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The Time for E-Closings Is Now

Electronic mortgages benefit brokers and borrowers alike

Electronic closings are changing the way mortgage brokers, lenders, title companies, attorneys and borrowers do business. E-closings are no longer an imaginary concept; they're happening now and will likely be the way we conduct most, if not all, real estate transactions in the near future.

Some time ago, the question was whether e-notes had the same specific legal benefits under the Uniform Commercial Code as paper promissory notes. Thanks to the Electronic Signatures in Global and National Commerce Act (ESIGN) and the Uniform Electronic Transaction Act — laws Congress enacted to spur the growth of electronic commerce — this is no longer the case. Electronic mortgage documents are now enforceable in every jurisdiction in the United States.

The question becomes: Are you and your settlement-providers prepared for e-closings?

Several lenders have implemented e-closing platforms, and some already charge a paper-handling fee for loans that don't close electronically. Brokers should think of such fees as penalties and seek settlement-providers with e-closing capabilities.

Although some brokers might view e-closing mandates as unnecessary hurdles in an ever-changing mortgage market — perhaps even sources of customer frustration, confusion and loss of business — such a perspective cheats reality. In

fact, e-closing platforms offer brokers another way to increase communication with customers, educate clients and serve their needs, and increase revenues.

And if you like to think green, e-closings save trees.

Congress enacted ESIGN to facilitate the use of electronic records and signatures and to ensure their validity. Lawmakers were careful to preserve the underlying consumer-protection laws that ensured consumers' rights to receive certain information in writing. Consumers can receive ordinarily printed disclosures electronically if they offer their consent and if the business clearly discloses specific information before it obtains consent. Consumers also must consent electronically in a manner that demonstrates their ability to access information in an electronic format, such as by sending a confirmatory e-mail from their home computer.

When the National Telecommunications and Information Administration, on behalf of the Department of Commerce and the Federal Trade Commission, conducted a study to evaluate the effects of the law's requirements, some commenters expressed concern about the additional steps required to establish borrower consent. A face-to-face meeting or teleconference with borrowers would still require borrowers to take what many brokers considered an unduly, burdensome step of sending a confirmatory e-mail.

The law, however, was created with technological neutrality that allowed for

flexibility and broad parameters to obtain consent. It also helps brokers engage their borrowers and increase dialogue. Brokers can get creative. Instead of being passive participants and waiting for borrowers to send the confirmatory e-mail, brokers can send an e-mail to borrowers and require a response that would adequately obtain consent.

Additionally, brokers can use this e-mail to address borrowers' other concerns or questions. The informality of e-mail may make some borrowers feel more secure asking questions they might be uncomfortable voicing on the phone or in face-to-face meetings. Essentially, brokers can turn the requirement into a conduit for addressing and assessing borrowers' needs, further developing their relationships.

Moreover, e-closing platforms can enhance borrowers' confidence in brokers and their company. Proper compliance establishes a company's legitimacy and credibility while differentiating the company from unethical and unscrupulous industry practitioners.

By making sure borrowers understand which information will be the subject of electronic disclosures — and that they must consent to receive that information electronically — originators take on the role of educator, which often comes with

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increased borrower trust. Brokers also can enjoy a more advisory role by promoting borrower awareness.

E-closings provide another benefit by addressing potential fraud and deception before it occurs. Unlike some consumer-protection laws that provide remedies after fraud has occurred, ESIGN establishes safeguards to help avoid abusive tactics and practices. The act affords consumers who receive electronic records and who provide electronic signatures the same protections as those who use traditional, paper-based transactions. Additionally, ESIGN mandates that consumers continue to receive comprehensive disclosures and that electronic records be stored securely.

The act discourages providing electronic information to consumers without Internet access and using price to persuade consumers to accept electronic records. It also ensures consumers' ability to not only access but also retain electronic records.

Furthermore, e-notes must contain only the same terms and conditions allowed for on paper promissory notes to be legal and enforceable instruments, and they must include e-signatures definitely attributable to the signor.

When brokers implement e-closings, many find them instantly more convenient and efficient. In some cases, final loan documents can be signed in 20 minutes or less. Many jurisdictions allow

for electronic recording of security documents. Those documents often can be delivered to a lender's post-closing department automatically upon completion of the e-signing, substantially reducing courier or overnight fees and resulting in additional savings and substantially fewer delayed fundings.

Ultimately, e-closings can cut costs, improve compliance and enhance brokers' service. In time, it's almost certain that e-closings will dominate the mortgage landscape. Brokers who get on board early can reap the benefits and build their clientele before the advantages become the norm. ●