

ELECTRONIC SIGNATURES: ONE MORE NAIL IN THE SCRIBE'S COFFIN

When literacy was at its lowest ebb in Medieval Europe, the professional class of scribes was born. Educated in writing in all its forms, from simple note-taking to elaborately illuminated documents, these men would write on others' behalf, for a price. A nobleman who could barely read his own family name could hire a scribe to dash off a letter while he prepared to sally forth onto the tournament field. Scribe-work gave the educated a specialist's position in society that was direly needed.

As technology is wont to do over time, literacy became more commonplace as Europe stumbled out of the Dark Ages. To formalize transactions in the newly literate populace, the legal systems of the Continent adopted the requirement of the seal. A document was not valid unless it was authenticated by a wax imprint of a signet ring or other marker. Still the province of the affluent, these documents would be deemed "worthy" by their readers simply because the document had been "sealed." Wax fell out of favor in the Twentieth Century, but it was not until relatively recently that the act of sealing all recorded documents was abolished. You still see the last vestiges of sealing in court documents and in transactions of Notaries Public. Notaries are the heirs to the scribes of the Middle Ages, and one form of the language they use – "signed and sealed this day" – is the last legacy of this historical practice.

Just as the printing press changed publication practices and made the written word widely available, the so-called electronic age brought new benefits and practices to businesses. The law, following some prodding from business, evolved to adopt these new technologies. One of the biggest changes was the simple act of acceptance.

Before 1999, there was only one sure-fire way to prove acceptance: a written instrument. We've heard the maxim that a "verbal contract is worth the paper upon which it's written" and the jokes about how the actress Kim Basinger disproved it. (As it turned out, she was vindicated on appeal and the maxim remains intact, at least as far as maxims go.) Even written contracts with blatant acceptance were subject to litigation. When you added the new ability of facsimile machines to transmit documents quickly, and later electronic mail to do it effortlessly, you had a revolution with which the law barely keep up. Electronic commerce, however, needed something more, because while email and faxes could transmit an image of the real signature, there was no parallel for e-commerce transactions.

Proving acceptance could be difficult, and so to resolve matters before they came to a head, people started working on a solution. The National Conference of Commissioners on Uniform State Laws produced the Uniform Electronic Transactions Act in 1999. In the UETA, the NCC recommended, as the heart of the UETA, that

- (a) "a record or signature may not be denied legal effect or enforceability solely because it is in electronic form."
- (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- (c) If a law requires a record to be in writing, an electronic record satisfies the law.
- (d) If a law requires a signature, an electronic signature satisfies the law.

Congress adopted this section as first principle of Public Law 106-229, the Electronic Records and Signatures in Commerce Act, which is now located at 15 U.S.C. § 7001 *et seq.* Electronic signatures cannot be rejected solely because they are electronic: "a contract [...] may not be

denied legal effect, validity, or enforcement solely because an electronic signature or electronic record was used in its formation.”

How does this affect the apartment rental industry? As commerce has moved beyond national borders and is truly global, a landlord can expect inquiries from not only prospective renters in Arizona but also from locations such as Seattle, New York, and London. Exchanging contracts – even applications – is expensive in terms of opportunity cost and actual cost. Through the ERSCA, a digital image of a contract’s signature page is as valid as the original contract itself. A digital contract – such as an Amazon.com purchase – is similarly valid, without even the need to physically sign and scan the contract. ERSCA improves efficiency.

If your company wishes to utilize digital contracts, you can’t simply set up a website and pray it works. You will need to develop a reliable database, maintain high levels of security for the data, and ensure that all of the proper documentation is available in written – or, at least, printed – form. Data security is the buzzword in the electronic commerce industry; witness the latest spate of scandals with credit card companies “losing” data to hackers and other unsavory individuals. So long as you approach electronic commerce properly, however, the benefits are immeasurable: improved response time, reliable data collection, and up-to-the-second information.

Unfortunately, the scribe loses another purpose, but that’s the nature of technological advancement...