

*By action of the Executive Board on March 2, 2000, this document is an official white paper of the Property Records Industry Joint Task Force.*

## **Property Records Industry Joint Task Force**

### **Standards Committee White Paper: Real Estate Document Formatting**

#### **Introduction to the Issue**

The Property Records Industry Joint Task Force (Task Force) is a coalition of public and private participants of the property records industry, cooperating to formulate positions on issues of common interest. Among other objectives, the Task Force works to identify problems, opportunities and solutions that will make property records systems more efficient, effective and responsive to the public. The Task Force also works to identify areas of consensus within the industry, leading to recommendations for national standards pertaining to recordable documents. This White Paper is the product of the Task Force Standards Committee, a standing committee dedicated to promoting more consistent processes, procedures and practices among recording offices nationwide. This Paper specifically addresses real estate recordable document formatting standards.

The following discussion is limited to the recording of PAPER documents. Recording standards for other media will be addressed later. Also, this discussion focuses on standard recordable real estate documents, such as deeds, mortgages or deeds of trust, assignments, releases and satisfactions, etc. It does not consider non-real estate documents, such as military notices, county ordinances, federal tax liens, and court documents.

Two trends have worked together to bring the recordable document formatting issue to the forefront. The first factor is the nationalization of the real estate finance industry. In the past, when real estate document recording was wholly a local matter, the players knew what the local recording office wanted. If there was a dispute about whether a document was proper, the parties could walk down the street and discuss the matter. Such a parochial solution is no longer workable in today's national economy, where users routinely encounter many of the 3,600-plus recording offices nationwide. While local recorders are often elected officials, elected by citizens within their limited jurisdictional boundaries, recorders today serve a broader constituency—beyond local government lines, across the nation, and even the world. Just as the industry has been elevated to the national level, so too must real estate document recording standards.

At the same time that real estate finance develops into a national industry, expanding the constituency whom "local" recorders serve, technology continues to offer improved but ever-changing means by which recorders do their jobs. In the continuing quest to improve customer service, public officials look to new technology to improve upon government services, and new technology often requires new practices. Image capture technology, for example, may require larger document margins to prevent document text from being cut off and lost, or may require a larger font size to ensure documents are readable when retrieved in the future. Without technology standards, different vendors create products with different document formatting requirements. So as individual jurisdictions invest in various products, different document recording needs emerge. While technology solves one problem, improving document imaging, it creates another: inconsistent document formatting requirements. While the ideal solution may be consistent technological standards, the current reality is that differing document technologies result in a mish-mash of document formatting requirements for filers doing business with more than one recording office.

As many as 14% of documents submitted for recording are rejected, translating into an economic loss to the industry of approximately \$400 million per year<sup>1</sup>. How many rejects are based on document formatting problems is not known and varies by jurisdiction, but current information supports the contention that document formatting problems are a significant contributor to the industry's high document rejection rate. And as the real estate finance economy continues to expand so that filers do business with recorders all over the country, the opportunity for continued confusion grows. Document formatting standards can only simplify the challenges of multi-jurisdictional filers, and can only improve the efficiencies of recording offices around the country by encouraging uniform documents. While some suggested standards may exceed the technological needs of individual recording offices, the "most restrictive requirement" of other offices may need to set the standard until the technologies themselves employ uniform standards or all recording offices are able to purchase new technologies. But the politics and funding mechanisms of the 3600-plus recording offices nationwide vary, thereby producing numerous complications and limitations as to an individual recording office's ability to invest in new systems.

The Task Force has identified the document formatting problem as one that appears particularly suitable to redress by a coalition of public and private participants, like itself. Working to identify consensus and common ground on the issue, the Task Force presents the following discussion and proposes the following document formatting standards, with the goal of seeking more efficient and effective recording systems, from which both public and private sector participants will benefit.

## **The Role of Recorders and The Guiding Principles of Document Recording**

All fifty states operate real estate recording systems that assist the public in determining who has title to any given parcel of land. Instead of making affirmations about ownership of land, the government maintains a public library of documents affecting title to real estate. The parties to real estate transactions bring the documents to the office to be recorded, adding to the library of information stored there. This repository of information is open to the public for examination. Users may examine the documents on file, and draw their own conclusions about any parcel of land located therein.

Most states charge local, usually county, officials with maintaining this library of information for the real property located within that local government's boundaries. So within most states there are multiple local recorders offices, each charged with creating and maintaining reliable depositories of information regarding the land transactions within that local government. The number of recording offices per state runs from one (Hawaii and the District of Columbia) to 254 (Texas).

While processes followed and technologies employed may vary, recorders basically do two things with documents presented for recording. First, the recorder retains a copy of the document to add to the library of information maintained by the recorder. With few exceptions, the original document is returned to the person requesting recording. In most cases, an image of the recorded document is retained in the public library of the recorder forever. Second, the recorder indexes the documents so that they may be located at a later date. With the millions of individual recorded documents that may be housed within any recording district, this index is essential to allow users to locate the documents affecting the land in which they are interested.

Identifying the basic responsibilities of the recorder reveals two guiding principles of document recording. First, there is the "Legibility Principle." Recorders must ensure that

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<sup>1</sup> Real Estate Recording Guide

documents presented for recording are sufficiently legible so that clear, legible copies can be reproduced from the retained image. Second, there is the “Accessibility Principle.” Recorders must ensure that documents accepted for recording contain sufficient information to produce an accurate and efficient index. The Task Force endorses the importance of these two principles, and offers the following discussion and proposed standards in light of these goals.

## **Keeping Standards at the State Level and The Importance of the Rule of Law**

From the perspective of the user of recording offices in today’s national economy, the challenges of doing business with hundreds, even thousands, of recording offices can be mind-boggling and confusing. The confusion is compounded when users encounter not only state-by-state inconsistencies in recording requirements, but intra-state inconsistencies in recording requirements—escalating the number of potential sets of rules from fifty-one, to the thousands! Certainly most, perhaps all, local formatting requirements are ordained in the name of either the legibility or the accessibility principals. Nonetheless, the resulting myriad expectations are problematic for two reasons. First, as a practical matter, the sheer number of potential inconsistencies with 3,600-plus recording offices makes compliance with local preferences impossible to the regional or national user. State-level inconsistencies would keep differences to a manageable (though still challenging) level in the context of a national economy.

In some situations, many local “requirements” are made without true legal authority, but instead reflect the office’s preferred standards. No doubt such preferred standards are deemed to promote legibility and accessibility according to the recording technology available to that office. Nonetheless, the practice places users in an unfair position: risk the legal consequences of not recording the document or challenge the basis for a document’s rejection. While legibility and accessibility remain the guiding principals of document recording, the rule of law must be respected. Recorders should have a legal basis for any requirements enforced. If current state law fails to promote legibility and accessibility, then the public and private sectors must work together through the proper channel—the state government—to see that such standards are enacted.

Should state statutes not address recording standards with necessary specificity, legislators could delegate such rulemaking authority to an appropriate agency—addressing the need for specificity while recognizing the need to keep standards uniform statewide. Keeping recording standards codified within state statutes or regulations ensures that all users, throughout the country, have access to the standards, thus increasing compliance. And keeping recording standards within the force of statutory or administrative law provides the enforceability and respect of the law. This is not to say that, ultimately, a unified national recording standard is not the ideal; it is. But even industry-endorsed, national standards should be codified at the state level of government, much like individual states enact versions of the Uniform Commercial Code (U.C.C.). The Task Force simply emphasizes that local variances, not based on true legal authority, cause confusion and are unworkable in today’s national economy.

## **State of the States**

While the number is subject to change with each legislative session, approximately 38 states now have some sort of statutorily mandated recording requirement. The comprehensiveness of the statutes varies. Research and analysis done by the Standards Committee identifies three basic categories of comprehensiveness: the four “maximum states,”<sup>2</sup>

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<sup>2</sup> California, Oregon, Washington and Wisconsin.

which require cover sheets or strict placement of required information on the first page, the twelve “unregulated states,”<sup>3</sup> which are without any recordable document statute, and the majority of states in between.<sup>4</sup> As the specificity of the various statutes change with each legislative session, two trends remain consistent: States that already have some statutory document formatting requirements continue to “tighten up” those statutes. And states without statutory requirements are beginning to introduce legislation to establish some rules. Again, the problem with the current system lies in the number of recording requirements and the frequency with which they change.

## **Discussion and Recommendations**

Guided by the two principles of document recording, this section discusses the issues surrounding the elements of document formatting, and proposes formatting recommendations to be implemented across the nation.

### **The Legibility Principle: “Legibility”**

Twenty-one states specify that a document must be “legible” to be accepted for recording. This requirement is at once obvious, and yet unhelpful. Because the purpose of recording a document is to put others on notice of the document’s content, users should have incentive to record legible documents. And because recorders are charged with maintaining a permanent record of legible and retrievable documents, recorders have incentive to accept only that which is legible enough to be of value to the permanent record. Indeed, “legibility” is one of the two overriding goals or principals of document recording.

Nonetheless, “legibility” as a document formatting standard is problematic because of the inherently subjective nature of the word. With over 3,600 recording offices, and as many possible interpretations of the subjective concept, “legible” is not of much value as a recording standard since it cannot objectively put the public on notice as to what is, and what is not, recordable. Of greater value to our ever-broadening economy are the objective elements discussed below. Together, these objective standards result in a document that could commonly be accepted as “legible,” while providing objectively understandable recording requirements that recorders and users alike can understand and agree upon.

Again, the Task Force strongly supports the premise that all documents presented and accepted for recording must be legible. Because the concept is inherently subjective, “legibility” is best considered an overriding principle of document recording, and not a specific element of a well-formatted recordable document. The Task Force supports the overriding principle that any document accepted for recording must be sufficiently legible so that, after it is imaged, a clear, legible copy that can be read without magnification and can be reproduced from the image. But the dangers of subjective requirements are particularly of concern when combined with other related issues, like a recorder’s ability to reject a document for recording (as opposed to charging a non-standard filing fee, but accepting the document for recording). The very purpose of identifying and promoting a national standard is to promote objective uniformity. Because subjective requirements, by their very nature, do not promote uniformity, they cannot be embraced as promoting the national ideal.

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<sup>3</sup> Alabama, Connecticut, District of Columbia, Idaho, Massachusetts, Montana, New Jersey, New Mexico, Pennsylvania, Rhode Island, South Carolina and Wyoming.

<sup>4</sup> Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia and West Virginia.

## The Legibility Principle: Paper Specifications

Paper specifications address the requirements of the physical pieces of paper presented for recording. Paper specifications are aimed at ensuring that documents presented for recording will produce legible copies once imaged.

Eight states specify a minimum of 20 pound paper, and one state requires that paper be “opaque.” These are paper quality standards, aimed at ensuring that documents are substantial enough to hold up to the physical handling of the imaging and indexing processes. Paper quality standards also ensure that paper is thick enough so that ink will not bleed through to the reverse side of dual-sided documents. **The Task Force recommends paper weight sufficient to handle easily for review, indexing and imaging. Twenty-pound paper appears to be the objectively measurable standard of the industry. (This is the weight of standard copier paper.)**

Of the 20 states that specify a size of paper, only three limit it to 8 ½ by 11-inch (letter-sized) paper. The other states also accept 8 ½ by 14-inch (legal-sized) paper. Plats and maps are exempted from these size limitations. The states that require 8 ½ by 11-inch documents do so in the name of increased recording efficiency. Other industries also appear to be moving towards the uniformity of letter-sized paper; many courts, for example, are moving away from legal-sized filings and towards standard, letter-sized documents. Those who oppose required use of letter-sized paper point out that reducing paper size increases total document length (more pages per document). Increased document length means more pages to be imaged, and, in jurisdictions where recording fees are calculated on a “per page” basis, increased recording costs. Finally, some recorders question whether 8 ½ by 11-inch paper truly offers increased efficiencies to offset the price of change. Despite the surprisingly controversial nature of the paper size issue, **the Task Force recommends that the industry move towards a unified paper size of 8 ½ by 11 inches, but that 8 ½ by 14 inch-paper continue to be an acceptable alternative for a period of three years from the time of adoption of this White Paper.**

Six states specify that the paper on which recordable instruments are printed must be white. The apparent purpose of this requirement is to encourage a strong enough contrast between the paper and the ink so that the clarity and thus legibility of imaged documents is enhanced. **The Task Force recommends that paper color should be light enough to be effectively reviewed and imaged (that it should be white). Watermarks and other variances in paper color interfere with legible imaging and should be avoided.**

## The Legibility Principle: Document Specifications

Most state statutes do not address the issue of document specifications, or rules regarding the pieces of paper which, together, comprise a recordable transaction. One state rejects bound documents and continuous form paper. Document specifications are intended to facilitate efficient and legible imaging.

**To facilitate document imaging, the Task Force recommends that no foreign objects be attached or glued to pages, no continuous forms or bound sheets be used, and that only one-sided documents be created/accepted (to simplify imaging). To ensure legible imaging, the Task Force recommends that colored markers not be used to highlight text, stamps and seals not overlap text or signatures, and that one-sided documents be created/accepted (to avoid ink bleed-through).**

## The Legibility Principle: Margins

Twenty-six states specify some amount of blank space on documents. Of these, 16 have a special rule for the first page and three have a rule for the last page. No two states have the same first or last page margin requirements.

Margin requirements are driven by two factors. First, recorders must have enough blank space on a document in which to record their own information, without covering document text with the recorder's information, thus rendering both pieces of information unreadable. Second, imaging technology is not able to capture a complete image of the document without cutting off edges of the document. Margin requirements lessen the risk of not capturing information by increasing the amount of white buffer space that may be lost without consequence.

Unfortunately, document margins are not increased without cost. As with other recording requirements (increased font size, limited paper size, increased margin size, cover sheets) increased margin requirements can extend the length (number of pages) of a document. Increasing the length of a document will increase the cost of recording the document with per-page fee schedules. In the aggregate, increasing the length of a document by only one page can translate into significant additional recording costs. Ultimately, these increased costs are borne by the consumer.

While all recording offices need recording and image-capture buffer space, not all jurisdictions require the same amount of space or want the space in the same location. Until and unless uniform recording technologies and processes are implemented nationwide, different offices will have different needs. As a result, proposed "buffer space" margin standards will always exceed the need of some offices, but will be necessary to accommodate the requirements and limitations of other offices. What some may call "excessive" is the price of industry uniformity. Similarly, proposed "recording space" margin requirements may not match the current practices of a few recording offices. For example, most recording offices prefer to stamp recording information at the beginning of the document, while others prefer to stamp the same information at the end of the document. Without consistent practices within a state, documents must provide extreme margins at both the beginning and the end of a document in an effort to accommodate all recording preferences. These extreme margins, in turn, increase document length and recording costs. In an effort to promote consistent placement of recording information, **the Task Force suggests uniform placement of recording space, at the beginning of each recordable document.** Recorders that currently stamp at the end of the document will need to rethink practices that require deviation from what already is the norm within the industry. Again, the initial cost of uniformity will need to be borne by some, so that the long-range benefits may be enjoyed by all.

The Task Force recommends the following margins, which should provide sufficient recording space at the beginning of the document and enough buffer space to prevent lost document text during the imaging process. While the left half of the top margin may be used by the preparer to list administrative content per statute, the right half of the top margin must be reserved for the exclusive use of the recorder. Non-essential information, such as the name and copyright of the company that printed the form, bar codes and preparer control information, may be allowed, so long as such information prints at least ½ an inch from the bottom edge of the paper.

- **Top First Page: 3 inches (left half may note administrative content per statute, but right half must be reserved for the exclusive use of the recorder)**
- **All other margins: 1 inch**

## **The Legibility Principle: Print Specifications**

Thirteen states specify a minimum font size, which varies from 8 to 10 points. A few jurisdictions look to a minimum number of characters per inch.

Five states specify black ink, and two allow dark ink of another color for signatures.

Print specifications ensure legibility of documents, particularly after imaging. Some imaging technology slightly reduces the size of the print pictured, making the type in the copy produced from the retained image smaller and harder to read than the type in the original. Minimum font sizes ensure that the image of the document preserved in the recorder's office is readable by those who access it in the future. Print specifications are also intended to ensure enough contrast between the paper and the print so that images of documents are clearly reproduced.

**The Task Force recommends use of text no smaller than the equivalent of 10-point size in Times New Roman font style for all documents presented for recording. The Task Force also recommends no more than 9 lines of text per vertical inch. Information that is not essential to the indexing process or to the legal validity of the document (such as the form company's name and copyright) should be excluded from these typesize requirements.**

**The Task Force recommends the use of dark ink, suitable for imaging, preferably black. Signatures and initials should also be in dark, preferably blue, ink.**

## **The Accessibility Principle: Administrative Content**

The rest of the elements of a well-formatted recordable document fall under the Accessibility Principle: Recorders must be able to accurately and efficiently index the documents recorded in their offices so that the documents may be reliably located and retrieved in the future. Administrative content is the information used by the recorder for indexing and processing the document presented for recording. Examples include the document title, grantor and grantee names and addresses, the property legal description, return to information, references to original document, parcel or tax identification numbers, and preparer information.

Administrative content should be easily identifiable and accessible, so as to increase recording efficiency and accuracy, which benefits all parties. Placing administrative content in a consistent and easily identifiable location assists in this process. Current recording practices vary in the placement of administrative content. Some jurisdictions call for placement at the beginning of the document, others at the end of the document, and some a combination of locations. Unifying current practices and placing administrative content in a single, easily identifiable location will increase efficiency in document preparation and processing as well as accuracy in document processing.

The placement of some administrative content interrelates with the Task Force's recommendation that the top three inches of the document be reserved for recording information. While the right half of the recommended three-inch top margin must always be protected for the recorder's exclusive use, the left half of this top margin may be used by the document preparer to list certain administrative content.

**The Task Force believes that all administrative content should be placed at the beginning of the document, on the first page when possible.**

**Document preparers may list some administrative content--such as preparer and return-to information, parcel and tax numbers, and references to the original document--on the left side of the top three inches of the document. (The right half of the top margin must remain protected for the recorder's exclusive use.)**

**Other administrative information, traditionally located within the document text--such as party names and addresses and legal descriptions--should appear near the beginning of the form. When this information cannot be accommodated on the first page of the document, document preparers should indicate the page on which such information may be found.**

**The Task Force recognizes that document preparers cannot always control placement of administrative content (such as the recently revised Fannie Mae/Freddie Mac security instruments, which include the legal description towards the beginning, but not on the first page of the document). Nonetheless, to the extent possible, document preparers should place administrative content at the beginning of recordable documents.**

## **The Accessibility Principle: Indexing Issues**

In addition to placing indexing information at the beginning of a document, other methods may be employed to facilitate accurate and efficient document processing. Virginia law provides one example. Under Virginia law, names to be indexed must appear in the first clause of a document and be properly designated (grantor, grantee, etc.). In addition, individual surnames and names of business entities must be printed in capital letters or be underlined. According to the state statute, these requirements are intended to assist recording officers in determining what names are to be indexed, and how.

This Virginia law raises the larger question of who, the preparer or the recorder, should determine how party names are indexed. Unlike the UCC filing system, where the filer indicates what names are to be indexed and how, the real estate recording system leaves such discretion to the recorder, not the document preparer, who may not understand long-established indexing systems for various types of documents. On one hand, the Virginia system appears to lean towards the UCC filing system, where the government exercises little discretion and follows the filer's filing instructions. On the other hand, the Virginia statute also appears to retain the recorder's discretion to determine which names are to be indexed and how (the requirements are meant to assist the recorder). While the Task Force is interested in exploring ways to improve indexing efficiencies, the Virginia approach raises a significant question: should indexing responsibilities be moved from the recorder to the preparer? This important question with serious ramifications to the recording system requires further consideration.

**The Task Force recommends further consideration of the Virginia method, though more information is needed before a definite recommendation can be offered. In the meantime, recorders should retain the authority and responsibility to index according to state practice so as to keep the indexing system uniform and of value to the public.**

## **The Accessibility Principle: Cover Sheets**

Another attempt at increasing the accuracy and efficiency of document indexing is the "cover sheet experiment" explored by a handful of states. Cover sheets are intended to aid in accurate and efficient indexing by setting apart the information needed for indexing and document

processing (the administrative content) from the rest of the document. There are two different types of cover sheets: those prepared by the document preparer, and those prepared by the recorder.

The cover sheet debate is surprisingly controversial among players in the real estate recording industry. Some favor the simplicity of setting aside necessary administrative information, rather than following directives regarding what information is to be placed where within a document. Others point out that cover sheets duplicate information within a document, thus providing opportunity for inconsistency between the two forms. When a (preparer prepared) cover sheet and document are inconsistent, what information should be indexed? Cover sheets also increase recording costs by increasing the number of pages to be recorded.

Technology should work to resolve at least one of the cover sheet controversies. When information is no longer entered separately, but is inserted from a single data piece wherever needed, the opportunity for inconsistency is eliminated, and this one argument against the cover sheet should be moot.

**Because document cover sheets provide duplicative information, which can lead to confusion and contradiction, the Task Force does not yet recommend the cover sheet approach. Instead, the Task Force recommends pursuing standards for the uniform placement of information within the document itself.**

### **Summary of Task Force Recommendations**

In summary, the Task Force recommends that the following document formatting standards be enacted by state legislatures across the nation:

- Paper Specifications: 20 pound, white paper, preferably 8 ½ by 11 inches, but with 8 ½ by 14-inch paper an acceptable alternative for a three year transition period.
- Margins: 3 inches across the top of the first page (preparer may list administrative content on left half of the top margin, reserving the right side for the recorder's use); 1-inch margins everywhere else
- Print Specifications: No smaller than the equivalent of 10-point type size in Times New Roman font style, using black ink
- Administrative Content: Administrative content should be required to appear at the beginning of the document, on the first page where possible (preparer may list administrative content on the left side of the top margin, reserving the right side for the recorder's use)
- Indexing Issues: Further consider the Virginia approach, requiring document preparers to identify the names and party designations to be indexed
- Cover Sheets: The cover sheet method is not recommended at this time

### **When Documents Do Not Meet Objective, Legally Mandated Standards: Rejection versus Penalty**

Necessarily related to the issue of document standards is the question of the appropriate response to non-conforming documents. Some jurisdictions accept such documents for recording, but charge a penalty or "non-standard filing fee." Others reject non-conforming documents. The purpose behind both approaches is the same: to discourage the submission of non-conforming documents.

The issue of the appropriate response is not without controversy. Some claim that the penalty approach, while intending to discourage submission of non-conforming documents, may not work. If the fee is small and there is some overriding advantage to submit non-conforming

documents, the submitter may choose to pay the penalty. Because the penalty may not serve its intended purpose, some call for the outright rejection of non-conforming documents.

Others claim that document rejection undermines the very purpose of the recording system—to reflect current and accurate information regarding real property interests. Document rejection is particularly dangerous without objective recording criteria or when based upon recording “requirements” without legal authority. Any time a document is rejected for recording, the recorder should indicate the legal basis for and/or the objective requirements that the document(s) fail to satisfy.

Non-conforming documents must be deterred. Continued submission of non-conforming documents works to undermine the integrity of the recording system, and hurts everybody in the end. **It is the opinion of the Task Force that states should wean document preparers from submitting non-conforming documents by first charging a substantial penalty, followed by outright rejection at the end of the transition period. Fair notice is required before any standard is enforced. And rejection is only acceptable when clear, objective standards with legitimate legal backing are not met.**

## Conclusion

The Task Force appeals to all members of the real estate recording industry to consider and support the standards presented in this White Paper. Today’s national economy and ever-changing technology require all players--individual recorders, recorders associations, technology and document vendors, document preparers, back-end users and others--to consider their role within the larger industry and unite in the effort to work towards more efficient and effective recording systems. How players work to implement these standards will vary according to their role within the larger system. But all should be guided by these standards, just as all will benefit from the end goal, improved recording systems.