E-SERIES:
WHAT YOU NEED TO KNOW ABOUT E-RECORDING!
CONSIDERATIONS, NUANCES, & PITFALLS

NC CLOSING ATTORNEY
BEST PRACTICES / TRID TASK FORCE

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WHAT IS E-RECORDING? THE PROCESS

• Comparison:
  • In person
  • Mail or overnight delivery
  • Electronic

• Send → Receive → Review → Record → Return

REQUIREMENTS SAME AS “PAPER” RECORDING! E-RECORDING IS JUST DELIVERY METHOD!!

• ORIGINAL DOCUMENT
  • SIGNATURES – G.S. 47-14
  • NOTARIAL CERTIFICATES – G.S. 47-14
  • FORMATTING – G.S. 161-14.

• Electronic same requirements as Paper
  G.S. 47-16.3, G.S. 47-14(b)(5)

• RECORDING FEES -- G.S. 161-10

• LOCAL REQUIREMENTS (such as tax certifications)
HOW DO YOU GET STARTED E-RECORDING?

- Vendor(s)
- Payment options

County’s Register of Deeds – particular issues:
- Allow e-recording?
- Which documents?
- Additional fees for e-recording?
- Submitter Agreement with Law Firm
- Which Vendor MOU’s

E-RECORDING VENDORS

- Simplifile
- CSC – Corporation Service Company
- EPN – eRecording Partners Network
- EDL – Electronic Data Logistics
- Indecomm Global Services eRecording
SUBMITTER AGREEMENTS

• Variations matter
• Changes in firm, address, lawyers
• Authority to sign on behalf of firm

TYPICAL LAW FIRM PROCESS – UPLOADING DOCS & SUBMITTING

• Traditional review → notary, execution
• Scan (always B&W)
• Update title
• Indexing in E-rec software; Register to verify
• Submit → wait for notification if accepted / rejected
• Follow up on rejections IMMEDIATELY!!
• DO NOT DISBURSE UNTIL CONFIRMED RECORDED & TITLE UPDATED
REGISTER OF DEEDS ➔ TYPICAL PROCESS

• Review of documents and fees
• If accept, record & return to vendor
• If reject, notify submitter through vendor
VENDOR:
NOTIFICATION OF ACCEPTANCE OR REJECTION

• Parties indicated
• Fees: Recording and transfer/excise taxes
• Real-time notifications → Best Practices Compliance

ISSUES WITH E-RECORDING & E-CLOSING

• Some counties only e-record certain documents, or will not e-record at all
• Different recording protocols for e-recording vs paper delivery (Fed Ex, UPS, mail) vs in-person presentation for recording
  • Wait times for e-recording verification of recording … or rejection
• Requiring “prepared by” (discuss new statute)
• Requiring “return to” (when document has to be returned electronically through vendor) GS 161-30(a)(1)
  • Will not record unless one on there
  • Will not record because requiring it to be the Submitters’ address!
ISSUES WITH E-RECORDING & E-CLOSING

- Inability to update online (later discussion NOSA), some examples attached though somewhat dated at this point.
- Some registers’ “official” (in office) records
  - not yet posted or verified with the online records (different database and vendor)
  - EXAMPLES: On Sunday 7/22, these verified/certified dates range as far back as 7/9/2018
- Various ways & locations indicating currency (or not) of the registers’ records, such as “Pending documents”; Certified Dates; “Temp index”; “What’s Available?” “Document Search” bar on the left, among others

ISSUES WITH E-RECORDING & E-CLOSING

- Inability to update completely online (later discussion NOSA), some examples attached though somewhat dated at this point. (cont’d)
  - Some counties’ online records are limited to certain documents, so are not the required Consolidated Index at all
  - AOC is ALWAYS behind (even in the Clerk’s office physically), with widely varying degrees of currency – special proceedings, judgments, IRS liens, estates, etc.
ISSUES WITH E-RECORDING & E-CLOSING

• Tax office pre-approvals
  • Can attorney obtain certification on separate page pre-closing & attach to deed?
  • Offices that physically pick up and deliver deed copies for stamping, versus require stamp on “paper” deed ahead.
  • Separate indication in vendor software if attorney certifying to pay at closing

• Limitations on e-recording vendors
  • – inconsistency in acceptance by all counties and standards

• Additional fees for e-recording (which created problems with TRID)
• Additional fees for online access to register of deeds and AOC records

ISSUES WITH E-RECORDING & E-CLOSING

• Some counties appear to have county-specific requirements for regular recording as well as e-recording … for example,
  • some counties requiring the back deed reference on all deeds
  • some counties requiring PIN on face of document or in legal description

• Other local rules, such as drainage districts, water bills, dock transfer fees
DELAYS IN RECORDING → CAUSES

• Queue of particular register’s office
• Tax certifications
  • Re-routing through tax office
  • Online verification of intervening filings

REJECTIONS – COMMON REASONS

• Same as see for hand delivered or mailed documents, such as…
  • Quality of scan
  • Incorrect document type selected
  • Seal – illegible or embossed
E-RECORDING FEES

• Register of Deeds “portal fees”
• Software vendor
  • Register's index and website vendor
  • E-recording vendors
• Payment
  • Trust account
  • business account
  • ACH
  • Periodic billing

“ORIGINAL” DOCUMENT

• Not as clear as “paper” world
  • E-recording vendor has version with history and metadata up to their return to law firm
• Adding text in e-vendor software vs. original re-scanned
• Lenders require “original”
  • “Wet-signed” document plus copy of recording page
  • Electronic version at registry (not the “original” once recorded & returned)
• Re-recording
  • Neither of the above
  • Use Certified Copy from Register

CRITICAL NOTE: This is NOT about doing a technical or clerical error correction under GS 47-36.1 or GS 47-36.2 which require separate new documents. (Often abused and now revised statutes, effective 8/31/2018.)
E-RECORDING TIPS & TRICKS!

- Packaging documents as a group
  1. All docs in one package are recorded with consecutive instrument numbers
  2. If any document in a package is rejected, the entire package is returned to the submitter so they can remedy the rejected document and resubmit the entire package in order to protect the integrity of the recording order
- If recording a subsequent document in which book and page from first document must be completed, they cannot be recorded in the same package;
- Avoid back reference book/page that have to be inserted, if possible
  - Notary certificate – statutory forms not including book/page
  - Subordinations – in different package
WHO HAS THE “ORIGINAL” TO E-RECORD?

- “Wet-signed” document
- Same law firm
- NOT third party
- NOT pdf emailed

UPDATING & RACE RECORDING:
CHANGES IN PAPER AND ELECTRONIC SEARCHES

- Pre-closing
- Updating at closing – gaps
  - Multiple recording lines – in person and online
  - Clerk vs Register
  - Temporary boxes & indices
- Post-recording update
- “Gaps” at Register
- “Gaps” at AOC (VCAP)
- Potential Notice of Settlement
POTENTIAL NOTICE OF SETTLEMENT ACT

• To provide legal protection of record for any title gaps in recording, such as:
  • Delays at registry,
  • Multiple recording lines,
  • Delays in postings to the AOC computer,
  • Temporary indexes,
  • Distance between court, registry, city and other applicable search offices
• Paper or electronic.

ELECTRONIC RECORDING COUNCIL ("ERC")
N.C.G.S. 47-16.5
HTTPS://WWW.SOSNC.GOV/DIVISIONS/GENERAL_COUNSEL/ELECTRONIC_RECORDING_COUNCIL

STATUTORY MEMBERS
• Registers of Deeds (7)
• NC Bar Association
• NC Society of Land Surveyors
• NC Bankers Assoc.
• NC Land Title Assoc.
• NC Assoc. of Assessing Officers.
• Cultural Resources

PROJECTS
• “Model” Submitter Agreement
• Best Practices Guide to E-Recording for Registers
• Legislation re:
  • Re-recording
  • Issues with title in e-recording & e-commerce
Electronic Recording Council

North Carolina Registrars of Deeds are elected county officials. Their duties include recording, entering, and filing our valuable real property documents. They sell them.

Registrars of Deeds can choose to record and index documents electronically or by traditional paper and ink. The Secretary of State provides the standards for electronic recording. The Secretary of State adopted the standards in 2005. They determined that standards were needed.

An electronic recording council (ERC) was created by the Secretary of State to ensure that the standards are followed. The ERC advises and assists the Secretary and other county registrars on electronic recording of deeds and other real property documents. The ERC needs to consider recommending changes to the standards. The ERC's meetings are public and posted on our website as well as on the North Carolina Secretary of State's website.

ERC Membership

Electronic Recording Council

General Counsel

What We Do

Our Mission

Deeds for Priority

Public Records & Meetings

Regulations

Searches

Notaries

Contact Us

Practice Tips

FAQs

What can I find here?

We don't do that!

Standards

North Carolina Electronic Recording Standards

ERC and the Standards Requirement

For information about the organizations that appoint members of the ERC:

- NC Association of Registrars of Deeds
- NC Bar Association
- NC Society of Land Surveyors
- NC Surveyors Association
- NC Land Title Association
- NC Association of Assessing Officers
- Department of Natural and Cultural Resources