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## Signed, sealed and delivered – execution of deeds

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### Introduction

A number of documents are required to be executed as a deed, rather than as an agreement. Typically, where there is no visible consideration passing from one party to the other, a deed is required to make the promises in the document enforceable. This is because where there is a lack of valuable consideration passing from one party to the other (such as in a contract of sale), the document is not legally enforceable unless it is a deed. Common forms of deed are powers of attorney, deed poll for change of name, confidentiality deed, termination deed and escrow deed.

### Legislation governing the execution of deeds

In Queensland, the law governing the execution of deeds is Part 6 of the *Property Law Act 1974 (Qld) (PLA)*. Other Australian states and territories have similar legislation so that execution of deeds in Australia is covered by uniform requirements.

### Requirements for deeds

A document intended to be a deed, should be named as a deed. The deed will have a signature clause for a natural person reading:

SIGNED, SEALED AND DELIVERED by [Name of ]

Individual] in the presence of: )

)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness Name (print)

The requirement to sign and seal is no longer onerous. Sealing with a wax seal is no longer needed and 'sealing' these days relies on a separate party witnessing the signature of the person signing the deed. The word 'delivered' is to establish that the signed deed is to be binding and if there is another party to the deed, it implies physical delivery to that other party of a signed version.

For a corporation, the execution requirements are slightly modified from those applying to natural persons. Section 46 of the PLA recognises execution under a corporation's common seal by a company secretary and director (without the need for a witness). Alternatively, the board of the corporation could by resolution and authorising instrument, approve someone to sign for it (similar to a power of attorney).

Those requirements largely reflect the general execution of documents through s 127 of the *Corporations Act 2001* (Cth). The notable differences with s 46 of the PLA are:

1. Execution by two directors rather than the company secretary and a director; and
2. Execution by a sole director and company secretary of a proprietary company.

In the case of execution by a sole director and company secretary, that person should sign under cover of:

SIGNED, SEALED AND DELIVERED as a deed by )

[name of company and ACN] by its sole director )

and company secretary in the presence of: )

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness Name (print)

## Time constraints on the enforceability of deeds

Unlike agreements which have a six year limitation period for the bringing of actions for breach, deeds have a longer limitation period under statutes of limitation in each State and Territory.

This period varies between 12 years for Queensland and up to 20 years for Western Australia.

## Conclusion

Whilst the days of official seals, sealing wax and parchments are well behind us, it is telling that 'deeds' have survived as a document more robust than a contract or agreement. Deeds do not rely upon any party getting consideration to be enforceable (as with agreements). Deeds are still recorded on paper and are still signed and witnessed in the traditional sense. Because of the execution process, deeds have an elevated status above a simple agreement and the enforceability of promises given under a deed are recognised beyond the terms applying to ordinary agreements.

## Meet the Corporate team

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