



eSignature and ePayment News and Trends

SPECIAL COVID-19 EDITION

ESIGNATURE AND EPAYMENT NEWS AND TRENDS

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By: Margo H. K. Tank | David Whitaker | Andrew Grant | Elizabeth S. M. (Liz) Caires

A fact of business today is that customers – both consumers and other businesses – and employees expect to transact digitally. To remain competitive, companies find themselves increasing their efforts to digitally transform their businesses.

Successfully implementing this transformation requires careful planning to ensure regulatory compliance, a smooth integration with existing business technology and a positive customer experience.

Each issue will feature in-depth insight on a timely and important current topic.

In this issue, we have prepared a compilation of significant actions taken by the federal and state governments to enable the use of electronic signature and records to facilitate remote transactions as part of addressing the coronavirus disease 2019 (COVID-19) pandemic. In addition, this edition includes other recently enacted federal and state laws, federal and state regulatory activities, fresh judicial precedent and other important news.

For related information regarding blockchain and digital assets, please see our monthly bulletin Blockchain and Digital

INSIGHT

COVID-19 DEVELOPMENTS – THE SPRINT TO DIGITAL

In response to COVID-19, numerous federal and state governments and regulatory agencies have released new guidance enabling immediate use of electronic records and signatures for financial services and other business transactions, and significantly have enabled the use of remote online notarization (RON). We have summarized below some of the more significant actions.

Please see our “So You Want to Go Digital” guidance for helpful advice in moving critical business online in light of customer demand.

We are continuing to monitor this changing environment and will provide updates on material actions. Also see our Coronavirus Resource Center.

Federally related actions

- **Small Business Administration (SBA) updates guidance on acceptable signatures for applications and loan documents in the 7(a) and 504 Business Loan Programs.** In anticipation of money that will be made available via the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to financial institutions, on March 24, 2020, the SBA provided guidance to SBA lenders regarding acceptable signatures on applications and other loan documents for 7(a) and 504 business loans. This guidance states that as set forth in Standard Operating Procedure (SOP) 50 10, SBA currently permits SBA lenders to use electronic signatures on SBA forms and other documents requiring signatures in connection with 7(a) and 504 business loans provided they comply with the standards set forth in Appendix 8 to the SOP.

The SBA also stated that “[e]ffective immediately and until September 30, 2020, where electronic signatures are not feasible, all SBA Lenders may accept scanned copies of signed applications and loan documents, provided the SBA Lender also obtains:

- A copy of the individual's driver's license or other valid form of identification (front and back); and
- A valid original signature on the applicable document within 6 months of the date of the Note.

If the SBA Lender fails to obtain the required original signature within 6 months of the date of the Note, for 7(a) loans, SBA may deny liability on the guaranty in full and, for 504 loans, SBA may pursue a CDC recovery claim under 13 CFR § 120.93.”

- **Fannie Mae publishes Lender Letter providing information on use of electronic records and signatures.** On March 23, 2020, Fannie Mae published Lender Letter (LL-2020-03) to address the impact of COVID-19 on originations. Within this letter, Fannie reiterated its current approach to the use of electronic records and signatures. Specifically Fannie wrote that “[a]s a reminder, unless originated as an electronic note in accordance with Selling Guide A2-5.1-03, we require that the original promissory note be in the possession of the document custodian when it certifies the loan for our purchase. See Selling Guide A3-3-05 and E-2-01; and the Requirements for Document Custodians, Sections 2.2 and 8.1 for additional detail. We require the original note to be in the possession of the document custodian before purchase of the loan to minimize transit risk and to protect our legal rights in the loan under applicable law.

In addition, the Selling Guide A2-5.1-03 describes all of our other policies related to electronic records, signatures, and notarizations. Note that electronic signatures are permitted under the terms of the Selling Guide but promissory notes may not be signed electronically unless the promissory note is an electronic note sold in accordance with A2-5.1-03. Lenders that are approved to deliver eMortgages may refer to the Guide to Delivering eMortgages to Fannie Mae for additional information.”

- **Freddie Mac publishes Bulletin on Selling Guidance Related to COVID-19.** On March 23, 2020, Freddie Mac published Bulletin 2020-5, which addresses selling guidance related to COVID-19, and in the bulletin reminded sellers of Freddie Mac's guidance on the use of electronic records and signatures. Specifically, Freddie Mac stated that the "Seller/Servicers may currently take full advantage of Electronic Records and Signatures in connection with their origination processes – both with Borrowers and with related third parties, as detailed in Chapter 1401. This includes the use of Electronic real estate purchase and sale agreements, as well as Electronic initial and final disclosures often provided at closing.

Freddie Mac also permits Seller/Servicers to use Electronic Signatures and Records as part of the closing process, and, in many instances, to conduct Electronic closings in which even the Note is created and signed electronically (i.e., "eMortgage" closings), as detailed in Chapter 1402. In order for eMortgages to be eligible for sale to Freddie Mac, there is a specific approval process the Seller/Servicer must follow, but in most instances such approvals are forthcoming within a week after Seller/Servicer integration with approved systems and the MERS® eRegistry."

- **VA reiterates ability to use electronic signatures for eNotes while also stating that use of electronic notarizations, including RON, are allowed for eClosings.** On March 27, 2020, the Veterans Benefits Administration (VA) stated in Circular 26-20-10 reiterated that VA loans for which the promissory note is an eNote are eligible for guaranty, *except* where the eClosing includes use of an allonge. The VA notes that while it does not publish a standard eNote as a template, the VA encourages industry and technology partners to review all eNotes to remove references to the possible inclusion of an allonge.

The VA stated that loans for which an electronic notarization was used – which includes both in-person electronic notarizations and RON – are eligible for guaranty provided that the notarization is valid and effective under applicable law and regulations.

Finally, the VA noted that it was working with the Government National Mortgage Association (GNMA) to increase the accessibility of eMortgages.

- **HUD FAQ's for Office of Multifamily Housing Stakeholders.** HUD has released an FAQ – which it is frequently updating – for the Office of Multifamily Housing Stakeholders that provides new guidance, in part, on the use of electronic signatures in certain situations:

- In a question on whether HUD will allow electronic signatures or the electronic transmission of a scanned document containing wet signatures on closing documents, HUD responded that "OGC **cannot** authorize the execution of the FHA note, mortgage, regulatory agreement, or other loan documents using a digital signature or other means of fully electronic authentication. However, OGC closing attorneys will accept electronic copies (i.e. scanned PDFs) of manually executed documents and will rely on such documents for purposes of releasing the endorsed FHA note at closing. The closing opinion delivered by borrower's counsel may not be modified to include additional qualifications or limitations related to the use or reliance on scanned documents unless discussed and approved by the OGC closing attorney. Such changes will not be approved unless (i) clearly warranted by a duly cited state statute or local ordinance and (ii) the modification results in no additional risk to HUD." In a question on what should an owner or property manager do about residents that are ill or have concerns about coming to the office for their recertification interview, to sign consent forms, or to sign form HUD-50059, HUD stated that "[f]or owners/agents (O/A) that are working on recertifications for residents impacted by COVID19, HUD will allow electronic signatures as long as they obtain original, "wet" signatures on recertification documents at a later date." In a question regarding whether MFH will allow electronic signatures on its documents, HUD stated the following:

- **Asset Management:** Electronic signatures are allowed for all subsidy administration, including contract renewals, rent schedules, and HAP Assignments, and all other Multifamily Housing submissions. State and local law determines the requirements for leases and 50059s.
- **Recapitalization:** For RAD and other real estate transactions, the recorded

documents typically have “wet” signatures that are notarized. The HUD closing attorney will have to advise if electronic signatures are acceptable in the recording offices in their jurisdictions. Documents that will not be recorded may be signed electronically.

- For all transactions, electronic signatures must conform to applicable federal, state, and local requirements.

- **Federal Home Loan Bank of San Francisco updates collateral policies in response to COVID-19.** The Federal Home Loan Bank of San Francisco sent an email on March 26, 2020 stating that it was making several changes to its collateral policies. For members who are working to assist borrowers affected by COVID-19 by offering loan modification and payment forbearance options, “members are permitted to use electronic signatures (“e-signatures”) on loan modification and forbearance agreements relating to mortgage notes pledged to the Bank that benefit borrowers who have experienced a hardship due to the COVID-19 pandemic. Any such loan modification or forbearance agreement that is electronically signed pursuant to this guidance must be included in paper form in the loan file and must include a clause substantially similar to the following:

This document may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Delivery of a signature page to, or an executed counterpart of, this document by facsimile, email transmission of a scanned image, DocuSign, or other electronic means, shall be effective as delivery of an originally executed counterpart. The words “execution,” “signed,” “signature,” and words of like import in this document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, Electronic Signatures in Global and National Commerce Act, any other similar state laws based on the Uniform Electronic Transactions Act or the Uniform Commercial Code, and the parties hereto hereby waive any objection to the contrary.”

- **SEC issues Staff Statement temporarily suspending enforcement of retention requirements for manual signatures on certain documents.** On March 24, the SEC issued a Staff Statement under Rule 302(b) of Regulation S-T. The SEC allows electronic filings, but Rule 302(b) requires the signatory to “manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing.” This Statement notifies filers that the SEC will not recommend enforcement action if the signatory retains such a manually signed document which bears the date and time of signing, and provides that document “as promptly as reasonably practicable” the filer for retention. The signatory may also provide the filer with an electronic copy of the document once it is signed. The filer must establish and maintain policies and procedures governing this process.
- **SEC issues guidance for public companies to satisfy annual meeting and proxy rules using electronic means.** In response to inquiries from companies regarding the impact of COVID-19 on annual meeting requirements, the SEC provided on March 13 guidance to assist US public companies in satisfying their annual meeting solicitation obligations under the US federal proxy rules. Specifically, in response to inquiries from companies and shareholders regarding compliance with US proxy rules for annual meetings in light of the ongoing coronavirus outbreak, the SEC provided a process for companies to notify shareholders of a change in the date, time or location of their annual meeting and guidance with respect to the holding of “virtual” or “hybrid” annual meetings and the presentation of shareholder proposals. Read more.
- **Fintech lenders authorized under CARES Act to make loans to small businesses.** Treasury Secretary Steve Mnuchin, during a television appearance on March 29, 2020, stated that “[a]ny FDIC bank, any credit union, any fintech lender will be authorized to make these loans’ to a small business, subject to certain approvals.”
- **House Committee on Financial Services issues industry letter urging companies to minimize consumer harm arising from COVID-19.** On March 11, 2020, Maxine Waters (D – CA), the Chairwoman of the House Financial Services Committee, wrote a letter to leading financial institutions requesting that they

“do what you can to minimize any negative consumer or employee harm resulting from the coronavirus to ensure that all communities are well-served and can recover.” This may lead to more financial institutions using electronic means to be able to assist their customers.

State Remote Online Notarization (RON)

As more businesses are forced to work remotely due to the COVID-19 crisis, several federal and state governments are moving quickly to enable fully electronic processes to keep businesses operating.

Currently, there are 23 states that have enacted some form of RON law: Arizona, Florida, Idaho, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, South Dakota*, Tennessee, Texas, Utah, Vermont, Virginia, Washington and Wisconsin.

The basic components of each state's RON law are to:

- Allow notarial acts to be completed using audio-video communication, including acts where the signer is located outside the state in which the notary is authorized to operate.
- Require that the notary authenticate the person signing.
- Require recording of the audio-video communication.

The state RON laws are very detailed and vary with respect to, among other things, authentication, journaling and retention periods. (* The South Dakota RON law differs substantially from the others in that it enables the use of communication technology only "if the notarial officer: ... affixes the notarial officer's signature to the original tangible document executed by the [principal]" and only if the notary personally knows the principal.)

In states that have yet to enact RON or otherwise make their RON law effective, emergency short-term measures are being issued:

- The California Secretary of State updated its website to include an endorsement of its residents' use of remote notarization capabilities under the laws of states which permit remote notarizations.
- On March 31, the governor of Arkansas issued Executive Order 20-12 which suspends certain provisions of Arkansas notarial laws to enable certain types of notaries public to (i) meet the in-person requirement using real-time audio and visual means to notarize paper documents, as well as, (ii) when serving as an eNotary under Arkansas law, use real-time audio and visual means to meet the in-person requirement when notarizing electronic documents, provided that, in each case, the notary and the signer are both physically located in Arkansas at the time of signing, among other conditions.
- On March 30, Kentucky enacted legislation (SB 150) which waives the state's in person requirement for notarizations, enabling notarizations to be performed via video teleconference in real time, and permitting such paper documents to be signed or notarized in counterparts.
- On March 30, the governor of New Mexico issued Executive Order 2020-15 directing the Notary Compliance and Enforcement Unit to not recommend any discipline for any notary public performing a notarial act using audio-video technology, and notarizing a legible copy of the signed document delivered by the signer either by fax or electronic means.
- On March 30, the governor of Maryland issued a Executive Order number 20-03-30-04 temporarily waiving the in person requirement for notarizations and allowing notarizations utilizing communication technology, subject to guidance of the Secretary of State.
- The Delaware Secretary of State updated its website to include an endorsement of its residents' use of remote notarization capabilities under the laws of states which permit remote notarizations.

- On March 27, the Georgia Supreme Court issued an order temporarily suspending the attorney Rules of Professional Conduct requirements for in person attendance at real estate closings, and enabling Georgia attorneys to participate in real estate closings using audio-video conferencing.
- On March 27, the governor of Colorado issued Executive Order D 2020 019 temporarily suspending the requirement to appear personally before notarial officers to perform notarizations, and authorizing the Secretary of State to promulgate and issue temporary emergency rules to permit notarial officers to perform remote notarizations using real-time audio-video communication.
- On March 26, the governor of Illinois issued Executive Order No. 12 waiving the in-person requirement for notarial acts, provided that the notarial act is performed in accordance with guidance issued by the Secretary of State, and allowing any act of witnessing required by Illinois law to be completed by two-way audio-visual communication, with conditions.
- On March 26, the Governor of Washington issued Proclamation 20-27 making remote online notarization immediately effective in Washington under SB5641 as of March 27 for the duration of the COVID 19 event.
- On March 26, the Pennsylvania Secretary of State announced the suspension of the in person requirement for PA RULONA to enable personal real estate closings in process to be closed using audio-visual technology and to enable new and in process commercial real estate closings to be closed using audio-visual technology.
- On March 24, the Wyoming Secretary of State issued guidance allowing remote online notarization during the COVID event.
- On March 23, the governor of New Hampshire issued Emergency Order #11 to Executive Order 2020-4 which authorizes notarial acts using audio-visual technology, provided that the signer mails a copy of the signed documents to the notary for certification and the official date and time of notarization shall be the witnessing of the signature using the audio-visual technology.
- On March 22, the governor of Iowa issued a Proclamation of Disaster Emergency which enabled Iowa notaries to perform remote online notarizations in accordance with guidance of the Iowa Secretary of State and compliance with section 6 of Iowa Senate bill SF475 regarding notarial acts performed for remotely located individuals.
- The Vermont Secretary of State issued emergency administrative rules permitting remote online notarization under certain restrictions for 180 days to address the COVID 19 event.
- On March 23, the governor of Connecticut issued Executive Order 7K immediately authorizing notarial acts to be performed utilizing audio-visual technology for persons physically located in Connecticut under certain conditions.
- On March 19, the governor of New York issued Executive Order 202.7 immediately authorizing notarial acts to be performed utilizing audio-visual technology under certain conditions and on March 25 the New York Secretary of State issued guidance clarifying that order.
- On March 19, the New Jersey Legislature passed bill A3864 enabling remote online notarization (the bill awaits signature by the Governor and becomes effective 90 days after enactment).
- On March 18, the Maryland Court of Appeals enacted an administrative order expressly accepting electronic records and signatures, and electronic notarial acts, created in accordance with the Maryland UETA for filing in land records in those counties utilizing the Simplifile application.
- On March 18, the Wisconsin Department of Financial Institutions issued emergency guidance immediately authorizing remote online notarizations in the state.

Further, Fidelity National Title Insurance Company, Chicago Title Insurance Company, Alamo Title Insurance, National

Title Insurance of NY, and Commonwealth Land Title Insurance Company released a bulletin on March 18 titled “Emergency Exemptions to Remote Online Notarization Procedures” that allows RON to be available, provided certain requirements are met, as an option for properties located in all states and the District of Columbia with a proposed policy amount of \$1 million or less (and for higher amounts on a case-by-case basis). This emergency exemption will be available through April 30, 2020.

Other notarial acts are also being made available on a remote basis using audio-visual communication technology, such as the swearing-in of witnesses (see Supreme Court of Florida Administrative Order No. AOSC20-16), and the general conduct of court proceedings (see Pennsylvania Supreme Court Order dated March 16).

REGULATORY DEVELOPMENTS

FEDERAL

Virtual currency

- **Federal Reserve Bank issues briefing on CBDC.** On February 26, the Federal Reserve Bank of Kansas City issued a briefing entitled, “[How Did We Get Here? From Observing Private Currencies to Exploring Central Bank Digital Currency](#)” discussing whether privately-issued digital currencies, can coexist with central bank-issued currencies, and whether central banks will ultimately need to issue their own version of a digital currency—a central bank digital currency, or “CBDC.” The Briefing gives a historical overview of private currencies in relation to central banks, explains the impetus for the new wave of digital currencies, and explores some of the problems that could be addressed by a CBDC.
- **FinCEN Deputy Director speaks on AML/BSA compliance by networks developing cryptocurrencies.** During the February SIFMA 20th Anti-Money Laundering (AML) and Financial Crimes Conference in New York City, the US Treasury Department’s Financial Crimes Enforcement Network (FinCEN) Deputy Director Jamal El Hindi [discussed](#) the “evolutionary state” of the financial sector’s dealing with new technologies and new payment systems, such as those using virtual currencies, noting that all actors, including social media and messaging platforms developing cryptocurrencies, are “subject to the same AML principles and requirements of other financial institutions.” FinCEN will “regulate in this space consistent with the existing principles underlying the BSA/AML regime,” and will “judge emerging financial institutions on whether and how they make their systems resilient to, and report on, money laundering, terrorist financing, sanctions evasion, human and narco-trafficking, and other illicit activity.”

STATE

- **NYDFS requires cryptocurrency firms to provide coronavirus preparedness plans.** New York’s Department of Financial Services (NYDFS) issued an [industry guidance letter](#) on March 10 requiring state regulated virtual currency firms to submit to NYDFS detailed preparedness plans “to address operational and financial risk posed by the outbreak of a novel coronavirus known as ‘COVID-19,’” specifically describing the firm’s plan of preparedness to manage the risk of disruption to its services and operations. The plan must include, at a minimum, preventative measures tailored to the institution’s specific profile and operations, which include a documented strategy addressing the impact of the outbreak in stages; assessment of all facilities, systems, policies and procedures necessary to continue critical operations and services if staff are unavailable for long or are working off-site; and an assessment of potential increased risk of cyber-attacks and fraud due to an outbreak. Responses are required no later than 30 days from the date of the guidance letter.

LEGISLATIVE DEVELOPMENTS

STATE

Electronic signatures

- **Washington enacts UETA:** On March 18, 2020, the governor of Washington signed into law Washington’s enactment of the Uniform Electronic Transactions Act. Prior to the approval or enactment of E-SIGN and UETA, Washington State

enacted one of the first comprehensive laws to address the authentication of digital signatures. Washington's law authorized the secretary of state to regulate and maintain a list of licensed certification authorities for the verification of digital signatures and recognized repositories for storing that information. With the adoption of ESIGN, the regulatory approach contemplated by this law became obsolete and was repealed by the Legislature in 2019 (see here for our prior summary of this repeal). With Washington's enactment of UETA, only New York and Illinois have not done so, though each has its own law enabling the use of electronic records and signatures.

- **West Virginia legislature enacts URPERA over governor's veto:** On February 28, 2020, the West Virginia legislature amended and passed again the Uniform Real Property Electronic Recording Act (URPERA), which the governor had previously vetoed. The new law takes effect 90 days from passage. URPERA provides for recording of electronic documents and requires any county clerk implementing the provisions of the act to comply with established standards.

Blockchain

- **Wyoming establishes select committee on blockchain.** On March 13, the Governor of Wyoming signed [HB27](#) creating the Select Committee on Blockchain, Financial Technology and Digital Innovation Technology. The Committee is charged with developing knowledge and expertise among its members regarding issues pertaining to blockchain, financial technology and digital innovation technology, and developing and introducing legislation as necessary to promote blockchain, financial technology and digital innovation in Wyoming.
- **Washington establishes blockchain work group.** On March 12, the Washington legislature enacted [SB6065](#) to establish a Washington blockchain work group to "examine various potential applications for blockchain technology including, but not limited to, applications in computing, banking and other financial services, the real estate transaction process, healthcare, supply chain management, higher education, and public recordkeeping." The bill is awaiting execution by the Governor.

Digital assets

- **Wyoming modifies state laws regarding handing of digital assets.** Wyoming's Governor signed [SF47](#) on March 13. This new law clarifies several matters regarding digital assets, including:
 - the jurisdiction of Wyoming courts to hear claims related to digital assets, including those arising under the WY UCC;
 - the duty of a digital asset custodian to pay supervision fees to the state;
 - the means to perfect a security interest in virtual currency and digital securities in the state;
 - modifying provisions relating to security agreements involving virtual currency and digital securities;
 - factors relating to location of digital assets used as collateral;
 - amending duties and requirements for banks that provide custodial services and;
 - amending the scope of authorized custodial services.

CASE LAW

FEDERAL

Electronic Funds Transfer Act

- **Court finds email copy of authorization sufficient to satisfy EFTA:** The Electronic Funds Transfer Act requires that for preauthorized fund transfers from a consumer's account, such transfers must be authorized in writing and a *copy of such authorization* must be provided to the consumer when made. In *L.S. v. Webloyalty.com, Inc.*, 2020 WL 1313638 (2nd Cir. Mar. 20, 2020), the court interprets the EFTA's "copy of such authorization" as a matter of first impression in its circuit, and notes that no other circuit has considered it. The court held that the EFTA did not require that the defendant provide the plaintiff with a duplicate of the webpage on which he provided authorization and that the email

sent to the plaintiff was sufficient. In reaching its decision, the court notes that written authorization can be provided orally pursuant to E-SIGN, and that giving a duplicate copy of an oral authorization would unduly burden the payee without any consumer benefit. Here, the plaintiff received an email with the material terms and conditions of the payment authorization and that a duplicate of the enrollment page – with its attendant text and graphics unrelated to the authorization – would not have provided the plaintiff any incremental protection.

Electronic signatures and general online contract formation

- **Court upholds electronic signature despite “inconclusive” forensic analysis of failed cryptographic verification:** In *Hill Phoenix, Inc. v. Classic Refrigeration Socal, Inc.*, 2020 WL 1244354 (C.D. Cal. Mar. 15, 2020), the court held that an offer letter and an employment agreement were electronically signed by the defendant because the audit log contained defendant’s name and email address, and the defendant could not explain why the documents bear his signature and originated from his email address. The court stated that even though the defendant’s computer forensics expert could not cryptographically verify the electronic signature, this was insufficient to establish the “scintilla” threshold needed to establish a genuine issue of material fact.
- **Court upholds arbitration agreement entered into electronically:** In *Argun v. Neiman Marcus Group, Inc.*, 2020 WL 1272247 (Mar. 16, 2020), the court found that the plaintiff agreed to the arbitration agreement because the defendant’s online signature and contracting system required persons to use a unique sign-in number and self-selected password to access the materials. The plaintiff did not forthrightly deny that she signed the documents and she offered no explanation of how they came to be signed if not by her. Therefore, the plaintiff did not create an issue of fact regarding whether she signed the agreement.
- **HR document execution process binds employee to arbitration.** In *Stowell v. Cantor Fitzgerald & Co.*, 2020 WL 949043 (Sup Ct of NJ, Feb. 27, 2020), the appellate court overturned the trial court’s denial of the defendant’s motion to compel arbitration based on the employee’s electronic execution of a dispute resolution policy and agreement with her employer. The employee was required by the signing platform to separately log into the platform, scroll through the entire agreement, check a click box at the bottom of the agreement saying that she “read and accept the terms” of the [agreement] and intend the click to be her electronic signature, and then click a button labeled “Approve and Submit”. The “Approve and Submit” button did not become enabled unless the click box was checked. Employees could print and save the agreement from the platform and the platform tracked the employees’ log in and date and time of execution. The court found that “accepting” the terms of an agreement is the equivalent of “agreeing” to its terms.

STATE

Electronic signatures and online contract formation

- **Exchange of emails not sufficient to form contract under Texas law:** In *Chalker Energy Partners III, LLC v. Le Norman Operating LLC*, 2020 WL 976930 (Tex. Feb. 28, 2020), the court held that an exchange of emails between the parties were not a definitive agreement and thus the emails did not satisfy the condition precedent in the “no obligation” clause” requiring execution and delivery of a definitive agreement. The petitioners, which are 18 individuals and entities (the Sellers), were attempting to sell oil and gas rights and Le Norman Operating LLC (LNO). During the negotiations, LNO sent Sellers an email setting out various terms, requested that the Sellers notify LNO by a specific time and date, and before that time and date, the Sellers emailed LNO notifying them that the Sellers were on board subject to a mutually agreeable purchase and sale agreement (PSA) and the Sellers would be turning a PSA later that night to respond to the latest draft. A separate party then submitted an offer to Sellers, which the Sellers accepted. LNO brought suit attempting to enforce the alleged contract entered into through the email exchange. The court stated that the emails exchanged here were more akin to a preliminary agreement than a definitive agreement to sell and that the parties’ dealings suggested that they intended a more formalized document to satisfy the definitive-agreement requirement. The court noted in a footnote that the trial court granted the Sellers’ motion that Texas Uniform Electronic Transactions Act (UETA) precluded an agreement because the parties did not agree to conduct business electronically and the agreement lacked a signature. The court of appeals held that fact issues existed regarding UETA, but the Texas Supreme Court did not address UETA in its analysis.

RECENT EVENTS

- Margo Tank participated in a webinar with MERS and the Federal Home Loan Bank of Boston: **eNotes and the Role of the MERS® eRegistry: Guidance from Attorneys for Attorneys** on March 25.
- Margo Tank and Liz Caires presented an MBA webinar – Remote Online Notarization State-of-Play on February 27, 2020.
- Margo Tank presented at the **Structured Finance Conference** in Las Vegas on February 25, 2020, speaking on a panel entitled “eNotes, eClosings, and eVaults.”
- Margo Tank presented at DLA Piper’s **FinTech 2020 and beyond: eContracts and Asset Backed Securities** event in New York on February 12, 2020.

RECENT PUBLICATIONS

The MBA Compliance Essentials Remote Online Notarization State Surveys, developed by DLA Piper, provides a comprehensive look at RON requirements in each state that has enacted RON legislation. These fully editable surveys are organized by category of requirements, including registration, technology, seal and signature, certificates of RON acts, journal, authentication, session, recording, and additional requirements. Companies can purchase the full package which includes surveys for all states that have enacted RON legislation along with a matrix summarizing state requirements, or companies can purchase information about individual states as needed. [Read more.](#)

For more information

Please visit our Coronavirus Resource Center and subscribe to our mailing list to receive alerts, webinar invitations and other publications to help you navigate this challenging time.

Additional contributors

Heather Howell
Raymond Zamora

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AUTHORS



Margo H. K. Tank
Partner
Washington, DC | T: +1 202 799 4000
margo.tank@dlapiper.com



David Whitaker
Partner
Chicago | T: +1 312 368 4000
david.whitaker@dlapiper.com



Andrew Grant
Associate
Washington, DC | T: +1 202 799 4000
andrew.grant@dlapiper.com



Elizabeth S. M. (Liz) Caires
Attorney



Dallas | T: +1 214 743 4500
liz.caires@dlapiper.com
