

THE REVIEW OF  
**BANKING & FINANCIAL  
SERVICES**  
A PERIODIC REVIEW OF SPECIAL LEGAL DEVELOPMENTS  
AFFECTING LENDING AND OTHER FINANCIAL INSTITUTIONS

Vol. 33 No. 12 December 2017

## ELECTRONIC RETAIL INSTALLMENT SALES CONTRACTS IN CALIFORNIA

*Although excluded from California's Uniform Electronic Transaction Act, the authors find "robust arguments" in favor of the enforceability of electronic retail installment sales contracts under other California law and, alternatively, under federal preemption based on the ESIGN Act.*

By Margo H.K. Tank and R. David Whitaker \*

The passage of the Electronic Signatures in Global and National Commerce Act ("ESIGN")<sup>1</sup> and the near-universal adoption of the Uniform Electronic Transaction Act ("UETA")<sup>2</sup> have paved the way for safe, reliable — and reliably enforceable — electronic contracting in the United States. Further, with the

ubiquity of smart phones, tablets, and computers, practical implementation of electronic contracting in consumer transactions is more widespread than ever, providing convenience and efficiency for both consumers and commercial entities. Notwithstanding the widespread use of electronic consumer contracting, in California some parties have been hesitant to abandon paper for one particular type of consumer contract.

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<sup>1</sup> 15 U.S.C. § 7001, *et seq.* ESIGN was signed on June 30, 2000, and in general, took effect October 1, 2000.

<sup>2</sup> In this article, we refer to UETA as it was promulgated by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). The final draft of UETA as approved and recommended by NCCUSL in July 1999 is available from NCCUSL at: [http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta\\_final\\_99.pdf](http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta_final_99.pdf).

A mainstay for sellers of goods and finance companies, retail installment sales contracts ("RISC") provide an efficient way to both (1) finance larger consumer purchases and (2) assign the underlying obligation and security interest between the seller and their financial services company backers. As an

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