

## **NY SUPREME COURT REVERSES LOWER COURT OBSERVES ENOTE AND TRANSFER HISTORY SUFFICIENT UNDER ESIGN**

On April 13, the New York Supreme Court, Appellate Division, Second Department [issued an opinion](#) reversing a lower court order dismissing a foreclosure action against a borrower who signed a mortgage note electronically (“eNote”). *New York Community Bank v. McClendon*, 2016 N.Y. Slip Op. 02790 (N.Y. Supp. April 13, 2016). In the proceedings below, the lower court had granted the borrower’s motion to dismiss the foreclosure complaint for lack of standing, accepting the argument that the plaintiff mortgagee lacked standing because it could not produce a chain of valid assignments of the eNote from the original lender to itself. In opposition to the motion to dismiss, the mortgagee had submitted, among other things, a copy of the eNote and a print out of an electronic record of the transfer history of the eNote (“Transfer History”) showing a chain of transfers from the original lender to itself. The court observed that the eNote qualified as a “Transferable Record” under Section 201 of the Electronic Signatures in Global and National Commerce Act (“ESIGN”) and that a person is in “control” of a Transferable Record if “a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.” Citing the UCC, the court further observed that the holder of the eNote would have standing to foreclose and that any person with “control” of the eNote is its holder. After establishing this legal framework, the court concluded that the Transfer History, together with the eNote, were sufficient to establish that the plaintiff mortgagee had control of the eNote under ESIGN and therefore had standing to foreclose as the holder. According to the court, because these rules governing Transferable Records applied to the eNote, the failure of the plaintiff mortgagee to produce proof of assignment was “irrelevant” and the complaint should not have been dismissed for lack of standing.