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When the Inkwell Runs Dry: California's Uniform Electronic Transactions Act

For most of us, “business as usual” has become a thing of the past, at least temporarily. Still, business must go on. Whatever your line of work, chances are you are still making deals, negotiating transactions, and providing goods or services, even if only to a limited degree. This means that at some point, you’ll need to sign a contract. But how? Certainly not in a crowded conference room, sliding stacks of closing documents across the table for wet-ink signatures. Handshake deals, which were never advisable to begin with, are now potentially fatal. And who ever heard of an “elbow-bump deal”? So how are parties supposed to sign and exchange contracts while they are sequestered alone, miles apart from one another?

Enter the California Uniform Electronic Transactions Act, or CUETA. It’s been around for over 20 years, but until recently, it has been somewhat overlooked and underutilized. Now it is quickly becoming a business necessity.

Where do you find CUETA, and what does it authorize?

It was enacted in 1999 and is codified at Civil Code §§ 1633.1 through 1633.17. It applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after January 1, 2000. It states that signatures – and entire contracts – can be enforceable even if they are in electronic form.

What are the requirements?

There aren’t many – CUETA is a pretty short Act – but all of them need to be met in order for an electronically signed contract to be valid:

- The contract, document, or other record must be “signed” in a manner that meets the Act’s definition of an electronic signature: “an electronic sound, symbol, or process attached

to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.”

- You must have some means of proving that an electronic signature was actually made by the person to whom that signature is attributable. This is fairly easy when faxing a copy of an ink-signed document, or e-mailing a scanned pdf copy of one. But where the signature is entirely computer-generated, you may need to be able to show that your computer security protocols are such that only the person to whom the signature is attributable had the ability to cause the computer to generate that signature.
- All parties to the contract must agree that the transaction may be conducted by electronic means. CUETA states that this agreement “is determined from the context and surrounding circumstances,” so for many contracts, it will suffice to include in the body of the contract itself an express statement that electronic signatures are authorized and will be accepted. However, if you are using a “standard form” contract that is not itself an electronic contract, the parties will also need to sign a separate agreement. The primary purpose of that separate agreement must be to authorize the use of electronic signatures and electronic records of the transaction covered by the first agreement. And you can’t force any party to sign that separate agreement if they would prefer not to conduct the transaction electronically.
- The contract, document, or other record must be electronically transmitted in a manner that does not inhibit the recipient’s ability to store or print it.

Which documents CANNOT be signed electronically?

Most documents can be signed electronically, but several are specifically excluded from coverage under CUETA. Those include:

- Wills, codicils and testamentary trusts;
- Transactional documents governed by Divisions 1, 3, 4, 5, 8, 9 and 11 of the Uniform Commercial Code;

- Documents governed by laws that require specific portions to be separately signed or initialed. However, this exclusion does NOT apply to arbitration provisions in documents pertaining to the sale of real property, and does NOT apply to liquidated damages provisions in any contract; those provisions may be signed or initialed electronically;
- Documents governed by certain specified sections of the Business and Professions Code, Financial Code, Health & Safety Code, Insurance Code, Public Utility Code, or Vehicle Code; and
- Residential and commercial eviction notices, including 3-day notices to “pay rent or quit.”

What if your document needs to be notarized?

California law currently does not authorize “remote notarization” or “remote online notarizations” by California notaries. Many other states do allow remote notarization, and a notary acknowledgment legally executed in another state is sufficient under California law pursuant to Civil Code § 1198(b).

Unfortunately, states which allow remote notarization generally require the person signing the document and the notary public to be physically located in the same state, so Californians seeking to avail themselves of another state’s remote notary laws would likely have to travel to that state to execute their documents.

Can your electronically signed or remotely notarized document be recorded?

Probably not. Although CUETA makes clear (at Civil Code § 1633.3(c)) that a document may be *recorded* by electronic means, another statute requires the document itself to be physically signed. Government Code § 27201(b) states that in order for a County Recorder to record a document, it must “contain an original signature or signatures, except as otherwise provided by law, or be a certified copy of the original.”

Keep Calm and Carry On.

While there are certain limitations to electronic signatures, they are generally very effective. So don’t let state and local directives which

limit public gatherings prevent you from getting your contracts signed. Read CUETA, comply with its provisions, and be confident that your electronically signed and delivered documents are fully enforceable under California law.

A responsive and detail-oriented advocate, Craig Hardwick helps clients successfully meet a broad range of real estate needs. The Chairman of AlvaradoSmith's Real Estate and Land Use Transactions Department, he has managed and led a variety of real estate transactions over the course of his career: from acquisition to sale, and everything in between, including procurement of real estate development entitlements, construction, financing, and leasing.

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