:

- one partner who is duly authorised by the partnership to execute the document and bind the partnership
- all partners executing the document

To verify that an individual partner has the authority to bind the partnership, you should request a certified copy of the partnership agreement. As outlined above, it is good practice to have the individual's signature witnessed by an adult third party.

What about other cases?

There are many other rules and procedures for contract execution such as:

- contracts dealing with land have specific requirements for execution and registration (eg. for a lease, the parties must usually sign the first and last page of every annexure)
- a person signing on behalf of another using a power of attorney must state that they are signing in that capacity (and, in relation to land dealings in NSW, the power of attorney must be registered with NSW Land Registry Services)
- an agent may have the capacity to bind a party in certain circumstances
- certain contracts can be binding notwithstanding that they are unwritten and/or unsigned

Takeaways



In summary:

- a properly signed contract greatly assists with enforcing it
- a signing deficiency may lead to a painful ending
- there are different rules and requirements for the execution of documents depending upon the type of legal document, the parties executing it and the jurisdiction in which it is signed

More Information

Please contact our commercial law team at **Matthews Folbigg Lawyers** on **9635 7966** if you require legal advice or assistance in respect of any commercial matter.