

D R A F T
FOR DISCUSSION ONLY

UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

Discussion Draft for Drafting Committee Meeting February 21-23, 2003

UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

WITH PREFATORY NOTE AND REPORTER'S NOTES

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

Prefatory Note

The status of electronic information technology has progressed very rapidly in recent years, making it technically feasible to execute real estate transactions electronically. The Uniform Electronic Transactions Act was approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1999 and has already been adopted in at least 41 states and is under consideration in six others. The federal Electronic Signatures in Global and National Commerce Act was adopted in 2000. The two acts have now made it legally feasible to execute real estate transactions electronically. While the documents that result from those electronic transactions are valid and enforceable between the parties to the transaction, there is, however, no recognized structure for recording, storing and protecting them and providing access to them for title searching purposes.

Limited experiments with recording electronic documents have been initiated by a few counties in a few states. These approaches have resulted from the initiatives of individual county recorders. However, they are piecemeal and have little or no interoperability. They are no uniform standards for the acceptance and processing of electronic documents. Some venues accept one type of electronic document while others accept yet another type. The reliability of accepted electronic signatures in these venues also varies considerably. Any expansion of the current situation without the guidance of a model for a secure uniform system will risk propagating the lack of interoperability and raising concerns about adequate maintenance and preservation of electronic records. Study committees in several states have begun to consider the question of electronic recording of real estate documents and would benefit by the availability of a uniform act.

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 following document is a first draft for discussion by the drafting committee. It proposes a uniform structure for the recording, storage and retrieval of electronic documents. It also seeks to provide a model for security, maintenance and preservation of electronic documents as they are accepted and stored in the system.

UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

Reporter's Notes

This first draft of the Uniform Real Property Electronic Recording Act endeavors to incorporate a wide range of features. A recording system must accommodate not only the receipt of a document, but also the processing and storage of that document, and ultimately the retrieval of that document by a title examiner. Developing a recording system for electronic documents should consider the seamless movement of documents through that system.

In addition to establishing a basic recording process for electronic documents, this draft continues to authorize the acceptance of paper documents that will undoubtedly persist for some time. However, it melds the management of electronic and paper documents into a single storage and retrieval system.

It provides a structure (electronic land records index and electronic document record) in which electronic documents are indexed and stored. It adopts a parcel identifier number system to promote efficient and error-free recording and searching. It states when a prospective purchaser of real property will have constructive notice of an electronically recorded document.

It provides for recording uniformity within the state via two processes. It creates a Real Property Records Director to propose and adopt regulations to implement the provisions of the Act in a uniform statewide fashion. It also employs a primary system located in the office of the Secretary of State that is connected electronically to each of the local recorder's offices. The primary system is an extension of the local recorder's office and forms a unified system to store electronic documents. Although employing a primary system as the locus for the storage of electronic documents, it retains the centrality of the local recorder in the recording process. It also calls for cooperation between and among states for the purpose of achieving an appropriate countrywide uniformity.

It establishes a process by which titles may be searched on the primary system. It deals with the conversion of paper records currently existing in the various recording offices throughout the state into an electronic format. It provides for coordination of the electronic land records system with various other offices throughout the state, such as the clerks of court and the UCC filing office or offices. It also deals with a number of other important issues, such as backup of the primary system and the security of the recording system, and it provides for 24 hour a day, 7 day-a-week operation.

In drafting this act, it was recognized that there may be more than one way to implement the objectives of the act. It was also recognized that electronic systems are a relatively new technology that will undoubtedly change in the future. It should not be necessary to amend this act in order to permit new implementing variations or changes in technology. Thus, the act is a "shell" under which many variations and technologies may operate. To the extent that additional mandatory directives should be necessary, they may be implemented by regulation or rule.

Despite its breadth, other provisions could be added that would broaden the document preservation and recording processes of this act. By similar measure, various components in this draft are, to some extent, severable and need not be a part of the ultimate proposal.

Preliminary Comments¹
on Types of Electronic Documents and Electronic Signatures²

A. Comments on Types of Electronic Documents

1. Computer Graphics Files: Created at the Recording Office

The first type of electronic document is quite simple and involves very little change from current practice, at least in those recording offices currently using computer graphics files to copy and preserve documents. In fact, the document itself is not electronic, only the ultimate copy is electronic.

In this system, the document begins its life as a paper document in the scrivener's office. After it is drafted, signed by the necessary parties, and acknowledged, it is physically delivered to the recorder's office. There, the document is electronically scanned into a computer graphic file³ and stored in the electronic land records storage file. Index information is also extracted from the paper document, or provided separately by the party filing the document. The index information is stored in the electronic index, which is a database of index information for all documents in the electronic land records storage file. The information in the index is hyperlinked or otherwise cross-linked to the documents in the electronic land records storage file.

While this type of document hardly qualifies as a true electronic document in its origins, it would qualify as such after it is converted into a graphic file by the recorder. Indeed, this type of document may be necessary during the (probably lengthy) transition period from paper documents to electronic ones.⁴

However, the shortcomings of this type of system are obvious and many. The original document must still be physically delivered to the recorder, whether by personal delivery or by mail. It must then be converted into a computer graphic file, with all of the possible errors inherent in the process. Furthermore, since the document is "unintelligent," information cannot be extracted from it by an automated computer process.⁵ Consequently, creating the index for the document would entail manual entry of the index information, thereby introducing the potential for further error. Finally, the recording process will be just as time consuming,⁶ and potentially more expensive, since there is the need to produce and work with both paper and electronic documents.

2. Computer Graphics Files: Sent to the Recording Office

A second type of electronic document is, in many ways, very similar to the one described

1. These Introductory Comments are substantially derived from Arthur R. Gaudio, *Electronic Real Estate Records: A Model for Action*, 24 W. New Eng. L. Rev. 271 (2003).

2. The primary purpose of presenting this material here is to provide an introduction to some aspects of electronic recording. For ease of discussion, some of the shorthand labels used in these Introductory Comments will be employed in the subsequent Reporter's Notes.

3. An example is a .tiff file.

4. One should not expect that all attorneys, businesses, and individuals would be emotionally or financially able to make a transition to an all-electronic form of conveyancing immediately upon adoption of a statute allowing it. More likely, a considerable number of years will pass before all conveyances can be recorded in electronic format.

5. As a graphic file, it exists only as a picture of the original paper document; it does not contain individual words and letters that can be searched and extracted.

6. However, it would not be as time consuming as a search of the records.

1 above. It, too, begins its existence as a paper document in the scrivener's office. It is drafted,
2 signed by the parties, and acknowledged, just as any other paper document. However, unlike the
3 previously described document, it is converted into an electronic document in the scrivener's
4 office. There, it is scanned and copied into a computer graphics file and the copy becomes the
5 electronic document. The copy, along with any necessary index information, is sent
6 electronically to the recorder's office.

7 There are several possible means of electronically delivering the document to the recorder's
8 office. Any additional information required by the recorder could also be included. Once the
9 electronic document is received by the recorder, it will be verified, to the extent possible,⁷ and
10 stored in the electronic land records. An entry will also be made in the electronic index, quite
11 similar to that described previously. Searching of the electronic land records system will be
12 similar to that previously described.

13 The clear advantage of this type of electronic document is that it is converted from paper into
14 an electronic format before it is sent to the recorder's office, thereby sharply reducing the time
15 and cost of transmitting the document to the recorder. Nevertheless, there are disadvantages.
16 While reducing some costs and saving some time in the recorder's office, the costs and
17 processing time in the scrivener's office are increased due to the document conversion process.
18 The conversion process, as in the previously described process, would also raise the potential for
19 error. Further, since each scrivener may use proprietary software and hardware, which each
20 recorder would also need to possess, these costs to the recorder would be increased. Such
21 proprietary software and hardware would also introduce difficulties in any efforts to achieve
22 uniformity in the system.

23 Finally, the document sent to the recorder's office would not be the original document—that
24 remains the paper document in the scrivener's office. This raises questions about the legal status
25 of the electronic copy, as well as security issues about its veracity, such as whether the copy has
26 been manipulated or changed from the original before arriving at the recorder's office.

27 *3. An Original Electronic Computer Graphics File*

28 A third type of electronic document begins its existence in a true electronic format with no
29 previously executed paper version. Since there is no paper version and no written signature, it
30 depends on UETA⁸ or the federal E-SIGN Act⁹ for its validity.

31 The format of this type of document is, in the first instance, a graphic file. It is created in the
32 attorney's or mortgagee's office by the use of appropriate hardware and software. The
33 substantive content of the document (i.e., the various agreements of the parties) is reduced to a
34 graphic or picture of words that form the agreement. An electronic signature may then be
35 appended to the graphic electronic document. The signature may be a "holographic" image of
36 the actual handwriting of the signator.¹⁰ When completed, the graphic file presents an on-screen
37 picture of what one would expect of a paper version of the same document, including a

7. Problems exist as to the ability to confirm the veracity of the signature and acknowledgement. Additional problems exist with regard to assuring that the document has not been intercepted and tampered with after it leaves the presence of the executing parties and before it is received by the recorder.

8. UNIF. ELEC. TRANSACTIONS ACT (Nat'l Conf of Comm'rson Unif. State Laws 1999).

9. Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 (2002).

10. This signature process is much as one might experience with certain credit purchases at various stores in which an actual graphic of the purchaser's signature is created.

1 handwritten signature and acknowledgement.

2 This electronic document is sent to the recorder's office electronically. When the document
3 arrives at the recorder's office, it is stored in the electronic land records storage file. Since the
4 document is a graphic file, and index information can not readily be extracted from it, additional
5 information will likely be required by the recorder when preparing the index. The recorder will
6 obtain that information either from supplemental information supplied by the scrivener, or the
7 recorder will need to read or scan the graphic file to obtain it. The searching of the electronic
8 land records system will be similar to that previously described.

9 The major advantage of this form of electronic document over those previously described is
10 that it is a true electronic document. There is no need to create a paper original and convert it
11 into a graphic electronic document. It thus enhances productivity by reducing the time and cost
12 of creating the document. As with the former example, it also reduces the time and effort needed
13 for transmittal and recording.

14 However, a major shortcoming is the fact that it is an "unintelligent" document. It is merely
15 a graphic file and information for the electronic index or for other searching purposes is difficult
16 to extract from it. Thus, supplemental information must be transmitted to the recorder by the
17 attorney or mortgagee. Alternatively, the recorder will be required to extract the information by
18 human intervention. Either of these alternatives adds time and cost as well as increases the
19 potential of mistake due to human error. Further inefficiencies are introduced because of the
20 potential of many different proprietary versions of the technology necessary to create these
21 electronic documents.

22 *4. HTML and XML Protocols*

23 A fourth type of electronic document available under current technology makes use of HTML
24 and XML (XHTML) protocols. These protocols are part of an open software architecture and are
25 available for use by programmers and end users. The document is thus readable by all parties
26 involved in the transaction, as well as the recorder, without the need for expensive proprietary
27 software and hardware.

28 A document created with these protocols uses generally recognized embedded "tags" to
29 designate various data entries, such as "grantor," "grantee," "PIN," and other document contents.
30 Each of the entries is an individual set of data that is readable and extractable electronically.
31 Unlike the previously described documents, this type of electronic document is not a graphic file
32 but rather one containing information in discrete, readable data sets. The document is drafted by
33 the scrivener directly in the electronic format; there is no prior paper document. Nevertheless, it
34 will be readable on-screen much as a traditional paper document would be. It may then be signed
35 by using a digital signature.

36 After the document is created and signed by the party, it is sent electronically to the
37 recorder's office. Upon arrival at the recorder's office, it will be verified and stored in the
38 electronic land records. Index information can be extracted directly from this document and need
39 not be separately sent to the recorder. Based on established standards, information delimited
40 with certain "tags" can be routinely extracted and entered into the electronic index.

41 The searching process is much the same as previously described. However, since the
42 document consists of individual "words" that can be searched as well as extracted, the title
43 searcher can, if the system is so set up, not only look for information by searching the index, but
44 may also search the actual electronic document. Thus, it will be possible to use the information
45 for a multitude of purposes. Non-standard information can be searched across documents even

though the electronic index does not contain that data.

B. Comments on Verification – Electronic Signatures

There are security concerns with electronic documents that arise from the potential of an initial forgery of the document or from tampering with the electronic document during transit after it leaves the signator and before it arrives at the recorder's office. Although different in operation, these concerns also exist with paper documents. Any system of accepting and recording electronic documents should perform essentially the same verification process as currently exists for paper documents.

There are several methods of signing documents electronically, some more secure than others. Within the secure methods, some provide more security and are easier to use than others. Among the obvious insecure methods are simple typed messages and attachments as are currently used in general e-mail communication. Anyone may "sign" a person's name, even one other than his own, simply by typing it. Even if signed by the purported signator, the e-mail document may be intercepted in transit and its contents changed. Thus, simple e-mail documents are not satisfactory for electronic recording.¹¹

Another type of document security involves biometrics. With these processes, certain unique bodily features can be used to identify the signing party. These include fingerprint scans, retina scans, and even unique blood characteristics. However, these processes are currently not very satisfactory, although increasing in their potential. The technology needed is expensive and generally not widely available. There is also difficulty associated with the recorder's ability to verify the biometric scan.¹² Finally, there are serious privacy issues that must be resolved before these methods of identification can be widely used.

There are two types of electronic signatures that currently enjoy some usage or acceptance, but provide different degrees of security. One type involves a "holographic" picture of an actual signature that is made by the party and imbedded in the document. The second form of technology, sometimes known as a digital signature, involves a unique set of characters that is imbedded in the document by means of a secure algorithm.

1. The Holographic Signature

The "holographic" signature is a graphic of the signator's actual signature. It has been used most often with the graphic original document described in document Type 3, above. The image of the signature and the acknowledgement, if required, is obtained by means of a handwriting stylus. The signature image is then attached to the graphic electronic document and is visible on the computer screen.¹³ Once the signature is attached to the document itself, it presents a close rendition of what one would normally see on a paper document.

A "holographic" signature could be verified by the use of an acknowledgement, the method currently employed in verifying paper documents. The notary could witness the signature or take the acknowledgement and thereupon attach his or her own signature and certification. Both

11. To the extent that this means of signature has been used, the enabling acts or recorder practices have limited acceptance of documents so signed to "trusted signators" – persons or entities that might be assumed to be reliable. See, e.g., ARIZ. REV. STAT. § 11-461 (C) (2001); CAL. GOV'T CODE § 27279.2 (2002). Of course, this does not assure that they were not forged, nor does it assure that there was no tampering with the document in transit.

12. This will require a database of retina scans, fingerprints, and/or blood characteristics.

13. This signature process is much as one might experience with certain credit card purchases where the purchaser signs with a special pen or stylus.

1 signatures would then be a part of the document and be transmitted to the recorder's office.

2 However, without more, either the signature or the acknowledgement could be tampered with
3 or the document subsequently changed. Thus, by itself, this form of electronic signature is not
4 very secure. Various proprietary vendors may offer secure procedures by the use of passwords,
5 but they are still subject to the same issues. The proprietary nature of these processes also raises
6 issues regarding the ability of the recorder to verify the signature without actually possessing a
7 copy of the proprietary software and hardware.

8 *2. Digital Signature Technology*

9 Digital signature technology involves the use of a private key and a public key (PKI). The
10 private key allows both the execution and the reading of the document, while the public key only
11 permits reading of the document. A certification authority issues a digital signature to a
12 subscribing party.¹⁴ The signature consists of a unique string of characters assigned to the
13 subscriber. The subscriber is issued a private key containing that signature. The document can
14 be signed only by using the private key. The public key is made generally available to the public
15 and allows another party, such as the recorder or title examiner, to verify the signature executed
16 by the subscriber.

17 The PKI technology may also be incorporated into a "smart card," that is, a "credit" card that
18 allows the signator to "sign" the document by using the card. This card is similar to a credit card
19 with a computer chip imbedded in it, containing the PKI information. By this means, the
20 document can be verified by tracing it back to the "smart card" issued to the signator.

21 When the document is "signed" using this technology, an algorithm is applied to the entire
22 document that combines the electronic document with the digital signature in such a way that it is
23 extremely difficult, if not practically impossible, to tamper with the document after it leaves the
24 presence of the signator. If the document has been tampered with, the fact of tampering will be
25 revealed when the document is read using the public key. This form of secure signature is
26 generally associated with the XHTML document described in document Type 4, above. It may
27 also be used to "wrap" the graphical signature and the acknowledgement to the document itself,
28 as described in document Type 3, above.

14. See, e.g., Utah DigitalSignatures Act, UTAH CODE ANN. § 46-3-101 (2001).

1 **UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT**

2 **SECTION 1. TITLE.**

3 This [Act] may be cited as the Uniform Real Property Electronic Recording Act.

4 **Reporter's Notes**

5 This is the title of the act as designated by the Executive Committee of the National
6 Conference of Commissioners on Uniform State Laws.

7
8
9 **SECTION 2. DEFINITIONS.**

10 In this [Act]:

11 (1) "Document" means any instrument that creates, transfers, asserts or explains an
12 interest in real property, and includes a deed, patent, mortgage, will, lien instrument, grant of
13 easement, affidavit, court order or decree, notice, and any other instrument that affects an interest
14 in real property. It refers either to an electronic document or a paper document.

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

17 (3) "Electronic document" means a document that is created, generated, sent,
18 communicated, received or stored by electronic means.

19 (4) "Electronic recording system" means the information, databases, hardware and
20 software that form the recording system established by this Act. It includes all components of the
21 both the primary system and those in the county [other governmental unit] recorders' offices and
22 the means of communication between them.

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

26 (6) "Index information" consists of the following:

27 (a) the parcel identifier number of the real estate;

28 (b) the address of the real estate, to the extent available;

1 (c) the names of the parties to the document;
2 (d) the marital, corporate, partnership, or other similar legal status of a person
3 who is a party to the document,
4 (e) the date of the document; and
5 (f) any other information as required by the Secretary of State [other state
6 officer], by [regulation][rule].

7 (7) “Paper document” means a document that is created and stored on paper or
8 similar medium.

9 (8) “Person” means an individual, corporation, business trust, estate, trust,
10 partnership, limited liability company, association, joint venture, governmental corporation,
11 public corporation, or any other legal or commercial entity.

12 (9) “Primary system” means that portion of the electronic recording system
13 maintained by the Office of the Secretary of State [other state officer] for the storage and
14 recording of all documents affecting real property in the state. It is comprised of all components
15 of the system, including the information, databases, hardware and software.

16 (10) “Real property” means any interest in real estate located in the state, whether
17 that interest is considered real property or personal property for purposes of any other statute or
18 legal decision.

19 (11) “State” means a State of the United States, the District of Columbia, Puerto
20 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
21 jurisdiction of the United States.

22 **Reporter’s Notes**

23 (1) Document. A document is any agreement, conveyance, lien, or other instrument that
24 affects an interest in real property. The document may either be on a tangible medium (paper
25 document), or on an electronic medium with the information retrievable in a perceivable form.
26 In terms of the Uniform Electronic Transactions Act (UETA) § 2(13), a document is a record that
27 affects an interest in real property.

28 In selecting the term “document” as used in this act, an explicit decision was made not to use
29 the term “record,” as employed in UETA. The term “record” has a different meaning in real
30 estate recording law and practice than it has in UETA. If the term “record” were used in this act,
31 it would undoubtedly lead to confusion and misinterpretation. In UETA the term “record” refers

1 to information on a tangible or electronic medium. In this act, depending on syntax, the term
2 would have several different meanings, all of which deal with the official storage of real estate
3 information and not the information itself. For example, this act deals with the *recording* process
4 through which a person can *record* a document. The governmental officer who oversees the land
5 *records* is the *recorder*. These terms are so ingrained in the lexicon of real estate recording law
6 and practice that it would not be productive to attempt to change them by this act.

7 (2) Electronic. The term “electronic” has the same definition in this act as it has in UETA
8 § 2(5). The comments to that subsection are equally applicable to this subsection.

9 (3) Electronic document. An electronic document is a “document” that is in an “electronic”
10 format. Both of those terms are previously defined. The definition in this act parallels that of an
11 “electronic record” as defined in UETA § 2(7). The comments to that subsection, other than
12 those that refer to the use of the term “record,” are equally applicable to this subsection.

13 (4) Electronic recording system. The electronic recording system is inclusive of all aspects
14 of that system. It consists of the hardware on which the recorded information is stored and
15 through which it is transmitted, as well as the software by which it operates. It also includes the
16 information and databases that are stored on the system.

17 The electronic recording system, as conceived in this proposal, is a statewide system. The
18 components of the system include both the primary system located in the Secretary of State’s
19 office as well as the various local systems located in the county recorders’ offices. Together they
20 form a seamless and transparent system for the recording of real estate information throughout
21 the state.

22 (5) Electronic signature. The term “electronic signature” has the same definition in this act
23 as in UETA § 2(8), except to the extent that that subsection makes reference to the term “record.”
24 The comments to that subsection are also applicable to this subsection, except as they refer to the
25 term “record.”

26 (6) Index information. As with currently existing land records systems, documents recorded
27 on the electronic recording system will be located by means of an index. Current land records
28 indices are of two types – a grantor-grantee index or a tract index. These indices contain limited
29 but important information about the recorded document as well as its location in the land records
30 system. The electronic land records index defined in section 7 is not limited to one type or the
31 other. It allows for the location of documents by either a grantor-grantee approach or a tract
32 approach.

33 Index information is information that is either necessary or highly valuable for the proper
34 indexing of a document. It will provide important information that will allow a searcher to
35 determine the relevance of the document to his search. The index entry will also be linked to the
36 recorded document.

37 The parcel identifier number is described in sections 9 and 10 of this act. It is the means by
38 which a parcel of land is described. A person examining a title might search the land records by
39 means of the parcel identifier number and will, in that process, locate all the transactions
40 affecting the parcel.

41 The address of the real estate is not essential to the index, but it would be highly valuable
42 information. A person performing a search might not initially have the parcel identifier number
43 of a parcel or the names of the grantors and grantees involved in a transaction affecting it. She
44 might, however, have the address of the real estate. By means of that address, the searcher could

1 determine the other, more common search indicia.

2 The names of the parties to the document form another method to search a land records
3 system. In a traditional grantor-grantee search the title history of a parcel is traced backwards in
4 time by means of multiple searches of the grantee index and then verified forward by means of
5 the grantor index. For most purposes, a search using the parcel identifier number of the parcel
6 will be quicker, more efficient and more accurate. However, a limited search to locate a single
7 document in the electronic document record might be quicker if done by means of the grantor or
8 the grantee on the document or both. More significantly a lien search must, very often, be
9 performed by using the name of the owner of the real property, i.e. the grantee. Many liens are
10 filed personally against a person by name rather than *in rem* against a parcel of real estate. As a
11 result, all the real property owned by the named debtor is subject to the lien even though the real
12 property is not actually listed in the lien. A search of names will allow the lien searcher to locate
13 all parcels of real estate in which the named debtor has an interest.

14 The legal status of a person who is a party to the document is also not essential to the index,
15 but would provide valuable information. It allows for a quick determination of the marital,
16 corporate, partnership and other similar status of the parties.

17 The date of the document provides a reference point for the document and helps to identify it.
18 It affords quick information as to where the transaction fits in the title history of the property. It
19 also helps to establish how quickly the document was recorded after it was delivered.

20 Because certain information may be uniquely important to the recording process under the
21 law of a particular state, the act allows for the requirement of other information by means of a
22 regulation promulgated by the Secretary of State.

23 (7) Paper document. A paper document is a traditional document that is created and stored
24 on paper or a similar medium. It is usually printed but may be handwritten or produced by other
25 visible means.

26 (8) Person. The definition of person is the same as contained in UETA § 2(12). It includes
27 individual, associations of individuals and corporate entities.

28 (9) Primary system. The database in the Secretary of State's (or other state officer's) office
29 is the primary system and the actual locale on which land title information will be stored.
30 Nevertheless, the electronic recording system is a statewide system and consists of the receiving,
31 processing and inputting systems located in each county (or other governmental unit), the
32 primary system located in the Secretary of State's office, and the means of communication
33 between them. Together they form a semi-centralized statewide electronic recording system.

34 Documents will be received initially by the county recorders who will review them for
35 accuracy, completeness and compliance with this act and other provisions of law. When the
36 processing is completed the document will be entered in a workstation in the county recorder's
37 office and transmitted in a transparent fashion to the primary system. There the index
38 information will be stored in the electronic land records index (*see* section 7) and the electronic
39 document will be stored in the electronic document record (*see* section 8).

40 (10) Real Property. Real property is an interest in a parcel of real estate physically located in
41 the state.

42 (11) State. This is the definition of "state" as used in Uniform Acts.
43

1
2 **SECTION 3. PRIMARY ELECTRONIC RECORDING SYSTEM.**

3 The Secretary of State [other state officer] shall establish and maintain the primary system for
4 the recording of all documents affecting real property in the state. The system shall consist of the
5 electronic land records index described in Section 7 and the electronic document record
6 described in Section 8. After a document is entered in a workstation by the county [other
7 governmental unit] recorder, it shall be transmitted electronically to the primary system where it
8 shall be indexed in the electronic land records index and stored in the electronic document
9 record.

10 On completion of the indexing and recording of a document in the primary system as
11 provided in this Act, the document shall be considered recorded.

12 **Reporter's Notes**

13 This section establishes the basic primary system to which all the land records offices in the
14 state will be linked. The approach helps to accomplish the objectives of uniformity, efficiency,
15 reliability and security. Nevertheless, it also recognizes the importance of the position of the
16 local recorders in the recording system and maintains their operations and functions. The
17 recorder will continue to provide document review to assure the correctness of documents and
18 compliance with the recording requirements of this act and other state law.

19 Uniformity is essential to an efficient and speedy recording process. Increasingly,
20 landowners and their attorneys and mortgagees are located in counties or states other than those
21 in which the real estate is located and where the document will be recorded. These parties may
22 regularly deal with land located in many different recording districts. It is important that
23 recording procedures and requirements be substantially similar among the various districts so
24 that scriveners can be confident that a document they draft will be acceptable in any recording
25 district in the state. In today's economy it would not be to the advantage of lenders or
26 landowners if it were necessary to obtain separate information about each district in which
27 recording is desired and to incur the expense of drafting accordingly. The system proposed here
28 will better assure that uniform requirements and procedures are implemented throughout the
29 various recording districts in the state.

30 The cost of establishing and maintaining separate and independent electronic recording
31 systems in each recording district in the state will be considerably higher than it will be with the
32 semi-centralized system proposed here. Although this act provides that documents will continue
33 to be entered into the system through the various local recorders' offices, it will be necessary to
34 incur the expense of establishing and maintaining only one primary system actually storing land
35 records information. If this system were adopted, instead of establishing more than 3,600
36 separate and independent electronic recording systems in each of the various recording districts
37 across the nation, there will only be one primary system per state. The overall costs will be
38 significantly less. The cost of maintaining fewer, although larger, systems will also be
39 significantly less.

40 Reliability and security are also important. If trained personnel can not be found and paid in

1 each of the separate recording districts, those systems will be less reliable. Although finding
2 those personnel in larger recording districts should not be a difficult matter, in many of the
3 smaller recording districts hiring qualified personnel might be very difficult. If adequate security
4 systems and qualified personnel to maintain the systems are not available, disgruntled “hackers”
5 could cause serious damage to land records. It is believed that better maintenance and security
6 could be provided for the 50 primary systems than for each of 3,600 independent systems. The
7 semi-centralized systems can be relied upon to perform better and without serious security risks,
8 thus assuring reliability and security to the people and economy of the country.

9 The Secretary of State will establish the primary system on which will be located the two
10 parts of the recording system – an electronic land records index and an electronic document
11 record. The electronic land records index will contain index information that will be used to
12 locate documents in the electronic document record. Index information will be linked to the
13 related document in the electronic document record. The electronic document record will
14 contain copies of the actual electronic documents (or electronic copies of the paper documents)
15 as they were presented to the recorders. Only when the title information is entered into the
16 electronic land records index and the electronic document record, will it constitute notice to all
17 persons of the interests revealed therein.

18 19 20 **SECTION 4. DOCUMENT ENTRY INTO ELECTRONIC RECORDING SYSTEM.**

21 Except as otherwise provided in sections 20 and 21, the entry of each document into the
22 electronic recording system shall be performed by the county [other governmental unit] recorder
23 in which the real property is located. The entry shall be made on a workstation in the recorder’s
24 office that is electronically linked with the primary system.

25 **Reporter’s Notes**

26 As stated in the Reporter’s Notes to the previous section, the local recorder will continue to
27 enter the information into the recording system. The local recorder will receive the documents
28 from the recording parties, whether in electronic or paper formats. The recorder will examine the
29 documents to assure that the information is correct and adequate, that all requirements of law
30 have been met, and that all fees and taxes have been paid. The recorder will then enter or
31 transfer the document and its index information into the primary system from workstations that
32 are located in the recorders’ offices, and which are linked with the server in the Secretary of
33 State’s Office. The interoperability of the local system and the primary system will be seamless
34 and transparent.

35 **SECTION 5. BACKUP OF INFORMATION AND SECURITY.**

36 For security purposes, the electronic land records index and the electronic document record
37 shall be backed up on a daily basis or at more frequent intervals as determined by the Secretary of
38 State [other state officer] or replicated at sites physically separate from the locale of the primary

1 system. The Office of the Secretary of State [other state officer] shall take all measures
2 necessary to protect the primary system against the loss of index information in the electronic
3 land records index and documents in the electronic documents record. It shall also take all
4 measures necessary to protect the primary system from access or tampering by unauthorized
5 persons.

6 **Reporter's Notes**

7 Assurance of the security and integrity of the electronic recording system is extremely
8 important to the commercial acceptability of an electronic recording system. To assure that
9 system information is available to restart the system if there should be an error or failure in the
10 system, this section requires that the information on the primary system be backed up on, at least,
11 a daily basis. Indeed, it is likely that the information will be backed up on an even more frequent
12 basis. The backup will be located at a site physically separate from the primary system to assure
13 recovery from catastrophic situations.

14 It may be preferable that the Secretary of State maintain two or more servers with the
15 additional servers simultaneously operating replicated copies of the primary system. Not only
16 can the additional servers act as a back up to the other(s), but each server may operate as part of
17 the primary system. This might prove especially beneficial during periods of high usage by
18 alleviating the actual load on a single server.

19 Security from computer "hackers" and intruders is also critical. In addition to taking
20 measures that will protect the electronic recording system from an intrusion, the backup system
21 will help assure that any intrusion can be rectified. This section also allows the Secretary of State
22 to take whatever other steps are necessary to prevent unauthorized access and tampering.
23

24 25 **SECTION 6. ACCESS TO INFORMATION.**

26 Except during periods of routine or necessary maintenance, the data in the primary system
27 shall be accessible 24 hours per day, 7 days per week to county [other governmental unit]
28 recorders and to persons searching the system for real property information. The Office of the
29 Secretary of State [other state officer] shall maintain and update the primary system to assure
30 speedy access and functionality.

31 **Reporter's Notes**

32 By recording through the local county recorders, the system will employ human intervention
33 to help assure that information is correct and adequate and that all requirements have been met.
34 The actual staffing and hours of those local offices should be a matter determined by the local
35 recorder. Thus, no specific provision is made regarding the accessibility of the recorders' offices
36 for recording of documents.

1 However, the searching process should seldom require human intervention at the primary
2 system venue. Staffing and hours are not as critical for this purpose. Thus, the primary system
3 will be available for searching 24 hours a day, 7 days per week.

4 Availability of the primary system on a 24 hour a day, 7 day a week basis will also
5 accommodate the local recorders if they should decide to keep their offices open for longer
6 hours. It will also allow for information entry "after hours" by the local recorder if backlogs
7 should arise. This may be particularly important to allow for conversion of paper documents into
8 an electronic format. However, it should be noted that any such "after hour" entry will detract
9 from the "real time" notice that the electronic recording system is designed to provide. If entry is
10 delayed until "after hours" the information will not be available for searching and will not
11 provide the expected notice, either constructive or actual.
12

13 14 **SECTION 7. ELECTRONIC LAND RECORDS INDEX.**

15 The electronic land records index shall contain the index information for each document
16 creating, transferring, asserting or explaining any interest in real property that is recorded in the
17 electronic recording system. Each entry of index information shall be electronically linked to the
18 electronic document record that it references.

19 **Reporter's Notes**

20 The electronic land records index will contain index information that will be used to locate
21 documents in the electronic document record. Index information will be linked to the related
22 document in the electronic document record.
23

24 25 **SECTION 8. ELECTRONIC DOCUMENT RECORD.**

26 The electronic document record shall contain an electronic version of each document that is
27 recorded in the electronic recording system.

28 **Reporter's Notes**

29 The electronic document record will contain copies of the actual electronic documents (or
30 electronic copies of the paper documents) as they were presented to the recorders. These
31 documents will be linked to the index information to which they relate.
32

1 **SECTION 9. PARCEL IDENTIFIER NUMBERS.**

2 (a) The county [other governmental unit] recorder shall assign a parcel identifier number
3 unique to each separately described parcel of real estate located in the county [other
4 governmental unit].

5 (b) The Secretary of State [other state officer] shall establish a different prefix number
6 for use by each county [other governmental unit] recorder when assigning the parcel identifier
7 number for that county [other governmental unit]. When assigning the parcel identifier number,
8 the prefix number shall be followed by a combination of numbers and alphabetical letters that
9 provide a unique number for each parcel of real estate located in the county [other governmental
10 unit].

11 (c) The county [other governmental unit] recorder shall ascertain each separately
12 described parcel of real estate in the county [other governmental unit] as previously conveyed
13 and recorded and shall assign to it a unique parcel identifier number. When used in a document,
14 the parcel identifier number shall be deemed to incorporate the parcel's legal description existing
15 in the county's [other governmental unit's] land records prior to the establishment of the
16 electronic recording system. All subsequent transfers shall refer to the parcel identifier number.
17 The county [other governmental unit] recorder shall maintain a database of all parcel identifier
18 numbers and the corresponding land description as previously used to convey that parcel.

19 **Reporter's Notes**

20 Historically, the earliest type of land records index was a grantor-grantee index. That system
21 depends on the ability to trace the names of grantees and grantors through a parcel's title history.
22 It originated largely because of the inadequacies of land descriptions. Its great shortcoming is
23 that it requires a review of each index entry retrieved from the system to ascertain both that the
24 correct grantee and grantor have been identified and that the document deals with the correct
25 parcel.

26 A significant improvement in that system came about with the implementation of tract
27 indices in many states and recording districts. Even if not adopted as the official index by a state
28 or district, title examiners often use such a system in their own title plant. This system operates
29 by identifying a parcel of land by description and then following it through its title history.
30 Various systems of describing or identifying a parcel have been used. However, the more
31 verbose the system, the more difficult it is to use in an electronic land records system.

32 When searching for title information electronically, it is important that the search criteria be

1 entered precisely as it exists in the electronic index. Failure to do so will cause a failure in the
2 search. For example, if the description of a parcel of land, as contained in an entry in the
3 electronic index, should contain a comma, but the search criteria do not, the document would not
4 be located or retrieved. To complicate the search even more, one index entry might contain the
5 comma and another may not. Land descriptions, especially metes and bounds descriptions, can
6 be very long and knowing whether the entered description contains a comma, semi-colon, or
7 other punctuation is virtually impossible. Beyond the punctuation differences are genuine
8 differences in the description of the parcel. For example, if the correct call in a metes and
9 bounds description, as contained in the electronic index, were N 10° 20' 30" E, but the entered
10 search criteria were N 10° 20' 30" W, the document would not be located. However obvious
11 these errors are in hindsight, they are nevertheless common. It should also be noted that the error
12 need not be on the part of the title searcher. The index entry may contain the error totally
13 unbeknownst to the title searcher. For example, this might occur if the index information were
14 not self-extracting; the county recorder would have to hand-enter the description in the index and
15 that would create the possibility of a human error.

16 The method of avoiding (or at least substantially reducing) this problem is to use parcel
17 identifier numbers (PINS). A PIN is an alpha-numeric combination that is unique to the parcel of
18 land and not duplicated for any other parcel in the state. Once applied to a parcel, that parcel can
19 be searched, conveyed, mortgaged or otherwise transferred simply by reference to that PIN.
20 Rather than applying the PIN to the parcel in a Torrens Registration System, which would be
21 costly, time consuming and fraught with controversy, the system proposed here assigns the PIN
22 to the description currently used for the parcel. The allocation of PINs to parcels would be
23 maintained in a separate database.

24 The use of a PIN is not meant to suggest that the description assigned to the PIN is precise or
25 even correct. It is simply a shortcut for describing the land. If the description currently used for
26 the parcel is incorrect, it can be changed by a boundary line agreement or quiet title action and
27 the new description can then be assigned to the PIN, as described in the next section.
28

29 **SECTION 10. CHANGES TO PARCEL IDENTIFIER NUMBERS.**

30 (a) If the legal description of a parcel of real estate is changed, whether by agreement of
31 the parties or by operation of law, the county [other governmental unit] recorder shall assign a
32 new unique parcel identifier number to it. Any document forming the basis of the change shall
33 be recorded in the electronic recording system. The title history of the parcel shall include the
34 prior parcel identifier number for the period prior to the assignment of the new number.

35 (b) If a parcel of real estate is subdivided, the county [other governmental unit] recorder
36 shall assign a new unique parcel identifier number to the subdivided parcel. Any document
37 forming the basis of the change shall be recorded in the electronic recording system. The title
38 history of each subdivided parcel shall include the title history of the parcel from which it was

1 subdivided for the period prior to the subdivision.

2 (c) If a parcel of real estate is assembled from two or more existing parcels, the county
3 [other governmental unit] recorder shall assign a new unique parcel identifier number to the
4 assembled parcel. Any document forming the basis of the change shall be recorded in the
5 electronic recording system. The title history of the assembled parcel shall include the title
6 history of each parcel from which it was assembled for the period prior to the assemblage.

7 **Reporter's Notes**

8 The assignment of PINs must accommodate the possibility that parcels will be further
9 subdivided or, to the contrary, consolidated. The description of the parcel may also be changed
10 by the interested party or parties or by operation of law. At the time of the subdivision,
11 consolidation or change in description a new PIN will be assigned to apply thereafter. The
12 recording history of old parcels and their PINs, up to the date of the subdivision or consolidation,
13 will then become part of the history of the new parcel or parcels and their PINs. Since the
14 document accomplishing the subdivision, consolidation or change in description would have to
15 have a new PIN in order to be recorded, the body (and perhaps the index entry) should refer to
16 the old PIN.

17 18 19 **SECTION 11. ELECTRONIC DOCUMENTS.**

20 An electronic document shall consist of (1) the index information for the electronic document
21 in a searchable, self-extractable electronic format, (2) the electronic text of the electronic
22 document, (3) an electronic signature, and (4) if applicable, electronic graphical information.

23 **Reporter's Notes**

24 An electronic document consists of three and perhaps four parts. It will contain the index
25 information in an electronic format, the electronic text of the document, an electronic signature,
26 and possibly electronic graphical information. The index information will not need to be hand-
27 entered by the recorder since it will be automatically self-extracted into the electronic land
28 records index.

29 The electronic text of the document will be the main body of the document. Although the
30 index information will be a part of the electronic body text, undoubtedly additional information,
31 such as recitals and covenants, will be in the document. The electronic text may include a
32 description in addition to that contained in the parcel identifier number. This might be useful for
33 several reasons. For example, an easement might be "across the north 10 feet of PIN 12-34567."
34 In this example, the PIN is "12-34567" and is for a parcel of land of some size. However, the
35 precise location of the easement is not across the entire parcel but only across the north ten feet
36 of the parcel. The text might also include a reference to another recorded document. For
37 example, a standard form of mortgage document may be recorded in the electronic land records
38 system and subsequent mortgages may incorporate that document, or portions of it, by reference.

1 The signature on the electronic document is in an electronic format and must comply with the
2 requirements of section 12, below.

3 Finally, the document may contain graphical information such as a plat or drawing.
4 Information of that sort will not be a textual format, but rather will be in a graphical one. Since it
5 is, in reality, an attachment, it must be securely “wrapped” with the rest of the electronic
6 document by the electronic signature process. Also, since it is not in a textual format, it will not
7 be searchable electronically as will the rest of the document.

8 This section expressly provides that the only form of electronic document that is acceptable is
9 one that has index information in a self-extractable format. As written, the proposal envisions
10 the index information to be extractable from the electronic document itself without the need of
11 hand entry by the recorder. This is a Type 4 document, as described in the Introductory
12 Comments.

13 Thus, the act does not permit the use of electronic documents that would require the recorder
14 to perform a visual review of the document to ascertain the index information and then separately
15 enter that information into the electronic land records index. The primary reasons for this choice
16 are efficiency and precision. It would not require the recorder to make hand entries of index
17 information, with the attendant time requirements and potentials for error. The documents
18 excluded would be Types 2 and Type 3 documents, as described in the Introductory Comments.

19 However, this approach in the act could be modified or changed entirely. For example, a
20 minor amendment would make Type 2 or Type 3 documents acceptable if index information
21 were provided in a self-extractable form in an “attached” summary information memorandum.
22 The scrivener would prepare the summary information memorandum and “wrap” it to the
23 electronic document by means of the electronic signature. Appropriate security provisions
24 should be added to assure that the summary information memorandum is valid. (Of course, this
25 opens the potential for error if the index information is attached to the wrong document by the
26 scrivener.)

27 In the alternative, the requirement for a self-extracting document or summary information
28 memorandum could be eliminated entirely. This would impose fewer restrictions but it would
29 also introduce greater potentials for error and entail time delays that might not be appropriate in
30 an electronic system.

31 **SECTION 12. STANDARD FORMATTING; TECHNOLOGY PROCESSES;** 32 33 **SIGNATURES.**

34 The acceptable format for any electronic document and the technological processes and
35 issuing authority for any electronic signature shall be determined by the Secretary of State [other
36 state officer]. The Secretary of State [other state officer] shall approve only the formats for
37 electronic documents, and the technological processes and issuing authorities for electronic
38 signatures that are capable of assuring that:

- 39 (1) the party indicated to have signed the electronic document is the party who actually

1 signed the electronic document, and

2 (2) the electronic document and its electronic signature have not been changed after it
3 was executed.

4 **Reporter's Notes**

5 This section sets forth the essential requirements for security of electronic documents. The
6 requirements are technology neutral and permit accommodation to new forms of electronic
7 signatures as they develop and become available.

8 It sets forth two requirements: the security system must assure that (1) the party indicated to
9 have signed the electronic document is the party who actually signed it, and (2) the electronic
10 document and its electronic signature have not been changed after it was executed. The objective
11 here is to assure that the document is not fraudulent, i.e. not forged initially or changed
12 subsequently. If electronic signatures are not secure, then the public will not accept and trust the
13 system.

14 The burden of approving formats for electronic documents as well as their technological
15 processes and issuing authorities is placed on the Secretary of State. It provides more assurance
16 than generally exists in most states today that the issuing authority will only issue digital
17 signatures to the appropriate parties and that they are sufficiently secure so as to permit
18 dependence on them in the stream of commerce. For example, the Secretary of State should not
19 approve electronic signatures by an issuing authority if that authority issues electronic signatures
20 on an unverified basis to applicants. However, the Secretary may approve the electronic
21 signatures by an issuing authority if that authority requires verification of the applicant by means
22 of a notarized application or personal appearance before an agent of the issuer.

23 This section does not require that the signature in the document be acknowledged. Much has
24 been written about the use of acknowledgements, but the reasons for their use can be reduced to
25 essentially two. First, they assure that the signature is that of the signator and is not forged.
26 Second, they assure that the signator was not suffering from duress or undue pressure by another
27 person to sign the document.

28 The first objective for using an acknowledgement is satisfied by the use of an electronic
29 signature meeting the requirements of this section. That is, the Secretary of State will only
30 approve electronic signatures from issuing authorities that can assure "the party indicated to have
31 signed the electronic document is the party who actually signed the electronic document." Since
32 the objective of assuring that the signature is not forged is satisfied by the electronic signature
33 process itself, it seems unnecessary to employ the use of an acknowledgement to accomplish the
34 same purpose. It would be redundant.

35 Furthermore, the electronic signature provides more assurance than does an
36 acknowledgement. It also assures that the electronic document has not been tampered with after
37 it left the presence of the signator. An acknowledgement can not perform that service. To the
38 extent that this assurance can be accomplished when using paper documents it is done by the
39 recorder in her examination of the document for obvious erasures and changes. The electronic
40 signature will add greater assurance in this respect.

41 Nevertheless, in some situations an electronic acknowledgement might prove beneficial. For
42 example, if electronic signature technology is lost, stolen or otherwise compromised, a document
43 could be fraudulently signed using that technology. Using an electronic acknowledgement

1 should provide an additional layer of security since the person using the lost or stolen signature
2 technology would have to identify him or herself to the notary in order to obtain the electronic
3 acknowledgement. However, as currently occurs with lower tech fraudulent endeavors of this
4 sort, false identities can be used that will pass the notary's rather limited ability to screen for this
5 type of identity fraud. Furthermore, as with any stolen credit card, the party to whom it is issued
6 should immediately notify the issuing authority so that the validity and functionality of the
7 electronic signature technology can be terminated.

8 To the extent that the second purpose of an acknowledgement is actually accomplished (i.e.,
9 the prevention of duress or undue influence), the use of an electronic signature as provided in this
10 section will not meet the same objective. Since the document's signator will be in possession of
11 the actual electronic signature technology, another person could apply duress or undue influence
12 to obtain the signator's execution of a document. Ideally a notary could isolate the signator and
13 query him or her to determine whether there is any duress or undue influence occurring in the
14 transaction. However, it is questionable how often a notary today actually intervenes in such a
15 transaction to prevent the exercise of undue influence or duress. Furthermore, some protection
16 may be provided from some forms of economic duress by means of cooling-off periods, and it is
17 seldom that a notary will interdict that form of duress either. It is also highly probable that most
18 electronic conveyances or mortgages of real estate will be executed in the presence of attorneys
19 or closing officers, who will perform the same evaluation function as is performed by a notary.

20 Nevertheless if an electronic acknowledgement should be desired, it may be added to the
21 provisions of this section. A further requirement could be inserted stating that the document
22 must have an electronic acknowledgement in order to be acceptable for recording. However, it is
23 not recommended that the two currently-stated requirements in Section 12 for the approval of the
24 format, technological process and issuing authority be changed since they are valuable and will
25 enhance the effectiveness of the acknowledgement.

26 If it should be decided to permit the use of Type 2 and Type 3 documents, the use of
27 acknowledgements might be valuable for those documents. Document of these types involve the
28 use of a graphic of the signator's signature as part of the electronic document. The validity of the
29 original signature can be verified by means of an acknowledgement, which would also be a
30 graphic in the electronic document. While the signature graphic and the acknowledgement
31 graphic might be tampered with, the acknowledgement would at least provide facial assurance
32 that the document is valid. Of course, it might be possible to avoid the issue by requiring that
33 these types of documents also be signed with the same type of electronic signature as described
34 in this section. However, that would require some further identity verification, i.e. verification
35 that the electronic signature and the graphic signature are those of the same person.
36
37

1 **SECTION 13. RECORDING ELECTRONIC DOCUMENT.**

2 Except as provided in sections 20 and 21, an electronic document shall be submitted to the
3 county [other governmental unit] recorder in the county [other governmental unit] in which the
4 real estate is located. The recorder shall review the electronic document to ascertain that it
5 contains the appropriate electronic index information, body text, and signature and complies with
6 other requirements of law. In accordance with procedures established by the Secretary of State
7 [other state officer] by [regulation][rule], the recorder shall also review the electronic signature to
8 assure, to the extent possible, that it is a valid electronic signature. As soon as the recorder has
9 ascertained compliance with the requirements of this subsection, the recorder shall enter the
10 electronic document into the electronic recording system.

11 **Reporter's Notes**

12 This section states the process by which the recording of an electronic document is
13 accomplished. When the recorder receives the electronic document (presumably by an electronic
14 transmission from the signator or his agent), the recorder will examine it to determine whether it
15 contains the required electronic index information in a self-extractable format and appropriate
16 electronic body text. She will also review the electronic signature and check information from
17 the issuing authority to assure that it is proper and valid. For example, if the electronic signature
18 is a public key-private key electronic signature, she would check the issuing authority's public
19 key to determine that the signature is valid. Finally, she will review the document to assure that
20 it complies with other requirements of law and that the person recording the document has paid
21 the applicable fees and taxes (*see* section 22). When all requirements have been met, the
22 recorder will enter the document into the electronic recording system. It will be transmitted to
23 the primary system where the electronic index information will automatically be extracted and
24 inserted into the electronic land records index and the document will be placed in the electronic
25 document record (*see* section 16).

26 **SECTION 14. PAPER DOCUMENTS.**

27 A paper document shall consist of (1) index information for the paper document, (2) the text
28 of the paper document, (3) a signature, [(4) an acknowledgement,] and (5) if applicable, graphical
29 information.

1 **Reporter's Notes**

2 Human nature and economics suggest that not everyone will, at least immediately,
3 changeover to electronic real estate documents. It will be a number of years before electronic
4 documents become dominant and probably many years beyond that before paper documents
5 disappear from the conveyancing process. In recognition of that fact, this and the next section
6 provide for the continued recording of paper documents. However, it melds the recording of
7 paper documents with the recording of electronic documents so that both forms of documents can
8 be recorded in the same electronic recording system.

9 This section provides for the same essential parts of a paper document as stated for an
10 electronic document in section 11 of the act. However, it adds an acknowledgement to the list.
11 The addition is optional, however, since some states may not wish to require an acknowledgment
12 or may wish to insert a different means of verification.
13

14 **SECTION 15. RECORDING PAPER DOCUMENTS.**
15

16 (a) Except as provided in sections 20 and 21, a paper document shall be submitted to the
17 county [other governmental unit] recorder in the county which the real estate is located. The
18 recorder shall ascertain that the paper document contains the appropriate index information, text,
19 signature [and acknowledgement], and complies with other requirements of law. As soon as the
20 recorder has ascertained compliance with the requirements of this subsection, the recorder shall
21 make an electronic copy of the document in an electronic graphical format and shall enter the
22 index information and the electronic copy of the document in the electronic recording system.

23 (b) The technology and format of the electronic graphical format shall be prescribed by
24 the Secretary of State [other state officer] by [regulation][rule]. The technology shall assure that
25 the electronic copy has not been changed after it is entered into the electronic recording system.
26 The recorder shall keep the paper document until the recording process is completed.

Reporter's Notes

Just as with electronic documents, when the recorder receives a paper document (presumably by personal delivery or postal mail), the recorder will examine it to determine whether it contains the required index information and appropriate text. She will also review the signature and confirm that it has been properly acknowledged. Finally, she will review the document to assure that it complies with other requirements of law and that the person recording the document has paid the applicable fees and taxes (*see* section 22). When all requirements have been met, the recorder will enter an electronic copy of the document into the electronic recording system. It will be transmitted to the primary system where the index information will be inserted into the electronic land records index and the electronic copy of the document will be placed in the electronic document record (*see* section 16).

This section provides that paper documents will be converted into electronic copies. It is assumed that the electronic copies will be graphical electronic documents, Type 1 documents as described in the Introductory Comments. This is the format currently in general use today for the copying of paper documents in many recorders' offices. The act provides that the Secretary of State will prescribe the format of the electronic copy. This authority is granted to the Secretary in order to assure that the electronic graphical copy is compatible with the electronic recording system and can be stored in the same electronic document record as electronic documents.

Since neither the original paper document nor the electronic graphical copy will contain self-extracting index information, the recorder will have to glean this information from the document. After doing so she will hand enter the index information into the electronic land records index, with the accompanying opportunities for error. Alternatively, the act could require that the person submitting the document for recording must also submit a summary information memorandum that separately contains the index information, as is employed in some recording districts today.

Both the process of converting the document into an electronic format and the process of hand entry of the index information involve delays. However, since it will be impossible to completely and immediately eliminate paper documents, those delays and opportunities for error must be accommodated.

It might be noted that if hand entry of the index information is permitted for paper documents, then it might also be permitted for Type 2 and Type 3 documents. See discussion in the Reporter's Notes to Section 11, above.

1 **SECTION 16. RECORDING IN PRIMARY SYSTEM.**

2 An electronic document or electronic copy of a paper document and its related index
3 information shall be electronically transmitted from the county [other governmental unit]
4 recorder's office to the primary system. The index information shall be entered in the electronic
5 land records index in the primary system. The electronic document or electronic copy of a paper
6 document shall be stored in the electronic document record in the primary system. Upon
7 completion of the indexing and recording process in the primary system, the recording process
8 shall constitute constructive notice to all persons as provided in Section 29.

9 **Reporter's Notes**

10 When the county recorder has completed reviewing an electronic document (*see* Section 13)
11 or a paper document (*see* Section 15), she will enter the electronic document or an electronic
12 copy of the paper document, along with its index information, into the electronic recording
13 system. It will then be transmitted immediately to the primary system.

14 Upon receipt by the primary system the electronic document will immediately be stored into
15 the electronic document record and the index information will simultaneously be extracted from
16 it and inserted in the electronic land records index. Similarly, when the primary system receives
17 an electronic copy of a paper document, the electronic copy will be stored in the electronic
18 document record and the accompanying index information that was prepared by the county
19 recorder will be inserted into the electronic land records index.

20 When that processing is completed the document will be considered recorded and it will
21 constitute constructive notice to all parties. Until the document is properly recorded and indexed,
22 a subsequent purchaser does not have any means to ascertain the existence or content of the
23 document. Thus, no constructive notice should be attributed until that time (*see* *Hanson v.*
24 *Zoller*, 187 N.W.2d 47 (N.D. 1971)). It rejects the premise that a document deposited with the
25 recorder is recorded despite the fact that it is not indexed or improperly indexed (*see* *Haner v.*
26 *Bruce*, 499 A.2d 792 (Vt. 1985)).

27 **SECTION 17. CONFIRMATION OF RECORDING IN PRIMARY SYSTEM.**

28 Upon completion of the recording process, the Secretary of State [other state officer] shall
29 transmit a confirmation of recording to the county [other governmental unit] recorder who
30 entered the document into the electronic recording system. The confirmation of recording shall
31 contain the date and time of the completion of the recording along with summary information
32 about the recorded document. The format of the confirmation of recording and the summary

1 information shall be determined by the Secretary of State [other state officer] by
2 [regulation][rule]. At the same time that the confirmation of recording is sent to the county
3 recorder, the Secretary of State [other state officer] shall also send a copy of the confirmation of
4 recording to the party recording the document. The confirmation of recording may be sent to the
5 party electronically, or by postal mail or other means, as requested by the party.

6 **Reporter's Notes**

7 This section provides that the Secretary of State will confirm that the document has been
8 recorded to both the local county recorder as well as to the party submitting the document for
9 recording. Because the structure of a semi-centralized recording system as proposed in this act is
10 novel, there is no practice or legal authority for transmitting a confirmation of the recording to
11 the county recorder. However, this is a good approach for at least two reasons.

12 First of all, without some response from the Secretary's office such as proposed here, there is
13 nothing inherent in the nature of electronic communications that would necessarily tell the
14 county recorder that the document was not received and thus not processed by the primary
15 system. The recorder might rightfully presume that the transmission of the document occurred
16 without difficulty when, in fact, the transmission was not complete or totally faulty. Under the
17 system proposed here, if the recorder does not receive a confirmation of recording within a
18 customary time (as determined by actual practice), she should inquire about whether the
19 document was received and, if necessary, retransmit it.

20 Secondly, Section 15(b) provides that the county recorder will retain the paper document
21 until the recording process is completed. In the event that there is a failure in the transmission of
22 the document to the primary system, the county recorder has the substantive information with
23 which to retransmit the document to the primary system. Receipt of the confirmation of
24 recording by the recorder will act as notice that the recording process is then complete.
25 Thereafter, she can confidently return the paper document to the party who submitted the
26 document for recording.

27 Under general practice today, the county recorder notifies the party who submitted the
28 document for recording that it has been recorded. Usually this is done by returning the paper
29 document together with certain reference information as to the time of recording and the location
30 of the recorded document in the land records written or stamped on it. This section provides that
31 the Secretary of State will perform that function by sending the confirmation of recording to the
32 submitting party. This notification can be sent either electronically or by normal postal mail. (It
33 seems likely that confirmations of recording for electronic documents will be sent electronically
34 and confirmations of recording for paper documents will be sent by postal mail. In either case
35 the Secretary will need the appropriate addresses of the submitting parties.)

36 Although this proposal selects the Secretary as the person who will send the confirmation of
37 recording to the submitting party, that job could easily be given to the county recorder. The
38 reason that it was given to the Secretary in this proposal is based on the fact that, at least with
39 regard to electronic documents, the electronic confirmation could easily be sent to both the
40 county recorder and the submitting party simultaneously as part of a single process. Admittedly,
41 as to paper documents a separate mailing would likely be necessary and the county recorder
42 could, perhaps more easily, send that confirmation along with the return of the paper document.
43 However, since it is expected that over a relatively short time electronic documents will become

1 the predominant form of real estate documents, the choice was made to give that function to the
2 Secretary initially and not to cause confusion by bifurcating the confirmation process.

3
4
5 **SECTION 18. OTHER ENTRIES INTO ELECTRONIC RECORDING SYSTEM.**

6 No person shall make an entry into the electronic recording system unless it is based on an
7 electronic document or a paper document submitted and entered into the electronic recording
8 system.

9 **Reporter's Notes**

10 This section sets forth the simple principle that every entry into the electronic recording
11 system must be based on an electronic or paper document submitted and entered in the electronic
12 recording system. It would appear obvious that no document should be entered into the
13 electronic document record without the supporting electronic or paper document having been
14 submitted. Without that supporting document, entry of a document into the electronic document
15 record would be fraudulent.

16 Similarly, this section also states that no additions may be made to the electronic land records
17 index without also being based on an electronic or paper document. The recorded document
18 provides a "paper" trail for each entry in the index. If the original document contains an error, it
19 must be corrected by the parties executing a new document correcting the error and then
20 recording the latter document in the electronic recording system.

21 The full operation of this section should be considered in light of the next section.

22
23
24 **SECTION 19. CORRECTING DOCUMENT.**

25 (a) A correcting document is a document that contains a correction to the electronic
26 document record or the electronic land records index that may be necessary to conform it to the
27 original document.

28 (b) If an error occurs in the recording process that requires a correction either to the
29 electronic document record or the electronic land records index, the correction may be made only
30 by means of a correcting document. The correcting document shall be recorded in the electronic
31 recording system in such a manner as to link it to both the original parcel and party.

32 (c) The correcting entry may be executed by the county [other governmental unit]
33 recorder without prior notice or consent of the any party affected by the correcting document.

1 The recorder shall immediately give each party notice of the correcting document. A party may
2 object to the correcting document in an appropriate document submitted to the county [other
3 governmental unit] recorder. The document containing the objection shall be indexed and
4 recorded in the electronic recording system.

5 **Reporter's Notes**

6 It might occur that after a document has been recorded and indexed, an error is discovered in
7 either the electronic land records index or the electronic document record. The error described
8 here would be of a nature that the index or record does not conform to the actual document, as
9 filed. Such an error is most likely to occur when preparing index information from a paper
10 document. As provided in section 15(a), the index information is prepared manually by the
11 county recorder by reviewing the actual document. This manual intervention provides an
12 opportunity for human error. The recorder might misread the information as contained in the
13 document or might make a typographical error when entering the information into the electronic
14 recording system. It is not likely that such errors will occur with index information obtained
15 from electronic documents since that information will be automatically retrieved from the
16 document. Whatever is entered on the original document should also be entered into the
17 electronic land records index. It is also unlikely that there will be errors in the electronic
18 document record, whether the document is an electronic one or a paper one. In either case actual
19 copies, whether textual or graphical, of the original document will be stored in the electronic
20 document record. There is little or no chance for human error. However, it cannot be stated
21 without doubt that no errors will occur.

22 In the event of an error of this sort, the recorder should not simply change the electronic land
23 records index (or the electronic document record if such an error should occur). If she were to do
24 so, the history of the index entry would be wiped out without any record of its prior content. A
25 party having relied on that entry will no longer be able to find the basis for his reliance. He will
26 not be able to prove that he did not (or that another party did) have notice of the transaction. This
27 section avoids that difficulty by requiring that the correction not be made without a correcting
28 document. That correcting document will be stored in the electronic document record and an
29 index entry will be made in the electronic land records index based on it. The original document
30 and, more importantly, its original index entry will be maintained in the electronic land records
31 system. The new index entry will give notice of the correct contents of the original document to
32 parties who deal with the real property from
33 the date of the new entry forward.

34 Subsection (c) recognizes that the recorder may discover this error and that an immediate
35 correction should be made. However, it would take time to notify the parties to the recorded
36 document of the error and it is quite possible that one or more of them would object, despite the
37 appropriateness of the correction. In order to avoid the resulting impasse, this section authorizes
38 the recorder to make the change without prior notice. However, the recorder must immediately
39 give notice of the correction document to the parties to the original document. Should one or
40 more of them object to the change, they may submit an appropriate document asserting that
41 objection to the recorder, who will record and index it. When so recorded and indexed the
42 objecting document will give notice to subsequent purchasers that the party has opposition to the
43 correction.
44

1
2 **SECTION 20. COORDINATION WITH OTHER OFFICES.**

3 The filing of documents creating, transferring or terminating interests in real property in other
4 offices in the county [other governmental unit] shall be coordinated with the electronic recording
5 system established by this act. The documents may be filed in the applicable office in the county
6 [other governmental unit] in which the real estate is located either in electronic or paper format.
7 The information contained in a document, whether in electronic or paper format, shall be
8 transmitted electronically to the county [other governmental unit] recorder's office in a method
9 and format prescribed by the Secretary of State [other state officer] by [regulation] [rule]. As
10 soon as the recorder has ascertained that the information complies with the requirements of the
11 [regulation] [rule], the recorder shall enter the index information and the electronic document
12 into the electronic recording system.

13 **Reporter's Notes**

14 This section recognizes that not all real property information is recorded in the county
15 recorders' offices. The nature and number of the alternative locales and what is recorded in them
16 varies considerably from state to state. Probably most common among these locales are of the
17 offices of the clerks of court. Again depending on the jurisdiction, interests such as judgment
18 liens, lis pendens and mechanics' liens might be recorded there. Also the orders or decrees of
19 court in quiet title actions, probate proceedings, judicial mortgage foreclosures and similar legal
20 proceedings might also be located there. Other alternative locales where real estate information
21 might be located include the county and/or city office where real estate tax liens are filed, the
22 federal Bankruptcy Court for the district in which the real estate is located, as well as other
23 federal courts. (U.C.C. Article 9 filings are a special case and are dealt with in the next section).

24 The first issue is whether this proposed act should deal with documents in those locales at all.
25 It might be suggested, with just cause, that the variations are too wide-ranging to manage in a
26 uniform act. Since the basic documents pertaining to real estate, i.e. deeds and mortgages, are
27 provided for in the act the purpose of the act is accomplished.

28 Before, however, the drafting committee decides not to deal with this issue in the uniform
29 act, the committee should consider, at least, these two points. First of all, if the purpose of this
30 act is provide an efficient system from which real estate information can be retrieved
31 electronically, not dealing with these matters may form a significant gap in the real estate
32 information that is available electronically. For example, for prospective mortgage lenders some
33 of the most important information that they would want and that might not be available from the
34 electronic recording system is lien information. A separate lien search prior to closing the
35 mortgage would still have to be conducted in the various alternative locales, particularly the clerk
36 of court's office and the city and/or county office in which real estate tax liens are filed.

37 Secondly, just as electronic versions of mortgages, deeds, and related documents will
38 increase in future years, the same will occur with the other real estate interests filed in these

1 alternative locales. For example, courts are increasingly using electronic means to file legal
2 documents. As the electronic transformation continues to move forward, it is realistic to expect
3 that judicial decrees and orders along with judgment liens and lis pendens will also be entered
4 electronically. As a result the approach taken in this draft is to provide at least some basis on
5 which the land records might be coordinated with these other offices.

6 Assuming that it is decided to coordinate these alternative offices with the electronic land
7 records system, the second issue is how to accomplish that objective. Four basic approaches are
8 available that one might take in doing so. One approach might be simply to require the various
9 alternative offices to establish electronic systems in their offices that are compatible with the
10 electronic land records system. Then a link could be established between the electronic land
11 records system and the alternative office. The title searcher could perform separate search in the
12 alternative office for the relevant real estate information.

13 A second approach might be to expand the statewide electronic recording system to include
14 these alternative offices. When the alternative office receives a document affecting an interest in
15 real property, the officer would follow substantially the same procedures provided in this act for
16 county recorders and transmit the electronic document or electronic copy of a paper document
17 directly to the primary system.

18 A third approach might be to require the person owning the interest filed in the alternative
19 office to file it also with the county recorder in order for it to provide notice to subsequent
20 purchasers. Although effective between the parties when filed in the alternative office, it would
21 require further filing to give proper notice. This is not unlike the system used in some
22 jurisdiction with regard to judgment liens and lis pendens today. It puts the burden of filing on
23 the party owning the interest to file in the county recorder's office.

24 A fourth approach, and the one tentatively set forth in this proposal, is to have the alternative
25 office transmit information about the real estate interest to the recorder in the county in which the
26 real estate is located. This information would be in a format and transmitted by a method
27 approved by the Secretary of State, thus assuring that it is compatible with the electronic land
28 records system. It would also provide the opportunity for a person experienced in these issues,
29 the county recorder, to review it before it is entered in the electronic land records system.
30

31 **SECTION 21. UNIFORM COMMERCIAL CODE FILINGS.**

33 (a) The filing of documents creating, transferring or terminating security interests
34 affecting real property under Article 9 of the Uniform Commercial Code shall be coordinated
35 with the electronic recording system established by this Act. The Secretary of State [other state
36 officer] shall maintain an electronic security interests system consisting of an electronic land
37 records index and electronic document record.

38 (b) Documents creating, transferring or terminating security interests shall be submitted
39 either in electronic format, or in paper format and converted to electronic format. If the

document is filed with the county [other governmental unit] recorder, the recorder shall transmit the electronic document or an electronic copy of the paper document to the Office of the Secretary of State [other state officer], where it shall be indexed and recorded in the electronic security interest system. If the document is filed with the Office of the Secretary of State, it shall be indexed and recorded in the electronic security interest system. In either case, the information contained in the primary electronic security interest system shall be coordinated with the electronic recording system so that a search of the primary system will disclose the creation, transfer or termination of the security interest.

Reporter's Notes

The recording of U.C.C. Article 9 security interests is a subset of the situation described in section 20 above, but is nevertheless a special case. Article 9 security interests affecting real property are usually filed in an alternative office and not that of the county recorder. Generally, those security interests are filed with the Secretary of State or other state officer (UCC § 9-501(b)). However, certain Article 9 security interests are instead filed with the local county recorder (UCC § 9-501(a) – interest in fixtures and timber; the local filing office stated in that section is the “office designated for the filing or recording of a mortgage on real property”).

Since the Secretary of State has jurisdiction over both the U.C.C. filing system and the primary system as provided in this act, he is presumably free to structure a coordination of Article 9 security interests in real property with the electronic recording system as defined in this act.

In general, this act states that the Secretary will maintain a filing system for electronic security interests that is compatible with the electronic recording system created in this act. The electronic security interests system will have an electronic land records index and an electronic document record. Security interest documents may be submitted in either electronic or paper format. If submitted in paper format, they will be converted to an electronic format. If they are submitted directly to the Secretary of State, they will be entered directly into the electronic land records index and electronic document record of the electronic security interests system. If they are submitted to the county recorder, the recorder will transmit the electronic security interest document or the electronic copy of a paper security interests document to the Secretary's office where it will be recorded in the electronic security interests system. The electronic land records system and the electronic security interests system are to be coordinated in such a way that the search of the electronic land records system will disclose the Article 9 security interest.

Once again, as stated in the Reporter's Notes to the prior section, more than one approach might be taken to bring about this coordination. The other approach (of those mentioned in the prior section) that would seem to be appropriate in the case of Article 9 security interests would be the first one – a simple directive that the Article 9 security interests system be linked with the electronic land records system so that a title examiner could easily perform a separate search for Article 9 security interests. On the assumption that the Secretary already has in place an electronic filing system for Article 9 security interests, this might be accomplished by the deletion of this entire section other than the first sentence of subsection (a) and the addition of a sentence to the effect that “The information in the filing system for Article 9 security interests

1 will be linked with the electronic land records system in order to enable a search of Article 9
2 security interests.”
3

4 **SECTION 22. RECORDING FEES AND TAXES.**

6 (a) Persons recording a document in the electronic recording system shall pay the
7 applicable fees and taxes to the county [other governmental unit] recorder. The fees payable to
8 the recorder shall include an electronic recording system fee of [\$] per document.

9 (b) A person recording an electronic document shall have an account established with the
10 county [other governmental unit] recorder. The recorder shall establish an account for a person
11 upon demonstration of financial ability to pay the filing fees and taxes for documents recorded
12 under authority of the account.

13 **Reporter's Notes**

14 Subsection (a) states that person recording a document in the electronic recording system,
15 regardless of whether it is an electronic or paper document, must pay the applicable fees and
16 taxes as well as an electronic recording system fee. This act does not attempt to set the amount
17 of the recording fees or taxes and leaves those issues to other state law or local options. It does
18 state that a special fee must be paid for use of the electronic recording system. Even if the
19 document is a paper document it is appropriate to require the payment of that fee since an
20 electronic copy of the document will be recorded in the electronic recording system. Also the
21 paper must be copied electronically and that is an effort that will incur the expense of time and
22 money.

23 The proposal does not state how these funds are to be shared between the county recorder and
24 the Secretary of State. This is an issue that is likely to have serious political and economic
25 overtones. It should be discussed and a decision made regarding whether any attempt to should
26 be made to devise a means of sharing the funds.

27 Also unstated is the unit basis for the charging of the fees. The traditional means of charging
28 recording fees for paper documents is based on document pages, usually with an initial per
29 document minimum. With true electronic documents the traditional concept of pages is largely
30 irrelevant; pages are imaginary and do not explain the size of a true electronic document. There
31 will also be considerable differences between the size of a graphical copy of a paper document
32 and the size of a comparable truly electronic document. Several possible approaches suggest
33 themselves, but there is no clear choice. There might simply be a charge per document, although
34 a truly large document would not seem to pay its fair share of storage costs and it might invite the
35 continuance of less efficient means of document generation. A charge based on kilobytes is also
36 possible, but it's not clear what the future of file sizes might be.

37 Subsection (b) states that a person recording a document must have an account with the
38 county recorder. That account might be a traditional one under which payment is made to the
39 county recorder at regular periods. It might also be an account set up by the use of a credit card

1 or under the various electronic payment systems that are now available or will become available
2 in the future.

3 **SECTION 23. SEARCHING PROCESS.**

4 A person may search for real property information in the electronic recording system by
5 accessing the primary electronic recording system as described in section 24. A search of the
6 primary electronic recording system may be performed based on the parcel identifier number, the
7 name of a grantor or grantee, the name of a current or former owner of real property, or the
8 address of the real estate, if available. The electronic recording system shall be designed so that a
9 search will disclose the index information and a document contained in the electronic recording
10 system pertaining to the search criteria. If a searcher should request a verified [certified] copy of
11 a document, the copy shall be supplied electronically or in such other format as the Secretary of
12 State [other state officer] shall determine.

13 **Reporter's Notes**

14 A person may perform a search of the electronic land records system by electronically
15 accessing the office of the Secretary of State. The search will be made on primary system located
16 in the Secretary's office.

17 The search may be performed based on the parcel identifier number (PIN), the name of a
18 grantor or grantee in a document, the name of a record owner of real property or, to the extent
19 available, the address of the real estate (*see* Reporter's Notes for section 2(7)). Probably the most
20 common means of searching will be by PIN since it is quicker, more accurate and can disclose
21 the entire title history of a parcel in a single search. However, lien searches will also be very
22 common. Those searches will usually be based on the name of a proposed record owner of real
23 property. The search engine might be structured in such a way as to allow the search to be date-
24 limited since most liens only last for a stated number of years.

25 The immediate results of the search will include a display of the index information pertaining
26 to the search criteria. This draft of the act proposes that the actual document also be displayed
27 on-line, if so requested by the searcher. The searcher could print copies of the index information
28 and document from his computer if he desires. However, they would not be official copies and
29 are informational only. Should he desire a certified/verified copy of the document he must
30 request that copy from the Secretary of State who will certify/verify it and send it as requested.
31 As will be stated in the next section, that service will incur an additional fee.

32 **SECTION 24. ACCESS TO SEARCH; PAYMENT OF FEES.**

1 (a) A person may obtain access to search the electronic recording system by establishing
2 an account with the Secretary of State [other state officer]. The Secretary of State [other state
3 officer] may establish a usage fee based upon time on-line, number of searches in a session, and
4 other criteria. Viewing of index information or a document shall be at no additional cost to the
5 searcher. If a searcher requests a verified [certified] copy of the document, the searcher shall pay
6 a fee based on size of the document and method of delivery. The Secretary of State [other state
7 officer] shall issue a person an account upon demonstration of financial ability to pay the fees
8 incurred under authority of the account.

9 (b) A person may search the electronic recording system by using a workstation
10 established for that purpose in the county [other governmental unit] recorder's office. The use of
11 a workstation in the recorder's office is subject to the supervision of the recorder and payment of
12 the usage fee established by the Secretary of State [other state officer]. Viewing of index
13 information or a document shall be at no additional cost to the searcher. If a searcher also
14 requests a verified [certified] copy of the document, the searcher shall pay a fee based on the size
15 of the document and method of delivery.

16 **Reporter's Notes**

17 Subsection (a) states that the Secretary may establish a usage fee based on time on-line,
18 search frequency and other criteria. No additional fees will be charged for viewing of the index
19 information or related documents, but an additional fee will be charged for the delivery of a
20 verified/certified copy of the document.

21 The charging of a usage fee might potentially raise issues of freedom of information. In most
22 recording districts today there is no charge for simply searching the land records office. The data
23 are considered open documents available for the public to see. Fees are imposed for making
24 copies of the information and documents. However, totally open access raises conflicting issues
25 involving payment for the electronic land records system and access demands placed on the
26 system by casual browsers.

27 First of all, the provision of land records information is a function of government that must
28 be paid for in some fashion. A system that places the cost of the system, at least in part, on the
29 user of the service is generally accepted and reasonable. In order to maintain that proposition,
30 however, the fee may not be designed to preclude access by anyone who wishes to do so as long
31 as he is willing to pay a reasonable fee for the service. This payment system is similar to the
32 usage fees charged by the providers of on-line legal databases.

33 Secondly, totally free access without any gateway limitations would potentially raise a
34 problem with casual browsers overusing and overloading the system, especially during times of

1 peak demand. There is limited bandwidth available for access to any system. If one or more
2 persons should request large, graphical documents and then seek to download those documents
3 the system could become overloaded. If the electronic land records system is available to the
4 casual browser who can search for and download those files without charge, the potential for
5 difficulty is increased. While the usage fee is not designed to prohibit access to anyone, it will
6 likely act as a gateway and limit casual browsing of the primary system for no purpose other than
7 “surfing the net.”

8 Subsection (b) recognizes that not all persons will have computers or on-line access and may
9 wish to access the electronic land records system from the county recorder’s office. It also
10 recognizes that the county recorder will inherently have access to the electronic land records
11 system. It would be a simple matter for the recorder to set up a workstation in her office either to
12 be available for usage by the public or dedicated to public usage. In other respects the access and
13 costs are the same as described for access under subsection (a).
14

15 **SECTION 25. APPLICABILITY.**

16 The provisions of this Act shall apply only to documents filed after the effective date of this
17 Act. Indices and records of paper documents filed in the county [other governmental unit]
18 recorder’s office before the effective date of this Act shall continue to be maintained by the
19 county [other governmental unit] recorder.

20 **Reporter’s Notes**

21 The electronic land records system established by this act only applies to documents filed
22 after the effective date of the act. The county recorder will maintain indices and records of paper
23 documents (whether on a paper, photographic film, photocopy, or electronic format) in the
24 county recorder’s office. Conversion of old records for use in the electronic land records system
25 is discussed in the next section.

26 **[SECTION 26. CONVERSION OF PRIOR DOCUMENTS.**

27 [Within [three] years after the effective date of this Act] The county [other governmental
28 unit] recorder shall convert all paper documents recorded in the recorder’s office [during the
29 thirty years prior to the effective date of this Act] into an electronic format compatible with the
30 electronic recording system. Upon conversion into an electronic format the converted documents
31 shall be entered into the electronic recording system and be available for search and retrieval of
32 information.]

Reporter's Notes

Dealing with old document is an extremely difficulty matter due primarily to the cost of converting the old documents and the time necessary to do so. On the other hand, failure to do so limits the usefulness of the electronic land records system as a means of searching for land title information, at least for a good number of years to come. Three models are available to deal with this problem.

The first model is simply not to convert the documents. The old records will be maintained as part of the services of the local county recorder and available for search. It is unquestionable that this approach will save money in the short term for the state. However other costs are very high. Under this model, searches of the electronic land records system will only gradually begin to have any value as time progresses. To the extent that records older than the enactment of the electronic land records system must be searched, two searches would have to be performed – one in the electronic land records system for current transactions and one in the county recorder's office for documents predating the system. In all likelihood, the cost would be higher to the searcher than would be a simple search in a single system. The benefits presumed to be produced by the electronic system would be long delayed, undoubtedly causing considerable dissatisfaction with the system. Nevertheless, the entire section is bracketed to allow its deletion by an enacting jurisdiction.

The second model is the obvious answer to that situation – make electronic copies of the old paper records and place those copies in the electronic document record and convert the old indices to an electronic format and insert them in the electronic land records index. However, as indicated above, the cost of that conversion can be extremely high and the time necessary for the conversion very lengthy unless a lot of funding is allocated to perform the conversion quickly. The proposal set forth here uses a three-year time frame for the conversion, and that would seem to be very optimistic and costly. Thus, it too is bracketed and a longer completion time could be used. However, the longer that the completion of the conversion is delayed, the longer it will be until the full benefits of the electronic system can be enjoyed.

The second time-based issue is the number of historical years the conversion must cover. The longer that period, the longer the conversion will take to complete and the more expensive it will be. The period selected in this proposal is 30 years and is based on the Uniform Marketable Title Act. However, even this period is not very satisfactory for several reasons.

First of all, the Uniform Marketable Title Act cuts off interests only if recorded prior to the root of title and not subsequently preserved. The root of title is the last title transaction recorded more than 30 years prior to the date marketability is being determined. Thus, the root of title may as little as 30 years and one day or perhaps as long as 100 years prior to the current date. It will vary depending on the title history of the individual parcel. Accordingly, 30 years is initially not a long enough period. However, as time passes after the effective date of the act the roots of title of more parcels will begin to fall within the prescribed period and thus it will begin to have more effectiveness.

Nevertheless, 30 years is not a safe period for all title examinations. If one were to perform an electronic search the title history of a parcel of real property after the documents were converted to an electronic format and were to discover that the root of title was not disclosed by the search, the searcher would have to do an extended search. He would have to search the old paper records in the county recorder's office to locate the root of title. Thus, although the period is not sufficient in all cases, it may be accommodated by an extended title search.

The second difficulty with using the 30-year period is that not all states have adopted the

1 Uniform Marketable Title Act. The periods of search in many jurisdictions may be a matter of
2 contract between the abstractor and the customer, or it may be a matter of local law or custom.
3 That period might be 30 years plus such further time as necessary to reach a root of title, just as
4 in the Uniform Act. However, it might be longer.

5 The third problem with the 30-year period is that under the Model Marketable Title Act,
6 which existed prior to the Uniform Marketable Title Act, the period of marketability was 40
7 years and such time as necessary to locate the root of title. Several states adopted the Model Act
8 provision with the 40-year provision. Thus, as proposed in this act the 30 year period is
9 bracketed and a state may insert the time period that would fit its local law and custom best.

10 The third model for dealing with old paper documents is suggested by a recent proposal of
11 the Iowa Real Estate Modernization Project, a committee of the Iowa State Bar Association that
12 has developed an electronic recording system for the State of Iowa. It has been presented to the
13 Iowa Legislature but it has not yet been acted upon.

14 Iowa is unique in that for over 50 years the sale of title insurance has not been permitted in
15 the state. In response to the secondary mortgage market's demand for title assurance beyond a
16 lawyer's title opinion, in the mid-1980s the legislature enacted its Title Guarantee system. The
17 system is essentially a lawyer's title insurance system with the ultimate guarantor being the state-
18 backed Title Guarantee Division. The committee making the electronic recording proposal
19 looked at the question of converting old documents. The cost of converting would be very high
20 and would have to be borne by the State. It proposed an alternative that it believes will be
21 considerably less costly. Instead of converting the old documents, they would remain as paper
22 documents in the various county recorders' office. When Title Guarantee writes a title guarantee
23 policy based on a search that included those records, it will file a notice in the land records
24 stating that the search has been made and listing the interests disclosed by that search. Unlike
25 normal title insurance, the guaranty it writes as to the search of the paper records would be
26 available to subsequent purchasers. Consequently an examination of the paper records need not
27 be repeated. The cost of this approach would be the additional underwriting costs assumed by
28 the state-backed agency to guaranty any loss to a subsequent purchaser based on an undiscovered
29 title defect in the paper records. Nevertheless, the committee believes that the costs would be
30 considerably less than the costs of a full-scale conversion of real estate records for a 40 year
31 period, as would be suggested by their adoption of the 40 Year Model Marketable Title Act.

32 While no other state has a state-backed agency guaranteeing titles as exists in Iowa, the
33 model might be adjusted for use with private title insurance companies. For a reasonable
34 additional fee, a title insurance company might be willing to write the type of policy described
35 above assuring subsequent purchasers that the prior paper documents disclosed only listed title
36 defects. Any subsequent purchaser and his or her title examiner could rely on that search of the
37 paper records need not repeat it. In some ways, this would not be unlike the current in-house title
38 insurance company practice. If the title company has a title plant for the area in which the real
39 estate is located and has made a search of the same title history some time ago, the new search
40 begins at the date the old search ends and continues forward. The title company does not repeat
41 the prior search. There is an additional issue that must be considered also. Who should pay for
42 the added cost of underwriting? Should it be the state, as in the Iowa proposal, or should it be the
43 users of the system by paying an increase in the cost of title insurance?

44 This concept presents a very interest possibility but is not included in this proposal because
45 too many very significant issues are unresolved. Would title insurance companies write such a
46 policy? Who should pay for the added cost of title insurance – the insured or the state? Would
47 consumers find the proposal reasonable? Would the state find the idea acceptable?
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2 **SECTION 27. [REGULATIONS] [RULES].**

3 The Secretary of State [other state officer] may propose and adopt [regulations][rules] to
4 implement the provisions of this Act. The [regulations][rules] shall be designed to promote a
5 uniform system of real property information throughout the state and, to the extent feasible, to
6 coordinate with the [regulations][rules] adopted by the appropriate officers in other states.

7 **Reporter's Notes**

8 This section gives the Secretary of State the authority to propose and adopt rules or
9 regulations to implement the various provisions of the act. The specifics of the regulations are to
10 be ascertained from the next section as well as from the various sections of this act that state
11 some function is given to the Secretary for which rules or regulations must be adopted. This
12 section specifically states that the rules and regulations are to be designed to promote a uniform
13 system of real estate information within the state as well to coordinate with similar rules and
14 regulations in other states.

15 **SECTION 28. REAL PROPERTY RECORDS DIRECTOR.**

16 (a) The Secretary of State [other state officer] shall establish in the Secretary's office the
17 position of Real Property Records Director. The Real Property Records Director shall report, and
18 be responsible, to the Secretary of State [other state officer].

19 (b) As delegated by the Secretary of State [other state officer], the Real Property Records
20 Director shall have the following authority and duties regarding the electronic recording system
21 as well as the entry of information in counties [other governmental units] in which the recorders
22 have implemented the recording system:

23 (1) To propose and adopt [regulations][rules] to implement the provisions of this Act
24 in a uniform fashion statewide, considering the status of technology, the promotion of commerce,
25 the protection of privacy, the enhancement of system security, and the need for land records
26 interoperability within the state and between states;

27 (2) To enforce the provisions of this Act and the rules adopted pursuant to it; and

28 (3) To exercise any other authority or duty the Secretary may consider appropriate
29 and delegate.

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1 **Reporter's Notes**

2 This is a standard provision in Uniform Acts for the purpose of reciting the importance of
3 considering the need for uniformity among the enacting states when applying and construing the
4 act.

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7 **SECTION 31. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
8 **NATIONAL COMMERCE ACT.**

9 This [Act] modifies, limits, or supersedes the federal Electronic Signatures in Global and
10 National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede
11 Section 101 of that act (15 U.S.C. Section 7001(a)) or authorize electronic delivery of any of the
12 notices described in Section 103 of that Act.

13 **Reporter's Notes**

14 This is a provision suggested for inclusion in uniform acts. It responds to the specific
15 language of the Electronic Signatures in Global and National Commerce Act and is designed to
16 avoid preemption of state law under that federal legislation. This proposed section was created by
17 the Standby Committee for the Uniform Electronic Transactions Act for this purpose. The
18 Executive Committee of the National Conference has reviewed and approved this language.