

Electronic Recording Delivery System Memorandum of Understanding

Note: Each county's Memorandum of Understanding (MOU) will be written to meet their individual county needs, including for multiple years.

Parties

This Memorandum of Understanding (MOU) is between the California Department of Justice, hereinafter referred to as the "DOJ," and the County of Tehama, hereinafter referred to as "County."

Purpose

The Legislature passed the Electronic Recording Delivery Act of 2004 (Gov. Code, §§ 27390-27399; ¹ "ERDA") to enable counties to electronically accept, record, and return certain instruments affecting a right, title, or interest in real property. Subdivision (a) of section 27397 provides that a "county establishing an electronic recording delivery system [ERDS] . . . shall pay for the direct cost of regulation and oversight by the Attorney General." The purpose of this MOU is to memorialize the parties' understanding of how these costs are calculated and apportioned.

Acknowledgments

The parties acknowledge that under the ERDA, certain statutory duties must be performed before a county puts its electronic recording system into operation. For example, the Attorney General must evaluate and certify the ERDS selected by each county (§ 27391(a); § 27392(a)); "approve software and other services" (§ 27392(b)); establish a list of approved computer security auditors (§ 27394), conduct criminal background checks (§ 27395); certify that each county's submission method will be secure (§ 27397.5(d)); and may, from time to time, "adopt regulations for the review, approval, and oversight of electronic recording delivery systems" (§ 27393(a)). These duties entail costs which cannot be adequately recouped through the collection of recording fees authorized in section 27397. Each participating county is responsible for paying, among other things, its proportionate share of the costs of developing, operating, and monitoring its ERDS. (§ 27397(a).)

¹ All statutory references are to the Government Code.

Agreement

The DOJ and County hereby agree that County will pay the DOJ for the County's proportionate share of the DOJ's direct costs for regulation and oversight, as specified in the ERDA,

General Provisions

County agrees to pay the DOJ for the County's proportionate share of the direct costs of carrying out the DOJ's obligations under the ERDA, which costs may include all or part of the following: staff, consultant, and vendor costs for program development and implementation including hearings, meetings, travel, site visits, minutes, mailing, legal review of regulations, procedure and forms development, advertisement, and drafting, review, and approval of regulations. Extensions of this MOU beyond the first year will be made by addendum to the MOU. This will allow the DOJ to issue a new estimated cost figure, via the Letter of Intent process, for the next fiscal year that includes the cost of regulation and oversight without requiring the parties to sign a new MOU. The County's estimated cost calculations for succeeding fiscal years will be prepared by DOJ and will follow the annual Letter of Intent process.

Cost to County Formula

The direct cost of developing and adopting regulations, and the costs of regulation and oversight under the ERDA, are allocated to each county based upon the total number of documents recorded and filed the previous year, as reported to the Office of the Insurance Commissioner. (See § 27296.) The formula to determine a county's proportionate cost is set by the total documents recorded and filed per individual county, divided by the total documents recorded and filed by all participating counties. The percentage figure obtained for each county is applied to the estimated annual costs of the Attorney General to arrive at an individual county figure.

Cost of the Attorney General

The estimated costs of the Attorney General are those costs projected to be incurred in the next fiscal year, as well as the costs actually incurred to date. County agrees to pay the DOJ for actual expenditures incurred and in accordance with the final costs identified herein, which is attached hereto and made a part of this MOU. The County shall annually provide to the DOJ the total documents recorded and filed as reported to the Office of the Insurance Commissioner for the previous year. (§27296.) The DOJ shall issue an annual estimated cost to the County based on the Cost to County Formula. The final cost to the County will be incorporated herein by reference.

Payback and/or Carry Over

If the actual costs exceed the estimated costs, the following year's estimated direct costs will be adjusted to capture the additional costs; the following year's estimated costs along with the previous year's adjusted amount will then be used as the base for redistribution to each participating county. If the total actual costs are less than the estimated costs, the following year's estimated direct costs will be adjusted to capture the decreased costs; the following year's estimated costs along with the previous year's adjusted amount will then be used as the new base for redistribution to each participating county.

DOJ Reporting

The DOJ shall report to the County every ninety (90) days on the expenditures made by the DOJ to carry out its statutory obligations under the ERDA.

Payment

County shall pay to the DOJ a lump sum of the final proportionate cost owed by the County, as incorporated herein by reference, toward the direct cost to be incurred by the DOJ. Payments to the DOJ shall be deposited in the Electronic Recording Authorization Account, which is hereby created in the Special Deposit Fund.

Payment Method

Upon receipt of the signed MOU from each county, the DOJ representative will sign and return a copy of the MOU to the county representative as identified herein, for their records. A copy of the signed MOU will be forwarded to the DOJ accounting office, which will generate an invoice for payment due. Upon receipt of the invoice, the county will send the said lump sum payment along with the bottom portion of the invoice to the address as referenced in the MOU and on the Invoice.

Payment shall reference the invoice number and customer number and shall be made to:

California Department of Justice
Accounting Office, Cashiering Unit
PO Box 944255
Sacramento, CA 94244-2550

Term

The term of this MOU will be from the date this MOU is signed by the DOJ and County MOU representatives until the end of Fiscal Year 2013/2014.

A County Recorder reserves the right to terminate this MOU upon thirty (30) days written notice to the DOJ. Refunds of payment toward regulation and oversight will be prorated as incurred in the fiscal year at the time of termination. Upon termination of the MOU, without the mutual intent of the parties to renew, the County Recorder shall cease operation of its ERDS.

Representatives

The MOU representatives during the term of this MOU will be:

Department of Justice

Name: Michelle N. Mitchell
Phone: (916) 227-1127
Fax: (916) 227-0595
E-Mail: michellen.mitchell@doj.ca.gov

County MOU representative (please complete):

County of: Tehama

Name/Title: BEVERLY ROSS, COUNTY CLERK & RECORDER
Address: 633 WASHINGTON ST., ROOM 11, PO BOX 250
City, State, Zip Code: RED BLUFF, CA 96080
Phone: 530-527-8748
Fax: 530-527-1745
E-Mail: bross@co.tehama.ca.us

Agreed and Accepted

Certification of MOU Representatives

I certify that I have read and understand the foregoing statements and agree to comply with the requirements of this MOU:

County of: Tehama

Department of Justice

Name/Title: BEVERLY ROSS, COUNTY RECORDER

Name: Michelle N. Mitchell

Signed: 

Signed: 

Dated: 09/17/2013

Dated: 9/26/13

Please return the completed MOU to:

California Department of Justice
Electronic Recording Delivery System (ERDS)
PO Box 160526
Sacramento, CA 95816-0526

Attachment: Final Proportionate Cost
Expenditure Report

Attachment A
Attachment B

Approved as to form:



2013-2014 Final Proportionate Cost Report

County Code	County Name	Recordings*	% of Recordings	Final County Cost **
1	Alameda	435,841	5.02%	\$8,294.61
4	Butte	58,938	0.68%	\$1,121.67
7	Contra Costa	198,552	2.29%	\$3,778.70
9	El Dorado	69,416	0.80%	\$1,321.07
10	Fresno	189,809	2.19%	\$3,612.31
15	Kern	209,615	2.41%	\$3,989.24
19	Los Angeles	2,019,254	23.25%	\$38,428.97
21	Marin	95,897	1.10%	\$1,825.04
24	Merced	22,698	0.26%	\$431.97
27	Monterey	81,642	0.94%	\$1,553.75
28	Napa	44,290	0.51%	\$842.90
29	Nevada	43,182	0.50%	\$821.81
30	Orange	817,537	9.41%	\$15,558.77
31	Placer	127,320	1.47%	\$2,423.06
33	Riverside	639,244	7.36%	\$12,165.63
34	Sacramento	484,248	5.58%	\$9,215.86
35	San Benito	14,986	0.17%	\$285.20
36	San Bernardino	245,643	2.83%	\$4,674.90
37	San Diego	816,321	9.40%	\$15,535.63
38	San Francisco	245,610	2.83%	\$4,674.27
39	San Joaquin	175,844	2.02%	\$3,346.53
41	San Mateo	233,332	2.69%	\$4,440.60
42	Santa Barbara	52,782	0.61%	\$1,004.51
43	Santa Clara	639,836	7.37%	\$12,176.89

* Recordings are based on what the counties submitted to the Insurance Commissioner in 2012 per the LOI.

** The total documents recorded and filed by the participating counties, as reported to the Office of the Insurance Commissioner pursuant to Section 27296 of the Government Code, for the previous calendar year; A percentage figure will be calculated, by dividing the total documents recorded per participating county, by the total documents recorded for all participating counties; The percentage figure is applied to the estimated annual costs of the ERDS Program to arrive at each participating county's System Administrative Fee.

<i>County Code</i>	<i>County Name</i>	<i>Recordings*</i>	<i>% of Recordings</i>	<i>Final County Cost **</i>
44	Santa Cruz	40,555	0.47%	\$771.81
45	Shasta	52,380	0.60%	\$996.86
48	Solano	144,709	1.67%	\$2,754.00
49	Sonoma	135,223	1.56%	\$2,573.47
52	Tehama	16,134	0.19%	\$307.05
54	Tulare	89,278	1.03%	\$1,699.07
56	Ventura	244,958	2.82%	\$4,661.86
Total		8,685,074		\$165,288.00

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PROJECTIONS
ERDS Expenditure/Collections Report

COLLECTIONS

YTD Collections (November 2004 through June 2013)	3,448,909
Interest on Collections	43,099
Total Collections	3,492,008

EXPENDITURES

Summary of ERDS Program Expenditures (November 2004 through June 2013)	3,174,151
2013-14 ERDS Projected Expenditures	215,288
1/ Expenditure Credit Applied to (2013-14) for Subsequent Years (2012-13)	(50,000)
2013-14 Projected MOUs	165,288

1/ Expenditures credits will be applied one year in arrears to allow for fiscal year liquidation.

MINUTE ORDER
BOARD OF SUPERVISORS
COUNTY OF TEHAMA, STATE OF CALIFORNIA

C O N S E N T A G E N D A

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Bob Williams, Supervisor - District 4
SECONDER: Burt Bundy, Supervisor - District 5
AYES: Garton, Chamblin, Williams, Bundy, Bruce

10. CLERK & RECORDER

- a) AGREEMENT - Memorandum of Understanding with the Department of Justice for the Electronic Recording Delivery System (ERDS) Program in the amount of \$307.05, effective upon date of signing through 6/30/14 (2013 Miscellaneous Agreement Book #185-2013)

STATE OF CALIFORNIA)
) ss
COUNTY OF TEHAMA)

I, BEVERLY ROSS, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Tehama, State of California, hereby certify the above and foregoing to be a full, true and correct copy of an order adopted by said Board of Supervisors on the 17th day of September, 2013.

DATED: September 24, 2013

BEVERLY ROSS, County Clerk and
Ex-officio Clerk of the Board of Supervisors
of the County of Tehama, State of California

by Mackenzie Parkinson
Deputy