

# STATEMENT OF SCOPE

## Department of Administration

**Rule No.:** Chapter Adm 70

**Relating to:** Updating Standards to Implement the Uniform Real Property Electronic Recording Act

**Rule Type** Permanent

### **1. Finding/nature of emergency (Emergency Rule only): N/A**

### **2. Detailed description of the objective of the proposed rule:**

Wisconsin Electronic Recording Council is considering adopting updated standards for implementing the Uniform Real Property Electronic Recording Act (URPERA), codified at Wis. Stat. § 706.25. The URPERA is implemented by Wis. Admin. Code Ch. Adm 70, which was effective August 1, 2009. Certain portions of Ch. Adm 70 are now in need of updating to reflect current information and standards.

The URPERA expressly charges the Council with the responsibility of adopting standards for its implementation. The Council's objective in fulfilling this responsibility is to "keep the standards and practices of registers of deeds in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this section and to keep the technology used by registers of deeds in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this section . . ." Wis. Stat. § 706.25(4)(a). In particular, the Council is charged with considering all of the following:

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.
4. The needs of counties of varying sizes, populations, and resources.
5. The need for security protection to ensure that electronic documents are accurate, authentic, and resistant to tampering.

Wis. Stat § 706.25(4)(b). For this rulemaking, the Council will review and potentially update the Property Records Industry Association (PRIA) standards that are incorporated by reference in Chapter Adm 70. The remainder of Chapter Adm 70 will also be reviewed to consider any other revisions that may be necessary to interpret the provisions of Wis. Stat. § 706.25 or adopt standards for its implementation.

### **3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

The PRIA standards currently incorporated by reference into §§ Adm 70.03 and Adm 70.04 are dated April 2007 and March 2008, respectively. As part of this rulemaking, the Council will review these standards to determine whether more current standards should be adopted instead. The Council will also consider updating the methods of obtaining trusted submitter agreement applications under § Adm 70.05 and other revisions to necessary to modernize the language of Ch. Adm 70, update contact information, or clarify the interpretation and implementation of Wis. Stat. § 706.25.

The alternative to the proposed rule is to leave the code provisions as they are without being reviewed to determine whether updates are necessary. This would contravene the statutory purpose for the Council to maintain standards and practices consistent with those of other jurisdictions that operate under the laws substantially similar to the URPERA. *See* Wis. Stat. § 706.25(4)(a).

**4. Detailed explanation of statutory authority for the rule (including statutory citation and language):**

The Wisconsin Statutes provides explicit authority for the Electronic Recording Council to adopt standards implementing the Uniform Electronic Real Property Electronic Recording Act, codified at Wis. Stat. § 706.25, and for the Department of Administration to promulgate these standards by rule. Specifically, § 706.25(4) provides that the Council “shall adopt standards to implement this section” and further provides that the “department of administration shall promulgate by rule the standards adopted, amended, or repealed by the council under this paragraph.” Additionally, Wis. Stat. § 227.11(2)(a) provides explicit authority for an agency to “promulgate rules interpreting the provisions of any statute enforced or administered by the agency.” The proposed rule will interpret the provisions of Wis. Stat. § 706.25 and set forth standards for its implementation which are developed and approved by the Electronic Recording Council consistent with these provisions.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :**

80 hours

**6. List with description of all entities that may be affected by the proposed rule :**

Wisconsin Registers of Deeds, members of the real estate community who prepare, organize and submit documents for recording, individual citizens that are served by the real estate community or who act on their own behalf to record and receive documents, vendors that provide service to submitters and local registers, and private and professional people who conduct records research in the land records systems of the registers of deeds such as real estate attorneys, bank, mortgage and title companies.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :**

The Uniform Electronic Transactions Act (UETA) and the Uniform Real Property Electronic Recording Act are state model acts adopted by Wisconsin with the intention of preempting the application of the federal Electronic Signatures in Global & National Commerce Act (ESIGN). *See* Wis. Stat. §§ 137 706.25(6)(a). ESIGN expressly authorizes states to modify, limit, or supersede its application with respect to state law. *See* 15 U.S.C. § 7002(a).

Therefore, except as specifically provided in Wis. Stat. § 705.25(6)(b), Wisconsin’s URPERA supersedes the federal ESIGN Act to the extent there is overlap between the two.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

At this time there is no anticipated economic impact from promulgating the proposed rule.

**Contact Person:** Sharon Martin, Washington County Register of Deeds and Chairperson of Wisconsin Electronic Recording Council, (262) 306-2225; David Rabe, DOA Legal Counsel, (608) 264-6397.