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Electronic Recording Models: Time to Move Forward

January 16, 2019

www.pria.us

PROPERTY RECORDS INDUSTRY ASSOCIATION

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May 2019

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Executive Summary

For nearly as long as the Property Records Industry Association (PRIA) has been an organization, it has been linked with the concept of “the models of electronic recording.” This paper looks at the history of “the models,” along with some of the common misperceptions that have evolved relating to the models, and then examines 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 jurisdictions were the early pioneers of eRecording. Ernst was describing the various approaches these experiments were taking. The article was also speculative, touching on additional options that were being discussed by other 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 provides additional background and describes the industry's interim real-world experience with the concept of models.

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 differences between the models were how a document began its lifecycle (as paper or natively electronic) and the technologies used to create the electronic document.

The models were described 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(s) of the paper documents to the recorder for recordation rather than sending 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. The core of this model is that, in addition to the image of the document, Model 2 documents also include some information delivered as normalized data in an XML format to supplement the document image and, ideally, eliminate the need for rekeying for indexing and other purposes. This model can include both digitized and natively electronic documents. It also allows for both wet ink signatures and electronic signatures.
- 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.”)

Feature/Function	Model 1	Model 2	Model 3
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 an image and some amount of data. Paper documents are scanned to create an image, while natively electronic documents are rendered to a specified format as part of the electronic recording process.

Evolution of Electronic Recording and Resulting Misunderstandings

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 of eRecording.

- 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 electronic documents?
- Would there be a need to integrate with third party systems to validate natively electronic documents?
- Could a document notarized using electronic means be accepted for recording? 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 local administrative rules or as informal policy, to limit the documents jurisdictions will accept for eRecording. This constrained access to eRecording has limited submitters who use legitimate and lawful processes to create documents using electronic methods, including having the documents eSigned and eNotarized.

In PRIA's 2014 eRecording Document Volume Survey published in January 2017, there was a question asking counties about accepted models. The answers to this question revealed misunderstandings of the models accepted, eRecording processes, and applicable laws, and confusion about which models the jurisdiction did or did not accept. PRIA's eRecording vendor members report inconsistencies between the answers provided and the practices encountered. This type of confusion is cited regularly as a barrier by lenders, servicers, and settlement agents utilizing eRecording.

eNotarization and eRecording

When evaluating the relevance of the models of eRecording, keep in mind that the purpose for recording land records is to provide public notice. Recording does not bestow legal status on 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 the states of Washington, Illinois, and New York, provide equivalent legal status for electronic documents and signatures in relation to their paper and wet-ink counterparts. There is no need to make any distinction regarding how documents began their lifecycle. 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 eNotarization is growing. The adoption of rules relating to various forms of eNotarization provides guidance and certainty to the marketplace.

Another aspect of eNotarization is the conversion of electronic documents to tangible media (paper) for use in jurisdictions that do not currently electronically record. The Uniform Law Commission has recommended that states address this practice as they adopt eNotarization 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 of eRecording nomenclature is unnecessary and confusing. Eighteen years have passed since the experiments were first described by Ernst. The legal status of electronic documents and signatures is equivalent to paper counterparts. Electronic documents do not require any specialized technology for jurisdictions to review and record them. There are no substantive or functional reasons to differentiate between document models.

Since electronic documents, signatures, and notarization “satisfy the requirement of the law,” PRIA finds that the only distinction necessary is whether a jurisdiction electronically records documents. Therefore, a recording jurisdiction should not distinguish between an electronic document and paper document, an electronic signature and wet ink signature, or traditional notarization and electronic notarization when a document is submitted for eRecording. Going forward, PRIA will discontinue the use of the models terminology and concepts.