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California Embraces Statewide Electronic Recording Provisions

BY JENNIFER HARMON

SACRAMENTO, CA—The California Electronic Recording Delivery Act of 2004 has been approved by Gov. Arnold Schwarzenegger as a way to develop a secure system for all 58 county recorders to deliver, record and return documents electronically by title companies and institutional lenders.

The act authorizes a county recorder, upon approval by resolution of the board of supervisors and system certification by attorney general Bill Lockyer to establish an electronic recording delivery system.

"California is one of the first states to do this," said Stuart Wolfe, a partner with the Irvine-based law firm Wolfe & Wyman LLP. "Recording has been on a county-by-county basis. It's been a very antiquated system — not ahead of the curve in technology. Every recorder does things the way they want to do it, and struggles often occur to make sure a document actually gets recorded when it should."

Upon system certification, a county recorder would be authorized to enter into a contract with a title insurer, institutional lender or an entity of local, state or federal government for the delivery for recording. A digitized electronic record would be returned to the party requesting information.

Existing law permits this on a pilot/test project basis in two counties, only one of which — Orange County — actually conducted the test and e-recorded over two million real property instruments since approximately 1987. "It's going well here, and there are not as many glitches after the last four years. This project seems to be working. So the government has said, 'Why don't we authorize all 58 county recorders to do this, if they want to,'" Mr. Wolfe said.

Under the act, each county may charge a \$1 recording fee for each document recorded to fund the e-recording program as well as the administrative and regulatory costs of the attorney general's office.

The law allows for two types of e-recording in California, digitized electronic records and digital reconveyance documents including deeds of trust, release of liens, satisfaction of a mortgage, substitutions of trustee or an assignment of deeds of trust.

Digitized electronic records are scanned images of instruments affecting title, right or interest in real property submitted by a title insurer, an underwritten title company, an institutional lender or any local, state or federal agency.

Digitized electronic records are scanned images and digital electronic records are created and stored electronically, without a paper original of reconveyances, substitutions of trustee or assignments of deeds of trust.

"There never has to be a piece of paper," Mr. Wolfe said. "Digital docs have been recorded for some time, but now lenders will be able to control compliance. Before, once a reconveyance got to a recorder's desk, it just sat there sometimes and was not stamped or indexed on time."

According to Mr. Stuart, the legislation will not actually go into effect until the attorney general's office develops all of the necessary regulations and programmatic elements for the cer-

tification of each county e-recording program.

While the bill allows each county to create its own e-recording system, each must be approved by the attorney general and must undergo extensive security audits and review as specified in the bill. He is also required to evaluate the electronic recording delivery systems, and report to both Houses of the Legislature on or before June 30, 2009.

In addition, all title and lender employees

involved in submitting all digitized documents must undergo a background and fingerprint check by the Department of Justice to ensure they do not have a criminal record. Under the law, lenders and title companies choosing to record reconveyance documents only, do not have to comply with the rigorous standards, he said.

"One of our specialties within mortgage banking is title work. Because we deal with

insurance issues, we want to step up and get involved. That is why we are on the waiting list to implement this electronic record system," Mr. Stuart said.

"This legislation, once its implemented and the rules come out, and assuming county recorders decide to do it, will be a huge leap forward for lenders to be able to control compliance with the rules regarding reconveyance of deeds of trusts and how it gets done."