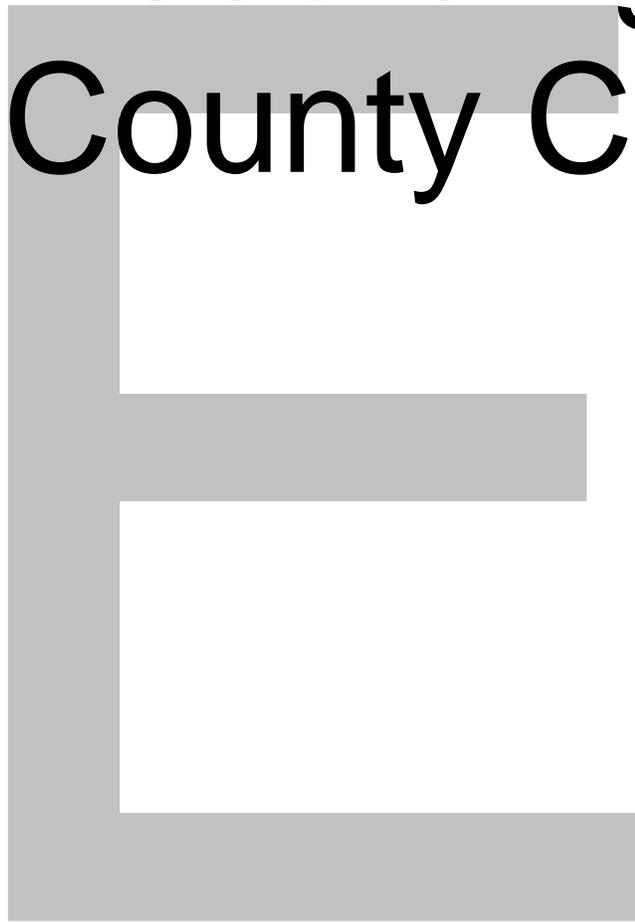


Electronic Filing and Recording By County Clerks



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E Electronic Filing and Recording By County Clerks

LOCAL GOVERNMENT BULLETIN E

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Texas Local Government Code

Sec. 191.009. Electronic Filing And Recording.

- (a) A county clerk may accept electronic documents and other instruments by electronic filing and record the electronic documents and other instruments electronically if the filing or recording complies with the rules adopted by the Texas State Library and Archives Commission under Chapter 195.
- (b) An electronic document or other instrument that is filed electronically in compliance with the rules adopted under Chapter 195 is considered to have been filed in compliance with any law relating to the filing of instruments with a county clerk.

(c) For purposes of this section:

- (1) an instrument is an electronic record, as defined by Section 322.002, Business & Commerce Code; and
- (2) "electronic document" has the meaning assigned by Section 15.002, Property Code.

Source:

Acts 1999, 76th Legislature, Chapter 58, Section 1, effective May 10, 1999. Amended by: Acts 2001, 77th Legislature, Chapter 702, Section 2, effective January 1, 2002; Acts 2005, 79th Legislature, Chapter 699, Section 2, effective September 1, 2005; Acts 2007, 80th Legislature, Regular Session, Chapter 885, Section 2.23, effective April 1, 2009.

Texas Local Government Code

Chapter 195. Electronic Filing of Records with and Recording by County Clerks

Sec. 195.001. Definitions. In this chapter:

- (1) "Commission" means the Texas State Library and Archives Commission.
- (2) "Director and librarian" means the executive and administrative officer of the Texas State Library and Archives Commission.
- (3) "Electronic document" has the meaning assigned by Section 15.002, Property Code.

Source:

Acts 1999, 76th Legislature, Chapter 58, Section 2, effective May 10, 1999. Amended by Acts 2005, 79th Legislature, Chapter 699, Section 3, effective September 1, 2005.

Sec. 195.002. Adoption of Rules.

- (a) The commission shall adopt rules by which a county clerk may accept electronic documents and other instruments by electronic filing and record electronic documents and other instruments electronically under Section 191.009.
- (b) The rules must provide for:
 - (1) the electronic filing with and recording by the county clerk of:
 - (A) real property records; and
 - (B) except for records maintained under Section 192.006, other instruments filed with and recorded by the county clerk as determined by the commission;
 - (2) the means by which an electronic document or other instrument may be electronically transmitted to a county clerk for filing;

- (3) the means by which a county clerk may electronically record an electronic document or other instrument filed electronically;
 - (4) requiring that the means adopted under Subdivision (2) or (3) be generally available, nonproprietary technology; and
 - (5) security standards to prevent the filing and recording of fraudulent electronic documents or other instruments or alteration of electronic documents or other instruments that were previously filed and recorded electronically.
- (c) Rules adopted by the commission under this section that permit the use of digital signatures in the electronic filing of electronic documents or other instruments with the county clerk must be, to the extent practicable, consistent with rules governing digital signatures adopted by the Department of Information Resources under Section 2054.060, Government Code.
 - (d) Before adopting or amending a rule under this section, the commission shall consider the recommendations of the Electronic Recording Advisory Committee established under Section 195.008.
 - (e) Notwithstanding Sections 322.017 and 322.018, Business & Commerce Code, a county clerk may accept any filed electronic record, as defined by Section 322.002, Business & Commerce Code, or electronic document and may electronically record that electronic document or record if the filing and recording of that electronic document or record complies with rules adopted by the commission under this section.

Source:

Acts 1999, 76th Legislature, Chapter 58, Section 2, effective May 10, 1999. Amended by Acts 2001, 77th Legislature, Chapter 702, Section 3, effective January 1, 2002. Amended by Acts 2005, 79th Legislature, Chapter 699, Section 4, effective September 1, 2005. Amended by Acts 2007, 80th Legislature, Regular Session, Chapter 885, Section 2.24, effective April 1, 2009.

Sec. 195.003. Persons Authorized To File Electronically. The following persons may file electronic documents or other documents electronically for recording with a county clerk that accepts electronic filing and recording under this chapter:

- (1) an attorney licensed in this state;
- (2) a bank, savings and loan association, savings bank, or credit union doing business under laws of the United States or this state;
- (3) a federally chartered lending institution, a federal government-sponsored entity, an instrumentality of the federal government, or a person approved as a mortgagee by the United States to make federally insured loans;
- (4) a person licensed to make regulated loans in this state;

- (5) a title insurance company or title insurance agent licensed to do business in this state; or
- (6) an agency of this state.

Source:

Acts 1999, 76th Legislature, Chapter 58, Section 2, effective May 10, 1999. Amended by Acts 2005, 79th Legislature, Chapter 699, Section 4, effective September 1, 2005; Acts 2005, 79th Legislature, Chapter 1260, Section 21, effective June 18, 2005.

Sec. 195.004. Notice of Confirmation.

- (a) A county clerk that accepts electronic filing and recording under this chapter shall confirm or reject an electronic filing of an electronic document or other instrument not later than the first business day after the date the document record or instrument is filed. Notice under this section must be made:
 - (1) by electronic means if possible; or
 - (2) if notice under Subdivision (1) is not possible, by telephone or electronic facsimile machine.
- (b) If the county clerk fails to provide notice of rejection within the time provided by Subsection (a), the electronic document or other instrument is considered accepted for filing and may not subsequently be rejected.

Source:

Acts 1999, 76th Legislature, Chapter 58, Section 2, effective May 10, 1999. Amended by Acts 2005, 79th Legislature, Chapter 699, Section 4, effective September 1, 2005.

Sec. 195.005. Time Electronic Document or Other Instrument Considered Filed or Recorded.

An electronic document or other instrument that is recorded electronically under this chapter is considered to be recorded in compliance with a law relating to the recording of electronic documents or other instruments as of the county clerk's business day on which the electronic document or other instrument is filed electronically. An electronic document or other instrument filed electronically under this chapter must be recorded as timely as an instrument filed by any other means.

Source:

Acts 1999, 76th Legislature, Chapter 58, Section 2, effective May 10, 1999. Amended by Acts 2005, 79th Legislature, Chapter 699, Section 4, effective September 1, 2005.

Sec. 195.006. Additional Fee Prohibited.

The fee to file or record an electronic document or other instrument electronically under this chapter is the same as the fee for filing or recording the instrument by other means, and a county clerk may not charge an additional fee for filing or recording an electronic document or other instrument electronically under this chapter.

Source:

Acts 1999, 76th Legislature, Chapter 58, Section 2, effective May 10, 1999. Amended by Acts 2005, 79th Legislature, Chapter 699, Section 4, effective September 1, 2005.

Sec. 195.007. Access To Electronic Document or Other Instrument Recorded Electronically.

- (a) An electronic document or other instrument filed or recorded electronically must be available for public inspection in the same manner and at the same time as an instrument filed or recorded by other means.
- (b) The county clerk shall provide a requestor, as defined by Section 552.003, Government Code, of an electronic document or other instrument filed or recorded electronically under this chapter with electronic copies of the electronic document or other instrument in a form that is capable of being processed by the use of technology that is generally available and nonproprietary in nature. The county clerk shall provide the copies to the requestor at the cost of producing the copies in accordance with Section 552.262, Government Code.

Source:

Acts 1999, 76th Legislature, Chapter 58, Section 2, effective May 10, 1999. Amended by Acts 2005, 79th Legislature, Chapter 699, Section 4, effective September 1, 2005.

Sec. 195.008. Electronic Recording Advisory Committee.

- (a) The Electronic Recording Advisory Committee shall be appointed as required by this section to recommend to the commission initial and subsequent rules to be adopted under this chapter.
- (b) The committee consists of:
 - (1) the following persons appointed by the director and librarian:
 - (A) one person who is employed by or is an officer of a title insurance agent or title insurance company;
 - (B) an officer or employee of a federal government-sponsored entity;

- (C) a person who as a usual business practice obtains copies of recorded instruments from a county clerk to maintain an abstract or title plant; and
 - (D) a public representative;
- (2) two persons who are county judges or county commissioners appointed by the County Judges and Commissioners Association of Texas;
 - (3) four county clerks appointed by the County and District Clerks' Association of Texas;
 - (4) three persons who are employed by or officers of different title insurance agents or companies appointed by the Texas Land Title Association;
 - (5) the presiding officer of the Title Insurance Subcommittee of the Real Estate, Probate, and Trust Law section of the State Bar of Texas or the functional equivalent of that subcommittee;
 - (6) the attorney general or a person designated by the attorney general;
 - (7) the comptroller or a person designated by the comptroller;
 - (8) the executive director of the General Services Commission or a person designated by the executive director;
 - (9) the executive director of the Department of Information Resources or a person designated by the executive director; and
 - (10) the director and librarian or a person designated by the director and librarian, who also serves as presiding officer of the committee.
- (c) A member of the committee serves a term of two years that expires on August 31 of each odd-numbered year.
 - (d) A vacancy in the membership of the committee is filled in the same manner as the initial appointment and is for the remainder of the unexpired term.
 - (e) A meeting of the committee is at the call of the presiding officer and is subject to Chapter 551, Government Code.
 - (f) A member of the committee is not entitled to compensation or reimbursement of expenses from the commission for serving on the committee. A member of the committee who is an employee or officer of a state agency is entitled to compensation and reimbursement of expenses for service on the committee as determined by the state agency of which the member is an officer or employee. Chapter 2110, Government Code, does not apply to the committee.

Source:

Acts 1999, 76th Legislature, Chapter 58, Section 2, effective May 10, 1999.

Sec. 195.009. Filing

For purposes of this chapter, an electronic document or other instrument is filed with the county clerk when it is received by the county clerk, unless the county clerk rejects the filing within the time and manner provided by this chapter and rules adopted under this chapter.

Source:

Added by Acts 2001, 77th Legislature, Chapter 702, Section 4, effective January 1, 2002. Amended by Acts 2005, 79th Legislature, Chapter 699, Section 4, effective September 1, 2005.

Texas Administrative Code, Chapter 13

Section 7.141. Definitions.

Electronic Filing and Recording

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these sections shall have the meanings defined in the Local Government Code, Chapter 201.

- (1) Authorized filer—A person authorized to file instruments electronically as provided in the Local Government Code, Section 195.003.
- (2) Electronic record—Any information that is recorded in a form for computer processing and that satisfies the definition of local government record data in the Local Government Code, Section 205.001.
- (3) Filed instrument—An instrument that has been sent to and received by a participating county clerk, but not yet recorded.
- (4) Participating county clerk—A county clerk who chooses to accept real property instruments by electronic filing and to record those instruments electronically in accordance with the Local Government Code, Section 191.009 and Chapter 195 and these sections.
- (5) Real property record—All recorded instruments relating to real property.
- (6) Recorded instrument—An instrument that has been sent to, received by, and recorded by a participating county clerk.
- (7) Security procedure—A procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, callback or other verification procedures.

Source:

The provisions of this Section 7.141 adopted to be effective December 6, 2000, 25 TexReg 11937.

Section 7.142. General.

- (a) These sections establish the minimum requirements for the electronic filing and recording of real property records by a participating county clerk.
- (b) If a participating county clerk chooses to accept instruments for filing electronically, the participating county clerk shall record those instruments electronically.
- (c) An authorized filer must apply to a participating county clerk to be enrolled in the participating county clerk's electronic filing and recording program.
- (d) An authorized filer and a participating county clerk must enter into an agreement of understanding relating to the terms and conditions of participation in the county clerk's electronic filing and recording program.
- (e) The provisions of an agreement of understanding must be consistent with these sections and the Local Government Code, Chapter 195.
- (f) A participating county clerk may adopt other procedures and requirements consistent with these sections and the Local Government Code, Chapter 195, in order to implement fully the electronic filing and recording program of the participating county clerk.
- (g) Any electronic record created by electronic recording means shall meet the minimum requirements for the management of electronic records in subchapter C of Chapter 7 of this title (relating to Standards and Procedures for Electronic Records).
- (h) A participating county clerk shall:
 - (1) impose no fee or charge of any kind for filing or recording electronically, other than the recording fees authorized by state law for filing of a paper instrument;
 - (2) provide a requester (as defined in Government Code, Section 552.003) of an instrument filed or recorded electronically with electronic copies of the instrument in a form that is capable of being processed by use of technology that is generally available and nonproprietary in nature;
 - (3) provide the electronic copies at the cost of producing the copies in accordance with the Government Code, Section 552.262; and
 - (4) retain control and ownership of the electronic records created or received by the office of the county clerk and be responsible for their maintenance as public property pursuant to the Local Government Code, Section 201.005.

Source:

The provisions of this Section 7.142 adopted to be effective December 6, 2000, 25 TexReg 11937.

Section 7.143. Form and Method of Transmission.

- (a) An authorized filer should visually inspect each instrument prior to transmitting to ensure compliance with existing statutory recording requirements.
- (b) Electronic submissions shall carry sufficient information to identify the authorized filer and to uniquely identify the instrument to be recorded.
- (c) Instruments transmitted electronically shall:
 - (1) provide fidelity to the original appearance of any instrument at the time such instrument was first created, whether by electronic or other means;
 - (2) retain the original content; and
 - (3) provide for a non-proprietary digital file format.
- (d) An electronic filing system may offer several means by which electronic instruments can be delivered to a participating county clerk. Commonly available electronic delivery mechanisms include network connections, direct electronic connection with the county clerk, and physical delivery of media.

Source:

The provisions of this Section 7.143 adopted to be effective December 6, 2000, 25 TexReg 11937.

Section 7.144. Method of Recording.

- (a) An agreement of understanding between a participating county clerk and an authorized filer shall include information required by the participating county clerk in order to provide electronic notice of confirmation or rejection of an electronic filing and subsequent recording, or if such electronic notice is not possible, by telephone or facsimile. The agreement of understanding shall address the following:
 - (1) All electronic submissions shall generate an acknowledgment of receipt to an authorized filer indicating that the instrument has been filed, but not recorded by the participating county clerk. The acknowledgment of receipt shall include the identity of the receiving county clerk, date and time of the instrument's receipt (which is the county clerk's official receipt date/time), and a county clerk-assigned instrument reference number (i.e., transaction number).
 - (2) When a participating county clerk provides acknowledgment of receipt of an instrument filed electronically, the instrument is considered to have been filed in compliance with the applicable regulations and laws relating to filing of an instrument with the county clerk.
 - (3) A notice of confirmation of recording or a notice of rejection for recording shall be provided by a participating county clerk to an authorized filer no later than the first business day after the instrument is filed electronically pursuant to the Local Government Code, Section 195.004(a).

- (4) A notice of confirmation shall include recording information for the instrument accepted for recording and shall identify the instrument accepted for recording, as provided in the agreement.
 - (5) A notice of rejection shall include a brief explanation of the reason or reasons for rejection and shall identify the instrument rejected for recording, as provided in the agreement.
 - (6) If a participating county clerk complies with the notice provisions of the agreement, the failure of an authorized filer to receive notice of confirmation or rejection of filing and subsequent recording shall not affect the validity of the confirmation or rejection.
- (b) The authorized filer shall be responsible for returning the original instrument to the party or parties entitled to it after notice of confirmation of recording is received by the authorized filer and for providing to such party or parties the recording information set forth in the notice of confirmation from the participating county clerk.
 - (c) A participating county clerk may allow the concurrent submission of an index of real property records filed electronically with the corresponding electronically filed instruments.
 - (d) If a participating county clerk permits an electronically filed index of real property records, and the authorized filer submits an electronic index, the following requirements shall be met:
 - (1) The index shall show the same information that may be required by state law for an index to the same record if it is not filed electronically.
 - (2) Indexing fields and field syntax shall be provided by the participating county clerk to enable authorized filers, who choose to do so, to transmit that information in as complete a form as possible.

Source:

The provisions of this Section 7.144 adopted to be effective December 6, 2000, 25 TexReg 11937.

Section 7.145. System Security Procedures.

- (a) Security procedures shall be implemented to ensure the authenticity and integrity of the electronically filed instrument, including the ability to verify the identity of the filer, as well as the ability to verify that an instrument has not been altered since it was transmitted or filed.
- (b) In order to protect the integrity of instruments to be recorded electronically, a participating county clerk and authorized filers shall meet the following security procedure requirements:
 - (1) Authorized filers who are enrolled in a participating county clerk's electronic filing and recording program shall implement security procedures for all electronic filing transmissions in order to properly identify each authorized filer.

- (2) Instruments to be electronically transmitted to a participating county clerk for filing and recording shall be instruments in a form eligible for recording under conventional means of recording.
 - (3) Authorized filers agree to transmit eligible instruments using commercially available, nonproprietary formats and other commercially available, nonproprietary computer software programs compatible with those used by the participating county clerk.
 - (4) All authorized filers shall be responsible for maintaining the security of the systems within their respective offices.
 - (5) Participating county clerks and authorized filers shall scan files capable of carrying viruses prior to processing.
- (c) If a participating county clerk implements an interactive electronic filing process, the participating county clerk shall control interactive access to the electronic filing system via a user authentication process. When an electronic communication channel is used, the login process shall be secured via use of a secure communication channel, or other secure means.
 - (d) Electronic filing and recording systems shall protect against system and security failures and, in addition, they shall provide normal backup and disaster recovery mechanisms in accordance with Section 7.75 of this title (relating to Security of Electronic Records).
 - (e) If a participating county clerk permits electronic filing that utilizes digital signature standards based on public-private key encryption technology, they shall be in accordance with the Government Code, Section 2054.060. For purposes of efficiency, participating county clerks are encouraged to utilize technology and to accept certificates from certification authorities compatible with the technology used and certificates accepted by other participating county clerks.

Source:

The provisions of this Section 7.145 adopted to be effective December 6, 2000, 25 TexReg 11937.