Use of Electronic Signatures on Bank Loan Documents

Introduction

The federal Electronic Signatures in Global and National Commerce Act (“E-Sign Act”) and Tennessee’s Uniform Electronic Transactions Act (“UETA”) broadly validate the legality and enforceability of electronic records and signatures in most documents. Certain areas of the law, including the majority of the Uniform Commercial Code, have been expressly excluded from these acts and include their own requirements. However, the majority of the UCC independently validates the legality and enforceability of electronic records and signatures. Therefore, regardless of the body of law covering a particular loan, electronic signatures on bank loan documents are valid.

In this way, the E-Sign Act gives electronic signatures the same legal effect as actual signatures. A digital signature is not necessarily an electronic form of a person's written signature; a digital signature can be anything which verifies that the person signing the contract is actually the person he or she claims to be.

Additionally, both the use and acceptance of electronic transactions is wholly voluntary. The E-Sign Act provides that, except for certain governmental transactions, the act does not “require any person to agree to use or accept electronic records or electronic signatures.”

Exceptions to E-Sign Act

The E-Sign Act includes specific exceptions for certain documents and transactions that mandate a hard copy of a document and/or signature. For instance, this Act does not apply to state statutes governing the creation and execution of wills, codicils, or testamentary trusts or adoption, divorce, or other matters of family law. With regard to the UCC, Article 5 (letters of credit), Article 8 (securities), and Article 9 (security interests) already incorporate the use of electronic transactions. Article 4A (funds transfers) does not have a writing requirement. Thus, the only chapter of the UCC which is excluded in its entirety is Article 4 (bank deposits and collections).

Tennessee Statute

The Tennessee legislature has also enacted a state statute (“UETA”.) Like the E-Sign Act, UETA “applies to electronic records and electronic signatures relating to a transaction.” Additionally, UETA does not require parties to conduct transactions by electronic means. Rather, the UETA governs “transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.”

Uniform Commercial Code

For all practical purposes, security agreements and other loan documents may be executed electronically. Provisions of the UCC expressly provide for the use of electronic signatures and transactions. The definition of “authenticate” does not explicitly include electronic signatures, but it does allow the debtor “[w]ith present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.” Therefore, a debtor can sign a tangible record (e.g., security agreement typed on paper) or accept or adopt an electronic record (e.g., a security agreement that is electronically stored) to authenticate a security agreement. The definition of "record" encompasses both tangible and electronic records.

Unsecured Loans

If a bank loan is unsecured, the loan is covered by UETA's general provisions. In unsecured loan transactions, the use of electronic signatures is validated by UETA's fundamental purpose that the medium in which a record, signature, or contract is created, presented, or retained does not affect its legal significance. In these situations, "[t]he fact that the information is set forth in an electronic, as opposed to paper, record is irrelevant." All that is required is that the parties consent to the use of electronic medium in their transaction.

Summary

The E-Sign Act and the UETA broadly validate the legality and enforceability of electronic records and signatures in most documents. Certain areas of the law, including the majority of the Uniform Commercial Code, have been expressly excluded from these acts and include their own requirements. However, the majority of the UCC likewise validates the legality and enforceability of electronic records and signatures. Therefore, regardless of the body of law covering a particular loan, electronic signatures on bank loan documents are valid.