



Electronic Signatures

Martin Desjardins, Asst. Co. Atty., Fairfax Co.
Webinar, October 16, 2023

Overview

- General concepts of signatures & contract enforceability
- The Virginia Uniform Electronic Transactions Act
- Fairfax County's Electronic Signature Policy, April 25, 2023

General Concepts

Signatures & Contract Enforceability

General Concepts

Signatures & Contract Enforceability

- Freedom of contract
- Meeting of the minds

General Concepts

Signatures & Contract Enforceability

- Freedom of contract
- Meeting of the minds
- Course of dealing
- Parties' intentions

General Concepts

Signatures & Contract Enforceability

- Freedom of contract
- Meeting of the minds
- Course of dealing
- Parties' intentions
- Role/significance of signatures

Virginia UETA

Uniform Electronic Transactions Act

- Adopted in 2000, eff. July 1, 2001.
- Title 59.1, Chapter 42.1.
- Va. Code §§ 59.1-479 through 59.1-498.
- Almost entirely unchanged since adoption.
- Provides statutory authority addressing:
 - Use of electronic signatures; and
 - Use/keeping of electronic records.

Virginia UETA – Definitions (§ 59.1-480)

What does it cover?

Virginia UETA – Definitions (§ 59.1-480)

What does it cover?

- What counts as electronic signatures & records?
 - “electronic”
 - “electronic signature”

Virginia UETA – Definitions (§ 59.1-480)

What does it cover?

- What counts as electronic signatures & records?
 - “electronic”
 - “electronic signature”
- What type of activities does it address?
 - Records & recordkeeping
 - “records”

Virginia UETA – Definitions (§ 59.1-480)

What does it cover?

- What counts as electronic signatures & records?
 - “electronic”
 - “electronic signature”
- What type of activities does it address?
 - Records & recordkeeping
 - “records”
 - Transactions
 - “agreement” & “contract”
 - “persons” & “public bodies”
 - “transaction”

Virginia UETA – Scope (§§ 59.1-481)

Any limitations on overall scope?

Virginia UETA – Scope (§§ 59.1-481)

Any limitations on overall scope?

- A few categories of “transactions” are excluded:
 - Wills, codicils, and testamentary trusts;
 - Many contracts under Virginia’s UCC.
- UETA is “subject to other applicable substantive law.”

Virginia UETA – Scope (§§ 59.1-483)

Are there any general caveats?

Virginia UETA – Scope (§§ 59.1-483)

Are there any general caveats?

- Does not require use of electronic signatures or records.

Virginia UETA – Scope (§§ 59.1-483)

Are there any general caveats?

- Important caveats for transactions:

Virginia UETA – Scope (§§ 59.1-483)

Are there any general caveats?

- Important caveats for transactions:
 - Applies to transactions between parties that have “agreed to conduct transactions by electronic means.”

Virginia UETA – Scope (§§ 59.1-483)

Are there any general caveats?

- Important caveats for transactions:
 - Applies to transactions between parties that have “agreed to conduct transactions by electronic means.”
 - Can be determined by “surrounding circumstances” and the parties’ “conduct.”

Virginia UETA – Scope (§§ 59.1-483)

Are there any general caveats?

- Important caveats for transactions:
 - Applies to transactions between parties that have “agreed to conduct transactions by electronic means.”
 - Can be determined by “surrounding circumstances” and the parties’ “conduct.”
 - But ...
 - Must be “conspicuously displayed” and “separately consented to” if using a “standard form.”
 - May not be “inferred solely” from electronic means of paying an account or registering a warranty.

Virginia UETA – Interpretation (§ 59.1-484)

How is it to be applied?

- Courts are instructed to construe and apply it to:
 - Facilitate electronic transactions consistent with other applicable law;
 - Be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and
 - Effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Virginia UETA – Interpretation (§ 59.1-485)

How is it to be applied?

- A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- If a law requires a record to be in writing, an electronic record satisfies the law.
- If a law requires a signature, or provides for certain consequences in the absence of a signature, an electronic signature satisfies the law.

Virginia UETA – Signatories (§ 59.1-487)

Who signed this thing?

Virginia UETA – Signatories (§ 59.1-487)

Who signed this thing?

- Electronic signatures are attributable to a person “if it was the act of a person.”

Virginia UETA – Signatories (§ 59.1-487)

Who signed this thing?

- Electronic signatures are attributable to a person “if it was the act of a person.”
- Such act “may be shown in any manner”
 - Including a “showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.”

Virginia UETA – Errors & Timing Issues

What about, “I never got the email”?

- The Effect of Errors & Changes - § 59.1-488
- Time and place of sending & receipt - § 59.1-493

Virginia UETA – Electronic Records

Didn't you say something about records?

Virginia UETA – Electronic Records

Didn't you say something about records?

- Any public body of the Commonwealth may:
 - create and retain electronic records and convert written records to electronic records. § 59.1-495.

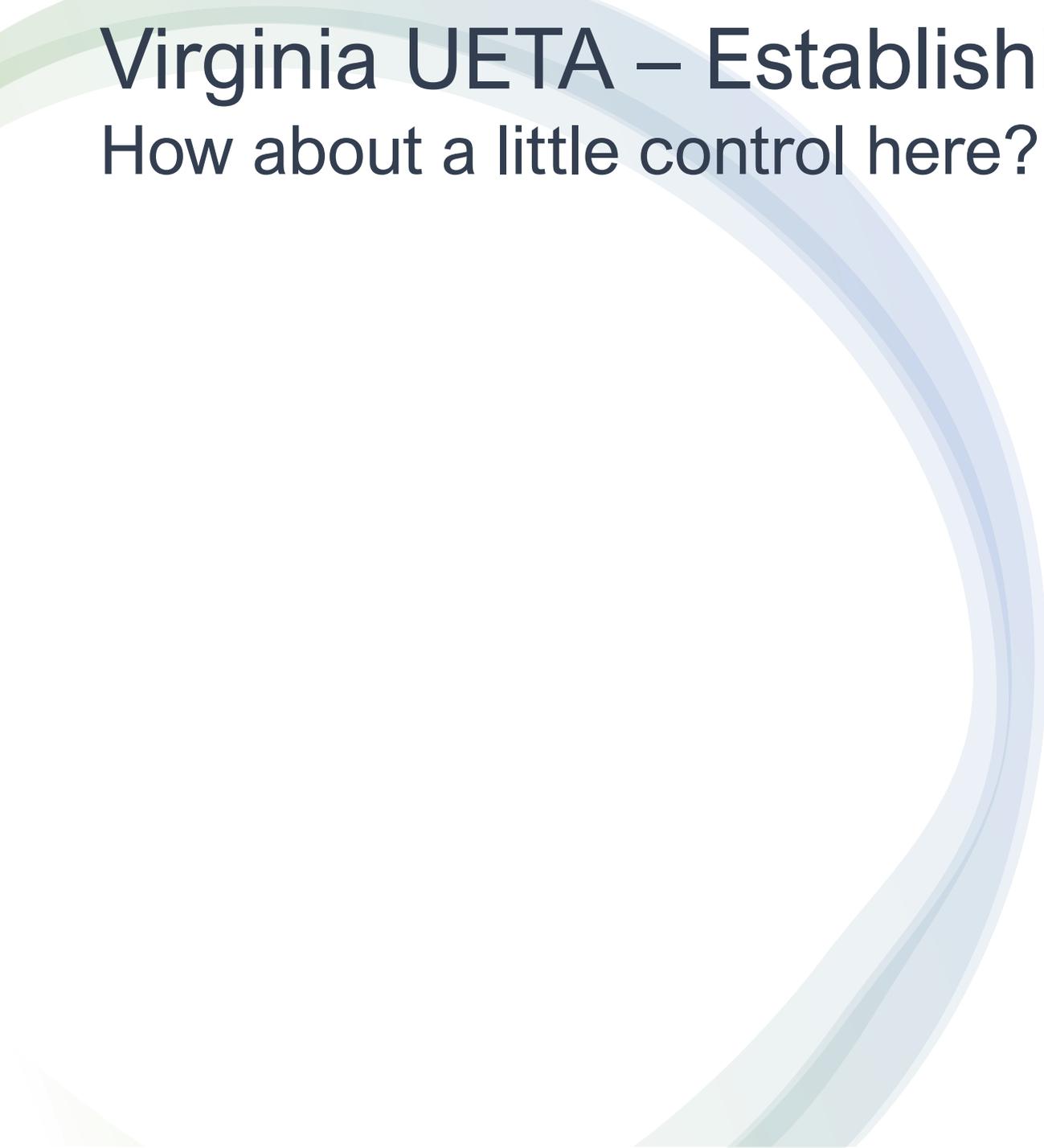
Virginia UETA – Electronic Records

Didn't you say something about records?

- Any public body of the Commonwealth may:
 - create and retain electronic records and convert written records to electronic records. § 59.1-495.
 - (i) accept the electronic filing of any information required or permitted to be filed with such public body and (ii) prescribe the methods of executing, recording, reproducing, and certifying electronically filed information. § 59.1-496(a).

Virginia UETA – Establishing standards (§ 59.1-496)

How about a little control here?



Virginia UETA – Establishing standards (§ 59.1-496)

How about a little control here?

- Any public body of the Commonwealth may specify:
 - The manner and format of creating, sending and storing electronic records.

Virginia UETA – Establishing standards (§ 59.1-496)

How about a little control here?

- Any public body of the Commonwealth may specify:
 - The manner and format of creating, sending and storing electronic records.
 - The type of electronic signatures required, and the manner and format by which they are affixed to a record.

Virginia UETA – Establishing standards (§ 59.1-496)

How about a little control here?

- Any public body of the Commonwealth may specify:
 - The manner and format of creating, sending and storing electronic records.
 - The type of electronic signatures required, and the manner and format by which they are affixed to a record.
 - Control processes for “adequate” preserving, disposing, integrity, security, confidentiality, and auditability of electronic records.

Virginia UETA – Establishing standards (§ 59.1-496)

How about a little control here?

- Any public body of the Commonwealth may specify:
 - The manner and format of creating, sending, and storing electronic records.
 - The type of electronic signatures required, and the manner and format by which they are affixed to a record.
 - Control processes for “adequate” preserving, disposing, integrity, security, confidentiality, and auditability of electronic records.
 - Other criteria to ensure authenticity and validity of electronic signatures.

Virginia UETA

Some overall considerations

Virginia UETA

Some overall considerations

- Localities don't HAVE to use electronic signatures.

Virginia UETA

Some overall considerations

- Localities don't HAVE to use electronic signatures.
- Localities also don't have to use them for everything.

Virginia UETA

Some overall considerations

- Localities don't HAVE to use electronic signatures.
- Localities also don't have to use them for everything.
 - Or use them in the same way everywhere.

Virginia UETA

Some overall considerations

- Localities don't HAVE to use electronic signatures.
- Localities also don't have to use them for everything.
 - Or use them in the same way everywhere.
- Internal records/documents vs. external records/transactions.

Virginia UETA

Some overall considerations

- Localities don't HAVE to use electronic signatures.
- Localities also don't have to use them for everything.
 - Or use them in the same way everywhere.
- Internal records/documents vs. external records/transactions.
- Need for control, consistency, and verifiability if used.

Virginia UETA

Some overall considerations

- Localities don't have to use electronic signatures.
- Localities also don't have to use them for everything.
 - Or use them in the same way everywhere.
- Internal records/documents vs. external records/transactions.
- Need for control, consistency, and verifiability if used.
- Accessibility, access, and equity considerations.

Virginia UETA – In Application

Fairfax County Electronic Signature Policy

FAIRFAX COUNTY, VIRGINIA PROCEDURAL MEMORANDUM No. 02-14	
To: Department Heads	Date: 4/25/2023
Initiated by: County Executive's Office	Approved by the County Executive:  5CFC69274C2440E...
Subject: Electronic Signature Policy	

I. Purpose

The purpose of this Electronic Signature Policy is to provide guidance on the implementation and standardization of electronic signatures by all Fairfax County agencies. Electronic signatures eliminate resource-intensive processes that require employees, County vendors, and the public to manually sign documents.



Electronic Signatures

Martin Desjardins, Asst. Co. Atty., Fairfax Co.
Webinar, October 16, 2023

