eRecording: An E for Efficiency

— by LATHA PARAMESWARAN —

The mortgage industry is sorely in need of new efficiency tools. One of the best options on the horizon is eRecording. The sooner we get universal adoption, the better.

The massive downsizing in mortgage industry staffing that occurred during the Great Recession of 2008 is still fresh in the minds of many. Now, as new mortgage volumes increase and seasonal strength adds to the growth in home sales, avoiding the mistakes of the past becomes a priority. ¶ All areas of the mortgage business need to be explored for efficiencies so that costly swings in staffing are not repeated. Real estate document recording is one area that should be inspected closely for added efficiencies. The mortgage industry has a long-standing, often underutilized tool—eRecording. ¶ Electronic recording is a proven concept that delivers fast and smooth recording of deeds, assignments, security instruments and other standard real estate documents. Using it shortens turn times, improves quality, and reduces risk for lenders and the industry as a whole. Benefits like that come at a cost, but like other types of automation, the frustrations that may occur with the initial adoption are more than offset over the long term.

What is eRecording?

eRecording is part of eCommerce—nothing more, nothing less. It is the process of submitting document images electronically to recording jurisdictions, which record and return them to the sender. Lenders, title companies and law firms create mortgages, deeds and other documents that require recording. They submit an image of the document for the electronic submission process, which is passed securely to the recording jurisdiction through the Internet. Once the document is recorded, it is returned to the sender as an image to complete the process. This replaces the traditional mailing and return of the paper document to and from the county.

Generally speaking, four parties are involved in the eRecording process. They are 1) document providers, 2) technology providers (vendors), 3) trusted submitters and 4) the county recorders (recording jurisdictions).

The document providers are the individuals and companies such as law firms, title companies, lenders/servicers and others who generate the mortgages, deeds, assignments, releases and other documents for recording and filing with the county clerk or recorder. With eRecording, the document providers send their documents electronically for recording.

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In any eCommerce business, someone has to generate the architecture to make the process happen. In eRecording, these are the business-to-government (B2G) vendors (technology providers) that develop the recording software or other electronic recording systems for the counties to record and return documents electronically. These B2G vendors are also the conduit between the trusted submitters and the county.

Trusted submitters such as Indecomm build an interface and leverage their connectivity through the B2G vendors to enable eRecording. The document providers contract with the trusted submitters to use their interface and connectivity to submit documents to the county for eRecording. The document providers typically pay the trusted submitter a per-document fee. The systems of the trusted submitters are often flexible, allowing the document providers the channel to directly connect to one or more counties. This eliminates the need for the document providers to directly integrate with the counties. Trusted submitters are also integrated with title production and lien-release platforms to automate the submission of data and images.

The fourth player in the eRecording process is the county recorder or registrar of deeds. These are generally county officials of recording jurisdictions who accept documents, whether submitted in paper or electronic form, for recording or registration with the county.

The genesis of eRecording

Mortgage recording is traditionally a local matter, usually conducted at the county level. As a result, each state can establish its own rules and procedures—and usually does.

This provides a strong case for trusted submitters who understand the nuances of each recording jurisdiction. With eRecording, trusted submitters must have the technology understanding to build the connectivity and embed the nuances of each recording jurisdiction such as primary and ancillary document types, data elements and payment setup, all of which can vary by county.

Some standardization of state activities is needed to improve the process nationally. Often this leads to uniform laws being drafted by organizations such as the American Bar Association (ABA). These uniform laws are not binding on an individual state but are designed to provide a general guide to individual state legislation. Adopting laws based on the model law makes the legal process more uniform among the states and easier to implement for any particular state.

This is exactly what happened in the late 1990s when the Uniform Law Commission drafted model legislation for

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What is eRecording?

It is a safe and efficient way to record real estate documents and improve document turnaround times.

Types of eRecording

There are several types of eRecording. Level 2 is the most popular—sending images and some data.

Parties involved

Parties involved include document providers (title companies and lenders), vendors (technology providers), trusted submitters (eRecording service providers) and county recorders (recording jurisdictions).

How do I start eRecording?

Document providers need a person to handle the submission process, supported by a computer with an Internet connection, a scanner and connectivity through a trusted submitter.

Vendors (technology providers) need to sign up counties to offer eRecording software and support.

Trusted submitters need to build their own software to accept the document, and their platforms must have connectivity through technology providers to submit documents to the county.

County recorders need a computer with an Internet connection and an eRecording module from the technology provider. Recording jurisdictions either integrate the eRecording module with their existing land records management system (LRMS) or purchase a new LRMS with eRecording capability.

eRecording under the Uniform Electronic Transactions Act (UETA). If a state enacted this uniform law, the state made the eRecording process legal so that electronic documents became legal documents. However, not every state adopted this uniform law and confusion still persisted about the eRecording provisions in UETA.

As a result, the Uniform Real Property Electronic Recording Act (URPERA) was created in 2004 to remove any doubt that local recording offices could accept and process electronic documents.

Thus, eRecording, even though it has gotten easier over the years as technology has improved, is in no sense a new idea. In fact, immediately after the uniform law was drafted, a number of states quickly passed laws allowing the use of electronic documents in mortgage recording. Orange County, California, is generally thought to be the first county to use the process in 1997.

Since its inception, eRecording has grown steadily but slowly and has gradually become the standard in the industry alongside paper-based recording processes.

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Why eRecording is important

Electronic recording provides benefits at both the private and public levels.

Document providers are drawn to eRecording because they expect significant savings over paper transactions. But just as many things on the Internet are not free and do not necessarily reduce cost directly, eRecording, which uses the Internet, is not free.

The economics of the process require that the trusted submitter recover research and development costs as well as maintenance expenses through fees paid by the document providers. Of course, postage, check reconciliation and some labor costs associated with paper document handling are reduced, yet other costs such as vendor fees and document-handling costs offset such savings.

However, those viewing the big picture will quickly see that the benefits of eRecording far outweigh the perception of it as solely a shipping cost replacement.

Time savings are an especially important consideration because electronic recording minimizes the occurrence of misplaced and lost documents. It also reduces reprocessing time and minimizes recording fee rejects.

In addition, eRecording improves labor productivity, freeing employees to build the business. Because eRecorded documents are encrypted, eRecording inhibits document tampering.

In this sense, eRecording streamlines document processing. eRecording uses uniform formats and procedures. Documents are fed into the system automatically, which minimizes handling time. A paper filing that could easily take days can be done electronically in a few hours or less.

eRecording uses open and nonproprietary systems and formats, which facilitate connectivity across the recording space. The speed offered by eRecording improves customer relations and trust.

Electronic recording is also a green technology and helps more than just a single adopter. When electronic documents are generated, it benefits the entire mortgage industry and in this sense is a public good.

eRecording allows the lender to get a lien position established within the county record system on a particular property without any delay. It is also quicker to eRecord, and there can be complete online traceability of the documents and the sender. There is no uncertainty about who holds the lien. This prevents multiple sales or refinance of the same property, which is perhaps the worst type of mortgage fraud because it provides leverage to the crime. A single fraudulent application can be sent to multiple lenders. If the recording process is slow and the documents can't be traced in real time, the lenders have no way of knowing that the property was being mortgaged multiple times.

The quick traceability of the documents has other benefits. It obviates one of the major problems faced by the mortgage industry during the mortgage crisis: Funds paid by the borrower and remitted by the lender to record the mortgage and issue the title policy could be diverted to other uses. The lender had no visibility into the status of the recording of its closed and funded loans. This is exactly where electronic tracking comes in. And this is also the confluence of electronic recording and electronic tracking services that can combine to significantly reduce fraud.

Another aspect is important, too: eRecording will speed the process of ensuring first-lien enforceability under Fannie Mae's and Freddie Mac's Life of Loan Representation and Warranties for Clear Title and First Lien Enforceability.

Where eRecording is available, the lender can enforce its use. It raises the professional standards for the business, minimizing any possible county recording delays or lack of response from impeding the completion of a transaction.

Where are we with eRecording?

Important legal issues in electronic recording were resolved long ago at both the federal and state levels. At the federal level, electronic signatures were legalized more than a decade ago.

The Electronic Signatures in Global and National Commerce Act (E-SIGN) was enacted by Congress in 2000. This raised electronic signatures to the same legal status as written signatures. As the E-SIGN Act states, a contract or signature "may not be denied legal effect, validity or enforceability solely because it is in electronic form."

In addition, the statute intended that laws about electronic signatures be broadly applied. This is reflected in the Federal Deposit Insurance Corporation (FDIC) compliance manual's definition of an electronic signature, which includes sounds, symbols, or processes: "Electronic Signature—The term 'electronic signature' means an electronic sound, symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record."

There is no need to wait for the final technology for electronic recording to be developed—the laws are written to accommodate any innovation. The aversion to new technologies that may have existed before in public officials seems to have largely evaporated when their children brought home their first smartphone. The advancements in electronic document and data transmission technology will only make electronic recording more ubiquitous as it becomes more flexible.

As regulations continue to evolve around mortgage processes, the title and settlement industry is in a unique position to accelerate eRecording.

The intent to legitimize electronic signatures at the federal level has been mirrored at the state level. UETA is a model law adopted by the vast majority of states, which provides for electronic signatures to be accepted as legally binding.

Forty-seven states, the District of Columbia and the Virgin Islands have adopted UETA. Illinois, New York, Puerto Rico and Washington have not adopted the act, but have their own laws on electronic transactions.

Still, eRecording is a glass half-full and half-empty. Of the approximately 3,600 recording jurisdictions in the United States, more than 900, or 25 percent, offer eRecording, and this may reach 1,000 by the end of 2013, according to the Property Records Industry Association (PRIA). PRIA data shows that this represents 57 percent of the population being served by eRecording.

Certainly this is to be applauded, because these jurisdictions are located in 42 different states. But eight states do not offer eRecording at all: South Dakota, West Virginia, Kentucky, Mississippi, Delaware, Maryland, Rhode Island and Vermont.

So if eRecording is so beneficial, why isn't it universally employed?

The diffusion of new technologies into the broader economy is never without problems. A general level of information needs to be provided to give county recorders comfort with the process.

County recorders themselves may be unclear about the process of electronic recording. For example, they may not understand that the document provider and/or the trusted submitter could be the same party submitting a paper document to them. As result, counties may need supplemental information to support the adoption of eRecording even if they are already accepting paper documents from these parties. Recorders may also experience interdepartmental issues when dealing with certain types of documents.

Specific problems vary with each point in the process. PRIA identifies the elements of eRecording in its 2007 white paper, *Electronic Recording Security Considerations*. While there is little in these security considerations that are unique to eRecording, they nevertheless need to be addressed.

The list reads like a primer in eCommerce. The process of eRecording is initiated by the trusted submitters whose identity needs confirmation. In addition, the integrity of the documents themselves can be a concern.

Fraudulent providers or doctored documents are a risk, but it is largely the same concern that we have with paper submissions and certainly prevalent in eCommerce. Nevertheless, passwords and protocol need to be established for the trusted submitters and the recorders so that the transmission can be validated on both ends.

Electronic processing of documents and their storage confront eRecording users with a range of technical issues. Though not the problem they once were, the physical integrity of computers and networks can come into question. Computers can crash and networks can go down. The problem is vastly mitigated by local and remote backups. These can be automated as well. It should be remembered that eRecording has a long history and has benefited from the technological developments in eCommerce generally.

People can be the weakest link in the computer system—or any system, for that matter. Personnel training and personnel review is standard procedure. It is useful to remember that mortgage fraud is typically perpetrated by the professionals in the field and rarely by the borrower.

eRecording is an industry priority

Technology and regulation are transforming the mortgage business. Electronic recording and retrieval of documents offer benefits at both the firm and industry level. It is a well-developed technology that can advance the efficiencies needed to avoid the old boom/bust cycle in mortgage origination and recording. In addition, eRecording is a risk-mitigation tool at all levels of use. Finally, as regulations continue to evolve around mortgage processes, the title and settlement industry is in a unique position to accelerate eRecording.

Risk mitigation procedures like eRecording and electronic tracking of documents are clearly best practices. Earlier this year, the American Land Title Association (ALTA) released its Title Insurance and Settlement Company Best Practices, in which it recommended using electronic recording where available in order to comply with federal and state consumer financial laws. For its part, PRIA has a robust resource section about eRecording on its website and continues to develop educational materials for the industry.

In the end, the voluntary adoption of these best practices by the industry demonstrates its commitment to better serving its consumers, especially as we head into a high production season that could produce delays and inaccuracies in recording as well as overstaffing to meet short-term surges in demand. **MB**

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