

How eNotes are Transforming the Mortgage Industry

Is digital lending the wave of the future?



Presented by
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President
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Rachael Sokolowski is the President of Magnolia Technologies LLC. She is a recognized leader in the mortgage banking industry acting as a trusted adviser, strategist and driver of results in industry initiatives.

Rachael provides over 30 years of business and technical experience in industry standardization, integration, electronic and digital signatures, electronic mortgages and closings, secondary market delivery and patent applications/litigation. In her consulting practice, Rachael has advised banks, mortgage banking lenders, technology vendors, GSEs, and insurance, student lending, and automotive finance companies. Rachael previously was the CIO of a community bank.

Currently Co-Chair of the MISMO eMortgage Community of Practice, she is certified by MISMO as a Certified Mortgage Standards Professional (CMSP®). She has authored numerous articles for the *Scotsman Guide*, *Mortgage Compliance Magazine* and *Mortgage Banking Magazine* providing commentary on technology, compliance and policy issues facing the financial services industry. In 2016, Rachael received the “MISMO Chairman’s Award” and was named by *Mortgage Women Magazine* as a Technology Leader and Entrepreneur in the industry.

Consumers Today...

- Are accustomed to a digital experience for
 - Banking and bill paying
 - Shopping and searching real estate listings
 - Signing documents and contracts
- Experience a cumbersome and confusing mortgage experience
 - Fill out forms
 - Provide information multiple times
 - After purchase, are handed a stack of paper documents that many never read or understand

Fannie Mae's 2018 National Housing Survey:

one of the most common things borrowers told their lenders would make the overall mortgage process easier would be a reduction in paperwork.



<https://www.wsj.com/articles/mortgage-closings-just-took-a-big-step-into-the-digital-age-1502287181>

Lenders and Settlement Companies Today...

Are accustomed to

- Performing closing with paper documents
- Paying shipping fees
- Scanning documents
- Retaining mortgage data and documents scattered across multiple systems

Experience

- Time delays shipping documents in warehouse lending and post closing activities
- Lost documents
- High costs to process and retain the paper

In transition to electronic systems for

- Document preparation
- Closing
- Vaulting
- Servicing of loans

Primarily focused on

- electronic documents and signatures for the application and origination process
- scanned images of paper documents for closing

Digital Landscape

Transformation of the mortgage loan to fully digital documents for all segments of the lifecycle:

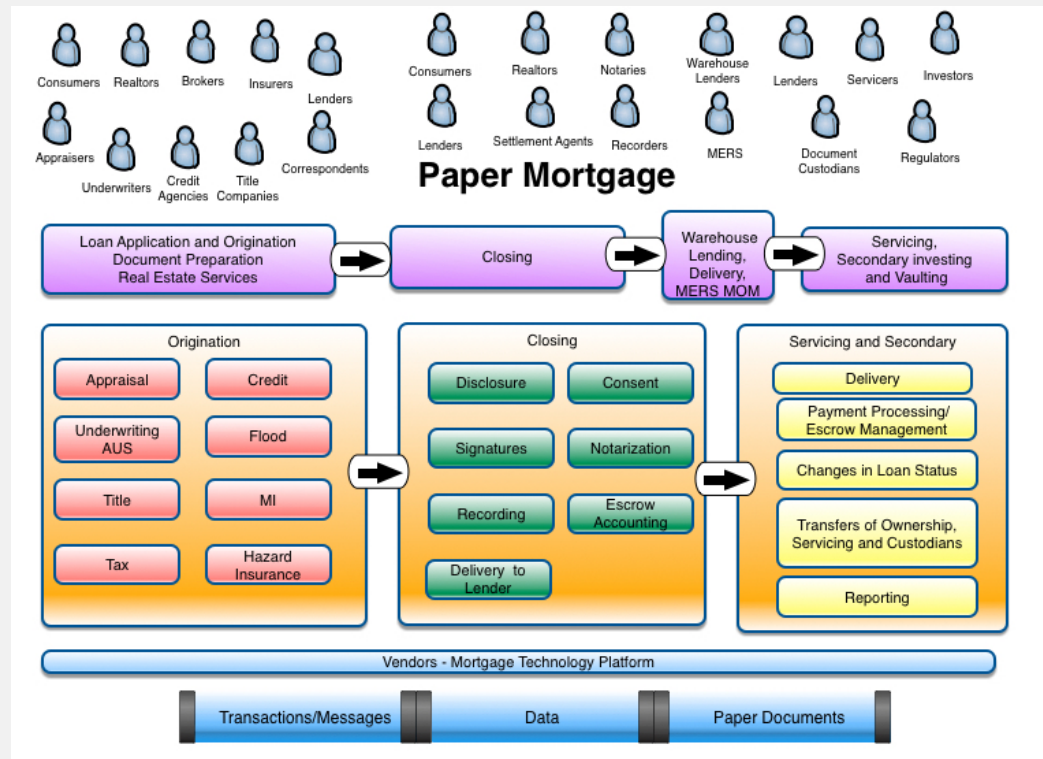
- Application and initial disclosure delivery
- Closing
- Notarization
- Recording
- Require replacing the wet-ink signed, paper including the promissory note with the electronic equivalent --the “eNote”

The benefits of all documents in an electronic format include:

- Centralization of data and documents
- Automation of the process for the life of the loan
- Reduction the time spent in post closing activities
- Capital efficiencies
- Minimization of errors
- No lost documents

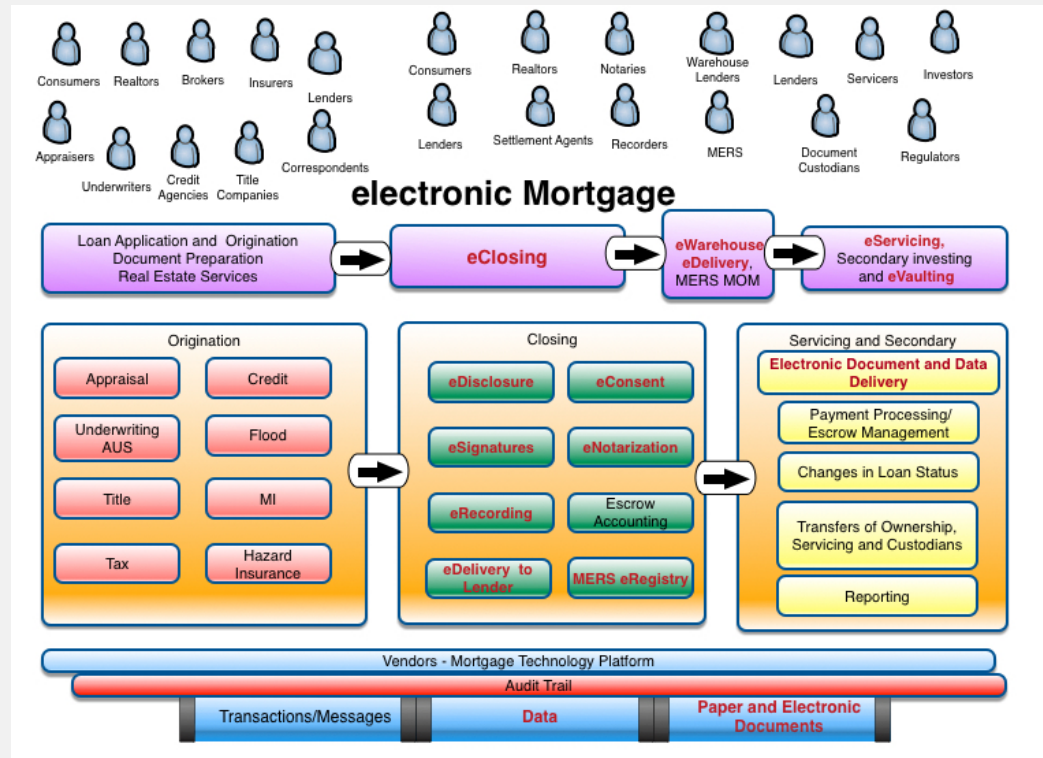
Overview of Paper Mortgages

Friday, April 26, 2019



Overview of eMortgages

Friday, April 26, 2019



Removing Paper from the Mortgage Process

Requires
compliance
with

- Federal and state laws for electronic documents and signatures
- Evolving industry standards
- Investor requirements

What
changes?

- Processes
- Information Technology
- Operations
- Staffing
- Agreements

What is the Difference?



Digital Mortgage

This term is coming into more current use to broadly describe a mortgage transaction where any component has an “e.”



eClosing

A loan closing where at least one document is signed electronically



eNote

An Electronic Record under ESIGN and UETA that

- **would be a Promissory Note under the Uniform Commercial Code if the Electronic Record were in writing;**
- **the issuer of the Electronic Record expressly has agreed is a Transferrable Record;**
- **for purposes of ESIGN, relates to a loan secured by real property. A Transferable Record is also referred to as an eNote.**

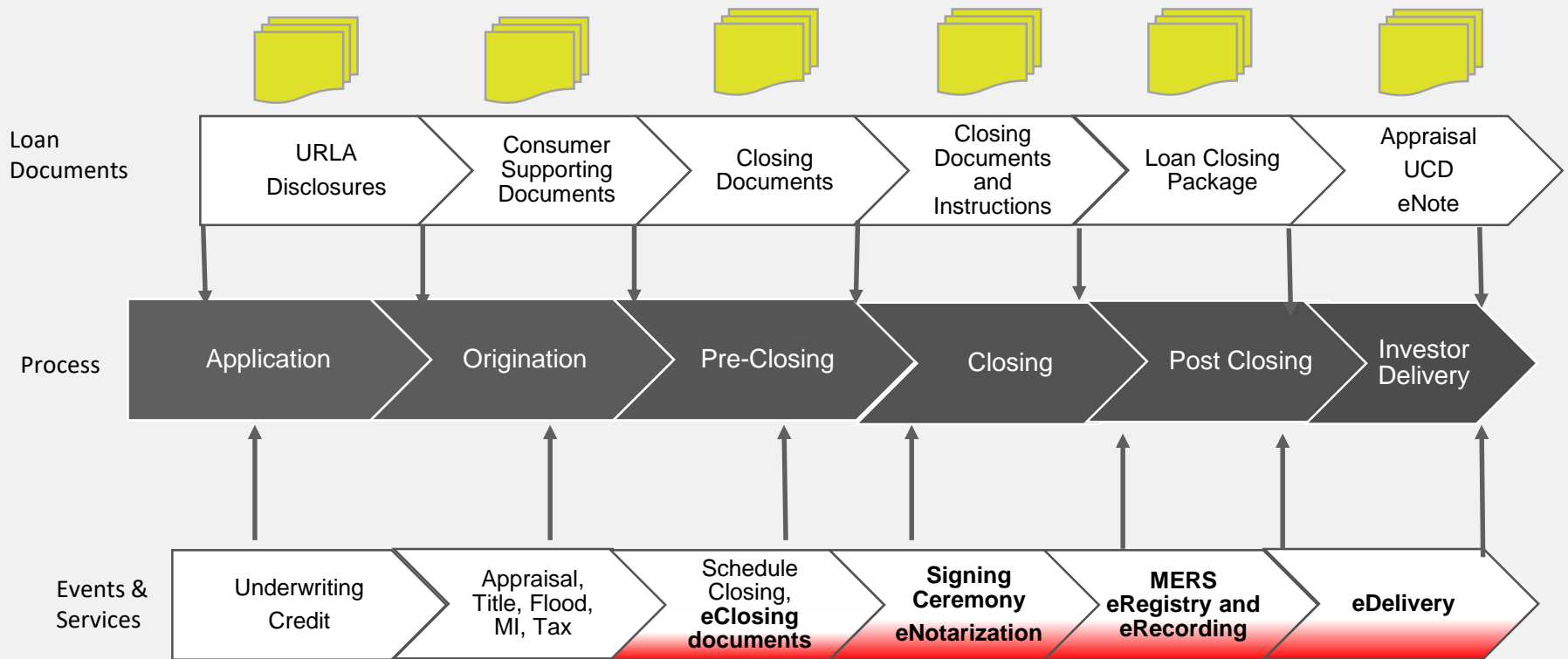


eMortgage

Traditionally, a mortgage where critical loan documentation, at a minimum including the promissory note, is created, executed, transferred, and ultimately stored electronically

In common use, the term is sometimes used to refer to a mortgage transaction where any document might be eSigned, and/or eRecorded, and/or eNotarized

Documents and Data ...



<http://www.mortgagecompliancemagazine.com/technology/wild-west-eclosing-good-bad-ugly/>

How to Turn off the Paper? What's Needed?

- Visual representation of the document
- Access to the document's data for automated processing
- Linking the data and visual representation
- Electronically sign
- Provide tamper-evident security for integrity
- Confirm that the document is exactly what the consumer e-signed
- Audit trail of changes in the document
- How to identify the electronic equivalent of the wet-ink signed paper version?
- Identification of owner and location of electronic "original" Note vs. copies

Electronic Document

<MISMO_DATA_IN_XML>

VIEW or presentation

TIMELY PAYMENT REWARDS ADDENDUM TO NOTE

THIS TIMELY PAYMENT REWARDS ADDENDUM TO NOTE is made this ____ day of _____, ____ and is incorporated into and shall be deemed to amend and supplement the Note made by the undersigned ("Borrower"), in favor of _____ ("Lender") and dated the same date as this Addendum (the "Note"). The Note is secured by a security instrument, as modified or amended, in favor of Lender dated the ____ day of _____, ____ (the "Security Instrument").

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Note, Borrower and Lender further covenant and agree as follows:

1. **TIMELY PAYMENT REWARDS RATE REDUCTION**
Borrower has agreed to pay the rate of interest set forth in Section 2 of the Note (the "Note Rate") until the full amount of principal has been paid. However, if on any one of the second, third, or fourth anniversaries of the scheduled due date of the first full installment payment due under the Note (each, an "Anniversary Date") Borrower has demonstrated a Good Payment History, Lender agrees to decrease the Note Rate by _____ percentage point (____ %). Borrower will be deemed to have demonstrated a "Good Payment History" if Borrower: (a) has made each of the most recent 24 consecutive monthly payments under the Note and Security Instrument before the date the next payment was due, and (b) has never been late by 3 months or more in making any monthly payments due under the Note. If Borrower demonstrates a Good Payment History, the new Note Rate will take effect on the earliest Anniversary Date on which Borrower has demonstrated a Good Payment History ("Rate Reduction Date"). Beginning with Borrower's first monthly payment after the Rate Reduction Date, Borrower will pay the new amount as the monthly payment until the Maturity Date. Lender will decrease Borrower's Note Rate only one time during the term of the loan, provided Borrower demonstrates a Good Payment History on any one of the second, third, or fourth Anniversary Dates.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Timely Payment Rewards Addendum to Note.

eSignatures

_____(Seal)

_____-Borrower

_____(Seal)

_____-Borrower

Log of Events

Enter the SMART Doc ...



The MISMO SMART Doc was developed as an electronic document to include system consumable data and to support the mortgage document lifecycle.



Locks together data, signatures and presentation in such a way that it can be system-validated to guarantee that the document is exactly what the borrower saw and signed on the computer screen.



Allows for variation in the representation in the view of the document and the data (100000.00 vs. one hundred thousand).

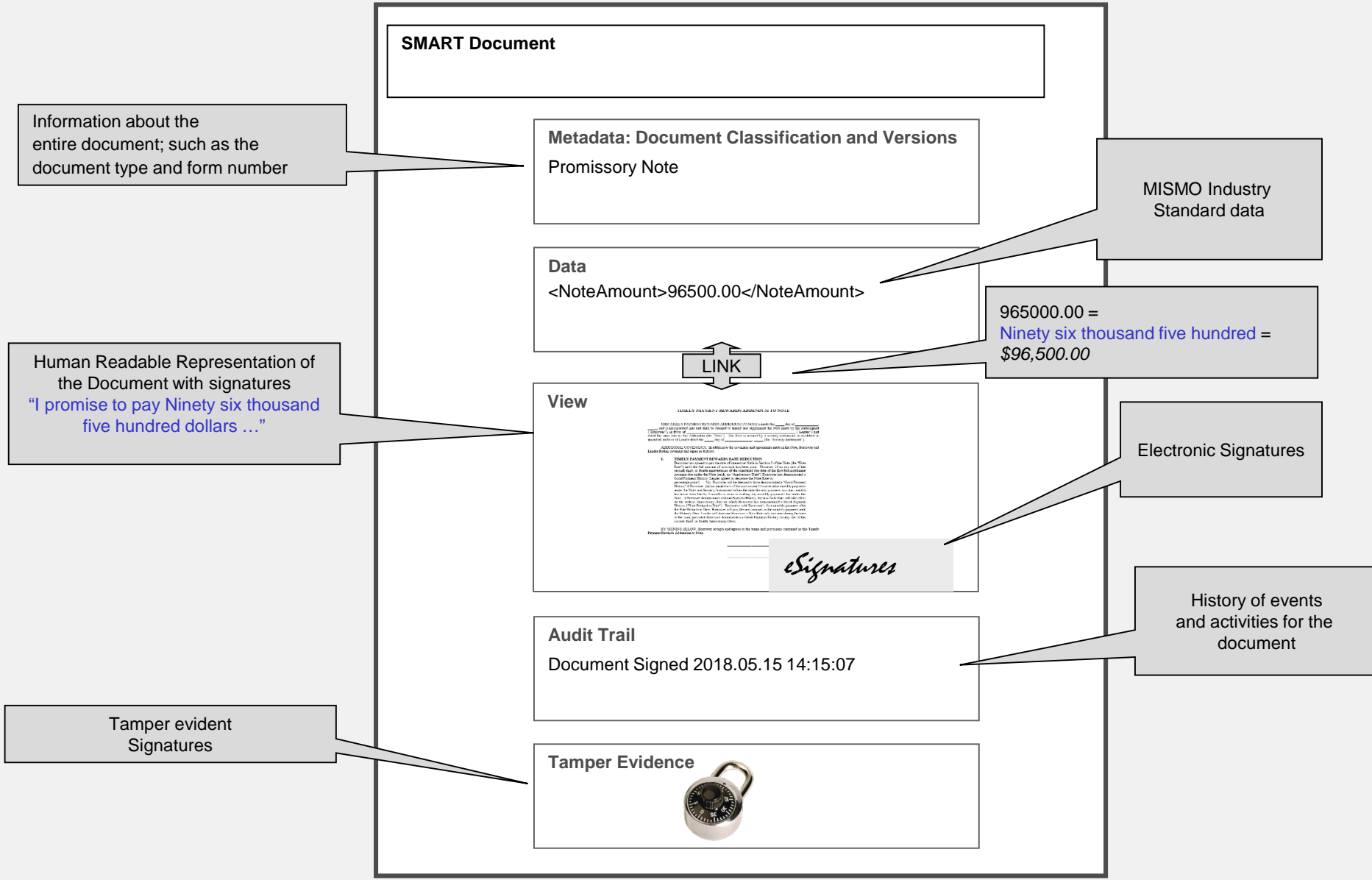


Complies with state and federal laws governing real estate transactions (UETA and ESIGN)



Required for delivery to Fannie and Freddie for promissory notes and the closing disclosure.

MISMO SMART Documents



Example Electronic Document Workflow



Web Site

Authentication
Disclosure and Document Presentation
Final delivery of signed documents to the borrower



Electronic Signature Process

Electronically signs documents
Add Tamper –Evident signatures
Delivery to eVault
Storage of the electronic record and audit information



eVault: Long Term Storage

Electronic records archived
Viewing and printing for operations
Delivery to Investors

What is a Signature?



- A handwritten signature marks a document with a person's unique identifier
- The signature indicates that the person approved of/agreed to the document's contents
- Signature Lines denote locations for signatures
- Signature Characteristics
 - Where is the signature located?
 - How the signature was applied?
 - What was signed?
 - Who signed the document?
 - When the signature was applied?
 - Has the document been tampered with in any way?

eCommerce or eSignature Laws



Authorize the use of electronic records and signatures in many transactions where state and federal laws would have previously required paper documents

Allow parties to focus on the message that they are trying to convey rather than on the medium in which it is presented



UETA-- Uniform Electronic Transactions Act

**Nat'l Conf. of Comm'rs On Uniform State L. 1999 – State solution
Wide state adoption (49 jurisdictions)**



ESIGN --Electronic Signatures in Global and National Commerce Act

**ESIGN Act of 2000 - 15 USC 7006 (5) – Federal solution – effective on October 1, 2000
Adopts most of the significant UETA provisions**



It is likely that both ESIGN and UETA will apply to the transaction

Both contain other provisions for storage, reproduction and electronic consent and are intended to be technology neutral

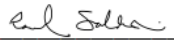
An Electronic Signature is a Process ... Not an Ink to Paper Event ... A Digital Event

- The law defines an electronic signature as:
 - An electronic sound, symbol or process
 - (e.g., typed names, PIN, Password, a click, a digitized picture of handwritten signature, biometric, audio, video or a digital signature)
 - Attached or logically associated with a contract or other record, and
 - Executed or adopted by a person with the intent to sign the record.
- Requires a signing ceremony that
 - Obtains a consumer's consent to sign electronically
 - Presents specific disclosures right before signature capture (e.g., by clicking "I agree" I am indicating my intent to be bound to terms and conditions . . .)
 - Obtains a confirmation of agreement

Confirm Receipt
By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Michael Jones <small>Digitally signed by Michael Jones DN: cn=Michael Jones, o=nc, email=mjones@ncmail.com, c=US Date: 2015.01.13 17:30:44 -0800</small>	Date	Mary Stone <small>Digitally signed by Mary Stone DN: cn=Mary Stone, o=nc, email=msstone@ncmail.com, c=US Date: 2015.01.13 17:31:07 -0800</small>	Date
Applicant Signature		Co-Applicant Signature	

MAGNOLIA TECHNOLOGIES, LLC

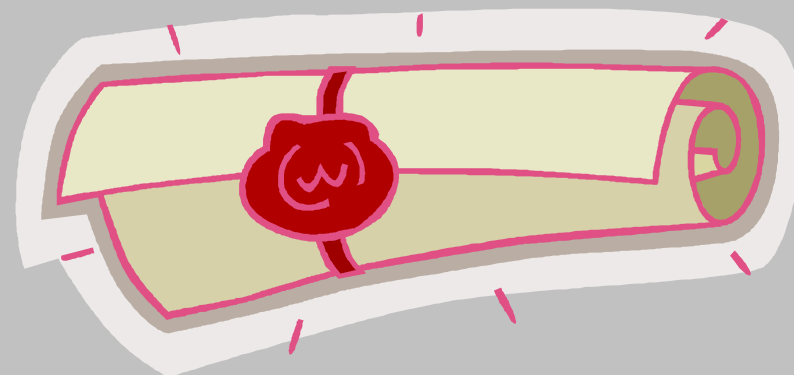
By: 

Title: Rachael Sokolowski, President



Tamper Evident Signatures

- A Tamper Evident Signature is a special case of an electronic signature in eMortgages
- The Tamper Seal is used to provide
 - Document integrity
 - A certificate that uniquely identifies the person/application/system that signed
- The Tamper Seal is applied
 - As soon as possible after closing
 - By either a system or an individual
- Uses an industry defined certificate type
- A date and timestamp are required



eClosing

eClosing is much more than just eSigning

- Centralizes the process and transaction for everyone
- Consolidates communication for the consumer
- Provides consistent educational materials
- Sets up documents for digital consumption
- Includes tracking mechanisms to ensure delivery, receipt & acknowledgement of documents

Consumer

- More Informed, every step of the way
- Has time to review documents

Variety of Closings

- Fully Paper Closing
 - All documents on paper and wet-ink signed
- Hybrid eClosing
 - Wet-ink signed documents including the Promissory Note
 - Electronic documents
 - Electronic notarization
 - Electronic recording
- Fully paperless all documents
 - are electronic
 - and electronically signed

Electronic Notarization



**Permits
electronic
notary
signature**



**Eliminates
requirement
for stamp or
seal**



**Preserves any
other features
of notarization
required by
state law**

Personal
appearance

Confirmation of

- Identity
- Awareness
- Freedom from
Duress



**Patchwork of
differing rules and
laws on a state by
state basis**

Some states have
published rules for
eNotarization.

Others have stated
publicly that it is
allowed but have not
provided any
guidance

There are states that
have remained silent
on the issue.



**Two
types**

1. Face-to-
face with
electronic
signatures
2. Remote --
video
notarization
over the
Internet



**There are
over
1,380
eNotary
counties**

Representing
@74 percent
of total
population

eNotarization at Closing

Hybrid In person

- Signing occurs in person
- All non-Notary docs are eSigned
- All Notary Docs are wet signed

In Person eNotarization (F2F)

- Closing happens in person
- All Docs are eNotarized and eSigned

Remote Online Notarization (RON)

- Signing occurs Remotely using Audio/Visual Two way Connection –Real Time
- All documents are eSigned and eNotarized
- ID through KBA and ID Inspections

eRecording



Title companies, banks, attorneys, and lien filers now have the ability to electronically record documents

E-recording is the process of securely recording documents received via the Internet that would otherwise arrive by express mail or courier service.

The recorder is able to electronically review, stamp, record, and return documents back to the submitter within minutes of receipt



1943 Counties (47 states + DC) eRecording which is approximately 82% of the U.S. population, with more counties coming online every week



“eRecording” means different things in different recording offices

eRecording Challenges

Major roadblock is the uncertainty with eNotarization

County recorders uncertainty about acceptance of an electronic signature

No unitary standard for how to eRecord, or what an eRecorded document needs to look like, or what protocols need to be followed to get it to the recording office

Industry is rolling out services that address these challenges.

Vendor systems coordinate with settlement agents on the recordable documents and payments to county recorders and the county works from the electronic version, does their recording, and sends back the updated image with the recording data

eNote Challenges

Does the eNote need to be electronically signed?

Who is the "holder"? Is there a "physical" holder?

What does possession mean?

How are the rights of a secured party maintained?

How are indorsements handled?

Once an electronic record is transferred from one party to another it is no longer unique ... there are two copies or more!

When there are multiple electronic copies of the promissory note – which is the original?

New Process, New Concepts to Replace Paper



UCC Article 3 alone would not support a promissory note executed as an electronic record



Provisions of the eCommerce laws were intentionally drafted to enable the electronic equivalent of a negotiable paper promissory note, “Transferrable Record”



The eCommerce Laws accomplish this by replacing the requirements for “possession” and “indorsement” of a written or paper promissory note with the concepts of “control” and “transfer of control” for an eNote



A Transferrable Record is just as enforceable against the borrower as its written counterpart

Control/Controller



The party having Control of a transferrable record has the same rights and defenses as a holder of a Negotiable Instrument, typically by having possession of an original paper note (endorsed in blank or specially endorsed to the holder)



The Controller is the party (entity) named on the system of record that has control of the transferrable record



The Controller can be thought of as the “holder,” “holder in due course,” and/or “purchaser” of an original paper note as defined under the Uniform Commercial Code.

Authoritative Copy



Because any copy of electronic record is identical to any other copy – they are simply copies of electronic files or transmissions between systems – no one copy of an electronic record can contain data that would identify it as the authoritative copy



Some external mechanism is required to resolve the question of which of the copies of an electronic record is the authoritative copy



The copy of a Transferrable Record that is identified by the Controller, stored in an eVault and evidenced by the System of Record as the single, unique, identifiable and legally controlling copy.

The Electronic Promissory Note is a Transferrable Record



A single authoritative copy of the transferrable record exists

unique identifiable borrower agreed that it is a transferrable record



The authoritative copy identifies the person asserting control or the “controller”

The person to which the transferrable record was issued or
If the transferrable record has been transferred, the person to which the transferrable record was most recently transferred;



The authoritative copy is maintained by the controller or its designated custodian (electronic Vault)



Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the controller



Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy and that is not the authoritative copy



Any revision of the authoritative copy is readily identifiable as authorized or unauthorized

eNote Provisions

“ISSUANCE OF TRANSFERABLE RECORD; IDENTIFICATION OF NOTE HOLDER; CONVERSION FROM ELECTRONIC NOTE TO PAPER-BASED NOTE

(A) I expressly state that I have signed this electronically created Note (the "Electronic Note") using an Electronic Signature. By doing this, I am indicating that I agree to the terms of this Electronic Note. I also agree that this Electronic Note may be Authenticated, Stored and Transmitted by Electronic Means (as defined in Section 11(F)), and will be valid for all legal purposes, as set forth in the Uniform Electronic Transactions Act, as enacted in the jurisdiction where the Property is located ("UETA"), the Electronic Signatures in Global and National Commerce Act ("E-SIGN"), or both, as applicable. In addition, I agree that this Electronic Note will be an effective, enforceable and valid Transferable Record (as defined in Section 11(F)) and may be created, authenticated, stored, transmitted and transferred in a manner consistent with and permitted by the Transferable Records sections of UETA or E-SIGN.

Tamper Evidence, Retention, Location



The Authoritative Copy must be retained, to meet compliance and regulatory requirements, in a secure digital vault, often referred to as an electronic Vault or eVault

The concept is analogous to a paper note vault administered by a document custodian in the industry today

It is the responsibility of the controller to manage and verify the integrity of the eVault



The lender must be prepared to demonstrate that the Authoritative Copy, while in the lender's "control," has not been impermissibly altered since it was signed



The eVault is an important component to enforceability

Transfers of Control



The eCommerce Laws replace the requirements for and “indorsement” of a written or paper promissory note with the concepts of “control” and “transfer of control” for an eNote



Each transfer of control is maintained and recorded in an audit trail, either by the eVault or a Registry



The audit trail of transfers of control creates the electronic equivalent of a “chain of indorsements” in the paper world

How to meet the Safe Harbor Requirements of the eSignature Laws?



eNote is originated and closed



Multiple parties can have copies:

Lender
Title company
Servicer
Warehouse Lender



Which party has the legal rights to sell the eNote?

Who is the controller
What copy is identified as the authoritative copy?
Where is the authoritative copy retained?
Are copies identified as copies?

MERS® eRegistry

The industry's response to some of the requirements imposed by UETA and E-SIGN

National registry that

Retains a copy of the eNote
Tamper Seal or 'hash'

Identifies the Controller
("Holder") of the Authoritative
Copy of an eNote

Identifies the Location
("Custodian") of the
Authoritative Copy of an eNote

Does not store the eNote

Four forces came together for its creation:

eSign and UETA legislation for
Safe Harbor requirements
created opportunity for eNotes

Secondary Investors developed
requirements for eNotes

MISMO defined technical
standards

MERS® developed and
maintains the system to
register ownership of eNotes

Electronic Note Registry - MERS®

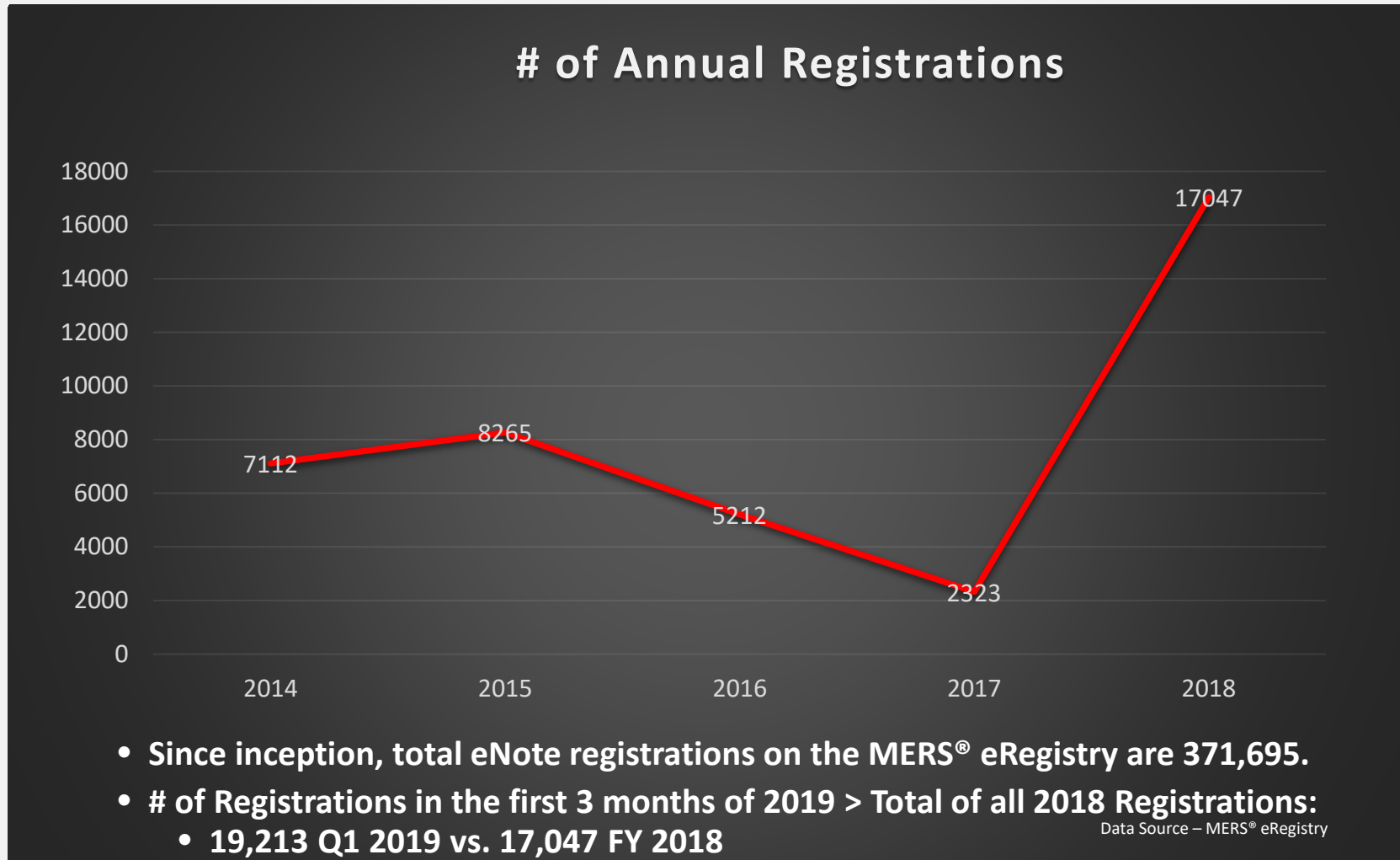
- Determines who ‘owns’ the eMortgage
 - The mortgage industry’s system to identify the party that has the right to enforce the Authoritative Copy of an eNote and retains a copy of the tamper evident signature or hash

Mortgage	eMortgage
Negotiable Instrument	Transferrable Record (“eNote”)
Original Note	Authoritative Copy of the eNote
Possession	Control
Investor/Holder	Controller
Custodian	Location
Vault	eVault
Endorsement	Transfer of Control
Chain of Endorsements	Transferrable Record Audit Trail of Controllers

MERS® eRegistry – Five Year Trend

eNote volumes on the MERS eRegistry are increasing rapidly

Adoption of the electronic promissory note is a key enabler to a fully digital mortgage





Court Cases: Enforcing eNotes

- The MERS eRegistry is Part of the Evidence
 - Rivera v. Wells Fargo Bank, Rivera v. Wells Fargo Bank, No. 4D14-2273 (Fla. App. April 20, 2016) the court observed that:
 - the Bank established that its records system stored the eNote in “such a manner that a single authoritative copy of the e-note exists which is unique, identifiable, and unalterable”
 - and that the “authoritative copy, introduced into evidence by the Bank as Fannie Mae’s designated custodian, identified Fannie Mae as the entity to which the transferrable record was most recently transferred.”
 - The court concluded that because the Bank proved that Fannie Mae had control of the eNote, and that the Bank was Fannie Mae’s designated custodian, the Bank had standing to foreclose and affirmed the judgment of the lower court.
 - New York Community Bank v. McClendon, N.Y. Slip Opinion 02790 (N.Y. Supp. April 13, 2016) <http://www.infobytesblog.com/new-york-supreme-court-reverses-lower-courts-ruling-in-foreclosure-case-observes-enote-and-transfer-history-sufficient-under-esign/>
 - court dismisses a foreclosure action against a borrower who signed a mortgage note electronically (“eNote”). Court ruled that the handling of the eNote and the record of ownership transfers was sufficient under the eSignature Laws

Delivery Requirements for the eNote

Secondary market investors have created standards that eNotes must meet before they are eligible for purchase

Originators must use the prescribed additions to the Fannie Mae/Freddie Mac Uniform Note Forms that include:

- **Specific Document formats for the header and footer**
- **System technical & security requirements**
- **eNote language**

eNotes must be in a valid MISMO® SMART Doc format and must be tamper evident sealed

Fannie explicitly requires “one note” closing

No audio/video eSignatures

ESIGN/UETA process compliance

eNotes must be registered on the MERS® Registry

FHLBS are working on similar requirements for pledged collateral

What can you do now to go “e”?



No need to build your own platform

Save money and years of development time ... leverage vendors and partnerships
Find a neutral platform which allows for open integrations



Commitment at all levels of the organization to support e-Initiatives

Set clear expectations and maintain consistent communication



Create a team from multiple areas

Technical
Legal
Operational
Compliance
Business



Project Plan

Get the training and support in place early
Allow time for preparation testing and roll-out



Understand and comply with the law

Ensure systems are compliant to ESIGN, UETA, URPERA and state eNotarization laws

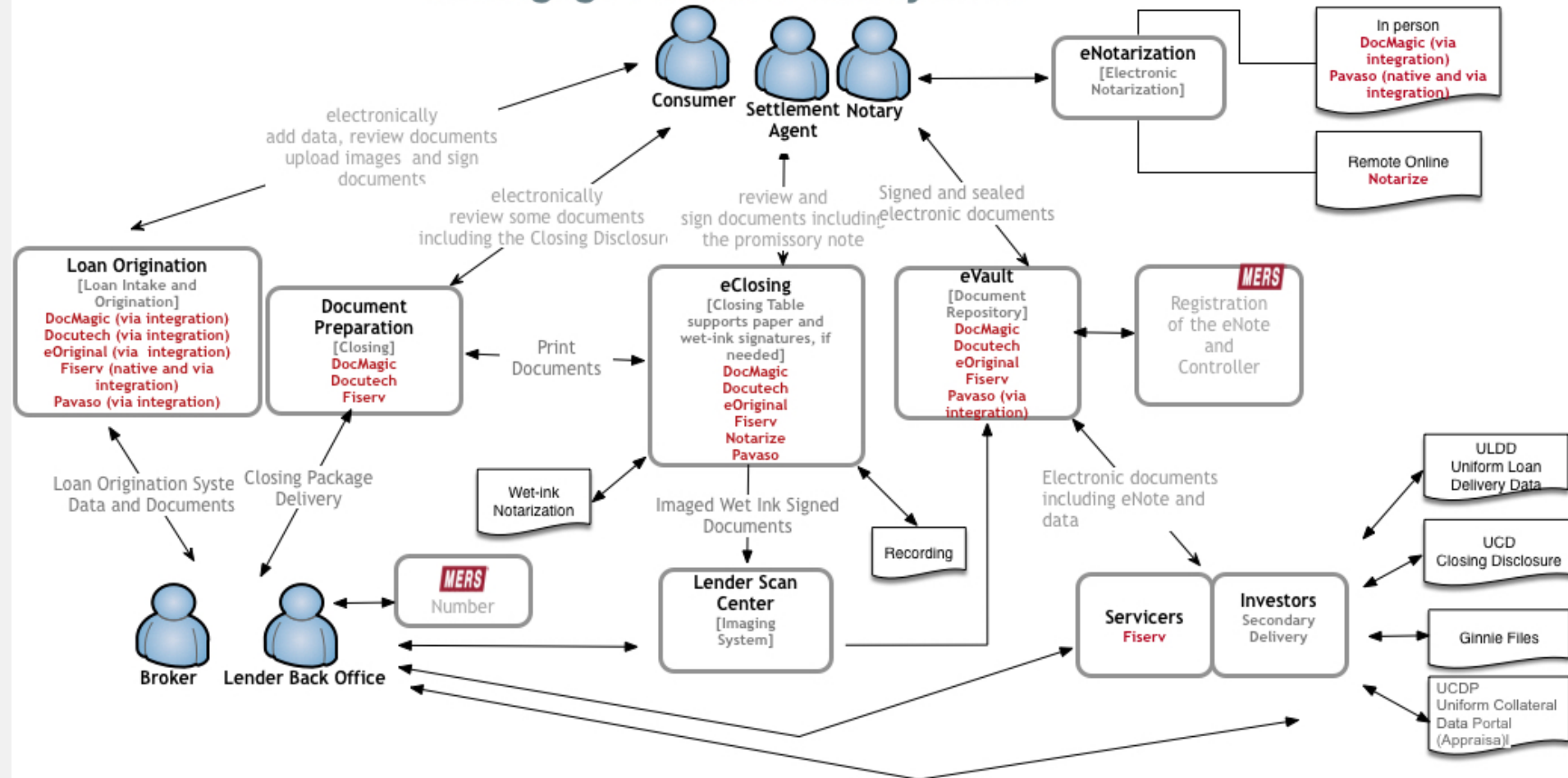


Understand and comply with Investor (GSE) Delivery Requirements

Connect to the MERS eRegistry
FNM/FRE eMortgage vary

State of the e-Union

eMortgage Processes and Systems



eNotes are the Future

User friendly process for all
participants

Compliance with eSignature Laws

Increased collateral control

Improved auditing and tracking
of mortgage documents and data

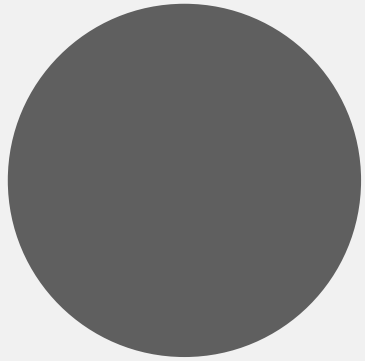
Transparent record of ownership

Elimination of lost promissory
notes

Centralizes the process and
transaction for everyone

Compliance to eCommerce Laws
is necessary

- Use of the MERS eRegistry provides investors and other parties in the process and independent third party registration system that meets legal compliance for eNotes for mortgage lending



Questions?



Resources



FHLB Topeka

- <https://www.fhlbtopeka.com/products/collateral/enotes>
 - What is an eNote video
 - The Road to eNotes Presentation
 - What an eNote is
 - What an eNote is NOT

Freddie Mac eMortgage Information Resources

- Electronic Documents Home Page
http://www.freddiemac.com/singlefamily/sell/e_docs.html
- Contains links to
 - [FAQs on Electronic Loan Documents](#)
 - [Getting Ready For eClosing Checklist](#)
 - [eMortgage Guide](#)
 - [eMortgage Seller Servicer Vendor Approval Requirements.html](#)
 - [Freddie Mac Reviewed Vendor List](#)
 - [eWarehouse Lender List](#)
 - [Servicers Ready to Service eNotes](#)
 - [eMortgage and eClosings Factsheet](#)
 - [eMortgage Foreclose Educational Aid](#)
- If you have questions or need additional information, please contact Freddie Mac eMortgage Team at eMortgage_Team@freddiemac.com

Fannie Mae eMortgage Resources

- eMortgages/eClosings Portal
<https://www.fanniemae.com/singlefamily/emortgage>
- Contains links to the following
 - 5 Step Getting Started Guide
 - eMortgage Learning Series
 - eMortgage Calculator (tool to quantify potential business benefits from adopting eMortgage)
 - Decision Support Selection Tool (DSST)
 - eClosing and eMortgage Fact Sheets
 - FAQs
 - eMortgage Provider Lists (Approved Vendors, Warehouse Lenders, and Servicers)

MERS[®] eRegistry Reference Materials

- Public Website (<https://mersinc.org/products-services/mers-suite/eregistry>)
 - MERS[®] eRegistry Tutorial
 - MERS[®] eRegistry FAQs
- Member Website (<https://members.mersinc.org>)
 - MERS[®] eRegistry Addendum
 - MERS[®] eRegistry Procedures Manual
- Please direct questions regarding MERS[®] eRegistry to membership@mersinc.org

MISMO® Reference Materials

- Public Website (www.mismo.org)
 - Standards and Resources
 - eMortgage Specifications
 - Remote Online Notarization Proposed Standards
 - eMortgage Glossary
 - SMART Doc specifications and Implementation Guide
 - Residential and Commercial Specifications
 - Get Started / Participate in a MISMO Workgroup for information on collaboration in progress
 - eMortgage Community of Practice
- “MISMO Connect” Member Collaboration Site - <https://collaborate.mismo.org/home>
 - Access works in progress
 - Leverage community discussion forums to get your questions answered
- Please direct questions to info@mismo.org

Contact Information



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