

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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To: Cliff Spirock, Chair of the Professional Surveying Committee of the Board of Licensure for Professional Engineers and Professional Surveyors

From: Miguel Lozano, Assistant Attorney General

Date: March 31, 2020

Re: Use of Electronic or Digital Signatures on Recorded Documents

I have reviewed the relevant statutes regarding the use of digital or electronic signatures on survey plats, drawings and other documents recorded with the County Clerks' offices as well as the Governor's recent Executive Order regarding notarial services, and have determined that electronic or digital signatures should be acceptable forms of signature in any legal document requiring a signature, including survey plats and engineer drawings. It would be inappropriate, especially during the public health emergency, to deny legal effect to documents that utilized electronic or digital signatures.

The Uniform Electronic Transactions Act, Sections 14-16-1 through 14-16-20, NMSA 1978, states that "if a law requires a signature, an electronic signature satisfies the law" and that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. Additionally, according to Section 14-3.15.2, NMSA 1978, "[w]henver there is a requirement for a signature on any document, electronic authentication that meets the standards promulgated by the [C]ommission [of Public Records] may be substituted." The Public Records Commission had identified many varying forms of signature which would be legally binding including "[s]ymbols such as a typed name" or a "digitized image of a handwritten signature that is attached to an electronic record" NMAC 1.12.7.13(A)(1).

For the purposes of professional surveyors and engineers, the use of electronic seals and signatures is explicitly permitted on survey plats, engineers' drawings, and other reports requiring a seal pursuant to the Rules of the Board of Licensure for Professional Engineers and Professional Surveyors. See NMAC 16.39.3.12(A) (Engineer's Seal of License); NMAC 16.39.5.11(A) (Surveyor's Seal of License). "An electronic signature, as an option to a permanently legible signature, is acceptable for professional documents." See NMAC 16.39.3.12(H); NMAC 16.39.5.11(G).

Documents that must be recorded with a county clerk require acknowledgment through a notary public except those documents listed in Section 14-8-4(C) which includes, in relevant part, "surveys of land that do not create a division of land but only show existing tracts of record when filed by a professional surveyor pursuant to Section 61-23-28.2, NMSA 1978. However,

other legal descriptions or plats are required to be acknowledged and certified, but only by a professional surveyor. NMSA 1978, § 14-8-16. There is no requirement that other signatories included on the recorded document provide an acknowledgment.

Under normal circumstances it is likely inappropriate for a county clerk to deny the recording of a legal description or plat due to the use of electronic signatures, including the signature of the professional surveyor certifying the document. While acknowledgment may be required by the surveyor in some circumstances, that requirement does not preclude the use of an electronic signature and seal, nor does it prohibit other signatories from providing an electronic or digital signature on the document. The permitted use of electronic or digital signatures has become more important in light of the current public health emergency created by the COVID-19 virus. The Governor has made it clear that these extraordinary circumstances require some adjustment to norms related to public records and other documents, which is apparent by her executive order permitting notarial acts through audio visual technology under certain circumstances. *See Governor's Executive Order 2020-015.* While it appears that prohibiting the use of electronic or digital signatures on recorded documents may not be in accordance with the law, the current public health emergency surely disincentives this prohibition.

Please do not hesitate to contact me should you have any additional questions regarding this issue.