



**THE MISSISSIPPI ELECTRONIC
RECORDING COMMISSION**

**Rules and Standards Concerning Electronic Recording
of Real Property Records in the Offices of Chancery Clerks**

Title 36: Technology

Part 201: Electronic Recording Commission Rules and Standards

Part 201 Chapter 1: General Rules and Standards to Implement Electronic Recording

Rule 1.1 Purpose. The purpose of this chapter is to establish uniform recording standards and practices, provide for integrity and security of transmissions of such records, and promote efficiencies and improved service for electronic recording of real property records in the offices of Chancery Clerks.

Source: Section 5 (a), HB 599, 2011 Regular Session of the Mississippi Legislature, as approved by the Governor.

Rule 1.2 Definitions. The following definitions govern the use of terms in these Rules:

(A) "Electronic Signature" means an electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document;

(B) "Electronic Recording" or "eRecording" means the process of the office of a Chancery Clerk accepting, recording and indexing a document in an electronic form instead of by paper submission.

(C) "PDF" (Portable Document Format) means the file format originally created by Adobe Systems for document exchange allowing documents to be viewed as they were intended to appear. PDFs are a common format for image exchange or Web presentation.

(D) "TIFF" (Tagged Image File Format) means the variable-resolution bitmapped image format originally developed by the Aldus Corporation (now part of Adobe Systems) and published as ISO 12639:2004, Graphic technology-Prepress digital data exchange-Tag image file

format for image technology (TIFF/IT). TIFF is a common format for high-quality black and white, gray-scaled, or color graphics of any resolution and is made up of individual dots or pixels.

(E) “XML” (Extensible Markup Language) means an extensible document language for specifying document content. XML is not a predefined markup language but a metalanguage – a language for describing other languages – allowing the user to specify a document type definition (DTD) and design customized markup languages for different classes of documents.

(F) “Trusted Submitter” means a party that has a Trusted Submitter Agreement signed, approved by, and on file with an individual Chancery Clerk as provided in these Rules in order to record documents electronically with that Chancery Clerk.

(G) “Trusted Submitter Agreement” means the agreement to be signed by any party who wishes to become a Trusted Submitter as defined in these Rules and which is in a form which substantially conforms to that appended to these Rules as Exhibit A.

(H) “Electronic Document” and “Electronic Record” both mean a document that is received by the office of a Chancery Clerk in an electronic form meeting the standards set forth in this Chapter.

(I) “Electronic Acceptance” or “Acceptance” means the act of a Chancery Clerk accepting a submitted document for recording through electronic means.

(J) “System of Electronic Recording” means a computer program, and the hardware and software components that comprise it, which allows for the receipt and processing of Electronic Documents for recording and indexing.

(K) “Delivery Agent” means a third party or entity other than the Trusted Submitter and the Chancery Clerk through whom Electronic Documents and/or recording fees are delivered to the office of a Chancery Clerk.

Source: Section 5 (a) and (c), HB 599, 2011 Regular Session of the Mississippi Legislature, as approved by the Governor.

Rule 1.3 Optional Participation. The implementation of, use of, establishment of, and/or participation in, a System of Electronic Recording is optional with each Chancery Clerk of each county in the state of Mississippi.

Source: Section 4, HB 599, 2011 Regular Session of the Mississippi Legislature, as approved by the Governor.

Rule 1.4 Standards. The following standards are applicable to eRecording in the office of any Chancery Clerk who elects to implement, use, establish and/or participate in a System of

Electronic Recording in the State of Mississippi:

(A) Electronic recording under this Chapter shall conform to the technical standards set forth in the following documents adopted by the Property Records Industry Association (PRIA): (1) PRIA eRecording XML Standard Version 2.4, which includes PRIA Request Version 2.4.2 (August 2007); (2) PRIA Response Version 2.4.2 (August 2007); (3) Document Version 2.4.1 (October 2007); and (4) Notary Version 2.4.1 (October 2007).

(B) The PRIA eRecording XML Implementation Guide for Version 2.4.1, Revision 2 (March 2007), as amended from time to time, should be consulted for reference. Copies of these standards and the Implementation Guide are available:

(1) from the Property Records Industry Association (PRIA), 2501 Aerial Center Parkway, Ste. 103, Morrisville, NC 27560; telephone: (919) 459 2081; website: <http://www.pria.us>; and

(2) from the Office of the Secretary of State of the State of Mississippi, 700 North Street, Jackson, Mississippi 39202; telephone: 800-256-3494 or 601-359-1633; website www.sos.state.ms.us.

(C) Electronic Documents shall be transmitted and stored as either TIFF or PDF files with a minimum of 200 dpi.

(D) The Commission shall annually review these standards and guidelines and, when deemed appropriate, adopt necessary amendments thereto.

Source: Section 5 (a) and (c), HB 599, 2011 Regular Session of the Mississippi Legislature, as approved by the Governor.

Rule 1.5 Subsequent Changes. Any subsequent changes to, amendments to, or versions of, the standards referenced and established in Rule 1.4 which may hereafter be adopted by PRIA or any successor organization shall be subject to approval by the Mississippi Electronic Recording Commission before becoming effective in the State of Mississippi.

Source: Section 5 (a) and (c), HB 599, 2011 Regular Session of the Mississippi Legislature, as approved by the Governor.

Rule 1.6 Models of eRecording. Electronic Documents shall conform to the following models:

(A) Model 1: Trusted Submitters will transmit scanned images of original ink-signed documents to the office of the Chancery Clerk. The office of the Chancery Clerk completes the recording process in the same way as paper using the imaged copy as the source document. Once the Chancery Clerk accepts the documents for recording, the scanned image is "burned" with the recording information, including recording date and time as well as the unique recording

reference number, such as instrument number. Indexing is performed by the indexing staff of the Chancery Clerk's office, as with paper documents. A copy of the recorded images is returned to the Trusted Submitter, together with the recording endorsement data.

(B) Model 2: Trusted Submitters will transmit scanned images of ink-signed documents or an Electronic Document electronically signed and notarized, along with data necessary for processing, indexing, and returning the document, to the office of the Chancery Clerk. The office of the Chancery Clerk performs an electronic examination of the imaged document and indexing data, and then completes the recording process using the imaged copy and electronic indexing information. The electronic version of the recorded document is returned to the Trusted Submitter, together with the recording endorsement data.

(C) Model 3: Trusted Submitters will transmit documents which have been created, signed and notarized electronically containing the electronic indexing information, or SMART™ documents which are a single object containing the electronic version of the document in such a way that enables the electronic extraction of data from the object. SMART™ documents are required to be signed and notarized electronically. Electronic Signatures must comply with the Uniform Electronic Transaction Act (UETA). The office of the Chancery Clerk performs an electronic examination of the Electronic Documents and indexing information, then completes the recording process using the Electronic Documents. Images of electronic and SMART™ documents are made and returned to the Trusted Submitter along with recording endorsement data.

(D) However, Model 3 documents are acceptable only to the extent that they have been electronically notarized within a state which has enacted laws governing electronic notarizations and has promulgated rules effectuating the same.

Source: Section 5 (a) and (c), HB 599, 2011 Regular Session of the Mississippi Legislature, as approved by the Governor.

Rule 1.7 Trusted Submitter Agreements. Every Trusted Submitter and every Delivery Agent transmitting electronic records shall complete and sign a Trusted Submitter Agreement application in a form which substantially conforms to that appended to this Rule as Exhibit A. Each Chancery Clerk electing to implement, use, establish and/or participate in a System of Electronic Recording must record a true and correct copy of each such Trusted Submitter Agreement in and among the county land records in his or her Miscellaneous Book or other, similar record series. Thereupon, the Trusted Submitter shall be authorized to record documents electronically.

Source: Section 5 (a) and (c), HB 599, 2011 Regular Session of the Mississippi Legislature, as approved by the Governor.

Rule 1.8 Who may Submit Trusted Submitter Agreements. Each Chancery Clerk shall determine who may submit real property documents for electronic recording and who may enter into Trusted Submitter Agreements as set forth in these Rules.

Source: Section 5 (a) and (c), HB 599, 2011 Regular Session of the Mississippi Legislature, as approved by the Governor.

Rule 1.9 Business Rules. Each Chancery Clerk electing to implement, use, establish and/or participate in a System of Electronic Recording must adopt, establish and publish a set of Business Rules that govern how electronic recording will be conducted. At a minimum, such rules must:

(A) provide for a reasonable period of time exclusive of weekends, holidays, and any day on which the Chancery Clerk's office is closed: (1) for acceptance or rejection of a document submitted for recording electronically; and (2) for notification thereof to the Trusted Submitter;

(B) establish a procedure for assigning an order of processing electronic submissions in conjunction with documents transmitted to the Chancery Clerk's office by other, traditional means;

(C) describe document rejection practices and standards and provide for a means of informing Trusted Submitters of the reason(s) for rejection.

Source: Section 5 (a) and (c), HB 599, 2011 Regular Session of the Mississippi Legislature, as approved by the Governor.

Rule 1.10 Payment of Fees. Each Chancery Clerk electing to implement, use, establish and/or participate in a System of Electronic Recording shall allow for the electronic payment of recording fees. Such fees may be paid and collected through a Delivery Agent using a third party account, provided full recording fees are paid by the close of the following business day provided such funds are available to the office of the Chancery Clerk within two business days of the transaction and sufficient documentation is generated to satisfy county audit requirements. Electronic payment may be accomplished by ACH debit, direct deposit, escrow account payment, federal reserve wire transfer, credit cards, or such other means as the individual Chancery Clerk may designate. However, no transaction or merchant fee may be paid by the office of the Chancery Clerk.

Source: Section 4 (b)(7), HB 599, 2011 Regular Session of the Mississippi Legislature, as approved by the Governor.

Rule 1.11 Document Formatting. Any document submitted for electronic recording shall, where applicable, conform to the formatting requirements set forth in Miss. Code Ann. § 89-5-24 (Supp. 2012).

Source: Section 5 (a) and (c), HB 599, 2011 Regular Session of the Mississippi Legislature, as approved by the Governor.

Rule 1.12 Amendments. The Rules set forth in this Part 201 may be amended at any time by a majority vote of the Mississippi Electronic Recording Commission in accordance with the Mississippi Administrative Procedures Act.

Source: Section 5 (a) and (c), HB 599, 2011 Regular Session of the Mississippi Legislature, as approved by the Governor.

Part 201 Chapter 2: Rule-making Oral Proceedings.

Rule 2.1 Application of Chapter. This Chapter applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations or written input on proposed new rules, amendments to rules, and proposed repeal of existing rules before the Mississippi Electronic Recording Commission pursuant to the Administrative Procedures Act.

Source: Miss. Code Ann. § 25-43-2.105 (Rev. 2006).

Rule 2.2 Request for Oral Proceeding. When a political subdivision, an agency, or a citizen requests an oral proceeding in regards to a proposed rule adoption, the requestor must submit a printed, typewritten, or legibly handwritten request.

(A) Each request must be submitted on 8-1/2" x 11" white paper.

(B) The request may be in the form of a letter addressed to the Mississippi Electronic Recording Commission or in the form of a pleading as if filed with a court.

(C) Each request must include the full name, telephone numbers, and mailing address of the requestor(s).

(D) All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.

Source: Miss. Code Ann. § 25-43-2.105 (Rev. 2006).

Rule 2.3 Notice of Oral Proceeding. Notice of the date, time, and place of all oral proceedings shall be filed with the Secretary of State's Office for publication in the Administrative Bulletin. The agency providing the notice shall provide notice of oral proceedings to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of the notice with the Secretary of State. The Chairman of the Mississippi Electronic Recording Commission, or a designee who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

Source: Miss. Code Ann. § 25-43-2.105 (Rev. 2006).

Rule 2.4 Public Participation Guidelines. Public participation shall be permitted at oral

proceedings in accordance with the following:

(A) At an oral proceeding on a proposed rule, persons may make statements and present documentary and physical submissions concerning the proposed rule.

(B) Persons wishing to make oral presentations at such a proceeding shall notify the Mississippi Electronic Recording Commission at least three business days prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not contacted the Commission prior to the proceeding.

(C) At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.

(D) The presiding officer may place time limitations on individual presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(E) Persons making presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may, however, be submitted at the oral proceeding.

(F) Where time permits and to facilitate the exchange of information, the presiding officer may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding. No participant shall be required to answer any question.

Source: Miss. Code Ann. § 25-43-2.105 (Rev. 2006).

Rule 2.5 Submissions and Records. Physical and Documentary Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Mississippi Electronic Recording Commission, part of the rulemaking record, and are subject to the Mississippi Electronic Recording Commission's public records request procedure. The Mississippi Electronic Recording Commission may record oral proceedings by stenographic or electronic means.

Source: Miss. Code Ann. § 25-43-2.105 (Rev. 2006).

Part 201 Chapter 3: Declaratory Opinions.

Rule 3.1 Application of Chapter. This Chapter sets forth the Mississippi Electronic Recording

Commission's rules governing the form, content, and filing of requests for declaratory opinions, the procedural rights of persons in relation to the written requests, and the Mississippi Electronic Recording Commission's procedures regarding the disposition of requests as required by Mississippi Code § 25-43-2.103.

Source: Miss. Code Ann. § 25-43-2.105 (Rev. 2006).

Rule 3.2 Scope of Declaratory Opinions. The Mississippi Electronic Recording Commission will issue declaratory opinions regarding the applicability to specified facts of:

(A) a statute administered or enforceable by the Mississippi Electronic Recording Commission;

(B) a rule promulgated by the Mississippi Electronic Recording Commission;

Source: Miss. Code Ann. § 25-43-2.105 (Rev. 2006).

Rule 3.3 Scope of Declaratory Opinion Request. A request must be limited to a single transaction or occurrence.

Source: Miss. Code Ann. § 25-43-2.105 (Rev. 2006).

Rule 3.4 How to Submit Requests. When a person with substantial interest, as required by Section 25-43-2.103 of the Administrative Procedures Act, requests a declaratory opinion, the requestor must submit a printed, typewritten, or legibly handwritten request, consistent with the following:

(A) Each request must be submitted on 8-1/2" x 11" white paper.

(B) The request may be in the form of a letter addressed to the Mississippi Electronic Recording Commission or in the form of a pleading as if filed with a court.

(C) Each request must include the full name, telephone numbers, and mailing address of the requestor(s).

(D) All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.

(E) Each request must clearly state that it is a request for a declaratory opinion.

Source: Miss. Code Ann. § 25-43-2.105 (Rev. 2006).

Rule 3.5 Signature Attestation. Any party who signs the request shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full,

complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative, or judicial tribunal.

Source: Miss. Code Ann. § 25-43-2.105 (Rev. 2006).

Rule 3.6 Request Content Requirement. Each request must contain the following:

- (A) A clear identification of the statute, rule, or order at issue;
- (B) The question for the declaratory opinion;
- (C) A clear and concise statement of all facts relevant to the question presented;
- (D) The identity of all other known persons involved in or impacted by the facts giving rise to the request including their relationship to the facts, and their name, mailing address, and telephone number; and
- (E) A statement sufficient to show that the requestor has a substantial interest in the subject matter of the request.

Source: Miss. Code Ann. § 25-43-2.105 (Rev. 2006).

Rule 3.7 Reasons for Refusal of Declaratory Opinion Request. The Mississippi Electronic Recording Commission may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- (A) The matter is outside the primary jurisdiction of the Mississippi Electronic Recording Commission;
- (B) Lack of clarity concerning the question presented;
- (C) There is pending or anticipated litigation, administrative action or anticipated administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
- (D) The statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- (E) The facts presented in the request are not sufficient to answer the question presented;
- (F) The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;

(G) The request seeks to resolve issues which have become moot or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute, or order on which a declaratory opinion is sought;

(H) No controversy exists or is certain to arise which raises a question concerning the application of the statute, rule, or order;

(I) The question presented by the request concerns the legal validity of a statute, rule, or order;

(J) The request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct;

(K) No clear answer is determinable;

(L) The question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;

(M) The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;

(N) The question is currently the subject of an Attorney General's opinion request;

(O) The question has been answered by an Attorney General's opinion;

(P) One or more requestors have standing to seek an Attorney General's opinion on the proffered question;

(Q) A similar request is pending before this agency, or any other agency, or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law; or

(R) The question involves eligibility for a license, permit, certificate or other approval by the Mississippi Electronic Recording Commission or some other agency and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.

Source: Miss. Code Ann. § 25-43-2.105 (Rev. 2006).

Rule 3.8 Agency Response. Within ninety (90) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Mississippi Electronic Recording Commission shall, in writing:

(A) Issue an opinion declaring the applicability of the statute, rule, or order to the

specified circumstances;

(B) Agree to issue a declaratory opinion by a specified time but no later than ninety (90) days after receipt of the written request; or

(C) Decline to issue a declaratory opinion, stating the reasons for its action. The ninety (90) day period shall begin on the first business day after which the request is received by the Mississippi Electronic Recording Commission.

Source: Miss. Code Ann. § 25-43-2.105 (Rev. 2006).

Rule 3.9 Availability of Declaratory Opinions and Requests for Opinions. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinions and requests shall be indexed by name, subject, and date of issue. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

Source: Miss. Code Ann. § 25-43-2.105 (Rev. 2006).