

RESOLUTION NO. 2022-40

RESOLUTION OF THE BOARD OF SUPERVISORS ACTING AS THE GOVERNING BOARD FOR SAN BERNARINO COUNTY, BOARD GOVERNED COUNTY SERVICE AREAS AND SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT; AND OF THE BOARD OF DIRECTORS FOR THE BIG BEAR VALLEY RECREATION AND PARK DISTRICT, BLOOMINGTON RECREATION AND PARK DISTRICT, IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY, INLAND COUNTIES EMERGENCY MEDICAL AGENCY, AND SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT REGARDING FACSIMILIE AND DIGITAL SIGNATURES

On Tuesday, March 1, 2022, on motion of Supervisor/Director Baca, Jr., duly seconded by Supervisor/Direction Rowe and carried, the following resolution is adopted by the BOARD OF SUPERVISORS ACTING AS THE GOVERNING BOARD FOR SAN BERNARINO COUNTY, BOARD GOVERNED COUNTY SERVICE AREAS AND SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT; AND OF THE BOARD OF DIRECTORS FOR THE BIG BEAR VALLEY RECREATION AND PARK DISTRICT, BLOOMINGTON RECREATION AND PARK DISTRICT, IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY, INLAND COUNTIES EMERGENCY MEDICAL AGENCY, AND SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT (collectively referred to as "BOARDS"), State of California.

WHEREAS, on April 21, 2020 (Agenda Item No. 29), the Board of Supervisors approved Resolution No. 2020-030 to allow the County to accommodate and accept facsimile and digital signatures in order to process official documents during the COVID-19 pandemic; and

WHEREAS, the local emergency related to the COVID-19 pandemic is anticipated to be terminated effective March 1, 2022; and

WHEREAS, the County and other Board of Supervisors governed entities has utilized facsimile and digital signatures successfully for the last two years and is currently in the process of drafting and submitting a County Policy on the use of electronic signatures to the Board of Supervisors for approval; and

WHEREAS, this new Resolution will allow for continued use of facsimile and digital signatures through May 31, 2022, or the Board of Supervisors' approval of the County Policy on electronic signatures, whichever occurs first; and

WHEREAS, due to available technology, agreements, and other documents (Official Documents) are frequently composed and executed within an electronic system; and

WHEREAS, available technologies exist and are being used to complete necessary transactions for goods and services, resulting in Official Documents which must be signed; and

WHEREAS, it is necessary and in the best interests of the County to accommodate facsimile and digital signatures in order to process Official Documents.

NOW, THEREFORE, BE IT RESOLVED by the BOARDS, as follows:

I. USE OF FACSIMILE SIGNATURE

The use of a facsimile signature of the Chairman of the BOARDS is authorized for use on all copies of resolutions, orders, ordinances, letters, contracts, minutes, and records of the BOARDS, upon which the Chairman has been authorized, empowered or instructed to sign by order or resolution of the Board, or by ordinance or statute. The Chairman may delegate the affixing of his/her facsimile signature or digital signature to the Clerk of the Board of Supervisors/Secretary of Board of Directors or his/her duly qualified deputies, by executing a document approved as to form by the County Counsel reciting the delegation and setting forth what shall be considered his/her signature.

II. **DIGITAL OR ELECTRONIC SIGNATURES**

1. DEFINITIONS

- A. **Electronic signature** means an electronic sound, symbol, or process attached to or logically associated with a contract or other record, and executed or adopted by a person with the intent to sign the record and be legally bound. The Uniform Electronic Transaction Act (UETA) authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. (Cal. Civ. Code §1633.1-1633.17)
- B. **Digital signature** means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

2. USE OF ELECTRONIC AND DIGITAL SIGNATURES

The Uniform Electronic Transaction Act (UETA) authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency, when both parties agree to its use. (Cal. Civ. Code Section 1633.1 - 1633.17). The electronic signature must be supported by evidence that the signature is the act of the intended person. An agreement executed with an electronic signature has the same legal enforceability as a wet signature, subject to documents that are exempt.

A digital signature is a type of electronic signature with strict security requirements that may be used to execute certain written communications and agreements with the County if it satisfies the requirements found in Cal. Gov. Code § 16.5, et. seq. and Title 2, division 7 Chapter 10 of the California Code of Regulations. (2 CCR §22000- 22005)

The signatures must be:

1. Unique to the person using it;
2. Capable of verification;
3. Under the sole control of the person using it;
4. Linking to the data in such a way that if the data is changed the signature will be invalidated; and
5. Conforms with regulations adopted by the California Secretary of State URL (<https://www.sos.ca.gov/administration/regulations/current-regulations/technology/digital-signatures>).

III. **PROCEDURES FOR USE OF ELECTRONIC OR DIGITAL SIGNATURES**

A. **System Approval:**

For purposes of the timely completion of the BOARDS's necessary business, the following may be agreed upon between the entities governed by BOARDS and its contracting parties:

- **Express Agreement:** When the parties to an agreement desire to use electronic signatures for executing the agreement, a term shall be included in the agreement to memorialize the use of electronic signatures for the agreement. Absent such terms in an agreement, the agreement must have a wet signature.

- B. **Submission for Approval and Execution:** Once the electronic agreement is complete and has been digitally or electronically signed by the duly authorized representative of the other parties, it may be submitted for execution by the BOARDS or the individual who has the delegated authority to bind the entities governed by BOARDS for that contract type.

- C. **Retention:** The executed electronic agreement must be maintained pursuant to the County Retention of Records Policy (10-01), or statute within a County approved secure retention process. The secure method of retention of the final agreement must lock the document, preventing any changes to the final executed agreement.

IV. CHANGE OR ERROR IN ELECTRONIC RECORD

If a change is needed or an error is being corrected within the electronic record of the fully executed agreement, those actions will comply with the requirements of Cal. Civ. Code § 1633.10 or will be addressed through a contract amendment.

V. EXEMPTIONS

Electronic signatures may not be used in all situations. Documents that may not be completed using electronic signature include, but are not limited to:

1. Laws governing the creation and execution of wills, codicils, or testamentary trusts;
2. Certain transactions governed by the Uniform Commercial Code;
3. Laws requiring specifically that identifiable text or disclosures in a record or portion of a record be separately signed, including initialed, from the record; and
4. Certain transactions governed by the Business and Professionals Code. (Cal. Civ. Code § 1633.3)

A list of documents that may not be signed with an electronic or digital signature pursuant to statute is incorporated herein and Attachment I.

PASSED AND ADOPTED by the Board of Supervisors/Board of Directors of BOARDS, State of California, by the following vote:

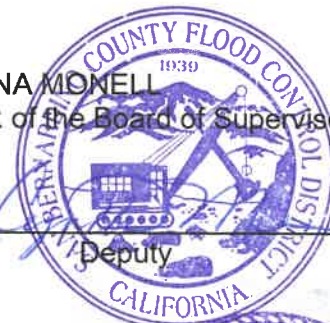
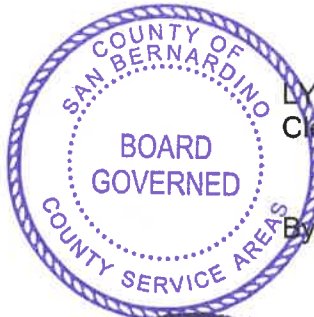
AYES: SUPERVISORS/DIRECTORS: Col Paul Cook (Ret.), Janice Rutherford,
Dawn Rowe, Curt Hagman, Joe Baca, Jr.

NOES: SUPERVISORS/DIRECTORS: None

ABSENT: SUPERVISORS/DIRECTORS: None

STATE OF CALIFORNIA)
)
SAN BERNARDINO COUNTY) ss.

I, **LYNNA MONELL**, Clerk of the Board of Supervisors and Secretary of Board of Directors for BOARDS, State of California, hereby certify the foregoing to be a full, true and correct copy of the record of the action taken by the Board of Supervisors/Board of Directors, by vote of the members present, as the same appears in the Official Minutes of said Board at its meeting of March 1, 2022.
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ATTACHMENT I

LIST OF EXCLUDED DOCUMENTS

1. Civil Code
 - a. Creation and execution of wills, codicils, or testamentary trusts (Civil Code§ 1633.3(b)(1).)
 - b. Documentation required for the foreclosure of a mortgage or deed of trust (Civil Code, §§ 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, and 2937.)
 - c. When a law requires that specifically identifiable text or disclosures must be signed or initialed separately. (Civil Code§ 1633.3(b)(4).)
 - d. Requests to obtain medical information (Civil Code§ 56.11.)
 - e. Genetic test results (Civil Code§ 56.17.)
 - f. Notices related to the Mobile home Residency Law (Civil Code§ 798.14.)
 - g. Notice of Blanket Encumbrance on Real Property (Civil Code§ 1133.)
 - h. Statement of Defects in a transfer of real property (Civil Code§ 1134.)
 - i. Cancellation or Rescission of a home solicitation contract or offer (Civil Code§§ 1689.6, 1689.7, 1689.13.)
 - k. Home Equity Sales Contracts (Civil Code§ 1695.)
 - l. Debit or credit obligations (Civil Code§ 1720.)
 - m. Consumer Credit Reporting Agencies documents (Civil Code§§ 1785.15, 1789.14, 1789.16, or 1793.23.)
 - n. Retail Installment Contracts (Civil Code§ 1801 et seq.)
 - o. Notices for sales from non-payment of judgement or unclaimed property (Civil Code§§ 1861.24, 1862.5.)
 - p. Loans (Civil Code§§ 1917.712, 1917.713.)
 - q. Rental applications with credit reports and notices (Civil Code§§ 1950.6, 1983.)
 - r. Liens on Vehicles (Civil Code§ 3017.5.)
 - s. Common Interest Developments (Civil Code§ 4000.)
 - t. Commercial and Industrial Common Interest Developments (Civil Code§ 6500.)
2. Uniform Commercial Code: Documents described in Division 1, 3, 4, 5, 8, 9, and 11 of the Uniform Commercial Code.
 - a. Transactions subject the General Provisions, Division 1 of the UCC commencing with § 1101
 - b. Negotiable Instruments subject to Division 3 of the UCC commencing with§ 3101
 - c. Bank Deposits and Collections subject to Division 4 of the UCC commencing with § 4101
 - d. Letters of Credit subject to Division 5 of the UCC commencing with§ 5101
 - e. Investment Securities subject to Division 8 of the UCC commencing with § 8101
 - f. Secured Transactions subject to Division 9 of the UCC commencing with§ 9101
 - g. Funds Transfers subject to Division 11 of the UCC commencing with § 11101
3. Telephone solicitation (Business and Professions Code §17511.5.)
4. Financial Code
 - a. Certain Provisions of Premium Finance Agreements/ right to cancel (Financial Code § 18608 (b))
 - b. Liens on mote vehicles and disposition of repossessed vehicles (Financial Code §22328)
5. Health Care Service Plan documents (Health and Safety Code§§ 1358.15, 1365, 1368.01, 1368.1, 1371, 18035.5.)

6. Individual and group disability policies (Insurance Code §786.)
7. Termination of utility service for nonpayment. (Public Utilities Code §§ 779.1, 10009.1, 10010.1, 12823.1, 16482.1.)
8. Brokering agreements for manufacturers, transporters and dealers of vehicles (Vehicle Code §11738.)
9. Any notice that is required to be sent when obtaining possession of Real Property (Code of Civil Procedure §1162.)