



The Global Standard for
Digital Transaction Management™

Legality of Electronic Signatures

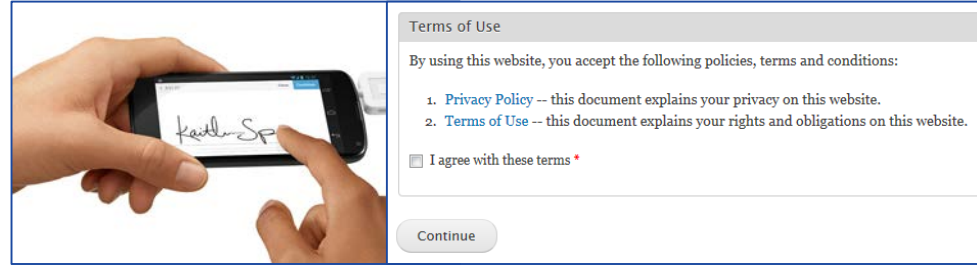
Nic Wolfe, *Chief Legal Counsel of Public Sector, DocuSign*

Agenda

- Primer on Electronic Signatures
- State of the law in Texas
- Exceptions
- Texas Case Law Support
- The Advanced Security of DocuSign Signature
- Trends in eContracts

What is an Electronic Signature?

- Sound, symbol, process
- Associated with record
- Executed or adopted
- By a person with intent to sign



DocuSigned by:
Kevin Smith
3143CD30CA0D40B...



Electronic v. Digital Signatures

- The term **digital signatures** refers to a particular type of **electronic signature** that is created by cryptographic means involving the use of PKI technology.
- Use of Digital Signature is not required but may be advised in certain high risk transactions, such as benefit payment applications where the transaction value is high and the signer is unknown to the agency.
- The Texas Department of Information Resources has published "Digital Signatures & Public Key Infrastructure (PKI) Guidelines," and adopted a rule addressing Digital Signatures.

State of the Law - Overview

Federal	Texas State Law	Law applicable to Texas State Agencies
<p>ESIGN Act, Pub.L. 106–229 provides that a signature “may not be denied legal effect, validity, or enforceability solely because it is in electronic form”.</p>	<p>Texas Uniform Electronic Transactions Act provides that an electronic signature shall be given the same legal force as an ink signature. <i>See</i> Tex. Bus. & Com.Code Ann. § 322.007</p>	<p>Texas Administrative Code §203 sets forth the <u><i>Guidelines for the Management of Electronic Transactions and Signed Records</i></u> applicable to State Agencies using electronic signatures.</p>

More on this Later

Exceptions in Texas

- Consumer transactions require consent and opt-out rights
- Wills, family documents
- Court documents made under oath (except with court permission for good cause shown)
- Negotiable instruments (where physical possession of a document is a legal requirement)

Exceptions in Texas - Takeaway

- Exceptions do not necessarily mean that electronic signatures cannot be used, just that UETA does not apply.
- Largely consumer-based, personal transactions
- When in doubt, seek consent. (DocuSign does this by default).

Case Law Support in Texas and the 5th Circuit

Prejean v. O'BRIEN'S RESPONSE MANAGEMENT, INC.	THICK v. Dollar General	Williamson v. Bank of New York Mellon	Sollner v. Linton (California)
<p>Court's Focus: DocuSign</p> <p>Issue: Whether the use of DocuSign is a valid means of class action certification in Texas</p> <p>Holding: Yes.</p> <p>Takeaway: DocuSign is recognized in the 5th circuit as a credible electronic signature provider</p>	<p>Court's Focus: Attribution</p> <p>Issue: Whether a plaintiff can claim forgery for signatures applied after account authentication</p> <p>Holding: No</p> <p>Takeaway: The audit trail offered by defendant provided robust evidence to rebut claims of forgery or lack of control.</p>	<p>Court's Focus: Intent</p> <p>Issue: Whether an email constitutes electronic signature</p> <p>Holding: Yes, but only where there is an intent to sign.</p> <p>Takeaway: Use of e-Signature products and approval workflows can rebut inadvertent email signatures by showing no intent to sign.</p>	<p>Court's Focus: DocuSign</p> <p>Issue: Whether the use of DocuSign is a valid means of entering into a lease in California</p> <p>Holding: Yes.</p> <p>Takeaway: DocuSign will stand behind its product and testify as an expert as to the underlying signature technology</p>

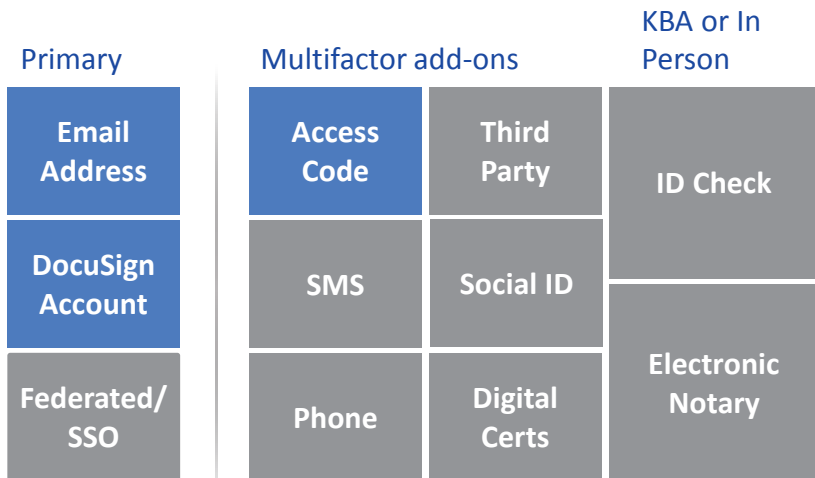
Texas State Agency Guidelines

State Agencies must use electronic signatures that comply with Section 2054.060 of the Texas Government Code, which requires the following:

- Strong authentication;
- Record integrity;
- tamper-seal technology that meets x.509 v3 standards (DocuSign meets these); and
- Demonstrated attribution by a **showing of the efficacy of any security procedure** applied to determine the person to which the electronic record or electronic signature was attributable.

How DocuSign Assures Attribution

1. Signer Identity



Industry-Leading Choice of Authentication Options

Enterprise Add-On
 Standard Method

2. Audit Trail

Certificate of Completion


Envelope Number: 68704012721C4E7833659513763BF1EE Status: Completed

Subject: Documents for your DocuSign@8806

Source Envelope: Signatures: 1 Envelope Originator: Dan Reid
 Document Pages: 1 Initials: 0 danielbruceired@gmail.com
 Certificate Pages: 4 AutoNav: Enabled IP Address: 70.42.242.1
 Enveloped Stamping: Enabled

Record Tracking

Status: Original Holder: Dan Reid Location: DocuSign
 4/18/2013 9:15:20 AM PT danielbruceired@gmail.com

Signer Events	Signature	Timestamp
James Bothwell james.bothwell@docuSign.com Sr. Product Marketing Manager DocuSign Security Level: Email, Account Authentication (None)	 Using IP Address: 9.20.114.11	Sent: 4/18/2013 9:17:50 AM PT Delivered: 4/18/2013 9:45:51 AM PT Signed: 4/18/2013 9:45:57 AM PT

Consumer Disclosure:
 Accepted: 4/18/2013 9:45:51 AM PT
 ID: 9F19602a41a5492a9f0c385ba066c259

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Dan Reid
 danielbruceired@gmail.com
 Director of Product Management
 DocuSign
 Security Level: Email, Account Authentication (None)
 Consumer Disclosure: Not Offered
 ID

COPIED

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/18/2013 9:45:58 AM PT
Certified Delivered	Security Checked	4/18/2013 9:45:58 AM PT
Signing Complete	Security Checked	4/18/2013 9:45:58 AM PT
Completed	Security Checked	4/18/2013 9:45:58 AM PT

Consumer Disclosure

How DocuSign Assures Record Integrity

Restricted Access

Please review and sign your document

DocuSign

From: **Michael Strickland (michael.strickland@docu.com)**
DocuSign

Hello Phillip Buckingham,
Please review the documents and sign immediately.
Best,
Michael

RECIPIENT: **Sign Here**

By: _____

Name: **First Name**

Title: **Title**

Date: **Date Signed**

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8A5A4DDADB5490AAC0D358ED675F3BD0

- Tags
- Hashing and Encrypting
- Email Access Code
- Tamper Evident
- Recipient Roles

Security Certifications



State of Local Government Product

- Leverages FedRAMP Infrastructure
- Sequestered Cryptographic keys
- Sequestered Data
- Plus more advanced features!

Trends in Texas

- Smart Contract Technology
- Click wraps being challenged more often.
- Mobile signing challenges