



# *The Commonwealth of Massachusetts*

*Office of the Commissioner of Banks  
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COMMISSIONER OF BANKS

July 13, 2010

Kathy Bankert  
Senior Vice President – Quality Control and Compliance  
Pulte Mortgage LLC  
7475 South Joliet Street  
Englewood, Colorado 80112

Dear Ms. Bankert:

This letter is in response to your correspondence received on April 2, 2009 to the Massachusetts Division of Banks (the "Division") on behalf of Pulte Mortgage LLC ("Pulte"). This matter was also discussed in a telephone conversation between April O'Shields of Pulte and staff of the Division. The Division currently licenses Pulte to operate as a mortgage lender and a mortgage broker within Massachusetts. Your correspondence states that Pulte provides electronic delivery of disclosures and other documents upon request of its customers. To further accommodate its customers, Pulte seeks to offer its customers the option of digitally signing and electronically returning disclosure documents. Your letter describes Pulte's electronic signature program and requests a "waiver" from the Division in order to engage in the practice of using electronic signatures for disclosure and other documentation exchanged between mortgage loan originators and consumers. Upon review of the federal and state laws and regulations governing the electronic consummation of transactions, the Division is not required nor authorized to issue a "waiver" of any type. However, this letter sets forth the governing laws and regulations applicable to the use of disclosures and signatures by electronic means in mortgage loan transactions in the Commonwealth.

As you are aware, in 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act (E-Sign Act) 15 U.S.C. §7001-7006 *et seq.* to facilitate the use of electronic records and signatures in interstate or foreign commerce. The Uniform Electronic Transaction Act (UETA) is a model act promulgated by the National Conference of Commissioners on Uniform State Laws in 1999. UETA was created to prepare state laws for electronic commerce transactions. Almost every state has enacted some version of UETA. Massachusetts adopted UETA (MUETA) in 2003, codified as M.G.L. c. 110G, §1 *et seq.* The purpose of these federal and state law provisions was to establish a framework to enable the completion of transactions through electronic means, including the use of electronic signatures. UETA and E-Sign are designed to recognize that a signature, contract, or other record relating to a transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form.



An electronic signature will satisfy the legal requirement that certain documents be signed, so long as the two parties to the contract have properly consented to conduct the transaction electronically.<sup>1</sup> The MUETA specifically does not modify or supersede §7001(c) of the E-Sign Act, the section which governs the consent necessary for electronic disclosures and signatures to be legally valid in a consumer transaction.<sup>2</sup> Therefore, a lender, broker or mortgage loan originator operating within Massachusetts must obtain the proper consent of a borrower, as governed by the E-Sign Act, prior to disclosing or signing any materials or documents electronically. See 15 U.S.C. § 7001(c).

The E-Sign Act dictates the requirements for consent to electronic disclosures and signatures in consumer transactions. At the time of obtaining the affirmative consent to electronic disclosures and signatures from the borrower, the licensee, such as Pulte, must inform the borrower of his or her right to receive physical copies of the documents, how to obtain these copies, the scope of the consumer's consent, and the hardware or software requirements to access and retain the electronic disclosures.<sup>3</sup> The consumer may consent electronically in a manner that reasonably demonstrates his or her ability to access the information in the electronic form that will be used to provide the information that is the subject of the consent.<sup>4</sup>

In addition, recent amendments to 209 CMR 32.00 *et seq*, the Commonwealth's regulation implementing the Truth in Lending law, M.G. L. c. 140D *et seq*, incorporated provisions recognizing that disclosures in consumer credit transactions may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. See e.g. 209 CMR 32.17(1)(a). These provisions are consistent with federal Truth in Lending law and federal Regulation Z.

Licensees should be mindful that these specific requirements about the type and content of the consent must be obtained from borrowers prior to electronically providing any of the disclosures that are required by law (see the advisory letter from the Office of the Comptroller of the Currency titled *Electronic Consumer Disclosures and Notices*, dated October 1, 2004, for further details). Pulte should also consider consulting FannieMae's release entitled *Guide to Delivering eMortgage Loans to FannieMae Version 2.0*, dated June 2005, in order to understand proper procedures for preparing for sale on the secondary market a consumer loan which has been documented electronically.

Please be advised that any notices provided to a borrower regarding the default, acceleration, repossession, foreclosure, right to cure, or eviction under a credit agreement secured by a primary residence of an individual are not subject to MUETA or E-Sign. The law requires that the borrower must receive physical (paper) disclosure of these notices.<sup>5</sup>

Based upon the above referenced statutes and regulations, a licensee, including mortgage loan originator, mortgage broker, or mortgage lender may disclose or sign electronically the

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<sup>1</sup> M.G.L. ch. 110G §§ 5(b) & 7(d)

<sup>2</sup> M.G.L. ch. 110G § 3(b)(3)

<sup>3</sup> 15 U.S.C. § 7001(c)

<sup>4</sup> 15 U.S.C. § 7001(c)(1)(C)

<sup>5</sup> M.G.L. c. 110G § 3(b)(3)(iv); 15 U.S.C. § 7003(b)(2)(B)

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documents to which the consumer has affirmatively consented be disclosed or signed by electronic means so long as the transaction is performed in compliance with MUETA (M.G.L. ch. 110G § 1 *et seq.*) and the E-Sign Act (15 U.S.C. § 7001 *et seq.*).

Pulte should be aware that when a consumer agrees to conduct one transaction electronically that consumer does not waive his or her right to refuse to conduct subsequent transactions electronically. Transactions that are conducted electronically are still subject to other applicable substantive law, including the notarization of certain documents such as the mortgage instrument to be recorded, and the maintenance and retention of records.<sup>6</sup> Licensed mortgage lenders and brokers must obtain approval to retain records in electronic form pursuant to 209 CMR 48.00 *et seq.*

Please be advised that Pulte must be able to demonstrate to Division examiners that it is compliant with all federal and state laws pertaining to all facets of disclosure requirements, record retention, and retention of loan documentation for all mortgage transactions.

This letter does not approve nor endorse a particular "eSignature" program or product utilized by Pulte but sets forth applicable federal and state law requirements for the use of electronic means of evidencing transaction disclosures and signatures.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,



Joseph A. Leonard, Jr.  
Deputy Commissioner of Banks  
and General Counsel

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<sup>6</sup> M.G.L. ch. 110G § 3(d)