

Electronic Signatures and Records and SPeRS



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The Opportunity

- The elimination of paper documents and wet signatures offers a major opportunity to streamline, automate, accelerate and control the delivery, execution and management of business and consumer records.



Where are Signatures Needed?

- Statute of Frauds
- Agent appointments and terminations
- Applications
- Medical information releases
- Replacement notices
- Policy illustrations
- Change of beneficiary designations
- Premium receipts
- Death claims



Types of Transactions That Can Be Executed Electronically

- Producer transactions
 - Quoting and selling insurance products
 - Updating insureds' information
- Services to insureds
 - E-billing (for recurring premiums)
 - Administrative services
 - Loss control services
- Reinsurance
 - Signing documents



Advantages of E-Signatures in Commercial Insurance

- For Producers and Insureds:
 - Payments can be confirmed promptly
 - Convenient payment schedules
 - Access to payment history, loss reports, claims data
 - Secure transactions
- For Insurers:
 - Faster insurance/reinsurance transaction
 - Lower cost per transaction
 - Data productivity: can be used elsewhere (*e.g.*, loss control, premium audits, underwriting)



The Environment is More Favorable to Insurance E-Commerce

- Consumers increasingly sophisticated
- Legal developments allow
 - Electronic Signatures
 - Electronic Records
 - Electronic Disclosures
- Regulations – State DOIs tolerant of technological innovation



UETA

- State law solution for electronic records and signatures
- Created by the National Conference of Commissioners on Uniform State Laws (NCCUSL)
 - **Overlay statute**
 - **Authorizes replacing writings with electronic records**
 - **Authorizes electronic signatures**



UETA

- **Problems with the UETA**
 - **Must be adopted by each state**
 - **Process can take years**
 - **States add non-uniform provisions**
 - **California**
 - **Doesn't change federal law**
 - **Federal Reserve Board**
 - **HUD**



The Federal ESIGN Act – An Overview

- A federal solution:
 - it covers state and federal laws
 - it expressly states that it is the “specific intent of the Congress” that it apply to the business of insurance
 - it is an instant 50 state baseline for the use of electronic signatures and records
 - it provides specific requirements for consumer transactions
 - it sets boundaries for regulatory authority
 - it is technology neutral



General Rule of Validity

- Both ESIGN and UETA *only affect* laws imposing writing or signing requirements and do *not* affect -
 - substantive protections of any law, including consumer protection laws; or
 - the content, timing or format of disclosures required by law.



General Rule of Validity

- The use or acceptance of an electronic signature or record is not required.



Electronic Signatures: The Legal Definition

- E-SIGN gives legal force and effect to ***electronic signatures***. The law defines an electronic signature as:
 - an electronic sound, symbol or process,
 - attached to or logically associated with a contract or other record, and
 - executed or adopted by a person with the intent to sign the record.



Electronic Signatures: The Technological Possibilities

- The E-SIGN legal definition does not specify the technology that an electronic signature must use to be valid. A business can use ***any technology***, including an:
 - “I agree” button,
 - digitized image of a handwritten signature,
 - PIN number,
 - digital signature using public/private key cryptography, or
 - biometrics (including a retinal scan).



Intent/Authentication

- E-SIGN answers the question of “Is it a signature?”
- E-SIGN does not answer the question “Is it your signature?” or suggest how to demonstrate the signer’s intent (necessary for binding contract)
- The recipient -- not the signer -- bears the burden of proof of signer’s attribution and intent.



Intent/Authentication

- **Challenges**

- Establishing identity and authority in remote transactions**

- Establishing intent when using new, unfamiliar signature processes**

- **SPERS – Standards and Procedures for Electronic Records and Signatures**



E-Commerce Implementation Challenges

- Cost
- Security
- Fraud/Validation
- Consistency with offline commerce
- Federal and State laws/regulations
- Technology
- Regulators interpretations of state and federal requirements
- Evidentiary concerns
- Limited precedent
- GLB compliance
- Social Security numbers



The Challenge

- While the statutory framework for enforceability of electronic records and signatures is now firmly established, the new Ecommerce laws require that electronic systems and processes meet specific standards for:
 - Consent to use electronic records and signatures
 - Presentation of information,
 - Execution of signatures,
 - Record retention, and
 - Record printing and delivery.
- Failure to meet those standards will impair the enforceability of electronic records.



Standards and Procedures for electronic Records and Signatures

- SPeRS is:
 - A cross-industry initiative to establish commonly understood “rules of the road” available to all parties seeking to take advantage of the powers conferred by the new Ecommerce laws.
 - Focused on the behavioral aspects of the interaction between parties to the transaction, not on technology. SPeRS is intended to be technology neutral.



The SPeRS Objectives

- SPeRS will:
 - Permit businesses to establish a common understanding with vendors concerning design parameters for routine functions, without having to develop detailed custom specifications,
 - Assist in establishing industry standards for commercially reasonable, enforceable structures and processes, and
 - Provide the customer with a “common experience” across various online transactions, increasing the customer’s comfort level with the transactions.



The SPeRS Structure

SPeRS is divided into five sections:

- Authentication
- Consent
- Agreements, notices and disclosures
- Electronic signatures
- Record retention
- Each section provides 5 to 10 high-level standards to guide systems designers in developing processes that will meet the new legal requirements.
- Each standard is supported by:
 - Plain-English discussions of the underlying issues,
 - Checklists outlining specific strategies and options for implementing the standards,
 - Examples and illustrations, and
 - Legal commentary to assist in-house counsel.



The SPeRS Participants

- ACORD
- Adobe Systems
- Alliance of American Insurers
- American Financial Services Association
- American Bankers Association
- American Council of Life Insurers
- American International Group
- Charles Schwab
- Citicorp
- DealerTrack
- Dell Financial Services
- Esurance
- Fannie Mae
- First American Title Insurance Company
- Freddie Mac
- GE Mortgage
- Harland Financial Solutions
- Intuit Inc.
- MassMutual Financial Group
- Mortgage Bankers Association
- MGIC
- National Association for Variable Annuities
- National Multi Housing Council
- NewRiver
- PricewaterhouseCoopers
- Principal Financial Group
- Republic Mortgage Insurance Co.
- RPost, Inc.
- Route 1 LLC
- SafeDocs, Inc.
- Securities Industry Association
- Silanis Technology
- Software & Information Industry Ass.
- Swiss Re
- TIAA-CREF
- Verisign
- Wave Systems
- Wells Fargo Home Mortgage
- Zions Bancorporation/ Digital Signature Trust



Value of SPeRS

- Identifies threshold decisions
 - Business
 - Technological
 - Legal
- Provides reasonable compliance alternatives
- Mandates actions where legally necessary
- Fills legal gaps
- Combines guidance and flexibility



How SPeRS Helps: Identifying Threshold Decisions

- Do we want or need to obtain consent?
See SPeRS 2-1: General Agreement to Use Electronic Records and Signatures
 - What is the nature of the client relationship?
 - What Records will you transmit?
 - Does the Rule of law require a writing?
- SPeRS provides the thought process



How SPeRS Helps: Mandated Essential Requirements

- Consumer Consent Process – See SPeRS 2-3
 - Checklist ensures that all requirements are considered
 - Sample disclosure forms help streamline development



How SPeRS Helps: Filling the Gaps

- ESIGN and the UETA are not self-executing
- Practical questions unanswered:
 - When to provide disclosures?
 - When to obtain consent?
 - How to obtain reasonable demonstration?
- What kind of customer experience do you want?
- The goal: Meet legal requirements and allow flexible implementations



NAIC Has Actively Worked in E-Commerce

- E-Commerce Working Group (1996)
- Internet White Paper (1997)
- Internet Summits (1998, 2000)
- Survey of regulators, companies
- NAIC endorsed UETA
- NAIC Model Bulletin (2001)