

COVID-19: ENFORCEABILITY OF ELECTRONIC SIGNATURES AND NOTARIES AMIDST COVID-19

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The COVID-19 outbreak has clearly led to many disruptions in the workplace, including an increasing amount of employers encouraging, and in some cases requiring, their employees to work remotely. One significant consequence of this trend is the inability to sign documents that are necessary to complete transactions. This situation has caused many companies to consider electronic signatures as the only viable option, and therefore, questions arise as to their enforceability.

Under the Electronic Signatures in Global and National Commerce Act (ESIGN), an electronic signature is any "electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record." An electronic signature is legally enforceable as a signature so long as the consumer affirmatively consents to completing the transaction electronically; however, there are exceptions for areas such as wills, trusts, and other matters of family law where such electronic signatures are not enforceable. Additionally, ESIGN is applicable to the Uniform Commercial Code sections pertaining to sales and leases, and applies to interstate and foreign commerce.

Yet another barrier to consider when executing documents electronically is that of notarization. As it stands, there are some alternative options. One more recent option is a remote notary. Remote Online Notarization is when a signer appears using audio-visual technology over the internet as opposed to being physically present. At this time, over twenty states have passed remote notarization laws, although not all of those laws are in effect as of the present time. A second option to complete notarization is electronic notarization (eNotary), which involves documents being notarized in electronic form with an electronic signature. In this case, an electronic notary would affix a digital signature and notary seal to effectively notarize a digital document. Unlike remote notarization, however, electronic notarization requires the signer to physically appear before the notary.

As the threats of the virus continue to shape the landscape of the workplace, the implementation of electronic signatures and remote notarization may be necessary options to complete transactions. Given that the laws of each of these processes can vary from state to state, particularly the laws surrounding the options for notarization, businesses should carefully consider their compliance with the applicable laws to ensure the enforceability of their respective transactions.

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