

DRAFT
FOR DISCUSSION ONLY

UNIFORM REAL PROPERTY ELECTRONIC RECORDATION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For Drafting Committee Meeting March 12-14, 2004

WITH INTRODUCTORY NOTE AND COMMENTS

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UNIFORM REAL PROPERTY ELECTRONIC RECORDATION ACT

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UNIFORM REAL PROPERTY ELECTRONIC RECORDATION ACT

Introductory Note

The status of electronic information technology has progressed rapidly in recent years. Innovations in software, hardware, communications technology and security protocols have made it technically feasible to create, sign and transmit real estate transactions electronically.

However, approaching the end of the 20th Century, various state and federal laws limited the enforceability of electronic documents. In response, the Uniform Electronic Transactions Act (UETA) was approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1999. As of February 15, 2004, UETA had been adopted in 44 states and the District of Columbia and was under consideration in two others. The federal Electronic Signatures in Global and National Commerce Act (E-Sign) was also adopted in 2000. The two acts give legal effect to real estate transactions that are executed electronically and allow them to be enforced between the parties thereto.

Nevertheless, even though documents that result from electronic transactions are valid and enforceable between the parties, there is no broad agreement as to whether those documents may be recorded in the various local land records offices in the several states. Laws and regulations in many states frequently limit a recordable document to one that is in writing or on paper or to one that is signed. Being electronic and not on paper, and not having a handwritten signature, electronic documents might not be recordable under the laws of some states (*see* Op. Cal. Atty. Gen. No. 02-112 (Sept. 4, 2002)).

Limited experiments with recording electronic documents have been started in a few counties in a few states. These experiments depend, however, on the initiatives of individual recorders. They are piecemeal and offer only limited interoperability among the recording venues. And the experiments do not provide a uniform legal standard for the acceptance and processing of electronic documents.

In response, a few states have convened study committees or task forces to consider the question of recording electronic documents (*see* Report of Iowa State Bar Ass'n, Real Estate Modernization Comm., draft of *Ch. 558B – Iowa Electronic Recording Act* (2001); Conn. Law Revision Comm., *An Act Establishing the Connecticut Real Property Electronic Recording System* (Conn. Gen Assembly, Judiciary Comm., public hearing Feb. 20, 2004)). In 2002 a drafting committee was established by the NCCUSL Executive Committee to draft a Uniform Real Property Electronic Recordation 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 act was drafted to authorize the receipt, recordation and retrieval of documents in electronic form. Its fundamental principle is that requirements of state law

1 describing or requiring that documents be on paper or in writing are satisfied by a document in
2 electronic form. Furthermore, any requirement that the document contain a signature is satisfied
3 by an electronic signature. The act also establishes a state electronic recording commission that
4 is charged with adopting standards for the receipt, recordation, and retrieval of electronic
5 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

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

7 (1) “Document” means information that is:

8 (A) inscribed on a tangible medium or is stored in an electronic or other medium
9 and is retrievable in perceivable form; and

10 (B) eligible to be recorded in the land records maintained by the [recorder].

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

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

15 (4) “Electronic signature” means an electronic sound, symbol, or process attached to or
16 logically associated with a document in accordance with standards of the state electronic
17 recording commission and executed or adopted by a person with the intent to sign or verify the
18 document.

19 (5) “Paper document” means a document that is received by the [recorder] in a form that
20 is not electronic.

21 (6) “Person” means an individual, corporation, business trust, estate, trust, partnership,
22 limited liability company, association, joint venture, public corporation, government,

1 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

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

5 *Comments*

6 (1) **“Document.”** A document consists of information stored on a medium, whether the
7 medium be tangible or electronic, provided that the information is retrievable in a perceivable
8 form. The traditional tangible medium has been paper on which information is inscribed by
9 writing, typing, printing or similar means. It is perceivable by reading it directly from the paper
10 on which it is inscribed. An electronic medium may be one on which information is stored
11 magnetically and from which it may be retrieved and read indirectly on a computer monitor or a
12 paper printout.

13
14 Additionally this section limits the definition of a document to information that is eligible
15 to be recorded in the land records system maintained by the recorder. Certain documents that
16 contain information affecting real property may not be recordable in the land records system
17 maintained by the recorder. For example, in some states certain information such as liens and
18 judgments are filed in the clerk of court’s office. This act does not apply to such documents.
19 Although it would be valuable to integrate the information of the two offices, this act merely
20 provides for recording documents in the recorder’s office.

21
22 While a document recorded in a land records system will usually contain information
23 affecting real property, it need not necessarily be so limited. Thus deeds, grants of easements
24 and mortgages are documents subject to this act. Similarly, certificates and affidavits may be
25 documents under this act if state law allows such documents to be recorded in the land records
26 office.

27
28 The definition of a document in this act is derived from the definition of “record” as
29 contained in the Uniform Electronic Transactions Act (UETA) § 2(13). In terms of that act, a
30 document is a record that is eligible to be recorded in the land records maintained by the
31 recorder. In selecting the defined term “document” for use throughout this act, an explicit
32 decision was made not to use the defined term “record.” The term “record” has a different
33 meaning in real estate recording law and practice than it has in UETA. If the term “record” were
34 used generally in this act, it might lead to confusion and misinterpretation.

35
36 In UETA the term “record” refers to information on a tangible or electronic medium as
37 does the term “document” in this act. In this act, however, depending on syntax, the term
38 “record” could have several meanings, all of which deal with the storage of information and not
39 the information itself. For example, this act deals with the *recording* process through which a
40 person can *record* a document. The government officer who oversees the land *records* is the

1 *recorder*. These terms are so ingrained in the lexicon of real estate recording law and practice
2 that it would not be productive to attempt to change them by this act.
3

4 **Legislative Note:** The bracketed word “[recorder]” is used in this act to identify the
5 officer who has the authority under state law to accept documents for recording in the land
6 records system. Although this is the word commonly used in most states to identify the officer,
7 other words are also used. For example, the word “registrar” is used in some states to designate
8 that officer.
9

10 In addition, since this act affects all land records systems in a state, the word “recorder”
11 also applies to the appropriate officer under the alternative title system sometimes known as a
12 “Torrens” registration system. In some states the traditional officer is known as a “recorder” and
13 the officer under the alternative system is known as a “registrar.” This act would apply to both
14 officers.
15

16 Thus, when adopting this act the legislature should modify the bracketed word
17 “[recorder]” and substitute the appropriate word or words under the system or systems in effect
18 in the state.
19

20 (2) **“Electronic.”** The term “electronic” refers to the use of electrical, digital, magnetic,
21 wireless, optical, electromagnetic and similar technologies. It is a descriptive term meant to
22 include all technologies involving electronic processes. The listing of technologies is not
23 intended to be a limiting one. For example, biometric identification technologies would be
24 included if they affect communication and storage of information by electronic means. As
25 electronic technologies expand and include other competencies, those competencies should also
26 be included under this definition.
27

28 The definition of the term “electronic” in this act has the same meaning as it has in
29 UETA § 2(5). The Comments made under that subsection are equally applicable to this
30 subsection.
31

32 (3) **“Electronic document.”** An “electronic document” is a “document” that is in an
33 “electronic” form. Both of these terms are previously defined. However, this definition adds an
34 additional requirement not specifically stated in the individual definitions. In order to be an
35 “electronic document” the document must be received by the recorder in an electronic form.
36

37 A document may have a prior or subsequent existence in an “electronic” form, while not
38 being an “electronic document” under this act. For example, the document may have been
39 created by an electronic process or have existed in an electronic form before being converted to,
40 and received by the recorder in, a paper form. Thus, a document prepared on a computer by
41 means of a word processing program may have been created electronically and may still exist
42 electronically, but if the document is printed out and submitted to the recorder on paper the
43 submitted document is not an electronic document. Similarly, after arriving in the recorder’s
44 office in a paper form the document may be converted to an electronic form prior to, or as part
45 of, the recording process. The paper document does not become an electronic document because

1 of the conversion.
2

3 By comparison, a document received by the recorder in an electronic form, but
4 subsequently converted to a paper form, will be considered to be an electronic document. For
5 example, a document received electronically and printed in a paper form, as with the process
6 commonly known as a facsimile or a FAX, is an electronic document. Issues common to
7 electronic documents, such as security and integrity, also relate to a facsimile or FAX document.
8

9 This act applies only to documents that are received by the recorder in an electronic form
10 and enables those documents to be recorded. The recordability of documents not received by the
11 recorder in an electronic form continues to depend on other state law.
12

13 (4) **“Electronic signature.”** The term “electronic signature” is based on the definition
14 of that term in UETA § 2(8). Thus, the Comments to that section have general applicability to
15 this section also.
16

17 However, this definition uses the word “document” instead of “record” to identify the
18 instrument being signed. (*See generally* § 1, above, for a discussion of the reasons). This
19 definition also states that the purpose of an electronic signature may be to “verify” the document
20 rather than to “sign” it. The provision was added to clarify that the use of some signatures, such
21 as those of a notary public when taking an acknowledgement, are not meant for purposes of
22 “signing” the document as such, but only for the purpose of “verifying” the signators to the
23 document and its contents.
24

25 This definition also requires that the electronic signature and its means of association
26 with the document must comply with the standards established by the state electronic recording
27 commission established under § 5 of this act.
28

29 (5) **“Paper document.”** A “paper document” is one that is received by the recorder in a
30 form that is not “electronic.” Despite the use of the word “paper” it is not limited to documents
31 on a paper medium. Just as with the definition of an “electronic document,” the moment at
32 which the character of the document will be determined is the moment it is received by the
33 recorder. As stated in paragraph 3, above, if a document is received by the recorder in a non-
34 electronic form it is a paper document regardless of whether it has a prior or subsequent
35 existence as an electronic document.
36

37 (6) **“Person.”** The definition of a “person” is substantially the same as that contained in
38 UETA § 2(12). It includes individuals, associations of individuals, and corporate and
39 governmental entities.
40

41 (7) **“State.”** The word “state” includes any state of the United States, the District of
42 Columbia, the United States Virgin Islands, or any territory or insular possession subject to the
43 jurisdiction of the United States.
44

1 **SECTION 3. RECORDING OF ELECTRONIC DOCUMENTS.**

2 (a) A [recorder] may establish a system to receive, index, store, archive, and transmit
3 electronic documents. The [recorder] may also establish procedures to access, search, and
4 retrieve documents and information in the system.

5 (b) If a law requires, as a condition for recording, that a document be an original, on
6 paper or other tangible medium, or in writing, an electronic document meeting the requirements
7 of this [act] satisfies the law.

8 (c) If a law requires, as a condition for recording, that a document be signed, an
9 electronic signature satisfies the law.

10 ***Comments***

11 (a) The establishment of an electronic recording system is an option, and a decision to
12 implement one is to be made by the recorder. The act does not require that a recorder must
13 establish an electronic recording system. It allows each recorder to do so when and if the
14 recorder decides to proceed with electronic recording.
15

16 If the recorder establishes an electronic recording system, the office in which electronic
17 documents will be received and recorded is the same office that exists for the recording of paper
18 documents. The recorder will receive electronic documents from the recording parties and will
19 enter them into the electronic recording system established in that office.
20

21 The system for receiving, indexing, storing, archiving and transmitting electronic
22 documents is inclusive of all segments of that system. It consists of the hardware on which the
23 information is stored as well as the software by which it operates. In addition, since electronic
24 documents must be communicated to and from the recorder, the system includes the hardware
25 and software that form the means of communication with the recorder's office. It includes all
26 parts of the system regardless of whether the components of that system are physically located
27 on-site or elsewhere.
28

29 This act does not state the type of electronic documents that may be accepted by the
30 recorder. Nor does it state the type of electronic signatures that permissible. Those matters are
31 the subject of regulations adopted by the state electronic recording commission pursuant to §
32 5(b) of this act.
33

34 This act applies to "Torrens" title registration systems. Thus, a recorder who operates
35 such a title registration system and chooses to accept electronic "registration" documents may

1 establish a system to receive, index, store, archive, and transmit them, as well as procedures to
2 access, search, and retrieve documents and information in the system.
3

4 **Legislative Note:** The structure of this act does not preclude the possibility that other
5 state or local law might require a recorder to establish an electronic recording system. Should
6 the state legislature wish to make such a requirement, this subsection should be amended
7 accordingly.
8

9 (b) Subsection (b) states the basic principle of this act – if a document would be
10 recordable in a paper format, an electronic document with the same content and meeting the
11 requirements of this act is also recordable. Any reference in a statute, regulation, standard, or
12 guideline to a document as being on paper or a similar tangible medium in order to be recorded
13 is superseded by this act. Similarly any statute, regulation, standard, or guideline that specifies
14 that a document must be in writing in order to be recorded is also overruled by this act.
15 Furthermore, since any paper-specific requirement such as the size of the paper or the color of
16 the ink used for the document is inapplicable to an electronic document, those requirements do
17 not prohibit or limit the recording of electronic documents.
18

19 (c) Subsection (c) provides that any statute, regulation, standard, or guideline that
20 requires that that a document must be signed in order to be recorded is satisfied by an electronic
21 signature attached to an electronic document. The provisions of UETA and the federal
22 Electronic Signatures in Global and National Commerce Act (E-Sign) provide that an electronic
23 signature is not an impediment to the enforceability of an electronic document between the
24 parties to the transaction. Similarly, this section provides that an electronic signature is not an
25 impediment to the recording of the document.
26

27 **Legislative Note:** This act uniformly authorizes a recorder to accept and record
28 electronic documents with electronic signatures. It does not attempt to change the other real
29 property laws of the various states. However similar those laws may be in many respects, they
30 also have many features that are quite unique. A single electronic recording act could not
31 possibly weave itself into the general real property laws of each state and amend the current laws
32 in exactly the same fashion producing the same ultimate result. In some cases gaps may have to
33 be filled legislatively and in others conflicts may have to be resolved. Each legislature will have
34 to review its own laws to determine what collateral real property laws have to be modified and
35 how to do it.
36

37 For example, it is fair to assume that electronic recording systems will not cease to
38 operate when recorders lock their office doors at night or over the weekend. Indeed, it may be
39 quite fair to assume that electronic recording systems would accept electronic documents 24
40 hours per day and seven days per week. If a mortgage is filed electronically on Saturday, the
41 electronic recording system may collect the document in a queue to be processed and indexed on
42 Monday morning. If a potential purchaser searches the electronic recording system on Sunday to
43 determine whether there are any claims against the real estate, the purchaser will not find the
44 mortgage and may accept a deed and file it electronically on Sunday.
45

1 Although the mortgage was filed, it was not indexed; by its status in the queue it might
2 not even be considered recorded. The laws of the various states are not consistent on how this
3 issue should be addressed. It may depend on whether this document is considered delivered to
4 the recorder when it is received by the queue or whether it is delivered when the queue is opened
5 on Monday. It may also depend on whether the state law requires indexing in order for the
6 recording to be complete or whether simple delivery to the recorder is sufficient. The state laws
7 are sufficiently diverse that this act could not amend all state laws in a uniform fashion to
8 achieve the same result. Thus, the issues of when recording should be considered to have
9 occurred and whether indexing is required for a complete recording are issues that the legislature
10 should consider.
11
12

13 **SECTION 4. RECORDING OF PAPER DOCUMENTS.**

14 (a) A [recorder] who accepts electronic documents for recording shall continue to accept
15 paper documents and shall place entries for both types of documents in the same index.

16 (b) A [recorder] may convert paper documents accepted for recording into an electronic
17 form. The [recorder] may convert into electronic form information recorded before the
18 [recorder] began to record electronic documents.

19 *Comments*

20 (a) This act does not require that persons engaging in real estate transactions must use
21 electronic documents in order to have them recorded. It merely permits the recorder to accept
22 electronic documents if they are presented. Economics, availability of technology, and human
23 nature suggest that not everyone will begin use electronic real estate documents immediately. It
24 will likely be a number of years before the use of electronic documents becomes dominant and
25 perhaps well beyond that before paper documents disappear altogether from the conveyancing
26 process. In recognition of that fact, this section requires the recorder to continue to accept paper
27 documents even after establishing an electronic recording system.
28

29 The recorder must index paper documents together with electronic documents as part of a
30 single indexing system. This will enable a title examiner to make a single search of the index for
31 the purpose of ascertaining all relevant instruments that were recorded after the implementation
32 of the electronic recording system. It avoids the inefficient and costly process of maintaining
33 and searching two separate indexing systems – one for electronic documents and one for paper
34 documents.
35

36 Efficiency suggests that the unified index will likely be an electronic one. It would be
37 more efficient to enter the index information from paper documents directly into an electronic
38 index rather than convert the index information for electronic documents into a paper system;

1 electronic index information can be sorted and manipulated more easily than paper index
2 information; and an electronic index can be searched more quickly and without the searcher's
3 physical presence in the recorder's office. However, the act does not require the single index be
4 an electronic one.

5
6 (b) Subsection (b) relates to the conversion of the actual text or information contained in
7 paper documents into an electronic form. It does not concern the index information that is
8 derived from those paper documents. The treatment of index information is described in the
9 prior subsection.

10
11 **"New" paper documents.** The first sentence of this subsection relates to the conversion
12 of paper documents received by the recorder after the implementation of an electronic recording
13 system. It does not require that such newly-received paper documents be converted into an
14 electronic form. It does, however, permit the recorder to make such a conversion of paper
15 documents and thus store them with electronic documents.

16
17 If the paper documents are not converted into an electronic form the recorder will
18 continue to store them and, as public documents, the recorder will continue to provide a process
19 for accessing them. That might include on-site or off-site access. If the conversion is not made,
20 however, the usefulness of the electronic recording system will be limited because of the
21 continuing need to access documents from both a paper system and an electronic system.

22
23 **"Old" paper information.** The second sentence of this subsection relates to the
24 conversion of paper information from "old" documents recorded prior to the implementation of
25 the electronic recording system. As with newly-received paper documents, the act does not
26 require the recorder to convert previously-recorded information into an electronic form. Such a
27 conversion is, however, permitted under the act.

28
29 Dealing with "old" information is more difficult than dealing with "new" documents
30 simply because of the potentially large expenditure of time and money needed to convert the
31 immense volume of paper information to the new electronic form. As with the situation of
32 newly-received paper documents that are not converted into electronic form, the usefulness of
33 the electronic recording system is limited, at least for a good number of years, if the paper
34 information is not converted into an electronic form.

35 36 **SECTION 5. STANDARDS FOR ELECTRONIC DOCUMENTS.**

37 (a) A state electronic recording [commission] consisting of [number] members appointed
38 by [the governor] is hereby created. [The majority of the members of the [commission] must be
39 [recorders].] [To be eligible for appointment to the [commission], an individual must be a
40 recorder or a person having a professional interest in electronic recording standards.] The

1 members of the [commission] may not receive compensation but may be reimbursed for
2 reasonable expenses.

3 (b) The state electronic recording [commission] shall adopt standards that it considers
4 necessary or desirable to facilitate an electronic recording system.

5 (c) A [recorder] who elects to accept electronic documents shall comply with the
6 standards promulgated by the state electronic recording [commission].

7 (d) In promulgating standards under subsection (b), the state electronic recording
8 [commission] shall consider the needs of [counties] of varying size, population, resources, and
9 capability; the standards of national standard-setting organizations; and the views of interested
10 persons for the purposes of obtaining guidance and assuring uniformity.

11 (e) The electronic recording committee may employ staff to assist the [commission] in
12 carrying out its responsibilities.

13 *Comments*

14 In order to promote the establishment of interoperable, dependable and secure electronic
15 recording systems, this section allocates to a state electronic recording commission the duties of
16 adopting standards appropriate to that purpose. Recorders implementing an electronic recording
17 system must comply with the standards adopted by the commission.
18

19 (a) Subsection (a) creates a state electronic recording commission and provides for its
20 general makeup. The exact size of the board is to be determined by the legislature. The
21 appointment of the members is to be made by the governor, or other state official or
22 governmental body determined by the legislature. Membership on the commission is voluntary
23 and members are not compensated, although they may be reimbursed for reasonable expenses.
24

25 Two optional, i.e. bracketed, provisions relate to the qualifications of the members of the
26 commission. One provision states that the majority of the members must be recorders. The
27 other provision states that members must be recorders or have a professional interest in
28 electronic recording standards.
29

30 Recorders, by the fact that the standards adopted by the commission will affect the
31 operation of their electronic recording systems, have a professional interest in the standards. In
32 addition, informed recorders will be able to provide a wealth of information to the commission.

1 They very likely will have valuable input when considering standards in the light of the needs of
2 recording districts of varying size, population, resources and capabilities, as stated in subsection
3 (d).
4

5 Other persons who might have a professional interest in electronic recording standards
6 include, but are not limited to, real estate attorneys, mortgage lenders, representatives from the
7 title and escrow industries, real estate brokers, and notaries public. They are or may be regular
8 users of land records systems and, by their experience and education, are able to provide insight
9 and assistance in adopting quality standards.
10

11 (b) Subsection (b) provides that the commission has the authority to adopt standards not
12 only if necessary, but also if desirable, to facilitate the implementation of an electronic recording
13 system.
14

15 Although the subsection does not provide a list of objectives or purposes for which
16 standards might be necessary or desirable, reference to § 5(d) of this act (*see* discussion in
17 paragraph (d), below) and to UETA § 18(b), regarding the acceptance and distribution of
18 electronic records by governmental agencies, provide useful sources.
19

20 UETA § 18(b) provides that governmental agencies may specify (1) the manner and
21 format in which an electronic document must be created, submitted, received, and retrieved and
22 the systems established for that purpose; (2) the type of electronic signature required, the manner
23 and format in which it will be affixed to an electronic document, and the identity of, or criteria
24 that must be met by, any third party used in filing the electronic document; and (3) the processes
25 and procedures appropriate to ensure adequate preservation, integrity, security, confidentiality
26 and auditability of electronic records. These purposes relate to the establishment of an
27 interoperable, dependable and secure electronic recording system. They promote commerce
28 while at the same time providing integrity and security for the electronic recording system.
29

30 (c) Although the decision of whether to implement an electronic recording system is up
31 to the recorder (*see* § 3(a), above), if a recorder so elects, he or she must comply with the
32 standards promulgated by the state electronic recording commission. Compliance with those
33 standards is necessary or desirable to the facilitation of electronic recording. If recorders within
34 the state were each permitted to implement their own standards, parties seeking to record
35 electronic documents or search electronic records might find different requirements in each
36 recording venue regarding the format of an electronic document and the means of affixing an
37 electronic signature to it.
38

39 Serious issues might also exist regarding the dependability and security of the electronic
40 recording systems. Security from computer “hackers” and intruders is critical. The section
41 allows the commission to establish standards that will protect the system from unauthorized
42 access and tampering. It will also allow the commission to adopt standards that will assure
43 backup and recovery from any errors or intrusion.
44

45 (d) Because most states are quite diverse in the size, population, resources and

1 capabilities of their recording venues, it is important that the state electronic recording
2 commission consider all of their needs. Standards that are designed only for large, populous and
3 well-financed recording districts may never promote the development of electronic recording in
4 smaller, less-populous and poorer-financed recording districts. This subsection clearly
5 recognizes that the standards should promote the overall good of the state. Thus, the
6 commission is advised to consider the needs of the entire spectrum of recording districts.

7
8 Other valuable sources of information on electronic recording standards are the national
9 standard-setting organizations such as the Property Records Industry Association (PRIA), the
10 Mortgage Industry Standards Maintenance Organization (MISMO), and others. In most
11 situations these organizations will have considered the same issues presented to the commission
12 and have developed a protocol or standard to deal with them. Furthermore, since many of these
13 organizations are national in scope, they would already have considered the needs of recording
14 districts of varying size, population, resources and capabilities when adopting the standards or
15 protocols. These organizations can provide guidance and help assure uniformity.

16
17 The subsection also states that the commission is consider the views of other interested
18 persons. Among others, these persons might include potential users of the electronic recording
19 system such as real estate attorneys, mortgage lenders, representatives from the title and escrow
20 industries, real estate brokers, and notaries public. Also included might be potential suppliers of
21 electronic hardware, software and services to recorders.

22
23 (e) The members of the commission will likely assemble only when meetings of the
24 commission are called. To assist them in carrying out their responsibilities between meetings, to
25 prepare for upcoming meetings, to staff the meetings, and to implement the commission's
26 decisions, the commission is authorized to employ staff.

27
28 **SECTION 6. VERIFICATION.** A requirement that a document or a signature
29 associated with a document be notarized, acknowledged, verified, witnessed, or made under oath
30 is satisfied if the electronic signature of the person authorized to perform that act, and all other
31 information required by law to be included, is attached to or logically associated with the
32 document or signature in accordance with standards adopted by the state electronic recording
33 [commission]. No physical or electronic image of a stamp, impression, or seal is required to
34 accompany an electronic signature under this section.

35 ***Comments***

36 This section is derived from UETA § 11. The Comments to that section are generally

1 relevant to this section.

2
3 This section provides that any statute, regulation, standard or guideline that requires or
4 specifies that a notarization, acknowledgement, verification, witnessing, or taking of an oath be
5 done on paper or similar tangible medium, that it be done in writing, or that it be signed, is
6 satisfied by an electronic signature that is attached to, or logically associated with, the electronic
7 document in accordance with standards adopted by the state electronic recording commission. It
8 permits a notary public and other authorized officers to act electronically without the need to do
9 so on paper or a similar tangible medium. However, it does not apply to any other requirements
10 that may be established under other law of the state for notarizing, acknowledging, or verifying a
11 document or an associated signature.

12
13 It also provides that any statute, regulation, standard or guideline that requires a personal
14 or corporate seal, stamp, or impression is satisfied by an electronic notarial, corporate or other
15 seal. Thus, the notarial stamp that is required under the laws of some states is not required for an
16 electronic notarization. Nor is there a need for the corporate stamp or impression that is required
17 under the laws of some states to verify the action of a corporate officer.

18
19 **SECTION 7. SATISFACTION OF CONDITIONS PRECEDENT TO**
20 **RECORDING.** Subject to the standards established pursuant to Section 5, the [recorder] and
21 other governmental officials may agree on procedures or processes to facilitate the electronic
22 satisfaction of prior approvals and conditions precedent to recording and the electronic payment
23 of fees and taxes.

24 ***Comments***

25 It is common that before a recorder may accept a document for recording it must be
26 approved by one or more other offices in order to assure compliance with the other office's
27 requirements. The person submitting the document may also be required to pay fees or taxes to
28 the other office. If the prior approval and the fee or tax paying processes are not conjoined with
29 the electronic recording process, it may not be possible to effectuate the speedy electronic
30 recording envisioned by this act.

31
32 For example, a document may first need to be submitted to the county assessor or
33 treasurer to determine whether prior taxes have been paid or whether current ones are due.
34 Under current practice that submission might be accomplished in a process independent from the
35 electronic recording process. If a tax or fee must be paid, that sum might also be paid
36 independently by check or other non-electronic process. Procedures such as these will delay the
37 electronic recording process and will limit the achievement of a speedy, efficient electronic
38 recording system.

This section permits and encourages the recorder to enter into agreements with other county and state offices for the purpose of implementing processes that will allow the simultaneous satisfaction of all conditions precedent to recording and the payment of all fees and taxes in a single transaction. Any fees and taxes paid by the recording party will subsequently be allocated between the recorder and the other offices in accordance with the agreements.

SECTION 8. FEES [AND TAXES].

[Alternative A]

[(a) In addition to collecting fees [and taxes] authorized under law other than this [act], a [recorder] may collect fees established pursuant to Section 5.]

[Alternative B]

[(a) In addition to collecting fees [and taxes] authorized under law other than this [act], a [recorder] may collect a fee of [] for recording a document and a fee of [] for accessing, searching, or retrieving indices and documents. The additional fees collected under this section by the [recorder] may be used only for planning, implementing, maintaining, and improving electronic access, recording, searching, and retrieval.]

(b) Any fee [or tax] collected by a [recorder] may be collected electronically.

Comments

This section concerns the collection of three different fees and taxes by the recorder. The determination of the amount of those fees and taxes and the purposes for which they can be used depends on the enactment choices made by the legislature and, under Alternative A, the decisions made by the state electronic recording commission. The three fees and taxes are (1) the usual fees and taxes as are generally charged today for the recording of a document; (2) an additional fee imposed on recording a document; (3) an additional fee imposed on searching for and retrieving documents.

The additional recording fee will be paid by a person recording a document regardless of whether it is an electronic document or a paper document. The index information for both paper documents and electronic documents will be combined into a single index, which may be an electronic one (*see* § 4(a), above). The paper documents may also be converted into an electronic form to be made available for electronic access (*see* § 4(b), above). For these reasons and others the operation of an electronic recording system will require funding greater than the

1 existing funding provided by traditional fees and taxes.

2
3 The additional searching and retrieval fee will be paid by all parties establishing
4 electronic access to, or making an electronic retrieval from, the system. The fee may vary
5 depending of the type and frequency of search, the means of access, and the size of the retrieval.
6 The fee may be based on a per-access fee or a subscription fee for continuous use. The access
7 may be from a terminal in the recorder's office or from a private terminal.
8

9 Both Alternatives envision that the recorder will continue to collect the usual fees and
10 taxes as are generally charged for the recording of a document. Under Alternative A, the
11 decision on whether to impose either or both of the two additional fees and their amounts is left
12 to the state electronic recording commission. The purpose for which the fees may be used is also
13 to be determined by the state electronic recording commission. In deciding whether to enact this
14 Alternative it is important to determine whether it is permissible under the state constitution or
15 other state law for a commission to determine and impose a fee.
16

17 Under Alternative B, the amounts of the fees are determined at the time of the passage of
18 this act. If the amounts are to be changed in the future it will be necessary for the legislature to
19 amend the act. Under this Alternative the usage of the additional fees is specifically limited to
20 planning, implementing, maintaining, and improving electronic access, recording, searching, and
21 retrieval. This limitation not only restrains the recorder in the purposes to which she or he may
22 apply the fees collected under this section, but it also limits the county legislature, to the extent it
23 has authority over the recorder, from otherwise allocating the usage of the fees collected.
24

25 Unstated in this act is the unit basis for charging the recording and access fees. The
26 traditional means of charging recording fees for paper documents is based on the number of
27 pages contained in the document, usually with an initial per document minimum. With some
28 forms of electronic documents the traditional concept of pages is irrelevant; pages are imaginary
29 and do not explain the size of the electronic document. Several possible approaches may suggest
30 themselves, but there is no clear choice. There might simply be a charge per document, although
31 a truly large document would not seem to pay its fair share of storage costs and it might even
32 invite the continuance of less efficient means of document generation. A charge based on file
33 size is also possible, but it's not clear what the future of file sizes might be. This lack of a clear
34 choice supports the approach of Alternative A which allows the commission, with its greater
35 expertise and ability to be more flexible and adaptable, to make the decision.
36

37 The charging of an access fee might potentially raise issues of freedom of information
38 and the right of access to public documents. In most recording districts today there is no charge
39 made for simply searching the land records index or inspecting recorded documents. The land
40 records data are considered to be open documents available for the public to inspect. However,
41 fees are imposed for making copies of index information or the recorded documents. The fee
42 imposed by this section is, in effect, a fee for providing electronic copies of the index
43 information and documents, much as is currently charged for making paper copies.
44

45 Two additional reasons may be given for this access fee. First of all, the provision of

1 land records information is a function of government that must be funded in some fashion. A
2 system that places the cost of the system, through the means of a delivery fee, on the user of the
3 service is generally acceptable and reasonable. In order to maintain that proposition, however,
4 the fee may not be designed to preclude access by anyone who wishes to do so as long as he is
5 willing to pay a reasonable fee for the service.
6

7 Secondly, totally free access without any gateway limitations might create a problem
8 with casual browsers overusing and overloading the system, especially during times of peak
9 demand. There is limited bandwidth for access to the system as well as limited system load. If
10 one or more persons should request large, graphical documents and then seek to download those
11 documents, the system could become overloaded. If the electronic land records system is
12 available to casual browsers who can search for and download those files without charge, the
13 potential for problems is enhanced. While the usage fee is not designed to prohibit access, its
14 existence will tend to act as a gateway to limit casual browsing of the electronic recording
15 system for no purpose other than “surfing the net” while not limiting serious users of the system.
16

17 (b) Subsection (b) provides that any fee or tax that is collected by the recorder may be
18 collected through an electronic payment system. The achievement of a speedy and efficient
19 electronic recording system would not be possible without a means of paying the applicable fees
20 and taxes electronically. The nature and operation of the electronic payment system is not
21 specified. The recorder might establish a subscription service with a regular billing system, a
22 prepayment system with access charges applied against a deposited amount, or a payment per
23 individual service system.
24

25 **SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
26 applying and construing this Uniform Act, consideration must be given to the need to promote
27 uniformity of the law with respect to its subject matter among states that enact it.

28 *Comments*

29 This section recites the importance of considering the need for uniformity among the
30 enacting states when applying and construing the act.
31
32

33 **SECTION 10. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
34 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
35 Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.)
36 but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or

1 authorize electronic delivery of any of the notices described in Section 103(b) of that act (15
2 U.S.C. Section 7003(b)).

3 *Comments*

4 This section responds to the specific language of the Electronic Signatures in Global and
5 National Commerce Act and is designed to avoid preemption of state law under that federal
6 legislation.