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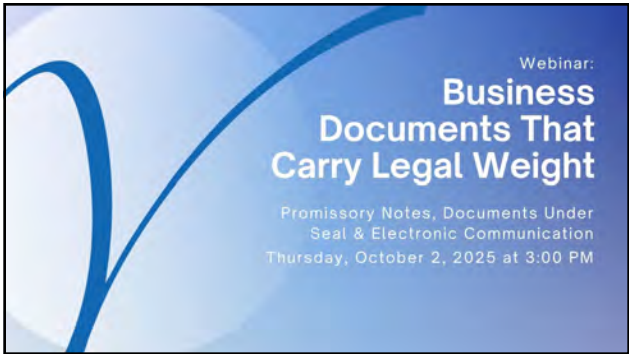
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### Documents “Under Seal”

- Historically, a wax seal was used to verify the authenticity and intent of a document.
- The word “Seal” beside a signature line has taken the place of a wax seal or other symbol.
- Statute of Limitations in NC: a document under seal has a 10 year statute of limitations vs a 3 year statute of limitations.
- Presumption of Consideration: presumed to have been made with consideration (one element of an enforceable contract).
- Presumption of Corporate Authority.

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### Promissory Notes

- Is generally a written promise
- Signed by the borrower
- To repay a specific sum of money
- To a Lender
- Upon specific terms and a specific due date (interest rate, repayment terms, maturity date, consequences of default)

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### Written Promises to Pay

- Common Pitfalls:
  - No due date
  - No terms of what is a default and what happens if there is a default
  - No interest provisions
  - No attorneys fees provision

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Credit Application/Purchase Order/Contracts

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Reviewing/Creating a Credit Application.

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Reviewing/Creating a Credit Application

- Company and/or Customer Name
- Legal Status:
  - Proprietorship
  - Partnership
  - Corporation
  - L.L.C.
  - L.L.P.

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Reviewing/Creating a Credit Application

- Has the corporation or any of the principals of the business every filed for Bankruptcy? If so, when:
- Date business started
- Date business incorporated

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Reviewing/Creating a Credit Application

- Principals of the business
- Mail Invoices and Statements to
- Who is authorized to purchase

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After the Customer Signs the Application...

- Does the client fill out the application or does the sales staff complete it?
- Does the Customer sign the application in front of an employee?

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Reviewing/Creating a Credit Application.

- What happens if the receptionist signed the application?
- What happens if the receptionist signed the personal guarantee?
- What happens if the manager, foreman or project manager signed the application?
- The REAL question: who has authority to sign?

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Reviewing/Creating a Credit Application.

- What else is important to you?
- Lien History?
- Judgment History?
- Federal Tax ID Number?
- Sales Tax Exempt?
- Purchase Orders Required?
- Credit Limit Sought?
- What else???

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Reviewing/Creating a Credit Application.

- Principal(s) Print and Sign Below:
- Name: \_\_\_\_\_ Signature: \_\_\_\_\_ (Seal)
- Title: \_\_\_\_\_
- Date: \_\_\_\_\_

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Reviewing/Creating a Credit Application.

- The undersigned, in consideration of the extension of credit to the applicant, do hereby, jointly and severally, personally guarantee the full and immediate prompt payment to Creditor of all indebtedness heretofore or hereafter incurred for the purchase of materials supplied to.

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Reviewing/Creating a Credit Application.

- Buyer agrees that any line of credit desired or approved is not a limitation of liability, and Buyer expressly agrees that Buyer will be responsible for valid charges in excess of a credit limit.

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Reviewing/Creating a Credit Application.

- The applicant agrees to notify Seller in writing via certified mail, return receipt requested, within seven (7) days upon the change of any information given to Seller in this Application

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### Reviewing/Creating a Credit Application.

- Please do not buy a pre-packaged application not specifically designed for your company.
- Review other credit applications as a reference.
- Seek the advice of your legal counsel to review the terms.

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### Provisions to Include

- **Attorney Fee Provision:**
  - Reference "Reasonable Attorneys Fees"
- **Finance Charges:**
  - Contract Rate of 1.5% (18% APR) or
  - Legal Rate of 8% per year
  - Reference NCGS § 24-5

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### Provisions to Include

- **Finance Charges:**
  - Reference NCGS § 24-5
- **NCGS § 24-5. Interest on judgments. (Modified)**
  - (a) Actions on Contracts. — In an action for breach of contract the amount awarded on the contract bears interest from the date of breach. The fact finder in an action for breach of contract shall distinguish the principal from the interest in the award, and the judgment shall provide that the principal amount bears interest until the judgment is satisfied. If the parties have agreed in the contract that the contract rate shall apply after judgment, then interest on an award in a contract action shall be at the contract rate after judgment; otherwise it shall be at the legal rate. On awards in actions on contracts pursuant to which credit was extended for personal, family, household, or agricultural purposes, however, interest shall be at the lower of the legal rate or the contract rate. For purposes of this section, "after judgment" means after the date of entry of judgment under G.S. 1A-1, Rule 58.

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### Other Provisions Which Are Helpful

- ✓ Arbitration? Pros and Cons
- ✓ Ability to Unilaterally Modify Credit Limit With No Notice to Credit
- ✓ Jurisdiction and Venue? (where the lawsuit may be filed)
- ✓ Buyer agrees that any line of credit desired or approved is not a limitation of liability. Buyer agrees to make all payments even if in excess of credit limits.

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### Other Provisions Which Are Helpful

- Buyer hereby authorizes the Seller to utilize oral or written consumer **credit reports** on Buyer from time to time in connection with the extension or
  - continuation of the business credit represented by this credit application. Buyer authorizes the **Trade References** listed herein to release to seller any
  - information concerning the credit or financial status of buyer.

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### Other Provisions Which Are Helpful

- Buyer agrees that all information supplied by Buyer herein is correct to the best of Buyer's knowledge, and Buyer understands that all goods or services purchased from Seller are subject to all terms and conditions contained in this credit application and agreement and all other terms and
  - conditions contained on any of the Seller's invoices, delivery tickets and/or statements.

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Other Provisions Which Are Helpful

- Seller shall have the sole discretion and complete right to apply any payment received from Buyer in any manner which Seller deems proper unless
  - otherwise specified in the remittance by Buyer.

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Other Provisions Which Are Helpful

- In the event of any conflict between the
  - provisions of this Agreement and the terms of any other agreement, sales order, purchase order, oral statement or otherwise, the terms and conditions of this Agreement shall control.
- (Battle of the Forms) What do you do?

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Other Provisions Which Are Helpful

- Seller shall have the sole discretion and complete right to apply any payment received from Buyer in any manner which Seller deems proper unless
  - otherwise specified in the remittance by Buyer.

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### Other Provisions Which Are Helpful

- Seller shall not be liable for any damages or other losses resulting from any delay in delivery or performance where such failure is the result of a
  - cause beyond the Seller's reasonable control, including but not limited to, an act of God, any government law, regulations, or order, shortage of material, or any other cause beyond the Seller's reasonable control.

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### Other Provisions Which Are Helpful

- Seller's liability hereunder shall be limited to the purchase price paid by the Buyer for any goods. IN NO EVENT SHALL SELLER HAVE ANY
  - LIABILITY FOR COMMERCIAL LOSS, CLAIMS FOR LABOR, OR ANY CONSEQUENTIAL DAMAGES OF ANY OTHER TYPE.
- Other limitations of liability?
- Limitations of Warranties?

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### Competing Contract Language

- My contract says...
- My customer's contract says... which is contrary to my contract terms.
- "Battle of the Forms" issue.
- How is it resolved?
- Contract vs. Purchase Order...

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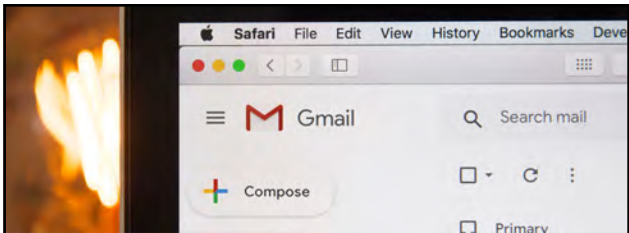
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**Electronic Communications**

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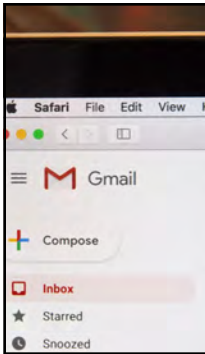
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**E-Sign Act and UETA**

1. The federal E-Sign Act; and
2. The Uniform Electronic Transactions Act (UETA).

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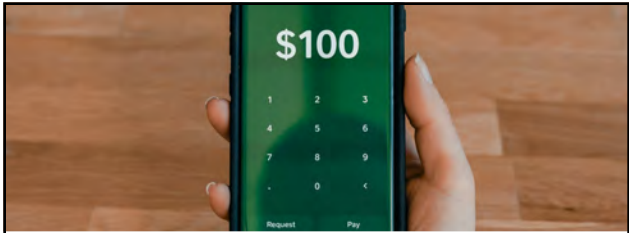
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**UNIFORM ELECTRONIC  
TRANSACTIONS ACT (UETA)**

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### Uniform Electronic Transactions Act

- States have the option, at their discretion, of adopting all, part or only portions of UETA.

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### Uniform Electronic Transactions Act (UETA)

- It applies only to electronic records and signatures that relate to a “*transaction*”, which is defined as those interactions between people relating to business, commercial, or governmental affairs.

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### Uniform Electronic Transactions Act (UETA)

- UETA has the limited objective of ensuring that electronic records and electronic signatures are the equivalents of paper records and manual signatures.

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### Uniform Electronic Transactions Act (UETA)

- Agreement to use electronic means between the parties may be derived in several ways:
  - 1. Express Assent;
  - 2. From the context and surrounding circumstances, including the parties' intent;
  - 3. An express "trading partner agreement" that describes how the parties will proceed with e-contracting.

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### Uniform Electronic Transactions Act (UETA)

- Agreement to use electronic means between the parties may be derived in several ways:
  - In some circumstances, the use of a business card that includes an e-mail address may be an indication of assent to contract electronically.

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### Uniform Electronic Transactions Act (UETA)

- UETA does not attempt to create a whole new system of legal rules for the new electronic marketplace.

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Uniform Electronic Transactions Act (UETA)

- The same substantive laws regarding contract formation, assent, Statute of Frauds, etc., still apply to transactions that the parties attempt to conduct electronically.

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Uniform Electronic Transactions Act (UETA)

- When Are Records Sent and Received?

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Uniform Electronic Transactions Act (UETA)

- When Are Records Sent?
  1. When it is addressed properly or otherwise directed to an information processing system that the recipient has designated or uses for receipt of electronic records and from which the recipient is able to retrieve the record;
  2. It is in a form capable of being processed by that system; and
  3. Enters an information processing system outside the control of the sender

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### Uniform Electronic Transactions Act (UETA)

- When Are Records Received?
  1. Unless otherwise agreed, it enters an information processing system designated by the recipient or used for the purpose of receiving electronic records or information; and
  2. It is in a form capable of being processed by that system.

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### Uniform Electronic Transactions Act (UETA)

- When Are Records Received?

Electronic records are "received" even if no individual is aware of the receipt.

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### E-SIGN ACT

- Enacted by Congress on June 16, 2000 and signed by President Clinton June 30, 2000.
- E-Sign and UETA overlap significantly, but they are not identical.

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### E-SIGN ACT

- E-Sign is an acronym for:
- Electronic Signatures in Global and National Commerce Act.

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### E-SIGN ACT

- Congress adopted E-Sign because of concerns about the continued adoption of divergent state laws governing electronic signatures and records and the uncertainty about the time it would take to enact UETA in all of the states.

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### E-SIGN ACT

- E-Sign drafters drew heavily upon UETA.
- Some portions of E-Sign use the same language of UETA.

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### E-SIGN ACT

- Scope of E-Sign:  
It applies only to electronic records and signatures that relate to a "transaction", which is defined as "an action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons."

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### E-SIGN ACT

- The fundamental principle embodied in E-Sign is the fact that a signature, contract, or other record relating to any transaction may not be denied legal effect or enforceability solely because it is in electronic form or an electronic signature or record was used in its formation.

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### E-SIGN ACT

- The major effect of E-Sign is that "with respect to any transaction in or affecting interstate or foreign commerce, a signature, contract, or other record relating to a transaction will not be denied legal effect, validity, or enforceability solely because it is in electronic form".

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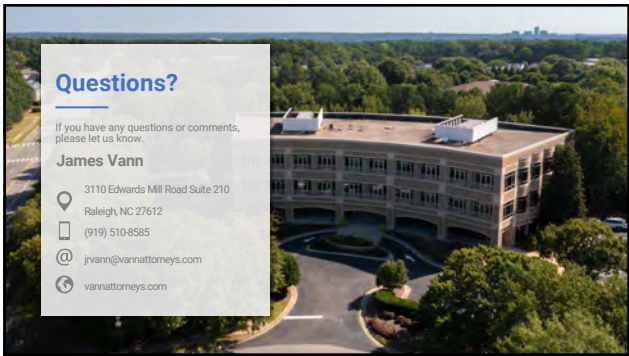
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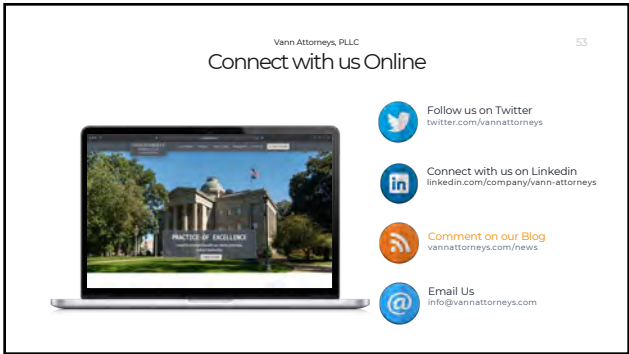
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