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By Erin Ackor of Moore & Company, P.A.

ELECTRONIC

In this age of technology, where you can email, scan, skype, google and twitter, is the use of electronic records and electronic signatures legal? The short answer is yes.

Federal Law governing Electronic Records and Electronic Signatures:

According to the Electronic Signatures in Global and National Commerce Act (the "Act" or "E-Sign"), enacted into federal law on June 30, 2000, the use of electronic records and electronic signatures is legal unless such use is otherwise excluded from the Act.¹ The Act provides in part:

*"with respect to any transaction in or affecting interstate or foreign commerce--a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation."*²

Examples of electronic records and electronic signatures specifically excluded from use by the Act, include, but are not limited to, electronic records and electronic signatures utilized in connection with, the creation and execution of wills, codicils, or testamentary trusts, adoption, divorce or other matters of family law, the Uniform Commercial Code (excluding the sale of goods, leases, and other specified sections), and official judicial documents.³

Additionally, it should be noted that although the use of electronic signatures and electronic records is legal, the Act does not limit, alter or otherwise affect any requirement imposed by any other statute or rule of law related to the record, contract, signature, or transaction, except the requirement that such record, contract or signature be in non-electronic form.⁴

State Law governing Electronic Records and Electronic Signatures:

Prior to the federal government's enactment of the Act on June 30, 2000, the National Conference of Commissioners on Uniform State Laws gathered for the purpose of establishing a uniform set of rules governing electronic records and electronic signatures for adoption by the States. Shortly thereafter, the Uniform Electronic Transactions Act, as approved by the National Conference of Commissioners on Uniform State Laws in 1999, was born.⁵

Where States adopt the Uniform Electronic Transactions Act ("UETA"), or a substantially similar law, the State enacted law would preempt the Act.⁶ However, where States adopt a law governing electronic records and electronic signatures that is substantially different than UETA, the State enacted law would be preempted by the Act.⁷

VALIDITY OF

RECORDS & SIGNATURES

Florida Law governing Electronic Records and Signatures

Prior to the inception of UETA, the State of Florida took steps of its own to establish guidelines for the use of electronic records and electronic signatures and to further promote e-commerce by signing into law the Electronic Signature Act of 1996.

The Electronic Signature Act of 1996 provides in part that:

*"Unless otherwise provided by law, an electronic signature may be used to sign a writing and shall have the same force and effect as a written signature."*⁸

Shortly thereafter, in 2000, Florida adopted UETA.⁹ To date, all States with the exception of four (Georgia, Illinois, New York and Washington), have adopted UETA.¹⁰ UETA, as enacted by the State of Florida, provides for legal recognition of electronic records and electronic signatures and states in part:

(7)(a) A record or signature may not be denied legal effect or enforceability solely because the record or signature is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in the formation of the contract.

(c) If a provision of law requires a record to be in writing, an electronic record satisfies such provision.

*(d) If a provision of law requires a signature, an electronic signature satisfies such provision."*¹¹

Additionally, it should be noted that in order to establish the validity of an electronic record or electronic signature, the parties to the transaction must agree to conduct a transaction by electronic means.¹² Whether the parties have agreed to conduct a transaction by electronic means is determined from the circumstances surrounding the transaction.¹³

What Constitutes an Electronic Signature and how is an Electronic Signature Attributed to the Signatory pursuant to Florida law?

UETA defines an electronic signature as follows:

*"Electronic Signature means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."*¹⁴

In general terms, the following could be considered an electronic signature: Pasting a scanned version of your signature where a signature is required; Typing, by electronic means, your signature where a signature is required; Use of secured technology to generate a signature where a signature is required; or The act (or process) of pressing the "I accept" button (a popular form of electronic signature when purchasing goods and services on-line).

However, the more important question may be: How is the electronic signature attributed to the signatory? How can you be sure that the electronic signature is that of the signatory and not the fraudulent use of an electronic signature by another person? This is perhaps the greatest area of concern when making a decision as to whether or not the parties to a transaction should agree to be bound by electronic signatures. Pursuant to UETA, the attribution of electronic records and electronic signatures is set forth as follows:

(a) An electronic record or electronic signature is attributable to a person if the record or signature was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

*(b) The effect of an electronic record or electronic signature attributed to a person under paragraph (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law."*¹⁵

In general terms, in order to be a valid electronic signature, the electronic signature must be the act of the signatory. Whether or not the electronic signature is the act of the signatory may be determined from the circumstances surrounding the transaction such as:

Does the electronic signature match the signatory's signature?

Did the electronic signature come from the signatory's email address?

Would the signatory logically have been able to affix the electronic signature to the electronic record?

Currently, there are no specific rules requiring security procedures be implemented to ensure protection electronic records and electronic signatures. However, as the use of electronic records and electronic signatures continues to grow, rules governing their protection are likely to increase.

**The information offered in this column is summary in nature and should not be considered a legal opinion.*

**Each country undoubtedly has their own law regarding validity of esignatures. As long as a particular contract is governed by US or Florida law, the article applies.*

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¹ 15 USCS § 701

² *Id.*

³ 15 USCS § 7003

⁴ 15 USCS § 7001

⁵ 15 USCS § 7002

⁶ *Id.*

⁷ *Id.*

⁸ *Fla. Stat. § 668.004*

⁹ Ryan Hutton & Brandi Bennett, *Uniform Electronic Transaction Act*, (visited April 23, 2009)

www.ncsl.org/programs/CIP/ueta statutes.htm

¹⁰ *Id.*

¹¹ *Fla. Stat. § 668.50*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

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⁵ 15 USCS § 7002

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