

# eWarehouse Lending

*An Overview of Warehouse Lending with eNotes*

July 2015

## Statutory Basis for Electronic Notes (eNotes)

### The Electronic Signatures in Global and National Commerce Act (ESIGN) and the Uniform Electronic Transactions Act (UETA):



- ❖ The “**transferable records**” provisions of ESIGN and UETA allow lenders to create the electronic equivalent of negotiable instruments with the same benefits a paper note would have under the UCC .
- ❖ The eNote framework and standards, built on ESIGN and UETA and technology initiatives such as the MERS® eRegistry and SMART Docs, **enable the creation and sale of transferable records** that can be validated and tracked in a completely automated way.
- ❖ Fannie Mae has routinely been **accepting delivery of eNotes** for over a decade.

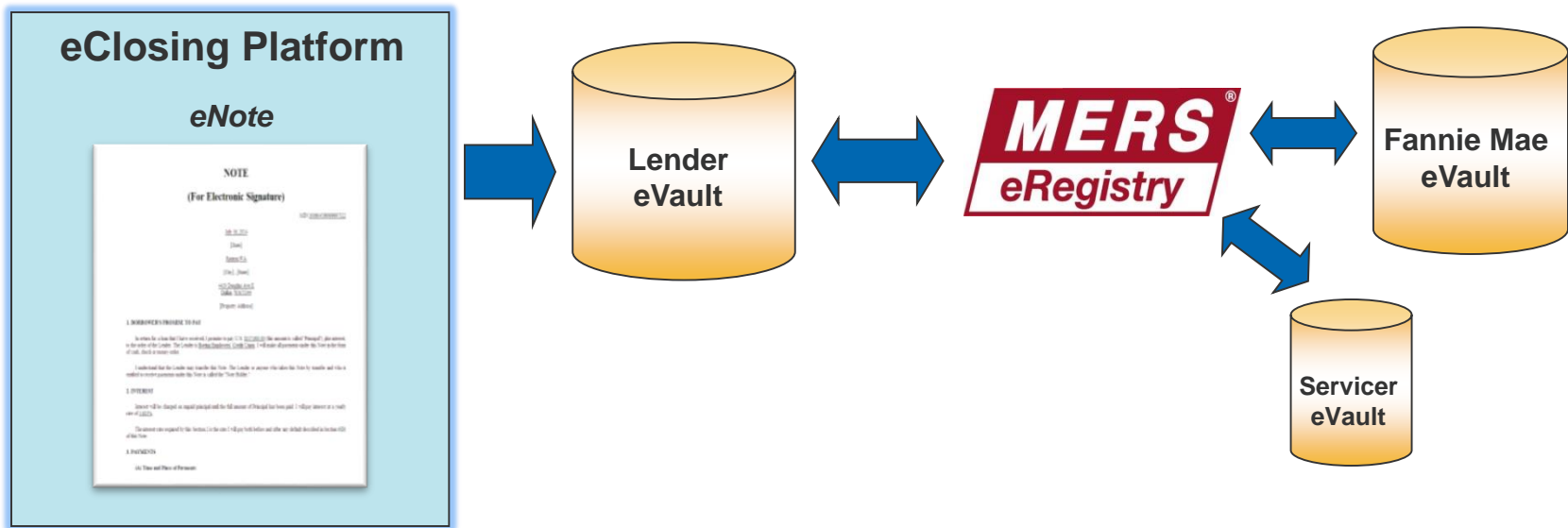
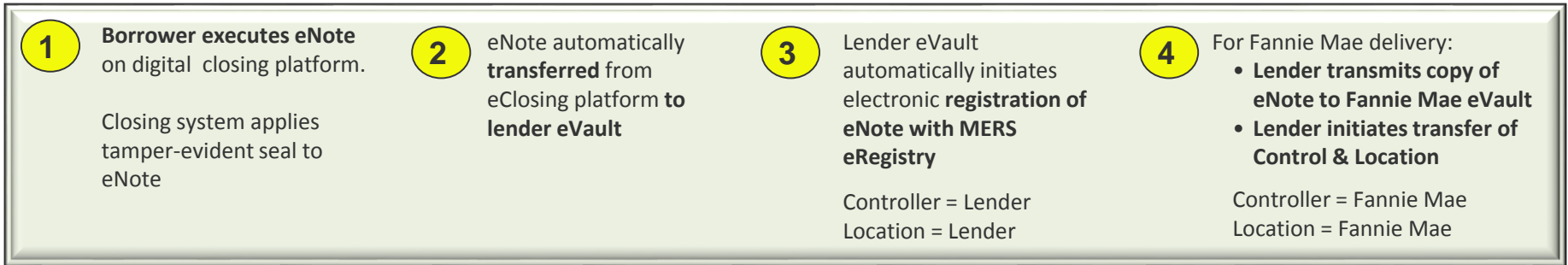
## eNotes and MERS



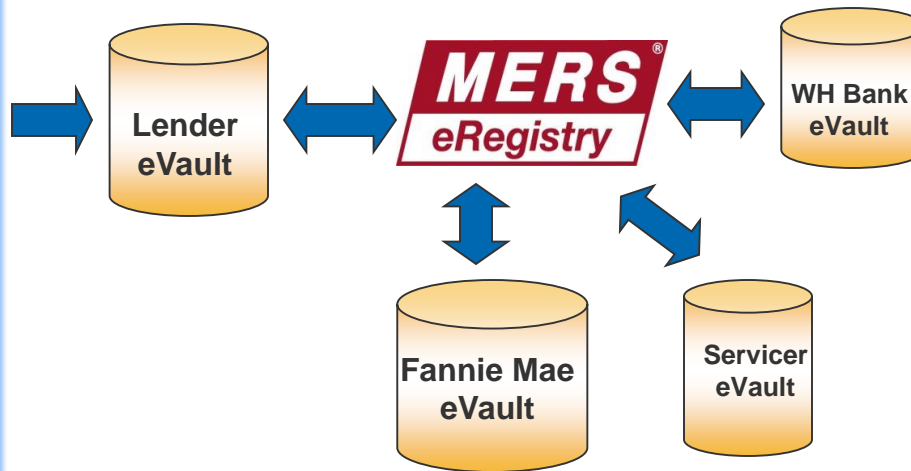
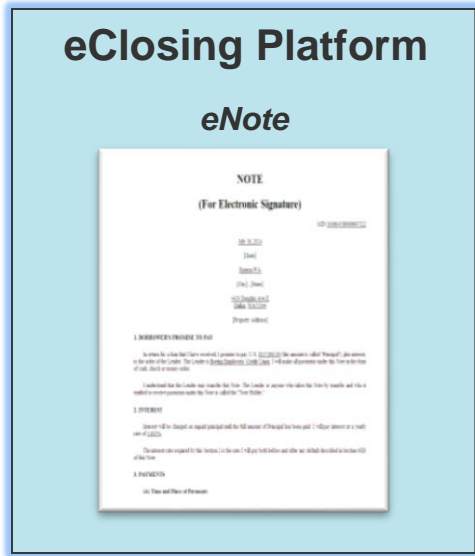
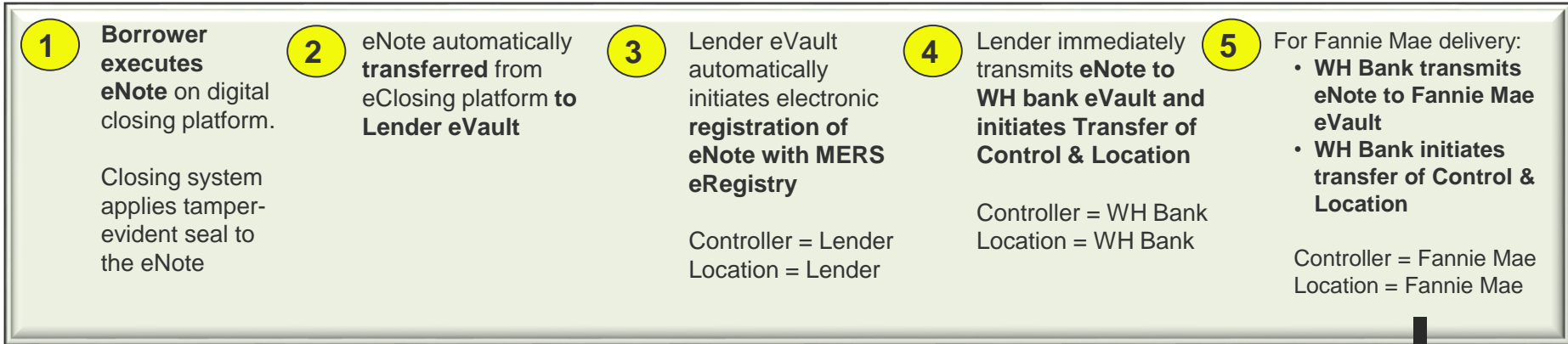
**What is the MERS® eRegistry?** A system of record that identifies the owner (Controller) and custodian (Location) for registered electronic promissory Notes (eNotes). The eRegistry was created in collaboration with industry participants to satisfy the requirements of both ESIGN and UETA for the establishment of a system reliably evidencing the transfer of interest in transferrable records.

- ❖ **Upon execution, eNotes are registered with MERS and uniquely identified in the eRegistry for tracking and verification purposes.**
  - The eRegistry does not store actual documents, but rather maintains a "digital fingerprint" of the signed documents to enable authentication.
  - Actual eNotes are maintained outside of the eRegistry by a legal fiduciary ("eCustodian") in a secure electronic repository ("eVault").
  
- ❖ **The eRegistry maintains information on transfers of ownership and custody.**
  - Transfers of control and/or custody are effected via secure system-to-system communications between the MERS eRegistry and eNote Controllers.
  - Participating organizations are identified in MERS via 7-digit MERS Organization IDs.

# eNote Process Flow (basic)



# eNote Process Flow (w/ warehouse bank)




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*Per tri-party agreement, Fannie Mae acts as custodian for WH provider (as designated by the lender) until funding or return of eNote to WH provider.*

## MERS “Affiliate” OrgIDs

*MERS permits member organizations to request “affiliate” OrgIDs which are connected to the primary OrgID and can be tied to a specific line of business. Through affiliate OrgIDs, WH banks can segment funding by organization, and investors can readily identify the seller-WH bank relationship at the time of eNote delivery.*

	<u>Primary Org ID</u>	<u>Affiliate OrgIDs</u>
Warehouse Bank Inc.	1111111	
- Warehouse Bank Inc., as Secured Party and Designee for Seller A		222222
- Warehouse Bank Inc., as Secured Party and Designee for Seller B		333333
- Warehouse Bank Inc., as Secured Party and Designee for Seller C		444444



- The OrgID used to deliver to Fannie Mae can be tied to a specific **Master Bailee Letter** for eNotes which requires payment to specific wiring instructions.

# eNote Master Bailee Letter & Tri-party Funding Agreement

*In lieu of traditional bailee letters delivered with paper Notes, for eNotes Fannie Mae utilizes an eNote Master Bailee Letter (MBL) along with a Tri-party funding agreement.*

- The eNote MBL ties deliveries from a specific MERS OrgID to a set of wiring instructions, and is delivered to Fannie Mae and our custodian (BONY) only once and updated as necessary.*
- The Tri-party is executed between Fannie Mae, our seller, and the warehouse bank, and provides the WH bank similar protections to a traditional bailee letter.*

## **The tri-party funding agreement provides for the following:**

1. After accepting Control of an eNote from the WH bank, up until Fannie Mae either pays the purchase price or returns the eNote to the WH bank, Fannie Mae controls the eNote as designated custodian for the WH bank, as secured party and designee for the lender;
2. Should Fannie Mae subsequently purchase the loan, payment will be remitted via wire transfer based on the wiring instructions contained within the eNote Master Bailee Letter;
3. Should Fannie Mae not accept delivery of the loan, Fannie Mae will transfer Control back to the prior Controller (i.e. warehouse bank).

# Getting Started

## What is required to fund eNotes and deliver to Fannie Mae?

1. MERS membership – The warehouse bank must be an active institution on the MERS eRegistry
2. eVault – The warehouse bank must have access to (either directly or through a 3<sup>rd</sup> party custodian) an eVault which is fully integrated with the MERS eRegistry and MERS eDelivery utilities in order to:
  - a) Accept and maintain control of eNotes post closing and prior to investor delivery;
  - b) Initiate deliveries to investors
3. MERS Affiliate OrgIDs – For each institution the warehouse bank is providing funding, a MERS affiliate OrgID is established by the warehouse bank.
4. Testing – The warehouse bank must complete end-to-end testing with Fannie Mae, including the seller and their technology provider as well as the WH bank and their eVault platform
5. eNote Master Bailee Letter & Tri-party funding agreement – The WH bank must execute the tri-party funding agreement with Fannie Mae and the respective Fannie Mae seller, and deliver the related eNote Master Bailee Letter to Fannie Mae and our custodian (BONY).
6. Delivery - All subsequent eNote deliveries from the warehouse bank to Fannie Mae under the specific affiliate OrgID will be subject to the provisions of the tri-party agreement



## Warehouse Bank Benefits w/eNotes



- Immediate recognition of security interest on the MERS® eRegistry.
- Immediate receipt and control over eNote.
- Elimination of lost Notes.
- Elimination of bailee letters with eNotes.
- Reduces risk of double pledging.
- Eliminates shipping and custody costs associated with paper Notes.
- eNotes enable an efficient and seamless delivery process between lenders, funding providers, and secondary market investors.

## Warehouse Bank Considerations

- Industry direction
- Customer demands
- Legal aspects
- Cash flow implications
- Operational impacts
- Technology requirements and options
- MERS membership



# Questions?

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