

ESS/Iowa Land Records

8711 Windsor Parkway, Suite 2
Johnston, Iowa 50131

November 17, 2020

To: All Iowa Supervisors

From: Kathy Jurries, Calhoun County Recorder
Iowa County Recorders Association (ICRA) 2021 President

Travis Case, Grundy County Recorder
Iowa County Recorders Association (ICRA) Past President

Re: Electronic Services System 28E Agreement

Fellow County Officials,

First, please allow us to express our hope that this message finds you all well and safe. It has been a challenging time for everyone working in courthouses due to COVID-19, the derecho, and more. On behalf of the Iowa county recorders, thank you for your extra efforts this year.

Our purpose in writing to you today is to let you know that next year we may be asking boards of supervisors to amend the 28E agreements that govern the Iowa Land Records system. The 28E organization is known as the Electronic Services System, which was originally established back in 2005. No action is required at this time, but now is a good time to start the conversation. Below is some background information.

The 28E agreement was established in 2005 as directed by the Iowa Legislature, for the purpose of having a more formal governance and administrative structure for managing Iowa Land Records. Since then the system has been managed with the support of the Iowa County Recorders Association. We're very proud to say that Iowa county governments have worked together to successfully operate a statewide system of land records. That system enables electronic filing of documents with all 99 Iowa county recorder offices. E-filing, or E-Submission as we call it, has grown significantly over the last decade, and during this pandemic it has proven to be a safe, contact-free way for the real estate industry to conduct business with county recorders. Iowa Land Records also hosts a website and search engine that provides safe public access to more than 20.7 million land records from all 99 counties. In short, it has been a successful endeavor and we continue to work to make it better.

Every year we submit an audit to the Office of the State Auditor, and periodically we meet with the State Auditor's staff to update them on our activities. During the past few years, the State Auditor's office and our own legal counsel have identified some areas of the 28E agreement that may be in need of a technical correction. Specifically, the original enabling legislation required that all contracts for the system be managed directly through the Iowa County Recorders Association. This structure has created the unusual situation where the system is filing an audit with the State while also filing a tax return with the Internal Revenue Service. This is a very unique situation, and now seems like the right time to make a correction.

In this regard, the Electronic Services System will be seeking legislation that would authorize the 28E agreement to be amended, and to effectively remove the requirement that contracts be managed directly through the Iowa County Recorders Association. If the legislation is approved, a formal amendment to the 28E agree will likely be proposed, perhaps sometime during the summer of 2021.

As this discussion proceeds, we will work with ISAC and the Supervisors' affiliate to keep you informed. We know this is a busy time for everyone, especially immediately following the election. But it is important that supervisors be aware of this conversation. Attached is a background paper which will provide you with more information.

Once again, no action is required at this time. After the New Year we'll be following up with the Chair of the Board of Supervisors in each county, and also the Supervisors' Affiliate, to provide another update. If you have any questions in the interim, please don't hesitate to contact us. Best regards and have a happy and safe holiday season.

Attachment: 28E Background Paper

**Legislation to Authorize
Amendment to 28E Agreement**

**Electronic Services System (ESS)
&
Iowa County Recorders Association**

Legislation is needed to permit a 28E agreement to be amended to provide for the legal separation of the Electronic Services System and the Iowa County Recorders Association.

STATEWIDE SYSTEM - LOCAL GOVERNANCE

ESS and Iowa Land Records is one of the few statewide land records systems in the United States. As the only system coordinated by county recorders, it provides public access to more than 20.7 million records and enables electronic filing in all Iowa Counties. The system has standardized data and service delivery across all 99 counties, simplifying operations for Iowa's real estate industry. This structure doesn't exist in any other state.

BACKGROUND

In 2005, nearly two years after the creation of the county land records information system by the legislature and the Iowa County Recorders Association, a session law was adopted (House File 882) requiring that the system be managed through a 28E organization. It was believed, correctly, that the system should be managed through a more formal governance structure. The legislation required that all contracts be administered through the Iowa County Recorders Association. This set up the unusual circumstance of having a 28E organization managed through a non-profit association.



Electronic Services System

The 28E organization, known as the Electronic Services System ("ESS"), was created in August, 2005. Since that time, the day-to-day operations of the system have been overseen by an ESS Coordinating Committee comprised of county recorders and representatives from stakeholder groups including the Iowa Bar, and the title industry.



28E Compliance

ESS, as a public agency operating under Chapter 28E, complies with conventions for public organizations in Iowa. Specifically, ESS conforms to the following requirements.

- Open Records
- Open Meetings
- Formal Policies & Procedures
- Annual Audit



Audit + 990 Tax Return

Discussions with the State Auditor's office about the unusual 28E and non-profit combination, which requires a filing of a 990 tax return for the IRS, spurred the proposal to establish an independent governance structure for ESS.

Amendment Review + Proposed Legislation

AMENDMENT REVIEW + PROPOSED LEGISLATION

An amendment to the 28E has been drafted to remove direct references to the Iowa County Recorders Association, and it establishes the existing ESS Coordinating Committee as the primary governing board. Iowa county recorders would still be very actively involved with the management of ESS, as they would continue to serve as key members of the ESS Coordinating Committee.

LEGISLATION REQUIRED

The proposed amendment to the 28E agreement was developed with the assistance of legal counsel. This review led to a finding that the amendment to the 28E agreement required modifying the original session law. That session law required the administration of contracts through the Iowa County Recorders Association, and it cannot be ignored.

If the proposed legislation is enacted, the amendment to the 28E agreement itself would be initiated after July 1, 2021. If the amendment is approved by the requisite counties, the change would likely be effective January 1, 2022.

PROPOSED LEGISLATION

Proposed Session Law to clarify Session Law enacted in Chapter 179 – Laws of the Eighty-First G.A., 2005 Session - Section 101, paragraph 1, Pages 818-819 (House File 882)

Section __. COUNTY LAND RECORD INFORMATION SYSTEM – GOVERNANCE.

1. The 28E agreement for the implementation of the county land record information system known as the Electronic Services System, in accordance with the requirements of Chapter 179 – Laws of the Eighty-First G.A., 2005 Session - Section 101, paragraph 1, may be amended by the board of supervisors of each county, on behalf of each county recorder, as necessary to provide for the ongoing implementation of the county land record information system. Each county shall participate in the county land record information system and Electronic Services System, and shall comply with the policies and procedures established by the governing board established by the 28E agreement.