

E-SIGNATURES: PITFALLS OF EMAILS AND TEXT MESSAGES IN CONTRACT NEGOTIATIONS

Today's Presenters

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What is an e-signature?

- ☐ Electronic sound, symbol or process
- ☐ Attached to or logically associated with a record
- ☐ Executed or adopted by a person with the intent to sign



Key Points From The Statute

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☐ Applicability

- ☐ Applies only to transactions where parties have agreed to conduct the transaction by electronic means.

☐ Enforceability

☐ Enforceable if:

1. the signature is attached or logically associated with an e-record,
2. made with the intent to sign the record, and
3. the signature is attributable to the signer

Massachusetts Law

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□ Chapter 110G

- Designed to accommodate different technologies.
- Does not require a “signature” in non-digital sense.
- Specific security procedures are not required by statute.

Massachusetts Uniform Electronic Transactions Act (MUETA)

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- ☐ Notices
- ☐ Record Retention
- ☐ Delivery of Records



MUETA - Exceptions

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- ❑ UCC (except Sales and Leases)
- ❑ Wills, codicils or testamentary trusts
- ❑ Transactions governed by certain other bodies of law:
 - ❑ Court orders or notices or other official court documents
 - ❑ Notices of default, acceleration, repossession, foreclosure or eviction or the right to cure
 - ❑ Insurance, product recalls, hazardous materials

Federal E-Sign – 15 U.S.C. § 7001

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- ☐ Federal documents
- ☐ With respect to any transaction in or affecting interstate or foreign transactions
- ☐ Consumer consent

Particular Issues

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Academic
Records

Health
Care

What's in it for us?

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- Efficiency
- Current Practice
 - ▣ Recommended Standards
 - Be clear about intent
 - Agents'/employees' scope of authority
 - Review company policy
 - Employee training

Concerns

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- Fraud

- Third Party Vendors

- Authentication and ease of use

- Authority

- Pattern of Practice



Other Concerns

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Access to
Computers

Difficulty
Logging in

Public
Perception

Notarized
or
Witnessed
Documents

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Questions?



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