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eRecording Best Practices for Recorders

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Executive Summary - Best Practices for Recorders

eRecording has been steadily progressing throughout the United States since first being utilized in 1998. The trail blazing Recorders, end-user submitters, eRecording vendors and Land Records Management System (LRMS) vendors have tested out multiple approaches and strategies over the years. Due to the wider adoption of and greater reliance upon eRecording, PRIA is repeatedly asked for the best practices and norms for eRecording processes. This paper sets forth the consensus that has been reached on 11 eRecording best practices for Recorders; however, PRIA recognizes that there may be differences in the adoption by all recording jurisdictions.

1. **Best Practice: Memorandum of Understanding.** The Recorder should execute Memorandums of Understanding (MOUs), contracts, or agreements with each eRecording vendor that serves the recording jurisdiction, not with each end-user submitter.
2. **Best Practice: Recording Fees.** The Recorder should accept fees electronically for service in the eRecording environment with Automated Clearinghouse (ACH) payments.
3. **Best Practice: Document Types.** The Recorder should accept all real estate-related document types for eRecording.
4. **Best Practice: Process.** The eRecording process should be as simple as paper recording with the fee no greater than paper recording.
5. **Best Practice: Index.** The Recorder is responsible for recording the document and creating the index.
6. **Best Practice: Images.** Images should be submitted in a standardized format taking into consideration preservation needs. Scanned documents should be clean, without artifacts/lines, and must accurately represent the original documents.
7. **Best Practice: Vendors.** The Recorder should work with multiple eRecording vendors.
8. **Best Practice: Voiding Documents.** The Recorder should not void or remove documents after recording, unless directed to do so by a court order.
9. **Best Practice: Submission Limitations.** The Recorder may choose to limit the number of documents submitted in a single package or batch to no more than 10 documents totaling no more than 200 pages.
10. **Best Practice: Duplicate Recordings.** Procedures and systems should be in place to prevent duplicate recording of a document.
11. **Best Practice: Electronic Signatures and Notarizations.** Recording jurisdictions should accept electronically signed and notarized documents.

The Legal Foundation

Any discussion of best practices requires a solid foundation. For eRecording, the legal foundation lies in three key pieces of enabling legislation. The following brief summary is not intended to provide legal advice.

1. The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) was signed into law June 30, 2000.
2. The Uniform Law Commission (ULC; formerly known as National Conference of Commissioners on Uniform State Laws) adopted the Uniform Electronic Transactions Act (UETA) in 1999. Since then, 47 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have adopted the UETA.
3. The Uniform Real Property Electronic Recording Act (URPERA), promulgated by the ULC in 2004, which has been adopted by 28 states, the District of Columbia and the U.S. Virgin Islands.

E-SIGN and UETA provide for the legal equivalency of electronic records and electronic signatures with their paper and wet-ink counterparts. E-SIGN and UETA are “overlay statutes,” which means their provisions were intended to work synergistically with all existing legislation. New legislation did not need to be drafted for every area of each statute that mentioned paper or ink signatures. Existing and future legislation could rely on the E-SIGN and UETA provisions for moving into electronic processes.

Sections 17 and 18 of UETA provide for the adoption of electronic processes for government entities. If a state enacts these sections of UETA as set forth in the uniform act, URPERA may not be necessary for eRecording. If these sections were not included in a state’s enactment of UETA (or were substantially altered from the uniform formulation), then enactment of URPERA provides additional authority for recording jurisdictions to adopt an eRecording process.

Among these three pieces of legislation, eRecording finds a solid legal foundation.

The Best Practices

1. Best Practice: Memorandum of Understanding. The Recorder should execute Memorandums of Understanding (MOUs), contracts, or agreements with each eRecording vendor that serves the recording jurisdiction, not with each end-user submitter.

Purpose: To minimize the number of needed MOUs, contracts or agreements.

Procedures to meet this Best Practice:

- The Recorder must first determine whether a written MOU, contract, or agreement is needed. Consult with legal counsel to determine whether the recording jurisdiction or state requires an MOU, contract, or agreement.
- The Recorder should sign an MOU, contract, or agreement with each eRecording vendor. The eRecording vendors, in turn, should be required to have MOUs, contracts, or agreements with each of their end-user submitters.
- The Recorder should rely on the integrity of the eRecording vendors to conduct due diligence before contracting with reputable, end-user submitters.

End-user submitters may choose not to eRecord in jurisdictions that require individual submitter MOUs.

MOUs and contracts are legally binding agreements. Requiring additional MOUs or contracts with end-user submitters adds cost for the legal review process and time for implementing the ensuing agreements.

Recorders do not have written MOUs with the organizations and individuals that submit paper documents.

2. Best Practice: Recording Fees. The Recorder should accept fees electronically for service in the eRecording environment with Automated Clearinghouse (ACH) credit transactions.

Purpose: To simplify the payment of fees for eRecording.

Procedures to meet this Best Practice:

- Documents should be recorded throughout the business day, culminating in a single, aggregated daily financial transaction by the eRecording vendor.
- At the end of the day, eRecording vendors should transmit the daily total of the recording fees and taxes, as applicable, to the recording jurisdiction via ACH and funds will be credited into the appropriate accounts of the recording jurisdiction.
- The eRecording vendor should provide a daily reconciliation report that details the fees remitted for each specific transaction.

Rules and regulations that govern the ACH network are established by [NACHA](#) (formerly the National Automated Clearing House Association) and the [Federal Reserve](#).

3. Best Practice: Document Types. The Recorder should accept all real estate-related document types for eRecording.

Purpose: To maximize efficiencies for Recorders and all end-user submitters.

Procedures to meet this Best Practice:

- The Recorder should review, record, and index all submitted documents.
- The Recorder should utilize technology to manage documents that may require routing or additional review through other offices within the jurisdiction.

Reasonable exceptions for eRecording submissions may include plats and surveys (which may be large-format documents), documents containing personally identifiable information, or documents containing information prohibited by law.

4. Best Practice: Process. The eRecording process should be as simple as paper recording with the fee no greater than paper recording.

Purpose: To maximize eRecorded document transactions for the Recorder and the end-user submitter. Dealing with multiple recording jurisdictions and varying requirements complicates the process for end-user submitters.

Procedures to meet this best practice:

- The eRecording process should be standardized so that required fields are limited to document identification and calculation of recording fees and taxes.
- The recording fees should be consistent for any method of document transmission whether in paper or electronic form.
- Documents should not be rejected based on data formatting.
 - The eRecording vendor and the LRMS vendor should accommodate the formatting requirements of data fields to make it easier for the end-user submitter and Recorder.
 - The eRecording vendor and LRMS vendor should know the specifics of how fields will populate and format based on testing and integration.
- A communication system should be utilized which sends rejection reasons back to the end-user submitter with details on why the document was rejected.
 - The Recorder should provide rejection reasons in simple terms to allow the end-user submitter to make corrections quickly and return the document for recording.
 - Communicating clear and concise rejection reasons enhances the recordation process and reduces unnecessary delays.

End-user submitters send to multiple recording jurisdictions having different requirements, and will not be able to remember all the rules for every recording jurisdiction.

Recorders should not require additional documentation when eRecording if similar documentation is not required for paper recording. Examples might be original affidavits or declarations.

5. Best Practice: Index. The Recorder is responsible for recording the document and creating the index.

Purpose: To meet the legal requirements obligating the recording jurisdiction to create the index and maintain its accuracy.

Procedures to meet this Best Practice:

- The Recorder should require only enough data to identify the document and properly calculate fees.
- The Recorder should not reject electronically submitted documents for data-related errors.
- The Recorder should maintain its indexing rules and should not expect the end-user submitter to assume responsibility for the inclusion or accuracy of critical index data.

Recording jurisdictions have been historically and statutorily responsible for reviewing and recording documents, as well as for capturing and cumulatively preserving the grantee/grantor and other necessary index information.

6. Best Practice: Images. Images should be submitted in a standardized format taking into consideration preservation needs. Scanned documents should be clean, without artifacts/lines, and must accurately represent the original documents.

Purpose: To record and preserve documents in the public land records.

Procedures to meet this Best Practice:

- The PRIA page size recommendation is 8.5 inches by 11 inches.
- The page size should be included in the metadata provided by the eRecording vendor.
- The PRIA image resolution recommendation is 300 dpi.
- The metadata should contain a page count for each document.
- The PRIA recommendation for font is a minimum 10 point font.
- The image format should be single file, multi-page TIFF, PDF or PDF/A, as specified by the Recorder.

7. Best Practice: Vendors. The Recorder should work with multiple eRecording vendors.

Purpose: To increase the percentage of eRecording document submissions

Procedure to meet this Best Practice:

- The Recorder should work with multiple eRecording vendors to increase the volume and percentage of eRecording document submissions.

Recording jurisdictions accept paper recordings from multiple sources: in person, courier deliveries, Federal Express, UPS, or USPS. Using multiple eRecording vendors applies the same logic to electronically delivered documents.

8. Best Practice: Voiding Documents. The Recorder should not void or remove documents after recording, unless directed to do so by a court order.

Purpose: To maintain the integrity and reliability of the public land records.

Procedures to meet this Best Practice:

- The Recorder should void or remove recorded documents only when specifically directed to do so by a court order.
- If ordered by the court, the Recorder should enter into the index database, in the location of the document being voided, a note explaining the voided recording information or document number.
- A copy of the court order should replace the voided document in the document library to justify the original document's removal.

In jurisdictions where documents may be administratively removed or voided (i.e. without a specific court order), a note should be made in the index in the place of the voided document. The Recorder should notify the interested parties of the document change.

9. Best Practice: Submission Limitations. The Recorder may choose to limit the number of documents submitted in a single package or batch to no more than 10 documents totaling no more than 200 pages.

Purpose: To assure submittal and return of documents to the end-user submitter while minimizing the chance of rejections of larger packages or batches.

Procedures to meet this Best Practice:

- The Recorder should post on the Recorder's website any package size restrictions to avoid a problem with either acceptance or return of documents.
- The Recorder should communicate any package size restriction information specific to the recording jurisdiction to each eRecording vendor.

10. Best Practice: Duplicate Recordings. Procedures and systems should be in place to prevent duplicate recording of a document.

Purpose: To avoid duplicate recordings which result in extra fees being charged and confusing entries in the index.

Procedures to meet this Best Practice:

- All parties involved in the eRecording transaction should take an active role in minimizing the occurrence of duplicate recordings.
- The technical interface between the LRMS and the eRecording vendors should minimize the possibility of duplicate recordings. An important aspect of this process should ensure that when the recording jurisdiction rejects a document, the original submission should not remain available to be reconsidered or recorded by other recording office staff.
- When there is an apparent delay in a submission, end-user submitters should check with their eRecording vendor before re-submitting a package for recording.
- When a duplicate recording occurs, the parties should work cooperatively to identify and resolve the issue.

11. Best Practice: Electronic Signatures and Notarizations. Recording jurisdictions should accept electronically signed and notarized documents.

Purpose: To maximize the volume and efficiencies of eRecording.

Procedures to meet this Best Practice:

- Obtain a legal opinion addressing specific requirements for the recording jurisdiction
- Consult with other Recorders within the state who have initiated eRecording

The Electronic Signatures in Global and National Commerce Act (ESIGN) is a federal statute that was adopted by Congress and became effective in October 2000. Regarding electronic signatures, the act states: "A signature, contract, or other record relating to such transaction may not be denied legal effect, validity or enforceability solely because it is in electronic form." 15 U.S.C. §7001(a)(1). Regarding notarization, the act states: "If a statute, regulation, or other rule of law requires a signature or record relating to a transaction in or affecting interstate or foreign commerce to be notarized, acknowledged, verified, or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record." 15 U.S.C. §7001(g). Simply stated, electronic signatures, including a notary's use of an electronic signature, have been legally valid in the United States since 2000.

Additionally, 47 states have adopted the Uniform Electronic Transactions Act (UETA), which is a model law drafted by the Uniform Law Commission. The language in UETA regarding the legal validity of electronic signatures and notarization is virtually identical to the ESIGN language previously quoted.

Further, 31 states have adopted the Uniform Real Property Electronic Recording Act (URPERA), another model law drafted by the Uniform Law Commission which addressed the possibility that under certain circumstances, UETA might not be applicable to recordable documents. When this scenario exists, the adoption of URPERA clarifies that electronic records are, indeed, legally recordable.

Understanding that most documents need to be acknowledged to meet recording requirements in most states, URPERA echoes ESIGN and UETA by stating: "A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature." URPERA Section 3(c).

All of these statutes have proceeded from the simple concept that an electronic notarization is a notarization performed with a different tool. An electronic notarization must meet all of the requirements of a paper notarization, including the personal appearance and identification proofing of the signer. Rather than changing the nature of the notarization, electronic notarization changes only the means by which the transaction is performed.

While ESIGN, UETA and URPERA establish the legal validity of an electronic notarization, some states believe additional regulations are required before e-notarizations can be accepted. Notary appointing authorities (usually within the Secretaries of State offices) may have statutory responsibilities which make registration of the electronic signature that a notary intends to use when notarizing electronic documents a necessary requirement.