REPORT BY THE COMMERCIAL LAW AND UNIFORM STATE LAWS COMMITTEE

SUPPORT FOR THE ENACTMENT OF THE UNIFORM ELECTRONIC TRANSACTIONS ACT IN NEW YORK

I. EXECUTIVE SUMMARY

The Commercial Law and Uniform State Laws Committee of the New York City Bar Association urges the Legislature to amend Article 3 of New York's Technology Law, the Electronic Signatures and Records Act, NY Chapter 57-A, Sections 301-309 ("ESRA") to more closely align ESRA with the Uniform Law Commission's ("ULC")[1] Uniform Electronic Transactions Act ("UETA"), including incorporating provisions of UETA into ESRA.[2] (The amendment to ESRA proposed herein is referred to as the "Amendment.") Proposed bill language is attached as Exhibit A to this report.

ESRA, New York's law governing electronic records and signatures, is seriously out of sync with the law of every other U.S. State and jurisdiction, each of which has enacted the Uniform Electronic Transactions Act.[3] It is also not considered to be consistent with the law of the 87 nations

[1] The Uniform Law Commission is a non-profit organization established more than 100 years ago consisting of lawyers appointed by state governments to draft uniform state laws in areas where uniformity is desirable. New York has enacted a multitude of model uniform laws drafted by the Uniform Law Commission. Well-known examples of the ULC's work include the Uniform Commercial Code, the Uniform Transfers to Minors Act, the Uniform Partition of Heirs Property Act, the Uniform Enforcement of Foreign Judgments Act, and the Uniform Voidable Transactions Act, all of which have been enacted in New York.

[2] In 2001, the Committee (previously known as the Uniform State Laws Committee) similarly urged the Legislature to amend ESRA to enact UETA. *See* "Report on the Uniform Electronic Transaction Act, the Electronic Signatures in Global and National Commerce Act and the Electronic Signatures and Records Act," The Record, Fall 2001, Vol. 56, No. 4, https://www2.nycbar.org/Publications/record/fall01.1.pdf (all websites last visited Aug. 7, 2025).

[3] UETA has been enacted in all 49 other states as well as Washington D.C., Puerto Rico and the Virgin Islands. *See* https://www.uniformlaws.org/committees/community-home?CommunityKey=2c04b76c-2b7d-4399-977e-d5876ba7e034.

About the Association
The mission of the New York City Bar Association, which was founded in 1870 and has over 20,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

and the 63 subsidiary jurisdictions that have enacted the UNCITRAL Model Law on Electronic Commerce ("UNCITRAL Model Law") on which the Uniform Electronic Transactions Act is based.[4]

New York is the only state in which electronic transactions are governed by two different laws: ESRA for purely intra-state transactions and the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Chapter 96, Sections 7001-7031 ("E-SIGN"), which is based on UETA and which pre-empts ESRA for interstate and international transactions.[5]

New York is the only state whose electronic records law does not apply to electronic negotiable notes and other instruments of title, the ownership of which is evidenced by distributed ledger or blockchain technology.

New York is the only state whose electronic records law does not apply to electronic powers of attorney or non-testamentary trust instruments executed by individuals, which often have important commercial uses.

New York's electronic records law, unlike that of every other U.S. jurisdiction, lacks useful provisions setting rules to deal with documentary errors, transmission and retention of electronic records, notarization of electronic records, attribution of electronic signatures, and control over electronic negotiable notes.

Lawyers whose practices encompass electronic transactions know that the above-listed deficiencies create confusion and uncertainty, which frequently leads parties to select the law of other jurisdictions, such as Delaware, to govern electronic transactions.

This tendency to avoid application of New York law for electronic transactions is also inconsistent with the goal of New York to be a leading jurisdiction in digital commerce, including blockchain, and to attract parties to use the Commercial Division of the New York Supreme Court to resolve disputes concerning digital commerce and technology.[6]

The failure of New York to modify its Technology Law to incorporate the provisions of the Uniform Electronic Transactions Act is a self-inflicted wound that impedes New York's profound

---

[4] "Status: UNCITRAL Model Law on Electronic Commerce (1996)," United Nations Commission On International Trade Law, https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce/status.

[5] The New York Legislature has previously recognized that the divergence of ESRA from E-SIGN inhibits electronic commerce in New York. "Determining which law [ESRA or E-SIGN] applies to particular transactions has caused confusion in the business community and thereby has an inhibiting effect on the expansion of electronic commerce in New York." Senate Mem. In Support of L. 2002, Ch. 314, 2002 McKinney's Session Laws of N.Y., at 1881.

[6] *See* Memorandum: Request for Public Comment on Amending 22 NYCRR § 202.70(b)(1) to Add a Reference to Technology in the Description of Commercial Cases, New York State Unified Court System Office of Court Administration, Oct. 5, 2023, https://www.nycourts.gov/LegacyPDFS/rules/comments/pdf/RPC-Commercial-Division-Rules-technology.pdf; and AO/77/24, adopted and effective on Feb. 14, 2024, https://www.nycourts.gov/LegacyPDFS/rules/comments/orders/AO77-Commercial-Division.pdf.

interest in maintaining its pre-eminence as an international commercial jurisdiction, which requires updating its laws dealing with electronic records, inasmuch as the records that are used in much of the world's commerce are rapidly becoming electronic and digitalized.[7]

Compared to UETA, the exclusions to the scope of ESRA in subdivision 1 of section 307 are overly broad because they prevent the use of electronic signatures to create not only wills, but all trusts and powers of attorney executed by individuals, whether or not they are testamentary and whether or not they have a transactional, business or commercial function. This has required frequent enactment of multiple exceptions to this exclusion, which are themselves very narrowly drafted. In fact, this subdivision of ESRA has been amended in each of the last three New York State legislative sessions.[8] The overly broad exclusion, and need for such frequent amendments, is an imposition on both consumers and the business community, as well as the Legislature, and a potential source of confusion. If the exclusion in that subdivision of ESRA were more closely aligned with UETA, to be limited to wills, including testamentary trusts, other than electronic wills authorized by the EPTL, the need for amendments would be eliminated.

There is simply no advantage to New York to retain ESRA as is, without the provisions that are in effect in every other U.S. jurisdiction and in all of the leading commercial jurisdictions that have enacted the UNCITRAL Model law.[9]

Because of the increasing importance of digital commerce based on blockchain, it is even more important that New York fully update its electronic commerce law to bring it into line with the electronic commerce laws of the rest of the United States and the other leading commercial jurisdictions of the world. New York took a major step in that direction by its adoption of the 2022 Technology Amendments to the Uniform Commercial Code which, among other things, recognize blockchain-based electronic transactions.[10]

---

[7] *See* Lorraine McGowen, "Op-ed: New York must update its commercial code to address emerging technologies," Crain's New York Business, May 17, 2024, https://www.crainsnewyork.com/op-ed/op-ed-new-york-must-update-its-commercial-code-address-emerging-technologies; "Support for the New York Emerging Technologies Amendments to the Uniform Commercial Code," New York City Bar Association, June 30, 2025, https://www.nycbar.org/reports/ny-emerging-technologies-amends-ucc/; "Report in Support of Enacting NY Version of 'Emerging Technology Amendments' to the UCC," New York City Bar Association, Feb. 16, 2023, https://www.nycbar.org/reports/emerging-technology-amends-ucc-ny/; and "Talking Points & Resources | NY Emerging Technologies Amendments to the UCC," New York City Bar Association, https://www.nycbar.org/issues-policy/policy-department-resources/talking-points-resources-ny-emerging-technologies-amendments-to-the-ucc/.

[8] Chapter 543 of the laws of 2023, chapter 33 of the laws of 2024 and S.7416-A, which passed during the 2025 legislative session and currently awaits action by the Governor.

[9] The UNCITRAL Model Law is also important for international sales transactions. UNCITRAL instruments, including the UNCITRAL Model Law, are relied upon to supplement and interpret the United Nations Convention on Contracts for the International Sale of Goods, of which the United States was an early signatory.

[10] The New York Emerging Technology Amendments to the Uniform Commercial Code, S.1840-A / A.3307-A, Chp. 579, was signed by the Governor in December 2025. The City Bar supported enactment of the bill; *see* https://www.nycbar.org/reports/ny-emerging-technologies-amends-ucc/.

For all of these reasons, as further explained below, the Commercial Law and Uniform State Laws Committee urges New York to amend ESRA to more closely align with ULC's UETA.

II. A BRIEF HISTORY OF ESRA, UETA AND E-SIGN

Historically, many statutes have required that certain types of contracts be in writing or signed to be enforceable, thereby rendering evidence of oral contracts ineffective or inadmissible. But by the late 1990's, as computer technology became more widespread, it became clear that despite the fact that contracts in electronic format were arguably not "in writing," the terms of such contracts (and the fact that they had been "accepted" by identifiable parties) could be reliably established. Thus, the fact that an agreement was in electronic format did not mean it was subject to the risks of dispute inherent in alleged oral agreements. As a result, beginning in the late 1990s, virtually every state, as well as the federal government, began to consider enactment of a law to validate the use of electronic records and signatures to form valid, enforceable contracts.

UETA, which was approved by the Uniform Law Commission in the summer of 1999, began to be adopted in state legislative sessions commencing in January 2000. However, New York, which was a pioneer in this area at the time, adopted ESRA, effective on March 27, 2000. The game changed, however, when the federal government on June 30, 2000, enacted E-SIGN, which effectively imposed statutory law analogous to UETA on all of the states in transactions affecting interstate and foreign commerce. As a result, every state, other than New York, ultimately opted to enact UETA rather than create its own law relating to electronic records, which, at best, would have limited intrastate application, and, at worst, create confusion as to the law governing intrastate versus interstate and foreign commerce.[11]

In addition to the fact that enactment of ESRA creates problems with federal preemption, ESRA is seriously deficient compared to UETA, because ESRA lacks certain significant provisions that facilitate the use of electronic records and signatures to form valid, enforceable electronic contracts for commercial transactions. Unlike UETA, ESRA does little more than provide that electronic records and signatures are equivalent to paper-based records and signatures. ESRA also fails to provide a usable means to create valid electronic negotiable promissory notes.

In addition to these deficiencies, New York's failure to enact UETA causes difficulties when New York considers enactment of other uniform laws proposed by the Uniform Law Commission. Because UETA has been so widely adopted, other uniform laws assume the application of UETA, and New York must formulate non-standard provisions when it enacts these other laws. The differences between UETA and ESRA and the necessary conforming variations adopted in other supposedly uniform New York laws present traps both for New York lawyers and for out-of-state lawyers, who commonly work with documents governed by New York law. This results in additional legal costs, uncertainty and potential litigation.

All of these factors tend to fuel a desire to move away from New York law documentation, undermining New York's position as the leading legal, commercial and financial center of the

[11] Only New York and two other states enacted laws other than UETA. The two states other than New York have since repealed their original electronic records law and enacted UETA. *See supra* note 3.

United States and the world for many decades. It is time for New York to remove these self-defeating obstacles and to enact UETA.

III. REASONS TO SUPPORT

a. The Amendment Would Add to ESRA the Helpful Provisions from UETA Applicable to Electronic Contracts.

ESRA, essentially, does one thing: It provides that electronic records and electronic signatures have the same legal effect as paper-based records and signatures. UETA also does this, but it does much more. UETA has numerous provisions that facilitate electronic contracting and transactions, which are missing from ESRA. The UETA provisions, summarized below, would be enacted in New York by the Amendment.

i. Facilitating Electronic Contracts and Transactions

UETA is focused on facilitating transactions conducted electronically. ESRA does not have comparable provisions. Thus, UETA defines a "transaction" as "an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs." Section 4 of UETA makes clear that UETA applies to records that are electronically "sent, communicated or received." In contrast, ESRA applies only to records that are created or maintained electronically. UETA's expansion of the definition of an electronic record, which is missing from ESRA, is vitally important to the formation of electronic contracts by the transmission of electronic copies. If a contract is copied and transmitted electronically, it is governed by UETA. This enables UETA to recognize the efficacy of electronic delivery of a signed paper record as effective to create a contract.

Section 5 of UETA makes clear that UETA applies only to transactions between parties each of whom has agreed to conduct the transaction by electronic means, and provides rules as to that agreement. Section 6 requires that UETA be construed and applied to facilitate electronic transactions, consistently with reasonable practices and the continued expansion of those practices. Section 7 of UETA states four rules to give legal recognition to electronic records and electronic signatures, which apply where the parties have agreed to conduct a transaction by electronic means. Three of these rules are present in ESRA, but the following critical rule is missing from ESRA:

> A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

In sum, UETA's provisions protecting the validity of consensual electronic transactions should be added to ESRA through the Amendment.

ii. Electronic Delivery of Records

As noted above, various provisions in UETA recognize the use of electronic copies and electronic delivery of records to create and evidence a contract. These are missing from ESRA. In this regard, section 8 of UETA provides rules for the electronic satisfaction of any applicable requirement that a person provide, send, or deliver a written record to another person. Such a requirement is satisfied if the information is provided, sent or delivered in an electronic record capable of retention by the recipient at the time of receipt. It further makes clear that if the sender of an electronic record inhibits the recipient's ability to print or store the record, the record does not satisfy the requirement that it be capable of retention by the recipient and, therefore, it is not enforceable against the recipient. UETA has additional rules concerning the formatting of such information in the electronic record and variations of any legal requirements by permitted agreement.

Although ESRA defines an electronic record as one that allows information to be retrievable in perceivable form, it lacks any of the rules in UETA concerning what constitutes delivery and the effect of delivery.

iii. Attribution of Electronic Signature

Section 9 of UETA explicitly states what it means for an electronic record and associated signature to be "attributable" to a person and how such attribution may be demonstrated.

ESRA is silent on these points.

iv. Relief from Errors During Transmission

Section 10 of UETA sets out rules for when an affected party may obtain relief from an error or unauthorized change in an electronic record which has occurred in transmission of the record between the parties. These rules are based on the ability of the affected party to protect against the change or error and other applicable rules concerning the law of mistake.

ESRA is silent as to this.

v. Document Retention

Section 12 of UETA specifies how any requirement that a record be "retained," or be "presented or retained in its original form", is satisfied by use of an electronic record which is accurate and accessible.

ESRA does not provide for this.

vi. Automated Transactions

Section 14 of UETA provides rules for the formation (and validity) of contracts by the interaction of electronic agents for the parties or the interaction of a person and an electronic agent for the other party. With the rapid expansion of distributed ledger technology, automated

transactions and so-called "smart contracts" have become increasingly common, and this section directly covers this new technology.

ESRA has no provisions addressing this.

vii. Delivery and Receipt of Records Sent to Information Processing Systems

Section 15 of UETA provides rules, based on control of the recipient information processing system over a record capable of being processed, to determine the time of sending and receipt of an electronic record. It also provides rules to determine the locations from which, and to which, the record is deemed sent.

ESRA is silent on such issues.

viii. Control Over Transferable Records

Section 16 of UETA provides a general, technology-neutral definition of when a transferee obtains control of an electronic record and what the legal effect of such control is. It also specifies criteria to satisfy a safe-harbor of deemed control, but it does not limit control to that safe-harbor. Control has particular importance for those types of electronic record, which, if they had been in paper format, would be negotiable instruments or documents of title. Thus, the general rule of "control" is that the system employed for evidencing the transfer of interests in the electronic record (referred to in UETA as a "transferable record") "reliably establish" the person to which the transferable record was issued or has been transferred. A system falls within the safe-harbor, and is deemed to satisfy the general standard, if the transferable record is created, stored, and assigned in such a manner that (i) a single authoritative copy of the transferable record exists which is unique, identifiable, and unalterable; (ii) the authoritative copy identifies the person in control; (iii) the authoritative copy is maintained by the person in control; (iv) no changes to the identified person in control can be made without such person's consent; (v) each copy is readily identifiable as not being an authoritative copy; and (vi) any revision of the authoritative copy is readily identifiable as authorized or unauthorized. A person satisfying the requirements for control has the rights and defenses, as appropriate, of a holder, holder in due course of an instrument, holder to which a document has been duly negotiated, or a purchaser, under the applicable rules of Articles 3, 7 or 9 of the Uniform Commercial Code ("UCC").

Section 16, in essence, renders electronic promissory notes and documents of title negotiable without the need for amendments of UCC Articles 3, 7 or 9.

ESRA is particularly deficient with respect to the issues of transfer, control and negotiability of an electronic instrument, which are of great commercial importance.

ix. Severability

UETA provides that any provision held to be invalid is severable. ESRA has no such savings provision.

b. The Amendment Would Correct ESRA's Unworkable Provisions Dealing with Electronic Negotiable Promissory Notes.

Although the drafters of ESRA intended to provide for electronic negotiable instruments, they failed to effectively do so. Uniform Commercial Code Article 3 ("Article 3"), which governs negotiable instruments, requires that negotiable instruments be in writing on paper and be signed in writing. Furthermore, Article 3 requires that negotiable instruments be transferred or negotiated by physical delivery, and transferees who take delivery of the instruments for value, in good faith and without notice of any defense become holders in due course and are entitled to special rights, including taking the negotiable instrument free of most claims and defenses. The transferee of an electronic instrument cannot satisfy the delivery requirement, because "delivery" is defined in UCC Section 1-201 as a "voluntary transfer of possession." But holder in due course rights are critical to the free transferability and commercial value of negotiable instruments, such as promissory notes.

In contrast to what ESRA provides, when dealing with negotiable instruments in electronic form, the drafters of UETA and E-SIGN recognized that it was not sufficient to provide merely for the validity of electronic negotiable instruments that were signed electronically; there must also be a procedure to be used in place of transfer by physical delivery, since physical delivery cannot be accomplished with an electronic record. That procedure is referred to as "control," and both UETA (in Section 16(d)) and E-SIGN (in Section 7021(d)) have specific provisions stating that a person in control of an electronic note is the holder and that such a person may be a holder in due course if it meets the requirements of Article 3 other than the requirement that the note be in writing.

Unfortunately, ESRA is completely silent as to how an electronic negotiable instrument is transferred and what rights and defenses a transferee has. The applicable provision in ESRA (Sec. 307, subd. 2) excludes from ESRA's scope "negotiable instruments and other instruments of title wherein possession of the instrument is deemed to confer title, *unless an electronic version of such record is created, stored or transferred pursuant to this article in a manner that allows for the existence of only one unique, identifiable and unalterable version which cannot be copied except in a form that is readily identifiable as a copy*." (Emphasis added.) Because of the absence in ESRA of a statutory substitute for the physical delivery requirement in Article 3, it is unlikely that the transferee of an electronic instrument under ESRA will be treated as a holder in due course.

A second problem with ESRA's negotiable instrument provision is that ESRA does not permit electronic negotiable instruments to be stored in a blockchain or distributed ledger technology ("DLT") environment. ESRA's requirement of "one unique, identifiable and unalterable version" is incompatible with DLT, in which multiple identical records exist. Although both ESRA and UETA were drafted before DLT was developed, UETA Sec. 16 contains both a general provision and a safe harbor provision delineating control of an electronic record, and only the safe harbor provision requires a "single authoritative copy" which is unique and identifiable. In recent years DLT has been used more and more frequently, and a properly designed DLT system

would satisfy the general provision in UETA. Section IV of this report goes into further detail about blockchain and DLT under UETA.

The lack of holder in due course provisions in ESRA, together with the requirement in ESRA that there be one unique version of the electronic document, make the use of New York law untenable for financial products involving electronic payment obligations.[12] One of the authors of this Report was involved in the arrangement of an electronic payments program in which, because of these problems with New York law, the participants intentionally structured the transaction so that New York law would not apply, and the law of a state that had adopted UETA was chosen instead.[13] If New York does not update its law regarding electronic negotiable instruments, market participants will likely opt for non-New York jurisdictions more and more often, resulting in lost business opportunities for New York lawyers, bankers and accountants and lost revenue for New York State.

c. The Amendment Would Prevent ESRA From Being Pre-Empted by E-SIGN, Thereby Eliminating Present Legal Uncertainty.

Although under federal preemption principles, a federal law generally supersedes any conflicting state law, E-SIGN contains a very unusual preemption provision, sometimes referred to as "reverse preemption," in 15 U.S.C. Sec. 7002. E-SIGN provides that a state law in the form of UETA, adopted without any non-standard variations, will supersede 15 U.S.C. Sec. 7001 (which provides for the validity of electronic records, electronic signatures, notarizations and contracts executed automatically by electronic agents). Since ESRA differs very substantially from UETA, this reverse preemption provision does not apply in New York.

But E-SIGN offers another alternative and provides that other state law, not in the form of the standard version of UETA, will supersede 15 U.S.C. Sec. 7001, if such state law specifies alternative requirements for the establishment of the validity of electronic records and electronic signatures which (1) are consistent with 15 U.S.C. Sec. 7001-7006 and 7021, and (2) do not require the application of a specific technology (i.e. they are technology-neutral) and (3) if enacted after June 30, 2000, specifically refer to E-SIGN.

It appears that ESRA does not satisfy the three conditions specified immediately above. With respect to the first condition, ESRA's requirements are generally consistent with 15 U.S.C. 7001-7006, except that ESRA does not contain the consumer disclosure provisions set forth in 15 U.S.C. 7001, nor does it contain the provisions validating notarizations in electronic form or

[12] The negotiable instrument provisions of E-SIGN are not generally available as a substitute for the deficient ESRA provisions, because the E-SIGN provisions are limited to electronic notes secured by real property. The UETA provisions are available for all electronic notes, regardless of whether or not they are secured, and regardless of the nature of the collateral. The E-SIGN provisions serve as the legal underpinning for a huge federal real estate mortgage note program, but there is a vast market of other notes (either unsecured, or secured by collateral other than real estate) in which the participants would like to be able to use electronic instruments in place of paper documents.

[13] *See* BAFT Releases Best Practices for New Financial Asset on Distributed Ledger Technology, BAFT.org, Jan. 12, 2021, https://www.baft.org/policy-news/baft-releases-best-practices-for-new-financial-asset-on-distributed-ledger-technology/.

contracts executed by electronic agents. Furthermore, ESRA deviates significantly from 15 U.S.C. Sec. 7021, relating to electronic negotiable notes (the E-SIGN provision is generally very similar to UETA Sec. 16, except that the E-SIGN provision is limited to notes secured by real property). With respect to the second condition, ESRA's treatment of electronic negotiable instruments is not technology-neutral. As discussed above (in section III), ESRA does not permit use of blockchain or distributed ledger technology. The third condition is not applicable to ESRA, because ESRA became effective on March 27, 2000, which is prior to the date on which a state law must reference E-SIGN.

As a result of the failure of ESRA to satisfy the preemption criteria in E-SIGN, the legal status of ESRA is unclear. Is it preempted in its entirety by E-SIGN or are those provisions of ESRA which are not inconsistent with E-SIGN valid and effective? And to the extent it is preempted, parties to New York contracts are subject to the confusion and uncertainty of two different laws, depending on whether the contract relates only to New York intrastate commerce or, on the other hand, interstate and foreign commerce.

There have been two court decisions in New York which grappled with the interaction of ESRA and E-SIGN. In the earlier decision, *People v. McFarlan*, 191 Misc. 2d 531, 744 N.Y.S. 2d 287 (N.Y. Sup. Ct. 2002), one issue concerned the validity of an electronic record. The court recognized that ESRA was very different from UETA and that as a result E-SIGN purports to preempt ESRA. The court discussed some of the ensuing complexities, including potentially having to determine whether the electronic record in question related to a transaction affecting interstate commerce, and concluded that "the same result would obtain in this case whether [E-SIGN] or ESRA applies, and accordingly, the constitutional and preemption issues need not be reached in rendering this decision."[14] In the second court decision, *Naldi v. Grunberg*, 908 N.Y.S.2d 639, 80 A.D.3d 1 (1st Dept. App. Div. 2010), the court was asked to determine whether an electronic record (in the form of an e-mail) satisfied New York's statute of frauds. The court noted that E-SIGN may be applicable, particularly since the plaintiff was an Italian individual and therefore the transaction was likely to be one affecting foreign commerce as required by E-SIGN. However, the court did not do any real analysis of the preemption provisions of E-SIGN, apparently because the plaintiff did not make an argument that E-SIGN applied, and instead confined its analysis to New York law. The court quoted a portion of the legislative history of a 2002 amendment to ESRA which revised the definition of "electronic signature" to more closely conform to the definition in E-SIGN: "Subsequent to the adoption of ESRA, [E-SIGN] was adopted [by Congress] to permit and encourage the expansion of electronic commerce in interstate and foreign commercial transactions. Like ESRA, this federal law authorizes the use and acceptance of electronic signatures and electronic records in the context of these commercial transactions. It is the intent of this bill to ensure that these laws continue to complement each other in achieving their stated purposes. Rather than seeking to modify, limit or supercede [*sic*] federal law [as E-SIGN permits states to do to a defined extent], the legislature finds that it is in the best interest of the state of New York, its citizens, businesses and government entities for State and federal law to work in tandem to promote the use of electronic technology in the everyday lives and transactions of such individuals and entities." 908 N.Y.S. 2d at 646. The court also quoted, in its footnote 13, from a legislative memorandum in support of the 2002 amendments to ESRA:

[14] 191 Misc. 2d at 540.

> "**Determining which law [ESRA or E-SIGN] applies to particular transactions has caused confusion in the business community and thereby has an inhibiting effect on the expansion of electronic commerce in New York.** Consequently, [the Office for Technology] is proposing that ESRA be amended to eliminate some of the definitional differences between ESRA and [E-SIGN]' (Senate Mem. In Support of L. 2002, Ch. 314, 2002 McKinney's Session Laws of N.Y., at 1881). (emphasis added)

It is worth emphasizing that the New York Legislature formally recognized the confusion resulting from the overlapping coverage of ESRA and E-SIGN and attempted to remedy this by removing "**some** [but not all] of the definitional differences" (Emphasis added). However, as discussed in this Report, there remain many substantive differences between the two laws, and situations are likely to arise in which these differences will translate into potentially different legal results. This possibility, which would entail resolving novel legal issues in a time-consuming and expensive litigation, will continue to inhibit certain types of electronic commerce in New York.

d. The Amendment Would Align ESRA with UETA with Regard to Certain Powers of Attorney.

Unlike UETA's scope provision, ESRA Sec. 307 excludes generally from its application powers of attorney executed by individuals. That exclusion is unduly broad to the extent it arguably would deny recognition of a limited power of attorney in electronic format of the type commonly included in business, commercial and governmental transaction documents. For example, commercial pledges or other security agreements commonly include a grant by the pledgor of a power of attorney in favor of the secured party, and there is no apparent reason why such a power of attorney by an individual pledgor should not be valid and enforceable merely because it is included in the electronic record to which it relates. Indeed, New York's General Obligations Law ("GOL") Sec. 5-1501C provides that powers of attorney "given primarily for a business or commercial purpose" are not subject to the more stringent documentation standards set forth in GOL 5-1501B[15] that are otherwise applicable to powers of attorney given by individuals.

Therefore, we recommend modifying the existing scope provision in ESRA Sec. 307 so that the exclusion from ESRA does not apply (i) to any power of attorney excluded from the application of GOL 5-1501B by GOL 5-1501C[16] or (ii) to any power of attorney the governing law of which provides that such instrument is valid, despite the fact that it may have been signed electronically or an electronic record used in its formation.

---

[15] These standards include requiring both a notarial acknowledgment, and the witnessing, of the principal's signature and a notarial acknowledgment of the agent's signature.

[16] This would also make ESRA more consistent with UETA because UETA does not exclude from its scope powers of attorney when such instruments are used in connection with a transaction. *See* UETA Section 3.

e. The Amendment Would Conform ESRA to the UETA Exclusion of UCC Transactions.

In general, ESRA purports to apply to transactions governed by the Uniform Commercial Code. UETA does not do this, because the UCC itself deals with electronic transactions in certain articles. Thus, the Amendment would delete the present section 307(2) of ESRA, which excludes certain negotiable instruments and instruments of title, and instead, track UETA's scope provision in UETA Sec. 3(b)(2) and exclude all records relating to transactions governed by the UCC except for Articles 2 and 2A.[17]

f. The Amendment Would Confirm That a Properly Certified Paper Copy of an Electronic Record is Eligible for Recordation.

New York has amended its executive law section 135-c to permit remote electronic notarization of electronic documents. However, New York law does not currently permit remote electronic notarization of paper documents. Since New York real estate recording offices are not set up to record electronic records, a remotely notarized electronic record must be converted to tangible form in order to be recorded. To accomplish this, executive law section 135-c contains a procedure for the notary to certify a tangible record as an accurate copy of an electronically notarized and electronically signed electronic record and provides for the recording office to accept such a certified copy. Despite the clear intent of executive law section 135-c, some county clerks have refused to record such certified copies on the basis that New York's real property law requires a wet-ink signature. The last two sentences of section 310 of the Amendment clarify that section 135-c overrides any inconsistent law, and no wet-ink signature is required on a properly certified paper copy.

g. Recent Uniform Laws Proposed by ULC/ALI Assume Adoption of UETA.

Because New York has not adopted UETA, it is necessary to prepare specialized non-standard provisions for the New York versions of some recent uniform laws. These non-standard provisions can be rather complex to draft, and the result is that New York's "uniform" law is no longer uniform with other jurisdictions.

Examples of this problem have arisen in connection with the Uniform Commercial Code. In Section 12-102 of the ULC and ALI's 2022 UCC Amendments,[18] the term "controllable electronic record" is defined in part by reference to a transferable record under UETA. But ESRA does not use the term "transferable record," and it does not have a comparable defined term. This necessitated the creation of specialized language for the New York version of UCC 12-102(a)(3)

---

[17] Although the negotiable instrument provisions of ESRA cover both notes and drafts, whereas the comparable provisions of UETA are limited to notes, the expanded coverage of drafts in ESRA is not really useable, because as noted above, the negotiable instrument provisions of ESRA are severely deficient.

[18] Available at: https://www.uniformlaws.org/viewdocument/final-act-164?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac&tab=librarydocuments.

and 12-103(c).[19] Another example is New York UCC 7-103(d) relating to electronic documents of title. Because ESRA does not exclude from its scope UCC Article 7, and in fact specifically purports to deal with certain negotiable "instruments of title" (this term is not defined, but appears to refer to documents of title), it was necessary to add Section 7-103(d), which provides for Article 7 to control in the event of any conflict between ESRA and Article 7.

This problem also arises in connection with the Uniform Electronic Estate Planning Documents Act ("UEEPDA"),[20] which has not yet been adopted in New York. Many of the defined terms and substantive provisions of UEEPDA are either identical to or closely modeled on UETA. As a result, it can be expected that these defined terms and provisions will be interpreted similarly in UEEPDA and UETA. If New York does not adopt UETA, this benefit of common interpretation will not exist in New York.

Furthermore, it is likely that any further uniform acts addressing electronic commerce will refer to UETA or will assume its uniform enactment. This complicates the legislative drafting process in New York and will provide a trap for the unwary attorney, with potentially adverse consequences for New York persons.

IV. DRAFTING CONSIDERATIONS FOR ENACTMENT OF UETA IN NEW YORK

For a statute drafted 25 years ago to deal with rapidly expanding new technology, UETA has held its own amazingly well. Undoubtedly one of the reasons for its success was that it was careful to remain technology-neutral.

One significant technological innovation in the last decade impacting electronic commerce is the development and increased use of blockchain or DLT, and some concerns have been expressed as to whether this technology is adequately covered by UETA. In 2019 the Uniform Law Commission issued a Guidance Note[21] on this subject that persuasively argued that (1) the existing definitions in UETA adequately cover blockchain and DLT, (2) adding references to blockchain and DLT is actually detrimental, because it violates the existing technology-neutral drafting of the statute and may inadvertently restrict UETA's coverage to certain existing blockchain and DLT concepts (especially since there is currently no widely accepted industry definition for this technology), and (3) adding references to blockchain and DLT may invite federal preemption under E-SIGN (one of the E-SIGN reverse preemption provisions requires that the state law "not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification." 15 U.S.C. Sec. 7002(a)(2)(A)(ii). Nonetheless, a handful of states (including Nevada, North Dakota, Ohio, Oklahoma, South Dakota and Washington) have enacted non-uniform amendments to UETA. Most of these amendments

[19] *Supra* note 10.

[20] Available at: https://www.uniformlaws.org/viewdocument/final-act-76?CommunityKey=f911ff58-34ae-47a1-8928-68d5396a72b1&tab=librarydocuments

[21] Guidance Note Regarding the Relation Between the Uniform Electronic Transactions Act and Federal Esign Act, Blockchain Technology and "Smart Contracts," Uniform Law Commission, March, 11, 2019, https://www.uniformlaws.org/viewdocument/guidance-note-regarding-the-relatio?CommunityKey=2c04b76c-2b7d-4399-977e-d5876ba7e034&tab=librarydocuments.

add a reference to blockchain to one of more of the defined terms "electronic," "electronic record" "or electronic signature", and some include a definition of blockchain. In view of the compelling arguments made in the Guidance Note and the lack of consistent language among the few states that have enacted these blockchain amendments, we do not recommend adding blockchain or DLT language to a New York implementation of UETA.

There are a few cross-references in UETA to sections of the UCC, and some of these need to be adjusted to reflect revisions to the UCC subsequent to 1999 or to account for New York variations to the official text of the UCC. In the Scope section of UETA (Sec. 3(b)(2)), the references to "Sections 1-107 and 1-206" should be revised to refer to "Sections 1-207 and 1-306." Old Section 1-107 (which provided that a written and signed waiver was effective without consideration) has been moved to Section 1-306. Old Section 1-206 (a statute of frauds) has been moved to Section 1-207. In the Transferable Records section of UETA (Sec. 16(d)), the reference to Section 1-201(20) should now be 1-201(21), the reference to Section 3-302(a) should be 3-302(1) and the reference to Section 9-308 should be 9-330 (old Section 9-308 was moved in connection with the adoption of Revised Article 9).

We recommend that UETA be adopted in New York by means of the Amendment as proposed in Exhibit A. The name of the statute would remain "ESRA," and the first few sections, consisting primarily of defined terms and provisions relating to the electronic facilitator, would keep the same numbering, thereby minimizing any impact on other New York laws that refer to ESRA.[22] UETA definitions would be included in a new Section 302-A, and the other UETA sections would follow the retained ESRA sections. Although this means that the numbering of the UETA sections would not correspond to the official text of UETA, we think that it is better on balance to retain the numbering of the ESRA sections, since these are referenced in other New York laws. In comments to the Amendment, we provide references to the original UETA section numbering, in order to facilitate use of the New York law by persons familiar with UETA. There are also several provisions of ESRA that would not be changed because they are beneficial or cause no problems. Those provisions are outlined in the Appendix.

As noted in footnote 19 and the related text above, the New York version of Section 12-102 of the 2022 UCC Amendments had to be customized to define "transferable record," because ESRA (unlike UETA) does not have a defined term "transferable record." However, since the Amendment includes the defined term "transferable record," this customized, non-uniform language will be unnecessary and should be removed from New York's UCC 12-102(a)(3) upon enactment of the Amendment. Additionally, customized language was included in New York's UCC 12-103(c) to ensure that an electronic record that might appear to fall under both Article 12 and (by virtue of ESRA) Article 3 would be governed only by Article 12. This non-uniform language should also be deleted as unnecessary upon enactment of the Amendment. Finally, New York's UCC 7-103(d) will be unnecessary and should be deleted upon enactment of the Amendment, because Article 7 then will be excluded from ESRA. The Amendment bill proposed in Exhibit A includes, at the end thereof, provisions effectuating these changes.

[22] For example, the Electronic Notarization statute, Executive Law Sec. 135-c subd. 1 defines "electronic" and "electronic signature" by reference to subdivisions of ESRA Sec. 302. Similarly, General Obligations Law Sec. 5-1501(m) refers to subdivision 3 of ESRA Sec. 302 in connection with the definition of "sign."

V. CONCLUSION

For the reasons set out above, we recommend that New York enact UETA as an amendment to ESRA. In doing so, New York will join the other 49 states and the District of Columbia that have enacted UETA, thereby reducing confusion among businesspeople and consumers arising out of New York's one-of-a-kind law. We are not aware of any negative consequences that would arise from such an enactment. Enactment would not have any adverse fiscal effect on New York, but it would be beneficial for New Yorkers involved in any way with electronic commerce. New York's enactment of the Amendment will modernize New York's law, particularly as it relates to electronic negotiable notes, will clarify that New York's enactment of UETA prevails over E-SIGN by virtue of E-SIGN's reverse preemption provision (as is true in other jurisdictions), and will help to maintain New York's leading role as a preeminent center of trade and commerce.

Commercial Law and Uniform State Laws Committee
Gizem Alper, Chair
Eric Marcus and Alan Kolod, Primary Drafters

Updated and Reissued January 2026

Contact:
Elizabeth Kocienda, Director of Advocacy | 212.382.4788 | ekocienda@nycbar.org
Raabia Qasim, Policy Counsel | 212.382.6655 | rqasim@nycbar.org

APPENDIX

PROVISIONS OF ESRA THAT WOULD NOT BE CHANGED BECAUSE THEY ARE BENEFICIAL OR CAUSE NO PROBLEMS

The definitions of "electronic," "electronic record," and "electronic signature" are virtually identical in ESRA and UETA, despite some slight wording differences. The wording differences do not appear to result in any substantive differences.

The statutory wording of the fundamental concept embodied in both ESRA and UETA – namely, that a record or signature is valid and effective regardless of whether it is on paper or in electronic form – is slightly different in the two statutes. Compare ESRA Sec. 304 subd. 2 and Sec. 305 subd. 3 with UETA Sec. 7. But it seems unlikely that these wording differences would lead to differing legal results.

The use of electronic records and signatures is voluntary under both ESRA and UETA. ESRA Sec. 309 and 304 subd 2 first sentence. UETA Sec. 5(a) and 5(b).

ESRA contains provisions regulating the use of electronic records by governmental entities, including requirements that governmental entities make paper copies of such records available to users and allow users to submit paper copies to governmental entities. ESRA Sec. 305 subd 1. The parallel UETA provision (UETA Sec. 18) is optional and is to be used only in states that do not have other applicable legislation in place.

Both ESRA and UETA state that electronic records and electronic signatures are admissible in evidence. ESRA Sec. 306 and UETA Sec. 13.

The provisions of ESRA described in the next four paragraphs do not have analogs in UETA, but they are valuable provisions and should be retained.

ESRA provides for the establishment of an electronic facilitator (the Office of Information Technology Services) to administer ESRA, including promulgating rules and regulations generally, and developing guidelines relating to security, confidentiality and privacy. ESRA Sec. 303. Rules to be established by the electronic facilitator include those relating to the use and authentication of electronic signatures. The electronic facilitator shall not adopt rules that impose or limit liability relating to the use of electronic signatures. (ESRA Sec. 304, subd 1).

ESRA includes provisions regarding the use of electronic records by government entities, including that (1) users of government services must be allowed access to such records, to the extent permitted by law, (2) persons shall not be required to file any record in electronic form, except as otherwise provided by law, and (3) government entities may not refuse to accept records not in electronic form, except as otherwise provided by law. (ESRA Sec. 305, subd 1.)

ESRA specifically provides that a government entity may dispose of or destroy certain records in accordance with the arts and cultural affairs law. (ESRA Sec. 305 subd 2).

ESRA contains certain personal privacy protections. (ESRA Sec. 308). The electronic facilitator and any authenticator of electronic signatures are required to maintain the privacy of information disclosed to it. Electronic records are subject to the same rules as paper records for purposes of the freedom of information law and the personal privacy protection law.

If New York enacts the Amendment, the provisions described in the four immediately preceding paragraphs of this Section will be retained. These provisions are not inconsistent with provisions in UETA. In fact, Sections 17 and 18 of UETA (which are optional) contemplate that a state governmental agency or a designated state officer may issue guidelines on the use of electronic records and electronic signatures by governmental entities, and the existing ESRA provisions described in this Section designate the Office of Information Technology Services for this purpose. Therefore, such ESRA provisions will be retained in the Amendment, and Sections 17 and 18 of UETA will be omitted.