eRecording Best Practices
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Work Group Break Out:
Background/updates on where we are at with the eRecording best practices work group.

1) Discussing about "Why Best Practices"
2) Best Practices vs. Legal Legislation (PRIA standards being used by legislators. (this is a good thing)
3) Best Practice topics and overview:
   a) Recording jurisdictions should have MOU's or agreements (contract) with eRecording vendors not individual submitters.
   Discussion:
   - Possible examples of language to require documents meet state laws and originals.
   - Original document vs. non-original documents being submitted. Talk to the title company or other submitters about the importance. UETA should take precedence if adopted.
   - Liability not on recorder or clerk.
   - Certificates of Authenticity used in Tennessee for every recorded document. Is that really where we want to go?
   - Other states have verification written into contract with vendor and is also written into vendor/submitter MOU

   b) Recording jurisdiction should accept ACH payments.
   Discussion:
   - NACHA regulated
   - Escrow accounts too much burden on vendor
   - ACH reduces clerk processing of checks and saves time and administrative costs
   - Federal Government tightening standards on entities using ACH **(Watch for this)**
   c) Recording jurisdictions should accept all document types for eRecording.
   Discussion:
   - One submission process including all document types
   - Vendors have software or products to allow for taxes, transfer tax, etc.
   - **Submitters should limit # of documents sent in packages** (should this be a best practice by itself?)
   d) eRecording process as easy for submitter as paper.
   Discussion:
   - Data limited to image ID, Fee and tax collection
   - No rejections based on data formatting
   - Communication between recorder/vendor/submitter
   - Ability to send rejection information
   e) Recorder Responsible for recording and indexing not submitter.

f) eRecording images in standardized format
g) eRecording jurisdictions should work with all qualified vendors.
   Discussion:
   - Multiple vendors will increase % of eRecordings
   - Documents submitted in paper from multiple delivery methods/vendors. (USPS, FedEx, UPS, Courier and Over the counter) so why should vendors be limited to just one or two?

Remaining best practices:

- eSignatures
- Voiding documents after recording

Add to work group discussion:

- Federal Government setting new standards for ACH
- Limits to # of documents in packages
- Limits on system to what eRecording can do
- Land records management vendors who may limit what vendors can come into their system (middle man) Costs could be detriment
- Submitting documents twice

WORD SMITH:
- DATA vs. DOCUMENT

Additional Work Group Members: (Jerry has cards with e-mails)

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eRecording Best Practices – for Government

For purposes of these Best Practices:

- Recorder refers to any recorder of deeds, register of deeds, clerk, deputy or recorder who is responsible for recording and maintaining the public land records for their respective recording jurisdiction
- Recording Jurisdiction includes all states, cities, towns and counties that record property records
- End-user submitter includes all title companies, settlement services, attorneys or other entities that submit land records to the recording jurisdictions
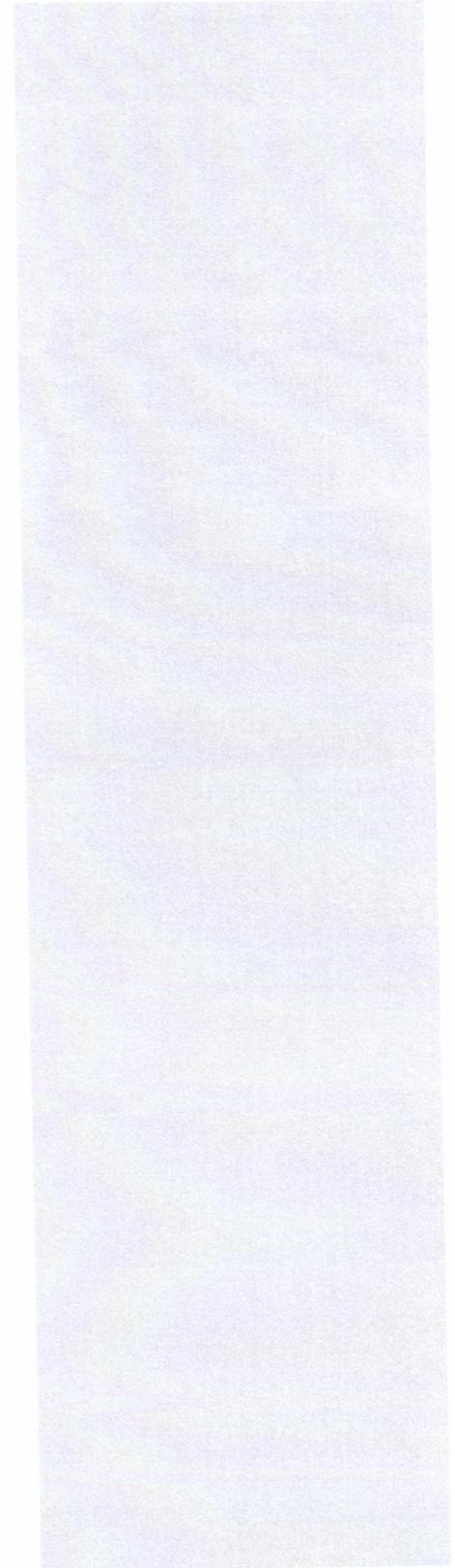
Preamble to Best Practices - Laying the Legal Foundation

Any discussion of best practices requires a solid foundation. For eRecording, the legal foundation lies in key pieces of enabling legislation. The following is not intended as legal advice, but to provide a high-level overview of this legislation.

At the Federal level, there is the Electronic Signatures in Global and National Commerce Act (ESIGN). At the state level there is the Uniform Electronic Transactions Act (UETA). And if necessary, another state level act is the Uniform Real Property Electronic Recording Act (URPERA).

Among other provisions, ESIGN and UETA provide for the legal equivalency of electronic records and electronic signatures with their paper and wet-ink counterparts. ESIGN and UETA were drafted as "overlay statutes," which means their provisions were intended to work synergistically with all existing legislation. New legislation did not need to be drafted for every area of each statute that mentioned paper or ink signatures, but rather all existing legislation could rely on the ESIGN and UETA provisions for moving into electronic processes.

Sections 17 and 18 of UETA provide for the adoption of electronic processes for government entities. If these sections of UETA were enacted in a state as formulated in the uniform act, URPERA may not be a necessary prerequisite for eRecording. If these sections were not included in a state's enactment of UETA (or were substantially altered from the uniform formulation), then enactment of URPERA provides the authority for recording jurisdictions to adopt an eRecording process.

Among these three pieces of legislation, eRecording stands on a solid legal framework.
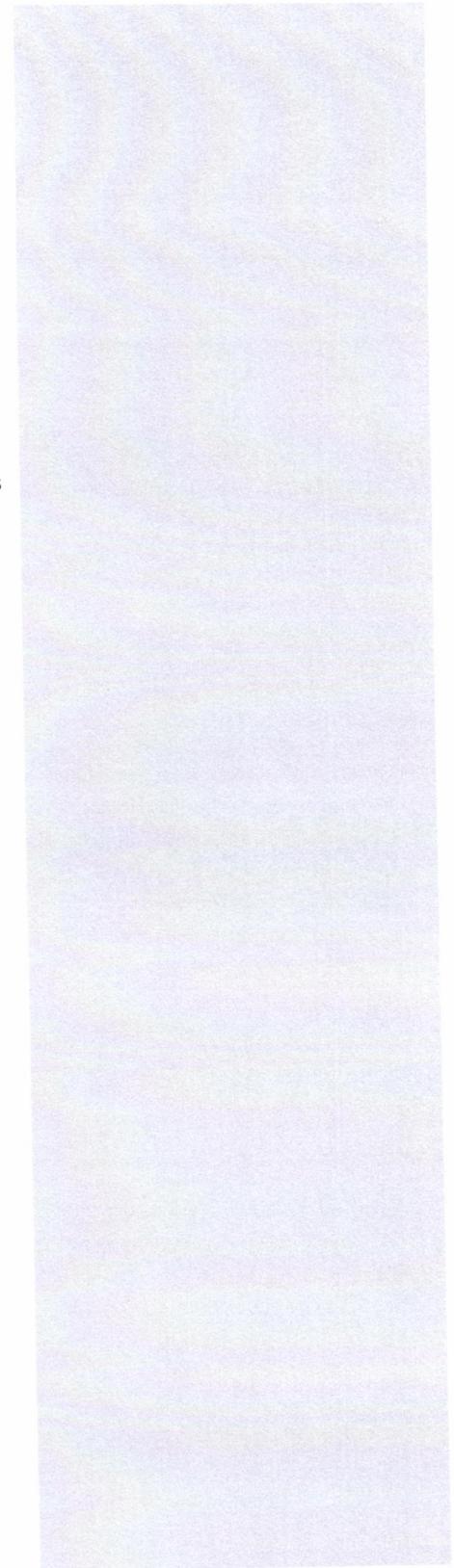
I. **Best Practice:** Recording Jurisdictions should execute Memorandums of Understanding (MOUs) or contracts with each eRecording vendor that serves the Recording Jurisdiction, not with the end-user submitters.

Purpose: To reduce the number of MOUs needed by the Recording Jurisdiction to eRecording vendors of which there are only a few reputable companies, rather than hundreds or thousands of MOUs with end-user submitters

Procedures to meet this Best Practice:

- Individual submitter MOUs or contracts are not required by Recording Jurisdictions if a document is mailed or walked into the Recording Jurisdiction offices.

    > **Comment [shk1]:** This statement does not "meet" the procedures for this best practice

- The best practice is for the recording Jurisdiction to sign an MOU or contract with the eRecording vendor. The eRecording vendors are required to have MOUs or contracts with their customers, who are the end-user submitters.
- The best practices are for the recording Jurisdiction to contract with eRecording vendors that act as submission agents for the end-user submitters. Recording Jurisdictions can rely on the professionalism of the eRecording vendors to conduct due diligence before contracting with reputable, end-user submitters.
- Recording jurisdictions do not have the time or staff to administer hundreds of individual MOUs. As the number of end-user submitters grows, the time needed to administer the MOUs or contracts will continue to increase correspondingly.

    > **Comment [shk2]:** Same comment as above. This is editorializing and not a procedure to meet this best practice.

- If every recording jurisdiction required an MOU or contract with every submitter, the end-user submitters would need to execute 3600, or more, individual MOUs or contracts to eRecord nationally. MOUs and contracts are legally binding agreements. Requiring additional MOUs or contracts with end-user submitters adds cost for the legal review process and time for implementing the ensuing agreements.

    > **Comment [shk3]:** Don't think this first part is needed.

End-user submitters may choose not to eRecord in jurisdictions which require individual submitter MOUs.

II. **Best Practice:** The Recording Jurisdiction should accept fees for service in the eRecording environment with Automated Clearinghouse Payments (ACH).

Purpose: To simply the payment of fees for document recording using electronic transfers of funds from one account to another. Rules and regulations that govern the ACH network are established by NACHA (formerly the National Automated Clearing House Association) and the Federal Reserve.

Procedures to meet this Best Practice:

- In the eRecording process, documents are typically recorded throughout the business day. At the end of the day eRecording vendors will transmit the daily total of the recording fees and taxes, if applicable, to the recording jurisdiction via ACH and funds will be credited into the appropriate accounts. In addition to the ACH payment, the eRecording vendor also provides a reconciliation report which details the fees remitted for each specific document.

> Comment [shk4]: Not a procedure but an explanation of how ACH works.

- There are several advantages to ACH payments. One is the reduction in the number of paper checks that need to be endorsed and processed through the bank. A single ACH transaction can facilitate payment for hundreds of documents. Paper checks need to be endorsed and delivered to the bank. Then the bank runs the checks through a processing system, which can take 3 to 5 days for the funds to be fully available to the recording jurisdiction. With the ACH payment method, the funds are generally available more quickly. With ACH payments, NSF checks and the time it takes to recoup the funds are not a problem.

> Comment [shk5]: Same comment as above

- In the early days of eRecording, a small number of recording jurisdictions were requiring pre-paid draw down accounts that were funded in excess of a day's worth of recording fees. This practice has been a barrier to the adoption of eRecording as it places a financial burden on the end-user submitters that does not exist in the paper recording process. Because there is an established record of successful use of the ACH network, pre-paid accounts are not recommended and ACH will encourage the expansion of eRecording.

> Comment [shk6]: This one could be turned into a procedure

- With rare exceptions, there is a fee associated with the recording of documents; and often more than one fee is required. In most recording jurisdictions, there is a requirement that these fees be paid "at the time of recording."

> Comment [shk7]: Is this a procedure?

III. **Best Practice:** Recording Jurisdictions should accept all document types through eRecording

Purpose: To open up efficiencies to all end-user submitters.

Procedures to meet this Best Practice:

- The best practice is for the recording jurisdictions to eRecord all real estate-related document types.* Regardless of how a document is delivered to the Recording Jurisdiction, it is the recorder's responsibility to review, record and index all documents delivered.
- The best practice is to utilize technology available for managing documents that may require:
    - Routing through other Recording Jurisdiction offices prior to recordation
    - Additional document review prior to recording (i.e. transfer tax forms)

*Reasonable exceptions for accepted document include plats, surveys or documents with extensive personally identifiable information, i.e., trusts.
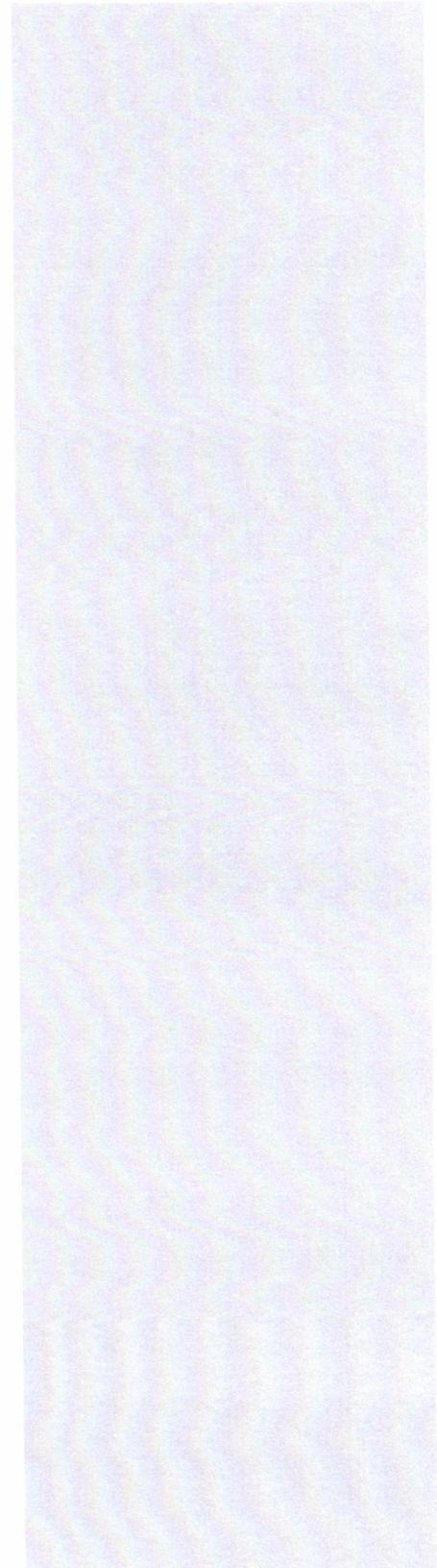
IV. **Best Practice:** The eRecording process should be as simple for the end-user submitter as paper recording

Purpose: To encourage more eRecorded documents by simplifying the information required by the end-user submitter

Procedures to meet this Best Practice:

- The best practice is to standardize the recording process so that the required fields are limited to those for identification and fields needed to calculate the recording fees and taxes.
    a. A Recording Jurisdiction should not require additional data fields to be entered when eRecording, if they are not required for paper documents.
    b. A Recording Jurisdiction should not require additional documentation when eRecording if similar documentation is not required for paper recording. Examples might be originality affidavits or declarations. These add extra steps for the end-user submitter to locate and research data in order to get a document electronically recorded. If the data is not available or adds processing steps to obtain, the end-user submitter may instead, opt to prepare and send a paper document because the paper recording is easier.   **Comment [shk8]:** Not procedural.
- The best practice is to not reject a document based on data formatting.
    a. The eRecording Vendor or Land Record Management System (LRMS) should be able to accommodate the formatting requirements of data fields to make it easier for the end-user submitter and recorder. Since often the end-user submitters send to multiple Recording Jurisdictions each having different requirements, they will not be able to remember all the rules for every Recording Jurisdiction. Thus, the eRecording Vendor and LRMS Vendors should be aware of the specifics on how fields should be populated and formatted based on their integration. Depending on the integration, either the eRecording Vendor or the LRMS can do the formatting so that the data is presented in the appropriate format for the recorder.   **Comment [shk9]:** Find a new home for this info

- The best practice is to utilize a communication system including the recorder, LRMS and eRecording Vendor to send rejection reason back to the submitter with details on why the document was rejected and how to correct them.
    a. Since end-user submitters deal with thousands of Recording Jurisdictions, it is important that the Recording Jurisdiction provides rejection reasons in simple terms. This will require the LRMS to strip out any codes from the rejection reasons and send the simple version to the eRecording Vendor who then

provides this to the end-user submitter. This will enable the submitter to make the correction(s) quickly and return in a timely manner for recordation.

b. Communicating clear and concise rejection reasons will enhance the recordation process and reduces unnecessary delays.

c. Return in a timely manner for recordation.
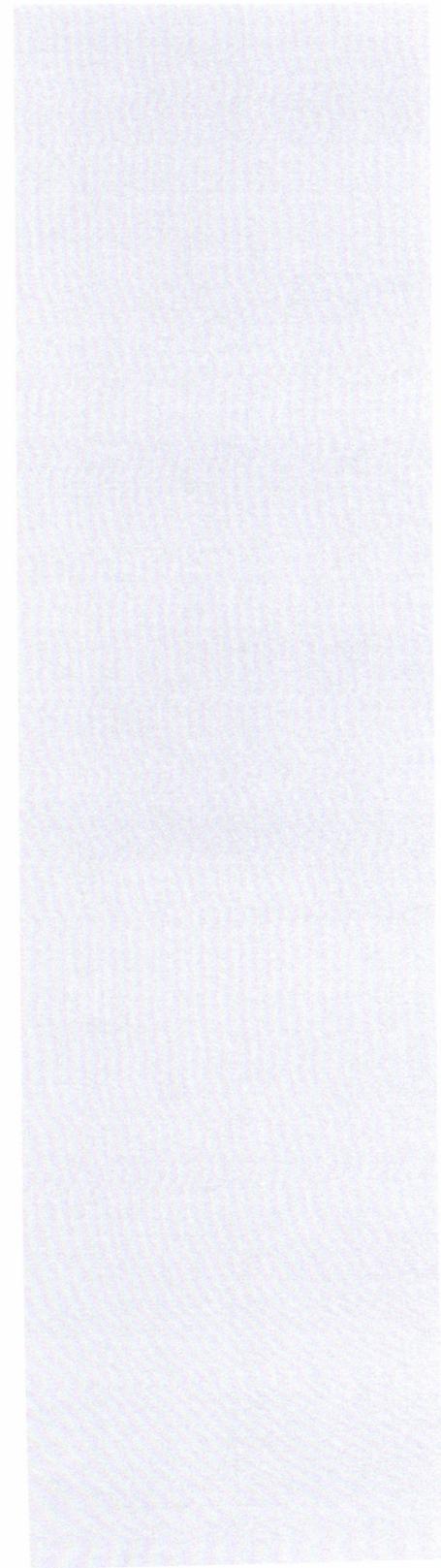
V.   **Best Practice:** The recorder is responsible for recording the document and creating the index

Purpose: To meet the legal requirements that require the recording jurisdiction to create the index and maintain its accuracy.

Procedures to meet this Best Practice:

- The best practice is to require only enough data to insure the identification and proper fee calculation of the document submitted.
- The best practice is for the recording jurisdiction to accept electronically submitted documents rather than rejecting documents for issues that are the responsibility of the recording jurisdiction.
- The best practice is for the recording jurisdiction to maintain their indexing rules rather than expecting the end-user submitter to assume the responsibility for the inclusion or for the accuracy of critical index data.
- The best practice is for the recorder to both record and index the documents
    a. eRecording simply facilitates the electronic delivery of the documents and identifying data directly to the recording jurisdiction.

Recording jurisdictions have historically been responsible for reviewing and recording documents, as well as for capturing and cumulatively preserving the grantee/grantor and other necessary index information. This indexing was first accomplished by hand writing, then typing, into index books, and is now typically done via data entry or Optical Character Recognition (OCR).

VI. **Best Practice:** Image and image format should be submitted in standardized format taking into consideration future imaging and preservation needs. The scanned documents should be clean, without artifacts/lines and must represent the original documents.

Purpose: To record and preserve documents in a standardized format for current and future preservation of the public land records.

Procedures to meet this Best Practice:

- The best practice is a page that meets the state or local recording standards. The PRIA recording standard is 8.5" X 11".
- The best practice is for the page size to be included in the metadata provided by the eRecording vendor.
- The best practice is a physical resolution of the image that meets the PRIA standard of 300dpi X 300dpi.
- The best practice is for the document identifying information to contain a page count for each document.
- The best practice is a font size/type to meet the PRIA standard of 10 point, Times New Roman. The font size and type are important for both OCR and ICR output.
- The best practice is for the image format the County is requesting TIFF, PDF, PDF/A, etc. The current PRIA standard is TIFF.

Overall, the ideal scenario is for the end-user-submitter to send electronically generated, signed and notarized documents for eRecording, this generally eliminates image quality problems when received by the recorder.

VII.   **Best Practice:** Recording Jurisdictions should work with all qualified eRecording Vendors

Purpose: To increase the percentage of eRecording document submissions

Procedures to meet this Best Practice:

- The best practice is to use multiple eRecording vendors to increase the percentage of eRecording document submissions.
    b. Each eRecording vendor represents a unique end-user submitter base.
    c. By opening your doors to multiple vendors you are allowing your end-user submitters to choose which eRecording vendor works best for them.
    d. Multiple vendors provide accountability and efficiency that only marketplace competition encourages
    e. The best practice is to integrate with the submitter software. This is key to the larger end-user submitters.   The eRecording vendors each have their own integration technology which may work well for one end-user submitter but not so well for another.

Recording jurisdictions accept recordings from multiple sources, like Federal Express, UPS, USPS, etc. eRecording is essentially an additional delivery method.