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# **Electronic Recording Models: Time to Move Forward**

**(First Draft, January 16, 2019)**

[www.pria.us](http://www.pria.us)

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*There are still known deficiencies in format that PRIA's Style Committee will clean up following final approval.)*

**PROPERTY RECORDS INDUSTRY ASSOCIATION**

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**January 2019**

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## Executive Summary

For nearly as long as the Property Records Industry Association (PRIA) has been an organization, there has been a link with the concept of “the models of electronic recording.” This paper will look at the history of “the models,” along with some of the common misperceptions that have evolved relating to the models, and then examine the practicality of that paradigm. The goal of this paper is to provide an updated review of a familiar but often misunderstood concept and make recommendations intended to encourage even broader adoption of electronic recording, by recording jurisdictions across the country.

## History of the Models

The concept of a variety of models of eRecording first appeared in an article written by Carl Ernst (a founding member of PRIA) in *"The Real Estate Record,"* a newsletter distributed by Ernst Publishing. In the December 2000 issue, Ernst wrote about ["The Three \(or more?\) Levels of Electronic Recording"](#) and identified Orange County, CA; Maricopa County, AZ; Broward County, FL; and Salt Lake County, UT; as the counties known to be accepting electronic recordings. These were the early pioneers of eRecording and Ernst was describing for his readers the various approaches these experiments were taking. The article was also somewhat speculative, touching on other options that were being discussed by various groups.

The idea of various levels of eRecording was one that many in the industry found to be useful. Over time it became a de facto standard – even without formal adoption by any group. Because of Ernst's role as a founder of PRIA and his generous contributions of intellectual property to this newly created standard setting body, the models were intertwined with PRIA.

This paper is not PRIA's first effort to answer questions relating to the eRecording models. In August 2013, PRIA released a paper titled ["The Models of eRecording – A Continuum of Electronic Recording."](#) That paper focused on the idea that, in actual practice, electronic recording processes rarely fit neatly into the specific definitions of the various models. This paper will provide additional background.

## Original Intent

Ernst's intention was to inform his readers about the various approaches to electronic recording being tested by a handful of counties. The article was a descriptive narrative rather than a legal or technical standard. The major differentiators between the models were how a document begins its lifecycle (as paper or natively electronic) and the utilization of various technologies to create the electronic document.

The models are defined as follows:

- Model 1 – digitized document (scanned paper). This model consists of paper documents with wet ink signatures that are scanned by the submitter creating an electronic image of the paper documents. The submitter then sends the scanned image of the paper documents to the recorder for recordation rather than the paper documents.
- Model 2 – digitized document with XML or electronic document with XML. In Model 2 documents, there is no interactive relationship between the image of the document and the XML data that accompanies it. This model can include both digitized and natively electronic documents. It also allows for wet ink signatures and electronic signatures. The core of this model is that in addition to the image of the document, Model 2 documents also include some indexing data in an XML format.
- Model 3 – XML embedded into completely electronic documents that never existed in paper form. This model represents truly electronic documents with interactive view and data sections. (Ernst referred to them as “layers”; today we label them “sections” or “folders.”)

<b>Feature/Function</b>	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>
Paper documents / static images	X	X	
Wet-ink signatures	X	X	
Automated index population		X	X
Electronic signatures		X	X
Tagged data (XML)		X	X
Interactive data & view sections			X
Rules-based processing			X

Regardless of how a document begins its lifecycle, the recorder's office receives a TIFF image and some amount of data. Paper documents are scanned to create a TIFF image, while natively electronic documents are rendered to the TIFF format as part of the electronic recording process.

## Problems over time

As electronic recording grew in popularity and acceptance, so did misunderstandings about several practical and legal issues. Unfortunately, many of these misunderstandings became barriers to adoption.

- Were electronic records and signatures legally permissible for recordable documents?
- Did they, in fact, provide the constructive notice intended?
- Was the existence of a paper, ink-signed document a requirement of the eRecording process?
- If electronic documents were generated by automated systems, did the signer have the ability to see the document they were signing?
- Were electronic documents “real documents” as far as originality or writing requirements were concerned?
- Would a Recorder need a new land records management system to be able to process the various models?
- Would there be a need to integrate with third party systems to validate natively electronic documents?
- May I accept and record a document notarized using electronic means? Or is a paper document with an ink notarial signature and stamp required?

## Barriers

A consequence of the confusion surrounding the models has been the decision by some recording jurisdictions, either as formal administrative rules or as informal policy, to limit the documents counties will accept for electronic recording. This has constrained access to eRecording by submitters who use legitimate and lawful processes to create documents using electronic methods, including having the documents eSigned and eNotarized.

In PRIA's first eRecording Document Volume Survey published in 2017, there was a question asking counties about accepted models. The answers to this question revealed a misunderstanding of the models, eRecording processes, and applicable laws. PRIA's eRecording vendor members report inconsistencies between the answers provided and the practices encountered. This type of confusion is regularly cited as a barrier for lenders, servicers and settlement agents utilizing electronic recording.

## eNotarization and eRecording

When evaluating the relevance of the models of eRecording, keep in mind the purpose for recording land records is to provide public notice. Recording does not imbue legal status to documents, but rather places them in the public record at a specific date and time.

A wide variety of laws, for example [ESIGN](#), [UETA](#), [URPERA](#) and state-specific electronic signature laws in Washington State, Illinois and New York, provide equivalent legal status for electronic records and signatures in relation to paper and wet-ink counterparts. There is no need to make any distinction of how documents began their lifecycles. Duly recorded documents provide notice that a party is asserting a claim.

As more states adopt legislation and administrative rules to support remote online notarization, the interest in all forms of electronic notarization is growing. The adoption of rules relating to various forms of electronic notarization provide guidance and certainty to the marketplace. The remote online notarization conversation has also driven discussion regarding interstate recognition of notarial acts.

Another aspect of remote online notarization is the conversion of electronic documents to tangible media (paper) for use in jurisdictions that do not electronically record. The Uniform Law Commission has recommended that states address this practice as they adopt electronic notarization regulations. PRIA supports the premise that electronic records, converted to tangible media, meet the recording requirements of the various states.

## Recommendation

PRIA has determined that the models nomenclature is unnecessary and confusing. The legal status of electronic records and signatures is equivalent to the paper counterparts. Electronic documents do not require any specialized technology for counties to review and record them. There are no substantive or functional reasons to differentiate between document models.

Since electronic records, signatures, and notarization “satisfy the requirement of the law,” PRIA finds that the only distinction necessary is whether or not a county electronically records documents.

Going forward, PRIA will discontinue the use of the models convention.