



eRecording Electronic Document Formatted Recordable Instruments



BUSINESS REQUIREMENTS DOCUMENT

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2	01-24-2007	01.1	Incorporates comments from a walk-through conference call with the MISMO®-PRIA Workgroup held on 1-10-2007 and a review with members of the PRIA Technology Committee on 1-16-2007.	C. Bramante
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6	05-02-2007	0.5	Incorporates comments from PRIA conference calls in April and early May 2007.	C. Bramante
7	06-01-2007	0.6	Incorporates final review with the PRIA workgroup and the MISMO® eMortgage workgroup at the MISMO® Trimester Meeting during the week of May 21, 2007.	C. Bramante
8	06-20-2007	0.61	Adds verbiage for eGlossary and hyperlinked glossary terms.	R. Rothkopf
9	07-31-2007	0.7	Incorporates the final business requirements comments from the PRIA Counsel (David Ewan), members from the MISMO® eMortgage Workgroup and the PRIA XML eRecording Workgroup, additional language from R. Rothkopf regarding the eGlossary, and the addition of the rejection process flow. This draft is in preparation for the MISMO® and PRIA 30-day IPR-Antitrust Policy Disclosure Period.	C. Bramante
10	08-10-2007	0.8	Removes the table on page 10 per R. Rothkopf; adds terms to the glossary per R. Rothkopf; assigns ownership to glossary items; and adds the PRIA Evaluation License language per instructions from PRIA's Counsel.	M. Ladd
11	10-29-2007	0.9	Technical editing for structure, format, grammar, and readability.	C. Wesling
12	03-11-2008	1.0	Finalized document for publication; add approved copyright notice.	C. Wesling

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I. Introduction

A. Summary

This document describes the business requirements to allow for the eRecording of electronic recordable instruments in common electronic document formats such as MISMO SMART Doc[®], eSigned PDF and *Adobe* Intelligent Document Format, and Microsoft[®] *Word* with embedded-XML. It also includes business functions, a process flow diagram, and project assumptions, constraints, and dependencies.

B. Project Goal and Objectives

As the adoption of electronic mortgages (eMortgages) increases, the need for and use of electronic recording (eRecording) in the various recording jurisdictions in the country will also grow. Concurrent with this requirement will be the eRecording of the real estate industry's electronic recordable instruments. Therefore, the goal of this project is to enable electronic instruments to be eRecorded by applications and systems in public land records offices.

This project has six major objectives:

1. Prepare electronic instruments so that they are eRecordable.
2. Upload or transmit electronic instruments to eClosing systems and various other platforms.
3. Execute recordable electronic instruments on eClosing systems and various other platforms.
4. Deliver recordable instruments electronically from eClosing systems to various eRecording applications and systems in public land records offices.
5. eRecord electronic instruments including fee and payment information.
6. Enable the return of eRecorded (or eRejected) electronic instruments to the eClosing platforms, or enable the eClosing platforms to retrieve eRecorded (or eRejected) electronic instruments.

The eRecording of electronic instruments provides the following benefits to county recorders, mortgage lenders, and closing agents:

1. Improved ability to manage real estate document volumes,
2. Operational cost savings and productivity gains,
3. Improved data accuracy and reduced errors,
4. Effective and efficient use of resources, and
5. More accurate land records.

As more transactions become electronic, additional benefits will accrue to lenders, recorders, title, and closing agents with the improvement of the "paper" recording and real estate closing processes.

II. Project Considerations and Constraints

A. Project Definitions¹

1. **Electronic instruments:** Documents formatted and based on MISMO's most recent published SMART Doc[®] specification, the forthcoming SMART Document[®] 2.0 specification, eSigned and Intelligent PDF, Microsoft[®] *Word* with embedded XML, and similar electronic document types.
2. **Principals** include borrowers or sellers.
3. **Non-principals** include witnesses, notaries, corporate signatories, and others.
4. **Recordable:** The term "recordable" has the following definitions in this document. The context determines which definition is applicable.
 - a. A **document type**, which once fully executed, can be recorded in the public land records,
 - b. A **document state**, wherein the document has been fully executed and is ready to be submitted for recording, or
 - c. A **determination** (automated or manual) made by the county recorder's office that a document:
 - i. Complies with all applicable recording regulations (that is, content, format, fees, and so on), and
 - ii. is either not dependant on a recordability determination of any other document in the package – or – is part of a properly ordered sequence of documents, all of which have been determined to be recordable and can therefore be assigned the recording information and indexed in the public land records.

B. Project Scope

1. These requirements address only electronic documents that are submitted to and processed by a Recorder.
2. This document provides requirements for the following three eRecording methods as defined by PRIA:
 - a. Model 1: Scanned closing recordables containing only images (a TIFF file in the View section).
 - b. Model 2: Scanned closing recordables containing images and XML data (indexing and cashing data).
 - c. Model 3: Fully electronic documents containing page images and full document data (for example, Category 1 SMART Doc[®], Adobe Intelligent Document Format, embedded XML in Microsoft[®] *Word*, or similar electronic document types).
3. eClosing recordable documents include, but are not limited to, deeds, mortgages or deeds of trust, lien releases, assignments, and powers of attorney.

¹ See also the eMortgage Glossary on MISMO's Web site.

4. The eRecording process does not include the conversion of an electronic recordable document to a TIFF or PDF file for retrieval or archiving by the land records management system. (The Recorder's system usually performs file conversions during the post-eRecording process.)

C. Project Assumptions

The business requirements presented in this document were developed under the following assumptions:

1. The information is presented to the borrower(s) in the form intended by the lender or closing agent, and meets all federal, state, and local laws and regulations regarding consumer financial transactions.
2. The eClosing recordable document package may include other documents that are not recordable, but are required to process the package, such as electronic cover sheets, state or local tax conveyance forms, and so on.
3. The following fee and payment information is included in the recording package:
 - a. Recording fees,
 - b. Transfer taxes,
 - c. Rejection fees,
 - d. Technology Fund fees,
 - e. Housing Fund fees, and
 - f. Other fees and taxes.
4. The use of a secure signature by any signer – principal or non-principal – does not constitute a tamper-evident signature or seal.
5. The PRIA “Request & Response” specification will be used for enveloping purposes.
 - a. Rejected electronic instruments are handled in the PRIA enveloping process of the recordable package, i.e., document rejection reasons.
 - b. Other failures (for rejections) are also captured on the response envelope.
6. The Recorder will deliver to the Submitter the MISMO[®]/PRIA XML data for the recorded instrument(s).
7. Recorded electronic instruments are accessible indefinitely as part of the jurisdiction's permanent public land records system.

D. Project Dependencies

None have been identified.

E. Legal/Regulatory/Policy Constraints

None have been identified for the purposes of developing technical guidelines.

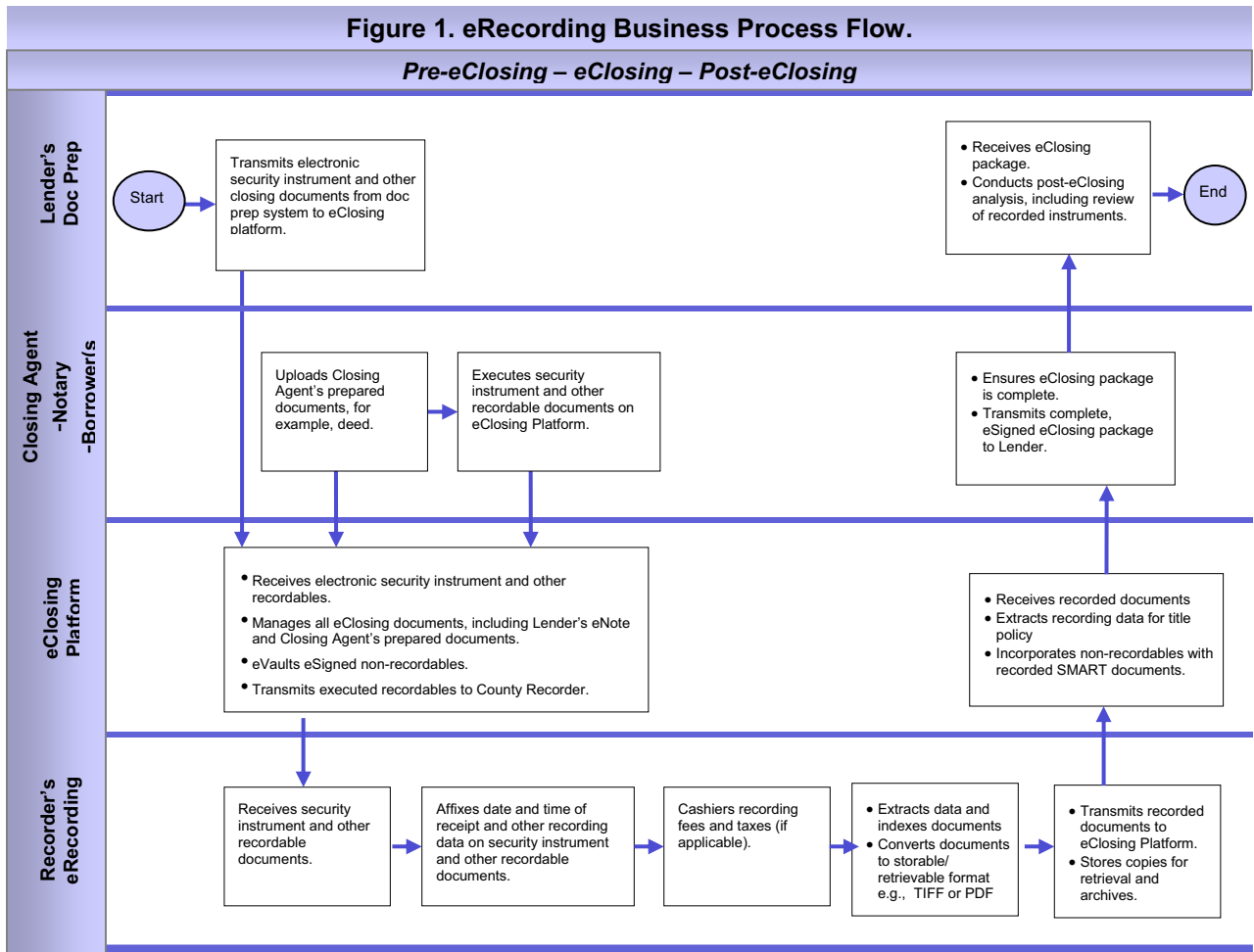
F. Design and Implementation Constraints

Initially, this functionality may be limited by the current published SMART[®] Document Specification. The MISMO[®] and PRIA technical team will assess whether there are limitations and which business requirements may not be met under the current specification.

III. Business Requirements

A. eRecording Business Process Flow

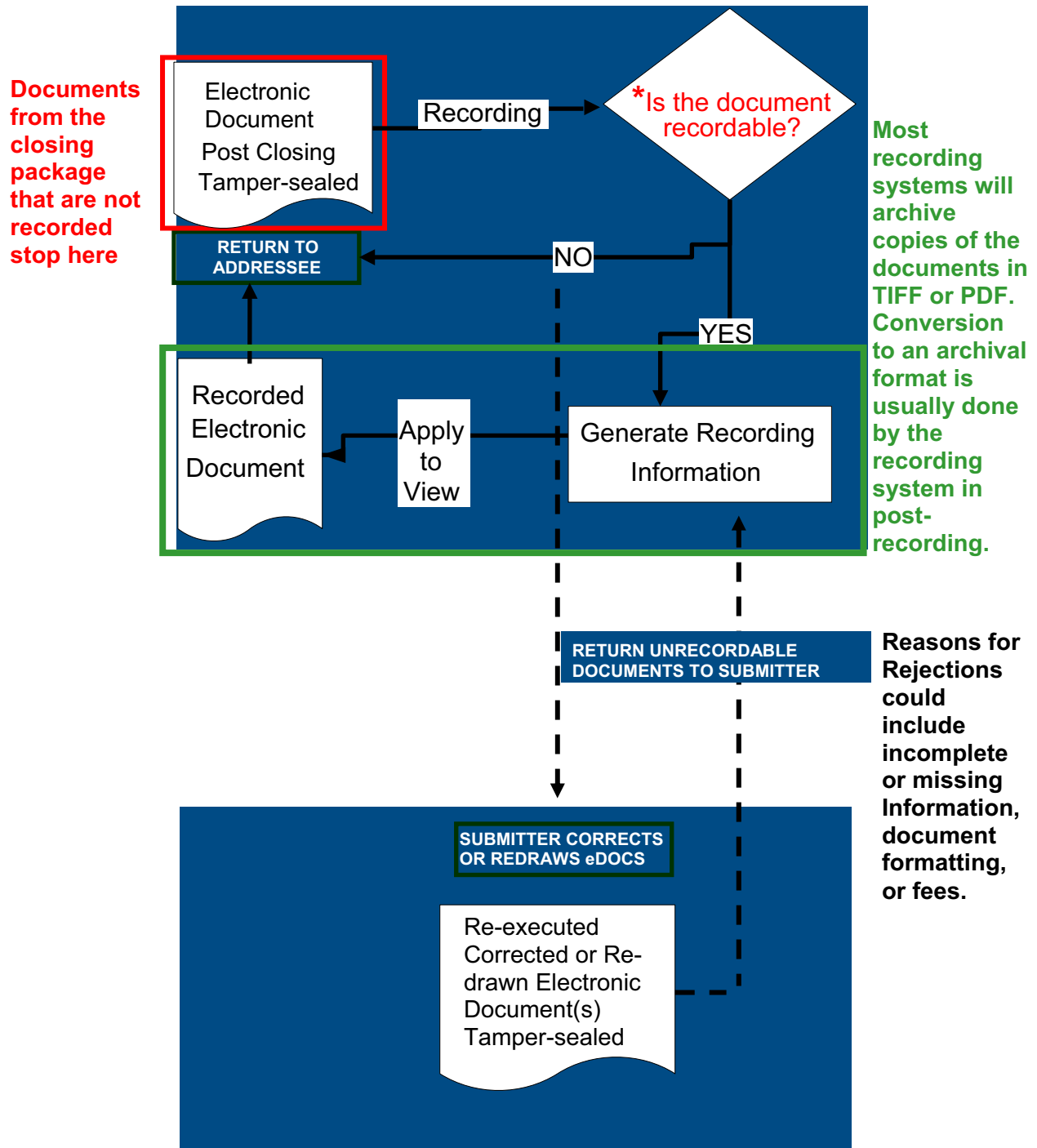
Figure 1 illustrates the eRecording business process flow from before eClosing to after eClosing, starting and ending with the lender's document preparation (doc prep) system.



B. Non-recorded or Rejected Documents

Figure 2 shows the process flow for closing documents that are either not recorded or rejected.

Figure 2. Unrecorded or Rejected Documents.



C. Business Functions

The high-level functional requirements for developing the capability to eRecord recordable e-Instruments are outlined below.

BUSINESS REQUIREMENT	EXPLANATION	ISSUE(S)
<p>1. eBusiness Relationship. Potential submitters must communicate with the land records office to establish an eBusiness relationship prior to submitting documents for eRecording.</p>	<p>Communication may take the form of a letter or memorandum of understanding (MOU) between the Recorder and submitter.</p>	
<p>2. e-Instrument Preparation. Prior to submission to the Recorder, the submitter must ensure that the e-Instrument meets:</p> <ul style="list-style-type: none"> a. State and local legal requirements, b. Local business requirements for recording, and c. Any lender & closing agent recording requirements. 	<p>For example, the document includes grantor, grantee, legal description, requisite signatures, formatting of a viewable image, adequate fee submission. Non-compliant documents will be returned prior to recording.</p>	
<p>3. Signatures. e-Instruments must have:</p> <ul style="list-style-type: none"> a. Signature block(s) for the electronic signature(s) of principals and of non-principal(s). b. Or allow insertion of the notary's (ies') acknowledgment/jurat block(s) for the notary's (ies') acknowledge/jurat certificate(s). 	<p>A scenario illustrating this requirement is when one spouse is eSigning in California at 9 a.m. and other spouse is eSigning in New York at 12:00 noon.</p>	<p>In some jurisdictions, the addition or alteration of the acknowledgement or jurat wording may be seen as the practice of law. Thus, if anyone other than the document's author (e.g. lender), or a licensed attorney adds or alters this information, that person could be engaged in the unauthorized practice of law.</p>
<p>4. Integrity. The integrity of the electronic recordable instrument must be able to be verified.</p>		
<p>5. Multiple Jurisdictions. When property is located in more than one recording jurisdiction, and transaction on that property occurs, (for example, a conveyance or mortgage lien) the e-Instruments must be able to be recorded in all the affected recording jurisdictions</p>	<p>This situation occurs when a single tract of land is situated partly in one county and partly in another. With paper processing, this transaction is recorded in one of the counties first, then a certified copy of the document(s) is recorded in the second county. With the electronic equivalent of</p>	

BUSINESS REQUIREMENT	EXPLANATION	ISSUE(S)
	<p>this process, the e-Instrument is recorded in one county and then immediately “re-recorded” in the second county. This can occur as long as the electronic envelope (equivalent to the certified paper copy) from the first county exists. Some additional documentation may need to accompany the second recording (for example, a tax form because transfer taxes were paid when the document was first recorded). These documents may have to be bundled in with the first recorded document.</p>	
Post-Recording Requirements		
<p>6. Recording Information. a. Recorded e-Instruments must capture the recording endorsement information. b. This endorsement must be viewable in the public records.</p>		
<p>7. Re-recording. Recorded e-Instruments must be able to be re-recorded.</p>	<p>a. The business need for re-recording is that in a race or race-notice state, the re-recorded document “relates back” to the originally recorded document when determining priority. b. With paper processing, most jurisdictions handle problems with the instrument found <u>after</u> recording by correcting (altering) the recorded document and attaching a new acknowledgement. The submitter re-submits recording fees and the corrected document for re-recording.</p>	

D. High-Level Technical Requirements

The high-level technical requirements for developing the capability to eRecord recordable e-Instruments are outlined below.

TECHNICAL REQUIREMENT	EXPLANATION	ISSUE(S)
<p>1. Standards and Protocols. e-Instruments must support XML data structures and follow MISMO's and PRIA's XML DTD or schemas or standards.</p>	<p>Specifically, for eRecording Models 2 and 3, the e-Instruments must contain data that conforms to published PRIA & MISMO data standards (that is, DTD and/or schemas) to facilitate automated review and indexing.</p>	
<p>2. e-Instrument Structure: eRecordable instruments must: a. Contain information about the document, and b. Contain a view that expresses the visual representation of the document.</p>	<p>Must be convertible to or contain a viewable format to facilitate manual recordability examination.</p>	
<p>3. Personally Identifiable Data: e-Instruments must be able to indicate that "personally identifiable" data fields are contained in the document.</p>	<p>Certain jurisdictions require that items such as social security numbers (SSNs) and account numbers be redacted or masked from records that are available to the public.</p>	
<p>4. Recorder's System. Before it can be submitted for eRecording, the e-Instrument must meet the system requirements of the Recorder's service provider (as covered under the MISMO eMCIT work effort).</p>		
<p>5. Recordability. The recordability of the e-Instrument is determined by: a. Whether adequate funds are present to pay for recording the eClosing/eRecording package, b. The sequencing of the documents in the eClosing/eRecording package, and c. Whether rejection of one recordable document will reject all recordables in the eClosing/eRecording package.</p>	<p>(c) For example, whether a rejection of the deed will cause the mortgage/deed of trust not to be recorded. (PRIA handles this business scenario in the Request. The PRIA Request also determines which documents within a package are recordable.)</p>	
<p>6. eRecording Status. The</p>		<p>a. Incorporate this</p>

TECHNICAL REQUIREMENT	EXPLANATION	ISSUE(S)
instrument's envelope must be able to identify the status.		requirement into technical requirements document. "Recordable" status will be explained in the technical guidance document (SMART 1.0 only). b. The Recorder will not recognize the audit trail of the document; therefore, the submitter will be responsible for updating the audit trail.
Post-Recording Requirements		
7. View Accessibility. The recorded document view of the e-Instrument must be accessible after successful recording.		
8. Recording Information. a. Must be capable of receiving a recording endorsement either as an appendage directly to the eDocument or via logically associating the endorsement with the document. b. The recording information must be in perceivable form.		
9. Document Integrity. Must be wrapped in tamper-evident seal during transmission to insure received document is complete and unaltered. If tamper-evident seal fails validation, document will be returned prior to being recorded.		

E. Streamline Title (Home Equity Loans)

1. Business Requirement

Streamline Title product vendors need to be able to add the legal description section after the mortgage has been eClosed with the customer. This processing sequence is required in order for the document to be complete and to avoid violating the tamper-evident-sealed original electronic mortgage instrument.

The “Streamline Title” product reduces the process time of home equity loans from application to closing by eliminating the property search step prior to closing. This product is offered in jurisdictions where it is not prohibited by law.

2. Streamline Title Process

In the Streamline Title process, the product vendor (lien insurer) performs the title search and provides the legal description after closing has taken place. At closing, the customer signs the normal loan documents (for example, note, HUD1, disclosures, and mortgage). The difference is that the mortgage may not have a legal description attached. Instead, the customer signs a new form called a “Borrower’s Limited Title Agreement” which, among other things, discloses to the customer that a more complete legal description will be added to the mortgage for recording. The following workflow diagram illustrates this process.

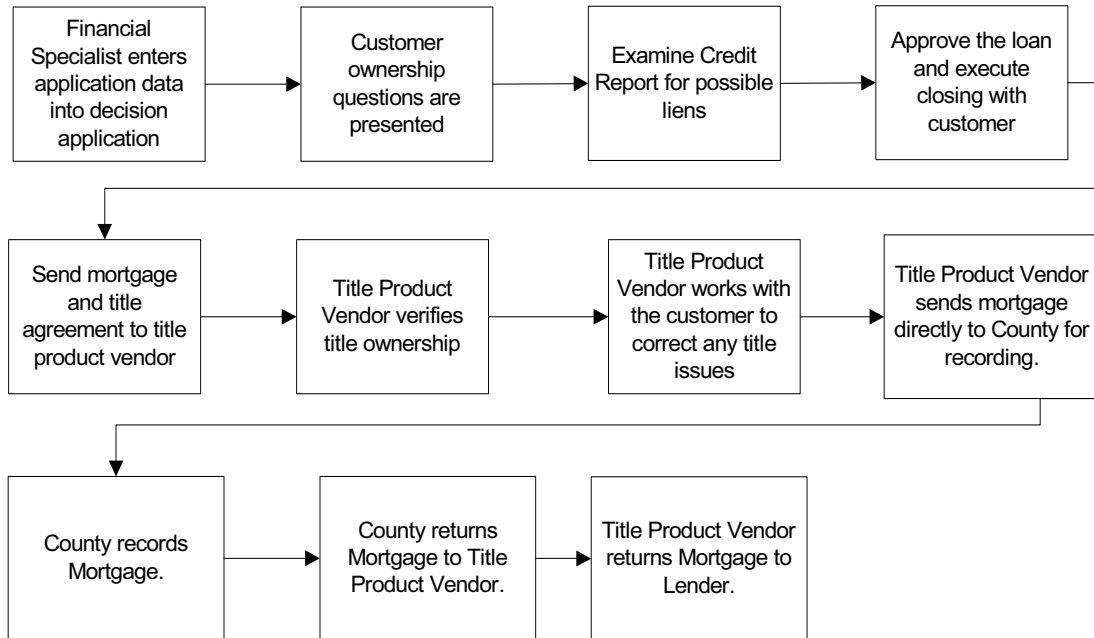


Figure 2. Streamline Title Process

IV. Conclusion

As the adoption of electronic mortgages (eMortgages) increases, the need for and use of electronic recording (eRecording) in the various recording jurisdictions in the country will also grow. Concurrent with this requirement will be the eRecording of the real estate industry's electronic recordable instruments. The Business Requirements set forth in this document are a step toward enabling widespread adoption of eRecording.