

## Going Paperless and the Law

### What are Electronic and Digital Signatures?

As defined by the California Civil Code, an “*electronic record*” is a record created, generated, sent, communicated, received, or stored by electronic means and an “*electronic signature*” is

- an electronic sound, symbol or process;
- attached or logically associated with a contract or other document; and
- executed or adopted by a person with the intent to sign said contract or other document.

A “*digital signature*” is a type of electronic signature. Digital signatures contain a digital code attached or embedded in the electronic document. Not only does it uniquely identify the signer, but it ensures the original content of the document and uses encryption technology to prevent alteration. A digital signature provides a higher level of security than other types of electronic signatures.

### Benefits of Electronic Signatures and Transactions

Some of the obvious immediate benefits of electronic records and electronic signatures are the

- reduction of the volume of paperwork and toner usage (benefits the environment, it’s “green”);
- reduction of lost paperwork during delivery or storage;
- reduction of inconsistent paperwork;
- reduction of signature fraud;
- reduction of travel time and expense to obtain signatures;
- ease of accessing documents anywhere (digitally stored online); and
- knowing who signed which documents and when.

The aggregate effects of the above benefits are lower costs and increased efficiency and productivity.

### Know the Law on Going Paperless

While there are benefits from implementing paperless practices, it is also important to ensure compliance with relevant laws and regulations. There are two sets of laws that specifically address the use of electronic signatures:

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- The Uniform Electronic Transactions Act (“**UETA**,” adopted by all but three states in the United States -- only Illinois, New York and Washington have not adopted UETA, however, each has its own laws recognizing electronic signatures).
- The Electronic Signatures in Global and National Commerce Act (“**ESIGN**”) which is federal law that was signed by President Clinton on June 30, 2000 using his electronic signature ID.

Both laws state that a document or signature cannot be denied legal effect or enforceability solely because it is in electronic form. Both UETA and ESIGN apply only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties’ conduct.

UETA and ESIGN do not modify the existing laws concerning the authentication of signatures and the burden of proof. If the authenticity of an electronic signature is challenged, the person enforcing the signature still has the burden to prove its authenticity.

### **Get Expert Advice on E-Transactions**

Businesses would be prudent to investigate and consider a well-designed paperless process, supported by today’s advanced electronic signature technology, which can actually reduce risk and increase the enforceability of electronic transactions when compared to paper processes. Varner & Brandt LLP stands prepared to assist your company with any concerns or issues you may have regarding “going digital” including the implementation of a paperless process and evaluating the enforceability of electronic communications as a basis for forming binding agreements (including communications by email).

*Varner & Brandt is a full service law firm with legal roots in Southern California dating back to 1873. With deep relationships in Inland Southern California and expertise in a diverse spectrum of business, real estate and trial practice, Varner & Brandt stands ready to assist your team with electronic records and/or other business and legal matters. Visit Varner & Brandt online at [www.varnerbrandt.com](http://www.varnerbrandt.com).*

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