

# SIGNING DOCUMENTS IN THE DIGITAL AGE

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**A**s more and more communication is carried out through electronic means, it seems that questions about what is sufficient for binding signatures on contracts are becoming more frequent. Here are some quick notes that should help answer some of these questions.

## Does a signature need to be witnessed in order to be binding?

Generally speaking, the answer is no. Some documents have specific witnessing requirements, but most contracts do not. A witness is not necessary for the agreement to be valid and binding.

However, even though having a witness may not be legally required in order for the contract to be binding, it is prudent to always try to have signatures witnessed. Having a witness or witnesses gives the party relying on the signature a source of evidence, both as to the intention of the signatory when he or she signed and as to the identity of who signed. It would be unusual, but not unheard of, for a person who signed later to say that they didn't sign (ie. someone else signed their signature without their knowledge) and that therefore the agreement is not enforceable against them. Having a witness to the signature provides a third party who can confirm who the person was who signed in front of them and what was said at the time, which can be strong evidence to defend such a claim.

## Does a signature need to be an original manual signature?

Again, generally speaking, the answer is no. Subject to exceptions for certain specific documents, a signature may be handwritten, stamped, impressed by machine or marked by other method. What is critical is that the signature/mark that is made satisfies the requirement that the signature/mark was made with the intention of signifying that the signatory agrees to and accepts the content of the document and its terms.

Again, for evidentiary purposes, it is recommended that an original signature be obtained if possible. If a contract has been signed with an original manual signature, then it will be easier for the party relying on the signature to prove that the signatory was in fact the person who signed and to prove that that person, at the time of signing, intended to accept the content of the document. This proof is not irrefutable, but can be very persuasive.

## Are electronic signatures binding?

Under section 11(1) of the Electronic Transactions Act (BC), subject to certain limitations set out in the Act and regulations, if there is a requirement under law for the signature of a person, that requirement is satisfied by an electronic signature. An "electronic signature" is defined in the Act as information in electronic form that a person has created or adopted in order to sign a record and

that is in, attached to or associated with the record.

As above, although an electronic signature may be legally acceptable, on a practical basis an original signature, or even a scanned copy of an original signature would be preferred. Again, as a matter of proof, this will make it easier for the party relying on the signature, if the circumstances arise, to defend a claim by the signatory that it wasn't him or her who signed. This is because one can show how the signature looks like the signatory's usual signature and it will be more difficult for them to prove it was a forgery. With an electronic signature, it may be difficult to disprove an allegation that another unauthorized person affixed the electronic signature.

## Conclusion

The "best" signature to have on a contract is an original signature, witnessed by an independent third party. This is not because an unwitnessed or electronic signature is not legally binding, but is for purposes of having the most and best evidence available to defend against any potential claim by the signatory that he or she wasn't the one who signed, or that for some other reason the signature does not confirm an intention to agree to the terms of the contract.

Bearing this in mind, if accepting a non-original or an unwitnessed or electronic signature, consider keeping a record of any other evidence at the time that may be relied on to defend against such an argument. For example, cover letters or emails that accompanied the signed document, the names and contact information of other individuals who were involved in the transaction and/or other correspondence that confirms the intention of the signatory at the time of signing. ♦

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