ELECTRONIC CONTRACTING IN WISCONSIN
Is it Legal and Other Considerations

The COVID-19 pandemic has, in many cases, made electronic transactions a necessity. Given this year's shelter-in-place orders, lockdowns, and ongoing social distancing practices, many banks currently operate with reduced lobby hours, and customers seek alternatives to obtaining financial services in-person. As banks look to meet current needs, and prepare for the future, issues may arise as to the practice and legal considerations surrounding electronic signatures. The topic of whether electronic signatures are legal in Wisconsin is a topic the Wisconsin Bankers Association (WBA) has attempted to answer since the onset of the pandemic via calls to its Legal Call Program and through educational offers such as the WBA Compliance Forum. This release attempts to generally outline the law surrounding electronic signatures and the business considerations each bank need consider when implementing electronic signatures in contracts.

Contents

- Electronic Signature Considerations..... 2
- Is it Legal 2
  - Electronic Signatures in Global and National Commerce Act (E-Sign Act) 2
  - The Uniform Electronic Transactions Act (UETA) 3
  - Applicability..... 3
  - Considerations 3
- What about Notarial Acts 4
- Regulatory Considerations 4
  - Truth in Savings Act (Regulation DD) 5
  - Electronic Fund Transfer Act (Regulation E) 5
  - Truth in Lending (Regulation Z) 5
  - Examiners 6
- Bank has Decided to Proceed with Electronic Transactions, Now What 6
  - Implementation 7
  - FIPCO Resources 7
  - Scenarios and Analysis 8
  - Other Resources 11

Electronic Signature Considerations

The trend in customer preference toward electronic financial services is not a new one, but the COVID-19 pandemic has, in many cases, made electronic transactions a necessity. Given this year's shelter-in-place orders, lockdowns, and ongoing social distancing practices, many banks currently operate with reduced lobby hours, and customers seek alternatives to obtaining financial services in-person. Even after social practices return to normal, it is likely that both business and consumer customers will desire access to financial services electronically. As banks look to meet current needs, and prepare for the future, issues may arise as to the practical and legal considerations surrounding electronic signatures.

Questions such as: electronic signatures, are they legal? How are they done? What transactions require a wet signature? What about notarial acts? What do the investors think? Insurance companies? How do you go about implementing all this?

All the above are important considerations, sometimes from a legal perspective, others from a policy and preference standpoint, and oftentimes both. The following resource explores these issues, provides considerations in implementing electronic signatures, and offers a general perspective on the matter. In addition, six hypothetical scenarios are presented at the end of this article to articulate these points through example.

Is it Legal?

Frequently, WBA is asked whether electronic signatures are legal. The short answer is that yes, electronic signatures are legal and enforceable in Wisconsin, but as with all legal considerations, the longer answer depends on important factual and statutory distinctions. Theoretically, every bank could offer electronic signatures right now, but the reality is, every bank must make that determination independently, based upon numerous of factors. Some of those factors, and contexts, are provided in the sections below.

Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 USC 7001

The E-Sign Act was signed into law in late June, 2000, and is designed to provide greater confidence in conducting transactions electronically. It provides national standards for validating many electronic signatures, records, and contracts. The general rule provides that a signature, contract, or other record may not be denied validity solely because it is in electronic form. The E-Sign Act also allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided to a consumer in writing, if the consumer has affirmatively consented to such use and has not withdrawn such consent. This provides banks with the ability to make consumer disclosures electronically. For example, rules such as Regulation DD and Regulation Z require certain disclosures to be provided to a consumer in writing. That requirement could be met electronically through the E-Sign Act (additional considerations specifically from a regulatory perspective are discussed further below).

The E-Sign Act generally permits banks to enter into almost all loan and deposit agreements and various service agreements electronically. However, States are restricted in their ability to modify or supersede the E-Sign Act's basic provisions. One way States might accomplish this involves enactment of the Uniform Electronic Transactions Act (UETA). Thus, the E-Sign Act and UETA set the overall legal

landscape for electronic signatures in commerce.

The Uniform Electronic Transactions Act (UETA), Wisconsin Statute Chapter 137

UETA allows the use of electronic records and electronic signatures in most transactions, with a few exceptions, and became effective in Wisconsin in May, 2004. UETA also recognizes the enforceability of electronic agreements and signatures. As discussed above, State adoption of UETA can limit and supersede the E-Sign Act. Thus, Wisconsin banks should work with legal counsel to better understand which legal standards should be followed for a given transaction. That said, a general rule would be to follow E-Sign Act for compliance with federal laws (such as Truth in Lending). For contracting electronically, a financial institution should consider UETA. For consumer lending transactions, a financial institution should consider both E-Sign and UETA. While that may be a helpful starting point, bank's legal counsel should still perform a fuller analysis.

Applicability

While the E-Sign Act and UETA will govern most consumer or commercial transactions, there are certain exceptions. Ultimate applicability of the law to any given document or transaction should be determined by bank's legal counsel, however, it is worth mentioning some circumstances where the E-Sign Act and UETA do not apply, which are covered briefly below. Many will involve situations that will not apply directly to banks, for example, any transactions governed by laws concerning the execution of wills, codicils, and testamentary trusts.

Additionally, the E-Sign Act and UETA generally do not apply to contracts governed by the Uniform Commercial Code (UCC), except for Articles 2 and 2A governing sales and leases. Specifically, Wisconsin's adoption of UETA excludes coverage of Chapters 401 and 403 to 410 (except for certain provisions of Chapter 401). Regardless of the limitation of E-Sign Act and UETA, Wisconsin has adopted the use of electronic documents and signatures within its UCC Article 9 as found in Wisconsin Statute Chapter 409.

Lastly, the E-Sign Act and UETA does not apply to notices of default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by or a rental agreement for a primary residence of an individual. For example, notices required by foreclosure proceedings could not be sent electronically.

Considerations

Both E-Sign and UETA provide for the enforceability of electronic signatures, but those signatures can still be challenged, just as any wet signature might be challenged. For example, a wet signature could be challenged on the basis of fraud or forgery. Thus, a bank must decide the extent to which it is comfortable relying upon, and enforcing, an electronic signature. This analysis might start with what technologies is bank using to confirm an electronic signature. There is a difference between obtaining a signature to a contract which is typed out at the end of an email versus utilizing a system designed to certain technological standards and processes, just as there is in accepting a wet signature through mail versus taking a wet signature witnessed in bank's lobby.

In summary, an electronic signature cannot be denied on the sole basis that it is "electronic" but that is not to say it cannot be challenged. It is important to note that while the law provides for this validity,

there have been no reported cases in Wisconsin involving the introduction of electronic records. Meaning, it is worth considering that Wisconsin courts have yet to weigh in on factors or processes that might be important to evidencing the validity of an electronic signature. Thus, the considerations presented in this article are general in nature. A bank should work with its legal counsel to obtain more specific advice, but some considerations are presented below:

- To what extent will bank utilize electronic signatures? For example, will it provide Federal disclosures electronically? Will the bank open accounts online by contracting with the customer electronically?
- What lines of business does bank have, what types of products does it have, and what desire from bank's customer base is there for electronic signatures?
- What technologies are available to the bank and how will it set its processes and procedures to best utilize those technologies to the extent it has chosen to accept electronic signatures?
- How are the technologies bank uses designed to meet E-Sign and UETA requirements? Including obtaining a customer's consent, delivery of required disclosures under the Acts, methods of verification, and evidence available to prove the enforceability of the contract?
- Will bank work with investors and if so, do they have their own requirements to follow? For example, Fannie Mae, Freddie Mac, and the Federal Home Loan Bank may have their own requirements and restrictions for electronic signatures.
- Based upon bank's decision to utilize electronic signatures, what new risks does the decision create for the bank? Has bank identified potential risks? What is strategy to minimize identified risk? Is bank prepared to explain these matters with its regulators?

What about Notarial Acts?

It is important to understand that a notarial act is different from an electronic signature. Generally, a person seeking notarization must "appear" before a notary public and in the "presence" of witnesses. On March 3, 2020, the Governor signed 2019 Wisconsin Act 125 into law, which authorizes online notarial acts. Act 125 adopts the Uniform Law Commission's Revised Uniform Law on Notarial Acts which allows for remote notarization of documents where a person does not appear in person before a notary public.

Electronic notary, while legal in Wisconsin, is still relatively new. The Wisconsin Department of Financial Institutions (DFI) has issued rules to implement remote notary, including creation of a Remote Notary Council. Currently, before performing a notarial act for a remotely located individual, a Wisconsin notary public must obtain authorization from an approved communication technology provider to use its system for remote online notarization and become knowledgeable about that provider's system and processes, including completion of any relevant training or instruction modules prepared by the provider. Communication technology providers are approved by DFI and the Remote Notary Council if they meet security, recordkeeping, and other standards to ensure the integrity of the notarial process. A list of approved providers is available on DFI's website.

Regulatory Considerations

When a bank has determined to proceed with accepting electronic signatures, another area of consideration is how to deliver any required disclosures and whether the E-SIGN Act has an impact on an electronic delivery process. Regulatory considerations are necessary as it can be a main reason

behind the actual flow of the establishment of a deposit account, loan application or added service. As discussed above, banks are required to provide various disclosures to consumers "in writing." Generally, this requirement can be met by providing disclosures in accordance with the E-Sign Act. Three of the most common regulatory disclosure requirements are discussed as examples below.

Truth in Savings Act (Regulation DD)

Regulation DD requires banks to provide account disclosures to a consumer before an account is opened or a service is provided. Section 1030.3 requires disclosures to be made in writing, and in a form the consumer may keep. It also provides that disclosures may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. Reg DD also requires a bank to provide account disclosures to a consumer upon request. If a consumer who is not present at the institution makes a request for account disclosures, including a request made by telephone, email, or via the bank's Web site, the bank may send the disclosures in paper form or, if the consumer agrees, may provide the disclosures electronically, such as to an email address that the consumer provides for that purpose, or on the bank's Web site, without regard to the consumer consent or other provisions of the E-Sign Act.

Electronic Fund Transfer Act (Regulation E)

Regulation E requires banks to provide disclosures to consumers at the time a consumer contracts for an electronic fund transfer (EFT) or before the first EFT is made involving the consumer's account. Disclosures are to be made in writing, and generally need be in a form the consumer make keep. Reg E allows for required disclosures to be made electronically, subject to compliance with the consumer-consent and other provisions of the E-Sign Act.

Reg E remittance transfer procedures set forth different requirements for electronic disclosure delivery which can be tricky. Section 1005.31 provides that if a sender electronically requests the remittance transfer provider to send a remittance transfer, the prepayment disclosure required under section 1005.31(b)(1) may be provided to the sender in electronic form without regard to the consumer consent and other applicable provisions of the E-Sign Act. If a sender electronically requests the provider to send a remittance transfer, the receipt disclosure required under section 1005.31(b)(2) may be provided electronically; however, the electronic delivery of this portion of the disclosure is subject to consumer consent and other provision of the E-Sign Act.

Truth in Lending (Regulation Z)

Regulation Z requires certain initial disclosures to be provided to consumers in connection with an application for credit. Due to the product-specific timing requirements for the delivery of disclosures, the application of the E-Sign Act in the consumer lending setting is not uniform. As a result, the implementation of delivering disclosures electronically can become complicated as the bank may need create different paths of delivering disclosures electronically depending upon whether the bank is required to first comply with the consumer consent and other provisions of the E-Sign Act.

Sections 1026.6 and 1026.40 requires account opening and other disclosures (e.g., home equity application brochure) for non-home secured open-end credit and home-equity plans. Sections 1026.5(a) sets forth general disclosure rules for open-end credit plans. Disclosures that are not required to be

provided in writing under 1026.5(a)(1)(ii)(A) may be provided in writing, orally, or in an electronic form. If the consumer requests the service in electronic form, such as on the bank's Web site, the specific disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.
For open-end home equity plans, section 1026.40 requires a unique set of disclosures describing the credit plan. The disclosures required by section 1026.40 may be provided to the consumer in electronic form without regards to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in section 1026.40. Several examples are provided within the commentary section of 1026.40 to illustrate the methods creditors could use to satisfy disclosure requirements electronically.

Sections 1026.18 and 1026.19 require certain disclosures for closed-end mortgage transactions, including the Loan Estimate. Sections 1026.17(a) and 1026.37(o) require closed-end credit disclosures to be made in writing, in a form that the consumer may keep, including the Closing Disclosure. Sections 1026.17(a) 1026.19(e), and 1026.31(b) provide that closed-end credit disclosures may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act.

Something to be mindful of when creating a process for the electronic delivery of disclosures which have precise timing requirements when the bank must obtain consumer consent and comply with other provisions of the E-Sign Act is that if consumer consent is not obtained before delivery of disclosures, a disclosure timing component may not be met. For example, if the bank delivers a Closing Disclosure to a consumer via email, but the bank did not obtain the consumer's consent to receive disclosures via email prior to the delivering the disclosures, then the bank does not comply with the timing requirements of delivering the Closing Disclosure under Reg Z, assuming the disclosures were not provided in a different manner (i.e., postal mail) in accordance the general timing requirements under section 1026.19(e).

Examiners

State and Federal bank regulators will not have an opinion of whether the bank should accept electronic signatures. Instead, the regulators will be concerned over whether the bank has considered risks associated with the decision. As both federal and state law accommodate electronic signatures, many banks in Wisconsin and throughout the various bank-supervisory regions contract electronically in different ways and on varying levels. Thus, examiners are familiar with banks accepting electronic signatures.

Examiners will be most concerned over implementation of a decision to accept electronic signatures. At minimum, the bank should be prepared to demonstrate how its Board of Directors were involved in the decision to accept electronic signatures, how procedures were updated to recognize the change, how staff was training, how the procedures will be monitored, and audited. Bank should also be prepared to demonstrate how Bank Secrecy Act/Anti-Money Laundering rules and third-party vendor management requirements are satisfied and how the security of bank's systems remain protected after another component is added into the deposit, loan or other service delivery or operating systems.

Bank has Decided to Proceed with Electronic Transactions, Now What?

One recurring point of this article is that electronic transactions are possible, but with numerous matters to consider. It has presented an overall landscape, as well as legal and regulatory considerations. This

section is designed to bring that together along with practical considerations so a bank can have a starting point of what to think about when looking to implement. Bank will still want to work with its legal counsel to ensure all of the matters presented more generally above have been considered.

Implementation

Once bank has worked through all of the legal and regulatory ramifications, there is still a lot to consider.

- Cost. As discussed above, much of conducting transactions electronically relies on various pieces of technology. Bank will want to consider what technologies are available, and the cost not only of adopting, but implementing, and maintaining.
- Training. Not only will training add to cost, it will also require time. Bank will want to ensure all staff are trained adequately in order to understand how to conduct transactions electronically, but also when it is appropriate to conduct a transaction electronically. Certain staff will also need be trained on proper record retention of any electronic documents and supporting data, such as metadata connected to the electronic document/signature or certifications of compliance of the electronic transaction.
- Staff. Will additional staff be necessary? Along the same lines as training, will the intricacies of technology, process, and decision-making involved require new staff or new roles? Or will training of current staff and morphing of duties and responsibilities be sufficient?
- Insurance. Bank should review its policy to determine whether it is flexible enough to accommodate its chosen course for electronic transactions. Will bank's insurance underwriters provide bonding and professional liability insurance? For remote notary? Or is possession of physical documentation or handwritten signatures required? What is bank's potential risk covered in the event of fraud via the new service?
- Technology. Above, the resource discusses the legal considerations of available technology, but what about accessibility? What lines of business is bank engaged in, or pursuing, and what technologies are best suited to achieving those goals? What about availability? Do certain vendors offer products more appropriate than others? Do existing vendors have products that tie into services bank already has available, such as online or mobile banking platforms that would allow for seamless access but customers already using those services? Are existing systems compatible with a system that accommodates electronic signatures and/or electronic notarial acts?
- Policy and Procedure Updates. For those products and services for which the bank has elected to accept electronic signatures, bank's policies and procedures need be updated to reflect the new process. Including, how will the new process be reviewed for completeness, audited, and monitored for fraud or unauthorized access? How will requirements under Bank Secrecy Act/Anti-Money Laundering be met? Have bank's responsibilities under third-party vendor management rules been met with vendor providing electronic signature capabilities? Have security systems been updated to accommodate the new service and protect against new potential system or information breaches?

In terms of available technology, FIPCO® offers electronic signature options through DocuSign®. Both FIPCO® and DocuSign® have different products available, together or separately, which may provide solutions depending on what bank is looking to offer. FIPCO® has provided links with more information from a DocuSign® standpoint which are included at the end of this article.

Recently, FIPCO® has noticed a trend amongst its users toward e-signatures, and for those implementing, safety has been a primary concern. When allowing the completely virtual route, there are several authentication options ranging from text, authentication code, and personalized questions that help assure the person signing is who they say they are. Some services even come with audit trails and tracking options as added security measures. With certain precautions, e-signatures can be a safe and efficient resource to provide more to customers.

As discussed above, FIPCO® provides e-signature services that banks can offer in their branches, or their customers can sign remotely through DocuSign®. Specifically, FIPCO® has created the WBA 145DS Electronic Record and Signature Disclosure (WBA 145DS). The WBA 145DS has been designed to obtain the customer's consent to receive communications electronically via the DocuSign® platform, which integrates the required disclosures under the E-Sign Act. For example, the WBA 145DS appears imbedded into the email message the signer receives along with a hyperlink in the DocuSign® platform. The customer must then select a checkbox in order to consent to receive communications electronically.

FIPCO® software users can also send documents and disclosures to customers electronically, and obtain consent, outside of the DocuSign® platform, through Compliance Concierge™. For this purpose, FIPCO® has created the WBA 145U Consent to Electronic Delivery of Communications (WBA 145U) and the WBA 145G Consent to Electronic Delivery of Account Disclosures (WBA 145G). The WBA 145U has been created for use with loan documentation while the WBA 145G is intended for use with deposit documentation.

In summary, FIPCO® has forms available to provide documentation electronically, and obtain customer consent, in accordance with E-Sign Act requirements. This function is available both through the DocuSign® platform and through Compliance Concierge™.

In addition to DocuSign®, FIPCO® recently began working with IMM Online as another option for financial institutions to accomplish electronic signatures. FIPCO® is still in the process of completing integration with Compliance Concierge™, but in the future, this will be another provider that financial institutions can consider in their evaluation process of selecting a vendor.

Conclusion

While electronic signatures are valid in Wisconsin, there are numerous considerations to make before deciding the extent to which banks will utilize them. This resource presents some of the legal and practical matters important to that process, but a bank should consider seeking the advice of its legal counsel for specific guidance in order to work through the inevitable complex and fact-specific issues that will arise.

Scenarios

The following scenarios are provided in addition to the article to help banks apply the various considerations that will come into play. Each scenario has been prepared to emphasize certain important components of an electronic signature analysis. Not every possible scenario will be covered, but each should give a bank some concepts to apply to their own situations.

Scenarios 1-3 are designed to present considerations of law, regulation, and technology. Scenarios 4-6 are designed to present risk-based considerations.

Scenario 1:

On a Monday, bank receives an email application for a fixed-rate mortgage loan. The application includes all required pieces of information and generally meets all requirements to be treated as an application under Regulation Z and would result in a transaction covered by TRID.

Analysis of Scenario 1:

Because bank has received an application for a TRID loan, it must deliver the loan estimate within three business days. The loan estimate must be provided in person, mailed, or electronically. If bank decides to provide the loan estimate electronically, such as by email, it must comply with the E-Sign Act. For example, if bank emails the loan estimate without obtaining consent to receive disclosures via email, then bank will not be considered to have complied with the delivery requirements of the loan estimate.

Scenario 2:

A consumer comes into the bank to open a checking account. The bank prints the TISA, and any other required disclosures, and hands them to the customer. Then, the customer reviews the account opening documentation on a computer screen and signs the depository agreement using a stylus and electronic pad.

Analysis of Scenario 2:

E-Sign does not apply because the disclosures have been provided in writing, rather than electronically. Thus, consent is not required.

However, the bank must consider the extent to which it is comfortable relying upon the "signature pad." In short, bank must be comfortable that it works. Meaning, is bank comfortable proving that the pad captured the customer's signature and applied it in a way that it is logically associated with the agreement, and evidences the customer's intent to be bound?

This scenario is valuable because it helps illustrate the differences between traditional wet signatures and a signature that is gathered through an electronic means, but might not be typically viewed as an "electronic signature." A bank must be equally confident evidencing that a customer's wet signature does all of the above. However, this comfort comes easier because the technology is simpler (ink and paper versus a stylus on a pad). The more complex the technology becomes, the more bank must consider the extent to which it is confident in its purpose of proving a customer's intent to enter into a binding agreement.

Scenario 3:

Customer is activating online banking for the first time from customer's mobile phone. Customer is presented with an online banking agreement, which customer signs through a prompt on customer's phone screen.

Analysis of Scenario 3:

There are various ways in which a person can sign a document, particularly electronically. For example, there could be a checkbox on the phone screen, a box where they sign with their finger, a place where they enter their name and a signature is generated for which they can select a style and appearance. The question is the same as above. That is, whether bank is comfortable proving that the signature was authorized and constitutes the customer's agreement to the online banking agreement.

Neither E-Sign or UETA discuss how electronic signatures can be proved, and again, this must be done in the same way as a wet signature on a paper document would be proved, with consideration of the complexities added by the technology applied. In this scenario, a bank will want to understand the technologies it is using and providing to its customers on their phones for signature.

Scenario 4:

Using a means of technology similar to Scenario 3, a customer designates, electronically, a payable on death (POD) beneficiary and/or power of attorney (POA) to customer's individual account.

Analysis of Scenario 4:

POD and POA agreements are documents that are part of the deposit account contract. Pursuant to a POD agreement and Wisconsin Statute Chapter 705, the bank is required to pay out the funds of the identified account upon request of the named surviving beneficiaries. Pursuant to a POA agreement, a bank must honor the authority of an agent to act in accordance with the agreement.

A bank will want to be confident in the enforceability of both types of documents to avoid challenges to their validity. For example, an heir who was excluded from the POD designation may challenge an electronic signature on the bank's POD agreement, or may challenge that the POD designation was not completed properly. Thus, the bank will not only want to ensure it is confident in its chosen technology's ability to capture a signature, but is also able to ensure the customer fully completes the document. Have all beneficiaries been named on the agreement? Have the beneficiaries been named clearly in a way bank will be able to identify them upon death of the account owner? Are the share designations clear? Even aspects of the agreement as simple as the date are important. For example, when a customer completes a document in person it's easy to review the paper copy and point out they forgot to insert the day's date – how will bank ensure completion electronically? Because a POD designation reflects estate planning decisions of the customer, it is important that bank is able to confidently rely upon it.

Similarly, a family member may dispute the authority of an agent to act under an electronically executed POA agreement. Because a POA agreement creates a fiduciary relationship it is important that the bank is confident that the agent has proper authority to act on behalf of the principal. Is the account to which the POA applies clearly indicated? Is the appointed agent clear? Does bank have a way to capture the agent's specimen signature or otherwise gather any identifying information it might require? Has the agent provided the bank with an Agent Certification as to a particular fact that could be protectionary to the bank?

Scenario 5:

Pursuant to bank's wire transfer agreement and security protocols, customer requests an outgoing wire transfer electronically.

Analysis of Scenario 5:

A bank customer could initiate a wire payment order electronically. The Uniform Commercial Code (UCC) permits this, and bank's wire transfer agreement may permit it as well. For example, the WBA 386 Wire Transfer Agreement permits transmittal of a payment order through electronic communication. A bank that accepts electronic payment orders will want to ensure that the orders are authorized. This analysis might begin with bank's security procedures. For example, does the customer initiate the payment order through the online banking system? What is the call-back authentication procedure? Or other procedures? If a bank accepts a payment order that is not authorized, effective, or enforceable, bank will be very likely be liable to refund the payment.

As discussed above, UETA and E-Sign generally do not apply to the Uniform Commercial Code (UCC). Specifically, Wisconsin's adoption of UETA excludes Statute Chapter 410, governing wire transfers, from coverage. This does not mean electronic signatures used in connection with a request for wire transfer is invalid, rather it means the bank need consider procedures and standards other than what may otherwise have been available under UETA. Chapter 410 of the UCC requires "commercially reasonable" security procedures which are agreed to between the bank and customer. Those standards could not automatically be met electronically through reliance upon UETA or E-sign. As a result, bank would need create its own commercially reasonable standards. Given the rise in fraud involving wire transfers, careful consideration should be given by the bank when creating its procedures and standards related to electronic signature for the authorization of a wire transfer, including a wire transfer request via email.

Scenario 6:

Customer executes a mortgage electronically, which is also filed electronically.

Analysis of Scenario 6:

The risk of an electronically executed mortgage is, in short, a question of whether the creditor is confident the transaction is secured. That is, whether the mortgage is enforceable. General considerations might include: is the signature valid? Does the instrument meet all required formal requisites? Will the local register of deeds accept the instrument for recording?

Thus, the risk analysis will involve many factors. For example, consumer versus commercial? Does collateral include any security agreements in addition to the mortgage? Have those also been executed electronically? Does the Register of Deeds Office accept electronic signatures for filing? If so, are its standards and procedures clear? Is bank's technology able to meet them? Because the mortgage represents banks' ability to enforce an interest in property securing a transaction, the final question is likely going to be whether bank comfortable presenting the mortgage in court as evidence of its right.

In addition, is the bank selling its mortgage interest to an investor? What conditions will the investor require for documents which include electronic signatures? Does the investor require the use of certain

vendors for the performance of a notarial act? Is the bank pledging a particular mortgage, for example to the Federal Home Loan Bank or to the Federal Reserve Bank? What requirements need be met for such pledge and can bank meet the requirements.

Resources:

Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 USC 7001:
www.govinfo.gov/content/pkg/USCODE-2010-title15/pdf/USCODE-2010-title15-chap96-subchapI-sec7001.pdf

The Uniform Electronic Transactions Act (UETA), Wisconsin Statute Chapter 137:
https://docs.legis.wisconsin.gov/statutes/statutes/137.pdf

Regulation DD, 12 CFR 1030:
https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1030/

Regulation E, 12 CFR 1005:
https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1005/

Regulation Z, 12 CFR 1026:
https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1026/

FIPCO-Related Resources:
https://www.fipco.com/
https://www.docusign.com/products/identify
https://www.docusign.com/how-it-works/legality/global