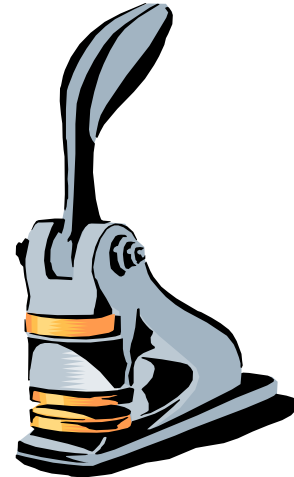


Documents Executed Under Seal

By *Brian Madigan*

Why are some contracts “sealed” and others are not?

In order to have a contract, you need to have an “agreement” that the Courts will enforce. Not all statements that are made, result in enforceable promises. Remember, all the promises made at election time!



Sometimes, it is necessary to determine which promises should be enforced. Really, there are basically three types of contracts:

- Those that have consideration (something offered, something given up)
- Those under seal (without consideration)
- Those that have consideration and are under seal (the most common type)

The legal seal is evidence that a promise is intended to be a legally enforceable promise. A promise might otherwise simply be a gift. A promise together with consideration is a legally enforceable contract. That promise arose out of the modern law of contracts. When I say “modern” I mean the last 700 to 800 years.

The concept of documents being executed under “seal” preceded modern contract law. Documents executed under seal were considered to be legally binding and enforceable promises.

Seals were used in Babylonia in 3200 BC to identify and authenticate the author and the agreement. Seals were commonly used by nations to settle disputes following war. The red wax seal (symbolizing blood) was used by Caesar. The first usage of seals in modern times was the period immediately following the Norman Conquest in 1066. From that time until 1215, seals were all the rage. They were the equivalent of cellphones. Everyone had a seal. This was your identification and served to indicate that you had the legal capacity to enter into a promise that was legally enforceable. It didn't

have to be a contract. You would be taken as a “man of your word” because you had a seal.

The poorer class, of course, didn't have seals. They would “prick their right thumbs” with a sharp object to draw blood and impress a document with their thumbprints. Later, Courts would recognize this activity as being the equivalent of executing a document under seal.

By 1215, the modern day usage of seals was introduced to England by the signing of the Magna Carta, often viewed by historians as the first bill of rights, the first constitution and the birth of the common law.

There continues to be a special class of documents executed under seal. A promissory note is enforceable for 6 years, but a promissory note executed under seal is enforceable for 20 years. In essence, the practice grew out of an ancient system of authenticating documents rather than contract law. So, naturally there are some differences with the rules.

The limitation is usually longer. Basically, why get a promissory note that will only last 6 years, when one under seal will last 20? And, don't forget that a mortgage is a promissory note.

It became commonplace for everyone to want just about everything executed under seal. All important documents were under seal. That was the way Kings and Queens did business. All deeds were executed under seal. That, of course, is no longer the case, but it was until 1985.

More recently, Courts have begun to erode the special status of documents under seal, by holding many other contracts to this higher standard.

Most standard form legal contracts include the words "signed, sealed and delivered" just above signatory line. You will find that in the standard form agreement of purchase and sale. The black dot is the location for the seal to be affixed. Seals today are small red circular dots with glue on the back. They should be affixed. However, any indication of an intention to execute the document under seal is sufficient. So, if you circle the black dot in ink, that will work and be just as good.

The custom at the present time is that just about all formal agreements documenting business transactions are executed under seal.

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