

Publisher's Notes

The year 2000 may be seen as a historic milestone on the road to electronic recording of real estate documents.

ELECTRONIC RECORDING INITIATIVES

Before this year, only one recording office (Orange County, CA) was accepting documents electronically every day, and one other county (Utah County, UT) had accepted electronically a document that contained a digital signature.

This year, three counties (Maricopa County, AZ, Broward County, FL and Salt Lake County, UT) introduced some form of electronic recording. In addition, work in preparation for electronic recording initiatives got started in a number of states:

- Racine County, WI issued an RFP for a system.
- Texas drafted rules to govern electronic recording in the state.
- Committees to examine the issue were established in Minnesota, Oregon, Washington and other states.
- Pilot projects being designed in other counties around the country will be announced soon, we suspect.

STANDARDS DEVELOPMENT

The real estate financing industry is undeniably getting more regional and national in scope.

In order to sustain electronic recording as a viable system at the state, regional or national model beyond selected local recording offices, it is recognized by both the public and private sectors that there is a need for standardization in the data that is to be transmitted with documents to be recorded so that recording offices can identify, index and archive documents received electronically. There are a number of different ways that documents can be accepted electronically, as summarized in the article that starts in the next column.

Data standards for recording information are now under development. For example:

- Realtor data and mortgage data XML standards have been developed.
- A work group has been established in California to define standard XML data fields for recording information that will be extended nationwide in 2001.

If you would like to participate in any of these initiatives send an email request to me at Carl.Ernst@ernst.cc, and I will put you in touch with the right people.

The Three (or more?) Models of Electronic Recording

Today, four counties accept some form of electronic recording: Orange County, CA, Maricopa County, AZ, Broward County, FL and Salt Lake County, UT. Orange County is the original pioneer, having introduced its system in 1997. The other counties introduced their systems in the year 2000. Utah County, UT also accepted an electronic recording in 1999. Each of these counties has taken a somewhat different approach to the systematic receipt of electronic recordings, but together their initiatives represent three possible models of electronic recording.¹

MODEL 1—ELECTRONIC TRANSMISSION OF SCANNED PAPER DOCUMENTS

Today, the great majority of recording offices maintain the archive of recorded documents in image format rather than archiving the original document. The image format is still microfilm (an analog copy) in most counties, but images are now maintained in digitized form² on optical media in many recording offices. In these offices, the process of creating the digitized image by scanning the original document is integrated into the process of accepting a document for recording and/or assigning a recording number to a document.

Technologically, the source of the scanned image of a document no longer has to be within a recording office. Remote scanners can be utilized to create the digitized image, which then can be submitted through a proprietary system or over the Internet. This is what Orange and Maricopa have done. Orange County uses a proprietary method using high-speed direct lines,³ and Maricopa uses the Internet.

¹ The current method of recording in the US is based on accepting original paper documents with ink signatures. A committee of LegalXML.org, in the process of developing the XML standard for court filings, established four "models" of electronic integration of the court filing process, of which the current paper-based filing systems was designated "model 0".

² A *digitized* copy is like a photograph of a document converted into computer bits. A *digital* copy of a document, on the other hand, would be a copy of each of the bits that represent the characters of text in a computer.

³ Orange County will convert to an Internet-based system in early 2001.

At this model, scanned documents from settlement agents who have contracted with a recording office enter the processing queue in the recording office at the point where manual document review and indexing take place. After the document is assigned a recording number, a message is returned to the user confirming the acceptance of the document and its recording information. This process takes less than 15 minutes from receipt of the document.

Documents are archived in the same manner as paper documents, that is, as digitized and/or microfilmed images, and copies of these images are certified by the recorder in the traditional manner.

Most state statutes are interpreted by recording offices to require original signatures on documents. It is possible that electronic images of original signatures are acceptable for recording under federal E-Sign legislation effective October 1, 2000. Maricopa and Orange were able to implement their systems prior to that date because of local initiatives. Arizona statute provides that documents containing original signatures may be submitted in imaged form. In Orange County, people have been deputized as county officials at the user scanning locations to review the original documents to determine that the signatures are original.

This model of electronic recording has the following benefits:

- (1) It shortens the time from receipt to acceptance of documents, which in turn allows house purchase/sale transactions to be consummated more quickly.
- (2) It decreases costs (especially staffing requirements) in the land recording office by eliminating the manual steps of document scanning and cashiering.

MODEL 2—XML WRAPPER ON PAPER-LIKE DOCUMENTS⁴ (ACTUAL PAPER OR PAPER-PARADIGM)

This next model of electronic recording introduces the concept of a paper-like (or “paper-paradigm”) document. The document may be a scanned image of a signed paper document the same as accepted in a model 1 system,⁵ or the document may have been prepared within a computer and signed by

⁴ The definition of the word “document” becomes less clear at model 2. Does the document to be recorded include the XML information?

⁵ Submission in this form assumes that statute allows paper-based signatures to be accepted in this format.

some electronic means,⁶ that is, a paper-paradigm, digital, computer-text document.

Also, just like a model 1 document, the model 2 document is wrapped in a digital certificate that identifies the submitter. The real difference between the two models is that in model 2 some XML fields are also submitted along with the document. These fields contain identifying information about the document, such as the document type, and include grantor/grantee names formatted to assist in indexing.

The document still needs to be reviewed by a person for formatting and other acceptance criteria that are required by statute, such as the Florida statutory requirement pertaining to witness signatures.

Although the names in the document submitted in a model 2 system may in theory be indexed by computer from the XML fields, as a practical matter this would be a really bad idea because the XML data is not imbedded in the document so what the document says and what the XML data says may differ. The Broward County system is programmed so that the XML name fields pop up on the computer review screen along side the image of the document. After the reviewer examines the document for compliance with statute, she reviews the index entries and either accepts them as submitted or corrects them.⁷

Model 2 systems have all the other characteristics and benefits of model 1 systems. Documents that contain handwritten signatures are still archived in the same manner as paper documents, that is, as digitized and/or microfilmed images, and copies of these images are certified by the recorder in the traditional manner. It is unclear yet whether and how model 2 documents with digital signatures will be archived, copied or certified.

⁶ Broward accepts holographic signatures as electronic signatures under the Florida version of UETA. Other forms of signature may be acceptable under federal E-Sign legislation.

⁷ Since Florida is an “official records” indexing state rather than a grantor/grantee indexing state, the recording office there do not have the problem of deciding who is the grantor and who is the grantee. In any case, reviewing indexing data already prepared by the submitter represents a saving over key entry and may be inherently more accurate than keying. Time will tell.

MODEL 3—XML INTEGRATED INTO XHTML WITHIN DOCUMENTS (DIGITAL DOCUMENTS),⁸ WITH OR WITHOUT PAPER-LIKE ATTACHMENTS

The real difference between model 2 and model 3 systems is **not** that digital signatures are used—digital signatures could be attached to a model 2 document. The difference is **also not** that the document is paperless—a scanned paper attachment may be submitted as part of a model 3 document.

The real difference is that **at least part** of a model 3 document is a digital document—one that includes computer-readable, multi-layered content which will be standardized as XML fields in XHTML format—that can include the following layers of information:

- a text layer (represents at least part of the traditional paper document),
- an HTML layer (tells the computer how to format the text layer for printing),
- an XML layer (contains fielded information to be included in text when formatted for printing),
- a signature layer (contains electronic signatures identified by category of signer, and
- maybe, a notary seal layer (contains a copy of the seal or notary information, as required by state statute, if not included in text or XML layers).

The text layer contains signature markers, which may be the printed names of the signers.

The XML information is included in formatted fields containing the names of all grantors, grantees, and other names to be indexed, and is printed in the text version of the document. This resolves one of the shortcomings of using XML-formatted names in model 2 systems; the name in the data field must agree with the printed version there, and there should be no variations in the document when the same name is printed multiple times. However, it still cannot be assumed that human grantors and grantees will sign a document exactly like the name in the XML fields, so some manual intervention may still be necessary in those recording offices that index from signatures or that index variations of names between printed and signed forms.

⁸ The definition of the word “document” at model three certainly includes the text portion of the XHTML piece plus any attached images. Does the recorded document need to include the HTML, embedded XML or electronic signature information layers? If so, how can it certifiably be represented as an image?

The initial implementation of a model 3 system in Salt Lake City, UT has avoided this problem so far because the documents that are accepted electronically (mortgage releases) are signed by corporate officers whose names are not indexed. The documents are not subject to indexing variations between printed human names and signatures.

Although the Utah statutes and the two Utah recording offices have tried to deal with recording issues raised by digital documents, open questions remain about how a recording office is actually required to handle a fully digital document. For example,

- What parts of the five layers of information in such a digital document need to be archived?
- What image, if any, of a digital document should be archived with paper documents?
- How is a “copy” of a digital document certified?

COMPARISONS BETWEEN THE MODELS

There are some who say that the Orange and Maricopa systems are not really electronic recording systems. They say that the document is still reviewed, and index entries keyed, in the traditional fashion. We, however, see no reason to relegate those systems to a lower status than model 2 or 3 systems. Rather, they fit neatly into this three model scheme. Like model 2 and 3 systems, model 1 systems use both electronic and automated technologies, such as,

- utilizing digital certificates that wrap around the document for secure transmission,
- utilize digital certificates to recognize the submitter, and
- automate the cashiering function.

Also, the automation of the indexing process is not an inherent ingredient at any of the models of electronic recording. Whether to embrace fully automated indexing is an individual recording office option, based on state statutory requirements, the characteristics of documents received, and the operating philosophy of the recording office. In fact, it may be said that the goal of an electronic recording system is not necessarily 100% automated acceptance, but reliably swifter acceptance of documents. Finally, in all models of electronic recording systems there always needs to be a point in the internal recording office process where the document may be reviewed by a real person because the electronic package containing a digital document may also contain a scanned-image attachment.

MODEL 4?—BEYOND THE PAPER PARADIGM

At least one academic commentator has suggested

that the day will come when submissions for recording will dispense with paper-paradigm documents altogether. A "document" will take the form of a purely digital, fielded record. There is a model for this model of electronic recording suggested by the statutes in those few states that allow a document to reference a master form that has been previously recorded.

In this model, a record submitted for recording would just consist of fields for the date, the grantor and grantee names, the digital signatures of the parties and notary public, other statutorily required fielded information such as the notary public registration number and property identification number, and a field referencing the recording number of the master form of document that was signed.

This sort of shorthand recording may be most applicable to assignments and releases of mortgages, both of which are documents most akin to standard forms. Time will tell whether this idea is practical.

News From The States

Changes are repeated each month in this section of the newsletter until the changes are included in the quarterly update of *The Real Estate Recording Guide*™. We recommend you mark these changes on the affected pages in your set.

DELAWARE—SUSSEX COUNTY

Effective January 1, 2001, recording requirements will closely follow the other two counties, including 2" margin at top of first page with preparer and return-to information on left side, 1" margins on other sides and pages, except 2" marginal also at bottom of last page. Documents that fail to meet these standards will incur an additional \$30 penalty fee.

ILLINOIS—COLES COUNTY

Add \$3.00 to all basic recording fees. Remember that each county is implementing this fee increase from \$15.00 to \$18.00 whenever it wants. Therefore, it would be wise to check the current status of

fees in any county that still shows a basic recording fee of \$15.00.

LOUISIANA

Hard as we try, it is difficult to determine with clarity what the fee for a mortgage will be in a specific parish starting January 1, 2001. A flat fee was charged in the past based on the usual number of pages in the standard mortgage forms designated by Fannie Mae and Freddie Mac. Since these forms will be 5-7 pages longer starting January 1, 2001, we anticipate that parishes will be increasing their flat fees once they see how much longer the new forms are. If you are using the new, longer forms, we suggest you call the Parish to confirm the fee for that particular form of mortgage.

We will be surveying parishes early in 2001 once they have received some of the new, longer standard mortgage forms to determine what they intend to charge.

MASSACHUSETTS

Effective December 13, 2000, add a \$20.00 "community preservation" fee to the basic fee for every instrument to be recorded.

NEW YORK—CHENANGO AND DELAWARE

Both counties now require a cover sheet.

NEW YORK—FULTON COUNTY

Telephone number is 518-736-5555.

NEW YORK—SUFFOLK COUNTY

Basic deed and mortgage recording fee is \$28.00. Basic assignment and release fee is \$28.50.

PENNSYLVANIA—YORK

By local ordinance, York County will require a "Uniform Parcel Identification Number" to be on all instruments "affecting real estate in York County. The number must be "certified before being presented for recording." Parcel numbers are available to the public on www.york-county.org under the Assessment Office. The certification unit is located in the main hall of the Courthouse at 28 Market St., York, PA 17401.

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