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Attorneys at Law

# BEYOND THE SIGNATURE: eTransactions & Digitizing Contracts

May 10, 2022

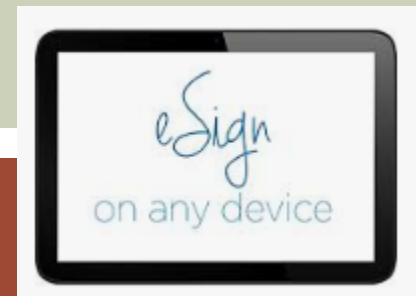
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# E-Sign – An Overview

## E-Sign – Signed into law on June 30, 2000

- i. Provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce.
- ii. 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that such information be provided in writing, if the consumer has affirmatively consented to such use and has not withdrawn such consent



# E-Sign - An Overview

## Electronic Signature:

The term “electronic signature” means an 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.

15 U.S.C. § 7006(5)



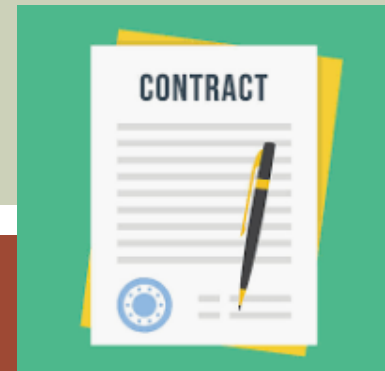
# E-Sign – Validity of Signatures

- Notwithstanding any statute, regulation, or other rule of law (other than this subchapter and subchapter II), with respect to any transaction in or affecting interstate or foreign commerce—

**(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and**

**(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.**

15 U.S.C. § 7001(a)



# E-Sign – Exceptions

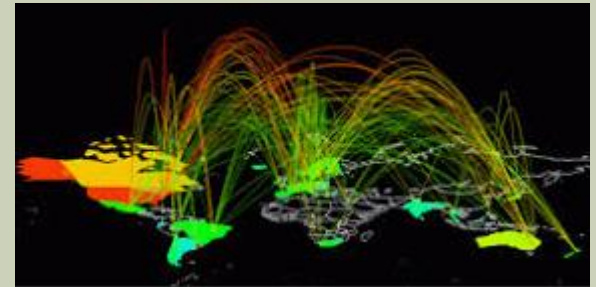
- Wills & Trusts
- Adoption / Divorce / Family Law
- Court Orders & Official Court Documents
- Notice of:
  - Utility Service Cancellation
  - Foreclosure / Eviction under credit agreement or rental agreement for primary residence
  - Cancellation of Health Insurance / Life Insurance
  - Product recall where there is a risk to health or safety



# UETA – An Overview

## Uniform Electronic Transfers Act

- i. Adopted in Arizona in 2000.
- ii. Applies only to transactions between parties each of which has agreed to conduct transactions by electronic means.
- iii. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.



# Cautionary Cases - *Armiros v. Rohr*

## ■ *Armiros v. Rohr* (No. 1 CA-CV 16-0755, Ariz.App., 3-8-18)

- “In February 2014, Julie listed a 10.17 carat diamond ring for sale on eBay for \$100,000 using the “Buy It Now” option.”
- Evangelos clicked the “Buy It Now” button and purchased the ring.
- Julie accepted the \$150,000 offer and tried to cancel her contract with Evangelos stating, “I made a mistake in my listing price.”
- In the “Purchase Conditions” section of the eBay agreement buyers agree that they will have a “legally binding contract” when they buy an item or have the winning bid on the item.



# Cautionary Cases - *Spencer Meyer v. Uber Technologies, Inc.*

- ***Spencer Meyer v. Uber Technologies, Inc.* (2d Cir., Docket Nos. 16-2750-cv, 16-2752-cv, decided 8/17/17)**
  - Spencer Meyer “downloaded onto his smartphone a software application offered by . . . Uber Technologies, Inc.”
  - Spencer used the Uber App about 10 times, then sued Uber. Spencer filed the case as a class action saying “that the Uber App allows drivers to fix prices among themselves, in violation of the Sherman Act . . .”
  - Uber moved to compel arbitration because by registering for the account, Spencer had agreed to a mandatory arbitration clause.....
  - You acknowledge and agree that you and Company are each waiving the right to a trial by jury to participate as a plaintiff or class User in purported class action or representative proceeding.





# Remote Online Notarization

- **Authorized in Arizona pursuant to A.R.S. § 371 *et seq.***
- **Initially was to take effect on July 1, 2020 BUT**
- **Governor Ducey accelerated the effective date to April 10, 2020, pursuant to E.O. 2020-26, due to the COVID-19 Pandemic.**
- **Works for anyone in the US (and some international persons) who need to have a document notarized.**
- **Notaries must maintain an audio and video recording of each online notarial act.**



# Remote Online Notarization

## UNDERWRITER-APPROVED VENDORS for Remote Online Notarization



UNDERWRITER	DocVerify	Expedite Close	Nexsys	Notarize	Notary Cam	Pavaso	Signix	Simply Secure Sign
Fidelity				✓	✓	✓		
First American	✓	✓	✓	✓	✓	✓		
Old Republic	✓		✓	✓	✓	✓		
Stewart			✓	✓	✓	✓		
Westcor			✓	✓	✓	✓	✓	✓

\*Thomas Title & Escrow currently uses Pavaso and Signix.

As of April 17, 2020

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# Remote Online Notarization

With Pavaso

● Rec This session is being recorded.

Buyer Complete Task List Undo Save Add Tags and Markup

Send Document to Remote Signer Tags on this Document

**NAME AFFIDAVIT**

Sign Here

This is to certify that:  
Leah Jean Sommerville, Leah J Sommerville, Leah Sommerville

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

are one and the same person.

**THIS IS TO CERTIFY THAT MY LEGAL SIGNATURE IS WRITTEN AND TYPED BELOW.**

Buyer: Leah Sommerville  
Leah Sommerville  
Signature

Leah Sommerville  
Print or Type Name

State/Commonwealth of: TEXAS

County/Parish of: Denton

The foregoing instrument was acknowledged before me this 16th day of September  
by Leah Somerville

known to me to be the person whose name is subscribed and sworn (affirmed) before me and executed by the same.

Sign Here  
Notarial for Buyer

Notary Public

My Commission Expires: \_\_\_\_\_

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Copy link

Leah Sommerville

To everyone

# Electronic Promissory Notes

- **Article 9**

Transferable Record Secured by Real Property =  
Payment Intangible

- **Perfection by Filing / Perfection by Control**

- **“Papering Out”**



# Prime Warning

- **\$70 million refund for consumers**
- **In developing its Kindle Fire tablet, Amazon identified “soccer parents” as a key target customer base, referring to them as “low-hanging fruit.”**
- **Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or effecting commerce, are hereby declared unlawful.**

**15 U.S.C. § 45(a)(1)**



# Questions?

