

Florida Electronic Recording Advisory Committee Report

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Committee Chair

FACC Destin 2/6/08



Florida's URPERA passed

- URPERA = Uniform Real Property Electronic Recording Act
 - Followed the National Conference of Commissioners on Uniform State Laws (NCCUSL) model legislation
 - Signed by Governor and became law in July 2007
 - Appears at §695.27

What Law Says

- If law requires (for recording) an “original,” an electronic document satisfies the law
- If law requires (for recording) a signature, an electronic signature satisfies the law
- If law requires (for recording) a notarial acknowledgment, law satisfied with electronic signature and other data; stamp not required

What the law says (continued)

- Recorder who chooses to accept electronic documents to do so in compliance with standards published by Department of State
- May receive, index, store, archive and transmit documents electronically
- May provide access and search/copy electronically
- Must always accept paper documents and both must co-exist in same index
- May convert paper documents to electronic form
- Must collect all normal fees and taxes

Role of Department of State

- Prescribe standards to implement the Act
 - Publish the rules
- In consultation with FLeRAC, which was created by this law
- DoS rule-making expected to take between 7-10 months

FACC to staff

- So that the Department of State would not incur any expenses
- FACC to staff FLeRAC at no charge
- All materials available at www.flclerks.com
 - Click on eRecording Committee button on bottom left

Created Electronic Recording Advisory Committee

- Membership
 - 5 recorders, including Broward
 - 2 Florida Land Title Association representatives
 - 1 FL Bar Real Property Trust and Probate Section representative
 - 1 FL Mortgage Bankers representative

Things to consider

- Standards and practices of other jurisdictions
- Most recent standards adopted by standard-setting bodies, such as PRIA
- The views of interested persons
- The needs of counties of varying size, population and resources
- Adequate information security

Committee Status

- First meeting within 60 days of effective date of act
- Members appointed for 1 year terms; can be reappointed
- Meet at least annually
- Committee terminates July 1, 2010

Committee Members

- Recorder appointees
 - Martha Haynie, Orange Comptroller, Chair
 - Chips Shore, Manatee County Clerk, Vice Chair
 - Sue Baldwin, Broward County Records
 - Buddy Irby, Alachua County Clerk
 - Jim Jett, Clay County Clerk
- FLTA appointees
 - Steve Rumsey, Pioneer Technology Group
 - Skip Straus, Straus & Eisler
- RPTPLS appointee
 - Pat Jones, Attorneys Title Insurance Fund
- Bankers appointee
 - John Hutchinson, Capital City Bank

Total of 4 Meetings Held

- First meeting: August 20, 2007
- Technical Subcommittee meeting: September 26, 2007 in Ft. Lauderdale
- Second meeting: October 31, 2007
- Conference call meeting: November 30, 2007

The Report

- Only 6 pages highlighting 10 standards
- Important to understand standards
- If we don't do it in the paper world, we don't do it in the eRecording world
- County Recorder choices

1. Data Standards

- Property Record Industry Association (PRIA) standards adopted
 - Document formatting
 - Data fields
- Recommend offering and conducting eRecording at all 3 models
- Recorder to use open architecture for reception of documents

Data Standard Questions/Issues

- Which version of PRIA standards?
- What are the 3 models?
- Are any extensions of PRIA standards needed for Florida?
- What's open architecture?

Which version of PRIA standards?

- Currently PRIA version 2.4
- Document and data
- Notary
- Request
- Response

Models Briefly Defined

- Model 1
 - Paper document with wet ink signature
 - Document scanned
 - Sent electronically to Recorder
 - No data sent with document
 - Recorder reviews and if recorded, burns “regular” information onto scanned image
 - Recorder staff indexes
 - Returns copy to submitter

Model 2

- May start as either paper or electronic based
- Create image
- Image wrapped in XML (including from whom, what's in package, index data, to whom to return, payment)
- Imported into Recorder's recording software
- Visual inspection to verify data and image match
- Recorder staff verifies index data
- If recorded, burn "regular" information onto image
- Return to submitter

Model 3

- Document created and signed electronically (never exists in paper)
- Documents submitted to Recorder
- Recorder's software validates document
- Data and image may/may not be reviewed by staff
- "Regular" recording information burned onto image
- Image returned to submitter

Any Florida Extensions Needed?

- None at this time
- DR-219 form provided for in PRIA standards

What's open architecture?

- Basically: set up so that anyone can access
- By using defined XML, it becomes non-proprietary and available to all submitters

2. Web Portals

- World Wide Web will be most common delivery medium
- Web portals in various forms
 - Single county
 - Multiple counties share
 - No mandatory web portal shall be created or promoted

Web Portal Issues

- What does web portal do?
- Who pays for web portals?

3. Business Rules

- Rules of individual county recorder
- Not a legal agreement between submitter and recorder
- Have business rules in paper world; thus have business rules in eRecording
- List of items to be covered in Business Rules
 - Session on Thursday afternoon to discuss

Business Rules Issues

- Is this a legal agreement/contract?
- What has to be covered?
 - Technical specifications
 - Document and indexing specifications
 - Hours of operation and processing
 - Payment requirements/options
 - Termination terms
 - Document rejection practices
 - Commitment to publish amendments/changes before amendment/change takes place

4. Security

- Standards and policies based on industry accepted practices
- Transactional security
 - Both transmitting and receiving parties must be assured of each other's identity
 - Nothing happens to document between sending and receipt
- Organizational security
 - Recorder to assure protection from alteration and unauthorized access

Security Issues

- To protect both submitter and recorder on both parts of the transaction (to and from)
- To make sure nothing happens to documents between sending and receipt
- To know who sent and who received
- To protect documents from alteration and unauthorized access

5. Electronic Signatures

- UETA and eSIGN allow multiple varieties of electronic signatures
- County Recorder only has to accept those varieties which have technology to support
- Recorder has no responsibility to verify signatures in document

Electronic Signature Issues

- What makes an electronic signature?
- What counts as an electronic signature?
 - A typed name?
 - A click-here box
 - A holographic signature (electronic John Hancock)
 - A symbol?
 - A sound?

6. Notarial Acknowledgment

- Recorder has no responsibility to authenticate or verify notary's signature
- After electronic notarization rules are published per 117.021, and if electronic notarization is used, must comply with electronic notarization rules

Notarial Acknowledgment Issues

- What's the data?
 - Date Commission Expires
 - Notary Number
 - Name

7. File Formats for eRecording

- Recorder decides what formats to accept
- Convert and store as TIFF or PDF
 - Along with metadata (information about the data and documents being submitted)
- If receive Model 3 documents, convert to TIFF or PDF (until native format storage is viable)

File Format Issues

- What if it comes in as PDF and we store as TIFF?
- What if it comes in as XHTML and you store as TIFF or PDF?

8. Processing eRecordings

- Recorders will process in accordance with §695.11 and §28.222
- A document is recorded at the time the official number is affixed
- Once number affixed = notice to all persons
- Sequence matters: lower number = priority over higher number

Processing Issues

- Do eRecord documents get priority?
- How work them into regular work flow?
- When do eRecord documents become recorded?

9. Records Retention and Preservation

- eRecorded documents to follow same retention as paper documents
- All Official Records are permanent (forever)
- Security microfilm recommended
- Alternate = written plan to refresh electronic media
- Recorder decides

Retention Issues

- Do we need to keep all the incoming and outgoing information?
 - Metadata
- How long?
- What about storage on CDs?
- Should eRecords be kept separately from paper Official Records?

10. Payment of Recording Fees

- Must provide for payment of all fees and taxes when eRecording
 - Including documentary stamp taxes and intangible taxes
- Recorder decides methods
- Typical methods = ACH Debit, escrow pre-payment, credit/debit cards, journal vouchers
- Most eRecording counties currently use ACH Debit

Payment Issues

- What about electronic checks?
- What if payment not received?
- How/when pay documentary stamp taxes?
- How/when refund?

Appendices

- Glossary of Terms
- Acronyms
- eRecording Models Explained
- Related Statutes (87 pages)
- PRIA Standards
- Records Retention and Preservation Guidelines
- DR-219
- Model Business Rules
- Frequently Asked Questions

Frequently Asked Questions

- What documents can be eRecorded?
 - Experience indicates all document types (except perhaps plats and condo drawings)
- More fraud with eRecording?
 - No, less.
- Are recorders responsible for authenticating signatures?
 - No, don't do in paper world so don't do in eRecording world

Role of Department of State (cont)

- How long does it take to make a rule?

For additional information

- Download Final Report from:
<http://www.flclerks.com/eRecording.html>
- Attend Business Rules session Thursday
- Attend eRecording Demonstration Thursday