

eClosings: An Underwriter's Perspective

Description

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Electronic closings are the future. Also known as digital closings or eClosings, the transition from wet settlements to hybrid closings to a completely paperless closing has begun. We are seeing increasing demand from the public to deliver this type of closing experience, especially from the younger generation of homebuyers. And why shouldn't they want this? Almost every other industry can interface with the consumer digitally. You can do your banking online, apply for a loan online, so why shouldn't you be able to buy your house online?

Well, as all of us in the industry know, it really is not that simple. There are certain aspects of the real estate closing that present unique challenges. For one, there are hundreds of years of state legislation and case law centered around paper documents signed in wet ink. Replacing the paper document and wet signature with electronic documents and electronic signatures may cause unintended consequences for future court decisions unless new statutes are carefully thought out and implemented. Another obstacle is recording. Even if appropriate legislation is passed, the Courthouse where you attempt to record your electronically signed document may not have the infrastructure in place to accept the document. The final challenge is us. Many in our industry lack the training and knowledge to understand how to direct and implement a electronic closing.

For underwriters, the eClosing presents a unique risk. This is especially true with regard to remote online eNotary closings. Because the parties are not in the same room as the notary public, it can be difficult to detect serious problems like fraud, duress, elder abuse, and mental incapacity. These problems create substantial risk of claims unless stopped in advance. This is the primary reason that not all states have adopted legislation to allow remote notarizations. However, the industry is working through these issues with the help of ALTA and the Mortgage Bankers Association. They have been able to craft model legislation that once adopted in all jurisdictions, will pave the way to the fully remote eClosing.

Notwithstanding these challenges, we all must accept that eClosings are the future and embrace it. As will be discussed later in this article, more consumers are pushing for the concept of the eClosing and are seeking out those parties in our industry who are able to provide it. Not to mention the fact that once implemented, the eClosing will provide tangible benefits to all parties involved in the transaction,

not just the consumer.

Before we discuss these benefits, let's provide a specific definition to an eClosing. One thing we have taken note of while reading numerous articles and discussing this topic with many persons in the industry is that there truly is no consensus on what an electronic closing is. In fact, there is quite a bit of misinformation out there – dare we say, “fake news”. The following is what we believe to be a simple and functional definition of an electronic closing or eClosing. An eClosing is any real estate closing, event or process in which the buyer, seller, borrower, notary or others use an electronic signature (eSignature) to sign some or all the closing documents.

This of course is a very broad definition. In practice, there have been very few if any fully electronic closings thus far. What has happened and will continue to happen are closings that are partly traditional paper and partly electronic. To make it simpler, let's break this definition down into different categories. What we have seen are three basic versions of eClosings. Each type is distinguished by which closing documents are electronically signed and the type of notarization used.

Hybrid eClosings

The first and what we believe will be the most widely used eClosing for the immediate future is the hybrid. In the typical hybrid eClosing, the lender's promissory note and any documents that require notarization (deed, mortgage, etc.) are signed with traditional wet ink on paper in the physical presence of a notary public. The rest of the closing documents, which do not need to be notarized, are electronic and eSigned. We have certainly seen this occur in the industry for many years now depending on the lender and title agent involved. While this certainly does provide some convenience to the consumer, it still requires the parties to gather in front of a notary public to sign certain documents and requires the title agent and lender to handle said paper documents. The hybrid closing will continue to be the most prevalent eClosing for some time until the necessary statutory changes and infrastructure improvements are implemented in all counties in all 50 states.

In-Person eClosing

The next category in the evolution from the traditional paper and wet ink closing to the fully digital eClosing is the in-person eClosing. In this category, *all* documents are digital and eSigned. The lender's promissory note and any documents that require notarization (deed, deed of trust, etc.) are also eSigned, and the eSignature is executed in the physical presence of a notary public. The documents requiring notarization are eNotarized using a digital notary seal and the notary's eSignature. The rest of the closing documents, which do not need to be notarized, are digital and can be eSigned without a notary being physically present. This type of closing provides most of the benefits to the consumer, the title agent and the lender that will be discussed shortly. One key benefit missing for the consumer in this scenario is the fact that *the parties must physically appear in front of a notary*. Even though the notary is an eNotary and all signatures including that of the notary are electronic, there is no remote notarization taking place under this category.

This is a very important distinction and one I believe is misunderstood by persons in the public, not to mention those in our own industry. An eClosing does not necessarily mean there is a remote notarization. There are counties in many states that are equipped to handle an eClosing but cannot

accept a remote notarization. Just because someone is an electronic notary does not necessarily mean the notary is authorized under state law to accept identification from a person executing a document via video conferencing. Most states do not recognize remote notarizations and the few states that do currently allow it, have specific steps that must be followed for the notary to properly identify the person that is not in their physical presence but rather appears before them via a computer screen.

Remote Online Notary eClosings

Which leads us to our third and final category: The Remote Online Notary eClosing. This is the final frontier for the future of real estate closings. This is what the consumer is expecting when they hear the terms eClosing or eNotarization. Unfortunately, the industry is not all of the way there yet, nor are all states in the position to handle this type of closing due to lack of necessary statutes and infrastructure. But, alas, the industry is headed in this direction and will be there sooner than we all think. In this category, all closing documents are digital and eSigned, and the lender's promissory note and any documents that require notarization (deed, deed of trust, etc.) are eSigned as part of an online video session between the notary public and the parties. In the online video session, the notary interacts with the consumer in real time while the consumer eSigns documents. The notary then eNotarizes the relevant documents using a digital notary seal and the notary's eSignature. The rest of the closing documents, which do not need to be notarized, are digital and can be eSigned without a notary being present. All of this can be accomplished without the parties having to leave their home or office. It will save the consumers commuting time on top of the other benefits that will be discussed. In many instances as part of today's closing process, the title agent finds themselves traveling from their own office to meet third parties to perform signings in their seller's or buyer's home or office. The remote notarization will eliminate this issue and allow title agents to be even more productive.

Why should the industry bother with the cost and headache to transition to an electronic closing? For one, this is what the public wants. For the first time, the majority of home buyers are millennials. They are tech savvy and desire a homebuying experience that matches their consumer experience elsewhere. In other words, they want it to be convenient and they believe the use of technology is the way to provide this convenience. Many lenders, underwriters, third-party vendors, and title agents are catching on to this trend and are trying to be the first to provide a fully electronic closing to the consumer.

In July of this year, Forbes Magazine reported that digital home closings are now possible in fifteen states. According to the article, one industry insider is predicting that 50% of home loan closings will be fully digital by 2019. While this estimate may seem optimistic, there is no question that the momentum is building at a rapid pace. Those in the industry who ignore this trend may be left behind.

Consumers are recognizing the benefits of electronic transactions in the marketplace and will expect them out of the real estate closing as well. They understand that the electronic transaction provides increased convenience. Why? Consumers can review documents on a secure portal in advance of the signing appointment. This leads to a more empowered and educated consumer. With more time to review documents, consumers can ask questions, flag concerns, get clarifications, and receive better guidance as they navigate the closing process. This will lead to shorter signing appointments because some documents in the closing package can be signed in advance of the eSigning appointment,

reducing the time spent with the notary public.

A shorter signing appointment is also a benefit to the settlement agent who can allocate time to other tasks. Having documents signed via an electronic portal will lead to increased efficiency for the title agent. The portal allows eSigned documents to be immediately accessible for storage, distribution and eRecording, with no paper scanning required. Both the shorter signing appointment and the efficiency in document handling will lead to greater productivity by agent employees and ultimately increased profit.

Another important benefit of the electronic process is increased quality control. Digital documents and eSignatures reduce human error by enabling automated quality control. This will lead to fewer title claims. Fewer title claims can obviously lead to lower E&O premiums and a more positive reputation for the title agent among consumers, loan officers, and real estate agents.

The lender can benefit from the electronic closing process for many of the same reasons. eSignatures may reduce the likelihood of missing signatures that can lead to a rescheduling of the signing and redrafting of documents. The decrease in errors leads to lower costs and increased lender reputation among consumers.

Further, lenders who employ electronic promissory notes (eNotes) are able to sell and deliver mortgage loans to secondary market investors much faster and with higher security. And finally, offering the convenience of an electronic closing will give the lender an edge in the competitive consumer mortgage market.

As discussed above, poorly deployed eClosings with weak processes can cause unique problems.

The industry is working diligently to conquer these obstacles and move toward the fully digital remote eClosing experience that the customer desires. Educate yourself now. Contact your lender and title insurance underwriter to find out what steps you can take to be ready to hit the ground running when the future finally becomes the present.

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