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REPORT

eTransactions

The eClosing Process

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eNotarizations key to process, but adoption is uneven

eNotarizations have been said to be the key to the eClosing process. In order to have an entirely electronic transaction, it is necessary, but without a national standard in place the adoption needed to propel eClosings has been uneven.

The technology needed to conduct eNotarizations is the easy part. It has been available for the past decade, according to **Bill Anderson**, vice president of legislative affairs for the National Notary Association (NNA).

“It’s the legal, legislative and policy issues that have slowed things down,” he said. “A decade ago the only option you had was to have a desktop computer screen and have the documents presented that way. Now you have vendors using iPads to do this.”

Although some notaries say it would give them a competitive edge, many aren’t investing in the technology or training to conduct eClosings. The proactive notary who chooses to adapt to the market generally will be able to generate more transactions and closed loans. However, many also said the compensation has to be worth the additional costs and it’s not without barriers to adoption, according to a recent

survey conducted by SnapDocs.

“I used to have a digital seal, years ago, but seldom used them,” one respondent said. “At one time I was going into law enforcement and it would have come in handy then. However, I will use it once again in Florida. I do see it as an opportunity. I have all the tools needed to do the signings, but haven’t received any calls to do any.”

“(I’m for) anything that makes the closing process more convenient,” another respondent said. “Borrowers like having options and most are fairly tech savvy.”

Efficiency also was a bonus, another said. “I see eClosings as an opportunity because they are much more efficient than waiting for overnight delivery,” the respondent said.

There are many reasons why eNotarizations haven’t been entirely embraced, according to Anderson. He said one is whether the lender wants to go entirely end-to-end electronically with the transactions. “We’ve seen some do hybrid-transactions. They’ll sign all the papers electronically, but when you get to the mortgage or the



LAYING THE FOUNDATION FOR eCLOSINGS

WEBINAR

The Title Report is hosting this exclusive webinar on how you can begin to lay the foundation for the eClosing process. Expert speakers Mark Ladd of Simplifile and Natalie Bombardier of Southwest Title Group, Fidelity National Title Insurance Co., together will address eClosings, how to streamline processes to save time, the benefits and challenges of eRecording, and transitioning to a paperless environment.

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Thursday, March 5
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deed of trust, the notary will paper those out and sign them,” he said. “We’ve seen that for a number of years. Lenders can realize some ROI (return on investment) benefits by using a hybrid process, (but) the Holy Grail is to eliminate paper. A hybrid solution postpones that.”

Aaron King, founder of SnapDocs, is thrilled at the concept of eNotarizations but agreed the execution is lacking.

“The concept is positive I just don’t think anyone has really figured out how to do it really well yet,” King said. “Instead of getting bogged down in the bureaucracy of trying to make eNotarizations work, we’re focused on making improvements to the closing process that can be implemented today. Once the door opens on that we’ll jump on it, but it’s just not something we want to focus our resources on now. I think it’s complicated and farther away than most people are willing to admit.”

For the past two years the NNA has been working with a national panel of 28 experts to draft the Model eNotarization Act (MeNA) — a realistic legislative blueprint for eNotarization provisions. The purpose is to offer state legislators a stand-alone model statute allowing them to incorporate all or part of its provisions without having to rewrite existing laws. The MeNA Review Committee drafting the act is comprised of technology-savvy officials such as Nevada Attorney General **Catherine Cortez Masto**, North Carolina Secretary of State **Elaine Marshall** and Delaware Deputy Secretary **Rick Geisenberger**. It also includes nationally recognized authorities on electronic documents and signatures including Chicago attorney **Tom Smedinghoff**, SafeDocs President **Terry Van Bibber** and DocVerify Chief Technology Officer **Darcy Mayer**.

MeNA is the latest in a series of model statutes published by the NNA that have helped lawmakers revise and modernize their notary public laws. The first was the Uniform Notary Act of 1973. That act was expanded, updated and republished in 1984 as the Model Notary Act. It was updated in 2002 and again in 2010. Over the past four decades, more than 40 states and territories have adopted or enacted some or of all of the provisions of the four model acts. However there is no one standard for conducting eNotarizations in these states.

“There’s a lot of confusion,” Mayer said. “Every state that allows eNotarization has its own unique way of doing it.”

Some states believe the Uniform Electronic Transactions

Act (UETA) provides all the authority for a notary to use electronic signatures. Other states don’t believe UETA goes far enough and have passed additional laws. The NNA believes the UETA authorizes notaries to use electronic signatures.

“Up to this point, you had people in the mortgage and finance industries advocating for this,” Anderson explained. “They’ve tried to push this forward. I’m at an age where I don’t want to have to sign another stack of papers. My adult daughters definitely don’t want to sign a big stack of papers. I think there’s more of an interest from consumers to do this now.”

Legislation isn’t the only barrier to acceptance. Many think electronic notarizations mean remote notarizations and that’s not the case. Virginia is the only state allowing notaries to perform eNotarizations remotely using video and audio technology. It has been a controversial issue. After Virginia enacted the statute a number of secretaries of state and attorneys general posted consumer notices that notaries in their state were forbidden from the practice. In those states the signer must physically appear before the notary to conduct a notarial act.

The argument against remote notarizations is that a video feed may not be able to capture the necessary dynamic. Anderson said the notary is there to make sure that the person who is signing is who they say they are. The notary asks questions about the document, examines identity credentials and ensures they are signing of their own free will.

“As a notary myself, I have never refused a notarization

“I think eClosings and eNotarizations could be massively positive once they become real. eClosings could fix a lot of problems. I think it will become much more common over the next few years, but not be mainstream for another four years probably.”

**Aaron King,
Founder, SnapDocs**

because I had a suspicion that someone was being coerced,” Anderson said. “But it has happened. Take, for example, elder abuse cases where powers of attorney are executed. Elderly signers are being pressured to sign that power of attorney. I think everyone that supports the presence requirement wants to ensure consumers are protected.”

However, not everyone thinks it’s necessary. King said mandating a physical presence to notarize an act is outdated. “We interface online all the time,” King said. “With a remote notarization everything is recorded. I can still see their body language. I can still talk to them face-to-face. I think there’s an additional security layer you can implement there. The whole point of notarization is to prevent fraud and to make sure the person is who they say they are. If you have a video of that person, I think it’s a lot less likely that person is going to pretend to be somebody else.

“I think eClosings and eNotarizations could be massively positive once they become real,” he continued. “eClosings could fix a lot of problems. I think it will

become much more common over the next few years, but not be mainstream for another four years probably. I don’t think it’s too far off in the future. The technology is there. There are absolutely no technological barriers to doing this and there haven’t been for five to 10 years. The problem is the counties need to get up to speed and the investors need to get on board.”

Mayer said they are working with forward-thinking companies who are integrating eNotarizations directly into their systems because they are aware the demand is coming.

“eNotarizations will play a big part in eClosings,” he said. “If you want it to be electronic, that’s part of the requirement. It has to be electronic beginning to end. eNotarizations are going to happen. It’s more secure. It’s more efficient. It’s a more productive way of doing things. The adoption will pick up after the CFPB pilot and their standards get pushed down — the point where people can’t procrastinate anymore. In the next two to three years adoption will significantly increase.”

Recording association expands with addition of newest member

The Electronic Signature and Records Association (ESRA), a trade association representing electronic signature adopters and providers, recently expanded its membership ranks with the addition of Ellie Mae, a provider of on-demand software solutions and services for the residential mortgage industry.

ESRA was founded in 2006 to educate businesses and the public about the legal, public policy, regulatory and operational issues involved with using electronic signatures and records. Its members include insurance and financial institutions, document and eSignature providers, and innovative technology providers such as Ellie Mae. As an ESRA member, Ellie Mae will have the opportunity to become involved in various public policy initiatives and promote the organization’s efforts and leadership by participating in ESRA-hosted events throughout the year.

“We are pleased to have a company of Ellie Mae’s stature join our organization,” said **Steve Bisbee**, ESRA membership chair and CEO of eOriginal. “We believe that Ellie Mae’s extensive customer base will be

instrumental in propelling eMortgage growth from within the mortgage industry, at long last.”

“By collaborating with ESRA and drawing on their expertise — as well as sharing our own experiences — we will all move much closer toward industry-wide acceptance of electronic signatures,” said **Joe Tyrrell**, Ellie Mae’s senior vice president of corporate strategy. “Digital signatures and electronic closings are a vital part of Ellie Mae’s mission to bring efficiency, loan quality and compliance to the mortgage industry.”

“Ellie Mae is committed to providing seamless eDisclosures and eClosings as part of Encompass’ end-to-end automation capabilities,” said **Harry Gardner**, Ellie Mae’s vice president of eStrategies. “Electronic mortgages provide an advanced framework for addressing the requirements of RESPA-TILA, and can increase efficiency and data quality throughout the loan process. We look forward to working with ESRA to help the industry reach the tipping point of mainstream eMortgage adoption.”