



Legal Guide for Queensland

Hutly often fields questions from the real estate sector as to whether contracts on our platform form legally binding and enforceable contracts. The short answer is yes!

However, we recognise the importance of transparency and are happy to share the advice that has been obtained from subject matter experts at K&L Gates, a fully integrated global law firm.



- 1.** The legal framework surrounding the use and validity of electronic signatures in Queensland is the Electronic Transactions (Queensland) Act 2001 (Qld) (Relevant Act). Section 14 sets out that:

 - (1) If, under a State law, a person's signature is required, the requirement is taken to have been met for an electronic communication if -

 - (a) a method is used to identify the person and to indicate the person's intention in relation to the information communicated; and
 - (b) the method used was either -

 - (i) as reliable as appropriate for the purposes for which the electronic communication was generated or communicated, having regard to all the circumstances, including any relevant agreement; or
 - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence; and
 - (c) the person to whom the signature is required to be given consents to the requirement being met by using the method mentioned in paragraph (a).
 - (2) The reference in subsection (1) to a law that requires a signature includes a reference to a law that provides consequences for the absence of a signature
- 2.** The Relevant Act is technologically neutral as it does not mandate a particular electronic signature technology which must be used.
- 3.** Therefore, the requirements as set out in Section 14(1) of the Relevant Act for the Hash Signature to be sufficient to constitute a valid signature, are:

 - (a) the Hash Signature must identify the relevant individual and indicate their acceptance to the terms of the relevant residential tenancy agreement (being their intention in providing the relevant communication);
 - (b) the Hash Signature:

 - (i) must be as reliable as appropriate to indicate acceptance to the terms of a residential tenancy agreement (being the purposes for which it is generated); or
 - (ii) must be proven in fact to have fulfilled the requirements of identification and intention in (a); and
 - (c) both parties must provide consent to using the Hash Signature to provide their signature to the relevant residential tenancy agreement.



What is a hash signature?

A hash is a function that converts an input of letters and numbers into an encrypted output of a fixed length. This is then stored on Distributed Ledger Technology (DLT) by Hutly. This creates a record that can never be changed or undone.

As no two hash's can ever be the same and are entirely unique to an event, when a party to a contract executes we generate a unique hash that identifies that event. This hash is what we then use to digitally represent the signature on a contract, as pictured below:

As there is a permanent record on DLT we can re-generate the contract in it's true form. This means it can never be lost or changed, which stops the risk of things like fraud or counterfeit documents.

Larry John (Lessor/agent)	11/04/19
Email link clicked	3:05pm
<hr/>	
Larry John (Lessor/agent)	11/04/19
Signed	3:07pm
<hr/>	
System	11/04/19
Email sent to all parties	3:09pm

Time: 10:21pm (GMT+10)


6b86b273ff34fce19d6b804eff5a3f574
7ada4eaa22f1d49c01e52ddb7875b4b

Analysis

4. Section 62 of the Residential Tenancies and Rooming Accommodation Act 2008 (Qld) requires both parties to sign the relevant residential tenancy agreement, and failure to sign will result in the relevant agreement being unenforceable at law. This must be read in conjunction with the Relevant Act which provides when electronic signatures are acceptable.
5. With respect to identification, we note that the Hash Signature can only be applied after a certification process is undertaken so that the person signing (who is identified through methods such as ID checks) is the appropriate individual to be signing the relevant residential tenancy agreement. Therefore, there is scope to suggest that the certification process is more secure than physical signing, and certainly is sufficient to identify the relevant individual.



6. With respect to acceptance, the process facilitated by Igloo provides the terms of the relevant residential tenancy agreement to both parties, and requires the parties to accept the terms through the Hash Signature. Therefore, the Hash Signature is sufficient to indicate the intention of the parties to accept the terms and conditions and execute the relevant residential tenancy agreement.
7. We note also the requirements for the Hash Signature to be “reliable as appropriate” for the purposes for which it is generated, or to be “proven in fact” to have fulfilled the identification and intention requirements, are satisfied by the use of the Hash Signature.
8. Additionally, it is important to note Special Term 56 to the Form 18A General Tenancy Agreement provided by the Real Estate Institute of Queensland. This term provides that if the relevant agreement is signed by any party or the lessor’s agent using an Electronic Signature, which is defined as an electronic method of signing that identifies the person and indicates their intention to sign the agreement, the parties:
 - (a) are deemed to have agreed to enter into the agreement in electronic form; and
 - (b) consent to either, or both parties, or the lessor’s agent signing the agreement using an Electronic Signature.
9. The agreement therefore presupposes execution by an “electronic method of signing” which identifies and indicates the intention of the person, which based on our assessment above would include the Hash Signature.

Conclusion

10. The Hash Signature method adequately meets the requirements for a valid signature set out in the Relevant Act in that:
 - (a) it sufficiently identifies the relevant individual through a stringent identity certification process undertaken prior to signature;
 - (b) the individual is required by the Igloo platform to accept the terms of the residential tenancy agreement, and further to consent to the use of the Hash Signature; and
 - (c) it is reliable as appropriate to indicate the acceptance of the relevant party to the residential tenancy agreement.





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