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Title

How to Get Ready for Electronic Recording.

The Submitter's Guide

How to Get Ready for Electronic Recording, Recorders Guide Part 1

A PRIA WHITE PAPER

Approved by the PRIA Board of Directors

July 14, 2009

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How to Get Ready for Electronic Recording, The Submitter's Guide

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DEFINITIONS

Submitter- The party who requests the document be recorded and has an interest in getting the documents recorded.

Electronic Document Delivery Vendor- A party who packages and delivers the document(s) to the recording agency and returns the recorded documents to the submitter, e.g. recording portal, document aggregator vendor, etc.

Recording Agency- The party who receives the document(s) for recording, e.g. county recorder, auditor or clerk.

It should be noted that a Submitter may have the capability to deliver its own documents to the recording agency. In this case the Submitter acts as both a Submitter and an Electronic Document Delivery Vendor.

Overview

The Property Records Industry Association (PRIA) is a non-profit association that was formed to bring together participants of the property records industry, including government associations and business concerns to formulate standards and best practices for the industry.

Among other objectives, PRIA works to identify problems, opportunities and solutions that will make property records processes more efficient, standardized and responsive to the public.

Electronic recording enhances the real estate recording process and introduces new technologies. It can bring changes to office procedures and can include a significant investment in resources and time. It is a unique opportunity to bring considerable improvements to the recording process to create efficiencies whereby costs are reduced for both the county recorder and the document submitter.

In the United States land document recording may take place at the state, county, city, town, borough or parish. Depending on the jurisdiction, the office of County Recorder may also be known as the Recorder of Deeds, Registrar-General, Register of Deeds, Registrar of Deeds, Registrar of Titles, Deeds Registry, or Deeds Office. In some states the recording function is part of the county clerk's responsibilities.

Introduction to the Issues

Electronic recording (eRecording) brings fundamental changes to the document recording process, while improving the efficiency and speed of recording. The purpose of this white paper is to guide submitting offices through the process of successfully implementing eRecording by drawing on the experiences of those who have already done so. Often seminars and discussions that occur on this subject can be technical in nature, going far beyond the basics that are needed to implement eRecording. This guide is intended to provide a step-by-step process that goes through each step until a system is in place and a document is submitted to the recorder's office electronically. The first phase of this project developed a similar guide for recorders.

Traditional paper-based recording Model versus the eRecording Model

Traditionally, the real estate document recordings process involves submitting the original paper document that is delivered to the recording office in person or sent using a mail delivery system or courier service. eRecording is only a change in the medium and delivery method; most document recording rules and regulations still apply.

Benefits of eRecording

Formerly we dealt with recording industry partners specifically from our local region. Today we deal on a national basis.

Some of the benefits of eRecording are:

- Reducing document errors and rejections
- Eliminating mailing and other document delivery costs
- Reducing delivery delays or loss
- Reducing document turn-around time
- Reducing redundancy
- Improving office efficiencies-Streamlines the document workflow process
- Enhancing Document security
- Enhancing efficiency of staff

The biggest advantage is time. Please see the below chart which indicates the estimated time for paper / regular Recording vs. eRecording:

Action Step	**Paper**	**Electronic**
Prepare Documents	5-10 minutes	5-10 minutes
Execute & Calculate Fees	5 minutes	5 minutes
Delivery	½ day to 5 days	30 seconds
Recorder Processing	½ day to 21 days	60 seconds
Return Delivery	½ day to 5 days	30 seconds
Update Title Files	½ day to 21 days	15 seconds
Total Time	2 – 52 **DAYS**	12.25 – 17.5 **MINUTES**

Is There Legal Authority to Submit eRecordings and Where Can I Find It?

Before starting down the road to eRecording, the first step is to determine whether the states in which you wish to eRecord provide the legal authority to eRecord. Many states may have enacted the Uniform Electronic Transactions Act (UETA), with Sections 17, 18, and 19, or the Uniform Real Property Electronic Recording Act (URPERA), or both. These laws give county recorders the legal authority to record electronically and allows submitters to deliver electronic real estate documents for recording. Though both acts supersede state recording statutes regarding the acceptance and recording of electronic real estate documents, another good step is to review the state's recording statutes and/or regulations to ensure the state allows for the acceptance of the eRecording model under consideration (see page 6 for the current definitions of the three eRecording Models). Some states may have passed different laws impacting or permitting eRecording, so you may need to research that possibility.

Your legal review could include additional steps. You should consider the following:

- Determine whether the state has enacted UETA (with or without Sections 17, 18, and 19) and or URPERA. You can check online at www.nccusl.org for a listing of states that have enacted UETA or URPERA.
- Review the state's recording statutes and any state or local regulations or ordinances.
- Find out whether there's a legal opinion from the jurisdiction's legal authority, e.g., State Attorney General or County Counsel.
- Contact the State Recorders' Association.
- Contact the Recorder directly to determine the legal basis under which they are accepting eRecordings.
-

You should also check the status of electronic notarization (eNotarization) in the state. This status is going to be an important determination for you to know whether they can close an "all electronic" real estate transaction. You need to know the status of eNotarization to determine if the county to which you plan to submit electronic documents can accept a Model 3 eRecording transaction. The federal Electronic Signatures in Global and National Commerce Act (ESIGN), UETA and URPERA allow notaries to use electronic signatures in a notarial act, such as an acknowledgment in a real estate transaction. However the state may or may not have enacted additional legislation or the secretary of state may have promulgated regulations that could affect the status or conditions of eNotarization in your state.

> Two whitepapers that are available have been published by MISMO and the MBA. They include: "Case Closed: eNotes Are Legal", available at http://www.mortgagebankers.org/files/ResourceCenter/emortgage/eNoteWhitePaper.pdf. Also, "Security Interests in Transferable Records", available at http://www.mortgagebankers.org/files/Technology/MBAResTechWhitePaper-SecurityInterestsinTransferableRecords.pdf.

Models of eRecording

PRIA has summarized the definitions of the three models of eRecording as follows:

Model 1 recordings are typically scanned paper with no index data accompanying the images. This image is a digitized copy of the paper document.

Model 2 recordings are scanned paper with index data included. Generated by the same process as Model 1 but it also includes sending at least some index information along with the image.

Model 3 recordings are electronic documents (they never were in paper form) with index data embedded into and extractable from the document. The viewable image that did not come from scanned paper.

For more detailed information on the models of eRecording go to www.pria.us to read "*The* M*odels of eRecording, A Continuum of Electronic Recording Updated"* a PRIA white paper presented July 2009.

The Role of the Submitter in eRecording

There are certain documents in a closing or real-estate transaction package that are required to be submitted into public records and recorded. eRecording is just one more available tool using technology to submit documents to the county recorder. It is much easier today to locate county recorders across the country that are doing some level of eRecording. The Property Records Industry Association (PRIA) maintains a list of counties that have adopted enabling eRecording technology. This list can be found at www.pria.us. There are many qualified eRecording software solution providers that are well versed in implementation and the technical requirements of eRecording.

How Will eRecording Affect My Existing Filing System?

If you currently use a software vendor for your computer system, they may have an eRecording module that can be integrated into your current system. If your vendor does not have an eRecording package, then you will need to do some checking to identify vendors that can integrate with your system. If you have a home grown system, you will need to talk with your information technology (IT) department to determine integration capabilities with an outside vendor. Places to check include the Property Records Industry Association (PRIA) at www.pria.us, trade shows, the Internet and county recorders.

How Will eRecording Affect my Business Practices?

This section relates in a number of ways to policies and procedures, but also addresses how payment for electronic recordings will be made.

You most likely have business rules governing your paper-based documents. You will want to outline your business rules for electronically-submitted documents as well. You may be required to sign a Memorandum of Understanding (MOU) with the counties that you do eRecording with. This is to ensure that you both understand and will follow the procedures for electronically submitted documents.

In considering how payment will be processed for electronically submitted documents, you must decide on a payment method. Most county recorders who have implemented eRecording are not willing to accept or wait for a mailed check for an electronically submitted document. If the decision is that payment for eRecordings should be made by Automated Clearing House (ACH) or escrow, you need to set up this type of payment process. Will you use ACH debit (the county pulls money for recordings completed) or ACH credit (submitter sends money for documents sent, even if they haven't been recorded or rejected yet). Will you be required by the county to maintain a specific minimum in the escrow account? (See page 13,"What type of Payment Options are Available for eRecording?").

If the county has document formatting standards, you will want to ensure that these standards are in place for electronically-submitted documents. Are there any document types that the county is unwilling to accept electronically? Many jurisdictions have held off on accepting large scale drawings such as plats or condominium drawings. Will the county allow a re-recording to be submitted electronically? Why or why not?

How much, if any, indexing data are you expected to include? Does the county require at least one grantor and one grantee to make sure the document images match? Does the county require a document type as well as a grantor or grantee name? Does the county expect the submitters to understand and remember each jurisdiction's particular abbreviation rules or shortened legal description variations?

These and other considerations need to be addressed prior to eRecording. Each particular jurisdiction may require additional procedures.

How Do I Implement eRecording in My Office?

This section of the eRecording Submitters Guide is intended to assist you with the implementation of eRecording in your office. It assumes that you have obtained the necessary authorizations and resources required and that you have selected a software vendor that provides the necessary software to capture and submit electronic documents to the county recorders' system efficiently and securely. (See page 14 "How Do I Select an eRecording Vendor?")

Implementation of eRecording in your office is a significant undertaking, but it need not be an overwhelming or difficult one. The key to success is to have a well-developed project plan. Like any good plan, it should include the tasks to be performed, the sequence they must follow, and who is responsible for accomplishing them. Starting with an implementation project plan – your eRecording roadmap – is the first step on your path to eRecording success. Fortunately this is a road well-traveled, there are many people and organizations that you can turn to for assistance.

Developing a good implementation plan and staying on-task requires the leadership of an experienced Project Manager (PM). The PM is responsible for carrying out the plan, applying necessary resources at the appropriate times, and making the mid-course corrections that will inevitably be required. That PM may be someone from your office, the vendor IT department, or an independent consultant. Regardless of their affiliation, the PM can only be successful if he or she is empowered to manage the entire project. As the project underwriter, you must be willing to give the PM responsibility and authority. (Hint: Avoid the temptation to be your own PM!)

Implementation of eRecording requires the cooperative effort of a number of both internal and external stakeholders in your company. What company departments should be included in the implementation and the final eRecording process*?* Company representation might include: individuals currently performing paper based document submissions to a county, IT, quality control, and administrative departments. (See page 10, "What Departments Should be Included in the eRecording Decision and Implementation?) Externally, county representatives, submission vendors, and software solution providers are likely participants. From these stakeholders an eRecording Implementation Team should be formed. Use your PM to help you identify, solicit and obtain the necessary stakeholder commitments. (Hint: Keep the eRecording team small – less than 10 if possible. Things get done quicker with fewer members. Specialized input can be obtained by applying appropriate resources on an as-needed basis.)

Change can be unsettling to some, especially in the work environment. While you may be very eager to start eRecording, your staff may be reluctant and have questions about how their work duties will change. It usually helps when they understand that eRecording is just another way to submit and process documents. Moreover, eRecording might significantly reduce mundane and repetitive tasks such as printing, data entry, re-entry verification and other such tasks. eRecording frees staff to deal with those exceptional or complex situations that should be handled by subject matter experts. Seeing eRecording in action and talking to peers is a great

way to ease into the change. It is likely that someone nearby in your state or region has already implemented eRecording and would be willing to provide you and your staff with a demonstration. Sending your staff in small groups to visit an eRecording submitters' office is well worth the time and expense involved. It should be considered as part of the cost of implementation strategy. (Hint: Make a reluctant staff member part of your implementation team.)

Look to your PM for assistance with tailoring your specific needs, if required. Once developed, the task list should drive weekly task team meetings hosted by your PM. (Hint: Teleconferences and web conferencing are not only convenient, but save time and money for everyone. Meetings should be short. After the first few, less than half an hour should be sufficient.)

The following is a brief explanation of the four implementation phases of the task list. Again, your PM should help you tailor your plan.

- Phase 1: Project initiation gets your project underway by identifying team members, determining meeting schedules and establishing project milestones. This also helps to get a jump start on any mandated approvals your county may require. Importantly, it moves quickly to identify a county that is willing to take this journey with you. Without counties on board, there are no eRecordings.

- Phase 2: The design phase identifies the rules under which your office will process eRecordings. It documents your current paper recording practices and specifies how eRecordings will fit into your work flow. eRecording payment rules are defined and recording specifications are established with the county and their vendors. (Hint: Your vendors are paid to meet your requirements.) This phase also involves your IT resources by identifying the hardware, software, security and certification specifications. This is also the phase in which you need to interview different vendor solutions and identify with your project team which solution your team prefers to use for eRecording and submissions. Testing plans are developed in which your submission vendors should play a major role (See Phase 4).

- Phase 3: In the build phase of your implementation, the IT and vendor technicians will work closely together to acquire, assemble and configure your installation infrastructure. All the hardware and software components are completed and tested. A test environment is built for you and the county to use in the next phase.

- Phase 4: Once the hardware and software pieces have been assembled, you are ready to deploy the system, starting with the exchange of test documents. All of the document types you intend to process electronically should be tested. Test documents containing errors should be run to ensure your software is applying accurate edit and validation rules. While these tests are underway, it is time to train your staff in the use of the system. The best way to do so is to have them perform the system testing. Repeat the tests until everyone is satisfied that the application is running correctly. You are now ready to "point" your systems away from the "test" and to your "production" environments and process your first electronic recording. Your IT and vendor technicians should be on hand and ready to resolve any problems that might occur, including "undoing" a transaction that fails to process correctly. "Fix-and-start-over" is nothing unique in this situation and only serves to further error proof your new system. Lastly, don't forget to celebrate your success and let your internal and external stakeholders know you are now an eRecording submitter to the county! Take some photos to document your eRecording journey.

What Departments Should be Included in the eRecording Decision and Implementation?

Legal/Compliance -

While eRecording continues to gain widespread acceptance, you should consult with your legal and compliance departments before beginning to submit documents electronically. These departments may want to review the recording statutes in areas you wish to eRecord. If you will be submitting documents on behalf of others, their approval should be sought before beginning to eRecord their documents.

Purchasing/IT-

The submission of documents electronically may necessitate the purchase of additional computer software or hardware for your eRecording work station. Your office may have specific guidelines to follow for any such procurement. Check with your purchasing department, administrator or other appropriate manager(s) as required.

Document Recording -

Any department that is involved in the processing of executed recordable documents prior to or subsequent to its recordation must be involved in the eRecording decision and workflow development. These may include:

- Pre-recording/QC Department: Not all counties eRecord and those that do may not accept all document types electronically. Your pre-recording team will need to be involved to establish workflows for documents that can and cannot be eRecorded.
- Post-recording Department: The original documents that have been recorded using Model 1 or Model 2 eRecording will not have a recording stamp on them. Your post-recording team will need to be involved to establish a process for matching the original document with the image of the electronically recorded document.
- Technology Dept.: Documents that have been recorded using Model 3 eRecording will not have a physical document to return. Your technical staff will need to be involved in the returning of these images to your customer and your image repository.
- Document Preparers, Closing Agents and Notaries: If your organization will be utilizing Model 3 eRecording, the departments responsible for the creation, execution and acknowledgement of the documents need to be involved.

Accounting -

Just as the inclusion of any department that touches the physical document is necessary, so is the inclusion of any department that is involved in the monetary aspect of recording. Any department involved in the payment, billing, reconciling or auditing of any monies must be involved. The most prevalent form of electronic payment of fees and taxes for eRecording is through ACH or escrow accounts.

Departments that may be involved in these decisions include:

- Accounting Department: Payment of recording fees and taxes are not made through traditional paper checks. This will change their process of bank account reconciliations.
- Escrow Audit Department: To develop an audit process of the charges made by the county and eRecording vendor against the escrow files.
- Your Bank: To ensure that an eRecording vendor can ACH the necessary funds from your account.

Support/IT-

Any new computer system or automated process will require the inclusion of your IT staff to facilitate any integration with your existing systems.

How do I Identify Potential eRecording Jurisdictions

The eRecording of land record documents is rapidly being implemented in the 3,600 recording jurisdictions in the United States. In order to do so, their respective state legislatures must have enacted enabling legislation such as the Uniform Electronic Transactions Act (UETA), with Sections 17, 18 and 19, and the Uniform Real Property Electronic Recording Act (URPERA), or both. In addition, the federal Electronic Signatures in Global and National Commerce ACT (ESIGN), along with UETA and URPERA allow notaries to use electronic signatures in a notarial act, such as an acknowledgment in a real estate transaction. The National Conference of Commissioners on Uniform State Laws maintains a list of states that have adopted enabling eRecording legislation. The list can be found at www.nccusl.org.

Because the list of counties accepting eRecording submissions continues to grow, contacting the respective recording office(s) is the surest way to verify whether or not they accept eRecordings and which models they are able to process. (See page 6, "Models of eRecording") Typically the county website provides recording office contact information and possibly the status of eRecording implementation therein. In addition, when jurisdictions first implement eRecording, they typically notify their frequent submitters that they are now doing so. Watch for public notices, mailings, announcements at PREP meetings, or trade conferences to that effect.

If you choose to submit documents through one or more national electronic submission vendors, those organizations will know into which jurisdictions they can process eRecordings. Ask your submission vendor(s) to keep you apprised of recording offices as they implement eRecording.

Finally, if the jurisdiction you wish to submit eRecordings into has not implemented eRecording, it will be helpful to contact the appropriate authorities in that organization. Your request to eRecord with them may well provide the impetus and justification for the recording office to receive the necessary funding to do so.

What Type of Payment Options are Available for eRecording

When implementing eRecording there are often questions on how payments for recording fees, taxes and any associated vendor service fees are made. There are primarily two methods for making payments for eRecordings. The payment method required is determined by the individual county and in some cases the eRecording vendor.

Escrow Accounts –

The first payment method that works with eRecording is the use of Escrow Accounts at the county or eRecording vendor. If using escrow accounts for the payment of fees associated with eRecording, there are a few things to keep in mind. An escrow account will need to be established with each county that requires this payment method. These accounts will need to be funded prior to eRecording and can be funded either through the deposit of funds via check or the deposit of funds via ACH, which will be covered more in depth in the next section. When using escrow accounts for payment of eRecordings, it is important to keep in mind that these accounts will need to replenished on a regular basis and the process for replenishing these accounts should determined as you plan your eRecording process.

ACH –

The second payment method that works well with eRecording is ACH, which is an electronic funds transfer method of payment. If using ACH for the payment of fees associated with eRecording, there are two very important things to keep in mind.

1. In order to pay via ACH payments, your accounting and finance personnel must be prepared to reconcile the ACH transmissions just as they reconcile check transactions today.

2. Your bank account must be set up to allow ACH transactions. Many banks automatically ensure that all of their accounts can utilize ACH transmissions, but it is important to check in to this.

ACH is a very reliable payment method when used in conjunction with eRecording as it allows the county and the submitter to employ a fully automated process for eRecording all the way from payment of fees to recording.

Wire Transfer –

The county financial system may be in a position to accept wire transfers from submitters to fund a recording account. Typically wire transfers are used for large dollar transactions, as a fee is typically charged by the sending or receiving bank institution. You should check with the county financial staff to see if this is possible.

How are Submitters Notified of Rejection or Acceptance of an Electronically Submitted Document?

When implementing eRecording it is important to understand how the receiving jurisdictions will notify you that your submitted documents have been successfully recorded, or why they were rejected. In order to enable eRecording, the recording office's land records system must have the ability to interface with similarly enabled submitter's software. The business rules established by the recording office dictate how, and in what format, the acceptance and rejection notifications will be sent to you. Typically, the electronic interfaces between the enabled systems carry these notices along with supporting explanatory information. You will need to verify that you will receive notices of the status of all associated financial transactions. Authorities in both the document processing and financial departments in your organization should understand and approve the notification rules prior to initiating eRecording. If you use a national submission vendor, they will apprise you of the notice detail you should expect to receive from them and or the receiving jurisdiction(s).

Who Can Answer My Questions about eRecording?

When working to implement eRecording within your organization there will most certainly come a time when you have questions that have not been answered. When this occurs there are a number of resources you can turn to. PRIA works to provide much information regarding eRecording to members and non-members through its web site at www.pria.us and through its Property Records Education Partners (PREP) chapters. Check on a PREP chapter in your area or region by clicking on the link on the PRIA web site. Other good resources include submitters in your area that may already be eRecording, the county to which you wish to eRecord and eRecording vendors.

How Do I Select an eRecording Vendor?

In addition to the actual application software that will enable eRecording in your office, your IT infrastructure may also require the addition of a server, communications, and security hardware and software. However, you need not become a computer expert to move ahead. It is the responsibility of the eRecording vendor to work with your IT department to provide the technical requirements and expertise needed for your eRecording implementation. Consequently, selecting the right eRecording vendor is likely the most important decision you will need to make in this process. The following information will help you with that decision.

The most important thing to look for in an eRecording vendor is their ability and willingness to interface with another vendor's recording and indexing application. Ask your IT department to review the vendor's interface(s). From a technical perspective, communications between the systems should use current industry-based Extensible Markup Language (XML) protocols and be fully exposed with either Application Program Interface (API) calls or Web services – none of which you need to understand, but your IT department should. Those interfaces should be well documented and available from your vendor.

Another obvious but often overlooked criteria for your eRecording vendor is a successful track record. Too often a slick demonstration will convince the unwary buyer that the vendor knows what they are doing. Proof of competency is a history of successful installations, possibly including the beginning product version and all revisions that have been made as improvements to the original product. These installations should mirror your system and office environments as closely as possible.

In addition to the communications standards noted above, the eRecording vendor's software should be based on the PRIA electronic document standard. This standard was developed so that the industry would use one seamless set of open eRecording standards nation-wide. The standards are published and can be downloaded on the PRIA web site and the vendor should be well aware of them. The vendor's eRecording product should support all three currently defined models of eRecording. Finally the vendor should follow commonly recognized eRecording security technology. (See the PRIA white paper "Electronic Recording Security Considerations") Ask your IT department to check adherence to digital certificate document processing and Secure Socket Layer (SSL) communication protocols.

As detailed in the section on implementing eRecording, your eRecording vendor needs to be part of your Implementation Team. This means help with developing a project plan, attending frequent progress meetings, and being onsite when you go live. The technical requirements for their system should be fully documented and reviewed with your IT department. All costs should be documented, including implementation, training, and travel expenses. Additionally, the terms and conditions of the vendor's on-going support are vital to your on-going success. Typically, support fees will either be in the form of an annual charge (for example, 15 to 20 percent of the original product cost) or a per-document charge.

Be sure these fees are documented and reviewed with your accounting department before making your final selection. Besides their support fees, the vendor's help-desk specifics should be understood. Are they available to you during your normal working hours regardless of time zone? Are there long-distance charges for calls? Do they have the ability to access your system remotely? Again, check with a reference submitter on these details. Ask about their performance before, during, and after the installation. Quality after-the-sale support is every bit as important as the features and functions of the application itself.