

Staff Report

TO: Criminal Justice Committee
Board of Commissioners

FROM: Karen R. Jackson

DATE: Wednesday, November 06, 2019

RE: For the Work Session Agenda November 19th, 2019

BACKGROUND

The Register of Deeds Office has been electronically recording documents via ERX, a third party vendor, since 2011. Title companies, attorneys, lenders, and other trusted entities contracted with an electronic recording vendor like EPN, CSC, or Simplifile to submit documents to the appropriate county. Those documents were then routed through ERX and finally submitted to Isabella County. Kofile, our new software vendor, allows EPN, CSC, and Simplifile to submit directly to Isabella County avoiding third party issues. In order to move forward with this process, I need approval for the Simplifile Memorandum of Understanding.

ALTERNATIVES

1. The board approves the Memorandum of Understanding authorizing the board to sign the same. Isabella County continues to offer electronic recording.
2. The board decides not to approve the Memorandum of Understanding. Isabella County will no longer be able to provide this service.

FINANCIAL IMPACT

Isabella County Register of Deeds records over ten percent of our yearly documents electronically each year.

OTHER CONSIDERATIONS

Electronic documents are much less disruptive to the Register of Deeds and Treasurers Offices.

RECOMMENDATIONS

1. Move to approve the Simplifile Memorandum of Understanding and have the chairman of the board to sign the same.

ATTACHMENTS

Simplifile Memorandum of Understanding with 3 signature pages

Electronic Recording Procedures

MEMORANDUM OF UNDERSTANDING AGREEMENT

This Electronic Recording Procedures Statement is dated _____ by and between Receiver, the government office of Isabella County, Michigan located at 200 N Main Street, Mt. Pleasant, MI 48858, and SIMPLIFILE LC, a submitting e-recording vendor, incorporated in the State of Utah, with its principal place of business located at 5072 North 300 West, Suite 300, Provo, Utah, 84604 (mailing address same).

This document outlines the procedures and rules for the trusted relationship between Simplifile and Receiver to facilitate a safe and secure Electronic Recording relationship. Simplifile will be delivering documents to Receiver from Simplifile's customers herein known as Submitter.

Electronic Recording means the electronically-based submittal of documents by or through Simplifile to Receiver and electronically-based confirmation of recording from Receiver to Simplifile. Such transactions are categorized by levels of automation, described as follows:

Level 1. Submitter transmits scanned image copies of ink-signed documents to Receiver.

Level 2. Submitter transmits scanned images of ink-signed documents along with any required electronic indexing information to Receiver.

Level 3. Submitter transmits documents which have been created, signed and notarized electronically, along with any required electronic indexing information.

Within all of these levels, the document will be delivered as a pdf or tiff based on the Receiver's requirements. Upon receipt, Receiver performs an examination of the electronic document, then either completes the recording process or rejects the documents and returns them to Submitter as Rejected. After recording, the electronic document is returned to Submitter as Recorded, with the original recording information contained thereon.

Basic E-Recording Document Standards. Electronic recording permits documents to be prepared, signed and transmitted in electronic format, and electronically recorded documents shall be considered the "original" record of the transaction with the same intended legal effect as paper documents and, if any such document bears a digital or electronic signature, it shall be considered the same as paper documents bearing ink signatures. Electronic documents, compliant with state and federal e-sign legislation are acceptable for electronic recording. Simplifile and Receiver accept these electronic document protocols as standards for e-recording:

- (a) PRIA standards will be used.
- (b) Images will be in TIFF or PDF format, at Receiver's request.
- (c) Encryption will be 128-bit file and image encryption.
- (d) Receiver may provide requirements for indexing data.
- (e) Documents that do not conform to Receiver's recording requirements may be rejected.
- (f) Rejected documents will be returned to Simplifile in electronic format with the reason(s) for rejection.
- (g) Non-conforming fees and/or rejection fees will not be charged without first returning the unrecorded documents to Submitter to confirm acceptance of these fees prior to recording.
- (h) The rules for accepting, reviewing, and processing documents for recording are the same for electronic documents as with paper submissions.

simplifile[®]

Simplifile's Duties. Electronic recordings by or through Simplifile shall conform to the requirements of Receiver's program. Further,

- (a) Technical Coordination. Simplifile shall be responsible for coordinating all technical problems and issues between Receiver and Simplifile and its Submitter customer. There is no cost to the Receiver, from Simplifile, for any services provided by Simplifile for e-recording.
- (b) Reporting. Simplifile will provide detailed data of each recording sufficient to reconcile fees associated with any/ all documents submitted by Simplifile for electronic recording.
- (c) Payment of Recording Fees. Recording fees are determined by the County and shall be paid electronically via ACH, unless other arrangements have been made. All recording expense charged, as determined by the County, will be as required by Michigan law. Recording fees will be deposited into the County's account after business hours on the day of the recording, or as agreed prior to implementation.

Receiver's Duties. Electronic recordings by or through Simplifile will be processed by Receiver under the terms noted herein. Further,

- (a) Availability. Receiver shall process electronically submitted documents during normal business hours. Receiver will notify Simplifile of the daily cut-off time. Receiver will attempt to notify Simplifile of service disruptions.
- (b) General Provisions. The following provisions, to be incorporated into electronic recording processes by Receiver will ensure success of electronic recording.
 - I. Receiver will not reject documents due to incorrect indexing data provided by Submitter unless it affects the Receiver's ability to accurately calculate recording charges or verify the image. Indexing data is provided to Receiver as a courtesy, not a requirement of the e-recording process.
 - II. Receiver will make every effort to not void documents after they have been recorded and returned. If a document must be voided, Receiver will immediately notify Simplifile.
 - III. Receiver will notify Simplifile if there are changes in recording fees or recording requirements that might affect Simplifile or its Submitter customers.
 - IV. Receiver shall apply the same level of diligence and recording standards in handling electronic documents as apply to paper documents.

Implementation. During the implementation process, Receiver will provide Simplifile with information pertinent to the implementation of electronic recording, and will update said information as it may change from time to time. Any such information will be in addition to this agreement in support of the implementation of e-recording between Receiver and Simplifile. Said information may include:

- (a) Document Types to be accepted for Electronic Recording;
- (b) Recording or Indexing Requirements, if any;
- (c) Receiver's Recording Hours of Operations;
- (d) ACH account information and/or payment requirements.
- (e) Contact information for business, accounting and technical needs.
- (f) Up-to-date Fee schedule for all recording costs by document.

General Disclaimers: Neither Receiver or Simplifile shall be liable to the other for any damages arising from any delay, omission or error in any recording submitted by or through Simplifile. Both parties understand that there are no warranties, express or implied, in connection with e-recording except as written herein. Receiver disclaims any liability for information electronically transmitted to Receiver or any breach of security, fraud or deceit as a result of any electronic recording.

No Waiver of Governmental Immunity. Nothing contained herein waives any protections that may be applicable to Receiver or any of its elected or appointed officials, employees, or agents under any applicable statutes or regulations providing governmental immunity, protections, defenses or limitations on liability Receiver or such related parties that are provided by law.

No Third Party Beneficiaries. The enforcement of the terms of this Agreement and all rights of action relating to such enforcement shall be reserved to the parties of this Agreement.

Document conformity. Receiver shall be held harmless in any dispute concerning the accuracy, completeness and conformity to the paper originals of any documents electronically recorded.

No Infringement. Neither party shall attempt to hack, reverse engineer, inspect, copy, or use for any other purpose, any hardware, software, or digital data belonging to the other party or used in the electronic recording process.

Disputes. The parties shall attempt in good faith to resolve any controversy or claim arising out of or relating to electronic recording with Receiver through negotiation, followed by non-binding mediation, before resorting to litigation. Parties agree that this document shall be governed and enforced by the laws of (and within) the state in which the documents are e-recorded. All litigation arising from a contract issue shall be in the Courts of, and according to, the laws of the State of Michigan.

SIMPLIFILE LC has complied with all Michigan requirements in Michigan, including the designation of a Michigan Resident Agent for service of process, and that status will be maintained during the term of the contract.

EFFECTIVE the date written above.

RECEIVER: Isabella County, Michigan

By: _____
(Signature)
Name: George A. Green
(Printed)
Chairman of the Isabella County
Office/Capacity: Board of Commissioners

Karen R. Jackson

Isabella County Register of Deeds

Date: _____

Dated _____

SIMPLIFILE LC

By: _____

Name: _____

Office/Capacity: _____

Date: _____