
INTEROFFICE MEMORANDUM

TO: WISCONSIN LAND TITLE ASSOCIATION BOARD OF DIRECTORS
FROM: CRAIG HASKINS, KNIGHT-BARRY TITLE GROUP
SUBJECT: MILWAUKEE ROD – NEW PRACTICES
DATE: 01/12/2009
CC: KAREN GILSTER

The Board and the membership of the WLTA may be interested in the new rule at Milwaukee County Register of Deeds office. I'm not certain how many other counties have practices that are inconsistent with Section 59.43(1)(e), Wis. Stats., but one can only assume that others may be interested in following Milwaukee's lead. Then again, it is very possible that Milwaukee was the only county with this bad habit.

Milwaukee ROD to end "immediate recordings" – sort of

The Milwaukee County Register of Deeds ("ROD") has issued a memo regarding the end of "immediate recordings" as of February 2, 2009. There has been banter on message boards and frantic calls to our offices from customers asking for guidance. This article should shed a little light on the topic.

Order of Recording

In order to understand the changes coming February 2nd, it is important to understand how documents are delivered to the ROD. Currently, there are four common ways:

1. **Title company courier:** Title companies deliver batches of documents to the ROD daily at random times throughout the day.
2. **Mail:** Documents are delivered to the ROD via USPS, UPS, FedEx, etc... at random times throughout the day.
3. **Counter:** Citizens, title people, lawyers, bankers, etc... deliver documents to the ROD in person by standing at the ROD's counter and reviewing documents with the ROD's staff at random times throughout the day.
4. **eRecordings:** Documents are submitted to the ROD via an eRecording vendor through the internet at random times throughout the day. This is the newest way to record documents.

Section 59.43(1)(e), Wis. Stats., is driving the February 2nd rule in Milwaukee. It states:

(1) ... the Register of Deeds shall: (e) 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. Instruments shall be recorded in the order in which they are received.

Please take a moment to re-read that last sentence. Documents must be kept in order as they are received. In Milwaukee County, the ROD records about 500 documents per day. Imagine yourself as the ROD with 500 documents arriving at random times throughout the day. Title companies are dropping off packages, FedEx/UPS/USPS is walking in the door, Regular Joe (who is completely illiterate to recordings)

is conveying the rear 10 feet of his lot to his neighbor, and the computer is beeping every time a document is eRecorded. This is all being done simultaneously. What do you, as the ROD, do in order to keep documents in order and comply with 59.43(1)(e)?

End of Counter/Walk-in Recordings

To complicate matters, it's been a long-standing practice that the Milwaukee County ROD accepts a document from the person at the counter and immediately records it ahead of the documents coming in via the other three methods described above. The ROD realizes that allowing a document at the counter to "jump" ahead of documents that arrived first does not comply with §59.43(1)(e) – thus the decision to stop "immediate recordings" as of February 2, 2009.

Although the Milwaukee County ROD will not immediately record counter recordings, after February 2nd it will continue to perform *counter reviews for Regular Joes only (thus no counter reviews for title companies)*, whereby the ROD's staff will review Regular Joe's documents at the counter for recordability then place the document in order behind the other documents that arrived first. The hope is that Regular Joe feels confident that the document was accepted by the ROD for recording and future assignment of a document number is assured.

But I Need a Document Recorded Immediately Today!

There are some of us non-Regular Joes who need instant gratification that our document has been accepted and recorded today. As of February 2nd, the only way to satisfy this need for instant gratification is *eRecording*. *eRecording* allows for the submission of documents through the internet without the hassle of delivering the actual document to the courthouse, and typically an *eRecorded* document is recorded and assigned a document number within a day of the closing. Without *eRecording*, notice that a document has been recorded and assigned a document number will take several weeks in Milwaukee County, as first evidenced by the return of the original document in the mail. In addition to the instant gratification of receiving the recorded document the day of (or day after) the closing, the benefits of *eRecording* include:

1. The original document with the wet signature never leaves your possession.
2. Elimination of some of the title gap risk by not allowing documents to sit around after a closing.
3. Documents will not be lost in transit to the ROD since the original remains in your possession post-closing.
4. eRecorded documents are almost always accepted the first time because the eRecording software addresses the most common recordability problems.

The only possible detriment to eRecording is that there is a nominal additional recording fee payable to the eRecording vendor – which detriment to us is heavily outweighed by the listed benefits.

Final Thoughts

It's not a huge issue, but currently there is no way to eRecord a subdivision plat or a Certified Survey Map. These documents must be delivered to the ROD for a counter review.

In addition to Milwaukee County, currently there are 16 counties accepting documents electronically. For a list of these counties, please visit:

<http://www.wrdaonline.org/RealEstateRecords/ElectronicRecording.htm> (note - not all of these counties will accept deeds electronically).