Electronic Signatures in NJ, NY, PA & FL: What You Need To Know

Legal Alert

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The COVID-19 pandemic rocked businesses with its required social distancing protocols and work from home mandates. However, one silver lining to the unforeseen chaos generated by the pandemic is the benefit of being able to execute most documents from the safety of home. Laws and guidance have been in place for years addressing electronic signatures, but the prevalence of their usage during the pandemic have led many states to enact their own laws. The Uniform Electronics Transaction Act (UETA) provides guidelines that most states have adopted to determine the legality of electronic signatures in certain commercial and government transactions, and the Electronic Signatures in Global and National Commerce Act (ESIGN Act) established the legality of certain electronic contracts in interstate and global commerce. Below is a quick primer on the respective New Jersey, New York, Pennsylvania and Florida statutes surrounding electronic signatures, a tool that has become increasingly important over the past year.

New Jersey

New Jersey enacted an electronic signature statute largely mirroring the UETA. N.J.S.A. § 12A:12-1 et seq. New Jersey transactions are not subject to this law to the extent they are governed by laws concerning: (i) the creation and execution of wills, codicils or testamentary trusts; (ii) the UCC, with exceptions; (ii) adoption, divorce or other matters of family law; (iv) court orders or official court documents; (v) notices of the cancellation of termination of utility services; (vi) the default, acceleration, repossession, foreclosure or eviction, or (vii) the right to cure an individual's primary residence.

New York

In stark contrast with the overwhelming majority of other states, New York has not adopted its own version of UETA. Rather, New York's statute addressing the validity of electronic signatures is called the Electronic Signatures and Records Act (ESRA). N.Y. State Tech L § 301 (2014). ESRA does not apply to documents providing for the disposition of an individual's person or property upon death (such as wills, trusts, orders not to resuscitate) with exceptions, negotiable instruments and other instruments wherein possession of the instrument is deemed to confer title, or any other document that the electronic facilitator has specifically excepted from ESRA's regulations.

Pennsylvania

Pennsylvania was one of the first states in the country to adopt a modified version of the UETA in 1999, permitting electronic signatures in most circumstances. Under Pennsylvania's law, electronic signatures are permissible except for transactions invoking laws governing wills, codicils or testamentary trusts or the Pennsylvania Commercial Code, with exceptions.

Florida

Florida's electronic signature statute was adopted in 2000. Florida's iteration of the law states that, unless otherwise provided by law, an electronic signature may be used to sign a writing and shall have the same force and effect as a written signature. This statute prohibited virtual signatures for documents governed by laws concerning the execution of wills, codicils or testamentary trusts, the UCC (with exceptions), contracts governed by the Uniform Computer Information Transactions Act, and the rules of judicial procedure. Interestingly, as of January 1, 2020, Florida's Electronic Wills Act went into effect, which permits, as the name indicates, wills to be signed and notarized virtually. By enacting this law, Florida is on the cutting edge of this area of law, being only one of a few states to loosen the traditional requirement that wills be signed in person.

Before you virtually sign any document, make sure you are in compliance with your state's electronic signature rules. If you or your business need legal advice, please consider contacting any member of Flaster Greenberg's Business & Corporate Department.