



The Warehouse at Camden Yards
Baltimore, MD
<http://www.eoriginal.com>

UNCITRAL

Colloquium on Electronic Commerce

Electronic Transferable
Records in Business
Transactions – The Practical
Experience

February 14-16, 2011

About eOriginal, Inc.

- Software company founded in 1996 to address the barrier to electronic mortgage notes as valid negotiable instruments
- Participated in drafting and establishment of enabling U.S. legislation for electronic signatures and transferable records (UETA, ESIGN and UCC 9-105)
- “Industry firsts” as an on-line collaborative transaction provider:
 - **First fully paperless international trade transactions in pilot with Rabobank and Canadian Wheat Board and USDA GIPSA in 1999**
 - **First eLeases with GE Capital in 2000**
 - **First eMortgages with Fannie Mae in 2000**
- Provides an electronic transactions platform for electronic mortgages as negotiable instruments through a national eNote registry system
- Provides a transactions platform for electronic negotiable instruments for direct and indirect vehicle finance, leasing, consumer finance, commodities contracts, time share finance and others

Transferable Records in the US – Applicable Law and a Few Guidelines

- **Electronic Signatures in Global and National Commerce Act (ESIGN), federal eSignature and eRecords preemptive legislation**
- **Uniform Electronic Transactions Act (UETA), The National Conference of Commissioners on Uniform State Laws (NCCUSL) model state law**
- **Uniform Commercial Code (UCC) Revised Article 9-105, enabling electronic chattel paper**
- **Uniform Commercial Code (UCC) Article 7-106, enabling electronic documents of title**
- **AFSA and American National Standards Institute X.9 Transfer of Location of Electronic Contracts (TOLEC) for electronic chattel paper**
- **ANSI X.9 guidelines for eContracts for electronic chattel paper**
- **MISMO eVault Compliance Standards: eContracting Standard 2004; MISMO eVault Standard 2005**
- **ABA Framework for Control over Electronic Chattel Paper, Compliance with UCC 9-105**
- **SPeRS (Standards and Procedures for Electronic Records and Signatures)**
- **Equipment Leasing and Finance Foundation Paperless Transactions Report 2007**

UETA and ESIGN Basics

- A record or signature may not be denied legal effect or enforceability solely because it is in electronic form
- A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation
- If a law requires a record to be in writing, an electronic record satisfies the law
- If a law requires a signature, an electronic signature satisfies the law

Transferable Records Control Provisions

For electronic transferable records, control replaces possession for perfection:

- 1. Creates and maintains a single authoritative copy that is unique, identifiable and unalterable without detection.**
- 2. Authoritative copy identifies the person asserting control as either to whom the transferable record was issued or the issuer.**
- 3. Authoritative copy is communicated to and maintained by the person asserting control or its designated custodian.**
- 4. Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control.**
- 5. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy.**
- 6. Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.**

Registry and Transaction Platform Control Alternatives

- Registry Model: A distributed system that provides for the controller/owner of the negotiable instrument to securely store the instrument independently from “registering” its ownership in a centralized database accessible by subscribers and enabling transfer of control.
- Transaction Platform Model: A subscriber based trusted system enabling the collaborative execution, management and transfer of the negotiable instrument, ancillary documentation and the record of ownership.

Process Management in Transaction Platform Model

eSignature

Applications that only require functionality that executes electronic signatures

- Invitation / Access
- Consent
- Presentment
- Signature capture
- Bind Signature to Record

Collaborative Systems ECM, BPM, ERP

Signature functionality built into collaborative system or provided by vendor

Vendor solutions run from basic storage to highly customized vertical markets

- Authentication
- Workflow
- Manage Execution
- Audit Trail

eTransaction Management

Negotiable instruments and Secondary markets

Transferable Records
Compliance

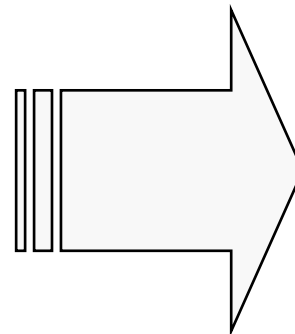
Transfer of Ownership

- Asset Transfers
- Pooling & Securitization
- Collateralizations
- Syndications
- Investors & Third Party Sales

Electronic Transaction Phases

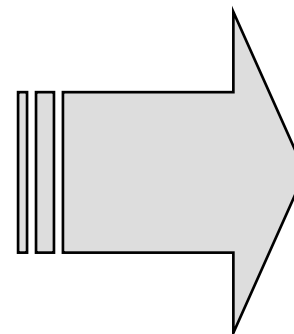
Origination

- Transaction (Folder) Creation
- Document Deposit
- Content Validation
- Signature Collection
- Signature Verification
- Initiation of Audit Trail
- Tamper-Evident, Time Stamped Seals



Post-Closing

- Scheduled content integrity verification
- Real-time retrieval of differentiated working copy of Authoritative Copies
- Collection of ancillary / supplementary documentation
- Audited control of user access (who, when)
- Transfer Control / Ownership



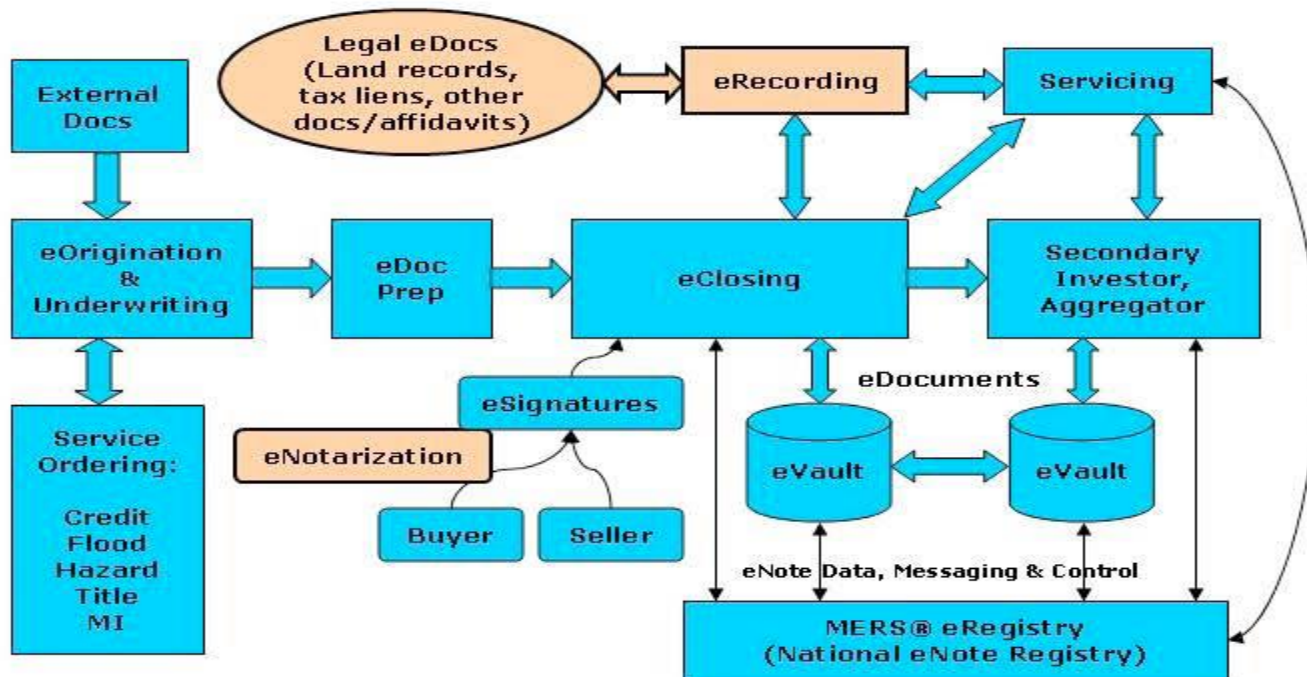
Document Lifecycle Management

- Status driven retention / destruction policies
- Aggregate transaction pools for securitizations
- Creation of legal evidentiary package (Certified Print®)
- Conversion of media / export, electronic to paper (Paper Out®)
- Conversion of media / paper to electronic (Paper In®)
- Transfer of Location between disparate electronic vaults (multiple custodians) (TOLEC)

The Mortgage Registry Experience

- Mortgage Electronic Registry (MERS) owned and operated eNote registry begun in 2005
- Standard for transferable records or eNotes in mortgage industry, supported by MBA, Fannie Mae and Freddie Mac
- 207,746 total eNotes registered through 2010, average 5,000-7,000 per month since 2008
- Requires standardized eNote form utilization
- Requires transaction process re-engineering
- Provides industry approved process, secondary market visibility and fungible eNotes

eMortgage Process Flow



eMortgage Process Flow Examples (Reprinted with permission from the Mortgage Industry Standards Maintenance Organization)

Electronic Chattel Paper – Indirect Vehicle Finance

- 21,000 new and used car dealers, 37 lenders participating on Internet vehicle finance portal providers, On Premise software model
- Fully electronic presentation, point-of-sale signing, vaulting, management and transfer of negotiable instruments in 1,000,000+ transactions
- \$15 billion in loan originations
- Securitization of automotive negotiable instruments into secondary markets of over \$3.8 billion in value
- No standardization of forms required, mirrors paper processes and customer experience
- Supported by debt rating agencies, issuer's counsel opinions
- No system errors or successful legal challenges

Electronic Chattel Paper – Direct Vehicle Finance

- Top three U.S bank direct vehicle lending to its customers through its Internet process since 2007
- Online application, automated underwriting, loan document presentation, signing, vaulting, management and enabling transferable records
- 80% electronic process adoption reducing loan process to funding time from 2 weeks to 40 minutes
- 35,000+ fully electronic loans completed

Electronic Chattel Paper – Lease

- Top 6 U.S. commercial “small ticket” leasing company
- Transitioning to solely electronic processing of all lease transactions
- Leveraging On Demand/SaaS transaction platform including authentication, presentment, signature capture, transaction management and transfer of negotiable instruments
- Delivery of the eLeases as collateral to its various funding sources and to their custodian for the negotiable instruments
- Since February 2010, 2,500 eLeases completed

Electronic Chattel Paper – Consumer Finance

- Multi-location U.S. based consumer finance company providing funding primarily to military personnel and their families
- Leveraging On Demand/SaaS transaction platform for multiple origination channels including:
 - Internet,
 - Point of sale, and
 - Paper In[®] conversion of paper negotiable instruments to electronic
- Since June 2009, 250,000+ loans completed and control transfer enabled for pledging/funding

Electronic Chattel Paper Application— Application for Timeshare Finance

- Top 10 international hotel and resort company offering timeshare financing through Internet sales and call centers
- Leveraging On Demand/SaaS transaction platforms including authentication, presentment, signature capture, transaction management and transfer of negotiable instruments
- Rating agencies applied the requirements for electronic chattel paper from UCC 9-105 to this particular financial asset class
- Currently executing 10% of new originations fully electronically, targeting 150,000 annually within 2 years
- Initiating process for Vault-to-Vault transfer of negotiable instruments directly to major U.S. bank custodian eVault
- Leveraging Paper Out[®] delivery to custodian and initiating Paper In[®] process for existing chattel paper

Electronic Transferable Records – Need for International Support

- Many U.S. companies currently utilizing electronic negotiable instruments are international in customer base and/or locations
- Cross-border management of negotiable instruments is an informational and educational hurdle in every implementation of fully electronic transactions
- Various transaction platform, registry and other models will evolve and need to be supported
- Need for coordination of various aspects of electronic transactions that are part of the management of negotiable instruments, such as federated identity, other authentication, documentation formats, signature and eVault methods, messaging, access, transfer and control methodologies, and others
- UNCITRAL is uniquely positioned to provide a forum and tools to address these needs



Stephen F. Bisbee
President and CEO
sfbisbee@eoriginal.com
410.625.5141

The Warehouse at Camden Yards
Baltimore, MD 21201
<http://www.eoriginal.com>