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# Legal Issues in Mortgage Technology

## *WRAP UP SESSION*






# WRAP UP SESSION

- E-Sign Law
  - Disclosures Disclosures Disclosures
  - RESPA's impact
  - Privacy
  - Industry's Efforts
- 



# E-Sign Act

- Electronic Signatures Recognized
  - Disclosures may be sent electronically
  - Other Relevant Stuff
- 



# E-Sign Act


- Electronic Signature
  - Sound
  - Symbol
  - Process
- With Present Intent to Authenticate






# E-Sign Act

E-Signature includes

- Click-Through
  - PIN #
  - Biometric
  - Digitized Picture of handwritten Signature
  - Use of specialized technology and processes
- 




# E-Sign Act

- Standard Contract Law applies
  - E-Sign law does not require signature prove identity or protect record from alteration
- 




# E-Sign Act

- Type of “signature” relied upon for a given transaction is dependent on the level of complexity or value of the transaction
    - Click-Through vs. Sophisticated Technology
  - Make sure that consumer knows that the click-through = Contract
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# E-Sign Act

## DISCLOSURE

- The consumer has **affirmatively consented** to receiving electronic disclosures, and has not withdrawn such consent.
- 




# E-Sign Act

- The consumer, **PRIOR TO CONSENTING**, is provided with a **clear and conspicuous statement**, informing the consumer of the following
    - Any **right** the consumer has to receive **hardcopy**;
    - The **right** of the consumer **to withdraw** his/her consent, the terms of such withdrawal, and the procedures to effectuate this withdrawal;
    - If **consent applies to one transaction**, or **certain categories**
    - The **procedures to update information** needed to contact the consumer electronically;
    - The **method** to obtain and fee charged for hardcopy
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# E-Sign Act

- The consumer, **PRIOR TO CONSENTING**, is provided with a statement outlining the **hardware and software requirements** for accessing and retention of the electronic disclosure;
  - The **consumer consents electronically**, or confirms his/her consent electronically in a manner that **reasonably demonstrates that the consumer can access the electronic disclosure.**
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# E-Sign Act

- Change of System Requirement
    - Advise consumer
  - Verification and Acknowledgment requirements unchanged
  - Certain events/transactions not covered (bad things gonna happen)
  - Remember E-Sign vs. UETA conflicts
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# DISCLOSURES

- TILA
  - RESPA
  - ECOA
  - GRAMM LEACH BLILEY
- 




# DISCLOSURES

*“So, like, if many of the disclosures are triggered at ‘Application,’ then, like, what’s an Application?”*





# DISCLOSURES


- Submission of borrower's financial information in anticipation of a credit decision, whether written or computer generated.
  - An oral or written request for an extension of credit that is made in accordance with procedures established by the creditor
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# DISCLOSURES


*Could be that:*

*In a single instance you have an  
“Application” under one Federal  
law, but not under the other!*






# DISCLOSURES

- Pre-Approvals are a possibility
    - Lender drives loan amount/terms that borrower qualifies for
  - May be that law does not apply to you (i.e., broker vs. lender)
  - Calculators may not trigger laws
- 



# DISCLOSURES


## E-Delivery

- Consent is required
  - If borrower does not consent, and this is the only method of delivery for you, then advise that you can't help them.
    - Issues that may arise??
- 



# DISCLOSURES


## TILA

- Fed Reserve Board issued Regs
    - These are not mandatory
  - All substantive and timing requirements remain the same
  - Redelivery Requirement
  - What will satisfy consumers' Attorneys, regulators, and investors?
- 




# DISCLOSURES

## ECOA

- “Application” may be triggered even if lender’s policy is to collect written 1003
    - Actions (pulling credit reports, rendering decision) may act as the “policy.”
  - Regs by Fed Reserve Board not mandatory
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# DISCLOSURES

- RESPA
  - Follow E-Sign Act provisions
  - HUD has not spoken yet
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# DISCLOSURES

Generally

- What will satisfy consumers' Attorneys, regulators, and investors?
  - Follow hard-copy process-logic and apply to internet environment
    - Higher Scrutiny, hence higher thresholds?
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# DISCLOSURES

- Lending Tree's demonstration provided insight on how disclosure requirements may be implemented on the internet
  - Links, check-boxes, clear statements in the appropriate chronology in the process is the key for e-disclosures
  - Lending Tree's results are unique to Lending Tree
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# DISCLOSURES

- Posting on Website may be appropriate
  - Simplicity may be the answer
  - Simplicity may not be the answer
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# RESPA

## ● Section 8 Problems

- Click-through vs. paying for referrals
  - Providing a “service” for your fee = no referral
  - Difficulty may be determining the amount of fee that may be collected to overcome “referral” scrutiny
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# RESPA

- CLOs
  - Co-Branding not favored by HUD if one party doesn't earn his keep
  - Joint Ventures/ABA's
  - Just make sure that parties are providing settlement service; or take relationship out of the settlement service realm
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# PRIVACY

- Lender must provide a notice to Consumers and Customers re:  
Lender's privacy policy (non-public)
  - What info collected
  - How used
  - How to opt out
- 



# PRIVACY

- GLB specifically authorizes the use of e-disclosure
  - E-Sign, then, not triggered
    - Consent is not required
  - Reality Check – Go through consent process anyway since other disclosures will require this anyway.
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# PRIVACY

- Regulators are adjusting to the realities of implementation
  - Account #'s on security instrument is ok
- Joint Marketing Exception
  - Must be endorsed jointly






# INDUSTRY'S EFFORTS

- MISMO
  - Transactional data standards
- REFSMO
  - Industry Security and PKI
- E-Mortgage
  - Extending MISMO standards to create true electronic mortgage infrastructure





# INDUSTRY'S EFFORTS

- MISMO data standards are well underway
    - Freddie and Fannie agreed to common automated underwriting systems data
    - Contemplates very advanced “document”
  - What's PKI?
    - Public Key Infrastructure
      - Digital certificates, tamper-proof E-docs
- 



# INDUSTRY'S EFFORTS

- E-Mortgage guidelines and recommendations
  - Draft release 1.0 released at MBA annual
    - Well received
    - in industry comment period
    - tweaks to be done





# INDUSTRY'S EFFORTS

When will we see bona-fide e-mortgages  
in the mainstream?

Realistically, 5 years to 10 years

One year, baby-steps





# INDUSTRY'S EFFORTS

## Electronic Recordation

In Florida, w/in 2 years, 50% of submissions will be electronically transmitted

Trend to Open systems to accommodate various formats






# INDUSTRY'S EFFORTS

- On a multi-state level
  - In the process
  - UETA addresses in some fashion





# What to Take Home

- Mortgage Transaction is “document” intensive
  - Laws exist to benefit from internet lending
    - Use “paper” environment to determine internet-related requirements
  - Laws are not proven for 100% confidence level
    - Common Sense approach is highly recommended
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# What to Take Home


- Don't try to make the process harder than is necessary
  - How complex is the transaction
  - What is the value of the transaction





# What to Take Home


Technology exists (in theory) to do  
paperless mortgages

- E-Docs
  - E-Disclosures
  - E-signatures
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# What to Take Home

## Impediments to Full e-mortgage loan

- Operational Infrastructures not prepared
  - Secondary Market not ready
    - No standardization originating lender can count on
  - County Recorders offices not ready
  - Consumers not ready
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# What to Take Home

- Industry Groups are making headway in addressing these issues
  - Get involved!
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*Thank You!!*

