

SCOTT B. UMSTEAD, P.A.

ATTORNEY AT LAW



Episode 5: Electronic Signatures

Call from the Agent: The parties in my transaction signed the contract through DocuSign. Are electronic signatures legally binding?

The Response: First, let me explain the controlling law. A version the Uniform Electronic Transactions Act was adopted in South Carolina several years ago and appears as SC Code §26-6-10 et seq. This Act governs electronic signatures, which are defined in the Act as “an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” Sure, this isn’t the comfortable definition we might hope for, but it very definitely applied to signatures affixed through DocuSign, Adobe, DotLoop and other familiar programs. The Act provides “a signature must not be denied legal effect or enforceability solely because it is in electronic form” and “an electronic signature satisfies the law requiring a signature” – South Carolina case law upholds this statutory precept. With this introduction, you might begin to think any electronic signature is definitely binding, but keep in mind even an electronic signature is subject to challenge – for example, if a person lacks mental capacity, his/her signature (electronic or wet) will not bind them to a contract. And, of course, an electronic signature can create a unique issue of authentication (simply meaning proof the signature is attributable to the right person). While electronic signatures endeavor to create the same level of confidence associated with handwritten signatures and the internal security of DocuSign and the others goes as far as possible to ensure the identity of the signor, electronic signatures can be challenged and proof can be pesky. With all of the foregoing in mind, the direct answer to your question is that the mere fact that the signatures on your contract are electronic in no way diminishes their legitimacy or enforceability – in short, an electronic signature is binding.

The preceding paragraph deals with the enforceability of an electronic signature between the parties, but it is worth mentioning that each government agency is able to make its own determination of the extent to which it will accept electronically signed documents for use and/or recording (Horry County ROD does not accept them, but this may change over time). Further, some lenders will not accept them on final loan documents. Because we recognize not every recipient of an electronic signature will know whether or not it should be accepted, my office includes an entry above certain signature lines on key documents we create stating: “Digital signatures affixed to this document are made pursuant to the Uniform Electronic Transactions Act, SC Code Ann §26-6-10 et seq.” (we find this is often helpful to the recipient).