

# The National eNote Registry: An Industry Perspective

MBA Doc Custody Conference

Las Vegas, NV

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# Project Background and History

- Jan 01: MISMO launches eMortgage workgroup
- Oct 01: eVault Subgroup recommends establishment of a “National Registry”
- Dec 01: MBA’s ResTech assumes stewardship for Registry project
- Apr 02: ResTech “Subgroup” formed, would become eNote Registry Task Force
  - Includes ResTech & cross-section of industry representatives – lenders, warehouse lenders, doc custodians, GSEs, Wall Street investors, tech vendors, etc.

# Project Background and History

- Dec 02: eNote Task Force releases executive summary and visualization of Registry concepts
- Jan 03: MISMO releases eMortgage guidelines 1.0
  - *Includes SMART Doc Specification (how to make an eNote)*
- 1Q03: eNote Registry Task Force finalizes Requirements Document & Executive Summary
- Mar 03: MBA announces release of Registry Requirements Document (and industry comment period) during MBA Technology Conference

# Legal Foundations – UETA

- Uniform Electronic Transactions Act
- State law blueprint, completed in July 1999
- States can adopt, with or without customization
- 41 states + DC have adopted so far

# Legal Foundations – E-SIGN

- Electronic Signatures in Global and National Commerce Act
- Modeled after UETA – uniform national set of rules for e-commerce
- Took effect in October 2000
- Overrides states that have not adopted UETA, or that modified it in adoption
- Bottom line: “e” signatures can bear same legal weight as “wet” signatures

# Concept of Transferable Records

- Electronic equivalent of a Negotiable Instrument (for eNotes)
- Control = Possession
- System requirements for providing UETA/ESIGN “Safe Harbor” are significant
  - *The Registry provides infrastructure to help*

# The Challenge

- System must identify a single, unique, authoritative copy
- Impossible to flag authoritative copy “identification” in only one copy of an electronic document
- Legal support for electronic contracts is in place, technology infrastructure is catching up
  - Historic first: Law leading Technology!

# The Solution

- A central registry to identify:
  - The Controller of the eNote, and
  - The location of the authoritative copy
  - *Note: The Registry must be referenced in eNote text to close the legal loop*

# Key Terms

- **Authoritative Copy:** The copy of an eNote or other electronic transferable record over which Control can be identified and asserted by the Controller (or owner) of the eNote. Roughly equivalent to an original paper note with wet ink signatures, where physical possession is the analog of “control.”
- **Controller:** The electronic equivalent of the Owner of a paper Note – the entity that is in Control of the Authoritative Copy of the eNote.
- **eCustodian:** A legal fiduciary designated by a Controller to administer the Controllers’ eNotes on its behalf in an eVault.
- **eVault:** A secure electronic repository for eNotes. May be operated by an eCustodian or by a lender or investor to store their own eNotes. Similar to a paper vault run by the Document Custodian industry today.
- **Transferable Record:** An eNote issued in accordance with the provisions of Section 16 of the UETA and Title II of E-SIGN

# Requirements and Assumptions

- eNotes must contain language which references the National Registry to identify their Controller
- All parties interacting with the National Registry must have executed membership agreements with the National Registry
- Industry must standardize around a single National Registry

# Frequently-Asked Question

- Could more than one Registry co-exist?
  - In theory, yes
  - But, multiple registries would...
    - undermine the registry's core function of unambiguously identifying the single authoritative copy (and its controller) without conflict
    - require additional messaging infrastructure and standards to interact

# Benefits of the National Registry

- Provides an industry standard utility for identifying the authoritative copy and controller of an eNote
- Simplifies post-closing e-doc checks
- Greatly reduces possibilities of eNote ownership conflicts
- Defines common messaging for Closing Agent, Lender, Investor, and eVault communications

Thank you!

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