



### David Whitaker

#### Partner

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David Whitaker advises traditional and emerging financial services companies, and commercial enterprises, in transactional, legal and regulatory matters, particularly those related to electronic commerce and digital financial services.

#### RELATED SERVICES

- Intellectual Property and Technology

He has extensive experience with the practical application of laws governing electronic banking, letters of credit, payment systems, records management and commercial and consumer financing. He provides valuable insights to his clients based on decades of in-house experience and deep practical knowledge of the structures, implementation platforms and processes used to contract for and deliver financial and other services online and via mobile devices. David also has extensive experience with various laws and regulations related to residential mortgage lending, including the Real Estate Settlement Procedures Act (RESPA), the Fair Credit Reporting Act and the Equal Credit Opportunity Act, as well as the laws related to privacy and data security.

David is a member of the American Law Institute, the American Bar Association's Business Law Section, and the Business Law Section's Committee on the Law of Commerce in Cyberspace. He has co-chaired the Cyberspace Committee's Task Force on Federated Identity Management. David was the Co-Reporter for the Standards and Procedures for electronic Records and Signatures (SPeRS). He served as Reporter for the Mortgage Bankers Association white paper "Security Interests in Transferable Records." He was an active participant in the drafting of Revised Articles 5 and 9 of the UCC. He also participated in the drafting of the Uniform Electronic Transactions Act, where he chaired the Task Force on Scope and served as reporter for the Task Force. David also advised industry participants on the creation and drafting of the federal Electronic Signatures in Global and National Commerce Act.

David has written extensively on both law and practice related to digital financial services, electronic commerce and digital transformation. In particular, he is co-author of Thomson Reuter's The Law of Electronic Signatures (now in its eighth edition). He has also appeared as a featured speaker at more than 250 conferences, seminars and webinars on financial services law.

#### CREDENTIALS

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##### Admissions

- District of Columbia
- Illinois

- Iowa
- Oklahoma

## Recognitions

- *Mortgage Banking Magazine*, Mortgage Banking Technology All-Star (2009)
- Electronic Records and Signatures Association, e-SignLive e-Sign Ambassador Award (2014)
- Electronic Records and Signatures Association, Cornerstone Award (2014)
- Electronic Records and Signatures Association, Cornerstone Award (2015)
- *Chambers FinTech*, Legal: Data Protection & Cyber Security – USA (2019)
- Acritas Star Award (2019)
- *The Legal 500 United States* (2019)

## Education

- J.D., University of Illinois College of Law  
*cum laude*
- B.A., James Madison College at Michigan State University  
*with High Honor*

## Memberships

- American Law Institute
- American Bar Association Business Law Section
- American Bar Association Business Law Section Cyberspace Law Committee

## INSIGHTS

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### Publications

#### **[UPDATED] Coronavirus: US Federal and state governments work quickly to enable remote online notarization and SBA PPP loans to meet global crisis**

20 May 2020

Federal and state governments are moving quickly to enable fully electronic processes to keep businesses operating.

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#### **Coronavirus: the federal government is working quickly to fund the efforts of small business to recover from the global crisis: electronic signatures are permitted**

13 May 2020

Electronic signatures are permitted as part of the Paycheck Protection Program and Main Street Lending Program.

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### **eSignature and ePayment News and Trends**

30 April 2020

eSignature and ePayment News and Trends

Some key considerations for lenders looking to close loans electronically, either in person or remotely, plus latest regulatory,

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legal and case law developments around eSignatures and ePayments.

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### **eNotes use surges – insights for lenders looking to close mortgage loans electronically**

30 April 2020

Some key considerations for lenders looking to close loans electronically, either in person or remotely.

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### **eSignature and ePayment News and Trends**

March/April 2020

eSignature and ePayment News and Trends

COVID-19 special edition

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### **eSignature and ePayment News and Trends**

28 February 2020

eSignature and ePayment News and Trends

What does it mean to design ethical algorithms that are transparent and fair? Testimony from the latest House Task Force on AI hearing; plus latest legal, regulatory and case law developments.

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### **eSignature and ePayment News and Trends**

30 January 2020

eSignature and ePayment News and Trends

The impact of the newly effective California Consumer Privacy Act on commercial websites and mobile applications, plus latest legal, regulatory and case law developments.

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### **Artificial intelligence software tools tested for demographic impact**

20 December 2019

A NIST report quantifying demographic differences in nearly 200 face recognition algorithms found “empirical evidence for the existence of a wide range of accuracy.”

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### **eSignature and ePayment News and Trends**

20 December 2019

eSignature and ePayment News and Trends

In this issue, a NIST report examines the demographic accuracy of nearly 200 facial recognition algorithms; plus latest developments from the legislatures, the regulators and the courts.

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### **eSignature and ePayment News and Trends**

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25 November 2019  
eSignature and ePayment News and Trends

In this issue, requirements and expectations for financial institutions and tech vendors striving to safeguard customer information, plus the latest developments from the legislatures, the regulators and the courts.

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### **Financial institutions and technology vendors: requirements and expectations when safeguarding customer information**

25 November 2019

Guidance from the FDIC contains valuable advice for any business contracting with a technology vendor, and it alerts vendors to what their financial institution customers will be asking of them.

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### **eSignature and ePayment News and Trends**

31 October 2019  
eSignature and ePayment News and Trends

In this issue, the potential risks in relying on a data processing system that may contain a programming or processing error, plus latest developments from the legislatures, the regulators and the courts.

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### **Testing and protecting key data processing systems**

31 October 2019  
Protecting the integrity of key systems through regular evaluation and testing is important to every business that relies on system outputs to process transactions or to make, or help make, transaction decisions.

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### **US Supreme Court denies review of *Robles v. Domino's Pizza*, opening door to more lawsuits on website and mobile app accessibility claims**

16 October 2019  
Does the ADA apply to websites and mobile apps?

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### **eSignature and ePayment News and Trends**

27 September 2019  
eSignature and ePayment News and Trends

In this issue, the future of identity in financial services, plus latest developments from the legislatures, the regulators and the courts.

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### **eSignature and ePayment News and Trends**

30 August 2019

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## eSignature and ePayment News and Trends

In this issue, an analysis on the requirements for receiving an electronically signed 4506-T form, plus latest developments from the legislatures, the regulators and the courts.

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## ACH debit entries: NACHA rule change and guidance from CFPB consent order - key takeaways on compliance

31 July 2019

Without proper consideration of the NACHA rule changes and the consent order, banks processing ACH debits may be exposed to unnecessary risk.

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## eSignature and ePayment News and Trends

31 July 2019

eSignature and ePayment News and Trends

In this issue: without proper consideration of the NACHA rule change and the CFPB consent order, banks processing ACH debits may be exposed to unnecessary risk; plus latest developments from the legislatures, the regulators and the courts.

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## eSignature and ePayment News and Trends

28 June 2019

eSignature and ePayment News and Trends

In this issue, an analysis of California's recent law regarding chatbots, plus the latest developments from the legislatures, the regulators and the courts.

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## eSignature and ePayment News and Trends

31 MAY 2019

eSignature and ePayment News and Trends

In this issue, website accessibility – the growing regulatory and litigation risk, plus latest developments from the legislatures, the regulators and the courts.

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## Website accessibility – not just about complying with the ADA

31 MAY 2019

Both regulatory and litigation risks related to website accessibility are on the rise.

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## So you want to go digital...

11 APR 2019

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This article assists businesses in identifying the core issues that must be addressed to ensure the legal sufficiency of transactions conducted on eSignature platforms.

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### **eSignature and ePayment News and Trends**

30 APR 2019

eSignature and ePayment News and Trends

In this issue, Washington state moves closer to ESIGN, plus the latest developments from the legislatures, the regulators and the courts.

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### **eSignature and ePayment News and Trends**

29 MAR 2019

eSignature and ePayment News and Trends

In this issue, the new prepaid rule may affect virtual currency wallet providers, plus the latest developments from the legislatures, the regulators and the courts.

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### **As new prepaid rule takes effect, virtual currency wallet providers need to take notice**

29 MAR 2019

While much focus has been on how the new rule impacts traditional prepaid card issuers, the Prepaid Rule is sufficiently broad that it could apply to virtual currency wallets.

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### **eSignature and ePayment News and Trends**

28 FEB 2019

eSignature and ePayment News and Trends

In this issue, digitally complying with data breach notification laws, plus the latest developments from the legislatures, the regulators and the courts.

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### **Digitally complying with data breach notification laws: a little planning goes a long way**

28 FEB 2019

Can you send an electronic data breach notice?

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### **Fairness by Design**

31 JAN 2019

The "net impression" created by the consumer's entire online interaction with a site will be reviewed by regulators and the courts when evaluating regulatory compliance.

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## **eSignature and ePayment News and Trends**

31 JAN 2019

eSignature and ePayment News and Trends

In this issue, Fairness by Design, plus the latest developments from the legislatures, the regulators and the courts.

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## **eSignature and ePayment News and Trends**

20 DEC 2018

eSignature and ePayment News and Trends

In this issue, digitally transforming your business – the year's big legal and regulatory developments and breaking news.

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## **eSignature and ePayment News and Trends**

30 NOV 2018

eSignature and ePayment News and Trends

In this issue, a fintech Q&A with the team, plus the latest developments from the legislatures, the regulators and the courts

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## **eSignature and ePayment News and Trends**

26 OCT 2018

eSignature and ePayment News and Trends

In this issue, obtaining remote epayment authorizations from customers – are you in compliance? Plus the latest legislative and regulatory news.

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## **Obtaining remote epayment authorizations from customers: are you in compliance?**

26 OCT 2018

The consequences of non-compliance can be significant.

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## **eSignature and ePayment News and Trends**

14 SEP 2018

eSignature and ePayment News and Trends

In this issue, remote notarization – US state requirements, plus blockchain, the new stablecoin, the validity of esignatures, and more.

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## **Remote notarization: authentication requirements, by US state**

14 SEP 2018

A high-level summary of remote notarization laws by US state.

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## Electronic Signatures: The element of intent in the digital environment

23 JUL 2018

Failure to establish intent means that while the person's actions may manifest assent to, or agreement with, a record, the record has not been signed.

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## eSignature and ePayment News and Trends

23 JUL 2018

eSignature and ePayment News and Trends

This regular publication from DLA Piper aims to help companies identify significant news and legal developments impacting digital transactions.

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## eSignature and ePayment News and Trends

29 JUN 2018

eSignature and ePayment News and Trends

In this issue, is your website ADA compliant? Plus news on federal and state law, federal and state regulatory activities, fresh judicial precedent and more.

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## Is your website ADA compliant? A brief look at the current legal status

29 JUN 2018

Websites too face regulatory issues around compliance with the Americans with Disabilities Act and other rules involving accessibility and accommodation.

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## Audit logs: key to enforceable electronic signatures

28 JUN 2018

Audit logs serve a number of purposes, and a particularly vital role when the authenticity of an electronic signature is in dispute.

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- "Remote Online Notarization is Here to Stay," *American Bar Association*, July 23, 2019
  - "The Effectiveness of Clickwrap for Legally Enforceable Agreements," *DocuSign*, March 21, 2019
  - "eSignature and ePayment News and Trends," May 2, 2018
  - *The Law of Electronic Signatures*, 2018 Edition, Thomson Reuters
  - "Electronic Retail Installment Sales Contracts in California," *The Review of Banking & Financial Services*, Vol. 33, No.12, December 2017
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- "Enabled by Lenders, Embraced by Borrowers, Enforced by the Courts: What You Need to Know About eNotes," MERSCORP Holdings, Inc., September 8, 2017
- "Special Considerations For Perfection Opinions Covering Electronic Chattel Paper As Collateral," *Journal of Equipment Lease Financing*, Spring 2015
- "Consumer Financial Services Answer Book 2016," Practising Law Institute, October 1, 2014
- "A Brief Guide to Using Electronic Signatures in Securities Transactions," July 1, 2013
- "Planning for Accessibility when Developing Financial Services Websites and Mobile Apps," *American Bar Association Consumer Financial Services*, June 20, 2013
- "Federal Regulators Issue Guidance on Social Media and Mobile Privacy," *Law Journal Newsletters*, April 2013
- "Is Regulatory Uncertainty an Impediment to Mobile Payments?," *Payments Journal*, January 23, 2013
- "Security Interests in Transferable Records Evidencing Residential Mortgage Lending Transactions and the Rights of Warehouse Lenders: An Analysis and Proposal," October 24, 2007
- "Admission into Evidence of Paper Records Converted to Electronic Form," *Consumer Finance Law Quarterly Report*, Vol. 60, No. 2, 2006
- "An Overview of Some Rules and Principles for Delivering Consumer Disclosures Electronically," *North Carolina Banking Institute Journal*, Vol. 7, April 2003
- "SPeRS - Standards and Procedures for electronic Records and Signatures," Electronic Financial Services Council, 2003
- "Emulating Documentary Tokens in an Electronic Environment: Practical Models for Control and Priority of Interests in Transferable Records and Electronic Chattel Paper," *The Business Lawyer*, Vol. 59, No. 1, 2003 (Contributing author)
- "Rules Under the Uniform Electronic Transactions Act for an Electronic Equivalent to a Negotiable Promissory Note," *The Business Lawyer*, Vol. 55, No. 1, November 1999
- "Proposed Rules Under the UETA for an Electronic Promissory Note," *Banking Policy Report*, Vol. 18, No. 8, April 19, 1999
- "Model Positive Pay Services Agreement and Commentary," American Bar Association, 1999 (Contributing author)
- "Electronic Commerce: Avoiding State Law Pitfalls," *Electronic Banking Law and Commerce Report*, Vol. 3, No. 9, 1999
- "A Lawyer's Take on the Electronic Purse: An Analysis of Commercial Law Issues Associated with Stored-Value Cards and Electronic Money," *The Business Lawyer*, Vol. 57, No. 2, 1997 (Contributing author)
- "Electronic Cash -- How It Works and Questions About the Rules of the Game," *Consumer Finance Law Quarterly Report*, Vol. 50, No. 3, 1996
- "Key Issues and Considerations in Drafting Deposit Agreements and Funds Transfer Services Agreements for Financial Institutions," *Consumer Finance Law Quarterly Report*, Vol. 50, No. 1, 1996
- "Letters of Credit and Electronic Commerce," *Idaho Law Review*, Vol. 31, No. 3, 1995
- "Model Funds Transfer Services Agreement and Commentary," American Bar Association, 1994 (Contributing author)
- "Special Considerations Related to Joint Deposit Accounts," *Consumer Finance Law Quarterly Report*, Vol. 47, No. 2, 1993
- "Signed, Sealed and Delivered: EDI and Letters of Credit," EDI FORUM: *The Journal of Electronic Data Interchange*, Special Edition on EDI Legal and Audit Issues, 1992
- "Electronic Documentary Credits," *The Business Lawyer*, Vol. 46, 1991
- Oklahoma Comments to Uniform Commercial Code Revised Article 3, Revised Article 4, Article 4A, Revised Article 5 and Revised Article 6 Oklahoma Statutes Annotated, West Publishing, various years

## Events

## Previous

### ADA and Digital Accessibility Webinar

22 MAY 2019  
Webinar

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## Digital contracting: litigation and enforcement trends

8 NOV 2018

Webinar

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- Speaker, "Comprehending the Tech in Fintech Boot Camp: A Complete Guide for Lawyers and Compliance Professionals on the Technologies Underlying Fintech Payment Systems" at the ACI Fintech and Emerging Payments Conference, May 2, 2018
- Speaker, "E-Signatures and Electronic Loan Documentation in Real Estate Finance: ESIGN and UETA, Interplay With UCC," Strafford Publications Webinar, February 20, 2018
- Speaker, "Building a Foundation of Knowledge: Communicating the Viability of eNotes to Your Legal Team," MERS User Conference, June 20, 2018
- Speaker, "eSignatures, Blockchain and Smart Contracts, Oh My! The New Landscape for Digital Transactions," Clear Law Institute Webinar, May 31, 2018
- Speaker, "Legal and Regulatory Update," Electronic Signatures and Records Association Spring Member's Meeting, May 9, 2018
- Speaker, "An Analysis of Today's Evolving FinTech Landscape: Industry Insights on How the Latest Innovations Are Changing and Disrupting the Financial Services, Alternative Lending and Payments Industries," ACI Emerging Payments Conference, April 30, 2018

## NEWS

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### DLA Piper lawyers ranked in *Chambers FinTech*

14 DEC 2018

DLA Piper is pleased to announce that the firm was ranked in the USA Legal 2019 edition of *Chambers FinTech*.

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Margo Tank and David Whitaker's recent article on the law governing digital mortgage notes is cited in the Treasury Department's new report, *A Financial System That Creates Economic Opportunities • Nonbank Financials, Fintech, and Innovation* (July 2018).