


# e-Signatures and e-Leasing in the COVID-19 World

May 6, 2020

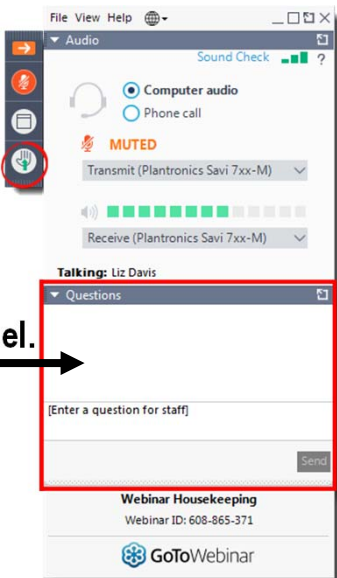
1

## Housekeeping



Today's web seminar is being recorded.

All questions should be submitted via the Questions Panel.



File View Help

Audio

Computer audio  
Phone call

MUTED

Transmit (Plantronics Savi 7xx-M)

Receive (Plantronics Savi 7xx-M)

Talking: Liz Davis

Questions

[Enter a question for staff]

Send

Webinar Housekeeping  
Webinar ID: 608-865-371

GoToWebinar

2

## Today's Speakers



**Dominic Liberatore**  
Deputy General Counsel  
DLL



**Robert S. Cohen**  
Partner  
Moritt Hock & Hamroff LLP



**Stephen F. Bisbee**  
President  
eOriginal



- Introduction
  - . Panelists.
  - . In light of COVID-19, essential for your business to be able to contract electronically.
  - . The objective of this webinar is to highlight steps you can take right away. Focus is next two weeks not next two months!



**Stephen Bisbee**

President

 **eOriginal**

Trust the Asset. Trust the Transaction.™

## Jumping Into the Electronic World

- Challenge of remote execution of lease transactions for social distancing and Stay at Home
- Enabling laws and practices in place, established and proven (ELFA Foundation Reports)
- COVID-19 funding and other legislation does not alter enabling laws
- No need for new IT tools or infrastructure
- Can accomplish for both eSignature (immediately) and full eLease (quickly)
- Remote execution of Electronic Chattel Paper transactions proven in the automotive industry



**Robert S. Cohen**  
Partner



## Electronically-Signed Documents are Enforceable

- Authority for the use of e-signatures varies depending upon the document being signed
- The Electronic Signatures in Global and National Commerce Act (E-Sign Act) covers UCC Article 2a leases but excludes UCC Article 3 and 9 transactions
- Uniform Electronic Transactions Act (UETA)
  - adopted in 47 states (not NY, IL and WA)
  - is broader and includes promissory notes
- UCC Article 9 (covers secured transactions)



## Enforceability and Transferability Considerations

### Enforceability

- Proof required
  - Execution
  - Document Terms

### Transferability

- Comply with UCC 9-105 (Control of Electronic Chattel Paper) and UCC 9-330 (Priority of Purchaser of Chattel Paper or Instrument).



**Dominic Liberatore**

Deputy General Counsel



## Operational Considerations – Partner Selection

- Funders to determine own proprietary workflows. But many common themes and approaches. In many respects, layering this on to what you already do.
- Choose e-sign provider carefully. Many out there; not all created equal. Important when securitizing or syndicating. Can be set up within a week or so. Consider:
  - name recognition and standing in industry,
  - size and overall viability,
  - platform and security protections,
  - signer authentication process, and
  - audit trail.
- If you plan to offer full blown e-Leases (with e-vault) later, need provider that offers this functionality. Name recognition and standing in industry very important when securitizing or syndicating. E-vaulting takes longer than e-sign set up. Still can be done in short time.
- E-Vault to e-vault transfers.

## Operational Considerations – Authentication & Execution

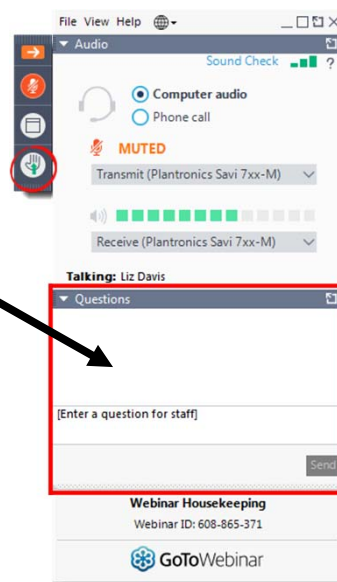
- Signer authentication level. Options include using known email address and IP location, two-step verification, such as text with a code, or out of wallet identity check service. Higher levels more secure but need to balance with customer experience. Consider different buckets depending on size. Cost/time generally not large.
- Determine need for sole original chattel paper for borrowing or sale purposes. Separate from enforceability. Critical for most funders and the reasons why.
- Need to determine how lease will identify sole original. Discussion of sample language.
- Important practical/COVID considerations whether only lessee or both parties should e-sign paper-based lease (assuming not full blown/e-vaulted e-lease). Lots of ELFA LegalTalk discussion in past few months. Less important for simple deferral addendum. Low risk for enforcement and determining original purposes. Important for amendment/restatement of lease and more complex amendments.

## Operational Considerations – Process Issues

- Many funders don't use a separate agreement to mutually agree to contract electronically. Some incorporate into lease. For many e-sign providers, baked into sign-in and "accept" process.
- Apart from your e-signing provider, determine which providers you will accept from your customers if they insist on using their e-sign accounts.
- Considerations if relying on someone else's e-sign account (customer or originating vendor), even if same provider as yours.
  - Authentication level.
  - Audit trail.
  - Single authoritative copy process if full blown e-leasing.
- Also need to consider risks in accepting customer's "home grown" solution.
- Certificate of completion/audit trail important. Be sure to retain.

## Q&A

Submit your questions  
via the Questions Panel.





**Dominic Liberatore**  
Deputy General Counsel, DLL  
[dliberatore@leasedirect.com](mailto:dliberatore@leasedirect.com)

**Robert S. Cohen**  
Partner, Moritt Hock & Hamroff LLP  
[rcohen@moritthock.com](mailto:rcohen@moritthock.com)

**Stephen F. Bisbee**  
President, eOriginal  
[sfbisbee@eoriginal.com](mailto:sfbisbee@eoriginal.com)

## Wrap Up



For previously-recorded web seminars go to:  
[www.elfaonline.org/events/elearning/web-seminars](http://www.elfaonline.org/events/elearning/web-seminars)



Next Wednesday

