PROPOSED ORDER OF THE
WISCONSIN DEPARTMENT OF ADMINISTRATION
TO ADOPT RULES

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.

SUMMARY OF PROPOSED RULE

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

Statutes interpreted: s. 706.25, Wis. Stats.

Explanation of agency authority:
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 Stats., the Department of Administration is required to promulgate by rule the standards adopted, amended or repealed by the Council under Uniform Real Property Electronic Recording Act.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:
Chapter 137, Wis. Stats.
Chapter Adm 13, Wis. Adm. Code

Plain language analysis:
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 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.

Comparison of similar rules in adjacent states:
Though they have not adopted formal administrative rules to date, Iowa and Minnesota have adopted the Uniform Real Property Electronic Recording Act (URPERA) and established business rules which require advance submitter agreements. Model 2 and 3 technology, Property Records Industry Association (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.

Data used to support rule:
Surveys were conducted of most of 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:
The proposed rule will provide a clear path for recording documents electronically in Wisconsin allowing for speedier processing of conveyances. The proposed rule will have no significant economic impact on a substantial number of small businesses as defined in s. 227.114(1), Wis. Stats.

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 4:30 p.m. on January 23, 2009, to be included in the record of rule-making proceedings.

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" or "uniform electronic transaction act" has the meaning specified in ch. 137, Stats.
(7) "URPERA" or "uniform real property electronic recording act" has the meaning specified in s. 706.25, Stats.

Adm 70.03 Standards. A trusted submitter shall submit an electronic recording file to a county register of deeds in a manner that is consistent with statute statutes and the technical standards contained in *Document 2.4.1* dated October 2007 and the *XML Implementation Guide* dated April 2007 both developed by PRIA. The council shall annually review these standards and guidelines and propose, to the department, necessary amendments to the standards and guidelines adopted in this section.

Note: Copies of the PRIA technical standards and guidelines imported by reference in s. Adm 70.03 and business requirements imported by reference in s. Adm 70.04 may be obtained from PRIA at:

Property Records Industry Association
2501 Aerial Center Parkway, Ste. 103
Morrisville, NC 27560
Telephone: 919.459.2081
FAX: 919.459.2075
Website : http://www.pria.us/cart/publications.htm

Locally copies may be obtained from the legislative reference bureau or from the council at the mailing address and website shown in s. Adm 70.04.

Adm 70.04 Business requirements and guidelines. In addition to council developed business requirements, a trusted submitter shall comply with the requirements contained in *Business Requirements Document for Recording Electronic Document Formatted Recordable Instruments*, dated March 2008, developed by PRIA and the mortgage industry standards maintenance organization. The council annually shall review the business requirements and propose, to the department, necessary amendments to the requirements adopted in this section.

Note: Copies of the current standards and guidelines for submission of electronic documents as in s. Adm 70.03, business requirements as in s. Adm 70.04 and materials for trusted submitter agreements as in s. Adm 70.05 may be obtained from the legislative reference bureau or the council at the following address:

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 70.05 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 mailing address and website listed in s. Adm 70.04.

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

Adm 70.07 Notarization of documents. An electronic document shall be notarized under standards adopted in ch.137, Stats. 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: April 23, 2009

Michael L. Morgan
Secretary of Administration