

The Basics of E-Recording

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Background

The Uniform Electronic Transactions Act (UETA) in most states, and the Global National Commerce Act (E-sign) federally, allow sale contracts, mortgage instruments, and promissory notes to be memorialized with the electronic signatures of the parties involved in the transaction. But many documents related to a real estate transaction require a further step that neither UETA nor E-sign addresses. They must also be recorded in the public records to officially document the interests held in the real estate, provide the basis for record title and/or show encumbrances on the real property.

In a move toward modernization, most states, including Florida, have enacted some form of the Uniform Real Property Electronic Recording Act (URPERA), which allows—but does not require—officials to electronically record real property and land record documents. While URPERA was meant to address issues associated with real estate transaction documents, e-recording can be used in any situation where a document must be recorded in the public records—for example, to record and create a lien against a judgment debtor's property, to provide a notice of commencement for construction work or to document a claim of lien for sums due a contractor.

E-recording is not for use by individuals, but for entities that record large volumes of documents in the public record, such as law firms, title companies, settlement and closing service providers, and, in some cases, developers.

Vendors

E-recording is facilitated through third-party vendors that set up accounts with county clerks' offices. For example, the Miami-Dade County, Florida clerk accepts e-recorded documents through the five vendors listed on its website. Vendors require their customers, such as law firms, to have the original document in hand at the time of e-recording. Vendors must comply with all laws and regulations governing the security of electronic documents.

Benefits of E-Recording

Based on our experience in Florida, E-recording improves the process of recording documents in the following ways.

- **Speed:** Often, if electronic submission is completed early in the morning, documents are recorded that same day, and completion of the process may take just minutes. The vendor notifies the customer when recording is complete and provides the official recording information for the document. Significantly, this quicker recording time shortens the "gap" during which intervening documents may be recorded. It also makes it possible to record in two or more counties on the same day.
- **Accuracy:** Payment errors are reduced because the vendor advances the recording fees and sends its customer an invoice that must be paid the next business day. Any clerk error in the fees charged can be corrected quickly. This also

eliminates incorrectly calculated check amounts. Clerk errors in indexing documents are also reduced because electronic copies of recorded documents are returned within minutes of recording, allowing the customer to review them immediately and notify the clerk's office of any error.

- **Control:** Because the original never leaves the possession of the customer (e.g., law firm) there is added security and convenience. For example, the customer can provide the original documents, stamped with the official recording information, to the buyer, seller, or lender, as appropriate, in a given transaction. Additionally, the customer can control the order in which documents are recorded, eliminating the need to rely on the clerk's office to follow instructions.
- **Priority:** E-recorded documents are processed on an equal priority basis as documents that are walked-in, and ahead of mailed documents.

As of November 2015, 44 of Florida's 67 counties offered e-recording. In Florida and beyond, its availability will continue to expand, providing benefits for professionals who regularly record documents in the public records.

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