

Hochul makes push for e-filing

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A national initiative in support of legislation to allow electronic filing of real estate transactions has succeeded in 15 states, but New York is not yet among them.

“We’ve been waiting for years for the state Legislature to bring this up to speed with other states that accept electronic recording,” said Erie County Clerk Kathy Hochul. “I hate to think our state is far behind.”

The Real Property Electronic Recording Act would recognize electronic documents and signatures as equivalent to paper documents and manual signatures so that parties, from attorneys and home buyers, don’t need to go to Erie County Hall for property closings.

Even though paralegals can now drop off completed real estate documentation that is signed off-site, the hard copy, which is scanned and returned, is still required.

The proposed legislation would eliminate hard copies altogether, helping ease Erie County’s storage concerns.

“Our crisis is storing county records. We’re 100 percent out of space,” Hochul said.

A move toward accepting all closing documents electronically is inevitable, Hochul said, and welcome among real estate practitioners. E-filing is already available in Erie and Niagara Counties for commercial, tort and tax certiorari cases.

Loan originators, title companies, lawyers and government officials say the law would save them time and money, after an initial software investment.

“If you can get the closing process streamlined with a degree of uniformity, it’ll reduce costs” and paperwork, said Frank Carroll, vice president and counsel at Tigor Title Insurance Co. “We’re inundated with paper (even though) we’re living in a paperless society.”

Investing in electronic filing will prevent problems stemming from lost copies, such as when filing insurance claims or making sure a deed was duly recorded, Carroll added.

“It will eliminate a lot of costs of tracking and transmitting hard copies and will eliminate a lot of errors in the recording process,” he said.

Where it all started

The act was drafted by the Uniform Law Commission, which suggests laws that are consistent from state to state and establishes state boards to create standards for electronic recording.

“No one ever says, ‘We’re going to get screwed by this uniform law.’ It contributes to the orderly flow and makes life easy for us,” Carroll said.

It has already been adopted in 14 states — Arizona, Arkansas, Delaware, Florida, Idaho, Illinois, Kansas, Nevada, New Mexico, North Carolina, Tennessee, Texas, Virginia and Wisconsin — plus the District of Columbia.

The act is an extension of the Uniform Electronic Transactions and Electronic Signatures in Global and National Commerce acts, but addresses problems with electronic transactions that need to be remedied for the efficiency of real estate markets, said John Jones, president of Arion Zoe Corp., a consulting firm hired to raise awareness of the act.

“The worst-case scenario is 50 different ways of doing things. The best case is one way with variations,” he said.

From ensuring the authenticity of signatures to defining copies or faxed versions as “duplicate originals,” there are still some logistical kinks to be worked out with the legislation.

For example, a notary seal on hard copies could be replaced with the seal’s information, minus the embossing.

There’s also concern over determining whether a paper or electronic document arriving at the same time receives the time stamp first. If a lien on a property arrives first electronically, it could beat out a deed transfer, holding up the sale of a property.

“New York is considered a race-to-the-courthouse state,” Jones said. “The idea is to get it into the record as soon as possible so you don’t have an intervening lien.”

Constantly improving technology allows for electronic signatures to be verified with a password and encryption — similar to what’s required for e-filing of taxes, Carroll said.

“There are ways for (computer) systems to verify that this signature is in fact yours,” he said.

Even if electronic recording is permitted, an actual meeting among the buyers, their attorneys and a lender representative would still be necessary to verify the borrowers’ identity.

“It’s a ‘know your customer’ kind of thing to prevent fraud and comply with the Patriot Act,” Ross said.

Hochul said state legislators should look to states that have overcome those issues and put safeguards in place.

“We don’t have to reinvent the wheel,” she said. “If others have implemented it with success, why not New York?”

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