

TITLE: Monterey County Policy on Electronic Signatures	RESOLUTION NUMBER: 20-038 Date of Board of Supervisors Approval:

PURPOSE: In order to increase productivity, efficiency, security, and to further the County of Monterey’s goal of improving its environmental impact, this Countywide Electronic Signature Policy shall be utilized by County Departments. Pursuant to this Policy, the use of electronic signatures is encouraged and preferred, but not required.

This Policy explains when electronic signatures may be utilized, with the goal of encouraging the use of paperless, electronic documents whenever appropriate and permitted by law. This Policy applies to all signatures used in processing County documents and assumes the County signatory has been given the authority to sign as determined by each Department or the Board of Supervisors.

The legality and use of Electronic Signatures are currently governed by state and federal law as codified in 15 U.S.C. § 7001, *et seq.*; California Government Code §16.5; and California Civil Code §§1633.1, *et seq.*

POLICY: This policy applies to documents requiring the signature of any person that is required to demonstrate authorship, approval, authorization, or certification. It is the Policy of the County to encourage the use of electronic signatures in documents and transactions where it is operationally feasible to do so, and where permitted by law. In such situations, affixing an electronic signature to the document in a manner consistent with this Policy shall satisfy the County’s requirement for signing a document. As used in this Policy, the term “signature” includes using initials, where appropriate, on a document instead of a signature.

DEFINITIONS:

Electronic Record is a record created, generated, sent, communicated, received, or stored by electronic means.

Electronic Signature, or E-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 and have the same force and effect as the use of a manual signature.

Electronic Transaction is a transaction conducted or performed, in whole or in part, by electronic means or electronic records.

Proxy Signatures are when Person-A authorizes Person-B to sign Person-A’s signature on his/her behalf. (This is prohibited for Electronic Signatures by this policy.)

Record is information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. Documents or forms are records.

CONSISTENT WITH STATE AND FEDERAL LAWS, THE COUNTY OF MONTEREY ADOPTS THE FOLLOWING POLICIES:

1. Department Discretion

- a. Except as directed by the Board of Supervisors, departments have discretion to decide whether to permit the use of electronic signatures. Departments should work with County Counsel to determine where applicable laws permit an electronic signature to be used. Each Department that opts to use electronic signatures must adopt their business practices to support the requirements of this policy.

2. E-Signature Requirements

- a. Pursuant to California Government Code Section 16.5, the use of electronic signatures is permitted and shall have the same force and effect as the use of a wet signature if all the following criteria are met:
 - i. The electronic signature is unique to the person using it.
 - ii. It is capable of verification.
 - iii. It is under the sole control of the person using it.
 - 1. Email notifications requesting electronic signatures must not be forwarded to others for signature.
 - 2. These requirements prohibit the use of proxy signatures.
 - iv. It is linked to data in such a manner that if the data are changed, the digital signature is invalidated.

3. Common Types of Documents:

- a. This Policy is intended to broadly permit the use of electronic signatures. Examples of common types of documents are listed in the following table, with notes on each type of document. Departments should work with County Counsel to determine where applicable laws permit an electronic signature to be used. This policy is intended evolve to allow additional documents and those listed below to be executed via electronic signatures as the law permits.

Document Type	Is Use of an Electronic Signature Acceptable?	Notes
Memos, Forms, Board Letters, and Other Correspondence	Yes	Electronic Signature is recommended.
Contracts	Yes	Electronic Signature is recommended.
Certificates/Permits	Yes, if permitted by law.	Departments should work with County Counsel to determine where applicable laws permit an electronic signature to be used.
Documents Requiring Notarization	No	
Documents Requiring the Chair of the Board of Supervisors Signature	Yes, if permitted by law.	

<p>Contract or record governed by (15 USC §7003(a)):</p> <ul style="list-style-type: none"> A law governing the creation and execution of wills, codicils, or testamentary trusts. 	No	
<p>Contract or record governed by (15 USC §7003(a)):</p> <ul style="list-style-type: none"> State laws governing adoption, divorce, or other family law matters. 	No	
<p>Contract or record governed by (15 USC §7003(a)):</p> <ul style="list-style-type: none"> The Uniform Commercial Code (other than the articles governing sales and leases of goods), waivers under Com C §1306 (former Com C §1107), and the personal property statute of frauds under CC §1624.5 (former Com C §1206). E-Sign therefore does not apply to negotiable instruments, bank deposits and collections, letters of credit, bulk sales, documents of title, investment securities, secured transactions, or funds transfers. 	No	
<p>E-Sign does not apply to (15 USC §7003(b)–(c)):</p> <ul style="list-style-type: none"> Federal or state orders or notices, or official court documents, such as briefs and pleadings, required to be executed in connection with court proceedings. California Rules of Court, Rule 2.257 permits electronic signatures on state court documents signed under penalty of perjury, documents not signed under penalty of perjury, and documents requiring signatures of opposing parties provided that certain requirements are met. 	Yes, if permitted by federal, state or local court rules.	Departments should rely on local court and evidentiary rules to determine whether the use of e-signatures is appropriate.

<p>Federal Rule of Civil Procedure 5 permits electronic signatures in federal court filings under certain conditions but allows individual federal courts to deviate from this rule with their own requirements.</p>		
<p>E-Sign does not apply to (15 USC §7003(b)–(c)):</p> <ul style="list-style-type: none"> • Notices of cancellation or termination of utility services. 	No	
<p>E-Sign does not apply to (15 USC §7003(b)–(c)):</p> <ul style="list-style-type: none"> • Notices of default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, an individual's primary residence. 	No	
<p>E-Sign does not apply to (15 USC §7003(b)–(c)):</p> <ul style="list-style-type: none"> • Notices canceling or terminating health insurance or benefits or life insurance benefits (except annuities). 	No	
<p>E-Sign does not apply to (15 USC §7003(b)–(c)):</p> <ul style="list-style-type: none"> • Product recalls. 	No	
<p>E-Sign does not apply to (15 USC §7003(b)–(c)):</p> <ul style="list-style-type: none"> • Any document required to accompany the transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials. 	No	

4. Documents Involving Other Parties

In the case of contracts or transactions which must be signed by outside parties, each party to the agreement must agree in writing, in advance to the use of an electronic signature. No party to a contract or other document may be forced to accept an electronic signature; they must be permitted to decide. Such consent may be withdrawn by the other party at any time such that future documents must be signed in hardcopy format. When a document is electronically signed by all parties, the County will provide a fully executed copy of the electronically-signed document to the other parties in an electronic format that is capable of being retained and printed by the other parties.

5. Use

To setup employees authorized to send out documents for Electronic Signature, Departments should contact their Information Technology Managers in ITD. All County users of electronic signature technology shall conform to all county IT rules and regulations.

6. Storage and Archiving of Electronically-Signed Documents

If a document exists only electronically, steps should be taken by each Agency/Department to ensure that a fixed version of the final document is stored in some manner. It is up to the Department to decide how to store these final electronic documents so long as it does so in a manner consistent with any applicable County document retention policies and any applicable laws.

7. E-Signature Solution Providers

The Monterey County Information Technology Department will be responsible to determine acceptable technologies and E-Signature providers consistent with current state legal requirements and industry best practices to ensure the security and integrity of the data and the signature.

On December 10, 2019 the County of Monterey through the Contracts/Purchasing and/or Information Technology Department entered into an agreement with **DocuSign**© to provide electronic signature capabilities and services to Monterey County. DocuSign© is on the *Approved List of Digital Signature Certification Authorities* certified by the California Secretary of State for use by public entities and is compliant with the U.S. Electronic Signatures in Global and National Commerce Act (ESIGN). *See* 15 U.S.C. §7001.