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Past Perfect:
A bright future for e-signatures

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WHITE PAPER

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Imagine a real estate closing in the not-too-distant future. At the closing table, instead of a hundred pages of paper documents flagged with SIGN HERE stickers, there's an electronic pad, sleek and glowing, where the parties can enter their secure, encrypted signatures. Instead of suffering writer's cramp, both lender and borrower come away from the deal refreshed and confident in the knowledge that the agreement between them is sound, binding, and every bit as valid as if they'd signed a stack of papers.

Now imagine that the property in question belongs to the estate of a deceased Wisconsin couple. Their eldest son and executor, Wade, can't make the closing because, well, he lives in California and needs to take his English spaniel, Trevor, for surgery that afternoon. The closing is called off, right? Hardly. With the help of a unique login and an electronic signature, Wade is able to sign the documents from the comfort of his Laguna Beach home. He doesn't need to be there. Best of all, Trevor comes out of his surgery with flying colors.

No, this isn't some fevered dream from the mind of a science fiction writer. In fact, the only thing that stands between the status quo and the scenario above is a lingering resistance to electronic signatures from borrowers and notaries within pockets of our industry.

It has been 14 years since congress passed the Electronic Signatures in Global and National Commerce Act ("E-SIGN"), which put the force of law behind the idea that electronic signatures are as valid as handwritten or "wet" signatures. In the direct aftermath of E-SIGN, things seemed promising enough: in 2001, mortgage giant Freddie Mac began accepting e-signatures on documents for the mortgages it purchases, followed a year later by Fannie Mae. In 2004, the first electronically signed promissory notes, or "e-mortgages," arrived on the scene. Since then, more than 322,000 e-mortgages have been originated in the U.S.

But nearly a decade-and-a-half after passage, E-SIGN has yet to fully live up to its promise. It's true that most states have adopted E-SIGN in some fashion, but implementation of the law has been uneven at best from profession to profession and from jurisdiction to jurisdiction. As a result, today most U.S. counties accept only a few types of documents with electronic signatures on them, typically mortgage releases and satisfactions—where the money is in-pocket and the stakes are low. E-signatures are widespread in the retail commerce and consumer banking arenas, but in much of the land records world there remains an entrenched bias in favor of wet signatures and the notion that major transactions are best when carried out face-to-face and with a firm handshake.

That bias appears to be softening, though. Earlier this year, the Federal Housing Administration (FHA), the last major holdout on electronic signatures, announced that it would immediately start accepting them on all mortgage insurance endorsement and servicing documents, and would accept e-signatures on promissory notes beginning on Dec. 31, 2014. As the nation's largest mortgage insurer, FHA has sent a powerful signal that electronic signatures are well on their way to becoming a preferred format.

"It looks like the stars are finally beginning to align for e-signatures," says Mark Rosser, vice president for electronic document recording services with Corporation Service Company (CSC). "For years we've said, 'it will be next year.' Well, we now know that was a dangerous prediction to make. But I think it's safe to say that we're getting much closer."

Two drivers on the road to a fully electronic process

Two industry forces appear to be smoothing the way for e-signatures. One is a desire to get transactions done faster and with less effort, cash, and materials—all driven by scarcer resources and declining budgets. "There is real pressure on banks with the cost of servicing," says CSC's Rosser. "It used to be a very profitable part of their business; now it's barely profitable at all. So anything you can do to get costs down is good. The same goes for loan origination. From the production side there is definitely an interest in electronic processes."

A more profound shift is taking place within the industry's compliance landscape. Implementation of the 2010 Dodd-Frank Act, which included the establishment of the Consumer Financial Protection Bureau (CFPB), has forced the lending industry to re-think many of its business practices. The CFPB has responded to consumer complaints with a number of new regulations, most recently the "Know Before You Owe" initiative, which seeks to give consumers greater transparency into the mortgage process. A few of the program's guidelines came into effect at the beginning of this year; others will do so on August 1, 2015. Failure to live up to them will likely expose lenders to sanctions and fines.

As the industry looks for ways to comply with the CFPB's guidelines and build the needed audit trails, e-signatures and e-mortgages are a few of the tools they know will help their cause.

For its part, the CFPB acknowledges the benefits of electronic mortgage processes. It especially likes how, through the electronic closing ("e-closing" or "eClosing") process, borrowers can receive their documents in advance, giving them time to review them and send questions and corrections back to the closing agent prior to closing.

"As part of our "Know Before You Owe" initiative, we are making a commitment to work with the various stakeholders to use technology in order to improve the mortgage closing experience for consumers," said CFPB Director Richard Cordray in a statement. "We strongly believe that electronic closing solutions—known as eClosings—can lead to more knowledgeable consumers and a much better process for everyone involved." In April 2014, the CFPB announced that it would sponsor a pilot program to evaluate whether a fully electronic closing process provides a better borrower experience compared to a paper-based closing[1]. The three-month program is expected to start in October 2014.

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The "f" word

One force that has stalled adoption of electronic mortgage processes is fear, plain and simple. "The mortgage and title industry have been rocked by a lot of things in the past few years—the whole foreclosure crisis—and it's put a

[1] *http://www.consumerfinance.gov/newsroom/cfpb-report-highlights-pain-points-for-consumers-in-mortgage-closing-process/*

lot of people on edge when it comes to adopting new technology, to embracing things that they feel might make them more vulnerable," says Rosser.

Early objections to e-signatures tended to focus on safety. By now, those fears should be put to rest. After all, e-signatures are in many ways *more* secure than handwritten signatures. In the CSC document system, for example, only authorized users can apply an e-signature to a satisfaction or assignment, and then only after CSC has verified the computer they are signed into and the signature file that comes from it. In the e-closing process, signers are not restricted to a particular computer but must still authenticate who they are (often through a series of questions). Electronically signed documents are also affixed with electronic, tamper-evident seals. The combination of a seal and a better audit trail renders electronic documents much more secure than paper documents.

Putting the brakes on

Well-founded or not, resistance to e-signatures at any point in the process effectively shuts down the rest of it. "In the past, one of the problems faced by government-sponsored enterprises was that the note holders wouldn't accept electronically signed documents," explains Rosser. "At the middle of the chain, you had the recorders, who also wouldn't accept them. The argument was, "I know that it's legal in my state, but if I have to testify in court that this is a legal document, am I really comfortable saying that?""

With time and enough positive evidence, most of the major concerns around e-signatures have dissipated. Other objections are minor.

With time and enough positive evidence, most of the major concerns around e-signatures have dissipated. Other objections are minor. On the consumer side, for instance, electronic signatures do take a little of the momentousness out of what is often the largest purchase of their lives. You go from something like this:

(Courtesy: http://en.wikipedia.org/wiki/File:JohnHancocksSignature.svg)

To this:

-------BEGIN SIGNATURE------

IQB1AwUBMVSiA5QYCuMfgNYjAQFAKgL/ZkBfbeNEsbthba4BlrcnjaqbcKg
Nv+
a5kr4537y8RCd+RHm75yYh5xxA1ojELwNhhb7cltrp2V7LlOnAelws4S87UX
80c
LBtBcN6AACf11qymC2h+Rb2j5SU+rmXWru+=QFMx

------END SIGNATURE------

(Courtesy: https://www.sos.wa.gov/ea/overview_faq.aspx)

From a process standpoint, though, the benefits of using e-signatures far outweigh the aesthetic sacrifices involved. For servicers, turnaround times can be shaved from days to minutes and expenditures can be reduced considerably.

Missing link

Today, nearly 15 years after E-SIGN, practically all mortgages are still created using electronic templates that are then printed out, physically signed and notarized, and scanned back into an electronic format. It's a little like putting your lunch in the microwave, removing it after a few minutes, gathering wood, building a fire, cooking it several minutes longer over the open flame, and then returning it to the microwave to finish it up. It doesn't make sense.

The use of e-signatures is the missing link along the entire path from origination to satisfaction. And that's precisely why the FHA's declared intention to accept e-signed documents is such a milestone.

Question is, are we any closer to the scenario we imagined earlier? CSC's Rosser thinks we are. "The industry is coalescing around the concept of a paperless mortgage being the Holy Grail," he said. "Title companies already use various kinds of software to generate the documents used at the closing table. By embracing e-signatures, settlement firms and title companies will finally be able to remove the paper from the process entirely. It's not a question anymore of *whether* this will happen but *when*."

About the author

Karl Klessig is the former CEO of Ingeo Systems, Inc., which revolutionized the mortgage industry more than a decade ago when it launched the first electronic system for real estate document recording. CSC acquired Ingeo Systems in 2011.

Klessig has served as president and CEO of nine companies and on the board of directors of 14 organizations. He has provided specific expertise in marketing, business development, restructuring, and financial and business management. Klessig has been an invited speaker throughout the U.S., Canada, Japan and Europe. In September 2013, he was elected to the Property Records Industry Association (PRIA) board of directors for a two-year term.

CSC, a pioneer of electronic real estate document processes

CSC revolutionized the mortgage industry more than a decade ago by launching the first electronic system for real estate document recording.

CSC's eRecording system serves as an electronic bridge between submitters of real estate documents and county offices, enabling documents to be prepared, submitted, recorded/rejected, indexed and returned with unmatched speed and efficiency.

CSC's secure, web-based technology helps submitters and recording offices alike save time, reduce costs and eliminate payment errors.

CSC has provided business solutions to the legal, corporate and financial communities for more than 110 years. For more information, visit www.erecording.com.

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