

## Memo re: Electronic Signatures and Municipalities

Generally, an electronic signature is legally binding - the governing statute is MGL c. 110G (the Massachusetts Uniform Electronic Transactions Act). MGL c. 110G includes various exclusions, including if another statute does not permit the use of electronic signature, that statute supersedes MGL c. 110G. If a document does not need to be recorded, and no statute prohibits the use of electronic signatures, a municipality's use of electronic signatures will hold the same legal force as wet signatures.

Pursuant to a recent April 2020 amendment to MA Indexing Standards, electronic signature is now permitted for documents signed by a board of the municipality that will be recorded with the Dukes County Registry of Deeds. (It is important to note that this has not yet been accepted for registered land and wet signature is still required when recording a document affecting registered land.) The recommendation is that prior to any municipal board executing documents by electronic signature, the following process occur:

1. The board place the item on the agenda.
  - Example of agenda item: "Discussion and possible adoption of M.G.L. c.110G, regarding the use of electronic signatures by \_\_\_\_\_ Board members pursuant to Amendment 13-7 to the Massachusetts Deed Indexing Standards 2018, effective April 17, 2020."
2. The board takes a vote at a duly called meeting, stating that the board recognizes and accepts the provisions of G.L. c.110G, and that executed documents by members with electronic signatures or with wet ink signatures will carry the same legal weight and effect.
  - Example of motion: "Moved that the Chilmark Board of Selectmen/Select Board/Planning Board/Zoning Board of Appeals/Conservation Commission hereby recognizes and accepts the provisions of M.G.L. c.110G regarding electronic signatures and that its members will henceforth execute documents either with electronic signatures or with wet ink signatures and that both will carry the same legal weight and effect."
3. A certificate of vote signed, notarized and certified by the Town Clerk is then recorded at the Dukes County Registry of Deeds.
  - Once the Certificate of Vote is recorded, electronic signatures may be affixed to permitting or compliance documents such as decisions and/or Orders of Conditions that have been approved by a board or commission vote.
4. Whenever electronic signature is used on a recordable document, it should refer back to the recorded certificate of vote.
  - Example of statement on documents signed electronically: "Signatures are made in accordance with M.G.L. c.110G and pursuant to the Board's/Commission's electronic signature authorization vote recorded on \_\_\_\_\_ in Book \_\_\_\_, Page \_\_\_\_ with the Dukes County Registry of Deeds."

Plans to be endorsed or approved by the Planning Board: Rather than rely on electronic signatures, Paulo DeOliveira (Register) at the Dukes County Registry of Deeds suggests it may be best to have the Planning Board vote to authorize a single individual to endorse plans on behalf of the Board for recording in the Registry of Deeds (as authorized by MCL c. 41, s81P and 81X). The process for such would be the same as above: notice the issue on the agenda, vote at a duly called meeting to authorize one member to sign such plans, and record a certificate or notice with the Dukes County Registry of Deeds. The certificate/notice of vote must contain signatures of a majority of the Planning Board.

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