

Case Closed: eNotes are Not Legal

Incorrect Analysis of eNote Enforceability Nationwide

Mortgage Industry Standards Maintenance Organization (MISMO, a registered service mark of the Mortgage Bankers Association), Electronic Signature Records Association, and the American Land Title Association released a White Paper¹ titled “Case Closed: eNotes Are Legal”.

The White Paper’s “Disclaimer” notes that “the authors and their organizations accept no responsibility for errors and omissions”.

The Error: eNotes are Not Legal

The Omission: 15 USC 7003

“UETA and ESIGN’s approach is noteworthy in that neither statute attempts to insert the concept of a transferable record into the UCC. Instead, UETA and ESIGN exclude from their scope most of the UCC...” page (3).

The Conclusion of the White Paper incorrectly states: *“UCC Article 3 provisions for promissory notes were not designed for use with electronic records. Rather, ESIGN and UETA were enacted to create the legal framework or a parallel structure for the electronic equivalent of a paper promissory note, known as a “transferable record”. As a result, an eNote that is created stored and maintained as required under ESIGN and UETA is a valid, enforceable and negotiable debt obligation.”*

The White Paper itself states that ESIGN and UETA both exclude the Uniform Commercial Code (UCC)– Article 3 – which governs Negotiable Instruments. The authors then attempt to persuade the reader that ESIGN and UETA provide sufficient governing laws to support the existence and the enforceability of an eNote. As ESIGN and UETA both exclude UCC Article 3 and the UCC was not designed for and currently does not allow for eNotes, eNotes lack supporting law to exist.

MISMO’s current day to day operations falls under the MERS umbrella.

E-Notes are “Not Legal”

Under the E-Sign Act or the Uniform Commercial Code E-Sign 15 USC 7003 excludes the Uniform Commercial Code Article 3

¹<http://www.mbaa.org/files/ResourceCenter/emortgage/eNoteWhitePaper.pdf>