



eRecording eXcellence

Myths, Perceptions and Challenges

2012

2012 Myths, Perceptions and Challenges to eRecording

From the following perspectives:

1. Document Submitters (DS)
2. eRecording Vendors (eR)
3. Land Records Management vendors (LRM)
4. Quasi-Public Portals (P)
5. County Recorders (REC)
6. Notary Publics (N)

1) Document Submitters (DS):

- a. The cost vs. benefit of eRecording is often misunderstood by DS. There is the belief that they don't want to do BOTH eRecording and paper since it will "cost them more", even though some experienced submitters that do both formats have found less cost disparity than expected. (Recorders have similar beliefs about having "hybrid" systems – see 5.I).
- b. There are often additional and/or inconsistent indexing requirements for eRecording vs. paper recording. Since there are no indexing requirements for paper documents, it is often more difficult for submitters to prepare to the "higher" standards required for eRecording and risk rejection.
- c. The DS have found that sometimes either the REC or the eR groups are unwilling to accept all document types (especially if transfer tax is involved with certain docs.)
- d. DS have heard from the REC that routing requirements within the REC impede the implementation of eRecording (i.e. document must be seen by other departments in the county).
- e. For coverage of all eRecording counties, DS need to utilize multiple eR vendors.
- f. Often there is a tax payment and tax document that accompanies a recording and unless they are both handled electronically it is easier to do both via paper.
- g. There continues to be misunderstandings and confusion about the types of payments that are acceptable; often REC interpret receiving payment as "cash in hand same day" which eliminates use of ACH, even though they currently accept checks and even blank checks for paper documents, which in fact delay payments.

2) eRecording Vendors (and sometimes these are also document submitters) - (eR):

- a. eR vendors are impeded in implementing eRecording by either the LRM companies or the REC because of their lack of understanding of eRecording implementation and because the LRM companies use a different technology architecture (i.e. database management) for their recording system. Often it is assumed that it will be costly for the LRM and the REC to create the specific eRecording module required.
- b. There is sometimes misunderstanding from the REC or LRM about the simplicity of adding eRecording capability to existing legacy recording systems using direct eRecording products.
- c. Some quasi-public portal systems (P) require additional payment from eRecording vendors.

- d. Some REC believe they cannot have multiple eRecording vendors and they wait for their LRMs to complete their own eR modules before allowing any eRs to implement or to submit documents.
- e. Often there are technology limitations to implement eRecording within a county's existing legacyLRM system.
- f. Since portal systems can take some time to implement and go live, eRs must wait even though the county is ready.
- g. Many states have a Trustee requirement which must be accommodated before documents can be eRecorded.

3) Land Records Management Companies (LRM):

- a. Sometimes LRMs have not budgeted for eRecording modules in their long term plans so they have inadequate financial resources to efficiently implement eRecording into the REC legacy system; and eRecording XML interface is not always part of their recording software (see same impediment in 2a).
- b. Counties often don't specifically request LRMs to create this functionality.
- c. There is a general lack of knowledge about how to implement eRecording or the LRM perceives the implementation of eRecording in a different technological way than the eRecording vendor.
- d. Complex contracting process or restrictive county policy to implement new modules that slows down implementation.
- e. LRMs often believe they need to wait to create modules until all technology issues they've heard about are resolved such as eNotarization and digital signatures. A good deal of confusion exists in these two areas even though there have been minimal reported issues in REC doing eRecording (see 5.k below).

4) Quasi-public portal vendors (P):

- a. If portal systems are publicly funded, there are sometimes issues with quick implementation due to the restrictions on public monies. Portals of any type are not particularly commonly used in the public sector, although the funding wouldn't be as much of an issue if privately funded.
- b. Ps are often misunderstood by RECs and others especially regarding "required" participation by all counties, etc.
- c. Sometimes public funded Ps involve legislative issues and requirements that must be met before implementing, which slows the process.
- d. Often there is a lack of integration with LRMs and eRs (see 2.c).
- e. There is industry misperception that portal systems need to "do it all" - i.e. Recording, eRecording, etc. before they are ready to be implemented or used.
- f. It can be a lengthy process – from 1-3 years - to implement a P.
- g. P vendors frequently require an additional fee plus the recording fee, making eR transactions more expensive than direct delivery solutions.

5) County Recorders (R):

- a. RECs sometimes have the perception that an electronic document is less secure than a paper document even though this does not seem to be accurate.
- b. There is a perception that eRecording is more susceptible to fraud even though there are few examples of this. Paper documents have been more utilized in fraud cases.
- c. eRecording seems to be too difficult or "technical"

- d. There is a REC belief that the LRM will charge too much to add the eR module.
- e. County Councils or Commissioners may prohibit use of what they perceive as “new” technology
- f. Sometimes RECs wait for a “larger” system to emerge or other changes to occur, such as implementation of a statewide portal or the purchase of a new LRM system, before implementing any eRs into their legacy system.
- g. Some RECs perceive that DS do not want to eRecord until the REC accepts all types of electronic documents.
- h. Often RECs believe that their DS shouldn’t have to “pay” in any way for submitting documents electronically even though the DS now pay to submit paper documents via the mail, Fedex, couriers, etc.
- i. Some REC believe that there is no need to eRecord because their document volume is low or they are too “small”.
- j. There is often a REC perception that there will be a loss of jobs resulting from eRecording implementation even though there usually is a backlog of work or other office projects to complete.
- k. RECs often believe that they need to wait until all technology issues they’ve heard about are resolved; the primary ones being eNotarization and digital signatures. There is a great deal of confusion regarding these two areas even though they aren’t predominant issues in REC already using eRecording.
- l. RECs often believe that DS don’t want to support a hybrid system so they believe they should wait until they can eRecord most document types (see 1.a and 1.c).
- m. RECs often are reluctant to pay a fee to portals for delivering the documents, and perceive this as increasing the cost of recording.
- n. RECs do not like to deal with multiple queues such as having multiple eRecording vendors, in addition to mail and over-the-counter document arrivals. Sometimes this does create an issue in race-to-record requirements and workflows.
- o. There continues to be misunderstanding and confusion about the types of payment that are acceptable; often RECs interpret receiving payment as “cash in hand same day” which eliminates use of ACH, even though RECs currently accept checks and even blank checks – which in fact are delayed payments; sometimes the REC finance offices prohibit use of ACH because they haven’t used it yet.
- p. Sometimes RECs perceive that eRecording will be “lights out” and/or that all indexing will be done by DS to individual REC standards.
- q. There is still a perception by RECs that eRecording is “new” and therefore “scary” even though eRecording has been going on for over 10 years and most issues have been resolved and framed into a simpler, common framework.
- r. Some RECs believe that receiving eRecordings, with additional fees, will amount to an extra cost for landowners. T
- s. RECs sometimes believe that eRecordings are less secure than paper docs and more susceptible to robo-signing, or fraud.
- t. Sometimes RECs believe that eRecording adds an extra accounting/workflow task for their staff.

6) Notary Publics (N):

- a. There are many perceived legal authorization issues; here are a few:
 - i. ESign, UETA, and URPERA were all written without permitting eNotarization.
 - ii. RULONA may permit it, but RULONA has not been adopted in all states.

- iii. Some state's notary law needs to be amended before notaries feel they can electronically notarize.
 - iv. Some states needs to adopt UETA.
 - v. Some states needs to adopt URPERA.
 - b. There are National Association of Secretaries of State (NASS) "Standards" issues; here are a few:
 - i. Often the SOS wasn't in office when the NASS standards were adopted, so it's believed that he/she: 1) does not know about them, 2) knows but is not interested, 3) knows but does not agree with what they say. The former secretary of state, who had some interest in eNotarization, is no longer the appointing authority and the new appointing authority has no idea about nor shows any interest in the subject.
 - c. There are Notary Public Administrator, Appointing Authority or State Notary Site/Educational issues; here are a few:
 - i. The secretary of state/notary public administrator says they do not have enough money to develop an eNotarization program.
 - ii. The state appointing authority does not have the ability to authenticate electronically notarized documents.
 - iii. It's difficult to use eNotarization because the state appointing authority requires a notary journal be kept and that there is only one, not one for paper notarizations and the other for electronic notarizations.
 - iv. While there are eNotaries in the state, the state does not seem to know who they are or what they are doing and rules may be needed.
 - v. In some states (AL, GA, OH, TN, VT) there is no centralized notary appointing system and notaries are appointed by each county. Because of this, people don't always know who the voice of the notary community is in the state.
 - vi. The appointing notary public administrator does not approve the concept in the state and the N is not willing to eNotarize without her permission.
 - vii. Sometimes former N administrators are knowledgeable and interested in eNotarization, but new ones are not. This lack of personnel continuity often takes Ns back to "square one" regarding eNotarization.
 - d. Public Key Infrastructure/Digital Certificate Issues, such as:
 - i. There is a perception that the only way to eNotarize is with public key infrastructure (PKI) and no other way is secure enough for these important transactions.
 - ii. The state is a self-appointed/self-approved Certificate Authority. The only way to eNotarize is by using their PKI process.
 - iii. The state requires customers to have a digital certificate in order to sign in front of N.
 - iv. All this stuff about "digital certificates" is too confusing and way above most Ns heads.
 - e. Employer, Vendor, Technology and/or Software Issues, such as:
 - i. Employers (80% of notaries public are employed by someone) say the technology is not secure enough for our market vertical.
 - ii. The employer will not purchase it for Ns as it is too expensive.
 - iii. There is not a particular software package available for employer's market vertical or there is not a software package that will permit eNotarization a signing agent.
 - iv. There are often very few approved vendors who will provide software that permit eNotarization of all sorts of documents; Ns don't want to be restricted to too few document types.

- f. Common notary related beliefs/myths, such as:
 - i. I cannot eNotarize because my customer has to be face-to-face, within arms-reach and that is not how eNotarization works.
 - ii. eNotarizing takes longer to do than regular paper notarization and it would be a waste of my time and my employer's money to notarize in this fashion.
 - iii. There have been no court cases yet that have approved the concept of eNotarization, so I cannot do it.
 - iv. A document that I notarize in paper is accepted all over the world (perhaps with additional authentication) whereas eNotarized documents will not be.
- g. Customer Concerns or Issues, such as:
 - i. There haven't been any requests from the public, whom I serve, for documents to be eNotarized.
 - ii. It's difficult for my customers to agree that a typed name on an electronic document is as official as a traditional notarization.
 - iii. Electronic notarization does not require the use of an embossing seal. Even though the embossing seal is no longer required in my state my customers always ask for it; the seal impression makes them feel like they have a "real" notarization.
 - iv. Perhaps we should consider that the name "eNotarization" is a misnomer. It confuses the public who thinks it is something that is done long distance over the Internet. We may need to use a better descriptive that the public can wrap their brains around.

Other comments or miscellaneous issues:

- The Uniform Electronic Transactions Act (UETA) states that there shouldn't be a difference in legal requirements in paper versus electronic formats, but often counties require more. Very few people from any of the above perspectives understand UETA.
- Under the Federal Electronic Signatures Act (ESIGN) the Uniform Real Property Electronic Recording Act (URPERA) and UETA notaries may use any process to attach an electronic signature.
- We've been told by some eR vendors that they have even paid for LRM modules so counties can start using eRecording.
- There is general confusion among many REC, and others, regarding what PRIA standards actually do or don't do. Often REC participating in their states eRecording Commission think eRecording business rules are a PRIA standard. PRIA should consider explaining what PRIA standards are on their website.