



Pen to paper: The persistence of wet ink signatures in real estate transactions - by Lindsay Mesh Lotito

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While in many circumstances electronically signing documents is easier for all parties involved, for commercial loans and real estate transactions, wet ink original signatures are still required.

New York State passed legislation in 2021, the Electronic Signatures and Records Act (ERSA) Regulation, permitting and establishing the standards and procedures for use and authentication of electronic signatures and records. ERSA also added Section 291-i to the Real Property Law, permitting recording officers to electronically record documents affecting real property. While ERSA has authorized this statewide, in practice, some counties do permit documents to be recorded and filed electronically, but the recording officer is still required to have an original, wet ink signature in hand.

None of the 62 counties in New York State have yet to accept electronic signatures for the recording of real property documents (mortgages, deeds, etc.) without a wet signature in hand. As such, it is still required that all documents that are to be recorded be wet ink signed. It is then the best practice to have any document which acts as the security for a loan be an original signature as well as the note for such loan.

In addition to the recording issues, if it ever was to be litigated as to the validity of the document and signature on same, both sides would need to prove “who signed what” and the party accused of providing a false signature would also need to prove the authentication and identification processes used for each electronic signature and the document security (the audit trail with timestamps of altering, viewing and signing the document).

While not always the most convenient, at the bare minimum, deeds, notes, mortgages and security agreements should not be electronically signed and wet ink original documents need to be provided to the recording officers.

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