

Should You Use Electronic Signatures?

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Electronic signatures have been acceptable for years in the business world. Software such as DocuSign and Adobe Sign offer an audit trail that can be used to show the circumstances surrounding the execution of the documents and to authenticate the signatures.

Parties to a contract often need to have the documents admitted in court, but it is not always easy. A witness must identify and testify that the parties did in fact execute the contract. That is okay if the parties were together in a room and watched each other sign, but if the only evidence is that the witness received an email, it may be more difficult. DocuSign and Adobe Sign keep a record of when the contract was emailed to the parties, when they signed the contract with their electronic signatures, and when the signed contract was returned to the sender. They also offer security features intended to confirm the identity of the signer.

Some courts have accepted the procedures required by e-signature software to confirm signatures, but the software can also be a hindrance if the parties have not been diligent in following the procedures. For example, the software inserts a code on each page of the document to ensure that the signed document is the same document provided to the party for signature and was not changed. In business, however, it is not unusual for parties to sign signature pages in advance of closing and attach them to a completed final version of the agreement at closing. In the final document, the code may appear only on the signature page, which might make it difficult to authenticate the document in court.

The expanding use of e-signature software will no doubt give rise to disputes to be resolved in court. Parties who use such software should recognize that the software is demanding in its procedures. If the parties are not able to comply with those procedures, then it might be better to use a more traditional, non-electronic method of executing and delivering the documents.

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