



WHITE PAPER

The Evolution of eRecording
from the County Recorder's
Perspective



By Danny Byrnes

Danny Byrnes is VP of Sales at Nationwide Title Clearing, Inc. (NTC) and has been with the company since 2013.

Paper has been part of the home finance process since the beginning, but over the past 20 years technologists have been working alongside mortgage lenders to take paper out. As the industry ramped up to the historic mortgage boom that brought us out of the last century, loan files grew to three-inch thick manila file folders, filled with documents. It was enough and lenders began, in earnest, to adopt electronic processes.

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Today, the federal government and secondary market investors are pushing lenders to submit more of the data involved in each transaction to them in digital format. Lenders are working hard to comply and since the deals are now almost entirely paperless, more of them are eager to submit information to the county recorder’s office in electronic form as well.

The financial services industry has earned a reputation for being slow to adopt new technologies that threatened established risk mitigation protocols, which were all based on paper documents. Consequently, moving away from paper has been a struggle here. Much of the problem springs from the fact that older processes that were initially designed to enforce compliance were protected by executives tasked with maintaining compliant organizations. The more serious the penalties for non-compliance became, the more difficult it was to abandon processes that had worked in the past in favor of untried methodologies, even when they carried with them all of the advantages of paperless processing.

But part of the problem was also the result of consumers who were uncomfortable with the prospect of leaving a closing room without a stack of paper to represent the massive debt they had promised to repay. There seemed to be a sense of security hiding in that stack of paper, even though the foreclosure crisis belied that fact. When title companies began trying to reduce the paper load by keeping more of the documents electronic, they sent borrowers home with a CD-ROM filled with electronic loan documents to preserve that sense of security for the consumer.

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County governments, on the other hand, never needed to earn such a reputation. It came built in. These offices, many of which had been recording documents into the public record for hundreds of years, are famous for the giant paper books that line their vaults. Many of their procedures were established when the only technologies available were the complex locks on their vault doors. It should come as no surprise that many in the mortgage industry wondered if eRecording would even be possible.

eRecording is today one of the great success stories of the mortgage business. Of the hundreds of thousands of documents Nationwide Title Clearing handles for our clients each month, more than 70% are currently recorded into the public record completely electronically. Perhaps surprisingly to many, the nation’s county recorders have emerged as the heroes of the eRecording process and some of the strongest proponents of paperless lending.

Through our active support of organizations like the Property Records Industry Association (PRIA), we come in contact with these government officials regularly. Through our normal business operation, we interact with them daily. We asked county recorders what, if anything, was still posing problems for eRecording and what they felt was the outlook for this part of the business. What we learned is the subject of this White Paper.

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The Steady Advance of eRecording

In most parts of the country, county governments are steeped in tradition. Doing things the way they’ve always been done provides a sense of stability to communities at the same time it preserves a historical tradition that county residents tend to take pride in. There is a strong impetus to resist change. This led many early proponents of all-electronic mortgage lending to assume that the “final mile” from the closing table to the county recorder’s office would be the most difficult terrain the industry would have to overcome to finally get the paper out of its processes. It didn’t work out that way.

Today about 1,300 counties are active eRecording jurisdictions, or about one third of all U.S. counties. While that may seem like the shorter part of the journey, those 1,300 counties are home to about 80% of the U.S. population, meaning that we’re almost there. While a number of different technologies are in use at the various

recorder's offices, the vendors that serve up electronic documents for recording on behalf of the mortgage industry are well versed in their use and requirements.

Unlike mortgage lenders, who had to overcome their fear of compliance mistakes before they could fully embrace the idea of a paperless loan closing (and some argue that until the CFPB made the push for eClosings, traditional lenders still refused to fix a system that wasn't technically broken), county recorders had no

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inherent objection to eRecording, as long as it supported their traditional function. In fact, recorders found plenty of advantages to going digital.

First, it allowed their offices to accept documents for recording anytime, even after business hours or on weekends. No longer was it necessary for the recorder to staff its office for peak times (end of month) or run the risk of errors when a flood of paper documents were brought in at the same time.

eRecording streamlines the recorder's workflow, allowing them to do more work in a fraction of the time at the same time they are reducing errors. More importantly to county governments, it reduces payment errors, which often forced recorders to send staff in search of relatively small payments, taking time away from other important work.

For lenders and mortgage servicers, eRecording improved document security by keeping the original documents with the

companies. In addition, it has significantly reduced both the time it takes to record a document (the time gap for recording) and the speed with which errors can be corrected so the corrected document can be recorded.

In hindsight, and given all of the advantages attributed to eRecording, perhaps the industry should have viewed county recorders as allies from the beginning- and some actually did.

County Recorders: Unexpected Allies

“PRIA put us, for the first time, in a position of partnership with the county governments”

Nationwide Title Clearing has been a major supporter of PRIA since the beginning. This organization brought together financial services companies and county government officials to work through problems plaguing the public records industry. From the beginning, it was clear that this would be an important organization.

“PRIA put us, for the first time, in a position of partnership with the county governments,” said Myron F. Finley, NTC’s Chief Legal Officer and co-chairperson of PRIA’s Business Processes and Procedures Committee. “It was clear to me very early on that many county recorders would not only be instrumental in moving our industry toward electronic recording but also great allies in that work.”

The stories told of county recorders rejecting the concept of eRecording were overblown, Finley said. While it is likely that some recorders who were working in counties where the prospect

of investing in a technology platform was daunting looked at the prospect as an unnecessary burden, that attitude was far from universal.

“We've been eRecording since 2004; we were an early adopter,” said Carol Foglesong, Assistant Comptroller for the Records Administration Division of the Orange County Comptroller's Office in Orlando, Fla. Foglesong, a 25-year industry veteran, pointed out that eRecording has offered some very attractive

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benefits to her staff and to the people who send documents for recording into the public record. “[eRecording] works. It is very helpful to a recorder hoping to build their relationship with the people sending them documents.”

According to Foglesong, a mistake on a document sent to the recorder on paper would require her staff to draft a letter, put it into an envelope with the incoming document and snail mail it back. Even when the documents are right, it takes her staff, on average, about 15 minutes per paper document to complete the recording process. With eRecording, the documents can become part of the public record in less than a minute. If there is a problem, she can send a message back electronically, get a corrected document and still get the document recorded the same day.

The Friction that Remains

Even with all of the benefits to be gained by eRecording, there are still barriers to overcome. With friction still in the system, we

decided to speak to county recorders to find out about the most common errors and problems they encounter.

Payment Processing

Perhaps not surprisingly, one of the most important problems for county government is making sure payments are processed correctly. Most documents do not cost a lot to record, which makes it very expensive for staff to go in search of payment. Counties that have switched over to primarily electronic recording process their payments through direct connections to their customer's bank

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account using ACH. One issue that comes up, especially for companies that file a lot of documents, is having the daily ACH limit set too low. If the recorder reaches the limit before all of the documents are recorded, the process must stop.

Incorrect Consideration

In many states, part of the recording fee is tied to the consideration paid for the real estate transferred. In Florida, for instance, if the consideration for a \$100,000 property is incorrectly input into the electronic filing system as \$1 million, it can lead the recorder's office to charge much more than the company expects for doc stamps. That can be an unwelcome surprise Foglesong says. She says her office is behind a proposed legislative change that would lead to a flat fee for recording, but until that happens she urges document preparation firms to double check everything before sending it through for recording.

“I understand that a flat recording fee would be a wonderful thing,” she said. “I want that just as bad as anybody else, but we don't have it yet. And it's not happening this legislative session in Florida.”

Image Quality

Unlike paper documents that come into the recorder's office, where the pages can be duplicated carefully and then stacked in the right order for the record, electronic documents must be taken as they are sent. Sometimes this results in public records that are not as easy to read or use as the recorder would like.

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“We have always been very concerned, as recorders, about getting the best image that we can because we're archiving it forever,” said Joan A. McCalmant, Recorder/Registrar Vital Statistics for Linn County, Iowa, where around 50% of the documents recorded are handled electronically. “I don't think that some lenders understand how important it is that we get a good image. With paper, we have the ability to rescan things or flip pages. With electronic documents, we have to take it the way it's presented. That's important because some day, maybe 50 or 100 years from now, someone may need a copy from the public record and the image won't necessarily be the quality that we would prefer to have.”

Missing Documents

In some jurisdictions, the documents the industry wants to have recorded are not the only documents county officials need to see in order to get the job done. For instance, in Tennessee, the county recorder must have a certificate of authenticity attached to every single document sent for electronic recording.

According to Kimberly LeGate, Chief Deputy of Operations in the Davidson County Register of Deeds office in Nashville, Tennessee, too often these certificates are missing and the documents cannot be recorded.

“The solution, she says, is more education, and the sooner that happens the better.”

“We see that mistake made frequently, especially by firms that are new to eRecording,” LeGate said. “We can tell when a vendor has a new customer coming on because they just delete that page.”

This is the most common problem her office sees, she said, but there are also frequent cases where the legal descriptions or notary information are missing from the electronic documents and they must be returned.

The solution, she says, is more education, and the sooner that happens the better. That’s because eRecording is taking off in her county, after 10 years of offering eRecording capabilities. Over the past six months, her electronic recording volume has risen from about 30% of all documents to nearly 42%. Like the other

recorders we spoke to for this white paper, she said it was a welcome change.

The Dangers of Speed

In the days before eRecording, a company might realize that they had sent incorrect documents and call the recorder's office to stop those documents from being recorded. That's harder to do today because things move so quickly.

"It used to be that they could call and say, 'Oh, I sent this and I didn't want to record it right now. Can you just return it to me?' and if we could catch the documents in the mail we could do that.

"We walk that delicate line separating not wanting to refuse documents on one hand and getting in trouble for not rejecting them in the other."

But electronically, the time frame offers us almost no chance for that," McCalmant said. Holding documents back carries with it risks as well.

"We walk that delicate line separating not wanting to refuse documents on one hand and getting in trouble for not rejecting them on the other," she said. "If we don't reject them and they're wrong, they have to pay to have them re-recorded. We've done a pretty good job in the past of finding mistakes and catching them before they get into our index, but mistakes happen sometimes, and then people are unhappy. It just happens faster now because we're recording electronically."

McCalmant urges submitters to remember that when they hit the send button, it's very likely that the documents they've sent will get recorded.

Trusting Recorders to do Their Jobs

The recorders we spoke to were pleased that their state governments had not seen fit to lay down much legislation relating to the completion of their work. Fewer laws makes it easier for them to work, but the few laws they do have are rigidly adhered to.

“From the first baby steps we took into eRecording, my mantra has been ‘If we don't do it in the paper world, we don't do it in the electronic world,’” Foglesong said. “On paper document, you don't tell us how to index it. That's our job. So why in an electronic world would I expect the submitter to index it for me? They're never going to know that in Orange County you put trustee last, and in Lake County you put trustee first.”

“If we don't do it in the paper world, we don't do it in the electronic world.”

In addition, in Florida Foglesong says you need to notarize your deed and get two witnesses, so she urges companies to do that, not spend time trying to explain why they don't think they need to do that.

“Recorders are not generally lawyers,” she admits. “I can't even hire attorneys. I'm paying clerks. But, boy, we've read our paltry few lines of state law a lot more than anybody else. Don't come up against me on my law.” Good advice!

Basic Communication

Even though more of our work is moving from the mortgage industry to the county recorder's offices, good communication between our offices is still vitally important. McCalmant tells

stories about jobs gone wrong due to simple communication problems.

“As familiar as our customers are with their own forms and documents, they sometimes fail to put themselves in the shoes of someone who's just for the first time looking at a document and looking for certain information,” she said. “Sometimes it's difficult to find the information that we need to get into our system. Just don't assume that we know your forms and where everything is.”

What may sound like a simple problem becomes more serious when you realize that eRecording takes place very quickly and mistakes that require re-recording at the industry's expense can occur.

“The conversation back and forth...helps us both realize what we do that drives each other crazy.”

“Our customers are submitting documents nationwide and I know that all of the states have different rules,” McCalmant said. “I know the code in Iowa and what we have to index. That's information a submitter should know so they know what we're looking for, but I also have to realize that there are a lot of other people out there than just Iowa recorders. I think the conversation that you have back and forth between each other is very important because it helps us both realize what we do that drives each other crazy.”

Foglesong agrees and says the best way to avoid communication problems is to send someone down to the recorder's office. “Once you see somebody's face, it's harder to get angry. But it also means

that you have somebody to call. Calling when you have questions re-establishes that personal connection with people.”

A Promising Future

The future of our industry is digital and so it’s in our best interest to work effectively with the county recorders who are tasked with getting our documents into the public record. Fortunately, this relationship need not be adversarial.

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“Pick up the phone and call or email us if you have a question or concern,” McCalmant said. “I know everybody's happy to answer questions, to get back to you, whatever we can do to make it easier. We're all in this together.”

Foglesong echoed that sentiment, saying, “The recorder isn't your enemy.” But she also issued a warning. “We are not now and haven't ever been the document police. Don't expect us to find or correct your mistakes. If you give it to me and you pay me, we're recording it.”

That may be the best reason to work with firms like Nationwide Title Clearing who make it our business to get your documents right before they are recorded. We have great relationships with recorders across the country. But don’t take it from us. Theresa J. Greene, Recording Supervisor in the office of the Ferry County Auditor, Republic, Washington, put it like this in a recent note she sent to Nationwide Title Clearing:

"Just wanted to let you know: very seldom do we receive a document from your business that is unrecordable and must be returned. I appreciate that so much! It makes our job easier when we don't have to call about or return documents. Thank You!"

In fact, a recent internal study found that less than one tenth of one percent of the documents prepared for recording by NTC are rejected by county recorders, giving us an unprecedented 99.9% county compliance rate. Find out more about how Nationwide Title Clearing can help you get your documents eRecorded correctly the first time and every time.

About the Author

Danny Byrnes is Vice President of Sales for Nationwide Title Clearing since March 2013. He previously spent two very successful years as the Director of Sales. He currently oversees 23 seasoned account executives in the Sales and Client Relations Division and has been instrumental in growing NTC's revenue by 350% since his career started at the company. Danny also has deep technical aptitude about the technology sector, spending nine years in the industry as a sales representative and senior executive for several specialty software companies. Since becoming NTC's VP of Sales, Danny has helped broaden the scope of services NTC offers by initiating and customizing solutions for clients. NTC has doubled the number of services it offers since Danny joined the team. His knowledge about complex sales and product management is invaluable to NTC.

About NTC

Nationwide Title Clearing, Inc. (NTC) is a privately-owned leading research and document-processing service provider to the residential mortgage industry that has been working successfully with County Recorders for 25 years. No one has better information about what the various recorders specifically need to see to eRecord documents correctly.

NTC services over 100 mortgage lenders, servicers and investors, including eight of the top 10 residential mortgage servicers in the country, resulting in an expansion that is also tied to its contribution to its industry and its local community. We perform most research and document-related work in house, but also maintain and utilize a national network of abstractors. Our advanced technology is used effectively by our highly trained staff of customer service and compliance experts.

NTC ranked as a Top 100 private employer in Tampa Bay in 2015, and number 3,108 on the 2015 Inc. 500/5000 list of fastest-growing companies in America. NTC has also won a Top 100 Workplace Award from the Tampa Bay Times, five times in its history. Recently, the company achieved a 99.9% statutory compliance rate for documents it handles for its clients.

For more information, visit our website at www.nwtc.com.

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