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Memorandum of Understanding

Between Recording Offices and eRecording Providers

Adopted by the PRIA Board on Month 9/17/2025

http://www.pria.us

PROPERTY RECORDS INDUSTRY ASSOCIATION

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Executive Summary

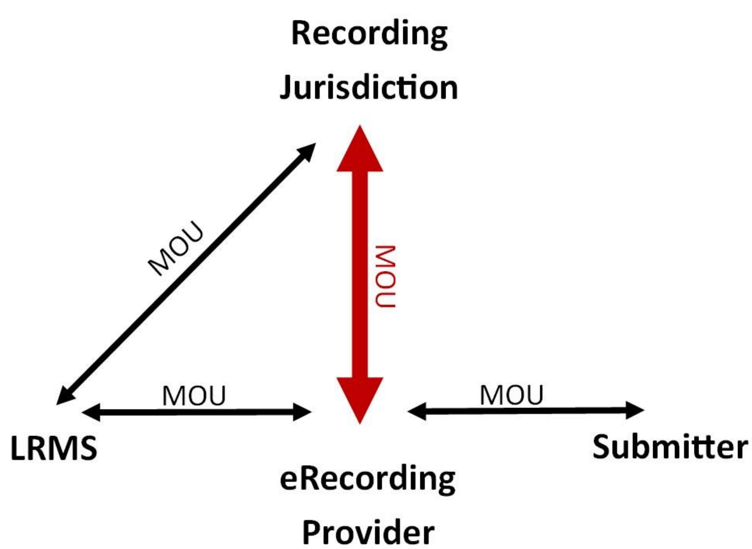
The Memorandum of Understanding (MOU) is the most common means to create a contract between a recorder and an eRecording provider. This paper offers guidance on applicable terms in a MOU between recording jurisdictions and electronic recording (eRecording) delivery providers. MOU terms can create problems for the different parties in the transaction. Many recording offices do not require MOUs or are satisfied with MOUs drafted by eRecording providers.

Parties involved in the eRecording process include the recording jurisdiction office, Land Records Management System (LRMS) vendor, eRecording provider, and submitter.

Steps in the eRecording process:

1. **Submitter** uploads documents to eRecording provider.
2. **eRecording provider** transmits documents to recording jurisdiction's LRMS.
3. **LRMS** presents documents to the recording jurisdiction's staff for approval.
4. **Recording Jurisdiction** staff examines, then approves or rejects document.
5. **LRMS** transmits approval or rejection back to eRecording provider.
6. **eRecording provider** transmits response back to submitter.

Although there are multiple parties involved in the eRecording process, this paper addresses only the agreement (MOU) between the eRecording provider and the recording jurisdiction.



Objectives

1. Define the MOU and common terms.
2. Draw distinction between submitters and eRecording providers.
3. Recognize that eRecording providers are not government contractors and neither buy nor sell services to the recording jurisdiction.
4. Clarify the parameters of service offered by eRecording providers.
5. Define the role of the eRecording provider in the electronic recording process.
6. Ensure that MOU terms are necessary and consistent with the eRecording process.
7. Protect recording offices and eRecording providers from third party claims.

Basic Terms in an MOU

The MOU is used to establish an agreement outlining intentions and expectations between parties.

1. Reason for MOU, including parties involved
    a. Function of eRecording provider
    b. Reason or justification for recording jurisdiction participation
2. General description of the relationship and agreement
    a. Establish that the MOU is voluntary between parties
    b. Provide provisions for any possible deposits or fees charged by the recording jurisdiction (aside from recording fees) or by the eRecording provider to the jurisdiction
3. Recording jurisdiction's responsibility
    a. Document integrity—monitor recordability of documents
    b. Consistency between paper and electronic submissions
    c. Business information, e.g., contacts, schedules, document types and indexing, payment requirements
4. eRecording provider's responsibility
    a. Document integrity—accept electronically submitted documents as original documents
    b. Technical facilitation between submitter and recording jurisdiction
    c. Compliance with jurisdiction's technology requirements
5. General terms
    a. Liability clause
    b. Dispute resolution and venue
    c. Severability clause
6. Termination clause

Submitters and eRecording Providers

Many MOUs drafted by a recording jurisdiction make no distinction between an eRecording provider and a submitter. This is a critical distinction and should be reflected in the MOU. Submitters are responsible for presenting the original document to be recorded, while eRecording providers transmit these documents to the recording office.

Recording jurisdiction's MOUs often require the eRecording provider to attest that a document is correct, complete, and accurate. The MOU may also make the eRecording provider solely responsible for the content of documents. Such provisions are unreasonable as applied to the eRecording provider. An eRecording provider has no direct connection with the underlying transaction or the background facts involved in a conveyance. The eRecording provider should be no more responsible for the substantive content of documents it transmits than those who deliver in person, by mail, or by courier.

There are differences between an eRecording provider and those who submit by traditional means. There needs to be special provisions to clarify the indexing parameters, to define technology requirements, and to establish the electronic payment process. That is the intended purpose of an MOU. Further, limitation of liability and indemnification provisions should not apply to eRecording providers, except to the extent that these provisions deal with liability resulting from the transmission of the records and system issues.

Another difference between eRecording providers and those who submit documents for recording by other means is that eRecording providers in some jurisdictions are required by statute or applicable law to qualify submitters; however, this responsibility is outside the scope of this paper.

eRecording Providers are NOT Government Contractors

An MOU is intended to set forth parameters under which the recording jurisdiction makes eRecording available. The MOU is not a contract with the eRecording provider for the sale of goods and services to the recording jurisdiction. Some MOUs include additional terms such as: unmandated insurance (insurance beyond statutory requirements), equal opportunity, and other requirements applicable to government contractors. The eRecording provider's role is like that of a courier who submits documents in person across the counter; therefore, the government contractor provisions are not applicable.

Unnecessary and Impossible Responsibilities

The eRecording provider's role, once submitting parties have been vetted, is the electronic equivalent of the mail, courier, or overnight delivery service. The MOU should reflect this equivalence. Many recording offices use MOUs that include provisions that are unnecessary and impossible for an eRecording provider to perform. Examples include:

1. *"By use of electronic or digital signatures, eRecording provider intends to be bound by those electronic signatures and such signatures shall have the same legal effect as if that signature was manually affixed to a paper document."*

   Explanation: This type of provision is unnecessary and subjects the eRecording provider to litigation risk. The eRecording provider is a conduit and not a party to the documents submitted for recording. Every state has URPERA, UETA, RULONA or similar laws which govern electronic signatures and records. Simply by submitting a document electronically for recording, the submitter is subject to those laws whether stated on the MOU or not.

2. *"eRecording provider and its employees attest to the accuracy and completeness of the electronic records and acknowledge responsibility for the content of documents submitted through the eRecording system."*

   Explanation: eRecording providers do not provide comprehensive legal reviews of documents to be recorded. Merely by submitting a document to the recording office, the submitter purports to comply with applicable law. An eRecording provider cannot make an attestation because these providers are not parties to the underlying transaction. Making such a determination would require the eRecording provider to exercise legal judgment, which would run afoul of most states' Unauthorized or Unlicensed Practice of Law statutes.

Anti-Fraud Measures

Most states have laws that criminalize the use of fraudulent documents in real estate transactions. Generally, fraud investigations are conducted by law enforcement. eRecording providers have an obligation to fully cooperate with such investigations; therefore, it isn't necessary for the MOU to detail additional measures.

Protecting Recording Offices and eRecording Providers

The MOU should expressly state that there are no third-party beneficiaries of the MOU. This will provide protection for both recording offices and eRecording providers, preventing non-parties from making claims. The purpose of an MOU should be to establish processing parameters unique to electronic submission. It should not subject the parties to greater liability than would be the case if a document was filed across the counter, by mail, or by courier.

Conclusion

An MOU between a recording jurisdiction and an eRecording provider establishes a clear framework for implementing and managing electronic document recording services. This agreement outlines the roles, responsibilities, technical standards, and protocols necessary to ensure mutual understanding of the services to be provided. The MOU serves as a foundational document that helps both parties align their efforts toward improved service delivery and long-term operational success. As with any legal agreement, the parties are encouraged to consult legal counsel.