

# Third Party Originators E-Sign Act Policy Guide

2018

Wholesale and Correspondents

Towne Family of Companies

# Table of Contents

<a href="#">Introduction</a>	3
<a href="#">Systems Technology</a>	3
<a href="#">Definitions</a>	3
<a href="#">Contents and Intent to Electronic Records</a>	4
<a href="#">Verification of Acknowledgement of Disclosures</a>	5
<a href="#">Delivery of Electronic Disclosures</a>	5
<a href="#">Requirements of Documentation Received from Consumers</a>	5
<a href="#">Changes to Hardware or Software</a>	6
<a href="#">Withdrawal of Consent</a>	6
<a href="#">E-Signature Allowable Application Documents</a>	6
<a href="#">Acceptable Third Party Documents</a>	7
<a href="#">Other Documents Acceptable</a>	7
<a href="#">Non-Acceptable Documentation</a>	8

## **Introduction**

The purpose of this guide is to describe the electronic signature, documentation and record retention policy and requirements of Towne Family of Companies (hereinafter known as "Towne"), wholesale and correspondent divisions. Towne will accept certain electronically signed documents from Wholesale, Non-Delegated Correspondent and Delegate Correspondents clients, collectively known as, Third Party Originators (TPO), under the requirements of this guide.

Towne requires that all transaction-related disclosures and documents signed electronically comply with the federal Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 USC 7001) and state laws and regulations, as applicable and allowed under the E-Sign Act.

**IMPORTANT: Federal and state laws are extremely complex and often amended. Towne does not warrant the accuracy of the information provided herein or otherwise with regards to these laws and regulations. This guide is not in any way a substitute for the TPO's own compliance procedures. You are advised to consult with an attorney should you have any compliance questions.**

## **Systems Technology**

All E-Sign Act technology utilized in connection with a mortgage loan transaction originated by or delivered to Towne must fully comply with the signature, presentment, delivery, loan file documentation and retention requirements of all applicable Federal and State laws and regulations. The process and technology used must result in an effective, valid and enforceable borrower signature.

The electronic agent capabilities must meet, but is not limited to, the following E-SIGN Act requirements:

1. Obtaining intent to sign from each party;
2. Obtaining affirmative consent to do business electronically from all parties and provide the parties the option to withdraw the consent;
3. The system used to capture the transaction must keep an associated record that reflects the process by which the signature was created, or generate a textual or graphic statement (which is added to a signed record) proving that it was executed with an electronic signature; and
4. Maintaining electronic signature records capable of retention and accurate reproduction reference by all parties or persons entitle to retain the contract or record.

Additionally, the vendor should have in place adequate processes and procedures, and systems to ensure the protection of these records and consumer information.

## **Definitions**

**Associated Record:** any and all documentation of changed circumstances, worksheets applications received, or other information provided by the consumer or exchanged with the consumer with respect to a transaction.

**Attribution:** the process of associating the identity of a signer with their signature.

**Consumer:** an individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and also means legal representative of such individual.

**Default Regulated Timeframe:** the period set within a regulation, which a rule will automatically revert back to should an action not occur or not occur by set timeframe.

**Legible:** clear enough to be read without zooming in more than 125%.

**Electronic:** relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

**Electronic Agent:** a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part without review or action by an individual at the time of the action or response.

**Electronic Record:** a contract or other record created, generated, sent, communicated, received, or stored by electronic means.

**Electronic Signature:** an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign a record. An electronic signature **does not** include stamp signatures.

**Information:** data, text, images, sounds, codes, computer programs, software databases, or the like.

**Originator:** the loan originator organization as defined by the Consumer Financial Protection Bureau.

**Record:** information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**Third Party Documents:** those documents that are originated and signed outside of the control of the Mortgagee, such as the sales contract.

## **Consent and Intent to Electronic Records**

In order to accept records electronically or deliver records electronically, the originator must document and maintain records of consent from the consumer to utilize an electronic agent.

However, **prior to acquiring the consumers consent** and in accordance with the E-Sign Act, the originator must provide the consumer with a clear and conspicuous written disclosure that informs the consumer of, at a minimum, the following:

- The right of the consumer to have documents provided in paper or non-electronic form;
- The right of the consumer to withdraw the consent to have the record and associated documents made available in an electronic form;
- The procedures the consumer must use to withdraw consent;
- Any conditions and/or consequences (which may include termination of the parties' relationship) or fees in the event of such withdrawal;
- The categories of records that may be provided or will be available during the course of the relationship;
- The procedures the consumer must use to update information needed to contact the consumer electronically;
- The procedures the consumer must use, after consent and upon request, to obtain a paper copy of an electronic record and whether a fee will be charged; and
- Whether consent applies to one particular transaction, which gave rise to the obligation to provide disclosures or a record.

The originator must also provide the consumer with a statement of the hardware and software requirements necessary to obtain records electronically. The originator must receive electronic confirmation from the consumer of his or her ability to access the information in the electronic agent that will be used to provide the information that is the subject of the consent.

Oral consent or a recording of oral consent does not qualify as proof of consent and does not sufficiently give authorization to disclose information electronically.

### **Verification or Acknowledgment of Disclosures**

If a disclosure requires verification or an acknowledgment and the acknowledgment will be received electronically, the electronic agent must provide for a signature capability to comply with the verification or acknowledgement (whichever is required) for that specific disclosure.

Towne requires a separate action by the signer, evidencing intent to sign, in each location where a signature or initials are to be applied.

### **Delivery of Electronic Disclosures**

In order to consider an electronic disclosure “delivered” prior to its default regulated timeframe, Towne requires confirmation of early receipt from the consumer. Demonstrating when the consumer viewed the document may be sufficient to prove early confirmation. Proof of early confirmation must be documented and uploaded with the file’s associated records. If confirmation is not received or not received prior to arrival of the default regulated timeframe, the consumer is assumed to have received the disclosure according to the regulated timeframe.

Staff or employees are required to establish attribution. Attribution can be established using one of the following methods, or a combination of methods:

- Selection by or assignment to the consumer of a Personal Identification Number, password, or other shared secret, that the consumer uses as a part of the signature process;
- Delivery of a credential to the individual by a trusted third party, used either to sign electronically or to prevent undetected alteration after the electronic signature using another method; or
- Public key cryptography.

The originator must ensure to employ industry-standard encryption to protect a signer’s signature and the integrity of the documents to which it is affixed. The originator’s employees are required to use such encryption methods or a combination of such methods whenever disclosures or other documents that indicate personal or sensitive information are involved. Identification codes and passwords must be unique, such that no two individuals have the same combination of identification code and password.

The originator must ensure its system will detect and record any tampering with the electronically signed documents. Staff and employees are required to notify Towne’s IT and Compliance departments of any known, suspected lost, stolen, missing, or otherwise compromised identification codes, or unauthorized use of passwords.

### **Requirements of Documentation Received from Consumers**

Towne will only accept non-editable formatted documentation. Towne accepts copies of original documentation and internet-printouts of documentation submitted electronically. A document is considered complete only if all pages to the document are included or uploaded. If the document is an internet-printout, the URL must be present on the document. All electronic records submitted to Towne must be legible. Towne will also accept photographs (i.e. Jpeg) of documentation submitted to clear conditions, so long as all information is legible and complete. However, Towne will not accept screenshots of any document.

Third Party Documents, which are signed electronically, must include a legible electronic signature and date, which should be clearly visible when viewed electronically and in paper copy.

If changes to a document are made, the electronic process must be designed to provide an “audit trail” showing all alterations, the date and time they were made, and identify who made the change. The fully executed document will be considered the Authoritative Copy of an electronically signed document.

### **Changes to Hardware or Software**

If the originator changes hardware or software requirements or any process previously disclosed to the consumer as its process to access or retain electronic records, the originator will document written notice to the consumer of such change. The notice will:

- Inform the consumer of the revised requirements for access and retention of electronic records; and
- Inform the consumer of his or her right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not initially disclosed.

The originator will then provide the consumer with a new statement of the hardware and software requirements necessary to obtain records electronically and receive electronic confirmation from the consumer of his or her ability to access the information under the revised process.

### **Withdrawal of Consent**

Should a consumer withdraw consent of use of electronic agents, within seven (7) business days, the originator will mail a written acknowledgment of withdrawal. The acknowledgment will:

- State the consumer withdrew from the use of electronic records;
- Notify the consumer that going forward the consumer should expect hard copy records;
- Indicate and verify the consumer’s current address on file which the originator intends to use, going forward, to send hard copy records; and
- Indicate the originator (and any relevant Department’s) name, address, and phone number should the consumer have any questions or need to mail correspondence in the near future.

Outline procedures the consumer must use to obtain a paper copy of an electronic record and whether a fee will be charged.

### **Towne’s Policy for TPO Transactions**

TPOs are responsible for complying with the guidelines contained herein for each transaction delivered to Towne. Further, it is the TPO’s responsibility to maintain written policy and procedures to manage e-statements, e-disclosures, and other e-records effectively and compliantly. These documents should be made available at Towne’s request for review.

### **E-Signature- Allowable Application Documents**

Below are examples of application documents Towne finds acceptable for e-signature.

- 1003 - Uniform Residential Loan Application (URLA) and Addendums
- Acknowledgement of Intent to Proceed
- Acknowledgement of Loan Estimate and Closing Disclosure
- Acknowledgement of Homeownership Counseling Organizations List
- Affiliated Business Arrangement Disclosure
- Anti-Steering Disclosure

- ARM Disclosure
- Borrowers Certification & Authorization
- Closing Disclosure
- Credit Authorization
- Credit Inquiry Letter
- Credit Score Exception or Risked Based Disclosure, as applicable
- Equal Credit Opportunity Act (ECOA) Notice
- Escrow Waiver Disclosure
- Fair Credit Reporting Act Disclosure
- Fair Lending Notice
- Financial Privacy Act Disclosure
- Flood Hazard Notice Disclosures
- IRS 4506-T
- Letters of Explanation (where an explanation is sought from the borrower(s))
- Loan Estimate
- MDIA Affidavit
- Mortgage Loan Origination Agreement
- Notice of Furnishing Negative Information
- Notice of Right to Receive a Copy of the Appraisal
- Patriot Act Disclosure
- Privacy Policy
- Rate Lock Commitments and/or Agreements
- Service Provider List
- Servicing Disclosure Statement
- Social Security Notification
- State Disclosures – Initial Origination Disclosures
- USA Patriot Act Information Disclosure

### **Acceptable Third Party Documents**

Below are examples of Third Party Documents Towne finds acceptable for E-signature.

- Purchase Agreement and Addendums
- Appraisals
- Inspections
- VA allowed documentation, such as VA Escape Clause
- FHA allowed documentation, such as Amendatory Clause/ Real Estate Certification, HUD Real Estate Owned (REO) Documents

### **Other Documents Acceptable for E-Sign**

Below are examples of other documents Towne finds acceptable for E-Signature.

- FHA Mortgage Insurance Endorsement Documents
- FHA Servicing and Loss Mitigation Documentation
- FHA Insurance Claim Documentation

## **Non-Acceptable Documents**

Below are examples of documents Towne will not accept at this time.

- Towne at this time does not allow closing documents (eClosings)
- Promissory Note and Allonge
- Mortgage and Riders
- Modification Agreements
- Documents requiring a witness, unless the electronic process was carried out by appropriate technology, such as video calls or other type systems
- Power of Attorney (POA) is involved, unless the document has been properly prepared
- Notarized required documents, unless proof is provided the process was carried out by appropriate technology, such as video calls.
- Any document prohibited under the E-Sign Act

If you have any questions on documents not listed, please contact your Account Executive.

Date	Version Number	Document Changes
2016	0.1	Compliance Guide E-Sign Policy Wholesale and Correspondent
May 2018	0.2	Document title and footer reference name changes, multiple content changes