

D R A F T
FOR DISCUSSION

UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

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UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

WITH PREFATORY NOTE AND PRELIMINARY COMMENTS

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UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

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UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

Prefatory Note

The status of electronic information technology has progressed 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. Current state laws and regulations generally describe a recordable instrument as one that is in writing or on paper, thus leading to a concern that electronic documents are not recordable.

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 recorders. However, they are piecemeal and have little or no interoperability. To date, there are no standards for the acceptance and processing of electronic documents either within a state or across state lines.

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 authorizing the recording of those documents. 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 draft of that act. It provides that an electronic recording system is one that, in its fullest form, involves the creation, receipt and retrieval of documents in an electronic form. Its fundamental principle is that requirements of state law describing or even requiring that documents be in paper or written form are satisfied by a document in an electronic form. It also provides that guidelines or regulations for the recording, storage and retrieval of electronic documents are to be formulated either by the recorder or by a state board.

1 **UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT**

2

3 **SECTION 1. TITLE.** This [act] may be cited as the Uniform Real Property Electronic
4 Recording Act.

5 **Preliminary Comments**

6 This act enables the recording of electronic documents.

7

8

9 **SECTION 2. DEFINITIONS.** In this [act]:

10 (1) “Document” means a record that is eligible to be recorded in the land records in
11 the office of the recorder.

12 (2) “Electronic” means relating to technology having electrical, digital, magnetic,
13 wireless, optical, electromagnetic, or similar capabilities.

14 (3) “Electronic document” means a document that is received by the recorder in
15 electronic form.

16 (4) “Electronic recording system” means a system, including its databases, duplicate
17 archives, hardware and software, established under this [act] for the electronic recordation [or
18 registration] of documents.

19 (5) “Electronic signature” means an electronic sound, symbol, or process attached to
20 or logically associated with an electronic document and executed or adopted by a person with
21 the intent to authenticate the electronic document.

22 (6) “Person” means an individual, corporation, business trust, estate, trust,
23 partnership, limited liability company, association, joint venture, government; governmental
24 subdivision, agency, or instrumentality; public corporation, or any other legal or commercial

1 entity.

2 (7) “Record” used as a noun means information that is inscribed on a tangible
3 medium or that is stored in an electronic or other medium and is retrievable in perceivable
4 form.

5 (8) “Recorder” means [insert reference to the appropriate governmental officer who
6 administers the land records office].

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

10 Preliminary Comments

11 (1) Document. A document is any instrument that is eligible to be recorded in the office
12 of the recorder. The document may either be on a tangible medium (written or paper
13 document) or in an electronic medium with the information retrievable in a perceivable form.
14 While the document will often be one affecting real property, it need not be so. Thus, deeds,
15 grants of easement, and mortgages are documents subject to this act as are certificates and
16 affidavits if they are otherwise eligible for recording in the recorder’s office.

17
18 In terms of the Uniform Electronic Transactions Act (UETA) § 2(13), a document is a
19 record that affects an interest in real property. This definition of the term “document” accepts
20 that concept by referring to a document as a “record.” However, in selecting the defined term
21 “document” for use throughout the act, an explicit decision was made not to use the term
22 “record,” as is done in UETA. The term “record” has a different meaning in real estate
23 recording law and practice than it has in UETA. If the term “record” were used generally in
24 this act, it would lead to confusion and misinterpretation.

25
26 In UETA the term “record” refers to information on a tangible or electronic medium as
27 does the term “document” in this act. (See the definition of the term “record,” below.) In
28 this act, however, depending on syntax, the term “record” could have several different
29 meanings, all of which deal with the official storage of real estate information and not the
30 information itself. For example, this act deals with the *recording* process through which a
31 person can *record* a document. The governmental officer who oversees the land *records*
32 office is the *recorder*. These terms are so ingrained in the lexicon of real estate recording law
33 and practice that it would not be productive to attempt to change them by this act.

34
35 (2) Electronic. The term “electronic” refers to the use of electrical, digital, magnetic,
36 wireless, optical, electromagnetic and similar technologies. It is a descriptive term meant to

1 include all technologies involving electronic processes. The listing of technologies is not
2 intended to be limiting. For example, biometric identification technologies would be
3 included if they involve communication and storage of the identification by electronic means.
4 As technologies expand and include other similar competencies, those competencies should
5 also be included in the definition.

6
7 The definition in this act has the same meaning as it has in UETA § 2(5). The comments
8 to that subsection are equally applicable to this subsection.

9
10 (3) Electronic document. An electronic document is a “document” that is in an
11 “electronic” form. Both of these terms are previously defined. However, this definition adds
12 a specific aspect to the nature of the defined term “electronic document.” It is an electronic
13 document that is received by the recorder in electronic form.

14
15 A document may have a prior or subsequent existence in an “electronic” form, while not
16 being an “electronic document” for purposes of this act. For example, the document may
17 have been created by an electronic process or existed in an electronic form before being
18 converted to, and received by the recorder in, a paper form. Similarly, after arriving in the
19 recorder’s office in a paper form it may have been converted to an electronic form prior to, or
20 as part of, the recording process. Neither of these documents is an electronic document as
21 defined in this act. This act only applies to documents that are received by the recorder in an
22 electronic form and enables those documents to be recorded. The recordability of documents
23 not received by the recorder in electronic form continues to depend on other state law.

24
25 A specific definition is not given for a “paper document” inasmuch as that term is
26 intended to include all documents in a tangible form that are currently accepted by the
27 recorder. As such it is defined elsewhere under state law. The continued acceptability of
28 “paper documents” is stated in section 4 of the act.

29
30 (4) Electronic recording system. The electronic recording system is inclusive of all
31 aspects of that system. It consists of the hardware on which the recorded information is
32 stored as well as the software by which it operates. It includes the databases that are stored in
33 the system as well as the duplicate archives in which copies of the databases are preserved,
34 even the archive not located on-site. Furthermore, since electronic documents must be
35 communicated to and from the recorder, it also includes the hardware and software that form
36 the means of communication with the recorder’s office.

37
38 The term “electronic recording system” also applies to any “Torrens” title registration
39 system that is converted into an electronic form. Thus, a recorder who operates such a title
40 registration sy
41 stem may accept “registration” information in an electronic form.

42
43 (5) Electronic signature. The term “electronic signature” has essentially the same
44 definition in this act as in UETA § 2(8), except to the extent that that subsection makes

1 reference to the term “record.” The comments to that subsection are also applicable to this
2 subsection, except as they use the term “record.” However, this definition substitutes the
3 word “authenticate” for the word “sign” as used in UETA for the purpose of clarifying a
4 signature as a means of authenticating the document as the instrument executed by the
5 signator.

6
7 (6) Person. The definition of “person” is the same as contained in UETA § 2(12). It
8 includes individuals, associations of individuals, and corporate entities.

9
10 (7) Record. The term “record” is used in this act only as a noun. Although it is used to
11 define the term “document,” it is not otherwise used in this act because to do so would lead to
12 confusion. (See Reporter’s Notes regarding the term “document” above.) It’s meaning, as
13 used here, is the same as in UETA, to the extent that it is there used as a noun.

14
15 A record must be in, or capable of being retrieved in, perceivable form. Electronic text
16 recorded in a computer memory that could be printed or displayed from that memory
17 constitutes a record.

18 Similarly, text that is written on a paper medium also constitutes a record.

19
20 (8) Recorder. “Recorder” is given a definition in this section for the purpose of easing
21 the use of the term elsewhere in the act. The intent is to permit the state legislature to insert
22 the appropriate governmental officer who administers the land records office under local law,
23 such as the county recorder, town recorder, registrar, or similar term.

24
25 (9) State. This is the definition of “state” as used in Uniform Acts.

26
27
28 **SECTION 3. ELECTRONIC DOCUMENTS.** A recorder may accept an electronic
29 document that meets the requirements set out in the [guidelines] [regulations] adopted
30 pursuant to Section 5 and record [or register] it in an electronic recording system. Any
31 requirement by law other than this [act] that a document must be on paper or in writing does
32 not prevent the recording of an electronic document.

1 **Preliminary Comments**

2 This section states the basic premise of the act. If a document is recordable in a paper
3 format, a document having the same content and meeting the requirements in an electronic
4 format is also recordable. Any statute, regulation, standard or guideline that specifies that a
5 document must be in writing in order to be recorded is superceded. Similarly any reference
6 in a statute, regulation, standard or guideline to a document as being on paper or a similar
7 tangible medium is similarly overruled by this act. Furthermore, any paper-specific
8 requirement such as page size or color of ink is also inapplicable.

9
10 This section is a permissive one. It does not require that a recorder must establish an
11 electronic recording system. It allows each recorder to do so when and if the recorder decides
12 to proceed with electronic recording. (This act does not preclude a requirement that the
13 recorder must establish an electronic recording system, but that requirement will come from
14 other state law.)

15
16 If an electronic recording system is established by the recorder, the office in which the
17 electronic document will be recorded is the same office as currently exists for the recording
18 of paper documents. The recorder will receive electronic documents from the recording
19 parties and will enter them into the electronic recording system.

20
21 This act does not state the type of electronic documents that may be accepted by a
22 recorder. Nor does it state the type of electronic signatures that may be accepted. Those
23 matters are the subject of guidelines or regulations adopted pursuant to section 5 of the act.

24
25 If the recorder registers titles under a “Torrens” title registration system, then this act also
26 applies to the acceptance of electronic documents for that title registration system.

27
28
29 **SECTION 4. PAPER DOCUMENTS.**

30 (a) A recorder that has established an electronic recording system under this [act]
31 shall continue to accept paper documents for recordation [or registration]. A paper document
32 recorded after establishment of an electronic recording system must be indexed, and [may be]
33 converted into electronic form and stored, in the system.

34 (b) A paper document recorded before establishment of an electronic recording
35 system may be indexed and converted into electronic form and stored in the system.

1

Preliminary Comments

2 (a) Human nature and economics suggest that not everyone will, at least immediately,
3 use electronic real estate documents. It will be a number of years before electronic
4 documents become dominant and perhaps many years beyond that before paper documents
5 disappear from the conveyancing process. In recognition of that fact, this section requires the
6 continued acceptance and recording of paper documents. Similar to the provisions of UETA
7 §5, this act does not mandate that persons dealing with the governmental recording system
8 use an electronic system. The recorder must continue to record paper documents even after
9 establishing an electronic recording system.

10
11 This section provides for the melding of the paper and electronic documents into the
12 electronic recording system. The extent to which that melding will occur will depend on the
13 decisions of the recorder.

14
15 The act requires that all paper documents recorded after the adoption of an electronic
16 recording system will be indexed as part of the electronic recording system. This will enable
17 a title examiner to make a single search of the electronic index to ascertain all instruments
18 affecting a real estate title that were recorded after the adoption of the system. It avoids the
19 inefficient and costly processes of maintaining and searching two indexing systems – one for
20 electronic documents and one for paper documents.

21
22 This section does not require that paper documents recorded after the establishment of the
23 electronic recording system be converted into an electronic format and stored in the
24 electronic recording system. It does, however, permit the recorder to make the conversion
25 and storage. If the documents are not converted into an electronic form, the recorder will
26 continue to provide a process by which a document discovered by a search of the electronic
27 index may be accessed by the title examiner. That might include on-site or off-site delivery
28 by manual or electronic means. If the documents are converted into an electronic form and
29 stored in the system, the means of delivery would be eased considerably by an electronic
30 delivery or “downloading” system.

31
32 (b) Dealing with old documents is an extremely difficult matter primarily due to the cost
33 and time of converting the old documents to the new electronic format and of indexing them
34 in the electronic recording system. On the other hand, not doing so limits the usefulness of
35 the electronic land records system as a means of searching for land title information, at least
36 for a good number of years to come.

37
38 This section recognizes that the recorder may decide not to convert or index any of the
39 paper documents recorded prior to the adoption of an electronic recording system, but permits
40 the recorder to do either or both. It recognizes many possible alternatives for the recorder.
41 The recorder may decide only to index the old documents in the electronic index without also
42 converting them into an electronic format. This would allow a title examiner to search a
43 single electronic index for all documents, although not to retrieve the old documents
44 electronically. Alternatively, the recorder might also decide to convert old documents into an
45 electronic form and to store them with current electronic documents. Under still another

1 approach the recorder might index (and possibly convert) old documents only back to the
2 date specified by local law or custom as the limit of the period of search, thus saving the
3 expense of indexing (and converting) generally unused documents while continuing to make
4 them available in traditional paper formats. If the old documents are not indexed or
5 converted, they will be indexed and stored by traditional means as part of the services of the
6 recorder and available for search.

7
8
9 **SECTION 5. ELECTRONIC DOCUMENT RECORDING [GUIDELINES]**
10 **[REGULATIONS].**

11 **Alternative A:**

12 (a) Except as required by law other than this [act], the recorder shall promulgate
13 guidelines regarding:

14 (1) the manner and format in which an electronic document must be created,
15 submitted, received, returned, and retrieved and the systems established for those purposes;

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

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

22 (b) In promulgating guidelines under subsection (a), the recorder shall, to the extent
23 feasible, consult with other recorders in the state, professional associations of recorders, and
24 other electronic recording industry organizations and adopt uniform guidelines.

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(b) The [state board] shall adopt [regulations] [guidelines] that specify:

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

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

This section provides two alternatives for establishing the requirements for recording electronic documents in the electronic recording system. Alternative A allows the recorder to specify those requirements by setting up guidelines. Alternative B establishes a state board and gives it the authority to specify and unify those requirements for all recorders across the state by regulation or guideline.

9

1 A state adopting UETA might decide to allocate the functions specified in this act to the
2 same board identified in its version of UETA subsection 18(b). If so, the state would adopt
3 Alternative B of this section and identify the same board.

4
5 The provisions of subsection UETA 18(b) are very broad and would apply to many
6 different state agencies with diverse purposes, procedures and processes. Generic provisions
7 adopted for accepting electronic documents by other governmental offices may have little or
8 no bearing on the procedures and processes unique to the recording of real estate documents.
9 Consequently, it might be advisable to establish a state board with members having unique
10 experiences with electronic real estate documents to establish the requirements. That board is
11 described in Alternative B. Alternatively, it might be appropriate and less expensive to allow
12 the recorders themselves to adopt guidelines for their own offices. The advantages and
13 disadvantages of each approach should be weighed by the legislature.

14
15 **Alternative A:**

16 Alternative A allocates the duty to specify the recording requirements for his or her office
17 to each recorder. The usual process currently used to establish similar requirements for
18 recording paper documents is by guideline. The recorder adopts and publishes the guidelines
19 for recording documents in his or her office. This Alternative takes the same approach. The
20 guideline process may be less formal and may not be considered a rule or regulation under
21 the state's administrative procedure act. However, if the administrative procedure act does
22 require a more formal adoption process, the recorder's process must comply with its
23 provisions. To acknowledge this limitation, the section begins with the condition "Except as
24 required by law other than this [act]."

25
26 Subsection (a) specifies two specific aspects for the recorder to consider, plus a more
27 general aspect regarding other attributes of electronic recording. The three aspects are:

28
29 (1) The first subsection deals with the manner and format in which an electronic
30 document is created and communicated. The recorder will specify the format of the
31 electronic documents. The specified format might be for a self-extracting XML document
32 (digital document from which data can be automatically extracted to the index).
33 Alternatively it might be for a document in a graphic format, whether originally electronic or
34 a copy of a paper document. Or it might allow two or more of these formats or specify other
35 formats yet to be determined. The recorder will specify the acceptable format and the
36 requirements of each.

37
38 The subsection lists the formatting attributes that are relevant. They deal with the
39 electronic means by which the document is created; the electronic means by which it is
40 submitted to, and received by, the recorder's office; the electronic means by which the
41 recorder will return the electronic document to the submitter; and the means by which title
42 searchers can retrieve information from the electronic recording system.

43
44 (2) The second subsection deals with the type or types of electronic signature required,
45 the manner and format in which the signature is affixed to a document, and the identity of, or

1 criteria for, third parties in the electronic signature process. Under this subsection, the
2 recorder will identify the acceptable type or types of electronic signature. The recorder may,
3 for example, require a private key/public key digital signature (electronic signature using a
4 secure private key to create it but allowing a public key to read it). Or the recorder may
5 permit another form of electronic signature that provides a secure process. The recorder can
6 establish other types of electronic signatures as may be appropriate and change those
7 designations from time to time. The recorder will also identify the acceptable certifying
8 authorities for those digital or other electronic signatures and the criteria for approving a
9 certifying authority.

10
11 (3) The third subsection is a catch-all provision allowing the recorder to specify the other
12 attributes of electronic documents as are reasonably necessary for proper administration of
13 the electronic recording system.

14
15 Subsection (b) seeks to promote uniformity across the state and provides a means for
16 assisting recorders in achieving that uniformity. Other recorders in the state may already
17 have adopted similar electronic recording systems and could provide a wealth of information
18 to a recorder. More broadly the recorder's associations and electronic recording
19 organizations, such the Property Records Industry Association, could supply important
20 information and guidance. Thus, this subsection requires that the recorder consult with other
21 recorders, recorders associations and other organizations for assistance in developing
22 guidelines and adopt, to the extent feasible, guidelines that are uniform on a statewide basis.

23 24 **Alternative B:**

25 Alternative B allocates the duty to specify the recording requirements to a state board. By
26 allocating the determination of electronic recording requirements to a state board there will
27 inherently be a collaborative and consultative process. Nonetheless the state board should
28 also consult with recorders' associations and organizations as described in Alternative A so
29 as to obtain their assistance and guidance.

30
31 The state board should promote the electronic recording abilities of the recorders by
32 education, training and other means. Also being a statewide board, this entity should
33 promote uniformity in electronic recording systems across the state. Nonetheless, since there
34 may be special circumstances and practices in any given recorder's venue, there should be a
35 process to allow variation as long as variation accomplishes the overall goals of this section.

36
37 The means by which the state board will adopt the recording requirements should be
38 determined by the legislature. If the process is to be less formal, similar to that currently in
39 existence in many recorders' offices, the guideline option should be selected. If the process
40 is to be more formal and subject to the state's administrative procedure act, the regulation
41 option should be selected.

42 Subsection (a) creates the state board and states its general makeup. The exact size of the
43 board is to be determined by the legislature. Other than stating that recorders are to be on the
44 board and make up its majority, it does not specify the other members. Those other members
45 might be mortgage lenders, real estate attorneys, representatives from the title and escrow
46 industries, notaries, and others, including public members. The subsection also states by

1 whom the members of the board will be appointed.

2
3 This subsection also states that the state board is a voluntary one and that the members
4 are not paid a salary. However, they are to be reimbursed for reasonable expenses. Although
5 not stated in the subsection, the board will, in all likelihood, function, for administrative
6 purposes, as a part of a state office and the staffing of the operations of the board should be
7 provided by that office.

8
9 Subsection (b) specifies three specific aspects for the board to consider, plus a more
10 general aspect regarding other attributes of electronic recording. The four aspects are:

11
12 (1) The first subsection deals with the manner and format in which an electronic
13 document is created and communicated. The state board will specify the format of the
14 electronic documents. The specified format might be for a self-extracting XML document
15 (digital document from which data can be automatically extracted to the index).
16 Alternatively it might be for a document in a graphic format, whether originally electronic or
17 a copy of a paper document. Or it might allow two or more of these formats or specify other
18 formats yet to be determined. The state board will specify the acceptable format and the
19 requirements of each.

20
21 The subsection lists the formatting attributes that are relevant. They deal with the
22 electronic means by which the document is created; the electronic means by which it is
23 submitted to, and received by, the recorder's office; the electronic means by which the
24 recorder will return the electronic document to the submitter; and the means by which title
25 searchers can retrieve information from the electronic recording system.

26
27 (2) The second subsection deals with the type or types of electronic signature required,
28 the manner and format in which the signature is affixed to a document, and the identity of, or
29 criteria for, third parties in the electronic signature process. Under this subsection, the state
30 board will identify the acceptable type or types of electronic signature. The state board may,
31 for example, require a private key/public key digital signature (electronic signature using a
32 secure private key to create it but allowing a public key to read it). Or the state board may
33 permit another form of electronic signature that provides a secure process. The state board
34 can establish other types of electronic signatures as may be appropriate and change those
35 designations from time to time. The state board will also identify the acceptable certifying
36 authorities for those digital or other electronic signatures and the criteria for approving a
37 certifying authority.

38
39 (3) The third subsection deals with the processes and procedures necessary to assure
40 adequate preservation of electronic documents. Under this subsection, the state board will
41 designate the nature and types of the storage systems and the means to assure that they are
42 secure.

43
44 Although this is also an appropriate issue for recorders to consider under Alternative A, it
45 is not stated there as an item for which guidelines must be created because these processes

1 and procedures are an internal matter to the operation of the individual recording office,
2 whereas under Alternative B it is part of the statewide guidance, uniformity and security
3 functions of the state board.

4
5 (4) The fourth subsection is a catch-all provision allowing the state board to specify the
6 other attributes of electronic documents as are reasonably necessary for proper administration
7 of the electronic recording system.

8
9
10 **SECTION 6. VERIFICATION.** A requirement that a document or an associated
11 signature be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if
12 the electronic signature of the person authorized to perform that act, together with all other
13 information required to be included by law other than this [act], is attached to or logically
14 associated with the signature or document in accordance with [guidelines] [regulations] of the
15 [recorder] [state board].

16 **Preliminary Comments**

17 The section is derived from section 11 of the Uniform Electronic Transactions Act. The
18 Comments to that section are generally relevant to this section also.

19
20 This section permits a notary public and other authorized officers to act electronically
21 without the need to do so on paper or similar tangible medium. However, it does not
22 eliminate the requirements that may be established elsewhere in state law for notarizing,
23 acknowledging, or verifying a document or an associated signature. It merely states that
24 those requirements may be satisfied electronically for an electronic document. Furthermore,
25 no personal or corporate seals or stamps will be required as long as the document contains the
26 information specified in the seal or stamp.

27
28
29 **SECTION 7. SATISFACTION OF CONDITIONS PRECEDENT TO**
30 **RECORDING.** The recorder and other governmental offices are authorized to agree to
31 procedures or processes to facilitate the electronic satisfaction of prior approvals and
32 conditions precedent to recording and the electronic payment of fees and taxes.

1

Preliminary Comments

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

8
9 For example, a document may first need to be submitted to the county assessor or auditor
10 to determine whether prior taxes have been paid or whether current ones are due. Under
11 current practice, that submission might be accomplished in a process independent from the
12 electronic recording process. Furthermore, if a tax or fee must be paid, that sum might
13 currently be paid by check or other non-electronic process. Procedures such as these will
14 delay the electronic recording process and limit the desire for a speedy, efficient electronic
15 recording process.

16
17 This section permits and encourages the recorder to enter into agreements with various
18 county and state offices for the purpose of adopting a process for the immediate, electronic
19 satisfaction of conditions precedent to recording and the payment of all fees and taxes
20 relevant to the transaction. Any fees and taxes paid by the recording party will subsequently
21 be allocated between the recorder and the other offices in accordance with the agreements.

22
23 The objective of this section is to encourage the recorder and other county and state
24 offices to enter the agreements and protocols so as to allow for the satisfaction of all
25 conditions precedent and the payment of all fees and taxes in a single, speedy electronic
26 recording process.

27
28
29 **SECTION 8. FEES [AND TAXES].**

30 (a) The recorder shall collect all applicable recording fees [and taxes] [and may
31 collect] [a fee of [\$ per document] to be used to plan, implement, maintain, and improve an
32 electronic recording system] [and] [an access fee for searching the electronic recording
33 system].

34 (b) Any fee [or tax] that is collected under subsection (a), that is collected for another
35 governmental office pursuant to Section 7, or that may be collected under law other than this
36 act may be collected through an electronic payment system.

Preliminary Comments

Subsection (a) provides that the recorder may collect three different fees and taxes, depending on the enactment choices made by the legislature. First of all, the recorder will collect all applicable recording fees taxes. The amounts of these fees are not stated but are to be determined by other laws or ordinances.

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 some forms of electronic documents the traditional concept of pages is largely irrelevant; pages are imaginary and do not explain the size of the electronic document. There will also be considerable differences between the sizes 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.

This subsection also permits the recorder to collect an electronic recording system fee in an amount to be specified. A person recording a document in the electronic recording system, regardless of whether it an electronic or paper document, will pay the electronic recording system fee. The fee will be used to plan, implement, maintain and improve an electronic recording system. Since the fee may be used to plan and implement an electronic recording system, it may be collected even prior to the actual establishment of the system. However, the fee may not be used for other functions of the recorder's office.

Finally, this subsection provides that the recorder may charge an access fee to a person searching the electronic recording system. The amount or method of computing the access fee is not stated. It may vary depending on the type of searcher and means of access. The fee may be a per-access fee or a subscription fee for continuous access. The access may be from a terminal in the recorder's office or from a private terminal.

The charging of an access fee might potentially raise issues of freedom of information. In most recording districts today, there is no charge simply for searching the land records office. The data are considered open documents available for the public to see. However, fees are imposed for making copies of the information and documents. This fee is, in effect, a fee for providing electronic copies of the documents, much as is currently charged for making paper copies. There are two reasons for suggesting the access fee.

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

1 Secondly, totally free access without any gateway limitations would potentially raise a
2 problem with casual browsers overusing and overloading the system, especially during times
3 of peak demand. There is limited bandwidth available for access to any system. If one or
4 more persons should request large, graphical documents and then seek to download those
5 documents the system could become overloaded. If the electronic land records system is
6 available to the casual browser who can search for and download those files without charge,
7 the potential for problems is increased. While the usage fee is not designed to prohibit access
8 to anyone, it will likely tend to act as a gateway and limit casual browsing of the electronic
9 recording system for no purpose other than “surfing the net.”

10
11 Subsection (b) provides that any fee or tax that is collected under this section, section 7 of
12 this act, or under any other provision of law may be collected through an electronic payment
13 system. The achievement of a speedy and efficient electronic recording system would not be
14 possible without a means for paying the applicable fees and taxes electronically. The nature
15 and operation of that system is not specified. The recorder might establish a subscription
16 service based on regular billing, a prepayment system with access charges made against a
17 deposited amount, or an individual pay per-service system.

18 19 20 **SECTION 9. SECURITY AND PRESERVATION OF ELECTRONIC**

21 **RECORDING SYSTEM.** The recorder shall regularly preserve the databases of an
22 electronic recording system in a duplicate archive reasonably distant from their location and
23 shall protect the electronic recording system from tampering and unauthorized access.

24 **Preliminary Comments**

25 The preservation and security of the electronic recording system is extremely important to
26 the commercial acceptability of an electronic recording system. As used in this section,
27 “preserve” refers to the process of maintaining and backing up the electronic recording
28 system, while “protect” refers to securing the system from access or tampering by
29 unauthorized persons.

30
31 To assure that information in the electronic recording system is available to restart the
32 system if there should be an error or failure in the system, this section requires that the
33 recorder take the measures necessary to archive the databases in the electronic recording
34 system. It specifically requires that the electronic recording system be preserved regularly in
35 a duplicate archive that is reasonable distant from the locale of the electronic recording
36 databases in order to assure recovery from catastrophic situations.

37
38 Security from computer “hackers” and intruders is also critical. This section requires the
39 recorder to protect the system from unauthorized access and tampering. In addition to these
40 measures, the backup system will help assure that any errors caused by an intrusion can be
41 rectified.

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4 **SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
5 applying and construing this Uniform Act, consideration must be given to the need to
6 promote uniformity of the law with respect to its subject matter among states that enact it.

7 **Preliminary Comments**

8 This is a standard provision in Uniform Acts for the purpose of reciting the importance of
9 considering the need for uniform among the enacting states when applying and construing the
10 act.
11

12
13 **SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
14 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
15 Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et
16 seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section
17 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of
18 that act (15 U.S.C. Section 7003(b)).

19 **Preliminary Comments**

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