

Attachment 1

Electronic and Digital Signature Policy ITAM-0430

**COUNTY OF SANTA BARBARA  
INFORMATION TECHNOLOGY ADMINISTRATIVE MANUAL**

SUBJECT:	ELECTRONIC AND DIGITAL SIGNATURE POLICY	ITEM NUMBER:	ITAM-0430
OWNER:	DEPARTMENT OF GENERAL SERVICES	ADOPTION DATE:	MM/DD/2020
APPROVER(S):	COUNTY BOARD OF SUPERVISORS	REVIEW DATE:	MM/DD/2023
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I. Purpose

In order to utilize the available technologies to improve County efficiencies, the Board of Supervisors hereby establishes the following guidelines and requirements for the appropriate business use of digital and electronic signatures.

II. Definitions

1. Electronic signature: an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. The Uniform Electronic Transaction Act (UETA) authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. (Cal. Civ. Code §1633.1-1633.17)
2. Digital signature: an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (h) of Section 1633.2 of the Civil Code. California Government Code Section 16.5 lists more fully the criteria that must be met, in the event a public entity elects to use a digital signature, in order for the digital signature to have the same force and effect as a manual signature.
3. Wet signature: a signature marked on a physical document by a person in ink, using a pen.
4. Information Technology (IT): the technology involving the development, maintenance, security, and use of computer systems, software, and networks for the processing and distribution of data.

III. Scope

This policy applies countywide to documents used to conduct official County business, that require signature of any party where a signature is intended to show ownership, approval, authorization, or certification.

IV. Policy

It is the intent of the County to encourage the use of digital and electronic signatures where it is operationally and legally feasible to do so, where existing technology permits, and where it is authorized and otherwise appropriate based on the Department's preferences and legal requirements specifically applicable to that Department's business. Specifically, the County encourages the use of approved methods for digital signatures and/or electronic signatures in all internal activities, communications, documents, and transactions and the use of approved methods for digital signatures in all external activities, communications, documents, and transactions. In such situations, affixing a digital and/or electronic signature to the document in a manner consistent with this policy shall satisfy the County's requirements for signing a document.

If parties have agreed to conduct a transaction by electronic means and a law requires a

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person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt.

1. Electronic or Digital Signatures

The Uniform Electronic Transaction Act (UETA) authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency, when both parties agree to its use. (Cal. Civ. Code § 1633.1 – 1633.17). The electronic signature must be supported by evidence that the signature is the act of the intended person. An agreement executed with an electronic signature and in accordance with applicable requirements has the same legal enforceability as a wet signature, subject to documents that are exempt.

A digital signature is a type of electronic signature with strict security requirements that may be used to execute certain written communications and agreements with the County if it satisfies the requirements found in Cal. Gov. Code § 16.5, et. seq. and Title 2, division 7 Chapter 10 of the California Code of Regulations. (2 CCR § 22000-22005)

2. Business Uses – includes but is not limited to:

(a) Board Letters

Routing coversheets: Signatures on Board Letter routing cover sheets can be made by any means (wet, electronic, scanned, faxed, or digital); they serve to confirm the County's internal review process has been followed.

Concurrence and Department Head signatures: Concurrence and Department Head signatures on Board Letters can be made by any means (wet electronic, scanned, faxed, or digital) and generally serve to confirm the County's internal review process has been followed and concurrence has been granted.

(b) Contracts

Parties to the contract: Signatures on contracts can be made by electronic, scanned, faxed, and/or digital means, but if non-wet signatures are used, the parties must agree to conduct the transaction electronically in a separate and optional agreement. (Civ Code § 1633.5(b)). Contracts signed with proper electronic and digital signatures are valid and enforceable. (Cal Civ. Code § 1633.7). NOTE - There are some transactions where electronic/digital signatures cannot be used; see section VI. List of Excluded Documents for a non-exclusive list of such transactions.

Concurrences: Concurrence signatures on contracts can generally be made by any means (wet, electronic, scanned, faxed, or digital). In some cases, internal concurrence is required in order for a contract to be valid, and the concurrence signature should satisfy the same authentication requirements that apply to other electronic signatures. Consult County Counsel for questions about

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specific instances where this will be required.

3. Requirements for Use of Electronic or Digital Signatures in Contracts with External Parties

- (a) **System Approval:** The system used for the creation of the electronic or digital signature must be approved by the Santa Barbara County Executive Information Technology Council (EITC) and be in accordance with state law. The EITC and supporting governance committees, will be responsible to determine acceptable technologies and eSignature providers consistent with current State legal requirements and industry best practices to ensure the security and integrity of the data and the signature.

The Information and Communications Technology (ICT) division, under the Department of General Services is responsible for providing network infrastructure, network access, data storage, application services, and e-mail services to Departments in support of this policy.

- (b) **Express Agreement:** When the parties to an agreement desire to use electronic signatures for executing an agreement, the parties must agree to conduct the transaction by electronic means. (Civ Code § 1633.5.) Only digital signatures can be used for electronic transactions with external parties. Except for a separate and optional agreement, the primary purpose of which is to authorize a transaction to be conducted by electronic means, an agreement to conduct a transaction by electronic means may not be contained in a standard form contract that is not an electronic record. An agreement in such a standard form contract may not be conditioned upon an agreement to conduct transactions by electronic means. Absent such an agreement, the agreement must have a wet signature.
- (c) **Submission for Approval and Execution:** Once the electronic agreement is complete and has been digitally signed by the duly authorized representative of the other parties, it may be submitted for execution by the Board of Supervisors or the individual who has the delegated authority to bind the County for that contract type.
- (d) **Retention:** The executed electronic agreement must be maintained pursuant to applicable retention policies.
- (e) **Change or Error in Electronic Record:** If a change is needed or an error is being corrected within the electronic record of the fully executed agreement, those actions will comply with the requirements of Cal. Civ. Code § 1633.10 or will be addressed through a contract amendment.

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V. Responsibilities

Each Department has discretion to decide whether to permit the use of electronic and/or digital signatures. Departments should work with County Counsel to determine where applicable laws permit an electronic and/or digital signature to be used. In addition, each Department that opts to use electronic and/or digital signatures must adopt/amend their business practices to support the requirements of this Policy.

VI. Applicable Rules, Laws, and Regulations:

- (a) California Civil Code, §§ 1633.1 – 1633.17
- (b) California Government Code, § 16.5
- (c) California Code of Regulations, 2 CCR 22000-22205, “Criteria for Public Entities To Use in Accepting Digital Signatures.”
- (d) 15 U.S. Code § 7001 [U.S. Federal Electronic Signatures in Global and National Commerce Act]

VII. List of Excluded Documents:

Below is a list of transactions to which UETA does not apply and that are therefore not covered by this policy. While this policy does not authorize the use of electronic signatures for these transactions, other applicable laws may allow the use of electronic/digital signatures for these transactions. (Civil Code § 1633.3(f).) Departments should check with County Counsel to determine what rules apply to these transactions.

Note also that this list is not exhaustive; electronic signatures may be prohibited or may not be recommended in other transactions not listed below. Departments should check with County Counsel regarding other transactions for which the use of electronic signatures is prohibited or limited

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1. Civil Code

- (a) Creation and execution of wills, codicils, or testamentary trusts (Civil Code § 1633.3(b)(1).)
- (b) Documentation required for the foreclosure of a mortgage or deed of trust (Civil Code, §§ 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, and 2937.)
- (c) When a law requires that specifically identifiable text or disclosures must be signed or initialed separately. (Civil Code § 1633.3(b)(4).)
- (d) Requests to obtain medical information (Civil Code § 56.11.)
- (e) Genetic test results (Civil Code § 56.17.)
- (f) Notices related to the Mobile home Residency Law (Civil Code § 798.14.)
- (g) Notice of Blanket Encumbrance on Real Property (Civil Code § 1133.)
- (h) Statement of Defects in a transfer of real property (Civil Code § 1134.)
- (i) Cancellation or Rescission of a home solicitation contract or offer (Civil Code § 1689.6, 1689.7, 1689.13.)
- (j) Home Equity Sales Contracts (Civil Code § 1695 *et seq.*)
- (k) Debit or credit obligations (Civil Code § 1720.)
- (l) Consumer Credit Reporting Agencies documents. (Civil Code §§ 1785.15, 1789.14, 1789.16)
- (m) Vehicle transfer disclosure statements. (Civil Code § 1793.23.)
- (n) Retail Installment Contracts (Civil Code § 1801 *et seq.*)
- (o) Notices for sales from non-payment of judgement or unclaimed property (Civil Code §§ 1861.24, 1862.5.)
- (p) Certain loan documents (Civil Code §§ 1917.712, 1917.713.)
- (q) Rental applications with credit reports and notices to former tenants (Civil Code §§ 1950.6, 1983.)
- (r) Transactions involving mortgage foreclosure consultants (Civil Code § 2945 *et seq.*), notices of delinquency (Civil Code § 2954.5), and home financing disclosures (Civil Code § 2963).
- (s) Automobile financing and leasing (Civil Code §§ 2981 *et seq.* and 2985.7 *et seq.*).
- (t) Liens on Vehicles (Civil Code § 3071.5.)
- (u) Common Interest Developments (Civil Code § 4000 *et seq.*)
- (v) Commercial and Industrial Common Interest Developments (Civil Code § 6500 *et seq.*)

2. Uniform Commercial Code: Documents described in Division 1, 3, 4, 5, 8, 9, and 11 of the Uniform Commercial Code.

- (a) Transactions subject the General Provisions, Division 1 of the UCC commencing with § 1101, except §§ 1206 and 1306.
- (b) Negotiable Instruments subject to Division 3 of the UCC commencing with § 3101
- (c) Bank Deposits and Collections subject to Division 4 of the UCC commencing with § 4101

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- (d) Letters of Credit subject to Division 5 of the UCC commencing with § 5101
  - (e) Investment Securities subject to Division 8 of the UCC commencing with § 8101
  - (f) Secured Transactions subject to Division 9 of the UCC commencing with § 9101
  - (g) Funds Transfers subject to Division 11 of the UCC commencing with § 11101
3. Telephone solicitation (Business and Professions Code §17511.5.)
  4. Financial Code
    - (a) Certain Provisions of Premium Finance Agreements/ right to cancel (Financial Code § 18608 (b).)
    - (b) Liens on motor vehicles and disposition of repossessed vehicles (Financial Code §22328.)
  5. Health and Safety Code
    - (a) Health Care Service Plan documents (Health and Safety Code §§ 1358.15, 1365, 1368.01, 1368.1, 1371,
    - (b) Manufacture Housing documents (Health and Safety Code § 18035.5.)
  6. Insurance Code
    - (a) Individual and group disability policies (Insurance Code §786.)
    - (b) Medicare documents (Insurance Code § 10192.18)
    - (c) Certain other insurance documents (Insurance Code §§ 10199.44, 10199.46, 10235.16, 10235.40, 11624.09, and 11624.1).
  7. Termination of utility service for nonpayment. (Public Utilities Code §§ 779.1, 10010.1, 16482.)
  8. Brokering agreements for manufacturers, transporters and dealers of vehicles (Vehicle Code §11738.)
  9. Any notice that is required to be sent when obtaining possession of Real Property (Code of Civil Procedure §1162.)