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A new era of closings is rapidly approaching – Are you ready? - by Joshua Luksberg

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It's a closing day, and as you prepare for your 11 a.m. closing, you pour a cup of coffee and notice how relaxed and unhurried you are. There is no paper to print, pens to layout, conference room to set up or a rush to get through traffic. It's just you at your desk logging onto a special online platform to virtually meet all the parties involved to sign documents. The borrower joins the session and explains how convenient this meeting is because they would have never made the closing on time if they had to drive across town. This is not a typical real estate closing. It's a remote online notarization (RON) eClosing, where the customer appears before an attorney using a webcam and electronically signs all their documents with a digital signature. RON eClosings, when handled right, can benefit everyone involved in the real estate transaction.

An eClosing is any real estate closing event or process in which the buyer, seller, borrower, attorney or others involved in the transaction use an electronic signature (eSignature) to sign some or all of the closing documents. There are different types of eClosings, including a hybrid, in-person eClosing, and the example I noted above, a RON eClosing. Regardless of the kind of eClosing, the outcome can be a fully signed digital document package with no missing signatures. Many eSignature software solutions are designed to prevent the signer from navigating to the next page until all signatures are completed on the current page. Hence, missed signatures on documents are virtually eliminated. Ultimately, this will help increase efficiency, accuracy, and convenience for all the parties to the transaction.

Currently in New England we are starting to see a push from lenders to facilitate hybrid eClosings. Hybrid eClosings are ones in which many, if not most of the loan documents are executed digitally. The lender is likely to have sent these documents to the borrower a few days prior to the closing, at which point their attorney will receive notice and instructions from the lender to review what has been executed. The only documents which would still require a wet signature would be those for which notarization is required. For example the deed and mortgage itself would still need to be wet signed, witnessed and acknowledged in front of the attorney on the day of close. A full eClosing,

where all documents, even those that require notarization are executed digitally, can only take place in a state which has passed an enabling statute allowing for acknowledgments and notarizations to be executed electronically.

In New England, Vermont is the only state to have enacted a law allowing RON. Massachusetts has a bill currently pending in the legislature, while Maine and Connecticut have pending bills which would create study groups (note that the 2019 Connecticut legislative session just ended and the RON Study Group bill did not pass). Suffice it to say that RON eClosings will become more commonplace as across the country more and more states are adopting laws enabling it.

One big question that many ask is how does one confirm that the borrower is who they are purporting to be if they are executing the documents and you are not physically present with them. The answer is that remote online notarization technology includes multi-factor authentication as well as credential verification to help protect against fraud. It should also be remembered that in a RON eClosing there will be a video recording of the signing session. This video will be stored and available to review in the future if needed. The technology is still very new, but it is evolving quickly.

Issues for lenders who are moving to eClosings to consider include analyzing which documents they would like to have eSigned and how far in advance of the closing they would like the documents to be eSigned. The lender also needs to consider how far in advance the lender is able to produce the documents and provide them to the attorney/settlement agent. If lenders are providing documents on the day of closing, eClosings will be more difficult to organize. Lastly, lenders will certainly need to confirm with their investors as to how they view and accept eClosings. Will the investor accept if only certain documents are eSigned?

Across the country, eClosings of all types are on the rise and will likely be coming to a closing office near you soon. If conducted correctly, eClosings promise increased efficiency and a more convenient customer experience. Those who educate and prepare themselves for the new frontier of eClosings are likely to reap the benefits shortly.

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