



New York Real Estate Instrument E-Filing

It should be no surprise to anyone that the world is becoming more digitalized at a very rapid rate. Keeping with this trend, New York will soon allow for the electronic recording of [real estate](#) instruments. On September 22, 2012 the law will provide deeds, mortgages, leases, easements etc. may be recorded digitally which results in very striking, and hopefully, positive changes for real property transactions.

Presently the original signed and notarized instruments, along with all the applicable documents and fees must be physically presented to the County Clerk. Once there, the documents are examined and, if accepted, they are recorded. These recorded documents are not immediately viewable to the public because they need to be sent for electronic imaging. As a result, it may take days or weeks to become available to the public.

With the new system, an electronic version of the recording instrument can be e-mailed to the County Clerk, along with all applicable documents. Instruments should be available almost immediately to the public because they are already in digital format. Curiously though, a method for electronic payment is absent from the new changes. Considering the nature of the new changes being implemented however, it is difficult to believe the logistics of electronic payments could pose a substantial hurdle.

Importantly, the instrument is considered to be “delivered” when the e-mail is successfully received during the County Clerk’s business hours. In other words, if an e-mail is sent during normal business hours, the instrument is delivered as soon as the e-mail is received, which occurs almost instantaneously under normal circumstances. However, if the e-mail is sent after normal business hours, it will be “delivered” on the next business day when the County Clerks opens. There is another big change that comes with this amendment to the Real Property Law. The wording of the new law provides specifically:

Where a law, rule or regulation requires, as a condition for recording, that an instrument affecting real property be signed, the requirement is satisfied, where the instrument exists as a digitized paper document, if the digitized image of a wet signature of the person executing such instrument appears on such digitized paper document or, where the instrument exists as an electronic record, if the instrument is signed by use of an electronic signature

Allowing the use of electronically signed documents means that a hard, physical copy need never exist at all. Transactions can occur completely via e-mail and still be successfully recorded. Those against the move towards digital filing often cite ease of fraud as a concern. As a result, the ability to digitally sign recording instruments does nothing but send red flags



through their minds. The statute does briefly address those concerns:

A digitized paper document or documents shall be created using a software application or other electronic process which stores an image of the original paper document or documents, and which does not permit additions, deletions or other changes to the digitized image, or if additions, deletions or changes are permitted, a media trail exists which creates an electronic record which makes it possible to identify these changes.

These restrictions pose a significant challenge. Requiring the electronic document to be incapable of modification certainly makes sense. In the cases where modification is possible, requiring a record of those changes also makes sense. The problem is that no file format satisfies those criteria. No file is truly incapable of modification, though admittedly the modification can be more or less difficult depending on the format. The most common form of digital document file is Portal Document Files or PDFs. PDFs are easily changed and provide no history as to what changes were made, making it insufficient for purposes of the new changes to the statute. It is difficult to imagine what file format will be 100% safe. Recognizing these problems, the State's Office for Technology has been appointed as Electronic Facilitator to promulgate rules which will ensure the accuracy of electronic documents.

The changes are not mandatory, and it will be up to each individual County Clerk office to decide whether or not to allow for electronic submission. Considering the likely issues to arise when these changes go into effect, it will be interesting to see which County Clerk office is brave enough to take the first step.

Our firm will be keeping abreast of this program and will be sure to post updated developments.

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