

Electronic Document Delivery E-SIGN DocuSign

How may disclosures be delivered electronically? When are they considered “delivered”? How do I stay in compliance with E-SIGN and TRID? Read on to learn more!

Demonstrable Consent is Everything

Appropriately completing E-SIGN “demonstrable consent” is of extreme importance. The applicant’s consent for electronic delivery must occur electronically. Obtaining only a signed hard copy of an E-SIGN consent form is worthless under the E-SIGN Act if electronic consent is not obtained, as well. The consumer must agree to receive documents electronically and must consent in a manner that both a) demonstrates that they can access the documents electronically, and b) provides the consent in an electronic format.

15 USC 7001 (c)(1)(C)(ii): consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.

Without such an electronic consent, there is *no* consent for receipt of documents, and it is as if the disclosures were not delivered/mailed at all! You should retain documentation showing the applicant has completed electronic demonstrable consent. PPDocs’ DocuSign system provides for documentation of this electronic consent process.

Importance of Completing the DocuSign Process (especially for the LE!)

If the applicant has not previously completed the DocuSign (E-SIGN) process, then documents will not be considered delivered *until they do so*. This is especially important for the delivery of the initial LE. If you send the initial LE via DocuSign and they do not complete the consent process within three business days of application, you are going to miss your three business day deadline for the delivery of the LE. Within an order file, you can determine the date the consumer has viewed the documents. The date of delivery will be the day that they viewed the document package, not the date that you sent it to them.

Subsequent Disclosure Delivery

Once the applicant has completed the E-SIGN agreement through DocuSign, then the agreement will cover any subsequently delivered documents, such as a revised LE or the initial, amended, or final CD package. Part of the DocuSign agreement contains the following:

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you.

Unless they have revoked their authorization (the instructions for revocation are also set forth in the agreement), then the agreement covers the electronic delivery of all documents to the applicant for the entire transaction.

The Mailbox Rule

TRID requires the CD to be in the applicant's hand at least 3 business days before closing. With e-delivery, this can play out in different ways:

1. If DocuSign does NOT show they have previously viewed a document package, then you will need the applicant to complete the DocuSign (E-SIGN) process, and the CD will be considered "in hand" as of the date they viewed the document package. Closing cannot occur for at least 3 business days from the viewed date.
2. If DocuSign shows they HAVE previously viewed a document package (thereby having established E-SIGN demonstrable consent), then subsequent documents will be considered "received" three business days after they are made available to the consumer, *whether they reviewed them or not*. **That is, the mailbox rule applies.** It is as if the you dropped them in the mail. 3 business days for received delivery + 3 business days "in hand" before closing = 6 business days from sending to closing.
3. If the applicant opens closing documents less than three business days from when you sent them electronically, then you would use the tracking information from DocuSign for the date of receipt. Closing could not occur for 3 business days from that viewed date.

Investors have their own requirements. They will likely want to see a signature and date on the CD and will not accept anything that relies on the mailbox rule.