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Recording Of Electronic Mortgages Is On The Way

By Michael J. Kling

The goal of electronic recording, a fundamental piece of the electronic mortgage, is coming within reach.

A critical step in the road to e-mortgages is the e-recording and notarization standards being developed by the Public Records Industry Association (PRIA). Building on XML-based standards devised by the Mortgage Industry Standards Maintenance Organization (MISMO), the e-recording standards establish common data architecture and tags that allow title companies, closing agents and lenders to submit electronic transactions to county recorders.

PRIA finished its first version, 1.2, over a year ago and expects to send the second version, 2.0, to MISMO's Core Data Workgroup for review this fall, explains Carmen D. Bramante, principal of cdb consultancy LLC and co-chairman of PRIA's Technology Committee.

A promotional banner for a webinar. It features the text "Commercial Mortgage Insight" in a yellow box, "BROKER DEVELOPMENT SERIES" in a blue box, and "FREE WEBINAR" in large white letters on a green background. Below that, it says "Sept. 15th, 2 p.m." and "Topic: Small Balance Loans". At the bottom, it says "Click here to register!" with a blue arrow pointing to the right.

Both the public and private sectors are pushing toward e-mortgages, says Harry Gardner, senior director of industry technology for the Mortgage Bankers Association (MBA). Technology vendors are rolling out e-closing products. And although lenders are releasing few public announcements, internal development of e-mortgages is active.

Out of over 3,500 recording jurisdictions in the country, over 80 and counting are equipped to handle electronic transactions. So far, they typically handle only simpler transactions like lien releases, not complete real estate deals, which are more complicated. And with refinances down from past years, Bramante says, the volume of e-recordings has declined.

Electronic signature pads have become common at store check lines, but a real estate transaction, being more important, is much more complex and sensitive than buying a bag of groceries, experts point out. For instance, both the property seller and buyer must agree to an electronic transaction.

Industry observers say that 80% of the volume is handled by 20% of the largest jurisdictions. So if just the most populous few hundred counties become electronically enabled, the business will have gone a long way toward electronic recording. Those counties will be the first to adopt, experts predict.

Possible hurdles

Cost is not a major obstacle. If it makes sense, recorders will find funding, either in their own budgets or through state or county funds, Bramante says, noting that county recorders have been enthusiastic about e-recording.

Getting enough volume to justify conversion is a bigger challenge. Recorders say few companies have begun submitting electronic transactions. In many ways, it's a chicken or the egg situation, but industry players say they're confident that the predicament will be resolved.

The National Conference of Commissioners on Uniform State Laws (NCCUSL), a group of attorneys that proposes standardized state legislation, in 1999 approved the Uniform Electronic Transactions Act (UETA), which allows use of electronic records and signatures. The federal Electronic Signatures in Global and National Commerce Act (ESIGN), passed by Congress in 2000, helped encourage e-mortgages by making electronic signatures legally enforceable.

Following confusion over electronic real estate transaction recording at the local level, the NCCUSL last year issued the Uniform Real Property Electronic Recording Act (URPERA), which clarifies how e-mortgage transactions are recorded and allows states to set up committees to develop and maintain their standards. Nine state legislatures have introduced the act and a few - Arizona, Texas and Delaware - have adopted it.

PRIA is preparing an implementation guide, expected to be completed this month, that offers guidance for implementing e-recording and explains issues surrounding the topic.

To promote adherence to standards, MISMO and PRIA are discussing how to certify compliance. Vendors would be certified as PRIA compliant, although the standard would be built on MISMO's MXCompliance, already in use.

"It just makes sense not to recreate the wheel that MISMO has done here," Bramante says.

Standards are essential

Standards are essential for e-recording to be successful, says Mark Monacelli, president of the National Association of County Recorders, Election Officials and Clerks (NACRC) and the recorder in Deluth County, Minn.

However, some players don't follow the guidelines, he concedes. "There are some rogue players out there, both public and private. We're not going to be able to contain everyone. There are going to be some fraying at the edges, but overall we think we'll be OK.

"County recorders don't want software that's not in compliance with national standards," Monacelli says, stressing that they want to be able to accept forms from the gamut of submitters.

The road to e-recording is long and complex, he says. The Mortgage Electronic Registry System (MERS) took eight or nine years to complete, and that was simpler than the current effort.

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recorders as well as industry users and consumers - is key. "People need to understand what it is and how it can help," Hansberger says. "A lot of education needs to occur. There are a lot of legal issues that need to be discussed." **SME**

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