

Flagstar is pleased to accept electronically signed documents as a first step towards a fully electronic mortgage process. This guide has been established to provide instruction on acceptable practices for utilizing electronic signatures. Users must comply with this policy in order to proceed with any electronic signature process with Flagstar Bank. This policy may be amended from time to time (whether or not advance notice of such amendment is provided).

FLAGSTAR ELECTRONIC SIGNATURE DEFINITIONS

ESIGNATURE (ELECTRONIC SIGNATURE/DIGITAL SIGNATURE)

An electronic signature is any electronic means that indicates that a person adopts the contents of an electronic message. The U.S. Code defines an electronic signature for the purpose of US law as "an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record."

EMORTGAGE/ECLOSING (ELECTRONIC MORTGAGE)

An eMortgage/eClosing is a mortgage for which the promissory note (eNote) and possibly other documents are created, signed and stored electronically, rather than as traditional paper documents requiring an ink signature.

E-NOTE (ELECTRONIC NOTE/DIGITAL NOTE)

An eNote is an electronic transferable promissory note; the electronic equivalent of a negotiable paper promissory note. It is created, signed and stored as an electronic document in an electronic vault (eVault), usually in the form of a SMART Doc. An eNote must be signed electronically and cannot be signed with wet ink.

SMART DOCUMENT (SMART DOC)

A SMART Doc is an electronic document created to conform to a specification standardized by MISMO. A SMART document locks together data and presentation in such a way that it can be system-validated to guarantee the integrity of the document. SMART is an acronym for Securable, Manageable, Achievable, Retrievable, Transferable document.

TAMPERSEAL

A tamperseal is a "seal" wrapping an electronic document that has been digitally signed. Used as a security tool, the seal will provide evidence of any changes made to the document after sealing.

PAPERLESS DATA TRANSFER (PDT)

A method of delivering documents electronically to the Flagstar imaging system through a secured web service. For a list of approved PDT vendors, refer to *Paperless File Manager Document Upload – Quick Reference Guide*, [Doc. #2151](#).

Paper World	Electronic World
Negotiable Instrument	Transferable Record (eNote)
Original Note	Authoritative Copy of eNote
Investor/Holder	Controller
Custodian	Location (eVault)
Endorsement and Delivery	Transfer of Control
Chain of Endorsements	Transferable Record Audit Trail
Servicer	Controller's Delegatee
Wet / Ink Signature	eSignature

ACCEPTABLE ORIGATION AND UNDERWRITING DOCUMENTS ¹

The section below shows generally accepted documents with Electronic Signatures through a Flagstar approved Electronic Signature platform.

CONVENTIONAL LOANS

- All application documents and loan disclosures
- Appraisal
- Purchase Agreement
- 4506-T ²

FHA LOANS

- All application documents and loan disclosures
- Appraisal
- Purchase Agreement
- 4506-T ²

VA LOANS

- All application documents and loan disclosures
- Appraisal
- Purchase Agreement
- 4506-T ²

GRH LOANS

- All application documents and loan disclosures
- Appraisal
- Purchase Agreement
- 4506-T ²

UNACCEPTABLE ORIGATION AND UNDERWRITING DOCUMENTS

CONVENTIONAL LOANS

- Power of Attorney
- SSA-89 Authorization for the Social Security Administration (SSA) To Release Social Security Number (SSN) Verification.

FHA LOANS

- Power of Attorney
- SSA-89 Authorization for the Social Security Administration (SSA) To Release Social Security Number (SSN) Verification.

VA LOANS

- Power of Attorney
- SSA-89 Authorization for the Social Security Administration (SSA) To Release Social Security Number (SSN) Verification.

GRH LOANS

- Power of Attorney

- **SSA-89 Authorization for the Social Security Administration (SSA) To Release Social Security Number (SSN) Verification.**

ACCEPTABLE CLOSING AND POST CLOSING DOCUMENTS ¹

The section below show generally Accepted Closing Documents with Electronic Signatures through a Flagstar approved Electronic Closing platform.

CONVENTIONAL LOANS

Approved eNote

FHA AND VA LOANS

None

GRH LOANS

None

1. Flagstar Bank reserves the right to request a wet ink version of any electronically signed document.
2. Acceptable platforms for an electronic 4506T: DocMagic, DocuSign, Encompass, IDS, Silanis, SureDocs by Ala Mode, eLynx, Wolters Kluwers Secure Document Exchange (SDX), eSign Systems and eOriginal.

UNACCEPTABLE CLOSING AND POST CLOSING DOCUMENTS

CONVENTIONAL, FHA, VA **AND GRH** LOANS

- Name Affidavit
- Security Instrument and applicable riders
- Power of Attorney

APPROVED ELECTRONIC SIGNATURE PLATFORMS

Flagstar currently accepts electronic signatures from the following vendors:

ORIGINATION AND UNDERWRITING DOCUMENTS

- Calyx INK-it
- Communication Intelligence Corporation – CIC
- CTM eContracts
- Digital Document Inc.
- DocMagic
- DocuSign
- Docu Prep
- DocuTech
- Dotloop
- eLynx
- Encompass
- eSign Online (Go Paperless)
- eSign Systems
- Fiserv Inc.
- IDS – International Document Services
- Signix (zipLogix)
- SureDocs by Ala Mode

- Instanet Solutions by Authentisign
- Wolters Kluwers Secure Document Exchange (SDX)

ECLOSINGS

- Fiserv Inc.

ENOTES

The eNote must always be signed electronically. The eNote retains language that specifies the document is for electronic signature only. An ink signed eNote is never acceptable. An ink signed eNote is considered null and void. If a correction is needed on the eNote a paper note will need to be drawn and signed with ink. At this time our investors will not accept any affidavits for the eNote.

TECHNOLOGY REQUIREMENTS

The entire transaction should conform to ESIGN and the Uniform Electronic Transaction Act (UETA) laws as well as adhere to investor specific requirements:

- The digital technology must conform with FIPS 186, Digital Signature Standard and FIPS 180, Secure Hash Standard issued by [NIST](#).
- AllRegs requirements as incorporated in Part 1, Section 402.

DOCUMENT DELIVERY, STORAGE AND REVIEW

Documents with electronic signatures shall be delivered to Flagstar in the same manner as documents with ink signatures using the Paperless File Manager upload process or designated fax. The Electronic Signatures and Audit Trail Record for those signatures must be verifiable by Flagstar Bank for the Life of the Loan or longer at no additional cost to Flagstar Bank.

Closing documents that are electronically signed on an approved eClosing platform will be electronically delivered to Flagstar through the PDT integration. These documents will be available for review in the Paperless File manager by designated/approved parties including loan originator and Flagstar employees.

REQUIREMENTS FOR ELECTRONIC SIGNATURE PLATFORMS

Flagstar will accept documents that include electronic signatures from approved vendors who meet the following criteria:

- Must provide a means for the signer to acknowledge his/her intent to sign. (See Establishing Intent and Obtaining Consent From The Signer)
- Use a method of electronic signature that is commonly used and approved for use by the main market investors (currently, Fannie Mae and Freddie Mac). The GSEs do not approve the use of voice-based electronic methods. The standard electronic signatures in the mortgage industry are click-based signatures and signing-pad (digitized handwritten) signatures. We suggest limiting the approved electronic signatures to these types.
- Use an electronic signature method that includes the signer's name, an indication that they electronically signed the document (such as text that states "Electronically Signed by") and a time/date stamp for the signature.
- Provide the electronically signed document such that the electronic signature is viewable on the electronically viewed, printed and downloaded copy. The electronic signatures must be a permanent part of the document. Viewing the electronic signature cannot require the use of any proprietary software. Electronically acknowledged documents, where the signature/acknowledgement is not made a permanent part of the document and is stored separately from the document such as in a database, are not recommended.

- Provide an “original” electronically signed document – a document that can be used as the original, without watermarks such as “copy” -- for all documents for which we would require the ink-signed paper original in the traditional mortgage loan file.
- If a tamper evident seal is applied to the document (highly recommended, and required for certain documents such as electronically signed Notes), the tamper evident seal must be created and applied using commercially accepted standards. This structure is available in both the MISMO SMART Document standard and the PKCS7 signing standard often used with PDF documents. The means to verify the tamper evident seal must be included as part of the document; this is usually the public key of the digital certificate used to apply the tamper evident seal. Verifying the tamper evident seal must not require any proprietary software.
- Signer should not be able to apply signatures in bulk.
- An audit trail or record of additional data related to the electronic signature process is created as part of the workflow. This information should be included in the document (either as part of the viewable electronic signature, such as a unique key, or as part of the overall document format, such as the Audit Trail section of the SMART Document standard).

REQUIREMENTS FOR ELECTRONIC CLOSINGS

- The electronically signed Note must be in a specific format which is currently only a MISMO SMART Document 1.02 format
- The eNote must be electronically signed using the MISMO SMART Document standards for applying electronic signatures, and the electronic signature format used must be either the click sign method or the signing-pad method.
- The eNote must be tamper evident sealed using a digital certificate from a third party certificate authority.
- The eNote must be registered with the MERS eRegistry within 24 hours of being electronically signed and tamper evident sealed, with the originator being listed as the Controller at minimum
- Must be able to provide the complete signed; tamper evident sealed eNote to Flagstar through PDT and/or the MERS eDelivery system.
- Must have the ability to initiate a transfer of the eNote for Control, Location and Servicing (as required) via the MERS eRegistry.
- Must be able to accept transfers of the loan back if you require them to repurchase the loan.
- Agree to buy back loans if the electronic signatures used on the documents are found to be unenforceable.

APPROVAL PROCESS FOR ELECTRONIC SIGNATURE PLATFORMS

Vendors who wish to provide documents with electronic signature must adhere to the requirements outlined in this documentation. Email the following documentation to eCloseNotify@Flagstar.com for review.

- Vendor should submit proof of each requirement
- Submit a written system overview
- Complete a demonstration (if requested)
- Must be able to comply with GSE requirements (see Investor Specific Requirements)
- At any time during the loan process Flagstar may require proof of an electronic signature. This may include providing an audit trail or other record of the electronic transaction.

USING ELECTRONICALLY SIGNED RECORDS

INVESTOR SPECIFIC REQUIREMENTS – ECLOSINGS ONLY

Flagstar investors have developed standards for accepting, delivering and processing eMortgages. These can be found by reviewing the appropriate investor eMortgage handbook.

FANNIE MAE

[Guide to Delivering eMortgage Loans to Fannie Mae](#)

FREDDIE MAC

[Freddie Mac eMortgage Guide](#)

ESTABLISHING INTENT AND OBTAINING CONSENT FROM THE SIGNER

Electronic E-Sign and UETA laws retain the rule that a signature is only valid if the signer intends to sign. In consumer transactions, E-Sign requires a specific and electronic consent process before an electronic notice may replace a legally required written notice. UETA merely requires that the parties agree to conduct transactions by electronic means, but does not specify how that agreement is to be proven.

E-Sign's consent rule, found in section 101(c), applies where another statute, regulation or rule of law requires information to be provided or made available to a consumer in writing. It requires all of the following:

- There must be an affirmative consent, which has not been withdrawn.
- The consent must be preceded by a clear and conspicuous statement informing the consumer of all of the following:
 - Any right or option to receive the information on paper (if the option exists)
 - How to withdraw the consent and whether any other consequences, such as fees or termination of the arrangement, will be imposed on the withdrawal,
 - How to update the contact information
 - How to obtain a paper copy on request and the fee, if any, for that copy.
 - Before the consent is given, the consumer must be provided with a statement of the hardware and software requirements for access to and for retaining the electronic records.
 - The consumer's consent must be obtained or confirmed electronically (not just on paper).
 - The manner of obtaining the electronic consent or confirmation must reasonably demonstrate that the consumer can access information "in the electronic form that will be used to provide the future information."

The consumer's consent must be reacquired if there is a change in the hardware or software requirements needed to access or to retain the electronic record and the change creates a material risk that the consumer will not be able to access or store records delivered electronically.

LEGAL FRAMEWORK FOR USE OF ELECTRONIC RECORDS AND SIGNATURES SUMMARY

In 1999 and 2000 the legal framework was created for using electronic records to replace paper records, and electronic signatures instead of ink signatures. In 1999, a model state law called the Uniform Electronic Transactions Act ("UETA") was drafted and approved by the National Conference of Commissioners on Uniform State Laws ("NCCUSL").³ The UETA was then adopted by most states. In addition, in July 2000, President Clinton signed the Electronic Signatures in Global and National Commerce Act ("ESIGN") which then became the federal law on the use of electronic records and electronic signatures.⁴

Both UETA and E-Sign have the same general purpose; to establish that an electronic signature is as legally effective as an ink signature; and that a contract that is made through the use of electronic records may not be denied enforceability solely because it is in electronic form.

ESIGN says this as follows:

SEC. 101. GENERAL RULE OF VALIDITY.

(a) IN GENERAL.—Notwithstanding any statute, regulation, or other rule of law (other than this title and title II), with respect to any transaction in or affecting interstate or foreign commerce—

- (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
- (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

UETA and ESIGN focus solely on the legality of business partners agreeing to use electronic records and electronic signatures. They purposely leave the decisions of process to effect electronic delivery and electronic signature, as well as choice of technology to create the electronic signature itself, up to the business partners.

3. Refer to the [UETA draft act](#) for a list of the states that have adopted UETA, including links to their legislative record on adopting UETA, go [here](#). As of this writing, three states have their own non-UETA based laws for electronic signature: [New York](#), [Illinois](#), and [Washington](#). The text of these state laws is available by clicking the state's name.
4. The text of the ESIGN Act is available [here](#).

It is up to the business partners to agree on the process used, the type of electronic signature created, and the storage requirements for the electronically signed documents.

In the mortgage industry, regulators and other entities have issued guidance for lenders to consider in regard to using electronic records and signatures in their electronic initial disclosures process.

FEDERAL RESERVE GUIDANCE

From a regulatory perspective, the Federal Reserve Board has issued amendments to Regulations B, E, M, Z, and DD; which are effective October 1, 2008 for lenders who wish to use electronic delivery and signature for disclosure processes. ⁵ The final rule is generally summarized as follows:

- Creditors may provide application-related and other disclosures as electronic records to consumers, “subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act”
 - Although the Board allows certain disclosures to be electronically provided without specific E-Sign Consent, in certain circumstances such as in the case of a consumer creating an online application where the context of applying online demonstrates that the consumer has the necessary technical ability to receive documents electronically, the Board is specific that eSign consent is required for adverse action notices, copies of appraisals, and other documents that would normally be provided to consumers at some point in time after the initial application is made.
- Creditors must still provide the disclosures at certain specified times as required in other regulations (e.g. within 72 hours of receiving an application for credit, per Regulation Z)
- The disclosures should be in an electronic form that the consumer can keep, that is, “a standard electronic format that can be downloaded and saved or printed on a typical home personal computer.”
- “Creditors are also expected to maintain disclosures on Web sites for a reasonable period of time (which may vary depending upon the particular disclosures) so that consumers have an opportunity to access, view and retain the disclosures.” It is important to note here that the Board originally proposed a specific term of 90 days, but deleted the 90 day provision in the final rule.

5. Review the [Federal Reserve final rule](#) for details.

FHA GUIDANCE

FHA issued [Mortgagee Letter 2014-03](#) on January 30, 2014 which stated that electronic signatures may be used on:

- Mortgage Insurance Endorsement Documents
- Servicing and Loss Mitigation Documentation
- FHA Insurance Claim Documentation
- HUD Real Estate Owned Documents

RURAL DEVELOPMENT GUIDANCE

Rural Development Agency issued Administrative Notice RD AN No. 4776 (1980-D) on September 23, 2014 which states Lenders may accept all documents associated with originating or servicing a loan which are signed electronically. Those lenders who choose to accept electronic signatures must meet the standards and requirements set forth in the ESIGN Act as well as all other applicable federal and state regulations and guidelines.

GSE GUIDANCE

Fannie Mae and Freddie Mac have issued guidance to lenders in their respective seller handbooks. Both GSE's have issued specific guidance on the use of electronic signatures on closing documents which can be reviewed at:

FANNIE MAE

<https://www.efanniemae.com/sf/guides/ssg/relatedsellinginfo/emtg/>

FREDDIE MAC

<http://www.freddiemac.com/singlefamily/elm/>

Both of these resources are recommended for formulating your electronic signature policies, even though their specific areas of interest are primarily the eNote.

SPERS GUIDANCE

The [Standards and Procedures for Electronic Records and Signatures](#) is an available resource for an overall understanding of system and process considerations when using electronic signatures.