DocuSign | The Global Standard for Digital Transaction Management™
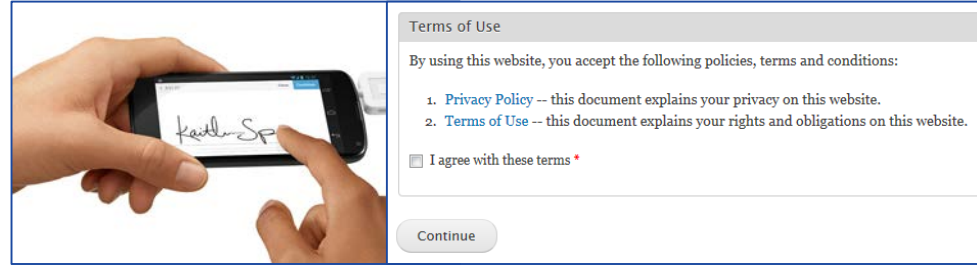
Legality of Electronic Signatures

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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

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What is an Electronic Signature?

- Sound, symbol, process

- Associated with record

- Executed or adopted

- By a person with intent to sign

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 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.

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State of the Law - Overview

Federal	Texas State Law	Law applicable to Texas State Agencies
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".	**Texas Uniform Electronic Transactions Act** provides that an electronic signature shall be given the same legal force as an ink signature. *See* Tex. Bus. & Com.Code Ann. § 322.007	**Texas Administrative Code §203** sets forth the *Guidelines for the Management of Electronic Transactions and Signed Records* applicable to State Agencies using electronic signatures.

More on this Later

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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)

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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

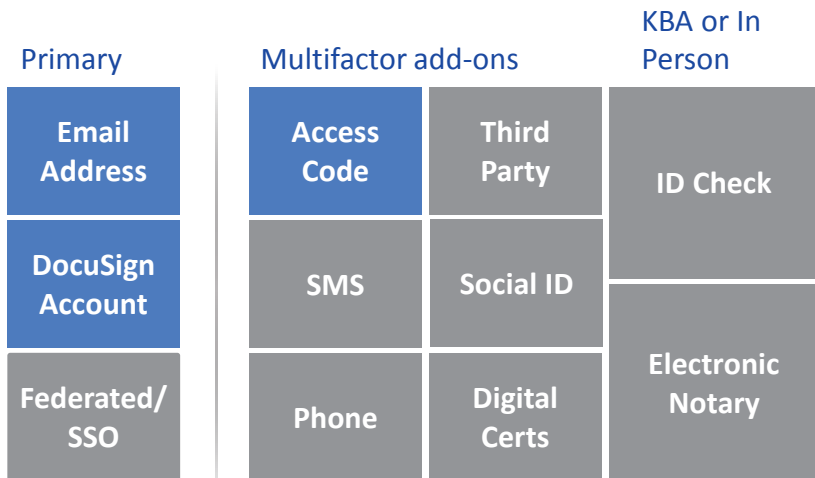| Prejean v. O'BRIEN'S RESPONSE MANAGEMENT, INC.	THICK v. Dollar General	Williamson v. Bank of New York Mellon	Sollner v. Linton (California)
Court's Focus: DocuSign **Issue**: Whether the use of DocuSign is a valid means of class action certification in Texas **Holding**: Yes. **Takeaway**: DocuSign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

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.

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How DocuSign Assures Attribution

1. Signer Identity

Primary

Email Address
DocuSign Account
Federated/ SSO

Multifactor add-ons

Access Code	Third Party
SMS	Social ID
Phone	Digital Certs

KBA or In Person

ID Check
Electronic Notary

Industry-Leading Choice of Authentication Options

■ Enterprise Add-On   ■ Standard Method

2. Audit Trail

How DocuSign Assures Record Integrity

Restricted Access

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

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