

eMortgage Frequently Asked Questions

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MBA Residential Technology Committee
eMortgage Adoption Task Force

Please note: The information provided here is educational in nature, providing general information about legal, financial, technological and other considerations associated with eMortgages. It is not intended as legal or other professional advice. You should consult an appropriate professional with any specific questions.

1. What is the definition of an eMortgage?

A mortgage where the critical loan documents — at a minimum the promissory note, and preferably also the security instrument and other closing docs — are created electronically, executed electronically, transferred electronically and stored electronically. A “full” eMortgage would create and manage all original loan documents electronically, and would scan any paper originals from the application process and then manage those images electronically as well.

2. Why isn't a document imaging system the same as an eMortgage?

In an imaging system, the original loan documents are created on paper and signed in ink, then scanned into electronic images. In an eMortgage, the documents originate electronically and are eSigned; they are never in paper form.

3. What are the key benefits of eMortgages?

By replacing much of the manual effort in handling, processing, and checking paper documents, eMortgages can bring cost savings throughout the mortgage process. In addition, closing, post closing and delivery cycle times are greatly reduced, and shipping and delivery costs nearly eliminated.

4. How are eMortgage documents protected and managed?

The tamper-evident seal, which is created at the moment of closing, is a “digital thumbprint” of the electronic documents, and can be re-verified at any point in subsequent processing to ensure that the documents have not changed. In addition, many typical design factors of mission-critical systems — data encryption, backup, physical security, and more — should be a central part of any eMortgage implementation.

5. What are industry standards with respect to eMortgages?

The MISMO® eMortgage Workgroup has created a wealth of resource material and technical standards for eMortgage implementation, all of which are available for downloading on the eMortgage area of www.mismo.org. In addition, MBA and other entities like MERS, SPeRS, PRIA and ALTA have all published different pieces of supporting information on their own web sites. MBA has created a central resource page to guide you to all of this information, at www.mortgagebankers.org/emortgage.

6. Have standards been developed for both conforming and non-conforming loans?

A non-conforming loan can readily be created using MISMO's SMART Doc® or Adobe PDF electronic docs, for which MISMO also provides guidance. The technical format does not limit the types of loans that can be created, and MISMO will work to support other formats as they become available and develop industry support.

7. Are investors ready to purchase eMortgages?

Fannie Mae and Freddie Mac are currently purchasing eNotes, and have each published their own guidelines for lenders. In addition, the MBA's eMortgage Adoption Task Force is making progress in educating and encouraging readiness and adoption by the rest of the secondary market.

8. How have consumers reacted to electronic signing?

Consumers have shown little or no resistance to electronic signing of eMortgages, with over 1,700 eNotes registered on the MERS® eRegistry to date. Most have been very happy to have the lengthy paper signing process streamlined and made easier for them.

9. What is the status of county recorder readiness to accept electronic documents?

There has been steady progress in adoption of eRecording capability in the nation's counties and recording jurisdictions. MBA and MISMO are working closely with PRIA (the Property Records Industry Association) to develop technical and data standards for eRecording, and to encourage further adoption. One promising trend is that of statewide eRecording portals, which provide a single point of integration for all of the counties within a state. It's important to note that eMortgage implementation is already proceeding forward in an incremental fashion, with hybrid eMortgages having an electronic Note and paper security instruments and recordable documents where eRecording is not yet available.

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10. What about electronic vaults? Do I need to implement my own?

An electronic vault provides a secure file storage capability for electronic documents throughout the eMortgage process. Electronic vaults are available now, through third-party vendors and within eClosing systems. They can also be implemented internally, if desired, by integrating very secure data servers with redundancy. Please reference the MISMO eMortgage Vaulting Guide for more detailed information on all aspects of electronic vaulting.

11. How do you ensure the authenticity of an eNote?

Through proper signing, closing and storage procedures, just as the authenticity of a paper note is ensured. In addition, the tamper evident seal is a kind of "digital thumbprint" of the eNote, which is stored on MERS® eRegistry and can be verified at any point in the loan's life by the various business partners who may hold the eNote at different times. In other words, efforts to alter an eNote would be obvious.

12. How do we know an eNote is enforceable?

Federal and state statutes support the use of electronic signatures in business transactions. The federal ESIGN law and the Uniform Electronic Transaction Act ("UETA"), a model act that has been passed in all but four states, provide that electronically signed contracts can be just as legitimate as paper documents (State laws need to be checked, however, for state-specific variations in UETA). eNotes are just as enforceable as paper notes, if properly prepared and signed. The settlement agents' closing process (done correctly) will result in an enforceable eNote just as it does a paper note.

13. How is a security interest in the eNote perfected?

The MERS® eRegistry provides the system of record per ESIGN & UETA, to indicate the Controller of the Authoritative Copy of the eNote (equivalent to the holder in due course of the wet-ink-signed paper original Note). A transfer of "control" over the eNote on the MERS® eRegistry is equivalent to the endorsement of a paper note.

14. Can data errors be corrected after an eClosing?

Yes, the electronic documents can be corrected through specific procedures.

15. Has a foreclosure occurred with an eMortgage? Would it require a different process?

No eMortgage foreclosure proceedings have occurred yet. The legal structure is the same, however, and there should be no differences in foreclosure proceedings or processes with an eNote vs. a paper note.

The MBA ResTech Committee thanks the participants of the eMortgage Adoption Task Force for their work in developing this FAQ document.