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Electronic Real Estate Recording Security & Technology Basics

A companion document to The eRecording Myths – Part 1: Security & Technology Video

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Introduction

The purpose of this document is to encourage the adoption of electronic recording (eRecording) by Recorders who may be considering eRecording.[1] The Property Records Industry Association (PRIA) eRecording eXcellence Work Group has developed a video that addresses some common myths held by Recorders and Submitters.[2] To further expand on the video, the eRecording eXcellence Work Group developed this document as a companion document to cover some of the basic questions and responses to the myths identified in the video. This document is an overview of PRIA's Electronic Recording Security Considerations paper, a more in depth and detailed white paper on security in the eRecording process. The full paper is available on the PRIA website, www.pria.us. Additionally, the PRIA website lists a variety of other eRecording papers addressing the adoption of standards and best practices in the real estate recording industry.

The Potential of eRecording

- eRecording offers the benefits of eCommerce.
- eRecording offers business and government sector participants an opportunity to improve quality and reduce the cost of recording real estate documents.
- eRecording provides significant savings in time and reduces errors.

While security and technology are standard eCommerce issues that have been addressed in the business sector, the topics are generally approached with trepidation by Recorders who have only dealt with paper document submissions and check/cash payments. The adoption of eRecording results in more secure, accountable, and efficient record creation in the land records systems.

eRecording Real Property Documents

eRecording was initiated in the late 1990s and has evolved over the years since. There are a variety of models that can be utilized when eRecording. In general, a model describes the manner in which a document is presented by the Submitter to the Recorder. Model 2 documents are currently the most predominant model in use. Model 2 documents are typically executed in ink, imaged, and then submitted electronically to the Recorder. Models 2 and 3 deliver an image and selected data to the recording jurisdiction's system. For more information regarding a description of eRecording models, please see the PRIA paper entitled "Models of eRecording – A Continuum of eRecording" available at www.pris.us.

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[1] In the United States, land document recording may take place at the State, City, Town, County, Borough, or Parish level. Depending on the jurisdiction, the Office of the Recorder may also be known as Recorder of Deeds, Registrar-General, Register of Deeds, Registrar of Deeds, Registrar of Titles, Deeds Registry, Auditor, or Deeds Office. In some states, the recording function is part of the county clerk's responsibilities. Throughout this paper, the term utilized for this role will simply be "Recorder."

[2] The term utilized for the role of the person or entity sending and receiving documents to and from the Recorder will be "Submitter." Submitters include, among others, eRecording vendors, title companies, attorneys, and lenders.

eRecording can be simply described as an alternative delivery process to the traditional paper-based document delivery process. The act of recording is still completed by staff at the Recorder's office. Upon receipt by the Recorder's office, the documents are placed in a queue in the recording system. The Recorder reviews each document for recordability. With electronic submission, the documents can also be delivered with information that will calculate the fees as well as provide some identifying or indexing data. It is important to note that the Recorder is responsible for verifying that the provided information and fees are correct prior to recording.

Once the Recorder has completed the process, the image and the associated recording information is sent back electronically to the Submitter.

Why eRecord

There are many advantages to eRecording, including but not limited to:

- Improved workflow efficiencies, both for the Submitter and the Recorder
- Quicker turnaround time
- Reduced cost in mailing / document delivery
- Reduced rejections
- Enhanced document security

Over 50 percent of the nation's population lives in a recording jurisdiction that presently accepts some form of eRecording. Both Submitter and the Recorder see the benefits. The technology has been tested and proven, and continues to be enhanced since the first document was electronically recorded in Orange County, CA in 1998. Standard-setting organizations like PRIA have worked with industry specialists to ensure that both the Submitters and the Recorders can be confident of the technology and the security of electronic document delivery.

How to eRecord

For some models of eRecording, the process starts with the imaging of documents by the Submitter. Once the documents are imaged, they are ready for electronic submission. Often this is done by the same person who was responsible for the collection of the documents. The documents may, however, be given to another electronic document delivery agent for submission to the Recorder.

Once the collection and submission of the documents is completed by the Submitter the Recorder's process has four basic steps:

1. Processing
2. Transferring
3. Storing
4. Disposing

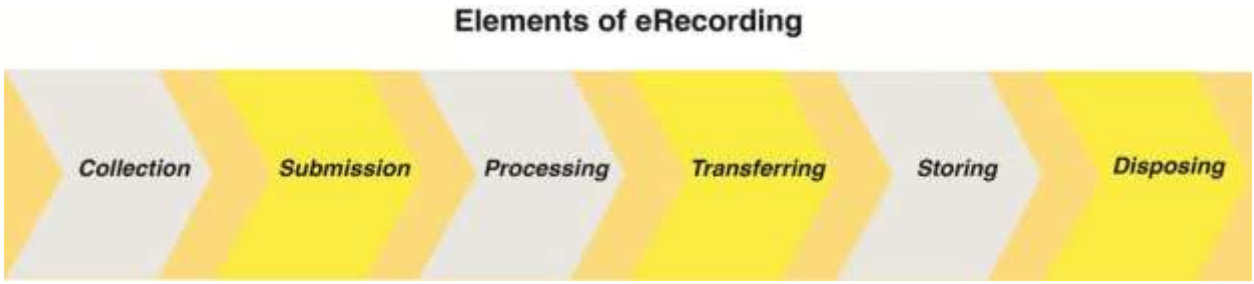

Figure 1 Elements of eRecording

Challenges with eRecording

As with paper recording, eRecording requires managing risks. The risks in eRecording are similar to those inherent in the paper recording process: they are not necessarily a function of how the document was received or recorded.

Electronic processes have the capacity to improve and reduce fraud by verifying where the documents originated, as well as how the documents were processed and delivered. The technology and security concerns in recording are often interrelated as shown in Figure 2.

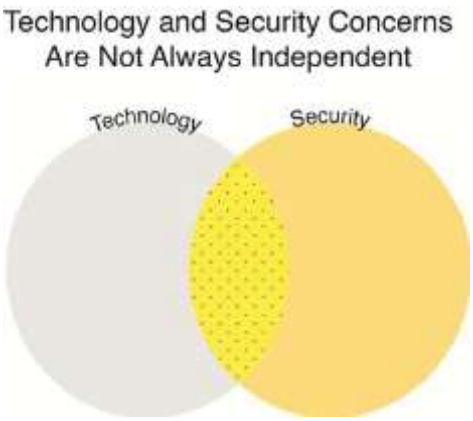

Figure 2 Technology and Security Concerns

The following paragraphs review issues commonly raised in opposition to eRecording. Key points are summarized in the graphic which follows each section.

A. Collection and Submission

Unlike paper recording, with eRecording you have a unique identification trail to the Submitter of each document. The Recorder may execute a Memorandum of Understanding (MOU) with the eRecording vendor(s) and the vendor(s) will have a Subscriber Agreement with each of their clients. eRecording may also allow each transaction to include an electronic link to the Submitter. This closed process provides for a more secure document environment than someone coming to the Recorder's counter and dropping off a document without having to provide any identification.

Figure 3 Collection and submission challenges and eRecording solutions

B. Transferring and Processing Data

The transfer of data, and the processing of data and associated recording fee payments each deserve special attention in eRecording. They are not necessarily different from existing paper processes or working with other eCommerce applications.

The process of transferring eRecording data to the Recorder requires routine vigilance in protecting against Internet-based attacks and corrupted code or software. These concerns are not unique to eRecording and are common within eCommerce. Effective firewalls and up-to-date antivirus software are necessities as is the use of data encryption and data integrity verification.

Creating standard internal procedures, proper allocation of workflow, and verification of recordings will aid in protecting against any potential human element for security issues.

The timely payment of recording fees is necessary whether recording electronically or in paper form. To facilitate efficiencies, eRecording fees are often paid electronically. Generally, the Submitters who submit electronically are the same as those who have been submitting paper documents with fees paid by check. The concerns Recorders have about electronic payments are not unique and have been addressed nationally. Laws have been widely adopted across the United States to facilitate electronic payments. The Federal Reserve's Regulation E, for example, governs electronic fund transfers (EFTs). It establishes the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.

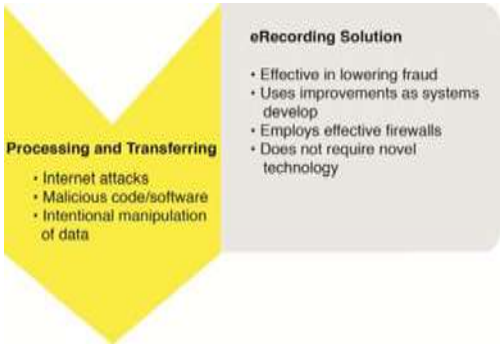

Figure 4 Processing and transferring challenges and eRecording solutions

C. Storing and Disposing

Once an electronically submitted document has been processed by the Recorder, it becomes a part of the land records just like all the other recorded documents. The same storage, backup, and operational procedures for security and safe keeping apply to both eRecorded and manually-submitted documents. As recording systems have become increasingly computerized, it is important to have appropriate backup and long term data storage plans in place that apply to all documents recorded.

Figure 5 Storing and disposing challenges and eRecording solutions

Setting the Record Straight – Debunking the Myths

Myth: **My county's system and workflow would not support the technology required for eRecording.**

Reality: **Land records systems support the technology required for eRecording**

There are a variety of options and methods for implementing eRecording in a jurisdiction to fit any location's (or Recorder's) needs. eRecording systems can be integrated into a land records system or via a paper workflow. If the Recorder has an Internet connection, chances are eRecording can be implemented.

Myth: **Often there is a lack of integration with Land Records Management Systems and eRecording vendors.**

Reality: **Integration with Land Records Management Systems and eRecording vendors is seamless with PRIA standards**

The PRIA standards exist to ensure that vendors of all types can integrate with each other and properly align data fields that are exchanged. PRIA continues to enhance the standards to accommodate new laws and technology. There was less integration many years ago, but over time this issue has taken care of itself as software has been upgraded and land records vendors have enhanced products. Land records system vendors often choose to partner with eRecording vendors to ensure the best integration possible.

Myth: **An electronic document is less secure than a paper document.**

Reality: **Electronic documents are equally secure as paper documents, if not more secure.**

Secure Internet protocols and mathematical encryption algorithms ensure a higher degree of security for the electronic submission of a document than the security provided by in-person submission or mailing a paper document to the recorder's office. At the very least, an electronic document is no less secure than a paper document. This is where the concept of trusted submitter comes into play. Having an audit trail from the time the document is scanned and submitted all the way through recording and then the ultimate return to the Submitter adds significant security that is not duplicated in the paper world. Additionally, with an electronic document, the XML data can be compared to the document image to see if they match and to make sure nothing has been altered or changed.

Myth: **eRecording is more susceptible to fraud or robo-signing.**

Reality: **eRecording is less susceptible to fraud than paper documents.**

Recording a document, whether in paper or electronic format does not make it legal; the act of recording it makes it a public record. A Recorder's job is not to determine the legal validity or sufficiency of documents. The confidence we have in real estate transactions is based largely on what has been called "a web of trust." There are a number of parties who are required to complete a transaction, several of whom would have to be duped to commit fraud. eRecording adds additional strands to that web of trust. The fact that a document sender must be authorized as a trusted Submitter and that documents can be traced back to that document's Submitter creates a more secure environment than an unknown customer walking up to the Recorder's counter and then disappearing. The electronic audit trail of eRecording provides a stronger deterrent to fraudulent behavior. eRecording is effective in lowering the cases of fraud, not increasing them. The responsibility for identifying and stopping issues of fraud lies with the entities executing (signing, overseeing the signing of) the document and not with the Recorder.

Myth: **A county needs to wait until all technology issues they've heard about are resolved.**

Reality: **A recorder has all the technology needed to begin eRecording.**

Electronic documents require no technology that doesn't already exist. The purpose of recording laws is to facilitate timely notice of an interest in real property, not to create barriers that make staking one's claim to real property unapproachable. Recorders who do not eRecord are missing out on a process improvement opportunity, not only for themselves, but also for their business partners and their constituents.

Things will progress as new technology becomes more popular. Taking advantage of a technological solution that can help manage workflow, increase efficiencies, provide savings in materials and postage, and give taxpayers a better return on their tax dollars just

makes sense.. eRecording is now a well-known technology, which will continue to improve over time. Businesses and governments have an opportunity to utilize today's advantages from eRecording and adapt to new features as they are added in the future.

Myth: **Document submitters don't want to support a hybrid system.**

Reality: **Document submitters will adjust to a hybrid system because it will save time and money.**

If a commonly recorded document can be electronically submitted, it will save money. If there is enough volume for a certain document type in a specific county, the Submitters will adjust. Many Submitters are willing to send any types and quantities of documents electronically because of the many benefits.

Myth: **County officials may prohibit use of what they perceive as "new" technology.**

Reality: **Local Government Officials will support processes that save money and enhance efficiencies.**

eRecording is a proven technology that lowers the cost to taxpayers and increases the efficiency of government operations. eRecording has been in use since 1998 in recording jurisdictions of all sizes and under a wide variety of state laws and regulations. The PRIA eRecording Mentors Program can provide connections to Recorders who have successfully implemented eRecording and are eager to share their real-world experiences. eRecording has become a mainstream business practice that currently serves more than one half of the US population. When officials don't understand the process or the benefits to the citizens and the Recorder's staff, rejection of eRecording can happen. The best way to combat this is with education.

Summary

By identifying and debunking these myths, we hope we give Recorders looking to implement eRecording additional information and allay any fears that may be lingering. As set forth above, more detailed information concerning security and technology in eRecording is available on the PRIA website, www.pria.us. If you still have questions or concerns, please contact PRIA by email at coordinator@pria.us or by phone at 919.459.2081.