

Document No. 4078
SECRETARY OF STATE
CHAPTER 113

Statutory Authority: 1976 Code Sections 30-6-10 to 30-6-70

113-300 to 113-400. Uniform Real Property Recording Act

Synopsis:

The Secretary of State proposes to create new regulations to adopt standards to implement Act 210 of 2008 (South Carolina Code Section 30-6-10, et seq.) creating the Uniform Real Property Electronic Recording Act. The Act provides that the Secretary of State shall promulgate regulations to adopt standards to implement this chapter based upon the recommendations of the Electronic Recording Committee. The proposed regulations were previously published in the *State Register* on May 22, 2009. No public hearing was requested.

The purpose of these standards are as follows:

South Carolina State Register Vol. 34, Issue 4
April 23, 2010

- A. To keep the standards and practices of registers in South Carolina in agreement with the standards of national standard-setting bodies, such as the Property Records Industry Association (PRIA), and in agreement with nationally accepted best practices in electronic real property recording.
- B. To keep the technology used by registers in South Carolina compatible with technology used by recording offices nationally that have enacted the Uniform Real Property Electronic Recording Act.
- C. To keep the standards and practices of registers in South Carolina in agreement with professional standards and best practices in electronic records management.
- D. To ensure accessibility of electronic instruments filed and recorded by a register as public records.
- E. To manage and retain real property records in accordance with established records management standards for electronic records.

The Notice of Drafting was published in the South Carolina *State Register* on February 27, 2009.

Section-by-Section Discussion

- 113-300. This section defines the terminology used throughout the regulations.
- 113-310. This section provides an overview of the intent of the regulations.
- 113-320. This section sets forth the three models for electronic filing of documents.
- 113-330. This section sets forth the requirements for the Memorandum of Understanding between the parties who elect to file electronically and the register who will receive the electronic filing.
- 113-340. This section outlines the procedures to follow to ensure the authenticity and integrity of the electronically filed document.
- 113-350. This section outlines the procedures to follow when the filer is prepared to submit the document to the register.
- 113-360. This section outlines the requirements for the electronic recording of the document.
- 113-370. This section describes the types of document formats that may be filed electronically.
- 113-380. This section describes how documents will be indexed in the county register's offices.
- 113-390. This section describes the process for the payment of fees and provisions for providing the filer with a receipt.
- 113-400. This section outlines the provisions for the preservation of the documents filed electronically within the register's offices.

Instructions:

Print the regulations in accordance with the directions given below to reflect new regulations.

Text:

113-300. Definitions

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A. "ACH" (automated clearing house) means a network processing and delivery system that provides for the distribution and settlement of electronic credits and debits among financial institutions.

B. "Authentication" means the act of tying an action or result to the person claiming to have performed the action. Authentication generally requires a password or encryption key to perform, and the process will fail if the password or key is incorrect.

C. "Authorized filer" means a party who has entered into a MOU with a register pursuant to the regulations herein.

D. "Digital electronic document" means an instrument containing information that is created, generated, sent, communicated, received, or stored by electronic means, but not created in original paper form.

E. "Digitized electronic document" means a scanned image of the original document.

F. "Document" means recorded information regardless of medium or characteristics that is:

(1) inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form; and

(2) eligible to be recorded in the real property records maintained by a register.

G. "E-government" means government's use of information technology to conduct business or exchange information with citizens, businesses or other federal, state and local government offices.

H. "Electronic" as defined in the Uniform Real Property Electronic Recording Act means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

I. "Electronic document" means a document that is received by a register in an electronic form.

J. "Electronic recording delivery system" means an automated electronic recording system implemented by a register for recording instruments, and for returning to the party requesting the recording, digitized or digital electronic instruments.

K. "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

L. "FTP" means file transport protocol.

M. "HTTPS" means hypertext transport protocol secure.

N. "Instrument" means any deed or other document in recordable form in accordance with S.C. Code Section 30-5-30.

O. "Memorandum of understanding" (MOU) means a legal document outlining the terms and details of an agreement between parties, including each parties requirements and responsibilities.

P. "Metadata" means "data about data"; it is information that describes another set of data. Metadata is descriptive information that facilitates the management of and access to other information. In the electronic recording context, metadata may be generated automatically or created manually and it may be internal or external to the digital object itself. Regardless of how it is created or stored, maintaining accurate and reliable metadata is essential to the long-term preservation of electronic recordings.

Q. "MISMO" means mortgage industry standards maintenance organization.

R. "PDF"(portable document format) means a file format created for document exchange. PDF is a fixed-layout document format used for representing two-dimensional documents in a manner independent of the application software, hardware, and operating system.

S. "PDF/A" means a subset of PDF that is an electronic document file format for long-term preservation of electronic documents that ensures the documents can be reproduced the exact same way in years to come. A key element is the requirement for PDF/A documents to be 100 percent self-contained. All of the information necessary for displaying the document in the same manner every time is embedded in the file. This includes, but is not limited to, all content (text, raster images and vector graphics), fonts, and color information.

T. "PRIA" means the Property Records Industry Association. PRIA is a not-for-profit association representing business and government members of the property records industry. The main goal of the association is to facilitate recordation and access to public real property records through research and the development and implementation of national standards and systems for the industry.

U. "PKI" (public key infrastructure) means a method of enabling a user of an unsecured public network such as the Internet to securely and privately exchange data and money through the use of a public and a private cryptographic key pair that is obtained and shared through a trusted authority. The public key infrastructure provides for a digital certificate that can identify an individual or an organization and directory services that can store and, when necessary, revoke the certificates.

V. "Register" means a Register of Deeds, Clerk of Court or Register of Mesne Conveyances.

W. "Schema" means a method for specifying the structure and content of specific types of electronic documents which use XML.

X. "SMART Doc™" means a technical framework for representing documents in an electronic format. This format links data, the visual representation of the form, and signature. The visual representation of the documents can utilize a variety of technologies such as XHTML, PDF, and TIFF. Previously SMART docs™ were called eMortgage documents. In order to better describe the actual capabilities of the technology, the word "eMortgage" was replaced by the acronym "SMART" which represents: securable, manageable, achievable, retrievable, and transferable.

Y. "UETA" (Uniform Electronic Transaction Act) means a body of recommended legislation drafted in 1999 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for adoption by state legislatures. UETA allows electronic documents and digital signatures to stand as equals with their paper counterparts. UETA was adopted in South Carolina in S.C. Code Section 26-6-10, et seq.

Z. "URPERA" (Uniform Real Property Electronic Recording Act) means a body of recommended legislation drafted in 2004 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for adoption by state legislatures. URPERA authorizes recorders to accept electronic documents for recording in accordance with established standards. South Carolina adopted URPERA in 2008 Act. No. 210.

AA. "XHTML" means extensible hypertext mark-up language.

BB. "XML" (extensible markup language) means a computer language used to create markup languages. XML allows developers to specify a document type definition or schema in order to devise new markup languages for general or specific uses.

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113-310. General Provisions

In accordance with the provisions of the Uniform Real Property Electronic Recording Act, the URPERA Committee adopted the electronic recording standards issued by PRIA as the foundation for the standards promulgated as rule under Regulations 113-300 to 113-400.

A. A register may accept instruments for filing and recording electronically in accordance with the requirements of the Uniform Real Property Electronic Recording Act pursuant to S.C. Code Sections 30-6-10 et seq.

B. Any real property record created by electronic recording means shall meet established records management standards for electronic records and record retention requirements identified in the local government records retention and disposition schedule for registers.

C. A participating register shall retain control and ownership of the electronic records created or received by the office of the register and shall be responsible for their maintenance as public records.

113-320. Electronic Recording Models

For registers that elect to offer electronic recording, authorized filers shall submit real property records for electronic filing and recordation utilizing one of three methods described below as allowed by the individual recorder. The methods are based on levels of automation and transaction structures identified in the PRIA *URPERA Enactment and E-recording Standards Implementation Guide*© utilized nationally to implement electronic recording.

A. Method One. An authorized filer transmits to the register a digitized (scanned) document of an original document created in paper, signed in ink and notarized. The register completes the recording process in the same way as paper using the imaged copy as the source document and determines the recording fees. Fees are usually paid from an escrow or ACH account the authorized filer establishes with the register. Documents may be submitted in batches. Once the register accepts the documents for recording the scanned image is “burned” with the recording information, including recording date and time as well as the unique recording reference number, such as book and page number or instrument number. Indexing is performed by the indexing staff of the register’s office. The recorded image is returned to the authorized filer. Usually a recording receipt, together with the recording endorsement data, the authorized filer uses the data to create and print a label with the recording endorsement information. The label is affixed to the paper document, which is then processed as usual by the authorized filer.

B. Method Two. An authorized filer transmits to the register a digitized (scanned) document of an original document created in paper, signed in ink and notarized wrapped in an XML wrapper containing the data necessary for processing, indexing and returning the document. In the case of a scanned paper document, method 2 further extends method 1 by adding data that improves the process, specifically the indexing process in the register’s office. The recordable documents are generally delivered to the register's website by whatever means the parties agree, including HTTPS, web services, and FTP. Documents may be submitted in batches. Authentication of the submitter is required based on an account and personal identification number. Digital signatures and certificates may be used. The documents are stored in a secure area on the register’s web site until the register’s system retrieves them. Once imported into the register’s system, the register’s system handles the recording functions. The system imports the data from an XML wrapper, including index data. The indexing process is partially automated, but the image must be visually inspected to determine that it meets recording requirements as well as possibly to validate against the data in the XML wrapper. If a document meets the requirements, it is recorded. The recording information is “burned” onto the image and returned to the authorized filer by means agreed upon by the parties in a MOU. Fees are paid based on the method agreed upon through the MOU, usually fees are paid from an escrow or ACH account the authorized filer maintains with the register.

C. Method Three. An authorized filer transmits to the register digital electronic documents that have been created, signed and notarized electronically along with the electronic indexing information. Real property documents are typically generated on a vendor's document preparation system usually in XHTML format. [Currently the XHTML format (XML data - HTML formatting) is used or other similar formats, such as MISMO's SMART Doc format or PDF's intelligent document that incorporate the XML data and link it to the content displayed.] The submitter logs on to the system and enters the information necessary to generate the document. Once the document has been generated, the person signs it if he or she has the authority, or notifies the person with signing authority to sign. Secure access is required for all parties that must sign the document because signing is done by digital signature. Once the documents are electronically signed and notarized, they are released for recording. The document preparation system compares each document against recording rules to ensure its recordability and then calculates recording fees. Documents may be submitted in batches. Documents received at the register's system are re-checked against the requirements to determine whether or not they may be recorded. If not, they are rejected and returned to the authorized filer. Otherwise they are accepted for recording and the data for recording is extracted from the documents and passed to the register's recording system. The endorsement data is received from the register's system and entered onto the respective documents usually in XML format. Fees are paid based on the method agreed upon through the MOU.

113-330. Memorandum of Understanding

A filer shall apply to a participating register to be enrolled in the participating register's electronic filing and recording program.

A. The authorized filer and a participating register shall enter into a memorandum of understanding (MOU) relating to the terms and conditions of participation in the register's electronic filing and recording program. The provisions of the MOU shall be consistent with the regulations herein and the Uniform Real Property Electronic Recording Act. At a minimum the MOU shall address the items described immediately below.

(1) Instruments permitted to be filed electronically. The agreement shall identify the types of real property records permitted to be filed electronically, which may be amended from time to time by the register.

(2) Payment of filing fees. The MOU shall require the payment of recordation taxes, recording fees or register's fees assessed by statute, and establish the manner and method of such payment.

(3) Notarization. The MOU shall provide that electronic real property recordings shall comply with requirements for notarization pursuant to South Carolina statutes and rules adopted by the Secretary of State.

(4) Notification of submission for recordation. The MOU shall provide that the register shall issue to the authorized filer an electronic or other written notification that the electronic document has been received by the register. The notification shall include the date and time of the receipt of the electronic instrument.

(5) Notification of rejection. The MOU will provide that the electronic instruments submitted for recordation shall be rejected if they fail to meet regulation image or file-format specifications and security requirements; comply with South Carolina statute requirements; or comply with the requirements established by the register for electronic recording of real property records.

(6) Transmittal sheet requirements. The MOU shall provide that authorized filers shall comply with transmittal sheet requirements as determined by the individual county recorders.

(7) The MOU shall establish an effective date and duration of the MOU or conditions for termination.

(8) Authorized filer contact information. The MOU shall require authorized filers to provide complete information on persons to contact, including an administrative contact person and an information technology contact person.

(9) Liabilities and responsibilities of the authorized filer. The MOU shall require authorized filers to be responsible for keeping their encryption keys secure pursuant to the regulations herein and for establishing internal controls to ensure the security of the private key is not compromised and shall charge them with the responsibility to notify the register's office of a compromise to address any breach of internal controls.

(10) Breach of agreement by authorized filer. If an authorized filer fails to take immediate corrective and remedial action for any security compromise, the register may revoke the authorized filer's privileges to file electronically.

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B. A participating register may include in the MOU other procedures and requirements consistent with S.C. Code Section 30-6-10 et seq. in order to implement fully an electronic filing and recording program.

113-340. Document and System Security Requirements

Security procedures shall be implemented to ensure the authenticity and integrity of the electronically filed instrument, including the ability to verify the identity of the filer, as well as the ability to verify that an instrument has not been altered since it was transmitted or filed. In order to protect the integrity of instruments to be recorded electronically, a participating register and authorized filers shall meet the security procedure requirements set forth below.

A. An electronic recording delivery system implemented by a register shall provide a secure method for accepting and recording digital or digitized electronic instruments. The system shall not permit an authorized filer or its employees and agents, or any third party, to modify, manipulate, insert or delete information in the public record maintained by the register, or information in electronic records submitted pursuant to Regulation 113-300 to 113-400. Security standards implemented by registers shall accommodate electronic signatures and notarization of documents in a manner that complies with S.C. Code Section 30-6-10 et seq. and that address the following encryption requirements. The electronic recording delivery system shall:

- (1) support, at a minimum, 128-bit file and image encryption over a secure network;
 - (2) provide for periodic updates to encryption by the electronic recording delivery system vendor;
 - (3) advise the authorized filer of its liabilities and responsibilities for keeping its keys secure;
 - (4) provide a secure key management system for the administration and distribution of cryptographic keys;
- and
- (5) require all encryption keys to be generated through an approved encryption package and securely stored.

B. The electronic recording delivery system shall control interactive access to the system through authentication processes that:

- (1) utilize a process of requesting, granting, administering and terminating accounts;
- (2) address the purpose, scope, responsibilities and requirements for managing accounts;
- (3) designate one or more individuals to manage accounts; and
- (4) provide for secure delivery of the authorized filer(s) initial password(s) and prohibit the transmission of identification and authentication information (password) without the use of industry accepted encryption standards.

C. Registers shall have a key management system in place for the secure administration and distribution of cryptographic keys.

- (1) The electronic recording delivery system shall authenticate the authorized filer's private key.
- (2) Authorized filers shall establish internal controls to ensure the security of the private key is not compromised and certify compliance with the register as part of the MOU.
- (3) Security of private keys compromised within the electronic recording delivery system shall be promptly addressed by the register.

D. A risk analysis to identify potential threats to the electronic recording delivery system and the environment in which it operates shall be conducted at least once every three years by the register. The purpose of the risk analysis is to prevent the filing and recording of fraudulent instruments or alteration of instruments that were previously filed and recorded electronically. A risk analysis shall identify and evaluate system and environmental vulnerabilities and determine the loss impact if one or more vulnerabilities are exploited by a potential threat. The risk analysis shall include:

- (1) a risk mitigation plan that defines the process for evaluating the system;
 - (2) documentation of management decisions regarding actions to be taken to mitigate vulnerabilities;
 - (3) identification and documentation of implementation of security controls as approved by management;
- and

(4) a reassessment of the electronic recording delivery system security after recommended controls have been implemented or in response to newly discovered threats and vulnerabilities.

E. Authorized filers who are enrolled in a participating register's electronic filing and recording program shall implement security procedures for all electronic filing transmissions and shall be responsible for maintaining the security of the systems within their respective offices.

F. Electronic recording delivery systems shall protect against system and security failures and, in addition, shall provide normal backup and disaster recovery mechanisms.

113-350. Electronic Transmissions

A. Instruments shall be transmitted through either a secured website or an electronic recording delivery system. The method of transmission shall be identified in the MOU signed by the authorized filer and the register.

B. An authorized filer shall visually inspect each instrument prior to transmitting to ensure compliance with existing statutory recording requirements and the regulations herein.

C. Instruments submitted for filing shall contain, at a minimum, a transmittal sheet with the following information. Individual county recorders may request additional information to supplement the following requirements:

- (1) document type: title of the document type shall be stated at the top of the page below the top margin;
- (2) return to all cover transmittal sheets: each shall have a return to name, address, phone and fax numbers and email address;
- (3) party names: all party names to be indexed shall be listed with the grantor's last name, then first, and middle names, followed by the grantee's last name, first and middle names and full name of business entities bolded, underlined or capitalized in a way to stand out for indexing;
- (4) subsequent references: references to the original document on subsequent documents shall appear conspicuously on the first page of all subsequent documents.

D. The register may post guidelines to assist customers submitting documents electronically.

113-360. Electronic Recording Process Requirements

A. An MOU between a participating register and an authorized filer shall include information required by the participating register in order to provide electronic notice of confirmation or rejection of an electronic filing and subsequent recording, or if such electronic notice is not possible, by telephone or facsimile. The MOU shall address the requirements outlined in the regulations herein.

B. When a participating register provides acknowledgment of receipt of an instrument filed electronically, the instrument shall be considered to have been filed in compliance with the applicable regulations and laws relating to filing of an instrument with the register.

C. A notice of confirmation of recording or a notice of rejection for recording shall be provided by a participating register to an authorized filer no later than the first business day after the instrument is filed electronically.

(1) A notice of confirmation shall include recording information for the instrument accepted for recording and shall identify the instrument accepted for recording, as provided in the agreement.

(2) A notice of rejection shall include a brief explanation of the reason or reasons for rejection and shall identify the instrument rejected for recording, as provided in the agreement.

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(3) If a participating register complies with the notice provisions of the agreement, the failure of an authorized filer to receive notice of confirmation or rejection of filing and subsequent recording shall not affect the validity of the confirmation or rejection.

D. The authorized filer shall be responsible for returning the original instrument to the party or parties entitled to it after notice of confirmation of recording is received by the authorized filer and for providing to such party or parties the recording information set forth in the notice of confirmation from the participating register.

113-370. Document Formats

A. Authorized filers may elect to transmit either a digitized (scanned) electronic document of an original ink signed instrument or an electronic document electronically signed and notarized along with electronic indexing information to the register.

B. Digitized (scanned) electronic documents shall meet the following specifications:

- (1) provide fidelity to the original appearance of any instrument at the time such instrument was first created, whether by electronic or other means;
- (2) retain the original content;
- (3) be scanned at a minimum of 300 dpi;
- (4) be scanned in TIFF or PDF/A formats;
- (5) be scanned in portrait mode;
- (6) shall capture document images in any multi-page storage format as specified by the register; and
- (7) shall be legible to enable reproduction onto microfilm or microfiche to meet regulation requirements.

C. Digital electronic documents transmitted to the register for recording shall meet PRIA formatting and document data field standards in accordance with state and local recording laws as applicable.

D. Electronic recordings shall be converted to (if necessary) and preserved as TIFF or PDF files along with their associated metadata. Method 3 submissions shall be converted to TIFF or PDF.

113-380. Document and Indexing Requirements

Electronic recording delivery systems implemented by registers shall have the capacity at a minimum to process documents that are compatible with indexing requirements established by PRIA for file formatting and indexing.

A. The *PRIA eRecording XML Standard v2.4.1* is adopted by reference. The most current version of the PRIA indexing and document format standards may be found at the PRIA website at <http://pria.us/>

B. Indexing fields for each document code shall require the minimum index fields listed below:

- (1) grantor(s) or equivalent grantee(s) or equivalent;
- (2) document type recording fee related (original document number, in the case of releases, assignment, amendments, etc.);
- (3) legal description fields as specified by county;
- (4) standard PRIA tags defined for these fields must be used. <http://pria.us/>

113-390. Payment of Filing Fees

Payment of recording fees shall be collected by a register as prescribed by statute. The register shall provide an electronic or other written receipt to the authorized filer indicating that the payment for the recordation of the electronic instrument has been received and processed by the register. The electronic recording delivery

system may generate an automated electronic report which complies with this requirement. The register shall provide authorized filers with a list of payment methods which may be used for the recordation of electronic real property records.

113-400. Preservation

Real property records in the custody of the register are permanent records and must be preserved. The preservation of electronic real property records requires consistent and complex management in order to maintain authenticity and integrity. Electronic records are subject to the same threats of destruction as other mediums such as natural or human-made disasters. There are the added challenges of hardware and software obsolescence, media longevity and migration, infrastructure failures and accidental damage from improper handling. The durability of electronic records has not been proven to be as enduring as microfilm. In order to secure and preserve information created and stored electronically, permanent digital real property records shall be converted to microfilm.

Fiscal Impact Statement:

No state funding is requested. The fiscal impact on local counties that choose to allow electronic recording is indeterminate. The Act does not require local government entities to incur any costs since participation in electronic recording is voluntary. If a county chooses to allow electronic recording of documents it would need to purchase specific hardware that would enable it to receive documents for recording, indexing and returning a copy of the documents once the recording is completed. Local Registers may experience reduced costs as a result of electronic recording. These savings would be in the scanning, copying and mailing costs currently associated with filings. Additionally, there would be a more efficient method of identifying and correcting errors in documents.

Statement of Rationale:

Promulgation of these regulations is necessary in order to carry out the provisions of 2008 Act No. 210.