

E-SIGNATURE LAWS, REGULATIONS & STANDARDS FOR FINANCIAL SERVICES

The following is an overview of relevant electronic signature laws, regulations and standards that apply to financial services organizations as well as those industry laws and regulations that need to be accounted for when bringing processes online.

LAWS & REGULATIONS

E-SIGN & UETA

The Federal Electronic Signatures in Global (ESIGN) and the state Uniform Electronic Transactions Act (UETA) give legal recognition for electronic signatures and records to satisfy the “in writing” legal requirements for transactions, including disclosures, and permit companies to satisfy statutory record retention requirements solely through the use of electronic records. Both ESIGN and UETA require a person’s consent to conduct business electronically.

UNIFORM COMMERCIAL CODE (UCC)

There are many types of transactions that are not covered by ESIGN or UETA but that fall under the Uniform Commercial Code including:

- Funds transfers (covered by UCC Article 4A);
- Letters of Credit (covered by revised UCC Article 5);
- Securities (covered by UCC Revised Article 8);
- Security interests in goods and intangibles (covered by UCC Revised Article 9).

STANDARDS, ASSOCIATIONS & GUIDES

SPERS - STANDARDS & PROCEDURES FOR ELECTRONIC RECORDS & SIGNATURES

<http://www.spers.org>

e-SignLive is a founding member of SPeRS, a committee formed by the Electronic Financial Services Council to produce best legal practices and guidelines to help the financial services industry implement compliant electronic signature, electronic disclosure and electronic vaulting solutions. e-SignLive’s solutions have been designed to comply with the best practice recommendations outlined in SPeRS.

ESRA - ELECTRONIC SIGNATURE AND RECORDS ASSOCIATION

<http://www.esignrecords.org>

ESRA is a centralized educational resource for its members and the public with respect to the legal, regulatory and operational issues in relation to the use of electronic signatures and records. Its original founding members — AIG, Adobe, DocuSign, eOriginal, Genworth Financial, e-SignLive and Wells Fargo Home Mortgage — represent a prestigious group of corporations, both technology-providers and “user” companies.

AFSA/X9.103 - AMERICAN FINANCIAL SERVICES ASSOCIATION

<http://www.afsaonline.org> • <http://www.x9.org/home>

In 2004, AFSA through Accredited Standards Committee X9 Inc. published the ANSI X9.103 standard for auto finance e-contracts. The scope of this standard includes signature capture and the creation, storage and assignment of Electronic Chattel. e-SignLive was a member of the X9.103 drafting committee.

AFSA/TOLEC X9.110 - TRANSFER OF LOCATION OF ELECTRONIC CONTRACTS

The Transfer of Location of Electronic Contract (TOLEC) technical standard provides commonality for the physical transfer of electronic contracts between banks, non-depository finance companies, underwriters and investors. e-SignLive was a member of the TOLEC standard drafting committee.

STAR - STANDARDS FOR TECHNOLOGY IN AUTOMOTIVE RETAIL

<http://www.starstandard.org/>

STAR has developed standards for data transfer and XML messaging within the auto finance industry. e-SignLive supports these standards.

MISMO - MORTGAGE INDUSTRY STANDARDS MAINTENANCE ORGANIZATION

<http://www.mismo.org>

MISMO developed the SMARTdoc standard, a data standard for electronic mortgages. e-SignLive is an active member of the MISMO eMortgage workgroup and e-SignLive solutions support the ability to e-sign MISMO SMARTDoc format according to MISMO eMortgage guidelines.

FANNIEMAE & FREDDIEMAC

Originally published in 2005, FreddieMac and FannieMae issued statements around the policies and procedures for selling e-mortgages to investors. The guides completely recognize electronic mortgages including the eNote, security instrument and application, as well as hybrid paper-electronic mortgages.

<https://www.efanniemae.com/sf/guides/ssg/relatedsellinginfo/emtg/pdf/emtgguide.pdf>

https://web.archive.org/web/20140722081158/http://www.freddiemac.com/singlefamily/elm/pdf/eMortgage_Guide.pdf

MERS - MORTGAGE ELECTRONIC REGISTRATION SYSTEM

<http://www.mersinc.org/>

MERS provides online eNote registration services for mortgage lenders to track electronic mortgage promissory notes. e-SignLive was a member of the MERS National eNote Registry Development Advisory Team, a group that reviewed and advised MERS registry development efforts. e-SignLive's solutions exceed MERS National eNote Registry requirements for authentication, registration, transfers, messaging, and control of the eNote.

IRI - INSURED RETIREMENT INSTITUTE

<http://www.irionline.org>

The Insured Retirement Institute (IRI, formerly NAVA) represents the supply chain of the insured retirement income industry: major insurers, broker-dealers, banks, asset managers, financial advisors and industry solution providers. In 2006, IRI produced Guiding Principles (standards) related to Straight-Through-Processing (STP) in new business processing, including the use of an electronic application with an electronic signature at point of sale.

e-SignLive participated on the committee responsible for developing standards and guidance on the use of electronic signatures in the variable annuity industry. e-SignLive was one of only two vendors chosen for the Association's subsequent proof of concept implementation.

DEPARTMENT OF EDUCATION

The Department of Education published Standards for Electronic Signatures in Electronic Student Loan Transactions. The standards indicate that a Lender will be protected from the loss of Federal benefits on a loan if the loan is determined to be legally unenforceable by a court based solely on the processes used for the electronic signature or related records, provided it meets the criteria listed. The DoE requires lenders be able to reliably demonstrate the process a borrower went through to sign an electronic Master Promissory Note. Voice recordings are not acceptable electronic signatures.

<http://ifap.ed.gov/dpcletters/attachments/gen0106Arevised.pdf>

NOTE: The above references should not be regarded as legal opinion. e-SignLive recommends seeking professional legal advice for guidance on compliance and legal matters.



For more information, contact a representative at
1-888-SILANIS (745-2647)
or visit the e-SignLive website today.

FREE TRIAL

About e-SignLive

Businesses of all sizes choose e-SignLive™ by Silanis when electronic signatures matter. Nearing one billion documents processed each year, e-SignLive is the most widely used e-signature solution in the world and ranked a leader by analyst firms. Organizations of all sizes, including top banks, insurers, credit providers, pharmaceutical and government agencies, trust e-SignLive to run their core business processes and take their businesses digital through innovations in mobile technology, electronic evidence, analytics and personalization. On premises or in the cloud, e-SignLive delivers the best customer experience while providing the strongest legal protection and regulatory compliance.

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