

The Electronic Recording Commission (Commission) hereby adopts temporary regulations adding a new Chapter 201 (relating to real property electronic recording standards), to read as set forth in Annex A.

### **Effective Date**

The temporary regulations will be effective upon publication in the Pennsylvania Bulletin.

### **Statutory Authority**

The Uniform Real Property Electronic Recording Act (P.L. 935, No. 100), known as URPERA, was signed into law on July 5, 2012 and codified at 21 P.S. §483.1-§483.9. URPERA directs the Commission to adopt initial standards for the electronic recording of real property documents which shall be promulgated as temporary regulations. Section 6(c) of URPERA (21 P.S. §483.6(c)) authorizes the adoption of temporary regulations which are not subject to sections 201, 202, 203, 204 and 205 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 – 1203), known as the Commonwealth Documents Law; to sections 204(b) and 301(10) of the act of October 15, 1980 (P.L. 950, No. 164), known as the Commonwealth Attorneys Act; or to the requirements of the Regulatory Review Act (71 P.S. §§ 745.1 – 745.15).

### **Background and Need for the Temporary Regulations**

Section 6(c) of URPERA (21 P.S. §483.6(c)) provides the Commission’s authority to promulgate temporary regulations to facilitate the prompt implementation of initial standards for the electronic recording of real property documents. These temporary regulations shall not be effective for more than two years. The Commission shall promulgate permanent regulations in accordance with law. The temporary regulations will expire upon promulgation of final regulations or the expiration of two years, whichever occurs first.

### **Description of the Temporary Regulations**

The temporary regulations set forth initial standards relating to electronic recording of real property documents developed by the Electronic Recording Commission to implement the Uniform Real Property Electronic Recording Act (Act 100 of 2012). For the purpose of this rulemaking, electronic recording (or e-recording) refers to electronic document delivery. It is the process of submitting documents online for filing in a county land records office and having the document reviewed, recorded and returned back to the submitter electronically. In other words, e-recording is

the delivery and return of an electronic document, using an electronic document delivery system, for the purpose of recording that document in the county land records. The Electronic Recording Commission (Commission) is an administrative board within the Department of State and is charged with adopting initial standards to implement the Uniform Real Property Electronic Recording Act (URPERA) in the form of temporary administrative regulations. The Commission must also promulgate permanent regulations.

Section 3(a) of URPERA sets forth the basic tenet that if a law requires that a document be an original or be in writing as a condition for recording, this requirement is satisfied by an electronic document which complies with URPERA. 21 P.S. §483.3(a). Section 3(b) also clarifies that electronic signatures satisfy legal requirements that a document be signed. 21 P.S. §483.3(b). Section 4(b) of URPERA makes clear that this act does not require a recorder to accept and record electronic documents. 21 P.S. §483.4(b). However, if a recorder does implement electronic recording, he or she must do so in compliance with the standards established by the Commission. 21 P.S. §483.4(a).

These temporary regulations establish the requirements for recorders of deeds or other county official responsible for the recordation of documents in counties without recorders of deeds who have elected under URPERA to accept electronic documents for recording.

Section 201.1 (relating to purpose and application) states the purpose and application of the chapter – to provide rules for real property electronic recording pursuant to the Uniform Real Property Electronic Recording Act (21 P.S. §§ 483.1 - 483.9).

Section 201.2 (relating to definitions) sets forth definitions of terms used in the new chapter.

Section 201.3 (relating to electronic recording models) establishes technical standards for document models that are consistent with e-recording models used by the property records recording industry both now and in the future. The section specifies that electronic recording models must follow industry-wide standards set by Property Records Industry Association (PRIA). There are currently three broad electronic recording models (formerly characterized as “levels”) defined by PRIA:

- Model 1 – digitized document (scanned paper or a digital image rendered).
- Model 2 – digitized document with XML4 or electronic document with XML. However, in Model 2 documents there is no interactive relationship between the image of the document and the XML data that accompanies it.
- Model 3 – XML embedded into completely electronic documents that never existed in paper form.

However, the Commission declines to specify the current models in regulation, because these models are subject to change. On August 27, 2013, PRIA issued a paper entitled “The Models of

eRecording,” examining “the evolving nature and definition of the characteristics of land record documents submitted for electronic recording” and concluding that “restricting discussion of eRecording to three distinct models quickly yielded to a continuum of models to accommodate emerging processes, solutions, and system enhancements.” All PRIA documents can be accessed via the Resource Library found at [www.pria.us](http://www.pria.us).

Section 201.4 (relating to data formats) establishes technical standards for data formats that are consistent with those used in other jurisdictions throughout the country. This section specifies that document formatting and data fields must follow industry-wide standards set by PRIA. This is for the same reason stated in section 201.3 – that industry standards will change much faster than governmental regulations are able to track. .” Again, all PRIA documents can be accessed via the Resource Library found at [www.pria.us](http://www.pria.us).

Section 201.5 (relating to electronic document formats) establishes technical standards for electronic document formats that are consistent with those used in other jurisdictions throughout the country. This section requires the use of TIFF and/or PDF files in accordance with their associated standards and also defers to the County Records Committee should any additional format be accepted in the future.

Section 201.6 (relating to electronic signatures and electronic notarizations) establishes requirements for electronic signatures and electronic notarizations, to ensure compliance with existing state law and consistency throughout the state. This section acknowledges that several other laws set forth the standards required for electronic signatures and electronic notarizations.

Section 201.7 (relating to electronic recording processing requirements) establishes minimum requirements for the processing of electronic documents by recorders of deeds, primarily notice of confirmation or rejection. This will ensure compliance with existing state law and consistency throughout the state.

Section 201.8 (relating to security requirements) requires that documents are transmitted, recorded and maintained in a secure manner. Security is the joint responsibility of the recorder, the delivery agent and the land records management system vendor. This section sets out minimum standards for the security of the electronic document delivery system and the land records management system, as well as requiring backup, disaster recovery, and audit trail mechanisms.

Section 201.9 (relating to records retention, preservation and disclosure) requires that electronic land title records are managed according to established retention, preservation and disclosure requirements established by the County Records Committee and other applicable law.

Section 201.10 (relating to agreement and procedures) requires an agreement between the recorder of deeds and delivery agent that must address, at a minimum, nine listed items; several of

these items are drawn from earlier sections of the regulation. In addition, this section states that the recorder must set procedures for electronic recording in the county, addressing most of these same elements, and must post this information online and in the office. The Commission recommends that recorders partner with as many delivery agents as possible in order to expand opportunities and options for submitters, as well as encourage wide-spread adoption of e-recording technology.

### **Fiscal Impact and Paperwork Requirements**

The proposed rulemaking will have no adverse fiscal impact on the Department of State or the Electronic Recording Commission. The Commission receives no General Fund monies and is not authorized to enforce this regulation. The principal stakeholders in this regulation are Pennsylvania's 67 county recorders of deeds (or other county official responsible for the recordation of land title documents in counties without recorders of deeds), who collectively already bear statutory responsibility for receiving, processing, and recording land title documents. Additional stakeholders are the land title industry (banks, mortgage and title insurance companies, law firms, etc.), which submit such documents for recording.

The proposed regulation does not require all Pennsylvania recorders of deeds to accept and record electronic documents. However, if a recorder does implement electronic recording, he or she must do so in compliance with the standards established by the Commission. While there may be cost to integrating electronic recording of documents into an existing land records management system, there are also cost savings to the county recording office once electronic recording is implemented. **Are there any numbers/data/surveys/studies on this??** Electronically recording land record documents will enhance the speed and efficiency of submitting land title transactions by the real estate and financial industries, while simultaneously ensuring the accuracy, integrity, security and permanence of recordings of such transactions, and reducing the county recording offices' administrative processing costs. Electronic submission of land title and related financial documents will facilitate commerce, decrease government operational costs, and improve public records preservation and access. For document submitters, the process can also save time and money. The submitter saves on postage, including overnight mail costs. Often recorded documents are returned by email within the same day. Electronic recording also reduces the document rejection rate through electronic calculation of fees and taxes. Rejected documents may be corrected and sent back electronically.

The proposed new chapter establishes temporary rules and standards to ensure uniformity, integrity, and security in the process of submitting and receiving land title documents electronically for purposes of recordation, while allowing sufficient flexibility to county recording officers to meet this legal requirement without forcing onerous and expensive reengineering of business processes.

Therefore, the proposed regulation will have no adverse fiscal impact on the Commonwealth

or its political subdivisions. There will be no additional paperwork requirements upon the Commonwealth or the private sector. The proposed amendments will have no adverse fiscal impact on the counties and submitters who must comply with the Commission’s regulations.

**Sunset Date**

The temporary regulations are intended to set forth the initial standards for electronic recording of real property documents. Because the temporary regulations shall not be effective for more than two years, the Commission will continue to assess the regulations and the effectiveness of the temporary regulations in formulating proposed and final rulemakings. It should be noted that the Commission itself terminates on January 1, 2016, unless it is reestablished by act of the General Assembly.

**Regulatory Review**

These temporary regulations are statutorily exempt from the Regulatory Review Act (71 P.S. §§ 745.1 – 745.15).

**Public Comment**

The Commission has solicited and received comment from the public, including stakeholders in the land title industry, in drafting these temporary regulations. The Commission will solicit additional input when formulating the proposed and final rulemakings.

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