
URPERA â?? Where are we now?

Description

It has been ten years since the Virginia General Assembly passed the Uniform Real Property Electronic Recording Act (URPERA). The uniform act can be found in Virginia Code Sections 55-142.10 to 55-142.15.

It has also been ten years since I wrote the article â??The Real Property Electronic Recording Act: Is Electronic Filing Really Here?â?• for *The VLTA Examiner*. In that article, I expressed concern for the high cost of compliance with the Virginia Information Technologies Agency (VITA) security standards, concluding that Virginia would not see rapid adoption by clerks around the Commonwealth. I stated: â??only the larger and wealthier localities will implement electronic filing systems unless and until the cost issue can be effectively addressed.â?•

I was right and I was wrong. The high cost of compliance with the VITA security standards has been mitigated by national electronic filing companies entering Virginia. Their ability to spread costs over multiple jurisdictions has enabled them to make electronic filing economical. In doing so, they have also enabled smaller clerksâ?? offices around the Commonwealth to participate in electronic filing. However, in ten years, only about 20% of clerksâ?? offices around the Commonwealth have adopted electronic filing.

Taking stock of electronic filing of land records today, there is good news and bad news.

THE BAD NEWS

First, for the bad news. While I thought it would be the high cost of compliance with the VITA security standards that would keep electronic recording from being rapidly adopted, it turns out that the economic downturn of the last eight years has had a negative impact on the real estate market in many areas of Virginia. The economic downturn has resulted in a significant decrease in the number of recordings throughout the Commonwealth. As a result, there has been very little industry demand for clerks to adopt electronic recording. In addition, the technology trust funds, collected by clerks and used to finance technology improvements in their offices, such as electronic filing, have decreased in lockstep. The reduction in technology trust fund monies has come at the same time that decade old hardware, software applications, and even coding languages, are in need of modernization. Therefore, many clerksâ?? offices are only able to maintain the technology they currently have in place.

THE GOOD NEWS

Now, for the good news. While the Commonwealth of Virginia does not compile statewide statistics, it appears there are at least 23 clerksâ?? offices electronically recording land record documents, representing approximately 20% of the 120 clerksâ?? offices in Virginia. At least 4 more clerksâ?? offices will have electronic filing capabilities within the year. Importantly, most of the larger jurisdictions in Virginia (Virginia Beach, Chesterfield, Prince William, Loudoun, Hanover, and Fairfax) have

electronic filing systems in place. Henrico is one of the localities which are scheduled to come on-line this year.

I am aware of three national electronic recording companies in Virginia: Simplifile, Corporation Service Company (CSC), and eRecording Partners. These companies have been game changers. They have been able to lower the cost of electronic filing to such an extent that even small and medium size clerks' offices can afford to record electronically. York, Smyth, Scott, King George, Dinwiddie, Washington, Arlington, Alexandria, and Rockingham, all have electronic filing systems in place.

To give you a sense of the growth of electronic recording, Simplifile, which is in all 23 of the electronic filing jurisdictions in Virginia, provided me with some of their statistics. In 2009, the first year statistics are available, Simplifile customers recorded 432 documents electronically statewide. In 2012, that number had jumped to 24,872. In 2014, the number rose to 36,547. In 2015, the number of documents filed electronically by Simplifile customers almost tripled to 106,218. Already, in the first quarter of 2016, over 48,000 documents have been filed statewide through the Simplifile system. This puts us on pace to electronically record 192,000 land records documents in 2016, with this one company alone.

In Fairfax, where we have our own electronic filing system with a portal that allows all three national electronic recording companies to access our system. With the addition of the three national e-filing companies, we are now recording over 50% of our documents electronically.

WHAT WILL THE NEXT DECADE BRING?

Since, I was not completely wrong in my predictions ten years ago; I will venture to make two more prognostications.

First, let me say, the economic benefits of electronic recording for both the public and for clerks' offices remain strong. For the public, the ability to record and disburse the same day is a huge benefit; being able to fix and re-record the same day, if a document is rejected for some reason, is truly amazing; the cost of having someone drive to the courthouse and stand in line to record is saved; and the time delay in recording, if a document is mailed to the clerks' office, is eliminated. Finally, the public receives their recorded documents back the same day. Gone are the mail-back time delays of yesterday!

From the clerk's perspective, the cost savings and efficiency of not having to process, record and mail back documents received in the mail, and not having to spend the time converting paper documents into electronic format for digitized storage and viewing by the public are tremendous; and since payment is often made by electronic funds transfer or handled by a third party, the clerk does not have to deal with bad checks.

For these reasons, my first prediction is that given the benefits, trends, and industry momentum, every clerks' office in Virginia will be recording electronically within ten years. My second prediction is that by 2026, over 75% of documents recorded in Virginia, will be recorded electronically. If I am wrong, and it turns out closer to 95% of all land record documents are recorded electronically by 2026, we can all celebrate my mistake!

John T. Frey, Esq.

John grew up in Springfield, Virginia. He attended West Springfield High School, graduated from Furman University, in Greenville, South Carolina, with a B. A. Degree, and received his law degree from Hamline University School of Law, in St. Paul, Minnesota.

[10858522_10203942530578077_6744624402099321076_n](#)John serves as the Clerk of the Fairfax Circuit Court, the largest circuit court in the Commonwealth of Virginia. He was elected in 1991 to serve an eight-year term and was re-elected in 1999 and 2007. John has a staff of 163 employees with a budget of over 11 million dollars.

As Clerk, John is accountable for filing and tracking over 25,000 new court cases per year, issuing marriage licenses, processing notary public applications and overseeing fiduciary matters before the court. He also serves as the custodian of the Fairfax County land records dating back prior to 1742. Last year, approximately 135,000 new land transactions were added to the collection of records.

Prior to being elected Clerk, John was a principal in the law firm of Frey & Autry, P.C., where he practiced in the area of residential and commercial transactions.

John is a member of the Virginia State Bar and the Fairfax Bar Association. He is a past President of the National Association of County Recorders Election Officials and Clerks. John is also a member of the Property Records Industry Association, the Virginia Court Clerks Association and a past President of the Virginia Metropolitan Circuit Court Clerks Association. He is a former member of the State Public Records Advisory Board, the Virginia Board for People with Disabilities, and the Board of Directors of the Fairfax Bar Foundation.

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