

Below are comments obtained informally from members of the Real Property Law Section, Titles and Conveyancing Committee, Michigan Bar Association in April 2013.

The comments below came from individual members of the RPLS Titles and Conveyancing Committee (i.e., they are not the official comments of this Committee):

- 1) There is no mention of security back-up, off-site back-up, etc. What happens if there is a disaster like at Macomb this past week? Further, how often should back-ups be done? What is the disaster recovery procedure?
- 2) With eRecording – how will those documents be available for public inspection (as provided by current law)?
- 3) What is included and necessary for organizational security? What are the minimum requirements?
- 4) How does an ROD achieve transactional security? Are there recommended software platforms/vendors? Again, what are the minimum requirements?
- 5) There is no mention about coordinating eRecording with other necessary services such as tax certifications from the treasurer.
- 6) What should be the document rejection procedure?
- 7) How will the ROD communicate a “timestamp” of when the document was received? How will they communicate once it’s been recorded?
- 8) Given that they “recommend” different document formats, will that “inconsistent” approach create other issues between ROD offices, vendors, and clients? It could impact costs...
- 9) Shouldn’t they suggest a preferred model so that there would be consistency across the state?
- 10) Historically TIFF formats have had compatibility issues with RamQuest. So perhaps the MLTA should involve the software vendors and eRecording providers to ensure there are no compatibility issues with the file types suggested.
- 11) Are the RODs going to vet the 3rd party erecording providers?
- 12) About Business Rules – it will become difficult for title companies to manager 83 different business rules for all the different counties. One of the strengths of ePN right now is that it is one consistent process regardless of county.
- 13) Payment – organizations with multiple bank accounts could face some issues

The following summarizes the Real Property Law Section Section, Michigan Bar Association formal response:

The State of Michigan Electronic Recording Commission has provided an opportunity for comments on its draft electronic recording standards for recording electronic documents with county registers of deeds.

The Section Council forwarded to Christian Meyer, a member of the Commission, a series of informal comments by members of Real Property Law Section committees with an interest in the standards. In addition, at its meeting on April 17, 2013,

after discussion and voting, the Section Council voted (15 of 18 voting members in favor, 0 against, and 3 absent) to adopt the following comments:

1. The draft standards contain technical details for recording that most real estate lawyers find difficult to understand, and further explanation would be helpful in obtaining comments on the practical application of the standards.

2. The provisions of the draft standards for "Business Rules," for "document rejection rights," are too broad as written.

Explanation: The section of the process denominated "Business Rules" should clearly extend only to business issues: "Document rejection rights where payment is not made or assured." Where a firm submitting a document for filing does not have sufficient funds in an account that the register of deeds allows it to keep to pay for recording, it is understandable that should be a reason for rejection under these rules, not a defect in the document not otherwise expressly provided by law.

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Michigan Bankers Association

May 1, 2013

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c/o Department of Technology, Management & Budget
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Re: Michigan Bankers Association Comments on Draft Electronic Records Standards

Chairwoman Hollinrake:

The Michigan Bankers Association (MBA) represents the entire banking industry of Michigan; commercial, savings, and trust banks. Our membership engages daily and relies upon publicly recorded real property documents and records. We appreciate the opportunity to comment on the proposed Michigan Electronic Records Standards.

The MBA understands that, in accordance with Public Act 123 of 2010, the Michigan Electronic Recording Commission is required to adopt standards to implement the Michigan Uniform Real Property Electronic Recording Act. The draft uses the standards of the Property Records Industry Association (PRIA) as its foundation. We find these standards to be strong and support their continued use as a basis for Michigan's standards.

As an industry heavily engaged and reliant upon public document recordings, we believe the use of electronic filing will better serve the Michigan public, property owners, and those involved selling, financing, improving, and managing real property. These industries and individuals all depend upon accurate and timely records reflecting ownership, lien, and other interests in real property. Electronic filing offers improved timeliness, increased accuracy, greater dependability, and reduced opportunities for error and deliberate fraud due to delays in filing interests.

The standards address key areas of concern to assure optimal public service, efficiency, and accuracy. These include data standards, formatting, signatures and authentication, recording requirements, security standards, locally-established business rules, and record retention and preservation including document back-up.

We note the continued discretion afforded counties in whether to use electronic filing and in adoption of business rules including hours and fee schedules. While we believe access to electronic filing will benefit the public and we encourage universal availability, we respect the autonomy provided for each county.

It is important that the standards do establish practices to be used if a county offers electronic recording. It is also most beneficial that these standards are based upon national models and practices. Again, consistency offers greater ease of use and efficiency by the public and all parties involved with real property.

With the enactment of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act and it's creation of the Consumer Financial Protection Bureau, we believe there will be additional federal rules dealing with electronic documents that will be promulgated in the near future. We urge the Commission to monitor these rules for potential changes to Michigan's Standards needed to comply with emerging federal requirements.

Thank you again for the opportunity to express support for your efforts.

Sincerely,

A handwritten signature in black ink that reads "Dennis R. Koons". The signature is written in a cursive style with a large, prominent initial "D".

Dennis R. Koons, J.D.
President & CEO

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BERNARD J. YOUNGBLOOD
REGISTER

BARBARA J. JOHNSON
CHIEF DEPUTY

May 3, 2013

TO: The Michigan Electronic Recording Commission
FROM: Bernard J. Youngblood, Wayne County Register of Deeds
Barbara J. Johnson, Chief Deputy Register of Deeds
RE: Comments on Draft Michigan Electronic Recording Standards

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Sections of the Draft Michigan Electronic Recording Standards adversely impact the constitutional authority of registers of deeds to operate their offices in an efficient and productive manner that best serve their constituents.

Sub-section 5 – Security requires that participants in erecording follow the security standards and policies based on the most recent Property Records Industry Association (PRIA) security practices and protocols. We suggest that the language be permissive, rather than mandatory, to avoid the appearance that PRIA is dictating how the registers practice. Also, “the most recent PRIA published security practices and protocols” is ambiguous. Does it mean the standards that currently exist on PRIA’s website or does it mean later editions that are published? If it includes later editions, we are concerned that modified standards could contain mandates that interfere with the registers’ ability to fulfill their duties and responsibilities and to determine what is best for their operations. At a minimum, there should be a check and balance. Any modified security standards and protocols should be reviewed and approved by the Michigan Electronic Recording Commission after comment by the registers.

Sub-Section 6 – Business Rules is another industry dictate that impacts the discretion of constitutional officers to run their offices. To appease the property records industry, the registers must develop business rules, containing specific information, in

order to participate in erecording. There are no equivalent rules for the registers to follow when recording documents by an alternative method. Having special rules for erecording implies that registers can't be trusted to handle that particular aspect of operations. We suggest changing the language to state that registers are encouraged to develop business rules that incorporate the recommended topics.

Sub-Section 7 – Payment of Recording Fees requires that electronic payment of recording fees be collected according to state and local law and **in accordance with accepted property records industry standards without incurring unreasonable electronic processing fees**. The comments below the section indicate fees are to be collected according to statute and in a manner consistent with the promotion of erecording. The net effect of the language is to give the property records industry control over an area in which a charter county has discretion. Charter counties, such as Wayne County, are allowed to impose a fee schedule by ordinance or resolution with different amounts than those prescribed in the statute.¹ It would be improper for the property records industry to dictate the amount of recording or electronic processing fees it is willing to pay a register of a charter county for recording documents sent electronically.

Additionally, the statement “without incurring unreasonable electronic processing fees” is ambiguous. What is an unreasonable fee? How is it determined? The property records industry should not be the one to make that determination, especially for the register of a charter county. A charter county has discretion to determine the amount of fees the register charges for recording documents.

Appendix B – Erecording Models Explained gives approximate times it would take to erecord a document under three models. If Model 1 is used, the document should be processed in under an hour from the time the recorder receives the document until the data and receipt are returned to the submitter. Under Model 2, the average time from receipt of data to its return to the submitter is five minutes. Comparisons of five days for similar closing documents delivered by settlement agents and seven days for mail-in documents are stated. Model 3 has an average time from receipt to return of 30 seconds, which includes the entire process of quality control verification and indexing.

We are concerned that registers will be bound to the times suggested in the Model descriptions, which are unrealistic for large counties. The volume of documents that are transmitted for erecording must be considered along with the volume of documents that are mailed in or brought into the office for instant recording. (With instant recording, a document hand-delivered for recording is immediately scanned into the system if it meets recording requirements. The submitter pays the appropriate fee and receives back the original document before leaving the office.) Wayne County records approximately 450,000 documents per year, including erecorded documents, while complying with race-notice requirements. The register

¹ M.C.L.A 600.2567(3)

has discretion to determine how that is accomplished, the business community does not.

In sum, we believe provisions in the Draft Michigan Electronic Recording Standards that impose PRIA standards on registers of deeds diminish discretion registers have to manage their operations. Those provisions should be permissive not mandatory. Also, the draft language would remove the statutory authority of a charter county to set fees and give the property record industry power to determine the amount of the recording fees. The draft should be revised to remove the industry's ability to determine its fees. Moreover, the standards should not impose an unrealistic time for erecording documents.

Please contact us if you require additional information at:

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Barbara J. Johnson	(313) 224-5149	bjohnson3@waynecounty.com



May 10, 2013

Michigan Electronic Recording Commission
6951 Crowner Drive
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Ladies and Gentlemen of the Michigan Electronic Recording Commission,

The American Land Title Association (“ALTA”) has reviewed your draft standards for eRecording and commends the commission on your efforts. We find no substantive errors or omissions in the document and believe it offers excellent guidance to your Registers of Deeds as they implement eRecording.

ALTA has recently promulgated a “Title Insurance and Settlement Company Best Practices” document that urges our members to adopt certain policies which will enhance consumer protection in the real estate settlement process. One of the principle “best practices” is timely and accurate recording of documents with custodians of the public records. We believe that the preamble to your report should contain language that strongly encourages your Registers of Deeds to place a high priority on the implementation of eRecording as soon as possible. eRecording offers substantial protections for consumers by making the recording process more timely and efficient.

Very truly,

A handwritten signature in black ink, appearing to read "Michelle Korsmo". The signature is fluid and cursive.

Michelle Korsmo
Chief Executive Officer

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May 14, 2013

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Ladies and Gentlemen of the Michigan Electronic Recording Commission,

While the Michigan Land Title Association (MLTA) has not attempted to dissect your draft standards for eRecording, some of our members have reviewed the proposed standards, sufficient to note that they do not appear to be significantly different than the PRIA document standards, used in several other states. We understand that the American Land Title Association (ALTA) has reviewed them and found no substantive errors or omissions, believing them to offer "excellent guidance to your Registers of Deeds as they implement eRecording."

As you know, the ALTA has recently promulgated a "Title Insurance and Settlement Company Best Practices" document that urges its members to adopt certain policies which will enhance consumer protection in the real estate settlement process. One of the principle "best practices" is timely and accurate recording of documents with custodians of the public records. We believe, along with the ALTA, that the preamble to your report should contain language that strongly encourages your Registers of Deeds to place a high priority on the implementation of eRecording as soon as possible. eRecording offers substantial protections for consumers by making the recording process more timely and efficient.

Sincerely,

Allan G. Dick
MLTA President