

Charles Law PLLC

Being quarantined has made wet ink signatures difficult, with signatories working from home and either not having access to a printer and scanner or, because of firm policy, not being able to print. Social distancing is also making getting documents notarized a challenge.

Electronic Signatures

The Electronic Signatures in Global and National Commerce Act (ESIGN) ensures the validity of contracts in interstate and foreign commerce that are executed by electronic signatures. ESIGN excludes, among other things, any contracts governed by the Uniform Commercial Code in effect in a given state, other than sales of goods and leases. However, Article 8 of the UCC which governs securities and Article 9 which governs secured transactions, include provisions governing electronics signatures.

In New York, the Electronic Signature Records Act (ESRA), to the extent not inconsistent with ESIGN, governs the validity of agreements that are signed electronically. ESRA excludes, among other things, “any negotiable instruments and other instruments of title wherein possession of the instrument is deemed to confer title, unless an electronic version of such record is created, stored or transferred pursuant to this article in a manner that allows for the existence of only one unique, identifiable and unalterable version which cannot be copied except in a form that is readily identifiable as a copy”.

ISDA Agreements and other trading agreements governed by New York law can all be executed by electronic signature and they will have the same validity and legal effect as if they were signed with wet ink.

Remote Online Notarization

Fourteen states have adopted the 2018 amendment to the Revised Uniform Law on Notarial Acts (RULONA) which allows remote online notarization through the use of audio-visual recording and identity-proofing technology. New York State has not adopted either RULONA or its amendment. Notaries in New York are currently relying on Executive Order 202.7 which permits remote online notarization under certain conditions. The Executive Order has been extended until June 6, 2020.

Any questions on Electronic Signatures or Remote Online Notarization can be directed to GuyLaine Charles at guylaine@charleslawpllc.com.