



## **ELECTRONIC RECORDS AND SIGNATURES -- CHALLENGE AND OPPORTUNITY**

New eCommerce laws make possible the widespread replacement of paper documents with electronic records. They also enable the broad use of electronic signatures. Many businesses have begun converting their operations to avail themselves of the enormous advantages offered by electronic records systems.

While the new eCommerce laws permit the use of electronic records and signatures, they also require that electronic systems and processes meet specific standards for:

- Obtaining consent to use electronic records and signatures,
- Presentation of information,
- Execution of signatures and creation of agreements,
- Record retention,
- Printing, and
- Delivery.

Failure to meet those standards may impair the enforceability of electronic records. As a result, companies are being forced to invest significant time, effort and manpower in answering questions about how to handle the practical, routine aspects of electronic transactions. Much of this time and effort could be avoided if industry-wide standards for these elements of electronic transactions could be established.

*To address this problem, industry leaders have undertaken a cross-industry initiative to establish commonly understood “rules of the road” available to all parties seeking to take advantage of the powers conferred by ESIGN and UETA. The product of this initiative is the Standards and Procedures for Electronic Records and Signatures (“SPeRS”).*

## **WHAT IS SPeRS?**

SPeRS is:

- A set of guidelines, procedures, checklists and strategies for developing systems to create, deliver, sign, manage and transfer legally enforceable electronic records and signatures in commercial and consumer transactions. Intended to help companies develop cross-discipline system design teams for implementing electronic commerce.
- Focused on the behavioral aspects of the interaction between participants in the transaction. SPeRS is technology neutral.

SPeRS will:

- Permit businesses to establish a common understanding with internal team members and vendors concerning the methodology for designing eCommerce systems,
- Assist in establishing industry standards for commercially reasonable, enforceable structures and processes, and
- Help provide the customer with a “common experience” across various online transactions.

## **WHAT KINDS OF ISSUES DOES SPeRS ADDRESS?**

SPeRS’ 30 Standards, and the supporting checklists, address dozens of issues related to the use of electronic records and signatures.

Examples include:

- Describing the risks and liabilities associated with using a PIN or password.
- Obtaining a consumer’s consent to use electronic records and signatures.
- Selecting a signature process that is appropriate for the transaction.
- Establishing the intent to sign an electronic record.
- Effectively delivering information in an electronic environment.
- Using hyperlinks and other devices used in referencing, displaying, and drawing attention to information and disclosures.
- Strategies for effective record retention.

See the attached **Table of Contents** for more information.

## **WHO PARTICIPATED IN CREATING SPeRS?**

### Drafting Committee Members

Adobe Systems Incorporated  
American International Group, Inc.  
Charles Schwab & Co., Inc.  
CitiMortgage, Inc.  
Dell Financial Services L.P.  
Fannie Mae  
First American Title Insurance Company  
Freddie Mac  
General Electric Mortgage Insurance Corporation  
Harland Financial Solutions  
Harris Investor Services LLC  
Intuit Inc.  
Massachusetts Mutual Life Insurance Company / MassMutual Financial Group  
Mortgage Guaranty Insurance Corporation  
PricewaterhouseCoopers  
Principal Financial Group  
Swiss Re Life & Health America, Inc.  
TIAA-CREF  
VeriSign, Inc.  
Wells Fargo Home Mortgage  
Zions Bancorporation / Identrus, LLC

### Observers

beTRUSTed  
Esurance Inc.  
NewRiver, Inc.  
Republic Mortgage Insurance Co.  
RPost  
RouteOne LLC  
Safedocs  
Silanis Technology  
SwiftView, Inc.  
Wave Systems Corp.

### Advisors

ACORD  
Alliance of American Insurers  
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American Council of Life Insurers  
American Financial Services Association  
National Association for Variable Annuities  
Mortgage Bankers Association of America  
National Multi Housing Council  
Securities Industry Association  
Software & Information Industry Association

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## **HOW DO I ORDER SPeRS?**

SPeRS Version 1.0 is available now for \$295.00 per hardbound copy, plus \$15.00 shipping and handling per copy. To order online visit [www.spers.org](http://www.spers.org). To order via telephone, contact Laura Kenney at Buckley Kolar, LLP at (202) 349-8068.

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