



PRACTICE BULLETIN No. 9

ELECTRONIC Use Of SEAL

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Ontario Professional Foresters Association

Practice Bulletin No. 9 - Electronic Use of Seal

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PURPOSE

The purpose of this bulletin is to provide advice to Members, outlining the legal implications of affixing a member's OPFA professional seal to documents in electronic format. Some suggested actions are also provided. A related matter (delegation) arising from electronic assembly of documents is also discussed. The issues covered in this bulletin were initially raised in connection with Crown land forestry but have wider application.

ISSUES

1. Does the OPFA support the member's use of their seal in electronic format (e.g..scanning the page with the signature & seal ?
2. How can the member minimize the risk of fraudulent use of their seal?

BACKGROUND

The electronic use of the R.P.F. seal became a matter for consideration by the OPFA through a resolution at the 2009 Annual General Meeting.

Definition of Electronic Seal

The Electronic Commerce Act 2000 Section 11.6 addresses the use of electronic signature, which is defined as "...electronic information that a person creates or adopts in order to sign a document that is in, attached to or associated with the document."

In this case an electronic image of a member's seal, signature and date constitutes an electronic seal.

OPFA Use of Seal Policy and Related Bylaws

The OPFA Use of Seal Policy dated 2005 sets out use of the seal. It does not deal with the electronic format of seals specifically.

Section 14.2 of the OPFA Bylaws state that the Association shall provide a professional seal to the members upon registration, which shall remain the property of the Association. The use of the seal can not be delegated without the permission of the Association.

The member is responsible for the use of their seal in any and all formats and cannot delegate its use.

MNR Direction on Use of Signature and Seal

Digital seals and signatures are not required by the Ministry of Natural Resources (MNR) to be submitted electronically, per the Forest Information Manual (FIM) and the FIM Forest Management Planning Technical Specifications:

“For all documents requiring a title, certification and approval page, an original hard copy with all required signatures and a reference to the electronic submission it is approving, will be kept on file at the appropriate MNR office(s) and the office of the Licensee.” (*FIM Forest Management Planning Technical Specifications, Section 5.1*)

DISCUSSION

With the increasing requirement of submission of digital documents the administrative assembly and electronic transfer of documents may in specific situations be conducted by someone other than the member who has professionally certified the document. This situation can occur, but is not limited to, corporations who have centralized planning activities.

Digital seals and signatures can often expedite the delivery of documents between agencies and in turn create business efficiencies.

For forest management planning on Crown land, documents containing a digital seal are not required by MNR to be submitted as per the Forest Information Manual (FIM) and the FIM Forest Management Planning Technical Specifications, Section 5.1 as referenced above.

Some foresters are commonly using seals electronically on various documents. In the case of submissions to MNR, as can be seen from Section 4.5 of the Forest Information Manual quoted above, there is no requirement to do so and in fact an original paper copy is required as the official record in any event. The approved versions of forest management planning documents available to the public on the internet do not require signatures or R.P.F. stamps. In other situations where foresters are compelled to use their seal electronically, careful consideration of alternatives to an electronic seal and an understanding of the risks associated with using electronic seals will ensure the best course of action.

OPFA Members working on private or other public lands may also run into situations where documents may be or are requested to be filed electronically.

Potential theft and fraudulent use of the seal are issues that appear to be in common with the misappropriation of any signature. i.e. part of the risk of doing business. It is the responsibility of the member to assess the risks before affixing their electronic signature and seal to any document. Delegation of the use of a member's seal is a contravention of the Use of Seal Policy and constitutes a misuse of seal.

(a) **Theft and Fraudulent Use** - The risk of theft and fraudulent use of a member's signature and seal are possible regardless of whether the signature and seal are in paper or electronic formats. There are inherent risks to the practice of affixing electronic signatures and seals to publicly accessible digital documents. Regardless of file security precautions such as saving the file as in picture format (.GIF, .JPG), portable document format (.PDF), locking the file to prohibit editing, copying and pasting, or encrypting electronic files, it is possible for someone to obtain a copy of a digital seal and signature through printing and scanning a signature page or

copying and printing a computer screen image. Therefore potential theft is not a problem that can be eliminated by the Association or the member.

(b) **Misuse of Seal** – The member cannot delegate use of their seal therefore doing so constitutes misuse of the seal. After assessing the risk, a member may choose to utilize the services of another person to administratively assemble an electronic document and then instruct the person to affix the member's seal after the member reviews the content of the electronic document. In this situation, the member has not delegated the use of the seal and continues to assume all professional responsibility for the certification. There is always the possibility however that the person will use the seal beyond the purpose set out by the member. The risk of this approach is an issue that the member can limit to a certain degree, but cannot eliminate entirely.

While the electronic use of the seal is considered commonplace by some Members, this is considered unwise by other members due to the high risk of potential fraudulent use.

CONCLUSION

The OPFA concludes that there is essentially no difference between using the R.P.F. seal on a paper document or in an electronic document. The same rules apply in both situations:

- a. The seal is the property of the Association.
- b. The forester to which the seal is assigned may not delegate its use.
- c. The work presented by the sealed document shall have been personally carried out by the member or shall have been carried out under the member's "direct supervision" or adequate review.
- d. Use of the seal must be accompanied by the signature of the R.P.F. and dated.

The member is responsible for the use of their seal in any and all formats and cannot delegate its use.

RECOMMENDATIONS

The following recommendations are offered to minimize the risk of theft and fraudulent use of a member's signature and seal:

1. Do not provide an electronic version of your signature or seal to anyone else.
2. Do not retain electronic copies of your signature or seal on unsecured computers.
3. The association does not support the use of the professional seal by any person other than the member to which it was assigned.
4. The member should keep a copy of each certification page they sign and seal.
5. Avoid use of a signature and seal in electronic format.
 - a. Is a signature and seal specifically requested on the electronic version of a document? If so, encourage your client or the requesting body to consider accepting an electronic version of the title or certification page that remains unsigned/unsealed with a notation of the location(s) of the original signature page.
6. The member should personally produce a certification page that applies to only specific information (i.e. print, sign, and seal a paper copy of the certification page, then scan the

document to produce an electronic version in .JPG or .PDF formats and electronically encrypt the document).

If the member assesses the risk and decides to proceed with use of their signature and seal electronically in a document administratively assembled by another person (not a delegation of use of seal or professional responsibility), the following points should be considered:

- a. Is it more appropriate that another R.P.F. involved in the work be responsible for professional certification?
- b. Can administrative procedures be changed to avoid the need for a third party to administratively assemble a document?
- c. Is there an R.P.F. who can administratively assemble the document?
 - i. If so, the member should document the specific conditions under which their signature and seal may be used (i.e. for what specific document, for what types of documents for a specific limited timeframe). Under this situation, the OPFA Code of Ethics would apply to the secondary member administratively assembling the document.
 - ii. If another R.P.F. cannot assemble the document, and the document administrative assembly is being carried out by a non-member, the member should document the specific conditions under which their signature and seal may be used (i.e. for what specific document, for what types of documents for a specific limited timeframe.). This situation should be considered as a last resort as the member assumes significant risk of misuse of seal and signature in this scenario.