



Government Relations Issues Update

Electronic Commerce

Background

Currently, electronic signatures cannot be legally enforced for Agreements of Purchase and Sale. This is governed by the Electronic Commerce Act, which was passed by the provincial government in 2000. This Act was intended to give electronic signatures and contracts the same legal status as paper documents; however, it includes some important exceptions. Specifically, it excludes “documents, including agreements of purchase and sale, that create or transfer interests in land and require registration to be effective against third parties”.

Due to this explicit exclusion, traditional practices are the only acceptable means for Agreements of Purchase and Sale. The provincial government’s rationale for this exclusion was that this type of contract requires more detailed safeguards and rules to protect against risks such as mortgage fraud or identity theft. For this same reason, the Act also does not apply to wills, personal powers of attorney, election documents, and most negotiable instruments, such as cheques.

Other real estate related commerce, or contracts, such as agency agreements, are captured by the Act, and can therefore be legally transacted electronically.

When the Electronic Commerce Act was moving through the approval process, the Ontario Real Estate Association requested specific clarification from the provincial government regarding the applicability of the legislation to Agreements of Purchase and Sale.

Prior to OREA’s input, the legislation excluded “documents that create or transfer interests in land and require registration to be effective against third parties” (which was intended to capture Agreements of Purchase and Sale), but did not specifically mention Agreements of Purchase and Sale. As a direct result of OREA’s request for clarification, the legislation was amended to specifically clarify that the above noted exclusion was intended to include “agreements of purchase and sale”.

In February 2007, **TREB** formally asked the Ministry of the Attorney General if a review or changes to the Electronic Commerce Act were planned, given advancements in technology since the Act was passed in 2000. Ministry staff has indicated that no formal review is planned.

TREB has asked OREA to review this issue to determine if any government relations action is necessary and to provide legal clarification for REALTORS® on this matter.