

POLICY AUTHORIZING USE OF FACSIMILE AND DIGITAL SIGNATURES

In order to utilize the available technologies to improve County efficiencies the Board of Supervisors hereby establishes the following procedures for the use of facsimile (faxed) and digital signatures. This policy establishes when an electronic/digital or facsimile signature may replace a hand-written (wet) signature, with the eventual goal of encouraging the use of paperless, electronic documents whenever appropriate. This policy applies to all signatures used in processing independent contracts and requests for proposals as well as internal communications, routing slips, external correspondence, and other official activities. However, this policy does not require any department to use electronic signatures, nor mandate any specific time frame for County implementation.

I. COMMON TYPES OF DOCUMENTS

This memo is intended to broadly permit the use of electronic or facsimile signatures. The most common types of documents are listed in the following table, with notes on each type of document.

Document Type	Is Use of an Electronic Signature Acceptable?	Notes (if an electronic signature is used)
internal/external memos, Board memos, normal letters/ correspondence	Yes	The signature does <u>not</u> need to have added security features for these purposes, but the Department <u>may</u> use a Secure Electronic Signature as outlined by this memo.
Service contracts above \$50,000	Yes	Signatures from vendors can be electronic/digital, facsimile, or original/wet. The County CAO, may establish or modify guidelines for the County's signatures from time to time as necessary.
Service contracts below \$50,000	Yes	Signatures from vendors can be electronic, facsimile, or original/wet. The Department Head or designee <u>must</u> use a <u>Secure Electronic Signature</u> (or original signature, either in hard copy or transmitted through facsimile/scanned) as outlined by this memo in order to protect the Department Head's signature authority.
Board Resolutions, Ordinances, and other items	Yes	See further discussion herein. The County CAO may establish or modify guidelines for the County's signatures from time to time as necessary.
HR-related Items, Employee Reviews	Yes	If an employee requests that an item be signed in hardcopy format, the Department should issue the item in that format. If an employee is required to sign something a hardcopy signature is generally preferable, but the document may be scanned and then stored electronically to extent allowed in any document retention policy

II. **CONTRACT FORMS.** When faxed or electronic signatures are used, the contract must state such mutual understanding and authorization. Please see amendment to County's standard exhibit "C", attached hereto as Attachment 2. A similar provision may be inserted into contracts not on the County's standard contract form, if approved by County Counsel.

III. **USE OF FACSIMILE SIGNATURE**

A facsimile signature is defined as a signature that is copied or scanned from a document bearing an authorized original signature. Under California law, a document bearing a facsimile signature is equivalent to the original copy in most situations unless an original signature is required by law. A facsimile signature can be created when a document is copied on a copy machine, when it is scanned, or when it is transmitted via a facsimile (fax) machine.

The use of a facsimile signature of the Chairperson of the Board is authorized for use on all copies of resolutions, orders, ordinances, letters, contracts, minutes, and records of this Board, upon which the chairperson has been authorized, empowered or instructed to sign by motion, order or resolution of the Board, or by ordinance or statute. The chairperson may delegate the affixing of his/her facsimile signature or digital signature to the Clerk of the Board of Supervisors or his/her duly qualified deputies, by executing a document approved as to form by the County Counsel reciting the delegation and setting forth what shall be considered his/her signature.

Department Heads shall **not** delegate the affixing his/her facsimile signature to any other person in their office, but shall sign all contracts/documents (even if in scanned, electronic or fax form) if the Department Head would be responsible for signing a document with an original signature prior to adoption of this policy. Department Heads shall be responsible for ensuring the security of their signature if electronic means are utilized.

IV. **DIGITAL OR ELECTRONIC SIGNATURES**

1. DEFINITIONS

- A. **Electronic signature** means 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)
- B. **Digital signature** means 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 (i) of Section 1633.2 of the Civil Code.

2. 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 Section 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 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)

The signatures must be:

1. Unique to the person using it;
2. Capable of verification;
3. Under the sole control of the person using it; and Must be linked to the data in such a way that if the data is changed the signature will be invalidated.

V. PROCEDURES FOR USE OF ELECTRONIC OR DIGITAL SIGNATURES

System Approval:

- A. The system used for the creation of the electronic signature must be approved by County of San Benito Information Technology Department and in accordance with state law.
 - Express Agreement: When the parties to an agreement desire to use electronic signatures for executing the agreement, a term shall be included in the agreement to memorialize the use of electronic signatures for the agreement. Absent such terms in an agreement, the agreement must have a wet signature. No vendor may be forced to utilize an electronic or faxed signature.
- B. **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.
- C. **Retention:** The executed electronic agreement must be maintained pursuant to the County's record retention policy and any applicable state statutes within a County approved secure retention process. The secure method of retention of the final agreement must lock the document, preventing any changes to the final executed agreement.

VI. 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.

VII. EXEMPTIONS

Electronic signatures may not be used in all situations. Documents that may not be completed using electronic signature include, but are not limited to:

1. Laws governing the creation and execution of wills, codicils, or testamentary trusts;
2. Certain transactions governed by the Uniform Commercial Code; laws requiring

- specifically that identifiable text or disclosures in a record or portion of a record be separately signed, including initialed, from the record; and
3. Certain transactions governed by the Business and Professions Code. (Cal. Civ. Code § 1633.3)

A list of documents that may not be signed with an electronic or digital signature pursuant to statute is incorporated herein and Attachment I

VIII PRIVACY CONTROLS

Because it is possible to use an electronic signature to easily create a forged copy, caution should be used when posting an electronic signature on any public-facing Internet site or other medium. In such situations, the Department should consider redacting all signatures (whether representing the County or any other party) in order to minimize making the signature itself widely available. The redaction should generally include some kind of statement such as "redacted" or "redacted to maintain privacy" or "original signature on file" or "original signed by [person's name or title]"

ATTACHMENT I

LIST OF EXCLUDED DOCUMENTS

1. Civil Code

- a. Creation and execution of wills, codicils, or testamentary trusts (Civil Code § 1633.3(b)(1).)
- a. Documentation required for the foreclosure of a mortgage or deed of trust (Civil Code, §§ 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, and 2937.)
- b. When a law requires that specifically identifiable text or disclosures must be signed or initialed separately. (Civil Code § 1633.3(b)(4).)
- c. Requests to obtain medical information (Civil Code § 56.11.)
- d. Genetic test results (Civil Code § 56.17.)
- e. Notices related to the Mobile home Residency Law (Civil Code § 798.14.)
- f. Notice of Blanket Encumbrance on Real Property (Civil Code § 1133.)
- g. Statement of Defects in a transfer of real property (Civil Code § 1134.)
- h. Cancellation or Rescission of a home solicitation contract or offer (Civil Code §§ 1689.6, 1689.7, 1689.13.)
- i. Home Equity Sales Contracts (Civil Code § 1695.)
- j. Debit or credit obligations (Civil Code § 1720.)
- k. Consumer Credit Reporting Agencies documents (Civil Code §§ 1785.15, 1789.14, 1789.16, or 1793.23.)
- l. Retail Installment Contracts (Civil Code § 1801 et seq.)
- m. Notices for sales from non-payment of judgement or unclaimed property (Civil Code §§ 1861.24, 1862.5.)
- n. Loans (Civil Code §§ 1917.712, 1917.713.)
- o. Rental applications with credit reports and notices (Civil Code §§ 1950.6, 1983.)
- p. Liens on Vehicles (Civil Code § 3017.5.)
- q. Common Interest Developments (Civil Code § 4000.)
- r. Commercial and Industrial Common Interest Developments (Civil Code § 6500.)

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
- 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
- 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 moto vehicles and disposition of repossessed vehicles (Financial Code §22328.)
- 5. Health Care Service Plan documents (Health and Safety Code §§ 1358.15, 1365, 1368.01, 1368.1, 1371, 18035.5.)
- 6. Individual and group disability policies (Insurance Code §786.)
- 7. Termination of utility service for nonpayment. (Public Utilities Code §§ 779.1, 10009.1, 10010.1, 12823.1, 16482.1.)
- 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.)

ATTACHMENT 2

MODIFIED ATTACHMENT "C" TO BE USED ON ALL CONTRACTS WHEN FAXED OR ELECTRONIC SIGNATURES WILL BE USED.

(IT IS RECOMMENDED, BUT NOT REQUIRED TO START USING THIS ATTACHMENT "C" VERSION ON ALL FUTURE CONTRACTS)