

Electronic signatures: five FAQs

What is an electronic signature?

According to the federal E-Sign Act, an "electronic signature" is an "electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record." The E-Sign Act provides that a signature, contract or other record relating to such a transaction may not be denied legal effect solely because it is in electronic form or solely because an electronic signature or electronic record was used.

When should I use electronic signatures?

Electronic signatures allow US law-governed documents to be executed more quickly and efficiently. In an increasingly globalized world, electronic signatures are a business-friendly alternative to wet signatures, especially if signatories are frequent global travelers or if signers do not have reliable access to a scanner.

Are there any documents that cannot be signed by electronic signature?

Electronic signatures can be used for most types of agreements that a startup company typically encounters, including commercial agreements, stock purchase agreements, option agreements, investment documents and leases. However, when documenting transfers or purchases of intellectual property, it is best to obtain wet signatures because some of those intellectual property transfer documents may need to be filed, or recorded or notarized. Also, many entrepreneurs will have documents prepared or updated to reflect their stock ownership in estate planning documents; most jurisdictions will NOT accept electronic signatures on customary estate planning documents like trusts, wills and codicils.

What are common mistakes I should avoid when using electronic signatures?

When an attorney uses an electronic signature service like DocuSign, an ID number is generated at the top of every page of the uploaded file. However, if the document is not originally uploaded to the electronic signature service at the time signatures were solicited, or if wet signature pages are later added to already-electronically-signed documents, not all signature pages will have corresponding ID numbers, which could raise questions about the enforceability of the agreement.

In addition, when signers execute signatures using an electronic signature service, the signature has an accompanying timestamp. For electronic signatures, an enforceability dispute may arise if the signature timestamp indicates that the signature occurred before the body was finalized. The timing issue may also arise for wet signatures, but the issue is much more pertinent to electronic signatures because of the timestamp.

How can I help ensure the enforceability of electronically signed agreements?

The best way to avoid these problems is to have all parties to an agreement use the same electronic signature service to sign documents. This can be accomplished by uploading the document in its entirety (body and signature pages) to the electronic signature service before soliciting signatures. In this process, an ID number will be inserted at the top of every page of the



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document.

Alternatively, your preferred electronic signature service may accommodate situations in which you have individuals providing wet signatures. In the case of DocuSign, when signing a document, the signer is presented with a "Request for Signature." Signers who wish to sign with a wet signature may click the "Print" button and sign the document by hand. Then, the signer may scan and upload the document back into DocuSign, thus keeping the entire transaction digital and maintaining compliance with DocuSign terms of service. However, it is important to note that this is relatively tedious for the signer and defeats the fundamental purpose behind the use of electronic signatures.

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