What You Should Know About the Laws Surrounding Electronic Signatures

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Gone are the days of going on vacation to get away. As technology continues to advance, society has not only become increasingly dependent on the ability to remotely handle routine tasks, but also on the capability to deal with more complicated tasks such as reviewing and signing involved legal documents. The world has definitely gotten smaller, with people expected to be connected and accessible at all times.

In today's computer-driven world, the requirement to have original documents physically signed and delivered is disappearing. Instead, laws in most jurisdictions now permit documents to be electronically signed and delivered in a manner that still renders them legally enforceable; however, these laws vary from document-to-document and from state-to-state.

To deal with these issues, there are laws at two levels, state and federal. On the state level, every state other than Illinois, New York, and Washington has enacted some form of the Uniform Electronic Transactions Act (UETA), which is a set of uniform laws proposed by the National Conference of Commissioners on Uniform State Laws to establish a baseline of what is and is not able to be signed electronically. On the federal level, the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 1701, *et seq*.) (E-SIGN) was passed, in part, to preempt any state laws that were inconsistent with UETA, and to ensure a more uniform treatment of electronic documents and records across state lines.

Both UETA and E-SIGN were formulated on the principal that "an electronic record and an electronic signature may not be denied legal effect or enforceability solely because they are in electronic form."[1] An electronic signature can be practically anything. Probably the most

familiar to us is clicking “accept” on a webpage, or signing with your finger on a touchscreen. Practically anything can be deemed an electronic signature so long as the recipient is made aware that the act constitutes acceptance of the agreement.

Generally speaking, UETA and E-SIGN apply to all documents except wills, codicils, testamentary trusts, and matters relating to family law (such as adoption agreements, separation agreements, and divorce decrees). However, some states have added additional categories of documents that are not permitted to be signed electronically. For example, Ohio added the following types of documents that cannot be signed electronically:

- Official notices of termination of utility services, including water, heat, gas, cable television, oil, telephone and power;
- Documents related to the repossession, foreclosure or eviction of a residence;
- Recall notices of a product affecting health or safety;
- Any document required to accompany any transportation of hazardous materials or toxic substances;
- A letter related to the termination of health or life insurance benefits;
- Documents of title;
- Documents related to investment securities; and
- Secured transaction documents.In addition to being signed, some documents are required to be notarized, and this raises the question of whether notarization may be accomplished through electronic means. Only eight states currently permit electronic notarization, as such laws have not caught on like the laws permitting electronic signatures. Ohio passed, but then retracted, laws permitting electronic notarization.It is a certainty that you will be increasingly confronted with requests for your electronic signature, and many of these requests are likely to fall within areas considered “standard and low risk.” However, what is required in order to constitute a valid electronic signature is extremely broad. If you ever find yourself being asked to electronically sign a document you are unsure of, best practices dictate contacting your Vorys attorney to ensure you are not unintentionally creating a legally-binding situation.

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[1] UETA, Section 7; E-SIGN, 15 U.S.C. §7001(a)(2).