

## E Records and E Signatures:

Emerging Technology and Business  
Applications in Financial Services



# eRecording & Electronic Notarizations

eRecords and eSignatures: Emerging Technology  
and Business Applications in Financial Services

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**SPeRS**<sup>SM</sup>

# eRecording & Electronic Notarizations

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# Most Pressing Issue



⌘ When can I go to the hotel bar?

# PRIA Relationships eRecording & eNotarization

## ⌘ Electronic Financial Services Council (EFSC)

- ☑ SPeRS 2.0 Drafting Efforts

## ⌘ National Association of Secretaries of State (NASS)

- ☑ Notary Public Administrators

- ☑ Notary issues

- ☑ Signatures, PKI, and Seals



# What is e-Recording?

- ⌘ E-Recording redesigns the real estate recording process
- ⌘ E-Recording initially redesigned only the method of presenting real estate documents to the Recorder and returning the documents to the closing agent.
- ⌘ The goal of electronic recording is to create efficiencies whereby costs are reduced for both the Recorder and the Customer. However . . .

# What is e-Recording?

- ⌘ . . . because federal E-SIGN and UETA allow for the replacement of paper and ink signatures with electronic documents and signatures, other technologies were introduced to the process to represent the real estate information to be recorded
  - ☒ scanned images
  - ☒ electronic documents
  - ☒ electronic data (e.g., XML)
- ⌘ which, in turn, redesigns other processes within the Recorder's office, such as document examination, indexing, and fee collecting.

# Types of e-Recording

- 3 Models or Levels of e-Recording
  - Electronic transmission of scanned paper (Model 1)
  - Electronic transmission of images with data (Model 2)
  - Digitally signed XHTML electronic files (Model 3)
- Not all 3 Models realize every one of the following expected benefits:

# Benefits of e-Recording

- ⌘ Recording time drastically reduced
- ⌘ Storage space can be cut drastically (Model 3)
- ⌘ Reduces errors due to re-keying of data (Models 2 & 3)
- ⌘ Reduces costs to all parties, e.g. Document transmittal to/from clerk at a fraction of the present cost – via email, VPN or internet
- ⌘ Documents can be self-indexing (Models 2 and 3) and may also be made to be full-text searchable (Model 3)
- ⌘ Standardizes processes and formats (All Models)
- ⌘ Improves customer service and satisfaction (All Models)

# eRecording Today

## ⌘ Documents Being eRecorded Today

- ☑ Lien Releases (majority of today's counties)
- ☑ Closing Docs
- ☑ Other Docs (e.g. tax, judgment)

# eRecording Today

## ⌘ 35 jurisdictions now ER enabled

- ⌘ Maricopa AZ
- ⌘ Orange CA
- ⌘ San Mateo CA
- ⌘ Riverside CA
- ⌘ San Bernardino CA
- ⌘ Broward FL
- ⌘ Cook IL
- ⌘ Dupage IL
- ⌘ Oakland MI
- ⌘ Lyon MN
- ⌘ Duval FL
- ⌘ Wayne MI
- ⌘ Dakota MN
- ⌘ Washoe NV
- ⌘ Lancaster PA
- ⌘ Salt Lake UT
- ⌘ Utah UT
- ⌘ Fairfax VA
- ⌘ Racine WI
- ⌘ Washington WI
- ⌘ Milwaukee WI
- ⌘ Washington D.C.
- ⌘ Boulder CO
- ⌘ Douglas CO
- ⌘ Orange FL
- ⌘ Denton TX
- ⌘ Tarrant TX
- ⌘ Mecklenburg NC
- ⌘ Macomb, MI
- ⌘ Renville MN
- ⌘ Cache UT
- ⌘ Boone MO
- ⌘ Snohomish WA
- ⌘ Dane WI
- ⌘ Brown WI

# eRecording in 2004

## ⌘ Counties planning to do ER

- ⌘ Franklin OH
- ⌘ Philadelphia PA
- ⌘ Cuyahoga OH
- ⌘ Miami Dade FL
- ⌘ Denver CO
- ⌘ Hennepin MN
- ⌘ Roseau, MN
- ⌘ Palm Beach FL
- ⌘ Pinellas FL
- ⌘ Polk FL
- ⌘ Seminole FL
- ⌘ St. Louis MO
- ⌘ Miami Dade FL
- ⌘ King WA
- ⌘ Pierce WA
- ⌘ Chippewa WI
- ⌘ Clark WI
- ⌘ Kenosha WI
- ⌘ Portage WI
- ⌘ Waupaca WI

# eRecording-PRIA-eNotarization Nexus

- ⌘ PRIA: promoter of seamless/  
interoperable eRecording  
transactions for those electing same
- ☑ Technical standards as enabler
- ☑ Enabling Legal Framework
  - ☒ URPERA
  - ☒ NNA's Model Notary Act
  - ☒ UETA Adoption Monitoring
- ☑ Emerging regulatory approaches

# PRIA's Views on eNotarial/Other Rulemaking

⌘ Hippocrates' Dictum

⌘ Follow E-SIGN/UETA Spirit

☑ Preserve Sanctity of Contract

☑ Permit Private-Public Partnerships to Set the Rules of Operation

☑ Don't burden emergence of eTransactions



# E-SIGN/UETA: Technology Neutral eTransactions

- ⌘ Validates eRecords/eSignatures
- ⌘ Allows parties to agree on particular technology deployments based on unique transactional needs
- ⌘ E-SIGN preempts technology specific eSignature rules for notaries and others
- ⌘ But government agencies (whether central or local) *can* set eFiling & eRecord retention standards under UETA & E-SIGN

# E-SIGN/UETA on eNotarizations



- ⌘ Notarial requirements are satisfied where notary's electronic signature, "together with all other information required to be included by other applicable law, is ***attached to or logically associated with*** the [notarized] signature or record"

# E-SIGN/UETA on eNotarizations

- ⌘ E-SIGN's legislative history echoes UETA on stamp & seal requirements:
  - ⌘ E-SIGN "removes any requirement of a stamp, seal, or similar embossing device as it may apply to the performance of [notarial] functions by electronic means"
- ⌘ Explicitly embraced by URPERA
- ⌘ Only substantive change to existing notarial rules: driven by the nature of the technology and the medium

# Observations on the Emerging eNotarial/Other Rules Landscape

- ⌘ California's eRecording Law & Licensure of Electronic Notary Seal Manufacturers
- ⌘ Colorado's Rules on eNotarization
- ⌘ Scanned eRecords in Florida
- ⌘ New York's no eRecording Rule

# California's Electronic Notarial Seals



- ⌘ SOS “Regulatory Guidance”  
Pronouncement
- ⌘ General Seal Requirement
  - ☑ Based on CA Const.
- ⌘ Issuance by Licensed Seal  
Manufacturers

# Colorado's Rules on eNotarization

- ⌘ Notaries to file “Intent to Electronically Notarize Documents” with CO SOS
- ⌘ Intent must be on prescribed forms and must include
  - ☑ Description of eSignature technology Notary desires to use in eNotarization
  - ☑ Contact info for tech vendor/supplier of any such eSignature
  - ☑ Such other information as the SOS “finds necessary”
- ⌘ Requires each eSignature to contain or be accompanied by a “Document Authentication Number”
- ⌘ Requires eSignature conformity to any standards promulgated by CO SOS
- ⌘ If approval expires, then notary’s eSignature software must be destroyed

# Observations on the Emerging eNotarial Rulemaking Landscape

- ⌘ Well-intentioned, but may pose dangers
- ⌘ Often involve a level of prescription not seen for ink/paper deals
- ⌘ Erodes E-SIGN & UETA uniformity and neutrality
- ⌘ Creates legal uncertainty, which in turn leads to --
  - ⌘ Transactional friction & inefficiencies, and
  - ⌘ Higher costs
- ⌘ Ultimately Impedes Adoption

# Notaries & eTransactions

- ⌘ Because “in the presence of” requirements are preserved, eSignatures must still be observed by a notary
- ⌘ But does the notary have to be physically in the same room with the eSignatory?
  - ☑ Maybe not, if interactive audiovisual linkups permit the notary to observe the signing from another location
  - ☑ As a practical adoption matter, physical presence likely to continue for some time, despite a few, isolated state laws that would waive the requirement under special circumstances

# PRIA's Practice Pointers on eNotarial Process

- ⌘ Ask signers if they have agreed to perform the transaction electronically
- ⌘ Validate any digital signatures used by signers **before** performing notarial service (**only** if digital signatures are used)
- ⌘ Consider security, e.g. use a document format that enables a document to be locked to prevent future tampering, or use versioning control features of the word processing application to capture an audit trail of changes
- ⌘ Do not put personal identifying information such as driver's license number or SSN on the notarized document. (Record this information in your journal or confirm against data in your file)
- ⌘ Do not forget to use basic notary practices for your state just because the document is electronic

# Final Observations



- ⌘ Allow letter & spirit of new legal paradigm to take root
- ⌘ Carefully train notaries to be a boon for eCommerce
- ⌘ eSignature laws are self-executing; no need for regulations; underlying pCommerce regs suffice

# Q&A



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