



DELBERT HOSEMAN
Secretary of State

TASK FORCE TO STUDY UNIFORMITY IN REAL PROPERTY RECORDINGS

AGENDA -- SECOND MEETING

**Mississippi Secretary of State's Office
700 North Street
Jackson, Mississippi**

**July 21, 2009
11:00 A.M.**

1. Introductions
2. Approval of Minutes from Organizational Meeting held on May 14, 2009 (Handout #1)
3. Presentation by Teleconference by Mark Ladd, National Property Records Industry Association (NPRIA) on e-Recording (Handout #2)
4. Powerpoint Presentation on Uniform Real Property Electronic Recording Act (Handout #3)
5. Presentation by Clint Pentecost, ITS, re "Madison County Project"
6. Chancery Clerks Survey Report and Results (Handouts #4 and 5)
7. Need for Task Force to Participate/Advise re: Implementation of New State Law on Uniform Formatting Standards for Land Documents (Handouts #6 and 7)
8. Other Business
9. Adjourn

Upcoming Meeting Dates: August 26; September 22


Handouts

1. Minutes of May 14, 2009 Meeting
2. Bio of Mark Ladd, NPRIA
3. URPERA materials (PowerPoint Presentation and Article)
4. Copy of Survey
5. Survey Responses and Compilation
6. MS Code Section 89-5-24, Effective July 1, 2009
7. MS Chancery Clerks Associations Handout "New Document Formatting Guidelines"
8. Updated Roster of Task Force Members
9. Alabama Electronic Property Recording Act

Code of Alabama [Currentness](#)

Title 35. Property.

Chapter 4. Conveyances and Creation of Estates.

 [Article 3.](#) . Recordation and Registration in General.

 [Division 4.](#) . Alabama Uniform Real **Property Electronic Recording Act**. [Final Placement and Text of 2009 Legislation is Subject to Editorial Action of the Code Commissioner]

HISTORY

Effective date:

The act which added this division is effective January 1, 2010.

Ala. Code 1975 T. 35, Ch. 4, Art. 3, D. 4, Refs & Annos, AL ST T. 35, Ch. 4, Art. 3, D. 4, Refs & Annos

Current through Act 2009-580, except Acts 2009-389, 2009-390, 2009-391, 2009-486, 2009-513, 2009-543, and 2009-569.


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➔ **§ 35-4-120. (Final placement and text of 2009 legislation is subject to editorial action of the Code Commissioner) Short title.**

This act may be cited as the Alabama Uniform Real **Property Electronic Recording Act**.

CREDIT(S)

([Act 2009-510, § 1.](#))

HISTORY

Effective date:

The act which added this section is effective May 14, 2009.

Ala. Code 1975 § 35-4-120, AL ST § 35-4-120

Current through Act 2009-580, except Acts 2009-389, 2009-390, 2009-391, 2009-486, 2009-513, 2009-543, and 2009-569.

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➔ **§ 35-4-121. (Final placement and text of 2009 legislation is subject to editorial action of the Code Commissioner) Definitions.**

In this act:

(1) “Document” means information that is:

a. Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

b. Eligible to be recorded in the land records maintained by the judge of probate.

(2) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) “Electronic document” means a document that is received by the judge of probate in an electronic form.

(4) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(6) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

CREDIT(S)

([Act 2009-510, § 2.](#))

HISTORY

Effective date:

The act which added this section is effective May 14, 2009.

Ala. Code 1975 § 35-4-121, AL ST § 35-4-121

Current through Act 2009-580, except Acts 2009-389, 2009-390, 2009-391, 2009-486, 2009-513, 2009-543, and 2009-569.


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➔ **§ 35-4-122. (Final placement and text of 2009 legislation is subject to editorial action of the Code Commissioner) Validity of electronic documents.**

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this act.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) 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.

CREDIT(S)

([Act 2009-510, § 3.](#))

HISTORY

Effective date:

The act which added this section is effective May 14, 2009.

Ala. Code 1975 § 35-4-122, AL ST § 35-4-122

Current through Act 2009-580, except Acts 2009-389, 2009-390, 2009-391, 2009-486, 2009-513, 2009-543, and 2009-569.

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→ **§ 35-4-123. (Final placement and text of 2009 legislation is subject to editorial action of the Code Commissioner) Recording of documents.**

(a) In this section, “paper document” means a document that is received by the judge of probate in a form that is not electronic.

(b) A judge of probate:

(1) Who implements any of the functions listed in this section shall do so in compliance with standards established by the Electronic Recording Commission.

(2) May receive, index, store, archive, and transmit electronic documents.

(3) May provide for access to, and for search and retrieval of, documents and information by electronic means.

(4) Who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.

(5) May convert paper documents accepted for recording into electronic form.

(6) May convert into electronic form information recorded before the judge of probate began to record electronic documents.

(7) May accept electronically any fee or tax that the judge of probate is authorized to collect.

(8) May agree with other officials of a state or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes as provided for in the standards to implement this act.

CREDIT(S)

([Act 2009-510, § 4.](#))

HISTORY

Effective date:

The act which added this section is effective May 14, 2009.

Ala. Code 1975 § 35-4-123, AL ST § 35-4-123

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➔ **§ 35-4-124. (Final placement and text of 2009 legislation is subject to editorial action of the Code Commissioner) Administration and standards.**

(a) The Electronic Recording Commission consisting of 14 members is created to adopt standards to implement this act. The members shall be appointed as follows:

- (1) Six judges of probate or chief clerks appointed by the Alabama Probate Judges Association.
- (2) Two practicing attorneys appointed by the Alabama State Bar Association.
- (3) One person engaged in the business of title insurance in the State of Alabama appointed by the Alabama Land Title Association, a division of the Dixie Land Title Association.
- (4) One person appointed by the Alabama Bankers Association.
- (5) One person appointed by the Association of County Commissions of Alabama.
- (6) The Chief Examiner of the Alabama Department of Examiners of Public Accounts, or his or her designee.
- (7) The Director of the Alabama Department of Archives and History, or his or her designee.
- (8) One person appointed by the Alabama Association of Realtors.

(b) To keep the standards and practices of judges of probate in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this act and to keep the technology used by judges of probate in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this act, the Electronic Commission, so far as is consistent with the purposes, policies, and provisions of this act in adopting, amending, and repealing standards, shall consider:

- (1) Standards and practices of other jurisdictions.
- (2) The most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association.
- (3) The views of interested persons and governmental officials and entities.
- (4) The needs of counties of varying size, population, and resources.

(5) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

(c) The Electronic Recording Commission shall adopt standards pursuant to this act. The commission shall prescribe uniform standards for electronic recording of real estate records for any county participating in the electronic recording of real estate in the county. The Secretary of State, pursuant to the Alabama Administrative Procedure Act, shall immediately implement the standards adopted by the Electronic Recording Commission without change.

CREDIT(S)

[\(Act 2009-510, § 5.\)](#)

HISTORY

Effective date:

The act which added this section is effective May 14, 2009.

Ala. Code 1975 § 35-4-124, AL ST § 35-4-124

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➔ **§ 35-4-125. (Final placement and text of 2009 legislation is subject to editorial action of the Code Commissioner) Scope and restrictions.**

Except as expressly provided in this act or the standards adopted by the Electronic Recording Commission, nothing in this act or any rule adopted pursuant to this act may amend, alter, or repeal the substantive law of this state as it relates to the requirements of any real property recording.

CREDIT(S)

([Act 2009-510, § 6.](#))

HISTORY

Effective date:

The act which added this section is effective May 14, 2009.

Ala. Code 1975 § 35-4-125, AL ST § 35-4-125

Current through Act 2009-580, except Acts 2009-389, 2009-390, 2009-391, 2009-486, 2009-513, 2009-543, and 2009-569.


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➔ **§ 35-4-126. (Final placement and text of 2009 legislation is subject to editorial action of the Code Commissioner) Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

CREDIT(S)

([Act 2009-510, § 7.](#))

HISTORY

Effective date:

The act which added this section is effective May 14, 2009.

Ala. Code 1975 § 35-4-126, AL ST § 35-4-126

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➔ **§ 35-4-127. (Final placement and text of 2009 legislation is subject to editorial action of the Code Commissioner) Relation to Electronic Signatures in Global and National Commerce Act.**

This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act ([15 U.S.C. Section 7001, et seq.](#)) but does not modify, limit, or supersede Section 101(c) of that act ([15 U.S.C. Section 7001\(c\)](#)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act ([15 U.S.C. Section 7003\(b\)](#)).

CREDIT(S)

([Act 2009-510, § 8.](#))

HISTORY

Effective date:

The act which added this section is effective May 14, 2009.

Ala. Code 1975 § 35-4-127, AL ST § 35-4-127

Current through Act 2009-580, except Acts 2009-389, 2009-390, 2009-391, 2009-486, 2009-513, 2009-543, and 2009-569.

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**TASK FORCE TO STUDY UNIFORMITY IN REAL
PROPERTY RECORDINGS**
(As established in House Bill No. 489, 2009 Regular Session)

Land Records Survey
June 10, 2009

Dear Chancery Clerk, the Task Force is compiling information on the various systems used by the Chancery Clerks' Offices for the recording, indexing, storing and retrieving of real property documents. Please help us by completing this survey and returning it to the Mississippi Secretary of State's Office, in care of Cheryn Baker, at fax number 601-359-1499 or by email to her at Cheryn.Baker@sos.ms.gov. If you have any questions please call Ms. Baker at 601-359-1401. We would appreciate you returning this survey by June 30, 2009.

Clerk's Name and County: _____

1. How are deeds, deeds of trust and other land instruments filed in your office's land records?

- ☐ paper copies
- ☐ scanned electronic or digitized copies
- ☐ both

2. How are deeds, deeds of trust and other land instruments indexed in your office?

- ☐ traditional bound index book
- ☐ electronic or computer indexes
- ☐ both

If any of your records are recorded or indexed electronically, please answer Question 3-8, otherwise skip to Question 10.

3. My scanned or digitized record copies cover the period of time from _____ to _____.

4. My electronic or computer indexes cover the period of time from _____ to _____.

5. My electronic or computer records are available for viewing and searching by:

(check all that apply)

- ☐ staff
- ☐ registered users
- ☐ attorneys
- ☐ general public

6. Is there a charge for access or use of electronic or computer records?

- ☐ no
- ☐ yes

7. Are any of your computer or electronically maintained records available on the internet?

☐ no

☐ yes

8. Please list the name and address, contact person and telephone number of the vendor responsible for developing and maintaining your electronic or computer records system.

9. Please list the name of the person to contact to get more information about your office's automation of the land records. Include their phone number and email address.

10. Approximately how many deeds or land related instruments are filed in your office every year.

11. Are you currently considering implementing a system for electronic storage and retrieval of land records filed in your office?

☐ no

☐ yes

12. Have you seen in operation or in a demonstration an electronic land record management system that you were impressed with? If so, please state where you saw the system and the name of the company which developed or demonstrated the system and the contact information for that company.

13. Please describe your general feelings about electronic or computer land management systems.

☐ not interested

☐ might be interested

☐ very interested

☐ other (please explain) _____

HAND OUT #5



DELBERT HOSEMAN
Secretary of State

Computation of Chancery Clerk Survey Responses

Compiled by Division of Policy and Research

July 2009

60 Out of 82 Counties Responding (73%)

How are deeds, deeds of trust and other land instruments filed in your office's land records?

15 counties (25%) use paper: Amite, Bolivar, Claiborne, Greene, Hinds, Kemper, Lawrence, Marion, Perry, Quitman, Sharkey, Smith, Tippah, Walthall, Webster

28 counties (47%) use scanned electronic or digitized copies: Alcorn, Chickasaw, Clarke, Coahoma, Copiah, Desoto, Hancock, Itawamba, Jackson, Jasper, Lafayette, Lee, Lincoln, Madison, Marshall, Monroe, Newton, Noxubee, Panola, Pearl River, Pike, Pontotoc, Rankin, Simpson, Sunflower, Union, Warren, Wayne

17 counties use both: Attala, Benton, Calhoun, Carroll, Forrest, George, Grenada, Harrison, Humphreys, Jefferson Davis, Lamar, Montgomery, Neshoba, Scott, Tallahatchie, Wilkinson, Yazoo

1. How are deeds, deeds of trust and other land instruments indexed in your office's land records?

11 counties (18%) use traditional bound index books: Greene, Humphreys, Kemper, Lawrence, Perry, Sharkey, Smith, Tallahatchie, Tippah, Walthall, Webster

28 counties (47%) use electronic computer indexes: Alcorn, Amite, Benton, Chickasaw, Claiborne, Coahoma, Copiah, Desoto, Hancock, Hinds, Itawamba, Jackson, Jasper, Lafayette, Lee, Lincoln, Marion, Monroe, Newton, Panola, Pike, Pontotoc, Rankin, Simpson, Sunflower, Union, Warren, Wayne

21 counties use both: Attala, Bolivar, Calhoun, Carroll, Clarke, Forrest, George, Grenada, Harrison, Jefferson Davis, Lamar, Madison, Marshall, Montgomery, Neshoba, Noxubee, Pearl River, Quitman, Scott, Wilkinson, Yazoo

5. Who can access the electronic or computer records? (counties not listed currently do not use electronic record keeping)

44 counties allow access to everyone including general public: Alcorn, Amite, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Clarke, Coahoma, Copiah, Desoto, Forrest, George, Grenada, Hancock, Harrison, Hinds, Itawamba, Jasper, Jefferson Davis, Lafayette, Lamar, Lee, Lincoln, Madison, Marion, Marshall, Monroe, Neshoba, Newton, Noxubee, Panola, Pearl River, Pontotoc, Quitman, Rankin, Scott, Simpson, Sunflower, Union, Warren, Wayne, Wilkinson, Yazoo.

3 counties allow access to staff only: Attala, Jackson, Montgomery

1 county allow access to attorneys and general public only: Pike



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Computation of Chancery Clerk Survey Responses

Compiled by Division of Policy and Research

July 2009

6. Who charges for access to electronic records? (counties not listed currently do not use electronic record keeping)
- 45 counties do not charge: Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Clarke, Coahoma, Copiah, Desoto, Forrest, George, Grenada, Hancock, Harrison, Hinds, Itawamba, Jasper, Jefferson Davis, Lafayette, Lamar, Lee, Lincoln, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Panola, Pearl River, Pike, Pontotoc, Quitman, Rankin, Scott, Simpson, Sunflower, Union, Warren, Wayne, Wilkinson, Yazoo.
- 1 county does charge: Jackson
7. Can your records be accessed via the Internet? (counties not listed currently do not use electronic record keeping)
- 37 counties can not access via internet: Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Coahoma, Copiah, George, Grenada, Hancock, Itawamba, Jackson, Jasper, Jefferson Davis, Lafayette, Lamar, Lee, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Panola, Pearl River, Pontotoc, Quitman, Rankin, Scott, Simpson, Sunflower, Union, Warren, Wayne, Wilkinson, Yazoo.
- 10 counties can access via internet: Amite, Clarke, Desoto, Forrest, Harrison, Hinds, Lincoln, Madison, Marion, Pike
11. Are you currently considering implementing a system for electronic storage?
- 17 counties said yes: Alcorn, Amite, Bolivar, Claiborne, Coahoma, George, Greene, Hinds, Marion, Marshall, Neshoba, Noxubee, Perry, Smith, Warren, Webster, Wilkinson
- 12 counties said no: Attala, Clarke, Copiah, Forrest, Harrison, Jackson, Jefferson Davis, Madison, Monroe, Panola, Pontotoc, Scott, Walthall, Yazoo
- 28 counties did not list: Benton, Calhoun, Carroll, Chickasaw, Desoto, Grenada, Hancock, Humphreys, Itawamba, Jasper, Kemper, Lafayette, Lamar, Lawrence, Lee, Lincoln, Montgomery, Newton, Pearl River, Pike, Quitman, Rankin, Sharkey, Simpson, Sunflower, Tallahatchie, Tippah, Union, Wayne



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Computation of Chancery Clerk Survey Reponses

Compiled by Division of Policy and Research

July 2009

12. Have you seen electronic computer system that you were impressed with?
- 41 counties did not list: Benton, Calhoun, Carroll, Chickasaw, Clarke, Copiah, Desoto, Forrest, George, Grenada, Hancock, Harrison, Hinds, Humphreys, Itawamba, Jasper, Jefferson Davis, Kemper, Lamar, Lawrence, Lee, Lincoln, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Pike, Pearl River, Pontotoc, Quitman, Rankin, Scott, Sharkey, Simpson, Sunflower, Tallahatchie, Tippah, Union, Wayne, Webster, Yazoo
 - 10 counties impressed with Delta Computer Systems: Alcorn, Amite, Bolivar, Claiborne, Lafayette, Marion, Perry, Smith, Walthall, Warren
 - 1 county listed Digital Filing Solutions: Attala
 - 2 counties listed Medir Government Solutions: Coahoma, Greene
 - 1 county listed Aptitude Solutions: Madison
 - 1 county listed State of MS bankruptcy court: Panola
 - 1 county listed Harrison County Chancery Clerk Office: Wilkinson
 - 1 county listed Manatron: Jackson
13. Please describe your interest in electronic management systems
- 23 counties were very interested: Amite, Bolivar, Claiborne, Clarke, Coahoma, Copiah, Forrest, Greene, Grenada, Harrison, Jefferson Davis, Lafayette, Lamar, Madison, Marion, Neshoba, Panola, Pike, Pearl River, Perry, Pontotoc, Smith, Walthall, Yazoo
 - 6 counties might be interested: Hinds, Marshall, Noxubee, Scott, Webster, Wilkinson
 - 6 counties indicated they were current users: Alcorn, George, Monroe, Simpson, Sunflower, Warren
 - 22 counties did not list: Benton, Calhoun, Carroll, Chickasaw, Desoto, Hancock, Humphreys, Itawamba, Jasper, Kemper, Lawrence, Lee, Lincoln, Montgomery, Newton, Quitman, Rankin, Sharkey, Tallahatchie, Tippah, Union, Wayne
 - 2 counties listed other and stated concerns: Attala, Jackson

Chancery Clerk Survey Responses Compiled by Division of Policy and Research July, 2009												
County	method of filing deeds	method of indexing deeds	Scanned electronic or digitized copy dates	Electronic computer index dates	who can view records	Charge for use	Records available via internet	responsible for electronic syst	amount of deeds or land related documents per year	considering implementing electronic storage of	impressed with electronic land record management of	interest in electronic land management system
1 Alcorn	scanned electronic or digitized copies	electronic computer indexes	1986- present	1986-present	everyone	no	no	Delta Computer Systems	8000	yes	Delta Computer Systems	current user
2 Amite	paper	electronic computer indexes		1991-present	everyone	no	yes	Delta Computer Systems, Inc.	4000	yes	Delta Computer Systems	very interested
3 Attala	both	both	9-1-2000- present	9-1-2000-present	staff only	no	no	Digital Filing Solutions	4000	no	Digital Filing Solutions	back up system
4 Benton	both	electronic computer indexes	1994-present	1994-present	everyone	no	no	Delta Computer Systems	not listed	not listed	not listed	must still maintain
5 Bolivar	paper	both		1985-present	everyone	no	no	Deanna Whitten 662-843-2071	4000	yes	Delta Computer Systems	not listed
6 Calhoun	both	both	May 2000-present	May 2000-present	everyone	no	no	Three Rivers	not listed	not listed	not listed	very interested
7 Carroll	both	both	Nov. 2002-present	Nov. 2002-present	everyone	no	no	LMI System	not listed	not listed	not listed	not listed
8 Chickasaw	scanned electronic or digitized copies	electronic computer indexes	1999- present	1999-present	everyone	no	no	not listed	not listed	not listed	not listed	not listed
9 Claiborne	paper	electronic computer indexes	/						approx. 300	yes	Chancery Clerk Offices using Delta Computer Systems	very interested
10 Clarke	scanned electronic or digitized copies	both	Sept. 2008- present		everyone	no	yes	Delta Computer Systems, Inc.	not listed	no	not listed	very interested
11 Coahoma	scanned electronic or digitized copies	electronic computer indexes	Jan. 2003-present	Jan. 2005-present	everyone	no	no	Medir Government Solutions	4997	yes	Medir Government Solutions	very interested
12 Copiah	scanned electronic or digitized copies	electronic computer indexes	1995-present	1995-present	everyone	no	no	Delta Computer Systems, Inc.	4800-4900	no	not listed	very interested
13 Desoto	scanned electronic or digitized copies	electronic computer indexes	1995-present	1995-present	everyone	no	yes	in house staff Jeff Brown	33000-47000	not listed	not listed	not listed
14 Forrest	both	both	1974-present	1974-present	everyone	no	yes	Delta Computer Systems, Inc.	18000	no	not listed	very interested
15 George	both	both	Feb. 2007-present	Feb. 2007-present	everyone	no	no	Medir Government Solutions	15000-20000	yes	not listed	current user
16 Greene	paper	traditional bound index book	/						approx. 3000	yes	Medir Government Solutions 1-888- Medir- It	very interested
17 Grenada	both	both	May 2006-present	May 2006-present	everyone	no	no	LMI	4470	not listed	not listed	very interested
18 Hancock	scanned electronic or digitized copies	electronic computer indexes	5-3-2005-present	5-3-2005-present	everyone	no	no	Local IT Tim Beya	not listed	not listed	not listed	not listed
19 Harrison	both	both	3/2004- present	1991-5/2008	everyone	no	yes	Advanced Business Systems	11000-17000	no	not listed	very interested
20 Hinds	paper	electronic computer indexes	1997-present	1984-present	everyone	no	yes	IMS Director Sieve Ous	30,000	yes	not listed	might be interested
21 Humphreys	both	traditional bound index book							not listed	not listed	not listed	not listed
22 Itawamba	scanned electronic or digitized copies	electronic computer indexes	9/2001- present	9/2001-present	everyone	no	no	Three Rivers	not listed	not listed	not listed	not listed
23 Jackson	scanned electronic or digitized copies	electronic computer indexes	7-25-2002-present	7-25-2002-present	staff only	yes	no	Manatron	65000	no	Manatron	support the electronic recording
24 Jasper	scanned electronic or digitized copies	electronic computer indexes	2005-present	2005-present	everyone	no	no	Delta Computer Systems, Inc.	6500	not listed	not listed	not listed
25 Jefferson Davis	both	both	2007-present	1995-present	everyone	no	no	Delta Computer Systems	4600	no	not listed	very interested
26 Kemper	paper	traditional bound index book							not listed	not listed	not listed	not listed
27 Lafayette	scanned electronic or digitized copies	electronic computer indexes	Jan. 2004-present	Jan. 2004- present	everyone	no	no	Delta Computer Systems	approx. 13000	current user	Delta Computer Systems	very interested
28 Lamar	both	both	1992-present	1992-present	everyone	no	no	Delta Computer Systems, Inc.	not listed	not listed	not listed	very interested
29 Lawrence	paper	traditional bound index book							not listed	not listed	not listed	not listed
30 Lee	scanned electronic or digitized copies	electronic computer indexes	2000-present	1993-present	everyone	no	no	Three Rivers 662-489-2215	30,000	not listed	not listed	not listed

31	Lincoln	scanned electronic or digitized copies	electronic computer indexes	1987-present	1987-present	everyone	no	yes	Delta Computer Systems	not listed	not listed	not listed	not listed
32	Madison	scanned electronic or digitized copies	both	Jan 2000- present	Jun 1988-present	everyone	no	yes	In house staff Duane Thompson	approx. 36000	no	Apitude Solutions	very interested
33	Marion	paper	electronic computer indexes	/	Aug. 1997-present	everyone	no	yes	Delta Computer Systems	4000-6000	yes	Delta Computer Systems	very interested
34	Marshall	scanned electronic or digitized copies	both	Jan 2008-present	Jan 2008- present	everyone	no	no	Three Rivers 662-489-2215	approx. 6500	yes	not listed	might be interested
35	Monroe	scanned electronic or digitized copies	electronic computer indexes	Jan 2002-present	Jan 2002-present	everyone	no	no	Randy Kelly	7942	no	not listed	current user
36	Montgomery	both	both	not listed	not listed	staff only	no	no	not listed	not listed	not listed	not listed	not listed
37	Neshoba	both	both	2005-present	2005-present	everyone	no	no	Glenn Terry	several thousand	yes	not listed	very interested
38	Newton	scanned electronic or digitized copies	electronic computer indexes	not listed	not listed	everyone	no	no	not listed	not listed	not listed	not listed	not listed
39	Noxubee	scanned electronic or digitized copies	both	Jan 14 2009- present	Jan 14 2009- present	everyone	no	no	Delta Computer Systems	a very large amount	yes	not listed	might be interested
40	Panola	scanned electronic or digitized copies	electronic computer indexes	Jan 1994- present	Jan 1994-present	everyone	no	no	Medir Government	6000	no	State of MS bankruptcy court	very interested
41	Pearl River	scanned electronic or digitized copies	both	March 2007-present	March 2007-present	everyone	no	no	Delta Computer Systems, Inc.	3000	not listed	not listed	very interested
42	Perry	paper	traditional bound index book							not listed	yes	Delta Computer Systems	very interested
43	Pike	scanned electronic or digitized copies	electronic computer indexes	1975-2009	1997-2009	general public	no	yes	Delta Computer Systems, Inc.	not listed	not listed	not listed	very interested
44	Pontotoc	scanned electronic or digitized copies	electronic computer indexes	1992-2009	1992-2009	everyone	no	no	Three Rivers	6000	no	not listed	very interested
45	Quitman	paper	both		1996-present	everyone	no	no	not listed	not listed	not listed	not listed	not listed
46	Rankin	scanned electronic or digitized copies	electronic computer indexes	all of their records		everyone	no	no	Medir Government	not listed	not listed	not listed	not listed
47	Scott	both	both	Dec 2000- June 2009	Dec 2000- June 2009	everyone	no	no	not listed	approx. 4500	no	not listed	might be interested
48	Sharkey	paper	traditional bound index book							not listed	not listed	not listed	not listed
49	Simpson	scanned electronic or digitized copies	electronic computer indexes	Jan 2005-present	Jan 2005-present	everyone	no	no	Delta Computer Systems	not listed	not listed	not listed	current user
50	Smith	paper	traditional bound index book							not listed	yes	Delta Computer Systems	very interested
51	Sunflower	scanned electronic or digitized copies	electronic computer indexes	Jan 2007-present	Jan 2007-present	everyone	no	no	Three Rivers	5500	not listed	not listed	current user
52	Tallahatchie	both	traditional bound index book	august 2008-present					Medir Government	not listed	not listed	not listed	not listed
53	Tippah	paper	traditional bound index book							not listed	not listed	not listed	not listed
54	Union	scanned electronic or digitized copies	electronic computer indexes	Nov. 1999-present	Nov. 1999-present	everyone	no	no	Three Rivers	approx. 6000	not listed	not listed	not listed
55	Walthall	paper	traditional bound index book	/	/					approx. 3000	no	Delta Computer Systems	very interested
56	Warren	scanned electronic or digitized copies	electronic computer indexes	Jan 1984- present	Jan 1984- present	everyone	no	no	Delta Computer Systems	approx. 3625	yes	Delta Computer Systems	current user
57	Wayne	scanned electronic or digitized copies	electronic computer indexes	2004-present	2004-present	everyone	no	no	Delta Computer Systems	not listed	not listed	not listed	not listed
58	Webster	paper	traditional bound index book	/						1500-1800	yes	not listed	might be interested
59	Wilkinson	both	both	2008-2008	1900's-2008	everyone	no	no	Delta Computer Systems, Inc.	approx. 2900	yes	Harrison County Chancery Clerk Office	might be interested
60	Yazoo	both	both	1985-present	1985-present	everyone	no	no	Delta Computer Systems, Inc.	approx. 7000	no	not listed	very interested


List of Counties from which Receipt of Survey is Still Pending

	<u>County</u>	<u>Chancery Clerk</u>	<u>Address</u>	<u>City/State/Zip</u>
1	Choctaw	Don Threadgill	P. O. Box 250	Ackerman, MS 39735
2	Clay	Harmon A. Robinson	P. O. Box 815	West Point, MS 39773-0815
3	Covington	Jimmie Baggett	P. O. Box 1679	Collins, MS 39428
4	Franklin	Jill Jordan Gilbert	P. O. Box 267	Meadville, MS 39653
5	Holmes	Dorothy Jean Ford-Smith	P. O. Box 239	Lexington, MS 39095
6	Jefferson	Delores Frye	P. O. Box 145	Fayette, MS 39069
7	Jones	Larry Ishee	P. O. Box 248	Ellisville, MS 39437
8	Lauderdale	Carolyn Mooney	P. O. Box 1587	Meridian, MS 39302-1587
9	Leake	Dot Merchant	P. O. Box 72	Carthage, MS 39051
10	Leflore	Sam Abraham	P. O. Box 250	Greenwood, MS 38935
11	Lowndes	Lisa Younger Neese	P. O. Box 684	Columbus, MS 39703
12	Marion	Cass Barnes	250 Broad Street, Ste. 2	Columbia, MS 39429
13	Oktibbeha	Monica Banks	101 East Main St.	Starkville, MS 39759
14	Panola	Jim Pitcock	151 Public Sqare Ste B	Batesville, MS 38606
15	Pike	Doug Touchstone	P. O Box 309	Magnolia, MS 39652
16	Prentiss	David Pounds	P. O Box 477	Booneville, MS 38829
17	Smith	Cindy S. Austin	P. O. Box 39	Raleigh, MS 39153
18	Stone	Gerald W. Bond	P. O. Drawer 7	Wiggins, MS 39577
19	Tate	Wayne Crockett	201 Ward Street	Senatobia, MS 38668
20	Tishomingo	Peyton Cummings	1008 Battleground Drive	Iuka, MS 38852
21	Tunica	Susan White	P. O. Box 217	Tunica, MS 38676
22	Washington	Marilyn Hansell	P. O Box 309	Greenville, MS 38702
23	Winston	Pam B. Reel	P. O. Drawer 69	Louisville, MS 39339
24	Yalobusha	Amy Fernandez McMinn	P. O Box 206	Coffeeville, MS 38922

HAND OUT #6

CWest's Annotated Mississippi Code Currentness

Title 89. Real and Personal Property

 Chapter 5. Recording of Instruments

→ § 89-5-24. Document formatting standards

<Text of section effective July 1, 2009>

(1) Except as otherwise provided in subsections (3) and (4), any document or instrument presented to the clerk of the chancery court for recording shall meet the following requirements:

(a) Each document or instrument shall consist of one or more individual pages printed only on one (1) side. The document or instrument shall not consist of pages that are permanently bound or in a continuous form and shall not have any attachment stapled or otherwise affixed to any page except as necessary to comply with statutory requirements. However, the individual pages of a document or instrument may be stapled together for presentation for recording. A label that is firmly attached with a bar code or return address may be accepted for recording.

(b) All documents must be printed or typed in a font no smaller than eight (8) point in size. If a document or instrument, other than a plat or survey or a drawing related to a plat or survey, presented for recording contains type smaller than eight (8) point type, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the requirements of this section.

(c) Each document shall be of sufficient legibility to produce a clear reproduction. If a document or instrument, other than a plat or survey or a drawing related to a plat or survey, is not sufficiently legible to produce a clear reproduction, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the type size requirements of paragraph (b) and shall be recorded contemporaneously as additional pages of the document or instrument.

(d) Each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall be on white paper of not less than twenty-pound weight. All text within the document or instrument shall be of sufficient color and clarity to ensure that the text is readable when reproduced from the record.

(e) All signatures on a document or instrument shall be in black or blue ink and of sufficient color and clarity to ensure that the signatures are of sufficient legibility to produce a clear reproduction when the document or instrument is reproduced from the record. The corresponding name shall be typed, printed or stamped beneath the original signature. The typing or printing of a name or the application of an embossed or inked stamp shall not cover or otherwise materially interfere with any part of the document or instrument except where provided by law. Failure to print or type signatures as required in this paragraph does not invalidate the document or instrument.

(f) The first page of each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall have a top margin of at least three (3) inches of vertical space from left to right which shall be reserved for the recorder's use. All other margins on the document or instrument shall be a minimum of three-fourths ($\frac{3}{4}$) of one (1) inch. Nonessential information including, but not limited to, form numbers or customer notations may be placed in a margin other than the top margin. A document may be recorded if a minor portion of a seal or incidental writing extends into a margin. The recorder shall not incur any liability for failure to show a seal or information that extends

beyond the margin of the permanent archival record.

(2) Each document or instrument, other than a plat or survey or a drawing related to a plat or survey, that is presented for recording and that contains any of the following information shall have that information on the first page below the three-inch margin:

(a) The name, address and telephone number of the individual who prepared the document.

(b) A return address.

(c) The title of the document or instrument.

(d) All grantors' names.

(e) All grantees' names.

(f) Any address and telephone number required by Section 27-3-51, Mississippi Code of 1972.

(g) The legal description of the property or indexing instruction per Section 89-5-33(3). If there is insufficient space on the first page for the entire legal description or the entire indexing instruction, immediately succeeding pages shall be used.

(3) The following documents or instruments are exempt from the format requirements of this section:

(a) A document or instrument that was executed before July 1, 2009.

(b) A military separation document or instrument.

(c) A document or instrument executed outside the United States.

(d) A certified copy of a document or instrument issued by a court or governmental agency, including a vital record.

(e) A document or instrument where one (1) of the original parties is deceased or otherwise incapacitated.

(f) A document or instrument formatted to meet court requirements.

(g) A federal tax lien.

(h) A filing under the Uniform Commercial Code.

(4) The recorder shall record a document or instrument that does not substantially conform to the format standards specified in subsections (1) and (2) of this section upon payment of an additional recording fee of Ten Dollars (\$10.00) per document or instrument. The fee shall be charged only for documents or instruments dated on or after July 1, 2009; this fee may not be charged for those documents or instruments specifically exempted in subsection (3).

(5) Failure to conform to the format standards specified in this section does not affect the validity or enforceability of the document or instrument.

CREDIT(S)

Added by Laws 2008, Ch. 508, § 1, eff. July 1, 2009.

HISTORICAL AND STATUTORY NOTES

Section 1 of Laws 2008, Ch. 508 added this section. Section 3 of Laws 2008, Ch. 508 provides: "This act shall take effect and be in force from and after July 1, 2009."

CROSS REFERENCES

Recordation and indexing of instruments, see § 89-5-25.

Miss. Code Ann. § 89-5-24, MS ST § 89-5-24

Current through all 2008 Sessions and HB Nos. 197, 699, 636 and 1027 of the 2009 Regular Session

(C) 2009 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

BIO for Mark Ladd

Mark Ladd served as the Racine County (WI) Register of Deeds from January 1994 until December 2004.

During his tenure as Register of Deeds, Ladd was President of the Wisconsin Register of Deeds Association (1999-2000) and served on the board of directors for the National Association of County Recorders, Election Officials and Clerks (NACREC). He also served as the Public Sector Co-Chair for the Property Records Industry Association's (PRIA) Technology Committee.

On January 15th, 2003 Ladd rolled out Racine County's Electronic Recording System and recorded the first fully electronic real estate documents in the state of Wisconsin.

In July 2004 Ladd joined a software company dedicated to electronic recording systems and continued his work in the electronic recording arena, representing that company to both PRIA and the Mortgage Industry Standards Maintenance Organization (MISMO) in their efforts to develop the data standards necessary to affect paperless, electronic real estate documents.

Today, Ladd heads Addison/One, LLC, a consulting firm focused on electronic real estate transactions. In this role, Ladd serves as a consultant to the PRIA Technology Committee and the PRIA Land Fraud Committee, placing him at the center of two of the hottest topics in the property records world.

In January 2008 Ladd was elected to the position of Chair of the LegalXML Member Section of the Organization for the Advancement of Structured Information Standards (OASIS). This section of the OASIS consortium is focused on technology standards that facilitate electronic legal documents and filings.

Ladd's background as a Register of Deeds, his involvement in the national standard setting process and experience in the private sector provides comprehensive insight into the emerging electronic recording arena.

**TASK FORCE TO STUDY UNIFORMITY IN REAL
PROPERTY RECORDINGS**
(as established in House Bill No. 489, 2009 Regular Session)

MINUTES OF ORGANIZATIONAL MEETING
May 14, 2009

The first meeting of the Task Force to Study Uniformity in Real Property Recordings was called to order on Thursday May 14, 2009 at 12:00 P.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi.

A list of the persons who were present is attached at Exhibit A.

Secretary Hosemann, Chairman of the Task Force, welcomed the group and thanked them for their attendance. He directed the members to the packet of materials that had been provided and indicated that minutes of the meeting would be kept by the Secretary of State staff and distributed to the members for review.

The members selected Steve Amos, Copiah County Chancery Clerk, as the Vice Chair of the Task Force.

Secretary Hosemann reviewed the mission and objectives of the Task Force as set forth in House Bill 489 and in the materials.

The members shared thoughts and ideas on these objectives. They discussed that achieving a uniform system would be difficult, as each county has its own unique system of recording and indexing real estate documents. Many counties, however, use one of a small handful of commercial vendors (including Delta Computer Systems, Tri-State Consulting Services and others) for their software and hardware needs. While a few counties, such as Madison County,

have all their deeds on-line, other counties have essentially manual recording systems that are not accessible over the internet. One member suggested that the Task Force conduct a survey of the chancery clerks to determine the different types of systems they each utilize for recording and indexing real estate documents, including turnaround times, the software they use and any electronic or on-line capabilities. Mr. Amos offered to distribute the survey to the chancery clerks and suggested that a representative from the Task Force speak to the chancery clerks at their annual meeting in Natchez in July on the subject. In addition, the staff at the Secretary of State's Office will contact the vendors to obtain more information about their systems.

The members discussed a new law (Section 89-5-24) which will go into effect in July 2009 that establishes formatting standards for real estate documents. They also mentioned the existence of several uniform and model laws on electronic filing of documents that should be reviewed as part of this project.

The Task Force also discussed the potential difficulty, expense and time that would be required to establish a retroactive uniform system, as opposed to making the system uniform on a prospective basis only. They also discussed that lack of funding on the state and county level is a huge stumbling block for this project. Senator Briggs Hobson stated that there was a fund appropriated by the Legislature for a pilot program of electronic filing in the court systems and that the Task Force should research this fund further to determine if any of these funds could be used for this project. The members also discussed the possibility of charging user fees or an additional or increased recording fee to pay for the uniform system.

A member suggested that the Task Force find out whether any states had recently converted their property recordings to a uniform system to see how the conversion was accomplished. The group agreed that this would be a good idea. Craig Orgeron, of the Mississippi Department of

Information Services, informed the Task Force that the Department was involved in the Supreme Court's e-filing pilot program and offered to organize a presentation on that program for the Task Force. Another member explained how the e-filing system works in Federal Court and the security measures this system has in place to protect against fraud or misuse. The Secretary of State also has a system of electronic filing and storage of Uniform Commercial Code documents that was mentioned as a possible model. Finally, one member suggested that Tennessee's "E-file anytime" system be reviewed.

Mr. Orgeron mentioned that there is a geospatial map of the state maintained by ITS and that one layer of this map has a slot for property ownership data. The Task Force should consider integrating this map into its recommendations as appropriate.

The members agreed that the best dates for meetings would be on Tuesdays or Wednesdays. Secretary Hosemann announced that he would contact the members before scheduling the next meeting to determine the best date to hold the next meeting.

There being no further business, the meeting was adjourned at 1:15 P.M.

Respectfully Submitted,

Cheryn Baker

Assistant Secretary of State

Policy and Research Division

HAND OUT #7

NEW DOCUMENT FORMATTING GUIDELINES

As an example, this is an **old document** that has been **reformatted** following Legislation outlined in Section 89-5-24, Miss Code of 1972 Annotated, effective from and after **July 1, 2009**

This “formatted” deed contains all the information on the **first page** which is required to process the document.

- With a **3” top margin and all other margins ¾” and a 10-point font** (statute provides that the font must be at least 8-point in size). These pages are **numbered “1 of 3”** etc. at the bottom of each page (not required but helpful to the recording clerks).
- The **grantors and grantees** are listed, along with the required **addresses and phone numbers**, in the body of the document.
- The **legal description** is a separate page, identified as “Exhibit A,” but this is becoming a common practice anyway. The legal description and indexing instructions can be placed on the first page if there is sufficient space.
- The **Indexing Instructions** are listed in the place where the legal description would be.
- The **preparer’s name, address and phone number**, along with the “**Return to**” information, are listed at the top of the document, below the 3” margin and just above the title.

Formatted version per § 89-5-24
Miss. Code of 1972 Annotated,
Effective July 1, 2009



1st Judicial District
Instrument 1998 6540 D ~J1
Filed/Recorded 8 27 1998 1 28 P
Total Fees 8.00
3 Pages Recorded

↑
3" top margin
for recorder's use
↓

Prepared by:
W. F. Holder, II
Attorney at Law
P. O. Box 1585
Gulfport, MS 39502
(228) 863-4999

← Preparer's Info

"Return to" Info →

Return to:
W. F. Holder, II
Attorney at Law
P. O. Box 1585
Gulfport, MS 39502
(228) 863-4999

STATE OF MISSISSIPPI
COUNTY OF HARRISON
FIRST JUDICIAL DISTRICT

WARRANTY DEED WITH EASEMENT

For and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, we

ROBERT L. McDANIEL, JR. and wife,
RUTH C. McDANIEL
16560 Road 520
Saucier, MS 39574
(228) 832-8042

**Grantors'
Address &
Phone #**

do hereby sell, convey, bargain and warrant to

LARRY M. COMPTON and wife,
PAULA I. COMPTON
613 E. Tandy Dr.
Gulfport, MS 39503
(228) 831-1966

**Grantees'
Address &
Phone #**

as joint tenants with right of survivorship and not as tenants in common, the following described real property situated and located in the First Judicial District of Harrison County, Mississippi, more particularly and certainly described as follows:

(See Exhibit A attached) (Page 3)

INDEXING INSTRUCTIONS: 2 acres, more or less, in SW ¼ of NW ¼
& easement in SW ¼ of NW ¼ & NW ¼ of SW 1/4,
Section 29 Township 5 South, Range 11 West

**Indexing
Instructions**

The conveyance is subject to the rights, use and benefit of Grantors over, to and upon the easement described above and a certain 30' easement over the northern boundary of the property herein conveyed for the purpose of ingress and egress to other properties owned by Grantors at, near or adjacent to the property herein conveyed by this reservation and exception, and grantors shall have the right to maintain a roadway over the property described above in said easements, such improvements to include the use of gravel, pavement, pipes, concrete and other such materials in the construction or maintenance of a roadway and for the proper drainage thereof. The reservation and exception of the aforesaid easements in favor of Grantors shall also include the right to the use of whatever equipment and machinery is necessary in the construction of or maintenance of said roadway and drainage.

This conveyance is further subject to all easements, roadways, servitudes, restrictive covenants and oil, gas and other mineral reservations, exceptions, conveyances and leases of record or obvious on reasonable inspection of the subject property.

Ad valorem taxes as of the date of sale have been prorated between Grantors and Grantees and are assumed by Grantees herein.

WITNESS OUR SIGNATURES, this the 27th day of August, A. D., 1998

/s/ Robert L. McDaniel, Jr.
ROBERT L. McDANIEL, JR., GRANTOR

/s/ Ruth C. McDaniel
RUTH C. McDANIEL, GRANTOR

/s/ Larry M. Compton
LARRY M. COMPTON, GRANTEE

/s/ Paula I. Compton
PAULA I. COMPTON, GRANTEE

STATE OF MISSISSIPPI
COUNTY OF HARRISON

THIS DAY PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, ROBERT L. McDANIEL, JR. and wife, RUTH C. McDANIEL, who each severally acknowledged that they signed and delivered the above and foregoing WARRANTY DEED on the day and year herein shown as their free and voluntary act and deed.

GIVEN UNDER MY HAND AND OFFICIAL SEAL OF OFFICE, this the 27th day of August, A. D., 1998.

/s/ Connie M. Fox
NOTARY PUBLIC

MY COMMISSION EXPIRES: 2/7/2002 (Notary Seal)

STATE OF MISSISSIPPI
COUNTY OF HARRISON

THIS DAY PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, LARRY M. COMPTON and wife, PAULA I. COMPTON, who each severally acknowledged that they signed and delivered the above and foregoing WARRANTY DEED and that they specifically acknowledge the easements reserved, excepted and/or retained by Grantors, and that they accept said Warranty Deed from Grantors with the terms and conditions therein contained.

GIVEN UNDER MY HAND AND OFFICIAL SEAL OF OFFICE, this the 27th day of August, A. D., 1998.

/s/ Connie M. Fox
NOTARY PUBLIC

MY COMMISSION EXPIRES: 2/7/2002 (Notary Seal)

TITLE NOT EXAMINED

EXHIBIT A

For the point of beginning, commence at the Southwest corner of the Southwest one-quarter of the Northwest one-quarter (SW $\frac{1}{4}$ of NW $\frac{1}{4}$) of Section 29, Township 5 South, Range 11 West; thence run North $89^{\circ}39'$ West 332.26 feet along the South line of said Southwest one-quarter of the Northwest one-quarter (SW $\frac{1}{4}$ of NW $\frac{1}{4}$); thence North $00^{\circ}13'$ East 262.20 feet; thence South $89^{\circ}39'$ East 332.26 feet to the East line of said Southwest quarter of the Northwest quarter (SW $\frac{1}{4}$ of NW $\frac{1}{4}$); thence along the East line of said Southwest quarter of the Northwest quarter (SW $\frac{1}{4}$ of NW $\frac{1}{4}$) South $00^{\circ}13'$ West 262.20 feet to the point of beginning, said land being entirely located in the First Judicial District of Harrison County, Mississippi, and containing two acres, more or less, and the use and benefit of the following easement:

An easement for road and drainage purpose over the East 60 feet of the Southwest quarter of the Northwest quarter (SW $\frac{1}{4}$ of NW $\frac{1}{4}$) lying south of Scarborough Road, said easement extending over, through, on and across the North one-half of the Northwest Quarter of the Southwest quarter, Section 29, Township 5 South, Range 11 West, Harrison County, First Judicial District, Mississippi.

HAND OUT #3

**ELECTRONIC RECORDING –
STATUTORY SOLUTIONS**


Mississippi Secretary of State
Division of Policy and Research
July 2009



DELBERT HOSEMANN
Secretary of State

Perceived Obstacles to eRecording

- Statutes of Frauds
- Agreement to use electronic media
- Original documents
 - Return of document upon satisfaction
 - Negotiable Notes
- Recording
 - “The” document
 - Authority
- Notaries




DELBERT HOSEMANN
Secretary of State

2

The Statutes

1. **Uniform Electronic Transactions Act**, approved by NCCUSL in 1999 (UETA)
[enacted in all states except GA, IL, NY and WA]
2. **Electronic Signatures in Global and National Commerce Act**, enacted in 1999 (E-SIGN)
3. **Uniform Real Property Electronic Recording Act**, approved by NCCUSL in 2004 (URPERA).



DELBERT HOSEMANN
Secretary of State

3

Statutes of Frauds

- Amongst other things, the statutes of frauds required that any transfer of an interest in land be signed
- Traditionally involved paper, pen-and-ink
- UETA and E-SIGN
 - Assume that electronic signatures and electronic transactions have same legal effect as paper signatures and paper transactions
 - Assume that electronic records have same legal effect as paper records



DELBERT ROSEMAN
Secretary of State

4

Legal Effect – UETA §7, E-SIGN §7001(a), (Miss. Code Ann. § 75-12-1 *et. seq.*)

- 7(a) "A record or signature may not be denied legal effect or enforceability solely because it is in electronic form."
- 7(c) "If a law requires a record to be in writing, an electronic record satisfies the law."
- 7(d) "If a law requires a signature, an electronic signature satisfies the law."



DELBERT ROSEMAN
Secretary of State

5

Electronic Signatures

- "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. UETA §2(8)
- E-SIGN §7001(c)(6) excludes oral communications and recordings from use when consumer consent is sought



DELBERT ROSEMAN
Secretary of State

6

Consent to Use Electronics

- UETA §5 - Act does not require electronic record or signature. UETA applies only if each party agrees to use electronic means
- E-SIGN §7001(b) has the same effect
- E-SIGN §7001(c) outlines specific procedures which must be followed for consumer consent to deal electronically



DELBERT HOSEMANN
Secretary of State

7

Originals and Negotiable Instruments

Specific legal rights and liabilities attach to negotiable instruments; NOT preempted by UETA and E-SIGN. Paper and pen still required.

- Of concern to mortgage bankers, secondary markets
- UETA and E-SIGN have special provisions permitting rights tied to negotiability to exist in an electronic environment



DELBERT HOSEMANN
Secretary of State

8

Originals – “The” Document

- Recording statutes refer to “the deed” or “the conveyance” and the like.
- Every state has a statute requiring return of the document marked paid upon satisfaction
- UETA §12 and E-SIGN §7001(d)(1) and (3) specify that if a law requires originals “that law is satisfied by an electronic record . . .”



DELBERT HOSEMANN
Secretary of State

9

Notarization and Acknowledgment

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the 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 law, is attached to or logically associated with the signature or record.

—UETA §11, E-SIGN §7001(g)



DELBERT HOSEMANN
Secretary of State

10

Notaries cont'd

A requirement that a document or a signature . . . be notarized, acknowledged . . . 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 §3(c)



DELBERT HOSEMANN
Secretary of State

11

Notary Drafting Committee

- At 2007 Annual Meeting, NCCUSL leadership authorized formation of new drafting committee to revise the Uniform Law on Notarial Acts. Scope will include responsibilities of notaries, interstate recognition of notarial acts, notarization of electronic records, remedies.
- 2009 Update



DELBERT HOSEMANN
Secretary of State

12

Governmental Agencies - UETA

- §17: Each governmental agency may decide whether and to which extent it will create and retain electronic records.
- §18(a): Each governmental agency may decide whether and to which extent it will send, accept or retain electronic records and signatures.
- §18(b): Each governmental agency may specify manner, format, systems, processes and procedures.



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Enactment of UETA §§ 17-19

- Enacted in some form in AL, AR, AK, CO, FL, HI, ID, IN, IA, KY, LA, ME, MD, MN, MS, MT, NE, NH, NJ, NM, ND, OK, OR, PA, RI, SD, TN, UT, VA, WY and District of Columbia
- Other states have enacted statutes, before or after UETA, granting authority to recorders



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State v. Federal Law?

E-Sign § 7002 provides that State law controls

- (a) If a State enacts UETA uniformly or
- (b) If a State enacts another law consistent with E-Sign § 7001 and "such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology...[for] creating, storing, generating, receiving, communicating, or authenticating electronic..."



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Secretary of State

15

UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT (URPERA)

- Establishes (again) validity of electronic documents
- Authorizes (again) electronic recording of paper or electronic documents
- Authorizes establishment of standards



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The URPERA Drafting Process

- Following upon the widespread enactment of the Uniform Electronic Transactions Act of 1999 (UETA) and the federal Electronic Signatures in Global and National Commerce Act (E-Sign) of 2000, the NCCUSL approved a drafting committee in 2002 and finalized the Uniform Real Property Recording Act (URPERA) in 2004.
- Observers to the drafting committee included Property Records Industry Association, American Land Title Association, American Bar Association, American College of Real Estate Lawyers, Freddie Mac, American Bankers Association and many others.



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URPERA – Sections 1 & 2

- Designates the title by which the act shall be referred.
- Establishes the operational definitions for the act.
- URPERA imports the definitional concepts of UETA, maintaining consistency and functionality with the thresholds set in UETA.



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URPERA – Section 3

- Establishes equivalency of electronic documents to paper documents and electronic signatures on recording instruments to manual signatures.
- Permits a notary public or other authorized person to act electronically.
- Provides that any statute, regulation, or standard that requires a personal or corporate stamp, impression, or seal is satisfied by an electronic signature.
- Requires that the information that would otherwise be contained in a notarization, oath, seal, etc., must be attached to or logically associated with the document or signature in an electronic fashion.



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URPERA – Section 4

- Allows a recorder to receive, index, store, archive, and transmit electronic documents.
- Allows a recorder to convert paper documents into electronic versions.
- Allows recorders to work with other recording officials in their state and other states to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording, and on electronic collection of fees.



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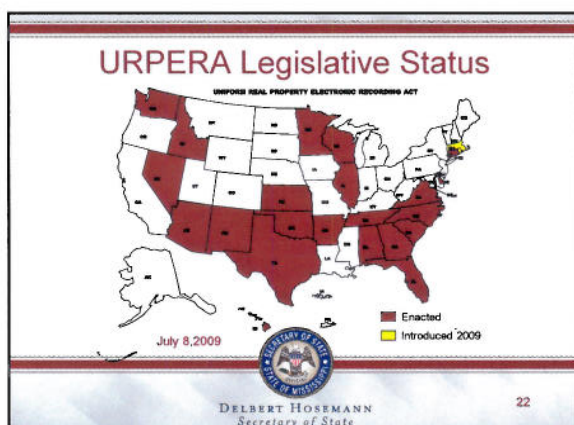
URPERA – Section 5

- Provides alternative methods to establish the statewide standard setting body.
- Leaves room for the adopting states to choose the composition of the standard setting body and the method of its appointment.
- Sets forth several factors that shall be considered by the standard setting body in developing their standards.

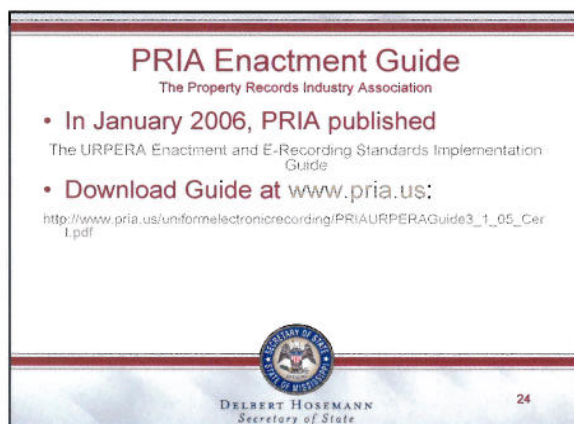


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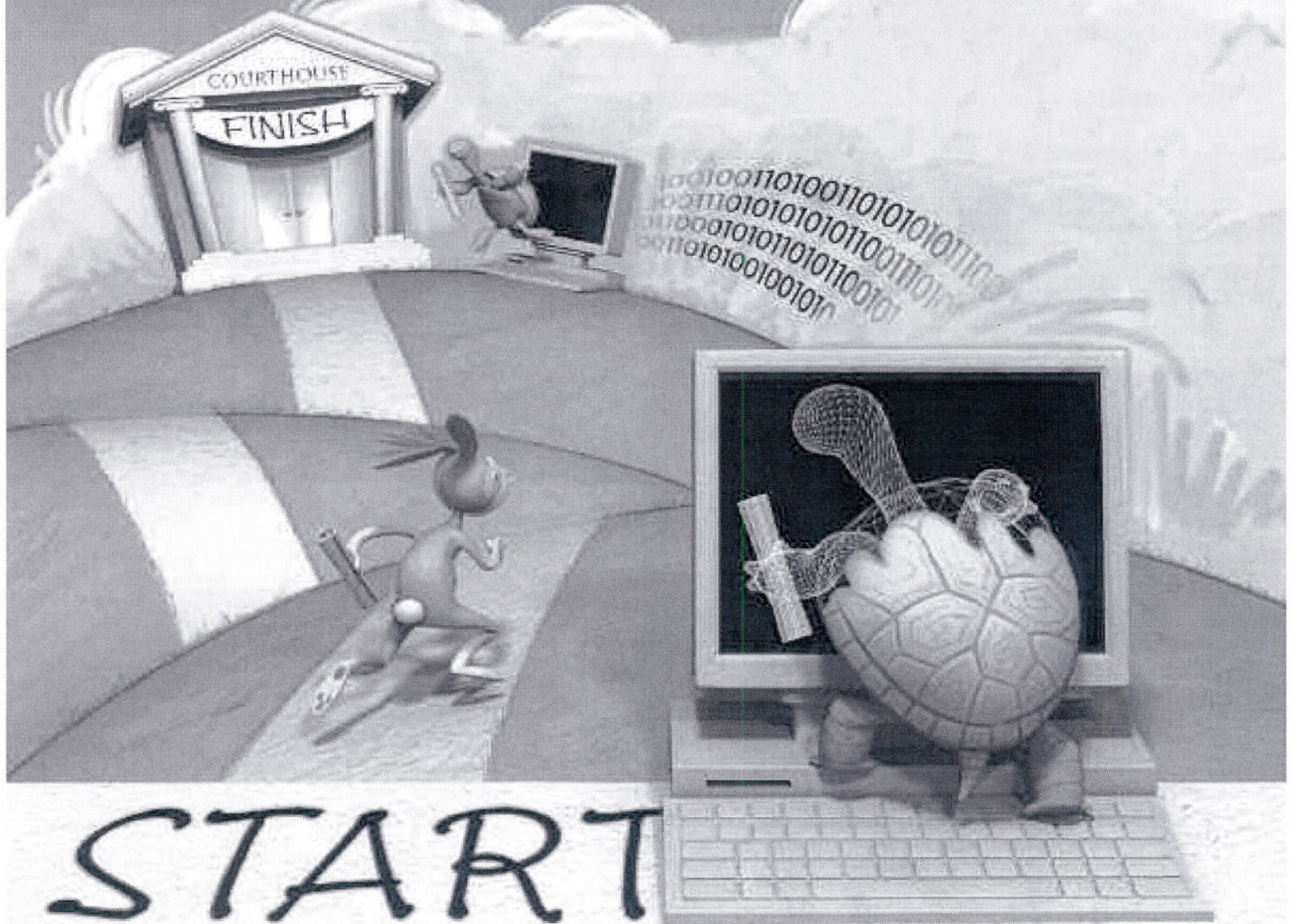




Race to the (Virtual) Courthouse

How Standards Drive Electronic Recording
of Real Property Documents

By David E. Ewan and Mark Ladd



In 2006, \$2.51 trillion in new mortgage loans were originated in the United States. Almost all of these mortgages were recorded in the land records of one of approximately 3,600 counties, cities, or other municipalities, using a land records system that dates back to the 17th century, which largely relies on accepting paper documents for recordation. In a growing number of jurisdictions, however, fairly recent legal advances in the form of the Uniform Electronic Transactions Act (UETA), the Electronic Signatures in Global and National Commerce Act (ESIGN), and the Uniform Real Property Electronic Recording Act (URPERA) now empower county recorders to accept electronic documents. See UETA, 7A(I) U.L.A. 211 (1999), 15 U.S.C. §§ 7001–7031; URPERA, 7B ULA 263 (2005).

This article aims to provide an overview of the legal and technological foundations, as well as practical real-world experiences of eRecording implementations.

Legal Foundations

Historical Background of Real Property Transactions

The current U.S. system of transferring interests in real property is rooted in the English feudal system. Under this system, transfers of real property were accomplished by the ceremony known as livery of seisin. To a large extent, seisin at common law was synonymous with possession. The new owner's possession provided notice of the transaction to third parties.

As English society grew and developed, it became necessary to develop additional methods to convey land. First, the statute of uses was enacted, enabling the common use of deeds.

Shortly thereafter, the statute of enrolments was enacted, requiring every sale of a freehold estate to be in writing. The statute of enrolments also purported to require the recording of conveyances of freehold estates and the payment of a tax. It could be viewed as the first statutory recording law. Next, the statute of wills was enacted, which allowed real property to be freely devised by a testator in his will. The final act was the statute of frauds, which, among other things, required that all transfers of interests in real property be in writing and signed "by the party to be charged."

Although the laws required real property conveyances to be in writing and signed by the parties, they did not require the use of one original document. Real property conveyances often used indenture (the practice of writing two or more copies of the document on a single large sheet of parchment, which was then cut apart with a jagged or wavy line—the indenture—into two parts) to document the transaction. This created more than one original document.

Originality was not important because of the talismanic effect of having one original document; instead, originality allowed one to be confident of the accuracy of the information displayed in the medium. The method of creating an indenture bore witness that the information contained in the indenture was trustworthy. Similarly, the UETA (which includes ensuring accuracy of the information contained in the record) does no less. The focus is on the information itself and whether the source of the information can be relied on or trusted, not on the form in which it is presented.

The Policy Aim of Recording Statutes

The Massachusetts Bay Colony enacted the first detailed recording law in the American colonies in 1640. 1 Records of the Governor and Company of the Massachusetts Bay in New England 306–07 (Nathaniel Shurtleff ed., 1853–54). This act, as well as the statute of enrolments, was the primary influence on the later

recording acts of other American colonies and states. In general, early American jurisdictions created recording systems in which parties to a land transaction appeared before some public official and acknowledged the transaction, the official created a short record of the substance and effect of the transaction, and the transaction documents were copied either in their entirety or in summary or abstract form into a public record. These practices, by and large, remain intact today. Thus, the official record consists of nothing more than copies of the documents underlying the transaction, which the recorder has reason to believe are accurate representations of the information presented.

The recording statutes were designed to impart notice to the world that the recorded transaction may have some bearing on the state of the title to real property. This type of notice, often called constructive notice, is imputed by law to a person without actual knowledge of the transaction. Recording statutes provide this constructive notice of all properly recorded instruments relating to a specific piece of real property to all persons who subsequently obtain an interest in that property.

Generally, an instrument has been properly recorded when it has been (1) duly executed, (2) proved or acknowledged, and (3) indexed and recorded in the appropriate record book. As long as a state has enacted the applicable provisions of UETA and a county recorder has determined to accept electronic documents, then notice may be imparted through electronic recording.

Although numerous methods may be employed in electronically recording documents with the local recorder, they fit into one of three broad "models":

- Model 1—A wet-ink signed paper document is converted into an electronic document by scanning the paper into a format acceptable to the local recorder. The electronic document is then transmitted to the local recorder for recording in the official land

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records. When recordation has been completed, a copy of the recorded document with recording information is returned to the submitter by the same method as the submission. This model most closely duplicates the submission of a paper document for recording.

- Model 2—A wet-ink signed paper document is converted into an electronic document by scanning the paper into a format acceptable to the local recorder, just as in Model 1. Unlike Model 1, the data used to create the index entry for the document at the recorder's office also are transmitted or sent to the local recorder with the electronic document. Thus, the local recorder does not have to "create" an index entry for the document because the document arrives with one already created.
- Model 3—The document starts off in electronic form, is signed electronically, is acknowledged electronically, is transmitted electronically, and is returned electronically. The document is never rendered to paper. This model provides the highest integration of data with the document because many aspects of the document can be read or handled by the computers processing the documents and, by design, they are easily read by both machine and human without conversion.

UETA Provides Baseline Rules for Electronic Transactions

The overarching objective of UETA, and one contained in all 48 enactments of UETA to date, is to "[f]acilitate electronic transactions." UETA pref. note. UETA is a self-effectuating legislative vehicle that acts as an overlay statute, which means it can be used to meet "writing," "signing," or "originality" requirements in a wide variety of laws without having to amend these existing laws or regulations. UETA accomplishes this goal by making electronic documents or

records equivalent to paper documents or records. *Id.* In short, UETA allows parties to focus on the message that they are trying to convey rather than on the medium in which it is presented.

What Is an Electronic Record?

UETA defines an electronic record as "a record created, generated, sent, communicated, received, or stored by electronic means." *Id.* § 2(7). Model 3 documents are easy to envision as electronic records because they live their entire lives in an electronic environment. Perhaps less intuitive, however, is the classification of a Model 1 or Model 2 scanned document as an electronic record. At first blush, some may

The recording statutes were designed to impart notice to the world that the recorded transaction may have some bearing on the state of the title to real property.

consider the electronic (that is, scanned) document to be a "copy" of the "original" paper document. The Official Comments to UETA, however, resolve any doubt that scanned documents are, indeed, electronic records: "[An electronic record] is any record created, used or stored in a medium other than paper. . . . Information processing systems, computer equipment and programs, electronic data interchange, electronic mail, voice mail, facsimile, telex, telecopying, scanning, and similar technologies all qualify as electronic under this Act." *Id.* § 2 cmt. 6.

In addition, UETA makes electronic records legally equivalent to paper records. Section 7(c) of UETA states

that "[i]f a law requires a record to be in writing, an electronic record satisfies the law." See *id.* § 7(c). Electronic signatures are also equivalent to ink signatures. See *id.* § 7(d) ("If a law requires a signature, an electronic signature satisfies the law."). These provisions embody the underlying concept of UETA. See *id.* § 7 cmt. 1 ("[UETA] is designed to eliminate the single element of medium as a reason to deny effect or enforceability to a record, signature, or contract. The fact that the information is set forth in an electronic, as opposed to paper, record is irrelevant."). Thus, UETA allows almost any type of document to be turned into an electronic record and be equally effective.

This *sine qua non* of UETA's section 12 (dealing with retention of records in electronic form) stems from a recognition on the part of its framers that in the electronic environment there is really no such thing as an original. In the electronic context, what is meaningful and dispositive about an electronic record—as is the case with all records preserved for eventual possible entry into evidence—is that the information in the record remains unaltered and accessible. Indeed, the ultimate objective of any record-keeping regime is not a rigid preservation of the physical artifact in the medium in which such information was initially created (or, for that matter, presented); rather, it is the preservation of both the information and the indicia of integrity of the information in a given artifact, however created, however initially presented, and, in the end, however put on as evidence. This is the notion advanced by the framers of UETA.

Historically, real estate records have been maintained as copies or transcripts of the underlying documents, and electronic documents and record-keeping are both authorized by UETA. It follows that, unless there is some exemption, electronic real estate documents could exist under the existing legal framework. UETA § 3(b) exempts only certain document types from its scope, and real estate documents are not among those exempted; so elec-

tronic deeds and mortgages would, per force, be valid and enforceable if the parties to them decide to use electronic documents.

ESIGN

While UETA was being developed, the Federal ESIGN Act (Electronic Signatures in Global and National Commerce Act) was enacted by Congress and signed into law by President Clinton. See 15 U.S.C. §§ 7001–7031. Immediately thereafter, confusion arose over which act (ESIGN or UETA) would govern electronic commerce, and questions abounded about the interrelation of the two. Although an in-depth analysis of the interrelation of the two acts is beyond the scope of this article, certain parallels and differences are noteworthy.

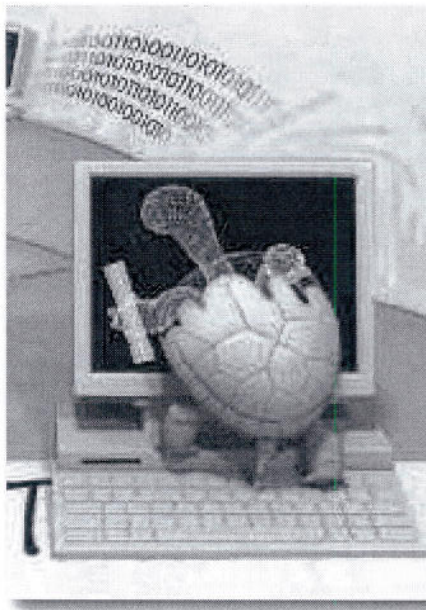
Like the UETA, the federal ESIGN Act addresses electronic records and signatures. Drafted contemporaneously with UETA, it comes as no surprise that ESIGN closely parallels the uniform act. ESIGN does, however, differ from UETA in a few significant ways.

The federal ESIGN Act adds some documents to its exclusion section that UETA does not. Of the documents excluded by ESIGN from electronic form, only one category is tangentially involved in real property transactions: notice of utility termination, default, or foreclosure under a mortgage or a lease. Id. § 7003(b)(2). Thus, an electronic mortgage could be the subject of foreclosure, yet the notice of default or notice of foreclosure would have to be given in the traditional paper method as provided by state law.

ESIGN also expressly limits the regulatory authority of the state and federal governments so that regulations will not impede or obstruct the effective use of electronic documents under the statute. Id. § 7001(a). Conversely, ESIGN allows the states to “preempt” the federal act (this is sometimes referred to as “reverse preemption”) if certain prerequisites are met. The ability of a state to preempt or supersede ESIGN is not unfettered, however. ESIGN may be superseded only by (1) enactment by a state of the Official

Text of the UETA or (2) enactment by a state of any other statute or regulation that (a) is consistent with ESIGN, (b) does not favor a specific technology, and (c) if enacted after ESIGN, makes a specific reference to the ESIGN Act. Id. § 7002.

When read in conjunction with UETA, ESIGN supplies some additional explicit safeguards (consumer notices, for example) as well as an overarching requirement for technology neutrality in any government regulation. The two statutes, taken together, provide the legal framework for using electronic documents in a real estate transaction.



URPERA

Even though documents resulting from electronic transactions are valid and enforceable between the parties, uncertainty and confusion remain about whether those electronic documents may be recorded in the various local land records offices in the several states. Legacy laws and regulations in many states purport to limit recordable documents to ones that are in writing or on paper or require that they be originals; other laws and regulations require signatures to be in writing and acknowledgements to be signed. See, e.g., Fla. Stat. Ann. § 695.26 (requires all instruments to be recorded have signatures of each per-

son who executed the instrument). Thus, an electronic document that is not written on paper, or is an electronic version of an original paper document that has an electronic instead of handwritten signature and acknowledgement, might not be viewed as being recordable under the laws of some states.

The Uniform Real Property Electronic Recording Act (URPERA) was drafted to remove any doubt about the authority of the local recorder to receive and record documents and information in electronic form. URPERA pref. note. Its fundamental principle is that any state law requirements describing or requiring that a document be an original, on paper, or in writing are satisfied by a document in electronic form. Id. § 3(a). Furthermore, any requirement that the document contain a signature or acknowledgment is satisfied by an electronic signature or acknowledgment. Id. § 3(b), (c). The Act specifically authorizes a recorder, at the recorder's option, to accept electronic documents for recording and to index and store those documents. Id. § 4(b).

In addition, the Act charges an Electronic Recording Commission or an existing state agency with the responsibility of implementing the Act and adopting standards regarding the receipt, recording, and retrieval of electronic documents. Id. § 5. The commission or agency is directed to adopt those standards with a vision to foster intra- and interstate harmony and uniformity in electronic recording processes. Notably, the commission or agency is directed in section 5(b)(2) to consider the standards established by national standards-setting bodies, such as the Property Records Industry Association (PRIA).

Interplay Between UETA and URPERA

Some commentators have argued that a state's passage of both UETA and URPERA indicates that UETA does not provide statutory authority for recording of electronic documents. See David E. Ewan et al., *It's the Message, Not the Medium!—Electronic Record and*

Electronic Signature Rules Preserve Existing Focus of the Law on Content, Not Medium of Recorded Land Title Instruments, Bus. Law., Aug. 2005, at 1487, 1488 n.9 (citing letters from attorneys commenting on the legal effect of enacting both statutes). In fact, passage of both acts does not indicate that either act is insufficient. There are several reasons why a state legislature might enact both UETA and URPERA.

First, passage of both UETA and electronic recording legislation could mean that the electronic recording legislation was enacted before the state's adoption of UETA and, as such, would have been entirely appropriate in a jurisdiction intent on providing for the enforceability of such transactions in the absence of UETA. In fact, at least one state—Virginia—had allowed electronic recording statutes enacted before its adoption of UETA to lapse and currently relies on its adoption of UETA to validate electronically recorded documents. See Va. Code Ann. § 17.1-256 (Lexis 2003) (expired July 1, 2004).

Second, passage of electronic recording legislation such as URPERA could provide the basis for a coordinated statewide implementation of electronic recording systems, as well as to remove any lingering doubt about the ability to present any type of electronic record to a county recorder for recordation.

Third, URPERA addresses several additional or ancillary issues that are specific to real estate recording and that UETA does not address head on. For example, outside of UETA, but related to electronic recordation, are issues such as standard document forms, notaries, and fee collection. In addition, URPERA may be a vehicle to provide more specific guidance from the viewpoint of real estate recording on some matters that are already included in UETA. In short, because of its expansive scope, URPERA provides specific guidance to county recorders that could not be provided in UETA.

Finally, as noted, many provisions of URPERA are intended to clarify

earlier authority provided by UETA that may have been overlooked by enacting states. For example, URPERA explicitly states that stamps and seals are not needed for electronic notarial acts. Such an approach was directly informed by regulatory initiatives in a number of states, most notably California, for the reimposition of electronic stamp and seal requirements (see Cal. Gov't Code § 8207), even though the Official Comments for UETA clearly point out that they are no longer called for, and ESIGN's legislative history provides similar guidance.



As of July 2007, URPERA has been enacted in 14 states and the District of Columbia. See www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-urpera.asp. It has also been introduced in another nine states. For more information on URPERA, see www.nccusl.org.

Technological Foundations

Even though ESIGN maintains a technology-neutral position for electronic commerce, technology cannot be ignored. To adequately understand what electronic documents are and how they behave in a real property setting, one must understand some of the technology that makes electronic documents in general, and electronic recording of title documents in partic-

ular, possible. Several distinct pieces, when combined, enable the eRecording process.

XML

The eXtensible Mark-up Language (XML) is a publication of the World Wide Web Consortium (W3C) that provides the key technological foundation for electronic documents. XML is a general-purpose markup language. It is called "extensible" because it allows users to define their own tags. Its primary purpose is to facilitate the sharing of data across disparate systems.

A markup language provides structure and context for the content of a document. Although not referred to as markup at the time, markup has been around at least since Gutenberg invented movable type. References to "lowercase" and "uppercase" are actually markups that describe how the various letters will appear or be displayed. Similarly, fonts such as Times New Roman and Arial are also markups.

Whether the document is paper-based or electronic, the markup itself is not seen, but it is there. Thus, all documents are actually a combination of content (the letters, words, and numbers) that is controlled by markup (the font, size, location, emphasis, and spacing). Without markup, it would be difficult to decipher the words on the page.

XML goes well beyond traditional markup. In fact, it separates document content from markup in an extremely powerful and flexible format. The XML standard allows a community of interest (such as the real estate finance community) to define its own language elements to control the data in electronic documents that the various trading partners need to exchange.

Standards

Users of XML can define their own data tags and formats, so the issue of having to keep track of all of the trading partners' various tag names and formats to conduct business arises. Fortunately, the solution to that issue has been addressed by organizations

like the Property Records Industry Association (PRIA) and the Mortgage Industry Maintenance Organization (MISMO).

PRIA is the national standard-setting body for electronic recording of land documents. MISMO is the national standard-setting body for the mortgage lending industry. These two organizations are working together to establish one set of data standards for all parts of the real estate finance transaction. Through a formal alliance agreement between PRIA and MISMO, the two organizations work cooperatively to ensure that whereas PRIA maintains data standards for recording, and MISMO maintains standards for mortgage lending, the two sets of standards are synchronized so they act as a unified single standard that encompasses all aspects of the real estate transaction.

Electronic Signatures

UETA defines an electronic signature as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." UETA § 2(B). The effect of this definition on real estate transactions is that it begins to move the focus away from the traditional notion of an "autograph" type signature and focuses instead on the process and intent of the signing itself.

When people first think of an electronic signature, they usually conjure up one type of electronic signature that everyone is familiar with. The majority of electronic signatures today are autograph-based technologies, such as the electronic signature pads used at an increasing number of retail outlets. Using an autograph-type technology can be comforting to people just getting used to electronic transactions because the now-familiar squiggle created by the stylus in their hand is displayed for them to see. But what about other types of electronic signatures? Even small things like those key-fobs that have a chip a gas pump can read (associated with a credit or debit card) actually are used to create an electronic signature. When the fob

is waved across a scanner, an electronic signature is created.

Another form of electronic signature that most lawyers have heard about is a digital certificate, even if only a few of us have actually ever used them. These password-protected pieces of software, based on complex algorithms and large prime numbers, are mainly used for computer network authentication across the Internet. The same technology can be used, and in fact is being used, to sign electronic documents today.

In keeping with E-SIGN's call for technological neutrality, it is easy to see that many available types of electronic signatures can be used for electronic real estate documents, almost all of which are compatible with the PRIA and MISMO standards.

UETA defines an electronic signature as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."

Electronic Document Formats

In December 2000, Carl Ernst published an article describing the three models of electronic recording discussed briefly above. Carl Ernst, *The Three (or More?) Models of Electronic Recording*, The Real Estate Record, Dec. 2000, at 1, available at www.pria.us/Papers/eRecordingModelsDefined_CarlErnst.pdf. That article provided the foundation for electronic recording models that PRIA references today. The models implement the elec-

tronic markup and signature requirements as follows:

- Model 1: Scanned paper. This basic form of eRecording is simply a matter of a traditional paper document containing ink signatures being scanned and electronically submitted to the recorder by a closing agent. The scanned image is usually a static (or dumb) document that provides little process automation.
- Model 2: Scanned paper combined with XML data. This hybrid form of eRecording begins with traditional paper and ink signatures, like Model 1. In addition to the static (dumb) image, the submitter adds XML-based data that can be used by the recorder to automate various aspects of the recording process.
- Model 3: This is the "holy grail" of eRecording. The document is never in paper form; rather it is created in an electronic format such as XHTML or according to a published standard like the MISMO SMART Doc™ specification or Adobe's Intelligent PDF. Electronic signatures are used in lieu of ink signatures. The XML data necessary to automate the recording process are embedded in the document.

More Than Just Pilot Projects

Some practitioners may be surprised to learn just how mature eRecording technology is and how widespread its use is. Each eRecording model traces its earliest implementations back to the late 1990s. The early adopting counties are quickly approaching their 10th year of service. Most of the major software vendors are into the second, third, and, in some cases, the fourth release of their products, keeping pace with new hardware availability and updates in the PRIA and MISMO standards.

PRIA has undertaken a project to track which counties have implemented the various versions of eRecording. As of July 3, 2007, PRIA's list included 254 counties in 24 states and the

District of Columbia. PRIA members have access to the full list, showing each of the counties or recording jurisdictions that accept electronic documents, as well as a specification of which model or models that jurisdiction accepts.

Although no scientific statistics have been compiled by anyone to date, counties that have implemented Model 2 eRecording systems report that within a few months of making their systems available, they receive between 50% and 75% of their documents electronically.

Innovative approaches such as the statewide portal projects being used in Iowa, New Jersey, and Missouri continue to drive adoption rates up and make submitter integrations easier than ever. Statewide portals allow document submitters to submit documents to or through a single web site without regard to the destination county. The routing of the document is handled by the portal design or by software on the portal. The submitter is presented with a uniform and familiar interface, even though the actual recording hardware and software of the various counties may be disparate.

Advantages and Success Stories

To grasp the full effect of electronic recording, two viewpoints need to be considered: the county recorder and the submitter.

For counties, all three models of electronic recording reduce the number of paper documents that need to be scanned by office staff. For example, Maricopa County, Arizona, records between 8,000 and 10,000 documents every day. Barbara Frerichs, the records project manager, reports that the county receives approximately 53% of the documents in a Model 1 format. That equates to 4,000 to 5,000 fewer paper documents that the county staff has to handle every day. Add to that the 5% of documents that are received in a Model 3 format, and a significant dent in the workload has been achieved.

Both Models 2 and 3 provide the opportunity to leverage XML data to automate the recording process. This

process can be as simple as having the recording software use the XML data to create index entries for the grantor and grantee names in the recorder's database. The XML data also can be used in complex business rules that fully automate reviewing the document for statutory compliance, calculating recording fees, initiating Automated Clearing House (ACH) payments, indexing the document (including legal or tract indices), and



routing the document to other governmental agencies that need to act on the newly recorded document. An example of Model 3 implementation comes from the experience of one of the authors as Racine County, Wisconsin, Register of Deeds. When implementing a Model 3 solution in January 2003, the author observed that the processing time for lien releases was approximately 11 minutes of direct staff time for a paper document, while a Model 3 electronic equivalent required less than one minute of system processing time.

For submitters, Models 1 and 2 require minimal internal process change and no consumer education. Traditional paper documents are still the foundational elements of these systems, so consumers do not need to understand any technology implementations to feel confident with the transaction.

All three models can, in appropri-

ate circumstances, decrease the turnaround time for recording documents. Implementation specifics vary, so results also vary, but everyone agrees that eRecording reduces document turnaround from days or weeks to hours or even seconds. Of course, the more documents that are submitted electronically, the faster the overall turnaround time becomes.

Some of the more sophisticated implementations that include county-specific business rules integrated into the document creation templates have significantly reduced the number of documents that are rejected by the recorder. Common mistakes such as missing data or incorrect fees are easily eliminated by the computer systems before the document's submission to the county.

The PRIA and MISMO document standards also address security concerns. Although there have been no reports of forged or altered electronic documents to date, the security aspect of electronic commerce cannot be ignored. A full explanation of security as set forth in the PRIA and MISMO standards is well beyond the scope of this article, but the two organizations have conducted (and will continue to conduct) multiple analyses of every aspect of the electronic documents to make them as secure as necessary. Although a "fear-factor" tends to surround electronic transactions in general, and electronic real estate transactions in particular, the eRecording experience over the past 10 years has been reliable and trustworthy.

Summary

UETA, ESIGN, and URPERA provide the legal framework for generating and recording electronic real estate documents. Sophisticated yet user-friendly technologies are at work behind the scenes, enabling powerful automation of an otherwise paper- and labor-intensive process. Over 250 counties in nearly half the states have already implemented eRecording systems.

Electronic recording of real estate documents is not a "wouldn't that be nice someday" concept. It is a proven, mature solution that is gaining momentum because it helps increase accuracy, reduce cost, and reduce turnaround on time-sensitive transactions. ■

Publisher's Notes

The year 2000 may be seen as a historic milestone on the road to electronic recording of real estate documents.

ELECTRONIC RECORDING INITIATIVES

Before this year, only one recording office (Orange County, CA) was accepting documents electronically every day, and one other county (Utah County, UT) had accepted electronically a document that contained a digital signature.

This year, three counties (Maricopa County, AZ, Broward County, FL and Salt Lake County, UT) introduced some form of electronic recording. In addition, work in preparation for electronic recording initiatives got started in a number of states:

- Racine County, WI issued an RFP for a system.
- Texas drafted rules to govern electronic recording in the state.
- Committees to examine the issue were established in Minnesota, Oregon, Washington and other states.
- Pilot projects being designed in other counties around the country will be announced soon, we suspect.

STANDARDS DEVELOPMENT

The real estate financing industry is undeniably getting more regional and national in scope.

In order to sustain electronic recording as a viable system at the state, regional or national model beyond selected local recording offices, it is recognized by both the public and private sectors that there is a need for standardization in the data that is to be transmitted with documents to be recorded so that recording offices can identify, index and archive documents received electronically. There are a number of different ways that documents can be accepted electronically, as summarized in the article that starts in the next column.

Data standards for recording information are now under development. For example:

- Realtor data and mortgage data XML standards have been developed.
- A work group has been established in California to define standard XML data fields for recording information that will be extended nationwide in 2001.

If you would like to participate in any of these initiatives send an email request to me at Carl.Ernst@ernst.cc, and I will put you in touch with the right people.

The Three (or more?) Models of Electronic Recording

Today, four counties accept some form of electronic recording: Orange County, CA, Maricopa County, AZ, Broward County, FL and Salt Lake County, UT. Orange County is the original pioneer, having introduced its system in 1997. The other counties introduced their systems in the year 2000. Utah County, UT also accepted an electronic recording in 1999. Each of these counties has taken a somewhat different approach to the systematic receipt of electronic recordings, but together their initiatives represent three possible models of electronic recording.¹

MODEL 1—ELECTRONIC TRANSMISSION OF SCANNED PAPER DOCUMENTS

Today, the great majority of recording offices maintain the archive of recorded documents in image format rather than archiving the original document. The image format is still microfilm (an analog copy) in most counties, but images are now maintained in digitized form² on optical media in many recording offices. In these offices, the process of creating the digitized image by scanning the original document is integrated into the process of accepting a document for recording and/or assigning a recording number to a document.

Technologically, the source of the scanned image of a document no longer has to be within a recording office. Remote scanners can be utilized to create the digitized image, which then can be submitted through a proprietary system or over the Internet. This is what Orange and Maricopa have done. Orange County uses a proprietary method using high-speed direct lines,³ and Maricopa uses the Internet.

¹ The current method of recording in the US is based on accepting original paper documents with ink signatures. A committee of LegalXML.org, in the process of developing the XML standard for court filings, established four "models" of electronic integration of the court filing process, of which the current paper-based filing systems was designated "model 0".

² A *digitized* copy is a like a photograph of a document converted into computer bits. A *digital* copy of a document, on the other hand, would be a copy of each of the bits that represent the characters of text in a computer.

³ Orange County will convert to an Internet-based system in early 2001.

At this model, scanned documents from settlement agents who have contracted with a recording office enter the processing queue in the recording office at the point where manual document review and indexing take place. After the document is assigned a recording number, a message is returned to the user confirming the acceptance of the document and its recording information. This process takes less than 15 minutes from receipt of the document.

Documents are archived in the same manner as paper documents, that is, as digitized and/or micro-filmed images, and copies of these images are certified by the recorder in the traditional manner.

Most state statutes are interpreted by recording offices to require original signatures on documents. It is possible that electronic images of original signatures are acceptable for recording under federal E-Sign legislation effective October 1, 2000. Maricopa and Orange were able to implement their systems prior to that date because of local initiatives. Arizona statute provides that documents containing original signatures may be submitted in imaged form. In Orange County, people have been deputized as county officials at the user scanning locations to review the original documents to determine that the signatures are original.

This model of electronic recording has the following benefits:

- (1) It shortens the time from receipt to acceptance of documents, which in turn allows house purchase/sale transactions to be consummated more quickly.
- (2) It decreases costs (especially staffing requirements) in the land recording office by eliminating the manual steps of document scanning and cashing.

MODEL 2—XML WRAPPER ON PAPER-LIKE DOCUMENTS⁴ (ACTUAL PAPER OR PAPER-PARADIGM)

This next model of electronic recording introduces the concept of a paper-like (or "paper-paradigm") document. The document may be a scanned image of a signed paper document the same as accepted in a model 1 system,⁵ or the document may have been prepared within a computer and signed by

some electronic means,⁶ that is, a paper-paradigm, digital, computer-text document.

Also, just like a model 1 document, the model 2 document is wrapped in a digital certificate that identifies the submitter. The real difference between the two models is that in model 2 some XML fields are also submitted along with the document. These fields contain identifying information about the document, such as the document type, and include grantor/grantee names formatted to assist in indexing.

The document still needs to be reviewed by a person for formatting and other acceptance criteria that are required by statute, such as the Florida statutory requirement pertaining to witness signatures.

Although the names in the document submitted in a model 2 system may in theory be indexed by computer from the XML fields, as a practical matter this would be a really bad idea because the XML data is not imbedded in the document so what the document says and what the XML data says may differ. The Broward County system is programmed so that the XML name fields pop up on the computer review screen along side the image of the document. After the reviewer examines the document for compliance with statute, she reviews the index entries and either accepts them as submitted or corrects them.⁷

Model 2 systems have all the other characteristics and benefits of model 1 systems. Documents that contain handwritten signatures are still archived in the same manner as paper documents, that is, as digitized and/or microfilmed images, and copies of these images are certified by the recorder in the traditional manner. It is unclear yet whether and how model 2 documents with digital signatures will be archived, copied or certified.

⁴ The definition of the word "document" becomes less clear at model 2. Does the document to be recorded include the XML information?

⁵ Submission in this form assumes that statute allows paper-based signatures to be accepted in this format.

⁶ Broward accepts holographic signatures as electronic signatures under the Florida version of UETA. Other forms of signature may be acceptable under federal E-Sign legislation.

⁷ Since Florida is an "official records" indexing state rather than a grantor/grantee indexing state, the recording office there do not have the problem of deciding who is the grantor and who is the grantee. In any case, reviewing indexing data already prepared by the submitter represents a saving over key entry and may be inherently more accurate than keying. Time will tell.

MODEL 3—XML INTEGRATED INTO XHTML WITHIN DOCUMENTS (DIGITAL DOCUMENTS),⁸ WITH OR WITHOUT PAPER-LIKE ATTACHMENTS

The real difference between model 2 and model 3 systems is **not** that digital signatures are used—digital signatures could be attached to a model 2 document. The difference is **also not** that the document is paperless—a scanned paper attachment may be submitted as part of a model 3 document.

The real difference is that **at least part** of a model 3 document is a digital document—one that includes computer-readable, multi-layered content which will be standardized as XML fields in XHTML format—that can include the following layers of information:

- a text layer (represents at least part of the traditional paper document),
- an HTML layer (tells the computer how to format the text layer for printing),
- an XML layer (contains fielded information to be included in text when formatted for printing),
- a signature layer (contains electronic signatures identified by category of signer, and
- maybe, a notary seal layer (contains a copy of the seal or notary information, as required by state statute, if not included in text or XML layers).

The text layer contains signature markers, which may be the printed names of the signers.

The XML information is included in formatted fields containing the names of all grantors, grantees, and other names to be indexed, and is printed in the text version of the document. This resolves one of the shortcomings of using XML-formatted names in model 2 systems; the name in the data field must agree with the printed version there, and there should be no variations in the document when the same name is printed multiple times. However, it still cannot be assumed that human grantors and grantees will sign a document exactly like the name in the XML fields, so some manual intervention may still be necessary in those recording offices that index from signatures or that index variations of names between printed and signed forms.

⁸ The definition of the word “document” at model three certainly includes the text portion of the XHTML piece plus any attached images. Does the recorded document need to include the HTML, embedded XML or electronic signature information layers? If so, how can it certifiably be represented as an image?

The initial implementation of a model 3 system in Salt Lake City, UT has avoided this problem so far because the documents that are accepted electronically (mortgage releases) are signed by corporate officers whose names are not indexed. The documents are not subject to indexing variations between printed human names and signatures.

Although the Utah statutes and the two Utah recording offices have tried to deal with recording issues raised by digital documents, open questions remain about how a recording office is actually required to handle a fully digital document. For example,

- What parts of the five layers of information in such a digital document need to be archived?
- What image, if any, of a digital document should be archived with paper documents?
- How is a “copy” of a digital document certified?

COMPARISONS BETWEEN THE MODELS

There are some who say that the Orange and Maricopa systems are not really electronic recording systems. They say that the document is still reviewed, and index entries keyed, in the traditional fashion. We, however, see no reason to relegate those systems to a lower status than model 2 or 3 systems. Rather, they fit neatly into this three model scheme. Like model 2 and 3 systems, model 1 systems use both electronic and automated technologies, such as,

- utilizing digital certificates that wrap around the document for secure transmission,
- utilize digital certificates to recognize the submitter, and
- automate the cashing function.

Also, the automation of the indexing process is not an inherent ingredient at any of the models of electronic recording. Whether to embrace fully automated indexing is an individual recording office option, based on state statutory requirements, the characteristics of documents received, and the operating philosophy of the recording office. In fact, it may be said that the goal of an electronic recording system is not necessarily 100% automated acceptance, but reliably swifter acceptance of documents. Finally, in all models of electronic recording systems there always needs to be a point in the internal recording office process where the document may be reviewed by a real person because the electronic package containing a digital document may also contain a scanned-image attachment.

MODEL 4?—BEYOND THE PAPER PARADIGM

At least one academic commentator has suggested

that the day will come when submissions for recording will dispense with paper-paradigm documents altogether. A "document" will take the form of a purely digital, fielded record. There is a model for this model of electronic recording suggested by the statutes in those few states that allow a document to reference a master form that has been previously recorded.

In this model, a record submitted for recording would just consist of fields for the date, the grantor and grantee names, the digital signatures of the parties and notary public, other statutorily required fielded information such as the notary public registration number and property identification number, and a field referencing the recording number of the master form of document that was signed.

This sort of shorthand recording may be most applicable to assignments and releases of mortgages, both of which are documents most akin to standard forms. Time will tell whether this idea is practical.

News From The States

Changes are repeated each month in this section of the newsletter until the changes are included in the quarterly update of *The Real Estate Recording Guide*™. We recommend you mark these changes on the affected pages in your set.

DELAWARE—SUSSEX COUNTY

Effective January 1, 2001, recording requirements will closely follow the other two counties, including 2" margin at top of first page with preparer and return-to information on left side, 1" margins on other sides and pages, except 2" marginal also at bottom of last page. Documents that fail to meet these standards will incur an additional \$30 penalty fee.

ILLINOIS—COLES COUNTY

Add \$3.00 to all basic recording fees. Remember that each county is implementing this fee increase from \$15.00 to \$18.00 whenever it wants. Therefore, it would be wise to check the current status of

fees in any county that still shows a basic recording fee of \$15.00.

LOUISIANA

Hard as we try, it is difficult to determine with clarity what the fee for a mortgage will be in a specific parish starting January 1, 2001. A flat fee was charged in the past based on the usual number of pages in the standard mortgage forms designated by Fannie Mae and Freddie Mac. Since these forms will be 5-7 pages longer starting January 1, 2001, we anticipate that parishes will be increasing their flat fees once they see how much longer the new forms are. If you are using the new, longer forms, we suggest you call the Parish to confirm the fee for that particular form of mortgage.

We will be surveying parishes early in 2001 once they have received some of the new, longer standard mortgage forms to determine what they intend to charge.

MASSACHUSETTS

Effective December 13, 2000, add a \$20.00 "community preservation" fee to the basic fee for every instrument to be recorded.

NEW YORK—CHENANGO AND DELAWARE

Both counties now require a cover sheet.

NEW YORK—FULTON COUNTY

Telephone number is 518-736-5555.

NEW YORK—SUFFOLK COUNTY

Basic deed and mortgage recording fee is \$28.00. Basic assignment and release fee is \$28.50.

PENNSYLVANIA—YORK

By local ordinance, York County will require a "Uniform Parcel Identification Number" to be on all instruments "affecting real estate in York County. The number must be "certified before being presented for recording." Parcel numbers are available to the public on www.york-county.org under the Assessment Office. The certification unit is located in the main hall of the Courthouse at 28 Market St., York, PA 17401.

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Task Force to Study Uniformity in Real Property Recordings 2009 Roster

Name	Company	Appointing Authority	City
1. Mr. Steve Amos (Vice Chairmain)	Copiah County Chancery Clerk's Office	MS Chancery Clerk's Association	Hazlehurst
2. Mr. Gerald Barber	Madison County Tax Assessor's Office	MS Assessors and Collectors Association (2)	Ridgeland
3. Ms. Andrea Barnes	Attorney at Law	Magnolia Bar Association	Madison
4. Mr. William "Bill" Benson	Lee County Chancery Clerk's Office	MS Chancery Clerk's Association	Tupelo
5. Mr. George R. Culpepper	Attorney at Law	MS Bar Association	Meridian
6. Mr. Sluggo Davis	DeSoto County Chancery Clerk's Office	Governor	Hernando
7. Mr. Parrish Fortenberry	MS Valley Title Insurance	Commissioner of Insurance	Madison
8. Ms. Judy Fortenberry	Rankin County Tax Collector's Office	MS Assessors and Collectors Association (2)	Brandon
9. Sen. Briggs Hopson	MS State Senate	Lieutenant Govenor	Vicksburg
10. Hon. Delbert Hosemann (Chairman)	Secretary of State's Office		Jackson
11. Mr. Mike King	Trustmark Bank	MS Bankers Associaton	Jackson
12. Mr. Warren McKinnon	MS State Tax Commission	MS State Tax Commission	Jackson
13. Mr. Gerald McWhorter	Secretary of State's Office	Secretary of State	Jackson
14. Mr. Tommy O'Beirne	Adams County Chancery Clerk's Office	MS Chancery Clerk's Association	Natchez
15. Mr. Craig Orgeron	MS State Department of Information Services	MS Department of Information Services	Jackson
16. Mr. John Praytor	Professional Appraisal Firm	MS Association of Realtors	Ridgeland
17. Mr. Paula Sykes	Sunflower County, MS	MS Association of Supervisors	Indianola
18. Rep. Joseph Warren	MS House of Representatives	MS Speaker of the House	Mount Olive