

NOTICE OF ADOPTION

Electronic Recording of Instruments Affecting Real Property

I.D. No. OFT-29-12-00011-A

Filing No. 891

Filing Date: 2012-09-04

Effective Date: 2012-09-19

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Part 540 of Title 9 NYCRR.

Statutory authority: State Technology Law, sections 103, 303, 304 and 305; and Real Property Law, section 291-i

Subject: Electronic Recording of Instruments Affecting Real Property.

Purpose: To establish standards in relation to the electronic recording of instruments affecting real property by recording officers.

Text or summary was published in the July 18, 2012 issue of the Register, I.D. No. OFT-29-12-00011-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: John Aveni, Esq., NYS Office of Information Technology Services (ITS), Empire State Plaza, P.O. Box 2062, Albany, New York 12220-0062, (518) 473-5115, email: erecordinglaw.feedback@cio.ny.gov

Assessment of Public Comment

The agency received no public comment.

Text of proposed rule: PART 540 ELECTRONIC SIGNATURES AND RECORDS ACT

(Statutory authority: State Technology Law, §§ 103, 303, 304(1), 305(1); and Real Property Law, § 291-i)

A new subdivision (g) of Section 540.1 is added to read as follows:

(g) This Part also establishes standards to implement Chapter 549 of the Laws of 2011 in relation to the electronic recording of instruments affecting real property by recording officers in New York State. Chapter Law 549 amended ESRA to allow for the use and acceptance of electronic signatures and records with conveyances and other instruments recordable under Article Nine of the Real Property Law. Chapter Law 549 also added a new section 291-i to the Real Property Law, permitting, but not requiring, recording officers to participate in electronic recording of instruments affecting real property. Real Property Law section 291-i requires the Office of Information Technology Services (ITS), formerly OFT, as the electronic facilitator, to promulgate rules and regulations governing the use and acceptance of digitized paper documents, electronic records and electronic signatures in the recording of instruments affecting real property. These rules and regulations are to prescribe standards to ensure that electronic records of instruments affecting real property documents are accurate, authentic, adequately preserved for long-term electronic storage and resistant to tampering.

New Subdivisions (m), (n), (o) and (p) of Section 540.2 are added to read as follows:

(m) Electronic recording means an electronic process by which digitized paper documents or electronic records affecting real property are delivered to a Recording Officer for incorporation into the public record.

(n) PRIA means the Property Records Industry Association, located at 2501 Aerial Center Parkway, Suite 103, Morrisville, North Carolina 27560.

(o) Recording officer means the county clerk of the county, except in a county having a register, where it means the register of the county.

(p) Registered submitter is a person whose identity has been verified and authenticated by a recording officer prior to the submission of digitized paper documents or electronic records to the recording officer for electronic recording.

A new Section 540.7 is added to read as follows:

Section 540.7 Electronic Recording of Instruments Affecting Real Property.

(a) Electronic recording of instruments affecting real property shall, at a minimum, meet the following technical standards and guidelines prescribed by PRIA: PRIA Request Version 2.4.2, August 2007; PRIA Response Version 2.4.2, August 2007; Document Version 2.4.1, October 2007; Notary Version 2.4.1, October 2007; and eRecording XML Implementation Guide for Version 2.4.1, Revision 2, March 2007, (collectively, "PRIA Guidelines"), which guidelines are hereby incorporated by reference. PRIA Guidelines may be found on the PRIA Website at: www.pria.us, and may be viewed at the New York State Office of Information Technology Services, Empire State Plaza, Swan Street Building Core 4, Albany, New York 12223.

(b) A recording officer who elects to accept electronic recording of instruments affecting real property shall accept one or more of the models of electronic recording supported by PRIA. Recording officers who elect to accept a model containing an electronic signature shall comply with section 540.4(c) and any other applicable section of this Part.

(c) An instrument affecting real property submitted to a recording officer for electronic recording shall be submitted and retained in a freely available, readable and searchable format. The utilized format must ensure the preservation of the instrument and its contents and the ability of the instrument to be retrieved in a fashion that prevents content modification or destruction. Examples of such acceptable formats include, but are not limited to, PDF/A (an International Organization for Standardization standardized version of the Portable Document Format) and TIFF (Tagged Image File Format for Image Technology).

(d) Recording officers who elect to accept electronic recording of instruments affecting real property shall:

(1) ensure that electronic recording complies with the security principles identified in Chapter 6 of the PRIA e-recording XML Implementation Guide for Version 2.4.1, Revision 2, March 2007, and applicable security standards established by New York State and local laws; and

(2) implement reasonable measures to ensure that digitized paper documents and electronic records of instruments that have been submitted for electronic recording are protected from alteration and unauthorized access from the time of submission to the recording officer throughout such time as the recording officer is required to maintain the document or record.

(e) A notary shall perform a notarization of an instrument affecting real property that exists as an electronic record only where the signatory appears in person before the notary at the time of notarization to execute the record or to affirm a prior execution, as permitted by New York State law. The methods that a notary uses to identify a signatory shall be as prescribed by New York State law. Electronic signatures used by a notary on an instrument affecting real property shall comply with section 291-i

(c) of the Real Property Law, and shall be:

(1) unique to the notary;

(2) capable of independent verification;

(3) under the notary's sole control;

(4) attached to, or logically associated with, the electronic record in such a manner that it can be determined if any data contained in the electronic record has been changed subsequent to the electronic notarization; and

(5) implemented in accordance with New York State law, rules and regulations and PRIA Notary version 2.4.1, October 2007 standards.

(f) A recording officer is not required to verify or authenticate electronic signatures or notarizations on an instrument affecting real property.

(g) Recording officers who elect to accept electronic recording of instruments affecting real property shall accept such electronic instruments only from registered submitters whose identity has been electronically verified and authenticated. A recording officer shall maintain a listing of persons so registered by the recording officer.

(h) Prior to submitting electronic instruments to a recording officer for recording, a registered submitter shall:

(1) comply with the standards and specifications set forth in this regulation; and

(2) agree to terms and conditions required by the recording officer, which shall include the terms and conditions set forth in subdivision (i) herein.

(i) A recording officer shall require its registered submitters to agree to terms and conditions which shall include the rights and responsibilities of both the recording officer and the registered submitter when participating in electronic recording. At a minimum, the terms and conditions shall address the following:

(1) the manner in which a registered submitter's identity will be electronically verified and authenticated by the recording officer;

(2) the manner in which the transmission of electronic instruments will be acknowledged by a recording officer;

(3) the models of electronic recording accepted by the recording officer;

(4) requirements for electronic submission;

(5) payment options for recording fees and applicable taxes;

(6) the recording officer's business hours

(7) requirements and procedures for acceptance or rejection of digitized paper documents or electronic records for recording purposes;

(8) provisions for amending or terminating a person's registration as a registered submitter; and

(9) rules for amending the terms and conditions agreement.

(j) For purposes of electronic recording of instruments affecting real property, recording officers may accept by electronic means any recording fee, filing fee or tax authorized to be collected by New York State or local law or regulation, in a manner compatible with the recording officer's internal software and financial practices. Upon receipt of a payment by electronic means, a recording officer shall cause an electronic receipt of payment to be provided to the party making the payment.

(k) Recording officers who elect to accept electronic recording of instruments affecting real property shall ensure that such electronic instruments are retained and preserved in accordance with the rules and regulations promulgated by the New York State Commissioner of Education which govern the retention and preservation of electronic records by local governments, including, but not limited to, Title 8 NYCRR Part 185, and any records retention and disposition schedules published by the New York State Archives. Recording officers also shall ensure compliance with New York State and local laws and regulations concerning the backup of real property instruments for disaster recovery purposes.