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Recent California Decisions Reinforce Need for Care in Electronic Contracting

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In mid-1999, the National Conference of Commissioners on Uniform State Laws, responding to an intensifying reliance on electronic communications and a corresponding need for clarity as to the legal enforceability of agreements reached electronically, approved and recommended for enactment in all states a Uniform Electronic Transaction Act ("UETA"). The California legislature then quickly adopted a modified version of this uniform act (as amended from time-to-time, the "Cal UETA"), whereupon electronically created and/or executed contracts became, subject to certain exclusions, legally equivalent to written contracts.

In the years since this legal recognition of the general enforceability of electronic contracts, contracting through email and other electronic means has become commonplace in numerous industries, including in the real estate industry. However, the Cal UETA does impose certain minimum standards that must be satisfied for an electronic record or signature to qualify for its protections. As businesses and individuals become more comfortable with the practice of electronic contracting, and improved technology and zeal for ever greater speed and efficiency in deal making accelerate reliance on the practice, more and more examples are arising of parties adopting lax standards with respect to the use of electronic records. Of particular concern are electronic signatures, which, when subjected to the scrutiny of the judicial process, are found insufficient under Cal UETA.

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