

# Signature Requirements for an Enforceable Contract

*By Practical Law Commercial Transactions*

*This article provides a general overview of how legislators and courts have defined what constitutes a valid signature on contracts that are governed by the statute of frauds. This article includes discussions of the validity of electronic signatures, the Uniform Commercial Code (UCC), the Uniform Electronic Transactions Act (UETA), and the Electronic Signatures in Global and National Commerce Act (E-SIGN).*

## **The Statute of Frauds and Uniform Commercial Code**

Every state in the US, except Louisiana, has adopted one or more statutes, known collectively as the statute of frauds, that identify categories of agreements that are enforceable only if they are in writing and signed. The purpose of the statute of frauds is to avoid fraud by providing evidence of the existence and terms of a contract.

Every state has also adopted a version of the UCC, which contains a statute of frauds covering security agreements and the sale of goods, personal property, and securities. Generally, the statute of frauds gives a party the right to void certain contracts that are not:

- In a writing that (a) reasonably identifies the contracting parties; (b) recites the subject matter of the contract so that it can reasonably be identified; and (c) presents the essential terms and conditions of the parties' agreement.
- Signed by the party to be bound by the contract or by the party's lawful agent.

(Restatement (Second) Contracts § 131 (1981).)

This article focuses only on the second requirement, that the relevant party must sign the written document.

## ***Contracts Covered by the Uniform Commercial Code***

The UCC requires that the following contracts be in a written, signed record that complies with the statute of frauds:

- Contracts for the sale of goods priced \$500 or more (UCC § 2-201).
- Agreements that create a security interest in personal property if the property is not (a) in the secured party's possession; (b) a certificated security; or (c) collateral that consists of deposit accounts, investment property, letter-of-credit rights, or electronic chattel paper if the secured party has control over such collateral (UCC § 9-203(b)(3)).
- A lease contract under which the total payments due are more than \$1,000 (UCC § 2A-201).

## **What Constitutes an Acceptable Signature under the Statute of Frauds**

A signature can be any symbol that a party makes with the intent to authenticate a record or contract (Restatement (Second) Contracts § 134 (1981) and N.Y. U.C.C. § 1-201(39)). A valid signature can be a traditional ink signature, initials, typed or printed, made with a rubber stamp, impressed onto paper, made with carbon paper, made by photographic process, or located in any part of the document. Most states also now give electronic signatures the same legal effect as traditional signatures in certain transactions.

## **Intent Makes a Signature Effective under the Statute of Frauds**

Courts generally use common sense and commercial experience to determine whether a signature is valid and creates an enforceable contract. To make this determination, courts must consider whether the signing party executed or adopted the signature with the present intention to authenticate the writing.

For example, in *Parma Tile Mosaic & Marble Co., Inc. v. Estate of Short*, the New York Court of Appeals held

that an automatic fax machine heading printed on a document did not satisfy the statute of frauds signature requirement (87 N.Y.2d 524 (N.Y. 1996)). The court held that under the statute of frauds, a valid signature requires an intentional act to authenticate the writing. Where the name or signature is automatically generated without regard to the underlying document, the statute of frauds is not satisfied and the contract is not enforceable (*Parma Tile Mosaic*, 87 N.Y.2d at 528).

## **The Uniform Electronic Transactions Act**

Many parties now conduct business transactions electronically but still desire the protections provided by the statute of frauds. In 1999, the National Conference of Commissioners on Uniform State Laws published the UETA. The goal of the UETA was to remove barriers to electronic commerce and to provide parties a legal framework for using electronic signatures and records in business transactions. Under the UETA, electronic records and signatures have the same legal effect as paper contracts and handwritten signatures.

### ***States that Have Adopted the Uniform Electronic Transactions Act***

Forty-eight states, the District of Columbia, Puerto Rico, and the Virgin Islands have adopted the UETA. The UETA gives an electronic signature the same legal effect as a traditional, written signature in certain transactions. Section 7 of the UETA provides legal recognition of electronic signatures by stating that (a) a signature may not be denied legal effect or enforceability solely because it is in electronic form; and (b) if a law requires a signature, an electronic signature satisfies that law.

The two states that have not adopted the UETA, New York and Illinois, have enacted similar statutes providing for the legal enforceability of electronic signatures.

### ***Exemptions to the Uniform Electronic Transactions Act***

The UETA applies only to transactions where each party involved in the contract has agreed to conduct the transaction electronically (UETA § 5(b)). Courts use the context and surrounding circumstances, including the parties' conduct, to determine whether parties have agreed to conduct a transaction by electronic means and make the transaction subject to the UETA.

The UETA also generally does not apply to transactions governed by:

- Laws relating to the creation and execution of wills, codicils, or testamentary trusts.
- The UCC, other than sections covering (a) the waiver or renunciation of a claim or right after a breach of contract (UCC § 1-306, former section 1-107); (b) the sale of goods (UCC §§ 2-101-2-725); and (c) leases (UCC §§ 2A-101-2A-532).
- The Uniform Computer Information Transactions Act.
- Any other specific law identified as exempt in a state's adopted version of the UETA.

(UETA § 3(b).)

### ***Uniform Electronic Transactions Act Definition of Electronic Signature***

Under the UETA, an electronic signature can be an electronic sound, symbol, or process that is both attached to or logically associated with a contract or record, and executed or adopted with the intent to sign the record (UETA § 2(8)).

As with traditional signatures, the critical question in determining if an electronic signature creates an enforceable contract is whether the signer executed or adopted the signature with the intent to sign the record. Courts have found that electronic signatures between parties who have agreed to conduct transactions electronically have the same legal effect as manually signed signatures in the following situations:

- Typed names or signatures at the end of an email.

- An in-court electronic recording of a party's oral assent to an agreement.
- Electronic signatures on online insurance forms.

### ***Email Signatures May Create a Binding Agreement***

Some courts have held that an email with a typed name can qualify as a valid electronic signature (see *Cloud Corp. v. Hasbro, Inc.*, 314 F.3d 289 (7th Cir. 2002)). However, courts have also noted that an email signature does not show intent to sign a record where the email contains (a) only an automatic signature block with no indication that the email's sender purposefully typed it; or (b) no other graphical representation of the sender's signature, such as an "s/" followed by the name (*Cunningham v. Zurich Am. Ins. Co.*, 352 S.W.3d 519, 529 (Tex. App. 2011) and *Forcelli v. Gelco Corp.*, 2013 WL 3812103, at \*6 (N.Y. App. Div. July 24, 2013); but see *Williamson v. Bank of New York Mellon*, 947 F. Supp. 2d 704, 710 (N.D. Tex. 2013)).

Counsel therefore should be cautious when sending emails. Counsel engaging in email or text communications with opposing counsel should consider:

- Placing a footer in email communications expressing an intent not to be bound by the statement in the email.
- Inserting clauses in an agreement regarding the requirements for amendment and waiver, specifically referencing electronic communications.
- Limiting ambiguity in email communications.
- Limiting use of contract terms such as "offer" or "agree" in email communications.
- Indicating whenever a term is subject to any contingencies.

### ***Text Message Signatures May Create a Binding Agreement***

Some courts may also find that a typed name at the end of a text message can qualify as a valid electronic signature, creating a legally binding agreement. Few courts have addressed this specific issue, but it appears to be emerging. The courts that have ruled on the issue generally tend to treat text messages like emails, including:

- *St. John's Holdings, LLC v. Two Elecs., LLC*, 2016 WL 1460477, at \*8 (Mass. Apr. 14, 2016), which found that text messages could constitute a writing sufficient under the statute of frauds to create an enforceable contract for the sale of land.
- *Tayyib Bosque, Corp. v. Emily Realty, LLC*, No. 17 CIV. 512 (ER), 2019 WL 2502494, at \*6 (S.D.N.Y. June 17, 2019), which found that a series of text messages did not satisfy the statute of frauds absent a signature.
- *Starace v. Lexington Law Firm*, 2019 WL 2642555, at \*4 (E.D. Cal. June 27, 2019), which found that a party assented to an arbitration agreement that had been sent via text message when he replied "Agree" to the text message, and inserted his electronic signature into the agreement at the time he electronically agreed to the agreement.

## **The Federal Electronic Signatures in Global and National Commerce Act**

On June 30, 2000, Congress enacted E-SIGN. The goal of E-SIGN is to ensure the validity and legal effect of electronic contracts and signatures used in transactions that are in or affecting interstate or foreign commerce.

### ***Legal Validity of Electronic Signatures***

Under E-SIGN, for any transaction in or affecting interstate or foreign commerce, related contracts cannot be denied legal effect, validity, or enforceability solely because (a) the signature, contract, or other record relating to the transaction is in electronic form; or (b) an electronic signature or record was used in the contract's formation

(15 U.S.C. § 7001(a)).

### ***E-SIGN Definition of Electronic Signature***

Similar to the UETA, under E-SIGN, an electronic signature can be an electronic sound, symbol, or process that is both attached to or logically associated with a contract or record, and executed or adopted with the intent to sign the record (15 U.S.C. § 7006(5)). A party's intent to sign an agreement using an electronic signature is crucial in determining whether there is a valid signature and enforceable contract under E-SIGN (*Hamdi Halal Market LLC v. United States*, 947 F. Supp. 2d 159, 164 (D. Mass. 2013)).

### ***Preemption of State Law***

Except under limited circumstances, E-SIGN preempts state laws governing written contracts that affect interstate or foreign commerce. However, a state law may modify, limit, or even supersede Section 7001 of E-SIGN if a state either (a) adopts the UETA; or (b) specifies alternative procedures or requirements that both (1) describe the use or acceptance of electronic records or signatures to establish the legal effect, validity, or enforceability of contracts; and (2) are consistent with E-SIGN provisions (15 U.S.C. § 7002(a)).

### ***Specific Exceptions***

E-SIGN does not apply to transactions that are subject to:

- Laws governing wills, codicils, or testamentary trusts (15 U.S.C. § 7003(a)(1)).
- Laws governing adoption, divorce, or other family law matters (15 U.S.C. § 7003(a)(2)).
- All articles of the UCC, as adopted by any state, except Section 1-107, Section 1-206, and Articles 2 and 2A (15 U.S.C. § 7003(a)(3)).
- Court orders or notices, or official court documents that a party must execute in connection with court proceedings (15 U.S.C. § 7003(b)(1)).
- A notice of (a) cancellation or termination of a utility service; (b) default, acceleration, repossession, foreclosure, or eviction under a credit agreement secured by an individual's primary residence; (c) default, acceleration, repossession, foreclosure, or eviction under a rental agreement for an individual's primary residence; (d) cancellation or termination of either health or life insurance or benefits; or (e) a product's recall or material failure that risks endangering health or safety (15 U.S.C. § 7003(b)(2)).
- Any document that must accompany the transportation or handling of hazardous materials, pesticides, or other dangerous materials (15 U.S.C. § 7003(b)(3)).

*The information in this article was excerpted from [Practice Note, Signature Requirements for an Enforceable Contract](#). State-by-state tracking of electronic signatures and remote online notarization (RON) laws for commercial transactions (including emergency measures during COVID-19) can also be viewed in [Practice Note, Electronic Signatures and Remote Online Notarization Laws for Commercial Transactions: Quick Reference Tracker \(US\)](#). The practice notes are among the more than 65,000 resources available at the Thomson Reuters Practical Law website.*

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