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Are You Poised for Your First E-contracting Experience?

Can it really be done? Can I really find myself subject to the terms of a written contract without having ever actually signed it in ink? The answer is yes! Believe it or not, but technological advances have brought us into the world of cyber-contracting!

Historically, individuals intending to be bound by a contract would remove a pen from their desktop drawer and sign their name in ink. Those unable to read or write, simply placed an "X" on the document in question. After all, courts have repeatedly held that any mark made with the intention of authenticating the marked document was enforceable.

Recent technological advances, however, are pushing the traditional notions and legal significance of signatures. The act of executing a contract, often in the presence of the other contracting parties and a witness, draws attention to the legal implications of the document being signed. With the advent of facsimile machines and computers, there has been a steady erosion of such ceremonial contract signings. But, even with such advances, contracts and other documents of legal significance have remained on paper, even if the actual signatures were not subscribed in ink.

This past July, however, Congress changed the entire legal basis of signatures and document authentication by passing the "Electronic Signatures In Global and National Commerce Act." This new law, which went into effect on October 1, 2000, gives certain electronic documents the same legal effect as their paper-based counterparts. In short, the law provides that contracts and other records created and signed electronically carry the same legal significance as documents bearing traditional signatures.

Under this law, electronic signatures can take on one of a number of forms, including symbols, sounds or processes, provided that they are attached to the contract or record. Despite what may seem logical, voice recordings authenticating a particular contract or record are specifically disallowed as electronic signatures. Digital signatures, a form of electronic signatures, are created and authenticated by an applied mathematics branch known as cryptography. Through this computer-based tool, digital signatures are encrypted into unrecognizable form by the sender of the electronic signature and then converted back to a legible form by the recipient of the signature. Although computer-based tools which allow this process to occur are readily available in the marketplace today, continuing uncertainty about the overall process has prevented many individuals and businesses from availing themselves of this new law.

Before embarking upon e-contracting at-large, be forewarned that the law does specifically exclude several documents from coverage. Default notices, notices of acceleration, repossession, foreclosure, and eviction, as well as cure notices, in both residential leases and home equity loans, are excluded. Similarly, documents relating to family law, adoption, divorce, and estate planning, are not covered under the act. Finally, court notices, notices of cancellation of utility service or health insurance, as well as product recall notices and documents pertaining to hazardous materials are all specifically excluded. Most everything else (if there is anything left), can be subject to an electronic contract and an electronic signature.

Before jumping in with both feet and getting rid of your printer and toner cartridges (just kidding!), it is important for you to also know that, like with so



many other things in today's business world, there are consumer disclosures and consents which must be made. Specifically, consumers must give their affirmative consent to use an e-contract, they must be given clear and conspicuous disclosures relating to hardware and software requirements, and their right to withdraw an e-contract, as well as their right to receive a hard copy of the electronic document.

Use of electronic contracts and signatures is just another stop in the endless journey of technological advances. Keep up if you wish or choose the "good old fashioned" way, but in either case, be cautious of the path you take. Choosing the cutting edge will force you to stay abreast of the laws and the tangential requirements, but choosing what has worked for hundreds of years may make you the dinosaur of the future. For more information on how you can take your company into the world of e-commerce, contact our office.