

Electronic Commerce Act

The following information about the Electronic Commerce Act was received from the Ontario Real Estate Association (OREA).

The Purpose of the ECA:

The purpose of the ECA is to provide a set of rules for the exchange of electronic information when creating legal documents. The ECA codifies the practice of using email, faxes, and other electronic means of communication to deliver signed versions of legal documents and provides that **contracts, information, and other documents are not invalid or unenforceable simply by virtue of their being in an electronic form. The ECA also provides that a legal requirement for a document to be signed or endorsed can be satisfied by electronic signature.**

What does this mean for REALTORS[®]?

REALTORS[®] and their clients can now utilize electronic signatures when entering into agreements of purchase and sale and other documents that create or transfer an interest in land. They can also deliver signed copies of such agreements subject to the protections afforded under the Electronic Commerce Act. In both cases, however, certain requirements set out in the ECA must be met.

Requirements under the Electronic Commerce Act:

"In Writing":

Under Ontario's Statute of Frauds, documents that create or vest an interest in land must be in writing and signed. Prior to July 1, 2015, the ECA excluded documents that create or transfer interests in land. As a result, the Statute of Frauds prevented the use of **electronic/virtual documents signed by the parties using an electronic signature to transfer or create an interest in land.**

With this exemption removed from the ECA, an electronic document signed by the parties using an electronic signature now satisfies the requirement that an Agreement of Purchase and Sale or other document that creates or transfers an interest in land be in writing.

The ECA provides that a legal requirement that a document be **'in writing'**, as is the case with Agreements of Purchase and Sale, is satisfied by a document in an electronic form if it is accessible so as to be useable for subsequent reference.

Therefore:

- 1.** The electronic document must be accessible by the other person so as to be useable for subsequent reference; and
- 2.** The electronic document must be capable of being retained by the other person – meaning capable of being printed and stored and not simply available for access.

"Signed":

The ECA provides that a legal requirement that a document be **'signed'** is satisfied by an 'electronic signature'. Thanks to the recent amendment to the ECA, the requirement that Agreements of Purchase and Sale and other documents that create or transfer an interest in land be "signed" is now satisfied by electronic signatures.

The ECA defines an 'electronic signature' as electronic information that a person creates or adopts in order to sign a document and that is in, attached to or associated with the document. This definition is very broad and would encompass any type of symbol.

“Retained”:

The ECA provides that a legal requirement that a written document be ‘retained’ is satisfied by the retention of an electronic document if:

1. The electronic document is retained in the same format as the one in which the written document was created, sent or received and accurately represents the information contained in the written document; and
2. The information in the electronic document will be accessible as to be usable for subsequent reference. Please keep in mind the above-noted requirements are in addition to those requirements that REALTORS(S) are already subject to such as the Real Estate and Business Brokers Act, 2002 (“REBBA”) and the Code of Ethics (Ontario Regulation 580/05) under REBBA as well as The Proceeds of Crime (Money Laundering) and Terrorist Financing Act, among others.

We would also recommend that if you have any specific questions with respect to your compliance under the ECA, that you consult independent legal counsel. Brokerages may also want to work with their own solicitors to develop a policy with respect to the proper use of electronic documents and signatures in an effort to ensure compliance with the ECA.

Electronic Signature Technology Provider Checklist:

When choosing an electronic signature technology provider REALTORS® and brokerages should consider the following:

- **Identity Assurance:** Ensure there is a process for signer authentication – make sure you understand the different levels of authentication available as they vary by product.
- **Strong Signature Association:** There should be at least one reliable form of unique attribution (e.g., email address, UserID, etc) to link to the signature.
- **Document Integrity:** System should assign identifiable document ID. Electronic documents should be tamper evident or tamper proof. Changes to documents post-signing should be prohibited or the document itself should indicate any tampering.
- **Audit Trail:** An audit trail or certificate should be available to indicate who signed and when including items (not limited to) email address, date/time stamp, geo-location, IP address and authentication measures used to identify the signer. This audit document should also be tamper evident or tamper proof.
- **Storage:** The provider should demonstrate its ability to preserve evidence of the transaction including storage, back up and disaster recovery.

Please note that the above-noted list is in no way exhaustive and REALTORS® are encouraged to seek independent legal advice when selecting an electronic signature provider.

Electronic Signature Providers:

The following electronic signature technology providers are licensed to use OREA Standard Forms and Clauses in their products. Whether using the following technology providers or another technology provider of your choosing, please ensure that the product is one that satisfies applicable law and obtain suitable professional advice. OREA does not endorse, recommend or favour any particular electronic signature providers, services or products, specifically or generally.

ViMo

<http://myvimo.ca/>
855.999.8466 (VIMO)
vimo.sales@teranet.ca

DealTap

<http://dealtap.ca/>
416.238.6560
sales@dealtap.ca

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