

Legal Sub-Committee

Minutes: 1-22-02

As recorded by Beth McInerney

Attendees: Mike Cunniff, Chuck Hoyum, Eileen Roberts, Chuck Parsons, Marty Henschel, John Jones (phone)

1. Approval of minutes: Marty Henschel moved and Mike Cunniff seconded that the minutes from 12-14-01 be approved. Marty Henschel moved and John Jones seconded that the minutes from 1-8-02 be approved. Both motions were unanimously adopted. These will be posted on the web.

Jack Seth was unable to complete the review of statutes. Chuck Parsons looked at Jack Seth's statutes for him and made notes. Rick Little has not had the opportunity to review his sections and Mike Cunniff has offered to work with him to get those reviewed.

2. Complete General Review of Statutes - 3. Identified Statutes for Amendment:

The following statutes were reviewed and comments were taken from the group.

83A.04. - The word "endorsement" should be picked up for the overlay language.

86B - This statute can be ignored; it is in regards to boats.

256.263 – This has the word "attested" and could be used in the overlay language.

272.115 - We need to speak to the department of revenue and talk about Certificate of Value needing to be added to e-recording.

272.12 - The language "and note upon the instrument" can be used for the overlay language.

John Jones asked what "official signature" means in this statute. Does official signature equate to official seal? This will help define what needs to be on a document.

Mike Cunniff stated that it is a stamp that says that taxes have been paid, this is done by the county auditor.

Eileen Roberts stated that we don't know what sequence documents will follow with e-recording. The term "over" in this statute sounds like something you do on paper.

John Jones details that typically in paper processing a signature goes at end of a document but e-signatures go over the entire document.

Because of document standards this signature is placed in the beginning in the 3” margin of the document.

Chuck Parsons noted that the IRS wanted to file federal tax liens electronically and we already have that in MN. It goes to Secretary of State’s office (SOS). Information tells what county the IRS wants to pay filing fees for. The SOS transfers this document to the county and it is stamped with tax lien number. So my sense is that we don’t have to do anything in addition to tax liens (272 statutes).

Mike Cunniff mentioned that the IRS liens don’t come to use quickly. It should bypass the SOS and come straight to the county and just skip the middle man.

Chuck Parsons stated that in his opinion nothing needed to be done with statutes 272#.

287.08. - This states that “the treasurer should endorse receipt on the mortgage”. Maybe overlay language can handle this?

John Jones mentioned that the IRS has modified this language for the federal documents that affect electronic recording. They have only done this in Florida and he can get copies for the subcommittee. 287 can be addressed in the overlay language.

287.25 “endorse a receipt” is also language to review. Maybe we need to suggest amendments within the sections themselves, these seem important enough. We should ask Senator Kelly to suggest that Kathy Pontius be assigned to the senate committee and ask her to write a draft for us for overlay language. If he asked her to do this she could do this pretty quickly.

358 – This statute gets into “notarial act”. This is uniform acknowledgement act and either affects overlay language or we could suggest a change in 358.

John Jones suggests that there is a draft change in language in uniform notarial act, on uniform state laws. We should look at it and it may have language pertaining to e-recording.

359 – This statute deals with notaries and seal.

John Jones states here that the seal issue is very confusing for UETA and E-Sign. They detail it in very generic terms. UETA eliminates the seal but not the information contained on the seal, that information needs to be on the document.

Chuck Parsons states that it is one thing to say you can’t claim it is invalid and another to say it is invalid. What is missing in 325L in UETA is the seal. Maybe 359.02 should say you don’t need to have the seal but you need to have the

information contained on the seal. We shouldn't mess with 325L because of the federal preemption problem.

359.05 – These are pretty strict instructions to a notary on what they are supposed to do. The date needs to be directly beneath the stamp.

John Jones states that this is used mostly as a check that the notary is still valid

Chuck Parsons added that we need to work on both. 325L. is UETA as adopted.

357.17 – This statute is dealing with fees. Does anyone know of anyone charging fees? I don't see anything to change.

Chuck Hoyum stated that this practice is more common where notaries are not plentiful.

357.18 The language “each page of” is something that may not work with e-recording. Counting pages and charging beyond the minimum is a throwback to when people were doing everything manually.

Chuck Parsons states that for paper, charging by the page seems logical. But isn't there a different fee for an electronic document. But you don't want to disadvantage electronic documents by using a minimum fee. 357.18 needs subsections for e-documents. I will throw this out for county recorders to determine if it would be document based and not page based, and to use the minimum fee.

Mike Cunniff stated that counties film documents and read them. The longer the document the longer it takes to process these documents. The document size only grows, it doesn't get less.

John Jones added that certified electronic copies going out should be charged a fee.

386.03. – This statute dates back to 1907, reception books. It was asked if this is done any longer in counties.

Mike Cunniff stated that Hennepin has a computerized system. We have basically all these items listed in the statute.

Chuck Parsons suggested that the statute looked like it may need a bit of work to be updated.

Marty Henschel added that this is the official Grantor / Grantee (G/G) description.

John Jones stated that we are looking at picking up who prepared the document and who it should be delivered back to in our standards group. Multiple return to's could be a revenue generator for counties.

Chuck Parsons added that updating this section looks like a big headache.

John J. suggested that the cashiering system and G/G indices would capture all of this information.

Eileen Richards asked if the reception book was different from the index? We have a tract and a reception book.

Chuck Parsons commented that we will have paper and electronic documents filed always. Reception books/records, this is an index or compellation of all documents recorded, and in chronological order. This gives you a date to reference for any race notice fights because this logs when documents are received.

Chuck Hoyum added that there is a G/G book and it is arranged alphabetically, and that it lists documents back to when the recorders office first started.

Mike Cunniff asked, how does the numbering system work when you have electronic and mail and in-person documents all being recorded. Some counties already record every document electronically. Some counties prefer to do manual numbering but they do know that there will be an electronically recorded element. Sequential numbering is a concern. Sequential numbering suggests that number 9 got recorded before 10. But there may be a block of numbers used for electronic numbering and another for manual numbering. Do we want numbers to indicate a document's recording method? Do Torrens and Abstracts get identified differently? That question needs to be considered.

Eileen Roberts noted that statute 386.32. is an indexing book statute. 386.04 states that the record book is both a numerical and detail book.

Chuck Parson suggested that Statute 386 sections be given to the Content and Workflow Subcommittee for review? The question to ask is, is this counter to what recorders offices are doing?

Mike Cunniff mentioned a discussion he was involved in regarding tract index as the official index. This was discussed with Metro Regional Recorders and they didn't see any reason this should not happen. But in discussion this on a more state wide level, Clay county is opposed to this change. They are maintaining a tract index already. Bonnie Rehder's county uses the tract index but she doesn't feel confident she has the expertise needed to handle legal descriptions. The liability for Clay is in cases where it is not all platted, we have meets and bounds, how do you get them all into tract? She is concerned that people describe tract

differently and how do you deal with that. She thinks there is no uniformity with tract and there is uniformity with G/G.

Eileen Roberts suggested that giving them a graphic representation of each tract may help.

Chuck Parsons suggested that for unplatted property just use quarters.

Chuck Hoyum noted that unplatted property is only broken down by quarter / quarter, if it is more broken down then counties should make the examiner make that decision. They are not title examiners so they don't need to make this determination.

Eileen Roberts noted that there are far fewer cases around posting to the tract than posting with names when you take into consideration typos and such.

Mike Cunniff mentioned that there has been an effort to ID how many counties do not have a tract. Goodhue's county recorder took the tract index with him when he retired, and Crow Wing also doesn't have one. We know of at least 77 counties that for sure have a tract index. But we are thinking that everyone really does have it.

Chuck Parsons restated that this will be only a go-forward plan, we are not asking counties to go back into their records.

386.14 - The language "so transcribed..." needs to be looked at, for example.

386.375 - Discusses the storage of abstracts in MN. This doesn't really seem to be an issue. You can still hire a backup storage vendor; this statute does not prevent this as I see it.

505.03 - I don't see this as critical but the "black ink" language should be addressed.

505.1792 – There is no indication that action should take place right now.

507.401 – There is nothing that indicates concern.

507.40 - The language "discharged mortgages" should be updated also. And "marginal entry" given the G/G index, could speed up title reviews.

Marty Henschel mentioned that sometimes the Satisfaction was not filed. But a Satisfaction was noted on the mortgage document; they put the satisfaction language in the margin only. This made searches difficult. The Content and Workflow Subcommittee should also look at 386.375 specifically.

508.82 – This statute mentions registrar’s fees. The registrar does not record by page like the recorder does. You make a “memorial” and throw this into your file. You didn’t need to make a copy. But you do make copies now. 508 does not need to be tinkered with as I see it.

Mike Cunniff stated that he does not know of any registrar who is not making copies or has kept all those documents over the years. We keep copies but not originals.

Chuck Parson proposed the following:. We will go back and pull out things that need an overlay and those that need something within their section. We will ask Senator Kelley to ask Kathy work on the language.

Eileen Roberts asked if she would work on 386 also?

Chuck Parsons suggested that the recorders need to look at this and make recommendations. This isn’t really a 2002 issue. I would like to meet the Clay county recorder and help work through that issue there.

Subcommittee Issues:

Beth mentioned the issues that were brought forward by the subcommittees.

Content and Workflow subcommittees:

Certified Documents: Content and workflow issues involved how documents needing and official seal or embossment / certified documents, will be dealt with in e-recording.

Chuck Hoyum stated that this could lead to another way to certify in e-recordings. Civil filings in bankruptcy are electronic. Short term they may need to be hardcopy filed.

Chuck Parsons commented that we shouldn’t be inventing the wheel. There has to be someone looking at the “seal” issue, there must be an electronic equivalent.

CRV: The CRV is a multipart document, how would this be dealt with. This has been discussed and is in consideration from previous meetings. See minutes from previous meetings.

Private Sector:

Issues mentioned by the Private Sector subcommittee. Security is a big concern. Many of the private sector needs are in searching. Having the ability to search by name causes concern if you are then able to see a person’s mortgage, liens, divorce information etc. causes much concern.

The legal subcommittee noted this concern and will take this under consideration.

4. A.G. Opinion Request

Mike Cunniff stated that the TF wants to go ahead with the AG request and wants Hennepin to ask for an opinion. Hennepin doesn't typically ask for an opinion, they usually look at things from county specific perspective. Mike is working with Bob in their offices and has not gotten back to him to check on status. There was a county attorneys that volunteered to do this, Fillmore could do it, Paul Kiltinen was suggested if Bob is not comfortable with this request.

Chuck Parsons made one addition to the letter to AG and will get this out to everyone. A background of EREER task force information was his addition.

The next meeting was scheduled for the 5th of February at 9:00 at William Mitchell.

Meeting adjourned at 11:15.