

FOR DISCUSSION ONLY

UNIFORM REAL PROPERTY ELECTRONIC RECORDATION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

For Drafting Committee Meeting May 2-4, 2003

With Reporter's Notes

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

April 14, 2003

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UNIFORM REAL PROPERTY ELECTRONIC RECORDATION 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 (UETA) 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 (E-Sign) 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 no agreement as to whether those documents may be recorded in the local land records. Nor is there any guidance as to the procedures and standards for accepting and processing those documents by recorders.

Limited experiments with recording electronic documents have been initiated in 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 standards for the acceptance and processing of electronic documents within a state nor across state lines. Any expansion of the current situation without the guidance 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 second draft for discussion by the drafting committee. It provides that requirements of state law describing or even requiring that documents be in a paper or written form are satisfied by a document in an electronic form. It also establishes an Electronic Document Recording Commission to adopt rules or regulations to implement a uniform structure for the recording, storage and retrieval of electronic documents.

1 **UNIFORM REAL PROPERTY ELECTRONIC RECORDATION ACT**

2

3 **SECTION 1. SHORT TITLE.** This [Act] may be cited as the Uniform Real Property

4 Electronic Recordation Act.

5 *Reporter's Notes*

6 This is the title of the Act as designated by the Executive Committee of the National

7 Conference of Commissioners on Uniform State Laws.

8

9

10 **SECTION 2. DEFINITIONS.** In this [Act]:

11 (1) "Document" means an instrument, whether electronic or paper, that creates,

12 transfers, asserts, explains or affects an interest in real property.

13 (2) "Electronic" means relating to technology having electrical, digital, magnetic,

14 wireless, optical, electromagnetic, or similar capabilities.

15 (3) "Electronic document" means a document that is created, generated, sent,

16 communicated, received or stored by electronic means.

17 (4) "Electronic recording system" means the information, databases, hardware and

18 software that form a recording system established under this [Act] and the means of

19 communication with it.

20 (5) "Electronic signature" means an electronic sound, symbol, or process, attached to

21 or logically associated with an electronic document and executed or adopted by a person with

22 the intent to sign the electronic document.

23 (6) "Paper document" means a document that is created and stored on paper or in

24 another tangible form.

25 (7) "Person" means an individual, corporation, business trust, estate, trust,

26 partnership, limited liability company, association, joint venture, government; governmental

27 subdivision, agency, or instrumentality; public corporation, or any other legal or commercial

28 entity.

1 (8) “Real property” means an interest in real estate located in the state, whether that
2 interest is considered real property or personal property under law other than this [Act].

3 (9) “State” means a State of the United States, the District of Columbia, Puerto Rico,
4 the United States Virgin Islands, or any territory or insular possession subject to the
5 jurisdiction of the United States.

6 ***Reporter’s Notes***

7 (1) Document. A document is any agreement, conveyance, lien, or other instrument that
8 creates, transfers, asserts, explains or affects an interest in real property. The document may
9 either be on a tangible medium (paper document), or on an electronic medium with the
10 information retrievable in a perceivable form. In terms of the Uniform Electronic
11 Transactions Act (UETA) § 2(13), a document is a record that affects an interest in real
12 property.

13 In selecting the term “document” as used in this Act, an explicit decision was made not to
14 use the term “record,” as employed in UETA. The term “record” has a different meaning in
15 real estate recording law and practice than it has in UETA. If the term “record” were used in
16 this Act, it would undoubtedly lead to confusion and misinterpretation. In UETA the term
17 “record” refers to information on a tangible or electronic medium. In this Act, depending on
18 syntax, the term would have several different meanings, all of which deal with the official
19 storage of real estate information and not the information itself. For example, this Act deals
20 with the *recording* process through which a person can *record* a document. The
21 governmental officer who oversees the land *records* is the *recorder*. These terms are so
22 ingrained in the lexicon of real estate recording law and practice that it would not be
23 productive to attempt to change them by this Act.

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

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

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

35 (5) Electronic signature. The term “electronic signature” has the same definition in this
36 Act as in UETA § 2(8), except to the extent that that subsection makes reference to the term
37 “record.” The comments to that subsection are also applicable to this subsection, except as
38 they refer to the term “record.”

39 (6) Paper document. A paper document is a traditional document that is created and
40 stored on paper or other tangible medium. It is usually printed but may be handwritten or
41 produced by other visible means.

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

44 (8) Real Property. Real property is an interest in a parcel of real estate physically located
45 in the state.

46 (9) State. This is the definition of “state” as used in Uniform Acts.

1
2
3 **SECTION 3. ACCEPTANCE OF ELECTRONIC DOCUMENTS.** A [county

4 recorder] of this State may establish an electronic recording system for documents affecting
5 real property located in the [county] and record an electronic document with an electronic
6 signature. Recording standards that require that a document be in writing or in a paper form
7 do not prevent a document from being recordable in electronic form.

8 ***Reporter's Notes***

9 This Section states the basic objective of the Act. If a document is recordable in a paper
10 format, then a document having the same content and meeting the document requirements in
11 an electronic format is also recordable. Any statute, regulation or standard that requires a
12 document to be in writing in order to be recorded is superceded. Similarly any reference in a
13 statute, regulation or standard to a document being on paper or a similar tangible medium is
14 similarly overridden by this Act.

15 This is a permissive provision. It does not require that a county recorder must establish
16 an electronic recording system. It allows the recorder to do so if and when that decision is
17 made. If an electronic recording system is established by the county, then the office in which
18 a electronic document will be recorded is the same office as currently exists for recording
19 written or paper documents. The recorder will receive electronic documents from the
20 recording parties and will enter them into the county electronic recording system.

21 This Act does not state the type or types of electronic documents that may be accepted by
22 a county recorder. Nor does it state the type of electronic signatures that may be accepted.
23 However, any electronic recording system established by a county recorder must comply with
24 the electronic document recording requirements stated in Section 5 of the Act, as
25 implemented by the Electronic Document Recording Commission.
26
27

28 **SECTION 4. ACCEPTANCE OF PAPER DOCUMENTS.** A [county recorder's]

29 office that has established an electronic recording system under this [Act] must continue to
30 record paper documents. The office must convert a paper document into electronic form
31 compatible with the electronic recording system and index and store it with other documents
32 in the electronic recording system.

33 ***Reporter's Notes***

34 Human nature and economics suggest that not everyone will, at least immediately, change
35 to electronic real estate documents. It will be a number of years before electronic documents
36 become dominant and probably many years beyond that before paper documents disappear
37 from the conveyancing process. In recognition of that fact, this section provides for the
38 continued recording of paper documents. The provisions of this Section are mandatory. The
39 county recorder must continue to record paper documents even after establishing an
40 electronic recording system.

1 This section also provides for the melding of the paper and electronic documents into the
2 electronic recording system. Paper documents will be converted into an electronic format
3 compatible with the electronic documents in the electronic recording system. The converted
4 document will then be indexed and stored in the electronic recording system, thereby
5 allowing the entire recording system to be searched in a single process.
6

7 8 **SECTION 5. ELECTRONIC DOCUMENT RECORDING REQUIREMENTS.**

9 The Electronic Document Recording Commission shall specify:

10 (1) the manner and format in which an electronic document must be created,
11 generated, sent, communicated, received, and stored and the systems established for those
12 purposes;

13 (2) the type of electronic signature required, the manner and format in which an
14 electronic signature must be affixed to an electronic document, and the identity of, or criteria
15 that must be met by, any third party used by a person filing an electronic document to
16 facilitate the process;

17 (3) control processes and procedures as appropriate to ensure adequate preservation,
18 disposition, integrity, security, confidentiality, and auditability of electronic documents; and

19 (4) any other attributes for electronic documents that are specified for corresponding
20 paper documents and reasonably necessary under the circumstances.

21 **Source:** Uniform Electronic Transactions Act § 18(b).

22 ***Reporter's Notes***

23 The provisions of this section are based substantially on subsection 18(b) of the Uniform
24 Electronic Transactions Act (UETA). As contained in that Act, the provisions broadly
25 authorize state agencies to receive electronic documents and signatures with non-
26 governmental persons. Essentially similar provisions are also contained in this Act for three
27 significant reasons.

28 First of all, the provisions of subsection 18(b) are optional and may not have been
29 adopted by every state enacting the UETA. Second, the provisions of subsection 18(b) are
30 very broad and may apply to many different state agencies with diverse purposes, procedures
31 and processes. Consequently, the rules and specifications generically adopted by the there-
32 designated state agency for accepting documents may have little or no application to the
33 procedures and processes specifically applicable to the recording of real estate documents.
34 Finally, subsection 18(b) of UETA is permissive and does not require the state agency there
35 designated to adopt any rules affecting the listed issues.

36 This Act addresses those issues in the following ways. First, this Section of the Act is not
37 optional. Instead it is considered to be an integral and essential part of the Act. For purposes

1 of uniformity, interoperability, and security, a single agency with the appropriate experience
2 and ability should establish these electronic recording requirements for electronic documents.
3 Since this Act is designed to be enabling and not prescriptive beyond the level necessary for
4 uniform and secure operation, the decisions on the adoption of the requirements stated in this
5 Section should be left to the state agency and not prescribed by the Act.

6 Second, the duty to adopt the requirements stated in this Section is delegated to the
7 Electronic Document Recording Commission, which is more fully described in Section 14 of
8 this Act. This Commission is uniquely established and appointed so that it will have the
9 experience and ability to develop and apply rules that appropriate to the recording of
10 electronic documents in a multiplicity of counties.

11 Finally, the Electronic Document Recording Commission must adopt rules and
12 regulations regarding the various electronic document recording requirements listed in this
13 Section. Although the specifics of the rules and regulations are left to the Commission, it
14 must specify each of the listed requirements.

15 This Section specifies three specific aspects of electronic recording of real estate
16 documents, plus a more general aspect regarding other attributes of electronic recording for
17 which the Electronic Document Recording Commission must specify requirements. The
18 three specific aspects are:

19 (1) The first subsection deals with the manner and format in which an electronic
20 document is created, communicated and stored. The Commission will specify the format(s)
21 of electronic documents. The format might be one that is a true electronic document from its
22 origin and that is self-extracting in an XML format. It might also include an original
23 electronic document in a graphic format or one that is a copy of a paper document in a
24 graphic electronic format. The Commission will specify the acceptable format(s) and the
25 requirements of each.

26 The Commission must also consider and specify the structure for storing electronic
27 documents in the electronic recording system. In order to provide for as much
28 interoperability as possible, the commission should establish uniform requirements for the
29 storage of electronic documents.

30 (2) The second subsection deals with the type of electronic signature required, the
31 manner and format in which it is affixed to a document, and the identity of, or criteria for,
32 third parties in the electronic signature process. Under this subsection, the Commission will
33 identify the acceptable type(s) of electronic signature(s). The Commission may, for example,
34 permit an private key/public key digital signature or any other electronic signature that
35 provides a secure process. The Commission must also identify the acceptable certifying
36 authorities for those digital or other electronic signatures or the criteria for approving a
37 certifying authority. It can establish other types of electronic signatures as may be
38 appropriate and change those designations from time to time.

39 (3) The third subsection deals the processes and procedures necessary to assure adequate
40 preservation of electronic documents. Under this subsection, the Commission will designate
41 the nature of the storage system for electronic documents and the means to assure that is
42 secure. (For more specific security requirements, see Section 13 of this Act.)
43
44

45 **SECTION 6. VERIFICATION OF ELECTROINC DOCUMENTS.** A requirement

46 that a signature or document to be notarized, acknowledged, verified, or made under oath is
47 satisfied if the electronic signature of the person authorized to perform that act, together with
48 all other information required to be included by other applicable law, is attached to or

1 logically associated with the signature or document in accordance with [rules] [regulations]
2 of the Electronic Document Recording Commission.

3 **Source:** Uniform Electronic Transactions Act § 11.

4 ***Reporter's Notes***

5 The Section is derived from Section 11 of the Uniform Electronic Transactions Act. The
6 Comments to that Section are relevant to this Section also.

7 This Section permits a notary public and other authorized officers to act electronically
8 without the need to do so on paper or similar tangible medium. However, it does not
9 eliminate the requirements that may be established elsewhere in state law for notarizing,
10 acknowledging, or verifying a document. It merely states that those requirements may be
11 satisfied electronically for an electronic document. Furthermore, no personal or corporate
12 seals or stamps will be required as long as the document contains the information specified in
13 the seal or stamp.
14
15

16 **SECTION 7. PARCEL IDENTIFIER NUMBERS.** In accordance with [rules]
17 [regulations] adopted by the Electronic Document Recording Commission, a [county
18 recorder] may establish a parcel identifier number system and assign a unique parcel
19 identifier number to each parcel of real estate in the [county]. If the [recorder] establishes a
20 parcel identifier number system, the parcel identifier number assigned to a parcel must be
21 used to identify the parcel in any document affecting the parcel recorded in the electronic
22 recording system.

23 ***Reporter's Notes***

24 This Section permits a county recorder to adopt a Parcel Identifier Number (PIN) system
25 and assign parcel identifiers to parcels of real estate in the county. If the recorder does adopt
26 a PIN system, the documents subsequently recorded in the county must use the PIN assigned
27 to the parcel to identify it.

28 When searching for title information electronically, it is important that the search criteria
29 be entered precisely as it exists in the electronic index. Failure to do so will cause a failure in
30 the search. For example, if the description of a parcel of land, as contained in the electronic
31 index, should contain a comma, but the search criteria do not, the document would not be
32 located or retrieved. Land descriptions, especially metes and bounds descriptions, can be
33 very long and knowing whether the entered description contains a comma, semi-colon, or
34 other punctuation is virtually impossible.

35 Beyond the punctuation differences are genuine differences in the description of the
36 parcel. For example, if the correct call in a metes and bounds description, as contained in the
37 electronic index, were N 10° 20' 30" E, but the entered search criteria were N 10° 20' 30" W,
38 the document would not be located. However obvious these errors are in hindsight, they are
39 nevertheless common.

40 It should also be noted that the error need not be on the part of the title searcher. The

1 index entry may contain the error totally unbeknownst to the title searcher. For example, this
2 might occur if the index information were not self-extracting; the county recorder would have
3 to hand-enter the description in the index and that would create the possibility of a human
4 error.

5 The method of avoiding (or at least substantially reducing) this problem is to use a PIN
6 system. A PIN is an alpha-numeric combination that is unique to the parcel of land and not
7 duplicated for any other parcel in the state. Once applied to a parcel, that parcel can be
8 searched, conveyed, mortgaged or otherwise transferred simply by reference to that PIN.
9

10
11 **SECTION 8. CONVERSION OF PRIOR DOCUMENTS.** A [county recorder] may
12 convert paper documents previously recorded in the [recorder's] office into electronic form
13 compatible with the electronic recording system. The [recorder] shall index and store them
14 with other documents in the electronic recording system.

15 ***Reporter's Notes***

16 Dealing with old documents is an extremely difficult matter due primarily to the cost of
17 converting the old documents to the new electronic format and the time necessary to do so.
18 On the other hand, not doing so limits the usefulness of the electronic land records system as
19 a means of searching for land title information, at least for a good number of years to come.
20 This Section recognizes that the county may decide not to convert any of the paper
21 documents recorded prior to the adoption of an electronic recording system, but permits it to
22 do so and include the converted documents with the electronic recording system.

23 If the old documents are not converted, they will be maintained as part of the services of
24 the county recorder and available for search. It is unquestionable that this approach will save
25 money in the short term. However the costs of non-conversion are very high. Searches of the
26 electronic land records system will only gradually begin to have any value as time progresses.
27 To the extent that records older than the enactment of the electronic land records system must
28 be searched, two searches would have to be performed – one in the electronic land records
29 system for current transactions and one in the prior recording system for documents predating
30 the system. In all likelihood, the cost will be higher to the searcher than would be a search in
31 a single electronic system. The benefits presumed to be produced by the electronic system
32 would be long delayed, undoubtedly causing considerable dissatisfaction with the system.
33 Nevertheless, this is the presumed system unless the county decides to make a conversion.

34 This Section permits the county recorder to make electronic copies of the old paper
35 records and record those copies in the electronic recording system. However, it does not
36 specify the period for that conversion. The longer the period, the longer the conversion will
37 take to complete and the more expensive it will be. By comparison, the shorter the period,
38 the longer will be the period before the benefits of a single all-electronic recording system
39 will be enjoyed and the associated costs of non-conversion. The county is allowed to make
40 the determination that will balance the needs of title searchers with the costs for the
41 conversion.
42

43
44 **SECTION 9. COORDINATION WITH OTHER OFFICES.** The filing officer of
45 another office in which a document is filed may, in accordance with agreements and

1 protocols established with the [county recorder], submit the information contained in the filed
2 document to the [county recorder's] office. The information in the document must be
3 indexed and stored in the electronic recording system.

4 *Reporter's Notes*

5 This Section recognizes that not all real property information is recorded in the county
6 recorders' offices. The nature and number of the alternative locales and what is recorded in
7 them varies considerably from state to state. Probably most common among these locales are
8 of the offices of the clerks of court. Again depending on the jurisdiction, interests such as
9 judgment liens, lis pendens and mechanics' liens might be recorded there. Also the orders or
10 decrees of court in quiet title actions, probate proceedings, judicial mortgage foreclosures and
11 similar legal proceedings might also located there. Other alternative locales where real estate
12 information might be located include the county and/or city office where real estate tax liens
13 are filed, the federal Bankruptcy Court for the district in which the real estate is located, as
14 well as other federal courts.

15 Two basic approaches are available for coordinating the information in these other offices
16 with the recorder's office. The first approach is to require the person owning the interest
17 filed in the alternative office also to file it with the county recorder in order for it to provide
18 notice to subsequent purchasers. Although effective between the parties when filed in the
19 alternative office, it would require further filing to give proper notice. This is not unlike the
20 system used in some jurisdictions with regard to judgment liens and lis pendens today. It
21 puts the burden of filing on the party owning the interest to file in the county recorder's
22 office. If that system is required by state law, then it may be relied upon to accomplish the
23 coordination without the need to take any further steps.

24 However, if that process is not required under state law, this Section permits an
25 alternative one under which the county recorder may enter agreements or protocols with the
26 alternative office. Under those agreements or protocols the alternative office will submit
27 information about the filed document to the county recorder. That information will then be
28 indexed and stored in the electronic recording system with the other documents received
29 directly by the county recorder.
30
31

32 **SECTION 10. SATISFACTION OF CONDITIONS PRECEDENT TO**

33 **RECORDING.** The [county recorder] may enter into agreements and protocols with other
34 [county] or state offices for the purpose of permitting the immediate, electronic satisfaction
35 of prior approvals and conditions precedent to electronic recording. An agreement or
36 protocol may establish a single electronic system for the payment of recording fees and taxes,
37 which will be allocated among the various [county] and state offices that are parties to the
38 agreement or protocol.

1 *Reporter's Notes*

2 It is a common situation that before a county recorder may accept a document for
3 recording the document must be approved by one or more other offices in order to assure
4 compliance with that office's requirements. In addition, the person submitting the document
5 may be required to pay fees or taxes to the other office. If the approval and fee and tax
6 paying processes are not conjoined with the electronic recording process, it may not be
7 possible to effectuate the speedy electronic recording process envisioned by this Act.

8 For example, a document may first need to be submitted to the county assessor or auditor
9 to determine whether prior taxes are unpaid or current ones are due. That submission would
10 probably be accomplished as a process independent from the electronic recording process. If
11 a tax or fee must be paid that sum would then be paid, again independent of the electronic
12 recording process, before the document could be submitted electronically to the recorder.
13 Procedures such as these will delay the electronic recording process and stymie the desire for
14 a speedy, efficient electronic recording process.

15 This Section permits the county recorder to enter into agreements and protocols with the
16 various county and state offices for purpose of adopting a process for the immediate,
17 electronic satisfaction of all conditions precedent to recording and the payment of all fees and
18 taxes relevant to the transaction. Any fees and taxes paid by the recording party will
19 subsequently be allocated between the county recorder and the other offices in accordance
20 with the agreements or protocols. The objective of this Section is to encourage the county
21 recorder and other county and state offices to enter the agreements and protocols so as to
22 allow for the satisfaction of all conditions precedent and the payment of all fees and taxes in a
23 single, speedy electronic recording process.
24
25

26 **SECTION 11. RECORDING; PAYMENT OF FEES AND TAXES.**

27 (a) A person recording a document in the electronic recording system shall pay the
28 applicable fees and taxes, including an electronic recording system fee of [\$ per document].
29 The fees and taxes may be collected through an electronic payment system approved by [rule]
30 [regulation] of the Electronic Document Recording Commission.

31 [(b) The [county recorder] shall transmit [twenty] percent of the electronic recording
32 system fee to the Electronic Document Recording Commission for use by the Commission in
33 performing its functions and responsibilities.]

Reporter's Notes

Subsection (a) states that a person recording a document in the electronic recording system, regardless of whether it an electronic or paper document, must pay the applicable fees and taxes as well as an electronic recording system fee. The Act does not attempt to set the amount of the recording fees or taxes and leaves those issues to other state law or local ordinance. It does state that an electronic recording system fee must be paid for use of the electronic recording system. Even if the document is a paper document it is appropriate to require the payment of that fee since an electronic copy of the paper document will be recorded in the electronic recording system. Also the paper document must be converted into an electronic version, a process that will incur the expense of time and money. The fees may be collected through an electronic payment system approved by the Electronic Document Recording Commission.

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

There is no other provision for the funding of the Electronic Document Recording Commission than that provided in this subsection and the similar provision in subsection (b) of the next section. This subsection provides for the payment of twenty percent of the electronic recording system fee to the Commission for the purpose of funding the operation of the Commission. However, the entire subsection is optional and is bracketed. If it is not adopted, the state will have to consider other means of funding the Commission. In addition, the percentage of the fee payable to the Commission is bracketed indicating that the legislature should determine the appropriate rate based on the facts and likely revenues from this provision under the circumstances peculiar to that state.

SECTION 12. ACCESS TO SEARCH; PAYMENT OF FEES.

(a) In accordance with [rules] [regulations] established by the Electronic Document Recording Commission, the [county recorder] may charge an access fee for purposes of searching the electronic recording system. A searcher may view or copy the information disclosed by a search but must pay a fee of [\$ per copy] for a verified [certified] copy of a document. The fees shall be collected through an electronic payment system approved by [rule] [regulation] of the Electronic Document Recording Commission.

[(b) The [county recorder] shall transmit [twenty] percent of the access fee to the Electronic Document Recording Commission for use by the Commission in performing its

1 functions and responsibilities.]

2 *Reporter's Notes*

3 Subsection (a) provides that the county recorder may charge an access fee to any person
4 searching the electronic recording system. The amount or method of computing the access
5 fee is not stated. It may vary depending on the type of searcher and means of access. The fee
6 may be a one time access fee or a subscription fee for continuous access. The access may be
7 from a terminal in the recorder's office or from a private terminal. The fee must, however, be
8 structured in accordance with the rules and regulations of the Electronic Document
9 Recording Commission. If the searcher should obtain a verified copy of the documents, the
10 subsection provides for the charging of an additional fee, the amount of which is not stated.
11 The fees will be collected through an electronic payment system approved by the Electronic
12 Document Recording Commission.

13 The charging of an access fee might potentially raise issues of freedom of information. In
14 most recording districts today there is no charge simply for searching the land records office.
15 The data are considered open documents available for the public to see. Fees are imposed for
16 making copies of the information and documents. However, totally open access raises
17 conflicting issues involving payment for the electronic land records system and access
18 demands placed on the system by casual browsers.

19 First of all, the provision of land records information is a function of government that
20 must be paid for in some fashion. A system that places the cost of the system, at least in part,
21 on the user of the service is generally accepted and reasonable. In order to maintain that
22 proposition, however, the fee may not be designed to preclude access by anyone who wishes
23 to do so as long as he is willing to pay a reasonable fee for the service.

24 Secondly, totally free access without any gateway limitations would potentially raise a
25 problem with casual browsers overusing and overloading the system, especially during times
26 of peak demand. There is limited bandwidth available for access to any system. If one or
27 more persons should request large, graphical documents and then seek to download those
28 documents the system could become overloaded. If the electronic land records system is
29 available to the casual browser who can search for and download those files without charge,
30 the potential for difficulty is increased. While the usage fee is not designed to prohibit access
31 to anyone, it will likely tend to act as a gateway and limit casual browsing of the electronic
32 recording system for no purpose other than "surfing the net."

33 As stated in the Reporter's Notes to the prior Section, there is no other provision for the
34 funding of the Electronic Document Recording Commission than that provided in this
35 subsection and the similar provision in subsection (b) of the prior section. This subsection
36 provides for the payment of twenty percent of the access fee to the Commission for the
37 purpose of funding the operation of the Commission. However, the entire subsection is
38 optional and is bracketed. If it is not adopted, the state will have to consider other means of
39 funding the Commission. In addition, the percentage of the fee payable to the Commission is
40 bracketed indicating that the legislature should determine appropriate rate based on the facts
41 and likely revenues from this provision under the circumstances peculiar to that state.

42 **SECTION 13. SECURITY AND BACKUP OF ELECTRONIC RECORDING**

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44
45 **SYSTEM.** In accordance with [rules] [regulations] established by the Electronic Document
46 Recording Commission, the [county recorder] shall take measures necessary to preserve the
47 information and databases stored in the electronic recording system. The electronic

1 recording system must be backed up and preserved on a regular basis; the backup must be
2 maintained at a site physically separate from the locale of the electronic recording system.
3 The [county recorder] shall also take measures necessary to provide security for the electronic
4 recording system and protect it from access or tampering by unauthorized persons.

5 ***Reporter's Notes***

6 The preservation and security of the electronic recording system is extremely important to
7 the commercial acceptability of an electronic recording system. As used in this Section,
8 preservation refers to the process of maintaining and backing up the electronic recording
9 system, while security refers to the protection of the system from access or tampering by
10 unauthorized persons.

11 To assure that information in the electronic recording system is available to restart the
12 system if there should be an error or failure in the system, this Section requires that the
13 county recorder take the measures necessary to back up and preserve the information and
14 databases in the electronic recording system. It specifically requires that the electronic
15 recording system be backed up regularly and that the backup be located at a site physically
16 separate from the locale of the electronic recording system in order to assure recovery from
17 catastrophic situations.

18 Security from computer "hackers" and intruders is also critical. This Section requires the
19 county recorder to take the measures necessary to provide security to the system and to
20 prevent unauthorized access and tampering. In addition to these measures, the backup system
21 will help assure that any errors caused by an intrusion can be rectified.
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24 **SECTION 14. ELECTRONIC DOCUMENT RECORDING COMMISSION.**

25 (a) There is established an Electronic Document Recording Commission located, for
26 administrative purposes only, in the [insert appropriate state agency or department].

- 27 (b) The Commission consists of [eleven] members, appointed by the Governor as
28 follows: (1) [Five] [county recorders];
29 (2) [One] banker experienced in real property transactions;
30 (3) [One] attorney experienced in real property law;
31 (4) [One] employee of a title [insurance] organization; and
32 (5) [Three] members of the public.

33 (c) The Governor shall designate one of the members as Chair.

34 (d) The Commission may employ an executive director and other necessary staff
35 within available appropriations.

1 (e) The Commission must adopt [rules] [regulations] that implement the provisions
2 of this [Act] in a uniform fashion, considering the status of technology, the promotion of
3 commerce, the protection of privacy, the enhancement of system security, and the need for
4 land records interoperability within and between states.

5 ***Reporter's Notes***

6 Section 5 and various other sections of the Act refer to the Electronic Document
7 Recording Commission and state the duties of the Commission or authorize it to adopt rules
8 and regulations to accomplish certain purposes. This Section creates that Commission and
9 sets forth its general structure and duties.

10 Subsection (a) creates the Commission and places it, for administrative purposes only, in
11 a state agency or department, as determined by the state legislature.

12 Subsection (b) states the makeup of the Commission. Although the number is bracketed
13 and subject to change by the state legislature, it nominally consists of eleven members. To
14 assure that county recorders, whose functions are most affected by the Commission's
15 decisions, are properly represented, the Act nominally states that five of its members will be
16 county recorders. The Act also states that there must be representation from other listed
17 groups who are interested in the operations of the Commission.

18 Subsection (c) states that the Governor will designate the Chair of the Commission.

19 Subsection (d) states that the Commission may employ an executive director and other
20 necessary staff personnel. Since this is a Commission that must operate in a continuing
21 fashion rather than merely when the Commission members meet, it is essential that the
22 Commission have personnel to implement the policies and rules or regulations adopted by the
23 Commission.

24 Subsection (e) states that the rules or regulations of the Commission are to implement this
25 Act in a uniform fashion. In so doing the Commission should give due consideration to the
26 status of technology, the protection of privacy, the enhancement of system security, and the
27 need for interoperability within the state and between states.

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30 **SECTION 15. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
31 applying and construing this Uniform Act, consideration must be given to the need to
32 promote uniformity of the law with respect to its subject matter among States that enact it.

33 ***Reporter's Notes***

34 This is a standard provision in Uniform Acts for the purpose of reciting the importance of
35 considering the need for uniformity among the enacting states when applying and construing
36 the Act.

SECTION 16. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [Act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

Reporter's Notes

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