



THE MICHIGAN ELECTRONIC RECORDS STANDARDS
ADOPTED BY
THE MICHIGAN ELECTRONIC RECORDING COMMISSION
ESTABLISHED UNDER
THE MICHIGAN UNIFORM REAL
PROPERTY ELECTRONIC RECORDING ACT

Effective January 1, 2014

Revised April 23, 2020

Michigan Electronic Recording Commission

Members:

Justin Roebuck, Chair	Ottawa County Clerk and Register of Deeds
Brandon Denby, Deputy Chair	Livingston County Register of Deeds
Sara Dolan	Chief Financial Officer, Michigan State University Federal Credit Union
Brian Henry	Chief Legal Officer, Orlans PC
Patricia Niepoth	Antrim County Register of Deeds
Derrick Quinney	Ingham County Register of Deeds
Dominic Rios	Loomis Law Firm
Brom Stibitz (non-voting)	Acting Director, Michigan Department of Technology, Management & Budget

Support:

Sherri Irwin	Designee of Brom Stibitz, Director, Office of Support Services, Michigan Department of Technology, Management & Budget
Deb Stevens	Recording Secretary, State Assistant Administrator

TABLE OF CONTENTS

Section I: Introduction	4
Section II: Michigan Electronic Recording Standards.....	6
1. Data and Document Standards	6
2. Document Formats	6
3. Electronic Signatures and Authentication.....	7
4. Recording Requirements	7
5. Security.....	8
6. Business Rules.....	8
7. Payment of Recording Fees.....	9
8. Records Retention and Preservation	9
9. Agreement Establishing a Verified Transactional Agreement	9
10. Standards for Electronic Notarization	10
Section III: Appendices	11
Appendix A: PRIA Standards and Guidelines	11
Appendix B: Glossary of Terms.....	12
Appendix C: Relevant Statutes.....	15
Michigan Uniform Real Property Electronic Recording Act.....	15
Michigan Uniform Electronic Transactions Act.....	15
Michigan Notary Public Act	15
Michigan Recording Act.....	15
US Electronic Signatures in Global and National Commerce Act.....	15
Appendix D: Michigan Electronic Recording Commission Bylaws	16

SECTION I: INTRODUCTION

By 2000, innovations in electronic information technology made it technically feasible to create, sign and transmit electronic transactions. That year, Michigan adopted the Michigan Uniform Electronic Transactions Act (MUETA) (MCL 450.831 et seq.), and Congress passed the Electronic Signatures in Global and National Commerce Act (E-Sign) (15 USC 7001 et seq.). These two acts, among other things, give legal effect to contracts that are executed electronically.

Neither act, however, sets out standards for how such electronic documents should be recorded in the public records. So, in 2010 Michigan adopted the Michigan Uniform Real Property Electronic Recording Act (MURPERA) (MCL 565.841 et. seq.).

MURPERA authorizes county registers of deeds to accept electronic documents for recording, provided that they do so in compliance with recording standards to be established by the Michigan Electronic Recording Commission (MERC), a new state commission established under MURPERA. The members of MERC and the advisors to MERC are set out on the prior page.

On August 27, 2013, MERC adopted its first version of these recording standards (Michigan Recording Standards), effective January 1, 2014. At the time, MERC noted that these Standards would be updated periodically as the need arises. The first update occurred in 2020 and is reflected in this April 23, 2020 version of these Standards.

As required by MURPERA, in adopting these Michigan Recording Standards, MERC considered: the standards and practices of other jurisdictions; the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association (PRIA); the views of interested persons and governmental officials and entities; the needs of counties of varying size, population, and resources; and standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

MERC used the electronic recording standards issued by PRIA as the foundation for these Michigan Recording Standards. The Michigan Recording Standards address the following issues:

- 1) Data Standards
- 2) Document Formats
- 3) Electronic Signatures and Authentications
- 4) Recording Requirements
- 5) Security
- 6) Business Rules
- 7) Payment of Recording Fees
- 8) Records Retention and Preservation
- 9) Agreement Establishing a Verified Transactional Relationship

While a register of deeds in Michigan is not required to accept electronic documents for recording, any register of deeds in Michigan who implements any of the functions set out in MURPERA on or after the effective date of these Standards shall do so only in compliance with these Standards. In adopting these Standards, it is not the intent of the MERC that any standard conflict with or expand or restrict the rights and obligations of registers under the Michigan constitution or under applicable law.

SECTION II: MICHIGAN ELECTRONIC RECORDING STANDARDS

1. DATA AND DOCUMENT STANDARDS

The Michigan Electronic Recording Commission (MERC) adopts the Property Records Industry Association (PRIA) data and document standards.

Each register of deeds who accepts electronic documents for recording (eRecording) shall provide open architecture for reception of electronic documents. All reception software, including portals, must support PRIA standards Version 2.4.1 and subsequent versions.

Comments

PRIA data and document standards are the preferred standard for use by industry participants of eRecording. Additional voluntary guidelines are also available from PRIA. (*See Appendix A – PRIA Standards and Guidelines.*)

Recommendations

MERC recommends that eRecording be offered by all Michigan counties and be conducted using the latest PRIA data and document standards. MERC also recommends that a register of deeds who participates in eRecording keeps current on eRecording technology and other relevant eRecording developments.

2. DOCUMENT FORMATS

eRecordings shall be preserved as TIFF or PDF files (or future formats approved by MERC) along with their associated metadata. (*See Appendix B - Glossary of Terms.*)

Comments

Preservation File Formats

TIFF: The Tagged Image File Format is widely adopted within the property recording industry and by registers of deeds who have imaging systems. TIFF is a non-proprietary format that is recommended for storing scanned images.

PDF: Portable Document Format is another commonly used file format in the property recording industry. PDF files capture the appearance of the original document, can store both text and images, are difficult to modify, and can be rendered with free, cross-platform viewer software. PDF is based

on publicly available specifications and is now an international open standard for electronic document exchange maintained by the International Organization for Standardization (ISO).

XHTML: Extensible Hypertext Markup Language is a newer version of HTML and is the main markup language for creating web pages and other information that can be displayed in a web browser.

XML: Extensible Markup Language is the currently recommended file format for long term preservation of any metadata.

Metadata: Metadata is commonly described as "data about data." Metadata is used to locate and manage information resources by classifying those resources and by capturing information not inherent in the resource. In the eRecording context, metadata may be generated automatically or created manually and it may be internal or external to the digital object itself. Regardless of how it is created or stored, maintaining accurate and reliable metadata is essential to the long-term preservation of eRecordings.

Recommendations

Electronic records are subject to the same threats of destruction from natural or human-made disasters as other media. In addition, there are the added challenges of hardware and software obsolescence, media longevity and migration, infrastructure failures and accidental damage from improper handling.

Therefore, since the majority of records in the custody of a register of deeds must be preserved permanently, and since the durability of electronic records has not been proven to be as enduring as microfilm, MERC recommends security microfilm to secure and preserve information created and stored electronically.

3. ELECTRONIC SIGNATURES AND AUTHENTICATION

While MUETA and MURPERA (*See* Appendix C – Relevant Statutes) allow many types of electronic signatures, registers of deeds are only required to accept electronic signatures that they have the technology to support. eRecordings shall comply with all federal and state authentication laws. Registers of deeds have no responsibility to authenticate electronic signatures embedded within the body of the document.

4. RECORDING REQUIREMENTS

All eRecordings shall comply with the Michigan Recording Act.

5. SECURITY

Participants in eRecording shall implement and maintain policies and procedures to ensure the security of the electronic document delivery system and the land records management system.

Comments

Transactional Security: All electronic documents must be secured in such a way that both the transmitting and receiving parties are assured of each other's identity, and that no unauthorized party can view or alter the electronic document during transmission, processing, and delivery.

Organizational Security: Each register of deeds who elects participation in eRecording shall implement reasonable measures such that each electronic document accepted for recordation is protected from alteration and unauthorized access.

6. BUSINESS RULES

A register of deeds who participates in eRecording shall establish business rules that govern how eRecording will be conducted in that county. eRecording participants agree to abide by the register of deed's business rules. Such business rules shall not conflict with the Michigan Recording Act or other applicable law and shall provide equal access to both documents provided through eRecording and those provided by other means.

At a minimum, any register of deeds participating in eRecording shall develop business rules covering the following:

- 1) Hours of operations and processing schedules;
- 2) Payment options;
- 3) Terms for terminating a party's participation in eRecording;
- 4) Document rejection rights;
- 5) Statement that any amendments and/or alterations to the business rules will be published with adequate notice before taking effect;
- 6) Any additional fees allowed by county charter;
- 7) That the register of deeds will e-confirm that the documents have been eRecorded;
- 8) The register of deeds' template agreement establishing a verified transactional relationship.

Comments

MERC recommends that the business rules be available on the register of deed's website.

7. PAYMENT OF RECORDING FEES

Electronic payment of recording fees shall be collected by public agencies as prescribed by state and local statutes and in accordance with accepted property records industry standards without incurring unreasonable electronic processing fees.

Comments

Payments are a prerequisite to all methods of recording. Therefore, whether a payment is attached or an authorization of payment is included in an eRecording submission, the submission must incorporate some methodology for payment of fees associated with a particular document or set of documents.

Fees are to be collected according to statute in a manner consistent with the promotion of eRecording, and in accordance with accepted property records industry standards.

8. RECORDS RETENTION AND PRESERVATION

A register of deeds must retain all records in his/her custody in accordance with requirements detailed in the General Retention Schedule #3, Registers of Deeds Offices, approved by the Michigan Department of Technology, Management, and Budget.

Comments

The Michigan General Retention Schedule #3, Registers of Deeds Offices, is available at: https://www.michigan.gov/documents/dtmb/RMS_GS3_640196_7.pdf.

9. AGREEMENT ESTABLISHING A VERIFIED TRANSACTIONAL AGREEMENT

A register of deeds shall only accept electronic documents for e-recording from a person with which the register of deeds has entered into an agreement establishing a verified transactional relationship.

Comments

To the end that the integrity of the public record is maintained, MERC recommends that such a transactional relationship be in writing and signed by the person entering into the agreement with the register of deeds (“submitter”) and that there be appropriate provisions in the agreement

allowing for verification such as record keeping obligations of the submitter and audit rights of the register of deeds and/or an annual attestation of compliance from the submitter. In addition, the agreement should include requirements that the submitter complies with all applicable law and these Standards.

10. STANDARDS FOR ELECTRONIC NOTARIZATION

- A. An electronic record electronically notarized in compliance with PA 360 of 2018 and the requirements of the Michigan Secretary of State may be eRecorded as an electronic document in compliance with these Standards.

- B. An electronic record electronically notarized in compliance with PA 360 of 2018 and the requirements of the Michigan Secretary of State and not submitted for eRecording under subsection (A) must meet the following requirements to be accepted for recording as a non-electronic document:
 - 1. Comply with the Michigan Recording Act;
 - 2. Be certified under oath by a person familiar with the electronic record that such non-electronic document is a true copy of the electronic record; and
 - 3. Such certification is subscribed and sworn to by the certifying person before a notary public or other public officer authorized to take oaths.

Comments

The Michigan Recording Act requires that documents executed in the State of Michigan must comply with certain Michigan Recording Act requirements. An electronic notarization should indicate where the electronic record was executed. Electronic records that do not indicate this may be subject to the Michigan Recording Act requirements that apply to documents executed in the State of Michigan.

SECTION III: APPENDICES

APPENDIX A: PRIA STANDARDS AND GUIDELINES

The most current version of the following PRIA standards and guidelines may be found at: <http://www.pria.us>. Prior to accessing the documents listed below, the user will be required to agree to the terms and conditions of the PRIA eRecording XML Standards License Agreement found at: http://www.pria.us/files/public/Standards_Publications/License_Agreement2.pdf.

- eRecording Business Requirements
- Document Version 2.4.1
- Notary Version 2.4.1
- PRIA Request Version 2.4.2
- PRIA Response Version 2.4.2
- eRecording XML iGuide

APPENDIX B: GLOSSARY OF TERMS

Authentication: The act of tying an action or result to the person claiming to have performed the action. Authentication generally requires a password or encryption key to perform, and the process will fail if the password or key is incorrect.

Digital signature: A type of electronic signature consisting of a transformation of an electronic message using an asymmetric encryption system such that a person having the initial message and the signer's public key can accurately determine whether:

- (1) the transformation was created using the private key that corresponds to the signer's public key; and
- (2) the initial message has not been altered since the transformation was made.

Document type definition (DTD): A document created using the Standard Generalized Markup Language (SGML) that defines a unique markup language (such as XHTML or XML). A DTD includes a list of tags, attributes, and rules of usage.

Electronic document: A document that is received by the Register of Deeds in an electronic form.

Electronic record: A record created, generated, sent, communicated, received or stored by electronic means.

Electronic signature: An electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

Encrypt: To apply an encryption key to a message in order to make it unreadable in an effort to prevent unintended use of the information.

Extensible Hypertext Markup Language (XHTML) is a newer version of HTML and is the main markup language for creating web pages and other information that can be displayed in a web browser.

Extensible Markup Language (XML): A computer language used to create markup languages. XML allows developers to specify a document type definition (DTD) or schema in order to devise new markup languages for general or specific uses.

Metadata: Commonly described as "data about data". Metadata is used to locate and manage information resources by classifying those resources and by capturing information not inherent in the resource.

Microfilm: Microfilm is an analog technology that allows documents to be read with magnification and a light source. If necessary, microfilm can be converted into a digital format. Producing microfilm that is created within the guidelines of the American National Standards Institute (ANSI) and properly stored and handled should provide secure records for hundreds of years.

PDF - Portable Document Format: A file format created by Adobe Systems, Inc. that uses the PostScript printer description language to create documents. PDF files capture the appearance of the original document, can store both text and images, are difficult to modify, and can be rendered with free, cross-platform viewer software.

Portal: In eRecording terms, an electronic location where submitters can send their documents for further processing and delivery. A fully featured portal will incorporate specific index rules and information from other tables that assure conformity with the receiving County's backend recording system. A portal should be capable of receiving various document types from various submitting parties and be able to deliver them to virtually any county regardless of their back end recording system or physical location.

Proprietary: Indicates that software or other employed technology is owned or controlled exclusively by the vendor. These solutions are not transferable to other systems and must be used only on the vendor's systems.

Schema: A method for specifying the structure and content of specific types of electronic documents which use XML.

Secure Socket Layer (SSL): A security technology that uses both asymmetric and symmetric cryptography to protect data transmitted over the Internet.

Signature Authentication: The process by which a digital signature is used to confirm a signer's identity and a document's validity.

TIFF - Tagged information file format: An image file format commonly used for photos, scanned documents, or other graphics. TIFF images are graphics that are made up of individual dots or pixels. Files in the TIFF format are distinguished by a .tif filename extension.

Uniform Electronic Transactions Act (UETA): A body of recommended legislation drafted in 1999 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for adoption by state legislatures. UETA allows electronic documents and digital signatures to stand as equals with their paper counterparts.

Uniform Real Property Electronic Recording Act (URPERA): A body of recommended legislation drafted in 2004 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for adoption by state legislatures. URPERA authorizes Registers of Deeds to accept electronic documents for recording in accordance with established standards.

XML: *See* Extensible Markup Language.

XML Schema: *See* Schema.

APPENDIX C: RELEVANT STATUTES

[MICHIGAN UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT](#)

[MICHIGAN UNIFORM ELECTRONIC TRANSACTIONS ACT](#)

[MICHIGAN NOTARY PUBLIC ACT](#)

[MICHIGAN RECORDING ACT](#)

[US ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT](#)

APPENDIX D: MICHIGAN ELECTRONIC RECORDING COMMISSION BYLAWS
ELECTRONIC RECORDING COMMISSION BYLAWS

ARTICLE I

Electronic Recording Commission

Section 1. Creation. The Electronic Recording Commission (ERC) is created pursuant to the Uniform Real Property Electronic Recording Act, MCL 565.851 *et seq* (Act).

ARTICLE II

ERC Members

Section 1. Membership. The ERC shall consist of eight (8) members, seven (7) of whom shall be voting members, as set forth in the Act.

Section 2. Term of Office. The method for selecting ERC members as well as their terms of office is set forth in the Act.

Section 3. Vacancies. Vacancies of the ERC shall be filled as set forth in the Act.

Section 4. Compensation. ERC members shall serve without compensation but may be reimbursed for actual and necessary travel and expenses incurred in the performance of their official ERC member duties, as set forth in the Act.

ARTICLE III

Officers

Section 1. Officers. The officers of the ERC include a Chairperson, Deputy Chairperson, a Recording Secretary and any other officers that the ERC may deem necessary or appropriate. Officers shall be selected by the ERC in accord with the Act.

Section 2. Chairperson. The Chairperson shall preside at all meetings of the ERC.

Section 3. Deputy Chairperson The Deputy Chairperson shall serve as acting Chairperson during the absence of the Chairperson or if the Chairperson is recused due to a potential or actual conflict with a matter coming before the ERC for consideration.

Section 4. Recording Secretary. The Chairperson shall designate a person to serve as Recording Secretary for the ERC. The Recording Secretary shall be responsible to keep and maintain a record of all ERC meeting Minutes and Resolutions, and perform such related tasks as requested from time to time by the Chairperson.

Section 5. Absence or Conflict of Chairperson and Deputy Chairperson.

Whenever both the Chairperson and Deputy Chairperson are unable to attend an ERC meeting or have both recused themselves due to a potential or actual conflict of interest, the members present and constituting a quorum shall designate a Temporary Deputy Chairperson from among the ERC members present to preside at the meeting.

ARTICLE IV

ERC Meetings

Section 1. Regular Meetings. The ERC shall meet at least annually, or more frequently, at the call of the Chairperson or if requested by five (5) or more ERC members.

Section 2. Public Meetings. All meetings of the ERC shall be called and conducted in accord with the Open Meetings Act, MCL 15.261 to 15. 275.

Section 3. Quorum and Voting. Five (5) of the eight (8) ERC members must be physically present to constitute a quorum for the transaction of business at an ERC meeting. A majority of ERC members present and serving are required for official action of the ERC. A member who is recused from deliberating and voting on a proposed ERC action due to a potential or actual conflict of interest shall not be considered part of the quorum for purposes of deliberating or voting on the proposed ERC action.

Section 4. Minutes. Minutes of the ERC meetings, including all votes, shall be kept, corrected and approved at a succeeding meeting. ERC Minutes and Resolutions shall be available to the public, pursuant to the Open Meetings Act, MCL 15.261 to 15. 275, and the Freedom of Information Act, MCL 15.231 *et seq.*

Section 5. Procedures. The rules contained in the current edition of Robert's Rules of Order shall guide ERC parliamentary procedures in all cases, consistent with the Act, these Bylaws, any special rules which may, from time to time, be adopted by the ERC and applicable law.

Section 6. ERC Action. The ERC shall only take actions by resolution. Resolutions shall be adopted at properly convened ERC meetings in accord with Article IV of these Bylaws. Resolutions shall be in writing and shall be indexed and filed with the ERC Minutes by the Recording Secretary. Resolutions shall be effective on the day of passage, upon adjournment of the meeting, unless otherwise specified in the resolution.

Section 7. Signing Documents. The ERC may authorize by resolution the signing of documents on behalf of the ERC by any ERC member.

ARTICLE V

Conflicts of Interest and Liability

Section 1. Conflicts of Interest. Members of the ERC and ERC officers shall be subject to all applicable conflict of interest laws, including but not limited to 1968 PA 317, Contracts of Public Servants with Public Entities and 1968 PA 318, implementing Const 1963, art 4, §10.

Section 2. Liability. No member of the ERC or any officer or agent for the ERC, including any person signing any documents on behalf of the ERC, shall be liable personally for any action taken by the ERC or any document signed on behalf of the ERC.

Section 3. Representation, Indemnification and Immunity. Upon the filing of a complaint against any member or officer of the ERC for breach of duty or responsibility, the member or officer shall immediately provide a copy of the complaint to the ERC Chairperson with a request for legal representation. If the ERC or the ERC Chairperson on behalf of the ERC determines the alleged conduct occurred during the course of the member or officer's service with the ERC and within the member or officer's scope of authority or that the member or

officer had a reasonable believe that his or her conduct was within that scope of authority, the

ERC or ERC Chairperson shall request that the legal representation be provided by the Attorney General, subject to any applicable state rules or regulations. The ERC is not required to request Attorney General representation in connection with any criminal prosecutions against an ERC member or officer.

MCL 691.1407 generally permits governmental immunity as a defense to a member’s alleged negligence in violating his or her duties and responsibilities so long as the member:

565 is acting, or reasonably believes he or she is acting, within the scope of his or her authority; and

566 His or her conduct does not amount to gross negligence, which caused the injury or damage (“gross negligence” means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results).

If the ERC finds that the members conduct was within those parameters and does not constitute willful misconduct, but a judgment for damages is nevertheless rendered against the member, the ERC may choose to allow payment from legally available sources for those damages in accord with ERC indemnification authority, if any, and MCL 691.1408.

ARTICLE VI

Fiscal Year

Section 1. Fiscal Year. The fiscal year of the ERC shall extend from October 1 of each calendar year to the ensuing September 30 of the following calendar year.

ARTICLE VII

Amendment and Suspension of Bylaws

Section 1. Amendment. These Bylaws may be amended by resolution adopted by a majority of the ERC Board appointed and serving at any ERC meeting, if

the notice of intention to present the resolution was given at least four (4) days in advance of the meeting at which the motion to adopt the resolution is made.

Notice of the proposed amendment may be included in the meeting agenda or mailed or delivered to the business or home address of each ERC member. Advance notice of motions to amend the proposed amendments to the Bylaws, need not be given.

Section 2. Suspension. Any of these Bylaws, except Article VII Section 1, and those required by state law, may be suspended by unanimous consent of the ERC members physically present at an ERC meeting.