WRDA QUESTION AND ANSWER

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Articles of Incorporation

Question: I have a certified copy from DFI for an Articles of Merger and they want to record. There is no recording area. Are they exempt?
Answer:
Per 59.43(2m)(c), Certified copies from the state are exempt so just fill out the cover sheet with the document title & return to information and then record.

(c) The register of deeds shall provide, upon request, a blank form which a person may complete and use as the first page of an instrument that the person seeks to record. The blank form shall be provided without charge and shall conform to the provisions of pars. (a) and (b).
(d) Paragraphs (a) and (b) do not apply to any of the following instruments:

1. Copies of documents that are certified by the state or by a city, village, town or county, or by a subunit or instrumentality of any of the foregoing. (Sharon Martin, Washington County)

Cemeteries

Question: Should Cemetery Plats be recorded, tracted and imaged similar to subdivision plats?
Answer:
Cemetery plats are recorded if the plat is located on publicly owned property (non-religious organization owned) and when platted. When cemetery plats are recorded they should be treated the same as other subdivision plats.

Question: Is a conveyance of a cemetery lot subject to a transfer return and fee?
Answer:
No. A conveyance of a cemetery lot is exempt from the transfer return and fee under administrative rule (tax 15.05(6), Wis. Adm. Code). The document should include language to the effect of "This is a cemetery lot and is exempt from transfer return and fee under administrative rule (tax 15.05(6), Wis. Adm. Code)" in keeping with the procedures of the Register of Deeds accepting documents without returns. **Note:** A conveyance of land for use as a cemetery is subject to a transfer return and fee per the same code.

Question: Can a Quit Claim Deed form be used for cemetery plots? If so, is there a transfer fee involved? (Susan Ginter, Wood Co.)
Answer:
We have a lot of recorded cemetery plats and thus get cemetery deeds on a regular basis. If a cemetery plat is recorded in the ROD office then the deeds should also be recorded. They certainly could use a Quit Claim Deed form (or Cemetery Deed). Per department of Revenue, they do not need a transfer return but must state the following: Exempt from fee per Tax 15.05(6) Wisconsin Administrative Code. Lois Hagedorn (Clark Co.)

Question: I had a cemetery sexton contact me regarding a columbarium they are building. She wanted to know what we would need in order to record a document when a niche is sold. (Peggy Walter, Clark County)

Answer:
There is a state cemetery board that may be able to answer this. Or this area at the Dept of Safety and Professional Services. http://dsps.wi.gov/Default.aspx?Page=95554070-c67b-4304-8c la-fd9e33533c4b (Jodi Helgeson GISP, CPM, Adams County)

Certified Copies/Copies

Question: A certified copy of a document is exempt from the standard document format. When you receive a certified copy (i.e. from Clerk of Courts, Dept. of Financial Institutions, etc.) and there is no place on the first page for the recording data, how do you handle this?
Answer:
If there is no space for recording information on a certified copy, we attach our WRDA cover sheet. This is on the advice of our Dane County Corp Counsel. He says we have the right to do what it takes in order to get the document recorded. We were presented with a proper certified copy. We and only we may add a page as part of our administrative duties to get the document recorded.
Per *s. 59.43(2m)(c) The register of deeds shall provide, upon request, a blank form which a person may complete and use as the first page of an instrument that the person seeks to record. The blank form shall be provided without charge and shall conform to the provisions of pars. (a) and (b). (d) Paragraphs (a) and (b) do not apply to any of the following instruments: 1. Copies of documents that are certified by the state or by a city, village, town or county, or by a subunit or instrumentality of any of the foregoing. 3. Filed documents. **4.** Federal income tax lien form 688 (Y) (c).* (Sharon Martin, Washington County)

Question: Is there a proper way to certify a document or a proper place to add the ROD seal & certification statement.
Answer:
There is no specific correct way to certify. It is Office preference.
s. 59.43 (1) (i) "Make and deliver to any person, on demand and upon payment of the required fees, a certified copy, with the register's official seal affixed, of any record, paper, file, map or plat in the register's office." There is no additional detail of what is to be included when certifying a copy.

There is some information given in s. 889.08 as it relates to certified copies allowed by law to be evidence. It states, "the copy shall be certified by the legal custodian of the original to have been compared by the custodian with the original, and to be a true copy thereof or a correct transcript therefrom, or to be a photograph of the original. The certificate must be under the custodian's official seal or under the seal of the court, public body or board, whose custodian the custodian is, when the custodian, court, body or board is required to have or keep such seal."

NEW-The committee agrees there are several ways to certify documents and each method is valid; we recommend consistency within your department for whichever process you choose. Most of the committee members attempt to stamp a certification on the face of the document, when there isn't room to certify on the first page we recommend certifying the back of the last page. When there isn't room on either page an additional blank page is added, stamped and sealed. We also recommend sealing/embossing each page of the document to ensure changes cannot be made to additional pages once the document has left your office. It is suggested to stamp with black ink, sign and date in blue ink. Only certify documents you personally print from your records.

NEW-If you choose to offer electronic certification in your office through a vendor such as ClerkePass, a certification string of characters is printed on each page of the document; the system adds an additional final page with the same string of characters and your electronic signature stamp.

Question: A certified copy by the Clerk of Courts of a document was submitted and the exhibit was 11x17 size. Is this acceptable for recording?
Answer:
Per *59.43(2m)(a), (d)1, (e), Standard format requirements for recorded documents (a) except as provided in pars. (d) and (e), no document may be recorded in the office of a Register of Deeds unless it substantially complies with all of the following on the first page of the instrument..... (d) Paragraphs (a) and (b) do not apply to any of the following instruments: 1. Copies of documents that are certified by the state or by a city, village, town or county or by a subunit or instrumentality of any of the foregoing OR (e) Every instrument that the Register of Deeds accepts for recordation under this subsection shall be considered recorded despite its failure to conform to one or more of the requirements of this subsection, if the instrument is properly indexed in a public index maintained in the office of the Register of Deeds.*

The document was recorded and a copy of the exhibit was reduced to 8 1/2 x 14 size for imaging. Suggested wording to add to comments on image might be "legibility impaired". (Sharon Martin, Washington County)

Question: Does the Department of Transportation receive copies of documents at no charge? Who DOES qualify to receive free copies of documents?
Answer:
The DOT is not exempt from copy fees. However, per *s. 59.43(2)(j) All fees under this subsection shall be payable in advance by the party procuring the services of the register of deeds, except that the fees for the services performed for a state department, board or commission shall be invoiced monthly to such department, board or commission.*

Under *s. 59.43(2)(b) For copies of any records or papers, $2 for the first page plus $1 for each additional page, plus $1 for the certificate of the register of deeds, except that the department of revenue is exempt from the fees under this paragraph.*

The county's VSO (Veterans Service Office) may receive copies of vital records per *s. 45.04(5) VITAL RECORDS. The service office may obtain a copy of a vital record under s. 69.30(2) and may transmit the copy to the department or to the U.S. department of veteran's affairs to assist a veteran or his or her dependent in obtaining a benefit.*

Under *s. 19.25 State officers may require searches, etc., without fees. The secretary of state, treasurer and attorney general, respectively, are authorized to require searches in the respective offices of each other and in the offices of the clerk of the supreme court, of the court of appeals, of the circuit courts, of the registers of deeds for any papers, records or documents necessary to the discharge of the duties of their respective offices, and to require copies thereof and extracts therefrom without the payment of any fee or charge whatever.*

NEW Response: The committee agrees you may charge the Army Corp of Engineers a fee as Wis. Stat. 59.43(2)(b) and Wis. Stat. 19.25 exempt the Department of Revenue, Secretary of State, State Treasurer, and Attorney General as the only offices exempt from copy fees.

Question: I need to order a new seal for certifying documents. Our current one has an eagle, ink well, pen and the eagle is standing on a book. Around the outer circle is "REGISTER OF DEEDS, SAWYER CO WISCONSIN". Do I need to order the exact seal, or can I use our county logo? Does anyone know of any requirements? (Paula Chisser, Sawyer Co).
Answer:
Based on responses it appears that an exact seal is not needed, but copy should be placed on file at the Secretary of State. *59.43(1) (t) Upon commencement of each term, file his or her signature and the impression of his or her official seal or rubber stamp in the office of the secretary of state.* The only suggestion I would have is if you do change your official seal, file a copy with the secretary of state – or perhaps now that is the department of financial institutions since they have taken over the 'notary' duties. (Marvel Lemke, Taylor Co.)
If you are not the only one who signs certified copies, consider leaving your name off.

Question: A document is submitted with the following statement, "A true copy Attest _____ Register of Probate." Is an attested copy the same thing as a certified copy? (Beth Pabst, St. Croix County)
Answer:
An attested copy is the same as a certified copy. (Marge Geissler, Chippewa County)

Certified Survey Maps

Question: Do Affidavits of Correction for plats and CSMs require approval by the local municipality? Do you send the document back if you find an error before you record it?
Answer:
Yes, if the approval was required initially. If we found an error prior to filing, we would ask them to correct it before it is filed.

Question: Who is responsible for policing the Department of Transportation approval on Certified Survey Maps when the land abuts a highway? Should the CSM not be filed if it is obvious there should be a DOT number?
Answer:
Registers of Deeds are not responsible for policing this approval. It is policed by the Department of Transportation by their refusal to issue a driveway permit to owners who have not had their survey approved. The Register of Deeds can look for the approval and can mention the approval requirement to the owner, but file the map without the approval at his request. It is the owner's responsibility to have his CSM approved, if needed.

Question: Is it permissible to accept a certified survey map for filing that is printed on both sides of a single sheet of paper if each side is consecutively numbered?
Answer:
No. Per the Department of Administration, Plat Review, Certified Survey Maps "cannot be printed back to back".

Question: A certified survey map was accepted for filing that was missing the surveyor's seal. How should this error be corrected?
Answer:
An Affidavit of Correction could be recorded stating the situation and include the surveyor's seal. This would then be tied back to the original certified survey map.

Question: A surveyor submits an original CSM for filing, along with a copy. He requests that the recording information be completed on the copy and returned in a self-addressed stamped envelope. Does anyone provide the information on the copy free of charge? How would you handle this request?
Answer:
Best practice is $2 plus $1 fee but you can have an office policy that differs.

Question: An attorney created an "affidavit of correction" correcting a scriveners error on a CSM. Can just anyone correct a plat or CSM?
Answer:
No. Per Wisconsin Statute 236.02(2m) defines a correction instrument as, “an instrument drafted by a professional land surveyor that complies with the requirements of s.236.295 and that, upon recording, corrects a subdivision plat or a certified survey map. While we would be required to accept the "affidavit of correction" if it is in recordable form, we could not place the "correction instrument recorded...." stamp on the CSM because a professional land surveyor did not prepare it. I would also suggest a notation be made in your indexing system that this instrument does not correct the map itself.

Question: “Plat of Survey done on top of a Certified Survey Map. A Quit Claim Deed was recorded but it wasn’t done to satisfy the land contract on a particular piece of land, using exemption 3 and the document number/date of the original land contract. A plat of survey legal description was used, not the CSM legal. Which one is correct?” Cindi Meudt, Green County
Answer:
Only a certified survey map creates a new legal description. A plat of survey only corrects a boundary or provides a better metes and bounds, or whatever the intent was to conduct the survey, and may be used as an attachment to illustrate the property boundaries. It has no special legal standing and cannot establish lots or subdivide land as a certified survey map can as per Chapter 236 of the Wis. Statutes. A plat of survey cannot be used as a "legal description" by itself. The section, town, range, quarter-section and metes and bounds must be given on the face of the document. (Jane Lich, Dane County)

Question: Can a road be vacated by filing a CSM or subdivision plat? (Carey Petersilka, Door)
Answer:
Per State Plat review: If this were a Town road, it would need to go through the courts to be vacated; however If the road is a private road then a written Release would need to be drafted and signed by whoever has right of enforcement on the Plat, usually the owners of the lots that the road abuts. This release would not be recorded alone. It would be attached as an exhibit to an Affidavit of Correction to the Plat. They also said the Affidavit of Correction should refer to the CSM also. I questioned the Affidavit of Correction, since it is going to correct the original Plat. They explained that this is the only way to modify a plat. (Carey Petersilka, Door)

Question: Are Land Corner Restoration documents filed in your office? We file them in the same book as Certified Survey Maps and charge the regular recording fee. Is there statutory language that references Land Corner documents? Our County Surveyor is concerned about recording these with the increase in recording fees and he did not budget for the increase. (Joan Hansen, Vilas Co)
Answer:
There are a handful of Counties who have Land Corner Restoration documents and some keep in a separate bound book; other file/record and keep with CSMs. Per s.59.43(2)(e), subject to s.59.72(5), for filing any instrument which is entitled to be filed in the office of register of deeds and for which no other specific fee is specified, you charge the current recording fee. Per

Administrative Chapter AE-7.08(1) (Minimum Standards for Property Surveys)...*indicates the record should be prepared and filed with the county surveyor's office*…. It is my understanding, in some counties there may be no full-time surveyor, so the records are filed in the ROD office, hence the reference to "Register of Deeds". (Marvel Lemke, Taylor Co).

A−E 7.08 U.S. public land survey monument record.

(1) WHEN MONUMENT RECORD REQUIRED. A U.S. public land survey monument record shall be prepared and filed with the county surveyor's office as part of any land survey which includes or requires the perpetuation, restoration, reestablishment or use of a U.S. public land survey corner, and,

(a) There is no U.S. public land survey monument record for the corner on file in the office of the county surveyor or the register of deeds for the county in which the corner is located; or,

(b) The land surveyor who performs the survey accepts a location for the U.S. public land survey corner which differs from that shown on a U.S. public land survey monument record filed in the office of the county surveyor or register of deeds for the county in which the corner is located; or,

(c) The witness ties or U.S. public land survey monument referenced in an existing U.S. public land survey monument record have been destroyed or disturbed.

Question: Copies of CSMs to Assessors – does anyone give copies of maps to assessors and if so, is there an agreement on file? (Cindi Meudt, Green Co)

Answer:

Per s.70.09(2)(b), to provide information on parcels of real property in the county for the use of taxation district assessors, city, village and town clerks and treasures and county offices and any other persons requiring that information. Also, assessors are an extension of the DOR, see *59.43(2)(b), for copies of any records or papers, $2 for the first page plus $1 for each additional page, except that the department of revenue is exempt from the fees under this paragraph*. (Marvel Lemke, Taylor Co).

Question: Page 1 of a certified survey map indicates Certified Survey map but does not give a qtr/qtr s/t/r. Is this rejectable per the following statute? *(Beth Pabst, St. Croix Co.)*

Answer:

Yes. *Per s. 236.34(1)(c) The map shall be prepared in accordance with s. 236.20 (2) (a), (b), (c), (e), (f), (g), (h), (i), (j), (k), and (L) and (3) (b), (d), and (e) at a graphic scale of not more than 500 feet to an inch, which shall be shown on each sheet showing layout features. The map shall be prepared with a binding margin 1.5 inches wide and a 0.5 inch margin on all other sides on durable white media that is 8 1/2 inches wide by 14 inches long with a permanent nonfading black image. When more than one sheet is used for any map, each sheet shall be numbered consecutively and shall contain a notation giving the total number of sheets in the map and showing the relationship of that sheet to the other sheets. "CERTIFIED SURVEY MAP" shall be printed on the map in prominent letters with the location of the land by government lot, recorded private claim, quarter-quarter section, section, township, range and county noted. Seals or signatures reproduced on images complying with this paragraph shall be given the force and effect of original signatures and seals.*

Question: Page 2 of a certified survey map gives the following as the full legal within the surveyor's certificate: located in part of the southwest of the Northwest of Section 3, Township 30 North, Range 18 West, City of New Richmond, St. Croix County, Wisconsin, described as follows: Lot 1, Lot 2, and Lot 3, CERTIFIED SURVEY MAP NO. 3486, Recorded in Volume 12, Page 3486 as document Number 583373. This does not give a full metes and bounds legal description. Does this comply with the following part of the statute? *(Beth Pabst, St. Croix Co.)*

Answer:

s. 236.34(1)(d) 2. A clear and concise description of the land surveyed, divided, and mapped by government lot, recorded private claim, quarter-quarter section, section, township, range and

county; and by metes and bounds commencing with a monument at a section or quarter section corner of the quarter section that is not the center of a section, or commencing with a monument at the end of a boundary line of a recorded private claim or federal reservation in which the land is located; or if the land is located in a recorded subdivision or recorded addition to a recorded subdivision, then by the number or other description of the lot, block or subdivision, which has previously been tied to a corner marked and established by the U.S. public land survey.
Per Marvel Lemke (Taylor Co.) This does comply. Because it is a CSM it did not need a full metes & bounds legal.

Question: I returned a DEED to a law firm that only had reference to the volume and page of the survey, there was NO Certified Survey Map number on it. The attorney called me and wanted to know the DATE that numbers were required on conveyances. (Paula Chisser, Sawyer County)
Answer:
1987 ACT 390 – changed 236.34(3) from may to shall…..After ACT 102 was passed in 2017 it reads: *236.34 (3) USE IN CONVEYANCE. When a certified survey map has been recorded in accordance with this section, the parcels of land in the map shall be, for all purposes, including assessment, taxation, devise, descent and conveyance, as defined in s. 706.01 (4), described by references to all of the following: (a) The number of the map. (b) The lot or outlot number of the parcel. (c) If the map is assigned a document number, the document number assigned to the map. (d) If the map is assigned a volume and page number, the volume and page where the map is recorded. (e) The name of the county.*

Question: I have a two page Certified Survey Map for recording. The surveyor's signature and seal is only on one page. We still need the surveyor's signature and seal on all pages correct, or did that change? (Deb Brandt, Monroe County)
Answer:
Yes. The statute itself does not say that; however, the administrative code does. (Cheryl McBride, LaCrosse County)

Question: According to our handbook section on Plats – Certified Survey Maps, Accepting for Recording (and Filing) *s. 236.34 states that no white out is allowed because it is not permanent and is easily chipped or rubbed off the surface.* That is referenced under #8. Is this actually part of the statute or is it just a best practice? (Deb Brandt, Monroe County)
Answer:
I would say the white out does not fit the Permanent non-fading black image, so I interpret it to be right in the statute. White out is not permanent. (Beth Pabst, St. Croix County)

Question: When do CSM's need to have the owner's signatures? Can we accept electronic signatures of the owner's? I'm wondering if we even need the signatures on this? And if we do, we will need to reject, but if we don't we can record.
Answer:
The signatures of the owner's need to be on the CSM when property is dedicated to the public, such as, roads and parks or outlots.
Per Plat Review and *s. 236.34(1m)(c)* which states, "…Seals or signatures reproduced on images complying with this paragraph shall be given the force and effect of original signatures and seals," they felt the digital or digitally reproduced signatures are ok to record.

NEW-Question: Before I try to have the County add the 3 X 3 CSM recording space area to an ordinance; I wanted to make sure there is no legislation in progress to add the requirement to Wis. Stats. 236.34. I was hoping it would have been done in the statutes.

Response: There is no plan to seek the recording space on CSM's; most people felt it was not an important legislative item. There are not many counties that have an ordinance; most simply sent a letter to their local surveyors and they complied.

** Refer to Resources Tab on WRDA Secured Website for the following examples: Jefferson County's letter to local surveyors and Outagamie County's ordinance to the submitter.*

NEW-Question: I was told by my Planning and Zoning Director that statutes allow the Register of Deeds to have an ordinance enacted to review all CSM's, whether or not they were a land division. Is there a statute that allows this?

Response: The committee has reviewed Wis. Stats. 59.43, 236.34 and 236.45 and could not find reference allowing the Register of Deeds to enact a CSM ordinance. We have checked with our Zoning Directors and they believe you could make an argument that an ordinance could be established; however, nothing specific to our department. We recommend you seek advice from your Corporation Counsel to determine if it is appropriate for your county.

NEW-Question: We received a CSM for recording that had several names typed in for owners of the property; however, only one owner signed the CSM, leaving several blank lines for signatures. The submitter produced a document that stated why the lines are blank which they do not intend on recording that document. Should we accept for recording?

Response: The committee agrees the CSM does not meet recording requirements and should be rejected. Wis. Stats. 236.34(2)(b) states the register of deeds may not accept a CSM for record unless the CSM shows all the certificates and affidavits required under Wis. Stats. 236.34(1) and (1m) and 236.21(2)(a) which requires all owners and person's holding interest in the land to sign the CSM. We recommend you ask your county surveyor or land department to review the CSM for any additional ordinance requirements.

NEW-Question We received, in the main, a CSM with a photocopied signature and notary seal. The surveyor is quoting statute 236.34 (1m) (3) which has this at the end. *Seals or signatures reproduced on images complying with this paragraph shall be given the force and effect of original signatures and seals.* We've never had one copied before. I read this to mean that as long as your CSM meets all the other requirements, it will be recorded.

Response: Renee said this would be a case-by-case scenario that the ROD would have to examine each record if it came in that way and make a decision. Renee suggested that the ROD call her, and she will walk them through it.

NEW-Question: I have a company called MACH IV that did a Certified Survey Map. He is using a 20lb paper and we keep the csm's in a book. The media type in the book says 24lb bond paper, 32lb bond paper, or White/Opaque film. He doesn't want to get new signatures if he doesn't have to. In the book it says that 20lb paper isn't durable, but he said that he sends them to Outagamie and Brown County

and they accept them. I asked if they send them back and he said no they destroy them. Can I tell him that he needs to use the right media type if I'm keeping the documents.
Answer: We referred to Spreadsheet Heather put together regarding CSMs. If your county still files the CSM's in Volume/Page books you can certainly require adequate paper weight. Most who are no longer keeping the CSM's allow surveys to come in on regular weight 8.5 x 14 paper.

Condominiums

Question: I question this statement in our handbook: "All condominium plats submitted for recording must include floor plans." What about condominiums without buildings such as campsites, dockominiums and single-family residence ground condominiums?
Answer:
Per *s. 703.11 (2)(c)* Plans that show the location of each building located or to be located on the property and, if there are units in a building, that show the perimeters, approximate dimensions, approximate square footage, and location of each unit in the building. Since campsites and dockominiums are not buildings this reference would not apply to them. Per *s. 703.365(4)(b)* Small Condominiums (12 units or less) need only show the location and designation of each unit in the building and the limited common elements appurtenant to each unit. Note only dockominiums (marina condominiums) created before June 1, 2007 are valid.

Question: Does the surveyor need to designate garage units as separate numbers on a condominium plat? For example: Evergreen Condo contains units 1-5. Can the garage units also be numbered 1-5 or do they need unique numbers?
Answer:
All units intended to be sold separately need unique numbers. If developers are selling garage units separately from regular units they need a unique unit number.

Question: Does condo legislation address the unit designation?
NEW-Answer:
Yes. 8 numerals are the maximum number allowed, and no alpha or roman characters are allowed. 2021 WI ACT 168: s. 703.11(3) indicates only numbers are allowed to designate units. s. 703.12 allows for letters and numbers for historical condos only.
703.11(3) *DESIGNATION OF UNITS. Every unit shall be designated on the condominium plat by the unit number. Unit numbers may not contain more than 8 numerals and must be unique throughout the condominium.*
703.12 Description of units. *A description in any deed or other instrument affecting title to any unit, including a conveyance, as defined in s. 706.01 (4), that makes reference to the letter, number, or other appropriate designation of the unit on the condominium plat the name of the condominium as it appears in the declaration, the name of the county where the condominium is located, the document numbers assigned to the declaration, and if volume and page numbers are assigned to the declaration, the volume and page where the declaration is recorded, shall be a good and sufficient description for all purposes.*

Question: If the condo association presents for recording an Amendment to the Condo Declaration to change the bylaws only, would they also need to present a Condo Plat Addendum? Is it necessary to file an Addendum to a Condominium Plat in addition to recording an Amendment to the Condominium Declaration if a copy of the Plat Addendum is attached to the Declaration Amendment?
Answer:
No, not as long as nothing changes on the condo plat. If the plat is being altered in some way, a separate Addendum to Condominium Plat must be filed. It is not specifically required to attach a copy of the Plat Addendum to the Declaration Amendment, but it is often done.

Question: A condominium plat was received for recording which contains six buildings. Each building consists of 8 units, numbered 1 through 8. If listed as building number 1 unit number 1, building number 2 unit number 1, etc. does this meet the requirements of 703.11 (3) requiring unit numbers to be unique throughout the condominium?
Answer:
Wis. Statute 703.11 (3) states "unit numbers may not contain more than 8 numerals and must be unique throughout the condominium." The statute doesn't refer to building numbers—only unit numbers.
NEW-Historical numbering and lettering needs to be honored. Going forward, unit numbers should be unique throughout regardless of multiple buildings.

Question: Where is it stated in the statutes that a declaration of condominium should be recorded first, followed by the condominium plat?
Answer:
There is not any specific language in the statutes to indicate it is required to record the condominium declaration first and file the condominium plat second. It merely states, "A condominium declaration and plat shall be presented together to the register of deeds for recording." However, it is logical to record the declaration first since this states the owner 's intent to subject the property to the condominium form of ownership and sets up the condo as a new creation. The intention (or plan) is carried out or completed with the plat by defining the exact ownership arrangement.

Question: A developer has control of a condominium and wishes to change the name of the condominium. Can he/she do so with an affidavit of correction?
Answer:
According to the Dane County Corporation Counsel, the answer is no. In the Oct. 31, 2000, opinion of David Gault who handles most real estate questions, "Section 703.09(1) states that 'The register of deeds may not...record amendments and addenda unless they are numbered consecutively and bear the name of the condominium as it appears in the declaration.' It appears that the name of the condo is not subject to amendment as it is the unique identifier that all subsequent filings must refer to." However, when the developer still controls the condominium, it is a relatively simple matter to record a CONDO REMOVAL document as per 703.28, immediately followed by a new condo declaration and condo plat that contain the new name.

Question: How can a condominium be created?
Answer:
Wisconsin Statutes 703.07(1) states, "A condominium may only be created by recording condominium instruments with the register of deeds of the county where the property is located. A condominium declaration and plat shall be presented together to the register of deeds for recording."

Question: What is an "amendment" according to Chapter 703?
UPDATED-Answer:
703.02(1h) "Amendment" means an instrument that modifies a recorded condominium declaration. "Amendment" includes a modification to a declaration to relocate unit boundaries under s. 703.13(6), to separate or merge units under s. 703.13(7) or (8), and to merge or consolidate a condominium under s. 703.275.

Question: What is an "addendum" according to Chapter 703?
UPDATED-Answer:
703.02**(1b)** "Addendum" means an instrument that modifies a recorded condominium plat.

Question: If a developer presents “Cloverleaf Condominium Declaration Amendment # 3”, must he/she also present “Cloverleaf Condominium Plat Addendum # 3”? When presented with an Amendment to Declaration and Addendum to Condo Plat, does the order of recording matter?
UPDATED Answer:
No. If modifications to the Condominium Declaration do not affect the Condominium Plat, only the Condominium Declaration Amendment would be presented. It is also possible, although rare, for a change to the Condominium Plat to have no effect on the Condominium Declaration. In that case, only the Condominium Plat Addendum would be presented. However, it is a good practice to ask the presenter if, in fact, this change in the Condominium Plat affects the percentage of interest of each unit owner in the common elements because that case would also require a Condominium Declaration Amendment. s. 703.095 does require consecutive numbering for both Amendments and Addendums.
While Chapter 703 does not address the order of recording directly, as with the initial Declaration and Condo Plat, it is logical to record the Declaration Amendment first as it describes the changes and record the Condo Plat Addendum after as it is a “picture” of the changes described in the Declaration Amendment.

Question: Is it okay to accept a Condominium Plat Addendum that was accidentally labeled an “Amendment”?
Answer:
NO. These terms are clearly defined in s. 703.02.Using the terms interchangeably causes confusion.

Question: What do “common elements” mean?
Answer:
Per 703.02 (2) Common elements mean all of a condominium except its units.

Question: What do “limited common elements” mean?
Answer:
Per 703.02 (10) Those common elements identified in a declaration or on a plat as reserved for the exclusive use of one or more but less than all unit owners.

Question: I thought that only the condo name and unit number can be used as the legal description, but 703.12 seems to indicate that “anything goes’. Can they use building numbers to make the legal unique within the condo?
Answer:
703.12 must be preserved because of older condominiums that use a variety of designations for units. 703.11(3) controls condo plats recorded after January 1, 1999 and states, “Every unit shall be designated on the condominium plat by the unit number. Unit numbers may not contain more than 8 numerals and must be unique throughout the condominium.”

Question: I notice that some condo plats give the entire, detailed floor plan of the condo units, but others only give the dimensions of the perimeters. Which is correct?
Answer:
Only the dimensions of the perimeters are required, but more detail may be given as long as it is legible. Original condo law required more detail that is no longer required.

Question: I received a condo declaration and plat for recording. We rejected it because the name was not unique to our county. There was another plat and declaration that was already

recorded but has since dissolved. The attorney who drafted the new condo stated it is unique under 703.11(2)(a), as the other one had been dissolved. (Paula Chisser, Sawyer County)
Answer:
After Jan. 1, 1999, condo names must be unique. The other condo name will always be a part of Sawyer County history, even though it has since been removed. You are correct. You cannot "reuse" a Condo name. (Jane Licht, Dane County)

Question: An attorney presented a “Restated Condominium Declaration for Sunnyvale Condominium.” Should I accept it? (Jane Licht, Dane County)
Answer:
It is likely that this document should be named “First (or Second, etc.) Amendment to the Declaration of Sunnyvale Condominium.” Amendments are defined in chapter 703 as “a condominium instrument that modifies a recorded condominium declaration.” The only place the word “restated” is mentioned is in reference to a merger of two condominiums in 703.275(5). Check to see if this is really a merger of two or more condominiums. If not, explain that it appears to be an amendment to the declaration and ask that they rename the document.

Question: A surveyor presented an addendum to a condominium plat that should have accompanied an amendment to the declaration that we have already recorded. What should I do? (Jane Licht, Dane County)
Answer:
Better late than never. Record the plat (if it meets statutory requirements) and diplomatically suggest that he/she work more closely with the attorney who is drafting the amendments so that both documents are presented at the same time. Also remind your staff to inquire whenever an amendment to the condominium declaration is presented, “Does it effect any changes to the plat?”

Question: An amendment to a condo declaration and an addendum to a condo plat are presented. Only the name of the condo and the legal description of the land being added to the condo are given as the legal description. Should the underlying legal of the original condo also be given?” (Jane Licht, Dane County)
Answer:
No. When a condo is recorded, the name of the condo becomes the current and only valid legal. Only the name of the condo and a description of the land being added are required in this case. If the underlying legal description is given anyway, just ignore it.

Question: We recorded an amendment to a condo declaration and addendum to a condo plat. The original condo had units 1 to 22. Units 23 through 30 were added. Should we index the deeds for units 23 through 30 to the first amendment or addendum? (Jane Licht, Dane County)
Answer:
NO! Sunnyvale Condominium will always be Sunnyvale Condominium regardless of how many units it has at any point in history or how many changes it undergoes through amendments and addendums. All instruments are posted/tracted to Sunnyvale Condo and the appropriate unit number. The only reason to add the first addendum to the plat in your index is to be able to locate the physical plat in your condo cabinets.
NOTE: In cases (older condos) where duplicate numbers have been used, you may have to add the Addendum to your recording software to prevent future duplicate indexing issues.

Question: A question on the surveyor's signature/seal on a condo plat. We recently communicated about plats of survey, which do need the original signature and seal of the surveyor. I know there is an exception for CSMs and subdivision plats (reproduced seals and

signatures have the full force of the original). Where do condo plats stand on this issue? (Connie Woolever, Walworth Co)
Answer:
Per Renee Power at Plat Review: Chapter 703 requires that the documents meet the same durability standards as plats so most seals and signatures are reproduced. I think it makes sense to accept reproduced signatures. Usually, it's the original ones that may not be archival. Something that should be changed in Chapter 703.
However, this could be disputed since it really is NOT addressed in Chapter 703 (condos) as it is in s. 236.25(2)(a) for plats/subdivisions and s. 236.34(1m)(c) for CSMs.
UPDATED-WI ACT 168 added 703.065 Recording requirements; general. Still original signatures and seals were not specifically addressed.

Question: I learned today about a new statute that became effective on 10/27/07 regarding Marina Condominiums and and Dockominiums. The statute reference is 30.1335. Perhaps you were familiar with this legislation, but I missed it. Thought I'd share it with you. (Connie Woolever, Walworth Co)
Answer:
Per 30.1335 (2) no marina condominiums can be created after June 1, 2007. Any declaration for a marina condominium that is recorded on or after June 1, 2007 is invalid and establishes ownership of the riparian land as tenants in common that is held by the owners of the marina condominium units. (3) existing marina condominiums established before June 1, 2007 shall be effective.

Question: I received a Condo Plat and Declaration for recording but rejected it due to various different reasons. Both documents came back and the plat has "white-out" on it. I objected again, citing s. 703.12(2)(d) which refers to nonfading black image, which this is clearly not. Should I still reject it? (Christie Bender, Juneau Co).
Answer:
Yes, whiteout is not permanent.

Question: If a condo is removed does the legal description automatically revert back to what the condo was platted over? (Cheryl McBride, LaCrosse, Co.)
Answer:
Yes, after the land is removed from the condominium form of ownership, the land is described as it was prior to the condo. – Renee Powers, Plat Review (March 2012 Seminar Handout, Page 13) (Cathy Williquette Lindsay, Brown Co.)

Question: Can a condo plat contain only common elements and limited common elements? This appears to be a campground style of condo with trailers being parked on a limited common element. (Jodi Helgeson, Adams Co.)
Answer:
Our Handbook mentions campground condominiums in paragraph 1 and in paragraph 2 states that in the case of campground condominiums there may not be units. (Cathy Williquette Lindsay, Brown Co.)

Question: A condo was properly removed and recorded in our office back in 2010. Now the owners want to revoke said Removal from the Condominium and want to reinstate it as it originally was. They are also reinstating the Condo Declaration. They have the owner"s signatures and want to record the document calling it: "Revocation of Removal from Condominium". Can I accept this or do they need to do something else? (Randy Leyes, Rock County)

UPDATED-Answer:
Once it's removed the property is owned by the unit owners, there is no longer a condo to reinstate.

703.28 (1m) Before a certified survey map, condominium plat, subdivision plat or other plat may be recorded and filed for property that is subject to a condominium declaration, the condominium shall first be removed from the provisions of this chapter by recording a removal instrument. This subdivision does not apply to a merger or consolidation under s. 703.275.

(2) Upon removal of any property from this chapter, the property shall be deemed to be owned in common by the unit owners. The undivided interest in the property owned in common which appertains to each unit owner shall be the percentage of undivided interest previously owned by the owner in the common elements.

Question: Can a removal document be any type of document such as an amendment to declarations?

UPDATED Answer:
s. 703.28 does not indicate a particular document type so while I'd thinka document type with "removal" in it would be more appropriate, I suppose if Amendment checks all of the s. 703.28 boxes, you should record. A follow up with the submitter may be worth it as it may eliminate future confusion. (Heather Schwersenska, Waushara County)

703.28 Removal from provisions of this chapter.

(1) All of the unit owners may remove all or any part of the property from the provisions of this chapter by a removal instrument, duly recorded, provided that the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property.

Question: I have a condominium plat, labeled as "Corrected plat of the first amendment to Cobblestone Cottage condominiums at Golf Hill Plat". This is removing projected condos, but not land area. Can the "wording" of corrected amendment be used, or should this be a 2nd amendment?

UPDATED Answer:
s. 703.02 clearly defines Amendment vs. Addendum. I would require the submitter only use these terms to prevent future confusion.
703.095 Modification and correction of recorded condominium instruments, amendments, and addenda clearly identifies how condo plats and declarations can be modified and the requirements to do so.
*Also See Handbook-Plats Chapter-Condominium pages. (Heather Schwersenska, Waushara County)
Answer:
I spoke to Renee Powers from the state and her opinion is this is not a "correction". An addendum should be done, then amend the declaration. In Green Lake we have never had an addendum, so in this case, the recommendation would be a 2nd amendment. The change that was being made was an area listed as "possible expansion". Renee stated that cannot be listed that way. The options would be to list as common areas, or future units. If the goal of the developer is to remove these areas from the condominium plat, then they need to do a removal instrument per *statute 703.28. All owners and lenders must sign the removal instrument.* (Renee Powers, State of Wisconsin Plat Revenue)

Question: We have an attorney wanting to file a condo plat. In the restrictions it talks about the residential Units 1 & 2, common elements, etc. The plat itself does not show any floor plans or common elements. We were told this is a duplex that they are turning into a condo. Do they need to show the floor plan and common elements? (Cheryl McBride, LaCrosse County)
Answer:
Small condominiums are exempt from floor plans. They only have to show the location and

designation of each unit in the building and limited common elements (*703.365).* (Cathy Williquette Lindsay, Brown County)

Question: They are recording a "Correction Instrument" to give a more accurate boundary of the original condominium. Following the recording with an Addendum. Can you do this with a correction, or does it need to be by an amendment? I realize they are probably trying to do a correction so the surveyor can sign, and I do understand it is only trying to correct the boundary. (Carey Petersilka, Door County)

Answer:

These are the statutes referenced in the document, it appears to be okay. (JoEllyn Storz, Kenosha County)

UPDATED Answer:

703.02(6m) "Correction instrument" means an instrument drafted by a professional land surveyor that, upon recording, corrects an error in a condominium plat. "Correction Instrument" does not include an instrument of conveyance.

703.095 Modification and correction of recorded condominium instruments, amendments, and addenda

(3) CORRECTION INSTRUMENT. A correction instrument may be used only to correct a scrivener error on a condominium plat, including erroneous distances, angles, directions, bearings, chords, building or unit numbers, and street names.

WI ACT 168 clarified **703.13 Percentage interests.**

(6) RELOCATION OF BOUNDARIES. (a) If any condominium instruments expressly permit a relocation of boundaries between adjoining units, those boundaries may be relocated in accordance with this section and any restrictions and limitations which condominium instruments may specify.

(b) If any unit owners of adjoining units whose mutual boundaries may be relocated desire to relocate those boundaries, the principal officer of the unit owner's association, upon written application from those unit owners and after 30 days' written notice to all other unit owners, shall prepare and execute the appropriate instruments.

(c) An amendment shall do all of the following:

1. Identify the units involved and state that the boundaries between those units are being relocated by agreement of the unit owners thereof.
2. Contain words of conveyance between the owners of the units identified in subd. 1.
3. If the adjoining unit owners have specified in their written application the reallocation between their units of the aggregate undivided interest in the common elements appertaining to those units reflect that reallocation.

(cm) An amendment under par. (c) shall be adopted, at the option of the adjoining unit owners, either under s. 703.09 (2) or by the written consent of the owners of the adjoining units involved and the mortgagees of the adjoining units.

(d) If the adjoining unit owners have specified in their written application a reasonable reallocation, as determined by the board of directors, of the number of votes in the association or liabilities for future common expenses not specially assessed, appertaining to their units, modifications to the condominium instruments shall reflect those reallocations. An amendment under this paragraph shall be adopted in the manner specified in par. (cm).

(e) An addendum showing the altered boundaries and the dimensions thereof between adjoining units, and their identifying numbers or letters, shall be prepared. The addendum shall be certified as to its accuracy in compliance with this subsection by a professional land surveyor.

(f) After appropriate instruments have been prepared and executed, they shall be delivered promptly to the adjoining unit owners upon payment by them of all reasonable costs for the preparation thereof. Those instruments are effective when the adjoining unit owners have executed them and they are recorded in the name of the grantor and grantee. The recordation thereof is conclusive evidence that the relocation of boundaries did not violate any restriction or limitation in the condominium instruments.

NEW-Question: The owners of a Condo recorded a Condo Removal, but have a mortgage on the property. The mortgage was actually taken out prior to recording the original Condo Plat.

Does the mortgage/lien holder need to sign the Condo Removal Instrument?
I looked back and found a situation in 2016 where the owners did hold a mortgage and recorded a Condo Removal and there was no mention of the mortgage holder.
My Tax Lister is questioning why I did not require the bank to sign the Removal based on 703.28(1).
Answer: The committee believes you must record the document if it is in recordable format. Statute 703.28(1) does require the holders of liens to consent to the condominium removal and that the consent of the mortgagees are to be recorded; however, it is not up to the registrar to police the legality of the document. We agree this will most likely put a cloud on the title as the Tax Lister suggests**; if possible bring this requirement to the submitter's attention, but if they insist on recording the document as is you need to record it.**

703.28 Removal from provisions of this chapter.

(1) All of the unit owners may remove all or any part of the property from the provisions of this chapter by a removal instrument, duly recorded, provided that the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property.

NEW-Question: An attorney called me yesterday; he needs to remove a "3000 ft. sliver of land" from an existing condo. The land is part of the common elements. He is drafting a Partial Condo Removal but wanted to know if he needs to file a Condo Addendum to the Condo Plat. I don't think he needs to but now I'm questioning myself because it is changing the Condo Plat. If he does need one then it would be logical to think we should have them for all removals.

Response: The committee agrees that modification of the condo plat requires an addendum to the condominium plat be recorded as well as an amendment to the declaration. For further clarification direct the submitter to WI Plat Review's document on condominiums.
https://doa.wi.gov/DIR/_WI_Platting_Manual-Condominiums.pdf

New-Question: When recording a conveyance is the document number of the declarations and any addendums to the original condominium plat required? What does the term appurtenance mean in reference to condominiums?

Response: WI ACT 168 changed **706.01(7r)(b)** By condominium name~~,~~ and unit number, ~~and appurtenance number~~ in a platted condominium development AND

703.12 Description of units. A description in any deed or other instrument affecting title to any unit, including a conveyance, as defined in s. 706.01 (4), that make~~s~~ reference to the letter, number, or other appropriate designation of the unit on the condominium plat the name of the condominium as it appears in the declaration, the name of the county where the condominium is located, the document numbers assigned to the declaration, and if volume and page numbers are assigned to the declaration, the volume and page where the declaration is recorded, shall be a good and sufficient description for all purposes.

New-Question: If condominium units must be numbers and not more than 8 numerals, why does Wis. Stats. 703.12 reference the letter or number when describing a unit?

Response: s. 703.12 reference to letters must be preserved because of older condominiums that use a variety of designations for units (i.e. pre WI ACT 168) (Heather Schwersenska, Waushara Co)

New-Question: Does a condominium plat require a surveyor's certificate on every page?
Response: The committee reached out to Wisconsin Plat Review to assist us with this answer and we agree that each page requires the surveyor's certificate. WI Admin. Code A-E 2.02(4), states each sheet

of the plans, drawings, documents, specifications and reports by a professional land surveyor shall be signed, sealed and dated by the surveyor.

NEW-Question: A Surveyor needs to correct the unit numbers on the last page of the plat; the unit numbers are correct on the drawing and in the declaration, can he use an Affidavit of Correction to correct the unit numbers?

UPDATED Response: The committee agrees the Surveyor may use an Affidavit of Correction to correct the unit numbers.
WI ACT 168 added s. 703.095(3) which states **CORRECTION INSTRUMENT.** A correction instrument may be used only to correct a scrivener error on a condominium plat, including erroneous distances, angles, directions, bearings, chords, building or unit numbers, and street names.
A Correction Instrument may NOT be used to change or reconfigure the location of units, buildings or common areas; this would require an addendum to the condominium plat and an amendment to the declaration.

New-Question: An attorney presented two Amendments to Declaration for recording, all the lot owners have signed the documents; however, the signatures are not notarized. There is a statement attesting that they saw the lot owners sign the petition. Those two persons have their signatures notarized. Can I accept these documents for recording?
Response: The committee agrees you should accept the documents for recording as presented; the witnesses have attested they have watched them sign the documents and gave an oath to the notary. A witness signature can be useful for evidentiary purposes if needed in the future.

NEW-Question: Correcting…….surveyor had Cottage Lane and it should have been Cottage Bluff Lane. Correcting a street name or CHANGING a street name. If they are changing a street name, I believe an Addendum to the plat would be in order.
UPDATED Answer:
No. WI ACT 168 added s. 703.095(3) which states **CORRECTION INSTRUMENT.** A correction instrument may be used only to correct a scrivener error on a condominium plat, including erroneous distances, angles, directions, bearings, chords, building or unit numbers, and street names.

NEW-Question: We have received a condo plat to be filed in our office. The land surveyor's signature date is 04/14/2005. Is it acceptable to record that old condo now in 2021? I know that CSM and subdivision plats need to be filed within 12 months of last signature and within 36 months of first signature. Please guide us in this regard.
Response: I was able to talk to Renee Powers at DOA. We went through again with all the recording requirements for condo plat. There is no date restriction with the condo plat. One new thing I learned from her that if The Land Surveyor's license is not current at the time of the recording, the plat is no longer legible. In my situation, the land surveyor signed the plat back in 2005. And Renee found out from the Dept of Safety and Professional Services site that his license expired in 2012. So, the plat is no longer legible.

NEW Question: A surveyor just dropped off an Addendum to a Condo without an Amendment. He is trying to correct the exterior and legal description from the original Declaration and Condo Plat. I

explained we would need an Amendment to the Declaration as well, since it is also changing the legal on that document. The attorney said to just put the following "note" language: It is the sold purpose of this addendum to revise the exterior and legal description (and therefore the LCE for Units 9 & 10) to match the E.W. Odbert survey from April, 1950 and the Allen Groll Plat of division from March 1964.

Answer: The committee agrees that you cannot just put a note on the declaration; they will need to draft an Amendment to the Declaration. We reached out to WI Plat Review for help in determining when an Amendment to the Declaration is required if there is an Addendum to the Condo Plat. Their response was: Per Wis. Stats. 703.11(5) and 703.09, if the legal description changes the legal given in the Declaration, you must also Amend the Declaration. They will also be required to get 2/3 of the owner's signatures and lenders must sign off on the Declaration; this is to protect the party's interests from title issues down the road.

Correction Instrument/Correction Affidavit

New-Question: Is an Affidavit of Correction the same as a Correction Instrument and should they follow the same statutory requirements?

Response: The committee does recognize there is a difference between an Affidavit of Correction and a Correction Instrument; however, we do not believe you can reject a document because they have used an incorrect form/name. The same statutory rules should apply, with the exception of a correction of a plat or certified survey map which needs to be signed by a licensed surveyor per WI Plat Review.

2009 WI Act 348 created a Correction Instrument see Wis. Stats. 706.085, the intent of this legislation was to create a mechanism for correcting a previously recorded conveyance documents.

Wis. Stats. 236.295 references Corrections Instruments and the use of an Affidavit to correct a plat or certified survey map. Affidavits to correct distances, angles, directions, bearings, chords, block or lot numbers, street names, or other details shown on a recorded plat or certified survey map. A correction instrument may not be used to reconfigure lots or outlots.

We recommend you contact the submitter for future documents and encourage them to use the Correction Instrument available on the WRDA website when correcting anything other than a plat or certified survey map. https://www.wrdaonline.org/forms

Question: Two affidavits were sent for recording with death certificates attached to them to be recorded. I called the attorney to let him know that we cannot record vital records. SVRO confirmed. Is there a written policy anywhere stating that we cannot record them? (Lisa Walker, Columbia County).

Answer:

SVRO sited me 69.24 as the statute that would pertain to not recording vital records in with the real estate records. (Kay Walsh, St. Croix County).

An option is for the ROD to type up something indicating that a death certificate (I also indicate whether I considered it certified or non-certified) was attached and that I viewed it. Similar to the HT110. Usually that was acceptable with the submitter. (Brent Bailey, Sauk County)

Question: I have a title company that wants to do a correction instrument but he only has on there that he is correcting the legal description. It does not tell us what in the legal description is being corrected. I see on the checklist that under Best Practices it states that it SHOULD specify the correction, but where does it state that it has to? (Cheryl McBride, LaCrosse County)
Answer:
Unfortunately statute *706.085* did not require a specific format for the correction instrument, so as you state, our checklist includes "best practices"– which an ROD office can choose to enforce (or not). There are certain ways to go about enforcing to require it indirectly – such as requiring the submitter to use the Correction Instrument form provided by Wisconsin State Bar Association.
While legislation to define a correction instrument was a step in the right direction, it did not go all the way (in others it left a gray area) and require a specific form – which was done on purpose by the drafting attorney to allow the ability to argue, in a court of law, the intention of the correction instrument. (Marvel Lemke, Taylor County)
You need to know what the correction is so you know who should be signing the Affidavit per *705.085(2)(b)(2)and (3)*. (Debbie Gore, Deputy, Brown County)
Rather than argue, it might a better response be to state it is office policy' that it is required? (Marvel Lemke, Taylor County)
In summary, a ROD may consider an office policy to require what exactly is being corrected to establish who is required to be signing the instrument per statutes. (Cheryl McBride, LaCrosse County)
***Note:** *Have an office policy in place to ensure consistency.*

Question: I received a Correction Instrument which has been executed by an attorney who did not draft the deed which is subject to the correction. In looking at *s. 706.085(2)(b)*, I am questioning if he has the authority to execute the Correction Instrument? The issue he is correcting is related to the Grantors share which was conveyed…the deed reflects "3/5 interest in the following property"; and the correction is: "Parties conveyed their entire undivided interest". (Peggy Walter, Clark County)
Answer:
s 706.085(2)(b) 1. Except as otherwise provided in this paragraph, a correction instrument that is executed after the effective date of this subdivision ….(LRB inserts date), may be executed by a person having personal knowledge of the circumstances of the conveyance and of the facts recited in the correction instrument, including the grantor, the grantee, the person who drafted the conveyance that is the subject of the correction instrument, or the person who acted as the settlement agent in the transaction that is the subject of the conveyance, and shall recite the basis for the person's personal knowledge. A correction instrument that was executed before the effective date of this subdivision…(LRB inserts date), is not rendered ineffective by reason of the instrument's failure to recite that the maker had the knowledge or capacity required under this subdivision. I think they could sign because of the line that says a person having person knowledge of the circumstances of the conveyance and of the facts recited in the correction instrument. If a settlement agent in the transaction can recite the basis for the person's personal knowledge, I believe they could recite it for this attorney. (Cheryl McBride, LaCrosse County)

NEW-Question: I want to confirm that a Correction Instrument cannot be used to change designation of ownership (i.e. tenants in common to joint tenants)?

Response: The committee agrees the best course of action is to create a new conveyance document to change the ownership designation; this will alleviate future possible clouds on the title. If the submitter insists on using a correction instrument, they will need to have all the grantees sign the document and

submit a transfer return; either way the grantees will be required to sign the document and submit a transfer return.

NEW-Question: One correction instrument can be used to correct multiple conveyances. The correction is the same corrections for several previously recorded deeds; how do they do one transfer return for all the past grantors/grantees?
Response: The committee agrees that you can use one correction instrument to correct the same error of multiple past conveyances; the transfer return will only correct the most current transaction and will require only the current grantor/grantee. The correction instrument may also correct multiple document types such as the deed, the mortgage, etc. The important factor to consider is the item they are correcting must be the same error throughout the documents.

NEW-Question: I have received a Correction Instrument correcting a Transfer on Death Deed. Should the attorney's office be filing and e-return exemption (3) OR typing it is exempt from return and fee (10m) or take without either?
Response: The committee agrees if the original document was a designation of beneficiary form which would not require a transfer return the correction instrument would not be required. However, if the document is correcting an actual conveyance, then a return would be required.

NEW-Question: I have not seen this before. Can they use a correction instrument for this?
Attached was a CI "unsatisfying" a mortgage - wrong mortgage # referenced.
Answer: Yes

Court Documents

Question: Should we or may we require that legal descriptions be attached to documents such as Domiciliary Letters, Power of Attorney, or Confirmation of Sale?
Answer:
We cannot require legal descriptions on these types of documents, however, you can point out that the document will not be tracted unless the legal is provided.

Question: I received a final judgment for recording. It is not certified by the court, but looks like the judge's original signature, is this OK to record, or does the court need to certify *(Paula Chissler, Sawyer Co.)*
Answer:
Per s. 863.29 ***Recording final judgment****. (1) Recording required. Whenever the final judgment assigns an interest in real property, assigns a debt which is secured by an interest in real property or shows the termination of a life estate or an interest as a joint tenant in real property or in a debt which is secured by an interest in real property, the final judgment, a certified copy of the final judgment or a certified abridgment thereof as described in sub. (2) shall be recorded by the personal representative in the office of the register of deeds in each county in this state in which the real property is located. (2) Abridged final judgment. In lieu of a certified copy of the final judgment assigning the estate, the personal representative may record an abridgment of the final judgment including the portions that relate to and affect title to real property in the county in which the abridgment is recorded. The accuracy of the abridgment shall be certified by the judge or the register in probate of the court which assigned the estate. (*Connie Woolever, Walworth Co.)

Question: Can we accept documents from the Clerk of Courts office that have been electronically signed by the Clerk of Courts and/or the Judge?
Answer:
Effective February 1, 2017, the state mandates that documents be filed and signed electronically in the Clerk of Courts office. The roll out date for electronic documents in the courts will be different for each county and it may take up to a few years for the roll out to be completed. Also in the next few years they will be using electronic certifications for their documents so there will no longer be a colored stamp and initials or signatures. It will be up to the courts to determine if the signature was real or not.

Per s. 801.18 (13) *SIGNATURES OF COURT OFFICIALS.*
(a) *If the signature of a court official is required on a document, an electronic signature may be used. The electronic signature shall be treated as the court official's personal original signature for all purposes under Wisconsin statutes and court rules. Where a handwritten signature would be located on a particular order, form, letter, or other document, the official's printed name shall be inserted.*
(b) The electronic signature of a court official shall be used only by the official to whom it is assigned and by such delegates as the official may authorize. The court official is responsible for any use of his or her electronic signature by an authorized delegate.
(c) A court official may delegate the use of his or her electronic signature to an authorized staff member pursuant to the security procedures of the court case management system. Upon learning that the confidentiality of the electronic signature has been inadvertently or improperly disclosed, the court official shall immediately report that fact to the consolidated court automation programs. Court officials shall safeguard the security of their electronic signatures and exercise care in delegation.

Question: Do eFiled documents from the Clerk of Courts still need to be certified in order to record them?
Answer:
eFiled court documents will still require certification for recording in our office based on s. 706.05(5), s. 137.19 and Supreme Court Rule 70.42; the certification can also be done electronically.

s. 706.05(5) Copies of instruments affecting title to land in this state, authenticated by certificate of any public officer, either of this or any other state or foreign country, in whose office the original is filed or recorded pursuant to law, may be recorded in every case in which the original would be entitled to record under this section.

s. 137.19 *If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to administer the oath or to make the notarization, acknowledgment, or verification, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.*

s. 137.11 Definitions. ***(8)*** *"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.*

NEW-Question: We received a court order, Judgment Affecting Title to Real Estate, which states the husband remains on the deed until the mortgage is paid off, at that time the husband shall sign a quit claim deed to the wife. The document is a certified copy from the courts; there is no drafter listed and a transfer return is included. Would you take as is and just include the transfer even if this isn't

transferring until he pays the mortgage off? Or would you leave the transfer off?
Response: The committee recommends you record as submitted; a court order affecting real estate interest does not need a drafted by per WI State Statute 706.001(2)(a) and 59.43(5)(b)(1). All documents affecting title and or conveyance to property does in fact require a transfer return per DOR.

NEW-Question: We received a court document that puts a lien on a property ordering the property cannot be sold without the proper family members receiving their fair share; the document contains a lot of personal information regarding the child. The document is a copy, without certification, drafted by or wet signatures. We believe the attorney should submit an affidavit and attach the court mandated lien. Should we reject or record?
Response: The committee agrees the court lien needs to be certified by the courts to accept for recording. We also recommend reminding the submitter all the information regarding the child is public record, they may want to reconsider the pages to be recorded if possible.

NEW-Question: We received an Abstract of Judgment Notice from the Department of Justice, we haven't seen one of these before; it doesn't have a drafter or printed name for the person signing. Do we just accept it? Also would you enter it as Grantor Department of Justice and Grantee the party of whom the judgment has been obtained?
Response: The committee agrees you should accept the document as presented, Wis. Stats. 59.43(5)(b)(1) exempts a decree, order, judgment or writ of court from the drafted by requirement. The document submitted has a statement from the deputy clerk certifying it. We would index the grantor as the US Department of Justice and the grantee as the party whom the judgment has been obtained.

NEW-Question: Our office recorded a court ordered Bond back in 2003. It affected real estate. There was never a release of the bond recorded in our office. Now we have a title company wanting us to record the release. We received a certified copy of the release of surety bond from the Clerk of Courts this morning with no money. Questions regarding this: No 3" x 3" in top right hand corner, it doesn't give a document number of what they are releasing & the legal is not ready entry to post into our tract index.

What needs to be done to make this a recordable document? We aren't sure that we can add a cover sheet to this since it is a certified copy of a court document. We would also need someone to give us a check for the $30.
Response: The committee agrees you can add a coversheet to the document to allow for the recording space per Wis. Stats. 59.43(2m)(c). If you accepted the brief legal when you recorded the original court ordered bond document we would recommend you accept the legal described in the release of the bond as well. While we would all prefer the original document number to be cited, we could not find a statutory requirement for this. Wis. Stats. 59.43(2)(e) requires a $30.00 recording fee and would reject the document for lack of fee. Generally the person submitting the document is responsible for the fee; however, the title company or the plaintiff on the bond may be required to pay depending on the court order or their need to have the release on record.

NEW-Question: We received a Second Amendment Judgement that was electronically signed by a judge. Does this document need to be certified by the courts?
Response: The committee agrees eFiled court documents will still require certification for recording in

our office based on Wis. Stat. 706.05(5), s. 137.19 and Supreme Court Rule 70.42; the certification can also be done electronically.

NEW-Question: We received an Order to Partially Vacate Judgment from the courts; it is not certified, does not contain a legal description, and only references a Volume and Page for a Judgment recorded in our office in 1982. Should we accept for recording?
Answer: The committee agrees you should reject the document as it does not meet our recording requirements. A legal description is required as is certification; when a document is electronically signed the requirements to record a certified copy does not go away. Per Wis. Stats. 889.08(1) whenever a certified copy is allowed by law to be evidence, the copy shall be certified by the custodian of the record, in this case the Clerk of Courts; Wis. Stats. 137.19 allows the certification to be done electronically. If you could identify the document number associated with the Volume and Page we would not reject solely because of the missing Document Number; however, since they have to correct the other requirements, they should provide the Document Number too.

DD214/Military

UPDATED Question: How many registers are accepting DD-214s for recording that are not the original or a certified copy? Is there a Statute regarding this? Discharged service men are getting their papers on a CD-how should RODs handle this? Our LVSO simply provides us with copies of the discharge papers, no seals or anything to let us know they are originals. Should we accept these for filing in today's eRecording world?
UPDATED Answer:
The committee agrees that originals would be recommended for older DD214's. However, as with our records, due to military modernization, the discharge documents only come in digital format now. While it is preferred that the copy of the DD214 come directly from the VSO, the statute does not require it. We recommend working with your LVSO to come up with a best practice for your county.

Question: May copies of Service Discharge records be obtained from the Register of Deeds office by an immediate family member other than the Veteran?
Answer:
The short answer is "yes." However, per the statutes below, it can be complicated. A best practice is to request that the "dependent/authorized representative" go to the LVRO to have them request the copy from us should they deem it appropriate.
45.05* Registration of certificate of discharge.** *Every person who has served in the U.S. armed forces at any time, and who has been honorably discharged or given a certificate of service or relieved from active service may record with the register of deeds of any county, in a suitable book provided by the county for that purpose, a certificate of discharge or release. The certificate shall be accessible only to the discharged person or that person's dependents or duly authorized representative, as defined in s. 45.04 (1) (a), the county veterans service officer, the department, or any person with written authorization from the discharged person or that discharged person's dependents. The register of deeds may not charge for recording, except that in counties where the register of deeds is under the fee system and not paid a fixed salary, the county shall pay the fee specified in s. 59.43 (2) (ag). The record of any certificate of discharge or release made prior to July 6, 1919, is legalized.* ***History: *2005 a. 22.*

Per s. 45.04 (1) (a) "Duly authorized representative" means any person authorized in writing by the veteran to act for the veteran, the veteran's guardian if the veteran is adjudicated incompetent, or a legal representative if the veteran is deceased. Where for proper reason no representative has been or will be appointed, the veteran's spouse, an adult child, or, if the veteran is unmarried, either parent of the veteran shall be recognized as the duly authorized representative.

Question: Can there be a military discharge index open to the public? Can the public or a genealogist obtain a copy of the military discharge index to use to create a memorial for veterans?
Answer:
No. *Per Wis. Statute 45.36 (2), "Separation documents and copies thereof evidencing service in the armed forces of the U.S. are confidential and privileged. Examination of such records…will be limited to authorized employees of the department or service office and…will be disclosed only to veterans and their duly authorized representatives or to interested governmental agencies for the purpose of assisting veterans and their dependents to obtain the rights and benefits to which they may be entitled."* Therefore, a copy of the index could not be provided to a member of the general public.

Question: Can ROD's file dishonorable discharges.
Answer:
Per the Vet Service Assn President, a discharge is a discharge and the document should be recorded. Statute 45.05 states person who has been honorably discharged OR given a certificate of service OR relieved from active service may record with the Register of Deeds. Dishonorable discharge would be considered either a certificate or relieved from active service. (Marvel Lemke, Taylor Co).

Question: What is the directive as to how DD214's are filed in our office? It appears that DD214's are not filed in the same manner in each of our offices. Example: We use to file them with a document number, index them and scan. Several years ago when the confidentiality issue arose, we changed to filing them similar to how we file vital records and treat them pretty much the same except that they are not issued on security paper and no document number is assigned only a volume and page that is specifically for DD214's. (Jodi Helgeson, Adams Co.)
Answer:
Military Discharges are recorded documents not filed—and are accessible only to the discharged person, dependents or duly authorized representative. In Taylor County, they are assigned a document number, no volume/page and only staff members (through authority) have access to the recorded document. The original document is returned to submitter (in most cases the veteran service officer).
45.05 Registration of certificate of discharge. *Every person who has served in the U.S. armed forces at any time, and who has been honorably discharged or given a certificate of service or relieved from active service may record with the register of deeds of any county, in a suitable book provided by the county for that purpose, a certificate of discharge or release. The certificate shall be accessible only to the discharged person or that person's dependents or duly authorized representative, as defined in s. 45.04 (1) (a), the county veterans service officer, the department, or any person with written authorization from the discharged person or that discharged person's dependents. The register of deeds may not charge for recording, except that in counties where the register of deeds is under the fee system and not paid a fixed salary, the county shall pay the fee specified in s. 59.43 (2) (ag). The record of any certificate of discharge or release made prior to July 6, 1919, is legalized.* (Marvel Lemke, Taylor Co.)

I asked what the last line of 45.05 that Marvel had provided regarding military discharges meant: —The record of any certificate of discharge or release made prior to July 6, 1919, is legalized‖. (Cheryl McBride, LaCrosse, Co.)

This response is from Jimmy Stewart – Department of Veterans Administration: Generally, the term is used for formalize a past practice and make the related actions/records legally viable. I suspect soldiers and sailors coming back from the Civil, Indian and Spanish American wars

wanted to ensure their discharge documents were kept safely and readily accessible: the register of deeds, which has been around since before the state was a state, probably was willing to —register‖ the document even though it wasn't a title or similar conveyance (they existed on the basis of registration fees and this was just another source of money). There was and may have been some dispute over doing that —favor‖ when all the WWI veterans returned and the Legislature made the practice into a legal obligation. To ensure parity for the past practice the Legislature just —legalized‖ all the copies which were —registered‖ prior to the enactment of this law in 1919. This is based on past acts of this kind, not hard legal research.

Question: Do you require forms to be filled out when Vets come into the office and request copies of their discharge papers or any other military papers? Separation papers? (Deb Brandt, Monroe County)
Answer:
We will recommend that they stop in to see the CVSO, but if they want them issued directly to them, we have them complete the "VETERAN'S AND VETERAN'S DEPENDENTS REQUEST FOR CERTIFICATE OF DISCHARGE (DD214), and have them present their ID. (Sara Nuernberger, Taylor County)

Question: Can Veterans Service Office request a birth certificate including a non-marital record and how about a Recruiter request?
Answer:
If the VSO is requesting a birth record for benefits (usually the case) they do have a direct and tangible interest and may receive a copy, even for a non-marital record. A letter is not required and the record will have the watermark on it so it cannot be used for other purposes. A recruiter requesting a non-marital birth record will need a letter of permission to obtain a certified copy. (Jane Kraus, State Vital Records Office)

Question: Does the Separation of Service from the National Guard also get filed in our office? (Jodi Helgeson, Adams County)
Answer:
No, the NGB-22 is not recorded as it is not a federal document. (Lisa Walker, Columbia Co. Per Richard Hasse, VSO)

Question: Have any of you received an "Affidavit of Nonmilitary Service" to record? The document does not have a legal description or recording fee. Is this supposed to be recorded with military discharges? (Sue Triggs, Richland County)
Answer:
The "Affidavit of Nonmilitary Service" should be filed with the Clerk of Court's Office. A lien Cannot be placed on someone while in military service. (Sue Triggs, Richland County)

NEW-Question: Washburn County has Trimin and we recently had our DD214 Military Discharge paper images imported into LandLink only my staff has access. They are indexed in LandLink. My question is the recording of these documents in the past have not been part of our daily recordings, using document numbers we are using for recordings. For example, our next document number is Document #384862 on LandLink for daily recordings. Our DD214's next number is #4407. We made copies for our book, therefore they had a Volume and Page too. I would like to drop this and have them part of the daily document #'s not making copies or maintaining a manual index. Can I do this? Is there a statute or

reason I can't. Any help, thoughts would be appreciated.

Response: The help desk has reviewed the statutes and per Wis. Stats. 53.43(1c)(a) you may discontinue the use of a book and begin using the same numbering system; you will however have to maintain your index so that the older documents can be found. We recommend you contact your land records vendor to ask them to integrate your old numbering system into TriMin so you do not have to maintain a separate indexing system for your DD214's. When you begin saving your image into your land records system electronically you will discontinue the use of volume and page.

NEW-Question: We had a veteran request to have his DD214 removed from our office. He has been having problems with identity theft and feels somehow his DD214 is involved. The Service Veteran's Officer will remove the DD214 from their files. Can we remove it from our records?

Response: The committee agrees that you should consult with your Corporation Counsel. We also believe you cannot remove a record from your files unless you are court ordered to do so. DD214's should be in a confidential area that are not accessible to the public.

NEW-Question: When issuing a vital record to a veteran, they get a free copy. Do you deal directly with the VA officer/staff or will you deal with the veteran themselves? Or doesn't it really matter?

Answer: The committee agrees you should receive the request for free vital records through the Service Veteran's Officer (SVO). Wis. Stats. 59.535(1)(b) states the veteran and their dependents shall receive certified copies at no fee in connection with filing a claim for benefits with any government agency. Wis. Stats. 45.01(12) defines the veteran's eligibility, the SVO will determine the claim or benefit and assist the veteran with the request.

Deputies

Question: Regarding the deputy appointment documents that are supposed to be recorded in our offices, do most of you bill the Register of Deeds office or how do you handle payment for the recording?

Answer:

Record at no charge.

Question: For every new election cycle, what is the requirement for oath of office and the requirement for every ROD to have at least one deputy? (Jodi Helgeson, Adams Co.)

Answer:

59.43(3) REGISTER OF DEEDS; DEPUTIES. Every register of deeds shall appoint one or more deputies, who shall hold office at the register's pleasure. The appointment shall be in writing and shall be recorded in the register's office. The deputy or deputies shall aid the register in the performance of the register's duties under the register's direction, and in case of the register's vacancy or the register's absence or inability to perform the duties of the register's office the deputy or deputies shall perform the duties of register until the vacancy is filled or during the continuance of the absence or inability.

59.21 Official oaths and bonds. (1) Each county officer named in this chapter, except county supervisors, shall execute and file an official bond and take and file the official oath within 20 days after receiving official notice of election or appointment, or if not officially notified, within 20 days after the commencement of the term for which the officer is elected or appointed, or the board may provide a schedule or blanket bond that includes any or all of these officials, except county supervisors. Every county supervisor shall take and file the official oath within 20 days after receiving official notice of

election or appointment, or if not officially notified, within 20 days after the commencement of the term for which he or she is elected or appointed. Every deputy appointed by any such officer shall take and file the official oath and if the deputy neglects to do so, he or she shall forfeit $100. If the board does not provide a schedule or blanket bond, the official bonds shall be in sums and with sureties, as follows: (g) Register of deeds, in counties containing less than 150,000 population, $3,000, with 2 or more sureties. In counties containing 150,000 or more population, not less than $3,000, with 2 or more sureties, conditioned for the accuracy of the register's work and the faithful, correct and impartial performance of the register's duties, and in addition thereto a bond of not less than $10,000, with 2 or more sureties, conditioned for the faithful accounting for and paying over to the treasurer all moneys which may come into the register's hands as register of deeds, or into the hands of the register's deputy or assistants
59.23(2)(m) *Certified copies; oaths and bonds; signatures.* 1. Make and deliver to any person, for a fee that is set by the board under s. 19.35 (3), a certified copy or transcript of any book, record, account, file or paper in his or her office or any certificate which by law is declared to be evidence.
59.23(t) *General.* Perform all other

Question: When an office has a new deputy, what procedures need to be followed to add the deputy to WAMS and as a new user to the eReturn system? (Jodi Helgeson, Adams Co).
Answer by Jeremy at DOR:

- Have new Employee go to http://www.revenue.wi.gov/ust/retn2.html
- Click Self-Registration for a WAMS User ID --_ have employee complete the interview screen and put the Register of Deeds email address in for where the access permission request will be sent to.
- Register of deeds will then need to log into the eRETR system - click on "manage users" at the top of the screen and approve them duties required of the clerk by Law.

Easements

New-Question: A title company submitted a copy of an easement with a coversheet attached stating they are re-recording the easement. There are no new signatures on the document. When I called the title company, they stated their underwriter told them because of the new easement rules they could record a copy because the easement was older than 50 years. Can they record a document by attaching a cover sheet to a copy of the easement? Should the document be indexed as a Notice or Easement? Who needs to sign the document?

Response: As a committee it was recommended to index the document as an easement. As we no longer re-record documents it would be best to have a new document drafted with the current owners signing the document. The title companies are also attempting to figure out the best plan of action to take concerning this matter. Ideally, they should sign an affidavit and include a copy of the original easement per the best practice article from the Realtor's Association. We could not find who needs to sign the affidavit in the statutes, preferable it would be the person granting or renewing the easement. Since there is no historical precedence on the legality of what type of document and who needs to sign the document, we can only suggest the customer seek legal advice.

New-Question: An attorney submitted a document titled Quit Claim Deed without a transfer return; on the face of the document, he has stated "Wisconsin Transfer Tax Exempt Section 77.25(2)". The attorney states this document is an easement and does not require a transfer return. If it is an easement, should it state that on the face of the document?

Response: The committee agrees that the current presentation of the document requires a transfer return per Wis. Stats. 77.25. The submitter clearly states the document is a quit claim deed and states on the face of the document that it is exempt from a transfer fee per 77.25(2); while it is exempt from fee it is not exempt from a return. As far as the claim that a return is not required because it is an easement; the submitter should title the document as an easement or at the very least state: ""This is the sale of an easement only and is therefore not a conveyance as defined by state law (sec. 77.21(1), Wis. Stats.), and is exempt from transfer return and fee imposed under state law (sec. 77.22(1), Wis. Stats.)."

NEW-Question: We received a document that gives both a driveway easement and includes a maintenance agreement for a piece of property. I have to send it back because the document states see Exhibit A; however, there is no exhibit A attached. They mention the 'property described, in whole or in part, in Doc 1234 and Doc 1235. Shouldn't they include the complete legal description of the property affected? I know it's an easement, but also maintenance agree.

Response: The help desk reviewed the document and find the legal description for easement they are referring to, we agree that is would be nice to add the legal descriptions for the properties cited; however, we don't find a statutory reason to include legal descriptions for associated documents. We would index the legal description as Government lot 2, SE NW of sec 22 township 50N range 8W and not require legals for the referenced associated properties.

Since you are rejecting for Exhibit A, you could ask for them to include them as long as they are sending the exhibit A, hopefully they will comply.

NEW-Question: We received a document titled "Amended Easement", the document they are referencing on the amendment was a deed; the easement is given in the legal description on the deed. Does this require a transfer return?

Response: The Department of Revenue said they do not require a transfer return on easements; easements are exempt from a fee and were not concerned that the easement was part of a deed.

NEW-Question: Submitter tried to record certified copy of deed with easement in description (restate vis a vis TJ Auto) by attaching cover sheet. No signatures, etc.

Answer: We believe that while its not the optimal way to "restate" the easement, the document is in recordable form and thus we feel it can be recorded. Since the certified copy does not bear the signatures of the current owner (We assume?) nor does it come from a court of law, it cannot be deemed a conveyance and would not require a return.

eSignatures/eNotaries/eCertifications

*Refer to the RON document & Certification form that's posted on the WRDA public website.

Question: Can electronic signatures/notaries on documents be accepted for recording?

Answer:

The state of Wisconsin has adopted federal E-Sign, UETA and UPERA laws; these laws treat electronic signatures the same as "wet" signatures. **An electronic signature on a hard copy**

document is a valid signature for the purpose of recording documents at the Register of Deeds office.

Per Jefferson County Corporation Council, J. Blair Ward:

> *The definitions below under the current Chapter 137 define record and electronic signature as follows:*
> *(8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.*
>
> *(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*

A common definition of "inscribe" is to "write or carve (words or symbols) on something, especially as a formal or permanent record."

For the above reasons it is my opinion that an electronic signature on a hard copy document is a valid signature for the purpose of recording documents at the Register of Deeds office.

Question: Has anyone ever received a certified copy from another state recorder/court where it does not have an original signature of the issuing office on the Certified Copy?
Answer:
As this is an interstate document, and the intent of the federal eSIGN was to promote interstate commerce, and per the following statute: Per *s. 137.11(8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.*
Per *s. 137.15 Legal recognition of electronic records, electronic signatures, and electronic contracts.*
(1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
(3) If a law requires a record to be in writing, an electronic record satisfies that requirement in that law.
(4) If a law requires a signature, an electronic signature satisfies that requirement in that law.
I would record the document.

Question: We have been receiving documents that have a signature stamp instead of an original signature. The stamp is even notarized. Is this legal?
Answer:
Under *s. 990.01(38),* it states *"If the signature of any person is required by law it shall always be the handwriting of such person or, if the person is unable to write, the person's mark or the person's name written by some other person at the person's request and in the person's presence* ***or, subject to any applicable requirements under*** *subch.* ***II of ch. 137, the electronic signature of the person".*** In lieu of knowing the exact situation regarding the person "signing" the document, this statute would support accepting a stamped, notarized signature.

Question: Original signatures vs electronic keypad: I have been asked if I would accept a signature that was generated by an electronic signature pad. The customer would sign a signature pad and their signature would be electronically affixed to documents after the fact. Would you accept this for recording in your county? (Cathy Williquette, Brown)

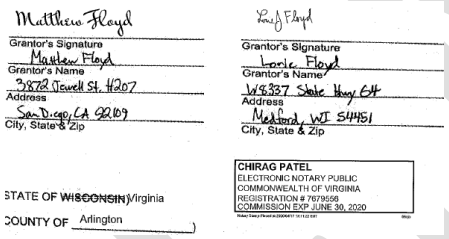
Answer:
Yes. Per *s. 137.11(8)* *"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.*

Question: I have 5 separate docs relating to a declaration of covenants and restrictions. On the first one all the signatures are original. On the following docs the one signature is not original but the authentication signature is original from the attorney, and he informed us that he doesn't need the original, that the faxed copy with his original authentication is enough. I read through *s. 706.05(2)(b)* but it doesn't say much. What do you think after you read *s. 706.06(2)*? Cindi Meudt, Green

Can we accept electronic signatures on Bankruptcy Court Satisfaction of Mortgage documents? (JoEllyn Storz, Kenosha County)

Answer:
Yes, if the satisfaction is from the Eastern District Court. The same process is used as Federal Tax Liens. (Sharon Martin, Washington County)

NEW-Question: I received the attached in today's mail from one of the Grantees and I'm wondering if it meets the Electronic Notary requirements??? I know that I have to reject as there is no "Return To" name and address, the grantor name is not legible and there is not Transfer Return Receipt. Had the other items been correct could I accept the signatures as submitted?



Response: You can accept all electronic signatures on documents that have been submitted via eRecording. As you may notice on this particular document the document says it has been electronically notarized which satisfies the new laws regarding notarizations. However, you need the notary certification when the document has been created electronically and then papered out per Wis. Stats. 140.20(3).

NEW-Question:

I need your assistance. I know the Warranty Deed has a lot of issues but my main concern is whether or not I need to have a certification page for the RON. Would you reject this e-Record document for legible and reproducible reason as well?

MONICA

Answer: The help desk all feel that you would only need a certification if the deed was submitted via paper. (It would then need a cert and wet signature) But, if it is submitted electronically, then the notary would be sufficient as is.

**Note:* *Have an office policy in place to ensure consistency.*

NEW Question: I have attached some examples of electronic signatures and I wanted some clarification on what is OK to accept. We have received a few Lis Pendens that either say electronically signed or simply have a /s/ by the name of the attorney. Please advise if these are ok to accept.
Answer: The committee agrees you should accept all documents as submitted; Wis. Stats. 137.15 states you cannot deny an electronic signature. The symbol /s/ is called an S-signature: An S-signature is an electronic signature between forward slashes and includes any signature made by non-handwritten means (i.e. electronic or mechanical). See Manual of Patent Examining Procedure (MPEP) 502.02 and 37 CFR 1.4(d)(2). This type of signature was part of the changes made in the US Patent & Trademark Office (USPTO) to support the implementation of its 21st Century Stategic Plan and makes using the USPTO's EFS-Web far more efficient and secure.
The thing to look for is that the printed signature is that of the attorney not the administrative clerk that drafted the document.

NEW Question: If a document is electronically notarized in another state (no notary seal) should I accept it for recording? How do I know if the state is authorized to electronically notarize?

Response: If a document is notarized, wet signature, electronic or remote, you should accept it for recording. Statute 137.19 allows signatures to be electronically acknowledged or notarized. Wisconsin has adopted both the Uniform Electronic Transaction Act - UETA and the federal bill which recognize electronic signatures and notaries across state lines. The only concern we should have with electronic notarization is whether or not the notary cited the person's name(s) they are notarizing, and the notary has signed and dated it. If the notary does not put a seal on the document we should not reject for the lack of a seal per 706.05(6)

Federal Tax Liens (FTL)

Question: Is there a state law that requires retaining federal tax lien releases (for a certain period) that have been microfilmed?
Answer:
Wisconsin Statute *779.97(4)(c)(2)* states the certificate of release should be kept for a period of 30 years. The original paper document, microfilm copy, or (if authorized) scanned image on optical disk or electronic records are all acceptable media.

Question: Do the recent statute changes pertaining to Federal Tax Liens also pertain to Federal Judgments?
Answer:
Yes. See details in summary of changes printed below.
Eliminates the requirement that the DFI and the local registers of deeds enter information into a statewide lien system (this is the system that was in effect prior to Revised Article 9).
Repeals section 409.528 effective July 1, 2010 – the statewide lien system.
• Allows registers to record Federal Tax Liens and return originals to IRS officials.
Amends language in 779.97(4)(c)(2) to allow for recording Federal Tax Liens.
• Clarifies the fact that Federal Tax Liens may be recorded with real estate records rather than setting up a separate manual index.
Amends language in 779.97(4)(c)(2) to allow for maintaining Federal Tax Liens by document number in the index maintained under 59.43(9)…the real estate records index.
• Clarifies the fee for Federal Tax Lien copies.
Amends language in 779.97(4)(e) to reflect copy fees for Federal Tax Liens to be "the fee specified under 59.43(2)(b)" or $2 for the first page, $1 for each additional page.

Question: How do you handle a Federal Tax Lien after it lapses in 10 years? The IRS faxed a release and said we should just mark all lapsed liens released? Is anyone doing this? (Mike Sydow, Marathon Co).
Answer:
Per the IRS FTL guidelines – **Self-Releasing Liens** A lien usually releases automatically 10 years after a tax is assessed, if the statutory period for collection has not been extended and the IRS extended the effect of the lien by re-filing it. When a lien is self-released, the Notice of Federal Tax Lien itself is the release document. The lien is considered self released if the: • date for refiling has passed and • IRS has not refiled the original *Notice of Federal Tax Lien*. Taxpayers should check the column titled Last Day for Re-filing on the *Notice of Federal Tax Lien* to determine if the lien is self-released. The IRS recommends that recording offices provide the requestor with a copy of the lien and identify the self-releasing language. This information is contained directly under the name and address on the lien document.
Note: Self-releasing does not mean the individual has paid the lien. It could just mean that the IRS has not refiled the lien. Usually the money is still owed to the IRS.

Question: How long are Federal Tax Liens in effect? Is there a time frame for renewing/continuing Federal Tax Liens to keep them current and in effect? If someone wants an old Federal Tax Lien, that has not been removed/continued, discharged, who do they contact? (Monica Bauer, Pepin County)
Answer:
Federal Tax Liens are good for "life", meaning once you have a Federal Tax Lien (FTL) filed

against you, unless an actual release is recorded, it shows up every time your name is searched. There is "self-release" verbiage on every tax lien that is in effect after ten years, which really means that the IRS has first priority and after ten years, they loose their place in line. See pages 3 & 4 of the guidelines. Once a Federal Tax Lien (FTL) is recorded, it becomes a permanent record in your office so you should be able to search grantor/grantee as well as produce an image any time, depending on how far back your indexes and images go. Years ago, FTLs were filed so you should at least have a paper copy if you have not converted them to digital yet; I believe the change from filed to filed or recorded was done in 2006? To release a lien that may already have passed the ten year time or to release a lien in general, they can contact the IRS at 1-800-913-6050 (page 8). Unfortunately, the customer just has to be patient when working with the IRS; when they get the release (original or copy), they can record in your office but you should collect payment. Also, see IRS Guideline update: January, 2014. (Sharon Martin, Washington County)

Genealogy

Question: How long do you keep papers filled out by genealogists?
Answer:
Per SVRO State Vitals keeps their genealogy registration papers 2 years. County policy should be consistent with the state.

Question: I received a written request from a granddaughter requesting a copy of her grandmother's birth certificate for genealogy purposes. The record is in our locked volume. This is an old record from back in 1917. The record states that "the mother alleges the father to be" and then it lists the name. Who can we issue locked volume records to? If I can issue this record to her, I am assuming it would be an uncertified copy. (Deb Brandt, Monroe County)
Answer:
As long as the record was dated anytime after October 1, 1907, it follows the same rules as a child born today. The law states that only a member of the immediate family can obtain a copy and grandchildren do not qualify. You'll need to write to her and suggest that her mother apply for her. According to statute, there is no such thing as an uncertified copy of a confidential record, so you can only issue a certified copy and only to a person with a direct and tangible interest. (Linda Langlois, State Vital Records Office)

Indexing

Question: Do the statutes require our offices to make note of corrections, amendments, etc. on the original maps in our office?
Answer:
Per *236.295(2)(a)* ***Correction Instruments.*** *The register of deeds shall note on the plat or certified survey map a reference to the page and volume in which the affidavit or instrument is recorded.*
Per *703.275(5)* ***Recording.*** *…The register of deeds shall reference the document number, volume and page of the plat of the resultant condominium on the plat of the preexisting condominium and shall note that the preexisting condominium has been merged.*
Per *84.095(3)(b)* ***AMENDING AND CORRECTION PLATS (TPP).*** *… The register of deeds shall make suitable notations on the plat to which the affidavit refers. ..*
If the map is electronically recorded, then you obviously cannot make the notation, but it should be cross referenced with the map in the electronic index.

Question: Would you accept a document that is intended to be a release of Mortgage but the title states Release Deed?
Answer:
Some states use Deed of Trust for what we call a mortgage. Just accept it and index it as a release of mortgage.

Question: When a mortgage comes in and the assignment is included on the last page of that document, do you index it?
Answer:
No. According to s59.43(2m), we are to use only the first title and that title is to be on the first page, upper 1/3 of document.

Question: Is it legal to record the following all together with a cover sheet: Domiciliary Letter, Letters of Trust and Judgment Assigning title? They are all certified copies but are stapled together and are presented as one document.
Answer:
Accept this for recording. Use the first title given as the title of the document and index just the first document as per s. 59.43(2m). Treat other pages as attachments and do not index. Explain how this will be handled to the customer if possible so that they have the option of recording each document separately.

Question: With all of the electronic record keeping we are doing, do we still need to do marginal notes (i.e. Satisfactions, Partial Releases) on mortgages or in the tract?
Answer:
At one time, marginal notes were required; with optical imaging, it is not. Should be referenced on the computer.

Question: A document was recorded that had a consistent spelling for the grantor's last name (Thomson). However, the signature was written as Thompson. Do you only index what is shown in the granting clause (Thomson), or do you add a second entry under the signature spelling (Thompson), or do you follow a different method?
Answer:
Index under both spellings to improve trying to locate the document. Several registers will inform the submitter of the error for future correction. Arguments against using the signature for indexing stated a signature is not always legible, and a document could
be signed by someone with Power of Attorney without identifying that he/she signed in that capacity.

Question: The legal description on the original mortgage is different from the Satisfaction. How is the following scenario tract:
1) Original mortgage - Lots 1, 2 & 3 Smith's Subdivision of Nowhere
2) Satisfaction submitted for recording includes - Lots 1 & 2 Smith's Subdivision of Nowhere
Answer:
Always index what the document states. In this case, copy grantor/grantee from original mortgage, enter Lots 1 & 2 only as the Satisfaction states.

Question: A land contract which was recorded in 2004 yet the validation stamp for some reason was entered as 2000. Documents preceding this one and the documents following all have the correct year of 2004. What would I have to do to correct this error? The parties involved have looked for the original but have not been able to locate it. (Carol Johnson, Rusk County)

Answers:
Wis. Statute 59.43 (12m), Attorney General Opinion 61, Attorney General 189: A Register of Deeds does not have authority to correct an original recording of a deed made by a predecessor. (Janet Wolf, Kewaunee County)
Per s.59.43(1)(d) Keep safely and maintain the documents, images of recorded documents and indexes mentioned in this section and in s.84.095 in the manner required, once you record a document and the image is out there for customers to retrieve, I would not "fix the image". A suggestion would be to put an annotation either on the document image or add a comment to the index. You could add something similar to: "The recording year was incorrectly endorsed; correct year should be 2004" per Rusk County Register of Deeds, 3/26/2013". (Sharon Martin, CPM, Washington County)

Question: Is it legal to have etal on a document instead of listing the exact names of the parties?
Answers:
No per Statute 706.02(1)(a) Transactions under 706.001(1) shall not be valid unless evidenced by a conveyance that satisfies all of the following: (a) IDENTIFIES THE PARTIES…… (Janet Wolf, Kewaunee County)

Question: How do you handle mortgages that contain easements? I was under the impression that you do not mortgage easements; therefore, if they are on mortgages, you do not need to tract them?
Answer:
An easement cannot be conveyed on a mortgage. Index main legal only.

Question: Are you tracting fractional interests to their respective parcels? (Example: Description reads…together with a 1/94th interest in Outlot 1 of Pikestaff which interest is conveyable only when title to Lot…is conveyed, intending to make said fractional interest in a permanent part of Lot…) Do you tract the 1/94th interest on any document that comes in, including mortgages?
Answer:
In general, when in doubt it is best to tract aggressively and then let the title insurance company or the public decides if they wish to disregard the entry. In this case, we would tract the fractional interest as long as the description is complete enough to identify the real estate.

Question: What is the ROD responsibility if the legal is incorrect?
Answer:
Nothing. It is the document drafter's responsibility to prepare a correct and valid document.

Question: If old plats are replatted with an assessors plat, can documents still reference the old plat?
Answer:
The assessor's plat supersedes the old plat. In essence, the old plat no longer exists, even though the assessor's plat may have technical problems. Assessor's plats are supposed to clear up problems, not create new ones! Omitted lands or boundary disputes must be settled in court.

Question: If a legal description is metes and bounds, but suggests that it may be in a plat (CSM) by indicating n/k/a or a/k/a, do we tract by all the property descriptions listed or only the most recent plat/CSM?
Answer:
Only the most recent plat/CSM would be indexed, unless there might be some additional

unplatted land outside of the recent plat. Tax parcel maps and/or tax parcel numbers could be used to help make the determination, but it is not a prerequisite to record.

Question: Do statutes support tracting to both the CSM and to the parcel the CSM was created from? (i .e. ¼ ¼ section; lot /block/subdivision name; lot /CSM of a prior CSM; etc.)
Answer:
Per 236.02 (9m) A parcel once divided into a CSM is to be described "by reference to the number of the survey, lot or out lot number, the volume and page where recorded, and the name of the county."
The statute does not require that when referring to a CSM you also must identify the parcel the CSM was created from. Since it is specifically indicated that a tract should be searchable by certified survey map and lot or out lot number, it follows that CSMs only need be tracted as CSMs.
This statute indicates the board could require by ordinance that the register of deeds keep a tract index. If such an ordinance is in effect in your county, it would be best to check the wording to make sure your tract complies with the language in the ordinance.

Question: Can/should we index dba's and the names of individuals when indicated on documents?
Answer:
Most RODs index both. Once recorded, some RPLs will list both, some only list the names of the individuals and some list the name of the dba. I do recall from my title days that dba's are not a valid or are inconsequential and therefore a dba does not hold title.

NEW-Question: I received a document titled Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing; I would normally index it as a mortgage as that is the first document type listed, however when I read the document it appears to be a UCC filing. How would you index this document?
Answer: The committee agrees you should index it as a mortgage; we would index the mortgagor and mortgagee as indicated on the first page.

NEW-Question: How do you index the grantor and grantee with a Cost Share Agreement? We have always indexed the land owner, grant recipient and the county as both grantor and grantee; I am now questioning if we should be indexing the land owner as the grantor and the county the grantee.
Response: As a general rule of thumb, the person(s) signing a document are the grantor(s). We would recommend you index the grantor as the Landowner/Recipient and the grantee as the County. Conversely, many of committee Counties have done it differently throughout the years with the county as the grantor and the landowner as the grantee. We based our response on a Cost Share Agreement form from the DNR that lists the County as the grantee directly on the form. However, the committee recommends you continue to index the way you have always done it for consistency in searching documents in your county.

New-Question: Is it necessary to index a reference to a vacated street or alley in our tract index system? For example, would we or should we index PINE AVENUE VACATED in the Lot field anywhere or make a note about it?
Here's my legal description: A part of Pine Avenue vacated, lying between Lots 41 and 42, Original Plat,

City of XXX, XXX County, Wisconsin, described as follows: commencing at a point on the North line of Milwaukee Street, 10 feet West of the Southwest corner of Lot 5, Block 41; thence West 50 feet on the North line of Milwaukee Street; thence North at right angles, 146 feet to the South line of lands formerly owned by W. L. Howes; thence East 50 feet; thence South 146 feet to the place of beginning.
Response: We would index lot 41 and 42 Original plat.

NEW-Question: There is an unrecorded plat with 41 lots, 40 of the owners each own 1/40th interest in lot 21 known as a common area. We received a deed transferring all interest in lot 21 to an owner of one of the lots. Their covenants state the President of the Association is authorized to sign any instrument necessary to convey title. The title company wants us to index to all 40 owners; however, the only name we have is the Association President. We believe we can only index the Association as grantor. How would you index this?
Response: The committee believes if the Association President signs the document, the Association is considered the grantor of lot 21 per the language in the covenants. Since the plat is unrecorded you would not be indexing to lot 21, you would be indexing to the current metes and bounds legal description available in your tract index. The title companies concern to index all owners as grantors would require each of the owners to be identified in the document; it is not the responsibility of the Register of Deeds to look up the current owners vested interested in each of the 40 lots.

NEW-Question: I have been told that a warranty deed and mortgage will be presented for recording; one title company did the owner's policy and another title company is doing the loan policy. The Warranty Deed will have an easement included in the legal description (for access) and the mortgage legal description will not have the easement included. Apparently the title company who is doing the loan policy for the lending institution does not include easements on their legal descriptions. Should I accept for recording or reject?
I have had discussions with that title company about this; the interesting thing about these two title companies is that they both write for the same underwriter.
Response: The committee agrees you should accept and record both documents as presented as long as they are in recordable format. It is not up the Register to point out the discrepancy. The mortgagor does not own the land under the easement; thus, if the mortgagee does not require the easement to be included you should record as presented.

NEW-Question: We have a plat named Ft. Howard Military Reserve; we call it Fort Howard Military Reserve. This plat was platted way back when the earth cooled to give Military members land because the government used it as compensation; the larger the lot the higher the rank. The Township at the time when platted was Fort Howard.
We are having a discussion in our office as to posting. At times we get in documents with a legal description that just states "Military Reserve" for the plat. Everything else identifies the proper lot. It has been the longstanding procedure to make the document "unable to post" and send the customer a note that their document is "unable to post" because it does not have the proper name on it.
I think we should post the document and add a note that it should say "Ft. (Fort) Howard Military Reserve", but my staff thinks differently. I had a conversation with Property Listing and they do post it but add a note. I think we should do that as well. What would you do?

Response: The committee agrees submitters should make every effort to use the correct plat name as it is imperative that we have good clean records for future searches. We recommend you attempt to educate your business partners with the correct recording information so the alias plat name is not used for future recordings. Assuming that Military Reserve is used only when referring to the Ft Howard Military Reserve plat we would tract to the correct plat and notify the submitter of the correct name. Many land records systems have a way to link alias's to the correct plat allowing someone to search the same records regardless if they search the legal description using the official name or the alias.

NEW-Question: The county is taking these properties away from the people listed on just the 5 parcels that have the descriptions in the back and is becoming the owner of them so to me they should be the Grantee. (from a lister)

Answer: Majority of Help Desk would index the owners/grantors(those delinquent in taxes) to the County(grantee). Obviously, it would be important to keep consistent with past practice. Are the people listed by name on the doc? I assume all the properties on one?

Internal County Office Policies

Question: Is there a common procedure to use when title companies present documents where the pages are not stapled together and are out of order?
Answer:
If they present documents in the wrong order it is their responsibility to submit documents and pages in the correct order. Some registers may call customers if they have a question about the proper order.

Question: If a check for recording/transfer fees is returned NSF or account closed, are these documents still considered recorded?
Answer:
Yes. If a document is recorded, it is considered recorded even though it may have some defect. Even though the document may be invalid, it is still considered recorded.

Question: When you have a legal that is metes and bounds, but suggests it may be in a plat, do you go to the map and figure out where it lands or is platted? Do you enter the lots in the computer if it goes into them? Take notice that the legal description does not say that it is being part of any lots. One abstractor informed us we must figure it out. I had only entered it into the Q/Q because with the degrees and angles, it was confusing.
Answer:
If land has been platted, they must refer to the platted subdivision name and lot numbers per 236.28. If we record a document with the old metes and bounds description that has now been platted, we will post to the Q/Q section and plat and return with a note to correct and re-record. Brown County has corp counsel legal opinion.

Question: Do Registers allow other county departments access to their records? If yes, is there a fee charged? Are there any limits to their access? How about inter-department contracts?
Answer:
It's in the best interest of the county to continue to provide copies free of charge to the Tax Lister, Surveyor, Treasurer and Zoning departments with the understanding they are for their own business use only. All other requests for copies of ROD documents should be directed to

the ROD office. Restricted document types (i.e. Vital records, confidential name changes, etc.) should only be accessible to ROD staff. A sample Internal County Department user agreement can be found in the WRDA Handbook.

Question: We have been receiving more and more requests over the phone for recording information from banks and mortgage companies. Are you providing this information free of charge?
Answer:
The majority of Registers are providing the information free of charge, providing the search is fairly simple to perform. Many expressed concerns about the increasing number of requests for information, as well as liability issues, and are considering charging. There are a few that charge for searches and the prices vary. A couple offices charge $5.00 for searching. Another will perform no phone searches, but ask the request be in writing. The copy cost of $2 plus $1 is then charged, but not an additional search fee.
**Note:* *Have an office policy in place to ensure consistency.*

Question: A document was returned to an attorney un-recorded because it was missing the return address, document number of the mortgage being assigned, document title located within 3 inches from the top edge, original signatures, etc. It was returned with some items corrected with a criticism for not recording it initially because it "substantially complied" with the statutes. What is the definition of "substantially complies"?
Answer:
Baron's Law Dictionary described "substantial performance" (compliance) as: "the performance of all the essential terms of a contract so that the purpose of the contract is accomplished; however, unimportant omissions and technical defects may exist in the strict performance of the contract". Under 59.43 (2m), it says no documents should be recorded unless they substantially comply with the standard format requirements. Some deviation from this section should not make a document un-recordable. Example: The statute states the title should appear not less than one-half nor more than 3 inches from the top of the instrument. If the document title appears at 4 inches from the top edge, this would not be reason enough to reject it. It still substantially complies. Statute 59.43 (6) discusses the effect of certain omissions in records (listing the specific types), and states the validity and effect of the record is not lessened by these omissions. Omissions of these specific items alone are not enough cause for rejection. However, under 706.05 (2), items mentioned "shall" be included. The omission of a signature would be cause for rejection. This would not be considered an unimportant omission. Under 706.02 (1) it states "transactions…shall not be valid unless evidenced by a conveyance that satisfies all of the following" and goes on to list those requirements. Omission of these items would also be cause for rejection.
**Note:* *Have an office policy in place to ensure consistency. Make sure reasons for rejections are backed by statute(s).*

Question: If a document is presented for recording that was previously recorded in the wrong county, do you cover up the other county's recording information with a sticker?
Do you require a cover page be added?
Answer:
You shouldn't cover up the other county's recording information with a sticker. It is part of the document, and there is no statutory support to require that this information be removed. It also might prove helpful to understand the delay in recording in the correct county. If there isn't enough room to place your recording stamp on the document in the necessary area, then request a cover sheet be added. If the document is presented with the sticker already placed over the other county's recording information, you can accept it for recording as presented.

Question: Is it mandatory that the register's original signature or stamped reproduction is included with the recording certificate placed on each document as it is recorded?
Answer:
s. 59.43(1)(e) states, *"Endorse upon each instrument or writing received by the register for record a certificate of the date and time when it was received, specifying the day, hour and minute of reception, which shall be evidence of such facts."* The statute does not state that the register's signature or stamped reproduction need be included. The decision to include the signature or not would be made by each individual register.

Question: I have a customer who wants to order 9 plats and have them mailed. Can I charge a postage fee? (Cindi Meudt, Green Co)
Answer:
You can charge a mailing fee per *s. 19.35(3)(d) An authority may impose a fee upon a requester for the actual, necessary and direct cost of mailing or shipping of any copy or photograph of a record which is mailed or shipped to the requester.* (Randy Leyes, Rock Co)

Question: Do you allow title people to bring in laptops and scanners? (Diane Poach, Washburn Co).
Answer:
The use of a laptop itself should not pose a problem. Several said they thought the scanner would be ok as long as they knew they would have to pay the $2 and $1 for copies, however policing this could be difficult. Consistency is important, if you allow one to do it you would have to allow all. And trust would play a big role. Some counties may not have WiFi available.
***Note:** Have an office policy in place to ensure consistency.*

Question: Can my Human Resources Department or Administration force me to send Register of Deeds employees to another office to work during their busy times?
Answer:
For some counties, the sharing of resources, including staff, may work. Proceed with caution, as this could create a complicated situation. Even though the County Executive/Administrator is the supervisor of other department heads, they could still make your daily life difficult by not working with them. The bottom line is YOU are responsible for the Register of Deeds office, given to you by the constituents and governed by Wisconsin State Statutes. Open communication and trust are key components of this type of collaboration.

Question: I had a gentleman come in a few days ago and wanted to use his camera to take picture of plat maps, instead of paying for the copies. I told him that I would not allow a camera in the ROD office to take pictures. He is asking in writing now what state statutes says he is not allow to do this..? (Kristi Chlebowski, Dane County)
Answers:
I have a sign posted stating no cameras or cell phone photos allowed. I've also seen signs in a number of retail stores, probably to prevent competitors from photographing their prices. I don't think there's a state statute, only my office policy. (Preston Jones, Manitowoc County)
He can use his camera, but per s. *59.43(2)(b)* - the fee is $2 first page/$1 for each additional page, plus $1 for the certificate of the Register of Deeds, except that the Department of Revenue is exempt from the fees under this paragraph. (Marvel Lemke, Taylor County)
We do not allow any electronic equipment in our public room. We provide computers, that is enough. We will issue paper copies. We had one person take a picture only once. Statutorily they must pay. So when he took the picture, he still had to pay. A copy is a copy statutorily. In the end, he paid for both because our copy was better and more legible to read. (Joan Hansen, Vilas County)

I would say that it is under if they want a copy the cost would be $3.00 for each page in Kenosha for a plat and we do not allow that either. If he wants a copy he has to pay the fee. (Louise Principe, Kenosha County)
Yes, you have to have it addressed by county ordinance and signs posted in your office. (Cathy Williquette Lindsay, Brown County
*_**Note:** Have an office policy in place to ensure consistency. Back it up with visible signage and a County Ordinance._

NEW-Question: We have a document from 2015 that was not tract because the legal description gave the name of a plat that did not exist. We then had 2 more documents in 2018 that used the same legal description and we must have looked up the plat and tract those 2 documents. Am I able to remove the tract information from the 2018 documents? Or because they are from some time ago, am I unable to do so?
Response: The committee agrees that you can correct an error made during your term. We recommend you notate your change or correction in the notes section of the document.

NEW-Question: My office has been in the practice of rescanning a document once it gets to our Audit area if they find pages missing. We hold the original documents until audit gets to check it out. Recently someone sent in an old HT110 and we did not sign it. Audit had it signed once it got to them and rescanned it. This was our error. I don't think we should be doing this and need your opinion.
Response: The committee agrees that you can rescan a document while it is still in your possession and before your audit is complete. We recommend you set up a process in prep to ensure the total pages are scanned so this will not occur in the future. The committee also agrees that once the document has left your possession and find that you need to correct an error on your part, such as the missing signature on the HT110, you should record a "recorders affidavit" (correction instrument) stating your error; this will help anyone who searched the records previous to finding your error fill in any unexplained changes.

NEW-Question: Can we have different cut-off time for eRecorded documents than we do for paper documents? We prepared our day end deposit and noticed after the fact there was an eRecord ready to be processed. The eRecord document was submitted one minute before our cut-off time.
Response: The committee agrees your paper and electronic documents should have the same cut-off time; WI Chapter 137 states all records shall be treated in the same manner specified in other law. We recommend you redo your daily deposit to reflect the document submitted within your county's ordinance for document cut-off time.

NEW-Question: I am starting to work on the 2021 Budget and working on Conferences/District Meetings. I see the one conference listed for 2021 on the WRDA website, but also see several others listed for 2020. Do you know where I can find a full list for 2021?
Answer: You may want to go off of your 2020 budget keeping the following in mind:

In a normal year, there are 3 conferences: WCCO (Wisconsin County Constitutional Officers, ROD, Treasurers & County Clerks) in Madison in March; WRDA Summer in June; WRDA Fall in October

Conference Fee $100 + Education Fee $35 + Lodging $state rate (varies some) + Mileage To/From

There are also typically 3 district meetings, each prior to the conference. These meetings can be held remotely, but are usually in person.

Mileage To/From

Wisconsin Land Information Association (WLIA) also holds their annual meeting in February and has quarterly meetings. The dates are not out yet, but that is an important meeting for Register of Deeds to attend as well. If you don't go to the quarterly meetings you should plan on going to the annual meeting.

NOTE: The '20 WRDA Summer Conference was a joint conference with WLIA. I am 95% sure that has been postponed until '21 Summer. Watch your emails, I will be sending out a confirmation email as soon as I've gotten confirmation from the venue. If this is the case, in 2021 you wouldn't need to budget for the Annual WLIA meeting because it will be a joint conference with us. ***This email will include an updated list of upcoming conferences which includes a list of expenses.***

Annual Membership Fee $55 (check with your LIO, your county may already pay for a group rate)

Conference Fee (Member) $250 + Lodging $82/per night + Mileage To/From

A portion of the money you make on recording documents goes to grants for the Land Information Committee to use based on their plan. Attending WLIA will give you the tools to understand what is going on during this meetings and within your County.

In 2020, the PRIA Conference, a national conference, was being held in Milwaukee in August. Due to COVID, it has been postponed until 2021. Because it is a national conference being held in our own back yard, we were encouraging members to attend if possible. There will be limited funds through the WRDA to use towards PRIA expenses, so it's a good idea to budget for the full costs. Not sure if Donna/Carol/Cappy was planning on attending the PRIA conference in 2020 so keep that in mind when referring to the 2020 budget.

Annual Membership Fee $395-495

MKE Lodging & Parking $180/nt + $18/nt

Land Contracts

Question: Should a deed in fulfillment of land contract include original recording information of Land Contract? (Connie Woolever, Walworth County)
Answer:
Yes, *s. 706.05(2m)(a)* states..."any such document shall also contain the document number of any original mortgage or land contract that the document affects and, if given on the original mortgage or land contract, the volume and page numbers of the original mortgage or land contract." (Marvel Lemke, Taylor County)

Question: Can you satisfy two land contracts on one deed? When the original Land Contracts were recorded, they were the same grantor/grantee and just had Lot 10 on one Land Contract and Lot 11 on the other. (Paula Chisser, Sawyer County)
Answer:
Since it is the same vendor/vendee on both Land Contract's then it is okay to accept. (Jeremy Wedge, Department of Revenue)

Question: Can we record an Assignment of Land Contract from an individual to their trust when they are assigning 2 different Land Contracts with 1 Assignment?
Answer:
Per *s. 59.43(2)(ar)* No person may record under this section a single instrument that contains more than one mortgage, or more than one mortgage, being assigned, partially released or satisfied.
This statute is only specific to mortgages so the assignment should be recorded, no eRETR required.

NEW-Question: I received a Quit Claim Deed today for a couple who are the vendees on a Land Contract and they got divorced. The attorney used a Quit Claim Deed to transfer from one spouse to the other, is that correct? I wasn't sure if an assignment of Land Contract needed to be done to transfer the interest of one spouse to the other spouse per the divorce OR should I not even question an attorney?
Response: The committee agrees that a Quit Claim Deed is appropriate to remove the spouses name on a Land Contract through a divorce; the transaction does require a transfer return. As long as the document is in recordable format it should be recorded.

NEW-Question: Please see the attached document and transfer return. It appears they are trying to terminate a Land Contract based on verbiage in the Land Contract that it terminates upon the vendors death – assuming she has actually passed.They are also establishing survivorship marital property and using exemption 8m. My other issue is Michael and Monica are both vendees of the LC, but only Michael is signing the QCD. The land contract states that payments continue until the death of Beverly but that will not terminate her interest only the payments.
Answer: The document seems to be an attempt to skip a few processes, plus it appears to indicate the assumption that payments ending upon the death of the vendor equates to "extinguishing" the land contract. We are unsure it accomplishes all the steps we would consider appropriate. That said, the document complies with recording requirements and includes an eRETR receipt; therefore, we would suggest recording the document.

Legal Descriptions

***Note**: Refer to WRDA Handbook once Joint Alpha approves Legal Description guide.*

Question: What is the definition of a "complete" legal description and are there any stats to back this definition up?
Answer:
s. 706.05(2)(c) states, *"Except as different or additional requirements may be provided by law, every instrument offered for record shall:...Identify, to the extent that the nature of the instrument permits, and in form and terms which permit ready entry upon the various books and indexes publicly maintained as land*

records of such county, the land to which such instrument relates and the parties or other persons whose interests in such land are affected…"
And
s. 706.05(2m)(b) states, *"The requirement of a full legal description under par. (a) does not apply to:…1. Descriptions of easements for the construction, operation or maintenance of electric, gas, railroad, water, telecommunications or telephone lines or facilities…"*

Per the "Unable to Record Document" in Recording Chapter of WRDA Handbook:
Documents pertaining to real estate require the complete legal description of the property. *s. 706.05(2)(c)* as defined as:

- *Metes & bounds* require at a **minimum** the Quarter Section, Section, Township, Range and metes and bounds associated with the Public Land Survey System or Private Claim or Government Lot. *s. 66.0217(1)(c)*
- *Plat/Subdivisions* require at a **minimum** Lot and Block number (as applies) and the Plat/Subdivision name. *s. 236.28* including the description reference to "County Plat", "Town Plat" or "Municipal Plat" *s. 236.45(2)(am)*
- *Certified Survey Maps* require at a **minimum** Lot or Outlot number, Map number, Volume and Page AND Document Number where map is recorded and County name. *s. 236.34(3)*
- *Condominiums* require at a **minimum** Unit number, Condominium name and appurtenance number. *s. 706.01(7r)(b)*
- *Assessor's Plats* require at a **minimum** Lot or Outlot number, Block number (as applies) and Assessor's Plat name. *s.70.27(3)(a)*

In general, many registers consider these to be *Best Practices* for accepting legal descriptions as being complete:

1. Metes and bounds legal descriptions should contain the location of the land either at the beginning or the end of the legal description. i.e. "A parcel of land located in the Northwest ¼ of the Northeast ¼ in Section 2, Township 18 North, Range 11 East, Town of Marion, Waushara County, Wisconsin, described as follows…" OR "…said lands being located in the Northwest ¼ of the Northeast ¼ in Section 2, Township 18 North, Range 11 East, Town of Marion, Waushara County, Wisconsin." (*s. 66.0217(1)(c)* only requires Quarter Section (or Government Lot), Section, Township, Range)

2. Exceptions to legal descriptions should be described/written out by more than just Volume/Page and Document Number references (no stat to back up, only best practice) EXCEPT those portions of real estate that have been sold off for highway purposes or utility easements. In these cases, Volume/Page and Document references are acceptable (backed up by *s. 706.05(2m)(b)*).

3. Legal descriptions copied from tax bills are not considered acceptable legal descriptions. Again, stats only back this up as outlined on "Unable to Record Document."

4. This would not qualify as a complete legal description: SW1/4 of SW1/4 of Section 5 T4N R16 E as described in Volume 222, Page 333 as Document No. 444444. (per s. 66.0217(1)(c) it would be index ready)

NOTE: *It is the recommendation of the WRDA that you consult with your corporation council and real property tax lister to determine a best practice policy for your offices.*

Question: If a document is received with a CSM legal description in which the page number of the CSM is wrong, is it recordable? Do you index by the CSM description? Should a correction instrument be recorded to correct it?
Answer:
s. 236.34(3) states when a CSM has been recorded, the parcels of land in the map shall be described by reference to the number of the survey, the volume and page where recorded, and the name of the county.
If the document otherwise substantially complies with recording standards, it's best to record. It never hurts to see if the document drafter would like to correct it before recording, if that's your office policy.

Question: If a deed comes in describing several different quarter-quarters in a particular section-township-range, and then also goes on to describe another parcel which, unless you sit down and draw it out, you don't know what quarter-quarter section it is in, do you try and figure this out? Is it our job to determine where this piece is located without it being called out on the deed? Are we responsible for finding the additional quarter-quarters by looking up the parcel numbers shown on the document? (Konna Spaeth, Vernon)
Answer:
The consensus is that we don't have time to draw legal descriptions out and we should just tract to those forties that are listed. Per *s. 706.05 (2m)(a)* and as defined in *s. 66.0217(1)(c)* the metes and bounds description needs to be listed at least by Quarter Section.
Most counties do not research parcel numbers to get a complete or correct legal description. In cases like this, we would probably tell them that this document would get tracted to EVERYTHING in that quarter section, township and range so they might want to narrow it down if it is just one (1) forty. Utilities do not have to have a full legal description but they do have to have a tractable legal description. (Cheryl McBride, LaCrosse County)

Question: To Tract Or Not To Tract. The documents coming into our office for recording have been deteriorating as far as the drafting and inconsistency of spelling of subdivision or condominium names. What do you do in the following case?
Answer:
Proper subdivision name as recorded on the plat is SUNNY DALE COURT. Deed, mortgage, assignment, mortgage, mortgage for the same party is recorded but an assignment and one mortgage have the subdivision as SUNNYDALE COURT, with the two words being run together. If you look at the computer world and type if alphabetically, it will not come up in order.
1. Tract all documents because that is the only Sunny Dale Court subdivision in your county.
2. Tract all documents, but type a courtesy note, stating 2 documents have an incorrect subdivision name.
3. Tract only 3 of the documents that match the recorded subdivision name, don't tract the 2 where the name is run together, type a courtesy note for the 2.
****Note:*** *Have an office policy in place to ensure consistency.*

Question: Do you record a document knowing the legal is incorrect? (Diane Poach, Washburn Co).
Answer:
Some said they would send it back unrecorded with a note. Several said they would just record it and send it back with a note. The majority said they would first try to contact the drafter or sender to let them know that they thought there was an error in the legal description. If the sender/drafter insisted that the legal was correct, it would get recorded. If they were unable to contact the drafter/sender, the document would get recorded and sent back with a note.
*__Note:__ *Have an office policy in place to ensure consistency.*

Question: I've had several questions asked about what is PLSS. It stands for Public Land Survey System which is the basis for all descriptions in Wisconsin (Section/Township/Range and Quarter/Quarter). MB stands for Metes and Bounds which is a legal description consisting of a description by going from point A to point B using the PLSS. (Jodi Helgeson, Adams Co).
Answer:
See also National Atlas website: http://www.nationalatlas.gov/articles/boundaries/a_plss.html

Question: When an alley or street is vacated it goes to each of the owners that adjoin it if the street is platted as part of a subdivision plat that are part of the same recorded plat. I've come across legals where one of the owners has sold their interest in the alley to the owner across from them. Where should it be tracted? If they do not specify the property that it will be attached to, do we have the right to return it and ask them for a correct legal? (Peggy Walter, Clark County)
Answer:
You always have the right not to tract a document. In that case we return the document with a note telling them we did not post it and why. It is up to them to fix and re-record (as long as the original document is re-signed and re-notarized). Since all counties tract differently my suggestion is to talk to your property lister and get their interpretation - after all it must be done right to update the tax roll and be attached to the proper parcel for taxing purposes. (Cathy Williquette Lindsay, Brown County)

Legal Matters

Question: Does anyone know, legally speaking, which holds more weight, the recording date or the date of signing of a document?
Answer:
It depends on the type of instrument and the situation. For most deeds, the date of signing and delivery define the magic moment of conveyance of the real estate; the recording is strictly for protection of the parties involved. For an easement on land which will soon be sold to another party, the date of recording (establishing constructive notice), is the key date.
Ultimately, it is up to the attorneys/courts to decide if/when it's disputed.

Question: Are we required to record a deed even if one of the parties involved request that it NOT be recorded?
Answer:
If a document is received for recording that is in proper recording order, you are obligated to record the document. Under 59.43 (1)(e), documents shall be recorded in the order in which they are received.

Question: Can anyone draft a deed? Are there restrictions or limitations on who can do this legally? Is there any statutory reference? (Sharon Martin, Washington Co).
Answer:
Per Don Schenker, Asst Vice President, First American Title Ins Co, Madison, “The practice of law is regulated by the Wisconsin Supreme Court. The Court can by rule or decision restrict who can and cannot draft deeds or other real estate documents.” We know that the following parties can draft deeds in Wisconsin: 1) Attorneys licensed to practice law in Wisconsin (some members of the bar believe the attorney must actually represent the grantor and not just act as a scribe. This is not the common understanding among most members of the bar); 2) If the grantor is a natural person, he/she grantor can draft their own deed; 3) Real estate brokers licensed by the State of Wisconsin. This is probably limited to properties the broker has an involvement in the sale. Other than that, The Wisconsin Supreme Court has never issued any rule or decision that would expand this list or even limit it to those on this list. Regardless, even if a deed is prepared by someone who cannot legally prepare it, the deed itself would be valid if it was otherwise properly drafted. If a person prepares a deed in violation of some unauthorized practice of law or rule and that person goofs up the drafting, they can be sued for legal malpractice.

Question: When a couple gets married and the wife just „assumes" the husbands last name, is there any rules or regulations that govern that she can do that? What do they do if they both want different names, or to add both names together and hyphenated them? What are the rules regarding this procedure? (Cheryl McBride, LaCrosse County)
Answer:
Social Security (and all other federal agencies) are getting tougher on accepting “non-traditional” name changes that people request due to a marriage. The practice of a bride changing her last name to her husband’s last name is common law practice and recognized by all federal agencies. With changing trends, those agencies have now come to accept the practice of a groom changing his last name to the bride’s last name or for the two parties to use both last names (hyphenated or not). In the last few years, people have gotten creative and started claiming all sorts of name changes due to marriage (first and middle name changes, and couples taking an entirely different last name). Up until recently, Social Security allowed these name changes to be recorded as post-marriage. That practice has now ended and federal agencies are in the process of tightening the rules on reporting name changes due to marriage. The best advice to give couples is to tell them to contact Social Security about their name change plans. That agency will let them know what they will accept. (Peggy Peterson, Assistant State Registrar, 2006 e-mail)

NEW Question: The WRDA is considering suspending the Bylaws to use PRIA scholarship money and or WRDA funds to assist WRDA members in attending the Milwaukee PRIA conference in 2020. I am wondering how the board can suspend the rules regarding something in the Bylaws.

Response: The committee has reviewed the WRDA Bylaws in regards to suspension of the bylaws, in accordance with Roberts Rules of Order it appears that while the WRDA bylaws may state under article IX Section 1.) "These bylaws, or any part thereof, may be amended or temporarily suspended by unanimous consent or by two thirds vote of the members present at any conference." That does not imply that the **board** can in fact temporarily suspend the bylaws; further the interpretation of Robert's Rules of order may suggest that suspension of the bylaws is a procedural error and thus invalidate any action taken under the guise of suspension.

Procedurally it is correct that the bylaws can't be suspended; the question becomes how does the board respond? It does appear that the board doesn't have the authority to change how the funds for PRIA scholarships are used; they can however use the $2,000 annually for one or more Registers to attend PRIA conferences at their discretion.

The question then is whether or not additional funds can be used to offset expenses for attendance at a PRIA conference? We don't find anything regarding granting the board specific authority to expend funds except in the case of payment of association travel related expenses etc. and as such believe allocating additional funds would need association approval. This should be proposed as a resolution to the general membership at the next conference.

From discussions with members of the board we believe the survey question was posed incorrectly to the association. It appears the board wanted to know if the association was interested in utilizing funds to assist in sending WRDA members to the PRIA conference in 2020. If so it would be discussed at the next board meeting and presented to the association for a vote; if not, the topic would not be on the agenda.

NEW Question: If there is no vesting information on grantees on a deed and we no longer will be reviewing a death certificate, does that deed still establish survivorship marital property or joint tenancy to terminate a joint interest? One local attorney has quit adding "husband and wife, smp" so we would not know whether these people are husband and wife or brother and sister or other.

Response: The committee agrees that the drafter is responsible for the content of the document. The person signing the Termination of Decedent's Interest is declaring it the content to be accurate.

DECLARATION: To the best of undersigned's knowledge and belief, the undersigned declares that this document is true, accurate, complete and in conformity with the provisions and limitations of the Wisconsin Statutes.

*We will work with Joint Alpha to address this concern.

Liens

Question: We currently use "lien" as the document type for all liens with our computerized index. We are unable to have a subcategory to show what type of lien it is other than putting information into the notes area, which means when one is searching by document type, the list of liens would include federal tax liens, medical liens, broker's liens and other types of liens. Are we required to keep a totally separate index for Broker's liens and Federal Tax Liens?
Answer:
Medical Liens as per 49.496(2)(d) have no requirements to have a separate index. Commercial Broker's liens as per 779.32(4m) & (8)(b) call for indexing in the grantor/grantee and tract index (if you have one). Federal Tax Liens as per 779.97(4) must be entered alphabetically in an index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the officer or entity certifying the lien and the total amount appearing on the notice of lien. (Personally, I do not enter the title and address of the officer). I

do use the document type “FTL” in my grantor/grantee index and also keep a separate manual index for Federal Tax Liens, which also have a column for the discharges.

Question: There was a question regarding Wage Claims (109.09 Wisconsin Statutes). Although they are not filed in the Register of Deeds office, it appears they can become a lien against all property of the employer. Has anyone ever dealt with these?
Answer:
In checking the statute and discussing the matter with a local title company, the liens are to be filed with the clerk of the circuit court. The lien takes “…precedence over all other debts, judgments, decrees, liens or mortgages against the employer that originate after the lien takes effect…”---109.09 (2)

Question: Our Clerk of Courts office has always filed mechanics liens in their office. Clerk of courts office just called and said they no longer file these types of liens in their office. Should these be recorded in the ROD office? (Cheryl A. McBride, LaCrosse Co).
Answer:
Liens filed under s.779.06 pertain to Construction liens as defined by 779.01 - and are filed with the clerk of court. s.779.41 pertains to Mechanics Liens (which is different from construction liens) are to be filed with DOT. (Marvel A. Lemke, Taylor Co)

Question: What statute indicates we cannot record a lien against public officials. (Sharon Martin, Washington Co).
Answer:
s.706.15 Liens against public officials or employees. No lien may be filed, entered or recorded against the real or personal property of any official or employee of the state or any political subdivision of the state, relating to an alleged breach of duty by the official or employee, except after notice and a hearing before a court of record and a finding by the court that probable cause exists that there was a breach of duty. (Marvel Lemke, Taylor Co)

Question: I received an ERISA lien for recording, what is it? How is it handled? (Sandy Fischer, Langlade Co).
Answer:
ERISA (Employee Retirement Income Security Act) liens are liens in favor of the Pension Benefit Guaranty Corporation against all property and rights to property, real or personal, belonging to an employer that fails to pay amounts owed to the corporation. 29 U.S.C. §1368(a). Priority is determined in the same manner as federal tax liens under 26 U.S.C. §6323. ERISA liens are "treated in the same manner as a tax due and owing to the United States...." therefore falls under 779.97(1)(b). It is not a federal tax lien, however, depending on the circumstances, is treated in the same manner. An ERISA lien is filed, indexed and searched in the same index in which federal tax liens are filed in the office of the register of deeds against the name of the debtor, and not against a legal description. (Marvel Lemke, Taylor Co)

Question: I found a file cabinet containing old age assistance liens. They have been filed with date/time stamp but never indexed anywhere. What can we do with these? (Paula Chisser, Saywer Co).
Answer:
Per 1971 Statutes – Old age assistance liens were to be filed and indexed in a separate index with the Register of Deeds. *s. 49.26(6) REGISTER OF DEEDS, INDEX, FEES. The register of deeds shall keep a separate book, properly indexed, in which shall be entered an abstract of*

every certificate so filed' which shall show the time of filing, the name and residence of' the beneficiary, the date of` the certificate, the name of the grantor county, and a record of releases and satisfactions.. No fee shall be charged for filing such certificate, release or satisfaction or the entry of the abstract there of except in counties wherein the register of deeds is compensated otherwise than by salary, and in such counties a fee of 25 cents shall be paid to the register of deeds by the county filing the certificate, release or satisfaction.
I would treat these documents as any other document filed/recorded in our office and consider them permanent records. They do not appear on the Records Retention Schedule but agree – scan/index them before removing them from your office. (Marvel Lemke, Taylor Co).
I contacted the Wisconsin Historical Society and they list them as non-permanent records (Certificates of old age assistance and indexes, CR+7 years/notify). The Society is looking for old age assistance case files and not copies of the liens. (Jan Flenz, Outagamie Co).

Question: We received a —Breeder‘s Lien in the mail. No legal description of course. Should this be recorded? (Diane Poach, Washburn, Co.)
Answer:
Yes s. 779.49 Lien of owner of breeding animal or methods.
(1)(a) Except as provided in par. (b), every owner of a stallion, jackass or bull, or semen from a stallion, jackass or bull, kept and used for breeding purposes shall have a lien upon any dam served and upon any offspring gotten by the animal, or by means of artificial insemination for the sum stipulated to be paid for the service of the dam. The owner of the stallion, jackass or bull, used to service, or semen used to artificially inseminate, the dam may seize and take possession of the dam and offspring or either without process at the time before the offspring is one year old, in case the price agreed upon for the service remains unpaid, and sell the offspring at public auction. The sale of the offspring shall be upon 10 days' notice, to be posted in at least 3 public places in the town where the service was rendered. The proceeds of the sale shall be applied to the payment of the amount due for the service and the expenses of the seizure and sale. The residue, if any, shall be returned to the party entitled to it.
(b) No lien given under this subsection shall be effective for any purpose against an innocent purchaser or mortgagee of the offspring or the dam of the offspring for value unless the owner having a claim for the service records with the register of deeds of the county where the owner of the dam served resides a statement showing that the service has been rendered and the amount due for the service.
(2) Any person who sells, disposes of or gives a mortgage upon any dam which to the person's knowledge has been served by a stallion, jackass or bull, or artificially inseminated with semen owned by another, the fee for which has not been paid, and who has not given written information to the purchaser or mortgagee of the fact of the service or artificial insemination, shall be guilty of a misdemeanor and upon conviction shall be fined not more than $10 or imprisoned for not more than 60 days.

NEW-Question: I received a Notice of Lien for Fine and/or Restitution Imposed Pursuant to the Anti-Terrorism and Effective Death Penalty Act of 1996 from the United States District Court Eastern District of Wisconsin; the document is a tax lien against a defendant, does it need a legal description to record?
Response: The committee agrees this document does not need a legal description, similar to a notice of federal tax lien; we recommend you index it as a lien, grantor is the defendant and the grantee is United States District Court.

NEW-Question: The Department of Justice would like to eRecord their documents, the documents are liens similar to a federal tax lien. How should we treat these documents and future federal tax liens that are eRecorded? Do we continue to file a paper copy after recording or discontinue the paper copies?
Response: The committee agrees the liens would be treated as any other electronically recorded document; there is no need to keep a paper copy. Statutes 779.97(5)(a), 137.15 and 59.43(4) allow you to treat documents electronically by scanning and archiving.

NEW-Question: A Child support agency in California wants to put a child support lien on someone who lived in California and now lives in Wisconsin. They want to file it here. They do not know if he has property here but want it on file for any future property he may own. Is this something that could be filed in my office? I told her about the state child support site but she wants it put on file here. Can I record this?

Response: The committee agrees the proper place for this lien to be filed would be within the Child Support Lien Docket; however, if the customer insists on recording it in your office we would do so. Although it does not substantially copy with Wis. Stat. 59.43(2m)(b) it could be treated similar to a Federal Tax Lien, this may be a requirement in their state. Whether or not the document will suffice to serve the intent is for the courts to decide.

For informational purposes: the Child Support Lien Docket is statewide and if recorded in our office would only be searchable in a particular county. The Child Support Lien Docket is a 5 year docket and can be renewed if money for child support is still owned.

NEW-Question: A gentleman came into our office with his mother; they wanted to record a mortgage from the son to his mother. He explained that his mother had borrowed him money to purchase the house while he was married, he was sent to jail and he and his wife have since been divorced. His mother wants to put a lien on the house to make sure the ex-wife doesn't do anything with the property. The mortgage was missing a legal description as we were looking it up for them we noticed the gentleman had deeded the house to his ex-wife back in 2018. We explained that he no longer owns the house and he argued that he was indeed still an owner on the property; he said an attorney told him he needed to record the lien. Had he not explained the story we would have just recorded the document once he added the legal description; my question is, now that I know the story should I record?

Response: The committee agrees you should seek the advice of your corporation counsel. We believe if it is in recordable format you would need to record the document and leave it up to the courts to decide if they can legally put a lien on the property.

Note: The ROD who submitted this question did speak with their corporation counsel and was advised:

My assessment of the matter is that the original loan was an unsecured loan. Given the fact that the son no longer has any interest in the real estate, he does not appear to have any ability to encumber the house, which now belongs to his ex-wife, with a mortgage to secure the original loan. Recording such a document without having an ownership interest in the house would likely cloud title on the home and such an act could be deemed a fraudulent act. Sec. 59.43 1(c) states in relevant part as follows:

REGISTER OF DEEDS; DUTIES. Subject to sub. (1m), the register of deeds shall:

(a) *Record or cause to be recorded in suitable books to be kept in his or her office, correctly and legibly all deeds, mortgages, instruments, and writings authorized by law to be recorded in his or her office and left with him or her for that purpose, provided the documents have plainly printed or typewritten on the document the names of the grantors, grantees, witnesses, and notary.*

It is my opinion, given the factual scenario described, that the son and mother seeking to record such a mortgage where the son lacks an ownership interest in the property, and without the consent of the

owner, could result in fraudulently clouding title on the subject property. Such a transaction would not be authorized by law and I would advise you not to record it.

NEW-Question: We received a "Notice of Lien for Fine and/or Restitution Imposed Pursuant to the Anti-Terrorism and Effective Death Penalty Act of 1996" document. Can you tell me if this document would be ok to take in, I've never seen anything like this? There is no legal.
Response: The committee agrees this document does not need a legal description, similar to a notice of federal tax lien; we recommend you index it as a lien, grantor is the defendant and the grantee is United States District Court.

NEW-Question: Not sure if this is in effect yet but I need some guidance. Attorney states he does not need to put the grantee on the release. I can't get into the WRDA secured site to see if there is any mention of a standard format for releases. We feel that the grantee should be on the document. Are we being too picky?
Answer: The absence of a specified grantee seems to contradict 59.43 (1c)(a):

(1c) REGISTER OF DEEDS; DUTIES. Subject to sub. (1m), the register of deeds shall:

59.43(1c)(a) **(a)** Record or cause to be recorded in suitable books to be kept in his or her office, correctly and legibly all deeds, mortgages, instruments, and writings authorized by law to be recorded in his or her office and left with him or her for that purpose, provided the documents have plainly printed or typewritten on the document the names of the grantors, grantees, witnesses, and notary

However, documents such as plats, resolutions, etc often do not have specific grantees either, yet are routinely recorded in the Register of Deeds. The condo statute (703) provides the guidelines for preparing a statement of lien and even includes a template, but gives no specifics with regard to a satisfaction of lien. In fact, only the Clerk of Court is mentioned as a filing point. It would appear that the satisfaction submitted "substantially complies" with recording requirements and although indicating a specific grantee would be preferable, the help desk feels it can be recorded as presented.

Lis Pendens

Question: It has been the policy of this office to send a certified copy of a Lis Pendens following recording to the Clerk of Courts Office. The party recording the Lis Pendens pays for the copy and certification. An attorney does not want to pay for the certified copy. Is it statutorily required to file a certified copy of the Lis Pendens with the Clerk of Courts Office?
Answer:
It is up to the submitter to file a certified copy of the Lis Pendens with the Clerk of Court's office. The ROD as a courtesy can deliver it to the Clerk of Courts Office, but there is no statute requiring us to do so. If the copy/certification fee is not paid to the ROD, no copy is made.

Question: Does a Release of Lis Pendens require a legal description?
Answer:
A Lis Pendens requires a legal description per *s. 840.10(1)*. This applies to filed or recorded documents. A legal description is also required on a Release of Lis Pendens. Per *s. 706.05(2m)*, legals are required on all documents that are to be indexed in the real estate records.

Question: A Release of Lis Pendens was received which only gave the document number of the Lis Pendens being released. Is the volume and page of the original document also required if given on the original Lis Pendens?
Answer:
Wis. Statute *s. 706.05(2m)(a)* refers specifically to showing the document number of any original mortgage or land contract, including the volume and page if given on the original mortgage or land contract. It does not refer to any other type of document, so it cannot be required to show the document number and volume/page of the Lis Pendens to be released on a Release of Lis Pendens.

Question: Is it acceptable for a Lis Pendens to refer to more than one mortgage?
Answer:
In *s. 840.10(1)* it discusses Lis Pendens that should include "the object of the action". A court action could encompass multiple parcels &/or multiple mortgages. Therefore, more than one mortgage can be included in a Lis Pendens. It would be a good idea to add a cross-reference on each referenced recorded Mortgage to the Lis Pendens.

Question: Has anyone ever received a Lis Pendens for recording from an individual? A homeowner wants to file to get a road abandoned in a township. The township has been collecting road money and according to the homeowner, some county records indicate this is a private road. (Beth Pabst, St Croix Co).
Answer:
Yes, subject to the document format requirements, notarized signature, drafted by, legal description, etc. As long as the document has a legal description it meets the requirements (you have a place to tract it) – if it is in error, it is the drafter's responsibility. It must include the person's name, a brief statement of the object thereof and a map and description of the street or road to be abandon or vacated. *s. 66.1003(9)* and *s. 840.11*.

s. 840.11 Highways; parks; record of order. (1) Every person who makes an application to any court, county board, common council, or village or town board for laying out, widening, vacating, or extending any street, alley, water channel, park, highway, or other public place shall, at or prior to the time of filing the same with the proper officer, present for recording in the office of the register of deeds of each county in which the affected land is situated a lis pendens, as provided in s. 840.10, containing the person's name and a brief statement of the object thereof and a map and description of the land to be affected thereby.

Standard document formats require a legal description. Legal Description is defined in s. 706.01 (7r) as follows: *s. 706.01(7r) "Legal description" means a description of a specific parcel of real estate that is described in one of the following ways, whichever is appropriate: (a) By one of the ways under s. 66.0217(1)(c).*

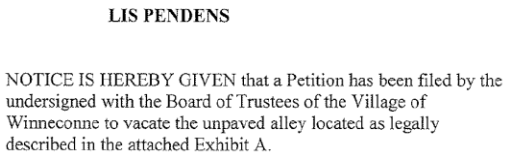
s. 66.0217(1)(c) "Legal description" means a complete description of land to be annexed without internal references to any other document, and shall be described in one of the following ways: 1. By metes and bounds commencing at a monument at the section or quarter section corner or at the end of a boundary line of a recorded private claim or federal reservation in which the annexed land is located and in one of the following ways: a. By government lot. b. By recorded private claim. c. By quarter section, section, township and range.

As long as the document has a legal description it meets the requirements (you have a place to tract it) – if it is in error, it is the drafter's responsibility. It must include the person's name, a brief

statement of the object thereof and a map and description of the street or road to be abandon or vacated. *s. 66.1003(9)* and *s. 840.11*. (Beth Pabst)

NEW-Question: The attorney is calling this document a Lis Pendens; I thought a Lis Pendens was notice of a court action which doesn't seem to be the case here. It appears the attorney's client petitioned the village to vacate a road, no court action was commenced. Should this be indexed as a Lis Pendens?

Image:



LIS PENDENS

NOTICE IS HEREBY GIVEN that a Petition has been filed by the undersigned with the Board of Trustees of the Village of Winneconne to vacate the unpaved alley located as legally described in the attached Exhibit A.

Answer: Per Statute 840.11 every person who makes and application to any court, county board, common council, or village or town board shall record a lis pendens in the office of the register of deeds. The WRDA handbook also includes under definitions that a street vacation is a lis pendens. It is appropriate to title and index the document as a Lis Pendens.

Managed Forest Land

Question: We get Managed Forest Lands transfer orders from the WDNR and sometimes in the return to box it says to bill the landowner for the recording fee. We send them an invoice and will not record the document until the landowner submits the fee. Is this the correct process? (Cheri McBride Lacrosse Co)

Answer:

s. 77.02(3)(b) reads as follows: *If the request of a petitioner is granted under par. (a) or sub. (4), a copy of such order shall be filed with the Department of Revenue, the supervisor of equalization and the clerk of each town, and the order shall be recorded with the register of deeds of each county, in which any of the lands affected by the order are located. The register of deeds shall record the entry, transfer or withdrawal of all forest croplands in a suitable manner on the county records. The register of deeds may collect recording fees under s. 59.43 (2) from the owner*.

The key word here is "may" Billing the landowner occurs only on request that falls under 1927 forest crop law statutes. The 1927 forest crop law is slowly being phased out – last documents we will see is in 2035 – the program can no longer be entered into as it is slowly being phased out. Managed forest land program law was enacted in 1986 and under that program – DNR bills the land owner. It would be appropriate to Contact the landowner requesting payment and if there is a problem, return it to the DNR for collection. (Marvel Lemke, Taylor Co).

Question: Managed Forest Land documents, can we invoice the WDNR and record them after I receive payment? (Melissa Nagel, Crawford Co)

Answer:

No Per s. 59.43(2)(j)… All fees under this subsection shall be payable in advance by the party procuring the services of the register of deeds, except that the fees for the services performed for a state department, board or commission shall be invoiced monthly to such department

We invoice the DNR monthly and they always pay. (Marvel Lemke, Taylor Co).

Miscellaneous

Question: Which statute discusses the penalty for failure to record a satisfaction in a timely manner?
Answer:
The statute is *706.05(10)*. The mortgage holder must receive a written request for a full satisfaction by certified mail from the Mortgagor. The Satisfaction must then be recorded within 7 days.

Question: What is the definition of "public records"?
Answer:
According to *s. 16.61*, "Public records means all books, papers, maps, photographs, films, recordings, optical disks, electronically formatted documents or other documentary materials, regardless of physical form or characteristics, made, or received by any state agency or its officers or employees in connection with the transaction of public business…"

Question: Is email considered a record?
Answer:
According to the authors of an article entitled Archives Advice 20 "…Email sent or received contains information about business activities and therefore can function as evidence of business transactions which are part of the official records of an agency…Courts have accepted email as a legitimate source of evidence and it is therefore subject to legal processes such as subpoena…Staff should be made aware of the rules and conventions surrounding the use of email and that they are communicating on an official business system…"

Question: Is sales tax due on the sale of copies of indexes and/or images?
Answer:
There was a ruling by Deputy Revenue Secretary John Bilotti in 1992 that says an authority selling copies of records is exempt from the Wisconsin sales tax.

Question: It has been brought to my attention that on the secretary of state's website that some county records are available. Go to the link below & type in your county name in the park name section. http://sos.nmtvault.com/deeds.aspx (Rose Ottum, Trempealeau Co).
Answer:
Per Wisconsin *s.14.43* - *"the secretary of state's office is the custodian of deeds, conveyances, abstracts of title, options and leases of land…. Belonging to this state… and they shall be open to the public."* I see no problem with the secretary of state having these available on their website – most likely residents will look for them in the county records first. (Marvel Lemke, Taylor Co).

NEW-Question: What statute states our recorded document is the official record; not the original. When stamping the document number we stamped two documents with the same number in error; however, the image in our system has the correct numbers.

Response: We searched multiple statutes and found Wis. Stats. 16.61(7) and 59.52(14)(d) that states our record has the effect of the original and we interpret that to mean we have a valid copy of the original. The imaged document must accurately reproduce the content of the original; since this is not the case we believe the county should record a correction instrument, gratis, to correct the county's error of miss stamping the original documents.

New-Question: What document name would you give an Exercise of Power of Appointment document? Does this document require a transfer return?
Response: The committee agrees if you do not have a specific document type in your system to index it as a miscellaneous document MISC. We believe it is not a good practice to make a new document type for every document presented, especially if it a one-time document.
After reviewing the document the committee believes a transfer return is required as the grantor is removing the ownership of one current owner and appointing the ownership to another person.

NEW-Question: A constituent received an appraisal letter from a company asking her to confirm the information contained in the letter in regards to details about her property purchase; the company claims to want to use her information as a comparable sale. The letter also asks her to supply any other information that may have affected the sale price of her property and then asks her to sign and date the document. I contacted the company and asked where they got the information in the letter and they stated the deed was public record; we do not have a contract with this company. Have you ever heard of such a letter and should she complete it?
Response: The committee agrees that your constituent has no obligation to complete the form or provide any additional information unless they wish to do so. There are multiple ways this company could have known this information as it is public record; the Department of Revenue provides the information given on the transfer return through their website.
https://propertyinfo.revenue.wi.gov/WisconsinProd/search/commonsearch.aspx?mode=owner

New-Question: I have someone who is looking for a Resident Certificate; he is required to have this document for his marriage in Laos. He was directed to get this form in our office. Has anyone heard of this and where do I find the form?
Response: The committee had not heard of this document; we searched the internet to find a Residency Certificate and found the required forms can be obtained only in "Lao-translation version" from the Department of Interior Affairs. There are also private services that will assist a person in getting and translating the appropriate documents.

NEW-Question: A document was submitted for recording titled "Contract" included with it was a transfer return and transfer fee. The ROD staff interpreted this document to be a conveyance of land. Our Real Property Lister is not convinced this is an actual conveyance. Their concern is that the grantor signature is from over three years ago and they do not know if that person is still alive. They also believe this document appears to act as a land contract and assignment of land contract. What are your thoughts, is this a conveyance document and should the RPL change the name on the tax roll?
Response: The committee agrees the RPL should change the name on the tax roll as there is no requirement to record a conveyance document within a specific time frame previous to a person's death other than the Designation of TOD Beneficiary document which needs to be recorded before the grantor's death.

NEW-Question: Do you recall a statute or rule change for when a corporation changes their name? Is there some type of form they have to record in our office?
Response: The committee agrees that corporation name changes are processed through WI Department

of Financial Institutes. If there is real property involved they would need to complete a new deed reflecting the name change of the corporation if applicable.

NEW-Question: During doc prep for a sheriff deed to be granted to the successful bidder, how would the attorney drafting typically determine what vesting be used for the grantee? Second, is there any time frame one must wait before re-titling the foreclosed property once the sheriffs deed is delivered?
Answer: I just checked my Sheriff Deeds for the last year or so. The couple of times that there were 2 Grantees (probably husband and wife) there was no vesting. I am guessing the Sergeant conducting the auction and taking information doesn't much care about that. The attorney drafting is not going to chase down any more information either. They just get the basics. We are happy to get an eRETR completed correctly. Many times we see a QCD after a Sheriff deed to add the spouse or change a name to an LLC. I would recommend that to anyone that is not happy with the way they took title.

NEW-Question: I have a couple at the counter that have a corporation filed in our office and the DFI told them to go to the county (not specifying which office) to get a certificate of good standing. They didn't file it with the state so the DFI won't issue one. Has anyone heard of this and where would I send them? I surely don't have any such certificate to issue in my office that I am aware of nor would I know how to find out if they truly are in good standing.
Response: When I worked at a law firm, my attorney would set up Corps and LLCs for clients. They would file the paperwork with DFI and then have to file an annual report with DFI. While I never had to request such a certificate, when you search the corporation or LLC on the DFI site, it would tell you if they are in good standing or delinquent. I haven't heard of filing anything at county level. Did they record something in your office? If so, where are they filing their annual reports? Even if they did record something in your office, like you mentioned, we couldn't issue an such certificate. I'm not sure where to direct them aside from DFI.
I wonder if DFI really said this!?! They need to contact DFI again. (Heather Schwersenska, Waushara Co)

NEW-Question: Does anyone know if we MUST have a copy of the SAH participant's cards to do the recording of the docs? I found in my notes that we need a copy of the card, but this participant just enrolled and only has a form letter about being a participant titled "Notice to State or Local Government of Participation in Safe at Home." I think we need a copy of the card to know what the end date is. Would you record without the card copy?
Response: Yes. You are supposed to have the card. I would not record without the card AND the Real Property Notice.

NEW-Question: We have a township that is trying to change the name of a street within their municipality. They want to just simply record their meeting minutes that shows that they agreed to do this. They need something more than this to actually have the street name changed, correct? Or, will simply recording some meeting minutes, that are not signed or notarized or anything, suffice? Maybe they need a resolution? Still I'm not sure that is enough to actually change the name.

Response: Here is what I received from Renee Powers on the street name change.
Usually when a local unit of government wants to change a street name, they first check with the county

to make sure the name is ok for 911 addressing (ex. Not a duplicate name in the county). Then they pass a resolution that changes the name. The resolution is then typically recorded with the Register of Deeds. I'm not aware that it's required, but it's a very good idea. If they didn't do a resolution, but passed a 'motion of the board', the only thing they may have is the documentation of passing the motion in the minutes. Recording that is better than nothing.

Mortgages

Question: A mortgage is recorded and then modified OR a mortgage is recorded and then corrected (either by recording another mortgage that says "corrects and confirms..." or by a correction instrument. Mortgage is then satisfied. Customer wants to put the original recording data on Satisfaction and also the modification recording information OR correction document recording info on same satisfaction.
59.43(2)(ar) refers to: "...one mortgage being assigned, partially released or satisfied"
Isn't it still only one mortgage even if it's modified, corrected, etc? (Jodi Helgeson, Adams County)
Answer:
When we get a satisfaction for a mortgage if it refers to an amendment, correction or whatever you are still only satisfying the original mortgage no matter what they do to it. We would take another reference as long as it is not ANOTHER mortgage. (Cheryl McBride, LaCrosse County)

Question: Is it necessary to separately satisfy the Assignment of Rents (or other documents related to a Mortgage) once the Mortgage is satisfied?
Answer:
It would not be necessary to satisfy separately the Assignment of Rents, Assignment of Mortgage, Subordination of Mortgage, etc. related to a specific Mortgage. The Mortgage is the document creating a lien on the property and is the only document that needs to be satisfied. Per a local title examiner, they would require a Satisfaction to appear for a Mortgage, but would not call for a Satisfaction of an Assignment of Rents.

Question: A Partial Release of an "Indenture" (aka Mortgage) was presented by a utility representative for recording. They are releasing only part of the real estate of the original mortgage, but to satisfy their lender, they must recite all the volumes and pages of supplements (addendums) to the original mortgage. Should I accept the document, tract it using the one legal description given, use the original mortgage recording info and ignore all the other recitals?
Answer:
Yes. We require separate documents for partial releases of separate mortgages but in this case, there is only one original mortgage. Ignore all the other recitals. Those searching the record can read the document and find each separate mortgage addendum if they wish.

Question: If on a document entitled "Satisfaction of Mortgage" the referenced document is actually that of the Assignment of Rents, should the document be returned requesting the referenced number be changed to the Mortgage document number? Or, should the title of the Satisfaction document be changed to reflect the type of document that is actually being satisfied?
Answer:
In most instances, this discrepancy wouldn't be noticed prior to recording the Satisfaction. If a document meets the statutory recording requirements, it would be recorded as presented. The document number referenced will then be cross-referenced to the newly recorded Satisfaction. You could return a notice when returning the recorded document indicating the error. It would be

up to a title searcher to call for an additional Satisfaction if, in fact, the Assignment of Rents was satisfied and not the accompanying Mortgage.

Question: According to s. *893.33 Action* concerning real estate, if a mortgage is approaching 30 years they need to record a notice referencing the current mortgage to keep it active? What is the form? (Marge Geissler, Chippewa County)
Answer:
Most mortgages are for 30 years or less or have refinanced so the 30-year time frame probably does not come into play much. *(3) The recording of a notice under sub. (2), or of an instrument expressly referring to the existence of the claim, extends for 30 years from the date of recording the time in which any action, defense or counterclaim founded upon the written instrument or transaction or event referred to in the notice or recorded instrument may be commenced or asserted. Like notices or instruments may thereafter be recorded with the same effect before the expiration of each successive 30-year period.* (Staci Hoffman, Jefferson County)

Question: Can more than one mortgage be modified, extended or partially released on a single document? Is a Real Estate Security Agreement the same as a Mortgage?
Answer:
No. Per *s. 59.43(2)(ar) No person may record under this section a single instrument that contains more than one mortgage, or more than one mortgage being assigned, partially released or satisfied.*
The intent of the statute was to cover all documents pertaining to mortgages including extensions and reamortizations. However, the statute only specifically mentions assignments, partial releases and satisfactions, so some might argue against a broader interpretation
A Mortgage is defined in our WRDA Handbook as "a pledge of real estate as security for the payment of a debt". A Real Estate Security Agreement would be included in this definition. Therefore, there should be separate documents to release each of the types of recordings indicated.
****Note:** Have an office policy in place to ensure consistency.*

NEW-Question: Can subordination document reference more than one document? I know they can't release or satisfy multiple mortgages with one satisfaction document.
Response: The committee agrees that a subordination document may reference more than one document and all documents listed should be indexed. Wis. Stats. 59.43(2)(ar) specifically references assignments, partial releases and satisfactions.

New-Question: We are wondering if we had a mortgage that was recorded and we had to do an Affidavit of Correction due to the legal description being incorrect, and now we are satisfying the mortgage. Do we need to satisfy both documents? Or only the mortgage that was recorded?
Response: The committee agrees the original mortgage document number needs to be referenced in the satisfaction; it is appreciated that you include the correction instrument also for future searches.

NEW-Question: An attorney submitted an Amendment to Articles of Organization for a cemetery association; the document is not notarized but has a certification page that each board member signed; this is not the normal certification from DFI. When I questioned the attorney, he said the certification was not necessary and DFI did not want to be part of this transaction and he did not witness the signatures, he insisted we record it as presented. Should we accept?
Response: The committee agrees it would be preferable for the attorney to certify that the document

presented is the version provided him and is recording at the behest of those that signed. With that said, if they insist that you record as presented, we would record. We believe the signatures on the certification page of the board members would be sufficient for the courts.

NEW-Question: We received a partial-release document come in with a legal for another County, but the document number is ours. The bank said that there was a mortgage recorded in both counties, which has a legal for both counties. Would you accept a partial release with another county's legal? Or should they just record it the other County since it is for their legal?
Response: The committee agrees you may accept a partial-release document even though the property being released is located in another county. The bank may be required to do so for their internal policies. We would index the grantor and grantee information only. As a courtesy you could contact the submitter to verify they did indeed intended to submit the document to your county, but you are not required to do so.

NEW-Question: Our planning department brought down the enclosed documents and wants them recorded together for the $30.00. The agreement was never recorded and now it has an amendment for it. The agreement was signed in July and the amendment was signed in December. Would you make them record each one separate or would you attach the original to the amendment?
Response: The committee agrees the preferred way to record these documents would be to first record the agreement, then as a separate document record the amendment referencing the original agreement. This will help with indexing and finding the appropriate documents in the future. However, we could not find a statutory reason to reject recording them together. If they insist on recording them together we recommend the original agreement be placed in front of the amendment; we would also notate in your system's notes that the amendment is attached.

NEW-Question: We received a mortgage for recording with no loan amount. Is the mortgage amount a requirement of recording? Other than this the document appears to be in recordable form.

Response: It is not a recording requirement. I have seen mortgages without loan amounts before. Sometimes they record "security instruments" that would act as a 2nd mortgage and claim any equity in the property i.e. a line of credit.

NEW-Question: I received an eRecord document that is titled "Mortgage & Assignment of Leases and Rents". It is 26 pages long and is two separate documents but combined as one. Can I record this way or should it be two separate documents? When we index this, we would index under the mortgage so this assignment would be very difficult to search for. Should I accept or reject?
Answer: The committee agrees we would reject the document as submitted and request a separate recording fee for the ARL. We would notify the submitter that if recorded as submitted, the assignment would not be searchable and would be indexed only to the mortgage. If the submitter insisted on recording this way, we would accept and only index the first name of the document title, in this case Mortgage.

Notary

Question: Under what circumstance(s) can you reject a document due to an incomplete notary?
Answer:
The WRDA Unable to Record Document contains the following rejection reason:

- ☐ A notary's signature or attorney's authentication are required. s.706.05(2)(b) as defined:
  - 706.06(2) - Signature of authenticator, Date of authentication, and Official title are requirements OR
  - 140.15 - Signature of notarial officer, Identification of jurisdiction, Title of notarial officer are requirements.

Per 706.06(2) – Signature of authenticator, Date of authentication, and Official title are requirements. I would reject if all three are not there.

Per 706.07(7) – Signature of notarial officer, Identification of jurisdiction, Title of notarial officer are requirements. I would reject if all three are not there. Date of Expiration is "required" but may be omitted and corrected later so if all that was missing was the Date of Expiration, I would record.

Per 706.05(6) *Except as may otherwise be expressly provided, no instrument shall be denied acceptance for record because of the absence of venue, seals, witnesses or other matter of form.*

Per *59.43(6), "The validity and effect of the record of any instrument in the office of register of deeds shall not be lessened or impaired by the fact that the name of any grantor, grantee, witness or notary was not printed or typed on the instrument".*

It is best to question the submitter if the date of notarization and/or date the commission expires is missing, but do not reject for recording if the submitter returns the document missing these dates. The document should not be returned if the seal is missing.

(Heather Schwersenska, Waushara County)

Question: Must the signatures on a marital property agreement be notarized? Is the drafter of the document required?
Answer:
If the MPA is being submitted for recording than the signatures need to be notarized and a Drafted by provided (unless s 59.43(5) applies).

Question: Can we accept documents notarized by "officers" different from those listed in section 706.07(3)?
Answer:
Yes. Section 706.07(4) allows us to accept notarial acts performed by other person(s) authorized by the law of that jurisdiction to perform notarial acts." For example, in Alaska the postmaster is authorized to perform notarial acts and the commission is considered permanent. We would accept a document notarized by a postmaster who resides in Alaska. A document might be authenticated by a barrister (a member of the bar) in Ireland or England.
We are not required to know the laws beyond Wisconsin so you should trust what the document says and record it.

Question: Why is it that the governmental signature appearing on a Holding Tank Agreement does not need to be notarized? Do you require a complete legal description on these documents, or will you accept an abbreviated one that just identifies the general area (1/4 section with section, town and range)?
Answer:
Usually, an "Agreement" is signed by both parties to the agreement with both sets of signatures being notarized or authenticated. Basically, the Holding Tank Agreement contains a statement made by the property owner agreeing to do certain things. Even though titled "Agreement", the terms of the document are something that only the owner is committing to or granting, so only that grantor signature must be notarized. The governmental signature appears as an acceptance of the terms.

Question: Does a Certificate of Redemption described in 846.13 require the clerk of court's signature to be authenticated or acknowledged?
Answer:
Per *s. 846.13: "…the clerk shall thereupon discharge such judgment, and a certificate of such discharge, duly recorded in the office of the register of deeds, shall discharge such mortgage."* The definition of "certificate" in Webster's Dictionary is: "A written testimony to the truth of a certain fact or facts; a testimonial; an attestation; to attest or certify by certificate." By using the wording "certificate of such discharge", it indicates that the clerk is certifying to the fact that the judgment is discharged. There is no further requirement that the clerk of court's signature be authenticated or acknowledged.

Question: I have a deed that was acknowledged in both the state of Wisconsin and also the state of Oregon. The Oregon Notary Public certificate is a smaller piece of paper (approx. 7½" x 3") stapled on the face of the deed at the bottom that it can be flipped up to see the Wisconsin acknowledgement. Can I reject for not complying with standard document format, or do I not question another state's form of notary certificate? (Marilyn Mueller, Kewaunee)
Answer:
Summary: As is, it does not meet the standard requirements. However, with the submitter's permission, the county could choose to tape or staple to an 8½ " x 11" sheet, photocopy and then scan and record.

Question: We received a final order to vacate a street today and the signatures of the town officials are not notarized. The town clerk attested the signatures. Is this acceptable?
Answer:
Per s. 19.21(1) Public records and property…….Each and every officer of the state, or of any county, town, city, village is the legal custodian of and shall safely keep and preserve all property…..66.0217(9)(a) states the filing requirements …..the clerk shall file a certified copy of the ordinance, certificate with the Register of Deeds……706.07(8)(e) shows an example for attestation of a copy of a document and the clerk's certification wording. If the clerk is a notary, they should include their title, rank and commission date.
Per *s. 887.01* states that clerks and deputy clerks can administer oaths or affidavits, and that where notaries are to sign documents, clerks can sign them as well; however, clerks should limit this to only signing on behalf of the town (in other words, clerks shouldn't sign as a notary public unless it is for the town). (Tara Fermanich Assistant Legal Counsel, Wisconsin Towns Association)

Question: Why are FTL's, Lis Pendens, DNR and DOT documents exempt from having notarized signatures and a Drafted by? (Konna Spaeth, Vernon County)

Answer:
Managed Forest Land and **Forest Crop Law** documents state on them: “Pursuant to *s. 77.125 SIGNATURES. (1) The signature of an official or an employee of the department of natural resources may be stamped, printed, or otherwise reproduced on an order under s. 77.01 to 77.14 after the official or employee adopts the stamped, printed, or otherwise reproduced signature as his or her facsimile signature. (2) The signature or the facsimile signature under sub. (1) of an official or an employee of the department of natural resources meets the requirement under s. 706.05(2)(a). (3) The requirement of s. 706.05(2)(b) does not apply to orders issued under this subchapter.*

Lack of notary is under numerous statutes in Chapter 77, so I believe it pertains to all of their documents. In regards to drafted by, the drafted by is usually the State of Wisconsin Dept of Natural Resources and then they ARE exempt from having to name a person. (Cheri McBride, LaCrosse Co.)

Federal Tax Liens state on their documents: “NOTE: Certificate of officer authorized by law to take acknowledgement is not essential to the validity of Notice of Federal Tax Lien” and then refers to the reference in the Tax Code. Drafted by is not required.

Lis Pendens – See *840.10(1)(b)* which states, *“A lis pendens that is prepared by a member of the State Bar of Wisconsin need not be authenticated”* If the Lis Pendens is prepared by someone other than an attorney it does need a notary. Drafted by is not required.

Award of Damages (DOT) – See *706.001(2)(a)* which states, *“Excluded from the operation of this chapter are transactions which an interest in land is affected:* ***(a)*** *By act or operation of law; or…”*

Question: My County Clerk pointed out statute 706.07 (3) 4. We as Registers /deputy Registers may perform the notarial act. What would be the requirements to do this?
Answer:
In order to perform a "notarial act", a person must be a "notarial officer" of some sort. Section 706.07(3) contains a list of persons who may perform notarial acts. Fourth on the list is "A register of deeds or deputy register of deeds".

The Rod or deputy would identify themselves by title (register or deputy register), indicate when their term of office expires, and affix a register of deeds seal or stamp, if that office has a seal. Preprinted forms must be neatly altered - if under the signing line, the words "notary public" appears, those words need to be lined out, and "Register of Deeds of XXX County" needs to be inserted. "My commission expires" would need amending to "My term of office expires".

I believe the confusion may come from the belief that these persons are automatically notaries public. They are not. They are authorized by s. 706.07 to perform notarial acts by virtue of holding their public office (judge, register of deeds, etc.). They are NOT notaries public unless they have applied for and been granted a notary public commission under s.137.01.

In summary, all notaries public are notarial officers, but NOT all notarial officers are notaries public. I hope this helps. (Susan Churchill, Wisconsin Office of the Secretary of State, Visit our website at www.sos.state.wi.us)

NEW-Question: I received an Easement document signed by two members of the Township and notarized by the Town Clerk; under the commission expiration date the clerk entered N/A. My deputy contacted the Clerk and the Clerk confirmed she is not a notary but has the authority to acknowledge documents based on the title of Town Clerk. Should I accept this for recording?

Response: Municipal Clerks can certify a document's signatures and we can take them in for recording per Wis. Stats. 19.21(1) and 66.0217(9)(a). However, they are not automatically notaries under 706.07(3). After much back-and-forth discussion on this the County contacted the attorney that drafted the document and the attorney agreed the Municipal Clerk does not have notary authorization; the document will be executed in front of a notary and submitted for recording.

Question: Documents bearing "FEDERAL NOTARY" seals.
Answer:
While these notarizations may appear to be dubious, they are perfectly legal, if they are performed by Military Notaries. Federal law and most states authorize certain individuals serving with or working for US Armed Forces to perform notarization for military personnel and their dependents anywhere in the world. Military Notaries can include commissioned officers, enlisted paralegals, judge advocates or civilian lawyers working as legal assistance attorneys and licensed to practice law in the United States. Federal law does not require Military Notaries to us a seal. Their signature and title along is sufficient. However, the military recommends use of a seal because it enhances the acceptability of a notarized document. If the seal is used, it should contain a reference to the federal statues regarding military notaries: Title 10 USC 1044a. (Marvel Lemke, Taylor Co).

NEW-Question: I received a document (Termination of Lease); the signatures were not authenticated or notarized. The submitter contends that since it is not a conveyance or mortgage and as long as both parties signed, the signatures do not need to be notarized or authenticated.

Answer: The committee agrees that you should require the signatures to be notarized or authenticated; we recommend this document be rejected siting 706.05(2)(a)(b), every instrument offered for record shall contain a form of authentication authorized by 706.06 or 706.07. See above for documents exempt from notarization/authentication.

NEW-Question: If typical DOT documents (i.e. Award of Damages, Right of Way Permit, etc) are prepared by the WI DOT, however the signatures on the document are not originals nor notarized

signatures, and do not indicate that they are those of a WI DOT agent, should I accept the document for recording?

Answer: The committee agrees this document should be rejected. Statute 706.05(2)(a)(b) indicates all documents shall contain a form of authentication. Since the document is not signed by an agent of the DOT, original signatures and authentication are required.

NEW-Question: Is there a reference in the notary statutes that states a document cannot be notarized in the future? We are getting documents that are notarized in the future and dated in the future. I understand we cannot reject a document for not being properly notarized.

Response: The committee agrees we cannot reject a document for notarization issues; however, Wis. Stats.706.07(7)(a) states a notarial act must be evidenced by a certificate signed and dated by a notarial officer. If this is a consistent issue with a specific notary you may wish to file a complaint with Wisconsin Department of Financial Institutions.

NEW-Question: Just wondering what you would do if you get a document in and the date on the first page is December 7, 2018, the notary date is December 7, 2018 and they list both people signing, but the 1 person puts a date by his signature as December 11, 2018. Date is after the notary date. Would you just take it or send it back?

Response: *Same response as previous question* - The committee agrees we cannot reject a document for notarization issues; however, Wis. Stats.706.07(7)(a) states a notarial act must be evidenced by a certificate signed and dated by a notarial officer. If this is a consistent issue with a specific notary you may wish to file a complaint with Wisconsin Department of Financial Institutions.

NEW-Question: We received a correction instrument drafted by an attorney that was the drafter of the original document. She simply signed the document and authenticated her own signature. Can she do this? Is there a statute that precludes recording because of the lack of signatures?

Response: The committee agrees this document should be rejected, Wis. Stats. 706.05(2) requires signatures and a form of authentication.

WI Department of Financial Institutes guidance to notaries on this issue is:

SHOULD I WITNESS MY OWN SIGNATURE? No. Since a Notary must always be an objective witness, the validity and effectiveness of notarizing your own signatures is questionable, and, therefore, not advised. Most filing officers (registers of deeds, county clerks, state offices and courts, etc.) will not accept documents on which a notary has notarized his/her own signature.

Per Deputy Chief Legal Counsel for WI Department of Financial Institutes:

A notary, including an attorney, may not notarize his or her own signature.

NEW-Question: A bank is insisting they do not need to sign and notarize a Mortgage Modification in which they are calling a Loan Modification Agreement. What statute requires them to sign and notarize the document?

Response: The committee agrees the document requires signatures and notarization, we would reject the document. Wis. Stats. 706.05(2) requires signatures and a form of authentication.

Question: Recording ***Foreign Documents***. Is it acceptable to record a document containing signatures notarized in a foreign country? Is the notarial actual required to be in English or verified by someone prior to recording?
Answer:
Although, there are no statutes or case law that addresses this issue directly s. *59.43, Chapter 706,* the open records law, case law and WI provide guidelines.

Per *s. 706.07(6)(a) Foreign Notarial Acts. A notarial act has the same effect in Wisconsin if performed by a notarial officer of a foreign nation. It must be performed by either a notary public, a judge, clerk or deputy clerk of a court of record, or by any other person authorized by law of that jurisdiction to perform notarial acts.* Therefore, if you can reasonably tell that the signatures were notarized, then you can record the document.

A record is defined as *"any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority".* (emphasis added). Both the federal and the Wisconsin rules of evidence require that documents must be authenticated before they can be admitted into evidence.

s. 59.43 identifies the documents which must be recorded by the Register of Deeds. It also requires the ROD to index the information which is recorded, which implies that the contents of the documents must be known and must comport to the statutory standards.

The original, properly notarized document should be recorded, along with an English translation containing a notarized statement by the person who translated the document attesting to the fact that it is a full, true and correct translation of the document (in other words, that the document is what it purports to be). (Mary Kasparek's response in 2005 to Jane Licht, former Dane County Register of Deeds)

UPDATED Response: All those responding from help desk agree foreign notarized documents can be recorded without being translated. It appears that an apostille can be used to further authenticate the notary, but we can find no such requirement for real estate recordings in Wisconsin.

Plats, TPPs & Maps

Question: We have a problem with the ink sticking to the plastic plat envelopes. Does anyone have a suggestion?
Answer:
Some of our older plats had this problem. Apparently, a copy machine rather than a photographic process was used. Try to pry them loose carefully and turn them inside toward the white cardboard. This problem may also be caused by the plastic material of the pocket breaking down. Pockets should be replaces as soon as possible.

Question: How are you handling restrictions/covenants that are brought in for recording that are for a plat that hasn't been recorded yet? Tract to metes and bounds? How do you refer to these after the plat has been recorded?
Answer:
We would tell the customer the plat has not been recorded and advise them to record them after it has been filed. If the customer insisted, we would tract it to the quarter/quarter. If they want it tracted to the plat at a later date, they would have to record a new document or "record a correction instrument."

Question: Should a ROD office record plats of survey?
Answer:
Wis Stat 236.031 – do not record plats of survey. Administrative Code states where plats of survey are to be filed. Of course, if a person wants to have it recorded and they meet the recording requirements, they can record.

Question: Who do you send notices to when plats are recorded?
Answer:
Per 236.26, clerk of municipality should receive notice as well as approving authority for recorded plats.

Question: When a subdivision plat or CSM is filed, can the lot numbers be fractional numbers (such as Lot 14.1)?
Answer:
No, per DOA Plat Review, Wis. Statute 236.20(2)(e) indicates all lots in each block must be consecutively numbered and whole numbers. Renee Powers from Plat Review verified that lot numbers on subdivision plats and CSMs must be whole numbers.
A reply from Rodney Key from the DOT indicated that Transportation Project Plats should also be numbered consecutively using whole numbers. They had a few instances where a utility parcel was discovered further into the process. That parcel was then numbered with a fractional number, such as 3.1 which followed parcel number 3. This was done so the parcels following didn't have to be renumbered. In this scenario, Mr. Key states that using fractional lot numbers is acceptable. However, as a general rule all parcels should be consecutively numbered using whole numbers.

Question: What are the acceptable guidelines for Plat Media? How do we know if it is acid free and 25% rag stock?
Answer:
Effective May 17, 2005, SB27, 2005 Act 9, s.236.25(2)(a)…for subdivisions, a permanent non-fading black image on durable white media that is 22"X30" and complies with s.59.43(2m)(b)4. The guidelines that were produced by the Department of Administration, Plat Review, section 1, "Acceptable Media" also refers to white & opaque, 4 mil polyester film (know as copy-tuff), heavy bond paper (CSM paper) which is at a minimum acid free, 24lb or 32lb paper with 25% rag stock. It should be a copy-press image that resists fading, image transfer, smearing & won't rub off. (See http://www.legis.state.wi.us/2005/data/acts/05Act9.pdf). However, unless your county plat ordinance specifies the 24lb or 32lb rag stock paper, DOA Plat Review will probably not accept it unless it's on white media, preferably copy-tuff.
To find out if the media is acid free and 25% rag stock, ask and take their word for it. If down the road the recorded plat or CSM is not holding up, contact the surveyor and let them know. If there is not an electronic image already, scan/copy it to perpetuate the record.

Question: A plat was submitted to our office and the submitter contends that the surveyor informed him that it was not subject to DOA plat review. Are any of you aware of plats that aren't subject to review. (Brent Bailey, Sauk)
Answer:
The only situation in which a subdivision plat is NOT to be reviewed by State Plat Review is if your county has passed an ordinance to establish county or municipal plats and it is a county or municipal plat. The plat will need to have words in the title of the plat such as "County plat of …"or the plat name will be followed by words "A county Plat". This is per 236.45(2)(am) (Jane Licht, Dane)
There is no harm in recording one as long as it stated it was NOT A STATE PLAT and that the surveyors certificate stated IT DID NOT FOLLOW CHAPTER 236. (Renee Powers, Plat Review)

Question: When recording amendments to TPPs, what is the recommended recording/indexing best practices?
Answer:
1. Record amendments as a new TPP.
2. Create separate tract index for the new TPP.
3. Cross reference amendment to original TPP.

Question: A City clerk wants to file an Official Map of the City the ROD office. She wants to file the map, ordinance and resolution. I told her she could file the ordinance and resolution and attach the map but we would have to have a typed legal description on each of the documents to accompany a copy of the map. She said her attorney told her she did not have to have the legal description on the ordinance & resolution. She referred me to *Wis. Statute 62.23(6).* In reading that I understand it to read that she is to file a certificate showing the city has an official map and the ordinance & resolution. (Vicki Nelson, Pierce County)
Answer:
They can certainly record the certificate without a legal description, per *706.05(2m)(a), "any document submitted for recording that is to be indexed in the real estate records…..shall contain the full legal description of the property to which it relates."* If the certificate is recorded without a legal description, it could be grantor/grantee-d only and perhaps never found again. Recommend a legal description, however, if they choose not to include one, I would make an instrument code, such as, 'Official Map'— so if anyone searches for an official map of the City- perhaps they will notice the instrument code and find the certificate. (Marvel Lemke, Taylor County)
66.0217(9) FILING REQUIREMENTS; SURVEYS. (a) The clerk of a city or village which has annexed territory shall file immediately with the secretary of state a certified copy of the ordinance, certificate and plat, and shall send one copy to each company that provides any utility service in the area that is annexed. The clerk shall record the ordinance with the register of deeds and file a signed copy of the ordinance with the clerk of any affected school district. Failure to file, record or send does not invalidate the annexation and the duty to file, record or send is a continuing one. The ordinance that is filed, recorded or sent shall describe the annexed territory and the associated population. The information filed with the secretary of state shall be utilized in making recommendations for adjustments to entitlements under the federal revenue sharing program and distribution of funds under ch. 79. ***The clerk shall certify annually to the secretary of state and record with the register of deeds a legal description of the total boundaries of the municipality as those boundaries existed on December 1, unless there has been no change in the 12 months preceding****. (b) Within 10 days of receipt of the ordinance, certificate and plat, the secretary of state shall forward 2 copies of the ordinance, certificate and plat to the department of transportation, one copy to the department of administration, one copy to the department of revenue, one copy to the department of public instruction, one copy to the department, one copy to the*

department of natural resources, one copy to the department of agriculture, trade and consumer protection and 2 copies to the clerk of the municipality from which the territory was annexed. (c) Any city or village may direct a survey of its present boundaries to be made, and when properly attested the survey and plat may be filed in the office of the register of deeds in the county in which the city or village is located. Upon filing, the survey and plat are prima facie evidence of the facts set forth in the survey and plat.

Question: Will you record a document that has a Plat of Survey attached to it or should that be removed? (Konna Spaeth, Vernon County)
Answer:
As long as it is the correct size and as long as a complete legal description is attached as well as it meets statutory recording requirements. (Konna Spaeth, Vernon County)

Question: What needs to be done to correct an error on a plat that has existed for many years?
Answer:
Per Renee from Plat Review, she said a court order was not necessary IF we had a professional land surveyor do the correction. A county surveyor is usually a professional land surveyor so he can do an affidavit to "correct" that old original plat. If the county surveyor is not a professional land surveyor, any professional land surveyor can create the correction instrument.
236.02 Definitions. In this chapter, unless the context or subject matter clearly requires otherwise:
236.02(2m) (2m) "Correction instrument" means an instrument drafted by a professional land surveyor that compiles with the requirements of s. 236.295 and that, upon recording, corrects a subdivision plat or certified survey map. (Cheryl McBride, LaCrosse County)

Question: Can a TPP be submitted by someone other than the DOT? If so, would it still need an approval from the DOT?
Answer:
TPP's can be submitted by the DOT or directly by a municipality. Registers need to inform or remind their assistants that it is acceptable for cities, towns, counties, etc. to record TPPs. The person submitting TPP's (if not DOT) may either be from an engineering firm representing the city, town, etc. or a representative of the city, town, etc. itself, such as a mayor or town chairman. The DOT would not usually need to sign a municipal or town TPP. Acceptance of municipal TPP's is covered in *Stat. 84.095(2)(a).*
(Amy Dillenburg, Shawano County& Rodney Key, R.L.S., Land Surveyor/Right-of-Way Plat Coordinator)
89.095 Transportation project plats.
89.095(2) (2) FILING OR RECORDING PLATS.
89.095(2)(a)(a) The department, or a city, village, town, or county, may submit any order or resolution relating to a project in the form of a plat for filing or recording in the office of the register of deeds in the county in which the parcel is located. The plat may include a separate title sheet and shall be filed or recorded within 20 days after the plat is signed under sub. (4) (a) 4. The register of deeds shall file or record any plat submitted under this subsection as a transportation project plat. A project authorized by an order or resolution may be described in more than one plat. Whenever a project is described in more than one plat, each plat may be submitted separately for filing or recording.

Question: I have a Warranty Deed from the Department of Transportation (DOT) to a party. The legal description is a TPP and in the description they list the TPP number 7730-00-20-4.06 recorded as document 256187 but they do not list the Volume/Page of the TPP. Do you require this information, or just the document number? (Carol Burmeister, Buffalo County)
Answer:

Yes. Per *84.095(7) as updated by passing of ACT 102 in 2017: DESCRIPTION FOR PARCELS AND REMNANT PARCELS. a) Whenever a plat has been filed or recorded under this section, any parcel depicted in the plat that is required for a project by conveyance or eminent domain proceedings shall be described using the following information to the extent the information applies: Parcel .... (number) of transportation project plat .... (project number), recorded in volume .... (number) of transportation project plats, page .... (number), as document .... (number), recorded in .... (county name), Wisconsin. (b) A description under par. (a) is a sufficient legal description for purposes of s. 32.05 or 706.05 (2m) (a). (c) Subsequent conveyances, mortgages, and other instruments affecting title to an adjoining parcel of land and its associated rights or interests may refer to the parcel description in par. (a) as an exception to the conveyance. (d) The plat may be used to depict remnant parcels to be disposed of or to delineate existing highway right-of-way.*

NEW-Question: Should we accept an affidavit to use the correct coordinate system on an Assessor's plat without a legal description attached. The submitter, the Land Information Officer, feels it is not necessary to provide a legal description since he is merely giving notice there was an error.
Response: The committee agrees the document should have a legal description as Wis. Stats. 706.05(2m)(a) states any document submitted for recording shall have a full legal description of the property to which the document relates.

NEW Question: I have been notified that a subdivision plat will be sent for recording; apparently all the owners did not sign the plat. My Corporation Counsel states they do not need to sign but according to statutes they are required to sign. Please advise.

Response: After further review of the plat it was determined the plat was actually an Assessor's Plat, not a Subdivision Plat. Assessor's plats do not require the owner's to sign an owner's certificate; however, subdivision plats do require an owner's certificate.

- Assessors plat do not need signatures from the owners – the owners are noticed of the boundary line changes and have 30 days to dispute the plat; if they have a dispute they must take it up in circuit court.
- Subdivision plats do require all owners and mortgagees to sign the certificate which is part of the plat per Wis. Stats. 236.21, per a conversation with Plat Review:
    a. Plat Review relies on the surveyor to list the owners (they do not check)
    b. The surveyor depends on the developer to list the owners
    c. If an owner was missed on the original plat, they can do a correction instrument to add the missed owners

Power of Attorney

Question: A deed or mortgage was submitted with a copy of a POA attached as an exhibit. Can this be recorded or should it be rejected to have the POA recorded separately?
Answer:
If the deed is in recordable form, regardless of what is attached, you must record it. It would be indexed under deed only. You can, however, call and suggest that they record the original POA as a separate document so that it gets indexed under the POA alone. (Kathy Hanson, Douglas County)

Question: Is it acceptable to record a copy of a power of attorney or any other document for that matter?
Answer:
A copy of a power of attorney is a legal document. It conveys the same powers as the original when presented as proof of its existence. However, it is not in recordable form because it does not meet the recording requirements of Chapter 706. An Affidavit containing original signatures could be recorded with a copy of the power of attorney attached, but it would only be indexed as an Affidavit. A power of attorney may be recorded IF it has the original signatures.

NOTE: 706.05(2)(a) states, "Except as different or additional requirements may be provided by law, every instrument offered for record shall: ***(a)*** *Bear such signatures as are required by law;* ***(b)*** *Contain a form of authentication authorized by s. 706.06 or 706.07;*

There is nowhere in the statutes that specifically address needing "original/wet signatures" so an attorney or anyone else trying to record a document, could argue this point. Unfortunately, there is no clear, black-white answer. It is the recommendation of the WRDA to require original signatures. How we know if an eSignature is an original, it is also unclear!
(Heather Schwersenska, Waushara County)

Question: I have an attorney who is presenting a "certified copy" of a POA. The POA is certified by him to be a true and exact copy of the Power of Attorney that he executed previously. Would you accept it? (Jodi Helgeson, Adams County)
Answer:
According to *s. 706.05(5)* it appears the attorney cannot certify his own document. We suggested he either attach an affidavit and attach as an exhibit or obtain a certified copy from the correct source or record the original.

Question: We received a mortgage for recording. The person that signed the mortgage is signing as a POA. Their name does not appear anywhere on the document other than where his signature is. We have no POA on record. Do we need some kind of proof that this person really is the POA or do we just record it with no questions asked. (Konna Spaeth, Vernon County).
Answer:
If it's in recordable form you should record it. It's not for our office to police the documents, especially mortgages. Title companies, attorneys & judges are responsible for making sure there is a valid POA, if/when the document is questioned/challenged in court.

Question: On a Power of Attorney if the receivers sign do their signatures need to be notarized? (Randy Leyes, Rock County)
Answer:
History: *2009 a. 319* 5
s. 244.05 Execution of power of attorney. To execute a power of attorney the principal must sign the power of attorney or another individual, in the principal's conscious presence and directed by the principal, must sign the principal's name on the power of attorney. A signature of the principal on a power of attorney is presumed to be genuine if the principal makes an acknowledgment of the power of attorney before a notarial officer authorized under s. 706.07 to take acknowledgments. (Randy Leyes, Rock County)

NEW-Question: Who can all certify a Power of Attorney for recording? A title company asked: Can I make a copy of the original and stamp it certified? My stamp also has my signature and date that I fill in.
Answer: The committee agrees that it would be best for the title agent to sign and notarized an affidavit

stating they have viewed the original Power of Attorney noting their client did not want to release their original document; they should attach a copy of the Power of Attorney to the affidavit. The title agent may sign an affidavit as someone with direct involvement and knowledge of the transaction. The committee did not feel the title agent has the authority to certify a document.

NEW-Question: Do Power of Attorneys have to be recorded? If so, what is the statute?
Response: The committee is not aware of any statutory requirements to record a Power of Attorney. We do agree that a POA is helpful for the real property lister and the title companies to determine a clear chain of title.

NEW-Question: Lately, we are receiving a lot of POA documents for both a husband/wife. The title company recording them is recording with a Power of Attorney Affidavit cover sheet and then including both of the POA documents as one document. Are other counties allowing this? Or can I require they record as two separate documents?
Answer: The help desk is in agreement that the document is recordable. While we feel it is not the optimal way to provide constructive notice of the POA, it has all the elements of a recordable document. It could be indexed as an affidavit or POA, bearing in mind that it is important to stay consistent with how these docs were handled in the past and will be handled in the future.

NEW-Question: I have a Military Power of Attorney with a legal description on the cover sheet. There is no drafted by. Normally I would say that it needs to have a "drafted by" but I am noticing language up at the top of page 1 of 3 that follows the cover sheet that is making me question whether it is required. Your thoughts?
Answer: You could call title co and ask them add drafter. However, the committee agrees to record as submitted.
**Refer to WRDA Handbook-Recordings Chapter-Accepting Docs for Recording page.*

Railroads

Question: Is there a state or federal agency where Railroad Conveyances are filed if they're not recorded at the county? If an original Railroad Conveyance is presented for recording in the ROD office, should it be accepted or should it be deferred to DFI?
Answer:
Department of Financial Institutions, P.O. Box 7847, Madison, WI 53707
http://ocr.wi.gov/RailroadFilings/RailroadFilings.html

The statute does state that the document must be filed with DFI, but it does not state that the filing must be made at DFI before filing in the county. The DNR prefers to record at the county level first because the original document is returned to them. They then make an authenticated copy and file with DFI. This is also beneficial financially to the county because 20% of the transfer tax stays with the county. Otherwise, DFI collects it all. Therefore, record railroad conveyances as presented.

Recording/Filing Requirements

Question: Can the “DRAFTED BY” be a corporate name or must it be a person’s name? When a document has an authentication by a licensed Wisconsin attorney, does it still require “drafted by” with the individual name?
Answer:
Per s. *59.43(5) INCLUDING NAME OF PERSON DRAFTING INSTRUMENT.*
(a) No instrument by which the title to real estate, or any interest therein or lien thereon, is conveyed, created, encumbered, assigned or otherwise disposed of shall be recorded by the register of deeds unless the name of the person who, or governmental agency which, drafted such instrument is printed, typewritten, stamped or written thereon in a legible manner. An instrument complies with this subsection if it contains a statement in the following form: “This instrument was drafted by … (name) …”;
(b) Paragraph (a) does not apply to an instrument executed before May 9, 1957, or to:
1. A decree, order, judgment or writ of a court.
3. An instrument that is executed or Acknowledged outside of this state.
4. A transportation project plat that conforms to s. 84.095

Per s. 59.43(5), only documents pertaining to an interest in real property must show the drafter’s name. Documents such as Firm Names, Corporations, Name Changes, and Power of Attorney documents that do not refer to specific parcels of land would be exempt from this requirement.

Look at the acknowledgement state to see if it is executed in Wisconsin to determine if a person’s name is needed. A drafter statement would not be needed for a document executed/acknowledged in a state outside Wisconsin. It would not be necessary to show the name of the bank or any other drafter information.

Question: A lending institution sends 10 satisfactions to be recorded. Each one gives a different return address. Do you send them to the 10 different addresses as stated on the documents or do you send them back to the Lending Institution where they originated?
Answer:
The return address stated on the legal document controls the situation.

Question: Should our office accept mortgage notes that are not attached to mortgages?
Answer:
If it is in recordable form, yes.

Question: If there are two grantors but only one signature, do you accept the document?
Answer:
No. See s. 706.02(d).

Question: Should an Assignment of Rents be recorded as a separate document or may it be attached to a mortgage even though it contains legal and notarized signatures? If attached to a mortgage, it is not indexed as an assignment of rents. Is there some statute referencing this?
Answer:
The customer should determine if he/she wished the AOR to be separate and can be accessed in the public records or if it should be another document. *s. 59.43(2m)* specifies that if a document has more than one title, only the first title will be indexed. You may wish to remind the customer of this. Do not reject it, but index only under mortgage.

Question: When an instrument comes in for recording and it has an old description on it and not the most recent plat description, do you accept the instrument as is or do you return it to get the up-to-date plat description?

Answer:
ROD is not responsible to determine whether the legal description is correct. A courtesy call can be made to explain that certain information is required per statute once a CSM or subdivision plat has been recorded that indicates what the legal SHALL contain. For CSM's *s. 236.24(3)* and for Plats *s. 236.28.*

Question: What do you do if a document is not dated?
Answer:
Only the recorded date is captured. The document date is left blank.

Question: What do you do with maps that come into the office to be recorded that are over-sized but are not a CSM or an official map, yet the attorney wants them on record?
Answer:
You do not accept it. Wis State *59.43(2m)* requires the width to be 8 ½ and the page length to be either 11 or 14. The maximum deviation from this may not exceed .025 inch.

Question: What should you do if you are not certain about whether or not a real estate document is legible or reproducible? Does the second page need to conform to the margin requirements?
Answer:
With most of today's technology, you can scan the questionable document into an existing document, view and print it, and delete the pages when legibility is determined. Second page should conform to margins.
UPDATED Response: The statutes do not specify where on the document a legal description must be cited; however, per 59.43(2m)(b)(4) the font of a document must be clear, and dense enough to be reproduced to the extent the image captured is legible. If the legal is legible and reproducible, accept the document, if not, reject the document and request a legible legal description be attached.

Question: A customer presented a certified copy of a divorce judgment for recording. The certification says it is a "true and perfect copy", but it appears to be only a portion of the divorce judgment. It is not labeled "Abridgment". Would you accept it for recording if you believe it is incomplete?
Answer:
Express your concerns to the customer that the document does not appear to be complete. Explain either a certified copy of the Judgment of Divorce or of an Abridgment of the Judgment prepared and certified by the custodian of the record should be presented for recording. If certified by the clerk as the complete copy that is what should be submitted for recording. If it is obvious pages have been removed, inform the customer the validity of the recorded document could be in question. If he insists on recording it, accept it. Wis. Statute 889.08 deals with this subject.

Question: Alliant Energy sent a "Certificate of Compensation" – Notice of Appeal (on 2nd page) and a copy of an easement attached for recording. There were no signatures on it.
We rejected it, but were told we were required to record without signatures because it was not a legal document and cited 32.06 as an example. Does anyone have any information on this subject?
Answer:
All the requirements under *s. 706.05* apply to these documents (including signatures/notary).

Statute 32.06 that the customer cited just discusses condemnation procedures, but does not give particular requirements needed on Certificates of Compensation.

Question: Is there a statute that states the return address area has to be completed on a document submitted for recording?
Answer:
Wisconsin statute *59.43(2m)(a)(4)* requires a horizontal area at least one inch by 3 inches for the return address to be on each instrument in one of three specified areas. While it doesn't spell out that the name and return address is required (just the space), it would follow that inclusion of the space for this information would mean that information should be provided. Additional support comes from statute *59.43(1)(g)* that says the register of deeds shall "safely keep and return to the party entitled thereto…every instrument that is left with the register for record and not required by law to be kept in the register's office." The document submitter needs to include that information so that the register knows where to return the document.

Question: I have received documents for recording in which the document date is after the notary date, and some in which the document date is prior to the notary date. Should we be concerned about these situations?
Answer:
If the document presented is in recordable form, it should be recorded. It is not our responsibility to make sure that the document is valid. There is no statutory requirement that documents be dated, other than Wis. Statute 137.01(4) indicates that the day, month and year when the notary public's commission will expire should be shown. If it is possible to make the submitter aware of the incorrect date, it is a service to them to do so. However, there is no basis to refuse to record the document.

Question: A "Certificate of Release" was presented for recording that was signed by a title company representative and notarized in Illinois. It included a statement that the mortgagee had no objection to the recording of the certificate of release and that it was made on behalf of the mortgagor. It further stated, "The person executing this certificate of release is an officer or duly appointed agent of a title insurance company authorized and licensed to transact the business of insuring titles to interests in real property in this state pursuant to Section 30 of the Mortgage Certificate of Release Act." What is the Mortgage Certificate of Release Act?
Answer:
There has long been a problem with paid-off mortgages that have not been satisfied of record. This act provides that a title insurer or its authorized agent may execute a mortgage release certificate on behalf of a mortgagor. Wisconsin's *s. 708.15(8)* allows for an Affidavit of Satisfaction to resolve this situation.

Question: We receive memorandums from local municipalities within our county notifying us of changes to existing street names. They are not in recordable form. What should be done with them?
Answer:
According to *s. 706.02* (general requirements for recording) and *s. 59.43(2m)*, the document must be returned to the municipality and resubmitted for recording and follow the standardized format. It must include the return address, recording area, drafted by, legal description or resubmitted as a clerk's certified copy. (Cathy Williquette, Brown County)

Question: A Milwaukee Title Company office manager drove from one county to another to record documents immediately. The documents needed to be recorded ASAP. The receiving

county refused to record the documents while the manager waited. What is the law, regulation or guideline RODs should be following for recording documents?
Answer:
s. 59.43(1)(e) requires that documents be recorded in the order received. This is important because Wisconsin is a "race/Notice" state and the order of recording is important for legal standing in a court of law. Large counties tend to have batches of documents submitted by title companies that were presented prior to a customer who walks up to the counter. In our county, we will review the counter customer's document on the spot to make certain it is in recordable form and accept the document and the recording fee. We set it aside with a note attached as to the time it was presented. Then after recording, we call the customer (if they leave their name and phone number with us) and give them the recording information. This seems to satisfy everyone. Also - if the counter customer needs to leave with something in hand, a recommendation would be to give them a receipt with the time of submission noted on the receipt.

Question: Is there a statute that covers the use of colored paper for original documents being submitted or certified copies being submitted for recording? What if the document submitted for recording is a certified copy, the first page is a white cover page and the second page is the page, where the clerk certified the document, is on bright yellow paper?
Answer:
(b) Except as provided in pars. (d) and (e), no document may be recorded in the office of register of deeds unless it substantially complies with all of the following: 59.43(2m)(b)1. 1. The paper is white and is at least 20 lb weight. (Diane Poach, Washburn County)
Certified Copies are the exception to the rule, even though it is on yellow paper, I would record it. See 59.43(2m)(d). (d) Paragraphs (a) and (b) do not apply to any of the following instruments:
1. Copies of documents that are certified by the state or by a city, village, town or county, or by a subunit or instrumentality of any of the foregoing.
2. Rerecorded documents.
3. File documents.
4. Federal income tax lien form 688 (Y)(c).
(e) Every instrument that the register of deeds accepts for recordation under this subsection shall be considered recorded despite its failure to conform to one or more of the requirements of this subsection, if the instrument is properly indexed in a public index maintained in the office of the register of deeds. A copy of the yellow page can be photocopied and scanned if the image is not clear when scanned. (Sharon Martin, Washington)
Remember, only government officials that are records stewards and have their records open to the public have the authority to prepare certified copies of the documents in their records repository. (Jane Licht, Dane)

Question: Where is the statutory reference that the names need to be typed below the signatures? (Sara Nuernberger, Taylor County)
Answer:
Per s. *59.43(1c)(a) REGISTER OF DEEDS; DUTIES. Subject to sub. (1m), the register of deeds shall: **(a)** Record or cause to be recorded in suitable books to be kept in his or her office, correctly and legibly all deeds, mortgages, instruments, and writings authorized by law to be recorded in his or her office and left with him or her for that purpose, provided the documents have plainly printed or typewritten **on the document** the names of the grantors, grantees, witnesses, and notary. …*

NEW-Question: An attorney wants to know where in the statutes it says he can't record a copy of a deed. I have provided him Wis. Stats. 706.05(2)(a) &(b) which states: Bear such signatures as required

by law. The attorney said that doesn't mean original signatures.

Response: The committee agrees that Wis. Stats. 706.05(5) states that documents affecting title to land may be authenticated by certificate are entitled to be recorded, thereby indicating that uncertified copies cannot. To help make your point; if you could simply accept a photo copy of a document this provision of the statute would not be necessary.

NEW-Question: A title company wants to record five documents; one of them is a Power of Attorney (POA). The POA was drafted in 2002 and contained a social security number and someone removed it, while doing so they also took off the names below the signature. The document also listed an incorrect county. When I questioned the title company on these items, they indicated they are not able to change the document once it is submitted to them. Should I accept for recording?

Response: The committee agrees that you should accept the documents as submitted as long as you can identify the grantor and grantee within the document and you can determine the legal description is within your county. The legality of the items can be determined by the court if needed.

NEW-Question: I have a mortgage that has the "Request for Taxpayer Identification Number", my question is would you accept with the as part of the document? It does have the EIN number listed.

Response: EIN (Employer Identification Number) are for businesses not individuals and are neither confidential nor addressed by Statute thus we would record as presented. As a courtesy you could contact the submitter and ask them if they wish to have it back so they can remove the EIN; however, you do not have to do so.

NEW-Question: I received this question from a title company.

A customer came in with a copy of a deed that was fully executed and never recorded, but it's just a copy, the original deed is lost. The notary seal was likely raised. Two people owned the property together as joint tenants, owner A and owner B. They executed a deed to give full ownership of the property to owner B in 1984; however, as noted the deed was never recorded. Owner A has since passed away and owner B would like to sell the property. I've discussed with our attorney and the real property lister if whether or not an affidavit re-recording the copy of the deed, signed by surviving owner B will confirm a transfer in the tax rolls; we're fine to insure future transactions based on that and the real property lister has been agreeable. However, it might be cleaner to just sever the Joint Tenancy and draft a new deed from owner B to the new grantee.

ROD question: Even if they use an affidavit and attached the deed copy, do they still have to do a TDI? They haven't paid a transfer fee, so if they do an affidavit, would they pay a transfer fee when recording the affidavit. Can they even do an affidavit for recording a lost deed? Seems to me the best way would be to do a TDI, and then have the surviving joint tenant do a deed to sell the property.

Response: The committee agrees it would be best for the title to record an affidavit of lost document and file a transfer return with the affidavit. The surviving joint tenant should pay a transfer fee on ½ the value of the property for the transaction that occurred in 1984. The transfer fee in 1984 is the same as today, $3.00 per $1,000. Then the sole owner can proceed with the future sale. If they simply proceeded with the Termination of Decedent's interest they will have not paid the statutory transfer fee that was due to the state and county.

NEW-Question: I have a bank that satisfied a mortgage in error. I recommended they check with attorney or Title Company to either do an affidavit of correction or correction instrument or to see what they recommend. The bank said the title company said just put a cover sheet on and record. Do you accept rerecording of original mortgage with cover sheet?
Response: The committee recommends the lender re-execute the document per Attorney General Creeron's opinion or submit a correction instrument, either way the lender should obtain new signatures and authentications.

AG Opinion #990817028: On October 15, 1999 Assistance Attorney General Thomas Creeron III gave the Oneida County Corporation, Lawrence Heath, an informal written opinion (Reference #990817028) that said register of deeds should not accept documents for re-recording that had not been re-executed (signed again by grantors and authenticated or notarized).

If the customer insists on "re-recording" with a cover sheet we would record if the rest of the document is in recordable format. It will be up to the title company to insure the transaction and the courts to determine the legality of the "re-recorded" document.

NEW-Question: We received a certified copy of a Judgment of Divorce; the judgment lists three properties, however, they only included a legal description for one property. We did reject for lack of legal descriptions for all the properties. The title company resubmitted the documents with the added verbiage "effecting but not limited to" on the cover sheet. Would you accept for recording?
Response: The committee agrees we would accept this document for recording as long as the legal description provided matches the legal description on the transfer return. It appears this document is only transferring one property at this time and is in recordable format.

NEW-Question: We recently recorded a Declaration from a well-known company. After recording the document the title company stated that several pages of the document were not for public knowledge. The title company was in disbelief this made it through the recording process; they insisted it be omitted from the public record. Can I remove the pages from the public record?
Response: The committee agrees that you should consult with your Corporation Counsel. We also believe that once a document is recorded you may not redact any information other than a social security number. They will be required to get a court order to remove the confidential business information included in the recorded document.

NEW-Question: We received a deed where two women owned the property together; since the original conveyance each of the women has gotten married to another person. The new deed is adding their new spouses; they have listed all four people as grantors and all four as grantees using exemption 77.25(8m). The original deed did not list the ownership interest between the two women.

Can they do this? Would all 4 be listed as grantors? Is it because they are married & now automatically have a marital interest? Woman 1's interest to woman 2's spouse would not be exempt using 8m etc.
Response: The committee agrees you should accept this document for recording as submitted, assuming the document meets recording requirements. Each woman is presumed to have 1⁄2 interests in the property and they could in turn add their spouse to their interest using exemption 8m.

By listing their spouse as a grantor they would be ensuring any marital property interests the new spouses have are transferred properly eliminating a possible cloud on the title.

Note: It would be preferable for them to list their interest rights on the document, but not something we can require. I.e. Jane Smith's 1⁄2 interest to Jane & John Smith, husband & wife, survivorship marital property and Sally Jones 1⁄2 interest to Sally & David Jones, husband & wife, survivorship marital property.

NEW-Question: We received two Severance Agreements; each with a recording fee. The first agreement was signed by the bank and the second agreement was signed by the individual. We are questioning whether all of the necessary parties have signed these documents so that they would meet the recording requirements.
Response: The committee agrees that it would be preferable to record the agreements as one document; however, there is no statutory reason to require they do so. The documents are in recordable format and should be recorded as submitted. It is the drafter/submitter's responsibility to ensure all appropriate parties have signed the document, not the recorders.

NEW-Question: We received three documents, a Termination of Decedent's Interest (TDI), a Statement of Mineral Claim and a Quit Claim Deed (QCD), we did record them. The TDI did not have a box checked indicating the interest of the signer, but the rest of the document substantially complies with statute. I believe the second document is re-establishing the mineral rights. The QCD is giving the mineral rights to the current owner's son; I would think they would call this document a Mineral Claim Deed rather than a QCD. We don't see many mineral claims in our county and was curious to your thoughts.
Response: The committee agrees we would prefer to have the document filled out in its entirety and you could have rejected for the lack of completeness. However, the documents do substantially comply with statutes. We believe they are restating the mineral rights; Wis. Stats. 706.057(3) discusses lapsing of the mineral rights, they may be trying to reinstate them per Wis. Stats. 706. 057(6). The submitter should title the document closest to what the document is trying to convey, but that is not the duty of the Register of Deeds.

NEW-Question: We received an Assignment via eRecord that was because as an assignment per the second whereas on page 2, when the reference is made to the "Lease" recorded November 3rd, 2014, the submitter has failed to indicate a document number. Do you agree with my decision?
Response: The committee agrees the document should be rejected for lack of associated document number, we would recommend siting Wis. Stats. 706.05(2m)(a), how would anyone know what lease was being assigned without referencing the original.

NEW-Question: I have an attorney trying to record an Affidavit of Lost Instrument for a deed. I was always told we couldn't accept Affidavits for Deeds as it will not transfer the properties ownership. An eRETR was also submitted.
Answer: I discussed this issue with a local attorney who does a lot of work with the elderly. He said that the practice use to be to do a 'delayed' recording, keeping a copy of the instrument and giving the original back to the client to record at a later date. That practice has since stopped under all the new laws concerning estate planning. Many times the client forgets or loses the original or passes away and

the family can't find it. The copy of the signed and notarized original is then recorded by the affidavit, which he said is acceptable as long as the attorney had 'direct and prior knowledge' (i.e. was the person who did the original). The caveat is that if any other recording was done after the date of the instrument in question, then the affidavit may not be valid. That's how I understood it. We have recorded such instruments.

When I worked in the lister's office, I was always taught that an affidavit cannot convey property. If they cannot find a person/heir-PR to sign, then they need something signed by a Judge. (go to court) However, it would not stop me from recording the document. It is up to the lister if they will change the name and up to the title company if they will insure.

NEW-Question: We have a title company that wants to record a deed between a couple getting divorced. The divorce is pretty nasty & the husband wont sign the deed or give any information. The title company does have a court order that states that if he will not sign the deed that it would still have the same effect. I guess my questions are, do we record the court order immediately before the deed & do them as separate documents? OR, do we attach the court order to the deed & record it as one document? The title company is asking us what we will accept. I am assuming that since there is a court order that we would not then require his signature.

Response:

Based on this Order, I would attach it to the deed if he still doesn't sign at the closing. This isn't a conveyance, simply an Order on how to proceed if he doesn't cooperate and sign the deed when a sale is final.

It probably wouldn't hurt to run the scenario by your real property lister to see if they'd find issues with a partially signed deed with the Court Order attached to prevent them from transferring ownership. Ultimately, the title company needs to contact their underwriter to know what's going to be considered "insurable."

NEW Question: What is the best practice for the last page being scanned; the page count on bottom of document does not match with total amount of pages "This page is intentionally blank to support duplex printing". Should they then correct the page count on the bottom of the document? Do you accept this document or do you reject the e-recording because of the last page? We are getting more of these; the lender wants the page left on. When someone comes to purchase this document, they need to pay for this intentionally blank page. Would like to know what other counties are doing?

Response: The help desk recommends you accept the document as submitted, scanning the last page as requested or in the case of an electronic document leave as is. We would not require the customer to renumber the pages; be sure to verify there is the same number of pages scanned as submitted.

As for the customer purchasing copies we would not worry about selling the blank page, if they need the full document for legal purposes they would need the page with the intentionally blank language. If they do not want the blank page they can purchase it without it in Tapestry or over the counter, it would be the customer's choice.

NEW Question: We received a Quit Claim Deed twice for recording, once from the attorney and again later from the property owner. The attorney wants us to stricken the second recording from the record; can we do this? Is there a statute that reflects how this should be handled?

Answer: The committee agrees that you cannot remove a document from the record unless ordered to do so from the courts. You could reference Wis. Stats. 59.43(1c)(d), keep safely and maintain the documents, images of recorded documents and indexes. We recommend you make a notation on the second recording stating, "This document has been erroneously submitted for recording twice".

Record Retention

Question: Which documents are we required to keep after scanning? For those documents that are not required to be kept, which documents do we need to offer to the Historical Society?

Answer:
Per the *s. 409.522(2)* requires you to digitally image financing statements before destroying them. This would be the recommendation for all non-permanent documents.

Your county should have a retention schedule for county records; the Register of Deeds follow the Wisconsin Historical Society's policy as they have retention authority over most historically valued records – www.wisconsinhistory.org

Recorded Instruments related to Real Property

Per the *s. 59.43(4)(a)* the County Board may determine where the paper copies are kept after they have been digitized; they must be stored in a reasonably safe location.

It is recommended that you keep all hard copies of permanent retention records after imaging for preservation, integrity and quality control.

Lis Pendens:

Per the *s. 59.43(4)(b)* the retention of lis pendens is permanent. However, with permission of the county by resolution, *…the register of deeds may destroy or move to off-site storage any notice of lis pendens that has been microfilmed or recorded…in electronic format...*

Old Age Assistance Liens:

Per the State of Wisconsin Historical Society, the retention of Certificates of Old Age Assistance and Indexes are current year plus seven years. After digitizing **you are required to notify them before you can destroy these records**.

Bills of Sale:

Per the State of Wisconsin Historical Society, the retention of Bill of Sales is current year plus six years, they have waived the need to notify them, after digitizing the records may be destroyed.

UCC Fixture Filings:

Per the State of Wisconsin Historical Society, the retention of UCC Fixture Filings is until the satisfaction of the mortgage, they have waived the need to notify them, after digitizing the records may be destroyed.

UCC Non-Fixture Filings:

Per the State of Wisconsin Historical Society, the retention of UCC Non-Fixture Filings is current year plus five years, the have waived the need to notify them, after digitizing the records may be destroyed.

Wills:

Per the State of Wisconsin Historical Society, the retention of a Will is current year plus seven years, the have waived the need to notify them, after digitizing the records may be destroyed.

Chattel Mortgages:

Per the *s. 59.43(12)(a)* the retention of chattel mortgages is six years after satisfaction of the mortgage, the State of Wisconsin Historical Society does not need to be notified as they have no retention authority of chattel mortgages. I would recommend after digitizing the records may be destroyed.

Town Mutual Insurance Companies & Documents Pertaining to Stock Corporations:

Per the *s. 59.43(12)(b)* the retention of town mutual insurance companies and documents pertaining to stock corporations may be destroyed if they are no longer required to be recorded in the Register of Deeds office. Per State of Wisconsin Historical Society **you are required to give them a 60 day notice prior to proposed destruction, before you can destroy the record**. I would recommend after digitizing the records may be destroyed.

Indexes:

Per the State of Wisconsin Historical Society, the retention of Indexes of Records or Files kept in the Register of Deeds office is permanent.

Per *s. 59.43(12)(d)* allows a county to digitize and combine indexes, it does not say to destroy.

Number Books & Fee Journals:

Per the State of Wisconsin Historical Society, the retention of Indexes of Records or Files kept in the Register of Deeds office is permanent.

Staci Hoffman 6/29/2017

School Records (i.e. report cards, attendance rosters):
These types of records are not mentioned in the State of Wisconsin Historical Society record retention schedule for Register of Deeds; however, they are listed as permanent for school

districts. It is recommended that you contact your Corporate Council for their opinion. It is always a best practice to scan the records before offering them to the Historical Society.

New-Question: What if anything do we need to do with ***Notice of Removals and Final Dispositions***? I'm finding out that we no longer do anything with them…….nor do we check that we are getting them. I have a vague memory that is correct, since everything should be in SVRIS, but can you let me know if we need to even check for them? Or if we can just shred them when they come in the mail?
Response: The committee deferred this question to SVRO, they responded that Notice of Removals are required to be filed with the LVRO per Wis. Stat. 69.18(3)(a), they indicated the Notice may be destroyed after a state file number is assigned to the death record. They also indicated the Report for Final Disposition is now done electronically through SVRIS and is no longer sent to the LVRO.

New-Question: What is the retention policy for microfiche from the Secretary of State?
Response: The committee contacted both the Secretary of State and DFI to find the answer to this question; DFI indicated that if the images are of UCC filings at the county level it would be a good idea to keep them. In 2001, the State absorbed most of the county UCC filings; however, they did not receive copies of all the counties filings for office filming. They do on occasion get a request for copies and direct them to the county.
After further discussion with DFI and the county it appears the microfiche in question was a master list of UCC filings by debtors name, DFI has that information so it would not be necessary for the county to keep it.
See the WRDA Handbook-Office Chapter-Schedule for Records Retention pages

NEW-Question: I have reviewed the WRDA records retention schedule in the hand book, yet I question the difference between real estate vs vitals certified copies and what qualify as correspondence? I assume a vitals request application is not correspondence, what about a rejected application? Or is the rejection letter in place of the application?
Response: The committee recommends you keep your records according to your county's adopted retention schedule. If your county does not have a retention schedule on file with the State you should use the retention schedule of the Wisconsin Public Records Board. For clarification, Current Year (CR) would be described as at the end of the year we are in; thus a retention schedule of CR + 3 years would allow you to destroy the record in January of 2023 (2019 plus 3 years).

- The vitals applications should be kept for a minimum of two years as per recommendation from SVRO memo dated September 26, 2016 page 7. Your 2017 applications and requests may be shredded in January of 2020. We recognize a vitals application at the counter and a request through the mail with the same retention. Requests for genealogy would be treated the same as a vitals request.
- Correspondence may include incoming and outgoing letters, memoranda, notes, acknowledgments, notices, requests for information or publications, enclosures and attachments. Correspondence retention is recommended at CR + 3; 2019 records may be destroyed in January of 2023 (2019 plus 3 years).
    - We do not consider vitals applications as correspondence as SVRO has specified a minimum of two year retention for this type of request.

Redaction

Question: An original document has social security numbers within the document. Can the submitter "white out" the social security numbers on the original or what is a recommended process?
Answer:
s. 59.43(1m)(cm) If a register of deeds is presented with an instrument for recording that contains an individual's social security number the register of deeds may, prior to recording the instrument, remove or obscure characters from the social security number such that the social security number is not discernable on the instrument.
Possibly place post-it note cut to size over the SSN prior to scanning that says "SSN suppressed by local register per *s. 59.43(1m)(cm).*
"White Out" is usually not permanent so ROD could reject but ROD could have an office policy to accept if initialed by the parties.

New-Question: I am receiving a document for recording via Simplifile and the document is redacted; see the attachment, would you record or would you reject per 59.43(2m)(b)4, everything must be clear, large and dense enough to be clear copies when reproduced. I've never seen a redacted document submitted for recording. I know the statute does say we can suppress a SSN prior to recording however as for suppressing anything else I'm not sure. My gut is to reject.
Response: The committee agrees you should record the document as submitted. While we only have authority to redact social security numbers, the customer can redact whatever they choose before submitting the document to us. It appears all the items necessary to record are viewable on the document.

NEW-Question: A mortgage was submitted for recording in September, the mortgage contained an "Occupancy and Mailing Address Verification Page" which contained personal information for the mortgagors including their address, email and phone numbers. They are very upset that it was recorded with this personal information and the title company is asking us to redact this information.
Obviously, this has already been on our system and has gone out to all of our subscribers. Can we redact this information at this point in time? Should we/could we have rejected this document because it contained personal information?
Response: The help desk agrees you do not have the statutory authority to redact any information on a document except the social security number as indicated in Wis. Stats. 59.43(1)(m). Once the document is recorded you should not change anything on the recording, with the exception of a redacting a social security number if missed. You do not have a statutory reason to reject documents with personal information, other than the social security number.

NEW-Question: Can we redact names of Judges and other law enforcement?
Response: I agree that the only thing we can redact is the social security number. Once a document is recorded, it becomes public record, unless it is a confidential name change, etc. A court order would be required to remove the record or hide it from the public. I would reach out to my corp counsel also if presented with this scenario. Note: We didn't think this was a joint alpha issue)
***Update/Remove if/when CRIS/Daniel's Law passes.**

Rental Weatherization with Department of Safety and Professional Services (Formerly Department of Commerce aka DOC)
NOTE: Program was repealed by ACT 59, effective 1/1/2018.

Signatures

Question: What is the proper way a document should be signed when the signer cannot sign? He has a stamp with his signature. Does the notary acknowledge the stamp? What if he can sign with an "X", what is the procedure for that? Witnesses? Should he sign with "X" over using the stamp?
Answer:
Per the WI Dept. of Transportation Real Estate Program Manual, persons unable to sign their names may sign by mark ("**X**"). The name of the grantor must be subscribed near the mark by one of the two required witnesses to such signature by mark, §990.01(38). Signatures of witnesses should be clearly and separately shown and should be identified as "Witness to the signature of grantor who is unable to write." Deeds so executed may be acknowledged in the same manner as if the grantor had personally subscribed the signature. The following witness clause is permissible:

Sample:

_____X _____
Roger F. Smith, Grantor

_____
<Roger F. Smith's name signed by witness (#1)>

Roger F. Smith, being unable to write, made his mark in my presence, and I signed his name, at his request, and in his presence; and we (the below signed) serve a witnesses to the signature of grantor who is unable to write.

_____
Witness (#1) <print or type name and address>

_____
Additional required witness (#2) <prints or type name and address>

NEW-Question: We have been getting several assignments of mortgages in with GSF Mortgage Corporation signing; however, they are not the assignor listed on the document. We have researched the referenced document number and see that GSF Mortgage Corporation is listed as the original assignor; same document reference. Should we accept as is, or should we reject because the assignor does not match the signature?
Response: The committee agrees you should record the document as submitted. While it does not appear that GSF should be signing this document, we do not find a statutory authority to reject it. It would be up to the courts to decide if the signer was legitimate. We would index the grantor as MERS and the grantee as WHEDA.

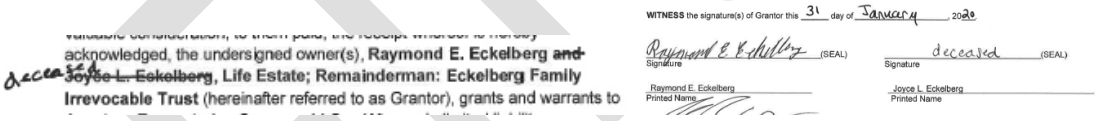
New-Question: I received a QCD for a divorce and the attorney has both names as grantor's but only the husband signed the document; the property is going to the wife. Does she need to also sign and have her name notarized since she is a grantor on the deed? Her name is not on the transfer return as a grantor, which I believe is OK. Please advise.

Response: The committee recommends you should accept the document for recording as presented. The ERETR should match the deed exactly in terms of Grantor/Grantee information, with that said in this particular case it appears the document is pursuant to divorce and while it may list both individuals as grantors, it clearly list only the wife as the Grantee. The wife doesn't need to sign the deed as she's already had her interest established. Only the husband is conveying an interest and as such only his signature is needed.

NEW-Question: We received a Loan Modification Agreement; only the borrower's signature has been notarized. Above the signatures, it does indicate the lender is also executing the agreement. Shouldn't the signature of the person signing for the lender also be notarized?

Response: The committee agrees that both signatures should be notarized; however, the document does substantially comply with recording requirements in Wis. Stats. 59.43 and 706.05. We would recommend you contact the submitter if possible and inform them of the missing notary, if they insist you record it as is, then record as presented.

NEW-Question: We received an easement that listed Raymond and Joyce, life estate, and a trust as the owner of the property. Joyce's name was crossed off and "deceased" was written next to her name. I would think her name should not be listed on the document as no one signed on her behalf. Typically we verify the grantor(s) have signed the document and their signatures are notarized. Is this document acceptable for recording?


acknowledged, the undersigned owner(s), **Raymond E. Eckelberg** ~~**and Joyce L. Eckelberg**~~, **Life Estate; Remainderman: Eckelberg Family Irrevocable Trust** (hereinafter referred to as Grantor), grants and warrants to

deceased

WITNESS the signature(s) of Grantor this 31 day of January 2020.

Raymond E. Eckelberg (SEAL) Signature

Raymond E. Eckelberg Printed Name

deceased (SEAL) Signature

Joyce L. Eckelberg Printed Name

Answer: The helpdesk feels that you should record the document. If there is an issue regarding the enforcement down the road, the appropriate legal parties will argue it.

NEW-Question: Is it required to have the name typed or handwritten under the signature or just on the document somewhere. I was just posed this question by my staff because we have required that the name be typed or handwritten under the signature but I cannot find it stating that anywhere in the statutes.

Answer: The stat below is what is noted on our WRDA Statutory Rejection Reasons doc:

- ☐ Names of grantor, grantee, witnesses and notary must be plainly printed or typed on the document. s. 59.43(1c)(a)

REGISTER OF DEEDS; DUTIES. Subject to sub. (1m), the register of deeds shall:

59.43(1c)(a) ***(a)*** *Record or cause to be recorded in suitable books to be kept in his or her office, correctly and legibly all deeds, mortgages, instruments, and writings authorized by law to be recorded in his or her office and left with him or her for that purpose, provided the documents have plainly printed or typewritten on the document the names of the grantors, grantees, witnesses, and notary...*

It does not state "under the signature" so we have loosened up on that requirement. The committee agrees that if you can read the signature and the Grantor/Grantee information in the body of the document, we'd accept and record as it substantially complies. If the illegible signature has no name underneath it and it doesn't look like any of the names anywhere else on the document, so you can figure out WHO signed it, then we'd reject.

Technology

Question: What would the best practice be for data backup & storage?
Answer:
First of all, you should make sure that everything is on backup. You should always plan for disaster recovery. Of course, a record retention schedule should be in place even though it pertains to only some records. Most of our records need to be kept indefinitely. It would be wise for your county to survey each department to see what they are doing for record storage.

SEE the "Data Backup" survey posted on the secured portion of the WRDA website.

Termination of Decedent's Interest (TDI fka HT-110)

NOTE: The new HT/TOD-110 combined form (TDI) was approved and implemented on 10/5/2017.

Question: The instructions for the TDI indicates "*For real property*, if required by the county, a copy of the real estate tax bill for each parcel for the year immediately preceding the decedent's Death."
Answer:
Yes-whenever a tax bill does not exist. In the case of a timeshare condominium, the tax bill goes to the condominium association, not the individuals named on the TDI. When the interest is personal (mortgagee or vendor) rather than real property is another exception. These exceptions are not spelled out in *s. 867.045* or *s. 867.046* Also, some Real Property Departments do not require the attachment of a tax bill, consult with the tax lister in your county before making requirement changes. Check the WRDA website to be certain. https://www.wrdaonline.org/taxbill

Question: Parents have deeded the property over to their children and kept a life estate for themselves. When one of the parents dies, can the surviving spouse complete the HT-110 termination the life estate of the decedent or are the children required to complete the HT-110 because the property is in their name?
Answer:
An HT-110 can be completed and signed by anyone with interest in the property. This includes the surviving spouse and children.

Question: A deed conveys a parcel to a father, a mother and a daughter. It does not say "husband and wife". The father dies. Can the daughter deed to her mother and father as survivorship martial property and then follow with the HT110 form?

Answer:
If the husband and wife are known to be husband and wife, either a relationship of joint tenancy (if the deed was executed prior to 1986) or survivorship marital property (if the deed was 1986 or later) is assumed. However, “joint tenancy” should be specified on the deed for the daughter because it cannot be assumed. If it is not, the daughter could deed her interest to her parents and herself and specify “as joint tenants” and then follow up with an HT-110. Customers should really be getting this kind of legal advice (about deeds) from their attorneys. We should only be answering questions about the HT-110 form. Or was it an attorney who asked the question?

Question: Why do Wisconsin registers of deeds provide copies and maintain the HT-110 form?
Answer:
The Department of Revenue created the original Termination of Decedent’s Property Interest form (HT-110) in order to track certain tax information. When recorded in the register of deeds office, this document also served to provide public notice of the fact that the decedent’s property interest was terminated. It was designed with instructions so that the remainder person could fill it out if they lacked the means or did not wish to hire an attorney to do it for them. Back in the early 1990's the DOR decided to stop providing this form since they no longer used the information. Our association, with the encouragement of the Wisconsin State Bar Association (Probate & Real Property Section) decided to preserve it as a convenient tool for the remainder person, who was usually the grieving spouse. The WRDA worked with legislators to change the statutes to delete references to the DOR and substitute language such that the local register would provide the form. With assistance from Attorney Randy Nelson from Milwaukee and input from many WRDA members, a new form and instructions were developed. Statutes provided some general guidance regarding the HT-110 form, but they also left a certain amount of discretion, just as when the DOR was responsible for the form.
In 2017, the WRDA worked with the WI Bar Assoc., WLTA, Tax Lister’s Assoc., etc. to update the form combining the HT110 and TOD110 forms together.

Question: Does the HT-110 form actually transfer property interest?
Answer:
No. It is important to note that under Wisconsin law, the termination of the interest of a joint tenant or surviving spouse takes place at the moment of death. This form serves to provide public notice of that fact, facilitates updating the tax roll, and clearly removes the decedent from the chain of title. There are other forms that the Register in Probate can provide for the same purposes, but most Registers in Probate, attorneys and title companies seem to prefer the HT-110 form. It is also important to note that the remainder person must already be on the deed or other document that established joint tenancy. The HT-110 form cannot be used to transfer interest to another person; it only provides notice of termination of interest. However, this is very important to the remainder spouse because after the HT-110 is recorded, he/she will, in the eyes of the real estate community, have full rights and interests in the real property.

Question: Are registers required to provide assistance to HT-110 customers?
Answer:
No. This is a tradition that was started decades ago and some registers continue doing it. If you choose to assist customers, be sure to ask the important questions, “Is this ALL of the land you and your spouse owned jointly? Was any parcel sold off or did you and your spouse own additional parcels?” “Do you have a marital property agreement?” Also, check with your corporation counsel to make sure they are comfortable with you providing assistance. This is a “statutory” form, designed so that people can fill it out themselves. If the county corporation counsel says no, the register should not provide this service. (Information on HT-110 provided

by registers Mark Ladd and Jane Licht 8/14/2003)

Question: We received a HT-110 form. Attached to it is a typed out legal description of the property (not copies of the deeds) along with a copy of a marital property agreement. After researching our records, we found that this couple owned 3 different properties – 1 in his name alone, 1 in her name alone, and 1 they purchased together as joint tenants. In the marital property agreement, it states that all their property subject to this agreement shall be classified as marital property, regardless of when or how acquired. The Marital Property Agreement was never recorded as a separate document. A copy of it is just attached to this HT-110. It doesn't seem right that this Marital Property Agreement would supercede what the deeds say, especially since it was never recorded. Can we accept it this way? An attorney did this by the way. Any suggestions would be appreciated. (Konna Spaeth, Vernon)
Answer:
A marital property agreement can be used in place of a deed so the answer is yes, it can be used. We have this situation occur quite often that they don't bother to record the marital property agreement until they record the HT-110. In fact, some feel the marital property agreement does not need to be recorded at all but if they refer to it on the HT-110, it must be found and must hold up in court if there is ever a dispute down the road. (Jane Licht, Dane)
Note: There are opinions from St. Croix and Washington County Corporate Counsels that require the Marital Property Agreement be recorded with the HT-110.
The instructions for completing the HT/TOD110 form indicate that, "…at a minimum attach the 1st page of MPA, page(s) of the MPA identifying to whom the property transferred on the decedent's death, and the signature page(s) of the MPA."

Question: Our property lister was just wondering if you could mark more than one box on a HT-110. Here is the reason. The owners have 3 parcels. One was sold on a land contract, which has not been paid off. The other two they still own as survivorship marital property. The attorney filing the document attached only one deed for the two parcels they still own and put the doc number on the first page. They didn't attach the one they sold on land contract and didn't mark the box re: vendors interest or refer to doc number of the land contract. Do they have to file two separate HT-110's or can they mark more than one box if there is more than one type of transfer going on? (Vicki Nelson, Pierce)
Answer:
We allow more than one type of document. But the documentation and the documents have to be identified correctly. And all documents are held jointly. (Rose Ottum, Trempealeau)

Question: We received an affidavit of correction on a HT-110 form along with an affidavit of correction on a quit claim deed, apparently there was an error in the legal description. My staff was at one time told that we could not accept an affidavit of correction on a HT-110 form, can anyone tell me if we can or not and if not what is the reason? (Ellen Schleicher, Sheboygan)
Answer:
If a customer asks about how to correct an HT-110 form, we suggest they use another HT-110 form and type Amendment on the top above and give the original recording info because that is always the safest way to do it. However, if they present an Affidavit of Correction in recordable form instead, record it. However, we strongly discourage customers from trying to use an Affidavit of Correction to "correct" a deed. Most of the legal community says that an Affidavit of Correction only points out an error, it does not change the original document and our Property Lister will not use it to make any changes to the tax roll. In order to record the HT-110 they would not need to do anything to the defective deed. The deed is there mainly to show that the couple owned the property as marital property or joint tenants. The correct legal description can

be obtained from a number of sources. Usually the correct legal is on the deed, but apparently not in this case. (Jane Licht, Dane)

Question: The form requests submitter to attach recorded document establishing joint tenancy, which could have changed due to some of land being sold off. Do you require a current legal on the HT110 along with the attachment of the original deed or do you accept the HT110 with the old legal at time joint tenancy was established? (Lois Hagedorn, Clark)
UPDATED Answer:
Per the instructions for the TDI form, "*For real property*, include the complete and accurate legal description of each parcel of real property." The TDI form also requires the preparer to one of the following boxes:

- ☐ REAL PROPERTY - legal description as set forth in the attached/referenced and previously recorded document
- ☐ REAL PROPERTY - current legal description *if different* than the foregoing document

Question: I'm questioning how ownership is held on an HT-110. It states ownership is shared equally between 3 people with each owning 33 1/3 interest. Do I assume that is joint interest? (Carey Petersilka, Door County)
Answer:
The % of interest would indicate tenants in common base on these definitions
Definitions per Wisconsin Real Estate Law book:
Joint Tenant – One of several persons owning property with right of survivorship, so that on death of one, the others own the whole property.
Tenant in Common – Owner of undivided fractional interest in property with no right of survivorship in other interests in the same property.
The Quit Claim deed states – ll share equally……with all rights, title and interest' – it's my understanding this would be joint tenancy. (Marvel Lemke, Taylor County)

Question: I have a customer that owns several pieces of property in the county. His wife recently passed. He wants to do an HT-110 for the properties. Most of them are all okay as they are titled to the both of them as survivorship property. However, one of them is titled in their real estate company name, i.e., Joe Jones Real Estate, LLC. It does not have either of their names listed only the Real Estate name. I have informed him he cannot change the property via an HT-110. Am I correct? What would he need to do? In all reality I think he would have to do nothing. If he sells the property, I would assume he could do so if he is the real estate company essentially? (Melissa Nagel, Crawford County)
Answer:
You are correct. He doesn't have to do anything with the LLC property. As a member of the LLC he should be able to convey the real estate when the time comes to do so. (Larry Eckert, Deputy, Milwaukee County)

Question: Can you remove a name on a mortgage using a TDI? (Carey Petersilka, Door County)
UPDATED Answer:
Yes. The TDI form contains the following box mortgagee as an option:

Interest of the signer of this document in the property:
☐ joint tenant ☐ remainder person if a life estate
☐ **mortgagee** ☐ land contract vendor
☐ decedent's spouse ☐ beneficiary of a marital property agreement
☐ beneficiary of a transfer under 705.10(1) or 705.15
☐ other: _____

Question: Can a TDI be recorded electronically?
UPDATED Answer:
A TDI form CAN be eRecorded because it no longer contains a signature line for the ROD to sign. Also, since the passing of 2019 WI ACT 127, the ROD is no longer required to view a certified copy of the death certificate. It is only recommended that you record the old HT-110 form if the signed date is prior to 10/5/2017.

NEW-Question: Can a customer use one Termination of Decedent's Interest form for both a TOD termination and joint tenancy termination?

Answer:

The committee agrees the Termination of Decedent's Interest can be used for both transactions, we could not find anything in the statues that would prohibit it. However, the remainder person(s) must be the same for both the TOD and the Joint Tenancy; if not there would need to be separate documents/signatures.

New-Question: Who can sign a Termination of Decedent's Interest (TDI) to terminate a life estate? Secondly, can you use a TDI to remove a member of a partnership?

Response: Any interested party may sign the TDI form to remove a life estate per the document instructions. A TDI is not intended to transfer property but rather to notify the public that someone has died. In this case, the TDI may be used to notify the public that a member of the partnership has died; however, it does not transfer interest, the owner is still the partnership.

New-Question: A title company requested we link a land contract to a Termination of Decedent's Interest; the land contract is listed as a supporting document. The decedent had a life estate in the land contract and was also the vendor. The attorney for the family states the life estate is terminated and the land contract is released.

Response: The committee agrees that you should reference the Land Contract as this will remove the life estate; however, we believe there needs to be a separate deed to fulfill the land contract. The way it appears right now is that the life estate would terminate, and the land contract would be with Gertrude's estate.

The title company really would be the one to insure it so they may want a legal opinion from their underwriter. Regardless it is recordable and you should reference the Land Contract.

New-Question: Should we index supporting documents that are given on a Termination of Decedent's Interest?

Response: The committee agrees it is the best interest of the county and public to index the supporting document numbers when given on a Termination of Decedent's Interest. Any way we can assist in searching records creates value to your records.

NEW-Question: Should we accept a Termination of Decedent's Interest if the ownership is not mentioned in the original deed? The deed states it is not homestead interest; however, it appears to be the people who built the house and the tax bill lists them as the property owners.

Response: The committee agrees you should record the TDI as presented. The person signing the document is indicating that it is true and correct to the best of their knowledge. It would be up to the courts to determine the legality of the conveyance.

NEW-Question: Should I accept a Termination of Decedent's Interest that does not list all the supporting document numbers, volume and page references; they simply stated see attached. They have attached the documents; do we need to have each of the document numbers, volume and pages listed on a separate sheet of paper?
Response: We did believe you cannot refuse to record because the documents are not listed on the first page. We suggest you reach out to the submitter and ask they list the associated documents, but if they refuse, you should record as presented. We also recommend you index all associated documents that are attached.

NEW-Question: Just had kind of an interesting one. Mom designates daughter and son in law as TOD beneficiaries. Son in law passes away first, then mother 2 months later. I figure 2 TDIs, but wonder which should go first – and does it matter?
Response: The committee would record the son-in-law's termination first, then the mothers. We could not find a specific reason in the statutes to the order of recordings; however, we felt it was in the best interest to record in order of the death.

NEW-Question: I have a rather unusual TDI submitted by a law firm for recording. They are removing a life estate, but two of the remainder persons are deceased so they have listed the heirs on the TDI. Can they do this?
Response: The document is acceptable in terms of recording as any interested party can complete the form to remove a life estate interest, however as for the legality regarding the actual conveyance that's a question for an attorney to answer and since it's coming from a law firm, it appears they feel this can be done. The TDI is simply removing the life estate which can be done through this form. The remaindermen hold the title as tenants in common; they will need to go through probate to remove the other decedents.
You may want to discuss this with your RPL prior to recording and get his/her opinion regarding conveyance and changing the tax roll, and then as a courtesy may wish to ask your submitter to reconsider and follow up with a personal representative's deed to convey. You may confer with your Probate Registrar as well. In any case when it comes to being an acceptable document for recording in our opinion there is no question that it meets recording standards.

NEW-Question: I received a call from a gentleman stating his wife has passed away and he was wondering if he needed to do a Termination of Decedent's Interest (TDI) for their property that is in a trust. Does a TDI even need to be done when a trust is involved?
Response: The committee agrees a TDI is not necessary in this situation and is not applicable as the husband and wife no longer own the property, their trust does.

Per Sheboygan County Corporation Counsel: Wis. Stat. 867.045 or 867.046, joint tenancy, life estate, survivorship marital property, etc. do not exist; instead the surviving trustee(s) continue to own the property. A way to describe this is similar to a corporation owning real estate: when a corporate officer dies, it doesn't change the fact that the property is still owned by the corporation, which may then need

to demonstrate the authority of the new corporate officer to sign future conveyance documents. For Trusts, the trust instrument should identify the successor trustees; s. 701.0710 automatically provides that title transfers to successor trustees.

NEW-Question: We recorded a Termination of Decedent's Interest (TDI) and our Real Property Lister (RPL) is questioning why we accepted the document. There were originally five people in title, all as joint tenants. Three people deeded their interest to the two remaining owners. One of the two current owners passed away and a local attorney submitted a TDI. The RPL states the subsequent deeds terminated the joint tenancy. Should we have rejected this document?
Response: The help desk agrees you recorded the document correctly. The members of the help desk that worked in the title industry previous to becoming a ROD do not agree the joint tenancy is taken away by the subsequent deeds. The document was in recordable format and it would be up to the courts to determine the validity, the Register of Deeds office does not.

NEW-Question: I received a TDI from an attorney and they attached the deeds and the tax bills, however, one of the parcels is not being transferred at this time yet it is still on the deed attached. I rejected it for another reason and asked them about this and I was told it will be terminated when it is sold and they did not change the legal description. My question is, do I enter it under that parcel? I think they should have attached a legal description without that piece on but they didn't. The tax bill isn't attached for that parcel and the parcel number is not typed on the TDI and it is not on the transfer return.
Answer: The committee agrees that you index the document to what is given; it is not your responsibility to remove legal descriptions from the legals submitted. We recommend you discuss this with your Real Property Lister to see how they will transfer the tax roll; they would not know about the exception if you did not point it out.

NEW-Question: We received a termination of decedent's interest today with both parent's names on it. One passed in 2018, one in 2020. Can they use one form for both names?
After further review the parents interest was only life estates, I believe the TDI is ok, but can they terminate both life estates on one TDI?
Answer: The committee agrees the document should be rejected. A Termination of Decedent's Interest form is the appropriate form to remove the life estate of the parents; however, the will need to do a separate return and form for each of the parents.

NEW-Question: We received an eRecording that is a TDI of a vendor's interest in a land contract. Not sure what happened to spouse but it appears that the second spouse has now passed away and they want to transfer the vendor's interest in the land contract into the vendor's estate. My thought is that it would need to go to probate and that this form cannot be used for this purpose but wanted to run it by the help desk.
Response: The committee agrees you should accept the document for recording; you are not responsible to make any legal determinations as to the enforceability or the intent of the document. We believe they are trying to release their life estate in the land contract and the use of the Termination of Decedent's Interest would be appropriate.

NEW-Question: I received this today and I need some guidance. The attorney is attaching the TDI for the first spouse and also the marital property agreement. According to the agreement the property goes to a trust upon the death of the second spouse. I do not understand what the attorney is doing here and I don't know what to advise him to do or if I can. The transfer return has the deceased as the grantor and the trust as the grantee. I don't think you can just transfer property this way??
I have attached the document so you can see what I am referring to.
Answer: The committee agrees that you should record. The Marital Property Agreement (MPA) is showing that upon the death of the 2nd spouse, the property goes into a trust.

NEW Question: If you receive an old HT-110 are you:

1. Rejecting; 2. Are you signing; 3. Are you leaving the ROD signature blank because we don't have to view the death certificate?

Answer: If they send the death certificate or if I can view it, I still sign the old form, but enclose a new form and a little note in the return envelope. If you are not really viewing the death certificate (or viewing the record in SVRIS), then leave the signature line blank. Some counties will even eRecord the old HT-110 forms, they just leave the signature line blank.

NEW-Question: I just received a call from a title company that we all probably deal with. They had a question regarding the "right" way to complete a TDI in the following scenario. This may not be a matter of "right" but more a matter of "good," "better," or "best" way to do something. Again, a partner of ours is looking to us for direction for consistency on their end and ours, so I would really like to give them our very best answer. I told them that I would email this group for feedback and get back to her.

Scenario:

Mother deeds property to son, reserves life estate interest

Mother dies

Son deeds property to Buyer/new owner

TDI is drafted to remove life estate interest. Does Son need to sign or can new owner?

Let's say son is now deceased or lives in CA. Does this change your answer at all?

The question came about as the signature box states the following, **Name(s) and address of owner(s) of the property <u>immediately after the decedent's death</u>; attach additional names & addresses if more than one owner.**
In the end, the purpose of the TDI is not to Add someone's interest to a property, it is simply to remove an interest that already has an interest in the property. For this reason, I think there is potentially more than one way to do it. Ideally, it would have been done right after mom passed, but that's ideal and not always the reality------(Heather)

Answer: The person that signs the TDI is not always going to be the person who receives the decedent's interest. We believe the new owner can sign, since technically they would be the ones still subject to the life estate. Ultimately, we think either could sign as either way, constructive notice is made.

NEW-Question: Can someone just attach the 1st page of a land contract to a TDI? They don't want to attach the whole document due to multiple attachments, but I don't know as though I've ever seen just the 1st page?
Response: I require full complete copies of the recorded document that they are terminating.

NEW Question: A land contract was recorded without stating the relationship of the vendee; they were husband and wife but were not referenced as such. The husband died and the wife recorded a termination of decedent's interest; the wife is now trying to get a loan and the title company states because it didn't indicate the interest it is considered tenants in common. Now the bank is requiring her to do a transfer by affidavit (TBA) saying the amount she owes is less than $50,000; I don't believe she can use the TBA as the full value is more than $50,000.

Response: The committee agrees that the termination of decedent's interest (TDI) was appropriate to use as the death certificate would have indicated their relationship as husband and wife. The WRDA handbook references an attorney that stated deeds after 1986 that do not state husband and wife are considered survivorship marital property if homestead, and joint tenants if not homestead; both instances can use the TDI to remove the spouse's interest. We recommend the customer bring this to the bank/title company for further review or seek assistance from Probate or an attorney if needed.

The use of the transfer by affidavit (TBA) is not applicable for the amount owing; it can only be used if the decedent's share of the property has an assessed value of less than $50,000. Even if the land contract is treated as tenants in common, the spouses share is valued at more than $50,000 and the TBA is not applicable.

Jeremy's (DOR) response:
My answer to this specific question is the fact that it is marital property does not necessarily mean title automatically passes to the surviving spouse. That would be the case only if the property was the couple's homestead. If it was not their homestead property, then one of the other statutory procedures would need to be used (such as an informal termination form PR-1812, or if the value of the property transferred from the estate is less than $50,000 one could use a transfer by affidavit form PR-1831). Note that the $50,000 value for a transfer by affidavit is only the value of the decedent's one-half interest, not the value of the entire property. However, you are correct that the gross value is used for determining whether the transfer by affidavit qualifies, not the net equity in the property.

General guidance from DOR legal section:

> Two general ways (but not the only ways) for spouses to hold title to real estate are as "marital property" and "survivorship marital property."

The classification of "survivorship marital property" can be added after the owner names or after each of these as additional clarification as to how title is held. In addition, if the property is the couple's homestead and they are the only owners, the classification of "survivorship marital property" is presumed, even if not stated on the deed, so long as there is no language to the contrary.

When an ownership document such as a land contract is silent as to how title is held after the owner names of two spouses, the legal default is "marital property" - which means that when an owner dies their one-half interest in the property goes to their heirs - not to the other owner(s) of the property. The exception is if the property is a homestead, as noted above, which would be treated as survivorship marital property and thus would pass to the surviving spouse upon the death of the other spouse.

Township/Municipal Ordinances

Question: If someone requests the ROD office to record an unusual document (town ordinance for minimum lot size, ……..) should the ROD record and what is the ROD responsibility to reject documents that go against the requirements of other offices?
Answer:
If a document meets the recordability requirements of *s. 59.43* (add other statutes here as appropriate) then ROD should record the document. The ROD office is responsible for recording documents and is not responsible to monitor whether documents create legal splits, do not violate restrictions previously recorded or that exist against a property.

Question: Is there any statute requirements that state how municipal documents have to be made out or if they have to be recorded? For instance if a city, town or village vacate an alley giving half to each landowner are they not then changing the legal for those properties? Should that not be recorded in a new deed? *(Ellen Schleicher, Sheboygan Co.)*
Answer:
Marvel Lemke (Taylor Co.)
The municipality's attorney should be assisting in following the proper statutory requirements for vacating alleys. It is my understanding, once recorded the final resolution/order conveys the vacated alley to the adjacent land owner.
s. 840.11 Highways; parks; record of order.
(1) Every person who makes an application to any court, county board, common council, or village or town board for laying out, widening, vacating, or extending any street, alley, water channel, park, highway, or other public place shall, at or prior to the time of filing the same with the proper officer, present for recording in the office of the register of deeds of each county in which the affected land is situated a lis pendens, as provided in s. 840.10, containing the person's name and a brief statement of the object thereof and a map and description of the land to be affected thereby.
(2) No final order, judgment or decree or final resolution or order taking or affecting such land, based upon any application therefor, shall be notice to any subsequent purchaser or encumbrancer unless a certified copy thereof, containing a legal description as defined in s. 706.01(7r), of the land affected thereby, and accompanied with a map showing the location thereof, is recorded in the office of the register of deeds of the county in which the land
is situated.

Transfer by Affidavit

NOTE: The new Transfer by Affidavit form, along with the Affidavit of Heirship, Affidavit of Service and Waiver of Notice, were approved and implemented on 7/17/2019.

Question: Is a transfer return required when a Transfer by Affidavit is recorded and includes real estate?
Answer:
Transfers by affidavit are subject to the same statutory requirements of the Real Estate Transfer return and fee.
Example: If you are:

- An heir - Exemption 11 applies
- A guardian - you may or may not be exempt from a transfer fee depending on who you are the guardian of
- A Trustee - Exemption 16 may apply

Question: To record the Transfer by Affidavit ($50,000 and under) form, does the entire estate need to be under $50,000 or just the solely owned property? What general procedure should be followed regarding this form?
Answer:
The total value of the solely owned property must be $50,000 or less. It does not matter what the total value is of the joint property.
The Register of Deeds should first view the Transfer by Affidavit to see if it was marked that funds were received for any type of medical assistance. If so, the proof of mailing should be viewed prior to recording the document. It cannot be recorded until 10 days after the date of delivery of the notice to the Department of Health & Family Services. The form applies to deaths occurring on May 9, 2000, or thereafter.
**Refer to the WRDA Handbook-Recordings chapter-Best Practices for WI Land Records page.*

Question: Can an attorney modify the Transfer by Affidavit form and add additional names that the property is to be transferred to? The form indicates that property is transferred to affiant (singular). (Jodi Helgeson, Adams Co)
UPDATED Answer:
The instructions indicate the obligations of the affiant as follows:
Pursuant to §867.03, Wis. Stats., when a deceased person ("decedent") dies with Wisconsin property subject to probate administration which does not exceed $50,000 in gross value, a person entitled to sign the Affidavit (as set forth below) (the "Affiant") may collect, receive, and have the decedent's interest in property transferred to the Affiant. ***By accepting the decedent's property, the Affiant assumes a duty to pay the decedent's debts and distribute any balance to the decedent's beneficiaries designated in the appropriate governing instrument (such as a will) or, if the decedent did not have a will or other governing instrument, to the decedent's heirs (as set forth below).***
No. 5 on the form itself states, *"I ask that the following property of the Decedent be transferred to me pursuant to §867.03(1g), Wis. Stats"*
You could also talk with your real property lister to see how they would handle the transfer of ownership should the form be altered and/or more than one person be identified and convey that answer to the preparer/submitter.
Regardless, if the submitter insists on recording the form and it is in recordable format, it should be recorded.
**Refer to the WRDA Handbook-Recordings chapter-Best Practices for WI Land Records page.*

Question: The Transfer by Affidavit $50,000 form clearly states that it should only be recorded in the Register of Deeds Office if real estate is involved. Many of the financial institutions in our county are requiring people to have these recorded in our office before they will release any funds. The banks insist on the recording of this document just to release a couple hundred dollars from a checking account. (Larry Eckert, Deputy Register of Deeds, Milwaukee Co).

UPDATED Answer:

Per s. 867.03(2m) states…(2m) RECORDING OF AFFIDAVIT. (a) If an affidavit under sub. (1g) describes an interest in or lien on real property a certified copy or duplicate original of the affidavit shall be recorded in the office of the register of deeds in each county in this state in which the real property is located. (b) For purposes of a transfer under this section of an interest in or lien on real property, the recording of the affidavit copy or duplicate original constitutes the transfer to the affiant under sub. (1g) of the evidence of the interest in or lien on real property.

Per the new TBA form instructions*, "If the Affiant is not transferring the decedent's interest in real estate, or a lien on real estate, then, after complying with any required notice to the State of Wisconsin, Department of Health Services Estate Recovery Program, the Affiant may furnish the Affidavit to any party holding property of the decedent included in the Affidavit to implement the transfer(s) to the Affiant.."*

If the Transfer by Affidavit only refers to personal property, there is no reason to record the document in the Register of Deeds office. If the customer insists, it can be recorded, but it serves no real purpose. If the personal property is a motor vehicle with a title, the document should be taken to the Motor Vehicle Department. If bank accounts are listed, the customer may also want to reconsider their request to record.

Question: What year was the Affidavit of Transfer increased to $50,000? (Cathy Williquette Lindsay, Brown Co.)

Answer:

New forms were created for deaths occurring on 05/09/2000 or after. It went from $10,000 to $20,000 and allowed including real estate. Previously, it was not allowed to transfer real estate using that form. On 04/11/2006, the amount was raised to $50,000. (Connie Woolever, Walworth Co.)

Question: I received for recording a Transfer by Affidavit. On the affidavit the value of the property was listed minus the amount still owed on the mortgage. The attorney argues that they can use the net value based on *867.03 1 (g) (b) administration and 867.03 2 (m) (a) – if affidavit describes interest or lien on real property.* (Susan Ginter, Wood County)

Answer:

The Transfer by Affidavit form indicates "The total gross value of the decedent's property subject to administration in Wisconsin on the date of Death did not exceed $50,000." This means the gross value of all property – not the "net" value. The reference to "lien on real property' in the statute mentioned by this attorney is if the decedent is owed money from someone else. The debt owed to them is an ADDITIONAL asset, which would increase the value of the decedents estate.

Example-The affidavit transfers the vendor's interest under a land contract. The balance still owed on the land contract was $19,000. This amount owed to the decedent is included in the value of assets of the decedent.

s. 867.03 Transfer by affidavit.

(1c) Definition. In this section, "guardian" has the meaning given in s. 54.01 (10) or s. 880.01(3), 2003 stats. 867.03(1g) (1g) Generally. When a decedent leaves property subject to administration in this state

which does not exceed $50,000 in value, any heir of the decedent, trustee of a revocable trust created by the decedent, or person who was guardian of the decedent at the time of the decedent's death may collect any money due the decedent, receive the property of the decedent, and have any evidence of interest, obligation to, or right of the decedent transferred to the affiant if the heir, trustee, or guardian provides to the person owing the money, having custody of the property, or acting as registrar or transfer agent of the evidences of interest, obligation to, or right, or, if the property is an interest in or lien on real property, provides to the register of deeds preliminary to the recording required under sub. (2m), proof of prior mailed notice under sub. (2m), proof of prior mailed notice under sub. (1m) if applicable and an affidavit in duplicate showing all of the following:
(a) A description of and the value of the property to be transferred.
(b) The total value of the decedent's property subject to administration in this state at the date of decedent's death. (Jeremy Wedige, Department of Revenue)

Question: A lady came in with the Transfer by Affidavit ($50,000 or under) and the value of the property she had down was $94,400. We told her she could not use that document if the value was over $50,000. She said her spouse owned the property solely and she is his wife and that the property is worth $94,400. She was told by the probate clerk to use the Transfer by Affidavit ($50,000 or under). (Cheryl McBride, LaCrosse County)
Answers:
From Attorney: The Wisconsin Marital Property Law presumes that each spouse has a one-half marital property interest in all assets owned by the spouses regardless of how title is held. Therefore, the widow already owned her one-half interest in the real estate even though the title was solely in the husband's name, and the only portion that needed to be transferred was the undivided one-half marital interest of the decedent husband. The "full" value of the property being transferred was the full value of the husband's one-half interest.
Per the Wood County Corporation Counsel, The attorney is correct in how he has prepared the documents for recording. Per *s. 766.31(2), Wis. Stats. The presumption is that all property owned by either the husband or wife is marital property. Unless there is a marital property agreement between them to the contrary, the property is marital and the ½ interest being conveyed is correct.*
This conveyance qualifies for disposition by summary affidavit under *s. 867.03, Wis. Stats.* or by summary confirmation if survivorship marital property under *s. 867.046, Wis. Stats.*" (Jeremy Wedige, Department of Revenue)

NEW-Question: I received a Transfer by Affidavit ($50,000 and under) from one of our local attorneys. I see it was notarized on July 22, 2019 and the eRETR also shows a conveyance date of July 22, 2019. They are using an old form and it surely looks like it has been modified. I am inclined to reject as the eRETR lists the grantor as the affiant, not the decedent. What is the deadline for using the old form?
Response: The committee agrees you should reject the document as the grantor on the transfer return does not match the grantor on the document. However, if the grantor was correct we would accept the document for recording with the use of the old form, there is not statutory deadline for using the old form. We recommend you notify the submitter that there is a new form available that addresses new legislative rules pertaining to transfer by affidavit Wis. Stats. 867.03.

NEW-Question: I received my first Transfer by Affidavit using the new form and the attorney attached his own version of a waiver rather than the one provided with the form. Would you accept it? He attached the affidavit of heirship and provided the death certificate and legal description and transfer return.

Response: The committee agrees you should accept the form as submitted; the new form is simply a recommended form and is not required by statute.

NEW-Question: If a beneficiary of a trust dies can a Transfer by Affidavit be used to transfer his interest to his wife or do they have to do a Trustees Deed? A title company wants to know and I am not sure. The value is under $50,000.

Response: The committee agrees it would be best for the title company to seek direction from their legal counsel. Each trust is set up differently and may be spelled out as to how and what can be done with the property. Generally if property is in a trust the value of the property would be over the $50,000 limit. It is not up to the Register of Deeds to determine the legality of the document; if it is submitted and in recordable format we would record.

Transfer on Death Beneficiary Designation (TOD)/Transfer on Death to Beneficiary (TDI fka TOD-110)

NOTE: The new TDI (fka HT/TOD-110 combined form) was approved and implemented on 10/5/2017.

Question: Does a transfer on death deed have to be on the actual form or can customers use a Quit Claim Deed form and add the appropriate language?
Answer:
Even though the State Bar has created a separate form, some attorneys are still using a Quit Claim Deed form and adding the words "Transfer on Death" as a subtitle or cross off the words "Quit Claim Deed." Either way, a transfer return is recommended, but not required for the TOD, and Exemption 10m should be used. (Jane Licht, Dane County)

For the most up to date TOD and HT/TOD-110 forms, visit the following WRDA webpage: https://www.wrdaonline.org/forms

Question: A Transfer on Death Deed is recorded from one individual sole owner to multiple individuals as beneficiaries. If one of the beneficiaries precedes the grantor in death, what is the appropriate process?
Answer:

- Ideally the grantor should file a new Transfer on Death Deed removing the decedent and creating a new beneficiary designation as desired.
- If the sole property owner passes away before filing a new beneficiary designation follow *s. 705.15(4) -On the death of the sole owner or the last to die of multiple owners, ownership of the interest in the real property passes, subject to any lien or other encumbrance, to the designated TOD beneficiary or beneficiaries who survive all owners and to any predeceased beneficiary's issue who would take under s. 854.06(3). If no beneficiary or predeceased beneficiary's issue who would take under s. 854.06(3) survives the death of all owners, the interest in the real property passes to the estate of the deceased sole owner or the estate of the last to die of the multiple owners.*
- Example-Mom to Child A, Child B & Child C. Child A has two of children-Grandchild A & Grandchild B. If Child A dies before mom, ideally mom should file a new TOD Deed/Designation. If mom does not file a new designation before passing away then the TOD 110 should list Grandchild A, Grandchild B, Child B, Child C.

Question: Do all remaindermen listed on a TOD need to sign the TDI with notarized signatures? (Marvel Lemke, Taylor Co on behalf of a title company).

UPDATED Answer:

s. 867.046(2) states that "a TOD beneficiary" may sign. If no TOD beneficiary files the TDI within 90 days of death, "any interested person" may file the form.

The WRDA assisted in the making up the TDI form that is found on their website. The TDI instructions clearly identify "Who may sign the form." The instructions also clearly identify how to "Complete the form." The TDI form itself contains the following box indicating that all of the names and addresses for the beneficiaries be provided:

Name(s) and address of owner(s) of the property immediately after the decedent's death; attach additional names & addresses if more than one owner.

The form also only includes one notary area indicating that only on beneficiary is required to sign the TDI. All beneficiaries should also be listed on the transfer return (eRETR) that must accompany the TDI. (Heather Schwersenska, Waushara Co)

Question: Can a new deed be submitted with new owners (BUYERS) listed as the grantee and also on the same document establish a transfer on death?

Answer:

Yes, according to various statutory references: *s. 867.046* SUMMARY CONFIRMATION OF INTEREST IN PROPERTY. (1). In this section: (a) "Beneficiary of a marital property agreement" means a designated person, trust or other entity having an interest in property passing by no testamentary disposition under s. 766.58(3)(f). (b) "Survivorship marital property" means property held under s. 766.60(5)(a). (c) "TOD beneficiary" means a person designated on a deed as a transfer on death beneficiary under s. 705.15

s. 705.15 NONPROBATE TRANSFER OF REAL PROPERTY ON DEATH. (1) An interest in real property that is solely owned, owned by spouses as survivorship marital property, or owned by 2 or more persons as joint tenants may be transferred without probate to a designated TOD beneficiary as provided in this section on the death of the sole owner or the last to die of the multiple owners. (2) A TOD beneficiary may be designated on a deed that evidences ownership of the property interest in the owner or owners by including the words "transfer on death" or "pay on death," or the abbreviation "TOD" or "POD," after the name of the owner or owners of the property and before the name of the beneficiary or beneficiaries. The designation may be included on the original deed that passes the property interest to the owner(s) or may be made at a later time by the sole owner or all then surviving owners by executing and recording another deed that designates a TOD beneficiary. A TOD beneficiary designation is not effective unless the deed on which the designation is made is recorded.

Question: Husband and wife record TOD deed conveying property to children upon their death. Wife passes and attorney is preparing HT/TOD-110 to give notice of her death. He is asking what reference document should be used? (Lois Hagedorn, Clark Co)

Answer:

Currently, husband and wife have interest in the property. Wife passes, using the HT/TOD-110 – The Attorney would reference the original deed granting ownership as the interest terminated is joint tenancy or survivorship marital property. Additional note … *Per s. 705.15(5) The designation of the TOD beneficiary on the deed does not affect ownership of the property until the death of the sole owner or last to die of multiple owners.* (Marvel Lemke, Taylor Co).

Question: We received a Transfer on Death Deed today with the Grantees listed as "My Children." Can that be recorded? (Diane Poach, Washburn County)

Answers:

You cannot record because The names are required per statute – *s. 59.43(1)(a)*

Record or cause to be recorded in suitable books to be kept in his or her office, correctly and legibly all deeds, mortgages, instruments and writings authorized by law to be recorded in his or her office and left with him or her for that purpose, provided such documents have plainly printed or typewritten thereon the names of the grantors, grantees, witnesses and notary. (Lisa Walker, Columbia County and Hal Karas, Attorney Whyte Hirschboeck Dudek)

Question: Does a TOD need to be recorded prior to the person passing? In other words, can a TOD be recorded after the death of the grantor?
Answers:

- ***In summary,*** if the TOD and HT/TOD-110 are in recordable form, then ultimately they are recordable. Whether or not they would be effective could/would have to be disputed by the attorneys.
- Per *s. 705.15 states TOD beneficiary designation is not effective unless deed on which designation is made is recorded.*

This topic was discussed at a Jt Alpha meeting. The attorney's at the meeting disagreed, they said that: If a TOD deed was drafted and signed, but not recorded prior to death and the person has now died, the TOD deed can be recorded and the HT/TOD-110 can be completed because the TOD deed is not a conveyance and is a notice. (Cheryl McBride, LaCrosse County)

We will work with Joint Alpha to get this opinion updated.

New-Question: Last week we received a Transfer on Death Deed that was prepared and signed in 2016 – but was never recorded. The father passed away and then last spring the mother passed away.

The family found the Transfer on Death Deed and brought it in for recording. We recorded it and my Tax Lister just came to me and stated that she was at their conference last week and they were told that a new law passed in July that says a Transfer on Death Deed cannot be recorded after the parties are deceased. Can a register deny recording a Transfer on Death Deed when both parties have died?

Response: Although Wis. Stats. 705.15(2)(c) states the designation is not effective unless the document is recorded in the register of deeds office before the death of the last to die of multiple owners, it doesn't say we shall not record the document. It is advisable for you to contact the submitter if possible, to alert them of this statute; however, if they insist on recording it we must comply. In this example it would be up to the courts to decide the legality of the document. While we understand the tax listers duties will not allow them to change the tax roll, we cannot statutorily reject a document because we know it will not do what the submitter intended.

NEW-Question: We received a copy of a recorded Transfer on Death Beneficiary along with two Deeds with Transfer Returns for each deed. The recorded TOD gave Jane Doe's property to John Smith and Karen Doe; Jane Doe died. The 1st Quit Claim Deed transfers the property back to Jane Doe's estate; with verbiage, "it is the grantors intent to disclaim any and all interest in the real estate". The Personal Representatives Deed then sells the property from Jane Doe's estate to a third party. Can they do this after her death?

Response: The committee agrees there is no statutory reason to reject these documents. The documents are in recordable format and have a transfer return for each deed. It would be up to the courts to determine the legality.

NEW-Question: We received a Transfer on Death where the grantee is listed as "the trustee of the trust established under the Grantor's Last Will and Testament for the benefit of the Grantor's children". We contacted the attorney and they stated they have done this before and this is how thy list it as they want to include any unborn children. Can we accept this and if so how would you enter the Grantee?
Answer: The committee agrees you should reject this document per Wis. Stats. 705.15(2)(a)2 which requires the name of the designated TOD beneficiary.

NEW-Question: We have an attorney that is submitting for recording a Warranty Deed, with the verbiage on the deed, that it is a Transfer of Death Deed. We have been recording it; however he is stating he doesn't need a real estate transfer return because, it's a TOD, but it's on a Warranty Deed form and we index as Warranty Deed, and the Real Property lister is getting annoyed as well.
Response: The committee agrees that the document is in recordable format and should be accepted as long as the proper verbiage is on the document. While it is not the preferred form, we do not have the statutory right to reject it. Wis. Stats. 705.15(2)(b) simply requires the document to designate it is a TOD beneficiary. A designation of beneficiary does not require a transfer return. We would recommend you forward the attorney a copy of the Designation of Beneficiary form for future use. The committee was split on how to index, some would index as a Warranty Deed as indicated and others would index it as a TOD Designation, whichever you decided to do we recommend you make that the standard practice in your office. When indexing the document type consider how you may find the document in the future.

705.15(2)(b) ***(b)*** *The designation of a TOD beneficiary may be made by use of the words "transfer on death" or "pay on death," or the abbreviation "TOD" or "POD," after the name of the owner or owners of the property and before the name of the TOD beneficiary or beneficiaries. The owner or owners may designate one or more persons as a primary TOD beneficiary and may designate one or more persons as a contingent TOD beneficiary if a primary TOD beneficiary does not survive the sole owner or the last to die of multiple owners. The designation may be included on the original document that passes the property interest to the owner or owners or may be made at a later time by the sole owner or all then surviving owners by executing and recording another document that designates a TOD beneficiary.*

NEW-Question: How would you handle this document? The TOD got recorded in Winnebago County in 10/23/2019, but the legal is Calumet County and was never recorded in the right county. Now the person died and the attorney is doing the Termination and including the TOD that was recorded in another county. Can they do this?
Answer: We believe the document should be recorded if it conforms with recording requirements. Since the legal description on the TDI refers to property in Calumet County, the fact that the original designation was recorded in Winnebago does not prevent the recording of the TDI. The committee feels that you may want to include a note with the returned document indicating that the designation appears to have been recorded in the wrong county. Ultimately, we feel the effect of the document could be challenged, but it contains all necessary elements for recording in Calument County. As a side, we would not reference the document number, though, since it is from Winnebago.

NEW-Question: An attorney has asked me: Can you do a Designation of TOD on a vendor's interest on a land contract? interesting question inasmuch as only personal property (cash), of course, is due the

vendor; I am thinking they would need to do an assignment of LC but how do you make that kick in upon the vendor's death?

Answer: The help desk believes a transfer on death designation can be recorded that references a vendor's interest in a land contract. Until the contract is satisfied, the vendor has an interest in the property while they are alive. That interest could be used for collateral purposes, so it may be possible that an assignment is not preferable in some circumstances to a designation of beneficiary. We think you can record if the document meets all recording standards.

NEW Question: I received a Warranty Deed from Grantor Smith to Grantee B & C Jones; the last page of the document has a TOD designation to D, E, F & G Jones. Should I record this document, if so how do I index it?

Response: Response: The committee agrees you should accept this document for recording, a transfer return is required; Statutes 705.15(2)(b) allows for the TOD designation on the original conveyance.

We recommend you index as a Warranty Deed, the grantor is Smith, and the grantees are B & C Jones.

However, if your county indexes TOD beneficiaries it is important to stay consistent:

We would then recommend you index as a Warranty Deed, the grantor is Smith, and the grantees are B, C, D, E, F & G Jones.

When possible we would caution the submitter that the document will not be searchable by the TOD designation as it will be indexed as a Warranty Deed.

NEW Question: Are we allowed to hand out the Designation of TOD Beneficiary form out to customers? I recall discussion that we weren't supposed to as it may be an issue with the State Bar Association.

Response: The committee agrees that there appears to be no statute barring the distribution of forms; however, we also all acknowledge that many of the forms we record could be construed as being the "property" of the State Bar or Bankers Association. While the majority does not provide the forms, it was common practice to refer customers to various websites that had the forms available. Many of those sites no longer have the forms available, or they are available for a fee. Ultimately, we feel it is you/your county's decision. It would be advisable to consult with your corporation counsel to help determine your policy.

Transfer Returns/eRETRs

NOTE: Many questions and answers have been removed from the WRDA Q&A if they can easily be found on the Dept fof Revenue's website: https://www.revenue.wi.gov/Pages/FAQS/slf-retr.aspx#ret160

NEW Question: Normally when conveyance documents are submitted electronically the eRETR is submitted before the deed; we received one today behind the deed, should I reject?

Response: The committee agrees if you are able to manipulate the transaction within your recording system you should not reject for this reason. Each recording vendor has a different way of processing documents, if you are able to enter the transfer tax due or exemption on the deed we would not reject.

Question: A transfer return is required with a judgment of divorce if the judgment is not followed by a deed. Who should be entered as the Grantor/Grantee on the eRETR?
Answer:
The grantor would be the individual that is relinquishing the property. The grantee is the recipient.

Question: Are there guidelines for RODs to use when determining whether or not an eRETR should be accepted or rejected?
Answer:
https://www.revenue.wi.gov/Pages/FAQS/slf-retr-retr-r.aspx#ret134

The following guideline will assist in determining whether a particular Electronic Real Estate Transfer Return (***eRETR***) Receipt warrants rejection of a conveyance from recordation.

eRETR Receipt Review per sec. 77.22(1), Wis. Stats.:

1. Ensure that the Receipt belongs to the document being recorded and is in the proper county as you will not be able to "Add recording information" if the Receipt and document are for another county.
2. **All items:** Document to be recorded, Receipt, payment (if due), weatherization papers (if needed). The Receipt, under Instruction 2 will have a list of the items needed.
3. **Date of conveyance**, must be **ON** or **BEFORE** the date of recording.
4. **Transfer fee amount**, if due, is the same as the amount on the check or other method of payment. Note for some transfers, there may be a fee due and an exemption.
5. **All grantors and grantees** named on the document are on the Receipt. Exceptions:
    a. Husband and wife with the same last name may have both first names on the first name line and only one social number is required.
    b. Middle initials are not a required entry field and do not have to be on the Receipt.
6. **All parcels** listed on the document are on the Receipt. **When there are five or fewer parcels, each must be listed in a separate parcel section (Add Parcel). When there are more than five, the first five must be listed separately under "Parcels" and the remainder may be listed separately here or listed under the "Short legal description".** If your county does not require parcel numbers on the document (they are required on the return), you can verify the property using the legal description. The return does not require a legal description when the Subdivision/Condominium section is completed, unless there are more than five parcels and the additional parcels are listed here.

Immediate Rejection:
If any information on the Receipt has been changed in any way, such as being crossed out or white out, with information inserted or added, REJECT the recording. Changing information on the RECEIPT creates an inconsistency with the information on the eRETR. It is acceptable to have signatures or initials written on the Receipt, so long as the data is not changed in any way.

No Attachments:
All data such as a complete legal description, all grantors, and all grantees must be entered on eRETR.

Optional *eRETR* Receipt Review:
The following items are not "rejects." However; they may result in an audit by DOR.

1. Does the tax bill address appear correct and consistent with the grantee's or agent's information?
2. Does the transfer fee exemption appear correct? Generally, exemptions 2 and 8m will apply when the type of transfer is a sale and an exemption is taken.

Per 77.21(1) The register shall have no duty to determine either the correct value of the real estate transferred or the validity of any exemption or exclusion claimed. The committee agrees it is best to use the correct exemption whenever possible to facilitate accurate records. We recommend you contact the submitter to correct the exemption; however, if they submitter does not comply you should record.

Question: When you receive your county's share of additional transfer fees collected from the DOR transfer fee audit, do you go back to the original document of record and make a notation on either the paper copy of in the computer of the amended fee?
Answer:
It seems that everyone does it a little different. We do not change the original document but in the notes section on the computer, we can note that the transfer fee was corrected. This is similar to any corrections/changes noted for that particular document. It just depends on how much extra work you want to do. The only question would be that since the corrections are not generally found in the regular records and if you do not put them on the computer, do you put the form we received anywhere so that if a transfer fee was questions, that someone could check to see if it was adjusted?

Question: On the transfer return form, are guardians, personal representatives, trustees, and officers of corporations, etc. considered agents, or is it just an attorney or title company who handles the closing?
Answer:
Anyone signing on behalf of the grantor or grantee is considered an agent. This would include guardians, corporation officers, personal representatives, trustees, attorneys and title company personnel. If both grantor and grantee have an agent, the information on the grantor's agent should be shown.

Question: If we receive a Portion of Judgment affecting title to real estate to record without a transfer return, should we call to see if a quit claim deed will follow later? If not, do we need a transfer form attached? (Marge Geissler, Chippewa County)
Answer:
We are not required to ask if there is a QCD coming for recording.
Per Department of Revenue, May 1994, "Yes," per *s. 77.21(1)*, defines conveyances of real property as including deeds and other instruments passing an ownership interest in real property. If the judgment conveys an interest in real property and is the only document submitted for recordation, a return is required and exemption 77.25(8m) is used for the majority of returns. DOR has seen where the grantor or grantee is an entity (LLC, corp., etc) and they use exemption 8m, between husband and wife in a divorce. An entity is not the husband and wife, they may be members but such a conveyance pursuant to divorce may be exempt by one

of the 15 exemptions or may in fact be subject to a fee. Examples: Exempt, per divorce, husband (H) is to get the property from HW, LLC where both H and wife (W) are members. Deed then goes from HW, LLC to H. Since both H and W were members, fee exempt 15s. Fee due, per divorce, husband (H) is to get the property from W, LLC where only wife (W) is a member. Deed then goes from HW, LLC to H. Since only W is a member, fee due. (Russ Reppen, DOR)

Question: If there is no statement on the document exempting the recording from a return, and the grantee's agent is insisting the document is exempt from the fee and return, can the Register of Deeds record the document?
Answer:
No. If the document is exempt from the return and fee requirement under state law there must be a statement on the front of the document exempting it.

- **Example statement:** "This document is a lease of less than 99 years and not a conveyance as defined by state law (sec. 77.21(1), Wis. Stats.), and is exempt from a return and fee imposed (sec. 77.22(1), Wis. Stats.)"

If the document is designating or removing a TOD beneficiary under state law (sec. 705.15, Wis. Stats.), it is exempt from transfer return and fee.

- **Example statement:** "This document is designating or removing a TOD beneficiary under state law (sec. 705.15, Wis. Stats.) and is exempt from return and fee per state law (sec. 77.25(10m), Wis. Stats.)"

Revised Question: When do Leases, Assignment of Leases or Memorandum of Leases or Assignments require an eRETR?
Answer:
Per email from Jeremy Wedige dated March 31, 2016: In regard to a **lease**, **assignment of lease**, **memorandum of lease** or **memorandum of assignment of lease** either the filer properly exempts it from return and fee with the appropriate language (if they need to) or they are required to file a transfer return and pay a transfer fee (if not exempt from transfer fee per one of the exemptions under sec. 77.25, Wis. Stats.)

The main thing to review for a **lease** or **memorandum of lease** is the length of the lease (in years):

- If it is less than 99 years a transfer return is not required if the length of the lease is clearly stated. If the length is not stated (I.e. memorandum of lease) then the filer needs to exempt it from return and fee with the appropriate language.
- If it is 99 years or greater a transfer return is required and a transfer fee is due (if not exempt from transfer fee per one of the exemptions under sec. 77.25, Wis. Stats.)

The two things to review for an **assignment of lease** or **memorandum of assignment of lease** are the original length of the lease (in years) and if any improvements are included with the assignment:

- If the original lease is less than 99 years and the original length of the lease is clearly stated a transfer return and fee are not required if there are no improvements being assigned. If the

length is not stated (I.e. memorandum of assignment of lease) then the filer needs to exempt it from transfer return and fee with the appropriate language.

- If the assignment includes improvements (I.e. cell tower or building) then a transfer return is required and a transfer fee is due for the value of the improvements (if not exempt from transfer fee per one of the exemptions under sec. 77.25, Wis. Stats.) regardless of the length of the lease.
- If the original lease was 99 years or greater a transfer return is required and a transfer fee is due for the value of the lease and any improvements (if not exempt from transfer fee per one of the exemptions under sec. 77.25, Wis. Stats.)

It is the responsibility of the parties to exempt the transaction from a transfer return and fee, not the Registers of Deeds. The Register of Deeds should not accept a verbal claim of exemption.

The appropriate language to exempt a **lease**, **assignment of lease**, **memorandum of lease** or **memorandum of assignment of lease** from transfer return and fee is the following:

> *"This is a/an **INSERT DOCUMENT TYPE NAME** and is not a conveyance as defined by state law (sec. 77.21(1), Wis. Stats), and is not subject to transfer return or fee imposed under sec. 77.22(1), Wis. Stats."*

It depends on the type of lease, whether a return is needed.

Examples:

- **Farmer Brown gives a 50-year lease to Big Phone Co.** - No return is needed if the wording on the recorded lease states, "This is a lease less than 99 years and not a conveyance per state law (sec. 77.21(1), Wis. Stats.) **Note:** If the lease is for 99 years or more, then a return and fee are due.) After the lease is recorded Big Phone Co. builds a tower on leased land.
- **Big Phone Co. assigns ground lease to Little Phone Co.** - transfer return and transfer fee are required since the assignment conveys "improvements" on leased land as defined under state law (sec. 77.21(1m), Wis. Stats.). The remaining length of the ground lease term does not matter. If the original lease was for less than 99 years then a transfer fee is due only on the tower; and if the original lease is equal to or greater than 99 years, then the fee is due on the ground lease and tower.
- **Little Phone Co. now leases tower space to Tell All Phone Co. for an antenna** - this is not a conveyance of real property. No return is needed. Provided, however, that wording is included on the document submitted for recording to clarify that this is a "lease of tower space only, not a conveyance per state law (sec. 77.21(1), Wis. Stats.).

Question: Would you accept a document titled “Affidavit of Identity” that appears to intend to change the name of one of the parties without a transfer form or transfer fee? The document in question states:
Affiants state under oath that they are Trustees of the Bradley J. Wessel and Amber D. Waite Living Trust of 2007, created July 18, 2007, and that the name of the trust has been changed to

the Wessel Waite Living Trust of 2007 as of February 26, 2014, and that they are the Trustees of the renamed trust.
The Bradley J. Wessel and Amber D. Waite Living Trust of 2007 is the Grantee in a Warranty Deed dated July 18, 2007, and recorded July 20, 2007, as Document No. 1831665, recorded in the office of the Register of Deeds for Sheboygan County, State of Wisconsin.
This is not a conveyance under 77.21(1) Wisconsin Statutes and is exempt from transfer return and transfer fee.
The purpose of this document is only to identify of record that the trust formerly known as the Bradley J. Wessel and Amber D. Waite Living Trust of 2007 is now know as the Wessel Waite Living Trust of 2007. (Ellen Schleicher, Sheboygan County)
Answer:
This is a name change of the owner of record for a piece of property – transfer return is required and exemption 3 applies. (Jeremy Wedige, Department of Revenue)

Question: Husband and wife get a divorce – Husband owns several rental properties under an LLC – judgment from the divorce gives the wife the rental properties which she wants to put into her LLC. Would the transfer of property still be considered exempt as husband to wife or is there a transfer fee involved because it is going from a LLC to a LLC? (Ellen Schleicher, Sheboygan Co).
Answer by DOR:
The conveyance from an LLC to LLC is not exempt from transfer fee. If the wife is not a member of the husband's LLC's, then the conveyance from those LLC's to her would be subject to transfer fee. You could have the husband's LLC's convey out to him using exemption 15s - then him to her using exemption 8m - then her to her own LLC(s) using exemption 15s.

Question: Can we accept an eRETR on the backside of the deed so that the return is part of the official permanent county document? (Cynthia Meudt, Green Co)
Answers:

- The eRETR is considered confidential & cannot be part of the recorded document Phone numbers and email addresses have been deemed confidential information by the secretary of state. eRETR receipts should NOT be recorded (image scanned) in to the public (ROD) record. With the receipt any individual has the ability to enter the information on the receipt and obtain all of the information entered into the eRETR submission process which includes emails, telephone numbers, etc.
- *Sec. 77.30, Wis. Stats. grants authority to the secretary of revenue to administer the transfer return: http://docs.legis.wisconsin.gov/statutes/statutes/77/II/30*
  (Jeremy Wedige, Department of Revenue)

Question: If the primary mortgage holder files a Lis Pendens and names the secondary mortgage holder as a defendant but the secondary mortgage holder bids and gets the property in a Sheriff's Sale, is there a transfer fee due? (Sharon Martin, Washington County)
Answer:
As long as it goes to a mortgage holder, exemption 14 applies; basically, if the property goes back to anybody listed on the Lis Pendens, exemption 14 applies. (Jeremy Wedige, Department of Revenue)

Question: John Doe sold property to Jane Doe on a Land Contract. Now John Doe is assigning his interest to someone else (not a bank). Does he pay a transfer fee? If Jane Doe was assigning her interest, would she pay a transfer fee? (Diane Poach, Washburn County)
Answers:

- Assignment of vendor's interest does not require a transfer return or a fee. Assignment of vendees interest requires a fee if it is a full assignment. If the assignment is for collateral purposes only, no fee required. (Larry Eckert, Deputy, Milwaukee County)
- Once John Doe sold on a land contract his remaining interest is a personal property interest only. (Michael Mazemke, Waupaca County)

Question: Can we accept a Sheriff's Deed with only one of the property owners listed as a defendant if the eRETR list both owners? (JoEllyn Storz, Kenosha County)
Answer:
Any deed should list all grantor and grantee names. (Jeremy Wedige, DOR)

Question: How do I amend an eRETR my department entered the wrong month into the DOR site in the wrong month? (Beth Pabst, St. Croix County)
Answer:
Go to the Department of Revenue Home Page at: www.revenue.wi.gov; Under Real Estate Transfer Fee "ONLINE SERVICES" click on eRETR for Real Estate; Under "ONLINE SERVICES" click on Amend/Instructions. (Monica Bauer, Pepin County)

Question: Do we need an eRETR for someone terminating a life estate on a deed? All parties are alive. (Cathy Williquette Lindsay, Brown County)
Answer:
A transfer return is required on the termination of life estate since it is a conveyance of a real property interest (it is part of the "bundle of rights" of a real property interest). Exception 11 applies. (Jeremy Wedige, Department of Revenue)

Question: What is the correct web link to reference on the eRETR handout that we give to customers who need to complete an eRETR? (Monica Bauer, Pepin County)
Answer:
www.revenue.wi.gov/retr/index.html (Jeremy Wedige, Department of Revenue)

Question: I received a deed from a title company where they are trying to convey two separate parcels to separate Grantee parties in the same deed. The title company is arguing that it can be done this way. I believe there should be two separate deeds and receipts, as there needs to be a value established for each parcel. (Peggy Walter, Clark County)
Answer:
From DOR website: Deeds – Multiple
Will the Department still accept "one transaction – one return" where the Register of Deeds receives multiple deeds conveying different interests in the same property to the same grantee and there is only one receipt filed?

No. Each instrument conveying an interest in real estate will require its own eRETR receipt. A portion of the total value of the property conveyed must be allocated to each return.

Example: Three (3) siblings sell their individual interests in parcel A to X. Each sibling will file a separate deed. Each sibling must file a transfer return for their respective interest transferred to X showing one third of the real estate value and the fee calculated on that value.

The eRETR simplifies the completing of multiple returns that have similar information by making a "template".

- Complete an eRETR for the first deed and before or after hitting the green "Submit" button, save the file on your computer under a name that identifies it with the deed. Do not change the ".dor" extension.
- Submit, print and attach the receipt to that deed.
- Return to the "Filer" page and select "restore saved information" to access the saved eRETR and make changes for the second deed.
- Repeat these steps for the remaining returns. (Sharon Martin, Washington County)

It has been "one document – one return" since 1998. (Jeremy Wedige, Department of Revenue)

Question: Is a Court Order transferring property exempt from filing a transfer return? (Deb Brandt, Monroe County)
Answer:
Court orders are not exempt if that is the only document they are using to convey the property. *s. 77.21 (1), Stats. define conveyances of real property as including deeds and other instruments passing an ownership interest in real property. If the judgment conveys an interest in real property and will be the only document submitted for recordation, a return is required.* (Sara Nuernberger, Taylor County)

Question: Do we need a transfer return when a husband and wife are "reclassifying" title as survivorship marital property or as joint tenants? (Cheryl McBride, LaCrosse County)
Answers:
YES. Any deed or other instrument being filed to confirm, correct or reform a prior conveyance requires a transfer return – exemption 3 applies. (Jeremy Wedige, Department of Revenue)
EXEMPTION 3 – Includes any document being recorded (ex: affidavits of correction, correction Instruments, correction deeds) that is executed for nominal, inadequate or no consideration, and confirms, corrects or reforms a conveyance previously recorded – regardless of what is being corrected whether it be the spelling of a grantor/grantee name, to define lot lines, to combine parcels, to correct a lot or block, to correct a direction or footage in a metes & bounds description, to change the way property is held, change a name from maiden or married or vice versa.

Question: I have an attorney using a Quit Claim Deed to terminate a person's interest in a lease agreement. Should they prepare a transfer return? (Deb Brandt & Joan Sherburn, Recording Clerk, Monroe County)
Answer:
If it is a lease of 99 years or less it is exempt from return. If the lessee built improvements upon the lease land and they go back to the lessor - then a return and fee are required. Make them exempt the document with the proper language if they feel it is exempt. "This is a termination of a lease less than 99 years and not a conveyance per *sec. 77.21(1), Wis. Stats."* (Jeremy Wedige, Department of Revenue)

Question: Can you provide some examples of other Governmental Agencies that are exempt from transfer fee under Exemption 2?

- Department of Housing and Urban Development, 42 USCS Â§ 3532
- Farm Credit Banks, 12 USCS Â§ 2011 (only four exist):
  - AgFirst
  - AgriBank
- Veterans Administration, 38 USCS Â§ 201

- Federal Home Loan Mortgage Corporation (Freddie Mac)
- Federal National Mortgage Association (Fannie Mae)

For more examples visit the DOR website: https://www.revenue.wi.gov/Pages/FAQS/slf-retr-retr-g.aspx#ret51

Question: I have a Release of Right of First Refusal. Does that document need the same language as the Right of First Refusal to make it exempt from fee and form? (Carol Burmeister, Buffalo County)
Answer:
Right of first refusal – exempt from return and fee. An option or right of first refusal to purchase: *"This is an option (or right of refusal to purchase) and is not a conveyance as defined by sec. 77.21(1), Wis. Stats and is not subject to transfer return or fee imposed under sec. 77.22(1), Wis. Stats."* I would think the same would apply to the release. (Cheryl McBride, LaCrosse County and Per DOR Website on Right of First Refusal).
As a general rule a Right of First Refusal is not usually considered a transfer document. I would not reject if it were missing the DOR preferred language (Beth Pabst, St. Croix County)

Question: What is the correct exemption with Quit Claim Deeds wherein property is being conveyed from one individual to a homeowner association? (Susan Ginter, Wood County)
Answer:
Exemption 77.25(3) or 77.25(13) works. This is a conveyance of the "common area" of a subdivision to the homeowners association. Each lot owner has an undivided interest in this common area – and they already paid for this interest when they bought their lot/house. (Jeremy Wedige, Department of Revenue)

Question: I have an Abstract/Title Company that is trying to complete an eRETR where the entity name is longer than the box allows on the return. What is the proper procedure to fill this section out? (Monica Bauer, Pepin County)
Answer:
Just have them fit in what they can. (Jeremy Wedige, Department of Revenue)

Question: When is a transfer return needed in association with an assignment of land contract of a vendor's interest? (Carey Petersilka, Door County)
Answer:
A transfer return is needed for an assignment of vendor's interest that is to release a security for a debt that a vendor assigned to a bank. When the bank assigns the interest back to the vendor/releases their interest in the land contract. Exemption 77.25(10) requires a transfer return – no exceptions. (Jeremy Wedige, Department of Revenue)

Question: What is the acceptable way to enter "aka" or "fka" when preparing an eRETR?
Answer:
Per Jeremy, ONLY the current legal name needs to be entered as a Grantor on the transfer return.

Question: What is the acceptable way to enter the Personal Representative and Estate when preparing an eRETR?
Answer:

"Estate of" before or after a decedent's name is appropriate. The PR does not need to be listed as a Grantor, they should be listed as the agent for grantor on the AGENT/PREPARER page. The PR is not the Grantor, the Estate is.

Question: Is an eRETR required for an "Affidavit of Merger" between two banks?
Answer:
Per Jeremy at DOR, yes, an eRETR is required if the document includes real estate.

NEW-Question: Can a Quit Claim Deed be recorded without a transfer return? The title company wrote this on the deed: "this deed is made and executed to combine said parcels for assessment and taxation purposes. Grantor and Grantee are one and the same. This document is exempt from Wisconsin real estate transfer fee and return requirements as it is not a conveyance pursuant to WIS Stat. 77.21(1)"
Answer:
The committee agrees you should record this document as presented without a transfer return as long as the document cites 77.21(1).

Question: Can they do this?

The Warranty Deed has parcel 1 owned by Willow River Joint Venture, a partnership and Parcel 2 owned by Derrick Homes LLC. Both companies are selling their parcel to t-Buck Properties LLC on one deed. Transfer return lists both the partnership and the LLC as grantors.

Shouldn't this be done on two separate documents? How will the DOR know what the value is on the parcel 1 vs. the parcel 2?

Answer: The committee agrees that there is no statutory authority to reject it. However, the Department of Revenue indicates that is should not be accepted as it creates an assessor (assessment) issue because the RETR does not break down the price paid for each property. We recommend you contact the submitter and notify them of the DOR's response; however, if they insist you take it as submitted we would record.

NEW-Question: I received a Lis Pendens to vacate Spring View Court and a Resolution to Vacate and Discontinue all of Spring View Court. The resolution states the land is going to the adjacent owners. Do these types of documents require a real estate transfer return?
Answer: If they are transferring the property with this document they need a transfer return. Per Jeremy's handout at the spring conference:
Does a Resolution to Vacate require a transfer return? Yes, a return is required. If there is no parcel number assigned to the vacated parcel you can list the parcel numbers of the property(s) the vacated parcel will be attached to.
With all that said, this Lis Pendens does not say to transfer the property. A lis pendens just puts the world on notice that a legal action is pending. We would not require the transfer return with this document as it is written. You indicated that the resolution says to transfer to the adjoining owners; we would require the transfer return with the resolution. It all depends on what document actually transfers the property.

NEW-Question: When processing a transfer return the document failed as the transfer receipt had already been used. After investigating I discovered the document had been submitted electronically and then also submitted in paper. Both transactions paid a transfer fee.
The Department of Revenue instructed me to refund the second transfer fee. Is that all I need to do? Do I need to do something in my recording system such as void the second deed? FYI, my system allows me to void a document; it is still searchable by grantor/grantee and legal description.
Response: The document is recorded and the $30 recording fee is not refundable, the county should refund the second transfer fee. We recommend you make a notation on the second recording stating, "This document has been erroneously submitted for recording twice, the duplicate Transfer Tax Fee has been refunded to the submitter."
Note: Depending on the timing of the discovery of the second recording you may be required to make an adjustment on the monthly Real Estate Transfer Fee Transmittal Report which is remitted to the Department of Revenue.

New-Question: We received a Resolution to Vacate yesterday with a transfer return. I tried looking back at our other Vacations and didn't see a transfer return. I checked with my RPL, and she agreed that we shouldn't need a transfer return. Our recording stamp for Vacations also doesn't have the questionnaire for a transfer return. We can get that changed if needed.
When we corresponded with the attorney, they provided us with 2 other Resolutions to Vacate, which did have transfer returns with them using exemption 2. I can see why they could need them, since the property is being attached to the adjoining land owners, but is it required?
Response: The committee agrees that a transfer return should be included as they are conveying land. WI Act 145 requires an ERETR be filed with every conveyance document except in two circumstances which are 77.25(1) and 77.25(10m). In this particular case exemption 2 applies if there is no consideration paid.

Question: Can you tell me if a county tax foreclosure judgment requires a state transfer form? If so, what exemption should they use, 4 or 14?
Response: The committee agrees the county is required to include a transfer return with the judgment under tax foreclosures. Exemption 14 should be used when the county acquires the property through a tax deed or tax foreclosure judgment. Exemption 4 applies when the county sells the property taken under tax foreclosure.
Note: If the judgment does not convey the property and a separate conveyance document will follow a transfer return is not needed; however, this is not a common practice in the tax foreclosure process.

NEW-Question: Must the deed state why the submitter is using an exemption 3 on the transfer return? We received a deed and transfer return that has exemption 3 on the return but nothing on the deed stating what they are correcting or confirming. Should I accept this for recording?
Response: The committee agrees it would be in the best interest of the submitter to include on the deed the reason for using exemption 3; however, there is not a provision in the statutes requiring the register of deeds office to reject the document if it is not provided. We recommend you contact the submitter and explain that adding the reason for the exemption may help with future title questions. If the submitter wishes to leave the explanation off the deed you should record as submitted.

NEW-Question: We received a Trust Deed that is moving the property from a parents trust to their children's trust. Can they use exemption 8?
Response: The committee agrees you should take the document as presented; while the exemption is not the appropriate exemption we do not have a statutory reason to reject it. The Department of Revenue will determine whether the exemption is applicable.

NEW-Question: Does an Award of Damages require a transfer return?
Response: The committee agrees a transfer return is required with an Award of Damages; they are exempt from a fee per Wis. Stats. 77.25(2r); however they are not exempt from a return. 2015 Wisconsin Act 145 enacted in February 2016 states all conveyance (transfer of ownership) documents presented for recording at a Register of Deeds office must include a real estate transfer return. There are only two exceptions under state law (secs. 77.25(1) and 77.25(10m), Wis. Stats., which are for conveyances made before October 1, 1969 and conveyances that solely designate a TOD beneficiary under sec. 705.15.

NEW-Question: We recorded a document that included a transfer return and transfer fee; it was later determined that the document did not intend to convey property so no transfer fee would be due at this time. My question is, it was recorded in July and July end of month is approaching. Can I just reference this document number on the RE Transfer Fee Transmittal form and subtract what I send to the DOR or should I submit the fee and wait for DOR to audit?
Response: Contact DOR and see how they would like to handle this situation.

NEW-Question: We received a document titled Quit Claim Deed and Interest in Real Property, the grantor quit claims to the grantee all flowage right to set the waters of the Wisconsin River back… Does this document require a transfer return?
Response: The committee agrees the document requires a transfer return, if the grantor is intending this to be an easement they will need to add to the face of the document that is it exempt from transfer return and fee i.e. "This is not a conveyance per sec. 77.21(1), Wis. Stats."

NEW-Question: I learned at the conference that I have been allowing some QCDs to be recorded without an eRETR in error. Did this change in 2016 when the other changes were made? Examples:

<u>Example 1) QCD designating ownership rights</u>

Grantor: John Smith, Jane Smith and Jim Jones (same as previous deed)

Grantee: John Smith, Jane Smith and Jim Jones as joint tenants with rights of survivorship

<u>Example 2) QCD with verbiage: this is not a conveyance per sec 77.21 (1) Wis. Stats.</u>

Grantor: Jane Smith, formerly known as Jane Jones and John Smith

Grantee: Jane Smith and John Smith, wife and husband

Response: The committee contacted WI Department of Revenue for clarification. Both documents are considered correction instruments to clarify the ownership rights and both would require a transfer return using exemption 3. This is part of 2015 Wisconsin Act 145 that took effect February 6, 2016.

NEW-Question: Lately we have been receiving deeds and eReturns for recording wherein the date of the document and the date that it was notarized is a date in February, normally a pretty recent date, however the date of conveyance as noted on the eReturn is a date in January. Some of the eReturns even show a date of conveyance from the previous year.
I am reading through the common questions tab on the DOR website regarding date of conveyance. It would appear that the date of conveyance and the date on the deed should be at least within the same month. Should we be rejecting for this reason if they are not?
Answer: The committee agrees you should accept eReturns as long as the date on the return is not a future date. We reviewed the statutes and could not find reference to limit the date requirement. The WI Department of Revenue's (DOR) instructions recommend the user enter the closing date, if that date isn't known, enter the date the document was signed. Per the DOR's Q & A states the "Date of Conveyance" is the date the deed is "delivered to the buyer" which is interpreted as the "date of closing" even though the deed may have been signed on a different date. If the date of closing is changed to a different month or into the next year from what was originally entered, the eRETR "Date of Conveyance" must be changed.

NEW-Question: Does an Extension of a Land Contract require an eReturn?
Answer: The Committee agrees a transfer return is required for an extension of a land contract. The Department of Revenues Q&A states: Yes. Any amendment to a land contract requires the submission of a transfer return. The amendment is exempt from transfer fee under state law (sec. 77.25(3), Wis. Stats.). Note: An increase in value requires the submission of an additional transfer fee.

NEW-Question: I know we are exempt from the transfer return fees, but I am wondering if I need to create an eReceipt if I am recording a Judgment Amendment. What is a Judgment Amendment? Our office annually does a group tax foreclosure by In Rem proceedings. After the original judgment by the court, the County by ordinance allows former owners to buy back their property before we sell. When that happens, and it did last month, the court signs an amendment to the judgment that is prepared by our Corporation Counsel. That is what a Judgment Amendment is in this situation. So basically, we are voiding out or reversing the judgment for a particular property and placing ownership back in the former owner's name.
I called our ROD office and I asked them to look at previous Judgment Amendments from our office to see if I had provided an eReceipt in the past and they did not see any going back to 2019. So, historically, we have not created an eReceipt when recording a Judgment Amendment, but both the ROD and I are wondering about that. Could you tell me whether the County needs to create an eReceipt for a Judgment Amendment? Again, we know we are exempt from the transfer return fee, so that is not the question.
Response from DOR:
Was the original judgement recorded with eRETR? If so, what doc. #?

From Treasurer to DOR:
Yes, the original judgment was Doc No. 2137859.
Final Answer from DOR: Yes, a return should be submitted. I would say exemption #3 fits best, based on your explanation. Here are our guidelines:

- Transfers of property foreclosed on by the County should use exemption 14.
- Sales of these properties to cover delinquent taxes owed should use exemption 4.
- Corrections instruments, recorded to modify the documents above, require an eRETR and qualify for exemption 3.

Leo Kiedrowski, Real Estate Transfer Auditor

NEW-Question: I received a document releasing all rights and interest acquired by virtue of a Land Contract. The Land Contract granted rights to farm the property until the Purchaser cancelled this provision. Being that the Land Contract actually conveyed the property to the Purchaser and retained rights to crop the land (to the Vendor), and that a transfer fee was paid for the transfer of the property, does the Release of Crop Rights require a DOR transfer return/receipt?
Response: I would say no, an eRETR would not be required for that purpose.

NEW Question: We received a trustee-deed wherein one trust is conveying to another one; Jane Doe Trust to Jane Smith Trust, the document states for purposes of showing the woman's name changed. The document also states it does not require a transfer return as it is not a conveyance per 77.25. I believe it should be referencing 77.21(1) which defines conveyances if the attorney feels it is not a conveyance.

Response: The committee agrees this is a conveyance of property from one trust to another. It may be the same person's trust; however, the trust name has changed. A transfer return is required; similar to when a woman changes her name through a marriage or divorce. The correct statute is Wis. Stats. 77.21(1) defines conveyance.

NEW-Question: Does the Department of Revenue require a Transfer Return with an Assignment of Grantor's Interest in a Land Contract?
Response: The committee agrees that the transfer of a vendor's interest in a land contract does not require a transfer return; see DOR's Q&A:

1. Is there a transfer fee due on a deferred land contract when there is an assignment of a vendor's interest in a land contract?

No. An assignment of a vendor's interest does not provide for the passage of ownership interest in real property and does not require a transfer return under state law (sec. 77.21(1), Wis. Stats.). Since a return is not required for a conveyance of a vendor's interest and typically does not involve the vendee, the deferred original land contract can remain deferred until satisfied or upon an assignment of the vendee's interest in the land contract. Note: An assignment of a vendee's interest is not only subject to fee but also requires a transfer fee on the original deferred land contract; this is because equitable

conversion gives the vendee an ownership interest in the real estate.

UCC Searches/Filings

Question: Regarding UCCs documents, do you need parcel numbers?
Answer:
If your county has passed a resolution requiring parcel numbers on all documents referring to real estate parcels, then yes. If the resolution specifies PINs only for instruments of conveyance of title, then no.

Question: Do you bill the USDA Farm Service Agency for UCC filings, searches &/or copies? Do they qualify for billing under 59.43(2)(j)?
Answer:
No per DFI-CCS 7.06(2)

Question: What procedure do you follow when you receive a UCC without a legal description? Do you keep copies of the rejected UCC and Notice of Refusal form? If so, how long do you retain the copies?
Answer:
Per *409.520(2), "Communication Concerning Refusal. If a filing office refuses to accept a record for filing, the filing office shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted the record."*
The Wisconsin Administrative Code Chapter DFI-CCS 2.08 spells out the process for filing a UCC that was wrongfully rejected. It states the filing officer shall, "File the UCC document with the filing date and time assigned when the filing was originally tendered for filing." Unless you retain a copy of the Notice of Refusal form, you would not be able to comply with this requirement.
The statutes do not address how long the "rejection communication" must be retained. DFI has recently decided to keep all rejection notices for 3 months; it would be WRDA's recommendation to follow the states retention of three months.

Question: We received the UCC3 back with a plain sheet of paper attached with the legal on it instead of form 3Ad. Our handbook guidelines & DFI admin rules advise that land recording offices in this state will only accept National Standard Forms. s 409.521(3) states "A filing office that accepts written records may not refuse to accept a written record in the following form" and then shows the standard forms, which seems vague to me as far as what we can accept. So my question is, do you accept plain sheets attached to the UCC1 or UCC3 without the 1Ad or 3Ad? (Lois Hagedorn, Clark)
Answer:
Marvel Lemke, Taylor: Yes, I accept plain sheets attached to the UCC1 or UCC3 without the 1Ad or 3Ad. The instructions for the UCC3 indicate "if you need to use attachments, use 8.5 x 11 inch sheets and put at the top …etc., etc., you are encouraged to use Amendment Addendum (Form UCC3Ad)." If you want to require the UCC3Ad to be used in your county, you can refuse the document on the Notice of Refusal form by checking the first item under "General" – the record has not been communicated by a method or medium authorized by this filing office. (409.516(2)(a)). This allows counties to handle it in whatever manner works best for them.

Question: We are beginning the painful process of back scanning all UCC Fixture filings. Does anyone know when chattel mortgages ended and UCC's began (I am looking for a date). My deputy thinks it was in the 1960's. Does anyone know how far back we need to scan the UCC Fixture filings? (Cathy Williquette, Brown).
Answer:
The topic of UCC Retention is being asked frequently. Bottom line, all financing statements should be microfilmed or scanned before documents can be discarded. FYI...I also checked the Historical Society ROD Retention Schedule which indicates the chattel documents as "permanent" records. They are also classified nonpermanent records with a retention of Current Year plus 7 - the Historical Society asks to be "notified" when purging these records. (Marvel A. Lemke, Taylor)

Question: Can a subordination of mortgage form be used to subordinate an older UCC to a brand new mortgage? (Beth Pabst, St. Croix Co).
Answer:
If it is recordable, we would take it. (Lois Hagedorn, Clark Co.)
It is my understanding there are only two UCC forms – UCC Financing Statement and UCC Amendment. The UCC amendment allows for a termination, continuation and assignment – it does not give an option for subordination. So using the subordination of a mortgage gets the job done while keeping the UCC in place. (Marvel Lemke, Taylor Co.)

Question: Can we record non real estate related UCC's in our offices if a customer insists? What is the statute that says we do not if there is one? (Cheryl McBride, LaCrosse Co.)
Answer:
No. Per Marvel Lemke, Taylor Co. the following is the Statute – DFI for financing statements not filed as a fixture filing.
409.501 (1) FILING OFFICES. Except as otherwise provided in sub. (2), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:
(a) The office designated for the filing or recording of a record of a mortgage on the related real property, if:
1. The collateral is as-extracted collateral or timber to be cut; or
2. The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or
(b) The office of the department of financial institutions or any office duly authorized by the department, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

Question: Is a UCC form required to have a "drafted by"? (Deb Brandt, Monroe County)
Answer:
They are not subject to *59.43*. Many of the requirements under *59.43(2m)* are not required on UCC's. UCC's are subject to different statute (409) as they are not signed or notarized either. The return to is not required but some lenders do put one on the document for "copies" to be returned to them. (Cheryl McBride, LaCrosse County)

Question: What does "fixture" mean in UCC fixture filings?
Answer:
"Fixtures" means good that have become so related to particular real property that an interest in them arises under real property law.

Common language on a UCC form: "Fixtures" means all materials, supplies, equipment, apparatus and other items now or hereafter attached to or installed on the property in a manner that causes them to become fixtures under the laws of the state of Wisconsin. Whether such right, title or interest in such items of property is now owned or hereafter acquired by the debtor, including all built-in or attached furniture or appliances, elevators, escalators, heating, ventilation and air conditioning system components, emergency electrical generators and related fuel storage or delivery systems, septic system components, storm windows, doors, electrical equipment, plumbing, water conditioning, lighting, cleaning, snow removal, lawn, landscaping, irrigation, security, incinerating, fire-fighting.

Other examples may include: siding, soffit, fascia, spare and repair parts, special tools, equipment, software, hardware, accounts receivable, chattel papers, deposit accounts, water heaters, minerals, oil to be extracted.

NEW-Question: Are we still required to return rejected UCCs with the "Notice of Refusal to Accept Record Presented for Filing" form? Having been using since 2001, but would prefer to just use my office rejection, if possible.

Response: Reading through ADMIN Code DFI-CCS 7.04(7) & 409.520(2), it does not say we must use the rejection form, however you must enter a date, time and reason in your rejection letter. We believe the form is to assist you in complying with the requirements. DFI's website no longer has a link to that form; we do not believe you need to use it as long as you include the information indicated in Wis. Stats. 409.520(2). We recommend you review 409.520 for reasons you can legally reject a UCC statement for, it is very limiting.

NEW-Question: We received a UCC Financing Statement, while we were verifying the legal description we noticed the names did not match. Our records show Sally Smith owning the property, the UCC document shows Sally Jones & Mark Jones. She never added her husband to a deed and never changed her name on a deed so the tax bill is in the name of Sally Smith. Would you question it or just take it in?

Response: The committee agrees you should take the document as submitted and index with Sally & Mark Jones. As long as the document is in recordable format you have no authority to reject it. It will be a matter for the courts if there is any issue in the future.

NEW-Question: We received a UCC 5 Information Statement document electronically; at the top it states: CAUTION: this is not an amendment. They are using it to correct the legal description on a UCC Amendment form, however the instructions & Item 1 says Identification of the record to which the Information Statement Relates & then 1a asks for the initial financial statement. Do they fill in both? Do they put the UCC Amendment number in 1 and then the initial UCC in 1a?

Response: The committee researched WI DFI's website and it appears that UCC 5 forms are used to correct an error found on a previously recorded or filed UCC statement. The UCC 3 form is used to terminate, assign or continue a previously recorded or filed UCC statement. Wis. Stats. 706.085(2)(a) states the correction shall recite the document number of the original document it is correcting, for this reason you may reject the document. We would recommend they check with their attorney for questions related to the form.

NEW-Question: I'm trying to figure out if we should be rejecting if it does not have the recording date. I got a phone call from a credit union after we rejected an Amendment for that reason, and she said that

no other county rejects for that. So is what we are using outdated or should we be rejecting?

Answer:

You should not be rejecting for a missing recording date as Wisconsin has unique file numbers aka document numbers. Per the instructions for the UCC FS Amendment form:

1a. **File Number.** Enter file number of initial financing statement to which this Amendment relates. Enter only one file number. *In some states, the file number is not unique; in those states, also enter in item 1a, after the file number, the date that the initial financing statement was filed.*

Additional UCC forms and instructions can be found on the WDFI website:
https://wdfi.org/ucc/forms.htm

Unusual Documents

Question: What statutory recording requirements do ***Sanitary District Boundary/Orders*** have to follow? i.e. Complete and accurate legal descriptions? Original and notarized signatures?

Answer:

Per s. 88.40 Assessments for costs to be certified to register of deeds; assessments are lien on lands. (1) *Immediately after the issuance of a drainage board order levying any assessments for costs, whether original or supplemental, the drainage board shall record in the office of the register of deeds in each county in which the assessed lands are situated a certified copy of the order, including a true description of each parcel of land in that county that was so assessed and the amount that it was assessed.*

Summary: Based on ***s. 88.40*** it is safe to say that the signatures should be originals and notarized and the document should include a "true description for each parcel so it can be assessed properly." Technically, ***s. 59.43*** requires a "legal description," it doesn't say it requires the correct legal description to accept for recording.

If you index the full 40 acre parcel that shows on the document, then you have indexed what is on the document accurately. If they do not list the new CSMs/Subdivision it is to their detriment. It is the submitting entity that will be harmed if the document is not found where they want it.

Some title companies don't go back to the underlying "40" once a CSM or subdivision is created. It is to their detriment if the sanitary district is not put on the appropriate tax parcel assessment statements or found by title companies.

Many RODs do not verify the legals with parcel numbers so most likely would not know if a newer legal description applied. We can always let them know that it may not be found by all those that need to know. If they don't want to correct it, we should still record it (as long as they have the notary/certified copy).

In the long run, the municipality would most likely appreciate you for requiring more information up front so the assessor who works for the municipality can properly assess each parcel and they can collect the correct amounts. If they do not want to provide the most current legal description (i.e. lots of CSMs/Plats) then there is a good chance that the assessments will be missed by the assessors.

Question: A ***Notice of Lease*** was presented for recording that was only signed by the lessee/grantee (the person to whom the lease is given). The lessor/grantor (one who leases to a tenant) did not sign, nor were they listed. Is this acceptable for recording? Since the lease

involves a mineral or timber interest, is a transfer return/transfer tax due? Can it be required that a lease indicate under which statute it is exempt from a transfer fee and return if it is a lease for less than 99 years and does not involve timber or mineral interests?
Answer:
A Notice is similar to an Affidavit in that it is just making the public aware that something is in existence. It would be better to have the lessor listed in the document and sign. That suggestion can be made to the drafter. However, the document shouldn't be refused recording for lack of these items. A transfer return and tax is due on any lease involving mineral or timber interests. It cannot be required to show exemption language on other leases, but it is strongly recommended the drafter be asked to show the exemption language to clarify the situation.

Question: I was asked to record a ***Certified Copy of a Judges Oath of Office*** (received from the state). Do you record Oaths of Office? If so, who pays the recording fee?
Answer:
The majority of those responding indicated they record their Deputy Appointments for no charge and file their Oath of Office in the County Clerk's office. Some felt they would accept a Judges Oath of Office for recording if presented in recordable form (i.e., certified copy) and would charge the normal recording fee. Others felt it was not in the statutes to be recorded in our office and, upon advice of their Corporation Counsel, would refuse to record. *Per 19.01(4), official oaths of circuit court judges shall be filed in the office of the secretary of state. Under 59.43(3), the Register of Deeds appoints one or more deputies. The written appointment shall be recorded in the Register's office. Statute 59.21(1) indicates official oaths of county officers shall be filed and designates under the duties of the clerk in 59.23(2)(m)(2) that the clerk will file the official oaths.*

Question: Does anyone know where you obtain government Land Patents? (Rita Conlin, Pepin)
Answer:
www.glorecords.blm/gov

Question: We received a deed that was submitted by an attorney. The parents are deeding a forty-acre parcel to their son and daughter. Within the body of the deed, it is stated that the portion north of the highway goes to the son and the portion south of the highway goes to the daughter. We rejected the deed and informed the attorney that he needs to draft two separate deeds. He is challenging this and wants me to cite statutes to back this up. I called our corp. counsel, and he suggested that I put the question out to all of you, since he does not know of anything I could use to back up our rejection of the deed. I asked two title people in our office and they both felt one deed would not provide clear title for the grantees. Karen Miller, Ashland
Answer:
Our county is zoned so these would be considered illegal parcels. The property lister would ignore this deed and most attorneys would be smart enough not to try to record it. The local authority (village, city, town, county) must approve a zoning change at which time the owner would be required to have a certified survey map to establish the two parcels. I wonder how you would index such a document in the tract. (Jane Licht, Dane)

Question: We received a document title ***REQUEST FOR NOTICE***. It is in recordable form but the body of the document says. It mentions that in accordance with Section 2924B, Civil Code, they are requesting that any notice of default or notice of sale of a certain property that they have a lien on be sent to them, when and if that happens. Would we be under any obligation to flag their mortgage and inform them of any judgments, lis pendens, etc? (Larry Eckert, Deputy Register of Deeds, Milwaukee County)
Answer:

If it meets all the other statutory requirements (ie, format, legal description, notary, etc) and includes the correct recording fee, record it, as long as it doesn't reference any liens against elected officials. Let the submitter ask for a copy. See California Civil Code: 2924b. (http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=civ&codebody=2924&hits=20 (Marvel Lemke, Taylor County).

Question: I have a local Abstract & Title Company who want to know if certified ***Domiciliary Letters*** ever become outdated? They want to record Domiciliary Letters but believe they were told that Domiciliary Letters become outdated. (Monica Bauer, Pepin County)
Answer:
Per our Probate Office, they do become outdated usually after six months. New Domiciliary Letters would have to be obtained or a copy indicating probate is still open and Domiciliary Letters are still in full force & effect. (Lois Hagedorn, Clark County)

Question: Can anyone explain the difference between a ***Release of Cost-Share Agreement*** and a ***Satisfaction of Cost-Share Agreement***? Is the Cost-Share Agreement Release used when the Cost-Share Agreement is completed, however, the property remains to be used as agricultural, and the landowner needs to stay compliant? And is the Cost-Share Agreement Satisfaction used when all obligations are complete, and the land is no longer used as agricultural? (Carey Petersilka, Door County)
Answer:
NR 153.22 (11) Release of property from obligations of cost-share agreements. At the request of the cost-share recipient, a governmental unit may fully or partially release a property from the obligations of the cost-share agreement provided that the governmental unit has determined that the best management practices installed on the property will be maintained or replaced with practices which will not increase the pollutant loading to surface water or groundwater counter to the water resource objectives of the grant application. If state dollars in excess of the amounts enumerated under sub. (10) (a) have been expended for the best management practices that are located on the property to be released, the governmental unit shall obtain written approval from the department before releasing the property from the obligations of the cost-share agreement. The release form shall be obtained from the department and filed with the cost-share agreement.
NOTE: Forms can be obtained from the department's Bureau of Watershed Management or the department's Bureau of Community Financial Assistance, 101 S. Webster St., PO Box 7921, Madison, WI 53707-7921.
NR 153.22 (12) Satisfaction of cost-share agreements. At the request of the cost-share recipient, the governmental unit may issue a certificate of satisfaction provided the governmental unit has determined that the cost-share recipient has met all of the obligations of the cost-share agreement, including the operation and maintenance period. The satisfaction shall be documented on a form provided by the department and filed with the cost-share agreement. For cost-share agreements recorded with the register of deeds under sub. (10), the
Satisfaction form shall be recorded in the office of the register of deeds for each county in which the property is located. (Marvel Lemke, Taylor County)

Question: I received a question from a realtor regarding the ***Pier Registration*** requirements. After researching the information (Marvel Lemke helped) we found that in 2011 a revision to the original Act was passed. (Lisa Walker, Columbia County)
Answer:
2007 Wisconsin Act 204, the regulation of Piers and Wharves, was revised in 2011 (2011 Wisconsin Act 167), which grandfathered all piers prior to April 2012.
I called Martye Griffin, DNR representative, for confirmation and he confirmed that prior to 2012 piers are grandfathered and no registration process or form is required. If a pier is placed after

April 2012, it is necessary to review the information on the Waterway & Wetland permits: Pier FAQ to determine if pier registration is required. (Lisa Walker, Columbia County)

Question: What is the proper method to have a ***Letter of Map Amendment*** (LOMA) from the Federal Emergency Management Agency (FEMA) recorded with the Register of Deeds for a specific property? The LOMA removes the structure located on the property from the Flood Zone. (Susan Ginter, Wood County as asked by Jeremy M. Ray, Property Appraiser, City of Wausau and City of Schofield)

Answers:

To my knowledge properties are added and removed by FEMA all the time and we do not record them. All information in Brown County goes through our Zoning Department and they update their records. ROD's are not responsible for flood zone maps. (Cathy Williquette Lindsay, Brown Co.)

All the LOMA's should go through the department that administers the FIRM's (Flood Insurance Rate Maps) usually a planning/zoning department. They note them as the property being removed from the flood zone. (Jodi Helgeson, Adams County)

Question: Who is authorized to issue an ***Affidavit of Satisfaction***? (Sharon Martin, Washington County)

Answer:

Per s.708.15 (8) SATISFACTION AGENT; NOTIFICATION TO CREDITOR OF AFFIDAVIT OF SATISFACTION. (a) Only a title insurance company, acting directly or through an authorized agent, may serve as a satisfaction agent under this section. An affidavit of satisfaction under this section is valid only for security instruments recorded against residential real property.

(9) AUTHORIZATION TO SUBMIT AFFIDAVIT OF SATISFACTION FOR RECORDING; FEES. (a) Subject to pars. (am), (b), and (c), a satisfaction agent may sign and submit for recording an affidavit of satisfaction of a security instrument against residential real property that complies with sub. (10) if either of the following applies:

1. The secured creditor has not, to the knowledge of the satisfaction agent, submitted for recording a satisfaction of a security instrument within 30 days after the effective date of a notification complying with sub. (8) (b).

2. The secured creditor authorizes the satisfaction agent to do so. (am) An affidavit of satisfaction is signed by the satisfaction agent only if it is signed by 2 persons who are employees of, and who have been authorized by, the title insurance company to sign an affidavit of satisfaction on behalf of the title insurance company acting as satisfaction agent.

(d) A satisfaction agent may submit for recording an affidavit of satisfaction that complies with this section even if full payment or performance of the secured obligation or payment as provided in a payoff statement under sub. (3) or a corrected payoff statement under sub. (4) was made before December 14, 2013. (Sharon Martin, Washington County)

NEW-Question: Who is responsible to record a name change in the Register of Deeds Office? I contacted my Clerk of Court for a printout of the ***Order for Name Changes*** that were filed for 2018. I had a feeling that we were not getting these to record. In fact, I'm unable to find any in our index. Could someone help find me find the statute that was mentioned at conference that states the Clerk of Court is to remit these to our office for recording?

Response: Stat.786.36(2) requires the name change to be recorded in the Register of Deeds office; however, the statute is silent on who is responsible to make this happen. Members of the Help Desk committee had discussions with their Clerk of Courts and all the Clerks responded similarly; it is the responsibility of the person changing the name – not the Clerk of Courts. We recommend you have a discussion with your Clerk of Courts to facilitate the process. Most are willing to include some information in their packet regarding the statutory obligation to record the certified copy with our office

and then make an effort to remind them when the final order is processed. Communication with your Clerk of Courts is vital for implementation in your county.
Record retention for civil filings is 20 years. The Clerk of Courts does report the name change to the Bureau of Vital Statistics as is required in the statute.

NEW-Question: We received a ***Will Substitute Agreement*** for recording; we are unsure of what to do with it? The document states they are using this to avoid future probate, the property is in a husband and wife's name and after death they want it to go to their trust. Should we treat it like a Designation of TOD Beneficiary?
Response: We agree it may be nice to reach out to the attorney to remind them all the information regarding the account balances and bank names will be public notice. We also think the preferable document would be a Designation of TOD Beneficiary. However, if they want you to record it as is, there is no statutory reason not to record as presented.
As presented we would index as an Agreement, grantor is husband and wife, grantee is their trust. They will be required to do a document to transfer the property after both spouses pass away and will need to reference the recording information from this document; a transfer return would be required at that time.

NEW-Question: I have a gentleman that has called me numerous times in the last week talking about ***title surrender***. What he has done is surrender the title for his mobile home. His banker is telling him he needs to record that document with us. Has anyone dealt with anything like this and if so any instruction would be great.
Response: That is correct – see https://dsps.wi.gov/Credentialing/ManufacturedHomes/SB3209.pdf
While this was not a question posed to or answered by the help desk, I thought I would include it for future reference purposes.

NEW-Question: We received and ***Affidavit of Heirship*** that stated the decedent had two children as his only heirs. The next document was a Quit Claim deed where the two children were the grantors, the decedents name or estate was not listed as a grantor. Can they do this?
Response: The committee agrees you should accept these documents for recording providing there is a transfer return and the fees are correct. The affidavit would be entered with the decedent's name and the affiants name as grantors, the remaindermen children will be the grantees. The use of a Quit Claim deed is not the usual way we see the property transferred; however, that would be up to the courts and title companies to sort out. The documents are in recordable format and there is no statutory reason to reject them.
You could give the submitter a courtesy call as the Real Property Lister and Title Company may have issues with the way the documents are prepared.
We will work with Joint Alpha to get this opinion updated.

NEW-Question: I have someone who wanted to record fictitious name registration. I think they are looking for ***Registration of Firm Name***, as it is for an individual for rental property. I see DFI has a form for Adoption of Fictitious Name for a foreign corporation (I would think that means corporation outside of state of Wisconsin, not out of United States of America). Is anyone aware of anything else that would

make sense for her situation? She said she filed a document like this in Florida.
Answer: The committee agrees the customer should seek legal counsel to ensure the document they record accomplishes their intention.

NEW-Question: We rejected a "***Certification of Trust***" document because the signature of the trustee (on page 2) was not notarized. The document as presented for recording includes the cover page, page 2 (with recitals, doc. date, and original un-notarized signature of trustee), and the remaining 4 pages, which are **photocopies** of select pages of the trust including the initial trustee's notarized signature (again said notarized signature is a photocopy).
The attorney referred us to §701.1013 as evidence that this document does not need notarization. I've attached the statute in question as the last page of the pdf.
Does this statute exempt the document from the notarized signature requirement?
Answer: The committee feels it could be rejected because ROD standards may differ from statutes regarding trusts.

NEW-Question: I received this request from my Treasurer/Real Property Lister. Do any of you have any ***Order for Consolidation of Drainage District*** like this recorded?
I talked to you about a week ago about a drainage district that begins in Ozaukee County and continues into Sheboygan County. Two districts (District 1 and District 2) belong to this drainage district. I found out recently that the 2 districts were consolidated to be one district. I have asked the attorney that works with these drainage districts whether or not he has recorded this order in the Register of Deeds Offices in Ozaukee and Sheboygan and he stated that WI State Statute 88.791 doesn't require it. He also indicated that he didn't want to provide a legal description, which he thinks he would have to include, if recording the order. I read that statute and it basically states the process of how to consolidate a drainage district. That statute doesn't say the order should be recorded, it doesn't say it shouldn't be recorded. I am wondering if there is some other statute that would require the drainage district to record this document. I also don't think that a legal description is necessary to be included, as the document as it stands would allow our office with Real Property Listing to move forward to do our work. Some of the reasons I feel it is important to record this order are as follows:
1. This is an important historical document. If it is not recorded it will only be lost in time and nobody in the future will ever know how or why the consolidation ever happened. By recording it, it becomes a permanent record in the Register of Deeds Offices in both counties. I have come across situations in real property listing that make me wonder where a document ever ended up, and how useful it would have been to have it recorded.
2. Real Property Listing doesn't make changes to districts without getting that information from the Register of Deeds Office, according to WI State Statutes 70.09 (2) (a) (2) and 70.09 (2) (a) (5). Although I have brought these statutes to the attorney's attention, he has responded that he isn't required to record this document.
I wonder if there is some other statute that you or any of your peers would know of that would require that this document be recorded. Could you check into this and let me know what you find out? Perhaps it is possible that some other county has a similar order recorded in their office.
Response: 88.34 Hearing by the court; organization of drainage district.

(9) The order organizing a drainage district shall be recorded with the register of deeds of each county in which lands of the district are located.
I'm not sure how this would apply to consolidations since 88.791 doesn't specifically mention anything about recording. However, if the order organizing the district needs to be recorded, it seems logical that the consolidation order should be recorded as well.
According to 88.19(3) the Secretary of the Drainage Board is the legal custodian of the records. 88.19(4)(1) states the secretary shall distribute the records to the state drainage engineer and the county zoning administrator, 88.19(4)(2)(b) that the drainage board secretary and the zoning director shall maintain the records in perpetuity.
So really, the register of deeds does not need it. If they record it great, but with legals.

NEW-Question: Our Zoning Dept wants to record an ***"Affidavit Regarding Presence of Floodplain, Wetland and Shoreland Restrictions"***; FEMA is requiring the Zoning Dept to record floodplain document(s). We are trying to figure out the best way to do this. The Zoning Dept would like to record this document with a copy of every deed attached. Is it required we attach every deed and legal with this document or could we just have them list all the document numbers so we could copy over the legal descriptions? We are anticipating hundreds of them.
Answer: The committee has not recorded such a document yet. We do see a few issues with the format of the document; the form as presented lacks a proper jurat as the form does not allow the notary to indicate who they are performing the notarial act for, or the county where they performed the act. We do not believe copies of each deed are required to be attached; we would recommend the current legal description, PIN number, and if they wanted the deed document number.
We recommend you work with your Zoning Dept and Corp Counsel to ensure the form fulfills the needs of FEMA and meets our recording requirements.

NEW Question: I have a title company whose customer insists a ***DNR Well/Drill Hole/Borehole Filing & Sealing Report*** be recorded. It's not signed or notarized, so what is the best way to do this? Have the title company do an affidavit and attach the report to the affidavit?
Answer: The committee researched the report document and see that it is to be filed with the DNR. DNR staff indicated that the report is submitted online by the well driller and pump installers and no signatures are required. They also said it is not required to be recorded and their website is available to view the report at all times. The committee recommends you let the submitter know this information, if they still want it recorded we would record.

NEW Question: The submitter sent three documents electronically, two affidavits of successor documents and a warranty deed to satisfy a land contract; the property was sold on land contract from a trust to an individual. Two of the original trustees have passed away, thus the affidavit of successor was filed for each of the descendant's. We rejected the batch because they attached the death certificates as indicated in section three of the document. Do they need to submit the affidavit of successor documents when there is a trust and if so do they require a transfer return? Do we need to see the death certificate with and affidavit of successor?

Note: The transfer return for the warranty deed included a transfer fee which was not required since the original land contract paid the fee already.

Response: The committee agrees the affidavit of successor documents do not require a transfer return as they are not conveying any property. While these documents may not be required for recording purposes, they are helpful for a clear title. The Register of Deeds is not required to view the death certificate. The warranty deed which is satisfying the land contract does require a transfer return; we recommend you check the original land contract to ensure the transfer fee was paid at that time, if so the transfer return should be redone using exemption 17. We recommend the submitter either cross off section 3 of the affidavit, or indicate the death certificate is not attached, as we cannot record a vital record in our real estate documents.

New-Question: An attorney submitted an ***Affidavit of Interruption*** referencing Wis. Stat. 893.305; the document was a copy of two deeds, a copy of a previously recorded Affidavit of Interruption and copies of some maps. There was no grantor/grantee listed, no signature, no drafted by and no notary. I sent the document back to him and said these things were required to record the document. He is arguing with me that he does not need all the above. I told him that I would give it to my Corp Counsel to look at. He said his deadline to record is today and asked if I could back date the document; I told him no. There was nothing original about this document, just a bunch of copies.

Response: The committee agrees the submitter is required to follow Wis. Stats. 59.43(1c)(a) which indicates the name of the grantor and grantee and notary must be plainly printed on the document. Wis. Stats. 893.305(6) also states they must follow Wis. Stats. 59.43(9) listing our indexing requirements. As always you should follow the recommendation of your corporation counsel as they will be the one to defend your response if need be.

NEW-Question: We received an ***Affirmation Agreement*** electronically, there is no legal description. I have never seen this type of document before; I believe it should be file in the Clerk of Courts. Should I accept for recording?

Response: The committee agrees that any document submitted for recording would require a legal description and they signatures must be notarized for this reason we would reject. This type of document was new to the committee as well; after further investigation is appears to be a document used in bankruptcy proceedings. This document is used to designate any property you don't want included in your bankruptcy. The reaffirmation allows the debtor to continue to pay their mortgage so they don't lose their house, hence keeping that creditor off a schedule F of the bankruptcy documents.

Vacated Roads

Question: I have an attorney who is sending over an order to vacate an alleyway, and he is telling me that it does not have to have original signatures as the original has to stay with the municipality. I am trying to find the state stats that say we are to have original signatures. (Renee Miller, Marinette County)

Answer:

706.05(2)(a) (a) Bear such signatures as are required by law; (Paula Chisser, Sawyer County)

New-Question: We received an Order to Vacate a street that was not signed by the court, but rather the municipal. Does this document require a notarization and drafted by statement? How would you index the document type – Order or Vacation?

Response: Since the Order is coming from the town, it does not need to be notarized as the town clerk is attesting to the validity of the document. We recommend accepting the document as submitted and index it as a Vacation which will make it easier to find when searching. Wis. Stat. 59.43(5) allows for the name of governmental agency as the drafter. The Town's order was attested by the town clerk who we would consider the drafter and would not reject because it doesn't specifically state "drafted by XXX town of XXX".

Vital Records (Birth, Death, Marriage, Domestic Partnership & Divorce)

Question: Who may copy vital records?

Answer:

s. 69.30 Authorized copying of vital records. *(2) A financial institution, state agency, county department, Wisconsin works agency, service office or long-term care district or an employee of a financial institution, state agency, county department, Wisconsin works agency, service office or long-term care district is not subject to s. 69.24 (1) (a) for copying a certified copy of a vital record for use by the financial institution, state agency, county department, Wisconsin works agency, service office or long-term care district, including use under s. 45.04 (5), if the copy is marked "FOR ADMINISTRATIVE USE". (2m) A county clerk under s. 59.23 or a clerk of court under s. 59.40 who processes passport applications is not subject to s. 69.24 (1) (a) for copying a certified copy of a birth certificate, if provided to a person for submission with a passport application and the copy is marked "FOR PASSPORT USE ONLY". (3) Any person may copy or may make available electronically an uncertified copy of a vital record for an event occurring before October 1, 1907, that is issued under s. 69.21 (2) (b) or (d).*

Question: What is the WRDA's best practice recommendation for the replacement and charging of vital records?

Answer:

The following best practice was established and voted on by the WRDA at the June 2014 Summer Conference: If a death certificate has a county or state error, we will replace for free what they return to us. If it is not a county or state error, then they will be charged the $20 + $3.

NEW Question: We had a customer come in with a birth certificate she purchased four years ago from our office; she just now noticed a parent's name misspelled. She wants a new one for free, what do other counties do in this situation?

Response: The committee recommends you create an office policy for standardization purposes and post it in your office. The most important factor is consistency in how you respond to exchanges or replacements. The committee agrees if the error was made by a county or state agency we would replace free of charge within 60 days.

The state vitals office policy is:

Vital Records Exchange/Replacement Policy

- The SVRO allows for an exchange or reissuance of a certificate, on a one-time basis, for any reason within 60 days of issuance.
- The requestor must return incorrect certificates, and will receive certificates equal to the number they submit for exchange.
- SVRO and LVRO will not exchange certificates issued by another vital records office.

If you feel it is appropriate to charge for errors made by others another option may be:

Vital Records Exchange/Replacement Policy

- XXX County Register of Deeds will exchange or reissue a certificate due to an error made by a county or state agency within 60 days of issuance.
- Errors made by an entity other than the county or state are not exchanged free of charge, the statutory fees apply.
- The requestor must return incorrect certificates and will receive certificates equal to the number they submit for exchange.
- XXX County Register of Deeds will not exchange certificates issued by another vital records office.

**Note:* *Have an office policy in place to ensure consistency.*

Question: An individual doing genealogy work has purchased many copies of real estate documents. He plans on reciting information from the documents verbatim in his genealogy book he is preparing. He wants to know, are there any prohibitions on this type of activity?
Answer:
No. You may want to caution him and explain that the register of deeds must record every document that is acceptable by law for recording. Just because a document is recorded is no absolute proof of accuracy or legality.

Question: We recently had a situation with a certificate from the locked file there was no father's name on the certificate and the supposed father was the one applying.
Answer:
If the father's name is NOT on the certificate, he does NOT have a "direct and tangible" interest in it. (Peggy Peterson).

Question: We had a genealogist in our office searching her family tree. She was interested in two stillbirths from 1965, which she found in the index. The state retrieved and destroyed all these records from each county. The customer was somewhat surprised, as she had just visited two other counties where she was able to view them. How can this be?
Answer:
Yes, the records were removed from county offices several years ago. These records are not considered public records, as they are only a report. Occasionally, the state will also run across a fetal death report, but they do not let genealogists view them.

Question: Can we release any information over the phone about Vital Records, and if so, what information can we provide?
Answer:
We do not give out vital index information over the phone. This would be considered a search

and they would have to request the information in person or by writing. If someone gives a name and date, and ask whether or not a particular record is filed within my county, I will check and answer yes or no.

Question: In the case of a death where no body was found (example—drowning in Lake Michigan), can a court order be accepted instead of a certified copy of a death certificate for presentation with an HT-110 form?
Answer:
Most responses indicated they would accept a court order instead of a death certificate. A notation should be made on the HT-110 form regarding the type of document presented in lieu of the death certificate.

Question: Where does it say in writing that death certificates are not to be recorded?
Answer:
An AG opinion on this issue is included in the WRDA Handbook in the "OPINIONS" chapter.

Question: We receive many requests for vital records and have never kept the search fee. Should we be charging to search for records even if no record is found?
Answer:
Under 69.22 (2), it states "…any local registrar…may charge $7 for a search of vital records if the registrar finds no record". Vitals Records in Madison does charge for each search. The same price is charged as the copy cost. That means they charge $20 for searching for a birth, death or marriage. If pressed for a refund on a search, they will issue a refund, but do not do so normally. Since the State Registrar directs the system of vital statistics and sets the policy, our office has been charging for searching for records (and at the same rate), but per the statute cited above, you are not required to charge.

Question: Can the Historical Society copy our vital records indexes, or are we allowed to photocopy the indexes for them? Can they bring lap top computers in to our office to "copy" the indexes?
Answer:
With the recent changes in the statutes regarding indexes detailed in a Memorandum dated September 2001 from the Bureau of Health Information-Division of Health Care Financing:

- Birth index information may be copied or reproduced for the public only after 100 years have elapsed from the year in which the birth occurred. No impounded records/information can be released.
- Death and marriage indexes may be copied or reproduced for the public after 24 months
have elapsed from the year in which the event occurred.
- Beginning 1/1/2003, any information issued from a copied or reproduced index shall contain the following statement: "This information is not a legal vital record index. Inclusion of any information does not constitute legal verification of the fact of the event."
- Indexes prepared for public use shall consist of the registrant's full name, date of the event, county of occurrence, county of residence, and, at the discretion of the state registrar, state file number.

Therefore, if the indexes contain only the information identified and are for the time periods identified, it is permissible to copy them for customers. Use of a lap top computer to "copy" indexes can be permitted if the indexes to be "copied" also meet the criteria. It would be up to the individual register and the county's policy if they wish to allow lap tops in their office, or

not.

Question: How should out of state and foreign vital records filed/recorded in our office prior to 1986 be handled?
Answer:
Chapter VIII, Page 12, #3a states that since 1986 (per statute changes) it is illegal to issue copies of these records. You may contact the individuals involved and return these certified copies to them. Inform them of the change in law and advise them to keep the records in a safe place. Additional note per Michelle Pink: "You should remove these records from your files when they are identified." The only exception is when a foreign-born, non-US citizen is adopted in Wisconsin. The Madison Vital Records office will create a certificate of foreign birth. Certified copies of these records can still be issued as a Wisconsin vital record.

Question: What is an apostle certificate, and how can one be obtained for a certified copy of a birth, death or marriage record?
Answer:
Authenticating a document by means of an official certificate is often required to confirm the existence of a particular notary public or public officer who has signed/certified the document. An "apostille" is a specific format of an authentication certificate that is required by certain countries. Under the Hague Convention, an international treaty established decades ago, the apostille certificate was established to verify the signature and seal of a notary public or public official on a document. Over 100 countries, including the U.S., now subscribe to the Convention. In most of the United States, it is the Secretary of State's office that keeps track of notaries and other public officials who may certify documents (such as vital records) and is responsible for issuing authentication certificates. When requesting authentication certificates, it is important to specify which foreign country is involved, so it can be determined if an apostille or regular authentication is needed.
The Wisconsin Secretary of State now has the application for an authentication certificate available on the Internet. Walk-in service is no longer available due to the high volume of requests. The application is available at https://sos.wi.gov/apostilles.htm. The completed "Certificate Request Form" and fee should be sent to the Secretary of State's office in Madison. The document containing the signature and seal to be authenticated should not be submitted. The completed certificate will then be returned so that it can be attached to the document. All requests are processed in the order received.

Question: If you receive a phone call from someone purporting to be from the state vitals office or from a register of deeds office from another Wisconsin county, what is the best course of action?
Answer:
If you do not recognize the voice of the person asking for information, do not assume the caller is the person he or she claims to be. Get a phone number to call back, and verify that it is a number from the particular office. If it is not a number on your listing for that specific office, call the number listed for that office and ask to be transferred to the caller .

Question: We do not have a policy in our County Code for issuing vital records. If the DA comes in for a death record personally or the coroner I will issue a Certified Copy for court use only and they will fill out a form. Recently I have had human services asking for Birth Certificates for court use only but I have them fill out a form for each child, sign and give me a check. Is this consistent with other counties? (Cindi Meudt, Green)
Answer from SVRO dated 4/28/2016:

We verify that they actually need a record before issuing it. They would complete an application and pay for a copy of the record. If they want an uncertified copy of a marital record, they can obtain it without additional documentation. If there is a pending court case and they can demonstrate that it is needed for court, we would issue a certificate for court use only. (Rebecca, SVRO)
**Note:* *Have an office policy in place to ensure consistency. A sample can be found in the Resources tab on the WRDA secured site.*

Question: This e-mail is from Julie Pagel concerning the copying of a driver's license for a vital record.
Answer:
Concerning the question on the legality of copying drivers' licenses, I looked up the statute and the referenced DOT Admin Rule (s.343.43, Wis. Stats. and Trans 102, Admin Rules). The Admin Rule (Trans 102) that is referenced in (f) below states that government agencies are allowed to reproduce the licenses (or ask the license holder to copy it for them) as long as we are using the copy in an attempt to insure the identity of the person presenting the license. We can't transfer the copy to a third party. There is no prohibition on size of the reproduced document, but I would think, if it is clear that the person making the copy took great pains to make it look just like an original license (size, color, laminated, etc.), he or she would be in trouble since it would be prima facie evidence of intent to use the copy as a substitute for the original. (Peggy Peterson, State Vital Records).

Question: Burial of body on private land. What did you record to show that a body was being buried on the families property and what information was included on the document. Do you record a deed of some type or use a Burial Site type doc? Any information would be helpful as I told the funeral director that I would get back to him tomorrow. (Randy Leyes, Rock Co)
Answer:
While there is no law against burying on private land, unless there is a local ordinance in place, burial on private land is an accepted practice BUT highly discouraged because of the burial sites protection offered which is fine if folks intend on keeping the property forever. If the family does not provide a document indicating where the burial is at on the land, it is suggested that the information be passed on to the Wisconsin Historical Society and they can create a catalogued burial site report which can be recorded. I explained the future implications (resale value, limited expanded building, etc) because of a burial on the property. (Jodi Helgeson, Adams Co)

Question: Who is the person you contact at the State level concerning professional and registering them? (Rita Conlin, Pepin Co)
Answer:
Burial Sites Program at the State Historical Society – 608-264-6494 or 608-261-1002. Home burial sites do not have to be registered unless they bury a certain number of people every year and then there are other requirements. (Cathy Williquiette, Brown County)

Question: Can a Domestic Partner receive a copy of their partner's death certificate? And is the domestic partner considered a joint tenant? (Ellen Schleicher, Sheboygan Co)
Answer:
Vital Records has instructed Registers of Deeds, funeral directors, etc on how to report domestic partners (DP) on death records. For a death occurring on or after August 3, 2009, the death record should be completed as follows: #12(Marital Status) Report the decedent's marital status (do not count the DP); #18(surviving Spouse) enter the name of the DP and in

parentheses, add “Domestic Partner”. If the informant questions the legal status of the decedent’s DP, you can ask this question – “Did the decedent and his/her partner file a Declaration of DP” with the Wisconsin Register of Deeds office? If the answer is yes, the decedent was in a state-recognized DP and can obtain a copy. Effective August 3, 2009, if owners are described in a deed as domestic partners, or are in fact domestic partners, it is presumed that the property is owned in joint tenancy unless the intent to create a tenancy in common interest is expressed [s. 700.19(2m)]. (WRDA Handbook – HT110). Legal point on Termination of DPs: If the partners filed a Certificate of Termination of DP, it does not go into effect until 90 days after the date it was filed at the ROD office. (Marvel Lemke, Taylor Co.)

Question: If someone marries, then later the courts annul the marriage, did the marriage legally ever exist? What happens to the marriage certificate if the marriage did not exist due to the annulment? (Marvel Lemke, Taylor Co).
Answer by SVRO:
If a marriage gets annulled, it does not legally exist. They do not have a 6 month waiting period to marry (again). It would count on another marriage application. On the bottom in the confidential information section it should show “Last marriage ended by” annulment. In reference to the marriage certificate filed in the local Register of Deed’s office, it would only be removed from the file at the direction of the State Vital Records Office and the page would be dead numbered (blank page inserted with the original page number).

Question: What do we charge for a copy of a “Record of Accidents”? It’s an older book in my office and I occasionally receive requests for copies. (Carey Petersilka, Door Co.)
Answer:
Per Peggy Peterson, State Vital Records – the answer is you should not be making copies. In our Vital Records Committee meeting today, it was mentioned that some local registrars were concerned over an earlier e-mail regarding century-old accident reports that some have on file (1905-1907). Unfortunately, some registrars thought that the message stated they must transfer those files to vital records so that they could be given to the accident prevention program. However, it is not mandatory that you turn those records over to the state. We offer this solution to those of you who want to get rid of these documents but don't know how best to go about that.
You are certainly welcome to keep them if you wish. However, they are medical records and therefore cannot be viewed by the public, so in many cases they are just a security liability to your office and they take up space. If you want to dispose of them (and you don't want to give them to the accident prevention staff), you should check with your records retention officer to see if you can do that. If you are allowed to destroy them, they must be destroyed as confidential medical records (shredded).
I hope this clears up the questions on these documents. If not, give me a call at (608) 267-7812.

Question: When back scanning, are you removing death certificates recorded with older real estate records? (Paula Chisser, Sawyer Co).
Answer:
Per the Wisconsin Historical Society, Register of Deeds Retention Schedule, real estate records are permanent records. It is my understanding that a Register of Deeds does not have the authority to correct an original recording of a document made by a predecessor, per 61 Atty General 189.
Per WRDA handbook, OAF13-91, a death certificate is not to be recorded in the real estate records:

Topic: Do Not Record Death Certificate

In OAG 13-91, Attorney General Jim Doyle, answers questions of the Winnebago County Corp Counsel John Bodnar in a letter dated June 14, 1991. “It is important to emphasize that the register of deeds does not actually record the death certificate, but only the application form [HT-110], even under sections 867.045(3) and 867.046(5). A certified copy of a death certificate is only presented to establish that it is filed elsewhere. The actual death certificate is not filed with the application. This is an important distinction because only the state registrar under section 69.03 and the local registrar under section 69.05 are required or permitted to register vital records which included death certificates under section 69.01(26)..”

However, I would insert a page when scanning to display on the internet but would not remove the page from the original paper records. (Marvel Lemke, Taylor Co).

Question: I have a customer calling that wants to know if certifieds have been issued for a deceased & who ordered them. Is that public record? Do I have to give that information out? (Cheryl A. McBride, LaCrosse Co.)

Answer by Linda Langlois, State Vital Records Office

- Since our application forms contain personally identifiable information, discretion should be used for these types of requests, but they would be somewhat considered an open records request.
- You should ask the customer if they have a direct and tangible interest in the record and what legal purpose are they asking for this information.
- They would need to put their request in writing including who they are, how they are related to the decedent and the purpose/reason why they need to know who applied and obtained copies.
- They would need to give specific information on the period they want you to search.
- We have told LVRO’s they only need to maintain applications for 2 years and then they can be destroyed, and this information can be confirmed to customers.
- Also, some offices may have no way of knowing if they had an application (by computer for example) unless they physically search through paper application forms.
- You can charge a customer a fee for staff time and research.
- For example, if it takes a staff person 3 hours to go through 1 year worth of application forms and the staff person makes $15.00 an hour, you could tell the customer it would be $45.00 for each year they want searched.
- In my experience, law enforcement has asked me for this and need it for fraud/criminal investigations.
- For other customers, it seems to be mostly curiosity and when they find out there’s a fee involved for staff time and research, they typically end up not interested in pursuing it.

Question:

1. Were birth, death & marriage records required to be filed by 1907?

Vital Records was mandated into law in Wisconsin on October 1, 1907. From that date on, record filers (the people who filled out the actual certificates) were supposed to file all birth, death, marriage and divorce certificates with the State Vital Records. There were also “local” vital records offices including County Registers of Deeds and many City Health Offices. All but two City Health Offices in Milwaukee and West Allis have been closed. If records dated prior to October 1, 1907 got filed in Vital Records, we maintain them, but no law required them to be filed prior to that time. Divorce actions were (and still) are only filed at the State, not at the local level. (Linda Langlois, State Department of Vital Records)

2. What about cross over to the State records, was that sometimes done instead?

Effective October 1, 1907, the law directed record filers to submit the original birth, death or marriage to the local office first. The local office filed the record (put their signature on it; numbered it; dated (filed) the record; kept a "copy" for archive and issuance; and submitted the original certificate to the State. Keep in mind prior to copy (like Xerox) machines being invented, record filers often hand- filled out 3 copies of each record – one being for the State, one for the County and one for the City. They might all look like originals, but only the State's copy is considered the original and the locals are considered a copy. NOTE: Due to the massive size of the Vital Records system, there are those instances where a record may be on file at the State and not at the local and others may be on file at the local and not the State. This may be due to staff errors, lost copies in the mail, etc.

3. Are there websites where genealogists can learn whether or not a record is available?

Wisconsin Vital Records (both State and local) does not publish any vital records indexes or records on the Internet in order to protect the identity and privacy of Wisconsin citizens. The Wisconsin State Historical Society does have a copy of all pre-October 1, 1907 Vital Records indexes and they have a free on-line search site, but Vital Records does not publish any Vital Records indexes or records, whether pre or post October 1, 1907 on the Internet.

Question: In a cabinet I found a bunch of microfilmed records including: births, deaths, and marriages. We have these records in paper and I'm wondering if the film can be destroyed? Any changes to any of those records now will be incorrect records! (Paula Chisser, Sawyer Co.)

Answers:

If you have all of the original paper documents and the microfilm was just a back-up medium (that is now out-dated), the film can be destroyed. Film must be destroyed in a secure manner & not just shreaded. (Linda Langlois, State Vital Records Office)

Larry Stanczyk at the State Records Center indicated that they do destroy microfilm in a secure process, the only problem is that you need to drop it off at their site at 4622 University Avenue, Madison. There is a $.50/lb fee to do this, your film needs to be in a covered and taped box, each box must weigh less than 30 pounds and be marked what type of media is in the box and labeled —destroy. You can contact Larry at 608-266-2995 if you have any further questions. (Staci Hoffman, Jefferson Co.)

Question: For a Termination of Domestic Partnership, should you use the same volume and page numbers that you used for the recording the domestic partnership agreement or did you create a separate volume and page for them? (Louise Principe, Kenosha County)

Answer:

From the Register of Deeds (RD) Handbook, Page VI-4:

Terminations should be consecutively numbered in accordance with LVRO numbering procedures (like death and marriage records).

The LVRO should prepare a public index of Terminations in accordance with *s. 69.07, Wis. Stats*. The public index can only contain the following information:

*Current names of partners

*Date filed (This should be clearly labeled as Date Filed as it is not the effective date of the Termination of the partnership)

*County

*County file number (optional)

SVRO recommends that LVROs file the Terminations separately from the Declarations, but LVROs are not required to store the Terminations in a book. They may be stored in a file in a drawer.

In Taylor, they will be given a separate volume/page and the termination record will be ‗linked' to the original… similar to a satisfaction to a mortgage in the real estate index. (Marvel Lemke, Taylor County)

Question: Would the Wisconsin DMV accept the name change of a man via marriage? (Staci Hoffman, Jefferson County)
Answer:
Everyone is treated equally at the WI DMV with regards to name changes. Anyone, man or woman, wishing to change their name at the DMV must provide the legal document that proves the name change. This document could be a marriage certificate, divorce decree, or legal name change paperwork from the courts.
We also ask that anyone changing their name contact the Social Security Administration to update their name with them prior to coming to the DMV. (Teresa Rowe, WI DOT)

Question: I think the state should be asked again now that Lisa is State Registrar & also ask VA office if they do and what their authority to do so is based on. Are VA offices authorized to fax death certificates to other VA offices? (Lisa Walker, Columbia County)
Answer:
The SVRO position remains to be that according to Wisconsin State Statute, Veterans Service Offices are not authorized as being able to copy vital records. We believe you should just confirm that there is no provision in Wisconsin Statute that allows them to copy vital records. (John Kiesow & Linda Langlois, State Vital Records Office)

Question: We had a woman in here from RTI Donor Services wanting a certified extended fact of death certificate for a young man who committed suicide. She had a "telephonic document of authorization" supposedly from the mother of the man but it was not signed since the information was taken over the phone. How do we know that the family really authorized this? We also thought that she could just have a fact of death not extended and she said that wouldn‟t do them any good that they needed the extended. Maybe this is on the up and up but how can we accept a phone verification that says the family says it is okay for them to have this? Plus, why would they need a certified copy and for that to be the extended? (Cheryl McBride, LaCrosse County)
Answer:
From your specific case, we would never accept a telephonic authorization. According to statute and our policies we need a written, signed application.
The only persons that can obtain a certified full copy of a death certificate with the cause of death are person with a DTI.
If a Donor service requested a full certified copy of a death with extended fact of death, they would need to do one of two things:
1) They would need a written, signed authorization from a member of the immediate family with a DTI (as indicated on the application form) or
2) They would need to indicate they are authorized in writing by a person with a DTI and present a copy of their contract with the family that specifically shows that they authorized to apply and receive a full copy of the death certificate with the cause of death.

I would doubt donor contracts specifically give the Donor Service a right to apply and receive a full copy of the death certificate (I would think they would get most information/documentation from coroners and ME‟s). With that said, they would be required to have a written, signed statement from a family member with a DTI and it would need to be attached to their application. (Linda Langlois, State Vital Records Office)

Question: Can a county issue an extended fact of death uncertified copy?
Answer:
Yes, IF they meet the direct and tangible requirement as well. (SVRO)

Question: When you create an “Application” in the CAS program and you have a “BIRTH” and “MARRIAGE” in the same Applicant I.D., why does the LVRO Transaction Summary list the first item, such as, if I enter “BIRTH” first and “MARRIAGE” second, the report lists “BIRTH” for both. (Monica Bauer, Pepin County)
Answer:
SVRIS lists the first event type on the LVRO Transaction Summary no matter how many requests (even for different events) are associated with the application. What I was told back when those reports were created was that Netsmart could not get multiple events listed so they just use the one entered first. (Lisa Walker, Columbia County)

Question: How does a person get a certified copy of their birth certificate if they were born in Germany? Does anyone have the link that tells us how to go about getting records for foreign births, etc? (Deb Brandt, Monroe County)
Answer:
You can to www.dhs.wisconsin.gov/vital records. Look under “Frequently Asked Questions”: How do I obtain a certificate for a birth that occurred in another state or country. (Monica Bauer, Pepin County)

Question: I have a person who is purchasing a certified copy of her birth certificate. She is also asking if we can do a “letter of non-marriage as well”. She is trying to prove that she was not married in the county. Do we do this and if so, do we charge a fee? (Deb Brandt, Monroe County)
Answer:
The customer will need to contact the State Vital Records Office because they complete those requests. (Monica Bauer, Pepin County)

Question: I have a couple dropping off their marriage certificate and asking to purchase certified copies. The officiant is from Chicago, Illinois. Do I need a letter of sponsorship before I accept the marriage certificate and issue the certified copies? (Deb Brandt, Monroe County)
Answer:
The Register of Deeds Office DOES NOT need anything from an officiant. The County clerks office may want a letter. From Page V-11 of the Vital Records Handbook D. SPECIAL ISSUES 1. Officiants SVRO receives numerous inquiries on the legality of certain “nontraditional” officiants. Some County Clerks feel uneasy about issuing a license of marriage if the officiant does not appear to easily fit any of the categories listed in *ss. 765.16* and *765.17, Wis. Stats.* Since the problem involves the question of separation of church and state, we must give the applicants the benefit of the double in these situations. A legal opinion from the Attorney General makes it clear that County Clerks are not required to validate or otherwise determine whether a marriage applicants’ listed officiant is authorized under *s. 765.16, Wis. Stats.* The statute does not permit inquiry into the method of ordination or appointment. This would include concern over internet-ordained ministers, or self-marriages. In terms of out-of-state officiants, the law requires that they have a letter of sponsorship from a member of the clergy of the same religious denomination or society who has a church in this state under his or her ministers. However, the law does not require that the letter or credentials be filed with the County Clerk. It is the burden of the couple to decide the legality of their chosen officiant. Since they are the

ones who would ultimately suffer if the marriage would later be contested, they must be able to make that decision. (Sara Nuernberger, Taylor County)

Question: We have some marriage records from 1978 that show the statistical information, such as, race of the bride and groom, number of this marriage, if previously married, last marriage ended by and the education information. It doesn't specifically say "CONFIDENTIAL FOR STATISTICAL PURPOSES ONLY" anywhere on the record. Should we be covering that part up when making certified copies, or only cover it up if it specifically says "CONFIDENTIAL FOR STATISTICAL PURPOSES ONLY"? (Deb Brandt, Monroe County)
Answer:
I did go back and look at our 1978 marriages and some do say confidential information and some do not. I did make a point of telling staff to watch that and they should be making certified copies without that information showing. (Cheryl McBride, LaCrosse County)

Question: I received a telephone call from a funeral home who said they had someone who passed away in a VA hospital and the Doctor who is signing does not have a Wisconsin Physicians License Number because he is a federal employee/doctor. What do they put on the Death Certificate? (Cheryl McBride, LaCrosse County)
Answer:
The funeral director should be instructed to enter the letters "VA" in the License Number field. This is an acceptable value when the physician is a Veterans Affairs doctor. These instructions were inadvertently left out of the user manual. We will add this instruction to the next revision. (Lisa Hebl, State Vital Records Office)

Question: Is there a limit on the number of copies we can issue of a death certificate that has a pending cause of death? (Diane Poach, Washburn County)
Answer:
No, there is no limit. Just make sure they realize that they will have to pay for more certified copies after the cause of death is added. (Diane Poach, Washburn County)

Question: Is there a specific format requirement for entering names such as hyphenations, etc.? For example, we received a death certificate for Patricia Marie Taylor Gigl. When I searched the record I entered Patricia% Gigl% and the record was not found. I then entered the date of death and found that the last name was entered Taylor Gigl. I was under the impression that the percent (%) wildcard would assist with showing names that were similar to Gigl but Taylor Gigl did not show up. My concern is as we continue adding records into SVRIS, searching by name could become a problem, especially for larger counties. (Lisa Walker, Former Columbia County Register of Deeds)
Answer:
There is not specific format for entering names with a hyphen in SVRIS. However, there are many ways the search could be performed. The percent sign is used as a wildcard but when entered as Gigl%, SVRIS will return any one person whose has the first four (4) letters in the last name of G-I-G-L. In your example, the percent sign would only work if the search was entered using the wildcard as the first character of the last name (ex. %Gigl) then SVRIS would display all records where the last name ended in G-I-G-L. Neither of those are great searches nor do I think most people would think to search that way or assume that this was a hyphenated name. I would suggest that if after entering what looks like the first and last name and the date of death without a successful return, that the user removes the first name and re-searches. If still no success then remove the last name and leave the first name and re-search. This usually works. If all else fails, I search on date of death alone. The nice thing about SVRIS is that there are many fields to search with so a user can really come up with many, many ways to find a

record even if the name doesn't work. Generally speaking, we would not recommend that a search be performed in SVRIS without using a date of occurrence (birth or death). At the very least, the year of occurrence should be used. Searches that do not include at least a year can result in a significantly slower response time. (Michelle Smith, State Vital Records Office)

Question: Are the applications for vital records considered confidential? If a customer comes in requesting to see a copy of a certain application, can we share that with them?
Answer:
SVRO is in agreement with the WRDA Vitals Committee. The applicant information on the application is confidential and therefore, the application is not public record. If the customer is not satisfied with the answer, you may refer them to Lisa Walker at lisa.walker@wi.gov or 608-266-0997.

NEW-Question: Do non-marital birth records have a time limit for when they can be viewed by someone without a direct and tangible interest?

Response: Non-marital birth records are confidential and do not have a time limit for the record or the index.

NEW-Question: A gentleman came into our office to purchase a copy of his neighbor's mother's death certificate. He said he was authorized, but nothing in writing. Could someone point me in the direction of how we should receive that authorization?

Response: Please see the Disclosure of Vitals Records Information memo distributed by State Vitals on July 28, 2018, an original statement that is signed and dated from the person with direct and tangible interest is required.

If a requester is someone other than the registrant, parent(s), immediate family, legal custodian, guardian, or a representative authorized in writing, such as an attorney, physician, funeral director, or other designated agent with written consent acting on behalf of the registrant or his/her family, certified and uncertified copies may be obtained if the requester submits a request in writing; if the request is accompanied by the fee required under Wis. Stat. § 69.22; if the request establishes the identity and appropriate relationship of the requester per Wis. Stat. § 69.20; and if the requester presents an original statement that is signed and dated from the registrant.

NEW-Question: When a vital record is requested and not found, do you keep the $20 and if so, do you split the fees with state? Or do you return the fee to the submitter?

Response: The committee referred this question to the Vitals Committee for further review. The vitals committee discussed this question at the February meeting with SVRO; the State does keep the $20.00 fee, many other counties do as well. There is no need to split the fee with the state if a copy is not issued. Some counties have people send in 2 checks with their requests, one for $20.00 and one for $7.00; if the record is not found they can then return the $20.00 check. SVRO cannot mandate how you handle the request; you should determine an office policy and be consistent.

NEW-Question: How does a person register a burial site on their property? A family member indicated his grandmother was buried on the family farm; he wants to ensure the grave site is not disturbed in the future.

Response: The committee recommends the customer contact the Wisconsin Burial Preservation Board to discuss the options available to them. We also recommend they check with the County Zoning Department for any specific county requirements.
State Historical Preservation Office, Care of State Archelogy, Wisconsin Historical Society, 816 State Street, Madison, WI 53706, 608-264-6494

NEW-Question: Can we accept a Matricula Consular ID card to issue a vital record?
Response: The committee agrees when using a Matricula Consular ID the customer would need an additional form of ID to obtain a vital record. SVRIS helpdesk has a link to the memo sent 7/27/2018 to the LVRO regarding the forms of ID needed:
https://share.health.wisconsin.gov/ph/vitalrecords/LVRO/Documents/Disclosure%20of%20Vital%20Records%20Information.pdf#search=consular%20id

For more information on Consular identification cards please see this link:
https://en.wikipedia.org/wiki/Consular_identification_card

NEW-Question: We have a customer trying to amend the spelling of his last name on his birth certificate; does he need to purchase a certified copy of his marriage license with the correct spelling or can SVRO just look it up in their records?
Response: The committee agrees that the SVRO amendment packet requires two documents showing the correct spelling of the last name prior to his 10th birthday; the documents may include a sibling's birth certificate with the correct spelling, medical records, school records, and other items provided to him in the amendment packet. A certified copy of the marriage license will not help him at this time. Wis. Stats. 69.12 allows for the person to petition the court to order a change/correction of fact without a legal name change. The courts can order SVRO to make the change based upon satisfactory evidence provided to them; at this time the certified marriage certificate may be needed. As a general rule the state requires certified copies for amendments; they will not use their records to view the spelling.

NEW-Question: I have a birth and death record for an infant who died at birth; there is no name listed on either record, the events occurred in 1934. Can I issue an uncertified death certificate and how do I request an update to SVRIS for the birth if there is no name?
Response: After review of a memo dated March 6, 2017 from SVRO the committee agrees both the birth and death records should be pulled from the local registrar's records and index. The records should be mailed to the State Vital Records office. The customer can request copies from the State Registers office.

NEW-Question: At the June conference, there was discussion regarding the authority of a temporary guardian to obtain a vital record for someone. It was said that there was something on the temporary guardian form that would allow/disallow the temporary guardian to obtain vital records.
Response: The committee believes it was indicated that as registers if an applicant indicates they have "guardianship" on the application, we cannot insist that they attach or provide their guardianship paperwork. You can ask to see the guardianship paperwork; however, they are not required to provide

it. You should issue the certified copies as requested, if fraud was suspected you should contact SVRO. We did not understand the temporary guardian form would indicate they could or could not obtain a vital record.

NEW-Question: We just received a phone call from someone who has not received her certified copies of her marriage she ordered the beginning of October. We show they were mailed out 10/9/2019; however she is saying she never received them. Her check has cleared and we have asked her to check with her local post office.
Response: The committee agrees that we would replace the documents. Since the customer contacted you in a timely manner and three weeks have already passed since you have mailed them, we assume they were lost in the mail to no fault of the customer.

NEW-Question: Is there a timeline the hospital needs to follow to submit birth records to SVRO? Please forgive me if this information is out there and I overlooked it.

Our current situation: our local hospital hasn't submitted any birth records for 2020 – we have folks coming in requesting the birth certificates for their children and we have to turn them away. I contacted the hospital only to learn the director has been out of the office and the next in line has not heard of this before, nor does she know if the director has/had a backup person. I did provide her with the phone number to SVRO but have not heard anything back yet.
Response: Per Wis. Stat. 69.14(1)(a) A record of birth for every birth that occurs in this state shall be filed within 5 days after the birth with the state registrar. We recommend you contact the State Vitals office so they may instruct the hospital staff of their obligation.

NEW-Question: We had a customer who required his grandfather's birth certificate from 1902 but it was a delayed registry of the record from 1954. Do we issue from the in-house book as the "event" was pre-1907 or do we ask vital records to update the record as that was filed post-1907?
Response: It is the recommendation of the Help Desk committee that you follow the guidance found in the SVRO letter dated 02 Jan 2020, which indicates that Birth Records are to be issued from SVRIS 10/01/1907 - with the notation that any request for "paper photocopy" be UNCERTIFIED ONLY. Additionally, if uncertain it is the Help Desk recommendation that the LVRO contact SVRO directly for guidance.

NEW-Question: Just checking – people can still marry themselves, correct? (ie Bride is officiant)
Answer: From Deb See Self marriages s. 765.16 Point: Yes, but they must belong to a sect that allows it.