

**ARTICLE XVII. ELECTRONIC RECORDS SERVICES
- OFFICE OF THE CLERK & RECORDER**

Sec. 2-361. Electronic records services.

- (a) Under Denver charter section 8.1.2, the clerk and recorder for the city and county of Denver is delegated the authority to perform, among other things, all acts and duties of a clerk and recorder, public trustee and city clerk (collectively referred as the “clerk”) as provided accordingly by Charter, ordinance, the Colorado Constitution, and state statute.
- (b) This authority includes the acts and duties of the clerk to accept, preserve, organize, maintain, store, reproduce, and make publicly available certain documents, including, but not limited to: 1) recorded deeds, deeds of trusts and other instruments and plats affecting real property title; 2) property foreclosure filings and documents and releases of deeds of trust; and 3) adopted city ordinances, approved city contracts, and certain other official city documents and bonds (collectively referred to as “clerk documents”).
- (c) State statutes, ordinances and other legal authority allow for the clerk to accept, preserve, organize, maintain, store, reproduce, and make publicly available such clerk documents by electronic means and in an electronic format.
- (d) Various persons and entities, including title companies, mortgage lenders and attorneys, desire more efficient and effective means to file, access and obtain clerk documents electronically, and in particular with respect to large volumes of such clerk documents and better search capabilities for such clerk documents through electronic means.
- (e) The city has made a sizeable investment, largely through taxpayer dollars, in building, maintaining and operating the computer systems necessary to provide for more efficient and effective electronic means to file, access and obtain clerk documents. The city and the clerk desire to recover the incremental costs of providing such service by electronic means, along with a reasonable portion of the costs associated with building, maintaining and operating the computer system in which the clerk documents are stored.
- (f) When and where such clerk documents are available by electronic means, it is the policy of the city and county of Denver and the clerk to make such clerk documents available in accordance with the provisions of this article and other applicable law, the requirements and criteria established by the clerk and any technical specifications, procedures, and restrictions that may be established.
- (g) It is likewise the policy of the city and county of Denver and the clerk that individual recorded documents, when provided by electronic means on a property-by-property basis or a small batch basis, will be available for free for public viewing through computers provided by the clerk or over the internet or other electronic means, at such time and in such manner as determined by the clerk.

Sec. 2-362. Definitions.

As used in this article, the following terms and phrases have the meaning indicated unless the context clearly requires a different meaning:

- (a) “*City*” means the city and county of Denver, including the clerk and any department or agency responsible for the city’s computer systems.
- (b) “*Clerk*” means the clerk and recorder for the city and county of Denver as such office is established and authorized under part 1 of article viii of the Denver charter including the performance of the acts and duties of the clerk and recorder, public trustee and city clerk.
- (c) “*Electronic*” or “*electronically*” means or pertains to technological systems having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities including but not limited to the use of digital imagery, software and/or the internet.
- (d) “*Electronic records services*” mean any services that the clerk provides or agrees to participate in which involve electronic records or documents or the electronic processing of records or documents.
- (e) “*Fees*” mean such fees and charges as the clerk adopts by schedule that are reasonable and necessary to recover the incremental costs of providing electronic record services or converting paper public trustee documents to electronic records form, along with a reasonable portion of the costs associated with building, maintaining and operating the city’s computer system in which public trustee documents and recorded documents are stored, including software licensing and design costs. Fees do not include any fees or surcharges prescribed by state statute or other legal authority which must be paid in addition to any fees assessed under this article.
- (f) “*Public trustee documents*” mean those submitted forms, deeds of trust, evidence of indebtedness, affidavits, certificates, notices, records, court orders, deeds, and other documents and papers that the public trustee is required to receive, generate, process or maintain: 1) for foreclosures under article 38 of title 38 of the Colorado revised statutes; or 2) for the release of deeds of trust under part 1 of article 39 of title 38 of the Colorado revised statutes.
- (g) “*Recorded documents*” mean recorded deeds, deeds of trusts and other instruments and plats affecting real property title that are filed for public record with the clerk acting as clerk and recorder. Recorded documents do not include: 1) documents regarded as confidential under law, including but not limited to T1000 declarations as provided in sections 39-14-101 and 102 of the Colorado revised statutes and military records protected from disclosure under the Colorado open records act; 2) ordinances, contracts and other city business documents collected and kept by the city clerk in accordance with city ordinances; 3) marriage license applications protected from disclosure under the Colorado open records act; or 4) public trustee documents, unless said they are recorded with the clerk and recorder.
- (h) “*Technology requirements*” mean all specifications, requirements and procedures applicable to the city’s computer systems.

Sec. 2-363. Public trustee documents.

- (a) Bulk public trustee documents. Attorneys, title companies, mortgage lenders, investors, data miners and other persons and entities with a substantial interest in accessing and using large segments of the public trustee documents available through the city's computer systems have made extensive use of these systems for the purpose of gathering and utilizing the information for various profitable purposes and sometimes for the purpose of generating new electronic data based on this information and making this new data available for sale or other profitable uses. The clerk is authorized to set, adopt and collect fees for electronic records services for bulk public trustee documents. Permits or authorizations, in accordance with the requirements and criteria adopted by the clerk and subject to technical requirements, shall refer to and incorporate the terms and conditions set forth in sub-sections 2-365(b) and (c).
- (b) Electronic releases of deeds of trust. Releases of deeds of trusts involve a specific set of public trustee documents and a process specified in section 38-39-102 of the Colorado revised statutes ("releases"). Certain private entities offer a specialized service to title companies, mortgage lenders, and other financial services providers for conducting releases electronically ("release servicers"). Subject to the release servicers 1) acceding to and complying with any permit required and rules adopted by the clerk; 2) complying with, and requiring their customers to comply with, the requirements of section 38-39-102 of the Colorado revised statutes; 3) using the release forms specified by the clerk; 4) paying on a daily basis the prescribed statutory fees for releases and providing such accountings and payment reports as the clerk deems appropriate; and 5) providing ready access and passwords to the internet sites where the release servicers initiate and process the electronic releases, the clerk may elect to participate in the release services provided by the release servicers. Permits or authorizations, in accordance with the requirements and criteria adopted by the clerk and subject to technical requirements, shall refer to and incorporate the terms and conditions set forth in sub-section 2-365(b). All filings of executed release forms with the clerk and recorder shall be in conformance with the requirements of sub-section 2-364(b) pertaining to e-recordings.
- (c) Electronic conversion of paper public trustee documents. In order to more effectively and efficiently process public trustee documents submitted for foreclosure, the clerk is authorized to set, adopt and collect fees to cover the reasonable costs of scanning and electronically converting paper public trustee documents to the electronic system and software used by the clerk for public trustee foreclosures.

2-364. Recorded documents.

- (a) Bulk recorded documents. Attorneys, title companies, mortgage lenders, investors, data miners and other persons and entities with a substantial interest in accessing and using large segments of the recorded documents available through the city's computer systems have made extensive use of these systems for the purpose of gathering and utilizing the information for various profitable purposes and sometimes for the purpose of generating new electronic data based on this information and making this new data available for sale or other profitable uses. The clerk is authorized to set, adopt and collect fees for electronic records services for bulk recorded documents. Permits issued and regulated by

the clerk, in accordance with the requirements and criteria adopted by the clerk and subject to technical requirements, shall refer to and incorporate the terms and conditions set forth in sub-sections 2-365(b) and (c).

- (b) E-recordings. The process for accepting filings and recording recorded documents are set forth in part 4 of article 10 of title 30 of the Colorado revised statutes, with specific authorization for the clerk and recorder to accept electronic filings for recording set forth in section 30-10-405.5 of the Colorado revised statutes (collectively the “recording process”). The clerk and technology services have established a computer system and methodology for performing electronic recordings that comports with the prescribed recording process (“e-recording”). Certain private entities and individuals wish to access and utilize e-recording available through the clerk (“e-recording users”). Subject to 1) the e-recording users acceding to and complying with any permit required and rules adopted by the clerk; 2) complying with, and requiring their customers to comply with, the recording process; and 3) paying on a daily basis the prescribed statutory fees for the recording process and providing such accountings and payment reports as the clerk deems appropriate, the clerk may elect to provide e-recording services to e-recording users. The clerk is authorized to set, adopt and collect fees for electronic records services for e-recording. Permits or authorizations, in accordance with the requirements and criteria adopted by the clerk and subject to technical requirements, shall refer to and incorporate the terms and conditions set forth in sub-sections 2-365(b) and (d).

2-365. Permit terms and conditions.

- (a) For those electronic record services that require a permit or authorization, as determined by the clerk, the party receiving the services (the “permittee”) shall sign or electronically execute a permit or authorization (“permit”), to be approved by the clerk, acknowledging the permittee’s obligation to comply with the terms and conditions of the permit as specified in this article and to conform with technical requirements included in the permit. The clerk may specify other terms and conditions, as appropriate, in the permit.
- (b) Group 1 terms and conditions:
- (1) The permit is governed by the laws of the state of Colorado and the city and county of Denver including the terms and conditions specified in sections 2-363, 2-364 and 2-365 and the requirements and criteria set by the clerk for electronic records services (“applicable law”).
 - (2) The permit is not transferable and not exclusive. No third party shall be a beneficiary of, or hold any rights under, the permit issued to the permittee. At the same time, the issuance of the permit shall not preclude the clerk from issuing the same or similar permits to other permittees.
 - (3) No rights, title or interests on the part of the permittee shall be established or shall be recognized in any electronic records services under this article, in any electronic form of a public trustee document or a recorded document (unless otherwise specified under applicable law), or any part of the city’s computer systems.

- (4) One type of permit issued by the clerk shall not entitle a permittee to obtain another form of permit issued by the clerk or to exercise such rights under the other form of permit. For example, a permit for bulk public trustee documents does not entitle the permittee to bulk recorded documents.
- (5) The clerk and any other city department or agency with authority over the city's computer systems shall have the exclusive right to control, monitor, regulate and establish procedures and restrictions applicable to the permittee's right to access and use electronic records services under this article or any part of the City's computer systems.
- (6) All permits are subject to immediate suspension or revocation, as the clerk deems appropriate, for failure by the permittee to pay prescribed fees and failure to comply with applicable permit terms and conditions and with applicable law.
- (7) The clerk may suspend or revoke any permit and/or any electronic records service, without cause and at the clerk's reasonable discretion, upon thirty (30) days prior written notice to the permittee and may so suspend or revoke immediately in the event of an emergency necessitating such action.
- (8) The continuing provision of electronic records services is subject to the consistent and faithful payment of any fees set and adopted by the clerk for such electronic records services. The clerk may specify accounting and reporting requirements on the part of permittees to assure that fees are fully paid. Fees are subject to change as determined by the clerk, but every reasonable effort will be made to provide thirty (30) days prior written notice to the permittee of any fee change.
- (9) The permittee represents and warrants that it has the legal authority, including any required licenses or approvals, to utilize any electronic hardware, software or communications system necessary for processing, preserving, storing, receiving, transferring, filing, viewing or reproducing any public trustee document or recorded document and that it has not engaged, and will not engage, in any illegal or inappropriate actions, including but not limited to violations of copyright, patent, trademark or proprietary rights of third parties or in the unlawful acquisition, utilization, manipulation, modification or misappropriation of any electronic hardware, software or communications system necessary for the processing, preserving, storing, receiving, transferring, filing, viewing or reproducing of public trustee documents or recorded documents.
- (10) The permittee represents and warrants that it will take no action nor fail to take any action that could result in damage or otherwise result in harm to the city's computer systems or a third party's computer system with respect to electronic records services.
- (11) All costs for electronic records services, including any hardware, software and communication systems, shall be the sole expense of the permittee. The city reserves the right to modify its computer and communication systems as the city deems appropriate. Notice will be provided to the permittee as soon as reasonably

possible of pending city modifications to its computer and communication systems in order that the permittee can modify or upgrade its hardware, software or communication systems at the permittee's sole expense.

- (12) The permittee represents and warrants that it shall defend, release, indemnify and save and hold harmless the city and its officers, agents and employees from any and all claims, damages, demands, liabilities, losses, actions, suits, costs, expenses, legal fees, judgments, causes of action, or other legal, equitable or administrative proceedings of any kind whatsoever, of or by anyone whomsoever, regardless of the legal theory(ies) upon which premised, which in any way result from, are connected with, or arise out of, directly or indirectly, the actions or omissions of the permittee in connection with any use of public trustee documents and/or recorded documents or exercise of the electronic records services by the permittee or in connection with any illegal or inappropriate actions in violation of this article or the permit, whether such use, action or omission is authorized or unauthorized by the permittee or any other person or entity acting for or through the permittee, including uses, actions or omissions of the permittee's officers, employees, agents, representatives, invitees, licensees, consultants, or any other individuals or entities.
 - (13) Nothing in this article or any permit issued by the clerk is intended, nor shall be construed, to modify or waive those immunities and protections that the city and the clerk have under Colorado law with respect to the performance of charter or statutory duties in accepting, processing, recording, storing or reproducing of recorded documents, nor shall this article or any permit issued by the clerk be construed or interpreted to create any financial liabilities on the part of the city or clerk in favor of the permittee.
- (c) Group 2 terms and conditions:
- (1) The originals of many of the public trustee documents and the recorded documents are generated by third parties not under the control or direction of the clerk. The city makes no representations, guarantees or warranties as to the content, accuracy, correctness, completeness, legibility or legality of such public trustee documents or recorded documents. These public trustee documents and recorded documents are accepted by the permittee "as is", with any and all faults.
 - (2) The electronic form of all public trustee documents and recorded documents, whether generated by the clerk or by third parties, are accepted by the permittee "as is", with any and all faults. The city makes no representations, guarantees or warranties as to the accuracy, correctness, completeness, legibility or legality of the electronic form of these public trustee documents or recorded documents. Furthermore, the city expressly disclaims all warranties of merchantability and all warranties of fitness for a particular purpose. The permittee uses and relies upon the electronic form of public trustee documents and recorded documents at the permittee's own risk.

- (3) The permittee represents and warrants that it will not alter in any fashion the contents of any public trustee document or recorded document obtained in electronic form from the clerk. All official markings, including but not limited to recording information made by the clerk and recorder and cancellation or deficiency notes made by the public trustee, must be left intact and legible in any reproduction or resizing of the public trustee document or recorded document.
- (4) If the permittee remarkets or conveys to third persons the public trustee documents or recorded documents, or distills or summarizes information obtained from the public trustee documents or recorded documents into a new data compilation for sale or transfer to third persons, the permittee shall not make any representation to the third persons that the city or the clerk certifies or approves the copies or the new data compilation provided by the permittee to the third persons. Only true copies of public trustee documents or recorded documents certified by the clerk may be self-authenticating in a court of law.
- (5) A permittee shall not remarket, sell, or convey to third persons, in bulk, the recording index records generated by the clerk in electronic form. The clerk reserves the sole right to market, sell or convey bulk recording index records electronically generated by the clerk. If the permittee remarkets or conveys to third persons specific recorded documents, the electronic form of the recording index records directly related to those recorded documents may be conveyed with the recorded documents. However, if fifty percent (50%) or more of the recording index records electronically generated by the clerk during any given time period are remarketed, sold or conveyed to third persons, the permittee shall be in violation of this provision.
- (6) The right to access or acquire public trustee documents or recorded documents in electronic form shall be subject to the type of permit obtained by the permittee and the availability of the public trustee documents or recorded documents in electronic form. The clerk will make every reasonable effort to make available on a timely basis the electronic form of such documents which the permittee is expecting under its permit; however, no specific assurances are made in this regard. In the event that the electronic form of such documents should be temporarily unavailable or unavailable by the typical electronic means, the clerk may provide the documents by alternative means, if so requested by the permittee and subject to the permittee paying any extraordinary costs incurred by the clerk in providing the documents by alternative means.
- (7) The permittee acknowledges and concurs that the city and the clerk have the right to market or sell the electronic forms of public trustee documents or recorded documents, and that the permittee shall not undertake any action to prevent or prohibit the city and the clerk from marketing and selling electronic forms of public trustee documents or recorded documents.
- (8) If the permittee discovers a problem with a public trustee document or recorded document or its electronic form, the permittee should promptly notify the clerk. If the clerk determines that there is a problem and that it has the ability to correct or

otherwise resolve the problem, a corrected public trustee document or recorded document will be provided to the permittee in electronic form free of charge.

(d) Group 3 terms and conditions:

- (1) The e-recording by the city of recorded documents shall be on “as is” basis, with any and all faults in the city’s e-recording system. The city makes no representations, guarantees or warranties as to the accuracy, correctness, completeness, legibility or legality of the electronic form of these recorded documents or the e-recording system. Furthermore, the city expressly disclaims all warranties of merchantability and all warranties of fitness for a particular purpose. The permittee files and relies upon the city’s e-recording of recorded documents at the permittee’s own risk.
- (2) All recorded documents submitted by the permittee for e-recording by the clerk must be in an electronic format and filed by the electronic means specified by the clerk and in accordance with technical requirements. Any e-recorded documents not meeting these requirements may be rejected by the clerk.
- (3) Unless otherwise expressly provided by statute, all recorded documents must have been originally hard-copy documents, executed with “wet” signatures, and then optically imaged to preserve a complete, legible, and accurate reproduction of the original. Any incomplete, illegible or altered recorded documents will not be accepted by the clerk through e-recording.
- (4) The right to e-record shall be subject to the type of permit obtained by the permittee and the functional availability and capacity of the city’s computer systems with respect to e-recording. The clerk will make every reasonable effort to make available on a timely basis the e-recording services which the permittee is expecting under its permit; however, no specific assurances are made in this regard.
- (5) The permittee exercising e-recording acknowledges and concurs that the city and the clerk have the right to market or sell the electronic forms of recorded documents e-recorded or otherwise filed for recording by the permittee, and that the permittee shall not undertake any action to prevent or prohibit the city and the clerk from marketing and selling electronic forms of public trustee documents or recorded documents.
- (6) If the permittee discovers a problem with a recorded document that the permittee has e-recorded with the clerk, the permittee should promptly notify the clerk. If the clerk determines that there is a problem and that it has the ability to correct or otherwise resolve the problem, a corrected recorded document will be provided to the permittee in electronic form free of charge.
- (7) The permittee shall participate in and support any reasonable testing, verification or problem resolution of e-recording systems or practices that the clerk may specify or as provided by technical requirements. The permittee shall comply with all security protocols and standards.