



Fund Assembly

# Digital Closings and Remote Online Notarization: The Latest and Greatest

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# Digital Closings

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# Florida Uniform Electronic Transactions Act (UETA) - Sec. 668.50, F.S.

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- Records, signatures, & contracts may not be denied legal effect or enforceability solely because record or signature in electronic form or electronic record used to form contract
- If provision of law requires record to be in writing, electronic record satisfactory
- If provision of law requires signature, electronic signature satisfactory
- Allows, but does not require, government agencies to accept electronic records & signatures
- Sets forth framework for use of electronic negotiable instruments

# Federal Electronic Signatures in Global & National Commerce Act (E-SIGN Act) – 15 U.S.C., Secs. 7001, et. seq.

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- Many similar provisions to UETA
- Consumer disclosures
  - Must affirmatively consent
  - Prior to consent must be provided notice consumer has right to withdraw consent & have paper record provided
  - Inform consumer how to withdraw consent
  - Inform consumer of hardware & software requirements
  - Consumer must demonstrate hardware & software requirements met in way they give consent

# How It Works



Alex Designs sent you a document to review and sign.

REVIEW DOCUMENT

## Receive Invitation



Please read the [Electronic Record and Signature Disclosure](#).

☐ I agree to use electronic records and signatures.

CONTINUE

OTHER ACTIONS ▾

Envelope ID: 2CE8A7A7-D072-4086-9E9D-256616E7F416

Sample Document

## Consent

FA

# How It Works



## Document Tags

## Signature Options

Adopt Your Signature

Confirm your name, initials, and signature.

Full Name

Michael P

Initials

MP

Select Style

Draw

Preview

DocuSigned by:

Michael P

02367A3E9D33485...

DS

MP

Change Style

By clicking Adopt and Sign, I agree that the signature and initials will be the electronic representation of my signature and initials for all purposes when I (or my agent) use them on documents, including legally binding contracts - just the same as a pen-and-paper signature or initial.

ADOPT AND SIGN

CANCEL

Adopt Your Signature

Confirm your name, initials, and signature.

Full Name

Michael P

Initials

MP

Select Style

Draw

Draw your signature

MP

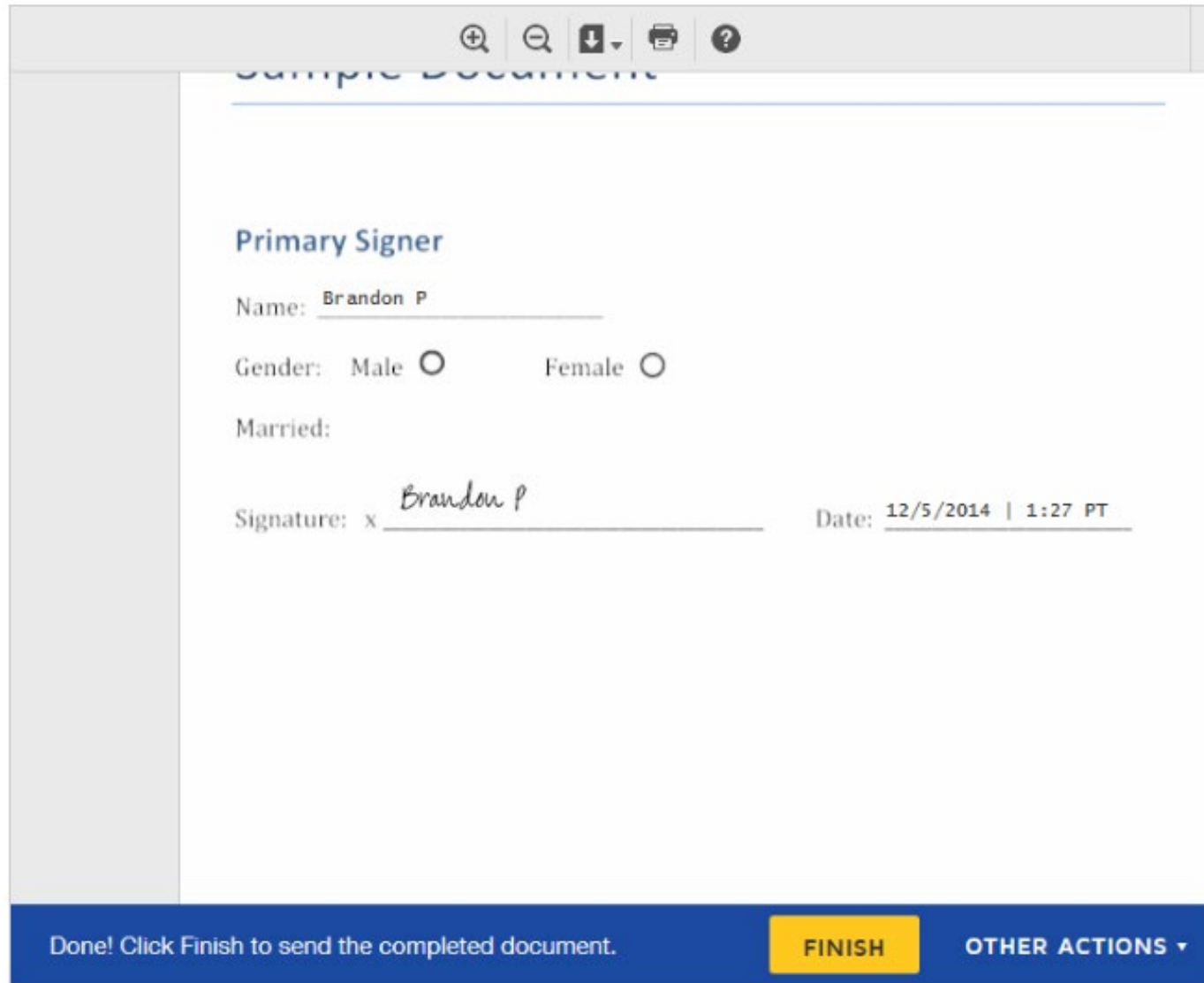
Clear

By clicking Adopt and Sign, I agree that the signature and initials will be the electronic representation of my signature and initials for all purposes when I (or my agent) use them on documents, including legally binding contracts - just the same as a pen-and-paper signature or initial.

ADOPT AND SIGN

CANCEL

# How It Works



Sample Document

**Primary Signer**

Name: Brandon P

Gender: Male ☐ Female ☐

Married:

Signature: x Brandon P Date: 12/5/2014 | 1:27 PT

Done! Click Finish to send the completed document.

**FINISH** OTHER ACTIONS ▾

**Signature Appears  
on Document**

# Benefits to Consumers

## Promotion to Consumers

More convenient – do not have to go to office

Review closing documents at home - on mobile device

No more pesky paper to keep up with

## Reality

May still have to “wet” sign certain documents

Some documents must be witnessed/notarized; may need to coordinate signatures of other parties

Documents not required to be delivered to consumer any earlier; still may not see documents until closing

## Other Pluses for Consumers

Eventually, most documents will be available at least 12-24 hours before closing; consumer has more time to review, with less pressure of being “watched” by other parties

More time to ask questions before closing; experience not so “rushed” & impersonal

Reduction or elimination of printing/shipping/archiving fees



# Benefits to Lenders & Settlement Agents

## Lenders

Reduced processing costs

Decreased error rates

Fewer lost notes

Speeds up time to secondary markets

Consumers see process as convenient/  
meets their needs

Regulators like it

Fannie Mae/Freddie Mac

CFPB

## Settlement Agents

Better consumer experience

Consumers may be able to track “progress” – feel more informed

Input/review information at their convenience – after hours/weekends

May be able to read/review/sign documents earlier

Decreases manual data entry – more efficient for paralegals/closers

Can be more convenient for remote parties

Can decrease incidence of fraud/forgery

Decreases need for corrective/follow-up documents

Closing & funding quicker

# The Big 3

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Note

Mortgage

Deed

# Promissory Note

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- Fannie Mae/Freddie Mac approval required
- Tamper evident signature applied after borrower signs
- Registered on MERS eRegistry (centralized & authoritative home of information)
- Stored in private “eVault”

# Promissory Note

- View in eVault

Summary			
9999317-0005790613-5		Active	
3704 Lorcom Lane		Reg Date:	04/16/2018
Arlington, VA 22207		County: Fairfax	First Lien
Borrower	Homeowner, John	SSN	XXX-XX-6778
Controller	9999317 - eOriginal - theLender		
Servicing Agent	9999317 - eOriginal - theLender		
Location	9999317 - eOriginal - theLender		
Delegatee for Transfers			
Vault Identifier			
Registering Org ID	9999317 - eOriginal - theLender		
eNote Pending Transfers			
Transfer Type		Effective Date	
No Transfer Pending			
eNote Other Information			
Assumption	No	Tamperseal Date/Time	04/16/2018 12:49:47
Modification	No	SMART Doc Presented	Yes
Modifying MIN		SMART Doc Version	1.02
Previous MIN			

Tamperseal  
Date



# Promissory Note

- Can also view/  
produce PDF

with a record and executed or adopted by a person with the intent to sign a record; (iv) "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; and (v) "Transferable Record" means an electronic record that: (a) would be a note under Article 3 of the Uniform Commercial Code if the electronic record were in writing and (b) I, as the issuer, have agreed is a Transferable Record.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED

*John Homeowner*

Click here

John Homeowner (Seal) - Borrower

*[Sign Original Only]*

Loan Originator Organization: theLender, NMLSR ID: 5555785

Individual Loan Originator's Name: Ollie Originator, NMLSR ID: 8675309

# Promissory Note

- Servicer view

TL1201744338		Actions ▼
<b>Documents:</b>		New Document
✓ eNote	Authoritative Copy	▼
1003 - Loan application	Signed	▼
Closing Disclosure	Signed	▼
Fact Act Notice	Signed	▼
<b>SmartSign Participant Info:</b>		
<b>Name</b>	<b>Status</b>	<b>Order</b>
John Homeowner	Completed	0 ▼
<b>MERS Info:</b>		↻
Controller	eOriginal - theLender (9999317)	
Location	eOriginal - theLender (9999317)	
Servicing Agent	eOriginal - theLender (9999317)	
Tampersealed At	03/08/2018 10:34:37 PM EST	
Registered At	03/08/2018 10:35:47 PM EST	
Registered By	eOriginal - theLender (9999317)	
Data Last Updated At	03/08/2018 10:35:49 PM EST	

# Mortgage

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- Fannie Mae/Freddie Mac approval NOT required
- Generally e-recorded
- Electronic notarization barrier to use

# In-Person Electronic Notarization

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- Signatory & notary physically located in each other's presence
- Notary signs document electronically; applies electronic seal
- Authorized in Florida – Sec. 117.021, F.S.
- No separate authorization required by Fla. Sec. of State
- Certain technical requirements
- Utilize platform to obtain electronic seal & satisfy technical requirements



# Deed

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- Generally e-recorded
- Electronic notarization & electronic witness signatures barrier to use
  - Witnesses must also be physically located with signatory

# Validity - *Rivera v. Wells Fargo Bank, N.A.*

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- Electronic notes & mortgages can be foreclosed
- UETA expressly provides persons seeking to enforce electronic notes must:
  - Prove document would be promissory note under Ch. 673, F.S., if it was in writing
  - Borrower expressly agrees it is a transferrable record
  - Holder provides “reasonable proof” it is in control of record
    - Has access to authoritative copy
    - Related business records sufficient to review terms & establish identity of person having control

# So, When?

# What to Expect in 2019 & Beyond

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- Moving to digital starts at home search & loan application
  - 43% conducted online research (general or visit primary FO website)
  - 67% somewhat or very comfortable completing loan application on laptop or desktop
  - 29% somewhat or very comfortable completing loan application on mobile device (but, 49% of millennials)

# What to Expect in 2019

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- The next frontier for lenders – mobile
  - 77% willing to answer security questions to verify ID
  - 59% willing to electronically sign documents
  - 53% willing to upload picture of driver's license
  - 51% willing to upload picture of loan documents
  - 47% willing to print docs from mobile
  - 43% willing to read docs on mobile

Source: Fiserv & Harris Poll, Expectations & Experiences: Borrowing & Wealth Management Survey, Mar. 2019



# What to Expect in 2019

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- Number of eNotes added to eRegistry during 1Q2019 exceeded all of 2018

	1Q	Full Year	% Change
2018	375	17,000	4,433%
2019	19,000		

# Remote Online Notarization

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From Wild West to Coordinated  
Approach

# A National Trend?

6 or 7 states in 2019 – so far

Arizona

Idaho

Kentucky

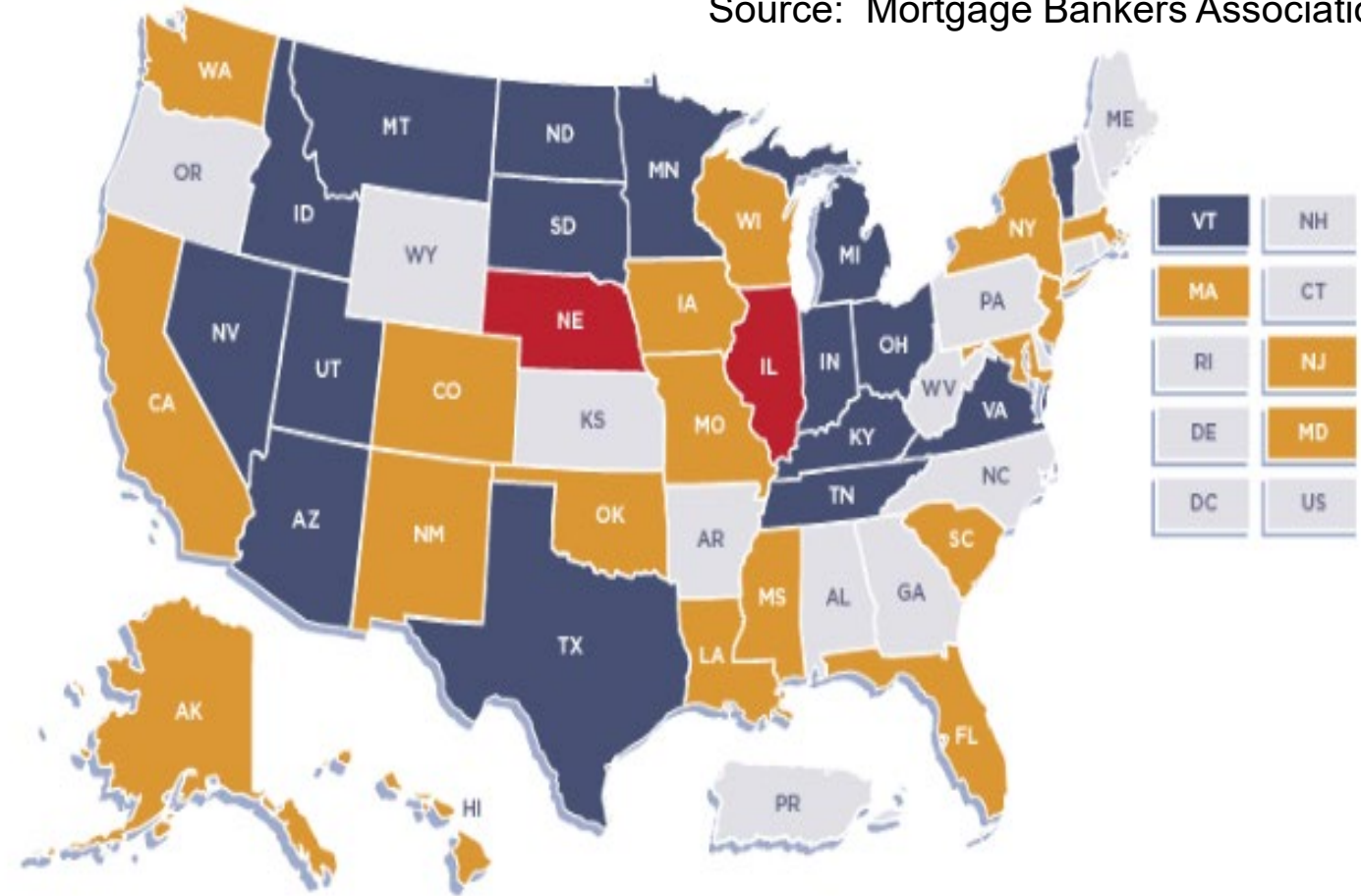
Maryland\*\*

North Dakota

South Dakota

Utah

Source: Mortgage Bankers Association



Key	
	States with enacted RON law
	States with enacted RON Study bills
	States with active RON legislation



# ULC's Principles for Future Legislation

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- Recognition of consumer choice in using RON
- RON should receive same legal status as traditional notarization
- Inclusion of robust provisions for ID proofing & credential analysis
- Acknowledgments performed online can be readily identified & distinguished from those done in person
- Technology requirements not specific as to favor 1 vendor over another, nor so restrictive they impede improvements to security over time
- Legislation conforms to other legal standards & laws

# Will 2019 Be the Year in Florida?

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- HB 409 & SB 548

# Maybe, Yes!

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- Remote Online Notarization & witnessing specifically authorized
  - Notary & signatory (including witness) must have audio-visual communication
  - Notary must be in Florida; witness must be in U.S. or physically located with signatory; signatory may be anywhere
  - Any document that may be notarized or witnessed on paper, may be notarized or witnessed remotely (except marital rites)
- Effective Jan. 1, 2020
- Notary may not be forced to use technology they have not selected
- \$25 fee cap for “performing an online notarization”
- Dep. of State directed to create rules

# Forms of Acknowledgment

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STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by

\_\_\_\_\_

[SEAL]

Online Notary

\_\_\_\_\_

Signature of Notary Public

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

- Additional forms for representative capacity, signing with mark, those physically unable to sign, & short forms of acknowledgment (including new LLC form)



# Qualifications

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- Must be separately registered as remote online notary with Dept. of State
  - Must already be notary public, civil-law notary, or commissioner of deeds
  - Complete RON education course
  - Pay fee & register
  - Identify RON provider(s) notary intends to use & verify they meet Florida's technology requirements
    - May change/add from time to time, must notify Dept. of State within 30 days
  - \$25,000 bond
  - \$25,000 E&O policy

# Consent & Identity-Proofing

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- Must obtain consent from principal they want Florida notary to perform act & Florida law to apply
- Verify identity of principal & witnesses
  - Personal knowledge; or
  - Presentation of identification; &
  - Credential analysis of identification; &
  - Identity-proofing through knowledge-based authentication

# Performing Notarial Act

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- Maintain electronic journal(s) & back-up(s)
- Retain recording of notarial act
  - Appearance by principal & witnesses
  - Confirmation of identities
  - Description or identification of records to be signed
  - Recitation of information by notary sufficient to identify notarial act
  - Declaration by principal that signature is knowingly & voluntarily made
  - All actions & spoken words of principal, notary public, & witnesses during notarization, including the signing of records
- Journals, back-ups, & recordings maintained for 10 years
- Notary may contract with secure repository for storage

# Recordkeeping

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- Notary required to keep electronic signature & seal secure
- Must provide electronic copies of journal entries & recordings to:
  - Parties to record notarized\*\*\*
  - Title agent & settlement agent who hired notary\*\*\*
  - Underwriter of record insured\*\*\*
  - RON service provider used
  - Person asked to accept POA
  - Dept. of State during investigation\*\*\*
  - Subpoena, court order, etc.
- May charge fee up to \$20 per transaction record to provide copies except to starred parties above



# Other Provisions

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- Requires clerks to accept electronically signed documents
- Sec. 95.231, F.S., 5-year & Sec. 694.08, F.S., 7-year statutes of limitation extended to “failure of, or absence of” acknowledgment
- 3d party asked to rely on POA may request electronic journal or record at principal’s expense
- Provisions related to wills & testamentary instruments

# Underwriting Guidelines

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- Florida transactions utilizing RON may not be insured on Old Republic
- If insuring transactions with notarizations from RON states make inquiries about circumstances of notarization & carefully inspect seal, acknowledgement, etc.
  - Ask signing party, contact notary, etc.
- Be proactive on closings; make sure buyer or seller do not utilize RON if not present for closing
- If you have concerns or questions about a notarization, contact Fund Underwriting Counsel

# Why this Position?

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- Constructive notice under Florida law
  - Sec. 695.03, F.S., requires parties executing instruments to be recorded to acknowledge execution “before” notary
  - Sec. 695.01, F.S., imparts constructive notice to instruments recorded “according to law”
  - Reminder – Sec. 117.107(9), F.S., makes it civil infraction subject to monetary penalty to notarize signature when signer “not in the physical presence” of notary

# Mutual Indemnification Agreement

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- Part IX revised Sep. 1, 2018 to expressly **exclude** “an acknowledgment taken remotely not expressly authorized by Florida Statutes and Rules”

# Bonus!

# Blockchain

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*Thank You!*  
for attending