

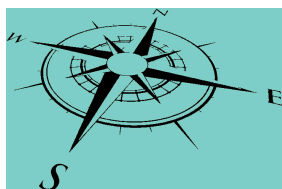
# About ESRA

ESRA promotes the awareness, understanding, and adoption of electronic signatures and records while providing a collective voice to the business community and government. ESRA members are influential, policy-defining advocates for electronic signatures and records in global commerce and government. The ESRA community collaborates to explore similar interests and goals to help establish a common understanding of legislation and trends needed for important business conversations involving e-signatures and e-records.

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## Electronic Signature and Records Association (ESRA)

### Description:

The Electronic Signature and Records Association (ESRA) is the industry trade association for digital transactions. ESRA advances and accelerates the adoption of digital transactions and related technologies across all verticals, and provides thought leadership, legislative advocacy, education and events to inspire a trusted digital economy for all.

### Stakeholder(s):

#### ESRA Board of Directors :

*ESRA BENEFITS EVERY VERTICAL USING ELECTRONIC RECORDS AND SIGNATURES*

#### Kevin Quaille :

*Chair / SVP Enterprise Capabilities, Wells Fargo*

#### Dan Puterbaugh :

*Vice-Chair / Director, Product, IP & Regulatory Affairs, Docu-Sign*

#### Larry Torri :

*Secretary & Treasurer / Sr. Sales Director, Wacom*

#### Stephen Bisbee :

*Director / President/Founder, eOriginal*

#### Bill Brice :

*Director / Executive Vice President, Alphatrust*

#### Tara Chacon :

*Director / Legal Counsel, Adobe*

#### Fred Gooch :

*Director / General Counsel/SVP Compliance, First American Docutech*

#### Patrick Hicks :

*Director / Head of Legal, Trust & Will*

#### Renée Hunter :

*Director / General Counsel, Notarize*

#### John Levy :

*Director / Executive Vice President, IMM*

#### Michael Magrath :

*Director / Director, Global Regulations & Standards, OneSpan*

#### Brian Pannell, PMP :

*Director / VP Client Services, DocMagic*

#### Dan Puterbaugh :

*Director, Associate General Counsel, Adobe Systems*

#### Kevin Park :

*Director / Government Affairs/Industry Relations Legal Dept., Insurance Auto Auctions, Inc.*

#### ESRA Attorneys : OF COUNSEL

#### Margo Tank :

*Counsel / Partner, DLA Piper*

#### David Whitaker :

*Counsel / Partner, DLA Piper*

#### ESRA Committees

#### Education & Events Committee :

*Purpose: Plan, coordinate and produce engaging educational programs, activities and events. Responsibilities:*

- Maintain confidentiality about deliberations on committee work.
- Execute the responsibilities and annual charge(s) of the committee to fulfil the committee's purpose and the association's strategic plan.
- Attend committee meetings and complete assigned tasks.
- Provide support during the ESRA Conference and other events.
- Secure speakers, ensuring that a well-balanced, high-quality program is organized and presented at the conference and other events.
- Gathers, maintains, and utilizes lists of media contacts and past and potential attendees for targeted outreach; and assists staff in promoting the conference and other events.
- Secures sponsors.
- Handles speaker introductions.
- Acts in an advisory capacity to provide feedback and recommendations to the ESRA Board and Staff on the following: - Venue Selection - Budget Setting - Fee Setting - Facilities Coordination

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Stakeholders (continued)

### **Marketing & Communications Committee :**

*Purpose: To create brand awareness and drive membership growth by overseeing ESRA's marketing and messaging efforts.*

*Responsibilities:*

- *Maintain confidentiality about deliberations on committee work*
- *Execute the responsibilities and annual charge(s) of the committee to fulfill the committee's purpose and the association's strategic plan*
- *Strive to maintain committee diversity across business types (end-users, providers and consultants).*
- *Make ESRA, its mission statement and value well known and accepted amongst key publics.*
- *Ensure consistent branding.*
- *Ensure consistent messaging.*

### **Membership Committee :**

*Purpose: Recruit, retain and engage ESRA membership, in collaboration with other committees. Responsibilities:*

- *Maintain confidentiality about deliberations on committee work*
- *Execute the responsibilities and annual charge(s) of the committee to fulfill the committee's purpose and the association's strategic plan*
- *Strive to maintain committee diversity across business types (end-users, providers and consultants).*
- *Execute membership related activities Identify current membership trends*
- *Work with staff on issues related to membership*
- *Continually monitor and analyze member services and value proposition*
- *Solicit member feedback through current member and exit surveys*

### **Public Policy Committee :**

*Purpose: Develop and implement policy initiatives in support of ESRA's core mission. Responsibilities:*

- *Maintain confidentiality about deliberations on committee work*
- *Execute the responsibilities and annual charge(s) of the committee to fulfill the committee's purpose and the association's strategic plan*
- *Strive to maintain committee diversity across business types (end-users, providers and consultants).*
- *Make recommendations on advocacy issues to the ESRA Board of Directors*
- *Draft policy comments in support of ESRA positions.*
- *Solicits inputs from ESRA workgroups.*

### **ESRA Members :**

*If your organization powers, is powered by, or utilizes electronic signatures and records, becoming a member of ESRA helps you and the organization move the global economy forward. Membership in ESRA is open to all types of organizations and trade associations. With every membership there will be a designated official representative, but other member employees are welcome to participate in association activities. Annual fees per organization are \$2,500 for general membership, or \$1,000 for associations; there are no other fees for membership. ESRA's membership fees are used to fund legislat-*

*ive and industry educational events, research studies, and other pertinent programs.*

**Adobe**

**Alphatrust**

**Assuresign**

**Black Knight Financial Services**

**Buckley LLP**

**Burr & Forman LLP**

**CHAMPtitles**

**CSC**

**DDI Technology**

**DLA Piper**

**DocMagic**

**DocuSign**

**eDOC Innovations**

**eNotary Log**

**eOriginal**

**First American Docutech**

**IAAI**

**IMM**

**K6 Partners**

**LegalZoom Inc**

**Lleida.net**

**Locke Lord**

**McGlinchey**

**MyAdvocate**

**Navy Federal Credit Union**

**Nexsys**

**Notarize, Inc.**

**NotaryCam**

**OneSpan**

**Pavaso**

**Property Records Industry Association**

**RouteOne**

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*Stakeholders (continued)*

**Simplifile**

**Teletrust**

**Topaz Systems**

**Trust & Will**

**Wacom Technology Group**

**Wells Fargo**

**ValTeo, LLC**

**ViewSonic**

**ZorroSign, Inc**

## Vision

A trusted digital economy for all

## Mission

To educate and advocate for the use and acceptance of digital transactions

## Values

**Expertise**

**Leadership**

**Collaboration**

**Accessibility**

**Technology Neutrality**

## 1. Public Policy

*Create and communicate public policy on electronic signatures and records management*

ESRA creates and communicates its public policy based upon a rigorous process that is led by key innovators in the electronic signature and records field, and voted on by the Board of Directors. This section contains a list of each of our Public Policy statements.

### 1.1. Blockchain

*Promote consistent policies on blockchain*

VALUE STATEMENT (EFFECT ON ESRA MISSION): Opportunity (future state) ~ Focus on blockchain by Congress and legislatures provides an OPPORTUNITY to create awareness of ESRA principles among decision-makers on issues involving crypto currencies and smart contracts. | Threat (future state) ~ State legislatures are considering bills that amend UETA and seek to redefine key components of technology neutrality. | OUTCOME DESIRED ~ Awareness among Members and staff of federal laws already in place, including ESIGN and UETA. Solidify general understanding and acceptance of ESRA principles.

#### Stakeholder(s):

##### U.S. House of Representatives :

*In July 2016, the US House of Representatives passed a non-binding resolution calling for a national technology innovation policy that includes supportive language for digital currencies and blockchain technology. The resolution calls on the US government to craft a national policy for technology, with specific mentions for digital currencies and blockchain.*

##### Rep. Jared Polis :

*On Feb. 9, 2017, Rep. Jared Polis (D-Colo.) and David Schweikert (R-Ariz.) announced the launch of the Congressional Blockchain Caucus.*

##### Rep. David Schweikert

##### Congressional Blockchain Caucus :

*The bipartisan Caucus will be dedicated to the advancement of sound public policy toward blockchain-based technologies and digital currencies. The Congressional Blockchain Caucus will seek to educate, engage, and provide research to help policy-makers implement smart regulatory approaches to the issues raised by blockchain-based technologies and networks.*

##### State Legislatures :

*In the ensuing months, several states have introduced—and some have passed—bills intended to further the adoption of blockchain technology, but in so doing they are creating confusion and potentially undermining the overlay characteristics of UETA.*

### 1.2. Wills

*Support uniform statutes on electronic wills*

VALUE STATEMENT (EFFECT ON ESRA MISSION): Opportunity (future state) ~ Introducing uniform, technology-neutral legislation to support electronically enabled will and codicil execution creates an OPPORTUNITY to advance the ESRA mission of broader adoption and acceptance of electronic signatures and records, by adding a legal foundation for a use case that is not covered by ESIGN and UETA. | OUTCOME DESIRED ~ Enactment of legislation enabling the electronic execution of wills, to the extent such legislation is consistent with ESRA principles.

#### Stakeholder(s):

##### States :

*Electronically executed wills, codicils and testamentary trusts are excluded from UETA and do not have protection under most state laws.*

##### State Legislatures :

*In 2017, several bills were introduced in state legislatures to support electronic execution and witnessing of testamentary documents. ESRA Public Policy Committee members have reviewed model legislation and have indicated support for those that are consistent with ESRA policy principles.*

### 1.3. Odometers

*Ensure reasonable federal standards on e-odometer processing*

VALUE STATEMENT (EFFECT ON ESRA MISSION): Opportunity (future state) ~ Electronic processing of odometers, and eventually titles, will significantly decrease fraud and serve commerce as states adopt these programs. | OUTCOME DESIRED ~ Technology and vendor neutral eOdometer solutions that are financially viable for states to adopt. Obtaining federal authorization for eOdometer is integral to modernizing vehicle salvage processing and is a subset of e-Titles, the ultimate goal.

#### Stakeholder(s):

##### National Highway Traffic Safety

##### Administration :

*MAP-21 (S.1449 2012) requires NHTSA to explore secure protocols for the use of e-odometer.*

##### American Association of Motor Vehicle

##### Administrators :

*AAMVA is supporting NHTSA by submitting a Report of Considerations. In 2016 ESRA provided substantive comments to the proposed rules issued under*

*MAPS-21. Presuming NHTSA adopts the considerations, states would no longer be required to petition to NHTSA for a waiver to allow e-odometer disclosure. Finding an e-odometer solution that is compliant with TIMA will remove this expense and time intensive hurdle. A solution will necessarily clarify NHTSA's opinion of a secure process, a secure printing process, a process that ensures the odometer disclosure stays "married" to the vehicle title, all while inhibiting odometer fraud.*

### 1.4. Home Loans

*Promote acceptance of e-signed loans as collateral for home loans*

VALUE STATEMENT (EFFECT ON ESRA MISSION): Opportunity (future state) ~ Opportunity for ESRA to advance its mission by gaining additional acceptance of eSignatures in Government / Banking | OUTCOME DESIRED ~ Phase 1: FHLB influencers and decision makers understand the value of eSignatures and express their support for developing a new policy to define their for support and acceptance. Phase 2: FHLBs actually develop and release said policy.

#### Stakeholder(s):

##### Federal Home Loan Banks :

*FHLBank currently requires ALL original documents related to the note to be retained and to contain a "wet" signature. We understand that many members are using or exploring the use of digital record retention systems and electronic signatures to execute loan documents, and we agree the practices are generally accepted as legally binding. However, our*

*concern relates to the transferability of the loan, specifically our ability to liquidate the asset, if needed, and the marketability of the loan to prospective buyers. Education, outreach and "moral-suasion" to move the FHLBs toward ultimately releasing a policy of eSignature acceptance.*

### 1.5. Notarization

*Promote uniform rules and universal acceptance of e-notarization and remote online notarization (RON)*

VALUE STATEMENT (EFFECT ON ESRA MISSION): Opportunity (future state) ~ Widespread adoption of electronic notarization among the states extends the use of electronic signatures in sectors where the use of notarized documents is either statutorily required or considered a best practice. For ESRA, it presents an OPPORTUNITY to advance its mission as the preeminent authority on electronic signatures. | Threatens (future state) ~ While the recent activity surrounding remote online notary (RON) can be considered an opportunity to further promote the adoption of electronic signatures and records, the current situation presents a THREAT to future adoption because it is likely to result in a patchwork of nonuniform laws that will reduce acceptance of notarized documents between the states, and perhaps even create a two-tiered system that treats electronic

notarial acts as less reliable. | **OUTCOME DESIRED** ~ Universal acknowledgment of the validity of electronically-enabled notarization within and between states, and consistent, accurate information made available to notaries public by their notary administrators, including a clarification that electronically-enabled notarization is permitted and supported. Promote a set of principles that should guide notary law and policy regarding remote notarial acts; influencers and decision-makers would use these principles in developing consistent rules or laws.

#### Stakeholder(s):

##### States :

*Current laws (UETA and ESIGN) permit the use of electronic notarization in every state. However, there is little agreement among the states on whether and how these foundational laws provide sufficient legal authority and direction to enable a state to permit electronic notarization or to acknowledge electronic notarizations from within or outside their jurisdictions.*

##### Notaries :

*ESRA has established its support for electronically enabled notarial acts, and it has promoted adoption of new technological means of performing the notarial function, as long as such means are aligned with ESRA's policy principles. The issue of physical presence in the performance of a notarial act has become a pivotal question, and many states are considering new legislation to either explicitly per-*

*mit — or explicitly prohibit — a notary public to witness a signature from a remote location.*

##### Virginia :

*While states like Virginia and Nevada have already enacted laws to permit so-called remote notary, others have expressed opposition and have even refused to acknowledge the validity of such acts. Bills and model legislation have been introduced that are not uniform in their definitions of personal presence or their interpretations of current model e-commerce statutes such as UETA, URPERA and RULONA. Some organizations are seeking a rapid adoption of their model laws, while the uniform law commission is considering developing its own draft, which would take 1-2 years to produce.*

##### Nevada

## 1.6. E-Signatures

*Ensure reasonable standards in IRS e-signature policy*

**VALUE STATEMENT (EFFECT ON ESRA MISSION):** Threatens (future state) ~ Recent pronouncements by Chief Counsel and ongoing work on in-house solutions **THREATEN** the adoption of electronic signatures and records by potentially disallowing them in all instances other than those transactions initiated or supported by IRS information technology systems. | **OUTCOME DESIRED** ~ Inform key influencers of the existence and value of 3rd party-initiated electronic signatures and records. Seek broader allowance for electronic means of signing and storing forms, short of specifying procedures for every form individually.

#### Stakeholder(s):

##### IRS Chief Counsel :

*In December 2016 the IRS Chief Counsel released Advice 201650019, which ruled on the issue of whether electronic signatures could be used on Form 2878 – Power of Attorney. In recommending that electronic signatures should not be accepted on the form, the chief counsel further recommended that “an electronic signature should only be accepted by the Service when there are published guidance or IRM provisions that specifically authorize use of an electronic signature for the specific form involved.”*

##### Taxpayers :

*While the advice states that it remains a business decision whether to accept use of electronic signatures on any specific form,” it recommends that “[i]n those cases dealing with high-risk documents, taxpayers should either be required to sign by non-electronic means or the Service should institute heightened authentication, security procedures, and*

*electronic signing processes to protect the Service against the risk of disavowal by the taxpayer.”*

##### GAO :

*In the meantime, work on Revenue Procedure governing electronic signatures has been underway for some time, but the subject matter now falls under Identity Assurance, a directorship that was formed in response to a GAO directive last year.*

##### IRS :

*While the draft Rev. Proc. has not been released for public comment, there is a high likelihood that it will call for 100% IRS oversight of electronic signatures on all forms, possibly threatening transaction workflows that do not currently include the IRS as a direct participant.*

##### U.S. Treasury Department :

*Internal Revenue Bulletin 2017-5 summarized temporary regulations and stated that the Treasury De-*

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Stakeholders (continued)

partment and the IRS have determined that valid electronically signed withholding certificates may be accepted by a withholding agent if the withholding certificates reasonably demonstrate to the withholding agent that they have been electronically signed by the recipient identified on the form or a person authorized by the recipient to sign the form (by, for example, a signature block that includes a time and date stamp and a statement that the certificate has been electronically signed and the name of the person authorized to sign the form).

#### **Withholding Agents :**

If the withholding certificate contains only a typed name in the signature line and no other information regarding the method of signature, a withholding agent cannot treat the withholding certificate as validly signed. There is much confusion about what is meant by "signature block", and whether and how indicia of electronic signing are to be implemented in compliance with the temporary regulation.

## 1.7. Commercial Loans

*Foster acceptance of e-signed commercial loans as collateral*

VALUE STATEMENT (EFFECT ON ESRA MISSION): Weakens (current state) ~ Lack of clarity in the FRBs' policies toward electronic chattel paper means smaller lenders are less likely to adopt electronic processes for these kinds of transactions. | OUTCOME DESIRED ~ Drive a single, clear policy across all 12 Federal Reserve Banks, accepting pledges of electronically signed credit agreements under conditions that are transparent and reasonable. Perhaps help draft a standard questionnaire or other assessment tool that could be used by all FRBs. Potential to set up a campaign of affected parties to send clear message of the harm currently being caused.

#### **Stakeholder(s):**

##### **Federal Reserve Banks :**

The 12 Federal Reserve banks lend to other banks by taking loans as collateral. Some FRBs will not accept electronically executed loans as collateral; others will only accept consumer loans, taking the position that commercial loans carry additional risk under UCC. In the past year, counsel for some of the FRBs

have developed their own questionnaires to determine whether an electronic loan can be collateralized. Lack of clarity in the FRBs' policies toward electronic chattel paper means smaller lenders are less likely to adopt electronic processes for these kinds of transactions.

## 1.8. Vehicle Titles

*Foster acceptance of e-signed powers of attorney*

VALUE STATEMENT (EFFECT ON ESRA MISSION): Opportunity (future state) ~ This opportunity falls within the ESRA Mission. This proposal requires educating state agencies that electronic signatures and electronic records will significantly decrease fraud and serve commerce as states adopt these programs. E-POA is a subset of eOdometer and eTitle. | OUTCOME DESIRED ~ Technology neutral and vendor neutral ePOA solutions must be offered that are financially viable for states to adopt. States participating in pilot programs and becoming familiar with ePOA is an important precursor for eOdometer.

#### **Stakeholder(s):**

##### **Vehicle Titling Agencies :**

Vehicle Titling Agency (VTL) in each state requires the title to include an odometer statement disclosed by the transferor/seller to comply with the federal odometer disclosure requirement established by The Truth in Mileage Act (TIMA). TIMA is also referred to as "The Rule." The Rule requires the seller whose name is on the title to provide an odometer disclosure to the buyer at the time of the sale.

##### **Vehicle Purchasers :**

They buyer must sign the title acknowledging the mileage disclosure.

##### **Vehicle Sellers :**

A POA may accommodate a transaction on behalf of the seller, and commonly occurs when the physical title is held by a lienholder.

##### **Vehicle Lienholders**

##### **States :**

A state may not issue a title unless the existing title with the completed odometer disclosure statement also is presented with the POA.

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Stakeholders (continued)

**Insurance Companies :**

*From the insurance company perspective, the time involved in using a courier to deliver these paper documents can be reduced by implementing an electronic POA. An ePOA, properly signed and received by an insurer, would permit the insurer to issue a check for the insured's equity interest in the vehicle, sooner. While the odometer requirements are challenging, navigating the various states requirements for general POA forms and states specific forms adds*

*another level. And, some states also require a notarized copy. Eventually, ePOAs may phase-out as eOdometers and eTitles gain acceptance.*

**Vehicle Dealers :**

*Note: This project encompasses vehicles that have been titled at least once and does not involve dealer-to-dealer transfers.*

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## 2. Meetings

### *Conduct meetings*

#### 2.1. Education

*Provide insight and practical guidance on business, technology, and legal implementation issues*

ESRA Digital 2021 Education Series ~ The Education Series will provide insight and practical guidance on the business, technology, and legal implementation issues across a wide spectrum of applications. These issues are of critical importance even more during this time of social distancing, remote work, and contactless consumer engagement.

#### 2.2. Conversation & Networking

*Host membership meetings for conversation and networking*

We invite you to attend and be part of the conversation at the upcoming Spring Members Meeting and Virtual Networking on Friday, March 26, 2021, from 2:30-4 p.m. Eastern Time, via Zoom. This meeting, exclusively for ESRA members, will be an opportunity to meet new members, learn about 2021 plans, and hear what is new with ESRA Public Policy. The meeting will conclude with a brief networking session.

### 3. Resources

*Provide resources*

#### 3.1. Public Resources

*Offer publicly accessible resources*

<https://esignrecords.org/resources/public-resources/>

#### 3.2. Industry Alerts

*Provide industry alerts*

<https://esignrecords.org/resources/members-resources/industry-alerts/>

#### 3.3. ESIGN Day

*Celebrate the The Electronic Signatures in Global and National Commerce (ESIGN) Act*

The Electronic Signature and Records Association (ESRA) celebrated the 20th anniversary of The Electronic Signatures in Global and National Commerce (ESIGN) Act with a free webinar that featured key ESRA leaders who contributed to the development of the ESIGN Act. They discussed key components of the Act, how it provides a national legal framework for electronic signatures and transactions, what has changed since 2000, and how ESRA works towards a trusted digital economy for all.

#### 3.4. Speakers

*Provide speakers upon request*

<https://esignrecords.org/request-esra-speaker/>

## Administrative Information

**Start Date:**

**End Date:**

**Publication Date:** 2021-07-31

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