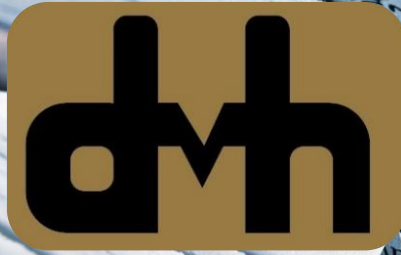


Dykes, van Heerden



Can one sign an offer to purchase electronically?

The short answer is that an electronically signed agreement of sale is not valid and therefore not binding on the parties.

In South-Africa electronic signatures are governed by the Electronic Communications and Transactions Act 25 of 2002 (hereinafter referred to as *ECTA*). Section 4 of ECTA provides for the spheres of our law to which ECTA applies. Section 4(4) of ECTA confirms that ECTA does not apply to an agreement for alienation of immovable property as provided for in the Alienation of Land Act 68 of 1981 (hereinafter referred to as the "*AoLA*").

Section 2(1) of the *AoLA* provides that no sale of land will be of any force and effect unless it is contained in a written deed of alienation signed by the parties.

The above has been confirmed by the Johannesburg High Court in the matter of *Aarifah Security Services CC v Jakoita Properties (Pty) Ltd and others 2020 JOL 48794 (GL)* at paragraph 63 where the court found that:

"A "normal" signature, such as one finds at the foot of an email, whilst it might suffice for a formality requiring a signature laid down in contract, cannot suffice if the signature is required by statute. More fundamentally, however, sections 4(3) and 4(4) read with Schedules 1 and 2 of ECTA make it clear that its provisions can in any event not be employed to validate Deeds of Sale under the Alienation of Land Act."

From the aforementioned provisions it is evident that an offer to purchase must be written and signed by all the sellers and purchasers and that the signatures of such agreement of sale may not be signed electronically. Should any of the above requirements, and other formalities, not be complied with it will cause the agreement of sale to be invalid and therefore not binding on the parties.

This newflash has been prepared for information purposes only and does not constitute legal advice, or a legal opinion, the practical application of the provisions of this newflash will vary depending on the facts of each case.

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