

# Florida's Take on Electronic Signatures

Law and technology have finally met to make electronic signatures both easy and useful. How and when can they be used in your practice?

## Federal Formalizing of E-Signatures

In the early 1990's, with fax machine use at its peak, and with the introduction of email in business, states began enacting laws to address E-Signatures. These laws were often inconsistent. In order to promote uniformity among the states, the National Conference of Commissioners on Uniform State Laws drafted the Uniform Electronic Transactions Act (UETA) in the late 1990's, and presented it to the states for incorporation into their own state codes.

The Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et. seq), or E-SIGN, was passed into Federal Law in 2000. States were given the option to adopt UETA substantially as written or face preemption by the Federal Law. If a state does not adopt UETA, then E-SIGN would preempt state provisions. Currently, 47 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have adopted a compliant form of UETA. Florida's own version of UETA can be found in Florida Statutes § 668.50.

Under Florida law, contracts, documents, and other records signed and stored electronically are admissible in court. Florida Statutes § 668.50(13)(d) state, "In a proceeding, evidence of a record or signature may not be excluded solely because the record or signature is in electronic form." Reputable third party providers can help by supplying an audit trail that can be used to authenticate an electronic record.

## Florida's Uniform Electronic Transactions Act

Florida's UETA guarantees electronic records and signatures the same force and legal-effect as their hardcopy and wet-ink counterparts. Florida Statutes § 668.50(7)(a)-(d) state:

- (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.

UETA allows parties to agree to the use of electronic signatures and records, but does not require it. Florida's UETA carves out exceptions concerning: the creation and execution of wills, codicils, and testamentary trusts; the Uniform Commercial Code (except for Articles 2 and 2A); the Uniform Computer Information Transactions Act (UCITA); and transactions governed by rules relating to judicial procedure.



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