Introduction

Midwest Loan Solutions, Inc. (MLS) is committed to the highest standards of Federal and state borrower compliance. MLS requires all management, employees and third-party originators and vendors to follow these policies and to adhere to these standards.

The purpose of this policy is to ensure MLS and its third party originators are complying with the requirements of the provisions of the E-SIGN Act and UETA and to implement borrower protection mechanisms as required by Federal regulation.

The standards set out in this policy represent minimum requirements based on applicable legal and regulatory guidance and apply throughout MLS' operations. In accordance with MLS' policy, the E-SIGN Act and UETA policy and procedures described herein shall apply to all residential mortgage transactions and represent the full scope of products, property types, branches and geographic locations.

Background

The Electronic Signatures in Global and National Commerce Act (E-SIGN Act) was implemented in 2001. The Act provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce. The E-SIGN Act allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if the borrower has affirmatively consented to e-sign and has not withdrawn such consent.

The E-SIGN Act overlays, rather than preempts, any state or federal law that provides for a borrower to receive certain information 'in writing' in connection with a transaction thereby preserving borrowers' rights under those laws in the world of e-commerce transactions.

The Uniform Electronic Transactions Act (UETA) was developed and recommended for enactment in July 1999 by the National Conference of Commissioners on Uniform State Laws to provide a legal framework for the use of electronic signatures and records in government or business transactions. UETA makes electronic records and signatures as legal as paper and manually signed signatures, in transactions relating to business, commercial and governmental affairs.

Review Requirement

MLS requires this policy and procedure to be reviewed no less than annually or when Federal regulation is amended and such amendments apply to MLS and its third party originators.

Consumer Disclosures

When providing disclosures electronically, MLS will obtain the borrower's consent to do business electronically. This consent disclosure is given to the borrower by MLS through the Loan Origination System (LOS) from which electronic disclosure/signature services are provided.

The disclosure of consent provided must be sent to the borrower electronically and must include the following information:

- Option to receive paper records and provide instructions on how to do so.
- Information on withdrawing their consent to doing business electronically for this transaction and in the future.
- Instructions on notification required when there is a change in email address.
- Description of required hardware and software needed in order to do business electronically.
- The scope of the consent. (For example, whether the consent applies only to the particular transaction that triggered the disclosure or to the identified categories of records that may be provided during the course of the transaction.)
- Acknowledgement of the consent to receive and/or sign documents electronically.

The E-SIGN Act outlines that a borrower must provide consent to receive disclosures electronically prior to delivery (different definition than receipt) of the disclosures. Prior to TRID, delivery was not defined and lenders were issuing the eConsent to be completed by the borrower after the disclosure package had been sent, but prior to the disclosures being electronically signed. TRID defines delivery of disclosures as the time that MLS places the package in the mail, sends the disclosures through secure email or completes the disclosure process through the LOS.

eConsent must be received from any borrower that will be receiving a disclosure package for eSignature prior to the disclosures being issued to the borrower. If the borrowers are on the same application, they will receive one disclosure package. In this case, both borrowers would need to provide their eConsent prior to the disclosures being issued electronically.

If the loan has borrowers on separate applications, each borrower would need to provide eConsent for their disclosure package. For instance, if the primary borrower provides eConsent but the cosigning borrower, on a separate 1003, does not provide eConsent, the primary borrower may receive disclosures electronically but the cosigning borrower would need to be issued a wet signature disclosure package.

Borrowers may provide eConsent at any time throughout the process. So, if a borrower received a wet signature disclosure package because they had not provided eConsent before the initial disclosures were due, they could still provide eConsent later in the process. This would allow borrowers to receive revised disclosures and the initial Closing Disclosure electronically. The LOS maintains an alert in the file when eConsent is not present. This acts as a safeguard for anyone sending disclosures to remind them not to send the package electronically. The system also houses a pop-up message when disclosures are being sent when eConsent is not present in the file to remind the employee to either send the disclosure package as a wet signature package or to print the package to a .pdf file.

Hardware and Software Requirements, Notice of Changes

As stated above, the hardware and software requirements listed in the consent for access and retention of electronic records must be disclosed to the borrower. If the borrower consents electronically, it must be completed in a manner that demonstrates that the borrower can access information in the electronic form that will be used.

If changes occur in MLS' hardware and/or software requirements the following information must be sent to the consumer:

- The revised hardware/software requirements;
- The right to withdraw consent without the placement of any condition, consequence or fee for withdrawal; and
- The borrower must re-consent to do business electronically.

Record Retention

For records provided to the borrower electronically under the E-SIGN Act, MLS shall retain evidence of the borrower's consent to receive electronic records for a period of five years.

State Regulations

MLS agrees to comply with all state specific regulations in regard to electronic commerce.

Exceptions

MLS will not allow electronic signatures or disclosures in the transfer or securitization of real property, default or foreclosure of mortgage or lease, oral communications of borrower notices and disclosures and any other disclosure or transaction that is excluded or prohibited from the UETA and the E-SIGN Act.

Electronic Signatures

Electronic signature services must allow third party originator clients and their borrowers to sign documents electronically that comply with the rules and regulation set by the E-SIGN Act, UETA and state specific regulations. The electronic consent certificate is required on a loan level basis when electronic signatures are utilized for a transaction.