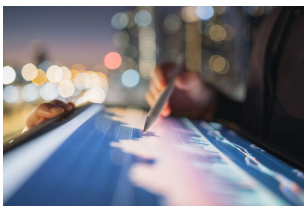

Seal of Approval: E-Signatures That Pass the Compliance Test

Aug 06, 2025

Categories:

Publications

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In today's digital world, electronic signatures have become indispensable for businesses, offering increased efficiency and streamlined workflows. However, it's not enough to simply use electronic signatures (aka e-signatures)—ensuring they comply with applicable laws is crucial for their legal enforceability and to avoid costly disputes or penalties.

Why a Comprehensive E-Signature Review Is Vital

Regularly reviewing your e-signature processes, products, and customer types can help ensure compliance with ever-evolving legal requirements. In the United States, most applicable legal requirements are contemplated by the Electronic Signatures in Global and National Commerce Act and the Uniform Electronic Transaction Act, the latter of which was adopted in some form by various states. Failing to observe compliance requirements can lead to increased regulatory risk and unenforceable agreements. An effective compliance review should achieve the following objectives:

- **Verifying legality and enforceability**: Confirming that your e-signature processes meet the requirements of relevant laws (e.g., intent to sign, consent to do business electronically, record retention) is paramount to ensure their legal validity.
- **Mitigating risks**: Non-compliant electronic signatures can expose your business to security risks like fraud, data breaches, and repudiation claims. Identifying and addressing these vulnerabilities can safeguard your company's reputation and financial stability.
- **Enhancing efficiency**: Streamlining e-signature workflows in a compliant manner could lead to a more efficient process and ease of customer relations.

What to Consider in Your E-Signature Survey

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A well-structured survey should delve into the following components:

- **Product assessment**: Examine the electronic signature solutions you utilize. Are they built with robust security features, like signer authentication and tamper-evident technology? Are the solutions you're using reputable and trusted?
- **Customer type considerations**: Different customer interactions might necessitate different e-signature protocols. For example, consumer agreements often require specific disclosures and consent procedures. Consider whether your approach is tailored to the needs and expectations of various customer groups.
- **Signature requirements**: Determine why the signature is being gathered. Is the signature required by a federal or state law or regulation, or is the signature otherwise acknowledging agreement?
- **Retention and accessibility**: Consider if your processes and practices are designed in a manner that allows for reproducibility (if required by law), sufficient for the parties to later understand what was executed, and accessibility by the parties at a later time.

Best Practices for E-Signature Compliance

- **Electronic signature policy:** Develop a clear, uniform electronic signature policy. The policy should address necessary permissions of signing certain documents. It should also establish procedures for secure storage and use of e-signatures and consents to implement new electronic signature processes.
- **Signer verification:** Ensure signer verification and authentication by implementing robust authentication methods to confirm the signer's identity and intent, such as using unique identification codes, passwords, or biometrics.
- **Adequate software:** Ensure your e-signature software provides a comprehensive audit trail that captures detailed

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information about the signing process, including timestamps, IP addresses, and any changes made to the document.

- **Regulatory requirements:** Pay close attention to possible industry-specific regulations, such as healthcare and finance, which may have stricter requirements for e-signatures and record retention. Familiarize yourself with these regulations and ensure your processes meet them.

Embracing electronic signatures offers numerous advantages, but neglecting compliance can lead to significant problems. By conducting a comprehensive review of your electronic signature practices, you can ensure their legal validity, mitigate risks, and continue to reap the benefits of this vital digital tool. Don't wait until a dispute arises—proactive compliance is key to building trust and security in digital transactions.

For more information as it relates to the topics discussed above or assistance auditing your e-signature protocols for potential compliance issues, please contact the authors or any member of Frost Brown Todd's Data, Digital Assets and Technology or Consumer Financial Services teams.

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