

Electronic Documents – UETA and E-SIGN

There are two important rules / regulations to consider here when considering electronic signatures and electronic documents. UETA and E-SIGN are both pieces of legislation that deal with electronic signatures and digital security.

The Uniform Electronic Transactions Act (UETA) was adopted in 1999, and it provides a framework for determining the legality of electronic signatures. It guarantees that electronic signatures are given the same legal weight as handwritten signatures. Each state adopts its own version of UETA and in Texas it is found in the Business and Commerce Code, [Chapter 322](#).

...snip

Sec. 322.005. USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES; VARIATION BY AGREEMENT. (a) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this chapter, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

UETA applies to both commercial and consumer transactions. All parties must acknowledge their consent to conduct business electronically. All parties must also be informed that they have a right to withdraw consent at any time. This is simple consent.

This publication is designed to provide accurate and authoritative information of the subject matter covered. It is provided with the understanding that the publisher is not engaged in the rendering of legal, accounting, or other professional advice - from a Declaration of Principles adopted by the American Bar Association and a Committee of Publishers and Associations.

COMPASS POINT: ELECTRONIC DOCUMENTS - UETA - ESIGN

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), signed into law on June 30, 2000, provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce. The E-Sign Act allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if the consumer has affirmatively consented to such use and has not withdrawn such consent. The E-Sign Act preempts UETA to the extent that UETA is inconsistent with it. UETA does not have the explicit consumer consent requirements of the E-Sign Act. Therefore, due to this inconsistency, its requirements should be followed on consumer transactions.

If the notice or disclosure is required to satisfy any statute, regulation, or rule of law (for example an appraisal notice under Regulation B) and is being provided electronically, under ESIGN there must be 'demonstrable consent' which is different than simple consent.

Under 'demonstrable consent,' the consumer must be able to demonstrate to the bank that he or she is able to receive the document in the format provided. A return receipt generated by an email does not meet that definition of proof. The bank has to be able to prove that the consumer can open any attachment or electronic document and read the contents or download an attached document. Additionally, 'demonstrable consent' must be provided and the 'demonstrable consent' received before any required disclosure is provided. Therefore, attaching a required disclosure to the email with the E-Sign disclosure would not meet the requirement of the E-Sign Act.

Finally, simply emailing required notices raises a cybersecurity issue. If email is desired, then it must be encrypted and adequately protected.