2005 DRAFTING REQUEST

Bill

Received: **09/21/2005**

Received By: **mlief**

Wanted: **As time permits**

Identical to LRB:

For: **Fred Risser (608) 266-1627**

By/Representing: **terry**

This file may be shown to any legislator: **NO**

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Pre Topic:

No specific pre topic given

Topic:

Uniform real property electronic recording act

Instructions:

See Attached

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/1	pkahler 01/26/2006	lkunkel 01/31/2006	jfrantze 01/31/2006	_____ _____	lnorthro 01/31/2006	sbasford 02/06/2006	

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UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-THIRTEENTH YEAR
PORTLAND, OREGON

JULY 30-AUGUST 6, 2004

WITH PREFATORY NOTE AND COMMENTS

November 2004

DRAFTING COMMITTEE ON UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

Copies of this Act may be obtained from:
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195
www.nccusl.org

UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

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UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

Prefatory Note

The status of electronic information technology has progressed rapidly in recent years. Innovations in software, hardware, communications technology and security protocols have made it technically feasible to create, sign and transmit real estate transactions electronically. However, approaching the end of the 20th Century, various state and federal laws limited the enforceability of electronic documents. In response, the Uniform Electronic Transactions Act (UETA) was approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1999. As of October 1, 2004, UETA had been adopted in 46 states, the District of Columbia, and the U.S. Virgin Islands. The federal Electronic Signatures in Global and National Commerce Act (E-Sign) was also adopted in 2000. The two acts give legal effect to real estate transactions that are executed electronically and allow them to be enforced between the parties to the transaction.

Even though documents resulting from electronic transactions are valid and enforceable between the parties, there is uncertainty and confusion about whether those electronic documents may be recorded in the various local land records offices in the several states. Legacy laws and regulations in many states purport to limit recordable documents to ones that are in writing or on paper or require that they be originals. Other laws and regulations require signatures to be in writing and acknowledgements to be signed. Being electronic and not written on paper, being an electronic version of an original paper document, or having an electronic signature and acknowledgement instead of handwritten ones, an electronic document might not be recordable under the laws of these states. The continuing application of these legacy laws and regulations remain uncertain (*see* Op. Cal. Atty. Gen. No. 02-112 (Sept. 4, 2002)).

Despite these uncertainties, recorders in approximately 40 counties in several states began recording electronic documents. These efforts depend, however, on the initiatives of individual recorders and the opportunities available under the laws of those states. They are piecemeal and offer only limited interoperability among the recording venues and across state lines. They do not provide a uniform legal structure for the acceptance and processing of electronic documents.

In response, a few states have convened study committees or task forces to consider the question of recording electronic documents (*see* Report of Iowa State Bar Ass'n, Real Estate Modernization Comm., draft of *Ch. 558B – Iowa Electronic Recording Act* (2001); Conn. Law Revision Comm., *An Act Establishing the Connecticut Real Property Electronic Recording System* (Conn. Gen Assembly, Judiciary Comm., Raised Bill No. 5664, 2004)). In 2002, a drafting committee was established by the NCCUSL Executive Committee to draft a Uniform Real Property Electronic Recording Act. The Committee's decision followed a recommendation of the NCCUSL Committee on Scope and Program. Their actions were in recognition of a strong recommendation from the Joint Editorial Board on Uniform Real Property Acts that a uniform act be drafted.

The Uniform Real Property Electronic Recording Act was drafted to remove any doubt about the authority of the recorder to receive and record documents and information in electronic form. Its fundamental principle is that any requirements of state law describing or requiring that a document be an original, on paper, or in writing are satisfied by a document in electronic form. Furthermore, any requirement that the document contain a signature or acknowledgment is satisfied by an electronic signature or acknowledgement. The act specifically authorizes a recorder, at the recorder's option, to accept electronic documents for recording and to index and store those documents.

If the recorder elects to accept electronic documents, the recorder must also comply with certain other requirements set forth in the act. In addition, the act charges an Electronic Recording Commission or an existing state agency with the responsibility of implementing the act and adopting standards regarding the receipt, recording, and retrieval of electronic documents. The Commission or agency is directed to adopt those standards with a vision toward fostering intra- and interstate harmony and uniformity in electronic recording processes.

This act does not state the means of funding the establishment or operation of an electronic recording system in the various recording venues. No single approach is inherently the best for funding electronic recording systems. This is especially true because of the range of taxation systems and cultures existing in the various states and recording venues and the diversity of the various states and recording venues in terms of population and resources. In fact, the best system for any state or recording venue might involve a combination of approaches.

The establishment, and perhaps the operation, of an electronic recording system might be funded from the general taxes and revenues of the state or county. Because of the relatively large "front end" expenses needed to set up an electronic recording system, this approach might be very appropriate for that purpose. Whether the funding is to be by the county or the state is an issue that should be resolved prior to the passage of this act. A related question is whether the funding should cover the entire cost of setting up the system or only part of it with the remaining costs to be paid by recording and searching fees dedicated to the establishment of the electronic recording system.

UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Real Property Electronic Recording Act.

Legislative Note: *The word "recorder" is used in this act to identify the officer who has the authority*

under state law to accept documents for recording in the land records office. Although "recorder" is the word commonly used in most states to identify that officer, it has been placed in brackets as an indication that other titles might be used for the position. For example, the words "registrar" or "clerk" are used in some states to designate that officer.

In addition, since this act affects all land recording systems in a state, the word "recorder" also applies to the appropriate officer under the alternative title system sometimes known as a "Torrens" title registration system. In some states the traditional officer is known as a "recorder" and the officer under the alternative system is known as a "registrar." Regardless of name, this act would apply to both officers.

When adopting this act the legislature should consider whether to delete the word "recorder" wherever it appears and substitute the appropriate word or words used under the system or systems in effect in the state. If the word "recorder" is retained, the brackets should be removed.

Comment

This act applies to the recording of documents in the land records office maintained by a recorder. It applies both to the filing of, and the searching for, documents in the recorder's office by whatever term or terms those functions and offices are known locally.

SECTION 2. DEFINITIONS. In this [act]:

(1) "Document" means information that is:

(A) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(B) eligible to be recorded in the land records maintained by the [recorder].

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means a document that is received by the [recorder] in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(6) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Legislative Note: *Since this act does not apply to offices other than the land records office maintained by the recorder, even though land title information may be filed in the other offices, certain gaps or inefficiencies may arise. For example, state law may not authorize the clerk of court's office to implement electronic filing and searching provisions similar to those of this act. If, under other state law, the clerk of court's office is the proper venue in which to file a satisfaction of a judgment lien, the creditor will not be able to file it electronically. Nor will it be possible for a title examiner to search for it electronically. The need to file or search in a non-electronic fashion may prevent the more complete realization of the benefits of electronic recording sought to be achieved by this act. Thus, a legislature might consider whether it would be beneficial to amend the laws affecting other offices in the state in which real estate documents are filed in order to authorize or encourage the filing and searching of electronic documents in them.*

Comment

(1) **"Document."** A document consists of information stored on a medium, whether the medium be tangible or electronic, provided that the information is retrievable in a perceivable form. The traditional tangible medium has been paper on which information is inscribed by writing, typing, printing or similar means. It is perceivable by reading it directly from the paper on which it is inscribed. An electronic medium may be one on which information is stored magnetically and from which it may be retrieved and read indirectly on a computer monitor or a paper printout.

While a document recorded in a land records office will usually contain information affecting real property, it need not necessarily be so limited. It applies to any document that is recorded in the land records office maintained by the recorder. Deeds, grants of easements, and mortgages are documents subject to this act. Similarly, certificates and affidavits not directly affecting real property may be documents under this act if state law provides these documents are to be recorded in the land records office.

The definition of a document in this act is derived from the definition of the term "record" as contained in the Uniform Electronic Transactions Act (UETA) § 2(13). In the terms of that act, a document is a record that is eligible to be recorded in the land records maintained by the recorder. In selecting the defined term "document" for use throughout this act, an explicit decision was made not to use "record" as a defined term. The term "record" has a different meaning in real estate recording law and practice than it has in UETA. If the term "record" were used generally in this act, it might lead to confusion and misinterpretation.

In UETA, the term "record" refers to information on a tangible or electronic medium as does the

term "document" in this act. In this act, however, depending on syntax, the term "record" and its variations can have several meanings, all of which deal with document storage and not the information itself. For example, this act deals with the *recording* process through which a person can *record* a document. The government officer who oversees the land *records* office is the *recorder*. These terms are so ingrained in the lexicon of real estate recording law and practice that it would not be productive to attempt to change them by this act.

(2) **"Electronic."** The term "electronic" refers to the use of electrical, digital, magnetic, wireless, optical, electromagnetic and similar technologies. It is a descriptive term meant to include all technologies involving electronic processes. The listing of specific technologies is not intended to be a limiting one. For example, biometric identification technologies would be included if they affect communication and storage of information by electronic means. As electronic technologies expand and include other competencies, those competencies should also be included under this definition.

The definition of the term "electronic" in this act has the same meaning as it has in UETA § 2(5).

(3) **"Electronic document."** An "electronic document" is a "document" that is in an "electronic" form. Both of these terms are previously defined. However, this definition adds an additional requirement not specifically stated in the individual definitions. In order to be an "electronic document" the document must be received by the recorder in an "electronic" form. The character of a document as "electronic" or "paper" will be determined at the moment it is received by the recorder.

Even though a document may have an existence in an "electronic" form prior or subsequent to being received by the recorder it might not be an "electronic document" under this act. For example, the document may have been created by an electronic process or have existed in an electronic form before being converted to, and received by the recorder in, a paper form. Thus, a document prepared on a computer by means of a word processing program may have been created electronically and may still exist electronically. If, however, the document is printed and submitted to the recorder on paper, the submitted document is not an electronic document. Similarly, after arriving in the recorder's office in a paper form, the document may be converted to an electronic form prior to, or as part of, the recording process. The paper document does not become an electronic document because of the post-receipt conversion. (For a definition of the term "paper document," *see* § 4(a).)

By comparison, a document received by the recorder in an electronic form, but subsequently converted to a paper form, will be considered to be an electronic document. For example, if a document is received electronically and then printed in a paper form in the recorder's office prior to storage, it is, nonetheless, an electronic document. Thus, a document received by the process commonly known as a facsimile or a FAX, is an electronic document. Issues common to electronic documents, such as security and integrity, also relate to a facsimile or FAX document.

In many cases a document may have originally been executed in a paper form with "wet signatures" and subsequently imaged and converted into an electronic format. This act provides that, if such a converted document is received by the recorder in an electronic format, it will be considered to be an electronic document and may be recorded. (*See* § 3(a).)

This act does not state or limit the type of electronic documents that may be accepted by the recorder. Nor does it state the type of electronic signatures that are permissible. Those matters are subject to the standards adopted by the state Electronic Recording Commission or state agency pursuant to § 5.

This act applies only to documents that are received by the recorder in an electronic form and

enables those documents to be recorded. The recordability of documents not received by the recorder in an electronic form continues to depend on other state law.

(4) **"Electronic signature."** The term "electronic signature" is based on the definition of that term in UETA § 2(8). However, this definition uses the word "document" instead of "record" to identify the instrument being signed. (*See generally* paragraph 1, above, for a discussion of the reasons).

(5) **"Person."** The definition of a "person" is the standard definition for that term used in acts adopted by the National Conference of Commissioners on Uniform State Laws. It includes individuals, associations of individuals, and corporate and governmental entities.

(6) **"State."** The word "state" includes any state of the United States, the District of Columbia, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. VALIDITY OF ELECTRONIC DOCUMENTS.

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this [act].

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

Legislative Note: *This act authorizes a recorder to accept and record electronic documents. It does not attempt to change the other real property laws of the various states. However similar those laws in the various states may be in many respects, they also have many features that are unique. A single electronic recording act could not possibly weave itself into the general real property laws of each state and amend all those laws in exactly the same fashion producing the same ultimate result in each case. In some instance, gaps may have to be filled legislatively and in others conflicts may have to be resolved. Each legislature will have to review its own existing laws to determine what collateral real property laws need to be modified and how to do it.*

For example, it is possible that electronic recording systems might not cease to operate when recorders

lock their office doors at night or over the weekend. Indeed, it may be possible for electronic recording systems to accept electronic documents 24 hours per day and seven days per week despite the fact that no one is in the office to process the document at the time. In that situation a recorder's electronic recording system may, for example, receive and place an electronic mortgage filed on Saturday into a queue to be processed and indexed on Monday morning. If a potential purchaser should search the electronic recording system on Sunday to determine whether there are any claims against the real estate, the purchaser will not find the mortgage and might accept a deed and file it electronically, also on Sunday. That document will also be placed in the queue to be processed on Monday morning.

Although the mortgage was delivered to the recorder's electronic recording system, it was not indexed; by its status in the queue it might not even be considered to have been recorded until Monday morning when it is processed. The laws of the various states are not consistent on how this issue should be addressed, if it is addressed at all. It may depend on whether the electronic mortgage is considered delivered when it is received by the queue on Saturday or whether it is delivered only when the queue is opened and the document is processed on Monday morning. It may further depend on whether the law of the state treats a document as recorded when it is delivered to the recorder or whether it must be indexed in order to be considered recorded. It may also depend on whether the state has a notice or a race notice recording law. The various state laws are sufficiently diverse that this act could not amend all of them in a uniform fashion to achieve the same result. Thus, these issues are ones that the legislature of each enacting state should consider in light of the structure of its own recording laws.

Comment

(a) Subsection (a) states the basic principle of this act – if a document would be recordable in a paper format, an electronic document with the same content and meeting the requirements of this act is also recordable. Any reference in a statute, regulation, or standard to a document as being on paper or a similar tangible medium in order to be recorded is superseded by this act. Similarly any statute, regulation, or standard that specifies that a document must be in writing in order to be recorded is also overruled by this act. Furthermore, since any paper-specific requirement such as the size of the paper or the color of the ink used for the document is inapplicable to an electronic document, those requirements do not prohibit or limit the recording of electronic documents.

This subsection also provides that any stipulation of state law requiring that a document be an original document is satisfied by an electronic document meeting the requirements of this act. For example, this section acknowledges that one form of electronic document is created by making an electronic duplicate of an original paper document. The duplicate is an electronic "picture" of the original document with all of its signatures and verifications. Under some existing state laws, the electronic duplicate may be considered to be a copy of the original paper document and not the original itself. The laws of the state may also provide that a copy of a document may not be recorded. This act corrects that circumstance and allows the electronic document containing the "picture" of the original document to be recorded. Of course, in order to be valid, the original paper document must be executed in accordance with law, including a signature and verification.

(b) Subsection (b) provides that any statute, regulation, or standard requiring that a document be signed in order to be recorded is satisfied by an electronic signature attached to an electronic document. The provisions of UETA and the federal Electronic Signatures in Global and National Commerce Act (E-Sign) provide that an electronic signature is not an impediment to the enforceability of an electronic document between the parties to the transaction. Similarly, this section provides that an electronic signature is not an impediment to the recording of the document.

(c) This section provides that any statute, regulation, or standard requiring that a notarization,

acknowledgement, verification, witnessing, or taking of an oath be done on paper or similar tangible medium, that it be done in writing, or that it be signed, is satisfied by an electronic signature that is attached to, or logically associated with, the electronic document. It permits a notary public or other authorized person to act electronically without the need to do so on paper.

It also provides that any statute, regulation, or standard that requires a personal or corporate stamp, impression, or seal is satisfied by an electronic signature. These physical indicia are inapplicable to a fully electronic document. Thus, the notarial stamp or impression that is required under the laws of some states is not required for an electronic notarization under this act. Nor is there a need for a corporate stamp or impression as would otherwise be required under the laws of some states to verify the action of a corporate officer. Nevertheless, this act requires that the information that would otherwise be contained in the stamp, impression, or seal must be attached to, or logically associated with, the document or signature in an electronic fashion.

SECTION 4. RECORDING OF DOCUMENTS.

(a) In this section, "paper document" means a document that is received by the [recorder] in a form that is not electronic.

(b) A [recorder]:

(1) who implements any of the functions listed in this section shall do so in compliance with standards established by the [Electronic Recording Commission] [name of state agency].

(2) may receive, index, store, archive, and transmit electronic documents.

(3) may provide for access to, and for search and retrieval of, documents and information by electronic means.

(4) who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.

(5) may convert paper documents accepted for recording into electronic form.

(6) may convert into electronic form information recorded before the [recorder]

began to record electronic documents.

(7) may accept electronically any fee [or tax] that the [recorder] is authorized to collect.

(8) may agree with other officials of a state or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees [and taxes].

Legislative Note: *Although this act does not require a recorder to implement electronic recording, it does not preclude the possibility that other state or local law might require a recorder to do so. Should the state legislature wish to make such a requirement, this section should be amended accordingly.*

Comment

(a) A "paper document" is one that is received by the recorder in a form that is not "electronic." Despite the use of the word "paper," this document form is not limited to documents on a paper medium; the use of the word "paper" is merely a convenience. It applies to any non-electronic document that the recorder is authorized to accept.

Just as with the definition of an "electronic document" in section 2 of this act, the moment at which the character of the document will be determined is the moment it is received by the recorder. If a document is received by the recorder in a non-electronic form, it is a "paper" document regardless of whether it has a prior or subsequent existence as an electronic document.

(b) Subsection (b) sets forth specific required or elective functions that apply to the recording of documents.

(1) With the exception of paragraphs (1) and (4), implementation of any functions described in subsection (b) is optional and a decision to implement one or more of them is to be made by the recorder. The act does not require that a recorder implement any or all of those functions. It merely allows each recorder to implement them when and if the recorder decides to proceed with electronic recording.

However, under paragraph (1) if a recorder does elect to implement any of the functions described in this section, the recorder must do so in accordance with the standards established by the Electronic Recording Commission or the state agency. All aspects of the functions described in this subsection are subject to the standards of the Commission or agency.

(2) Paragraph (2) provides that the recorder may choose to implement electronic recording functions. Recording functions are varied and deal with obtaining and storing of documents in a recording system. Under this paragraph, the recorder may elect to receive electronic documents. The recorder may store those electronic documents, or the information contained in them, and create an index of the documents or information. The recorder may also transmit electronic documents and communications to the recording party or to other parties. Finally, the recorder may archive the electronic documents or the information in them as well as the index in order to preserve and protect

them. This is an election to be made by the recorder that is separate from the decision to provide electronic searching, as described in paragraph (3).
Since this act also applies to "Torrens" title registration systems, a recorder who operates a title registration system may choose to implement the functions of receiving, indexing, storing, archiving, and transmitting electronic documents for the title registration system.

(3) Paragraph (3) provides that the recorder may choose to implement electronic search and retrieval functions. Searching and retrieval functions include any process by which a title searcher obtains information from the land records system. The paragraph allows a recorder to authorize persons to access documents or their information, including index information, electronically. In so doing, the recorder may allow the accessing party to search the index and the stored documents or information electronically and to retrieve them in an electronic format. This is an election to be made by the recorder that is separate from the decision to record electronic documents, as described in paragraph (2). A recorder who operates a "Torrens" title registration system also may choose to implement the functions of accessing, searching, and retrieving documents or information in the title registration system.

(4) This act does not require that persons engaging in real estate transactions use electronic documents in order to have their documents recorded. It merely permits the recorder to accept electronic documents if they are presented electronically. Economics, availability of technology, and human nature suggest that not everyone will begin to use electronic real estate documents immediately. It will likely be some time before the use of electronic documents becomes dominant and perhaps well beyond that before paper documents disappear altogether from the conveyancing process. In recognition of that fact, paragraph (4) requires the recorder to continue to accept paper documents even after establishing an electronic recording system. This is a mandatory and not an elective provision.

This paragraph also provides that the recorder must index the paper documents together with electronic documents as part of a single indexing system. This will enable a title examiner to make a single search of one index for the purpose of ascertaining all relevant instruments that were recorded after the initiation of electronic recording. It avoids the inefficient and costly process of maintaining and searching two separate indexing systems – one for electronic documents and one for paper documents.

Efficiency also suggests that the unified index would be an electronic one. It would be more efficient to store the index information from paper documents in an electronic index than to convert and store the index information from electronic documents in a paper index system. Electronic index information can be sorted and managed more easily and efficiently than paper index information. In addition, an electronic index can be searched more quickly and without the searcher's physical presence in the recorder's office. However, the act does not require the index chosen by the recorder to be an electronic one.

(5) Paragraphs (5) and (6) relate to the conversion and storage of the text or information contained in paper documents in an electronic form. It does not concern the index information that is derived from those paper documents. The treatment of index information is described in the paragraph (4).

Paragraph (5) relates to the conversion of "new" paper documents received by the recorder after the implementation of an electronic recording system. It does not require that such newly-received paper documents be converted and stored in an electronic form. It does, however, permit the recorder to make a conversion of those paper documents into an electronic form and store them with electronic documents received by the recorder. If the paper documents are not converted into an electronic form, the recorder must continue to store them and, as public documents, the recorder must continue to provide a process for accessing them.

If the recorder does not convert "new" paper documents into an electronic form, the usefulness and efficiency of the electronic recording system may be limited. A title examiner will have to obtain physical access to the paper document information in traditional ways. Since electronic documents are stored electronically, the examiner will have to access two different storage systems – one for paper documents and one for electronic documents.

(6) Paragraph (6) relates to the conversion of information from "old" paper documents recorded prior to the implementation of an electronic recording system. As with newly-received paper documents, the act does not require the recorder to convert previously-recorded information into an electronic form. Such a conversion is, however, permitted under the act.
Dealing with "old" document information is more challenging than dealing with "new" documents simply because of the potentially large expenditure of time and money needed to convert a significant volume of paper information extending over many past years into an electronic form. The time period over which a fully-effective conversion would extend probably spans a period of forty to sixty or more years, depending on the customary period of search in the jurisdiction. Without the conversion, the usefulness and efficiency of the electronic recording system is limited, at least until the passage of a period after the adoption of the act that is equal to the customary period of search.

(7) Paragraph (7) provides that any fee or tax that is collected by the recorder may be collected through an electronic payment system. Without a means of paying the applicable fees and taxes electronically, the achievement of a speedy and efficient electronic recording system would not be possible. Although the document could be submitted electronically, the fee would have to be paid by traditional means. The effective completion of the recording would be delayed until that payment is received by the recorder.

The nature and operation of the electronic payment system is not specified. The selection is subject to standards set by the Electronic Recording Commission or state agency and the choice of the recorder. Among others, the alternatives might include a subscription service with a regular billing system, a prepayment system with recording and access charges applied against a deposited amount, or a payment per individual service system.

(8) Commonly, before a recorder may accept a document for recording it must be approved by one or more other offices in order to assure compliance with the other office's requirements. The person submitting the document may also be required to pay fees or taxes to the other office or offices. If the prior approval and the fee or tax paying processes are not conjoined with the electronic recording process, it will not be possible to effectuate the speedy electronic recording envisioned by this act.

For example, a document may first need to be submitted to the county assessor or treasurer to determine whether prior real estate taxes have been paid or whether current ones are due. Under current practice that submission and approval might have to be accomplished in a physical process independent of the electronic recording process. If a tax or fee is due, that sum might also have to be paid by check or other non-electronic process to the treasurer. Procedures such as these will delay the electronic recording process and will limit the achievement of a speedy, efficient electronic recording system.

Paragraph (8) permits and encourages the recorder to enter into agreements with other county and state offices for the purpose of implementing processes that will allow the simultaneous satisfaction of all conditions precedent to recording and the payment of all fees and taxes in a single transaction. Any fees and taxes paid by the recording party will be allocated among the recorder and the other offices in accordance with their agreements.

SECTION 5. ADMINISTRATION AND STANDARDS.

[Alternative A]

(a) An [Electronic Recording Commission] consisting of [number] members appointed by [the governor] is created to adopt standards to implement this [act]. A majority of the members of the [commission] must be [recorders].

[End of Alternative A]

[Alternative B]

(a) The [name of state agency] shall adopt standards to implement this [act].

[End of Alternative B]

(b) To keep the standards and practices of [recorders] in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this [act] and to keep the technology used by [recorders] in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this [act], the [Electronic Recording Commission] [name of state agency], so far as is consistent with the purposes, policies, and provisions of this [act], in adopting, amending, and repealing standards shall consider:

(1) standards and practices of other jurisdictions;

(2) the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association;

(3) the views of interested persons and governmental officials and entities; and

(4) the needs of [counties] of varying size, population, and resources.

Legislative Note: *The term "Electronic Recording Commission" is used in this act to designate the administrative body delegated the duty of performing the functions described in Alternate A. However, a different name or title for the commission may be appropriate under the law or titling customs of an adopting state. Thus, when adopting this act, the legislature should consider the term "Electronic Recording Commission" and substitute another term if it may be more appropriate to do so under the law or customs of the state.*

In addition, if Alternative B is enacted, the references throughout this act should be to the state agency designated by the legislature to adopt the standards implementing this act.

Comment

(a) This section provides two alternatives for designating the entity that will adopt standards to implement this act.

Alternative A creates a state Electronic Recording Commission and provides for its general composition. The exact size of the board is to be determined by the legislature. The appointment of the commissioners is to be made by the governor or another state official or governmental body determined by the legislature.

Under Alternative A, the majority of the members of the commission must be recorders. Recorders, by the fact that the standards adopted by the Electronic Recording Commission will affect the operation of their offices, have a professional interest in generating efficient, functional standards. If the recorders are appointed from sufficiently diverse recording venues, they can also provide valuable input as to the needs of recording districts of varying size, population and resources, as described further in subsection (b).

Alternative B delegates the duty to adopt standards to implement this act to an existing state agency. In some states this oversight of the recording process, and in some cases the electronic recording process, has already been delegated to an existing state agency. In like fashion, some state legislatures may wish to delegate these duties to an existing state agency instead of creating a new commission as is directed in Alternative A.

If the state agency has oversight of many diverse functions, it might prove useful for the agency to establish a subdivision to implement and adopt standards for this act. The agency or subdivision might also wish to establish a regular process to obtain advice from persons with expertise in the area of recordings, particularly in electronic recordings.

(b) The Electronic Recording Commission or state agency is directed to adopt standards to implement the provisions of this act. As provided in section 4, recorders implementing any of the functions of this act must comply with those standards.

One of the objectives of this act is to facilitate the efficient use of electronic recording within the state and among the various adopting states. This subsection directs the Electronic Recording Commission or state agency to seek to keep the standards and practices of the recording offices in states using electronic recording in harmony and uniformity with each other. Ease of user access and interoperability and the promotion of interstate commerce depend highly on a similarity of standards and operating processes among the various recording offices. However, differences in operating processes and their governing standards may be justified based on legitimate differences that exist from venue to

venue. The commission is not required to adopt the same standards and practices that exist in other states, but must give them serious consideration.

When adopting, amending or repealing standards the commission or agency must consider the following factors:

(1) the standards and practices of other states adopting this uniform act or a substantially similar one. In many situations, Electronic Recording Commissions or state agencies of other states may have already considered the same issue. Their research and subsequent experiences may prove very helpful to the commission or state agency in making its decision.

(2) the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association (PRIA). National standard-setting organizations such as PRIA will likely have considered the issue that is now before the commission or agency and have developed a protocol or standard to deal with it. Furthermore, since these bodies are national in scope, they will likely already have considered the needs of recording districts of varying size, population and resources when promulgating their standards.

(3) the views of interested parties. Among others, these persons should include county recorders and potential users of the electronic recording system such as real estate attorneys, mortgage lenders, representatives from the title and escrow industries, real estate brokers, and notaries public. It must also consider the views of governmental offices that may interact with the recording offices, such as clerks of court, taxing authorities, and the office of the Secretary of State. Also included might be potential suppliers of hardware, software and services for electronic recording systems.

(4) the needs of counties of varying size, population and resources. Because most states are quite diverse in the size, population and resources of their recording venues, it is important that the Electronic Recording Commission or state agency consider all of their needs. Standards that are designed only for large, populous and well-funded recording districts may not promote the development of electronic recording in smaller, less-populous and not-as-well funded recording districts. This subsection recognizes that the standards should promote the overall good of the entire state and not just the good of certain types of recording venues. Thus, the commission is advised to consider the needs of the entire spectrum of recording districts.

SECTION 6. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Comment

This section recites the importance of uniformity among the adopting states when applying and construing the act. It is more general than the uniformity stated in section 5 for the Electronic Recording Commission or state agency when implementing or adopting standards. This section seeks uniformity in all situations when the application or interpretation of the act itself is considered or under review.

SECTION 7. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

Comment

This section responds to the specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

SECTION 8. EFFECTIVE DATE. This [act] takes effect [date].

Comment

This act will become effective in the enacting jurisdiction on the designated date.

Kahler, Pam

From: Dykman, Peter
Sent: Tuesday, November 08, 2005 10:24 AM
To: Kahler, Pam
Subject: FW: Risser Drafting Request: Uniform Real Property Electronic Recording Act

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From: Tuschen, Terry
Sent: Tuesday, November 08, 2005 10:21 AM
To: Dykman, Peter
Subject: RE: Risser Drafting Request: Uniform Real Property Electronic Recording Act

Hi Peter, after a big disconnect, we connected with Jane Licht and she can be the Register of Deeds contact person. Her number is: 267-8814. Email: licht@co.dane.wi.us

Let me know if you need additional information and thanks.
Terry

From: Dykman, Peter
Sent: Friday, September 16, 2005 10:21 AM
To: Tuschen, Terry
Cc: Lief, Madelon; Shovers, Marc; Champagne, Rick
Subject: RE: Risser Drafting Request: Uniform Real Property Electronic Recording Act

Bruce Munson has been unable to participate in uniform state laws activities for several years because of budget cuts.

Marc and Lonnie would know the answer to what state agency is involved but there may not be one. They interact with DOA and DFI but I don't think those departments supervise the register of deeds (which is a constitutional office).

59.43 Register of deeds; duties, fees, deputies. is a main section on this topic.

Is there a person with the Register of Deeds association that you want us to contact or should we go through you?

From: Tuschen, Terry
Sent: Friday, September 16, 2005 9:42 AM
To: Dykman, Peter
Cc: Lief, Madelon; Shovers, Marc; Champagne, Rick
Subject: RE: Risser Drafting Request: Uniform Real Property Electronic Recording Act

Hi Peter, I guess I'm the contact on the draft. Bruce Munson has been active on uniform laws issues and may be helpful with specific questions. What state agency currently handles these recordings/transactions?
T

From: Dykman, Peter
Sent: Friday, September 16, 2005 9:30 AM
To: Tuschen, Terry; Lief, Madelon; Shovers, Marc
Cc: Champagne, Rick
Subject: RE: Risser Drafting Request: Uniform Real Property Electronic Recording Act

I am forwarding this to the LRB attorneys who draft in real estate and counties. They might need to work on it together. Is there a contact person for this draft? The act has an optional state agency. One of the questions they will have is whether to include it in the Wisconsin act.

To find the bill drafts of this act introduced in other states, click on the following and select the name of the act.

http://www.nccusl.org/nccusl/ActSearchResults.aspx

From: Tuschen, Terry
Sent: Thursday, September 15, 2005 11:52 AM
To: Dykman, Peter
Cc: Tuschen, Terry
Subject: Risser Drafting Request: Uniform Real Property Electronic Recording Act

Hi Peter, Fred asked me to get this to you to have drafted. He's doing this on behalf of the Register of Deeds folks. I understand that he first ran this by Bruce Munson who said to get the language over to you. So here is the PDF file of the language and a web link too. Let me know if you have any questions or if there is additional information I can get to you.
Thanks, Terry

<< File: Nov2004FinalDraft.pdf >>
http://www.law.upenn.edu/bll/ulc/urpera/Nov2004FinalDraft.htm

****

Terry Tuschen
Office of State Senator Fred Risser
123 South, State Capitol
Madison, WI 53702
608.266.1627
Terry.Tuschen@legis.state.wi.us

of this Uniform Act

Please put a "PL" into our format and return it to me — do not submit.

(Note web address at bottom if it's easier to get that and "doctor" it up than to type from scratch)

Thanks!

2005 BILL

Date (time) needed _____

LRB – 3695 / P1

PJK : lmk : ____

↑ Ray, not H

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] ***to repeal*** . . . ; ***to renumber*** . . . ; ***to consolidate and renumber*** . . . ; ***to renumber and amend*** . . . ; ***to consolidate, renumber and amend*** . . . ; ***to amend*** . . . ; ***to repeal and recreate*** . . . ; and ***to create*** . . . of the statutes; **relating to:** the Uniform Real Property Electronic Recording Act.

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:
- For the main heading, execute: . . . . . **create → anal: → title: → head**
- For the subheading, execute: . . . . . **create → anal: → title: → sub**
- For the sub–subheading, execute: . . . . . **create → anal: → title: → sub–sub**

For the analysis text, in the component bar:
- For the text paragraph, execute: . . . . . **create → anal: → text**

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION #. CR; 706.25

↓

(B)

706.25 Uniform real property

(B) electronic recording act.

under state law to accept documents for recording in the land records office. Although "recorder" is the word commonly used in most states to identify that officer, it has been placed in brackets as an indication that other titles might be used for the position. For example, the words "registrar" or "clerk" are used in some states to designate that officer.

In addition, since this act affects all land recording systems in a state, the word "recorder" also applies to the appropriate officer under the alternative title system sometimes known as a "Torrens" title registration system. In some states the traditional officer is known as a "recorder" and the officer under the alternative system is known as a "registrar." Regardless of name, this act would apply to both officers.

When adopting this act the legislature should consider whether to delete the word "recorder" wherever it appears and substitute the appropriate word or words used under the system or systems in effect in the state. If the word "recorder" is retained, the brackets should be removed.

Comment

This act applies to the recording of documents in the land records office maintained by a recorder. It applies both to the filing of, and the searching for, documents in the recorder's office by whatever term or terms those functions and offices are known locally.

SECTION 2. DEFINITIONS. In this [act]:

(a) (1) "Document" means information that is:

1. (A) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

2. (B) eligible to be recorded in the land records maintained by the [recorder].

(b) (2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(c) (3) "Electronic document" means a document that is received by the [recorder] in an electronic form.

(d) (4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(e) ~~(5)~~ "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(f) ~~(6)~~ "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Legislative Note: *Since this act does not apply to offices other than the land records office maintained by the recorder, even though land title information may be filed in the other offices, certain gaps or inefficiencies may arise. For example, state law may not authorize the clerk of court's office to implement electronic filing and searching provisions similar to those of this act. If, under other state law, the clerk of court's office is the proper venue in which to file a satisfaction of a judgment lien, the creditor will not be able to file it electronically. Nor will it be possible for a title examiner to search for it electronically. The need to file or search in a non-electronic fashion may prevent the more complete realization of the benefits of electronic recording sought to be achieved by this act. Thus, a legislature might consider whether it would be beneficial to amend the laws affecting other offices in the state in which real estate documents are filed in order to authorize or encourage the filing and searching of electronic documents in them.*

Comment

(1) **"Document."** A document consists of information stored on a medium, whether the medium be tangible or electronic, provided that the information is retrievable in a perceivable form. The traditional tangible medium has been paper on which information is inscribed by writing, typing, printing or similar means. It is perceivable by reading it directly from the paper on which it is inscribed. An electronic medium may be one on which information is stored magnetically and from which it may be retrieved and read indirectly on a computer monitor or a paper printout.

While a document recorded in a land records office will usually contain information affecting real property, it need not necessarily be so limited. It applies to any document that is recorded in the land records office maintained by the recorder. Deeds, grants of easements, and mortgages are documents subject to this act. Similarly, certificates and affidavits not directly affecting real property may be documents under this act if state law provides these documents are to be recorded in the land records office.

The definition of a document in this act is derived from the definition of the term "record" as contained in the Uniform Electronic Transactions Act (UETA) § 2(13). In the terms of that act, a document is a record that is eligible to be recorded in the land records maintained by the recorder. In selecting the defined term "document" for use throughout this act, an explicit decision was made not to use "record" as a defined term. The term "record" has a different meaning in real estate recording law and practice than it has in UETA. If the term "record" were used generally in this act, it might lead to confusion and misinterpretation.

In UETA, the term "record" refers to information on a tangible or electronic medium as does the

enables those documents to be recorded. The recordability of documents not received by the recorder in an electronic form continues to depend on other state law.

(4) **"Electronic signature."** The term "electronic signature" is based on the definition of that term in UETA § 2(8). However, this definition uses the word "document" instead of "record" to identify the instrument being signed. (*See generally* paragraph 1, above, for a discussion of the reasons).

(5) **"Person."** The definition of a "person" is the standard definition for that term used in acts adopted by the National Conference of Commissioners on Uniform State Laws. It includes individuals, associations of individuals, and corporate and governmental entities.

(6) **"State."** The word "state" includes any state of the United States, the District of Columbia, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. VALIDITY OF ELECTRONIC DOCUMENTS.

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this [act].

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

Legislative Note: *This act authorizes a recorder to accept and record electronic documents. It does not attempt to change the other real property laws of the various states. However similar those laws in the various states may be in many respects, they also have many features that are unique. A single electronic recording act could not possibly weave itself into the general real property laws of each state and amend all those laws in exactly the same fashion producing the same ultimate result in each case. In some instance, gaps may have to be filled legislatively and in others conflicts may have to be resolved. Each legislature will have to review its own existing laws to determine what collateral real property laws need to be modified and how to do it.*

For example, it is possible that electronic recording systems might not cease to operate when recorders

acknowledgement, verification, witnessing, or taking of an oath be done on paper or similar tangible medium, that it be done in writing, or that it be signed, is satisfied by an electronic signature that is attached to, or logically associated with, the electronic document. It permits a notary public or other authorized person to act electronically without the need to do so on paper.

It also provides that any statute, regulation, or standard that requires a personal or corporate stamp, impression, or seal is satisfied by an electronic signature. These physical indicia are inapplicable to a fully electronic document. Thus, the notarial stamp or impression that is required under the laws of some states is not required for an electronic notarization under this act. Nor is there a need for a corporate stamp or impression as would otherwise be required under the laws of some states to verify the action of a corporate officer. Nevertheless, this act requires that the information that would otherwise be contained in the stamp, impression, or seal must be attached to, or logically associated with, the document or signature in an electronic fashion.

SECTION 4. RECORDING OF DOCUMENTS.

(a) In this section, "paper document" means a document that is received by the [recorder] in a form that is not electronic.

(b) A [recorder]:

1. (1) who implements any of the functions listed in this section shall do so in compliance with standards established by the [Electronic Recording Commission] [name of state agency].

2. (2) may receive, index, store, archive, and transmit electronic documents.

3. (3) may provide for access to, and for search and retrieval of, documents and information by electronic means.

4. (4) who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.

5. (5) may convert paper documents accepted for recording into electronic form.

6. (6) may convert into electronic form information recorded before the [recorder]

began to record electronic documents.

(7) may accept electronically any fee [or tax] that the [recorder] is authorized to collect.

(8) may agree with other officials of a state or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees [and taxes].

Legislative Note: *Although this act does not require a recorder to implement electronic recording, it does not preclude the possibility that other state or local law might require a recorder to do so. Should the state legislature wish to make such a requirement, this section should be amended accordingly.*

Comment

(a) A "paper document" is one that is received by the recorder in a form that is not "electronic." Despite the use of the word "paper," this document form is not limited to documents on a paper medium; the use of the word "paper" is merely a convenience. It applies to any non-electronic document that the recorder is authorized to accept.

Just as with the definition of an "electronic document" in section 2 of this act, the moment at which the character of the document will be determined is the moment it is received by the recorder. If a document is received by the recorder in a non-electronic form, it is a "paper" document regardless of whether it has a prior or subsequent existence as an electronic document.

(b) Subsection (b) sets forth specific required or elective functions that apply to the recording of documents.

(1) With the exception of paragraphs (1) and (4), implementation of any functions described in subsection (b) is optional and a decision to implement one or more of them is to be made by the recorder. The act does not require that a recorder implement any or all of those functions. It merely allows each recorder to implement them when and if the recorder decides to proceed with electronic recording.

However, under paragraph (1) if a recorder does elect to implement any of the functions described in this section, the recorder must do so in accordance with the standards established by the Electronic Recording Commission or the state agency. All aspects of the functions described in this subsection are subject to the standards of the Commission or agency.

(2) Paragraph (2) provides that the recorder may choose to implement electronic recording functions. Recording functions are varied and deal with obtaining and storing of documents in a recording system. Under this paragraph, the recorder may elect to receive electronic documents. The recorder may store those electronic documents, or the information contained in them, and create an index of the documents or information. The recorder may also transmit electronic documents and communications to the recording party or to other parties. Finally, the recorder may archive the electronic documents or the information in them as well as the index in order to preserve and protect

SECTION 5. ADMINISTRATION AND STANDARDS.

[Alternative A]

(a) An [Electronic Recording Commission] consisting of [number] members appointed by [the governor] is created to adopt standards to implement this [act]. A majority of the members of the [commission] must be [recorders].

[End of Alternative A]

[Alternative B]

(a) The [name of state agency] shall adopt standards to implement this [act].

[End of Alternative B]

(b) To keep the standards and practices of [recorders] in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this [act] and to keep the technology used by [recorders] in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this [act], the [Electronic Recording Commission] [name of state agency], so far as is consistent with the purposes, policies, and provisions of this [act], in adopting, amending, and repealing standards shall consider:

1. (1) standards and practices of other jurisdictions;
2. (2) the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association;
3. (3) the views of interested persons and governmental officials and entities; and

4. (4) the needs of [counties] of varying size, population, and resources.

Legislative Note: *The term "Electronic Recording Commission" is used in this act to designate the administrative body delegated the duty of performing the functions described in Alternate A. However, a different name or title for the commission may be appropriate under the law or titling customs of an adopting state. Thus, when adopting this act, the legislature should consider the term "Electronic Recording Commission" and substitute another term if it may be more appropriate to do so under the law or customs of the state.*

In addition, if Alternative B is enacted, the references throughout this act should be to the state agency designated by the legislature to adopt the standards implementing this act.

Comment

(a) This section provides two alternatives for designating the entity that will adopt standards to implement this act.

Alternative A creates a state Electronic Recording Commission and provides for its general composition. The exact size of the board is to be determined by the legislature. The appointment of the commissioners is to be made by the governor or another state official or governmental body determined by the legislature.

Under Alternative A, the majority of the members of the commission must be recorders. Recorders, by the fact that the standards adopted by the Electronic Recording Commission will affect the operation of their offices, have a professional interest in generating efficient, functional standards. If the recorders are appointed from sufficiently diverse recording venues, they can also provide valuable input as to the needs of recording districts of varying size, population and resources, as described further in subsection (b).

Alternative B delegates the duty to adopt standards to implement this act to an existing state agency. In some states this oversight of the recording process, and in some cases the electronic recording process, has already been delegated to an existing state agency. In like fashion, some state legislatures may wish to delegate these duties to an existing state agency instead of creating a new commission as is directed in Alternative A.

If the state agency has oversight of many diverse functions, it might prove useful for the agency to establish a subdivision to implement and adopt standards for this act. The agency or subdivision might also wish to establish a regular process to obtain advice from persons with expertise in the area of recordings, particularly in electronic recordings.

(b) The Electronic Recording Commission or state agency is directed to adopt standards to implement the provisions of this act. As provided in section 4, recorders implementing any of the functions of this act must comply with those standards.

One of the objectives of this act is to facilitate the efficient use of electronic recording within the state and among the various adopting states. This subsection directs the Electronic Recording Commission or state agency to seek to keep the standards and practices of the recording offices in states using electronic recording in harmony and uniformity with each other. Ease of user access and interoperability and the promotion of interstate commerce depend highly on a similarity of standards and operating processes among the various recording offices. However, differences in operating processes and their governing standards may be justified based on legitimate differences that exist from venue to

venue. The commission is not required to adopt the same standards and practices that exist in other states, but must give them serious consideration.

When adopting, amending or repealing standards the commission or agency must consider the following factors:

(1) the standards and practices of other states adopting this uniform act or a substantially similar one. In many situations, Electronic Recording Commissions or state agencies of other states may have already considered the same issue. Their research and subsequent experiences may prove very helpful to the commission or state agency in making its decision.

(2) the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association (PRIA). National standard-setting organizations such as PRIA will likely have considered the issue that is now before the commission or agency and have developed a protocol or standard to deal with it. Furthermore, since these bodies are national in scope, they will likely already have considered the needs of recording districts of varying size, population and resources when promulgating their standards.

(3) the views of interested parties. Among others, these persons should include county recorders and potential users of the electronic recording system such as real estate attorneys, mortgage lenders, representatives from the title and escrow industries, real estate brokers, and notaries public. It must also consider the views of governmental offices that may interact with the recording offices, such as clerks of court, taxing authorities, and the office of the Secretary of State. Also included might be potential suppliers of hardware, software and services for electronic recording systems.

(4) the needs of counties of varying size, population and resources. Because most states are quite diverse in the size, population and resources of their recording venues, it is important that the Electronic Recording Commission or state agency consider all of their needs. Standards that are designed only for large, populous and well-funded recording districts may not promote the development of electronic recording in smaller, less-populous and not-as-well funded recording districts. This subsection recognizes that the standards should promote the overall good of the entire state and not just the good of certain types of recording venues. Thus, the commission is advised to consider the needs of the entire spectrum of recording districts.

SECTION 6. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Comment

This section recites the importance of uniformity among the adopting states when applying and construing the act. It is more general than the uniformity stated in section 5 for the Electronic Recording Commission or state agency when implementing or adopting standards. This section seeks uniformity in all situations when the application or interpretation of the act itself is considered or under review.

SECTION 7. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

Comment

This section responds to the specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

SECTION 8. EFFECTIVE DATE. This [act] takes effect [date].

Comment

This act will become effective in the enacting jurisdiction on the designated date.

In response, a few states have convened study committees or task forces to consider the question of recording electronic documents (*see* Report of Iowa State Bar Ass'n, Real Estate Modernization Comm., draft of *Ch. 558B – Iowa Electronic Recording Act* (2001); Conn. Law Revision Comm., *An Act Establishing the Connecticut Real Property Electronic Recording System* (Conn. Gen Assembly, Judiciary Comm., Raised Bill No. 5664, 2004)). In 2002, a drafting committee was established by the NCCUSL Executive Committee to draft a Uniform Real Property Electronic Recording Act. The Committee's decision followed a recommendation of the NCCUSL Committee on Scope and Program. Their actions were in recognition of a strong recommendation from the Joint Editorial Board on Uniform Real Property Acts that a uniform act be drafted.

The Uniform Real Property Electronic Recording Act was drafted to remove any doubt about the authority of the recorder to receive and record documents and information in electronic form. Its fundamental principle is that any requirements of state law describing or requiring that a document be an original, on paper, or in writing are satisfied by a document in electronic form. Furthermore, any requirement that the document contain a signature or acknowledgment is satisfied by an electronic signature or acknowledgement. The act specifically authorizes a recorder, at the recorder's option, to accept electronic documents for recording and to index and store those documents.

If the recorder elects to accept electronic documents, the recorder must also comply with certain other requirements set forth in the act. In addition, the act charges an Electronic Recording Commission or an existing state agency with the responsibility of implementing the act and adopting standards regarding the receipt, recording, and retrieval of electronic documents. The Commission or agency is directed to adopt those standards with a vision toward fostering intra- and interstate harmony and uniformity in electronic recording processes.

This act does not state the means of funding the establishment or operation of an electronic recording system in the various recording venues. No single approach is inherently the best for funding electronic recording systems. This is especially true because of the range of taxation systems and cultures existing in the various states and recording venues and the diversity of the various states and recording venues in terms of population and resources. In fact, the best system for any state or recording venue might involve a combination of approaches.

The establishment, and perhaps the operation, of an electronic recording system might be funded from the general taxes and revenues of the state or county. Because of the relatively large "front end" expenses needed to set up an electronic recording system, this approach might be very appropriate for that purpose. Whether the funding is to be by the county or the state is an issue that should be resolved prior to the passage of this act. A related question is whether the funding should cover the entire cost of setting up the system or only part of it with the remaining costs to be paid by recording and searching fees dedicated to the establishment of the electronic recording system.

UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Real Property Electronic Recording Act.

Legislative Note: *The word "recorder" is used in this act to identify the officer who has the authority*