

ONLINE TRANSACTION MANAGEMENT

The purpose of this outline is to identify issues raised in considering the use of an electronic environment to manage and complete commercial real estate closings. These issues will be the subject of a panel discussion.

I. Introduction

A. By October 2000, 41 million online consumers had already used the Internet to find real estate related information

B. There are 300 national online mortgage lenders

C. In July 2000 it was estimated that there were more than 2 billion publicly accessible web pages on the Internet. It was predicted that the number would double to over 4 billion by early 2001.

D. It is forecasted that e-mail sent on an average day in the United States will grow to 8 billion in 2002. This is compared to an estimated 3.5 billion e-mails per day in 1999.

E. The above statistics are just a few indicators of how dominant the Internet has become as a productivity tool in American and International commerce.

II. Transaction Management

A. The Approaches Does Not Have To Be All Or Nothing.

1. Some of the first online mortgage closings were done by simulating, as close as possible, the traditional paper-based process, the buyer presence at the title company office during the settlement.

2. Attorneys may use the extranet or virtual deal room solely for collaboration within the firm, with the client or with local counsel.

3. The Internet may be used to deliver the initial set of documents to opposing counsel and to also facilitate changes while negotiating the specific language of the closing documents.

4. The entire deal may be done online with documents then stored in an electronic vault.

B. Virtual Deal Rooms

1. A Virtual Deal Room is a secure space on the Internet that contains all or most of the information relating to a particular transaction.

a) Accessible anytime from any where but only by authorized transaction participants

b) Security and ease of use are two key issues.

2. Virtual Deal Rooms can contain virtually any type of information, including:

a) Transaction Documents (with associated version control and audit trail).

b) E-mails and other Correspondence

c) Related documents such as the appraisal and survey

d) Background Information

e) Tasks or to do lists

f) Calendar

g) Lists of relevant contacts

h) Discussion areas

C. Due Diligence Management

1. E.g. Environmental Services

D. Disclosure Requirements

1. Will an electronic document suffice?
2. How do we document that the borrower received the disclosure document?

E. Tracking Status of Closing 7x24

F. Documents

1. Loan Application online
2. Commitment Letter
3. Closing Document
4. Document Exchange With Client
5. Version Control
6. Document Exchange With Other Side
 - a) Version Control
 - b) Redlining
7. Retention of Electronic Documents

G. Electronic Signatures

1. Generally the focus of the E-Signature Act (E-Sign) and the Uniform Electronic Transactions Act (UETA) is to prevent conflicting and overly burdensome local regulation and to establish that electronic writings satisfy the traditional requirements associated with paper documents.

2. The laws were intended to be primarily procedural. They attempt to make sure that there will be no barriers raised in e-commerce because of the form in which the messages or records are communicated or stored in transactions.

3. In order to accomplish the basic purposes of a signature a signature must have the attributes of “signer authentication” and “document authentication.”

4. The following language from E-Sign, Section 101(a) derives from UETA and thus the central provisions of the two acts are virtually the same.

Notwithstanding any statute, regulation, or other rule of law...with respect to any transaction in or affecting interstate commerce:

(1) a signature, contract or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and

(2) a contract relating to such transaction may not be denied legal effect, validity or enforceability solely because an electronic signature or electronic record was used in its formation.

Note that some states in adopting UETA have changed or dropped some provisions of the uniform act or have included additional provisions.

5. Federal Statute: The E-Signature Act (E-Sign)

The E-Signature Act went into effect in October of 2000. Its goal is to encourage electronic contracts and to put electronic signatures on equal footing with paper-based signatures.

a) Preemption Issues

See Section 102 of the E-Sign Act titled “Exemption to Preemption”.

b) State Action

Section 102 of the Act provides that only certain state laws may “modify, limit or supersede” the E-Sign Act.

c) The Signature

(1) Signer Authentication

(2) Document Authentication

d) Digital Signature Technology

The act does not provide technical requirements for electronic signatures.

e) Digital Signature Guidelines are now available from the ABA.

(1) The ABA Section of Science and Technology has produced a legal overview of the use of cryptology, electronic signatures, and entity authentication over an open network like the Internet.

6. Uniform Electronic Transactions Act

a) UETA has now been adopted by 40 states.

b) Unlike the E-Sign Act, UETA only applies to parties who have agreed to conduct business electronically.

c) UETA is more comprehensive in its scope than E-Sign. UETA for example:

(1) Establishes rules for the attribution of electronic signatures to parties to a transaction,

(2) Provides that electronic signatures and documents are admissible in evidence,

(3) Provides for a broad range of electronic promissory notes and negotiable instruments, whether or not secured by real property, and

(4) Provides means for allocating responsibility for errors in electronic communications

See Electronic Contracting in Delaware: The E-Sign Act and the Uniform Electronic Transactions Act by William R. Denny, Volume 4, Number 1, Delaware Law Review 2001. This article provides an excellent discussion of E-Sign and UETA.

d) Because disclosure notices must be received three days prior to finalizing a loan, sending the notices via the net will substantially speed up the process and eliminate some of the uncertainty of mail delivery. UETA provides that documents sent to the correct e-mail address are presumed received and accepted by the recipient, just as paper documents sent to a person's mailbox are presumed received and accepted.

7. Other Issues Relating to Electronic Signatures

- a) Consumer acceptance
- b) Digital signatures are not yet widely used
- c) The market for electronic signature products and services are still relatively young
- d) Legal uncertainties remain

H. How do we deal with notaries?

1. Some states in adopting UETA added provisions relating to notaries. See e.g. 1999 California Senate Bill 820 and 2000 Florida Senate Bill 1334

I. Recording Requirements

1. If state recording statutes require signatures on documents to be recorded how do we meet this requirement in an electronic environment?

J. Escrow

- 1. Documents Final and Cleared
- 2. Transfer of Funds
- 3. Where do documents physically get executed?

K. UCC Searching

L. Ordering, Delivery And Review Of Title

M. Ordering, Delivery And Review Of Survey

N. Ordering the Appraisal

1. PNC Bank has developed an online system to automate appraisal ordering for commercial real estate mortgages (orders 1300 commercial real estate appraisals per year)

2. Landsafe Inc., Plano, Texas, will do credit, appraisal, flood and home inspections that can be ordered at www.LandSafe.com (owned by Countrywide)

3. NETR (www.netronline.com) provides online real estate services nationwide 7x24

O. Common Databases

P. Executing the Closing

III. Collaboration Tools

A. Extranets

An extranet is a secure site on the Internet which allows a company or firm to make otherwise private data available to selected individuals via the World Wide Web. This is in contrast to the company's public web site that is accessible to everyone. An extranet many times is a site that exists in addition to the public web site. The differences may not be totally clear but generally an extranet implies real-time access through a firewall or other security. Typically no such security exists on a public web site.

B. Virtual Private Networks

A VPN is a private network configured within a public network. It is also defined as the use of encryption in the lower protocol layers to provide a secure connection through an otherwise insecure network, typically the Internet. For example there are a number of systems that enable you to set up a private network on the Internet. By using encryption and other security devices these systems ensure that only authorized persons can access the network and that data transmitted over the Internet cannot be intercepted. VPN's are generally cheaper than real private networks using private lines. VPN's rely on having the same encryption system at both ends.

C. Services and Tools

The sites listed below offer extranet products that appear to target the transactional legal market. The descriptions of the products and services were taken from the web sites of the various companies and from an article titled “Extranets for Transactions – Virtual Deal Rooms” by David Munn, www.legaltech.com/virtual_deal_rooms.htm, last updated 7/05/02.

1. RealEC Technologies™ (www.realec.com)

a) This company enables the online ordering and delivery of all real estate related products and services to provide lenders and REALTORS® a complete and integrated technology solution for closing and managing real estate transactions.

b) The RealEC solution is a simple and efficient way for all participants in a real estate transaction to conduct business online. Expenses associated with tracking and managing a transaction are reduced, and redundant processes such as the re-keying of standard data are eliminated.

2. LawCommerce.com (www.lawcommerce.com)

a) In 2001 LawCommerce.com announced a major technology initiative.

b) The initiative is intended to develop a worldwide common technology platform for Web-based collaboration deal sites to be employed by law firms, corporations, investment bankers, commercial banks, and other parties. The goal of this site is to provide a simple, cost effective solution that can be used worldwide for virtually any kind of deal, and which can be easily implemented with advanced security and confidentiality features. There is a plan to develop a series of template deal sites for use in transactions such as:

- Mergers & Acquisitions
- Public Finance
- Public Offerings

- **Bank Financings**
- **Real Estate**
- **Venture Capital**
- **Debt Offerings**
- **Other Deal Transactions**

3. Argosy Legal Systems' Power Closer – The program automates the transactional practice of lawyers acting as closing agents for 1099-S purposes.

4. ActionPoint Interaction Management System Consists of a suite of products that help to personalize and simplify complex Web-based transactions, such as arranging finance and insurance coverage.

a) InputAccel® is an information capture product that provides enterprise-level functionality for business critical data processing.

b) ActionPoint Enterprise Server™ allows organizations to integrate the diverse formats of data arriving at their offices into a single workflow.

c) Dialog Server™ is an XML-based software product that makes it easy for e-businesses to rapidly deploy intelligent, personalized Web interfaces, turning every Web experience into a live interaction that happens in real-time.

**5. Blaze Ventures"offers lawyers and other professionals a way to get deals done faster and more productively."
(www.blazeventures.com)**

a) The BlazeVentures platform combines everyone involved in corporate transactions, offering tools for document collaboration, deal tracking, time management, discussion boards and working group management."

**6. CynOps from TyMetrix- CynOps is a service for the creation and organization of collaborative networks, where each network is created to support a specific client and all of its outside law firms. It is touted as one of the advanced applications available today to assist organizations in the management of legal representation.
(www.cynops.com)**

7. Merrill e-colaborate™ Merrill Corporation is a diversified communications and document services company which applies advanced information systems and intranet/Internet technology to provide a broad range of services to its financial, legal and corporate clients. Merrill's services integrate traditional composition, imaging and printing services with online document management, distribution and collaborative solutions. (<http://www.merrillcorp.com/law/index.htm>)

8. RecordsCenter offers "DoxNet™, a document management and collaboration service for conducting and closing complex deals and legal transactions. The company also offers Virtual DataRoom™, a workspace, document management and source information tool designed specifically for the due diligence process. (www.recordscenter.com)

a) Virtual DataRoom™ is RecordCenter's Internet-based document management and collaboration service for managing and conducting due diligence in complex business transactions, such as mergers and acquisitions, private placements and initial public offerings.
See, http://www.recordscenter.com/public_web/solutions/due_diligence.asp

9. Serengeti/Ikon- "The IKON Virtual File Room™ (VFR™), a Serengeti Service, is a litigation and business transaction management solution that provides attorneys with rapid, secure access to large volumes of documents through a web browser. The VFR allows legal teams to simultaneously search, retrieve, view, annotate, organize, and print documents from matter-specific databases and work together from remote locations. (www.serengetius.com)

10. TLex -- "T Lex develops "extranets" -- private, highly secure Web sites for corporations, law firms and others. Each site is customized to meet the particular needs of each client." Primarily geared toward litigation, but the company says it can be used for other applications as well. (www.tlex.com)

11. DealCentral is a platform for accelerated deal making, is changing the way some Investment Banks, Corporations, Venture Capitalists and Law Firms manage complex financial transactions. DealCentral touts a “complete set of web-based financial process and collaboration tools eliminates the need for paper-based, physical deal rooms and email methods, to facilitate document collaboration, logistics and information control security and communications quickly, cost-effectively, and securely.” See www.casecentral.com/cc/dc_about

D. Other Online Collaboration Resources

1. ERoom Technology -- Web-based digital workspaces for sharing information among several parties.

2. Framework Technology – Framework Technology’s ActiveProject provides a shared space for collaborative projects. Focused primarily on product development.

3. Groove Networks – Provides a peer-to-peer client software for sharing files and links among groups of widely dispersed people. Groove is a solution platform and set of services for direct communication and collaboration — both within the enterprise and across corporate boundaries.

4. IBM -- Lotus QuickPlace – Is a self-service Web tool for team collaboration. It enables users to create secure and central workspace on the Web.

5. NextPage – Facilitates doing business across multiple locations and distributed enterprises by enabling users to come together in a “virtual collaborative space.” NextPage provides secure documents sharing and virtual deal rooms.

6. PlaceWare – Provides complete web conferencing solutions and tools for Web-based presentations.

7. WebEx – WebEx is a Web conferencing utility that can handle up to 2000 simultaneous participants. Web-based presentations and meetings.

8. Zaplet –Provides a structured workspace for collaboration on various types of projects. ZapLett Appmail allows users to collaborate in one of their most familiar environments – e-mail.

**See “Aftermath: Rethinking 'Place' in Business”, by Bob Tedeschi Smart
Business Magazine (November 1, 2001)**