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Law of Property (Miscellaneous Provisions) Act 1989

1989 CHAPTER 34

An Act to make new provision with respect to deeds and their execution and contracts for the sale or other disposition of interests in land; and to abolish the rule of law known as the rule in Bain v. Fothergill. [27th July 1989]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Deeds and their execution.

(1) Any rule of law which—

(a) restricts the substances on which a deed may be written;

(b) requires a seal for the valid execution of an instrument as a deed by an individual; or

(c) requires authority by one person to another to deliver an instrument as a deed on his behalf to be given by deed,

is abolished.

(2) An instrument shall not be a deed unless—

(a) it makes it clear on its face that it is intended to be a deed by the person making it or, as the case may be, by the parties to it (whether by describing itself as a deed or expressing itself to be executed or signed as a deed or otherwise); and

(b) it is validly executed as a deed by that person or, as the case may be, one or more of those parties.

(3) An instrument is validly executed as a deed by an individual if, and only if—

(a) it is signed—

(i) by him in the presence of a witness who attests the signature; or

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(ii) at his direction and in his presence and the presence of two witnesses who each attest the signature; and

(b) it is delivered as a deed by him or a person authorised to do so on his behalf.

(4) In subsections (2) and (3) above "sign", in relation to an instrument, includes making one's mark on the instrument and "signature" is to be construed accordingly.

(5) Where a solicitor **[**[F1], duly certificated notary public**]** or licensed conveyancer, or an agent or employee of a solicitor **[**[F1], duly certificated notary public**]** or licensed conveyancer, in the course of or in connection with a transaction involving the disposition or creation of an interest in land, purports to deliver an instrument as a deed on behalf of a party to the instrument, it shall be conclusively presumed in favour of a purchaser that he is authorised so to deliver the instrument.

(6) In subsection (5) above—

"disposition" and "purchaser" have the same meanings as in the [M1]Law of Property Act 1925;

[[F2] "duly certificated notary public" has the same meaning as it has in the Solicitors Act 1974 by virtue of section 87 of that Act;**]** and

"interest in land" means any estate, interest or charge in or over land **[**[F3]or in or over the proceeds of sale of land**]**.

(7) Where an instrument under seal that constitutes a deed is required for the purposes of an Act passed before this section comes into force, this section shall have effect as to signing, sealing or delivery of an instrument by an individual in place of any provision of that Act as to signing, sealing or delivery.

(8) The enactments mentioned in Schedule 1 to this Act (which in consequence of this section require amendments other than those provided by subsection (7) above) shall have effect with the amendments specified in that Schedule.

(9) Nothing in subsection (1)(b), (2), (3), (7) or (8) above applies in relation to deeds required or authorised to be made under—

(a) the seal of the county palatine of Lancaster;

(b) the seal of the Duchy of Lancaster; or

(c) the seal of the Duchy of Cornwall.

(10) The references in this section to the execution of a deed by an individual do not include execution by a corporation sole and the reference in subsection (7) above to signing, sealing or delivery by an individual does not include signing, sealing or delivery by such a corporation.

(11) Nothing in this section applies in relation to instruments delivered as deeds before this section comes into force.

Annotations:

Amendments (Textual)

F1 Words inserted by Courts and Legal Services Act 1990 (c.41, SIF 37), s. 125(2), **Sch. 17 para. 20(1)**

F2 Words inserted by Courts and Legal Services Act 1990 (c.41, SIF 37), s. 125(2), **Sch. 17 para. 20(2)**

F3 Words in s. 1(6) repealed (1.1.1997) by 1996 c. 47, s. 25(2), **Sch. 4** (with ss. 24(2), 25(4)(5)); S.I. 1996/2974, **art.2**

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Marginal Citations

M1 1925 c. 20.

2 Contracts for sale etc. of land to be made by signed writing.

(1) A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each.

(2) The terms may be incorporated in a document either by being set out in it or by reference to some other document.

(3) The document incorporating the terms or, where contracts are exchanged, one of the documents incorporating them (but not necessarily the same one) must be signed by or on behalf of each party to the contract.

(4) Where a contract for the sale or other disposition of an interest in land satisfies the conditions of this section by reason only of the rectification of one or more documents in pursuance of an order of a court, the contract shall come into being, or be deemed to have come into being, at such time as may be specified in the order.

(5) This section does not apply in relation to—

(a) a contract to grant such a lease as is mentioned in section 54(2) of the [M2]Law of Property Act 1925 (short leases);

(b) a contract made in the course of a public auction; or

[[F4](c) a contract regulated under the Financial Services and Markets Act 2000, other than a regulated mortgage contract;**]**

and nothing in this section affects the creation or operation of resulting, implied or constructive trusts.

(6) In this section—

"disposition" has the same meaning as in the Law of Property Act 1925;

"interest in land" means any estate, interest or charge in or over land **[**[F5]or in or over the proceeds of sale of land**]**.

[[F6]"regulated mortgage contract" must be read with—

(a) section 22 of the Financial Services and Markets Act 2000,

(b) any relevant order under that section, and

(c) Schedule 2 to that Act.**]**

(7) Nothing in this section shall apply in relation to contracts made before this section comes into force.

(8) Section 40 of the Law of Property Act 1925 (which is superseded by this section) shall cease to have effect.

Annotations:

Amendments (Textual)

F4 S. 2(5)(c) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 317(2)

F5 Words in s. 2(6) repealed (1.1.1997) by 1996 c. 47, s. 25(2), **Sch. 4** (with ss. 24(2), 25(4)(5)); S.I. 1996/2974, **art. 2**

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F6 Definition of "regulated mortgage contract" in s. 2(6) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 317(3)

Modifications etc. (not altering text)

C1 S. 2(1)-(6) excluded (retrospective to 31.5.1996) by 1996 c. 61 s. 41(1)(2)

Marginal Citations

M2 1925 c. 20.

3 Abolition of rule in Bain v. Fothergill.

The rule of law known as the rule in Bain v. Fothergill is abolished in relation to contracts made after this section comes into force.

4 Repeals.

The enactments mentioned in Schedule 2 to this Act are repealed to the extent specified in the third column of that Schedule.

5 Commencement.

(1) The provisions of this Act to which this subsection applies shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint.

(2) The provisions to which subsection (1) above applies are—

(a) section 1 above; and

(b) section 4 above, except so far as it relates to section 40 of the Law of Property Act 1925.

(3) The provisions of this Act to which this subsection applies shall come into force at the end of the period of two months beginning with the day on which this Act is passed.

(4) The provisions of this Act to which subsection (3) above applies are—

(a) sections 2 and 3 above; and

(b) section 4 above, so far as it relates to section 40 of the [M3]Law of Property Act 1925.

Annotations:

Modifications etc. (not altering text)

C2 Power of appointment conferred by s. 5(1) fully exercised: 31.7.1990 appointed by S.I. 1990/1175, **art. 2**

Marginal Citations

M3 1925 c. 20.

6 Citation.

(1) This Act may be cited as the Law of Property (Miscellaneous Provisions) Act 1989.

(2) This Act extends to England and Wales only.

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SCHEDULES

SCHEDULE 1

Section 1.

CONSEQUENTIAL AMENDMENTS RELATING TO DEEDS

The Law of Property Act 1925

1 The [M4]Law of Property Act 1925 shall be amended as follows.

Annotations:

Marginal Citations
M4 1925 c. 20.

2 In section 52(2)(e) for the words "not required by law to be under seal" there shall be substituted the words " other than those falling within section 115 below ".

3 In section 74(2) for the words "not under seal" there shall be substituted the words " which is not a deed ".

4 In section 80(1) for the words from "under" to "eighty-one" there shall be substituted the words " made under seal after 31st December 1881 but before the coming into force of section 1 of the Law of Property (Miscellaneous Provisions) Act 1989 or executed as a deed in accordance with that section after its coming into force ".

5 The following subsection shall be added at the end of section 81—

"(5) In its application to instruments made after the coming into force of section 1 of the Law of Property (Miscellaneous Provisions) Act 1989 subsection (1) above shall have effect as if for the words "under seal, and a bond or obligation under seal," there were substituted the words "bond or obligation executed as a deed in accordance with section 1 of the Law of Property (Miscellaneous Provisions) Act 1989"."

The Powers of Attorney Act 1971

6 In section 1 of the [M5]Powers of Attorney Act 1971—

(a) in subsection (1), for the words "signed and sealed by, or by direction and in the presence of," there shall be substituted the words " executed as a deed by "; and

(b) subsection (2) shall cease to have effect.

Annotations:

Marginal Citations
M5 1971 c. 27.

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7 (1) The following words shall be substituted for the words from the beginning of subsection (1) of section 7 of that Act to the end of paragraph (a)—

"**7** (1) If the donee of a power of attorney is an individual, he may, if he thinks fit—

(a) execute any instrument with his own signature, and".

(2) In subsection (2) of that section—

(a) the words "or (4)" shall cease to have effect; and

(b) for the words "those subsections" there shall be substituted the words " that subsection ".

The Solicitors Act 1974

8 In section 22(3)(b) of the [M6]Solicitors Act 1974 for the words "under seal" these shall be substituted the words " intended to be executed as a deed ".

Annotations:

Marginal Citations

M6 1974 c. 47.

SCHEDULE 2

Section 4.

REPEALS

Chapter .	Short Title	Extent
15 & 16 Geo. 5 c. 20.	The Law of Property Act 1925.	Section 40.
		Section 73.
		In section 74(3), the words "and in the case of a deed by affixing his own seal,".
1971 c. 27.	The Powers of Attorney Act 1971.	Section 1(2).
		In section 7, subsection (1), the words "and seal" and in subsection (2), the words "or (4)".

Changes to legislation:
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Changes and effects yet to be applied to :

- s. 1(2)(b) modified by 2006 c. 46 s. 46(1)
- s. 1(2)(b) text amended by S.I. 2005/1906 art. 7(3)
- s. 1(2A) inserted by S.I. 2005/1906 art. 8
- s. 1(3)(b) text amended by S.I. 2005/1906 Sch. 2
- s. 1(4) text amended by S.I. 2005/1906 Sch. 1 para. 14
- s. 1(4A) inserted by S.I. 2005/1906 art. 7(4)
- s. 1(5) text amended by S.I. 2005/1906 art. 9 Sch. 2
- s. 1(5) words substituted by 2007 c. 29 Sch. 21 para. 81(a)
- s. 1(6) text amended by S.I. 2005/1906 Sch. 1 para. 15
- s. 1(6) words substituted by 2007 c. 29 Sch. 21 para. 81(b)
- s. 1(6)(b) text amended by S.I. 2005/1906 Sch. 2
- s. 2(5)(c) text amended by S.I. 2006/2383 art. 27(a)
- s. 2(5)(c) text amended by S.I. 2009/1342 art. 24(a)
- s. 2(6) text amended by S.I. 2006/2383 art. 27(b)
- s. 2(6) text amended by S.I. 2009/1342 art. 24(b)
- Sch. 1 para. 8 repealed by 2007 c. 29 Sch. 23 (This Act is amended by 2009 c. 25 Sch. 21 para. 97 Sch. 23 Pt. 9)

Commencement Orders yet to be applied to the Law of Property (Miscellaneous Provisions) Act 1989:
Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2008/2860 art. 3 4 Sch. 1 commences (2006 c. 46)
- S.I. 2009/3250 art. 2 commences (2007 c. 29)