THE REVIEW OF
BANKING & FINANCIAL SERVICES
A PERIODIC REVIEW OF SPECIAL LEGAL DEVELOPMENTS AFFECTING LENDING AND OTHER FINANCIAL INSTITUTIONS

Vol. 42 No. 10 October 2026

NEW RULES OF DEFAULT SERVICING FOR MORTGAGES SECURED BY eNOTES

In the past two decades, eMortgages have moved from an emerging technology to an established component of the mortgage ecosystem. Despite their prevalence, judicial guidance and enforcement precedent remain limited for addressing electronic mortgage transactions. This article examines the legal framework governing eMortgages, including an analysis of recent judicial decisions demonstrating flaws in existing default servicing processes and procedures, and proposes practical measures for realizing the efficiency and certainty that the eMortgage regime provides if properly integrated throughout the entire mortgage ecosystem.

By Adam M. Swanson and Alexa Marie J. Derkasch *

The National Conference of Commissioners on Uniform State Laws approved the Uniform Electronic Transactions Act ("UETA") 27 years ago in 1999.[1] The following year, Congress passed the Electronic Signatures in Global Commerce Act ("ESIGN" and collectively with UETA, "Acts"), which serves as the federal counterpart to UETA.[2] By creating the concept of a "transferable record" as an electronic equivalent of a negotiable instrument, the Acts established an entirely new regime for mortgage lending.[3]

Within a few years, electronic records in mortgage lending gained initial acceptance in the secondary market when the Federal National Mortgage Association ("Fannie Mae") purchased its first eMortgage[4] in 2003.[5] Yet, despite being touted as a means to create

[1] "Uniform Electronic Transactions Act" (PDF), *last retrieved August 3, 2025.*

[2] 15 U.S.C. § 7001 (Pub.L.106-229, Title I, § 101, June 30, 2000, 114 Stat. 464).

[3] UETA and E-Sign embrace electronic transactions more broadly than just mortgage lending, but the focus of this Article is mortgage lending.

[4] In this Article, an "eMortgage" refers to a mortgage secured by an "eNote."

[5] Why You Need a Digital Ready Secondary Market Ecosystem, Wolters Kluwer, September 21, 2021.

* *ADAM M. SWANSON is a partner and ALEXA MARIE J. DERKASCH is an associate at McCarter & English LLP's Stamford, Conn. Office. They are members of the firm's Bankruptcy, Restructuring & Litigation Practice Group and are members of the Firm's consumer financial services, real estate, and foreclosure litigation teams. Their e-mail addresses are aswanson@mccarter.com and aderkasch@mccarter.com.*

IN THIS ISSUE

● ***EVOLUTIONARY RESTRUCTURING TRENDS IN CANADA AND THE UNITED STATES, Page 129***