

Electronic Consent and Email Delivery 101

The law – addressed federally and in Wisconsin

- Federal (E-Sign) — requires consumer electronic consent and applies to consumer transactions which typically involve individuals buying or selling residential properties because they will be using the property or the proceeds for personal, family or household purposes. The law does not apply to strictly commercial transactions or one involving two businesses as parties.
- Wisconsin (E-commerce) — the Wisconsin law addresses electronic commerce.

What are the two steps an agent needs to do to meet requirements?

Step 1) Achieve Electronic Consent

The easiest way

Electronic consent is included in your member benefit electronic signature platform, digital ink[®], DocuSign or Dotloop. A consumer cannot do anything within the system until electronic consent is provided.

The easy way

- A.) Send an email, as the party must provide consent electronically.
- B.) Go to www.wra.org/ecommerce.
- C.) Go to the third section - Forms for Electronic Commerce
- D.) Select and open the Word document “Consent for Use of Electronic Documents and Signatures in Consumer Real Estate Transactions.”
- E.) Save this document to your computer.
- F.) When it’s time to send it to the consumer, take the following steps:
 1. Compose an email, copy and paste the contents of the saved Word document into the email.
 2. Send the email to the party.
 3. The consent automatically attaches a generic Word and PDF document that do not relate to the transaction. The consumer needs to make sure they can open up and save each.
 4. To authorize electronic documents and email delivery for the transaction, the party clicks “Reply.”
 5. The consumer types in their name (as the party’s electronic signature) and email address.
 6. The consumer clicks “Send” to return the email to the agent. You have electronic consent.

Step 2) Include Email Delivery Language in the Contract

- A.) Check the Email Delivery box in the WB form
- B.) If the WB form does not already offer email delivery, (e.g., some listing contracts) add by execute the WRA Addendum D or insert delivery language in the additional provisions.

Common questions

Question: Can the agents’ email addresses be used for delivery in transactional documents instead of the consumers’ email addresses if the consumer has not electronically consented?

Answer: Yes. Per guidance from NAR, presuming the agent has authorization from the consumer to use the agent’s email address on the consumer’s behalf. However, keep in mind that electronic consent is required if the agent forwards transaction documents on to the consumer’s email address.

Question: When a party authorizes the agent to include the agent’s email address in the offer to purchase or some other transaction document, does that authorization have to be in writing?

Answer: No. Company policy will provide guidance for the agent on how to proceed relating to the authorization.

Example of authorization in an offer or other transaction document:

If the agent’s email address appears in the email delivery section of the offer to purchase or other transaction document and the consumer has not provided electronic consent, the consumer authorizes the use of that email address on the consumer’s behalf.

Example of authorization in a listing contract, buyer agency agreement or other agency agreement:

Client authorizes the use of the email address of an agent associated with the Firm in the email delivery section of the offer to purchase or other transaction document and hereby authorizes the use of that email address on the consumer’s behalf for delivery of documents and written notices.