

Clearinghouse Rule 08-084

PROPOSED ORDER OF THE WISCONSIN DEPARTMENT OF ADMINISTRATION

The Department of Administration, in cooperation with the Electronic Recording Council of Wisconsin (Council), proposes an order to create Chapter Adm 70 of the Wisconsin Administrative Code, relating to technical standards for electronic recording of documents in the County Register of Deeds Offices in Wisconsin.

Analysis prepared by the Department of Administration

Statutory authority: s. 16.004(1) and 706.25(4), Wis. Stats.
Statutes interpreted: s. 706.25, Wis. Stats.

Agency Authority to Promulgate Rule:

Pursuant to s. 706.25(4), Wis. Stats., the Department of Administration is required to promulgate by rule the standards adopted, amended or repealed by the Council under Uniform Real Property Electronic Recording Act.

Related Statute or Rule:

Wisconsin Statute 137
Adm 13, Electronic Signatures

Summary of Proposed Rule:

The proposed rule sets forth standards and other requirements designed to promote standard practices, security and efficiencies in recording documents electronically with the offices of the register of deeds in Wisconsin.

Comparison of Similar Rules in Adjacent States:

Though they have not adopted formal administrative rules to date, Iowa and Minnesota have adopted the URPERA and established business rules which require advance submitter agreements. Model 2 and 3 technology, PRIA standards and trusted submitter agreements are used in both Iowa and Minnesota for electronic recording of documents.

The Minnesota Legislature adopted URPERA in the spring of 2008. The Commission established under the Minnesota URPERA law will assume responsibility from the sun-setting earlier established Electronic Recording Task Force and then may well develop administrative rules for electronic recording. As of this time, no implementing rules are in place.

The Iowa Legislature passed legislation establishing an Electronic Transaction Fee in order to establish a statewide system for accepting documents

electronically. The system, called the County Land Record Information System (see www.iowalandrecords.org), is owned by the Iowa County Recorders and supported by a private project manager.

Michigan and Illinois have not progressed as far as Iowa or Minnesota.

Comparison with Existing or Proposed Federal Regulations

There are no federal regulations proposed for electronic document recording in the local offices of the register of deeds at this time.

Data Used to Support Rule:

Surveys were conducted of most the register of deeds offices in the Midwest and phone interviews were conducted of other register/recorder/clerk's offices who are actively recording documents electronically. Laws and rules regarding electronic recording from other states were reviewed. Various experts attended council meetings and gave presentations that greatly enhanced understanding of issues and technology:

- Mark Ladd, Technology Coordinator for the Property Records Industry Association (PRIA), shared updates on guidelines of this standard-setting organization;
- Tim Reiniger of the National Notary Association explained his group's desire for increased education for notaries and implementation of electronic notarization;
- Susan Churchill of the Wisconsin Secretary of State's Office explained plans to create a database of Wisconsin notaries;
- Phil Dunshee, gave presentations on the Iowa Recorders Association's statewide portal for accessing information and recording electronic documents;
- Marc Aronson from the US Notaries organization spoke on the National Uniform Committee's work on uniform notary law and his perspective on a range of acceptable methods for notaries;
- Lisa Nelson and Luann Kohlmann of Associated Bank in Middleton explained electronic funds transactions that can be used to make payments for electronic recordings;
- Bush Nielsen, counsel for the Wisconsin Land Title Association gave an interesting presentation on the importance of the prompt and proper order of recording documents;
- Mark Saunders, deputy legal counsel and Donna Sorenson, paralegal for the Wisconsin Department of Administration, reviewed the administrative rule form, wording, process and timeline; and
- Council administrative support provided by Amy K. Moran of the Department of Administration and Jim Pahl-Washa of the Department of Revenue.

Effect on Small Businesses:

Reduces uncertainty; provides a clear path for recording documents electronically in Wisconsin allowing for speedier processing of conveyances.

Agency Contact Person:

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Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the agency contact person that is listed above and via the Wisconsin Administrative Rules Website at:
<http://adminrules.wisconsin.gov> by (date).

Fiscal Estimate:

State Fiscal Effect

This rule will provide technical standards for electronic recording of documents in the local Register of Deeds Offices in Wisconsin. It requires the Wisconsin Electronic Recording Council to identify and approve “trusted submitters,” which are private entities that would be approved to record documents electronically in Wisconsin. The rule does not require any entity to record electronically. Recording fees are unchanged by the rule.

Wisconsin does not have a state-level Register of Deeds and the State would not be impacted by costs to implement electronic recording. The rule does not impact the current level of administrative support provided to the Wisconsin Electronic Recording Council by state resources or staff.

As a consumer, the State records documents with local Registers and pays recording and some copying fees. If the State elects to use electronic recording in counties which allow it, there may be some increased cost from software purchases or from trusted submitter fees. Since it is currently not known how many counties will elect to implement electronic recording, the cost to the State is indeterminate.

Local Fiscal Effect

The rule does not require local Registers to allow electronic recording of documents. However, if the local Register of Deeds Office chooses to allow electronic recording, it would need to purchase specific software that would enable it to receive documents for recording, indexing and returning a copy of the documents once recording is completed. There are approximately 17 large

to mid-sized counties that are currently accepting certain documents for electronic recording. There are several vendors of electronic recording software, but costs for the systems vary and the cost appears to depend on the level of use.

Local Registers may also experience reduced costs as a result of electronic recording; including saving on scanning, copying and mailing costs, as well as more efficient identification and correction of errors in documents.

The fiscal impact on local units of government that choose to allow electronic recording is indeterminate. In addition, the proposed rule would not require local government entities to incur any costs since participation is voluntary.

TEXT OF RULE:

SECTION 1. Chapter Adm 70 is created to read:

Adm 70
Electronic Recording of Documents
In Wisconsin County Register of Deeds Offices

Adm 70.01 Purpose. The purpose of this chapter is to establish uniform recording standards and practices, provide for integrity and security of transmissions and promote efficiencies and improved service for electronic recording of documents in Wisconsin county register of deeds offices.

Adm 70.02 Definitions. In this chapter:

- (1) "Council" means Wisconsin electronic recording council.
- (2) "Department" means the Wisconsin department of administration.
- (3) "PRIA" means the property records industry association.
- (4) "Trusted submitter" means a party that has a trusted submitter agreement accepted by and on file with the council in order to record documents electronically with a register of deeds.
- (5) "Trusted submitter agreement" means the agreement to be signed by any party who wishes to become a trusted submitter.
- (6) "UETA" means the uniform electronic transactions act, created by 2003 Wisconsin act 294.
- (7) "URPERA" means the uniform real property electronic recording act, created by 2005 Wisconsin act 421.

Adm 70.03 Standards. (1) Technical standards for submitting electronic recording files shall be established by the council in conformance with current industry standards, including PRIA electronic recording XML Implementation guidance.

(2) The council shall notify each Wisconsin county of any changes to the electronic recording standards by sending notice to each register of deeds in

advance of the effective date of the changes and by posting changes to the council's website.

Note: Copies of the technical standards can be obtained from the council at the following mailing address and website:

Electronic Recording Council of Wisconsin
c/o Wisconsin Department of Administration Secretary's Office
101 East Wilson Street, 10th Fl.
Madison, WI 53707
608 – 266-5030
Website - www.ercwis.wi.gov

Adm 70.04 Business requirements and guidelines Fundamental business requirements and guidelines for trusted submitter software shall be established by the council.

Adm 70.05 Trusted submitter agreement. Every document submitter shall complete and sign a trusted submitter agreement application as approved by the council. Upon notice of acceptance of the trusted submitter agreement by the council, the trusted submitter shall be authorized to record documents electronically.

Note: A trusted submitter agreement application can be obtained from the council at the following mailing address and website:

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c/o Wisconsin Department of Administration Secretary's Office
101 East Wilson Street, 10th Fl.
Madison, WI 53707
608 – 266-5030
Website - www.ercwis.wi.gov

Adm 70.06 Legal description. Electronic documents submitted for recording shall contain a valid legal description of the real property as defined in ss. 706.01(7r) and 66.0217(1)(c), Stats.

Adm 70.07 Notarization of documents. An electronic document shall be notarized under standards adopted by Wisconsin UETA law. The notary's commission date shall be contained on the document or the document shall be authenticated as required in s. 706.06, Wis. Stats.

Adm 70.08 Return and rejection of documents. The submitter of a recorded electronic document is the party entitled to the return of the document. Electronic documents that are recorded may be returned immediately. A document may be rejected if the party identified in the document image differs substantially from the party identified in the related index submitted.

Adm 70.09 Method of payment. Each county shall permit payment of fees by electronic means.

Adm 70.10 Business rules. The register of deeds may post business rules to assist customers submitting documents electronically.

EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Dated: September 3, 2008

Michael L. Morgan
Secretary of Administration