

Are Electronic Signatures Legally Enforceable?

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Despite the speed and efficiency that comes with signing documents electronically, many business people (and even some lawyers) remain reluctant to accept electronic signatures. Luckily for those of us who are sheltering in place or practicing social distancing, most electronic signatures are just as valid and enforceable as a traditional manual signature.

A federal law, the Electronic Signatures in Global and National Commerce (ESIGN) Act, and the law of nearly every state (through the adoption of the Uniform Electronic Transactions Act or similar legislation), provide that electronic signatures are legally enforceable as long as a few basic requirements are satisfied. These laws require electronically signed contracts to be enforced and treated the same as any document signed by traditional means. In other words, no contract can be voided or rendered unenforceable merely because it was signed electronically.

To qualify as an enforceable electronic signature, there must be evidence of the signer's intent to execute or accept the agreement. This is typically accomplished by requiring the signer to take affirmative action, like typing their name or drawing their signature using a mouse or touchscreen. As long as the signer's intent to agree to the contract can be discerned from the record, an electronic signature is likely to be enforceable. Courts in some states have enforced contracts where a party's intent to accept the terms of the agreement were evidenced by email exchange or text message, even though there was no drawn or typed signature.

A record of the electronic signature must be created at the time of execution and must show the process by which the document was accepted by the signer. For documents exchanged by email, the emails themselves will generally qualify as a record of the transaction. Popular services such as DocuSign and Adobe Sign generate audit reports that satisfy the record requirement.

In the case of contracts with consumers, the law typically requires that the consumer opt in to the electronic signature process or provide consent to do business electronically. This requirement can be satisfied by including a term in the contract stating that the consumer agrees to the use of electronic signatures, or by requiring the signer to check a box or click a button during the electronic signature process (as is the case with DocuSign and Adobe Sign).

While electronic signatures are widely accepted for many business transactions in the United States and internationally, there are a few circumstances in which an old fashioned signature is still required, such as on wills, certain trusts, powers of attorney and certificates of birth and death. In most cases, documents that must be notarized also still require a manual signature, although a handful of states permit certain documents to be notarized electronically or remotely.

If you need guidance on the acceptance or enforceability of electronic signatures, contact Kristin Biedinger.