

A Status Report: On-Line Images and E-Filing of Land Documents in Oklahoma

By Kraettli Q. Epperson



Kraettli Q. Epperson is associated with Rolston, Hamill, Epperson, Myles & Nelson, P.A., conducting his law practice in Oklahoma City, Oklahoma, focusing on real property litigation (ownership and lien issues), real property acquisitions, and homeowners/condominium association representation. He has practiced law since 1979. Mr. Epperson is Chairman of the Title Examination Standards Committee of the Real Property Law Section of the Oklahoma Bar Association. He also serves as an Adjunct Professor of Law teaching Oklahoma Land Titles at the Oklahoma City University School of Law, and frequently publishes and writes on real property law issues. Mr. Epperson has received awards for his writing and lectures. He also taught the Real Property portion of the Oklahoma Bar Review between 1998 and 2004. Mr. Epperson is a contributor to the annual update for *BASYE, CLEARING LAND TITLES*, and is the General Editor of and a contributing author to *VERNONS 2D: OKLAHOMA REAL PROPERTY FORMS AND PRACTICE*. He also conducts an annual survey of all fifty states to determine the state of their Title Examination Standards.

I. Introduction

The purpose of this article is to share information on several matters which will inevitably affect real estate transactions in every state, including: (1) how to access public real property information and images of documents available on-line

(using examples from the Oklahoma County and Tulsa County Clerks); and (2) the next frontier regarding e-imaging and e-filing of real estate documents.

There are efforts underway in various states concerning these issues. Your author is eager to learn more about each state's experiences, so that such information can be shared nationwide. You are invited to send e-mail to the author at kqelaw@aol.com and to visit his website at www.eppersonlaw.com. Though of nationwide interest, these developments are inherently a matter of local law. This article uses developments in Oklahoma for illustrative purposes. The information provided here is from both Oklahoma and Tulsa Counties although similar initiatives are under way in other states.

II. How to Access On-Line Images of Land Documents

A. Images in Oklahoma County (*i.e.*, the Oklahoma City Area)

From April 1991 through the current date all real property documents which have been filed in the office of the Oklahoma County Clerk (currently Carolyn Caudill) have been scanned and stored in digital image form, rather than being photocopied and stored as hard copies in books. From May 1994 through the present time, the indexes for accessing the documents (both grantor/grantee and tract indexes) have also become computerized and are no longer kept—in a go-forward basis—in paper form.

Starting in April 1999, whenever an original real property document was handed to the county clerk's staff at the counter for filing, the document was not kept but was immediately scanned into digital form and the original was returned

to the waiting customer. The returned document included appropriate recording information printed on its face. If the document was received by mail, it was scanned and stamped, and the original was promptly mailed back.

These initial steps resulted in the reduction of the County Clerk's expenses relating to: (1) the cost of space and supplies arising from preparing, storing and maintaining increasing numbers of hard copies of documents and paper indexes; and (2) salaries and postage for processing and mailing back original documents.

Both the indexes and the images of the documents have been available on computers located in the County Clerk's office since May 1994, which is the date the County Clerk stopped adding paper copies of documents and indexes to the system. As of August 1998, the County Clerk made the indexes available on-line to remote users through the County-wide website.¹ However, the remote on-line information did not include an image of any documents, as document images could only be accessed on the publicly-accessible computers physically located in the County Clerk's office.

The newest step which has recently been taken by the Oklahoma County Clerk is the addition of the digital images of all documents (post-1991) to the indexing information already available remotely on-line. These images became available on May 27, 2004. The pre-1991 images and indexes are being added to the system though a third-party vendor contract, and they should be available by January 1, 2006 (*i.e.*, all the way back to "Book 1"). An initial partial batch of new

1. See: www.oklahomacounty.org >>then select>> "Mortgages/Deeds."

images and index information was made available in March 2005.

The process that an attorney or other interested party can use to review the on-line index and look at the on-line document images is described below. It should be noted that—at this stage—while the images of the documents can be viewed and can be printed on one's own remote computer, according to Oklahoma County Clerk Carolynn Caudill there are unanswered questions about the legality of providing "official" or "certified" copies without charging for them. Therefore, the copy that one can save or print on one's own computer will include the words "NOT AN OFFICIAL COPY" stamped across the face of each document page. While the copies are certainly adequate to review and place in one's file, one will still have to go to the County Clerk's office and pay in order to obtain a "certified copy." The County Clerk's office wants to develop a means whereby a "certified copy" can be provided electronically, now that the clarifying legislation included in Oklahoma HB 2195 went into effect November 1, 2004, allowing electronic payments.

These images are available on-line at <http://landrecords.oklahomacounty.org/landrecords>. Because this system is new, there will certainly be software and data "glitches" to be identified and remedied. The Oklahoma City Real Property Lawyers Association and the Oklahoma Bar Association Real Property Law Section Title Examination Standards Committee were enlisted to be among the early testers of this new on-line imaging system and to provide prompt professional feedback. In order to assist with the "problem identification" process, interested parties are encouraged to note any problems and then e-mail Brett Maughan at cbremau@oklahomacounty.org. The County Clerk's staff can then work on the "problem remediation" process.

Oklahoma County has entered into a software sharing agreement with Oklahoma State University (OSU) to allow OSU to facilitate sharing with other counties the software that Oklahoma County staff developed for imaging their

documents. Such sharing with other county clerks will reduce the cost for smaller counties to begin imaging their documents.

B. Images in Tulsa County (*i.e.*, the City of Tulsa Area)

Tulsa County has images of its property documents in a digital image form starting with February 1934 and continuing to the current date. The computerized index allows searching by seven different methods from 1979 to the present (*i.e.*, (1) document type, (2) grantor, (3) grantee, (4) legal description, (5) condominium name, (6) book/page, and (7) document reception numbers). All of this information is being captured on a go-forward basis for use in the indexes. Tulsa County is gradually adding older omitted images and earlier omitted index information, as staff time permits.

Access to these indexes is available in the Tulsa County Public Libraries, and access to printable indexes and printable document images is available in either the Tulsa County Clerk's office or on-line at a remote computer location through a dial up system. Access to the dial up system requires the user to enter into an agreement to pay a flat monthly fee for access, with an additional charge being made if the number of times that the web site is used during a month exceeds the maximum allowance or if any images are printed. The images printed at a remote location are not "certified."

For more information on the Tulsa County system, contact Dorise Emery at the Management Information Systems Department of the Tulsa County Clerk's office at (918) 596-5206.

III. Where We Are Going Next?

A. Court Filings by Electronic Means

The next step in this process is the initiation of the on-line electronic filing of real property documents (*e.g.*, deeds, mortgages, easements, restrictions, statements of judgment, decrees, etc.).

The usual preliminary step, which occurs before a system is implemented whereby electronic images of paper documents and electronic versions of non-paper documents can be filed electronically, appears to be the on-line availability of indexes/dockets and images of the documents.

The Oklahoma Supreme Court is working with numerous county District Court Clerks to put their dockets and eventually images of all the court documents themselves on-line to be available to the general public.² Access to court dockets is currently available for thirteen of the seventy-seven counties in Oklahoma through the Oklahoma Supreme Court system, and another 47 are available through an alternative system known as "Kell Pro, Inc." For instance, the County Court Clerk for Oklahoma County (currently Patricia Presley) has the court dockets available on-line remotely for Oklahoma County and is in the process of placing the images on-line remotely. Currently images of the probate division pleadings and some of the regular civil division pleadings are available on-line remotely. All of these dockets and images are only available on a go-forward basis at this time, with the starting dates varying from county to county.

Duplicates (*i.e.*, photocopies and telecopies) of various court documents, such as signature pages from other counsel on motions and orders, are permitted by statute to be filed in district courts and this is regularly done in Oklahoma County. Title 12 Okla. Stat. section 2005(E)(2) provides:

A duplicate of any paper shall be acceptable for filing with the court and shall have the same force and effect as an original. For purposes of this section a duplicate is a copy produced on unglazed white or eggshell paper by mechanical, chemical or electronic means, or by

2. See: www.oscn.net >> then select >> "COURT DOCKETS."

other equivalent technique, which accurately reproduces the original. A duplicate that is acceptable for filing shall not be refused because any signatures thereon are duplicates. A carbon copy shall not be considered a duplicate for purposes of this section.

While there is statutory authority for the electronic filing of documents in the Oklahoma Supreme Court and county-based District Courts, this has not been implemented. *See* Title 20 Okla. Stat. section 3004:

The Supreme Court is authorized to provide for electronic filing of documents in the Supreme Court and the district courts. The Administrative Office of the Courts shall promulgate rules for the filing of documents transmitted by electronic device. Rules for electronic filing must have the approval of the Supreme Court.

And *see* Title 12 Okla. Stat. section 2005(E)(3):

Papers may be filed by facsimile or other electronic transmission directly to the court or the court clerk as permitted by a rule of court. The Administrative Office of the Courts shall promulgate rules for the district court for the filing of papers transmitted by facsimile or other electronic transmission device. Rules for facsimile or other electronic transmission filing must have the approval of the Supreme Court.

On and after May 1, 2004, all filings with the U.S. District Court for the Western District of Oklahoma (*i.e.*, Oklahoma City) are required to be done electronically, in "PDF" format (*i.e.*, portable document format).³ Since February 1,

2005 attorneys have been able to file documents electronically in the Northern District (*i.e.*, Tulsa); the Eastern District (*i.e.*, Muskogee) began electronic filing in the summer of 2005.

B. E-Filing of Land Documents in Oklahoma

1. Introduction

Apparently acting in response to pressure at both the national and state levels from lenders, federal legislation mandating the acceptance of electronic real property documents (including both images of paper copies transmitted electronically and electronic images of documents that never existed on paper) for filing in the local land records has been adopted, and companion state legislation has been promulgated and adopted as well.

On June 30, 2000, President Clinton signed the E-SIGN Act.⁴ One commentator observed that the enactment of this federal law was intended: (1) to encourage each state to adopt some version of the Uniform Electronic Transaction Act (UETA) in order to foster uniformity among the states concerning electronic commerce; and (2) to serve as interim legislation for each state until that state adopts the UETA.⁵

In order to serve as interim "state legislation," the E-SIGN Act is effective in every state except where: (1) the state has adopted the UETA; or (2) the state has enacted some other statute that will "specify alternative procedures for using electronic signatures to establish the validity of the contracts, agreements or records."⁶

The initial Oklahoma legislation dealing with e-commerce was adopted in 1998 as the Oklahoma "Electronic

Records and Signature Act of 1998,"⁷ but it excluded real property documents from its coverage. Title 15 Okla. Stat. section 963(B) provided: "This act shall not apply to...3. Rules of law relating to mortgages, conveyances, surface and mineral leases, rights-of-way, and easements of real property."

Oklahoma enacted the UETA in 2000 (the OKUETA), replacing the OKERSA.⁸ Unlike the earlier OKERSA, the OKUETA does not expressly exclude real property transactions from its coverage,⁹ although it does exclude any transaction covered by "a law governing the creation and execution of wills, codicils, or testamentary trusts."¹⁰ While the newer OKUETA authorizes a state or local governmental agency or subdivision to use or to permit the use of electronic records or electronic signatures, the act does not require it.¹¹ Thus the OKUETA authorizes but does not mandate acceptance of electronic documents and filings by county clerks.

The National Conference of Commissioners on Uniform State Laws (NCCUSL) has drafted a new uniform act to supplement the UETA, for real property. This new act is entitled the Uniform Real Property Electronic Recording Act (URPERA), and was adopted by the NCCUSL at its 2004 annual meeting on July 30–August 6, 2004. The precise language of the version quoted below is from the 2004 NCCUSL Annual Meeting draft and is subject to revision by the NCCUSL Committee on Style.

According to the explanation of this new Uniform Act (URPERA), as provided by NCCUSL:

The Uniform Real Property Electronic Recording Act, approved by the National Conference of Commissioners on Uniform State Laws,

7. Title 15 Okla. Stat. §§ 960 *et seq.* (OKERSA).

8. The Oklahoma Uniform Electronic Transactions Act, Title 12A Okla. Stat. §§ 15-101 *et seq.*—OKUETA.

9. Title 12A Okla. Stat. § 15-101(21).

10. *Id.* § 15-103(b)(1).

11. *Id.* § 15-118.

3. *See* www.okwd.uscourts.gov, 12A Okla. Stat. In Oklahoma, by nonuniform UCC provision, the central UCC Article 9 filing system is operated by the Oklahoma County Clerk. Title 15 Okla. Stat. § 136(4); Title 15 Okla. Stat. § 4(A) (filing of real property documents, *e.g.*, deeds, mortgages, easements, restrictions, statements of judgment, decrees, etc.).

4. 15 U.S.C. §§ 7001 *et seq.*

5. Julie R. Caggiano, *Electronic Signatures—E-Sign of the Times*, 56 Consumer Fin. L. Q. Rep. 142 (2001).

6. *See* Caggiano, *id.*; *see also* Donald C. Lampe, *The Uniform Electronic Transactions Act and Federal E-SIGN Law: An Overview*, 55 Consumer Fin. L. Q. Rep. 255 (2001).

was drafted to provide a uniform and consistent framework for bringing recordation into the modern electronic era. The act authorizes, but does not require, the receipt, recording and retrieval of documents and information in electronic form. Its basic principle is that requirements of state law describing or requiring that a document be an original, on paper or in writing, are satisfied by a document in electronic form. Furthermore, any requirement that the document contain a signature is satisfied by an electronic signature. The act also establishes a state electronic recording commission that is charged with adopting standards for the receipt, recording, and retrieval of electronic documents.

The URPERA only contains eight sections (namely: (1) Short Title; (2) Definitions; (3) Validity of Electronic Documents; (4) Recording of Documents; (5) Uniform Standards; (6) Uniformity of Application and Construction; (7) Relation to Electronic Signatures in Global and National Commerce Act; and (8) Effective Date). The URPERA contains fewer definitions than the UETA, and relies heavily on the assumption that the details for the operation of the URPERA will be developed outside the Act through a state-level "electronic recording commission." The URPERA continues the UETA theme of facilitating rather than forcing the acceptance of e-filing of real property documents.

In Oklahoma, in 2003–2004, the state legislature established an "Electronic Commerce Task Force" with a Subcommittee assigned to consider the "Electronic Filing of Land Records." The Oklahoma County Clerk,Carolynn Caudill, was appointed as the Subcommittee chair. The Subcommittee met several times in 2004, and addressed two goals, including one calling for the drafting and passage of legislation to facilitate the filing of land records by electronic means. Such state legislation was enacted and was ef-

fective November 1, 2004 (Enabling Legislation).¹²

The Oklahoma Enabling Legislation authorizes (but does not require) any county clerk to accept an electronic document, presented in compliance with the state's Uniform Electronic Transaction Act (the OKUETA), for filing.¹³ The Enabling Legislation makes it clear that the Oklahoma Secretary of State: (1) is required to promulgate rules and regulations and to "register" each "certification authority" which in turn can issue a certificate for a "digital signature" (not to be confused with an "electronic signature") to encapsulate and encode the documents being submitted for recording; (2) has no affirmative duty to ensure that such documents have been transmitted by an authorized sender; and (3) the Enabling Legislation expands the types of payment that the county clerks can accept to pay for recording fees and other charges as part of the process of accepting electronic documents for recording.¹⁴ As of the this writing, the Secretary of State has not indicated any intent to promulgate such rules and regulations.

2. Oklahoma County

The Oklahoma County Clerk has implemented, as of July 2001, a system whereby the County Clerk acts as the statewide recorder which processes the on-line filing of Uniform Commercial Code (UCC) Article 9 financing statements (form UCC-1) encumbering personal property under Article 9.¹⁵ The County Clerk relies on the OKUETA and the recent UCC Article 9 revisions for statutory authority to allow this electronic-filing of notice of UCC-1 financing statements, facilitated in part due to the lack of a need for the UCC-1 financing statement to be signed by the

debtor under the recent Article 9 revisions. Such UCC-1 electronic filings have grown to constitute about thirty percent of the total.

While the implementation of this UCC filing system has given the Oklahoma County Clerk significant experience in implementing an electronic filing system, the filing of real property documents presents an additional host of unique challenges not applicable to the UCC operation.

The Oklahoma County Clerk has indicated an intention to focus initially on the easier and simpler aspects of electronic real estate filings, involving the transmission (*i.e.*, by e-mail) of a scanned image of a real property paper document which exists in paper form outside the County Clerk's office, and which includes the grantor's actual physical signature and the notary's actual physical signature and seal. The next and more complicated major step will be to create and to file a document that does not exist in paper form anywhere, and therefore is not in writing and does not have the traditional grantor's signature and notary's signature and seal on it. Instead, the document would exist only in electronic form on someone's computer/server with a series of unique code numbers (*e.g.*, a grantor's and notary's name and personal identification number, or PIN) "associated with it" which allows for the signature and an acknowledgment to be imprinted on the document (when viewed or printed) looking just like the original signatures would appear.

Oklahoma County is moving with deliberation towards initiating the electronic filing of real property documents. The County Clerk's office has a new procedures manual, which has been approved by the County's District Attorney and the three Oklahoma County Commissioners. Such procedures will also be filed with the Oklahoma Secretary of State. Such diligence is regarded as necessary due to the newness of the untested OKUETA language. At this writing the Oklahoma County Clerk is also working with the Oklahoma Tax Commission to test the electronic filing of Tax Warrants.

12. HB 2195.

13. Title 19 Okla. Stat. § 298.1, as amended.

14. Title 28 Okla. Stat. § 32.3.

15. As noted *supra* at note 3, in Oklahoma, by nonuniform UCC provision, the central UCC Article 9 filing system is operated by the Oklahoma County Clerk.

3. Tulsa County

Tulsa County has already started the process of accepting electronic real property documents, as of late 2004. Tulsa County is using a third party vendor (ACS) as the intermediary. ACS enters into agreements with document originators (e.g., title companies and national and local lenders) who transmit images and template information (for indexing the document) to ACS which in turn electronically transmits the same information to the Tulsa County Clerk for filing. Tulsa County files the image of the document and then returns an image of the document showing the recording information to ACS, which forwards the image of the recorded document to the originator.

At the present time, Tulsa County is receiving about five-to-ten documents per day in electronic form, and county officials are hopeful that these numbers will increase when the software used to communicate between ACS and the originators of the documents is revised to become less labor intensive (i.e., requiring less keyboard entering of template information).

Tulsa County apparently has overcome at least one of the problems still burdening Oklahoma County. Those using the Tulsa County system can print a multi-page document without printing each screen separately, as is required in the Oklahoma County system.

4. General Laws in Effect

The Oklahoma Statute of Frauds requires real property contracts and conveyancing documents to be in writing and subscribed. For example, Title 15 Okla. Stat. section 136(4) provides:

The following contracts are invalid, unless the same, or some note or memorandum thereof, be *in writing and subscribed* by the party to be charged, by an agent of the party or by a single-party broker of the party pursuant to Sections 858-351 through 858-363 of Title 59 of the Oklahoma Statutes:

- 4. An agreement for the leasing for a longer period than one (1) year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent or a single-party broker of the party sought to be charged, is invalid, unless the authority of the agent or the single-party broker be *in writing, subscribed* by the party sought to be charged.¹⁶

And see 16 Okla. Stat. section 4(A):

No deed, mortgage, or conveyance of real estate or any interest in real estate, other than a lease for a period not to exceed one (1) year, shall be valid unless *in writing and subscribed* by the grantors. No deed, mortgage, or contract affecting the homestead exempt by law, except a lease for a period not exceeding one (1) year, shall be valid unless *in writing and subscribed* by both husband and wife, if both are living and not divorced, or legally separated, except as otherwise provided for by law.¹⁷

An acknowledgment is required on a real estate document for it to be filed of record. Title 16, Section 15 provides:

Except as hereinafter provided, no acknowledgment or recording shall be necessary to the validity of any deed, mortgage, or contract relating to real estate as between the parties thereto; but *no deed, mortgage, contract, bond, lease, or other instrument relating to real estate* other than a lease for a period not exceeding one (1) year and accompanied by actual possession, *shall be valid as against third persons unless acknowledged and recorded as herein*

provided. No judgment lien shall be binding against third persons unless the judgment lienholder has filed its judgment in the office of the county clerk as provided by and in accordance with Section 706 of Title 12 of the Oklahoma Statutes.¹⁸

Does the OKUETA override these statutory requirements for a handwritten signature and a handwritten acknowledgment? It would seem clearly so, but to avoid any doubt or arguments about such issues, it might be helpful to adopt further state legislation (such as the URPERA) or administrative procedures (via the Secretary of State) designed to explain what can be accepted as an appropriate electronic representation for signatures and acknowledgments, especially in the context of creating acceptable abstracts of title, and designing title examination procedures and standards for reviewing such records. If, for example, unique code numbers are used to confirm who signed a document, and are expected to be private and secret to ensure the avoidance of abuse, such as identity theft, how can the public or the title professionals confirm that the right person signed the document? The impact on title plants, abstracts of title, and title insurance, arising from the use of electronic documents may also need to be explored as well.

The tides of progress may lead to faster transactions and more convenience in avoiding traveling to distant sites to sign and record and examine real property documents. However, the right structure needs to be put in place to avoid both confusion in the daily implementation process, and to protect against transaction fraud and identity theft.

16. Title 15 Okla. Stat. § 136(4) (emphasis added).

17. Title 16 Okla. Stat. § 4(A) (emphasis added).

18. Title 16 Okla. Stat. § 15 (emphasis added). See also Title 16 Okla. Stat. § 16.

**IV. Accessing Document Images
On-Line in Oklahoma County**

Step 1: Access your on-line service and type in: www.oklahomacounty.org/landrecords.

Step 2: On the "log-in" page, enter your user name and your password, if you have used this system before, or enter your user name and create and enter your password, and, click on "create a new account," and, on the next screen, enter

the requested information to create your account. The account is self-creating and there is no charge to use the system.

Step 3: Thereafter, review and click through the next two screens to pick the department ("registrar of deeds public access"), and to pick the search criteria ("grantor/grantee or subdivision," or "grantor/grantee or unplatted," or "search by document number," or "search by book and page").

Step 4: On the next screen fill in the requested search information, and, then, if the next screen provides multiple names to choose among, click on the appropriate names, to narrow the search.

Step 5: Review the listed document(s) and click on either the document number for a "full document display" of information, or on the image icon next to the document number for a view of the document itself.
