

# Connecticut Commission on Uniform Legislation

February 26, 2008

## Statement re RB 5535

### AAC Uniform Real Property Electronic Recording Act

I am writing to urge Judiciary Committee of the General Assembly to approve the Uniform Real Property Electronic Recording Act (URPERA), Raised Bill 5535 for Connecticut. I am David D. Biklen, chair of the Connecticut Commission on Uniform Legislation. I also chaired the Uniform Laws Conference committee that drafted URPERA.

URPERA does one principal thing – it allows town clerks in Connecticut to record mortgages, deeds, and other papers on our land records in electronic form. To accomplish this result, the bill establishes that electronic documents recorded and stored on the land records have the same legal effect as written documents. The act calls on the State Librarian, who under current law sets standards for recording and storing documents on land records, to set standards for town clerks to accept, store, report, and exchange real estate documents in electronic form. The State Librarian will set those standards with the advice of the Public Records Administrator and other experts.

Several years ago, Connecticut adopted the Uniform Electronic Transaction Act (UETA) which establishes the validity of agreements and contracts executed electronically. URPERA builds on the success of UETA by allowing real estate documents to be recorded electronically on the land records.

The time for electronic recordation of real estate documents has now arrived in Connecticut. The Connecticut Town Clerks Association and the Connecticut Title Insurance Association support the act. The Real Property Section of the Connecticut Bar Association did not take a position on the act. To give sufficient time for the State Librarian to establish standards for electronic recording, the act has an effective date of October 1, 2009.

We are fortunate that fifteen states have already enacted URPERA. In setting Connecticut standards for electronic recording, the State Librarian will be able to draw on the experience of those other states.

It is important to note that town clerks will not be required to offer electronic recording – the bill is not a state mandate for towns to begin electronic recording. Each town clerk will use electronic recording only when the clerk is ready to do so.

It is also important to note that, even if a town clerk records documents electronically, paper documents will still be accepted for recordation. When it accepts a paper document, the town clerk can, of course, convert the paper document into electronic form.

The bill, itself, does not have a fiscal impact and does not place a mandate on the towns to use electronic recording. The bill authorizes setting of standards to accommodate electronic recording. Town clerks do not have to offer or accept electronic documents. When a town clerk does decide to offer electronic recording, the clerk's office may, of course, need to obtain electronic hardware and recording programs.

This uniform act has proven to be quite popular among the states. Since its promulgation in 2004, fifteen states have already adopted the act and ten more are considering it this year. The Connecticut Commission on Uniform Legislation urges the Judiciary Committee to give favorable consideration to Raised Bill 5535 this year.

If you have any questions, please contact me at [Biklen@sbcglobal.net](mailto:Biklen@sbcglobal.net) or 860-233-4200. Thank you for your consideration of the bill.

David D. Biklen, Chair  
Connecticut Commission on Uniform Legislation

# National Conference of Commissioners on Uniform State Laws

211 East Ontario Street, Suite 1300, Chicago, IL 60611 PH: 312/915-0195 FX: 312/915-0464 www.nccusl.org

## OFFICERS

MARTHA LEE WALTERS

*President*

Oregon Supreme Court

1163 State St.

Salem, OR 97301

HARRIET LANSING

*Vice President*

313 Judicial Center

25 Rev. Dr. Martin Luther

King Jr. Blvd.

St. Paul, MN 55155

H. LANE KNEEDLER

*Secretary*

901 E. Byrd St., Suite 1700

Richmond, VA 23219

CHARLES A. TROST

*Treasurer*

Nashville City Center

511 Union St., Suite 2700

Nashville, TN 37219

## EXECUTIVE COMMITTEE

ROBERT A. STEIN

*Chair*

University of Minnesota Law School

229 19<sup>th</sup> Ave. S.

Minneapolis, MN 55455

RICHARD T. CASSIDY

100 Main St.

P.O. Box 1124

Burlington, VT 05402

LANI LUI EWART

1099 Alakea St., Suite 1800

Honolulu, HI 96813

MICHAEL B. GETTY

817 W. Washington Blvd., #502

Chicago, IL 60607

## EX OFFICIO MEMBERS

*President*

*Vice President*

*Secretary*

*Treasurer*

HOWARD SWIBEL

*Immediate Past President*

120 S. Riverside Plaza, Suite 1200

Chicago, IL 60606

MICHAEL HOUGHTON

*Chair, Scope and Program Committee*

P.O. Box 1347

1201 N. Market St., 18th Floor

Wilmington, DE 19899

ROBERT J. TENNESSEN

*Chair, Legislative Committee*

80 S. 8th St., 500 IDS Center

Minneapolis, MN 55402-3796

## STAFF

JOHN A. SEBERT

*Executive Director*

john.sebert@nccusl.org

J. ELIZABETH COTTON

*Chief Administrative Officer*

elizabeth.cotton@nccusl.org

MICHAEL R. KERR

*Legislative Director/Legal Counsel*

michael.kerr@nccusl.org

MICHELLE W. CLAYTON

*Senior Counsel, Legislative/*

*Scope & Program*

michelle.clayton@nccusl.org

## UNIFORM LAW FOUNDATION

ROBERT A. STEIN

*Chair*

University of Minnesota Law School

229 19<sup>th</sup> Ave. S.

Minneapolis, MN 55455

February 26, 2008

Ms. Deborah Blanchard  
Committee Administrator  
Joint Committee on Judiciary  
Room 2500, Legislative Office Building  
Hartford, CT 06106

### Re: Raised Bill No. 5535, An Act Adopting the Uniform Real Property Electronic Recording Act

Dear Ms. Blanchard:

At the request of Mr. David Biklen, Connecticut NCCUSL Commissioner, I am forwarding sixty (60) packets of information on the Uniform Real Property Electronic Recording Act (URPERA), which is Raised Bill No. 5535 before the Joint Committee on Judiciary.

If you or the members of the Committee need further materials or have any questions on URPERA that I can assist with, please let me know.

Sincerely,



Kieran P. Marion  
Legislative Counsel

# **Uniform Real Property Electronic Recording Act**

## **- A Summary -**

Electronic communications make it possible to conduct old transactions in new forms. Some of the oldest kinds of transactions governed by law are transactions in real estate: for example, sales, leases and mortgages. In the Middle Ages transactions in real estate were conducted symbolically, without paper or signatures. Most people were illiterate. Writing, printing and more universal literacy brought paper deeds, mortgages and leases, memorialized by words on paper with manual signatures. These were filed in public records to establish who had rightful title to any piece of land. Several centuries have gone by since that initial migration to the then new technology of paper documents and manual signatures. A new technology of computers, software to run them, and electronic communications has come to replace paper. The law of real property must now make a transition to accommodate the new technology. The efficiency of real estate markets makes this imminently necessary.

This long dependence on paper, however, casts up certain barriers to using electronic communications to carry on real estate transactions. The law of the states of the United States has many "statute of fraud" requirements that inhibit the use of electronic communications. Statute of fraud requirements put total and express reliance upon paper documents and manual signatures to make transactions enforceable. No paper, no enforcement. These same requirements have also made it more difficult to develop electronic analogues to transactions in paper that are equally enforceable.

The first step to remedy the problem took place in 1999 when the Uniform Law Commissioners promulgated the Uniform Electronic Transactions Act (UETA). This act adjusted statute of fraud provisions to include electronic "records" and "signatures" for the memorialization of all kinds of transactions, including basic transactions in real estate. It is possible to have sale contracts, mortgage instruments (in whatever form a jurisdiction uses) and promissory notes memorialized in electronic form with electronic signatures that will now be treated the equal of the same paper documents with manual signatures. This is the result of the widespread enactment of UETA and of the subsequent enactment of the Electronic Signatures in Global and National Commerce Act (E-Sign) by Congress.

Real estate transactions, however, require another step not addressed by either UETA or E-Sign. Real estate documents must be recorded on public records to be effective. Recording takes place in most states in a county office devoted to keeping these records. Recording protects current interests in real estate by clarifying who holds those interests. The chain of title leading to the current title-holder, meaning the historic record of documents relating to transactions for a specific piece of real estate, establishes the marketability of that piece of real estate by the current owner of interests in it. The real estate records establish this chain of title. State law governs these local recording offices, and there are requirements in the law of every state relating to the originality and authenticity of paper documents that are presented for recording. These are themselves "statute of fraud" provisions that must be specifically adjusted before electronic recording may take place. Neither UETA nor E-Sign helps.

There must be an orderly conversion of every recording office in the United States for electronic recording to become accepted universally. That will be a complex process, but it needs a starting point in the law. The **Uniform Real Property Electronic Recording Act (URPERA)**, promulgated by the Uniform Law Commissioners in 2004, is that essential start.

The act does three fairly simple things that will have monumental effect. First, it establishes that any requirement for originality, for a paper document or for a writing manually signed before it may be recorded, is satisfied by an electronic document and signature. This is essentially an extension of the principles of UETA and E-Sign to the specific requirements for recording documents relating to real estate transactions in any state. Second, it establishes what standards a recording office must follow and what it must do to make electronic recording effective. For example, the office must comply with standards set by the board established in a state to set them. It must set up a system for searching and retrieving electronic documents. There are a minimum group of requirements established in URPERA. Third, URPERA establishes the board that sets statewide standards and requires it to set uniform standards that must be implemented in every recording office.

These may be simple steps in the law, but the entire process of implementing electronic recording of electronic real estate documents will be complex from state to state. Inserting URPERA in the law of a state requires careful scrutiny of its real estate law. If paper documents are effective, for example, when they are time-stamped when delivered to a recording office, when should electronic documents that may be delivered electronically when an office is closed be considered effective? Answers to questions like this one will take some work and some complex decisions as URPERA is considered for enactment in any state.

Notwithstanding this need for careful effort, it is important to make the start on electronic recording of real estate documents. Real estate transactions involve billions of dollars in the United States. The efficiency of real estate markets depends upon the adoption of technology to make them faster and more competitive. After UETA and E-Sign, the key is URPERA. Every state needs to consider it as soon as possible.

## **WHY STATES SHOULD ADOPT THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT (URPERA)**

As a result of the enactments of the Uniform Electronic Transactions Act (UETA) in most states, and the Global National Commerce Act (E-Sign; 15 U.S.C. 7001 *et seq.*) at the federal level, it is now possible to have sale contracts, mortgage instruments, and promissory notes memorialized in electronic form with the electronic signatures of the parties involved in the transaction. However, real estate transaction documents must be recorded on public records in order to protect the current interest in the real estate and clarify who owns title to the property. These real estate transactions require another step not clearly addressed by UETA or E-sign.

According to the Property Records Industry Association (PRIA), there are more than 3600 recording jurisdictions nationwide, usually counties or cities. Real estate records recorded with these entities establish a chain of title that is based upon the originality and authenticity of the paper documents presented for recording. Many local real estate recorders have developed a strong interest in converting their traditional paper-based land recording systems to electronic form, sensing the needs of the marketplace and the technological feasibility. Conversely, only a small number of recording jurisdictions have moved on to electronic recording, have some sort of system for e-recording in place, or are in the process of converting to e-recording. In the areas where digital systems for recording have developed or are developing, there has often been lack of clear authority for them to do so. The statutes that do exist are mostly piece-meal, dealing with isolated issues rather than taking a comprehensive and systematic view of the necessary legal developments.

There must be an orderly conversion of recording offices in the United States for implementation of an effective and substantially uniform electronic recording system. The essential starting point for this monumental process is the Uniform Real Property Electronic Recording Act (URPERA), promulgated by the National Conference of Commissioners on Uniform State Laws in 2004. Although a few counties in several UETA jurisdictions have undertaken e-recording, URPERA provides clear authority to begin widespread implementation of the practice. The act also creates a mechanism to promote harmonious standards between counties and between adopting states.

### **Why should states adopt URPERA?**

URPERA does several things designed to have far-reaching effects:

- Designates an existing state entity or creates a new “electronic recording commission” responsible for setting statewide, baseline, uniform standards for e-recording. These standards must be implemented in every recording office that **chooses** to accept electronic documents.
- Equates electronic documents and electronic signatures to original paper documents and manual signatures, so that any requirement for originality

(paper document or manual signature) is satisfied by an electronic document and signature.

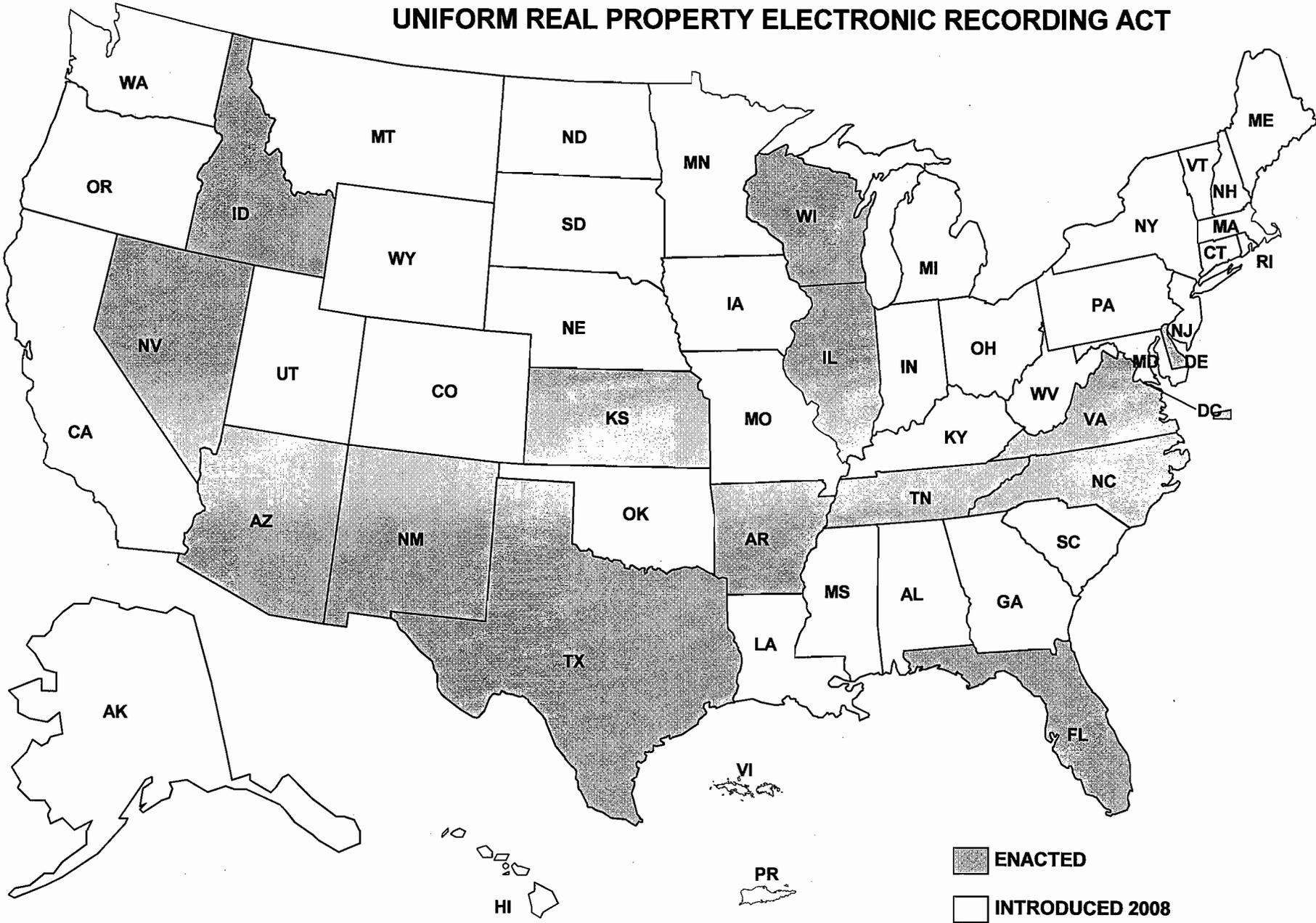
- Maintains conceptual and definitional consistency between URPERA and UETA and E-Sign.
- Empowers recorders who elect to implement electronic recording and provides greater clarity for the authority to do so.
- Establishes the factors that the state standards entity must consider when it formulates, adopts, and promotes standards for effective electronic recording.
- Recognizes that paper documents will likely continue to be accepted by many counties (even those that choose to e-record) for quite some time to come, and allows for cross-storage of electronic and paper documents.

URPERA modernizes real property law for the 21<sup>st</sup> Century. It helps states develop essential standards for electronic recording that will work fluidly from recording jurisdiction to recording jurisdiction, and across state lines. URPERA is designed to help state administrative agencies meet the growing public demand for quick identification of title ownership. It should also streamline the real estate transaction at a benefit to consumers and every facet of the real estate industry. URPERA is an essential compliment to those states that have already adopted UETA, acting as an extension of that law's effectiveness.

In sum, the basic goal of the Uniform Real Property Electronic Recording Act is to create legislation that expressly authorizes land records officials to begin accepting records in electronic form, storing electronic records, and setting up systems for searching for and retrieving these land records. Equally important, the act also ensures the development of coherent standards for e-recording that will function harmoniously between recording jurisdictions and across state lines. It should also be noted that URPERA's intent is only to authorize such activities, not to mandate them.

*The National Conference of Commissioners on Uniform State Laws (NCCUSL), now 115 years old, has worked for the uniformity of state laws where such is desirable since it's founding in 1892. It is a non-profit unincorporated association, comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners actually appointed. Most jurisdictions provide for their commission by statute. The NCCUSL provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of the law. NCCUSL's work supports the federal system and facilitates the movement of individuals and the business of organizations with rules that are consistent from state to state.*

# UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT



February 22, 2008

**UNIFORM REAL PROPERTY ELECTRONIC  
RECORDING ACT**

**(Last Revised or Amended in 2005)**

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***

Copyright ©2004

By

**NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS**

April 2005

## ABOUT NCCUSL

The **National Conference of Commissioners on Uniform State Laws (NCCUSL)**, now in its 114<sup>th</sup> year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

Conference members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- NCCUSL strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- NCCUSL statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
- NCCUSL keeps state law up-to-date by addressing important and timely legal issues.
- NCCUSL's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- NCCUSL's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- NCCUSL Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.
- NCCUSL's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.
- NCCUSL is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

**DRAFTING COMMITTEE ON UNIFORM REAL PROPERTY ELECTRONIC  
RECORDING ACT**

DAVID D. BIKLEN, 153 N. Beacon St., Hartford, CT 06105, *Chair*

OWEN L. ANDERSON, University of Oklahoma, College of Law, 300 Timberdell Rd.,  
Norman, OK 73019

PATRICK C. GUILLOT, 8140 Walnut Hill Lane, Suite 820, Dallas, TX 75231

CARL H. LISMAN, 84 Pine St., P.O. Box 728, Burlington, VT 05402, *Enactment Plan  
Coordinator*

JAMES J. WHITE, University of Michigan Law School, 625 S. State St., Room 300, Ann Arbor,  
MI 48109-1215

W. JACKSON WILLOUGHBY, 309 Roundhill Ct., Roseville, CA 95747

LEE YEAKEL, P.O. Box 164196, Austin, TX 78716-4196

ARTHUR R. GAUDIO, Western New England College School of Law, 1215 Wilbraham Rd.,  
Springfield, MA 01119, *Reporter*

**EX OFFICIO**

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Room  
3056, Norman, OK 73019, *President*

LANI LIU EWART, Suite 1800, Alii Pl., 1099 Alakea St., Honolulu, HI 96813, *Division Chair*

**AMERICAN BAR ASSOCIATION ADVISOR**

DALE WHITMAN, University of Missouri-Columbia, 216 Hulston Hall, Columbia, MO 65211,  
*American Bar Association Advisor*

**EXECUTIVE DIRECTOR**

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL  
35487-0382, *Executive Director*

WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

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](http://www.nccusl.org)

# UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

## TABLE OF CONTENTS

Prefatory Note .....	1
SECTION 1. SHORT TITLE .....	3
SECTION 2. DEFINITIONS .....	3
SECTION 3. VALIDITY OF ELECTRONIC DOCUMENTS .....	7
SECTION 4. RECORDING OF DOCUMENTS .....	9
SECTION 5. ADMINISTRATION AND STANDARDS .....	14
SECTION 6. UNIFORMITY OF APPLICATION AND CONSTRUCTION .....	17
SECTION 7. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT .....	18
SECTION 8. EFFECTIVE DATE .....	18

# 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 20<sup>th</sup> 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 acknowledgment. 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.

(7) **“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;

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

(5) standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

*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.

(5) information security for electronic documents. When considering the adoption of standards, the commission or state agency is directed to consider a number of security concerns.

The authenticity of a documents stored in any recording system is of utmost importance. If forged or invalid documents are accepted for recording, landowners and those depending on their titles can be seriously affected. Thus, the commission or state agency is directed to consider standards that would protect an electronic recording system from accepting and recording documents that are not authentic and genuine. Furthermore, even if an electronic document is authentic in its origin, it may be possible to intercept it in transmission and change its content. Such a change could cause problems equally problematic as those caused by an originally forged document. Thus, the commission or state agency is directed to consider standards that would protect documents from tampering and inaccuracies caused during transmission.

The subsection also directs the commission or state agency to consider standards for the proper preservation of electronic documents once they are in the electronic recording system. If an unauthorized person were to be able to "hack" or enter the electronic recording system, that person could cause considerable damage and injury to the records and persons having an interest in the affected land. Thus, the commission or state agency is directed to consider standards protecting the electronic land records system from unauthorized intrusion and tampering. Finally, the subsection directs the commission or state agency to consider adequate standards for the preservation of electronic documents. If there should only be one copy of the electronic land records and it is destroyed by an electronic or physical catastrophe, the security of the land records system would be seriously impaired. Thus, the commission or state agency should consider the means and methodology of preserving and replicating the electronic land records so that the recorder can recover from such a catastrophe with no loss of information.

## **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.