

OKLAHOMA REAL ESTATE COMMISSION

Senate Bill 657 Amends Uniform Electronic Transaction Act

This article will attempt to explain Oklahoma's law that was passed in 2001 that applied language regarding electronic transactions. The Commission believes that if you know the history of why the law was passed it will be easier to comprehend the most recent change.

In 1999, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Electronic Transaction Act (UETA) in an attempt to make state laws regarding electronic transactions more consistent. To date, the UETA has been adopted by 47 states and the District of Columbia.

Federal law was passed in 2000 to promote interstate and foreign commerce, stating that a signature, contract, or other record relating to a transaction *may not be denied legal effect or enforceability solely* because it is in electronic form. State laws could modify federal law if the State (1) adopted the UETA; or (2) specified alternative requirements for the use of electronic signatures that were consistent with federal law and were technology neutral.

Oklahoma passed its version of UETA in 2001 (Title 12A, O.S., Sections 15-101 – 15-121); however, Oklahoma's law added requirements that were not included in the UETA as follows:

- a. Oklahoma law required that all "real estate transactions" must use a digital signature issued by a "registered certification authority". The use of a registered certification authority was to be regulated by the Oklahoma Secretary of State, who was to adopt rules to register certification authorities.
- b. **It is important to note that an electronic signature is not the same as a digital signature:**
 - 1) A **digital** signature is defined as a signature consisting of a *transformation of an electronic message using an asymmetric crypto system that authenticates and verifies the signer* through extremely secure measures and ensures that no alteration has occurred since the transformation.
 - 2) An **electronic** signature means an electronic sound, symbol, or process attached to a record and executed or adopted by a person with the intent to sign the record.

- c. Had the rules been promulgated, the “registered certification authorities” would have been allowed to issue “digital signatures” to consumers (for a fee); however, no rules were ever promulgated by the Secretary of State.
- d. After significant research, no other state was found that required consumers to obtain a digital signature from a “registered certification authority” in order for them to be able to sign a real estate contract.
- e. Therefore, the Oklahoma Association of Realtors moved forward to amend Oklahoma’s UETA law to eliminate the requirement of “real estate transactions” having to use a digital signature authorized by a registered certification authority.

Senate Bill 657 contained this amendment and an emergency measure asking that the bill become effective and in full force after its passage and approval -- Governor Fallin signed SB 657 on April 13, 2011, thereby making the bill effective on that date.

In conclusion

Oklahoma's Uniform Electronic Signature Act, Title 12A, Oklahoma Statutes, Sections 15-101 - 15-121, provides that electronic signatures may be used in an agreement *if both parties agree to conduct the transaction by electronic means*. Whether the parties agree to conduct the transaction by electronic means is determined from "the context and surrounding circumstances, including the parties' conduct." [12A Okla. Stat. §15-105.]

To eliminate any question about whether the parties intended to conduct the transaction electronically or agree to the use of electronic signatures, the best practice is to include language in the agreement similar to this example:

"The parties hereto agree to conduct the transaction by electronic means and hereby state that the electronic signature shall have the same force and effect as an original signature".

Once the parties have agreed to the electronic transaction process, the email, fax, telegram, etc. must be able to be stored or printed by the parties to the transaction.

If you have additional questions regarding this act, we suggest you read the Uniform Electronic Transaction Act which can be found on the Commission’s website, under News Releases (right margin of Commission’s home web page).

Questions and Answers

Q. If a consumer wants to sign a listing agreement or sales contract and transmit it electronically, what would qualify as an electronic signature?

A. The law states that an electronic signature means a sound, symbol, or process attached to or associated with a record and executed or adopted by a person with the intent to sign the record.

An example of an electronic signature could be, but not limited to:

- 1) a signature received by fax,
- 2) an email executing or adopting the terms and conditions of the contract, or
- 3) a telegram executing or adopting the term and conditions of the contract, etc.

as long as it was the person's intent to sign the record.

Q. Why is a digital signature different than an electronic signature?

A. A digital signature authenticates and verifies the signer through extremely secure measures and ensures that no alteration has occurred since the signer's signature was transformed. A digital signature qualifies as an electronic signature.

An electronic signature is a means by which the signer can execute or adopt something electronically by way of sending an electronic record indicating their intention to sign the record.

Q. Must a licensee retain copies of electronic records used in an electronic transaction?

A. Yes. All documents, emails, telegrams, etc. must be retained in a transaction file for 5 years from the date of consummation of the transaction according to Commission Rule. Further, there maybe other laws pertaining to electronic transactions that may require that the electronic record be retained or stored in particular formats.

May 18, 2011