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## **eRecording Best Practices for Recorders**

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<http://www.pria.us>

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## Executive Summary - Best Practices for Recorders

eRecording has been steadily growing throughout the United States since first being utilized in 1998. Recorders, end-user submitters, eRecording technology business partners (TBP), e.g., eRecording vendors and portals, and Land Records Management System (LRMS) vendors have tested multiple approaches and strategies over the years. Due to the wider adoption of, and greater reliance upon, eRecording, PRIA is repeatedly asked for the best practices and norms for eRecording processes. This paper sets forth the consensus reached on 10 eRecording best practices for recorders. PRIA recognizes there may be differences in adoption by recording jurisdictions due to statutory/regulatory specifications or LRMS system capabilities.

1. **Best Practice: Memorandum of Understanding.** The recorder should execute a Memorandum of Understanding (MOU), contract, or agreement with each TBP that serves the recording jurisdiction, not with each end-user submitter.
2. **Best Practice: Recording Fees.** The recorder should accept fees for service with Automated Clearinghouse (ACH) credit transactions.
3. **Best Practice: Document Types.** The recorder should accept all land-title-related document types for eRecording.
4. **Best Practice: Process.** The eRecording process should be more efficient than paper recording with recording fees meeting state statutory/regulatory requirements.
5. **Best Practice: Index.** The recorder is responsible for recording the document and creating the index.
6. **Best Practice: Images.** LRMS and electronic recording software should be configured to accept images of varying quality and from multiple sources.
7. **Best Practice: Vendors.** The recorder should work with multiple TBPs.
8. **Best Practice: Submission Limitations.** The recorder should communicate any package-size restriction information or any other limitations specific to the recording jurisdiction to each TBP.
9. **Best Practice: Duplicate Recordings.** Procedures and systems should be in place to prevent duplicate recording of a document.
10. **Best Practice: Electronic Signatures and Notarizations.** Recording jurisdictions should accept electronically signed and notarized documents.

## The Legal Foundation

Any discussion of best practices requires a solid foundation. For eRecording, the legal foundation lies in four key pieces of enabling legislation. (Disclaimer: The following brief summary is not intended to provide legal advice.)

1. The Federal Electronic Signatures in Global and National Commerce Act ([ESIGN](#)) was signed into law June 30, 2000.
2. The Uniform Law Commission (ULC) adopted the Uniform Electronic Transactions Act ([UETA](#)) in 1999. Since then, 49 states (the exception is New York), the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have adopted the UETA.
3. The Uniform Real Property Electronic Recording Act ([URPERA](#)), promulgated by the ULC in 2004, has been adopted by 35 states, the District of Columbia and the U.S. Virgin Islands.
4. RULONA and MBA/ALTA Model Act. In addition to ESIGN and UETA enabling the eRecording process, the ULC developed a model act that addresses both in-person and remote online notarization (RON). The Revised Uniform Law on Notarial Acts ([RULONA](#)) provides updated recommendations regarding all notarial acts including traditional wet-ink notarization, in-person electronic notarization, and RON.

The Mortgage Bankers Association (MBA) and American Land Title Association (ALTA) jointly drafted a model act focused specifically on RON. In states where broader updates may not be necessary, the [MBA/ALTA model act](#) can provide a foundation for authorizing RON.

ESIGN and UETA provide for the legal equivalent of electronic records and electronic signatures with their paper and wet-ink counterparts. ESIGN and UETA are “overlay statutes,” which means their provisions were intended to work synergistically with all existing legislation. New legislation does not need to be drafted for every area of each statute that mentions paper or ink signatures. Existing and future legislation relies 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 a state enacts these sections of UETA as set forth in the uniform act, URPERA may not be necessary for eRecording. If these sections were not included in a state’s enactment of UETA (or were substantially altered from the ULC’s model version of UETA ), then enactment of URPERA provides additional authority for recording jurisdictions to adopt an eRecording process.

Among these four pieces of legislation and model acts, eRecording finds a solid legal foundation. Recorders are encouraged to consult with their state association or legal counsel to understand the legal requirements for their state.

## The Best Practices

**1. Best Practice: Memorandum of Understanding.** The recorder should execute a Memorandum of Understanding (MOU), contract, or agreement with each TBP that serves the recording jurisdiction, not with each end-user submitter.

**Purpose:** To minimize the number of needed MOUs, contracts, or agreements.

**Procedures to meet this Best Practice:**

- Determine whether a written MOU, contract, or agreement is needed. Consult with legal counsel to determine whether the recording jurisdiction or state requires an MOU, contract, or agreement.
- Sign an MOU, contract, or agreement with each TBP. These TBP, in turn, should be required to have MOUs, contracts, or agreements with their end-user submitters.
- Include in the MOU information about what is legally acceptable for submission (e.g., wet-signed documents, electronically signed documents, and remotely notarized documents).
- Rely on the integrity of the TBP to conduct due diligence before contracting with end-user submitters.

Recording jurisdictions do not have written MOUs with the organizations and individuals that submit paper documents.

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.

End-user submitters have chosen not to eRecord in jurisdictions that require individual end-user submitter MOUs.

Recording jurisdictions, which are part of a consortium or access portal may not require a separate MOU with each end-user submitter, because the portal manages integrations with Technology Business Partners on their behalf.

**2. Best Practice: Recording Fees.** The recorder should accept fees using Automated Clearinghouse (ACH) credit transactions.

**Purpose:** To simplify the payment of fees for eRecording.

**Procedures to meet this Best Practice:**

- Record documents throughout the business day, culminating in a single, aggregated daily financial transaction.
- Transfer daily total of the recording fees and taxes, as applicable, from the TBP to the recording jurisdiction via ACH credit.
- Require a daily reconciliation report from TBP detailing the fees remitted for each specific transaction.

Rules and regulations that govern the ACH network are established by [NACHA](#) (formerly the National Automated Clearing House Association) and the [Federal Reserve](#).

**3. Best Practice: Document Types.** The recorder should accept all land title-related document types for eRecording.

**Purpose:** To maximize efficiencies for recorders and all end-user submitters.

**Procedures to meet this Best Practice:**

- Review, record, and index all submitted documents that meet statutory guidelines for recording.
- Utilize technology to manage documents that require routing or additional review through other offices within the jurisdiction.
- Reference the [PRIA XML standard](#) for an example of document types.
- Provide updates to document types to all Technology Business Partners.

Reasonable exceptions for eRecording submissions may include plats and surveys (which may be large-format documents), documents containing personally identifiable information, or documents containing information prohibited by law. These exceptions should be posted on the jurisdiction's website.



**4. Best Practice: Process.** The eRecording process should be more efficient than paper recording with recording fees that meet state statutory/regulatory requirements.

**Purpose:** To maximize eRecorded document transactions for the recorder and the end-user submitter. Dealing with multiple recording jurisdictions and varying requirements complicates the process for end-user submitters and TBP.

**Procedures to meet this best practice:**

- Require only enough index data to identify the document and properly calculate fees.
- Consistently apply recording fees within a jurisdiction and among the jurisdictions in a state or region.
- Do not require additional documentation or processes for eRecording if the same is not required for paper recording, unless there is a need to comply with state statutory/regulatory requirements.
- Do not reject documents because of minor variances or imperfections within indexing data, which do not prevent processing, indexing, or archiving.
- Utilize a communication system, which sends [rejection reasons](#) through the Technology Business Partner to the end-user submitter with details on why the document was rejected. Communicating clear and concise rejection reasons enhances the recordation process and reduces unnecessary delays.

The implementation of eRecording should involve less processing time and be more streamlined than paper recording.

Following these procedures allows end-user submitters to send documents to multiple recording jurisdictions, which may have different requirements. It is time-consuming and confusing for end-user submitters and TBP to track recording requirements nationwide across multiple jurisdictions.

**5. Best Practice: Index.** The recorder is responsible for recording the document and creating the [index](#).

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

**Procedures to meet this Best Practice:**

- Require only enough index data to identify the document and properly calculate fees.
- Do not reject electronically submitted documents with minor variances or imperfections within indexing data, which do not prevent processing, indexing, or archiving.
- Maintain and share indexing rules. The recorder should not in any way expect the end-user submitter to assume responsibility for the inclusion or accuracy of jurisdiction-specific index data.

Recording jurisdictions have been historically and statutorily responsible for reviewing and recording documents, as well as for capturing and cumulatively preserving the grantee/grantor and other necessary index information. eRecording does not change that long-standing recorder's responsibility.

**6. Best Practice: Images.** LRMS and electronic recording software should be configured to accept images of varying quality and from multiple sources. It should be able to improve and enhance the quality and legibility of document content. While end-user submitters should be encouraged to adopt best practices for producing document images, LRMS software, recording jurisdictions, and intermediate document management systems should be equipped to successfully process documents from multiple sources and technologies.

**Purpose:** To record and preserve high quality document images in the public land record systems and archives.

**Procedures to meet this Best Practice:**

- Identify and utilize various image libraries by offering image conversion and compression tools in the LRMS and electronic recording software to preserve the content of documents and to improve the quality and legibility of images received from document submitters. In the event the document still has irregularities, the recorder should manually enhance the document with imaging tools. These imaging tools should:
  - Improve the conversion of images, which may include color such as blue signatures or property drawings or other graphics.
  - Preserve the clarity and color tone of the original document as allowed by a recording jurisdiction.
  - Improve the conversion of images scanned in greyscale or color format to crisp and legible black and white images as required by a recording jurisdiction.
  - Reduce pixilation, which is manifested as light or grey text which is marginally legible, or which may be at greater risk of degradation over time.
  - Provide for the conversion of images rendered from software rather than optical scanning devices.
  - Provide for the conversion of images, which include electronically generated indicia such as recording stamps, notarial stamps, digital signatures, zoning stamps, etc.
- Make reasonable efforts to improve the legibility of the image, but if these efforts are unsuccessful, the recorder rejects the document and returns it to the submitter.
- Communicate image requirements end-user submitter and technical business partner, including paper size, margin requirements, font size, compression, black and white vs. color or gray scale, orientation, and image format.

## 7. **Best Practice: Vendors.** The recorder should work with multiple TBPs.

**Purpose:** To increase the percentage of eRecording document submissions and ensure submitters have access to electronic recording services in a recording jurisdiction regardless of their preferred TBP, consortium, or access portal.

**Procedure to meet this Best Practice:**

- Work with multiple TBPs to increase the volume and percentage of eRecording document submissions.
- Verify with the LRMS vendor that their systems are capable of non-proprietary integration with any TBP.
- Provide a consistent Application Programming Interface (API), which can be presented to the end-user submitters and LRMS vendors. This API may be achieved through the [PRIA-MISMO XML Data Standards](#) or collaboration of multiple recording jurisdictions within a state.

Recording jurisdictions accept paper recordings from multiple sources: in person, courier deliveries, Federal Express, UPS, or USPS. Providing access to multiple TBPs applies the same logic to electronically delivered documents.

Recording jurisdictions accept paper recordings from multiple sources: in person, courier deliveries, Federal Express, UPS, or USPS. Providing access to multiple Technology Business Partners applies the same logic to electronically delivered documents.

**8. Best Practice: Submission Limitations.** The recorder should communicate any package-size restriction information or any other limitations specific to the recording jurisdiction to each TBP.

**Purpose:** To assure submittal and return of documents to the end-user submitter while minimizing the chance of rejections of larger packages or batches.

**Procedures to meet this Best Practice:**

- Post on the recorder's website or include in the MOU any package size restrictions and communicate limitations on the number of documents submitted in a single package or batch, the number of pages in a single document, file size and file compression type to avoid a problem with either acceptance or return of documents.

**9. Best Practice: Duplicate Recordings.** Procedures and systems should be in place to prevent duplicate recording of a document.

**Purpose:** To avoid duplicate recordings, which result in extra fees charged to the end-user submitter.

**Procedures to meet this Best Practice:**

- Take an active role with all parties involved in the eRecording transaction to minimize the occurrence of duplicate recordings.
- Ensure the LRMS vendor and Technology Business Partners have the necessary tools in place to prevent duplicate recordings. The [PRIA-MISMO XML Data Standards](#) include technical methods to minimize duplicate recordings.
- Advise the end-user submitter to check with their TBP before re-submitting a package for recording if there has been an apparent delay in the processing of a submission.
- Work cooperatively with all parties to identify and resolve the issues when a duplicate recording occurs.

**10. Best Practice: Electronic Signatures and Notarizations.** Recording jurisdictions should accept electronically signed and notarized documents.

**Purpose:** To maximize the volume and efficiencies of eRecording.

**Procedures to meet this Best Practice:**

- Address specific requirements for the recording jurisdiction per state statutes, regulations or eRecording commission's guidance within the MOU and on the website.
- Consult the state recorder's association or jurisdiction legal counsel for further guidance.
- Adopt policies placing the obligation on end-user submitters and TBPs to ensure that documents submitted for recording are legally executed.
- Communicate clearly to submitters and the TBP the policies for accepting electronic signatures and notarizations.

The Electronic Signatures in Global and National Commerce Act (ESIGN) is a federal statute adopted by Congress that became effective in October 2000. Regarding electronic signatures, the act states: "A signature, contract, or other record relating to such transaction may not be denied legal effect, validity or enforceability solely because it is in electronic form." 15 U.S.C. §7001(a)(1). Regarding notarization, the act states: "If a statute, regulation, or other rule of law requires a signature or record relating to a transaction in or affecting interstate or foreign commerce to be notarized, acknowledged, verified, or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record." 15 U.S.C. §7001(g). Simply stated, electronic signatures, including a notary's use of an electronic signature, have been legally valid in the United States since 2000.

Additionally, 49 states, with the exception of New York, have adopted the Uniform Electronic Transactions Act (UETA), which is a model law drafted by the Uniform Law Commission. The language in UETA regarding the legal validity of electronic signatures and notarization is virtually identical to the ESIGN language previously quoted.

Further, 35 states have adopted the Uniform Real Property Electronic Recording Act (URPERA), another model law drafted by the Uniform Law Commission which addressed the possibility that under certain circumstances, UETA might not be applicable to

recordable documents. When this scenario exists, the adoption of URPERA clarifies that electronic records are, indeed, legally recordable.

All of the legal foundation statutes have proceeded from the simple concept that an electronic notarization is a notarization performed with a different tool, other than an ink pen and a wet signature.

An electronic notarization must meet all of the requirements of a paper notarization, including personal appearance and identification proofing of the signer. Rather than changing the nature of the notarization, electronic notarization changes only the means by which the transaction is performed.

While ESIGN, UETA and URPERA establish the legal validity of an electronic notarization, some states believe additional regulations are required before eNotarizations can be accepted. Notary appointing authorities (usually within the Secretaries of State offices) may have statutory responsibilities, which make registration of the electronic signature that a notary intends to use when notarizing electronic documents a necessary requirement.



## Conclusion

Since the inception of eRecording in 1998, a significant body of enabling legislation and best practices has been developed. What were once trailblazing ideas have now become the norm. Electronic signatures and eNotarizations are legal, and it is the responsibility of the parties to a transaction to make sure they are properly executed. The industry has learned it isn't necessary for a recording jurisdiction to have a separate memorandum of understanding (MOU) with each end-user submitter; the eRecording TBP can execute the MOU with the submitter.

Payment systems for recording and other service fees, which rely upon ACH, are now common practice, and real-time payment systems are emerging. In the early years of eRecording, there were perceived risks associated with the electronic recording of certain document types. After more than 20 years, it has been clearly demonstrated that most document types can be electronically recorded, and any legal or procedural artifacts which prevent eRecording should be reconsidered.

Electronic processing is fast, and the key factor is getting the electronic document into the public record. Over time, eRecording has proven that less is more! Fewer prescriptive rules for indexing and formatting can make things easier for both submitters *and* recorders. Technology tools are also being used to enable more effective image processing and improved quality of electronic documents. It is easier than ever for the TBP to exchange information through published APIs based on [PRIA-MISMO](#) standards.

A critical component of any best practice is communication. More communication and deeper understanding among the parties involved in the recording function make all systems work better and faster. Most people will follow rules and business processes if they know and understand them.

Follow PRIA's suggested best practices for electronic recording. Recorders and submitters will celebrate their mutual success.