

I Have Been Sent a Deed to Execute – Now What Do I Do?

You have been told a deed is ready to execute. What does that mean? How do you go about it? This Pensions Quick Guide explains what to do and why it matters. Completed examples of common execution provisions are shown below. There are other variations. If in any doubt please contact your usual Squire Patton Boggs lawyer for help.

What Is Execution of a Deed?

Execution is the process by which a party to a document shows it intends to formally accept and be bound by its terms. There are strict legal formalities for execution which differ depending on who or what is the party, e.g., an individual, a UK company, an overseas company etc.. The essential elements of execution are that it is signed (often in front of a witness), sealed (although rarely required these days) and delivered. Traditionally delivery meant literally that, i.e., handing over the deed to the person who was to take the benefit of it. Nowadays deeds usually contain a statement within them to specify when delivery occurs, e.g., the day on which it is dated.

Why Does Execution Matter?

If all the elements of the correct execution process have not been properly completed, the deed is unlikely to be valid and effective; in other words, the document will not do what it is intended to. In a pensions context, where documentation often cannot have retrospective effect, it may not be possible to put right a problem with an invalid deed at a later date.

Who Can Sign a Deed?

The signatory to a deed will usually be the party entering into it, e.g., if an individual, that individual, but sometimes another person will act on its behalf, e.g., the director of a corporate entity will often sign on behalf of the corporate. It is important to clarify who is authorised to sign on behalf of an organisation, for example by checking the articles of association if the party is a company. The signature should be the name of the relevant person written by hand (not typed, electronically reproduced or stamped) and preferably in ink.

What About Witnesses?

Frequently the signature of a party needs to be witnessed as part of the formalities of execution. The purpose of this requirement is that someone could, if need be, give evidence to a Court that the party did indeed sign the deed. The witness must therefore have been physically present when the document was signed and must sign and give their own name and address in order that they can be identified. It is best to choose an entirely independent individual to act as a witness, preferably someone who is not a member of the family of the signatory. It must never be an individual who is also a party to the deed.

What Is a Counterpart?

When there are multiple parties to a deed, it is common to see a provision in the deed which says that it can be executed in counterpart. What this means is that instead of all the parties signing a single document, different parties may sign two or more separate (but identical) copies of the document, known as "counterparts". When properly executed the counterparts together comprise the entire deed. Each counterpart must be a complete document and not simply the signature pages. If the execution by an entity requires more than one person to sign the document (e.g. two directors signing on behalf of a single company), they must all sign the same counterpart.

Can I Execute an Electronic Version?

Even greater care is needed when dealing with electronic versions of a deed. If all parties wish to execute the same deed but are not present together, then electronic versions can be executed. This is different to execution in counterparts because whilst each party receives an electronic copy of the deed to be executed, only the signature page needs to be printed for signing. Each party must return a full copy of the deed to the coordinator, together with the scanned signature page. One document is then created with all signature pages attached to it. This process is not without its pitfalls, so it is vital that legal advice is taken. If in doubt, and unless instructed otherwise, print and retain the entire deed.

Some Practical Points

Do...	Don't...
Do make sure the deed (or counterpart) is complete including that all appendices, schedules etc. are attached	Do not date the deed (unless instructed to do so)
Do make sure that any person who is to witness one or more person's signature is physically present when each of those people sign and that they provide their details as witness for each such signature	Do not write on the deed (other than in signing or witnessing the deed) or remove or change pages of the deed Do not delay in getting full execution of the deed, as some changes cannot be made retrospectively
Do make sure that any person who is to sign on behalf of two or more companies, signs separately for each company	Do not assume the execution block in the deed is correct- if a party has to comply with unusual execution formalities these must be complied with (if in doubt, check)

Sample Execution Blocks – Two Common Versions for a UK Company

EXECUTED and delivered when dated as a deed by **AN EXAMPLE LIMITED** acting by **ALEXANDER NORMAN SAMPLE**, a director and **DIANA INGRID RECTOR**, a director

AN Sample

Director

D.I. Rector

Director

EXECUTED and delivered when dated as a deed by **ANOTHER EXAMPLE LIMITED** acting by **ALEXANDER NORMAN SAMPLE**, a director, in the presence of:

AN Sample

Director

Witness

Signature : *W.I.T. Ness*

Name : **Walter Ivan Terrance Ness**

Occupation : **Accountant**

Address : **7 Clearview Square
Example City
EY1 1YE**

Sample Execution Blocks – A Typical Version for an Individual

SIGNED and delivered when dated as a deed by **JOANNA BLOGGS** in the presence of:

J. Bloggs

Witness

Signature : *W.I.T. Ness*

Name : **Walter Ivan Terrance Ness**

Occupation : **Accountant**

Address : **7 Clearview Square
Example City
EY1 1YE**

Contact

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