

Electronic Recording Commission
Notice of Public Hearing to Adopt Rules

A public hearing will be held at the Electronic Recording Commission office, 211 East Prospect Avenue, Pierre, South Dakota, 57501 , on September 8, 2016, at 10:30 a.m., to consider the adoption and amendment of proposed rules numbered: § 22:03:01:01; 22:03:01:02; 22:03:01:03; 22:03:01:04; 22:03:01:05; 22:03:01:06; 22:03:01:07; 22:03:01:08; 22:03:01:09; and 22:03:01:10.

The effect of the rules will be to implement uniform standards for electronic transmission of certain documents to and from a register of deeds that has voluntarily elected to accept electronic documents for recording in accordance with SDCL Chapter 7-9A.

The reasons for adopting these rules are to implement uniform standards for electronic transmission of certain documents to and from a register of deeds that has elected to accept electronic documents for recording and carry out the provisions of SDCL Chapter 7-9A.

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the Electronic Recording Commission, 211 East Prospect Avenue, Pierre, South Dakota, 57501. Written comments must reach the Electronic Recording Commission office on or before the time of the scheduled hearing.

At the hearing, the Electronic Recording Commission will consider all written and oral comments it receives on the proposed rules. The Electronic Recording Commission may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Electronic Recording Commission at least 48 hours before the public hearing if you have special needs for which special arrangements must be made. The telephone number for making special arrangements is (605) 224-4554.

A copy of the proposed rules are posted on the South Dakota Association of County Official's website: <http://www.sdcounties.org/>. Copies of the proposed rules may be obtained without charge from the Electronic Recording Commission, 211 East Prospect Avenue, Pierre, South Dakota, 57501.

Published at the approximate cost of \$ _____.

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ARTICLE 22:03

ELECTRONIC RECORDING

CHAPTER 22:03:01

ELECTRONIC RECORDING IN COUNTY REGISTER OF DEEDS OFFICE

22:03:01:01 Definitions. Words and phrases defined in SDCL chapter 7-9A have the same meaning when used in this chapter. Terms used in this article and not otherwise defined in SDCL Chapter 7-9A mean:

- (1) “Delivery agent,” a party who has entered into an agreement with a participating register of deeds to deliver an electronic document from a submitter to a participating register of deeds and to return the recorded electronic document to the submitter;
- (2) “Electronic document delivery system,” an automated system for the secure transmission of an electronic document between a submitter and a participating register of deeds through the use of a delivery agent;
- (3) “Electronic recording,” the delivery and return of an electronic document using an electronic document delivery system for the purpose of recording that document with the register of deeds;
- (4) “Land records management system,” the system or software solution used by a register of deeds to securely receive, manage, access, search, retrieve, and store documents, electronic or otherwise;

- 1 (5) "Participating register of deeds," a register of deeds that has elected to accept
2 electronic documents for recording in accordance with SDCL Chapter 7-9A;
- 3 (6) "PDF" a portable document format which is a common format for image exchange or
4 world wide web presentation;
- 5 (7) "PRIA," the Property Records Industry Association located at 2501 Aerial Center
6 Parkway, Ste. 103, Morrisville, NC 27560 (<http://www.pria.us/>) whose mission is to develop and
7 promote national standards and best practices for the property records industry;
- 8 (8) "Submitter," a party who requests that an electronic document be recorded;
- 9 (9) "TIFF" a tagged image file format which is a common format for high-quality black and
10 white, gray-scaled, or color graphics of any resolution and consists of individual dots or pixels;
- 11 (10) "XML" extensible markup language which is an extensible document language for
12 specifying document content. XML is not a predefined markup language but a meta-language
13 (a language for describing other languages) allowing the user to specify a document type
14 definition (DTD) and design customized markup languages for different classes of documents.

15 **General Authority: SDCL 7-9A-8**

16 **Law Implemented: SDCL 7-9A-2, 7-9A-3, 7-9A-4, 7-9A-5, 7-9A-8, 7-9A-9**

17 **22:03:01:02 Electronic recording models.** Each electronic document shall conform to one or
18 more of the following models as approved by a participating register of deeds:

- 19 (1) Model 1: a scanned ink-signed document, transmitted without XML indexing data;

1 (2) Model 2: a scanned ink-signed document or a document that has been created and
2 signed electronically, transmitted with XML indexing data; or

3 (3) Model 3: a document that has been created and signed electronically, transmitted with
4 embedded XML indexing data.

5 **General Authority: SDCL 7-9A-8**

6 **Law Implemented SDCL 7-9A-2, 7-9A-3, 7-9A-9**

7 **22:03:01:03 Electronic document and data formats.** Each electronic document and data
8 format shall be in accordance with the following:

9 (1) Electronic recording shall be in accordance with the PRIA eRecording XML Standard
10 Version 2.4:

11 (a) PRIA Request Version 2.4.2;

12 (b) PRIA Response Version 2.4.2;

13 (c) Document Version 2.4.1;

14 (d) Notary Version 2.4.1; and

15 (e) The PRIA eRecording XML Implementation Guide for Version 2.4.1,
16 Revision 2;

17 (2) Electronic documents shall be transmitted and stored as either TIFF or PDF files; and

18 (3) Resolution of imaged documents shall be submitted at 300 DPI (dots per inch).

19 **General Authority: SDCL 7-9A-8, 7-9A-9**

20 **Law Implemented: SDCL 7-9A-3**

1 **References:** "PRIA Request Version 2.4.2," August 2007 Edition, Property Records
2 Industry Association. A copy may be obtained from the Property Records Industry Association
3 at www.pria.us free of charge. "PRIA Response Version 2.4.2," August 2007 Edition, Property
4 Records Industry Association. A copy may be obtained from the Property Records Industry
5 Association at www.pria.us free of charge. "Document Version 2.4.1," October 2007 Edition,
6 Property Records Industry Association. A copy may be obtained from the Property Records
7 Industry Association at www.pria.us free of charge. "Notary Version 2.4.1," October 2007
8 Edition, Property Records Industry Association. A copy may be obtained from the Property
9 Records Industry Association at www.pria.us free of charge. "The PRIA eRecording XML
10 Implementation Guide for Version 2.4.1, Revision 2," October 2007 Edition, Property Records
11 Industry Association. A copy may be obtained from the Property Records Industry Association
12 at www.pria.us free of charge.

13 **22:03:01:04 Acceptance of electronic documents.** A participating register of deeds is not
14 required to accept for recording any electronic document for which it does not have the
15 technology to record.

16 **General Authority: SDCL 7-9A-2, 7-9A-8, 7-9A-9**

17 **Law Implemented: SDCL 7-9A-2, 7-9A-3**

18 **22:03:01:05 Electronic signatures and notarizations.** Each electronic document required to
19 be notarized shall comply with SDCL Chapters 7-9A and 53-12. A participating register of deeds
20 has no responsibility to authenticate electronic signatures or notarizations. A participating
21 register of deeds is not required to accept for recording any electronic document containing
22 any electronic signature or notarization for which it does not have the technology to support.

1 **General Authority: SDCL 7-9A-8**

2 **Law Implemented: SDCL 7-9A-3, 7-9A-9, 7-9A-2**

3 **22:03:01:06 Electronic recording processing requirements.** Electronic document recording
4 processing requirements shall include at least the following:

5 (1) A participating register of deeds shall receive, endorse, and index electronic documents
6 pursuant to SDCL 7-9-3, 7-9-8, 7-9-8.1, and 7-9-9;

7 (2) An electronic transmission may include multiple electronic documents for
8 recording;

9 (3) The submitter shall include its telephone or e-mail contact information with each
10 submission;

11 (4) A document presented to a participating register of deeds for electronic recording shall
12 conform to SDCL 43-28-23 including the reference number of the document assigned or
13 released. No document to be recorded may contain more than one mortgage, or more than
14 one mortgage or other instrument being assigned, partially released or satisfied;

15 (5) A participating register of deeds shall provide notice to the submitter of confirmation or
16 rejection of recording through the electronic document delivery system as follows:

17 (a) A notice of confirmation shall identify the document accepted for recording and include
18 the recording information;

19 (b) A notice of rejection shall identify the document rejected for recording and include an
20 explanation for the rejection. If multiple electronic documents are submitted for electronic
21 recording, and one or more are rejected for recording, all of the documents shall be returned to
22 the submitter without recording; and

1 (c) If a participating register of deeds complies with the notice requirements, the failure of
2 a submitter to receive actual notice of confirmation or rejection of a recording does not affect
3 the validity of the confirmation or rejection;

4 (6) A plat shall be excluded from electronic transmission. A participating register of deeds
5 may not electronically accept for recording plats as referred to in SDCL 11-3-4, 11-3-10, and 43-
6 21-5;

7 (7) A participating register of deeds, may require payment of fees by electronic means for
8 documents received electronically; and

9 (8) The PRIA eRecording Best Practices for Recorders may be used as a guideline by a
10 participating register of deeds.

11 **General Authority: SDCL 7-9A-8**

12 **Law Implemented: SDCL 7-9A-3, 7-9A-9, 44-8-13, 44-8-14**

13 **Reference:** "The PRIA eRecording Best Practices for Recorders," May 2015 Edition,
14 Property Records Industry Association. A copy may be obtained from the Property Records
15 Industry Association at www.pria.us free of charge.

16 **22:03:01:07 Posting procedures by Participating Register of Deeds.** A participating register
17 of deeds shall establish procedures for electronic recording and shall post the procedures in the
18 office of the participating register of deeds and make a copy of the procedures available on
19 request. The procedures shall also be posted on the county's internet web site and through the
20 electronic document delivery system, if available.

21 **General Authority: SDCL 7-9A-8, 7-9A-9**

22 **Law Implemented: SDCL 7-9A-3, 7-9A-9**

1 **22:03:01:08 Security requirements.** Procedures shall be implemented and maintained to
2 ensure the security of the electronic document delivery system and the land records
3 management system, including the authenticity and integrity of the electronic documents and
4 of the public record maintained by the participating register of deeds as follows:

5 (1) Secure method. A participating register of deeds shall provide a secure method for
6 accepting electronic documents through the electronic document delivery system and for
7 recording and maintaining documents in the land records management system. Security
8 standards implemented by a participating register of deeds shall accommodate electronic
9 signatures and notarization of electronic documents in a manner that complies with SDCL
10 chapter 7-9A;

11 (2) Security procedures. A delivery agent shall implement and maintain security procedures
12 for electronic transmissions of documents and shall be responsible for maintaining the security
13 of the systems within its office;

14 (3) Disaster recovery. Electronic document delivery systems and land records management
15 systems shall protect against system and security failures and, in addition, shall provide backup,
16 disaster recovery, and audit trail mechanisms. Audit trail information shall be provided by the
17 system vendors to participating register of deeds on request;

18 (4) Unauthorized use. Electronic document delivery systems and land record management
19 systems may not permit any unauthorized party to modify, manipulate, insert, or delete
20 information in electronic documents or in the public record maintained by the register of
21 deeds;

1 (5) Breach in security. If a breach in security is detected by the participating register of
2 deeds, delivery agent, submitter, or land records management system vendor, the party
3 detecting the breach shall notify the other parties immediately. The parties shall cooperate to
4 resolve issues related to a breach.

5 **General Authority: SDCL 7-9A-8**

6 **Law Implemented: SDCL 7-9A-8, 7-9A-9**

7 **22:03:01:09 Agreement between Delivery Agent and Participating Register of Deeds.** The
8 delivery agent and participating register of deeds shall enter into an agreement specifying the
9 requirements, terms, and conditions of participation in the participating register of deed's
10 electronic recording program and delivery system. At a minimum, the agreement shall address
11 the following items:

- 12 (1) Accepted electronic recording models;
- 13 (2) Accepted document types;
- 14 (3) Technical specifications for data formats, document formats, electronic transmissions,
15 and security;
- 16 (4) If used by the participating register of deeds, indexing fields required for each document
17 code;
- 18 (5) Electronic signature and notarization requirements;
- 19 (6) Payment of fees;
- 20 (7) Hours during which electronic submissions shall be accepted and processing schedules
21 that affect order of acceptance;
- 22 (8) Document acceptance and rejection requirements and procedures; and

1 (9) Termination terms.

2 **General Authority: SDCL 7-9A-8**

3 **Law Implemented: SDCL 7-9A-3, 7-9A-8, 7-9A-9**

4 **22:03:01:10 Qualifications and Responsibility of Delivery Agent.** The delivery agent shall
5 review the qualifications of each potential submitter and approve the potential submitter
6 prior to granting access to the electronic document delivery system. The delivery agent
7 shall enter into an agreement with each submitter, prior to electronic submission of a
8 document to a participating register of deeds, which agreement shall provide among other
9 things that the submitter agrees to submit documents for recording in accordance with this
10 chapter and SDCL chapter 7-9A, and to maintain the security of the systems within the
11 submitter's offices.

12 **General Authority: SDCL 7-9A-8**

13 **Law Implemented: SDCL 7-9A-3, 7-9A-8, 7-9A-9**