

ELECTRONIC CONTRACTS: GENERALLY.

21-212. EFFICACY AND COMMERCIAL REASONABLENESS OF ATTRIBUTION PROCEDURE.

THE EFFICACY, INCLUDING THE COMMERCIAL REASONABLENESS, OF AN ATTRIBUTION PROCEDURE IS DETERMINED BY THE COURT. IN MAKING THIS DETERMINATION, THE FOLLOWING RULES APPLY:

(1) AN ATTRIBUTION PROCEDURE ESTABLISHED BY LAW IS EFFECTIVE FOR TRANSACTIONS WITHIN THE COVERAGE OF THE STATUTE OR RULE.

(2) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (1) OF THIS SECTION, COMMERCIAL REASONABLENESS AND EFFECTIVENESS IS DETERMINED IN LIGHT OF THE PURPOSES OF THE PROCEDURE AND THE COMMERCIAL CIRCUMSTANCES AT THE TIME THE PARTIES AGREED TO OR ADOPTED THE PROCEDURE.

(3) AN ATTRIBUTION PROCEDURE MAY USE ANY SECURITY DEVICE OR METHOD THAT IS COMMERCIALY REASONABLE UNDER THE CIRCUMSTANCES.

21-213. DETERMINING ATTRIBUTION.

(A) AN ELECTRONIC AUTHENTICATION, DISPLAY, MESSAGE, RECORD, OR PERFORMANCE IS ATTRIBUTED TO A PERSON IF IT WAS THE ACT OF THE PERSON OR ITS ELECTRONIC AGENT, OR IF THE PERSON IS BOUND BY IT UNDER AGENCY OR OTHER LAW. THE PARTY RELYING ON ATTRIBUTION OF AN ELECTRONIC AUTHENTICATION, DISPLAY, MESSAGE, RECORD, OR PERFORMANCE TO ANOTHER PERSON HAS THE BURDEN OF ESTABLISHING ATTRIBUTION.

(B) THE ACT OF A PERSON MAY BE SHOWN IN ANY MANNER, INCLUDING A SHOWING OF THE EFFICACY OF AN ATTRIBUTION PROCEDURE THAT WAS AGREED TO OR ADOPTED BY THE PARTIES OR ESTABLISHED BY LAW.

(C) THE EFFECT OF AN ELECTRONIC ACT ATTRIBUTED TO A PERSON UNDER SUBSECTION (A) OF THIS SECTION IS DETERMINED FROM THE CONTEXT AT THE TIME OF ITS CREATION, EXECUTION, OR ADOPTION, INCLUDING THE PARTIES' AGREEMENT, IF ANY, OR OTHERWISE AS PROVIDED BY LAW.

(D) IF AN ATTRIBUTION PROCEDURE EXISTS TO DETECT ERRORS OR CHANGES IN AN ELECTRONIC AUTHENTICATION, DISPLAY, MESSAGE, RECORD, OR PERFORMANCE, AND WAS AGREED TO OR ADOPTED BY THE PARTIES OR ESTABLISHED BY LAW, AND ONE PARTY CONFORMED TO THE PROCEDURE BUT THE OTHER PARTY DID NOT, AND THE NONCONFORMING PARTY WOULD HAVE DETECTED THE CHANGE OR ERROR HAD THAT PARTY ALSO CONFORMED, THE EFFECT OF NONCOMPLIANCE IS DETERMINED BY THE AGREEMENT BUT, IN THE ABSENCE OF AGREEMENT, THE CONFORMING PARTY MAY AVOID THE EFFECT OF THE ERROR OR CHANGE.