

# Introduction

Electronic signature and records legislation has revolutionized the way business and commercial transactions are conducted. Passage of E-SIGN by Congress in June 2000, and the progressive adoption of UETA by most states, has empowered parties to most transactions to do business electronically, confident that their contracts are legally enforceable. These legislative changes also made the need for an exposition of the law of electronic signatures and records increasingly apparent. Lawyers and business executives seeking to enter into and to document transactions in electronic commerce need a reference that explains these laws and relates them to developments in the marketplace.

Confronted with the huge potential change in the market for goods and services that widespread use of electronic signatures and records has triggered, market participants have developed a set of business conventions that build on both traditional legal principles and new laws, tailored to meet the business needs of particular fields of commerce. With these conventions in mind, we wish to provide more than a statement of the current law of electronic signatures and records. Rather, we seek to put these laws in context, considering the realities of the digital marketplace. For businesspersons and their advisors, understanding the environment in which the law of electronic signatures and records will be applied is as important as knowing the law itself. To that end, we offer practical examples related to the use of electronic signatures and records in particular industries. Several contributed articles in Part III discuss specific industry and government issues as well.

We bring two perspectives to this work that we hope will benefit our readers. First, we are all practicing lawyers advising clients on the day-to-day business of providing services electronically. We primarily focus on the field of financial services, but since many electronic transactions have a nexus to financial services, we deal with a wide segment of electronic commerce. Second, we were active participants in the public policy debate that led to state and federal legislation clarifying the law of electronic signatures.

The three authors have acted as counsel for the Electronic Signatures and Records Association, whose members have included both technology leaders and financial services firms.

Jerry Buckley, Margo Tank and David Whitaker also acted as Counsel and Co-Reporters to a cross-industry initiative called SPeRS, Standards and Procedures for electronic Records and Signatures ([www.spers.org](http://www.spers.org)). SPeRS is a set of guidelines, procedures, checklists and strategies for developing systems to create, deliver, sign, manage and transfer legally enforceable electronic records and signatures in commercial and consumer transactions. It is intended to help companies develop cross-discipline system design teams for implementing electronic commerce. One of the authors, David Whitaker, was a participant in the NCCUSL process that produced the landmark UETA. We closely followed state enactments of UETA. (A table comparing state versions of UETA with the official version adopted by NCCUSL is included in Appendix D.) The interplay of our roles as legal counselors to business clients and public policy advocates informs our approach to this work; we hope it provides valuable insight for our readers.

As we work to shape business agreements for our clients, we encounter areas of the law that present interpretive challenges. We also deal with the very practical side of business law: development of standard contract terms and standard forms of disclosure. Sample contract terms and disclosures are included in this book where appropriate.

If it was not obvious before, the Covid pandemic and resulting need to conduct transactions remotely demonstrated the wisdom of creating legal certainty around the validity of electronic signatures and records. The trend toward use of digital contracts executed electronically, while already underway, was accelerated during the pandemic.

Twenty-four years after enactment of the federal ESign Act and the almost universal enactment by states of the Uniform Electronic Transactions Act, these statutes have proven to be remarkably durable. And even as advances in digital commerce like the introduction of the block chain and Smart Contracts have emerged, the principles articulated in ESign and UETA have proven flexible enough to accommodate these developments. That is not to say that these new methods of contracting electronically do not need to be examined to assure that they are compliant with the rules related to electronic signing and the proper retention processes to assure continued validity and enforceability under the standards promulgated in the UETA and ESign, but so far it has not been deemed necessary to amend the foundational electronic signature statutes to accommodate technological advances.

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We are grateful to the editors and staff of Thomson Reuters for their assistance in our regular updates of this text.