



AN OVERVIEW OF VIRGINIA LAW ON ELECTRONIC SIGNATURES

Authored by Attorney: **W.THOMAS CHAPPELL**, tchappell@vanblacklaw.com; 757.446.8653

As business increasingly takes place digitally instead of on paper, electronic signatures have become an important facet of completing transactions. Now, instead of executing transactions the traditional way by having the parties provide signatures in ink on paper, many transactions are now completed by clicking a button, typing one's name into a form, signing a tablet using a finger or a stylus, or even via audio or video recording where the signers denote that they agree to complete a transaction. Such electronic signatures aid efficiency in that as soon as the transaction is completed, there is presumably a digital record of what took place. However, in light of the challenges presented by identity theft, many forms of electronic signatures may also lend themselves to scrutiny as to their legitimacy.

Virginia law recognizes electronic signatures as valid. Virginia's version of the Uniform Electronic Transactions Act, which is set forth in Virginia Code Sections 59.1-479 through 59.1-498, provides that an electronic signature will suffice when the law requires a document to be signed. The law defines an electronic signature to include "an electronic sound, symbol, or process" affiliated with a document that is made by a person with intent to sign that document. The law also provides that a document can be notarized electronically. However, it should be noted that while the Virginia Uniform Electronic Transactions Act applies to most transactions, it does not apply to wills, codicils or testamentary trusts, and it does not apply to transactions to the extent they are governed by certain parts of the Virginia Uniform Commercial Code.

When creating processes involving electronic signatures, companies should create policies and procedures to ensure an electronic signature will be upheld as a valid signature of the signer in court. When determining the impact of an electronic signature, Virginia law provides that courts should examine whether the signature is able to be verified, whether the signature is unique to the signer, whether the signature was under the signer's control only, whether it is possible that the document could have been changed after the signature was executed, and whether the procedure used to create the signature was sufficiently reliable for the purpose of the signature. Signatures executed using stringent processes to ensure their legitimacy are most likely to be upheld as valid by a court of law.

While the Act defers to the Rules of the Supreme Court of Virginia and/or other provisions in the Code of Virginia to govern electronic filing and electronic signatures in Virginia courts, the Act enables other government entities, including state agencies and local governments, to have discretion about whether to allow electronic signatures in dealings with the entity. The law also allows these entities to specify the requirements and procedures in transactions in which the entity is a party. Thus, companies that transact business with governmental entities should consult the relevant entity's electronic signature rules.

In light of the increasing reliance on technology in business, it is likely that compliance with Virginia's electronic signature rules will continue to be an important issue for businesses in the future. Businesses with questions about Virginia law on the issue of electronic signatures should seek the assistance of legal counsel.

This article is meant to bring awareness to these topics and are not intended to be used as legal advice.