THE UNIFORM ELECTRONIC TRANSACTIONS ACT

What is the Uniform Electronic Transactions Act?

What is the Role of State Law Since the Enactment of the Federal E-Sign Act?

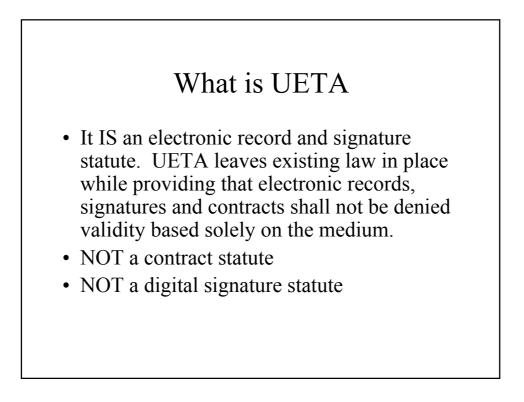


- www.nccusl.org
- www.uetaonline.com
- www.law.upenn.edu/bll/ulc/ulc.htm

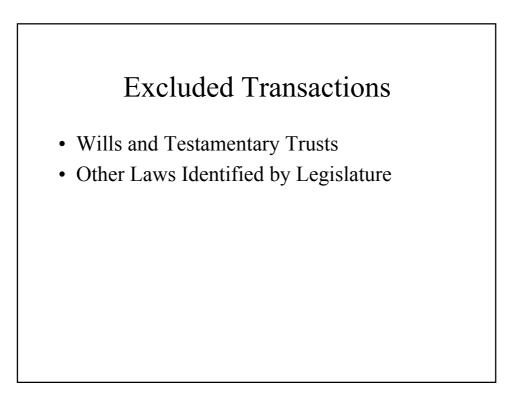
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UNIFORM STATE LAW

- Approved by National Conference of Commissioners on Uniform State Laws in 1999
- Enacted in 22 States: AZ, CA, DE, FL, HI, ID, IN, IO, KS, KY, ME, MD, MN, NE, NC, OH, OK, PA, RI, SD, UT, VA
- Introduced in another 7 states: AL, CO, DC, MI, NJ, VT, WV



Excluded Transactions Negotiable Instruments Article 3 of the UCC Bank Deposits and Collections Article 4 of the UCC Funds Transfer Article 4A of the UCC Letters of Credit Article 5 of the UCC Secured Transactions Article 9 of the UCC



Three Pillars of UETA

- A record or signature may not be denied legal effect or enforceability solely because it is in electronic form
- If a law requires a writing, an electronic record satisfies the law
- If a law requires a signature, an electronic signature satisfies the law

Meeting the Writing Requirement

If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing the 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.

Capable of Retention

An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

Format or Delivery

If another law requires a record to be posted or displayed in a certain manner, or sent or communicated by a specified method, or be formatted in a certain manner:

-it must be posted or displayed in the manner specified

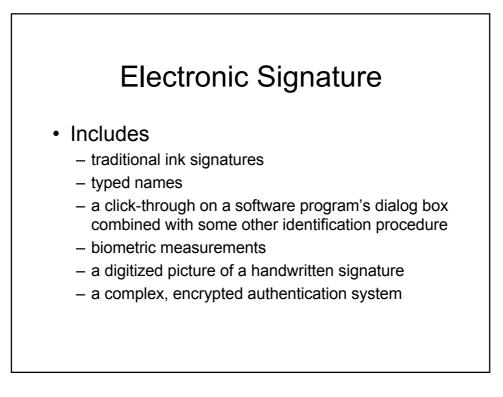
-it must be sent, communicated, or transmitted by the specified method

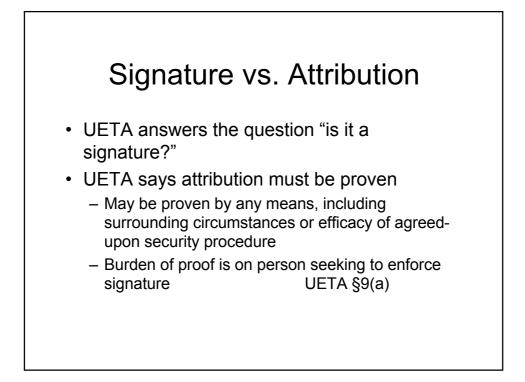
-it must be formatted in the specified manner

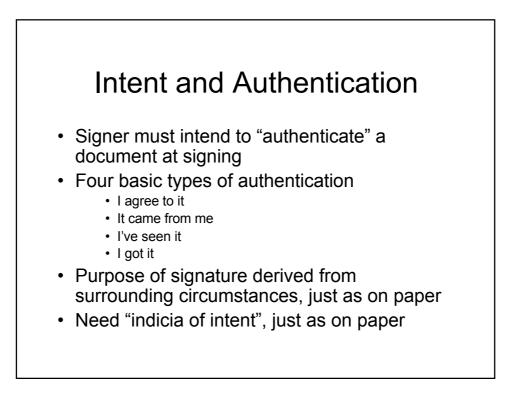


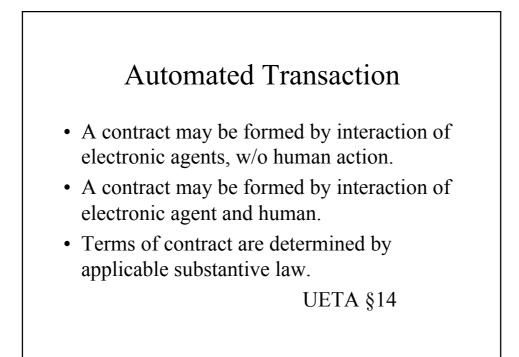
An "electronic sound, symbol, or *process* attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."

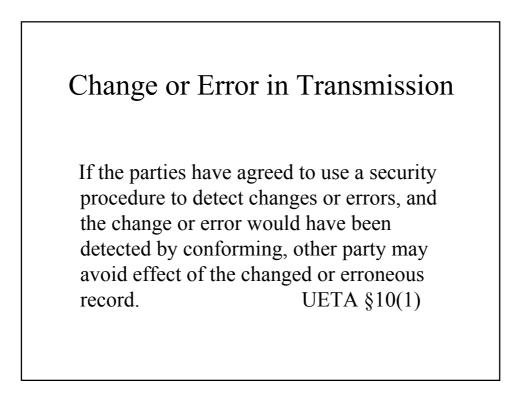
UETA §2(8)

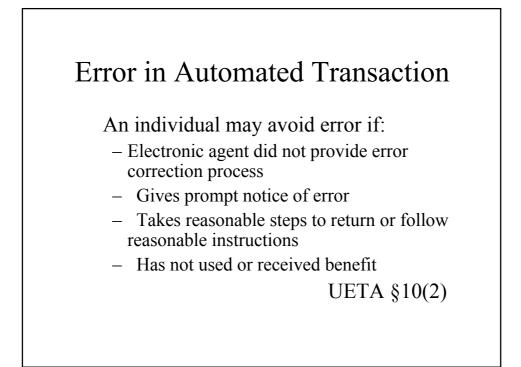


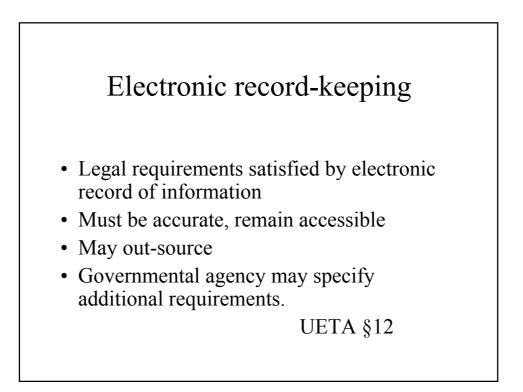






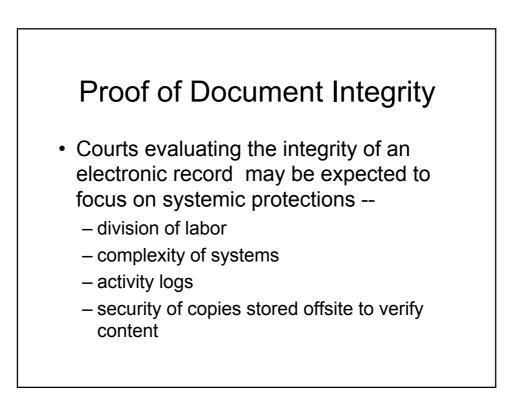






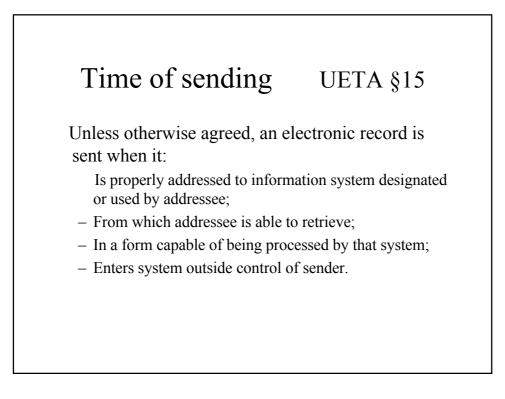
Document Integrity

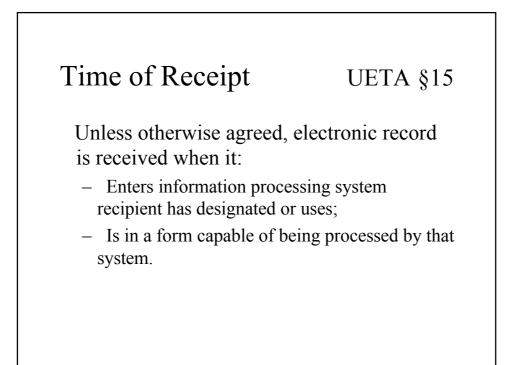
- Introduction into evidence will require proof of integrity
 - Identification to original transaction
 - Freedom from alteration

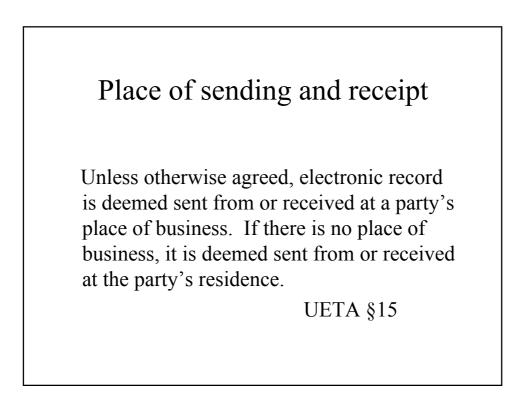


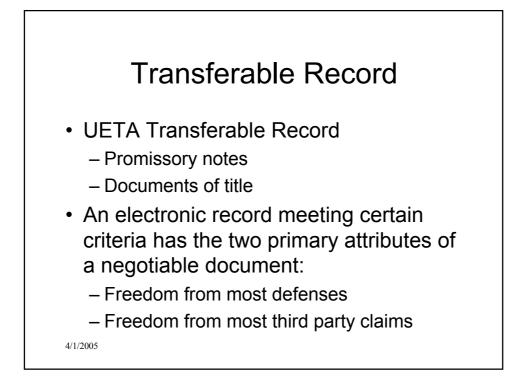
SENDING AND RECEIVING RECORDS

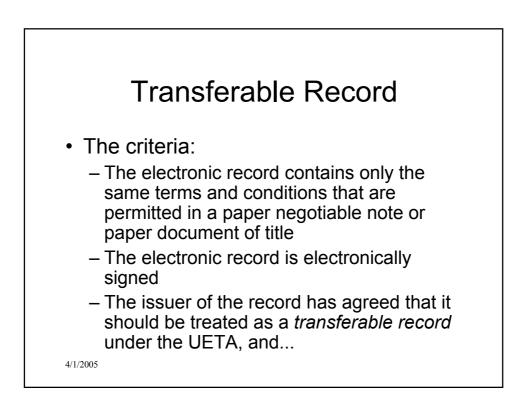
UETA §15

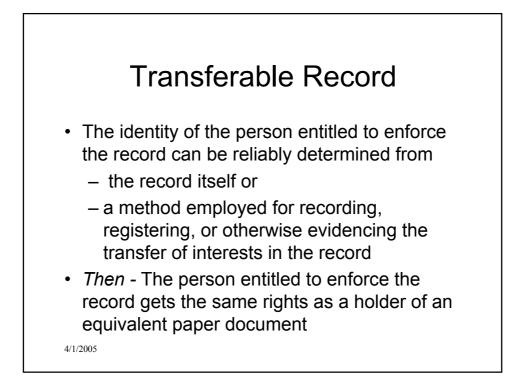


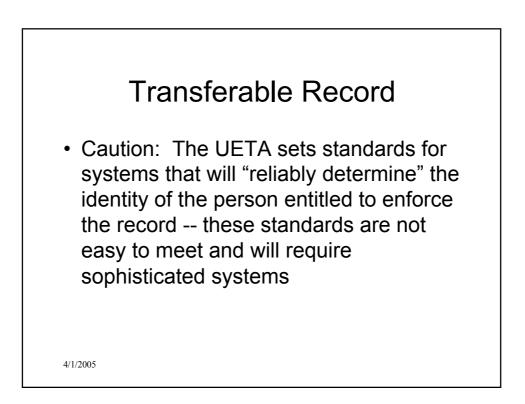


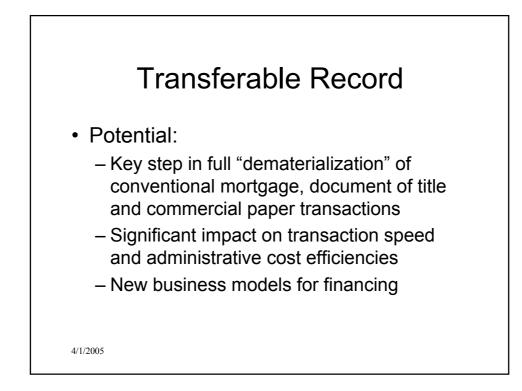


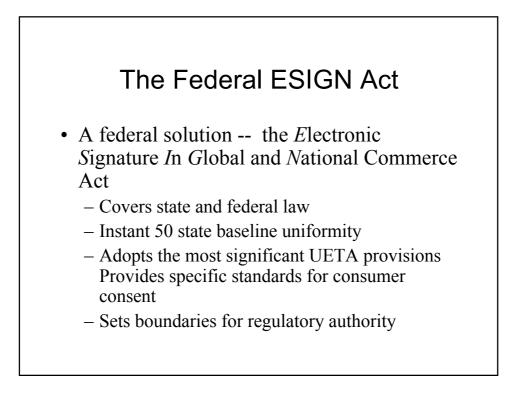




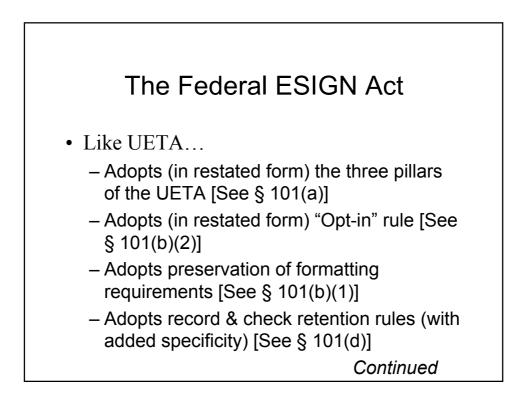


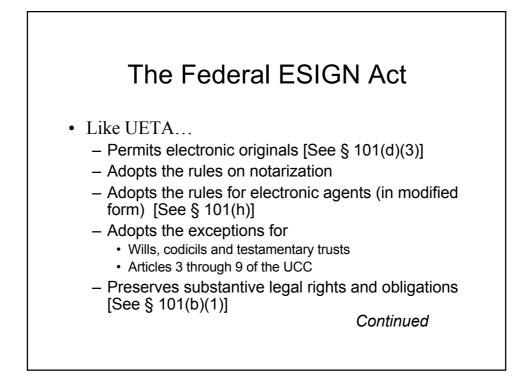


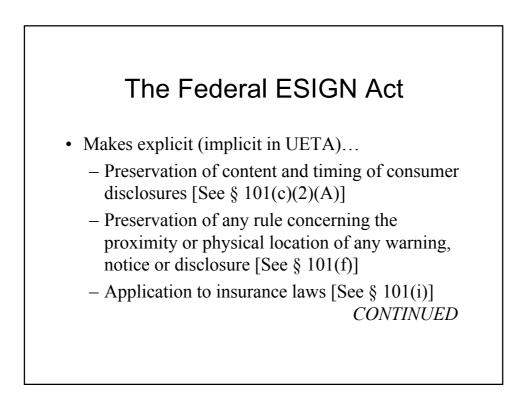


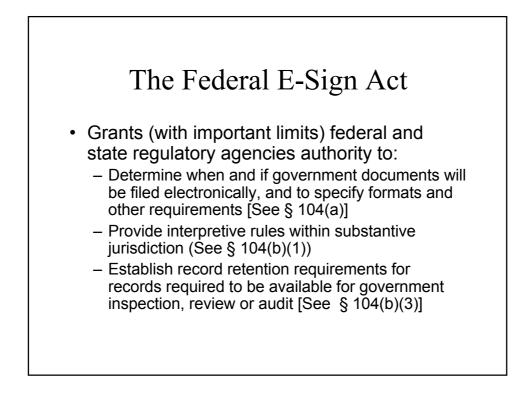


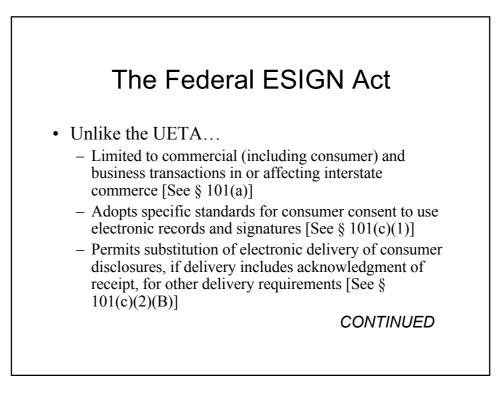
The Federal ESIGN Act Like UETA... Adopts UETA definitions of Electronic Electronic Agent (non-material language variation) Electronic Record Electronic Signature (non-material language variation) Information Person Record Transaction (with additional language)



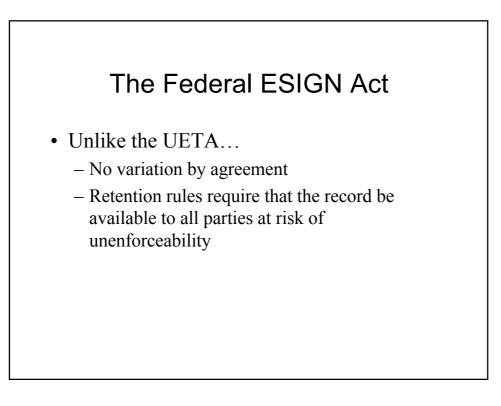




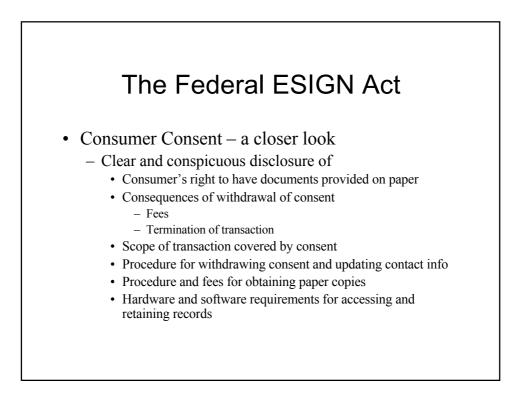




- Unlike the UETA...
 - Excludes recordings of oral communications from definition of electronic record for purposes of consumer transactions [See 101(c)(6)]
 - Adds exclusions and exemptions from statute [See § 102]
 - Expressly limits regulatory authority to impede or obstruct effective use of the statute [See §§ 102(c), 104(b)(2), 104(c)]
 - Limits Transferable Records to promissory notes secured by an interest in real property [See § 201(a)(1)(C)]



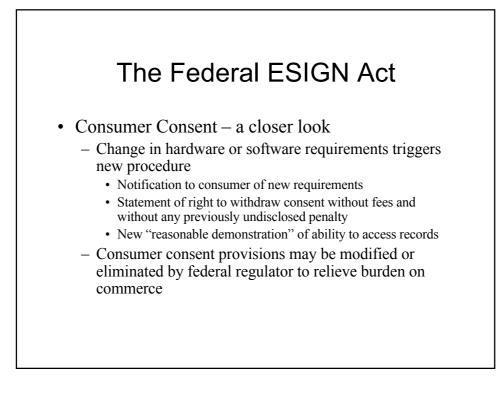
- Consumer Consent a closer look
 - Special procedure required if statute, regulation or other rule of law calls for a writing
 - Basic rules
 - Consumer must affirmatively consent
 - Other party must provide disclosures prior to consent in clear and conspicuous statement
 - · Consent must demonstrate ability to receive documents

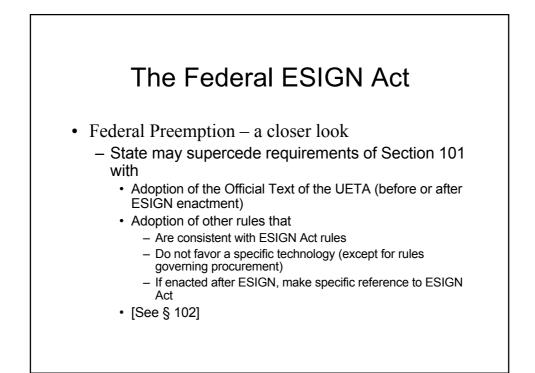


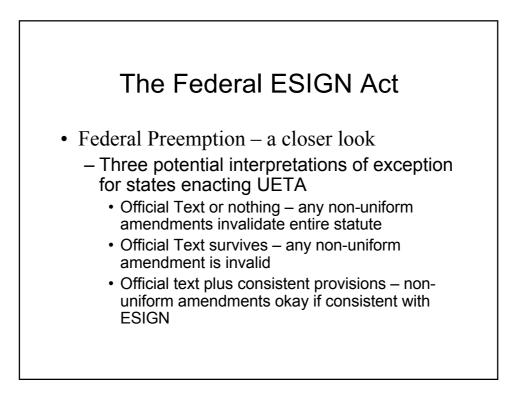
• Consumer Consent – a closer look

- "Reasonable demonstration" [See § 101(c)(1)(C)(ii)]

- Consumer consent must
 - Be electronic or be confirmed electronically
 - include a "reasonable demonstration" of consumer's ability to access information in the electronic form(s) provided
- · Legislative history attempts to set standard
 - Test is not intended to "burden commerce"
 - Email confirming receipt of test files is sufficient
- Failure to include "reasonable demonstration" in consent process may not be used as basis to invalidate contract [See § 101(c)(3)]
- Query: How to handle transactions where consumer gets paper but business retains electronic records?







- Federal Preemption a closer look
 - State can establish rules governing filing of records without regard to ESIGN
 - Consumer consent and retention and access rules only apply to transactions governed by state law if underlying state statute or rule of law requires a writing
 - UCITA
 - Other state statutes?