



ELECTRONIC SIGNATURES BEST PRACTICE FOR ALL PUBLIC AGENCIES

Date Effective: April 8, 2010

PURPOSE

The purpose of this best practice is to establish a set of statewide recommendations for electronic signatures. This best practice is not intended to be a statement of the current ability of public agencies. It is a statement of goals and expectations. The realization of such goals and expectations will result in more effective records and information management.

SCOPE

This best practice applies to all information created or received by public agencies.

STATEMENT OF AUTHORITY

Pursuant to 1 V.S.A. § 317a, 3 V.S.A. § 117, 3 V.S.A. § 218, 3 V.S.A. § 2222, 3 V.S.A. § 2283b, and 22 V.S.A. § 901, the Vermont State Archives and Records Administration (Office of the Secretary of State) and the Department of Information and Innovation (Agency of Administration) are authorized to establish and promulgate standards, procedures and techniques for the effective management of public records.

STATEMENT OF BENEFITS

The authenticity and reliability of electronic records and signatures relating to transactions are dependent on the accompanying processes, supplemental records and the overall context in which records are created, transferred, signed, and stored. Understanding the requirements under the Uniform Electronic Transaction Act (9 V.S.A. §§ 270-290) will result in a number of benefits, including the ability to fulfill legal mandates electronically if the law allows and strengthened the legal effect or enforceability electronic records and signatures.

STATEMENT OF RESPONSIBILITY

Establishing, using and sustaining electronic signatures over time requires a multidisciplinary approach. Public agencies should make effective use of the necessary range of expertise available throughout the State of Vermont. This includes expertise in archives, records and information management, information technology, business process management, risk management, and law.

CONTACT

Questions about this best practice may be directed to the Chief Information Officer or Vermont State Archivist.



DEFINITIONS

Agreement: The bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction (9 V.S.A. § 271(1)).

Electronic: Technologies having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities (9 V.S.A. § 271(6)).

Electronic Record: A record created, generated, sent, communicated, received, or stored by electronic means (9 V.S.A. § 271(8)). See also: **Record**.

Electronic Signature: An electronic sound, symbol, or process attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record (9 V.S.A. § 271(9)). See also: **Sign**.

Information: Data, text, images, sounds, codes, computer programs, software, databases, or the like (9 V.S.A. § 271(9)). See also: **Record**.

Information processing system: An electronic system for creating, generating, sending, receiving, storing, displaying, or processing information (9 V.S.A. § 271(12)). See also: **Recordkeeping System**.

Person: An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity (9 V.S.A. § 271(13)).

Record: Any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of agency business (1 V.S.A. § 317(b)).

Recordkeeping System: A system of coordinated policies and procedures that enable records to be collected, organized, and categorized to facilitate their management, including preservation, retrieval, use, and disposition. Systems may be manual or electronic.

Security Procedure: A procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. (9 V.S.A. § 271(15)).

Sign: Any symbol executed or adopted with present intention to authentication, adopt or accept a writing (9 V.S.A. § 5102; 9A V.S.A. § 1-201).

Transaction: An action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs (9 V.S.A. § 271(17)).



ELECTRONIC SIGNATURES BEST PRACTICE

- 1) An electronic signature is an electronic sound, symbol, or process attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record (9 V.S.A. § 271).**
 - Electronic signatures may be used to present intention to adopt, authorize or approve the content contained within a record provided that both parties have agreed to conduct transactions by electronic means (9 V.S.A. § 274); however:
 - i. The Uniform Electronic Transactions Act (UETA) does not “require any person to agree to use or accept electronic records or electronic signatures” (9 V.S.A. § 286).

- 2) An electronic signature can be used if the law requires a signature unless there is a specific statute, regulation, or rule of law that requires records to be written, signed or in non-electronic form. (9 V.S.A. § 276; 9 V.S.A. § 286).**
 - A signature shall not be denied legal affect or enforceability solely because it is in electronic form (9 V.S.A. § 276); however:
 - i. Signature requirements in law are only “satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt” (9 V.S.A. § 277).

- 3) Electronic records created or received by public agencies shall be appropriately attributed to the persons responsible for their creation and/or authorization or approval.**
 - An electronic record or electronic signature is attributable to a person if it is an act of that person (9 V.S.A. § 278).
 - Electronic signatures must be uniquely associated with specific individuals or entities and verifiable.
 - i. Agencies must have reliable methods for generating and managing electronic signatures.
 - ii. Agencies must have security procedures for verifying and authenticating electronic signatures.

- 4) Agencies must have an electronic recordkeeping system that can receive, store, retain, and reproduce electronic records and signatures relating to transactions in their original form as required by law.**
 - The system is governed by a security procedure that can verify that a signature is that of specific person and detect changes or errors in the information of an electronic record (9 V.S.A. §§ 278-279).
 - i. The system accurately reflects the information set forth in the record at the time and after it was first generated in its final form as an electronic record or otherwise (9 V.S.A. § 281).
 - ii. The record is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise (9 V.S.A. § 281).
 - iii. The record is capable of being retained until retention requirements have been met (1 V.S.A. 317a).