

The Freddie Mac eMortgage Handbook: Instructions for Climbing eMortgage Mountain While Avoiding the Slippery Slopes

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Creating a Freddie Mac Eligible eMortgage

- federal disclosures (TILA/Reg.Z, RESPA, ECOA) may only be provided under E-SIGN
- comply with E-SIGN's consumer disclosure and consent provisions
- prepare a consumer consent form and load it into the electronic closing system like other necessary loan closing documents
- use the same electronic signature process for the consumer consent form that is required for the electronic note
- the consumer consent form should be one of the first electronic records signed by the consumer
- the consumer consent form must be stored with other critical loan closing documents (e.g., the security instrument, federal disclosures, etc.)

Creating a Freddie Mac Eligible eMortgage, continued

- all electronic records must be presented to the consumer one at a time for signing
- all electronic records must be created so that an authorized party can verify that the consumer signed the electronic record, the type of electronic signature used and the identity of the signer
- the validity, effectiveness and enforceability of an eMortgage must not be dependent on the continued existence of the electronic closing system used to close the loan. Prepare a Consumer Consent form and load it into the electronic closing system like other necessary loan closing documents
- the eNote (and primary back-up copy), the security instrument, electronic modification agreements, electronic assumption instruments, and certain other eMortgage documents be created and stored as MISMO Category 1 SMART Documents.

Creating a Freddie Mac Eligible eMortgage, continued

- tamper-evident seals must meet MISMO standards and be issued by a SISAC-accredited Issuing Authority
- borrowers (consumers) must revalidate their credentials in the electronic closing system before commencing the closing process
- before the borrower signs the eNote, confirm that the data in the “view” section of the MISMO Category 1 Smart Documents matches the “data” section.
- the notary’s electronic signature process must be compatible with the electronic signature process in the electronic closing system and be as robust as the borrower’s signature process
- eNotes sold “with recourse” and eNote transfer warranties (similar to those in Section 3-416 of Article 3 of the UCC) must be documented

Registering an eNote

- each eNote must be registered with the MERS® eRegistry no later than 24 hours after closing of a loan
- each eNote must be registered with the MERS® eRegistry before it is eligible for purchase by Freddie Mac
- Freddie Mac will not accept a transfer of control of an eNote until the Lender transmits an electronic copy of the eNote to Freddie Mac
- all eNote tamper-evident seals must be stored in the MERS® eRegistry so that Freddie Mac
- all eNote tamper-evident seals must be validated against the MERS® eRegistry during eNote transfers

Electronic Vault Storage of eNotes

- lenders that intend to sell eMortgages to Freddie Mac must first transfer the eNotes to a Freddie Mac-approved eCustodian's electronic vault
- a Freddie Mac-approved eCustodian is one that has met Freddie Mac's legal and technical requirements
- the eCustodian must agree that Freddie Mac has an unconditional and absolute right to have the eCustodian transfer Freddie Mac's eNotes to another eCustodian's electronic vault at any time, at its sole discretion
- the eCustodian may use its own electronic vault or one that it licenses from a system provider

Electronic Vault Storage of eNotes, continued

- if the eCustodian uses an electronic vault provided by a system provider, the license between the eCustodian and the system provider must include language that recognizes Freddie Mac's absolute and unconditional right to have its eNotes documents transferred at any time, at its sole discretion
- the eCustodian must conduct thorough due diligence to determine that the electronic vault used to store eNotes does so safely and soundly for up to 47 years
- electronic vaults must be monitored for performance and be subject to annual audits to confirm its continued compliance with Freddie Mac's requirements (audit types may be a SAS 70 Type II, SysTrust, WebTrust or other audit types acceptable to Freddie Mac)

Electronic Vault Storage of eNotes, continued

- the eCustodian and its electronic vault must, among other things, be able to securely receive, store and transfer eNotes, logically associate modifying instruments to the eNote, support the MISMO industry standard version in which the eNote was created for the life of the eNote, interface with the MERS® eRegistry, and verify the eNote tamper-evident digital signature in the MERS® eRegistry by comparing the hash value of the eNote in the incoming eNote transfer file with the hash value of the same eNote as registered in the MERS® eRegistry
- annually the eCustodian must validate the tamper-evident seal for all stored, tamper-sealed eMortgage documents
- the eCustodian must validate the tamper-evident seal for any eMortgage documents affected by the restoration or partial restoration of an electronic vault's underlying databases

Electronic Vault Storage of eNotes, continued

- the eCustodian must back-up Notes and related documents on a regular basis
- the eCustodian must store at least two backup copies of the eNote in a system that meets or exceeds Freddie Mac's requirements for a primary eNote storage system
- the eCustodian must have at least one geographically remote disaster recovery site, in addition to the primary storage site and the requirements for the primary storage site also apply to the disaster recovery site
- the eCustodian must have an acceptable written Business Continuity Plan (BCP) that addresses, among other things, software versioning, replacement, and retirement/control

Servicing eMortgages

- a servicer must have an electronic storage system that stores all servicing related loan data and eMortgage documents other than the eNote
- the servicer must maintain an electronic audit trail for all eMortgage documents and keep such audit trail for the life of the loan plus seven years, perform regular backups of all eMortgage records, and be able to replace electronic records that are damaged, corrupted, or lost, maintain state and federal disclosures
- a servicer must maintain a disaster recovery site that is geographically remote from the primary storage site and not susceptible to the same disasters as the primary site
- a servicer must have a Business Continuity Plan that provides for recovery of all electronic records, functionality, and data to the point of failure within an acceptable time-frame

Servicing eMortgages, continued

- the servicer responsible for recording loan payoffs, transfers of eNote location, foreclosures, modifications and other eMortgage events in the MERS® eRegistry
- after a payoff or charge off, the controller or its delegatee must initiate a Change Status Request to the MERS® eRegistry to indicate that the record status has changed from active to inactive (refer to MERS® eRegistry instructions on the MERS® website referenced above)
- to modify an eNote that has been registered in the MERS® eRegistry, the servicer must electronically modify the eNote and then follow the MERS® eRegistry modification process
- the servicers must register an electronic modification agreement in the MERS® eRegistry if it modifies an eNote that was previously registered in the MERS® eRegistry

Servicing eMortgages, continued

- a servicer may only transfer servicing of eMortgages with eNotes or electronic security instruments to other servicers expressly approved by Freddie Mac to service eMortgages
- before a servicer may transfer servicing of eMortgages, the transferor servicer must notify: (i) the prospective transferee servicer that there are eMortgages in the servicing portfolio that have special servicing requirements unique to the eMortgages; (ii) the eCustodian holding the eNotes of the impending transfer; (iii) MERS of any eMortgages in which MERS is the nominee for the transferor servicer in the security instrument or as assignee in the land records
- upon approval of a the transfer of servicing of eMortgages, Freddie Mac will change the Delegatee on the MERS® eRegistry from the transferor servicer to the transferee servicer to allow the transferee servicer to record future actions in connection with the eNote