

Fannie Mae & eMortgages

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MBA Legal Issues in Mortgage Technology

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Overview

- Where We Are
- Legal Framework
- Fannie Mae Requirements
- eMortgage Status
- Practical Considerations

eMortgages are a Reality

- Business As Usual: As in the paper mortgage world, the process, technology, and legal risks have been manageable
- Our eMortgage Delivery system has been open for business since 2002
- We are buying eMortgage loans on a regular basis

Research Findings

- Recently completed industry-wide research
- What we learned...
 - eMortgage adoption is growing
 - Education is key – work done by MISMO, PRIA, SPeRS, and MERS extremely beneficial – more is needed
 - eMortgage implementations require lead time

Fannie Mae eMortgage Status

- Deliveries are for both Cash and MBS
- Have purchased eNotes from 17 states
- Have had major servicing events, servicing transfer, payoffs, and modifications

Legal Framework

ESIGN and UETA

- Notwithstanding any law to the contrary, a signature, contract, may not be denied legal effect because it is in electronic form
- Transferable Record provisions make eNotes equivalent to paper negotiable instruments

MERS eNote Registry

- Provides simplified means of compliance with Transferable Record provisions of ESIGN and UETA

Legal Framework

Uniform eNote Clause

- Borrower's agreement to the electronic transaction

“I expressly state that I have signed this electronically created Note (the "Electronic Note") using an Electronic Signature...”

- eNote Registry

“ **the identity of the Note Holder** and any person to whom this Electronic Note is later transferred will be **recorded in a registry maintained by [MERS]...**”

Legal Framework

Uniform eNote Clause

- eNote Registry

“The current identity of the Note Holder and the location of the authoritative copy..., will be available from the Note Holder or Loan Servicer, as applicable.”

“The only copy of this Electronic Note that is the authoritative copy is the copy that is within the control of the person identified as the Note Holder in the...Registry (or that person’s designee).“

Fannie Mae's Requirements

Getting Started...

- eMortgage Guide
 - Available on eFannieMae.com (search on “eMortgage”)
- Lender readiness process
- Contract
 - Amendment to Master Agreement that incorporates eMortgage Guide
- Documents other than note
 - Selling Guide permits most documents to be created electronically or to be imaged

Fannie Mae's Requirements

Key Points

- Uniform eNote
- eSignatures
- Borrower Attribution
- Disclosures
- Registration on MERS within 1 Day of eClosing

Practical Considerations

- Enforceability
- Modifications
- Foreclosure
- Payoffs

Questions?

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