

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Commentary

eRecording becomes a reality in New York state

On Sept. 23, 2011, New York Gov. Andrew Cuomo signed into law Senate Bill 2373A and Assembly Bill 6870A. The law amends State Technology Law Section 307, Real Property Law Section 290, RPL Section 317 and adds RPL Section 291-i. The bills were sponsored by Sen. Andrea Stewart-Cousins and Assemblyman George Latimer, both of Westchester County, and co-sponsored by Sen. George Maziarz from Niagara County.

The statutory provisions enabling eRecording became effective Sept. 23, 2012, at which time the regulatory standards were in place. The provisions do not require counties to elect to participate in eRecording. A group of professionals from several different fields including the New York State Bar Association, New York State Land Title Association, New York State Association of County Clerks, New York State Bankers Association, New York State Association of Realtors and several different entities from the state participated in a focus group to help promulgate the rules and regulations of the eRecording laws.

Locally, I served as chair of the New York State Land Title Association eRecording committee and Monroe County Clerk Cheryl Dinolfo served as vice-chair of the New York State Association of County Clerks eRecording Committee. We were able to work closely with the above groups to make sure that the interests of all parties were heard and addressed.

Prior to the late 1990s, in order to record a document affecting real property, one would have needed to travel to the county in which the subject property was situated, contract with a local vendor, or have the documents delivered to the county via a courier/overnight service. 1997 brought a dramatic change to the real estate industry as Orange County, Calif., became the first county in the United States to accept documents electronically for recording.

As support grew for electronic recordings there was a need for recording and technology standards to be developed. The National Association of County Recorders, Election Officials &

Clerks, the International Association of Clerks, Recorders, Election Officials & Treasurers and the Property Records Industry Joint Task Force joined forces to meet and discuss issues and recommend standards.

As the groups worked together, it afforded representatives from government, lenders, land title professionals and electronic recording providers a forum to ensure their voices were heard. After a period of time, the PRIJTF was dissolved and Property Records Industry Association was formed.

PRIA has been in existence since 2002 and has worked hard to make sure concerns are heard and best practices are implemented. According to PRIA, after nearly 10 years of eRecording being recognized as an acceptable method of recordation, there were still only 200 counties that had embraced this change.

"Between September 2011 and June 2012, the number of counties committing to the eRecording process increased by 14.3 percent. As the PRIA eRecording standards continue to mature, the number of counties leveraging this technology continues to expand," said

Larry Burtness, Washoe County, Nev., chief deputy recorder and PRIA technology committee co-chair.

More states and counties are becoming comfortable with the technology and processes used in eRecording. There are more than 820 counties in 42 states accepting documents electronically for recording throughout the U.S. This accounts for more than one quarter of the counties in the nation.

There are different models of eRecording recommended to counties to implement. The models were initially written about by Carl Ernst in December 2000, in the article "The Three (or more) Models of E-Recording." The models were relied upon as a reference by recorders and submitters for several years, but as the systems grew and technology changed, PRIA recognized that the models should be updated.

PRIA approached Ernst eight years after he wrote his article

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and asked for his thoughts on updating the models. The result was updated models that are largely adopted and relied upon today by recorders throughout the nation. The models vary dramatically and each county is able to elect which model they are going to implement.

The first model is as basic as a paper closing still taking place and the documents being scanned and delivered electronically to the clerk; where the third model is a true electronic closing with signatures captured electronically. Model 2 is a hybrid of the two but still requires a wet signature. At this time we will not see any clerks adopting model 3 as there is no legislation allowing electronic notarization in New York state.

When people first hear the term eRecording, I tend to see panic set in. They worry about fraud, logistics, implementation, etc. We need to take a step back and look at the eRecording process as a whole, to see what it really does and to recognize the benefits.

In simple terms, eRecording is just the process of electronically delivering documents to the clerk/register for recording. The fees are still the same, the indexing and verification processes still take place and you still receive a receipt.

When you start to submit documents electronically, one of the first things that you'll notice is an improvement in the time necessary to get documents on record. One example pointed out to me was that many years ago, a county was nearly 18 months behind in their recordings. They are now accepting documents electronically and the average time for an electronically recorded document to be accepted, indexed and searchable is 56 minutes.

In a race-to-record state, such as New York, this can dramatically decrease the risk of something being recorded ahead of your document. There are also several other advantages to eRecording: cost savings (lower mail/UPS/courier costs), additional document security (the original documents never leave your possession) and decreased time in re-submitting rejected documents. I suggest that one speaks to their abstract/title company of choice to learn about eRecordings and to ensure that their documents are recorded in a timely manner.

As of Oct. 17, Rockland and Westchester counties in New York are accepting documents for recording electronically. Paul Piperato, clerk of Rockland County; Tim Idoni, clerk of Westchester County; and Dinolfo, clerk of Monroe County, have been big proponents of eRecording in New York for many years. There

are several other counties working to move in the direction of accepting eRecordings and I would expect that in the coming months/year we will see several more counties allow electronically submitted documents.

Dinolfo, who also helped write the rules for establishing eRecording here in New York, is working on an eRecording system for Monroe County. "I am very pleased that eRecording has become a reality here in New York. Here in Monroe County, eRecording will be voluntary for our customers so all can ease into this new way of doing business. As we move forward, we will involve all interested parties, including the Monroe County Bar Association, abstractors and title companies as well as host training sessions as part of rolling out our system," Dinolfo said.

How do you get started? In order to eRecord with any county in New York, one must enter into a Registered Submitter Agreement with the county. The agreement spells out the rights and responsibilities of both the recorder and the submitter. In some counties you may need to work with a third party to transmit your documents to the county for recording.

To date there are three such companies offering services in New York: Simplifile, CSC-Ingeo and EPN (eRecording Partners Network). The third parties are basically acting as an electronic courier service accepting your electronic documents and delivering them to the county for recording.

The services each have their own unique features that may drive you to use one over another, as well as their own pricing structures. They charge a service fee for the delivery of the documents billed in addition to the recording/tax charges. I encourage you to do your due diligence when selecting a provider should you choose to start eRecording.

I believe that this is an exciting time for those of us in the New York state real estate industry. This is a big step forward technologically speaking, which could certainly benefit many of us. It will be interesting to see how this progresses over the next year. I anticipate that there will likely be challenges as counties work to adopt their systems and as the real estate industry works to embrace this change.

John Sauers is the operations manager/commercial coordinator and served as chair of the eRecording Committee of the New York State Land Title Association. Frontier Abstract and Research Services Inc. is an authorized agent for Chicago Title Insurance Company and Stewart Title. Frontier has offices located in Buffalo, Rochester, Syracuse and Albany. The home offices are located at 30 W. Broad St., Suite 100, Rochester, N.Y. 14614; phone (585) 955-6111; website, www.FrontierAbstract.com.