

April 10, 2007

TO: The NCCUSL Study Committee of Revision of the Law on Notarial Acts
FR: The Property Records Industry Association (PRIA)

The Property Records Industry Association (PRIA) is a cooperative venture of government and business that brings together both segments of the real estate industry for the purpose of establishing consensus on standards and best practices that affect the efficient execution of real estate transactions at the junction between lenders, title companies and settlement agents on the one hand and local land recording offices on the other.

PRIA has become a central player in the electronic recording (eRecording) space being identified in the Uniform Real Property Electronic Recording Act (URPERA) as a source of national standards and being designated by the Mortgage Industry Standards Maintenance Organization (MISMO) as the formal keeper of the eRecording technological standards used in systems and applications that interface between settlement agents and land recording offices.

In 2001, it became clear to PRIA membership that the subject of eRecording was taking center stage. One of the issues that had been raised was whether the traditional form of acknowledgment was applicable to electronic recording. Proponents of public key infrastructure (PKI) registries were suggesting, for example, that personal appearance could be dispensed with. Therefore, a subcommittee of the Association was established to determine the extent to which PRIA members represent a consensus on the issue. The subcommittee prepared a white paper, a copy of which is attached, which was approved by the membership and board of directors of PRIA on June 16, 2002.

The following are the overall conclusions of the white paper:

1. The traditional function of a notary public should be no different in the electronic world from the paper world.
2. The commissioning rules and standards for notaries public need to be reconsidered in light of today's environment.

Issue: Should new legislation make any changes in the traditional functions of a notary?

The white paper addresses four subjects which the membership of PRIA considers important to the subject of your committee's meeting.

1. Document Rejection: Acknowledgment errors are a major source of document rejections by land recording offices.
Issue: Should new legislation make any changes in the role of land recording officials with respect to the acceptance of acknowledged documents?
2. Notary Public Education: Standards need to address this problem in the paper world, and those who perform electronic acknowledgments need even more training because a rejected electronic document is very difficult to correct after rejection. The committee wrote: "the state has responsibility to the notary to provide training and guidance."
Issue: Should new uniform legislation demand the types of standards and practices that assure fully competent notaries public?
3. Notary Public Commissioning: "Each state should properly screen applicants to ensure that the notary commission is meaningful." Not only is it necessary to assure that notaries are properly trained, but this statement of the committee implies that a criminal background check should be required of every applicant to be a notary public, along with periodic checks of commissioned notaries. Further, "sanctions for improper notary performance are essential." The commissioning

agency needs to be active in policing notaries in the same kind of manner, for instance, that the Bar polices attorneys. Notaries that engage in unscrupulous acts, show that they are incompetent, or are associated with criminal acts of others must be found, adjudicated and decommissioned. Criminal prosecution should be encouraged when appropriate.

Issue: Should new uniform legislation place these kinds of commissioning requirements on the commissioning agency in each state?

4. Acknowledgment Standards: “The state must ensure that the laws guiding notaries are clear and contain provisions such as the journal and record book and identification requirement that protect both the notary and the public.”

Issue: Should new uniform legislation deal with improved acknowledgment procedures that help to identify or deter identity theft?

5. Electronic Recording: “E-Sign does not alter basic recording requirements...the intent of UETA and E-Sign is for no embosser or stamp seal to be required for electronic notarization.” “Fundamental recording principles and those of notarization should be considered in any development of electronic recording processes or procedures.”

Issue: Should new legislation call for a different class of notaries public with special training or other elements that distinguish them from “regular” notaries?

We realize that other issues have been raised in the five years since this white paper was issued, and PRIA is considering reestablishing a workgroup to bring the white paper up to date on these new issues. That workgroup would welcome the opportunity to participate in the deliberations of a NCCUSL drafting committee to draft new and expanded uniform notary legislation.