The Use of Electronic Documents and Electronic Signatures



The use of the Internet to deliver documentation mostly through email or through the sharing of a portal has now become not only convenient but necessary. In addition, parties to agreements no longer have the luxury of meeting in the same place and affixing "wet signatures" to documents. In this environment it is essential to understand that the legal requirements that documents and signatures are necessary to create contractual rights, legal rights or complete transactions can be satisfied through the use of electronic documents and electronic signatures.

The *Electronic Commerce Act*, 2000, SO 2000, c 17 (the "**Act**") was passed by the Ontario legislature in 2000. Eight other provinces [with the exception of Québec], have enacted similar legislation.

The purpose of this legislation is to assist and enable the authentication, formalization and legal sanctioning of the use of electronic documents and the use of electronic signatures.

So, for example, the *Statute of Frauds*, RSO 1990, c S.19 (the "***Statute of Frauds***") requires a document to be in writing and signed by the parties to a transaction in order for there to be a legal transfer or conveyance of land. Even this requirement can now be satisfied [as of 2014] through the use of electronic documents and electronic signatures.

Consent

The Act only applies to situations and transactions where a person consents to using, providing or accepting information or a document in an electronic form. Section 3 of the Act provides that this consent can be express or implied. However the courts have readily found that parties have impliedly consented simply by communicating information, documents and agreements over text messages and email exchanges.

Electronic Documents

The Act provides for the formation of a contract by electronic communications (such as an exchange of email) unless the parties agree otherwise. If there is no agreement otherwise then a contract can be formed through the exchange of electronic communications.

With limited exceptions, information or a document to which the Act applies is not

invalid or unenforceable by reason only of being in electronic form. Section 4 operates such that a lease that only exists in electronic form is equal to and as binding as the same lease set out on paper, notwithstanding legal requirements like the *Statute of Frauds*. An email exchange can constitute an acknowledgment in writing and meet a signing requirement under the *Limitations Act*, *2002*, SO 2002, c 24, Sched B (the "***Limitations Act***").

According to Section 5 of the Act, a legal requirement that information or a document be in writing is satisfied by information or a document that is in electronic form if it is accessible so as to be usable for subsequent reference. For example, an email is accessible so as to be usable for subsequent reference.

Section 6 provides that a legal requirement that a person provide information or a document in writing to another person is satisfied by the provision of the information or document in an electronic form that is, (a) accessible by the other person so as to be usable for subsequent reference; and (b) capable of being retained by the other person.

Consequently, the use of email or PDF copies of documents satisfy the requirement under the statute.

If the statute or a contractual document stipulates that a certain document is required in a non-electronic form such as a notice of termination under a lease or notice of default under a security agreement, Section 7 of the Act states that the requirement is satisfied electronically if the information or document or electronic document is organized in the same or substantially the same way as the specified non-electronic form.

Electronic Signatures

Certain legislation and contractual requirements require a signature to authenticate a document or to comply with a particular statute.

For example, the signing of a purchase agreement for land, or the signing of any acknowledgement in writing under the *Limitations Act*, is satisfied by the use of an electronic signature.

An electronic signature is essentially any electronic information that a person creates or adopts in order to sign a document. This will include not only facsimile signatures that are appended electronically to a document but as well simply the use of email to exchange documents.

An email exchange can constitute an acknowledgment in writing and meet a signing requirement under the *Limitations Act*.

What is Excluded

Section 31 of the Act states that the only documents that the Act does not apply to are Wills, Codicils, trusts created by wills or codicils and powers of attorney for property or personal care of an individual. Finally, the Act stipulates that negotiable instruments such as promissory notes and cheques are excluded from the application of the Act.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be ought about your specific circumstances.

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