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# Electronic Signatures and Transactions

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Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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<b>Electronic Signatures and Transactions ..... 3</b>
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# Electronic Signatures and Transactions

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County officials should also be aware of recent state and federal laws which have been passed to authorize and encourage electronic transactions and the acceptance of electronic signatures. In 2000, the U.S.

Congress passed the Electronic Signatures in Global and National Commerce Act ("E-Sign").<sup>[1]</sup> That same year, Tennessee passed its own Electronic Commerce Act of 2000. This law was superceded and replaced the next year, when the Tennessee General Assembly then enacted the Uniform Electronic Transactions Act (UETA),<sup>[2]</sup> which was a model law crafted by the National Conference of Commissioners on Uniform State Laws in 1999 and adopted by many states. These laws were all intended to facilitate and validate electronic transactions, but they do not replace existing laws or require the use of electronic signatures.

## Electronic Signatures in Global and National Commerce Act (E-Sign)

The E-Sign Act did not amend or pre-empt existing laws specifically, but provided that notwithstanding any statute, regulation, or other rule of law, with respect to any transaction in or affecting interstate or foreign commerce (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.<sup>[3]</sup> Therefore, if a state law requires a transaction or signature to be "in writing," the federal E-Sign Act requires that you interpret the term "in writing" to include electronic files and signatures. E-Sign specifically exempts certain transactions from its provisions, including—

1. a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;
2. a state statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law; or
3. the Uniform Commercial Code, as in effect in any state, other than sections 1-107 and 1-206 and Articles 2 and 2A.<sup>[4]</sup>

Additionally, E-Sign does not apply to—

1. court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;
2. any notice of the following—
  - Cancellation or termination of utility services (including water, heat, and power);
  - Default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;
  - Cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); or
  - Recall of a product, or material failure of a product, that risks endangering health or safety; or
3. any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials, wills, family law matters, court orders, most matters governed by the Uniform Commercial Code, notices of cancellation of utilities and notices of foreclosure.<sup>[5]</sup>

## Uniform Electronic Transactions Act (UETA)

As with E-Sign, this act does not require a record or signature to be created or sent in electronic format and only applies to transactions where all parties have agreed to conduct the transaction electronically but it does provide broad authorization for the use of electronic records and signatures. It also more directly controls the creation or receipt of such records and signatures by state and local government offices. The act provides that if the law requires a record or signature to be in writing, an electronic record or signature satisfies the requirement; however, the law also provides that if a law other than this act requires a record to be posted or displayed in a certain manner, to be sent, communicated or transmitted by a specified method, or to contain information that is formatted in a certain manner, then the record must be posted, displayed, sent, communicated or transmitted in accordance with that law. Similarly, if a law requires a record to be retained, the requirement is satisfied by keeping it electronically if the electronic record accurately reflects the information in the record and if the electronic record remains accessible for later

reference. One provision of the act notably states however that the act does not preclude a governmental agency of this state (which is defined to include county governments) from specifying additional requirements for the retention of a record subject to the agency's jurisdiction. Therefore, even though two parties to a transaction may agree to perform that transaction electronically, if a county office must receive and retain a copy of that transaction, the county could require that copy to be in paper format.

Another section of the UETA specifically governs the creation and retention of electronic records and the conversion of written records to electronic form by governmental agencies in Tennessee. It provides for the Information Systems Council (ISC) to determine whether and the extent to which the state or any of its agencies create and retain electronic records and convert written records to electronic records. Officials of counties and municipalities and other political subdivisions are authorized to determine for themselves whether they will create and retain electronic records and convert written records to electronic records. Those officials can also determine whether the governmental agency will send and accept electronic records and signatures to and from other persons. To the extent that any governmental agency chooses to do this, the Information Systems Council may establish certain rules and regulations governing the process. Local government officials that choose to send and receive electronic records that contain electronic signatures, must file certain documentation with the comptroller prior to offering such service as well as providing a post-implementation review.

In 2003, the General Assembly amended state law to clarify that the Tennessee Uniform Electronic Transactions Act does not supersede the federal E-Sign Act in regard to the following: (1) The consumer disclosure requirement (when a written record of contract terms is required by law an electronic record can be used instead, if the consumer consents to such); (2) The accuracy and accessibility requirement (when a law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record); and (3) Denial of electronic record requirement (if an electronic record is not in a form that can be retained and accurately reproduced for later reference by all parties, such electronic record's legal effect, validity, or enforceability may be denied). This legislature also clarified that the Uniform Electronic Transactions Act does not authorize the electronic delivery of any of the following (consistent with the E-Sign Act):

1. Court orders or notices or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;
2. Any notice of: cancellation or termination of utility services; default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual; the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); or recall of a product, or material failure of a product, that risks endangering health or safety; or
3. Any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

So far, the impact of these laws on the daily operation of local government offices has not been significantly burdensome. However, they are a clear indication that in the future local government offices will have to adapt to a private sector that is moving further and further away from traditional paper transactions and relying more on electronic commerce and communications.

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[1] 15 U.S.C. §§ 7001, *et seq.*

[2] 2001 Public Chapter 72, codified primarily in T.C.A. §§ 47-10-101, *et seq.*

[3] 15 U.S.C. § 7001(a)(1) and (2).

[4] 15 U.S.C.A. § 7003(a).

[5] 15 U.S.C.A. § 7003(b).

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