

eSigning and eLeasing in the Covid-19 World: Taking it to the Next Level

December 2, 2020

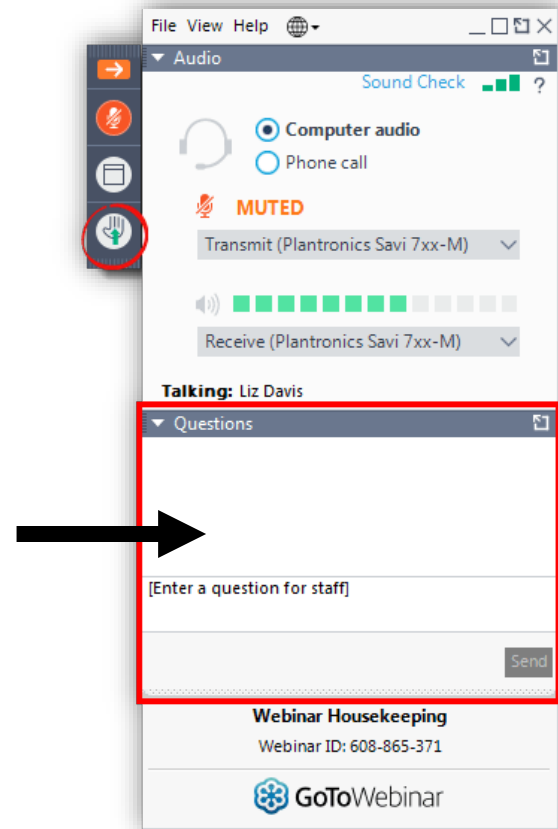


Housekeeping



Today's web seminar is being recorded.

All questions should be submitted via the Questions Panel.



Our Panelists



Steve Bisbee

President



Robert S Cohen

Partner



Dominic Liberatore

Deputy General Counsel



Covid-19: Digital Adoption Accelerator

Pre-Covid

1

Borrower Experience/
Convenience

2

Capital Efficiency

3

Cost Reduction

4

Digital Adoption – “Push”



Social
Distancing



Offices closed/
Not Available for closings



WFH complicates paper
intensive processing

Covid Industry Impact



Mortgage - Remote Closings



SBA - Remote & Speed



Auto - Restructure Loans & Remote Closings



RON authorized in 47 states



20+ states expected to adopt permanent legislation by year end

Post-Covid New Normal

1

Remote and Contactless
Application and Close

2

Remote and Contactless
Backoffice Operation

3

Speed with Compliance
First

4

Capital Efficiency &
Cost Reduction

5

Digital Adoption – “Pull”

Emerging Trends: Customer/Funder



Remove friction from the finance experience



Customer engagement



Digital contracting & remote signing



Supporting online transactions

Digital contracting continues to become the preferred way to contract

94%

Interest from dealers

97%

Increase in Remote Signed contracts

Dealertrack

4:21 PM 100%

Other

Financial Services

Control Desk

ACCOUNT NUMBER

ACCOUNT NUMBER

SELLER: SELECT ONE (Either "YES" or "NO" in this Contract)

BUYER: SELECT ONE (Either "YES" or "NO" in this Contract)

Name (Buyer)

Address

City State Zip Code

THE VEHICLE IS:

YEAR	MAKE	EXTRINSIC EQUIPMENT	MODEL	IDENTIFICATION NO. (Domestic Serial No.)	KEY CODE

AUTOMOBILE EQUIPMENT INCLUDED

Including Standard Manufacturer Installed Features (unless replaced by upgraded equipment) and the Following Dealer Installed Options:

Air Conditioning _____ Leather Interior _____ Power Mirrors _____ Custom Wheels _____ Rear Wing Spoiler _____ Alarm System _____

Audio System Includes: _____ AM/FM Stereo _____ AM/FM Stereo with Cassette Player _____ Cassette Player _____ CD Changer _____ CD Player _____

Other Dealer Installed Options: _____

FEDERAL TRUTH-IN-LENDING DISCLOSURE

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Monthly Payments	Total Payments
%	\$	\$	\$	\$

YOUR PAYMENT SCHEDULE WILL BE:

NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	WHEN PAYMENTS ARE DUE
PAYMENTS		MONTHLY BEGINNING
PAYMENTS		MONTHLY BEGINNING

Covid-19 and Preferences Converging Pushing Auto Closer to Full Digitization

1

**States Regulating In-Person Sales.
Driving Remote Processing**

2

**Dealerships Adopting eContracting.
DMS and Service Providers
delivering remote solutions**

3

**Car Shopping
Sentiment Changes: 83%
Search/Research Vehicles Online**

4

**KPMG Study found that 75% desire
to handle purchase, trade-in,
Financing and Delivery Remotely**

5

**Preferred Testing Drive Experience.
83% will not buy without a test
drive**

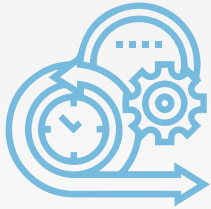
**47% Dealership
33% Home**

**13% Office
5% Virtual**

6

**Auto Service Providers working to
move the sales experience online.
Tesla pioneering end-to-end online
shopping experience**

ELFA 2020 Business Live



**Prepare for a long
duration and effect**

Peter Zeihan, Geopolitical Strategist



We will never return to where we were in 2019 ... economically, this means that the COVID recession is no longer a one-off, but instead a deep-seeded event affecting every economic sector ... every sector is facing some degree of disruption ... that will last for at least another year ...

How long will it be before we have that vaccine ... The best-case scenario, assuming we got a successful vaccine today ... would be April or May of next year. And then figure three to six months for the economy to recover to “normal” levels. But today, the leading candidate ... could not be in mass circulation in calendar year 2021 at all.

The bottom line is that you should not count on what we consider normal demand in pricing patterns recovering – or an end to the recessionary activity – until at least 2022.



“

Definitely we'll see more customers wanting to do most, if not all, of the transaction online. But I don't think everyone will want to do that, and that's why we have to meet them where they're at. ”

Mary Barra

Chief Executive

GENERAL MOTORS

Fiat Chrysler Automobiles NV moved up the nationwide launch of its new online and driveway-delivery service to this spring, six months earlier than planned.

“

These processes that we've become a lot better at, they're never going away. ”

Jeff Kommor

U.S. Sales Chief

FCA

FIAT CHRYSLER AUTOMOBILES

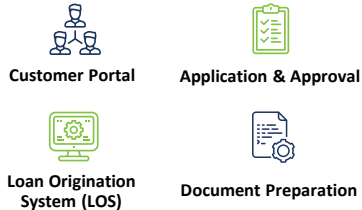
Digitizing the Lending Process from the Close to the Secondary Market



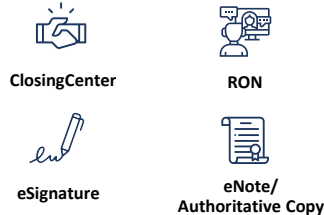
**Digital Asset
Certainty**

Digital Lending Solutions must be 'Purpose Built' to create and maintain a 'First Priority' Lien Throughout a Loan's Life-cycle.

Apply



Close



Manage



Monetize



eOriginal Digital Lending Platform

Expertise, Experience, Trust, And Scale

616+
Clients

Industry's Largest
Digital Ecosystem

14+
Million

Annual
Transactions

284+
Valued over
\$117 B

Digital
Securitizations

339+
Credit
Ratings

S&P, DBRS,
Moody's, KBRA

407+
ECCA's

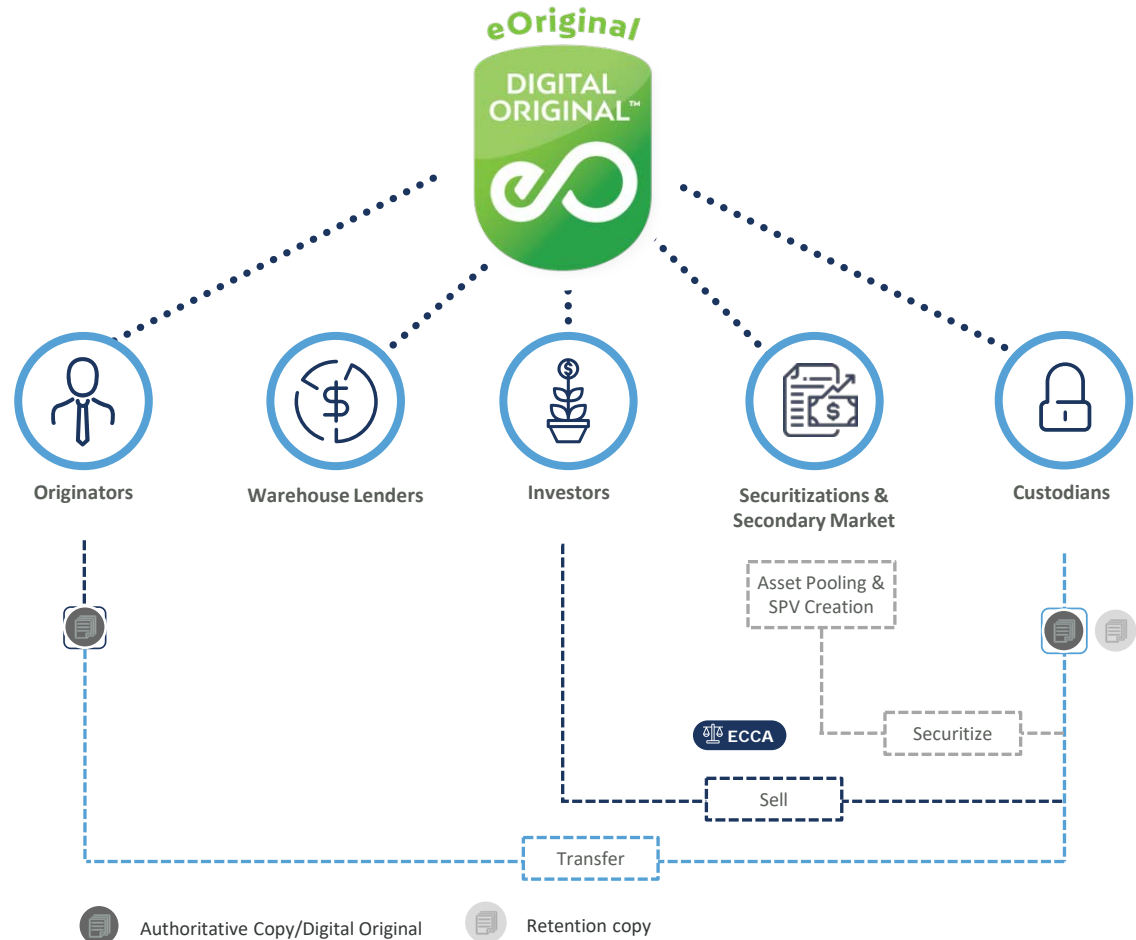
Trusted 3rd Party
Legally Tested

Single Instance, Multi-tenant SaaS Platform

Risk Management requires an Ecosystem built on **Confidence and Compliance**

A Digital, Immutable
Chain of Custody and
Evidence ensures a First
Priority Lien is created
and maintained through
a loan's life-cycle

**ECCA – SEC Ruling
Aequitas/Freedom Financial**



Understanding the Laws

State Chattel Paper Law

UCC Article 9

- Governs Secured Transactions
- UCC 9-105 set rules for digital securities as electronic chattel paper for non-real estate assets
- **The first law to apply "control" rather than possession for the priority of security interests.**

Established the six criteria required to establish control of Authoritative Copies

State Model Law

Uniform Electronic Transactions Act (UETA)

- UCC Model Law to enable the general legal enforceability of digital signatures and records.
- Ensures that an electronic signature, contract, or other record can be valid and enforceable

Provides for Transferable Records under the six control criteria for real estate assets

Federal Law

Electronic Signatures in Global and National Commerce Act (ESIGN)

- Ensures the validity of electronic contracting.
- Creates a national regulatory framework by preempting non-uniform state versions of the UETA.
- Consumer consent and disclosure
- Electronic records must be retained and able to be accurately reproduced.

Applies the Transferable Records six control criteria for real estate

Digital Asset Certainty

LAWS that govern digital lending: UETA, ESIGN, & UCC 9-105 require “control” of **Authoritative Copies** by “a system that reliably establishes” the person assigned, issued or transferred the Authoritative Copy

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The **SAFE HARBOR** for this control require systems that support digital loans to **create, store and assign** transferable records to meet each of the six stringent criteria.

.....

Additional Regulations and Industry Standards

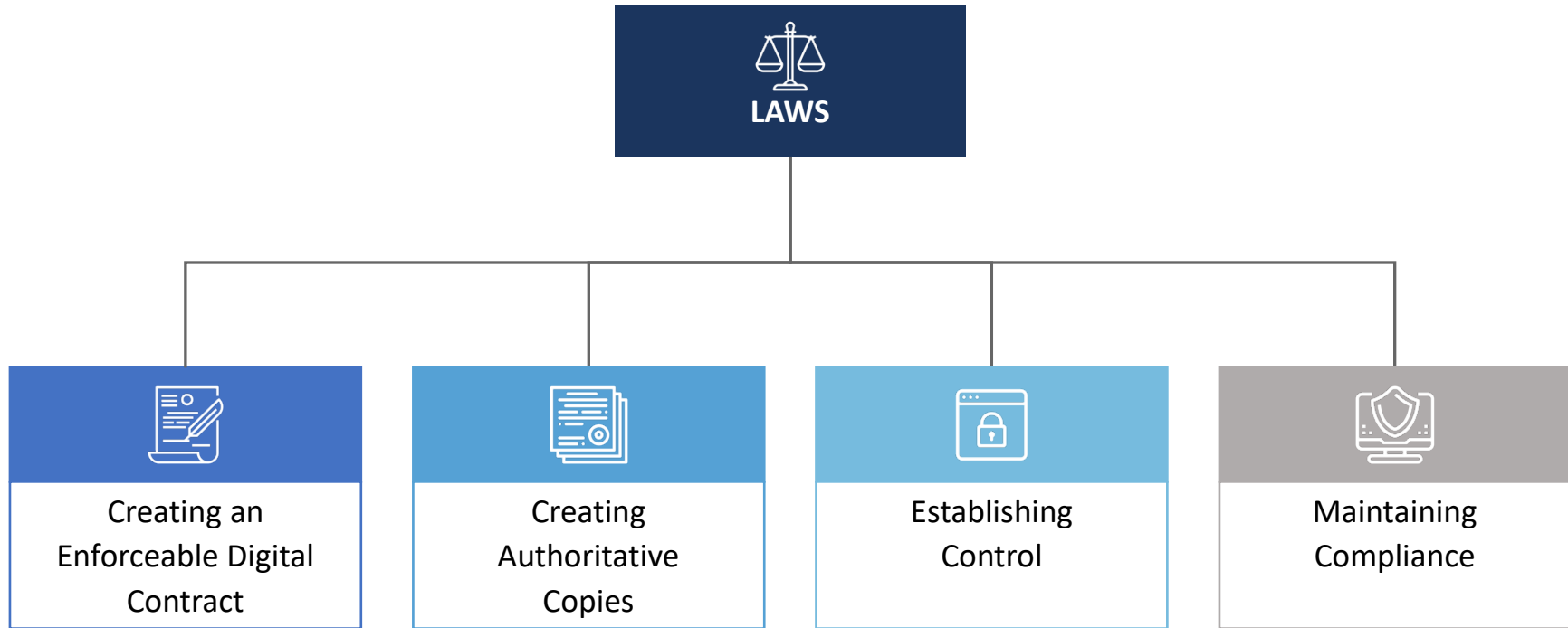


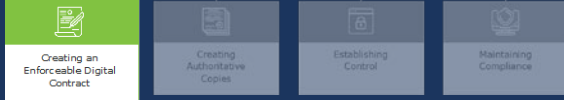
Creating and Maintaining a First Priority Lien

	REGULATIONS AND INDUSTRY STANDARDS	<ul style="list-style-type: none">• SBA Appendix 8• MISMO	<ul style="list-style-type: none">• ESRA• ELFA
	SAFE HARBOR	<ul style="list-style-type: none">• Authoritative Copy• Assignee Identification• Communications & Maintenance	<ul style="list-style-type: none">• Secured Party Modification• Copy Identification• Copy Revisions
	LAWS	<ul style="list-style-type: none">• ESIGN• UETA• UCC 9-105	

US Appellate Court ruled: The mere fact that information has been created and stored within a computer system does not make that information reliable or authentic

Applying the Laws in a Digital Solution





Creating an Enforceable Digital Contract



Electronic Signature

“Electronic Signature” means:

- an electronic sound, symbol, or process
- logically associated with an electronic record
- adopted with the intent to sign the record

Attribution, Authority and Intent are key:

- Use context of the record or circumstances
- Applies usual rules governing authority or intent



Electronic Record

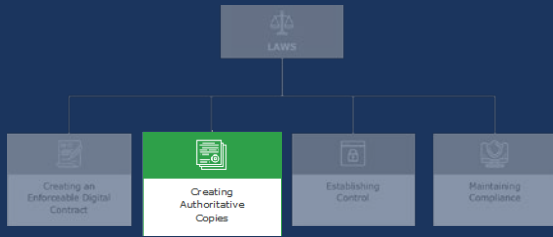
“Record” means:

- Information on a tangible, electronic or other medium
- Is retrievable in perceivable form

“Electronic Record” is virtually any stored record that is not on paper

Record retention system is critical:

- Enforce legal obligations
- Meet State or Federal “writing” and “retention” requirements
- Obtain admission into evidence in the event of a dispute
- **ESIGN/UETA focus on accurate preservation and access to information in the record.**



Creating Authoritative Copies

Under ESIGN and UETA, a Transferable Record is an electronic record which:

Transferrable records apply to:

- Mortgage Notes (eNote or a deeded time share sale contract secured by real estate)

The record consists of:

- A negotiable promissory note
- Often a security interest in collateral not tangible goods

UCC 9-105, Electronic Chattel Paper is an electronic record which:

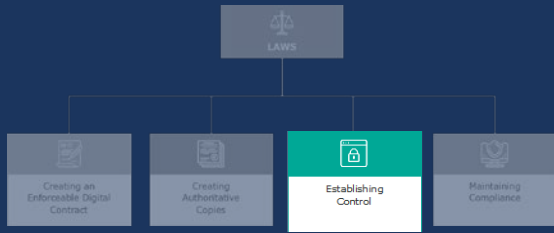
Electronic Chattel Paper includes:

- Equipment Leases
- Auto Loans and Leases
- Consumer Goods
- Security Alarm Services Agreements (equipment rental or purchase)
- Solar Panel Agreements

Consists of:

- A monetary obligation AND
- A security interest in specific, tangible goods (i.e., the collateral), not real estate

Unsecured Loans (Student loans, Consumers loans) are not covered by these laws, but you still want an asset that is negotiable, transferrable, and that can be sold



Establishing Control



“Control” is to Authoritative Copies what “possession” is to paper securities



The Federal and State laws require “control” of Authoritative Copies by “a system that reliably establishes” the person is assigned, issued or transferred the Authoritative Copy



The “Safe Harbor” for this “control” test requires Authoritative Copies that are created, stored and assigned to meet each of six stringent criteria.



Establishing Control

Criteria for Safe Harbor

+

“Create, Store & Assign”

1

A single authoritative copy of the record or records exists which is unique, identifiable, and unalterable; except as otherwise provided in numbered paragraphs 4, 5, and 6 below

2

The authoritative copy **identifies the secured party** as the assignee of the record or the person to which the authoritative copy was last transferred

3

The authoritative copy is communicated to and **maintained by the person asserting control** or its designated custodian

4

Copies or revisions that add or change an identified assignee of the authoritative copy can be made only **with the participation of the person asserting control**

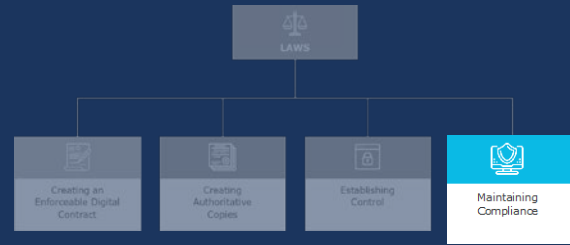
5

Each copy of the authoritative copy and any copy of a copy is readily **identifiable as a copy** that is not the authoritative copy

6

Any amendment of the authoritative copy is readily **identifiable as an authorized or unauthorized amendment**

Key Takeaways: With these six criteria, you have established a burden of proof that you have an authoritative copy. An immutable audit trail proves this out through an irrefutable, immutable chain of evidence and custody



Maintaining Compliance

Federal law and State evidentiary law require an effective management of digital records long-term:

- ✓ Maintain the accuracy of the record content and information
- ✓ Preserving evidence of content and delivery (e.g., archiving process)
- ✓ Preserving record integrity for production in the event of dispute or litigation (e.g., version control, audit logs)
- ✓ Providing for long-term access for those entitled to access either pursuant to law or by contract; and
- ✓ Addressing special Audit Trail requirements for a digital Chain of Custody for Authoritative Copies and Transferable Records

Utilization of Digital Financial Assets

Collateralizations



- Collateralization is when a company originating financial assets obtains a loan, such as a line of credit, in exchange for pledging to the funder a security interest in the assets.

Electronic Collateral Control Agreements



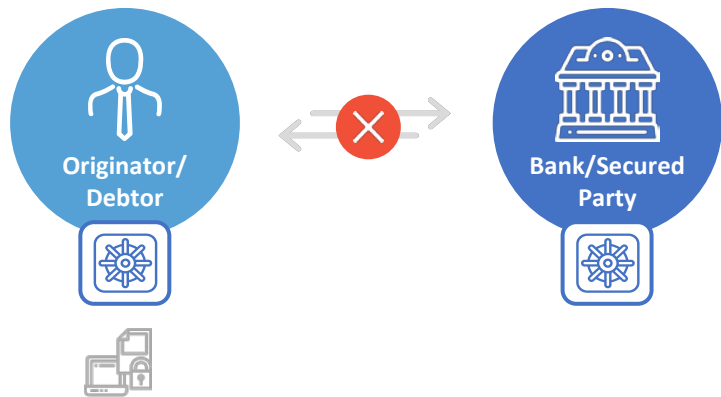
- Provides protection of lender capital for funds lent to an originator.

Securitizations



- Securitization is the process of taking a collection of assets, and through financial engineering, transforming them into a security.
- Most securitizations require an ECCA

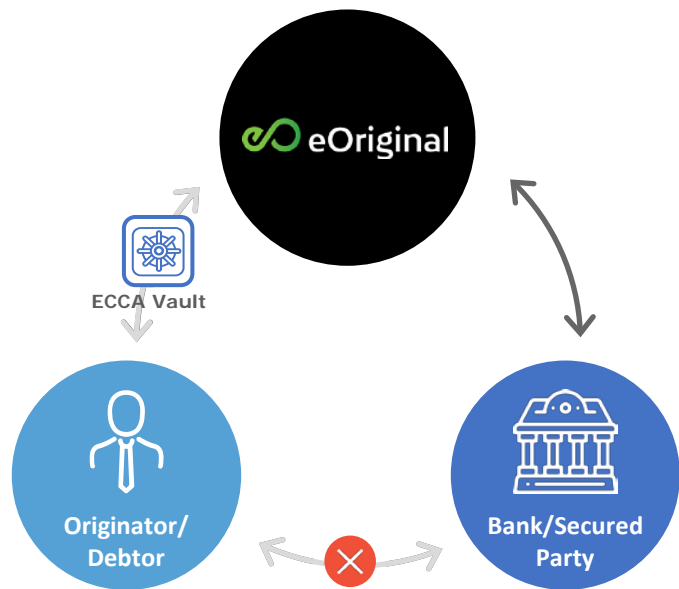
Collateralization Agreement



Simple Collateralization

1. A bi-party agreement, between the Originator/Debtor and the Bank/Secured Party, most often a Warehouse or Line of Credit Lender.
2. The Originator pledges digital assets as collateral for funds borrowed from the Bank/Secured Party.
3. The collateral is transferred to a Vault under the administration of the Bank/Secured Party.
4. **The Bank/Secured Party has a direct control of the collateral.**
5. Upon repayment of the debt by the Originator/Debtor, the Bank/Secured Party releases the collateral back to the control of the Originator/Debtor under their security agreement.
6. In the event of default by the Originator/Debtor, the Bank/Secured Party exercises its right to the collateral under its direct security agreement with the Originator/Debtor.

Electronic Collateral Control Agreement



ECCA Fundamentals

1. Created by eOriginal to provide protection to the bank/secured party for funds lent to Originators/Debtors
2. Tri-party agreement between eOriginal, the originator/debtor, and the bank/secured party.
3. The originator pledges digital assets as collateral for funds borrowed from the bank.
4. Collateral subject to an ECCA is transferred to a ECCA Vault under the administration of the originator.
5. **The bank/secured party has a unilateral right to take control of the collateral.**
6. Upon instruction from the bank/secured party, eOriginal terminates the originator's access to the ECCA vault and simultaneously transfers access and control to the bank.
7. eOriginal trains all parties to ensure ECCAs are properly constructed, enforceable, and actionable.
8. eOriginal enforced the ECCA transfer of \$65M secured assets to Freedom Financial, as approved under the receivership of the debtor by the SEC in New York courts.

Making eSignature Implementations Successful

- **Scale** - Businesses are adopting eSign with speed in 2020. Ensuring integration and automation for document preparation and back office processes are in place is necessary to achieve scale.
- **“Getting creative” in the time of COVID** - One enterprise is calling customers to walk them through their eSign process. Taking 16-18 hours a day for multiple people. It shouldn't be necessary. Plan to support scale. Inserting redundant human process into a digital initiative will negate the return on investment and user acceptance.
- **Support for human behavior** - People will do odd things. They won't read instructions, they'll start-stop-start, they'll be worried about “breaking” something when clicking buttons or are afraid to complete a transaction. Having a team who are experts at supporting your customers, and the unique actions that they take, is critical to keep momentum and a happy customer.
- **Overcoming roadblocks** - Discussion





Dominic Liberatore

DLL

Stephen Bisbee

eOriginal

Robert Cohen

Moritt Hock & Hamroff LLP

What's Next?



For previously-recorded web seminars go to:
www.elfaonline.org/events/elearning/web-seminars

Join us next week for the next ELFA Wednesday Webinar at 1!
Beyond the Cloud: Optimizing Digital Transformation



Appendices Material



Related Case Law

Lorraine v. Markel American Insurance:

Court focused on Reliable record retention systems for eSignature and digital records :

[C]onsidering the significant costs associated with discovery of ESI, it makes little sense to go to all the bother and expense to get electronic information only to have it excluded from evidence or rejected from consideration during summary judgment because the proponent cannot lay a sufficient foundation to get it admitted.

American Express v. In Re Vee Vinhnee:

Court focused on establishing that procedures have built-in safeguards to ensure accuracy and identify errors, and determined:

[T]he logical questions extend beyond the identification of the particular computer equipment and programs used. The entity's policies and procedures for the use of the equipment, database, and programs are important. How access to the pertinent database is controlled and, separately, how access to the specific program is controlled are important questions. How changes in the database are logged or recorded, as well as the structure and implementation of backup systems and audit procedures for assuring the continuing integrity of the database, are pertinent to the question of whether the records have been changed since their creation.



Related Case Law: Outside of Equipment Lease

Rivera v. Wells Fargo Bank:

A Florida district court reviewed UETA language around lender control and electronic promissory notes for real estate. Specifically, the court reviewed: “A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.”

The court ruled that control of the eNote was established through a trusted digital solution that established a single authoritative copy that was unique, identifiable, and immutable.

New York Community Bank v. McClendon:

The court considered language regarding lender control of an eNote for real estate, but this time as addressed in E-SIGN (which is exactly the same as UETA and similar to UCC 9-105).

The court cited eNote transfer history as demonstrating control by the lender and establishing rights to the real estate.