

# Controlling Energy

Here is another perspective reflecting *tangible*, *intangible*, and *electronic*. I'll use a *scenario* for the explanation and I pray you comprehend it. In short, tangible you can feel, intangible cannot be felt, and electronic cannot be intangible nor tangible. Another way to look at it is land does not move, only the boundaries, tangible, like money, can be moved, intangible is invisible, and electronic is the control of energy<sup>1</sup>. It takes energy to make an electronic agent move, it takes money to get an agent to move.

## Scenario:

### Who

If you and I were to agree to what ever it is we agree about and we put our agreement down on paper because if we don't our arguments about the agreement would be futile simply due to our ability to remember every exact detail of our agreement years later. So we have our paper agreement which we could call a contract, we both look it over to allegedly ensure we have our agreement written down. Upon that conclusion we both sign the paper contract. We only have the one contract so in order to provide you with the contract also I will need to make a copy of it because if we signed two contracts with the same wording we may argue over the signatures being different, and because your agreement was with me, I would be the holder of the contract you signed with your handwritten signature. If my choice is to make a copy for you this could be accomplished by using a copier machine, or I could use a device called a scanner to scan the copy and then print it out and give you that. Either way the end result would be a paper copy reflecting the alleged original contract we both signed.

### What

Lets say for instance you agreed to buy land from me with money I loaned you. This transaction may even be referenced in public land records as a general, or special warranty deed. If we ever have violations of our agreement we can either resolve these violations

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<sup>1</sup> For the sake of argument, don't confuse the tangible and intangible properties of electronics with tangibles, or intangibles of this world.

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between ourselves or if push comes to shove, then either of us may pursue a suit in a court of law to settle the disagreements. Since this contract is regarding a money flow streaming from you to me, I allow you to occupy the land while you pay me off. Whether I was required, or not, to provide constructive notice, such as recording the deed of trust, we still have a contract and that is what I would use in a court of law because per our agreement, we agreed I would let you occupy the land, and you would pay me until the agreement is completed by you paying off the money I loaned you for the land. Since I agreed to allow you to occupy the land and you default I would need to show you owe me money and you are behind in paying me as promised in the promise to pay instrument. Should the court be in my favor to foreclose on your debt, I can then pursue removing you from the land noted in our agreement because I hold the original contract and by law the court can order you to remove yourself and your belongings by a certain time and date. Else you would be violating the law and a court order.

When our agreement originated it was paper that we signed. I scanned the paper and gave you a copy of the original agreement. The original agreement was in writing. Everything in the agreement appears to be normal except that you did not notice I placed a disclaimer in our agreement that allows me to scan and register our agreement in our names in a registration system with no need for constructive notice and the registration system, or similar, is my nominee and or beneficiary. It really doesn't matter, I could use a database if I so chose. I need to provide no name of a registration system, I only need to disclose that I will use electronic methods and the agreement is signed.

### **Where**

Since our agreement to receive copies of the contract was only vague I took the liberty to scan and register our agreement shortly after you signed that agreement. But, for me to use this registration system to submit your alleged copy I must meet the guidelines of the registration system. This would also mean that I would need to know what jurisdictional law

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applies to these electronic records I have created because they are completely different from the paper agreement we originated with using contract law.

What I find in the certain electronic law that allows for my now converted electronic document's that I've created are actually of no value because only electronic records that are originally created in electronic format meet the requirements of the electronic law. For me to use this electronic registration, all I needed to do is provide a disclosure that forewarned you of what I would do with our agreement. If you conclude I may be violating our agreement you would need to prove I violated our agreement. Else, all is lost on your part.

Since our contract actually consisted to two documents to be construed as one, the disclosure was easily applied to the "land"<sup>2</sup> document, not the "debt"<sup>3</sup> instrument and this seemingly innocent conveyance allows me to "convey" electronically because it is up to me to know if there is a requirement to record the land document or not. If I am expecting title insurance to be provided on the land document, the insurance provider would most likely require me to file the land document in public record where the land is located. Then this would be considered constructive notice of a land document. It is also insurance for the title company to determine whether the title chain is free from defects, or in other words, the title chain is not clouded. So, the recorded general warranty deed provides constructive notice needed to give evidence to the insurance provider.

Because I've registered the copy of the agreement between you and me, it is only an alleged reflection of what I claim to own and nothing more as far as you and I are concerned. Your agreement is to repay the debt and once you repay it, I will turn over the land title to you free and clear of defects. That was our agreement.

As this following conduct of my business practices is no concern to you because I registered my name initially, then with your information also included because I am required to include this information for tracking purposes due to the requirements of the registration system. I am a business man and I need money to continue my ventures and through the

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<sup>2</sup> A.k.a. Lien, Deed of Trust, deed, etc.

<sup>3</sup> A.k.a. Promise to pay

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registration system I can offer up your information because it is considered an asset for me and because there is a stream of money coming in from you due to our agreement. It is not against the law for me to do this because there is law regarding electronic registration due to the scanned images I use for registration, and because paper law is different from electronic law.

So, the jurisdiction of what I am doing with this electronic registration is not within the jurisdiction regarding our paper realm of contract law, it is in the realm of electronic transactions. So, as for me, I have no concerns in regards to producing the alleged original paper contract we agreed upon. Such action of producing the paper contract would reside in the jurisdiction of paper transactions, age old contract law, and all real property law of the state where the property is located.

Now that I have found an avenue to use your contract, and the contracts of the many others like you who agreed with me, I have a group, or we can call it a pool of streaming money coming in from you and others like you who have agreed to repay me. This makes for a larger money stream portfolio that I can use within the registration system I agreed to use in our contracts which you and the others signed.

Though I have seemingly converted the value of these “promise to pay” into electronic form, it would be up to you to challenge this conversion in court, not me. And though other successors may come later for this promise to pay, it is still up to you to challenge the jurisdiction they will claim to use for these electronic records. The courts take for granted that we have jurisdiction, and if you don’t speak up, we can continue our fraud.

As a businessman I have learned to cut corners to lessen my expenses. And due to the age of electronics I am told the retention of paper records can be utilized through the process of imaging so that I may cut down on “paper” and “save the trees”. This process may be for a benefit, and it can be used in a legal sense in some instances, but if I am brought into court by you about our agreement all I need to do is to provide the court with a copy of our agreement. Now granted I still have the original paper agreement and it would be easy for

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me to provide that if I still have it, but all I need is a copy. It would be up to you to challenge my copy, not me. But, like I said, if I have the original I can produce it.

To conduct my business in this registration system, and to follow the law, (if you read it in your agreement) was to use an electronic agent for my part of our agreement. Even though I disclosed this, it was never challenged in the courts. The only challenges in court were for the name of a person named as a beneficiary, or nominee. My electronic agent is not a person.

So, in essence these challenges were aimed at the wrong jurisdiction and through the ignorance of the judge, the electronic agent prevails without being recognized as a separate jurisdiction issue. In other words, the silence on the electronic law preempted all other statutory law, including the constitutions and the electronic agent no matter what the “business” name, was now defined as a “person” without such definition within its electronic law. The alter ego prevails.

With ignorance abound, now I can move these electronic records quickly through the registration system and they are seemingly supported and without suspicion in courts of law. In these types of electronic transactions it is seemingly suspected that these transactions are governed by a commercial code, or other laws, but they are different. And even though these appear to be “intangibles” recognized within a commerce code, they are electronic records and nothing more. The law that governs these electronic records are Uniform Electronic Acts<sup>4</sup>, or named similar. These electronic laws derive from the Electronic Signatures in Global and National Commerce Act, a United States federal law, known as E-SIGN. And the state version will modify, limit, or supercedes the federal version. But face it, commerce and e-commerce are not the same even though commerce may be involved on the goods and services side from an e-commerce transaction. If there are any underlying transactions or obligations, those applicable laws would still apply to the underlying obligations. This is noted in the scope of the electronic laws.

Mind you there is a difference between e-commerce, commerce, contract, electronic contract, and real property law. Real property law does not pertain to commerce, and

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<sup>4</sup> In Texas, it is Uniform Electronic Transactions Act, Chapter 322, Texas Business and Commerce Code.

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commerce does not pertain to e-commerce, and e-commerce excludes most of the commerce code except for sales, 2, leases, 2A and two subsections in the general provisions of chapter 1.

With this recognized, the average man should see that even the definition of “general intangible” is not included in the electronic law. So if you need proof there is no such thing as an electronic record being intangible, you now have it.

There are fifteen (15) definitions in Chapter 322 section 002 and intangible is not defined. However, there is only one section in the whole chapter that seemingly allows the ignorant to be deceived. This *intangible* word is not defined in the chapter, but in the section. I Believe 322.016 may be where confusion arises about *intangible* because it states

“In this section, "transferable record" means an electronic record that: (1) would be a note under Chapter 3, or a document under Chapter 7, if the electronic record were in writing; and (2) the issuer of the electronic record expressly has agreed is a transferable record.”

So when you read that it seemingly alludes to a note, or negotiable instrument under Chapter 3 of the Business and Commerce code in Texas. Or even document of title under Chapter 7, and it does according to “In this section”, but not the way most were taught about those chapters in commerce because this is all a “single subject” of “electronic” and even though the same concepts in the electronics are at use, 322.016(1) is not governed by those commerce chapters, and such is further supported in 322.016(2). That would only leave proof of the “concept” method of chapter 3 or 7 so a “promise to pay” agreement may be made in electronic format. It has nothing to do with contracts already created in paper form. In fact, Chapter 3 through 9 are excluded from the electronic law. That is so noted in the scope<sup>5</sup> of Chapter 322 of the Business and Commerce Code.

Sec. 322.003. SCOPE. (a) Except as otherwise provided in Subsection (b), this chapter applies to electronic records and electronic signatures relating to a transaction.

(b) This chapter does not apply to a transaction to the extent it is governed by:

(1) a law governing the creation and execution of wills, codicils, or testamentary trusts; or

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<sup>5</sup> Sec. 322.003. SCOPE

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(2) **the Uniform Commercial Code**, other than Sections 1.107 and 1.206 and Chapters 2 and 2A.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under Subsection (b) when used for a transaction subject to a law other than those specified in Subsection (b).

(d) A transaction subject to this chapter is also subject to other applicable substantive law.

Maybe the definition of “transferable record” could be confusing because of the word is being used in “commerce”? E-commerce, and commerce both are subjects of a subject of the word commerce which is the single subject the title reflects. Think about it, you can’t have commerce unless you have a business. But as the Commerce scope clearly reflects, the Commerce code is limited for the use of the transactions in regards to electronic law. And the commerce code is also limited according to section 9.109. Examples are 9.109(d)(2); 9.109(d)(11).

Can you see how easy it is for me to win? Maybe you haven’t recognized it yet, but I won the minute you signed our agreement. It doesn’t matter how I did it, I won. The minute I sold these electronic assets to another, I won. Nobody even questioned how I did it because they thought I was still doing my business the old way they were taught about in their law schools. And with me being lawyer,<sup>6</sup> they trusted me because of my membership with an agency of the state. Can you imagine how much money I’ve received from my teaching of misconceptions to others on how I conduct business using a registration system? They even made me a “super lawyer”. Catch me if you can, ha, ha.

Here is all it took to convince the masses. We taught them about how our commercial practices would work for what we do, and we used the old ways of paper transactions to lead them into thinking the electronic procedure was the same as the paper procedure even when we have already told them that we scan the paper documents, save them to electronic records, then we destroy them, and if we are in need of any modification to the electronic record, we can make a document up to fit the need. We have photo editing software. And

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<sup>6</sup> Disclaimer: This is a scenario, not me speaking of being lawyer because I am not. It is the character in the scenario.

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judges have a tendency to turn a blind eye at what we are doing even though they may question our practice.

These judges cannot seem to recognize a jurisdictional issue is at hand simply because we are lawyers and the subject matter seems to be overlooked.

*Subject matter jurisdiction is essential to the authority of a court to decide a case. Standing is implicit in the concept of subject matter jurisdiction. The standing requirement stems from two limitations on subject matter jurisdiction: the separation of powers doctrine and, in Texas, the open courts provision. Subject matter jurisdiction is never presumed and cannot be waived. - Tex. Ass'n of Business v. Air Control Bd., 852 SW 2d 440 - Tex: Supreme Court 1993*

*Standing can be raised on appeal, "Standing is a component of subject matter jurisdiction that may be raised by an appellate court sua sponte." - in Limon v. State, 1997*

*Tex. Ass'n of Business v. Air Control Bd* has been cited as recently as 2018

*Subject matter jurisdiction is essential to the authority of a court to decide a case and is never presumed. - in DEVON ENERGY PRODUCTION CO. v. KCS RES., 2014.*

Even though the courts claim "*Texas courts have consistently held that the terms set out in a deed of trust must be strictly followed.*"<sup>7</sup> They seem to miss the distinction in the all applicable law requirements in covenant 16, or similar;

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law.<sup>8</sup>

I truly hope this scenario helps in understanding what UETA is and is not.

### When

Is to be determined by the challenge of the people

Peace be with you,

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<sup>7</sup> Harris County, Texas v. Merscorp Inc., 791 F. 3d 545 - Court of Appeals, 5th Circuit 2015

<sup>8</sup> HUD Form 3044, Texas Deed of Trust