Outline of Today’s Webinar

- Signature Basics
- Law of Electronic Signature
- Board Policy 5.25 and Board Procedure 5.25.1
What is the purpose of a signature?

- Contracts do not have to be signed to binding. “The purpose of a signature is to show assent and mutuality.” Welsh v. Barnes-Duluth Shipbuilding Co., 21 N.W.2d 43 (Minn. 1945).

- The American Bar Association identifies four purposes of a signature:
  - (1) **Evidence**: authentication of a writing by identifying the signer.
  - (2) **Ceremony**: the act of signing is indicative of the legal significance of the act itself.
  - (3) **Approval**: the signature expresses the authorization of the writing, the intention that it will have a legal effect.
  - (4) **Efficiency and logistics**: signatures impart a sense of clarity and finality, reducing the chance of an inquiry beyond the face of the document.
What constitutes a signature?

- A “signature,” is more than a set of written characters that have been physically inscribed on paper; it is a symbol that objectively represents the party’s willingness to enter into an agreement.

- A signature ... may be any symbol made or adopted with an intention, actual or apparent, to authenticate the writing as that of the signer.
  - Restatement (Second) of Contracts § 134
What is a signature, cont’d

- “The signature of a person, when required by law, (a) must be in the handwriting of the person or, (b) if the person is unable to write, (i) the person’s mark or name written by another at the request and in the presence of the person or, (ii) by a rubber stamp facsimile of the person’s actual signature, mark, or a signature of the person’s name or a mark made by another and adopted for all purposes of signature by the person with a motor disability and affixed in the person's presence.”
What is a signature, cont’d

- No requirement for full name (can be an X)
- No specified location or type of ink
- Can be typed or stamped
- Traps for the unwary:
  - An agreement can consist of one document or a series of documents.
  - Letters and emails can be contracts.
  - The typed name in an e-mail, an e-mail header, or an e-mail signature block have all been held by courts to constitute an electronic signature.
Applicable e-signature law

- Minnesota Statutes Ch. 325L, enacted in 2000, the “Uniform Electronic Transactions Act” governs the use of electronic signatures.
  - A record or signature may not be denied legal effect or enforceability solely because it is in electronic form. Minn. Stat. § 325L.07 (a).
  - If a law requires a signature, an electronic signature satisfies the law. Minn. Stat. § 325L.07(d).
- The Electronic Signatures in Global and National Commerce Act (or “E-SIGN” Act) is a federal law, also enacted in 2000, establishing that electronic signatures, contracts, and records are valid or enforceable if they meet certain criteria.
  - The validity or enforceability of a contract, electronic record, or signature for a transaction affecting interstate commerce cannot be challenged solely because it is in electronic form or because an electronic signature or record was used in the formation of the contract.
What is an electronic signature?

- The definition is not specific to any one technology, hardware, or software, and may take many forms.

- 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. Minn. Stat. § 325L.02 (h).
Types of electronic signatures

- An electronic signature may be a faxed or PDF copy of an original signed document, a “digitized signature” – an image of a signature added to a PDF, or signing with an electronic pen pad.

- May include a typed signatures such as “/s/ Jane Doe”, or a unique pin number.

- Electronic signatures include the “click through” or “I accept” buttons commonly used on many web sites.
  - If you are clicking “I accept” or “Yes” you may be entering into an enforceable contract.
  - Do you have the necessary delegation of authority to bind your college or university?

- Also includes digital signatures.
What elements make an electronic signature valid?

- **Authentication**
  - I am who I say I am.

- **Capturing the Signer’s Intent**
  - I meant to sign this contract.

- **Binding the Electronic Signature to the Document**
  - This is the document I signed.

- **Document Integrity**
  - This document hasn’t changed since I signed it.
Board Policy 5.25

http://www.mnscu.edu/board/policy/525.html

- Approves use of electronic signatures following System Procedure.
- Defines key terms.
- Requires any college or university wishing to use electronic signatures to ensure any risks are offset with anticipated benefits, consistent with system procedure.
- Requires the security of the electronic signature method be commensurate with the risk of the transaction.
System Procedure 5.25.1

http://www.mnscu.edu/board/procedure/525p1.html

- Requires policies/procedures at the campus level for approving technology, and authorizing employees for using e-signatures.
- Must appoint an electronic signature manager locally.
- Categorize transactions:
  - Critical impact
  - High impact
  - Medium impact
  - Low impact
- Multiple forms of electronic signatures permissible, depending on the impact of the transaction.
Allowable e-signature methods

- Digitized signatures
  - Graphical images
  - Faxed or scanned signatures
- Single- or multi-factor authenticated electronic signatures
- Digital signatures
What is a digital signature?

- A digital signature is a distinct technological implementation of an electronic signature. It is a mathematical scheme for determining the source of a digital message or document. It is not a facsimile of a handwritten signature (i.e. a scan of a written signature).

- All digital signatures are electronic signatures, but not vice versa.

- The Minnesota Electronic Authentication Act defines a digital signature as “A transformation of a message using an asymmetric cryptosystem such that a person having the initial message and the signer’s public key can accurately determine: (1) whether the transformation was created using the private key that corresponds to the signer’s public key; and (2) whether the initial message has been altered since the transformation was made.” Minn. Stat. Ch. 325K.
Digital Signatures

- A digital signature may look something like:

```
-------BEGIN SIGNATURE-------
IQB1AwUsBMVSiA5QYCuMfgNYjFQAAKgL/ZkBfbeNEsbthba4Blrc
njaqbcKgNv+a5kr4537y8dRC+RHm75yYh5xxA1ojELwNhihb7cltrp
2V7lOnAelws4S87UX80cLBtBbcN6AACf11qymC2h+Rb2j5SU+rm
XWru+=QFMx
-------END SIGNATURE-------
```

- Or like:

```
DocuSigned by: Abe Lincoln
DS
```

[Image of a signed document with a signature and a digital signature interface]

[Logo of Minnesota State Colleges & Universities]
E-signature matrix

Use of any of the type of e-signature depends on where the transaction falls on the matrix.

<table>
<thead>
<tr>
<th>Transaction Category</th>
<th>Critical Impact</th>
<th>High Impact</th>
<th>Medium Impact</th>
<th>Low Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature Type</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Original, Handwritten Signatures</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Digital Signatures</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Multi Factor Authentication</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Single Factor Authentication</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Digitized Signatures</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Faxed/Scanned Signatures</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Additional Requirements of System Procedure 5.25.1

- Part 6 of the system procedure requires both parties to **consent** to do business electronically, and that users must have a way to **opt-out** of using electronic signatures.

- Required by law. E.g., Minn. Stat. § 325L.05.

- What does it mean to consent?
  - Whether the parties agree to conduct transactions by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. *Id.*

- “Each ‘transaction’—or an action or set of actions—must be examined individually to determine whether the parties have agreed to conduct that specific transaction by electronic means.”

  - **SN4, LLC v. Anchor Bank, A13-1566, (Minn. Ct. App., 2014).**
Consent to Conduct Business Electronically

- Even if you have conducted business through electronic signatures in the past, the parties do not have to continue doing business that way.

- “[W]hile contracting parties may agree to negotiate and form a contract by electronic means, doing so does not mean that they have also agreed to electronically subscribe to whatever agreement may result from their electronic negotiations.”

Additional Requirements of System Procedure 5.25.1

- Ability to reproduce electronic records
- Transmission in a printable/storable form
- Identification of alterations
- Approval of digital signature technologies and password/PIN (single- or multi-factor) technologies by the system office CIO.
- Review of transaction categories and technologies on a 3 year basis
A word of caution

- This policy and procedure do not change the delegation of authority requirements.
  - System Procedure 1A.2.2 Delegation of Authority
  - [http://www.mnschu.edu/board/procedure/1a02p2.html](http://www.mnschu.edu/board/procedure/1a02p2.html)

- This policy and procedure do not change records retention requirements.

- This policy and procedure do not change system procedure that requires system legal counsel to review of all non-template contracts (including click-throughs).
System Guidelines 5.25.1.1 and more

- A business and technical working group is drafting specific guidelines for implementation
  - https://connect.mnscu.edu/sites/e-signature/SitePages/Home.aspx
- Draft guidelines anticipated Summer 2015
- Digital Signature product RFP forthcoming
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Please take a few minutes to complete our poll!

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