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The Last Mile: Closing Marks Final Frontier in eMortgage Adoption

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The promise of the eMortgage has tantalizingly lingered for nearly 15 years, but with each step forward, new challenges have arisen.

Arguably, two of the biggest hurdles--e-signature acceptance by the Federal Housing Administration and the Internal Revenue Service--have been conquered within a year of each other, but additional challenges still remain.

What is ultimately hindering the process is the uncertainty regarding how electronic and e-signed documents will affect the closing process. For example, when a security instrument is signed electronically, how is that e-signed document delivered to the county recorder, and are they going to accept that electronic signature? Because they are securitizing an actual piece of property, how do they determine if that signature is valid?

From there, the questions only get harder. What happens when a borrower misses a payment, defaults or is foreclosed upon? If the loan is an eMortgage at that point, how do you go about notating default on a loan that exists entirely electronically? Is it as simple as adding some statement on their obligations to the note that is associated with that security instrument showing that the borrower is not current? As you can see, clarity is needed, not to mention a platform on which to conduct these transactions.

The Mortgage Industry Standards Maintenance Organization (MISMO) has long established itself as the guiding force for eMortgage standards, so one would be inclined to look to them to lead the charge towards taking the eMortgage all the way through closing. However, MISMO's mandate is purely focused on just that--setting technology standards--not in serving as a platform for eMortgage closing transactions or in answering more esoteric/relationship questions. Simply put, when a tree falls in the forest, MISMO cares less about whether it makes a sound than about providing standards for the removal, cleanup and reporting process so that any vendor can perform this task.

Given its experience in managing electronic loan information, MERS may be the organization better suited to the task. Using the standards set by MISMO, the MERS platform, with a few tweaks, would be ideally suited to manage the transactions that would be required for a true eMortgage on the closing side. Furthermore, MERS's current legal entanglements with county recorders may well position it to take the lead, when the time comes, on working with these and other closing entities to establish eMortgage closing relationships and protocols. Not only are a number of county recorders already equipped to deal with electronic signatures, but also most are also dealing with electronic loan assignments and transfers via MERS. Once a final legal consensus can be reached regarding recording fees for loans exchanged within the MERS system, it doesn't seem to be too far of a stretch for MERS to become the *de facto* platform for eMortgage closings.

Of course, there may be a completely new wave of issues that arise in the e-signature side of those same security instruments, and perhaps, a new battle that's going to be fought. After all, taking the entire process electronic means you're taking away more of the process from the county recorders. The process would be so seamless that it would diminish some of the value that the recorders offer. In addition, it would be rather embarrassing for them to attempt to charge \$12 a page when it is all being done electronically. Suffice it to say, the turf wars have only just begun.

Despite the rather gloomy prediction for the fight ahead, it is imperative that the industry remains resolute in its determination to advance the eMortgage all the way to closing. The promise of efficiency cannot be overstated given the standardization, transparency and accountability of the process. Furthermore, we live in a truly electronic age, and the idea

of continuing to conduct mortgage transactions via paper seems more than a bit old fashioned--it's archaic. We've come so far in the process. It would be a shame to falter in the home stretch.

(The views expressed in this article do not necessarily reflect policy of the Mortgage Bankers Association, nor does it connote an endorsement of a specific company, product or service. MBA NewsLink welcomes your submissions; articles and/or Q/A inquiries should be sent to Mike Sorohan, editor, at msorohan@mortgagebankers.org.)