



THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

- A Summary -

Electronic communications make it possible to conduct old transactions in new forms. For many years now, real estate transactions have been memorialized on paper documents, and filed in public records to establish who has rightful title to any piece of land. Several centuries have gone by since that system was originally developed. A new technology of computers, software to run them, and electronic communications has come to replace paper in many other commercial markets. The law of real property must also make the transition to new technology. The efficiency of real estate markets makes this imminently necessary.

The long dependence on paper, however, casts up certain barriers to using electronic means to carry out commercial transactions. Both state and federal laws have many “statute of fraud” requirements that inhibit the use of electronic communications. Statute of fraud requirements put total and express reliance upon paper documents and manual signatures to make transactions enforceable. No paper, no enforcement. These same requirements have made it difficult to develop electronic analogues that are equally enforceable.

The first step to remedy the problem took place in 1999 when the Uniform Law Commissioners promulgated the Uniform Electronic Transactions Act (UETA). This overlay act adjusted statute of fraud provisions in other state laws to include electronic “records” and “signatures” for the memorialization of all kinds of commerce, including basic transactions in real estate. Under UETA, it is now possible to have sale contracts, deeds, mortgage instruments (in whatever form a jurisdiction uses) and promissory notes memorialized in electronic form with electronic signatures and treated as the equal of the same paper documents with manual signatures. This is the result of the widespread enactment of UETA and of the subsequent enactment of the Electronic Signatures in Global and National Commerce Act (E-SIGN) by Congress.

However, there is one more step specific to real estate transactions: documents must be recorded in public records to be effective. In most states, recording takes place in a county office devoted to keeping these records. The chain of title leading to the current title-holder, meaning the historic record of documents relating to transactions for a specific piece of real estate, establishes the marketability of that piece of real estate by its current owner. State law governs these local recording offices, and there are requirements in the law of every state relating to the originality and authenticity of paper documents that are presented for recording. UETA included optional provisions dealing with governmental authority, including that of local governments, to accept and utilize electronic records. However, not all states adopted these optional provisions, and confusion still persisted whether these provisions, coupled with the rest of UETA, authorized recording of electronic documents.

The **Uniform Real Property Electronic Recording Act** removes any doubt about the ability of a local recording office to accept and otherwise process electronic documents and signatures for recording. This legal ability is only the first stage; there must be an orderly

conversion of every recording office in the United States for electronic recording to become accepted universally. That will be a complex process, but it needs a starting point in the law. The Uniform Real Property Electronic Recording Act, first promulgated by the Uniform Law Commissioners in 2004, provides that essential start.

The Act does three fairly simple things that will ultimately have a monumental effect. First, it establishes that any requirement for originality, for a paper document, or for a writing manually signed before it may be recorded is satisfied by an electronic document and signature. This is essentially an express extension of the principles of UETA and E-SIGN to the specific requirements for recording documents related to real estate transactions. Second, the Act establishes an Electronic Recording Commission to set statewide standards to be followed in every recording office that operates an electronic recording system. The state may create a new commission or designate its duties to an existing state agency. Third, the Act gives local recording offices the discretionary authority to automate certain recording procedures, provided the office complies with the statewide standards.

These may be simple steps in the law, but the entire process of implementing electronic recording of electronic real estate documents will be complex. Inserting the Act in the law of a state requires careful scrutiny of the state's real estate law. For example, if paper documents are effective when they are time-stamped upon delivery to a recording office, when should electronic documents be considered effective if delivered by email while an office is closed? Answers to questions like this one will take some consideration in any state where the uniform act is adopted.

Notwithstanding this need for careful effort, it is important to make the start on electronic recording of real estate documents. Real estate transactions involve billions of dollars in the United States. The efficiency of real estate markets depends upon the adoption of technology to make them faster and more competitive. After UETA and E-SIGN, the key is the Uniform Real Property Electronic Recording Act. Every state needs to consider it as soon as possible.

For more information about the Uniform Real Property Electronic Recording Act, please contact ULC Legislative Program Director Kaitlin Wolff at (312) 450-6615 or kwolff@uniformlaws.org.