

Practical Guidance for Electronic Signature

The Purpose of this Guide

As technology has progressed, so too has insurers' ability to distribute and accept electronically signed documents. In fact, the term eSignature can describe a great many things. This guide describes a sample process in which a person signs a document by clicking a button (the button often says "I agree.") on a computer screen.

Electronic Signature

Both ESIGN and UETA define an "electronic signature" as an "electronic sound, symbol, or process attached to or logically associated with a Record and executed or adopted by a person with the intent to sign the record." UETA § 2[8]; ESIGN § 106

"Click-through" Agreement

One type of electronic signature is a click-through agreement. The official comment to the definition of electronic signature in UETA provides: This definition includes as an electronic signature the standard webpage click through process. For example, when a person orders goods or services through a vendor's website, the person will be required to provide information as part of a process which will result in receipt of the goods or services. When the customer ultimately gets to the last step and clicks "I agree," the person has adopted the process and has done so with the intent to associate the person with the record of that process.

Logical association with a Record

The electronic signature must be connected to the document in some way. In case of a digitized signature, logical association may be achieved when the signature is electronically attached to the electronic document being signed.

For instance, the electronic signature that is created when a signer click "I agree" could be embedded into a PDF format of the document being signed.

Electronic Signature Laws

Electronic transactions (including electronically signed documents) that comply with the requirements under the Electronic Signatures in Global and National Commerce Act (ESIGN), 15 U.S.C. 7001 - 7006, 7021, 7031 (federal law), and the Uniform Electronic Transactions Act (UETA) (state-enacted law), may not be denied validity merely because they are electronic.



Intent to sign

The “intent to sign” requirement is included in the definition of an electronic signature because any signature (including electronic signatures) must be the signer’s intentional act in order to be valid. A signer’s intent can be demonstrated and documented in many ways. Some basic processes such as the ones listed here can help to demonstrate the signer’s intent.

- Use a process that requires the signer to open the document before it can be signed. That will insure that the signer has the opportunity to read and understand the document.
- Make it clear to the signer that by clicking “I agree” the signer will be signing the document and agreeing to its terms.
- Have the signer sign a separate document that expresses the intent to sign the document by using an electronic signature.
- Require the signer to take a specific affirmative action to sign the document, such as clicking an “I agree” button.
- Record the date, time and signature and retain them in a secure manner.

Electronic Signing Process—Generally

Benefits of electronic signatures

- Gain a business advantage by reducing time for processing transactions
- Streamline your internal and external workflow
- Avoid transaction, processing and storage costs associated with paper-based transactions

Need for a documented consent to sign electronically

- Demonstrate the signer’s consent and intent to sign electronically
- Help avoid potential claims about the legality of the transaction or any of the documents
- Enhance the ability to use electronically signed documents as evidence
- To help establish the signer’s intent to sign with an electronic signature
- To help receive tangible evidence that consent was actually obtained

Suggested terms of a written consent to sign

- Require each signer to sign a separate consent and agreement that lists all documents that need the signature(s)/initials of that signer
- If a signer has to sign in more than one capacity (e.g., owner and co-signer), require them to sign one consent for each capacity (e.g., one as an owner and one as a co-signer)
- Include the signer’s acknowledgment that he or she wants the digitized signature to be effective
- Include document-by-document sections that the signer will mark as part of the electronic signing process
- Include the acknowledgment that the signer reviewed each document in the document set and that the financial organization’s employee explained the purpose of each signature/initials

Electronic Signature

Before signing

- Obtain signer verification
- Obtain consent to sign

The signing process

- Present the documents to be signed
- Explain the affect and placement of electronic signatures/initials
- Collect electronic signatures/initials, as needed
- Ensure proper placement of electronic signature/ initials

After signing

- Follow your procedure to save and store electronically signed documents
- Follow your procedure to provide copies of electronically signed documents

Suggested Electronic Signing Process

Before signing

- Follow your usual procedure to verify each signer's identity and authority to sign
- Present all documents in the transaction, including the consent document
- Save and store the consent form according to your organization's procedure

Signing

- Ensure that each signer signs the electronic signature pad with a stylus and clicks "I Accept" to indicate that they want the electronic signature(s)/initials to be applied to the documents
- Once each signer clicks "I accept", your software should embed the electronic signature, along with the date of the signature, to each area of all documents in the transaction set that requires that signer's signature(s)/initials

After the signing ceremony

- Follow your organization's procedure to save all documents in the transaction
- Follow your organization's policy for storing electronically signed documents

What to Remember

- You need to modify the procedures listed above on advice of your own legal and compliance professional to fit your particular needs and requirements
- All federal and state laws and regulations continue to apply to electronic transactions – only the signing process differs
- Additional security is required to preserve the integrity and privacy of electronic signatures and documents
- You need to establish written procedures that your organization will follow to create, access or destroy electronic signatures and documents
- Your personnel need training on your electronic signing procedures
- You should contract with a trusted provider of electronic record maintenance systems that ensures document authenticity, security, integrity and accessibility

What to Avoid

- **DO NOT** risk the integrity of the electronic signing ceremony by failing to ensure that the signer understands and wishes to use electronic signatures

- **DO NOT** skip the steps necessary to verify the signer's identity and authority to sign
- **DO NOT** save the digitized image of the signature/initials—electronic signatures/initials that have been saved, copied and pasted lose the characteristics necessary for a valid electronic signature
- **DO NOT** attempt to change a document after it has been electronically signed
- **DO NOT** compromise the integrity of your electronic records by failing to use a reliable electronic document storage system

Glossary

ESIGN—federal law that was created to facilitate electronic transactions; the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 - 7006, 7021, 7031

Electronic record—a record created, generated, sent, communicated, received or stored by electronic means; as used in this guide, a document signed with an electronic signature

Electronic signature—a way of marking or signing an electronic document, legally defined as an electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a person with the intent to sign the record

Electronic signature process—as used in this guide, a sample process of signing notices, disclosures or documents using an electronic signature

Electronic transaction—as used in this guide, a transaction conducted using the electronic signature process

UETA—a uniform law that was created to facilitate electronic transactions and has been adopted by the majority of states; the Uniform Electronic Transactions Act

Disclaimer

This guide provides a high-level overview of an electronic signing process and technology. It is intended to be used for informational purposes only, and does not constitute legal advice regarding the use of any specific product, service or process. In deciding which process to use, you will need to consider your organization's specific technology, business and legal requirements. So far, there is limited guidance from courts to help you judge the risks of various technologies and processes as they are implemented in specific business situations. Any company that chooses to implement an electronic signature solution or to create related processes should seek the advice of its own legal counsel.

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