eRecording in Minnesota

A Webinar for Metro PREP
(Property Records Education Partners)

Wednesday, September 10, 2014
Today’s presentation

- Explains who participates in eRecording
- Defines eRecording
- Provides statutory authority for eRecording and MN Electronic Real Estate Recording Commission
- Explains who pays for eRecording
- Identifies Minnesota’s current eRecording counties
- Explores highlights of Minnesota’s eRecording Act
- Reviews some nuts and bolts of eRecording
- Summarizes benefits and future of eRecording
Who participates in eRecording?

- **eRecording requires:**
  - **Providers**—Law firms, title companies, and others who generate deeds, mortgages, and other documents and submit them electronically for recording or registration.

- **Trusted Submitters**—Companies that develop eRecording software and sell it to Providers for use when eRecording.

- **Recorders and registrars**—County officials who accept documents, whether submitted in paper or electronic form, for recording or registration.
Our panelists: PROVIDER

• Robert D. Reitz
  • Senior Title Officer, First American Title Insurance Company—National Commercial Services
  • Member, Legislative Committee, MLTA
  • Rdreitz@firstam.com
Our panelists: TRUSTED SUBMITTER

- **Jeffrey Carlson**
  - Senior Vice President, Indecomm Global Services
  - Chair, Minnesota Electronic Real Estate Recording Commission (ERERC)
  - Represents Minnesota Land Title Association (MLTA) on ERERC
  - [Jeff.carlson@indecomm.net](mailto:Jeff.carlson@indecomm.net)
More about Trusted Submitters

- The ERERC has reviewed five Trusted Submitters:
  - CSC (Corporation Service Company) (formerly Ingeo Systems)
  - eRecording Partners Network
    - [http://www.erecordingpartners.net](http://www.erecordingpartners.net)
  - Indecomm Global Services
    - [http://www.indecomm.net](http://www.indecomm.net)
  - Nationwide Title Clearing
  - Simplifile
    - [https://www.simplifile.com](https://www.simplifile.com)
  - XEROX (formerly Affiliated Computer Services, Inc.)
    - [https://www.erxchange.com](https://www.erxchange.com)
Our panelists: COUNTY RECORDER

- **Martin McCormick**
  - Hennepin County Recorder and Registrar of Titles
  - Member, Minnesota County Recorders Association (MCRA)
  - One of three people who represent the Minnesota Association of County Officers (MACO) on ERERC
  - [Martin.McCormick@hennepin.us](mailto:Martin.McCormick@hennepin.us)
Our panelists: Eileen M. Roberts

- Eileen M. Roberts
  - Of Counsel, Dorsey & Whitney LLP
  - Professor Emerita, William Mitchell College of Law
  - Represents Minnesota State Bar Association (MSBA) on ERERC
  - Eileen.roberts@dorsey.com
What is eRecording?

- **eRecording** is the process of securely recording documents delivered via the Internet that otherwise would be sent by US Mail or courier.

- Using its Trust Submitter’s software, a Provider submits an electronic document, “wrapped” by digital information about the document, to a County Recorder.
What is eRecording?

- *eRecording* is the process of:
  - receipt,
  - examination,
  - fee calculation and payment,
  - endorsement of recording information, and
  - return of recorded electronic documents submitted for recording in a county’s land records system.
eRecording in Minnesota

- **2000**
  - Legislature established Minnesota Electronic Real Estate Recording Task Force (ERERTF).

- **2003**
  - Dakota County conducted Minnesota’s first eRecording.

- **2008**
  - Legislature enacted Minnesota Real Property Electronic Recording Act (MRPERA), which established the Electronic Real Estate Recording Commission (ERERC). The ERERC replaced the ERERTF.
What is the ERERC?

- From the Legislative Coordinating Commission website:
  
  http://www.commissions.leg.state.mn.us/erer/erer.htm

- The Electronic Real Estate Recording Commission was established by the Legislature in 2008 to adopt standards to implement electronic recording of land records. These standards . . . allow Minnesota counties to implement electronic filing of real estate documents. Submitters . . . have the option of sending documents electronically to the county, resulting in a more secure transfer and faster turnaround than the current paper process.
Statutory authority for eRecording

- **Minnesota Real Property Electronic Recording Act**—*MINNESOTA STATUTES* sections 507.0941 through 507.0948 (MRPERA)
  - Authorizes recording of electronic documents.
  - Establishes the ERERC.
  - Requires ERERC to adopt recording standards for electronic documents.
Who pays for eRecording?

- **MINNESOTA STATUTES Chapter 357 FEES.**
  [Excerpt only.]
- **§ 357.18 County Recorder.**
  - **Subd. 1. County recorder fees.** The fees to be charged by the county recorder shall be and not exceed the following:
    - (1) for indexing and recording any deed or other instrument a fee of $46; . . . $10 shall be deposited in the technology fund pursuant to subdivision 4; . . . .
Who pays for eRecording?

- **Minnesota Statutes Chapter 357 Fees**. [Excerpt only.]
- **§ 357.18 County Recorder.**
  - **Subd. 4. Technology fund.** The $10 [technology] fee . . . shall be deposited in a technology fund for obtaining, maintaining, and updating current technology and equipment to provide services from the record system. The fund shall be disbursed at the county recorder’s discretion to provide modern information services from the records system. The fund is a supplemental fund and shall not be construed to diminish the duty of the county governing body to furnish funding for expenses and personnel necessary in the performance of the duties of the office . . . and to comply with the requirements of section 357.12.
Who pays for eRecording?

- **Minnesota Statutes Chapter 357 Fees.**
- § 357.182 County Fees and Recording Standards for Recording of Real Estate Documents. [Excerpts only.]

  - **Subd. 7. Restrictions on use of recording fees.**
    - Notwithstanding any law to the contrary, . . . each county shall segregate the [technology] fee . . . in an appropriate account. This money is available as authorized by the [County Board] for supporting enhancements to the recording process, including electronic recording, [and] to fund compliance efforts . . . and data integration and aggregation projects. . . . This money must not be used to supplant the normal operating expenses for the office of the county recorder or registrar of titles.
Minnesota’s eRecording counties

• As of August 2014:
  • 43 counties (75%) accept all documents for eRecording;
  • 23 counties (16%) accept some, but not all, documents for eRecording;
  • 14 counties (7%) plan to accept at least some documents for eRecording by the end of 2014; and
  • 7 counties (2%) either record only paper documents or have not reported their eRecording status to the ERERC.
eRecording turnaround time

- **MINNESOTA STATUTES Chapter 357 FEES.**
  - § 357.182 County Fees and Recording Standards for Recording of Real Estate Documents.  [Excerpts only.]
    - Subd. 3. Recording requirements.
      - Instruments recorded electronically must be returned no later than five business days after receipt by the county in a recordable format.
**Minnesotan Statutes Chapter 357 FEES.**

- § 357.182 County Fees and Recording Standards for Recording of Real Estate Documents. [Excerpts only.]
  - Subd. 6. Certification of compliance with recording requirements.
    - The county recorder and registrar of titles . . . shall file . . . as part of their budget request, a report that establishes the status for the previous year of their compliance with the requirements established in subdivision 3. If the office has not achieved compliance . . . , the report must include an explanation of the failure to comply, recommendations . . . to cure the noncompliance and prevent a recurrence, and a proposal identifying actions, deadlines, and funding necessary to bring the county into compliance.
MRPERA § 507.0945

- **ADMINISTRATION.**
  
  ERERC shall consist of:
  
  - Three members appointed by MACO
  - One member appointed by MLTA
  - One member who represents Minnesota Bankers Association (MBA)
  - One member who represents Section of Real Property Law, Minnesota State Bar Association (MSBA)
  - One technology expert, appointed by other ERERC members
  - State Archivist (works for Minnesota Historical Society)
MRPERA § 507.0945

• ADMINISTRATION.

ERERC shall consist of:

• MACO Steve Holthaus (Stearns County Tax System Manager), Marty McCormick, Kay Wrucke (Martin County Recorder)
• MLTA Jeff Carlson (Chair)
• MBA Theresa Bulver (US Bank)
• MSBA Eileen Roberts
• Tech pro Pam Trombo (eRecording Partners Network, LLC)
• Archivist Shawn Rounds
eRECORDING STANDARDS.

In establishing standards, ERERC shall consider:

- eRecording standards and practices in other states,
- The most recent eRecording standards promulgated by national standard-setting bodies,
- The views of interested persons, and governmental officials and entities,
- The needs of counties of varying size, population, and resources, and
- Standards that require information-security protection, to ensure that eDocuments are accurate, authentic, adequately preserved, and resistant to tampering.
MRPERA § 507.0941

DEFINITIONS.

• (a) “Document” means information that is:
  (1) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and
  (2) eligible to be recorded in the land records maintained by the recorder or registrar.

• (c) “Electronic document” means a document that is received by the recorder or registrar in an electronic form.
MRPERA § 507.0943

- VALIDITY AND TIME OF RECORDING OF ELECTRONIC DOCUMENTS.

(d) Notwithstanding the time of its delivery, an electronic document is recorded for purposes of [chapter 507] at the earlier of (i) the time the electronic document is accepted for recording or (ii) the next close of the recorder’s office hours following the time of delivery. [Emphasis added.]
MRPERA § 507.0943, continued

- VALIDITY AND TIME OF RECORDING OF ELECTRONIC DOCUMENTS.

(d) Notwithstanding the time of its delivery, an electronic document is registered as to a parcel of registered land for purposes of chapters 508 and 508A when the electronic document is memorialized or otherwise noted on the certificate of title for the parcel. [Emphasis added.]
MRPERA § 507.0944

- RECORDING OF DOCUMENTS.

  (b) A recorder who accepts electronic documents for recording shall:

  (1) continue to accept paper documents; and
  (2) place entries for paper documents and electronic documents in the same index. [Emphasis added.]

  (c) A registrar who accepts electronic documents for registration shall:

  (1) continue to accept paper documents; and
  (2) place entries for paper documents and electronic documents in the same index. [Emphasis added.]
Nuts and bolts of eRecording

- What equipment and software does a Provider need to eRecord? Ballpark, what does all of that cost?
- How do Trusted Submitters get paid?
- What does it cost per document to eRecord?
- Is it economical for a small title company to eRecord?
Nuts and bolts of eRecording

- Can Providers eRecord documents in Minnesota that originated in jurisdictions outside of Minnesota?
- Can Providers use their Trusted Submitter’s software to eRecord documents in jurisdictions outside of Minnesota?
- Do all Minnesota counties accept eCRVs (Certificates of Real Estate Value) and eWell Certificates?
Nuts and bolts of eRecording

- What happens when a Provider submits an eDocument to a Recorder that contains mistakes or omissions?
- How do Trusted Submitters and Recorders protect county recording systems from viruses?
- Must a Provider get the Examiner of Titles to pre-approve a Torrens document before the Provider eRegisters the document?
- How can a Recorder determine whether an eDocument is an original instead of a copy?
Nuts and bolts of eRecording

- When a Provider eRecords, how does the Provider pay recording fees, deed tax, mortgage registry tax, and other recording-related costs?
- If a Recorder rejects an eDocument, does the Recorder refund the recording and other fees that the Provider who submitted the eDocument paid?
Nuts and bolts of eRecording

- Providers make a business decision to eRecord. What are the biggest advantages of eRecording to a Provider, and to the Provider’s customers?
- From a Provider’s perspective, what are the disadvantages of eRecording?
- Providers appreciate Minnesota counties that accept ALL document types (rather than just a few) for eRecording. Why is that important?
- What differences are there between eRecording commercial vs. residential closing documents?
Nuts and bolts of eRecording

- What happens when a Provider submits an eDocument for recording or registration when the courthouse is closed?
- Which does a Recorder record or register first—a paper document submitted at the counter or an eDocument?
- What is a Recorder’s or Registrar’s turnaround time for an eDocument submitted for recording or registration?
eRecording is beneficial because it:

- Saves paper (very green!), mailing, and courier costs;
- Allows for electronic payment of recording fees;
- Reduces the “gap” between the closing date and the recording date;
- Provides instant notice of rejected documents;
- Eliminates the possibility of losing a document that is submitted for recording or registration; and
- Creates an electronic audit trail that allows recorders and registrars to identify the provider of an electronic document as well as the provider’s trusted submitter.
What is the future of eRecording?

• Electronic execution, recording, archiving, and retrieval of real estate documents are becoming commonplace in Minnesota and throughout the US.

• As more and more Minnesota counties accommodate eRecording of all real estate documents in both the abstract and Torrens systems, eRecording will become an even more integral part of real estate purchases and sales, mortgage financing, and other transactions.

• If you are not currently eRecording, we encourage you to do so. Questions? [http://www.mnererc.com/](http://www.mnererc.com/)
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