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Electronic Execution of Documents

8/18/2021

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Practices: Real Estate

Electronic execution of a legal document is a practical, reliable, efficient and effective means of establishing an agreement of parties to be bound to the terms, conditions and provisions of the document. Two uniform U.S. laws, the Uniform Electronic Transactions Act and the Electronic Signatures in Global and National Commerce Act, have firmly established the foregoing. While Illinois is one of only three states which have not adopted these U.S. laws, Illinois has enacted its own Electronic Commerce Security Act, which for virtually all intents and purposes, accomplishes the same objectives and provides for the same certainty as the two uniform acts.

All that is required for enforceability and validity of an electronically conducted transaction or executed document under all of the foregoing laws is that the parties express their agreement that the transaction be conducted electronically and/or executed electronically.

Digital signatures are recognized as a specific type of electronic signature which provides an added signor authentication element. This is the inclusion of a “digital certificate” that is issued by the platform only when the identity of the signatory is validated. While there are other types of additional authentication layers, most platforms use a type of encryption called “public key infrastructure” or “PKI” to associate the specific signatory with the specific document. Thus, an additional assurance of the signor’s identity is provided.

To assure the recognition of the intent of the parties to a document that the transaction contemplated therein can be conducted wholly electronically and that electronic execution of the document will bind the parties, a provision such as the following should be contained in the document:

“This document may be signed electronically, either encrypted or digitally, in multiple counterparts each of which when taken together shall be deemed to be and shall constitute one and the same instrument. Signing of this document electronically shall as effectively authenticate the execution hereof as delivery of a manually/originally signed counterpart. An electronic signature of this document means any electronic sound, symbol or process attached to or logically associated with execution hereof and adopted by a party hereto with the intent to sign this document, including facsimile, .pdf and electronic mail signatures. The transactions contemplated by this document may be conducted and accomplished electronically solely, and if so, shall be of full force and effect and binding upon the parties hereto.”