

# Power & Control

On July 2, 2010, in preparation for the Fourth of July, the author posted:

## “ Case Closed : eNotes Are Not Legal ”

*“ Incorrect Analysis of eNote Enforceability Nationwide ”*

The author’s paper was in response to a White Paper published by Mortgage Industry Standards Maintenance Organization (MISMO), Electronic Signature Records Association, and the American Land Title Association release of a White Paper titled **“Case Closed: eNotes Are Legal”**.

Abraham Lincoln is noted to have said: *“You can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time.”*

## The Days of Fools and Lies are Now Over

Within hours of posting the document globally, Google’s search engine was pointing to a URL source for download. Google’s search engine from July 2<sup>nd</sup> until sometime Tuesday, July 6<sup>th</sup> returned URL links to “Case Closed: eNotes Are Not Legal” reflected by search terms such as “enote” and “law” entered into Google. Late on Tuesday, July 6<sup>th</sup> it was determined that the URL links to “Case Closed: eNotes Are Not Legal” were no longer reflected in a Google Search.

The author is not surprised by the actions of parties not yet identified; the author would have been disappointed if such action had not occurred. The action does in fact support that a “Nerve, a Very Big Nerve” has been touched. As of July 7<sup>th</sup>, “Case Closed: eNotes Are Not Legal” currently is still being hosted by a number of locations throughout the world.

## The Text of the “Case Closed: eNotes Are Not Legal”

*“Case Closed: eNotes Are Not Legal”*

*Incorrect Analysis of eNote Enforceability Nationwide*

*Mortgage Industry Standards Maintenance Organization (MISMO, a registered service mark of the Mortgage Bankers Association), Electronic Signature Records Association, and the American Land Title Association released a White Paper<sup>1</sup> titled “Case Closed: eNotes Are Legal”.*

*The White Paper’s “Disclaimer” notes that “the authors and their organizations accept no responsibility for errors and omissions”.*

*The Error: eNotes Are Not Legal*

*The Omission: 15 USC 7003*

*“UETA and ESIGN’s approach is noteworthy in that neither statute attempts to insert the concept of a transferable record into the UCC. Instead, UETA and ESIGN exclude from their scope most of the UCC...” page 3.*

*The Conclusion of the White Paper incorrectly states: “UCC Article 3 provisions for promissory notes were not*

<sup>1</sup><http://www.mbaa.org/files/ResourceCenter/emortgage/eNoteWhitePaper.pdf>

*designed for use with electronic records. Rather, ESIGN and UETA were enacted to create the legal framework or a parallel structure for the electronic equivalent of a paper promissory note, known as a “transferable record”. As a result, an eNote that is created stored and maintained as required under ESIGN and UETA is a valid, enforceable and negotiable debt obligation.”*

*The White Paper itself states that ESIGN and UETA both exclude the Uniform Commercial Code (UCC)- Article 3 – which governs Negotiable Instruments. The white paper authors then attempt to mislead the readers to believe that ESIGN and UETA provide sufficient governing laws to support the existence and the enforceability of an eNote. As ESIGN and UETA both exclude UCC Article 3 and the UCC was not designed for and currently does not allow for eNotes; eNotes lack supporting law to exist.*

*MISMO’s current day to day operations fall under the MERS umbrella.*

*E-Notes are “Not Legal”*

*Under the E-Sign Act or the Uniform Commercial Code  
E-Sign 15 USC 7003 excludes the Uniform Commercial Code Article 3*

## **E-Notes are “Not Legal”**

**Under the E-Sign Act or the Uniform Commercial Code  
E-Sign 15 USC 7003 excludes the Uniform Commercial Code Article 3**

***“Be sure you put your feet in the right place,  
then stand firm.”***

***Abraham Lincoln***

***The author has presented the facts of law,  
and stands on those facts.***