

E-signatures – what you should know

Lize de la Harpe, legal adviser, and Eugene Moodley, Information Security Officer, both at Glacier by Sanlam, unpacked some of the legal and cyber security issues around e-signing and electronic contract management, that may have people fearful when they don't need to be.

1. Is e-signing accepted as a legitimate process?

E-signing is a legally recognised and binding process. Actually, e-signatures have been legally recognised since 2002. The Electronic Communications and Transactions Act, 25 of 2002 (“ECTA”) gave formal recognition to e-signatures in South Africa by stating that “... an electronic signature is not without legal force and effect merely on the grounds that it is in electronic form.” (section 13(2)).

2. Which e-signatures are legally recognised?

ECTA gives legal recognition to all e-signatures. However, ECTA goes further and distinguishes between e-signatures in general and advanced e-signatures. It's important to understand the difference.

- An ordinary e-signature is any digital or scanned signature, a voice recording or signing a document via a smartphone or tablet, which is intended by the user to serve as a signature.
- An advanced e-signature is a specific form of digital signature which results from a process that has been accredited by the Department of Communications.

3. So, when is an ordinary e-signature sufficient and when must the advanced e-signature be used?

An ordinary e-signature is a method to show that you approve of sharing information or signing a contract. A single verification step like sending an email is acceptable in ordinary e-signing. However, multi-factor authentication (MFA) has become the norm in cybersecure document management, which means that the process involves more than one verification step. MFA could include entering a pin or a one-time password (OTP) combined with email verification. By completing these verification steps, digital proof emerges that you accepted the process and the terms of the contract at a particular point in time.

There are transactions, which by law, must be in writing and signed in order for them to be valid. These types of transactions can only be concluded electronically by using an advanced e-signature.

4. Can e-signatures be used for signing all contracts?

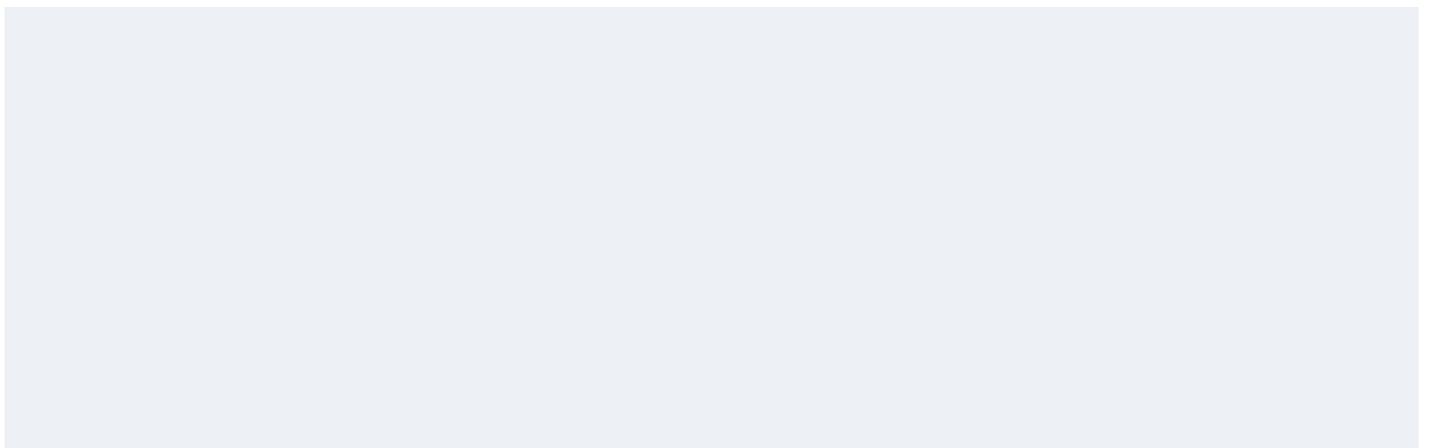
By law, you have to sign contracts, such as your will, in the traditional way – in ink and on a paper contract. ECTA specifically excludes such contracts from being concluded electronically, whether or not an advanced e-signature was used by the parties.

Why Glacier's e-signing process is cybersecure

In most cases, e-signing processes are more secure than the traditional paper process. These four features ensure that Glacier's e-signing process is tamper-proof and cybersecure:

- OTP functionality using your mobile phone combined with email verification. This MFA is important as it reduces the risk of impersonation. It is difficult for a hacker to gain access to your mobile SIM and your email at the same time. For verification purposes, this combination also requires the least amount of effort on your part as the client.
- An audit trail that is built up during the signing process. Given that more than two people could be involved in an e-signing process, an audit trail with multiple anti-tampering or tamper-evident features built in, is critical.
- Encryption in transit means that all activities in the process are encrypted to ensure security over the internet.
- All parties receive a copy of the final signed contract at the end of the process to ensure transparency.

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