

ELECTRONIC AGREEMENTS

Purpose: To describe RECA's position that real estate contracts in electronic form are valid and enforceable. This position is subject to the development of new case law in Alberta.

This bulletin applies to all industry professionals.

Background

Real Estate Council of Alberta (RECA) supports industry professionals to adopt new technologies to advance industry efficiency and improve the quality of service to consumers. RECA researches the application of new technologies that emerge to advise industry professionals of potential legal and regulatory issues.

Industry professionals are increasingly using electronic agreements and electronic signatures instead of paper-based agreements and hand written signatures as a means to enter and negotiate contracts.

RECA's review of the validity of electronic agreements in relation to the relevant Alberta legislation includes:

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Statute of frauds (Alberta)

The *Statute of Frauds* states agreements for interests in land, which includes the buying and selling of land, must be in writing and the parties to the agreement must sign the agreement. This applies to real estate purchase contracts.

Electronic signatures have not been judicially considered in Alberta to determine if they satisfy the requirements of the *Statute of Frauds*. The definition of "writing" in the *Interpretation Act* (Alberta) and the *Interpretation Act* (Canada) has been judicially considered and deemed to include "facsimile transmission or electronic mail."

Electronic Transactions Act (Alberta)

The creation of the *Electronic Transactions Act* (ETA) is to ensure that electronic records and transactions have the same validity and enforceability as traditional paper-based transactions. Please note that the ETA does not apply to records that create or transfer interests in land that require registration to be effective.

For electronic information to be valid under the ETA, it must be:

- organized in the same or substantially the same manner as the paper based form
- accessible for future reference
- capable of being retained

An electronic signature is valid if it identifies both the person who signed and the purpose of the signature in relation to the signed document. Valid electronic signatures have the same status as written ones.

In RECA's view, under the ETA, electronic real estate purchase agreements and real estate service agreements with electronic signatures are equivalent to those written on paper. This also applies to service agreements and contracts in the real estate, property management, mortgage, and appraisal industries. The ETA has yet to be judicially considered, so this position may change in the future.

Important note:

This Information Bulletin is not legal advice or advice to industry professionals to incorporate this technology into their business practices. It is important to reinforce that RECA's position is subject to judicial consideration of the ETA and as case law develops in this area. RECA encourages industry professionals who incorporate this technology into their business practices to monitor this issue.