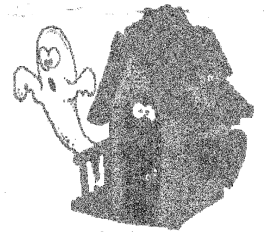




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“Tip of the Month”

DIGITAL SIGNATURES

The New Hampshire Digital Signature Act became law in 1997. RSA 294-D has two purposes:

1. To set standard and provide credibility for digital signatures used in dealings involving state entities in NH, and
2. To avoid the state’s direct involvement as a certification authority or repository.

A “digital signature” is an electronic identifier, created by a computer, intended by the party using it to have the same force and effect as a manual signature. For verification, the digital signature must embody all of the following attributes:

1. It is unique to the person using it;
2. It is capable of verification;
3. It is under the sole control of the person using it;
4. It is linked to data in such a way that if the data is changed, the digital signature is invalidated;
5. It conforms to rules adopted by the NH Commissioner of Administrative Services.

While the NH Digital Signature Act above applies to dealings with State agencies, a newer digital signature law applies more broadly. Passed in 1998, RSA 506:8 and 9 allow the digital signature for all transactions in NH. Under the statute a “digital signature” means any type of electronic manipulation that transforms a message using an asymmetric cryptosystem such that a person having the transformed message and the signer’s public key can accurately determine:

- (a) Whether the transformation was created using the private key that corresponds to the signer’s public key.
- (b) Whether the initial message has been altered since the transformation was made.

The trouble with these NH laws is in the NH Rules of Evidence. Rule 901 puts the burden of proving a valid signature on the party seeking to enforce the signature. This creates a presumption of invalidity that can be hard to rebut. The party must prove both that the signature is valid and that the digital document has not been altered. Other states have reversed this conundrum by legislating a presumption of validity. Meantime, in NH, be careful.

If you need assistance with electronic contracts or digital signatures, give us a call at 668-1971 or contact us through the Internet at *Meslaw @ aol.com*.

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