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Electronic Real Estate Recording Task Force

Legal Subject / Fee Subcommittee

SCOPE: This group will provide legal research and investigation into issues that affect both the pilot and production use of standards that include but are not limited to:

- Intellectual property rights.
- Legislation needs to validate electronic recording at pilot offices.
- Security issues.
- PKI and other forms of digital signatures used on real estate documents.
- Feasibility of on-going fees associated with document recording and electronic recording.

MEMBERS:

Chuck Hoyum

Chuck Parsons, Chair

Eileen Roberts

John Jones

John Richards

Mark Monacelli

Marty Henschel

Michael Cunniff

Richard Little

Old Republic Title

Moss & Barnett

William Mitchell

American Society of Notaries

Fannie Mae

County Recorder - St. Louis

Edina Realty

County Recorder - Hennepin

Deputy Examiner of Titles, Hennepin

County

[Kinney and Lange Opinion - Arcanvs Patent](#)

MEETING MATERIALS:

[Minutes from December 4, 2001](#)

[Minutes from January 8, 2002](#)

[Minutes from January 22, 2002](#)

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Electronic Real Estate Recording Task Force

Legal Subject / Fee Subcommittee

Minutes: 04 December 2001
As recorded by Beth McInerny

Present: (Members) Chuck Hoyum, Chuck Parsons, Eileen Roberts, Mike Cunniff, (via conference call) John Jones, John Richards, (Guests) Luci Botzek

Chuck Hoyum began the meeting with a discussion of pilot processes. One option is to run dummy data as long as they are run parallel to current process. County commissioners may need to authorize this; counties may need to get local approval. By not using real documents piloting could be made easier.

Mike Cunniff suggested that pilots should include satisfactions, releases or assignments. Pilots could be done with these documents and you would get high volume and it would be simpler.

Chuck Parsons asked about the concept of a parallel process. How do you execute both paper and electronic? This seems difficult to do, having both.

John Jones: There are several versions of a pilot – parallel system

1. Create same document – electronically and paper process
2. Electronically and then make a paper copy
3. Paper – scanned, use that for electronic

John Richards described how Broward County began by running dummy data – to see if the system was reliable. Once proven reliable it went straight to electronic. They selected documents to begin with; when comfort levels rose they moved to other documents.

Mike Cunniff asked if there any pilots out there doing parallel processes.

John Richards was not aware of any. When you get into performing two transactions you then struggle with which is valid of the two, this can get confusing.

Mike Cunniff suggested that dual processing would double the work load. He argued that it should be real the first time – no one wants added work that is duplicate effort on the same document. He also asked if we could waive the statute in place – he suggested the use of the State Board of Innovation.

John Richards asked if we know what legislation needs to be changed.

Chuck Parsons responded that a real process means more to someone involving their time – it gets people excited.

John Richards suggested that we assure folks the legal frame work exists and technology is tested.

Chuck Hoyum suggested the comparison of dummy data vs. tangible real data that is more valuable. It

is a chicken and egg scenario. The private sector is not at a point to create these documents right now.

John Richards stated that people are using and signing end to end in some cases. We have received documents that show this process is in use and recorder's stamp is on it – (where?) Broward County. The lender originated the document. Do run throughs on test basis then do production, parallel is not being done.

Chuck Parsons commented that Bank of America asked if they could send electronic satisfactions to the counties, but were told no. Looks like we would do trial testing then go straight to electronic recording in non-parallel scenario, once all the bugs are worked out.

Mike Cunniff suggested the State Board of Innovation and asked Luci if there is statutory authority here?

Luci Botzek responded that yes, there was a county exemption for collecting delinquent taxes. This was allowed. Only the auditor could collect them but this allowed counties to use the treasurer if they wanted to for collecting.

Chuck Parsons stated that we want to make sure we have documents that are valid. For e-signature we need to verify the signer's identity before we use it in Minnesota.

John Richards added that the borrower in Broward was asked to validate identity when they were in the office – digitally signed documents are stored on a server – a digital key validates documents have not changed till it reached the county office. The process from end to end in Broward they are:

- Executing documents using a digitized signature
- Notary signed the document holographically
- Closing agent then assigned an encryption key to ensure no changes were made to the documents – sealed with a public key

The public key resides on a server – the server can be owned by the technology provider – but could be owned by the closing agent

Mike Cunniff asked how closing agents will encrypt this document. How do they stay in the game? They partner with technology providers.

Chuck Parsons asked how a county recorder knows the document is untouched.

John Richards explained that the county gets a public key from the technology provider. They give the key that opens and examines the document.

John Jones inquired about digital signatures with notaries. He asked if the county now needed to validate the signatures as valid and suggested that this may be an added layer of responsibility. He commented that UETA allows for typing a signature if that was the intent.

Luci mentioned that HR block must file everything electronically – it may be worth taking a look at the processes.

Beth commented that there will be demos on 12-13 at the ERERTF meeting from technology vendors. This could help level set everyone's understands of e-recording.

John Richards asked if this is legislatively do-able? Are there statues that make this impossible – like mandatory use of purple paper?

Mike Cunniff suggested that we have document standards that may be a problem – payment shouldn't be a problem.

The Reviser of Statutes had produced a run of searches for Chuck Parsons that were presented to the attendees. These documents represent legislation on recording, filing, etc... 90% is probably ok but each

one needs to be reviewed. It is sorted by chapter and section and should be easy to divide out between the groups for review.

John Jones mentioned that UETA exempted any recordable real estate transaction.

Chuck Parsons added that we also need to look at the MN version of UEAT and see if it is in conformity with E-Sign.

Chuck Hoyum suggested that with E-Sign it is very difficult to have confidence that there is compliance in MN. It was intended to make sure states could conduct e-commerce. Could we request an opinion from the Attny General? Does the MN UETA adoption conform with E-Sign?

Chuck Parsons stated that we think it does conform, but we need to make sure.

Is there a process in place to accept e-transactions? Do recorders have to accept e-created documents before they think they are ready to, technologically?

We need to go back to the Task Force with a recommendation. The Attorney General can address this. A county will need to ask the Attorney General for an opinion on this issue. This should be our recommendation to the task force.

Mike Cunniff mentioned that Hennepin has been counseled by its own counsel not to accept these documents.

Chuck Hoyum added that local governments are not technologically set up. UETA does not compel counties to accept documents electronically.

John Richards mentioned that UETA – 17 and 18 – state that you are not forced to accept documents. This didn't really need to be carved out.

Chuck Parsons: A deed between two parties can happen electronically right now but cannot be recorded with the county.

John Richards suggests that the carve-out of legislation makes pilot recordings valid and enforceable.

Luci Botzek added that even if you got a waiver for counties the private sector may need to be protected. It may be best to get a pilot waiver amendment.

Chuck Parsons stated that this should be a statute. It will be easier to research later, years from now when someone is trying to figure out why these documents were done this way.

Eileen Roberts suggested that Carmen should be asked about UETA and E-Sign and the carve-out. And the Attorney General should still be asked for an opinion.

On another topic, Chuck Parsons referred to work done by the legal committee a year ago which identified issues. He presented the document from the Public Records Industry Joint Task Force which listed the issues. (as they are discussed they will be listed as item A, B, C, as they are listed down the document).

Eileen Roberts asked when will national standards be recommended? PRIJTF. When can we look at them?

John Richards responded saying that PRIJTF.org/TaskForce will show some status. A draft of standards will be ready by mid-January, the final by the end of February. MISMO (Mortgage Industry Standards Maintenance Organization) draft is complete.

Item B: Uniform conveyance blanks.

Chuck Parsons stated, as part of the original discussion – but we need a short list of documents for the beginning of pilots. Satisfaction, assignments, releases, and others.

Item C:

John Jones commented that recorded documents, once accepted and stamped by the recorder are electronically archived. Original is sent back to the custodian with copies of anything else. The note goes on to Fannie Mae.

Eileen Roberts added that the electronic signature storage is the concern.

John Richards stated that MISMO is looking into this.

John Jones commented that TIFF or ASCII file formats are currently accepted for storage.

Item D: Race and Notice

Chuck Parsons asked what is the time of e-recording vs. paper recording?

John Jones: also asked if there is a master clock or master Q for these recording.

Mike Cunniff asked if it is financially advantageous to use e-recording for sender. The computer may be the first to receive something. The documents hit the clock of the PC the same way a person at the desk meets the clock.

John Jones stated that incentives are a bit of a necessity for a new technology like this.

Mike Cunniff asked, if I am at the counter, how do I prioritize between people, mail and the computer? People come first before mail today.

John Jones remarked that the county can receive and log a time and date of receipt but does not record the document until the recorder processes it. They still have a right to reject when sent electronically.

Chuck Parsons stated that a process will need to dictate what gets recorded by each office.

Luci Botzek asked if there is a preference built into electronic recording that may be an issue. Not every county will be able to take part initially and that will be an issue.

John Richards suggested that business rules can be built in to recording time lines and priorities.

Item E: No one remembered it.

Item F:

Chuck Parsons stated that the recording process isn't just in the recorders' office. Review and approval may need to be done by auditors and treasurers. Documents that need an approval of examiner of title should be in the pilot.

Item G: county issue

Item H: State wide.

Chuck Parsons mentioned that we would like documents to be accepted by any county. Uniformity should be the goal.

Item I:

Chuck Parsons stated that we discussed some already. Today the CREV cannot be created electronically.

Item J:

Mike Cunniff stated that this could kill some counties if it becomes mandatory.

Chuck Parsons asked if the state has standards and some counties use it, can some counties not accept documents electronically where others do? Does E-Sign make all counties mandatory if only some

actually can?

Do we need statutes to authorize joint county use of technology? Where groups of counties share the technology and costs between them?

Mike Cunniff stated that it is already being done by AMC. Legislation should not be needed for counties to team up.

Item K: Permissive system

Item L:

Mike Cunniff mentioned that the Grantor / Grantee index provides little information, but it is the official index.

Eileen Roberts mentioned that this is because in the puritan communities they wanted to know who was moving in. They needed to know names to keep people out.

Chuck Hoyum suggested that we need some sort of G/G index because that is the only information we have in some cases.

Chuck Parsons noted that most counties already have tract indexes. Should we propose it?

Eileen Roberts added that everyone has it. It's just not on all the historical documents. If it was a go-forward plan this really would not be a huge economic impact.

Item M:

Chuck Parsons stated that county recorders need to tell us what issues need to be looked into.

Item N:

Mike Cunniff mentioned that Congress is examining the use of SS#s on documents, on public records. It could be costly to remove those items from all documents. This is a hot issue

Eileen Roberts stated that in the English system you need a reason and approval to look at documents.

Chuck Parsons commented that we are a free market society. It would be hard to close documents off. Title examiners for one need access.

John Jones stated that there is talk not to close off access but to change access. When you walk in to the office they see you. They verify you and some offices have you sign in.

Prove who you are on the internet??? How do you do that? It may not be easy but you could put up some obstacles.

Eileen Roberts recommended that we should look at the statutes.

Chuck Parsons stated that liability should not change with electronic documents.

What do we do with this document now?

Eileen Roberts commented that all of these items are in the workplan. We don't need to take this back to the Task Force, the intent was to have this covered already.

End of Meeting

Parking Lot Issues – Legal Sub-Committee Meeting 12-4-01

1. Legal Sub-Committee To-Do: Review CP stack of searches of statutes. Bring back items to be

discussed by the entire group.

2. Legal Sub-Committee To-Do: Suggest that the Task Force will need to request an opinion from the Attorney General for E-Sign vs. UETA.
3. Legal Sub-Committee To-Do: Look at the race/notice issues for the pilot.
4. Legal Sub-Committee To-Do: Look into what statutory changes are needed for pilots to go forward with "real" electronic documents.
5. Legal Sub-Committee To-Do: Recommend using Track Index as official index.

Considerations for pilot:

6. What documents will be used in pilot? The private sector must create them or need help creating them.
7. Pilot should include documents that need approval of examiner of title.

Considerations for Technology Application Demos

8. Technology Application Demo on 12-13: Talk about encryption and digital signature
 9. Technology Application Demo on 12-13: Talk about race issues
-

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Electronic Real Estate Recording Task Force

Legal Subject / Fee Subcommittee

Minutes: 08 January 2002

As recorded by Beth McInerny

Attendees: Julie Bergh, Mike Cunniff, Eileen Roberts, Chuck Parsons, Marty Henschel, John Jones (phone), Luci Botzek, John Richards (phone)

Chuck Parsons, introduced Julie Bergh, and she volunteered to become a member. Chuck Parsons states that she is too great a resource to pass up. Brief bio: Assistant examiner from both Hennepin and Ramsey. Worked for US Aid in Armenia and spent 3 years helping E-sign real estate recording models and write laws regarding e-recording. Knows MN law and has hands on experience.

Agenda: 2 major issues and a few general. 1. Eileen drafted a request for an opinion from the Attorney General (AG) to ask: is process exempt from E-Sign, and 2. After pilots are complete and legislation is in place can a county opt out still, or must all 87 offer it as an alternative. A review of draft took place.

The expectation is that the Legal Subcommittee will come up with complete draft of a letter to the (AG).

Hennepin volunteers to submit this to AG. It will be drafted for Hennepin to review and submit.

John Richards: thought this was more of a preemption analysis. Wouldn't the question be whether MN exception under 325.3(b)(2) is preempted by section 102A of E-Sign? So does E-sign provide a legal basis for recognizing legal documents, and can county recorders opt out? What does it mean if it is pre-empted? Then there needs to be a change in MN law.

Chuck Parsons: We assume we have to amend our statute.

John Richards: I think we could solve the entire issue by fashioning an amendment the repeals 3(b)(2).

Mike Cunniff: I think the intent was to not permit E-recording in MN until this Task Force had gotten recommendations together to change MN law to make it work in a uniform fashion. So counties didn't go off on their own or private interests didn't dictate their own standards. Does E-sign preempt that? There has been a lot written on that but that is why MN acted this way.

John Richards: Even with a decision in place that E-sign doesn't preempt this, we are going to recognize these documents that are E- recorded.

Chuck Parsons: The counties are looking to us to say explicitly what they can do.

Luci Botzek: We need to submit this in two questions: 1 What is the impact of MN law as it stands right now, and 2 if FannieMae says you have to file electronically, what is the county's legal position there?

John Richards: Even on existing MN adoption, counties have the right to say no, we are not ready. Counties get to say when they are ready and what the rules are. Private actors could not require them to accept these. E-sign has a few wrinkles but takes the same approach.

Chuck Parsons: If we change the law what allows a county to still say no?

John Richards: Each governmental agency of the state will determine when it will accept documents sent electronically. 18b of UETA, if they decide, they can dictate format. If a signature is used, they can dictate the signature used.

Chuck Parsons: The Task Force initiative is to set those standards. That is the state wide system we will establish. We don't want counties to establish their own standards, outside of state standard. Assuming we get statewide standards, can one opt out, assuming they don't have funding?

John Richards: There is an alternative in sections 17 and 18 that would enable a central authority in a state to develop those standards for government agencies. But the other question is, whether each county recorder is required or can opt out. That is a question for a preexisting law according to what their budget looks like.

Chuck Parsons. We were thinking we should ask the AG for an opinion on that. Do either E-sign or UETA mandate that counties accept documents after the Task Force is complete? Do you have a suggestion on the pre-emption?

John Richards: As Lucy said, concentrate on the preemption issue with the AG.

Eileen Roberts: I did what I could (on AG letter) but John you should take a crack at it.

John Richards: My primary comment was to tee up the preemption comment for the AG.

Chuck Parsons: This letter will change many times over before complete. We would like Task Force to give us a blessing of this draft.

John Richards: I will work on it and get a copy to Beth and she can get it to the Task Force meeting.

Chuck Parsons: The next issue: Statutory reviews that everyone worked on. Chuck Hoyum emailed comments and said he found no changes in the laws he looked at.

Mike Cunniff: I have the first 80 or so sections and found a lot relating to banking and agriculture, but nothing I saw that impacts us. I didn't get to tax issues yet, I need to still look at those. Nothing in 580's that pertained to us.

John Richards: I had done some work on the various provisions and I too had fun with it, looking at wolf bounty certificates, I was looking at not just what could impede but also anything wedded in a paper paradigm. 83A, looks at an endorsement of a signature on a document. In 103I subd 1, signatures are required on the front and back of a deed. Now, in e-recording you have a signature that encrypts the entire document or you can digitally sign the bottom of the document. This could make things

uncertain for e-signature.

Chuck Parsons: We may not find each and every of these instances. Should we have language that just states an overall argument that covers these all of these situations? It would be an overlay approach that applies to e-documents.

John Richards: So much of what I saw was predicated on the use of paper, "black ink" and "red ink" pens, etc. If there is a state requirement that a certain color needs to exist then we can cover this.

Chuck Parsons: Could you send these statements? If we had these in front of us we would do a better job of an overlay statement.

John Richards: A couple other things, I saw reference to "certified copy" and how those must be provide. In this context another authorized party can certify a document, but in the electronic realm you can get at authenticity that can be more efficient. UETA section 12 allows you to satisfy the requirement for an original document. You may want to address this as well. I also read where any documents that were created by a MN agency had to be stored in MN. This could be an issue if the Task Force saw it fit to use a data warehouse company that stores records out of state. There are advantages to using these vendors.

John Jones: A lot of government and privates archive documents in salt mines and other locations. It would be worth looking into this. Section 386.375 transfer and storage of abstracts.

Eileen Roberts: Have you looked at section 386?

John Richards: I had someone pull other sections for me. Since I had it all in a binder I took time and looked through all of this.

Marty H: I was surprised at how many times I saw the language "recorder" and not "registrar of title". Some documents like county documents that record timber growth rates, these are odd, rent restriction agreements should be recorded. Should we keep track of these? The ones that merit review: the tax lean section, 268.05A looks at electronic transmission. How should this be integrated with our work? Certificate of real estate value, 272.115, mandates the use of multi-carbon.

Mike Cunniff: Why do we have all these copies? I have been told that with the SS#, Department of Revenue needs to track this and it is a private number that no one should have free access to.

Chuck Parsons: The page that those numbers appear on is a larger page, so everyone who handles the document sees that private number anyway.

Marty H: I thought 272.12 and 121 which talk about how real estate taxes must be paid to record a deed, somehow this will need to be incorporated into the county process. There is a provision that if you pay someone else's taxes you need to file, tax lien 272.48. We will want to record this electronically and get it integrated, I made it through 281 and have not moved beyond that.

Chuck Parsons: There may be items in 282 that we want to make sure we pick up language in our overlay statement we will be working on.

Marty H: 256.263 subd2 talks about land acquired by the state because of old age assistance leans. The county auditor is involved but this may be rare, but it is the sort of thing that is buried and should be considered.

John Jones: Jack Seth has not completed the read and I don't have Jack's

portion. I will know by tomorrow what the status is and should have it by this weekend.

Eileen Roberts: As John Richards noted, there were others like 383B.603, that seem tied to paper copies of plats being of record. We need to think of a global statute to deal with these. There is a lot of stuff tied to paper and this is as good a place to look for phrases. Look at 386 as a model of what to look for. There are a lot of county officer forms but I just ignored those.

Chuck Parsons: Chuck Hoyum didn't have any changes

Mike Cunniff: In 507.4 and 507.401 the language of mortgage sats, the language consistently comes up.... how do you deal with the word "acknowledgement" and how do you deal with this term.

John Richards: There is in section 11 of UETA that squarely addresses that. Acknowledgements can be met by an electronic signature. The requirement with a stamp and seal would go away in this environment.

Chuck Parsons: And since we have no changes to that part of UETA we are ok.

Chuck Parsons: In 507.24 subd2 documents must have original signatures. We need to amend that for pilots. We should permanently amend it along with standards of the Task Force. UETA section 325L.03B needs to be amended also for the pilot. In 550-645 I didn't find anything that needed changing.

John Jones: Original signatures come up all over. Is original signature defined in the statutes, on how you would determine that?

Chuck Parsons: We haven't done a search for original signature.

John Jones: In the absence of proof in the electronic form, would there be a reason to reject it. If e-signature purports to be original, is that enough?

John Richards: Section 325L.07 of UETA covers this. Section (d), if a law requires a signature, an electronic signature satisfies the law.

Chuck Parsons: We should change language both in 507.24 and 325L to cover all of our bases. We should get paper copies of all of these. I will do that prior to the next meeting. Does anyone have other statutes they are aware of? No one. For the Task Force report on Thursday, we have almost completed our review, we waiting for just a few more. We need an overlay change and a change to UETA at a minimum.

Chuck Parsons; 2 items from the previous agenda: do we need to think about race notice issue when it comes to electronic docs as opposed to paper. Do recorders need help making judgment calls as they receive documents through the day.

Mike Cunniff: One of the thoughts we have had is to look at batch processing at the end of the day. These documents won't get recorded ahead of mail or desk visits. If we did a pilot, we would use this process. We now get packages of documents for a closing, we may not be able to electronically manage all of them. It is going to create challenges. How do you electronically pull a filing number out of the air and assign them a manual number, it is a hard issue.

Marty H: If I need something recorded I will walk it in.

John Jones: If you know deeds and mortgages go to the back of the Q, that

the adoption of this process a disadvantage.

Mike Cunniff: If you E- record you have the advantage to know you will get filed that same day in batch. Mail sometimes doesn't get filed the day it comes in. So mail can be at a disadvantage.

Chuck Parsons: The risk of a race notice loss is slim.

John Jones: How many people at Hennepin are at the desk?

Mike Cunniff: 2 recording desks and six people can manage them at a max.

John Jones: The claims are rare for a race case. But electronic recording should just be another line at the counter.

Mike Cunniff: But you deal with mailed in documents that way. How do I balance or mesh the mail, the desk, the bulk packages, I could never service the next person in line cause I can't manage what is in the mail vs what is electronically in Q.

John Jones: People make a decision on how they deliver something by how their document is received.

Chuck Parsons: I would guess that e-recordings will get a faster response than if they went through the mail. Should it be faster than people coming in personally? We just have a numbering scenario issue. A batch process is what we had in mind for a pilot.

John Jones: This will give us an opportunity to look at this issue and debate it to get consensus through as a result of what occurs in the pilot.

Chuck Parsons: Is there a statute in any other state that deals with this issue? No one aware.

John Richards: Virginia's statutes have been in this area, they may have addressed this issue?

Mike Cunniff: What about California or salt lake?

John Jones: Sale Lake, is not huge volumes, they are almost all satisfactions. They get the next number as they come in Q.

Chuck Parsons: Lets keep this issue open and on the table. The other item on the parking lot: tract index. Grantor Grantee (GG) is the official index in MN and seems archaic. Should we make tract the official index? If there is no cost it is a no-brainer. That is how people search? Most counties have tract.

Lucy: Most counties have this but the quality is different between counties.

Mike Cunniff: I think everyone will agree and from a good public policy stand we tackle it.

Marty: We should definitely tackle this.

Mike Cunniff: This is the best time to address this.

Chuck Parsons: We have gone into a budget deficit so if it cost money it

would be initiated for 2003

Mike Cunniff: This would minimize fiscal implications. It would put it publicly out on record and counties could start to prepare. It is less of a fiscal issue if they know ahead a time.

Chuck Parsons: Do we do away with GG index? Do people use it to search, will it be missed? Are there states where it is strictly tract indexing?

Eileen Roberts: Most are not tract

Marty: We rely almost solely on tract. But in a meets and bounds description having GG as a backup to do a separate search to confirm findings, it is a nice resource. We would be ok with tract as long as counties do a good job of indexing.

Mike Cunniff: I have used it to find documents that are in abstract and not torrens. We use GG in military discharges, etc. and there may be others. We would hear concerns from Marty's researchers as a backup search tool. A computer handles this indexing; if you work manually then it would save costs to not record it.

Luci: Chuck should take this to MLTA and Mike Cunniff should take this to the recorders to look at.

Eileen Roberts: Bob Horton mentioned 104 of E-sign and wondered; does that apply to MN. Does anyone know more about this?

John Richards: That question has come up before. The overall intent there is that this does apply to local government agencies.

Eileen Roberts: Yes this covers counties, but does it add anything for counties that 102 does not? Does 104 give us something that 102 does not?

John Richards: It is an ability to set standards for records filed electronically. This is not set out neatly but that is the interpretation that makes most sense. If you adopt UETA, E-sign is out of the picture. In UETA – counties have the right to reject documents.

John Richards: You may want to look at 325L.17 and 18, they anticipate that each county recorder can at their own discretion accept and establish standards. There is an alternative that would provide for a central figure to set standards.

Chuck Parsons: That would be the Task Force's responsibility. Counties want standards but not a single author to dictate or identify those. We will have MLTA and Marisa to look at it, I will go back to real property and look at it and Mike will have recorders look at it.

Chuck Parsons: We need to hear from Seth and Rich Little to see if there are other issues out there.

Next meeting will be: Jan 22nd, 9:00, this building (William Mitchell), this room. An email reminder will go out to remind all members.

Meeting Adjourned.

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Updated: 01/24/02(jhr)

Legal Sub-Committee

Minutes: 1-22-02

As recorded by Beth McInerny

Attendees: Mike Cunniff, Chuck Hoyum, Eileen Roberts, Chuck Parsons, Marty Henschel, John Jones (phone)

1. Approval of minutes: Marty Henschel moved and Mike Cunniff seconded that the minutes from 12-14-01 be approved. Marty Henschel moved and John Jones seconded that the minutes from 1-8-02 be approved. Both motions were unanimously adopted. These will be posted on the web.

Jack Seth was unable to complete the review of statutes. Chuck Parsons looked at Jack Seth's statutes for him and made notes. Rick Little has not had the opportunity to review his sections and Mike Cunniff has offered to work with him to get those reviewed.

2. Complete General Review of Statutes - 3. Identified Statutes for Amendment:

The following statutes were reviewed and comments were taken from the group.

83A.04. - The word "endorsement" should be picked up for the overlay language.

86B - This statute can be ignored; it is in regards to boats.

256.263 – This has the word "attested" and could be used in the overlay language.

272.115 - We need to speak to the department of revenue and talk about Certificate of Value needing to be added to e-recording.

272.12 - The language "and note upon the instrument" can be used for the overlay language.

John Jones asked what "official signature" means in this statute. Does official signature equate to official seal? This will help define what needs to be on a document.

Mike Cunniff stated that it is a stamp that says that taxes have been paid, this is done by the county auditor.

Eileen Roberts stated that we don't know what sequence documents will follow with e-recording. The term "over" in this statute sounds like something you do on paper.

John Jones details that typically in paper processing a signature goes at end of a document but e-signatures go over the entire document.

Because of document standards this signature is placed in the beginning in the 3” margin of the document.

Chuck Parsons noted that the IRS wanted to file federal tax liens electronically and we already have that in MN. It goes to Secretary of State’s office (SOS). Information tells what county the IRS wants to pay filing fees for. The SOS transfers this document to the county and it is stamped with tax lien number. So my sense is that we don’t have to do anything in addition to tax liens (272 statutes).

Mike Cunniff mentioned that the IRS liens don’t come to use quickly. It should bypass the SOS and come straight to the county and just skip the middle man.

Chuck Parsons stated that in his opinion nothing needed to be done with statutes 272#.

287.08. - This states that “the treasurer should endorse receipt on the mortgage”. Maybe overlay language can handle this?

John Jones mentioned that the IRS has modified this language for the federal documents that affect electronic recording. They have only done this in Florida and he can get copies for the subcommittee. 287 can be addressed in the overlay language.

287.25 “endorse a receipt” is also language to review. Maybe we need to suggest amendments within the sections themselves, these seem important enough. We should ask Senator Kelly to suggest that Kathy Pontius be assigned to the senate committee and ask her to write a draft for us for overlay language. If he asked her to do this she could do this pretty quickly.

358 – This statute gets into “notarial act”. This is uniform acknowledgement act and either affects overlay language or we could suggest a change in 358.

John Jones suggests that there is a draft change in language in uniform notarial act, on uniform state laws. We should look at it and it may have language pertaining to e-recording.

359 – This statute deals with notaries and seal.

John Jones states here that the seal issue is very confusing for UETA and E-Sign. They detail it in very generic terms. UETA eliminates the seal but not the information contained on the seal, that information needs to be on the document.

Chuck Parsons states that it is one thing to say you can’t claim it is invalid and another to say it is invalid. What is missing in 325L in UETA is the seal. Maybe 359.02 should say you don’t need to have the seal but you need to have the

information contained on the seal. We shouldn't mess with 325L because of the federal preemption problem.

359.05 – These are pretty strict instructions to a notary on what they are supposed to do. The date needs to be directly beneath the stamp.

John Jones states that this is used mostly as a check that the notary is still valid

Chuck Parsons added that we need to work on both. 325L. is UETA as adopted.

357.17 – This statute is dealing with fees. Does anyone know of anyone charging fees? I don't see anything to change.

Chuck Hoyum stated that this practice is more common where notaries are not plentiful.

357.18 The language “each page of” is something that may not work with e-recording. Counting pages and charging beyond the minimum is a throwback to when people were doing everything manually.

Chuck Parsons states that for paper, charging by the page seems logical. But isn't there a different fee for an electronic document. But you don't want to disadvantage electronic documents by using a minimum fee. 357.18 needs subsections for e-documents. I will throw this out for county recorders to determine if it would be document based and not page based, and to use the minimum fee.

Mike Cunniff stated that counties film documents and read them. The longer the document the longer it takes to process these documents. The document size only grows, it doesn't get less.

John Jones added that certified electronic copies going out should be charged a fee.

386.03. – This statute dates back to 1907, reception books. It was asked if this is done any longer in counties.

Mike Cunniff stated that Hennepin has a computerized system. We have basically all these items listed in the statute.

Chuck Parsons suggested that the statute looked like it may need a bit of work to be updated.

Marty Henschel added that this is the official Grantor / Grantee (G/G) description.

John Jones stated that we are looking at picking up who prepared the document and who it should be delivered back to in our standards group. Multiple return to's could be a revenue generator for counties.

Chuck Parsons added that updating this section looks like a big headache.

John J. suggested that the cashiering system and G/G indices would capture all of this information.

Eileen Richards asked if the reception book was different from the index? We have a tract and a reception book.

Chuck Parsons commented that we will have paper and electronic documents filed always. Reception books/records, this is an index or compellation of all documents recorded, and in chronological order. This gives you a date to reference for any race notice fights because this logs when documents are received.

Chuck Hoyum added that there is a G/G book and it is arranged alphabetically, and that it lists documents back to when the recorders office first started.

Mike Cunniff asked, how does the numbering system work when you have electronic and mail and in-person documents all being recorded. Some counties already record every document electronically. Some counties prefer to do manual numbering but they do know that there will be an electronically recorded element. Sequential numbering is a concern. Sequential numbering suggests that number 9 got recorded before 10. But there may be a block of numbers used for electronic numbering and another for manual numbering. Do we want numbers to indicate a document's recording method? Do Torrens and Abstracts get identified differently? That question needs to be considered.

Eileen Roberts noted that statute 386.32. is an indexing book statute. 386.04 states that the record book is both a numerical and detail book.

Chuck Parson suggested that Statute 386 sections be given to the Content and Workflow Subcommittee for review? The question to ask is, is this counter to what recorders offices are doing?

Mike Cunniff mentioned a discussion he was involved in regarding tract index as the official index. This was discussed with Metro Regional Recorders and they didn't see any reason this should not happen. But in discussion this on a more state wide level, Clay county is opposed to this change. They are maintaining a tract index already. Bonnie Rehder's county uses the tract index but she doesn't feel confident she has the expertise needed to handle legal descriptions. The liability for Clay is in cases where it is not all platted, we have meets and bounds, how do you get them all into tract? She is concerned that people describe tract

differently and how do you deal with that. She thinks there is no uniformity with tract and there is uniformity with G/G.

Eileen Roberts suggested that giving them a graphic representation of each tract may help.

Chuck Parsons suggested that for unplatted property just use quarters.

Chuck Hoyum noted that unplatted property is only broken down by quarter / quarter, if it is more broken down then counties should make the examiner make that decision. They are not title examiners so they don't need to make this determination.

Eileen Roberts noted that there are far fewer cases around posting to the tract than posting with names when you take into consideration typos and such.

Mike Cunniff mentioned that there has been an effort to ID how many counties do not have a tract. Goodhue's county recorder took the tract index with him when he retired, and Crow Wing also doesn't have one. We know of at least 77 counties that for sure have a tract index. But we are thinking that everyone really does have it.

Chuck Parsons restated that this will be only a go-forward plan, we are not asking counties to go back into their records.

386.14 - The language "so transcribed..." needs to be looked at, for example.

386.375 - Discusses the storage of abstracts in MN. This doesn't really seem to be an issue. You can still hire a backup storage vendor; this statute does not prevent this as I see it.

505.03 - I don't see this as critical but the "black ink" language should be addressed.

505.1792 – There is no indication that action should take place right now.

507.401 – There is nothing that indicates concern.

507.40 - The language "discharged mortgages" should be updated also. And "marginal entry" given the G/G index, could speed up title reviews.

Marty Henschel mentioned that sometimes the Satisfaction was not filed. But a Satisfaction was noted on the mortgage document; they put the satisfaction language in the margin only. This made searches difficult. The Content and Workflow Subcommittee should also look at 386.375 specifically.

508.82 – This statute mentions registrar’s fees. The registrar does not record by page like the recorder does. You make a “memorial” and throw this into your file. You didn’t need to make a copy. But you do make copies now. 508 does not need to be tinkered with as I see it.

Mike Cunniff stated that he does not know of any registrar who is not making copies or has kept all those documents over the years. We keep copies but not originals.

Chuck Parson proposed the following:. We will go back and pull out things that need an overlay and those that need something within their section. We will ask Senator Kelley to ask Kathy work on the language.

Eileen Roberts asked if she would work on 386 also?

Chuck Parsons suggested that the recorders need to look at this and make recommendations. This isn’t really a 2002 issue. I would like to meet the Clay county recorder and help work through that issue there.

Subcommittee Issues:

Beth mentioned the issues that were brought forward by the subcommittees.

Content and Workflow subcommittees:

Certified Documents: Content and workflow issues involved how documents needing and official seal or embossment / certified documents, will be dealt with in e-recording.

Chuck Hoyum stated that this could lead to another way to certify in e-recordings. Civil filings in bankruptcy are electronic. Short term they may need to be hardcopy filed.

Chuck Parsons commented that we shouldn’t be inventing the wheel. There has to be someone looking at the “seal” issue, there must be an electronic equivalent.

CRV: The CRV is a multipart document, how would this be dealt with. This has been discussed and is in consideration from previous meetings. See minutes from previous meetings.

Private Sector:

Issues mentioned by the Private Sector subcommittee. Security is a big concern. Many of the private sector needs are in searching. Having the ability to search by name causes concern if you are then able to see a person’s mortgage, liens, divorce information etc. causes much concern.

The legal subcommittee noted this concern and will take this under consideration.

4. A.G. Opinion Request

Mike Cunniff stated that the TF wants to go ahead with the AG request and wants Hennepin to ask for an opinion. Hennepin doesn't typically ask for an opinion, they usually look at things from county specific perspective. Mike is working with Bob in their offices and has not gotten back to him to check on status. There was a county attorneys that volunteered to do this, Fillmore could do it, Paul Kiltinen was suggested if Bob is not comfortable with this request.

Chuck Parsons made one addition to the letter to AG and will get this out to everyone. A background of EREER task force information was his addition.

The next meeting was scheduled for the 5th of February at 9:00 at William Mitchell.

Meeting adjourned at 11:15.

MINUTES
Legal Subcommittee of the ERE Task Force
February 5, 2002, Meeting

Persons in attendance: Luci Botzek, Bert Black, Mike Cunniff, Marty Henschel, Chuck Hoyum, John Jones (by telephone), Rick Little, Beth McInerney, Mark Monacelli (by telephone), Chuck Parsons, and Eileen Roberts.

Chuck Parsons called the meeting to order at 9:10 a.m. On motion by Marty Henschel, second by Eileen Roberts, the subcommittee voted unanimously to approve the minutes of the January 22, 2002, meeting.

In reference to the subcommittee's comprehensive review of Minnesota Statutes, Rick Little agreed to circulate his comments on his assigned statutes (Minn. Stat. §§ 502.65–515B.2-109) during the week of February 11.

Also in reference to its comprehensive review of Minnesota Statutes, the subcommittee reviewed the list of statutes that it had previously determined required amendment to eliminate references to an exclusively paper-based recording system. At the outset, Chuck Parsons noted that if the Task Force pilots are to include deeds, mortgages, and mortgage satisfactions, then Minn. Stat. § 272.115, which provides for certificates of real estate value, must be amended to accommodate electronic as well as paper-based recording. In response, Mike Cunniff said that his recent conversations with recording-software vendors indicate that the only documents for which electronic recording capability currently exists are mortgage satisfactions, mortgage assignments, and certificates of release.

Mike suggested that in light of that, the Task Force should structure its pilots to provide for electronic recording of documents of increasing complexity over a series of years. For example, electronic recording of mortgage satisfactions in the first year could be expanded to mortgage assignments in the second year, deeds in the third, mortgages in the fourth, and so on.

The subcommittee discussed Mike's suggestion, and then resumed its statutory review. The subcommittee agreed with Chuck Parsons' suggestion that it develop a short list of statutes whose amendment is a top priority. The subcommittee agreed that those statutes are Minn. Stat. §§ 325L.03 (part of the Uniform Electronic Transactions Act (UETA)); 358.41, 358.42, 358.47, 359.03, 359.05 (relating to notaries public and acknowledgment of documents); and 507.24 (requiring original signatures on recordable instruments). The subcommittee identified just two statutes—Minn.Stat. §§ 83A.04 (relating to the naming of geographic features) and 256.263 (referring to land that the state acquires under old-age-assistance liens)—to be considered in the so-called "overlay" amendment to Minn. Stat. § 507.24.

Chuck Parsons and Luci Botzek reported on Luci's meeting with a member of the Minnesota Attorney General's office regarding the Task Force's proposed request for a legal opinion about issues relating to E-Sign and UETA. Under its policy not to interpret or render opinions regarding federal law, the Attorney General's office declined to issue such an opinion. Mark Monacelli suggested that the Task Force might wish to obtain a legal opinion from a private law firm regarding those issues. The subcommittee discussed that and other options, and ultimately decided to consult with subcommittee member John Richards about whether such an opinion is necessary or desirable.

In reference to the subcommittee's previous discussions about the desirability of making the tract index, rather than the grantor-grantee index, Minnesota's official index for recording act purposes, Luci Botzek reported that some county recorders are resistant to the idea. After discussing possible reasons for that resistance, the subcommittee decided to raise the issue with the Minnesota Land Title Association (MTLA), the Real Property Law Section of the Minnesota State Bar Association (MSBA), and other groups to gain additional reactions.

The subcommittee also discussed the desirability of extending the sunset date for the Task Force from 2003 to 2004. That would allow for further evolution of recording software to accommodate more complex documents, increase the likelihood that national organizations that are preparing e-document standards will have completed their work, and afford the Task Force the benefit of additional funds from the soon-to-be increased surcharge fee for Torrens documents. On motion by Rick Little, second by Chuck Hoyum, the subcommittee voted unanimously to recommend to the Task Force that it seek an extension of the Task Force sunset date from the Legislature.

The subcommittee decided to defer scheduling its March meeting until a later date, and in the meantime to stay in touch by e-mail. On motion by Chuck Hoyum, second by Marty Henschel, the subcommittee voted unanimously to adjourn. The meeting ended at 11:15 a.m.

Respectfully submitted,
Eileen Roberts

**Legal Subcommittee of the ERER Task Force
November 4, 2003**

Attendees: Luci Botzek, Mike Cunniff, Marty Henschel, Chuck Hoyum, Rick Little, Beth McInerny, Chuck Parsons, Eileen Roberts, Greg Hubinger, Julie Bergh.

Legislation for the next legislative session, beginning the first week of February 2004, will be necessary to allow pilot activity to continue. The following considerations were originally documented in the to-do list for the Legal Subcommittee.

1. Non-Applicability of Non-Standard Document Surcharge

New legislation will eliminate the word “pilot” and open up e-recording for all counties.

Per the ERERTF standards a body will be in place to manage the standards in an on-going capacity.

Recommendation to task force: New legislation will eliminate “pilot” definition and open e-recording to all counties.

Discussion regarding an on-going body to maintain standards should be discussed by the task force.

2. Overlay Legislation to Eliminate Historic “Paper” Oriented Requirements.

Recommendation to task force: New legislation should contain overlay language that eliminates paper oriented terms.

3. Recording Priority vis-à-vis Delivery Method

Each county is different but generally numbering is managed in the following priority:

1. On-site customers
2. Bulk drop-offs
3. Mail

Consecutive numbering should be used to the extent possible at a county. Luci Botzek will be meeting with county Recorders in the next weeks and has volunteered to take the following question to them and report back to the Legal Subcommittee.

What issues or concerns do county Recorders have regarding priority management when e-recording is introduced to a county?

4. Elimination of Paper CRV Form (Remove)

The Department of Revenue at the last Phase II Planning Meeting has taken on the task of developing an electronic CRV and developing a methodology for filing this document.

This item will be removed from the Legal Subcommittee's list.

5. Well Disclosure Certificate Drawing (Remove)

The Department of Health originally worked with BenNevis to outline the process for filing this document. There is a schema for this document where a scanned image of the certificate will be imbedded. The schema will then be printed and a hard copy will continue to be sent to Department of Health. When they become ready to work with this document electronically Health can use the current schema as their starting point.

This item will be removed from the Legal Subcommittee's list.

6. Electronic Return of e-Recorded Documents

Discussion revolved around added security issues around returning xml data rather than a recorded image to the Trusted Submitter. It was agreed that returning xml data does not open up a greater level of risk than returning an image. Advanced technology today could manipulate data on an image just as well as with pure xml data itself. Having Trusted Submitters adds a layer of security to this transmission.

Recommendation to task force: New legislation will include overlay language that will include return by electronic means.

7. Tract Index

Recommendation to task force: On a go-forward basis the Tract Index and Grantor / Grantee Index will be joint official indexes.

8. Consistent Standards - Interoperability

Recommendation to task force: New legislation will authorize the tested ERERTF standards as the Minnesota standards for electronic recording of real estate documents. A standards maintenance group will also be authorized by the task force to maintain the standards in the future.

9. Notary Seals

Recommendation to task force: New legislation will permanently change the notary requirement to allow for notary with an e-signature.

10. Definition of the Official Record (Access and Reproduction)

Currently the official record in e-recording is the image. Luci Botzek will be meeting with county Recorders in the next weeks and has

volunteered to take the following question to them and report back to the Legal Subcommittee.

What do County Recorders need to work with the requirement that the official record is the imaged document?

11. Social Security Number – Privacy Concerns (Remove)

The social security number appears on the CRV and this element is encrypted. The Department of Revenue worked with BenNevis to ensure this.

This item will be removed from the Legal Subcommittee's list.

12. Evidence

The Trusted Submitter definition outlined in the standards will be sent to Chuck Parsons for additional review.

13. Issues Concerning Minn. Stat. Chapter 325K

Recommendation to task force: Along with new legislation 325K should also be reviewed in its acknowledgement section in order to keep notaries in the electronic process.

14. Arcanvs Patents (Remove)

An RFP has been let to retain services to investigate this patent issue.

This item will be removed from the Legal Subcommittee's list.

A summary of meeting activity and recommendations will be made to the task force at the November 14th meeting.

Greg Hubinger will see if the task force can use Tom Pender to draft new legislation.