

**A HISTORY OF LOUISIANA'S E-FILING REAL
ESTATE LEGISLATION SPONSORED BY JON
A. GEGENHEIMER, CLERK OF COURT OF
THE PARISH OF JEFFERSON**

**AS OF THE
SUMMER OF 2011**

A. Introduction

The requirements for the recording of written paper documents contained in Louisiana's Civil Code were very extensive. Hon. Jon A. Gegenheimer realized as a clerk of court and custodian of public documents that new legislation would be necessary to accommodate the technological demands of the future. Too many statutes required the "original" or "written" document executed with actual signatures to be filed with the clerk of court who served as a parish's recorder and custodian of records. A legislative sea-change would have to be effected in order to bring about electronic filing and storage of real estate records. Mr. Gegenheimer was the person to effect that change.

B. Senate Concurrent Resolution 21 of 2003

Jon's starting strategy was to gather all interested people in one room, including those opposed to technology and change, and do this using the powers of the legislative branch, where enacted laws are the solemn expression of the people's will. His method of accomplishing this was by convincing the Louisiana Senate to form a special legislative committee to investigate the need for the electronic filing and recording of public records. This was initiated in 2003. Jon first identified two other allies, the Clerk of Court of East Baton Rouge Parish and the Clerk of Court of Lafayette Parish, both of whom were being inundated by the press of paper storage. Clerk Gegenheimer led the drafting of Senate Concurrent Resolution 21 introduced by Senator Michod of Lafayette with a view towards identifying and including people in the study committee from all walks of life, those who were not only interested in a favorable outcome for electronic

storage and filing, but also those people who were opposed to change. His planned tactic was to get all people discussing the issues and to air all of the “pros” and “cons”. These discussions hopefully would evolve into working toward a common goal, and gradually the nay-sayers would get on board as the benefits of e-filing, e-storage, and e-access were made evident. The Concurrent Legislative Committee was a successful tool in this attempt. The Committee formulated Act 679 of 2004.

C. Act 679 of 2004

The starting point in the drafting of this Act was basically a redefined concept, What would an "original" document or deed would be in the future? Clerk Gegenheimer thought it should be the electronic recording, once the paper document had been converted by him and other clerks to record, file and index, namely, the electronic burst of energy. In the olden days, the primary purpose of using “paper” was not to gain consent of the parties, but to memorialize that consent. Paper was and would become superfluous in the future.

The step from paper preservation to electronic preservation was therefore an issue of proof and security, not of consent. Legal experience showed that electronic preservation was actually more secure, and this increased security would be an important selling point. Paper documents might be altered by unscrupulous or desperate people more easily than a properly stored electronic document.

This first step to electronic storage was also was a change in mind-set: The electronic energy, not the paper, would now be the main medium of storage and proof, the electronic energy would now be considered the “original,” admissible in court as

evidence, with the presumption of accuracy over the paper document. The “best evidence” in Louisiana was now defined to be the electronic copy of document not the paper copy.

This new concept of “best evidence” had a second and almost equally important ramification for Louisiana’s clerks of court. With the redefining of “best evidence,” paper documents need not be touched. People need not come to the courthouse and, pick up heavy records. Everything could be reviewed, copied and organized while seated in one’s chair before a computer terminal. Courthouse parking spaces would be easier to find; square footage could be reallocated from storage to other parish uses.

Archivists could also take heart. Historical documents need not be actually handled. Such historical documents could be transferred to more ideal locations for preservation and storage. With a proper intranet or internet system, public traffic through the recorder’s archives and historical areas could be “virtually” eliminated.

But the Concurrent Legislative Committee perceived an even further benefit. The Louisiana Secretary of State is the official archivist for all state documents. The Louisiana Secretary of State’s Office agreed to be the archivist for all documents for any parish clerk wishing to ship them to a central storage location near Baton Rouge, which was also out of reach of hurricane flood waters. Centralization of the State’s historical records above sea level would be a boon for those who research in these documents.

Clerks of parishes with small populations were informally offered the technical research done by Mr. Gegenheimer for his electronic storage and retrieval. On-line research was initiated in Jefferson and abstractors became more efficient in their

examination of the records. Act 679 was a win-win situation for all. Title insurance companies approved the procedure of title examination from the clerks' electronic records and their agents' profit margins increased with increased efficiency. This Act 679 of 2004, became the first step for the Concurrent Legislative Committee, whose life was extended for one more year, and which proposed another statute in 2005.

D. Act 125 of 2005

Obviously, electronic storage and retrieval by the recorder and clerks would only be one-third of the pie sought by the Concurrent Legislative Committee. In the next year, the Committee members were convinced to go for the second third- - the electronic filing of all documents. Act 125 of 2005 adopted a new Article 258 of the La. Code of Civil Procedure to allow for electronic filing of documents. A two-step process of electronic filing was necessary. This Act, to reassure the general public and specific filers as to the stability of records, imposed a major requirement in order to e-file. The filer must certify that the original paper document was in the filer's actual possession at the time of electronic filing. This certification would take the form of a contract between filer and clerk.

E. The Hurricane- What Katrina Wrought in 2005? Act 14 of the First Extraordinary Session

The terrible destruction caused by the largest hurricane ever to hit the United States pointed up additional frailties in the clerk's and recorder's legal powers related to the job of recording and storing which required immediate remedy. Mr. Gegenheimer reacted swiftly in the emergency after Katrina. Act 14 of the First Extraordinary Session of 2005

authorized clerks to open emergency offices in any location in the State. Location of a clerk's office, in the new hurricane-proof "virtual" world would no longer be tied to a particular geography.

F. Act 734 of 2006

Mr. Gegenheimer also sponsored Act 734 of the 2006 Regular Session, which allows Louisiana clerks to keep their offices open even if other officials, e.g. district judges and/or parish executives, close the buildings in which the clerk is housed. These two laws reflect and accommodate the clerks' movement to a virtual operation. While, Act 679 of 2004 and Act 125 of 2005 allowed for e-storage and e- recordation of clerks' records, Katrina did emphasize the advantages of technological implementation of e-recordation and e-storage. Many attorneys continued to file documents in Jefferson after Katrina even though the parish courthouse was physically inaccessible and paper could not be physically filed. At the present time, many clerks are rapidly implementing new e-storage systems, and accelerating the conversion from paper, especially those clerks most affected by Hurricane Katrina.

G. Act 368 of 2008.

In 2007, an unsuccessful effort was made by Mr. Gegenheimer to have article 258 of Louisiana's Code of Civil Procedure amended in order to expand e-filing to cover all real estate instruments. The effort (House Bill 242 of 2007) was defeated by a vote of 40-38. Several House members had expressed the view that they "did not believe in email". Legislative term limits, however, resulted in a sixty-percent change in House membership and a dramatic drop in members' ages. House Bill 828 was introduced in 2008 by

Representative Cameron Henry, a newcomer from Jefferson Parish, and unanimously passed both the Louisiana House and Senate, becoming Act 368. Unlimited e-filings was approved.

Act 124 of 2011

Clerk Gegenheimer then led the way in a different direction to help the public. He asked Senator Alario of Jefferson Parish to propose a “Uniform Cancellation Affidavit” which established a single state-wide method of cancelling mortgages and which could be filed electronically. This is the first step in state-wide simplification of real estate documents.

H. Attorney General Opinions

Clerk Gegenheimer did not stop with passing legislation. He has consistently requested opinions from the Attorney General of the State of Louisiana to facilitate e-commerce. At his behest, Attorney General James D. “Buddy” Caldwell has issued two formal state-wide opinions concerning e-commerce. On May 3, 2009, Attorney General Caldwell confirmed Jefferson parish’s procedure as a model for proper e-filing in opinion 08-0340. In opinion 10-281 on February 10, 2011, Attorney General Caldwell required all state officials to accept Jefferson parish’s electronic seal on documents as certifying the true and correct reproduction of those documents.

CONCLUSION

The march of electronic progress for the nation’s clerks cannot be stopped. As sure as shrimp and gumbo will be served on Friday, e-clerks will serve the public with

cyber-space offices, e-notaries will execute sales and mortgages for loans in interstate and global commerce, e-attorneys will begin arguing before judges in cyber-courtrooms, filing e-pleadings. Today 625 counties and parishes in 37 states have implemented some form of e-filing, and 46% of the nation's population live in e-filing jurisdictions. Clerk Jon A. Gegenheimer of Jefferson parish is a leader in this movement. Those who have a chance to visit the Gretna courthouse and use its facilities, will enjoy a state-of-the-art operation.