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## Real Estate **LAW**

# Technology allows counties to open express lane to faster real estate transactions

Faster, easier and cost-effective — those are the promises that technology makes in both our personal and our professional lives. In the realm of commercial real estate transactions, the promise of faster, easier and cost-effective would appeal to all parties, including attorneys, buyers, sellers, brokers, lenders, and title companies. However, real estate transactions are instead often viewed as antiquated. Individuals still manually search old title records in the clerk's office, we conduct "in-person" closings instead of the more common "mail-away" closings that our corporate colleagues complete, and we still travel to the county clerk's office to wait in line for the clerk to record our closing packages. Technology has the potential to bring real estate transactions to the finish line in a more efficient manner.

For decades, transactions involving real property that require recording with the county clerk could not be completed by electronic means. Even when the New York State Legislature enacted the Electronic Signatures and Records Act ("ESRA") in 1999, which allows for the completion of transactions by electronic means, the act did not apply to any real property conveyance or other instrument recordable under Article IX of the New York State Real Property Law ("Article IX of the RPL"). However, in September of 2012, the New York State Legislature amended both ESRA and Article IX of the RPL to provide that real property transactions under Article IX of the RPL would no longer be excluded from ESRA, thus allowing such transactions to be conducted and record-



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ing real property be an original, be on paper or another tangible medium or be in writing, the requirement is satisfied by a digitized paper document or an electronic record of such instrument." Section 291-i of Article IX of the RPL requires that the Office of Information Technology Services circulate guidance and produce regulations related to the acceptance of "digitized paper documents" and "electronic records" as it relates to the recording of real property instruments and further provides that such regulations are meant to "prescribe standards to ensure that electronic records of instruments affecting real property documents are accurate, authentic, adequately preserved for long-term electronic storage and resistant to tampering."

Each county that permits electronic re-

ed by electronic means.

As a result, a new section 291-i titled "Validity of Electronic Recording" was added to Article IX of the RPL and provides that: "notwithstanding any law to the contrary, where a law, rule or regulation requires, as a condition for recording, that an instrument affect-

ing real estate instruments must meet the standards established by the Office of Information Technology Services as set forth in the New York State Regulations (9 NYCRR Part 540). One of these established standards provides that "registered submitters" are the only parties that can submit "digitized paper documents" or "electronic records" for recording to the county clerk, such "registered submitters" often enter into formal agreements with the county to safeguard against a submitter not following the regulations. Once registered, a submitter can proceed to record real estate instruments electronically on behalf of the parties to a real estate transaction. In addition to submitting copies of the closing documents for recording electronically, "registered submitters" are also able to make electronic payments to the county clerk, whether for the cost of recording fees, transfer tax fees or otherwise.

Electronic recording has been permitted in Monroe County for over four years. There are certain approved "registered submitters" that have satisfied the criteria and process outlined by New York state and the guidelines imposed by the county. This electronic recording of real property documents allows closing documents to be submitted to the county clerk for recording the same day that a real estate transaction closes (and without requiring anyone to travel to the clerk's office), which saves time and money and reduces the risk that intervening title matters could arise between the closing date and the recording date.

While electronic recording is not required by New York state and the decision for each county to participate is purely voluntary, it is plausible that New York state could mandate electronic recording to achieve the same desired result that attorneys, buyers, sellers, brokers,

lenders, and title companies all want — faster, easier and cost-effective real estate transactions. Technology and the ability to record real estate documents electronically aids in this desired outcome, so it's imperative that we familiarize ourselves with the electronic submittal process in

the county where we reside. After all, it's always better to be acquainted with technology than antiquated without it.

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