
ELECTRONIC SIGNATURES

Effective October 1, 2000, the Electronic Signatures In Global and National Commerce Act ["E-SIGN"] implements a national uniform standard for all electronic transactions. E-SIGN encourages the use of electronic signatures, electronic contracts and electronic records by providing legal certainty for these instruments when signatories comply with its standards. Basically, E-SIGN imposes a uniform national standard permitting, *but not requiring*, the use of electronic or digital signatures to enter into contracts and other legal agreements. A contract or other record may not be denied legal effect because it is in an electronic format and a contract may not be denied legal effect solely because an electronic signature was used in its formation. In short, an electronic signature is as legally valid and binding as a written signature.

Under E-SIGN, an "Electronic Signature" is defined as "an electronic sound, symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record." By defining electronic signatures broadly, telephone keypad agreements (e.g., "press 9 to agree or 7 to hear this menu again") and click wrap agreements are now considered legally enforceable electronic contracts.

Under E-SIGN, the validity and enforceability of an electronic contract is still evaluated under existing substantive contract law. Therefore, if a statute, regulation or other rule of law requires a contract to be in writing, then an electronic contract must be in a form that is capable of being retained and accurately reproduced at the time of entering into the contract. If an electronic contract meets the validity requirement of a writing under existing substantive contract law, it is then legally enforceable. E-SIGN allows electronic notarization of documents by using the electronic signature of the notary.

Moreover, an electronic signature is only valid under E-SIGN if the signatory intends to sign the contract. Thus, the person or entity accepting an electronic signature has a duty of care to determine whether the electronic signature was really created by the person to whom it is attributed.

E-SIGN does not require persons to engage in electronic commerce or use an electronic signature. However, some merchants or lenders may only engage in electronic commerce and might require an electronic signature. The more likely scenario is a better rate or price for an electronic transaction as opposed to using brick and mortar facilities or face-to-face meetings.

E-SIGN also allows the electronic disclosure or transfer of documents or notices to consumers. Various laws require written disclosures to consumers in certain transactions. E-SIGN allows providing an electronic copy rather than a printed copy if:

1. The consumer consents and has not withdrawn the consent.
2. The consumer has been informed of their rights, the hardware and software requirements to receive electronic notice, any fees, the scope of the consent, and the consumer's electronic consent reasonably demonstrates they can access the information in its electronic form.

E-SIGN also allows using electronic copies of documents to meet any legal requirement to retain copies of documents. Any requirement to provide copies of original document can also be satisfied by an electronic copy. Any requirement to retain copies of checks may also be satisfied by an electronic copy. E-SIGN limits the authority of Federal and State agencies to require retention of paper records. E-SIGN provides that an electronic record or contract is satisfactorily retained if: "(1) the electronic record

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accurately reflect the information set forth in the contract or record required to be retained; and (2) the electronic record remains accessible to all parties who by law are entitled to access the record for the period set out in that law." First, the retention requirement only requires that the electronic record must be in a form that is capable of accurately reproducing the contained information. Second, the accessible requirement "only requires retained records to remain accessible to persons entitled to access them by statute, but does not require businesses to provide direct access to its facilities nor does it require businesses to update electronic formats as technology changes."

E-SIGN does not apply to the following:

1. Will, trusts, estates;
2. Marriage, divorce, adoption and other family law matters;
3. Uniform Commercial Code (UCC) other than requirements for Sales of Goods and Leases;
4. Court documents and filings;
5. Any notice of terminating or canceling utility services;
6. Any notice of default, foreclosure, repossession, eviction, etc., regarding a primary residence;
7. Any notice of cancellation or termination of health insurance or benefits or life insurance benefits;
8. Any notice of a recall of a product or material failure of a product that affects health or safety;
9. Any document requirement to accompany the transportation or handling of hazardous materials, pesticides or other toxic or dangerous materials; or
10. Federal or State procurement activities.

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