



**WHITE PAPER**

# **BEST PRACTICES FOR ELECTRONIC SIGNATURES AND DELIVERY**

**A realistic guide for community  
banks and credit unions  
that want to improve  
efficiency and deliver better  
customer experiences**

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## EXECUTIVE SUMMARY

**Ask a customer to fax a signature to your community bank and you're likely to hear a stunned silence.**

**The use of paper among consumers has been declining for years, and the move away from landlines means home fax machines have become nearly obsolete.**

**As mobile-loving millennials enter the consumer market, community banks and credit unions need a better way to capture signatures and deliver documents electronically.**

For banks that are executing or planning to execute digital transformations, the use of electronic signatures and delivery are now a standard customer expectation. A process that runs digitally up to the most critical point of the consumer experience the signing of an agreement and then reverts back to traditional paper isn't a digital experience. The consumer won't remember the ease with which a loan, for example, was researched, applied for, and approved: the consumer will only remember the painful last step that required them to dust off their printer or bring their personal paperwork to their offices.

Electronic signatures and delivery do more than deliver an outstanding customer experience. They also reduce operational inefficiencies that cost banks time and money, and that add up to significant waste over time. For example, the State of Hawaii has reported savings of \$500 million since it went paperless.

What is preventing more community banks and credit unions from embracing electronic signatures and delivery? The Electronic Signatures in Global and National Commerce Act (ESIGN Act) is almost two decades old. The technology is available and reasonably priced. Maybe banks are concerned about the risk of violating the (admittedly confusing) laws or failing to meet regulatory compliance obligations, or maybe they believe that implementing electronic signatures and delivery will be too hard to do in their particular organization. However, neither of those concerns are insurmountable. The opposite, in fact: With an understanding of the legal landscape, a tested set of best practices, and an experienced partner, electronic signatures and delivery are the easiest phase of a digital transformation to implement, and they deliver convenience and security that customers will appreciate.

# Legal Support for Electronic Signatures

There are two key statutes that you need to keep in mind when considering electronic signatures. The first statute is the Uniform Electronic Transactions Act (“UETA”).

Most states have adopted UETA (forty-seven states, the District of Columbia, Puerto Rico, and the Virgin Islands have adopted, with New York, Illinois, and Washington the only states not adopting UETA). There is also a federal statute on this issue, the Electronic Signatures in Global and National Commerce Act of 2000 (“ESIGN”). With certain specific exceptions, both statutes make electronic records and electronic signatures enforceable to the same extent that written documents and wet ink signatures are. Therefore, when best practices are followed, electronic signatures and electronic records are enforceable in every state. Even if a state has not adopted UETA, ESIGN will apply.

Why is the fact there are two different statutes important? Well, there are some differences in the requirements between the two statutes. Also, although Federal law usually controls over state law, ESIGN generally gives priority to UETA, while

requiring that any other electronic signature law defer to ESIGN. UETA also includes considerable more detail about the processes and down-stream effects of electronic records or signatures. Therefore, UETA is often more important than ESIGN in states where it is adopted and ESIGN is more important in states where UETA has not been adopted. However, ESIGN also has a very specific consumer consent process that applies to certain types of Federal-mandated consumer notices and disclosures regardless of UETA adoption – this process (which is described later in this article) is very important for financial institutions, because there are a number of such required Federal notices in relation to consumer loans and opening of consumer deposit or share accounts.

### Differences Between ESIGN and UETA

#### ESIGN

- Oral communications are not considered to be electronic records.
- Regulatory authority is expressly limited
- Transferable records are limited to loans secured by real estate. A transferable record is more valuable when you want to sell a loan.
- Default rules are not included.
- Consumer consent process outlined for provision of consumer notices and disclosures generally required to be provided in writing.

#### UETA

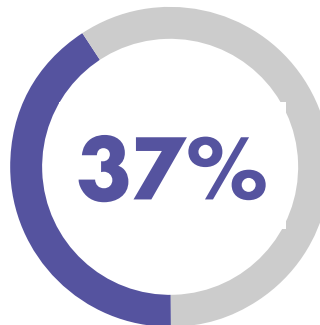
- Covers technical details, such as attribution of records, time and place of sending and receipt, how to address mistakes in contract documents, what retention means in relation to electronic records and what is required to satisfy a requirement that information be provided in writing when it is provided electronically, etc.
- Requires parties to consent to conducting transactions electronically, but allows that consent to be established by the parties’ conduct and does not require an explicit contract or disclosure.
- Does not limit transferable records to those loans that are secured by real estate.

### **Are There Types of Laws or Documents That UETA and ESIGN do not Cover?**

Both ESIGN and UETA exclude laws relating to wills and trusts created by wills. ESIGN also explicitly exempts certain types of notices, such as notices of default, acceleration, repossession, or foreclosure relating to a credit agreement secured by an individual's primary residence. UETA also allowed states to provide for each state categories of documents that are not covered, so there can be some differences in UETA coverage from state to state. ESIGN and UETA also exclude negotiable instruments (documents with more value to sell on the secondary market) and create a concept called the transferable record to replace it, but with more limitations under ESIGN.

### **All Electronic Signatures are not Created Equal**

Further complicating matters is the fact that many stakeholders do not know there are different types of signatures with different levels of trust. An electronic signature is simply encrypted. This is adequate security for low-risk transactions, like simple agreements with low dollar values. Digital signatures are more secure because the identity of the sender is guaranteed by a third party called a certificate authority. This level of security makes sense for high-risk transactions such as loans, real estate transactions, etc. Both types can be executed through most electronic signature solutions.



**Growth of electronic signature use year-over-year in financial institutions**

**Community banks and credit unions walk a tightrope between giving consumers what they want (easier access to services) and giving them what they need (absolute security).**



Community banks and credit unions is they need to be prepared to validate their signing processes. This can be accomplished simply by maintaining complete documentation of their processes- information they should have anyway, both for their own purposes and to meet regulatory requirements.”

**Start with an In-branch Electronic Signing Ceremony**

Community banks and credit unions walk a tightrope between giving consumers what they want (easier access to services) and giving them what they need (absolute security).

However, the use of electronic signatures and delivery will not be optional for much longer; banks need to prepare themselves to provide this convenience if they want to stay apace with modern banking trends.

The good news is that banks don't have to dive into the deep end when they decide to implement electronic signatures. They can test the waters by starting with an in-branch signing ceremony.

There are many advantages to this approach. The benefits will be tangible, quantifiable, and quickly realized: streamlined processes that improve efficiency, cost savings related to eliminating paper and its attendant storage and management costs, and support for digital transformation and mobile banking.

The way electronic signatures and delivery are used in-house will affect all employees, so the first step is to connect with stakeholders throughout the organization in order to gather accurate and complete requirements.

**“How Risky is This Document?”**

The legal team can help conduct a risk analysis that categorizes documents as high, moderate, or low risk.

Project planners can use these categories to determine what types of signatures and policies should be applied to what types of documents.

This, of course, necessitates a complete inventory of all document types in use.

### **Simplify and Standardize Workflows**

The requirements-gathering phase of planning will yield not only a list of functions, but an understanding of end users. Delving into current departmental processes will reveal which roles handle which document types, and what levels of authorization are appropriate for each role. Workflows will need to be captured for use in the electronic signature system in order to enable automated approval processes.

During this stage, inefficiencies and redundancies in existing processes are likely to be exposed. If the goal of using electronic signatures and delivery is to streamline processes and improve efficiency, now is the time to rectify those processes. Strive to standardize workflows as much as possible; eliminate unnecessary steps; and identify bottlenecks and investigate their causes. Even fractional gains will yield results that become meaningful over time.

When determining what roles have what level of authority, be stingy. The idea of least privilege is one banks are already familiar with; employees currently have restrictions on what they can sign for or approve. Carry these restrictions over into the electronic signature and delivery system, but reduce them whenever possible.

### **Merge Technology Into Record Keeping Practices**

Record keeping practices in the electronic signature and delivery system will be largely identical to traditional paper practices, since the same regulations and business practices apply. Differences are largely technological:

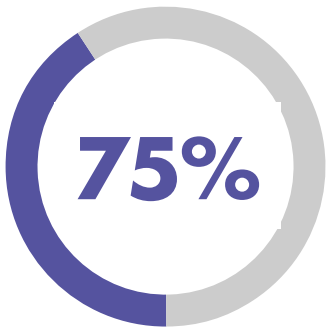
- The system must support compliance and IT security practices
- Metadata must be inter-operable among systems
- Records must be able to be migrated to other systems
- Audit logs must be kept
- Protections against unauthorized deletions must be in place

#### **Right-size Your Technology**

There are many electronic signature solutions to choose from some are best suited for global organizations, while others are perfect for the community bank or credit union.

Knowing your organization's technical capabilities will help define the right solution for you. If your technical capabilities are limited, buying a solution with all the bells, whistles, and customizable options may be overkill. Understand your capabilities and choose wisely.

A master policy should be in place that provides guidelines for the use of electronic signatures and delivery in compliance with laws, regulations, and organizational requirements. This policy should also define best practices, disclosures, and consumer consent to do business electronically.



Reduce transactions costs by up to 75% when using eSignature solutions

#### What Makes a Policy Successful?

1. State its objective
2. Summarize its content
3. Define terms
4. Share it formally with the organization

#### Develop Effective Policies

A master policy should be in place that provides guidelines for the use of electronic signatures and delivery in compliance with laws, regulations, and organizational requirements. This policy should also define best practices, disclosures, and consumer consent to do business electronically.

Also, when rolling out to the public, an opt-out clause must be included that specifies alternative procedures for those who choose to sign manually.

When the master signature policy is complete, it will be incorporated into the electronic signature and delivery solution in the form of templates. Best practice is for the master signature policy to cover as many types of documents and transactions as possible. This will aid strong adoption and return the most accurate measurable data.

#### Launch Strategically

A policy is only effective if people read and understand it. There must be an organization-wide launch to promote the new way of handling signatures and delivery, and it should be delivered with some fanfare. The use of electronic signatures and delivery will change the way everyone is accustomed to doing business, so the bank needs to get their full attention. A live event to explain the new processes is vastly more effective than a simple email announcement. During the meeting, be prepared to counter resistance; this is to be expected because people don't like change, at least not until they've experienced the improved ease with which they can accomplish their work.

Employees need to understand how and when to use electronic signatures and delivery, and where they can get help with their questions. Training should be available, either online or in-person, and the help desk should be prepared for a wave of calls while employees become comfortable with the new signature and delivery practices. The policy should be accessible in a convenient location at all times.

Best practice is to designate one person in each department as an advanced user. The advanced user can assist co-workers in the early days of the launch and report any issues to the IT team.



### **True 24/7 Banking is Built on Electronic Signatures and Delivery**

Electronic signatures and delivery have been a “nice-to-have” for many years. However, the growth of mobile and the increased sophistication of the average bank customer has moved electronic signing and delivery from the nice-to-have column to the must-have column.

If your bank is executing or planning a digital transformation, electronic signatures and delivery should be near the top of your priority list.

Electronic signatures and delivery are the heart of a digital strategy. They enable faster processing without large investments or additional staff, help support compliance, increase efficiency

with automated workflows and, of course, provide a superior customer experience.

There’s a right-sized electronic signature and delivery solution for every financial institution. Finastra can help you choose the electronic platform that’s right for your needs and your budget. We understand what can and cannot be electronically signed, we support compliance in all 50 states and we keep up with changes to regulations and laws relating to electronic signatures and delivery. We do all this so you can focus on serving your customers and members.

### **The Real Cost of Paper**

The relative low cost of an electronic signing and delivery solution is regained in the savings it delivers. Put aside the efficiency gains and improved customer experience for a moment, and simply consider the costs of managing paper:

- Paper and ink must be purchased and stored
- Documents take up valuable real estate in the office
- Later the paper must be transported for a cost to a storage facility
- Eventually, employees have to figure out which documents can be destroyed and arrange for a vendor to shred them (although many organizations never get to that stage it’s easier to just keep paying storage fees).

### **5-Year Outlook on Financial Benefits of Electronic Signatures and Delivery**

Paper processing – \$226,000

Electronic Documents – \$57,900

A large, flowing ribbon graphic in shades of purple, pink, and white, curving across the page from the bottom left towards the top right.

**Reduce Your Cost, Mitigate Risk and Enhance Your Customer Experience With Electronic Signing and Delivery**

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## About Finastra

Finastra unlocks the potential of people and businesses in finance, creating a platform for open innovation. Formed in 2017 by the combination of Misys and D+H, we provide the broadest portfolio of financial services software in the world today—spanning retail banking, transaction banking, lending, and treasury and capital markets. Our solutions enable customers to deploy mission critical technology on premises or in the cloud. Our scale and geographical reach means that we can serve customers effectively, regardless of their size or geographic location—from global financial institutions, to community banks and credit unions.

Through our open, secure and reliable solutions, customers are empowered to accelerate growth, optimize cost, mitigate risk and continually evolve to meet the changing needs of their customers. 90 of the world's top 100 banks use Finastra technology.

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