



# The ABCs of Digital Closings

Presented by:  
LEGAL EDUCATION DEPARTMENT  
of  
Attorneys' Title Fund Services, LLC

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# The ABCs of Digital Closings

Presented by: Michael Rothman, Esq.  
Senior Manager, The Fund

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## Today's Program: Overview

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Laws involved

---

What's involved with an eMortgage closing?

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What's a SMART document?

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The role of MISMO

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What makes a note an eNote?

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The role of the title agent

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## Why Digitize the Mortgage Process?



Lower costs

Shortened loan  
life cycle

Faster funding  
(2-4 days  
saved)

Reduced  
operational  
errors

No 'lost notes'

Fewer missing  
signatures,  
closing errors

More efficient  
closing

Capture of data  
that need not  
be re-verified

Consumer  
demand

<sup>6</sup>  
The  
Fund

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## Benefits of eMortgages

*"From an operational efficiency standpoint, eMortgages reduce document processing and handling costs, as the borrower-signed closing documents are available in the eClosing room right after the closing and there is no shipping involved. Since there is no need to wait on receiving signed closing documents from closing agents, lenders can start their post-closing review sooner. Electronic closing systems prevent a closing process from being completed without all signatures and as a result, there is no need to follow up on missing documents or signatures, saving time for both lender and closing agent, all while significantly reducing customer satisfaction issues."*

- Raj Penugonda, Product Dev. Dir., Freddie Mac

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## eClosing Cost Savings

- Hybrid to eNote closings increased lender cost savings **\$154.52 - \$443.85** per file
- For settlement agents, the cost savings was **\$97.00** per transaction
  - Plus a reduction of 104 minutes per full eClosing session



*The ROI of eClosing in Real Estate, MarketWise Advisors, LLC, 2022*

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## Who's Originating and Investing in eMortgages?

### ORIGINATORS

- Guaranteed Rate
- LoanDepot.com
- United Wholesale Mortgage, LLC
- Rocket Mortgage
- CrossCountry Mortgage
- Lennar Mortgage

### INVESTORS

- Fannie Mae
- Freddie Mac
- Federal Home Loan Banks
- Wells Fargo
- Chase
- Pennymac
- Mr. Cooper

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## Digital Mortgage Statistics

As of Aug. 2022

- 43 states passed RON legislation
- 2,454 of 3,006 (82%) U.S. counties allow eRecording
- 1,800,000+ unique eNotes registered with MERS
- 5.8% notes registered with MERS now eNotes (07/2022)
  - Despite decrease in refinances, 5%+ of purchase and sale transactions involve eNotes



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## Overview: The eMortgage Ecosystem

Comprises 6 essential elements

eCommerce laws

Investor requirements

eNote language within borrower's Note

eClosing platform

eVault provider

MERS eRegistry

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# eCommerce Laws

*In Support of the Electronic Closing*

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## Florida Electronic Signature Act

Sec. 668.001-006, F.S., adopted in 1996

- States:
- Electronic signatures same legal effect as written signatures, unless otherwise provided by law

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## E-Signatures in Practice

Held: email exchange between parties constitutes a writing satisfying statute of frauds

- *U.S. Distributors, Inc. v. Block*, 2009 WL 3295099 (S.D. Fla. Oct. 13, 2009)



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## FL Uniform Electronic Transaction Act (“UETA”)

Sec. 668.50, F.S., adopted in 2000

- Based on model law drafted by National Conference of Commissioners on Uniform State Laws
- Provides:
- **legal framework** for use of electronic records and signatures in gov’t or business transactions
- legal recognition to electronic records, etc.,
  - **Precludes denial of legal effect** because electronic record was used in formation of contract



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## Florida UETA (cont.)

Sec. 668.50 (16), F.S. – “Transferable Records”

- Creates paradigm for eNotes in Florida
- Places an eNote on par with paper note under Ch. 673, F.S. (negotiable instruments)
- Provides for holder in due course defenses available under Secs. 673.3021; 677.501, and 679.330, F.S.



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## Federal Electronic Signatures in Global and National Commerce Act

A/K/A the “ESIGN Act” 15 U.S.C., Secs. 7001 et. seq. (2000)

- States must allow use of e-signatures if parties agree
- National legislation for states that didn’t adopt UETA
- Applies to transactions in interstate commerce, foreign commerce, with the Federal government
- Consumer disclosures required; prior consent
- Maintenance & accessibility of electronic records and remain accessible for requisite period
- Hardware requirements
- “eNotes” as defined in Act must be secured by real property



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## UETA and E-Sign Act Essential Requirements

- **Intent:** only valid if each party intended to sign
- **Consent:** consumer has -
  - received UETA Consumer Consent Disclosures
  - affirmatively agreed to use electronic records
  - not withdrawn consent
- **Association of signature** with the record
- **Record retention**



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## E-Signatures in Practice

“Click Here,” “Click Yes” or “Agree and Place Order” is valid acceptance of terms and conditions, incl. arbitration clause

- *Bergenstock v. LegalZoom.com, Inc.*, 2015 WL 3866703



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## Florida Uniform Commercial Code

Sec. 679.1051, F.S. adopted in 2001

- Perfection by “**control**”
- If a system establishes:
  - single authoritative copy (AC) of the record (eNote) that’s unique, identifiable and unalterable
  - AC identifies secured party as assignee of the record
- Tracks Sec. 668.50(16)(c), F.S.



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## Uniform Real Property Electronic Recording Act

Sec. 695.27, F.S., adopted in 2007

- Places electronic records on par with paper documents
  - For purposes of recording signed originals
- Authorizes county recorders to accept electronic records
- Department of State responsible for standards and rules



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## Remote Online Notarization Statutes

Secs. 117.201-305, F.S. (effective Jan 1. 2020)

- FL online notary may perform any of the functions of a notary public under part I of Sec. 117, F.S., except conduct a marriage ceremony
- FL statutes require use of a RON platform that allows for proofing credentials (driver license, passport) and person (via KBA, maybe biometrics)
- SECURE Act has passed House, now before U.S. Senate



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## Coming Soon?

SECURE Notarization Act of 2022

- **S**ecuring and **E**nabling **C**ommerce **U**sing **E**lectronic Notarization Act
- Passed in U.S. House, pending in U.S. Senate
- Game changer?
- Permits immediate nationwide use of RON with minimum standards and provides interstate recognition of RON
- Supported by NAR and ALTA



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# Digital Closings

## Definitions and Terms

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### What's an Electronic Record?

- A contract or other record created, generated, accessed, sent, communicated, received, or stored by electronic means

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## What's a Digital Signature?

- Digital Signature provides evidence of authenticity of the Electronic Signature and the Electronic Record.
- In banking industry also known as Tamper Seals, Tamper Seal Signatures, and Tamper Evident Signatures



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## Digital vs. Electronic Signature

- **Digital signature – Technical concept** involving cryptography or mathematical equations. Think of it as a fingerprint embedded within a document
- **Electronic signature – Legal concept** codified by E-SIGN Act
- To be valid e-signature scheme, must have ways to verify
  - Identity of entity signing
  - Signer intended to affirm document signed
  - e-signature is associated with signed document



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## What's a Transferable Record?

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



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## eClosing vs. eMortgage – What's the Difference?

### eClosing

- Act of closing a mortgage loan electronically
- In a secure digital environment
- Can be a hybrid process (e.g. note and mortgage “wet-ink” signed, while other docs signed electronically)

### eMortgage

- Broadly speaking, refers to use of electronic processes and signatures in the mortgage production system
- BUT, for industry insiders, refers to electronically signed promissory note (eNote) via an **eClosing platform** and registered with the **MERS eRegistry** upon execution

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# eClosing with eNote = eMortgage!

- eClosings result in “eMortgages” only if the promissory note is signed electronically
- Wet signing the note and e-signing the balance of the closing package electronically is an “eClosing” but is not an “eMortgage closing” in industry parlance

# eNote Closing System Providers



**eClosing Technology Service Provider List** (continued)

Provider	eNote	eClose	eVault
Pavaso	✓	✓	✓
[Polunsky, Bellini Green LLP] eClosePlus	✓	✓	✓
SignaDocuments, Inc. (Evolve Mortgage Services)	✓	✓	✓
Simple Nexus	✓	✓	✓
Snadocs	✓	✓	✓
Symigo, Inc.	*	*	*

**Definitions**  
**eNote** – Production of a MISMO v1.02 SMART Doc eNote  
**eClose** – Supports digital execution of closing documents, including MISMO v1.02 SMART Doc eNote  
**eVault** – Connectivity to the MERIS eRegistry is enabled, including capabilities to validate, maintain, transfer, and service eNotes

**Key**  
 ✓ Capability included in provider offering  
 \* Capability provided via partnership and may require separate contract with each provider



## What Makes a Note an eNote?

- Signing a Note with an electronic signature doesn't make it an eNote
- eNote must be created by an eClosing system and result in a Transferable Record that meets the ESIGN Act
- eNote will be in an approved **SMART Doc** format for compatibility with **eVaults** and the **MERS eRegistry**
- eNotes are machine-readable XML documents which permits data to be extracted and compared directly to loan data submitted to Fannie Mae, and provides lenders the custodial certification required for delivery to Fannie Mae



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## What's a SMART Doc?

- Electronic document based on **MISMO** specification
- Locks together document's data, visual presentation, signatures
- Detects subsequent tampering
- Programmed to guarantee original document's integrity



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## SMART Docs Explained

- **S**ecurable, **M**anageable, **A**rchivable, **R**etrievable and **T**ransferable
- Comprised entirely of data
- Contain secure signature, tamper seal, and digital record of everything that happened to them
- Reduces/eliminates due diligence by investors; no “staring and comparing”
- Facilitates easier aggregation for repackaging into bonds



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# Role of MISMO

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# What is MISMO?

## Mortgage Industry Standards Maintenance Organization

<p>Subsidiary of the Mortgage Bankers Association (MBA)</p>	<p>Formed in 2001 to establish XML data protocol</p>	<p>Over 300 member organizations participating</p>
<p>Responsible for developing standards</p> <ul style="list-style-type: none"> <li>Through "Development Workgroups" (DWG) and "Communities of Practice" (CoP)</li> </ul>	<p>CMSP = Certified MISMO Standards Professional</p>	<p>MISMO Software Compliance Certification</p>



### Collaboration in Action

**300+**  
MEMBER COMPANIES

LENDERS SERVICERS ISSUERS CSS CFPB FHA FHFA  
GINNIE MAE TECHNOLOGY COMPANIES SERVICE  
PROVIDERS MORTGAGE INSURERS FANNIE MAE FREDDIE  
MAC FHLS GOVERNMENT AGENCIES AND REGULATORS

**1,500+**

LENDERS SUPPORTING NEXT-GENERATION SOLUTIONS BY PAYING THE INNOVATION INVESTMENT FEE

**75+**  
STANDARDS

**38**  
INITIATIVES IN PROGRESS

**30+**  
WORKGROUPS

**80%**  
INCREASE IN LINKEDIN FOLLOWERS

MERSCORP Holdings reports there have been **1.4 million eNote registrations** since inception. All eNotes are **MISMO SMART Docs**,<sup>+</sup> which support the industry's evolution from images to electronic documents.



## MISMO Members

Representative members:

Bank of America

Fannie Mae

Black Knight

Nexsys Technologies

Blend

NotaryCam

Doc Magic

Old Republic National Title

DocuSign

Equifax

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## MISMO'S Mortgage Industry Process Area

ORIGINATION	REAL ESTATE SERVICES	SECONDARY
Mortgage Application	Title	Delivery of Loans to Investors
Underwriting	Appraisal	Funding
Closing	Credit Reporting	Bulk Pool Transfer
	Flood	Securitization



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# MISMO Initiatives

## Support Progression of Digital Mortgages



Increased use of RON standards and SMART docs



Deliver MISMO RON-certification



Certification of eClosing systems



Standards for Uniform Residential Loan Applications



Standards for Loan Closing Instructions templates



Promotion of e-Eligibility Exchange

# Loan Closing Instructions - Templates

### MASTER CLOSING INSTRUCTIONS

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Disbursement of Settlement Proceeds .....	C.2

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### TRANSACTIONAL CLOSING INSTRUCTIONS

#### BORROWER CONTACT INFORMATION

Borrower Name(s): \_\_\_\_\_  
 Phone Number: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Current Address: \_\_\_\_\_

#### VESTING AND SIGNATURE INFORMATION

Borrower Vesting: \_\_\_\_\_  
 Additional Signers: \_\_\_\_\_  
 Use of Power of Attorney (if authorized): \_\_\_\_\_  
 Trust(s) of Entities: \_\_\_\_\_

#### PROPERTY INFORMATION

Subject Property Address(es): \_\_\_\_\_  
 APN (Assessor's Parcel Number): \_\_\_\_\_  
 Property Type: \_\_\_\_\_  
 Property Estate Type: \_\_\_\_\_

## MISMO e-Eligibility Exchange

- Serves as central source of information on the criteria impacting digital mortgages
- Features information on trading partner requirements, e-notarization regulations, county recording regulations, settlement agent readiness and title underwriter requirements
- 9,000 locations listed in ALTA Registry and 2,000 reflecting RON readiness



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## ALTA and MISMO

### ALTA Partners With MISMO for e-Eligibility Exchange Initiative

"ALTA announced that it will be the sole provider of title and settlement data for the [MISMO e-Eligibility Exchange](#), powered by Snapdocs. The e-Eligibility Exchange serves as a central source of information on the criteria that impact digital closings. The data will be provided to MISMO under a contributor agreement with the national [ALTA Title & Settlement Agent Registry](#), the national database of title and settlement agents."

*ALTA press release April 12, 2022*



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# Uniform eNotes

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## Uniform eNotes

Special Header (Fannie Mae)

- Has new line below word “Note” serving as reminder eNote is designed only for electronic signatures.
- The word “Note” replaced by:  
Note  
(For Electronic Signature)

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# Uniform eNotes

## Special Footers (Fannie Mae)

- Fixed-rate tagline:
  - MULTISTATE FIXED RATE eNOTE--Single Family -- Fannie Mae/Freddie Mac Uniform Instrument Form 3200e
- For state-specific fixed-rate notes:
  - FLORIDA FIXED RATE eNOTE--Single Family -- Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3239e 07/2021
- ARM tagline:
  - MULTISTATE ADJUSTABLE RATE eNOTE-30-day Average SOFR--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3441e 07/2021 21



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# Uniform eNotes

## eNote Clause (Fannie Mae)

- The eNote contains a new paragraph preceding the signature block
- Contains 4 sub-paragraphs:
  - (A) Definitions
  - (B) Issuance of Transferable Record
  - (C) Identification of Registry and Note Holder
  - (D) Conversion to a Paper Note



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## (A) Definitions

- The following terms used in this Section 11 are defined as set forth below: (1) "**Authoritative Copy**" will have the meaning ascribed to such term in the UETA and E-SIGN (both as defined below), as amended from time to time; (2) "**Electronic Note**" means an electronically created note; (3) "**Electronic Record**" means a Record created, generated, sent, communicated, received, or stored by electronic means; (4) "**Electronic Signature**" means an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign a record; (5) "**E-SIGN**" means the Electronic Signatures in Global and National Commerce Act, codified at 15 U.S.C. § 7001 et seq., as it may be amended from time to time, or any applicable additional or successor legislation that governs the same subject matter; (6) "**Note Holder Registry**" means a registry system that is used to record the issuance and transfer of Electronic Notes; (7) "**Paper Note**" means an Electronic Note that is converted into a paper note; (8) "**Record**" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; (9) "**Transferable Record**" means an Electronic Record that: (i) would be a note under Article 3 of the Uniform Commercial Code if the Electronic Record were in writing and (ii) I, as the issuer, have agreed is a © 2022 Fannie Mae. 6.22.2022 13 of 14 Transferable Record; and (10) "**UETA**" means the Uniform Electronic Transactions Act, as enacted by the jurisdiction in which the property is located, as may be amended from time to time, or any applicable additional or successor legislation that governs the same subject matter.

## (B) Issuance of Transferable Record

I have signed this Electronic Note using my adopted Electronic Signature. By signing this Electronic Note using my adopted Electronic Signature, I am: (1) promising to pay the amount owed, as evidenced by this Electronic Note, to the Note Holder, and (2) agreeing that this Electronic Note is a valid, enforceable and effective Transferable Record issued by me to the Note Holder under the transferable records provisions of UETA and E-SIGN. By virtue of my agreements above, this Electronic Note is a Transferable Record.

## (C) Identification of Registry and Note Holder

After I issue this Electronic Note to the Note Holder, the Note Holder will register this Electronic Note in the Note Holder Registry. This Electronic Note will be registered in the Note Holder Registry operated by [MERSCORP HOLDINGS, INC., a DE corp.]. I agree that the Note Holder has the right, at any time to transfer the registration of this Electronic Note to another Note Holder Registry. The Note Holder Registry will contain the identity of the Note Holder and the location of the Authoritative Copy of this Electronic Note. I understand that I may request a copy of the Authoritative Copy of this Electronic Note from the Note Holder or the Note Holder's designee. The only copy of this Electronic Note that is the Authoritative Copy is the copy identified by the Note Holder named in the Note Holder Registry or the Note Holder's designee.



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## (D) Conversion to a Paper Note

I agree that the Note Holder has the right, at any time, to convert this Electronic Note into a Paper Note. If this Electronic Note is converted to a Paper Note: (1) the Paper Note will be governed by the negotiable instrument provisions of the Uniform Commercial Code as enacted in the jurisdiction where the Property Address is located; (2) a copy or representation of my Electronic Signature affixed or attached to a printed paper copy of the Electronic Note will be, for all legal purposes, my adopted, original, written signature on the Paper Note; (3) I have authenticated, issued and delivered the Paper Note to the Note Holder; (4) the Paper Note will be a valid original writing for all legal purposes; (5) upon conversion of this Electronic Note to a Paper Note by the Note Holder, my promise to pay the amount owed, evidenced by this Electronic Note, will automatically convert to, (without interruption, alteration or diminution) my promise to pay the amount owed, evidenced by the Paper Note; (6) I am bound by my promise to pay the amount owed evidenced by the Paper Note; and (7) the Note Holder will update the Note Holder Registry to reflect the conversion of this Electronic Note to a Paper Note and remove the registration of (de-activate) this Electronic Note in the Note Holder Registry such that the Electronic Note ceases to have any effect or validity.



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## No Paper Note eMortgage Closing!

- Fannie Mae guidelines:
- To ensure that the eNote is a discrete transferable record, closing instructions or other procedures should be created to ensure that the borrower signs only the eNote at closing and does not also sign a paper version of the Uniform Note.



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## Amending eNotes

- Lenders may amend eNotes via a borrower-signed eNote Correction Agreement – this covers clerical errors (execution city, state, property address, misspelled lender name)
- Non-clerical errors require new eNote executed (note date, loan amount, rate, maturity date, P&I amount, etc.)



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# eMortgages

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## eMortgage Closing Process: Overview

Ex.: Fannie Mae (FNMA) as Investor

1. eNote (and other docs) signed electronically through use of an eClosing system, including RON

2. Documents are sealed by the system with tamper seal

3. eNote is registered on MERS eRegistry within 1 biz day

4. Lender transmits eNote using MERS eDelivery to FNMA's eVault

5. GSE eNote Vault validates tamper-evident seal and matches seal value stores in MERS eRegistry; if value matches, eNote is accepted for delivery

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## What's a “System of Record”?

- Authoritative system recognized to establish the identity of the **Controller** of a registered eNote and the **Location** of the **Authoritative Copy** of the eNote
- The **MERS eRegistry** is the most commonly used System of Record
- Think of the eRegistry as the “librarian” of the eNote world – tracking control of the eNote and the eVault where it's stored



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## What is MERS?

- MERS = Mortgage Electronic Registration System, Inc.
  - National electronic registry that tracks changes in servicing rights and beneficial ownership interests in U.S.-based mortgage loans
- Wholly-owned subsidiary of MERSCORP Holdings, Inc.
- MERSCORP Holdings is part of the ICE Mortgage Technology group that includes Black Knight, Ellie Mae, Inc. and Simplifile



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## Overview of the MERS® System and MERS® eRegistry

MERS® System: Security Instruments	MERS® eRegistry: Electronic Notes
<ul style="list-style-type: none"> <li>National electronic registry that tracks changes in Mortgage servicing rights and beneficial ownership interests in loans secured by residential real estate.</li> </ul>	<ul style="list-style-type: none"> <li>System of record for identifying the Controller (holder) and Location (custodian) of the Authoritative Copy of an eNote.</li> </ul>
<ul style="list-style-type: none"> <li>Transactions may be initiated manually via MERS® Online or via an interface</li> </ul>	<ul style="list-style-type: none"> <li>All transactions are system-to-system, eVault to MERS eRegistry</li> </ul>
<ul style="list-style-type: none"> <li>Secure system where lenders submit and track Security Instrument information.</li> </ul>	<ul style="list-style-type: none"> <li>Secure system where lenders submit and track eNote information.</li> </ul>
<ul style="list-style-type: none"> <li>Transfer transactions require an overnight cycle to process</li> </ul>	<ul style="list-style-type: none"> <li>Transactions are submitted via eVault system interfaces, with an online application to view information.</li> <li>Transfer transactions are processed real time.</li> </ul>

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## What's an eNote Registration?

- The process of creating the initial record in the MERS eRegistry for identifying the Controller, Location, and other key information of the eNote

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## eNote Registrations: Year Over Year



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## eRegistry 'Rights Holder' Positions

- **Controller**
- **Location** (Document Custodian)
- **Master Servicer**: Name of the mortgage servicer
- **Delegatee for Transfers** (as per Controller)
- **Secured Party**: Used when pledging loan as collateral

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## What's "Control" and Who is the "Controller"?

- ESIGN and UETA provide that a "person having control" of a Transferable Record is the equivalent of a UCC holder of a paper note
- "Controller" is the term used by the **MERS eRegistry** system and designates the person having control of the eNote



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## What's Location & Authoritative Copy?

- **Location** is the entity named on the MERS eRegistry that maintains the Authoritative Copy of the eNote either as Controller or as a custodian on behalf of the Controller.
- **Authoritative copy** is the unique, identifiable, and unalterable copy of the Transferrable Record (eNote) maintained within the Control environment established by the Controller



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## Where is the eNote “Stored”?

- Lenders using eNotes need access to their own **eVault** to properly store eNotes until the date of transfer
- eNotes get transferred from eVault to eVault
- Upon each transfer an adjustment is made of the ‘rights holder’ positions in the MERS eRegistry



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## What's an eVault?

- A secure storage solution that meets the requirements of eSignature laws. The concept is analogous to a paper note vault administered by a document custodian
- Once the eNote is signed and sealed, it is instantly deposited into an eVault, thereby establishing the authoritative original document
- The eVaults communicate with the MERS eRegistry



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## Enforcing eNotes in Court

- Controller (e.g. GSE) identified in MERS eRegistry transfers control of Authoritative Copy of eNote to Servicer
- Submit Electronic Note Affidavit (see Handout for form)
- Servicer files action in own name
  - Mortgages registered with MERS will be assigned to Servicer

*Rivera v. Wells Fargo*, 189 So.3d 323 (Fla. 4th DCA 2016): Affirmed trial court's judgment for lender, holding affidavits submitted by lender sufficient to establish lender's standing and right to foreclose.



# The Role of the Closing Agent

In the Age of the Digital Closing

## Title Agent's Digital Mortgage To Do List

Get Ready for the Digital Revol.ution

- RON readiness
- Ability to eRecord
- eClosing platform
  - <https://singlefamily.fanniemae.com/media/9466/display>
- ALTA Registry
  - [www.alta.org/registry](http://www.alta.org/registry)
- Education



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**Thank you**  
**for your time and attention**

For more information please contact:

**Michael Rothman**

[mrothman@thefund.com](mailto:mrothman@thefund.com)



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## ALTA Partners With MISMO for e-Eligibility Exchange Initiative

*April 12, 2022*

ALTA announced that it will be the sole provider of title and settlement data for the [MISMO e-Eligibility Exchange](#), powered by Snapdocs. The e-Eligibility Exchange serves as a central source of information on the criteria that impact digital closings. The data will be provided to MISMO under a contributor agreement with the national [ALTA Title & Settlement Agent Registry](#), the national database of title and settlement agents.

The MISMO e-Eligibility Exchange features information on trading partner requirements, e-notarization regulations, county recording requirements, settlement agent readiness and title underwriter restrictions. The platform helps real estate and finance professionals navigate these factors so each closing can be as digital as possible.

“We’re pleased to collaborate with MISMO and provide the e-Eligibility Exchange with the most accurate title and settlement services company data available in the industry,” said ALTA CEO Diane Tomb. “It’s crucial that the title insurance industry urge progress and innovation in the digital closing space. With 9,000 locations already listed in the ALTA Registry and 2,000 of them showing a state of ‘RON readiness,’ now is the time for all title insurance companies and real estate attorneys to register.”

The ALTA Registry is a unique real estate utility created specifically for the mortgage industry and service providers. For the first time, the ALTA Registry will provide data on individual title insurance and settlement services companies, identified by an ALTA ID, as well as each location’s “RON readiness” capabilities. The ALTA Registry is free and ALTA membership is not required.

ALTA launched the [ALTA Registry](#) in 2017 as the first national database of title insurance and settlement services companies. In addition to contact information and branch locations, each ALTA Registry listing also includes a title insurance company’s or real estate attorney’s unique seven-digit ALTA ID.

The e-Eligibility Exchange is now available to all MISMO members via an online interface and APIs that can be integrated into other technology platforms.

“The MISMO e-Eligibility Exchange serves as a resource for the entire industry and its success relies on the quality and accuracy of the contributed data,” said Seth Appleton, President, MISMO. “The exchange will benefit tremendously from ALTA participation, with its timely and accurate title insurance and settlement services company data. The fact that a title agent can only join the ALTA Registry after its title insurance underwriter has confirmed its information gives us ongoing confidence that we will have data that is unique and up-to-date. This accuracy, together with the uniqueness of the ALTA ID, will help make the e-Eligibility Exchange a compelling and innovative industry resource.”

The e-Eligibility Exchange draws on Snapdocs' and MISMO's respective areas of expertise, with Snapdocs providing the technology that powers the e-Eligibility Exchange, and MISMO working with industry participants such as ALTA to collect and maintain the most robust and up-to-date digital closing criteria possible.

"At Snapdocs, we're working backwards from a world where the many benefits of digital closings are accessible to everyone," said Camelia Martin, vice president of industry and regulatory affairs at Snapdocs. "Through our partnership with MISMO, and the collaborative efforts of the many contributors to the e-Eligibility Exchange, we're empowering lenders to overcome one of the most significant barriers to the adoption and scalability of digital closings. This initiative is a perfect example of what the mortgage industry can accomplish when we come together to drive innovation."

The number of title and settlement companies offering digital closings increased 228% compared to 2019, according to ALTA's 2021 Digital Closing Survey. The survey of 300 title professionals showed that 46% offered digital closings in 2020 during the COVID-19 pandemic. Prior to the health crisis, a 2019 survey showed that 14% of companies offered digital closings two years ago.

While the number of digital mortgage closings completed continues to rise, industry-wide adoption is still hindered by the complexity and lack of transparency into factors that determine how "e" closings can be. The e-Eligibility Exchange helps to maximize the digitization of closing processes, including shifting to eNote and RON, and increasing these benefits for every participant involved in a mortgage loan's life cycle.

"eClosing volume has grown significantly in the last two years due to growing acceptance from stakeholders such as investors, servicing buyers, etc., as well as the growing adoption of e-recording and e-notarization at the jurisdictional level," said Raj Penugonda, product development director at Freddie Mac. "However, since acceptance and adoption is not yet uniform across the ecosystem, lenders need to make a loan level determination of which loan documents can be electronically signed. This makes it difficult for them to scale their eClosings. MISMO e-Eligibility Exchange helps address this challenge. As part of our efforts to help the industry's journey towards a true digital mortgage, Freddie Mac is excited to work with MISMO in developing e-Eligibility Exchange."

[Click here](#) to get your company listed in the ALTA Registry.

Contact ALTA at 202-296-3671 or [communications@alta.org](mailto:communications@alta.org).



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## **eMortgage Foreclosure Educational Aid**

Document Version-2.0

05/11/18

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## I. Introduction

This educational aid resource, created by Fannie Mae and Freddie Mac (the “GSEs”), is intended to address a barrier to eMortgage adoption identified in the 2016 joint GSE eMortgage outreach survey. From the survey we learned that Servicers (and some of their local foreclosure law firms) wanted to better understand eMortgages, specifically, how eMortgages are foreclosed. While this document does discuss the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001, et seq. (“ESIGN”) and its interaction with the model Uniform Electronic Transactions Act (“UETA”), ***the GSEs do not intend nor should anyone construe, the information herein to be legal advice upon or an interpretation of any state’s adopted version of the UETA.***

This document provides a high level summary of the federal law, ESIGN, and how it governs eNotes and eMortgages and a basic overview on foreclosure of eMortgages.

- An overview of transferable records (eNotes)
- Definitions for key terms related to eMortgages
- Important eMortgage foreclosure court decisions
- Other important information on the eMortgage foreclosure process

## II. Applicable Laws

The essential difference between a transferable record (eNote) and a traditional paper Note is that an eNote does not exist in physical form. Therefore, the common test for standing in foreclosure cases (the foreclosing party should (or must) be the “holder” of the Note by possessing a paper Note indorsed in blank or indorsed to the foreclosing party) doesn’t work with eNotes since there is no instrument to possess. The applicable laws that govern electronic transactions are:

- In 2000, Congress passed ESIGN. The ESIGN states that contracts and signatures may not be deemed invalid simply because they are in electronic form. ESIGN further provides that electronic contracts and other records can be retained in electronic form as long as 1) they accurately reflect the information set forth in the contract or record, 2) are accessible to the parties and 3) can be accurately reproduced by electronic transmission or printing on paper.
- In 1999, the UETA was drafted by the Uniform Law Commission. It has been adopted in 47 States and the District of Columbia (but not Illinois, New York or Washington at this time). ESIGN and the UETA essentially parallel each other, legitimizing electronic records throughout the country. The text is available at:  
[http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta\\_final\\_99.pdf](http://www.uniformlaws.org/shared/docs/electronic%20transactions/ueta_final_99.pdf).<sup>1</sup>

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<sup>1</sup> Despite its name, UETA has not been adopted uniformly across the U.S. - California, for instance, omits sections 16-20 of UETA (Cal. Civ. Code §§ 1633.1 – 1633.17). Accordingly, it is the GSEs’ view that ESIGN supersedes the California UETA, at least for transferable records (eNotes).

### III. Key Terms

It's important to understand some of the key terms used in connection with eMortgage, which are defined below:

- **Transferable Record:** Both ESIGN and UETA contain special sections for “transferable records” (ESIGN 15 U.S.C. §7021; UETA §16). A “transferable record” is an electronic record that would be a Note under Article 3 of the Uniform Commercial Code (UCC) if it were in writing. To be a transferable record, the issuer (borrower) must have agreed the document is a transferable record and the document must relate to a loan secured by real property. (***GSEs often refer to transferable records as “eNotes”***).
- **Control:** ESIGN and UETA then provide that a “person having control” (in the MERS® eRegistry, this person is referred to as the “Controller”) of a transferable record is the equivalent of a “holder”, as that term is used in the State’s version of the UCC, and has the same rights and defenses as a “holder”. A “person has control” of a transferable record if the system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred. (ESIGN 15 U.S.C. §7021 (b); UETA §16b). The most common system for evidencing the transfer of interests in eNotes is the eRegistry operated by MERS®. (***The MERS® eRegistry tracks the identity of the person that has Control and refers to that person as the “Controller” of the eNote***).
- **Authoritative Copy:** A system satisfies the conditions of ESIGN and UETA if it maintains records in a manner such that an “Authoritative Copy” of the transferable record exists. An authoritative copy must be a single, unique, identifiable, and generally unalterable copy. (***This means that while there can be many copies of each eNote, there can be only one authoritative copy of the eNote, and only the Controller of the authoritative copy can enforce it.***)
- **Location:** The MERS® eRegistry tracks the “Location” of every eNote. In the MERS® eRegistry, the location is a named party (usually the Controller or its designee) that stores the eNote in an eNote Vault, similar to a document custodian storing an original paper Note.

The interplay of Controller, Location, and Authoritative Copy is discussed in the GSE context, below.

### IV. eNotes in the GSE Environment

The information below provides an overview of the delivery of eNotes to the GSEs. This information is particularly relevant for understanding the requirement for a transfer of control in order to enforce an eNote.

There are two components of the process that warrant explanation.

- **The MERS® eRegistry** – the system of record identifying the Controller and the location of the eNote. The MERS® eRegistry allows eNotes to be registered and tracked to the single, unique authoritative copy of the transferable record (eNote).

- **GSE eNote Vault** – refers to the GSEs’ respective electronic storage systems that eNotes are delivered to and stored in.

An overview of the eNote delivery process is as follows:

- The eNote is electronically signed by the borrower through use of an electronic closing system (“eClosing System”).
- The eClosing System secures the electronically signed documents by applying a tamper-evident seal to the entire transferable record (eNote).
- The eNote must be registered on the MERS<sup>®</sup> eRegistry within one business day.
- The lender transmits the eNote to the applicable GSE eNote Vault using the MERS<sup>®</sup> eDelivery software application.
- The lender submits a request to the MERS<sup>®</sup> eRegistry to transfer control of the eNote from the lender to the applicable GSE.
- The GSE eNote Vault validates that the tamper-evident seal value on each eNote delivered by lender and matches the tamper-evident seal value stored in the MERS<sup>®</sup> eRegistry and, if the values match, accepts the eNote delivery.

So, for all eNotes purchased by the GSEs, the applicable GSE becomes the Controller and the Authoritative Copy of the transferable record (eNote) is stored in the applicable GSE’s eNote Vault.

## V. Enforcement of eNote

The requirements for paper Notes and eNotes are the same as it relates to the following:

- Pre-enforcement workout solicitation requirements.
- Notices and GSE workout requirements.
- GSE requirements for the selection of foreclosure counsel.

However, some aspects of the enforcement process are quite different for eNotes. The party seeking to enforce a transferable record (eNote) must have *Control* of the *transferable record* (eNote). The Controller of a transferable record (eNote) has the same rights as the *Holder* of a paper note under the UCC. Since the GSEs are identified as the *Controller* of the transferable record (eNote) in the MERS<sup>®</sup> eRegistry, when foreclosure is the action that must be taken, in many jurisdictions control of the *authoritative copy* of the transferable record (eNote) will need to be transferred from the applicable GSE to the Servicer for the Servicer to enforce the Note in its name.<sup>2</sup> The process for requesting transfer of control from the GSEs are provided below:

- **For Fannie Mae loans:** A transfer of control can be initiated by contacting Fannie Mae’s Custodian Oversight Department at [eMortgage\\_Custody@FannieMae.com](mailto:eMortgage_Custody@FannieMae.com) and

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<sup>2</sup> The discussion in the main text concerns handling of the eNote. Don’t forget that for loans registered in the MERS<sup>®</sup> System, the security instrument must also be assigned from MERS<sup>®</sup> to the foreclosing party (usually the servicer) before starting the foreclosure.



submitting Form 2009, *Request for Release/Return of Documents* three business days before the change is desired. Fannie Mae will transfer control of the eNote without changing the location of the eNote, Fannie Mae's eNote Vault. Fannie Mae will transfer location if Servicer's counsel determines it is necessary under applicable state law.

- **For Freddie Mac loans:** The Servicer desiring the transfer of control and/or location should submit the request to [Loan\\_Delivery\\_Funding\\_Ops@FreddieMac.com](mailto:Loan_Delivery_Funding_Ops@FreddieMac.com), three business days before the change is desired. Freddie Mac will transfer control of the eNote without changing the location of the eNote . Freddie Mac will transfer location if Servicer's counsel determines it is necessary under applicable state law.

Regardless of the GSE, in states which require the foreclosing party to present a physical Note, the Servicer may (depending on State law requirements) print out a Servicer certified copy of the transferable record (eNote) and complete and execute an affidavit comparable to the GSE uniform sample Electronic Note Affidavit attached hereto as Exhibit A.

In the event the transferable record (eNote) is removed from the foreclosure process because of reinstatement or loan modification, the Servicer must initiate a timely transfer of control (and location, as applicable) of the transferable record (eNote) back to the applicable GSE.

The standard affidavit used today to prove up the amount of the default, could be used in tandem with the Electronic Note Affidavit.

Note: Be sure to use the correct ESIGN and UETA terminology in pleadings, etc. and, subject to state law, remove references to "holder" of the Note or "possession" of the Note.

## VI. Court Decisions

Here are some court decisions addressing eNote foreclosures:

- *Good v. Wells Fargo*, 18 N.E.3d 618 (Ind. App. 2014): The Indiana Appellate Court reversed an entry of summary judgment in favor of the lender, holding that the lender failed to adequately establish standing to foreclose.
- *New York Community Bank v. McClendon*, 29 N.Y.S.3d 507 (NY App. Div. 4/13/16): The New York Appellate Division reversed a decision dismissing a foreclosure complaint for lack of standing, finding that the lender adequately established standing.
- *Rivera v. Wells Fargo*, 189 So.3d 323 (Florida 4<sup>th</sup> DCA 4/20/16): The Florida Appellate Court upheld a decision of the trial court in favor of the lender, finding the affidavits submitted by the lender sufficient to establish the lender's standing and right to foreclose.
- *Wells Fargo v. Benitez*, 2016 N.Y. Misc. LEXIS 4823 (N.Y. Supreme Court, Suffolk County, 12/14/2016): The New York Supreme Court (trial level) found that the lender failed to establish its standing as the controller or holder of the eNote .

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## VII. GSE Resources

- **Fannie Mae's Guide to Delivering eNotes:**

[https://www.fanniemae.com/content/technology\\_requirements/emortgage-delivery-guide.pdf](https://www.fanniemae.com/content/technology_requirements/emortgage-delivery-guide.pdf)

Complete requirements for servicing eMortgage are available in Fannie Mae's master Servicing Guide:

<https://www.fanniemae.com/content/guide/servicing/index.html>

- **Freddie Mac eMortgage Guide** (*Chapter 3 addresses servicing, and the sub-chapter 3.5 addresses servicing of non-performing loans*)

[http://www.freddiemac.com/singlefamily/pdf/eMortgage\\_Guide.pdf](http://www.freddiemac.com/singlefamily/pdf/eMortgage_Guide.pdf)

For additional assistance and other resources, contact the Fannie Mae legal team at [default\\_attorney@FannieMae.com](mailto:default_attorney@FannieMae.com) or the Freddie Mac legal team at [Legal\\_eMortgage@FreddieMac.com](mailto:Legal_eMortgage@FreddieMac.com).

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## EXHIBIT A

File No. / **BORROWER NAME**

### ELECTRONIC NOTE AFFIDAVIT

The undersigned being first duly sworn, and under penalty of perjury, states as follows:

1. My name is [duly authorized employee of Controller name] and I am a [title] of [legal name of Controller];
2. Capitalized words used herein that are not defined, proper names, commonly capitalized or statutory citations herein, shall have the meanings ascribed to such words in 15 U.S.C. § 7021 and [Insert applicable State UETA statutory citation];
3. The borrower(s), using an Electronic Signature, executed an electronically created promissory note (the "Note") dated [date of Note], to [Enter original lender legal name]. The Note represents a promise from the borrower(s) to pay \$ [amount]. A copy of the Note is attached hereto as Exhibit A and is incorporated herein by reference;
4. As part of the terms of the Note, the borrower(s) expressly agreed that the Note would be:
  - a. authenticated (signed), stored and transmitted by electronic means and that the MERS<sup>®</sup> eRegistry would identify the Person in control of the Note (the "Controller"); and
  - b. a Transferable Record pursuant to 15 U.S.C. § 7021 and [Insert applicable State UETA statutory citation];
5. On [date registered with MERS<sup>®</sup> eRegistry], the Note (Transferable Record) was registered with the MERS<sup>®</sup> eRegistry by [registering lender legal name] under MERS<sup>®</sup> Organizational Identification Number [number]. The copy of the MERS<sup>®</sup> eRegistry Transaction History, attached hereto as Exhibit B and incorporated herein by this reference, identifies [legal name of controller] as the Controller of the Note (Transferable Record);
6. The Controller of the Note (Transferable Record), pursuant to 15 U.S.C. § 7021 and [Insert applicable State UETA statutory citation]:
  - a. has the same rights as a "holder" defined in [Insert applicable State UETA statutory citation]; and
  - b. is the only Person who can transfer control of the Note (Transferable Record);

7. [legal name of controller], as the Controller, has not:
- a. conveyed, assigned, pledged, hypothecated, or encumbered the Note (Transferable Record) or;
  - b. transferred control of the Note (Transferable Record) to any other Person; and
8. The Note (Transferable Record) is secured by a Security Instrument in the original amount of \$ [amount] dated [date of MTG], made by [borrower's name(s)], to [Enter original lender legal name], Lender, and recorded in the Clerk's Office of the Circuit Court of the [city/county], [State] in [recording information].

[legal name of controller]

By: [duly authorized representative's signature]

Name: [duly authorized representative's typed name]

Title: [title]

State of \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 County of \_\_\_\_\_ )

Acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_, by [duly authorized employee of Controller name], [title] of [legal name of Controller], a [insert type of entity: corporation, bank, savings bank, savings & loan, credit union, limited liability company, partnership, etc.], on behalf of the Controller.

Notary Public

Name

(SEAL)

My Commission Expires:

# Guide to Delivering eMortgages to Fannie Mae

**Updated June 22, 2022**





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# 1. Preface

The *Guide to Delivering eMortgages to Fannie Mae* (as amended, modified or supplemented from time to time, this “Guide”) contains policies and procedural requirements for Fannie Mae’s purchase of eMortgages. We update this Guide periodically and may announce important policy or procedural changes as they occur by issuing updates to lenders, either by modifications to this Guide or by an updated letter or memoranda to participating lenders. Lenders should be aware that this Guide may be modified frequently to accommodate this rapidly developing area of mortgage lending.

If the lender encounters a particular situation or process that is not covered or that the procedures may not apply because of certain circumstances, they should contact their Fannie Mae Customer Management Solutions (CMS) team.

If you need assistance after reading this documentation, please contact the Fannie Mae eMortgage team ([eMortgage\\_Info@fanniemae.com](mailto:eMortgage_Info@fanniemae.com)).

Technical information about delivery specifications, including samples, is available in Fannie Mae’s [eMortgage Technical Requirements](#). Fannie Mae’s *eMortgage Technical Requirements* is incorporated, and made part of, this Guide, and is part of a lenders’ contractual obligations to Fannie Mae in connection with selling and servicing eMortgages.

## 2. Getting Started

### 2.1 Overview

An eMortgage is a loan for which the promissory note and possibly other documents (such as the security instrument and loan application) are created and stored electronically rather than by traditional paper documentation that has a pen and ink signature. Because some recording jurisdictions will not yet accept electronic documents for recordation, eMortgages may consist of a paper security instrument and an electronic note (eNote).

Fannie Mae will purchase eMortgages only from lenders with which we have an addendum to the lender’s Mortgage Selling and Servicing Contract that specifically authorizes eMortgage sales and/or servicing (“eMortgage Addendum”). Servicers are also required to have an eMortgage addendum prior to servicing Fannie Mae eMortgages. This Guide describes the preliminary steps a lender must take prior to execution of the eMortgage Addendum, as well as our requirements for the origination and sale of one- to four-family eMortgages that Fannie Mae will purchase or securitize. This Guide and the *eMortgage Technical Requirements* are incorporated into the terms of the lender’s Mortgage Selling and Servicing Contract, as amended by the eMortgage Addendum. Our [Selling](#) and [Servicing](#) Guides, as well as the lender’s other contractual obligations to Fannie Mae, remain in force and effect except as modified by this Guide.

Lenders are reminded of the need to comply with the provisions of the *Fannie Mae Selling and Servicing Guides*, specifically with regard to requirements for electronic transactions.

Lenders who are interested in selling or servicing eMortgages should work with their Fannie Mae Customer Management Solutions (CMS) team to begin the consultation process.

### 2.2 Initial and Periodic Assessments

Each lender is responsible for determining that it meets the legal, technological, and operational requirements necessary to electronically create valid and enforceable mortgage obligations and/or effectively service eMortgages and that it otherwise complies with our requirements (which, in some cases, may be in addition to minimum statutory requirements).

As part of our eMortgage readiness review process, we ask the lender to provide information about some of the systems and processes it intends to employ in origination and servicing eMortgages. Prior to execution of the eMortgage Addendum, Fannie Mae will work with lenders to assess their technology implementations and business processes for conformance to Fannie Mae’s eMortgage requirements. This assessment involves a consultation which will walk the lender through the [eMortgage Readiness Checklist](#), helping us determine the lender’s eMortgage readiness and support the lender’s implementation.

We also encourage the lender to work with us to conduct certain systems integration testing (“Systems Testing”). The scope of the Systems Testing depends on the lender’s particular eMortgage implementation. Following initial implementation,



lenders must inform Fannie Mae prior to making any substantial technology or process changes, including implementation of any new Mortgage Electronic Registration Systems® (MERS®) functionality, to ensure that such changes are coordinated with Fannie Mae systems. Fannie Mae reserves the right to periodically reassess technology implementations and business processes to ensure compliance with these requirements.

## 2.3 Legal Requirements

The following terms and conditions will apply to delivery, sale and servicing of eMortgages.

The lender may only deliver eMortgages originated using systems that comply with Fannie Mae technology and process requirements as described in this Guide. The lender cannot use any other software technology or any other vendor without the express written prior approval of Fannie Mae.

A breach under this Guide is a breach under the Lender Contract.

The lender acknowledges that, in determining the lender's readiness to deliver, sell and/or service eMortgages to Fannie Mae, Fannie Mae relied on information provided by the lender.

The lender represents and warrants that it has executed all tests required by Fannie Mae and that all systems and processes necessary to deliver and/or service eMortgages pursuant to this Guide and the MERS eRegistry requirements, are fully operational, including, systems integration among the lender, Fannie Mae, and MERS.

The lender makes the following representations and warranties with respect to each eMortgage sold to and, where applicable, serviced for Fannie Mae:

1. Each eMortgage is evidenced by an eNote that is a valid and enforceable Transferable Record pursuant to the Uniform Electronic Transactions Act ("UETA"), or the Electronic Signatures in Global and National Commerce Act ("ESIGN"), as applicable, and there is no defect with respect to the eNote that would confer upon Fannie Mae, or a subsequent transferor, less than the full rights, benefits and defenses of Control (as defined by UETA and ESIGN) of the Transferable Record;
2. Prior to transfer to Fannie Mae, the lender is an entity entitled to enforce the eMortgage and, subject to Section 4.5, is named the Controller on the MERS eRegistry; and, except as provided in Section 4.5, the Lender's right to sell or assign is not subject to any other party's interest or to an agreement with any other party;
3. All electronic signatures associated with the eMortgage are authenticated and authorized;
4. The lender has established procedures and controls limiting access to eMortgage Delivery and the MERS eRegistry to duly authorized individuals, and Fannie Mae is entitled to rely on any transmission, transfer or other communication via these systems to be the authorized act of the lender;
5. Any transfers of Control of the eNote are authenticated and authorized;
6. The Authoritative Copy of the eNote has not been altered since it was electronically signed by its issuers;
7. There has been, at all times, one and only one Authoritative Copy of the eNote in existence, and all copies other than the Authoritative Copy are readily identifiable as non-authoritative copies; and
8. The eNote is not subject to a defense, claim of ownership or security interest, or claim in recoupment of any party that can be asserted against the lender.



## 3. Requirements for Creating and Closing a Fannie Mae-Eligible eNote

### 3.1 Overview

Standard Fannie Mae requirements regarding underwriting and eligibility for sale to Fannie Mae apply to eMortgages. This section describes additional requirements applicable to eMortgages.

As set forth in Section 2.2, Fannie Mae reserves the right periodically to reassess technology implementations and business processes to ensure compliance with these requirements.

### 3.2 Products

Most conventional first loans can be delivered to Fannie Mae as eMortgages. This includes fully amortizing fixed-rate and adjustable-rate loans. However, the following are **not** currently permitted to be delivered as eMortgages:

- Products that require additional or special purpose legal documents;
- Mortgages secured by Puerto Rico properties;
- Co-op loans; and
- Texas Section 50(a)(6) loans

### 3.3 Electronic Documents: Uniform eNotes and Electronic Signatures

#### 3.3.1 Uniform eNotes

To be eligible for sale to Fannie Mae, eMortgages must be originated using the Uniform Fannie Mae/Freddie Mac form of eNote. This form of eNote is created by modifying the appropriate Fannie Mae/Freddie Mac Uniform Note (available at [www.fanniemae.com](http://www.fanniemae.com)) in accordance with *Appendix A* of this Guide. Such modification includes addition of a specific provision (Section 11, or Section 12 in the case of ARM eNotes) that addresses the electronic nature of the note. This special provision also includes reference to the MERS® eRegistry. Immediately upon execution by the borrower, all eNotes must be registered on the MERS eRegistry and contain a valid, unique 18-digit MIN (Mortgage Identification Number). Appendix A provides more information.

For further information and technical samples, please see Fannie Mae's *eMortgage Technical Requirements*, available at [www.fanniemae.com](http://www.fanniemae.com).

#### 3.3.2 Electronic Document File Formats

Fannie Mae currently accepts delivery of eNotes in the MISMO SMART Doc® format. Please refer to Fannie Mae's *eMortgage Technical Requirements* for details, available at [www.fanniemae.com](http://www.fanniemae.com).

#### 3.3.3 Electronic Signatures

By selling an eMortgage to Fannie Mae, the lender represents and warrants that the type of electronic signature that is used by the borrower to sign the eNote and any other electronic record associated with the transaction (i) is legal and enforceable under applicable law, and (ii) was not affected by means of audio or video recording.

The systems and processes employed in the execution of an electronic signature must comply with the requirements of Fannie Mae's *Selling Guide*, including clearly identifying the electronic record being signed, clearly displaying the borrower's name and requiring the borrower to take action to initiate the electronic signature. A single electronic signature cannot be applied to multiple electronic records simultaneously.



### 3.3.4 Borrower Attribution and Audit Trails

To preserve the lender's ability to attribute the signer's signature to his or her identity, certain documents and system records must be retained in a manner that will provide Fannie Mae with ready access to such documents and records should we request the lender to provide us with such evidence. For example, in addition to retaining evidence of a borrower's identity in the loan file, the lender should collect and retain systems logs and audit trails that establish a temporal and process link between the presentation of identity documents and the electronic signing of a document, as well as evidence of the borrower's agreement to conduct the transaction electronically and his or her execution of a particular electronic signature.

All files should be retained for the life of the loan plus seven years. Any files that a lender maintains must include the name of the person (and related entity, if the borrower is not a natural person) who signed each document in the loan file, the date of the signature, and the method by which the document was signed, as well as any relevant identifying (and other) information that can be used to verify the electronic signature and its attribution to the signer's identity. Lenders must provide Fannie Mae with any audit trail files requested at any time in a format that is compatible with Fannie Mae systems. In the event of a servicing transfer, the lender is required to provide the new servicer with all attribution evidence and audit trails associated with the loans being transferred.

### 3.3.5 Electronic Disclosures and Consent; Additional Legal Requirements

Lenders are reminded that Section 101(c) of E-SIGN (the federal law that governs electronic signature transactions) has specific requirements about the type and content of the consent that must be obtained from borrowers before electronically providing any of the disclosures that are required by law to be given to borrowers. Additional requirements concerning the use of electronic signatures, records, and disclosures may be imposed by regulatory agencies or through state legislation. Lenders must be aware of, and comply with, all applicable legal requirements and otherwise follow applicable industry practices. By selling or servicing an eMortgage to or for Fannie Mae, the lender represents and warrants that it has complied with all such requirements and practices, the requirements of Fannie Mae's *Selling and/or Servicing Guides*, as applicable, and the requirements imposed by E-SIGN.

### 3.3.6 eNote Closing

To ensure that the eNote is a discrete transferable record, closing instructions or other procedures should be created to ensure that the borrower signs only the eNote at closing and does not also sign a paper version of the Uniform Note.

## 3.4 Electronic Document Security

### 3.4.1 Tamper-Evident Seal

Regardless of the type of electronic signature used, each electronic document delivered to Fannie Mae must be cryptographically "sealed." This tamper-evident seal, created by digital signature technology, is used to provide tamper-evident protection to the document. The tamper-evident seal must be applied to the signed document immediately after the last borrower's signature has been applied. If any alterations are made to the document, the seal will be compromised, therefore making it apparent that the document has been altered.

### 3.4.2 Protecting Server-Based Signing Keys

Tamper-evident seals (see Section 3.4.1) can be created using an individual user certificate or a server-based certificate. In implementations in which a server-based certificate will be used to create the tamper-evident seal, Fannie Mae requires that private keys are appropriately stored and that there be a separation of staff roles regarding access to those keys. Please see *Appendix B* for additional information.



## 3.5 Registering eNotes

The Fannie Mae/Freddie Mac Uniform eNote provides that the Note Holder (as defined in the eNote) will be the entity listed in the MERS eRegistry as Controller. Lenders must have process controls in place to ensure eNotes are registered in the MERS eRegistry as soon as possible after the tamper-evident seal has been applied, but no later than one (1) business day of signing. All eMortgages delivered to Fannie Mae must also be registered on the MERS Residential System prior to delivery to Fannie Mae (the registration does not have to be at origination). The record in the MERS eRegistry must reflect the originating lender – the lender whose name is on the eNote – as the first Controller. For lenders using tradenames or assumed names on eNotes, (a) the legal entity name must also be included on the eNote (e.g. ABC Financial, Inc., dba XYZ Mortgage), and (b) the initial MERS eRegistry registration should reflect the legal entity name as the initial Controller. Any and all subsequent transfers of the eNotes – changes of Control – must be reflected in the MERS eRegistry. Failure to comply with these requirements could render the loan ineligible for delivery to Fannie Mae. Detailed documentation on the MERS eRegistry requirements is available at [www.mersinc.org](http://www.mersinc.org).

## 4. Delivering eMortgages to Fannie Mae

### 4.1 Overview

Lenders may deliver eMortgages for either Whole Loan or MBS execution. Fannie Mae accepts mixed MBS pools – ones that contain both paper notes and eNotes. eMortgages are delivered to Fannie Mae via the MERS® eDelivery service. Please see [www.mersinc.org](http://www.mersinc.org) for more information on MERS eDelivery.

To sell the loan to Fannie Mae, the lender (or its warehouse provider acting as the lender’s designee) must perform the following procedures:

1. Transmit a copy of the eNote to Fannie Mae through MERS eDelivery. If the eNote is executed with a Power of Attorney, transmit a copy of the Power of Attorney to Fannie Mae through MERS eDelivery using the MISMO document type ‘PowerOfAttorney’ (note, that in some jurisdictions an original of the power of attorney must be recorded with the related security instrument). If eNote is being delivered through a warehouse provider, then the Lender may need to eDeliver both a copy of the eNote and the Power of Attorney directly to Fannie Mae;
2. Transfer Control and Location to Fannie Mae by submitting a request message to the MERS eRegistry; naming Fannie Mae as the new Controller and Location. The lender must be the Controller either immediately prior to Fannie Mae or immediately prior to their warehouse provider, if the warehouse provider is being named as Controller;
3. If the sale of the loan to Fannie Mae is accompanied by the sale of the Master Servicing Rights (co-issue), transfer servicing to reflect the MERS Org ID of the purchasing Master Service (or their designated sub-servicer) in the MERS eRegistry “Master Servicer” field. If the Master Servicer intends to utilize a sub-servicer for eMortgages, the sub-servicer’s MERS OrgID may be added to the record in the MERS eRegistry as required. It is recommended that this be completed as a step separate from the Transfer of Control and Location to ensure that the Transfer of Control and Location to Fannie Mae is completed successfully; and
4. To complete the sale of the loan, perform other processes as described in this chapter.

### 4.2 Delivering eMortgages to Fannie Mae Using MERS eDelivery

#### 4.2.1 Delivery of Documents

Fannie Mae accepts delivery of electronic documents through MERS eDelivery. Fannie Mae will return an electronic approval message once our systems have accepted the document. For more information on delivering eMortgages, please contact Fannie Mae or refer to Fannie Mae’s *eMortgage Technical Requirements*, available at [www.fanniemae.com](http://www.fanniemae.com).



## 4.2.2 Transferring Control and Location

Once the eNote has been successfully delivered to Fannie Mae, lenders (or their warehouse providers) should transmit a request to the MERS eRegistry to begin the process of transferring Control and Location of the eNote to Fannie Mae. A “Transfer of Control and Location” request must be transmitted to the MERS eRegistry to initiate the transfer of ownership and to update the MERS eRegistry to show Fannie Mae as the Controller and Location of the Authoritative Copy of the eNote. Lenders are expected to monitor the status of transfer requests to ensure they have been completed successfully. The transfer request must include an “Effective Date” of the same day as the request. The Effective Date is used by the MERS eRegistry to denote the date that the transfer must be complete. Fannie Mae requires that the MERS eRegistry records, for loans transferred to Fannie Mae, contain the Servicer’s MERS Org ID (or sub-servicer if applicable) in the “Master Servicer” field on the eRegistry in order to enable that party to perform certain transactions within the MERS eRegistry. (Note: If the Master Servicer is changing coincident with the sale to Fannie Mae, the update to this field can be completed after completing the transfer of control and location to Fannie Mae.)

If prior to Fannie Mae purchasing the loan, the lender requires the eNote to be returned, the lender must submit a *Request for Transfer of Control of eNotes (Form 2009e)* to Fannie Mae’s Custodian Oversight Department at [eMortgage\\_Custody@fanniemae.com](mailto:eMortgage_Custody@fanniemae.com) at least three business days before the change of Control and Location is required.

## 4.3 Additional Processes Necessary to Deliver eMortgages for Whole Loan or MBS

Lenders should not request or receive purchase proceeds for Whole Loan or MBS in connection with the purchase of an eMortgage until at least 1 business day after the lender disburses loan funds to (on behalf of) the borrower. Lenders must perform the following process in addition to delivering the eMortgage through MERS eDelivery:

### Whole Loan Deliveries

- Add the eNote Indicator flag to the corresponding loan(s) in Fannie Mae’s Loan Delivery application which identifies the loan as an eMortgage loan; and
- Perform the usual whole loan delivery through Fannie Mae’s Loan Delivery application.

### Deliveries for MBS

- Add the eNote Indicator flag to the corresponding loan(s) in Fannie Mae’s Loan Delivery application to identify the loan as an eMortgage loan; and
- Perform the usual MBS delivery through Loan Delivery.

**NOTE:** *If for any reason an eMortgage must be transferred back to the lender (for example, in the event of an error on the loan or transferred in error), the lender should submit form 2009e to Fannie Mae’s Custodian Oversight and Monitoring department at [eMortgage\\_Custody@fanniemae.com](mailto:eMortgage_Custody@fanniemae.com) to request the transfer. See Section 4.5 Warehouse Lending for details on transferring back when a warehouse provided was used.*

## 4.4 Reconciliation

Lenders must develop technologies and/or processes and procedures to ensure that:

- The eNote indicator flag is added to each eMortgage loan in Fannie Mae’s Loan Delivery application;
- For each electronic mortgage delivered and transferred to Fannie Mae through MERS eDelivery, the corresponding loan data is transmitted through Fannie Mae’s Loan Delivery application; and
- For each electronic mortgage transmitted to Fannie Mae through our Loan Delivery application, the corresponding electronic mortgage documents must be delivered and transferred through MERS eDelivery.



## 4.5 Warehouse Lending

### 4.5.1 Transfer of Control and Location

Lenders may originate or purchase eMortgages using interim funding from a warehouse provider in a manner that establishes the warehouse provider as lienholder of each related eNote and that shows the warehouse provider as being in Control of each related eNote at eMortgage settlement or that reflects the warehouse provider as the “Secured Party” in the MERS eRegistry for the related eNote. In order to facilitate Fannie Mae’s purchase or securitization of an eMortgage in which a warehouse provider has a security interest, the warehouse provider must perform (or cause to be performed) one of the two following actions depending on whether the warehouse provider is named as the Controller or as the “Secured Party” of an eNote.

1. If the warehouse provider is in Control of an eNote prior to sale to Fannie Mae, the warehouse provider must transfer Control and Location of the related eNote to Fannie Mae, on the lender’s behalf, using the warehouse provider’s MERS Org ID for pre-purchase inspection, among other things.
2. If the warehouse provider is named as the “Secured Party” in the MERS eRegistry on an eNote prior to sale to Fannie Mae, the warehouse provider must approve a transfer of Control and Location to Fannie Mae that has been initiated by the lender, or the warehouse provider may itself (or through a designated agent) initiate a transfer of Control and Location to Fannie Mae, on the lender’s behalf. At the conclusion of such transaction, Fannie Mae will be named in Control and Location and there will be no named entity in “Secured Party”.

Lender and its warehouse providers must use Fannie Mae’s Loan Delivery application, in accordance with their respective agreements with Fannie Mae, to submit or validate wiring instructions for the account to which purchase proceeds (in the form of cash or MBS) for eMortgages covered by such interim funding agreements should be delivered. Lender authorizes Fannie Mae to deliver the purchase proceeds (in the form of cash or MBS) for eMortgages in accordance with such wiring instructions.

### 4.5.2 eNote Control Transfer and Custodial Agreement

In connection with delivery of funded eMortgages to Fannie Mae, warehouse providers must enter into an *eNote Control Transfer and Custodial Agreement* with Fannie Mae in which, generally, Fannie Mae accepts Control of delivered eNotes until such time as:

- Fannie Mae makes payment and the warehouse provider releases its security interest, or
- Control of the eNote is returned to the eRegistry participant that was previously in Control prior to Fannie Mae; provided that if there was a “Secured Party” named on an eNote prior to transfer to Fannie Mae, Fannie Mae will first assign the applicable MERS Org ID to the “Secured Party” field and then initiate the transfer. Lender authorizes Fannie Mae to take such actions.

If, before Fannie Mae buys any eMortgage, Fannie Mae receives written notice from a warehouse provider that warehouse provider has exercised its right to acquire the eMortgage because of a default, lender authorizes Fannie Mae to transfer Control and Location of the related eNote to warehouse provider (or its designee).

If Fannie Mae believes a party other than lender or the applicable warehouse provider has an interest in any eMortgage (or the related purchase price), lender agrees that Fannie Mae may, in its sole discretion, decline to purchase such eMortgage and notify lender and warehouse provider of such decision.

In return for Fannie Mae’s accommodation of delivery of funded eNotes that are subject to warehouse lending arrangements and for Fannie Mae’s performance of certain obligations under the *eNote Control Transfer and Custodial Agreement* that are in the lender’s interest, the lender hereby agrees to indemnify and hold harmless Fannie Mae against all Fannie Mae losses (as defined in the *Fannie Mae Selling Guide*) arising or resulting from any act or omission of lender or Fannie Mae (except those arising or resulting from Fannie Mae’s gross negligence or willful misconduct) made in connection with the terms of the *eNote Control Transfer and Custodial Agreement*.





## 5. Certification and Custody of eMortgages

Fannie Mae provides in-house automated document certification (auto-certification) for eligible eNotes. For eNotes that cannot be auto-certified but are permitted to be sold to Fannie Mae, these will be routed for manual certification by a document custodian. A document custodian interested in certifying eNotes on behalf of Fannie Mae must meet all of the eligibility requirements outlined in the [Requirements for Document Custodians](#) on FannieMae.com. Contact Fannie Mae’s Custodian Oversight Department at [eMortgage\\_Custody@fanniemae.com](mailto:eMortgage_Custody@fanniemae.com) for additional information on certifying eNotes on behalf of Fannie Mae.

## 6. eNote Corrections

### 6.1 Execution of New eNote

eNotes containing errors will typically require that a new note be executed. In this instance, once the new note has been executed (either in ink-signed paper or as an eNote) the original eNote should be de-activated on the MERS eRegistry via a Registration Reversal transaction. Lenders should contact Fannie Mae’s eMortgage team at [eMortgage\\_Info@fanniemae.com](mailto:eMortgage_Info@fanniemae.com) with additional questions. If there are any issues identified with an eNote after it has been sold to Fannie Mae, the Servicer should contact Fannie Mae’s Custodian Oversight Department at [eMortgage\\_Custody@fanniemae.com](mailto:eMortgage_Custody@fanniemae.com) to discuss resolution options.

### 6.2 eNote Errors Not Requiring a New eNote

The Lender may amend an eNote via an eNote correction agreement, including a name affidavit where applicable, executed by both the Lender and the borrower, for the clerical errors noted in the table below. The eNote correction agreement must include a statement regarding the clerical errors that are being corrected within the eNote, and may be executed either electronically or via ink-signed paper.

If the eNote correction agreement is electronic, the eSignatures on the correction agreement must comply with Fannie Mae’s eSignature requirements as outlined in the Selling Guide. Regardless of whether the document is electronic or paper, the Lender should:

- report a “modification” to the MERS eRegistry with respect to the eNote ;
- transmit a copy of the correction agreement to Fannie Mae’s eVault; and
- provide a copy of the correction agreement to the Servicer to be maintained in the servicing file.

### Permitted Clerical Errors for eNotes

Execution City	<ul style="list-style-type: none"> <li>- Must be present on eNote</li> <li>- Misspelling can be corrected via a correction agreement</li> </ul>
Execution State	<ul style="list-style-type: none"> <li>- Must be present on eNote</li> <li>- Misspelling can be corrected via a correction agreement</li> <li>- Incorrect state cannot be corrected via a correction agreement</li> </ul>
Property Address	<ul style="list-style-type: none"> <li>- Misspelling of the street name can be corrected via a correction agreement</li> <li>- Incomplete or incorrect property number address requires a new Note be executed</li> </ul>
Lender Name	<ul style="list-style-type: none"> <li>- Misspelling can be corrected via a correction agreement</li> <li>- Missing or incorrect Lender Name requires a new Note be executed</li> <li>- Lenders are reminded that they must use their legal name, in accordance with <i>Section 3.5 Registering eNotes</i></li> </ul>
Borrower Printed Name below Signature Line	<ul style="list-style-type: none"> <li>- Must be present</li> <li>- Misspelling, including the addition of a middle initial or suffix, can be corrected via a correction agreement, including a name affidavit.</li> </ul>



	- Missing or incorrect name requires new Note be executed
--	---

If errors are identified in the following fields, an eNote correction agreement cannot be used to amend the eNote and a new note will need to be produced and executed with the correction(s).

MERS MIN
Note Date
Original Loan Amount
Note Rate
Maturity Date
Payment Amount (P&I)
Mortgage Margin
1 <sup>st</sup> Rate Chg Cap Up
1 <sup>st</sup> Rate Chg Cap Dwn
Lifetime Cap Up
Lifetime Cap Dwn
Registry Operator Tag

## 7. Delivery of Third-Party Originated eNotes

Lenders delivering eMortgages to Fannie Mae that were originated by a third-party broker or lender are responsible for establishing guidelines and procedures to ensure that the loans are created and maintained in accordance with the requirements of this Guide. Such guidelines and procedures must be furnished to Fannie Mae upon request and may be a requirement for eMortgage approval.

## 8. Servicing eMortgages

For complete requirements for servicing eMortgages, please reference Fannie Mae’s master [Servicing Guide](#).

## 9. References

More Information About:	Available at:
Delivering eMortgages to Fannie Mae	<a href="https://singlefamily.fanniemae.com/applications-technology/eclosings-emortgages">https://singlefamily.fanniemae.com/applications-technology/eclosings-emortgages</a>
MERS® eRegistry	<a href="http://www.mersinc.org">www.mersinc.org</a>



## Appendix A - Description of eNote Header, Footer, and eNote Clause

### a) eNote Header

The Uniform eNote has a new line below the word “Note” that serves as an additional reminder that the eNote is designed only for electronic signatures. The word “Note” should be replaced by:

Note

(For Electronic Signature)

### b) eNote Footer

The footer for an eNote is similar to the document footer that appears on our standard mortgage and deed of trust notes, except for the identification of the document as an eNote.

Fixed-rate tagline: MULTISTATE FIXED RATE eNOTE--Single Family -- Fannie Mae/Freddie Mac Uniform Instrument Form 3200e

For state-specific fixed-rate notes the tagline will be the Form number followed by "e" with the date of 07/2021.  
Example:

PENNSYLVANIA FIXED RATE eNOTE--Single Family -- Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3239e 07/2021

ARM tagline: MULTISTATE ADJUSTABLE RATE eNOTE-30-day Average SOFR--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3441e 07/2021

For state-specific ARM-rate notes the tagline will be the Form number followed by "e" with the date of 07/2021.  
Example:

ALASKA ADJUSTABLE RATE eNOTE-30-day Average SOFR--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3441.02e07/2021

### c) eNote Clause

An electronic Note must contain a new paragraph as follows as the last paragraph of the Note preceding the signature block with the appropriate number (e.g., #11 for Form 3200, #12 for Form 3210):

"[#]. ISSUANCE OF TRANSFERABLE RECORD (ELECTRONIC NOTE)

(A)

#### Definitions

The following terms used in this Section 11 are defined as set forth below: (1) "Authoritative Copy" will have the meaning ascribed to such term in the UETA and E-SIGN (both as defined below), as amended from time to time; (2) "Electronic Note" means an electronically created note; (3) "Electronic Record" means a Record created, generated, sent, communicated, received, or stored by electronic means; (4) "Electronic Signature" means an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign a record; (5) "E-SIGN" means the Electronic Signatures in Global and National Commerce Act, codified at 15 U.S.C. § 7001 et seq., as it may be amended from time to time, or any applicable additional or successor legislation that governs the same subject matter; (6) "Note Holder Registry" means a registry system that is used to record the issuance and transfer of Electronic Notes; (7) "Paper Note" means an Electronic Note that is converted into a paper note; (8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; (9) "Transferable Record" means an Electronic Record that: (i) would be a note under Article 3 of the Uniform Commercial Code if the Electronic Record were in writing and (ii) I, as the issuer, have agreed is a



Transferable Record; and (10) "UETA" means the Uniform Electronic Transactions Act, as enacted by the jurisdiction in which the property is located, as may be amended from time to time, or any applicable additional or successor legislation that governs the same subject matter.

(B)

#### Issuance of Transferable Record

I have signed this Electronic Note using my adopted Electronic Signature. By signing this Electronic Note using my adopted Electronic Signature, I am: (1) promising to pay the amount owed, as evidenced by this Electronic Note, to the Note Holder, and (2) agreeing that this Electronic Note is a valid, enforceable and effective Transferable Record issued by me to the Note Holder under the transferable records provisions of UETA and E-SIGN. By virtue of my agreements above, this Electronic Note is a Transferable Record.

(C)

#### Identification of Registry and Note Holder

After I issue this Electronic Note to the Note Holder, the Note Holder will register this Electronic Note in the Note Holder Registry. This Electronic Note will be registered in the Note Holder Registry operated by [Insert Name of Operator of Registry]\*. I agree that the Note Holder has the right, at any time to transfer the registration of this Electronic Note to another Note Holder Registry. The Note Holder Registry will contain the identity of the Note Holder and the location of the Authoritative Copy of this Electronic Note. I understand that I may request a copy of the Authoritative Copy of this Electronic Note from the Note Holder or the Note Holder's designee. The only copy of this Electronic Note that is the Authoritative Copy is the copy identified by the Note Holder named in the Note Holder Registry or the Note Holder's designee.

(D)

#### Conversion to a Paper Note

I agree that the Note Holder has the right, at any time, to convert this Electronic Note into a Paper Note. If this Electronic Note is converted to a Paper Note: (1) the Paper Note will be governed by the negotiable instrument provisions of the Uniform Commercial Code as enacted in the jurisdiction where the Property Address is located; (2) a copy or representation of my Electronic Signature affixed or attached to a printed paper copy of the Electronic Note will be, for all legal purposes, my adopted, original, written signature on the Paper Note; (3) I have authenticated, issued and delivered the Paper Note to the Note Holder; (4) the Paper Note will be a valid original writing for all legal purposes; (5) upon conversion of this Electronic Note to a Paper Note by the Note Holder, my promise to pay the amount owed, evidenced by this Electronic Note, will automatically convert to, (without interruption, alteration or diminution) my promise to pay the amount owed, evidenced by the Paper Note; (6) I am bound by my promise to pay the amount owed evidenced by the Paper Note; and (7) the Note Holder will update the Note Holder Registry to reflect the conversion of this Electronic Note to a Paper Note and remove the registration of (de-activate) this Electronic Note in the Note Holder Registry such that the Electronic Note ceases to have any effect or validity.

**NOTE:** Insert "**MERSCORP Holdings, Inc., a Delaware corporation**" here as the name of the Operator of the Registry.

## d) Signature Area

The text "[Sign Original Only]" which appears on the paper forms should be omitted from eNote forms.



## Appendix B - Requirements for Protecting Server-Based Signing Keys Used to Create Tamper-Evident Seals

eNotes and certain other documents presented for delivery must be cryptographically “sealed” with a tamper-evident seal generated using digital signature technology. To preserve document integrity, the private key associated with such certificates must be well protected. The private key(s) must be adequately protected to mitigate any risk of unauthorized access that could allow tampering with the document.

Generally, the tamper-evident seal can be applied in either of two ways: by an individual user at the loan closing site, or automatically generated by a server or system immediately after the last signature has been applied.

If the tamper-evident seal is generated using a server-based certificate and private key, the following requirements must be followed:

- Key(s) must be generated and stored using a hardware storage module; and
- There must be a separation of roles so that staff with access to the hardware device activation password(s) does not have administrative access to the server that applies the tamper-evident seal, and vice versa.

Lenders are responsible for ensuring the protection of any private keys used to generate tamper-evident seals on eMortgage documents delivered to Fannie Mae.



7666 E. 61<sup>st</sup>, Suite 315, Tulsa, OK 74133  
 Phone: 918-587-6828 ♦ Fax: 918-582-6772  
 www.nala.org ♦ cle@nala.org

**CERTIFICATE OF ATTENDANCE**

Certified Paralegals are required to submit evidence of 50 hours of continuing legal education hours to renew the CP credential every 5 years. Of the 50 hours, 5 hours must be in legal ethics, and no more than 10 hours may be recorded in non-substantive areas. If attending a non-NALA sponsored educational event, this certificate should be completed and submitted with relevant documentation for the event. Please be sure to obtain the required signatures for verification of attendance. The requirements to maintain the CP credential are available from NALA's web site at <https://www.nala.org/certification/certtest2view>.

**PLEASE COMPLETE THE SPACES BELOW AND ATTACH A PROGRAM**

Session Hours	Session Topics (Description and Speakers)	Validation of Attendance
1	<b>The ABCs of Digital Closings</b>	<i>MR</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_  
 Name of CP (Please Print)

\_\_\_\_\_  
 Signature of CP

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Preferred e-mail address

149113  
 NALA Account Number (On Mailing Label)

Attorneys' Title Fund Services, LLC  
 Name of Seminar/Program Sponsor

*Michael Rothman*  
 Authorized Signature of Sponsor Representative

\_\_\_\_\_  
 Date of Educational Event:

Webinar  
 Location:

For Office Use Only	
Substantive hours	
Non-substantive hours	
Ethics	



# The Florida Bar

651 East Jefferson Street  
Tallahassee, FL 32399-2300

Joshua E. Doyle  
Executive Director

850/561-5600  
[www.FLORIDABAR.org](http://www.FLORIDABAR.org)

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256131  
Attorney's Title Fund Services  
Robert J. Rohan  
PO Box 628600  
Orlando, FL 32862-8600

July 11, 2022

<b>Reference Number:</b> 2205963N
<b>Title:</b> The ABCs of Digital Closings
<b>Level:</b> Intermediate
<b>Approval Period:</b> 09/01/2022 - 03/31/2024

### CLE Credits

General	1.0
Technology	1.0

### Certification Credits

Real Estate	1.0
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