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Insights

What You Need to Know about Email and eSignatures for the Purchase or Sale of Goods

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The use of email has become common in the contracting process and received an additional boost from the COVID-19 pandemic, which made electronic communications the preference for most businesses. For the growing Florida manufacturing, warehousing and construction sectors, it may be a good time to revisit the rules of the road when it comes to the use of electronic signatures in connection with the purchase or sale of goods.

Florida law provides that a contract for the sale of goods for a price of $500 or more is not enforceable unless it is in writing signed by the other party. There are exceptions to that rule, but unless you want to consult a lawyer to see if an exception applies, it is best just to get it in writing.

Does a contract that is signed electronically satisfy that requirement? The answer is generally yes. Florida's Electronic Transactions Act specifically states that it applies to a transaction under Article 2 of the Uniform Commercial Code, which governs sales of goods. The Act also states that a signature may not be denied legal effect solely because it is it in electronic form. However, there are a few wrinkles to consider.

First, the Act states that the parties must agree to conduct transactions by electronic means. The fact that the parties sent an offer and acceptance by email would seem to evidence such an agreement, but there have been court cases where the court refused to enforce a contract because the parties had not expressed such an agreement. In many of those cases, the court reasoned that the parties had intended to follow up the email string with a formal written contract, but that never occurred. If you intend for the email string to constitute the contract, then you should say so—but only after all of the terms have been agreed upon! Conversely, if you do not so intend, then you should say that as well.

Another important question is what constitutes an "electronic signature?" In many cases, the complaining party has only the other party's email to rely on. What in that email constitutes a "signature?" The court precedent has not been consistent. Some courts have held that the reply email

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address itself is a signature, but most courts have held that something more is required. A typed signature was sufficient in some cases. A more certain approach would be to reduce the agreement to writing, email it to the other party, and request that it be signed by hand, scanned, and returned by email. This approach also has the advantage of reducing the agreement to a single writing, rather than piecing together several emails in an attempt to compile all of the terms.

If the contract involves a significant amount of money, then it is probably best to secure the assistance of a knowledgeable attorney in preparing the written contract.

If you have any questions relating to electronic transactions or to sales or purchases of goods, please reach out to Dave Peterson or the Lowndes attorney you work with.