

D R A F T

FOR APPROVAL

# **UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-THIRTEENTH YEAR  
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# **UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT**

*WITH PREFATORY NOTE AND PRELIMINARY COMMENTS*

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By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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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. 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 20<sup>th</sup> 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 May 1, 2004, UETA had been adopted in 44 states, the District of Columbia, the U.S. Virgin Islands and was under consideration in two other states. 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 about 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. They may also require that the recorded document be an original document. Similar laws and regulations may require signatures to be in writing and acknowledgements to be signed. Being electronic and not on paper, being an electronic version of an original paper document, or having an electronic signature or acknowledgement instead of a handwritten one, an electronic document might not be recordable under the laws of these states (*see* Op. Cal. Atty. Gen. No. 02-112 (Sept. 4, 2002)).

Limited experiments with recording electronic documents have been started in approximately 35 counties in a several states. These experiments depend, however, on the initiatives of individual recorders and the opportunities available under the laws of those states. They are piecemeal and offer only limited interoperability among the recording venues. 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., Raised Bill No. 5664, 2004)). 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 act was drafted to authorize the receipt, recording and retrieval of documents and information in electronic form. Its fundamental principle is that requirements of state law describing or requiring that a document be an original, on paper or in writing are satisfied by a document in electronic form. Furthermore, any requirement that the document contain a signature is satisfied by an electronic signature. The act also establishes a state electronic recording commission that is charged with adopting standards for the receipt, recording, and retrieval of electronic documents.

1                   **UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT**

2

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

4                   Electronic Recording Act.

5                   ***Legislative Note:** The word “recorder” is used in this act to identify the officer who has the*

6                   *authority under state law to accept documents for recording in the land records office. Although*

7                   *this is the word commonly used in most states to identify the officer, other words are also used.*

8                   *For example, the words “registrar” or “clerk” are used in some states to designate that officer.*

9

10                   *In addition, since this act affects all land records systems in a state, the word “recorder” also*

11                   *applies to the appropriate officer under the alternative title system sometimes known as a*

12                   *“Torrens” title registration system. In some states the traditional officer is known as a*

13                   *“recorder” and the officer under the alternative system is known as a “registrar.” Regardless*

14                   *of name, this act would apply to both officers.*

15

16                   *When adopting this act the legislature should consider whether to delete the word “recorder”*

17                   *wherever it appears and substitute the appropriate word or words used under the system or*

18                   *systems in effect in the state.*

19

20                   **Preliminary Comments**

21                   This act applies to the “recording” of documents in the land records office maintained by

22                   a “recorder.” It applies to filing of and searching for documents in that office by whatever term

23                   or terms those functions are defined locally.

24

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

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

27                                   (A) inscribed on a tangible medium or that is stored in an electronic or

28                   other medium and is retrievable in perceivable form; and

29                                   (B) eligible to be recorded in the land records maintained by the

30                   [recorder].

31                   (2) “Electronic” means relating to technology having electrical, digital, magnetic,

32                   wireless, optical, electromagnetic, or similar capabilities.

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

(4) “[Electronic recording commission]” means the [commission] established by Section 5 of this [act].

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

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

(7) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

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

**Legislative Note:** *Since this act does not apply to other offices in which land title information may be filed, certain gaps or inefficiencies may arise. For example, state law applying the clerk of court’s office may not authorize a clerk to implement electronic filing and searching provisions similar to those of this act. If, under other state law, the clerk of court’s office is the proper venue in which to file a satisfaction of a judgment lien, the creditor will not be able to file it electronically. Nor will it be possible for a title examiner to search for it electronically. The need to file or search in a non-electronic fashion may prevent the more complete realization of the benefits of electronic recording sought to be achieved by this act. Thus, a legislature might consider whether it would be beneficial to amend the laws affecting other offices in the state in which real estate documents are filed in order to authorize the filing and searching of electronic documents in them.*

*The term “Electronic Recording Commission” is used throughout this act to designate the body*

1 *to perform the functions described in § 6. A different name or title for the commission may be*  
2 *appropriate under the law or titling customs of an adopting state. Thus, when adopting this act*  
3 *the legislature should consider the term “Electronic Recording Commission” and substitute*  
4 *another term if it may be more appropriate under the law or customs of the state.*  
5

## 6 **Preliminary Comments**

7 (1) **“Document.”** A document consists of information stored on a medium, whether the  
8 medium be tangible or electronic, provided that the information is retrievable in a perceivable  
9 form. The traditional tangible medium has been paper on which information is inscribed by  
10 writing, typing, printing or similar means. It is perceivable by reading it directly from the paper  
11 on which it is inscribed. An electronic medium may be one on which information is stored  
12 magnetically and from which it may be retrieved and read indirectly on a computer monitor or  
13 from a paper printout.  
14

15 This section limits the definition of a document to information that is eligible to be  
16 recorded in the land records office maintained by the recorder. Under state law, certain  
17 documents that contain information affecting real property may not be recordable in the land  
18 records office. For example, in some states certain title information such as liens and judgments  
19 are filed in the clerk of court’s office. This act does not apply to such documents since they are  
20 not eligible to be filed in the land records office maintained by the recorder. Although it would  
21 be valuable to integrate the information of the two offices, this act merely provides for recording  
22 documents in the recorder’s office. (*See* Legislative Note, below.)  
23

24 While a document recorded in a land records office will usually contain information  
25 affecting real property, it need not necessarily be so limited. It applies to any document that is  
26 recorded in the land records office maintained by the recorder. Deeds, grants of easements, and  
27 mortgages are documents subject to this act. Similarly, certificates and affidavits not directly  
28 affecting real property may be documents under this act if state law allows these documents to  
29 be recorded in the land records office.  
30

31 The definition of a document in this act is derived from the definition of “record” as  
32 contained in the Uniform Electronic Transactions Act (UETA) § 2(13). In the terms of that act,  
33 a document is a record that is eligible to be recorded in the land records maintained by the  
34 recorder. In selecting the defined term “document” for use throughout this act, an explicit  
35 decision was made not to use “record” as a defined term. The term “record” has a different  
36 meaning in real estate recording law and practice than it has in UETA. If the term “record” were  
37 used generally in this act, it might lead to confusion and misinterpretation.  
38

39 In UETA the term “record” refers to information on a tangible or electronic medium as  
40 does the term “document” in this act. In this act, however, depending on syntax, the term  
41 “record” could have several meanings, all of which deal with the storage of information and not  
42 the information itself. For example, this act deals with the *recording* process through which a  
43 person can *record* a document. The government officer who oversees the land *records* is the  
44 *recorder*. These terms are so ingrained in the lexicon of real estate recording law and practice



1 that it would not be productive to attempt to change them by this act.

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

10  
11 The definition of the term “electronic” in this act has the same meaning as it has in  
12 UETA § 2(5). The Comments made under that subsection are equally applicable to this  
13 subsection.

14  
15 (3) **“Electronic document.”** An “electronic document” is a “document” that is in an  
16 “electronic” form. Both of these terms are previously defined. However, this definition adds an  
17 additional requirement not specifically stated in the individual definitions. In order to be an  
18 “electronic document” the document must be received by the recorder in an “electronic” form.  
19 The character of a document as “electronic” or “paper” will be determined at the moment it is  
20 received by the recorder.

21  
22 A document may have an existence in an “electronic” form prior or subsequent to being  
23 received by the recorder, while not being an “electronic document” under this act. For example,  
24 the document may have been created by an electronic process or have existed in an electronic  
25 form before being converted to, and received by the recorder in, a paper form. Thus, a document  
26 prepared on a computer by means of a word processing program may have been created  
27 electronically and may still exist electronically. If, however, the document is printed out and  
28 submitted to the recorder on paper the submitted document is not an electronic document.  
29 Similarly, after arriving in the recorder’s office in a paper form the document may be converted  
30 to an electronic form prior to, or as part of, the recording process. The paper document does not  
31 become an electronic document because of the conversion.

32  
33 By comparison, a document received by the recorder in an electronic form, but  
34 subsequently converted to a paper form, will be considered to be an electronic document. For  
35 example, a document received electronically and printed in a paper form, as with the process  
36 commonly known as a facsimile or a FAX, is an electronic document. Issues common to  
37 electronic documents, such as security and integrity, also relate to a facsimile or FAX document.

38  
39 Similarly a document may have been executed in a paper form with “wet signatures” and  
40 subsequently imaged and converted into an electronic format. If that document is received by  
41 the recorder in a electronic format, it will be considered to be an electronic document.

42  
43 This act does not state or limit the type of electronic documents that may be accepted by  
44 the recorder. Nor does it state the type of electronic signatures that permissible. Those matters  
45 are subject to the standards adopted by the state electronic recording commission pursuant to § 6

1 of this act.

2  
3 This act applies only to documents that are received by the recorder in an electronic form  
4 and enables those documents to be recorded. The recordability of documents not received by the  
5 recorder in an electronic form continues to depend on other state law.  
6

7 (4) **“Electronic Recording Commission.”** As is further defined and described in §§ 5  
8 and 6, this act creates an Electronic Recording Commission to promote harmony in the standards  
9 and practices of recording offices that use electronic recording in various adopting states and to  
10 keep their technologies compatible.  
11

12 (5) **“Electronic signature.”** The term “electronic signature” is based on the definition  
13 of that term in UETA § 2(8). Thus, the Comments to that section have general applicability to  
14 this section also. However, this definition uses the word “document” instead of “record” to  
15 identify the instrument being signed. (*See generally* paragraph 1, above, for a discussion of the  
16 reasons).  
17

18 (6) **“Paper document.”** A “paper document” is one that is received by the recorder in a  
19 form that is not “electronic.” Despite the use of the word “paper,” this document form is not  
20 limited to documents on a paper medium; the word “paper” is merely a convenience.  
21 Just as with the definition of an “electronic document,” the moment at which the character of the  
22 document will be determined is the moment it is received by the recorder. As stated in  
23 paragraph 3, above, if a document is received by the recorder in a non-electronic form it is a  
24 paper document regardless of whether it has a prior or subsequent existence as an electronic  
25 document.  
26

27 (7) **“Person.”** The definition of a “person” is substantially the same as that contained in  
28 UETA § 2(12). It includes individuals, associations of individuals, and corporate and  
29 governmental entities.  
30

31 (8) **“State.”** The word “state” includes any state of the United States, the District of  
32 Columbia, the United States Virgin Islands, or any territory or insular possession subject to the  
33 jurisdiction of the United States.  
34

### 35 **SECTION 3. VALIDITY OF ELECTRONIC DOCUMENTS.**

36 (a) If a law requires, as a condition for recording, that a document be an original,  
37 be on paper or other tangible medium, or be in writing, an electronic document satisfying this  
38 [act] satisfies the law.

39 (b) If a law requires, as a condition for recording, that a document be signed, an

1 electronic signature satisfies the law.

2 (c) A requirement that a document or a signature associated with a document be  
3 notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic  
4 signature of the person authorized to perform that act, and all other information required to be  
5 included, is attached to or logically associated with the document or signature. A physical or  
6 electronic image of a stamp, impression, or seal is not required to accompany an electronic  
7 signature.

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

17  
18 *For example, it is possible that electronic recording systems might not cease to operate*  
19 *when recorders lock their office doors at night or over the weekend. Indeed, it may be possible*  
20 *for electronic recording systems to accept electronic documents 24 hours per day and seven days*  
21 *per week. In that situation the electronic recording system may, for example, receive and place*  
22 *an electronic mortgage filed on Saturday into a queue to be processed and indexed on Monday*  
23 *morning. If a potential purchaser should search the electronic recording system on Sunday to*  
24 *determine whether there are any claims against the real estate, the purchaser will not find the*  
25 *mortgage and might accept a deed and file it electronically, also on Sunday.*

26  
27 *Although the mortgage was filed, it was not indexed; by its status in the queue it might*  
28 *not even be considered to have been recorded until Monday morning when it is processed. The*  
29 *laws of the various states are not consistent on how this issue should be addressed. It depends*  
30 *on whether this electronic mortgage is considered delivered to the recorder when it is received*  
31 *by the queue or whether it is not delivered until the queue is opened on Monday. However, if*  
32 *some receipt of the mortgage is sent to the mortgagee on Saturday and is also retained within*  
33 *the system, the resolution may depend on whether state law requires indexing to be completed in*  
34 *order for the recording of the mortgage to be completed or whether existence of information in*  
35 *the recording system is sufficient. The state laws are sufficiently diverse that this act could not*  
36 *amend all state laws in a uniform fashion to achieve the same result. Thus, the issues of when*  
37 *recording should be considered to have occurred and whether indexing is required for a*  
38 *complete recording are issues that the legislature of each enacting state should consider.*

## Preliminary Comments

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

This subsection also provides that any stipulation of state law requiring that a document be an original document is satisfied by an electronic document meeting the requirements of this act. For example, one form of electronic document is created by making an electronic duplicate of an original paper document. The duplicate is an electronic “picture” of the original document with all of its signatures and verifications. Under some state laws, the electronic duplicate may be considered to be a copy of the original paper document and not the original itself. Furthermore, under the laws of the state, a copy may not be considered to be a recordable document. This act corrects that circumstance and allows the electronic document to be recorded.

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

(c) Subsection (c) is derived from UETA § 11. The Comments to that section are generally relevant to this section.

This section provides that any statute, regulation, or standard requiring that a notarization, acknowledgement, verification, witnessing, or taking of an oath be done on paper or similar tangible medium, that it be done in writing, or that it be signed, is satisfied by an electronic signature that is attached to, or logically associated with, the electronic document in accordance with standards adopted by the state electronic recording commission. It permits a notary public or other authorized person to act electronically without the need to do so on paper.

It also provides that any statute, regulation, or standard that requires a personal or corporate seal, stamp, or impression is satisfied by an electronic notarial, corporate, or other seal. Thus, the notarial stamp or impression that is required under the laws of some states is not required for an electronic notarization under this act. Nor is there a need for a corporate stamp or impression as would otherwise be required under the laws of some states to verify the action

1 of a corporate officer. Nevertheless, the information that would otherwise be contained in the  
2 stamp or impression may be required to be attached to or logically associated with the document  
3 or signature.  
4

#### 5 **SECTION 4. RECORDING OF DOCUMENTS.**

6 (a) A [recorder] who implements any of the functions described in this section  
7 shall do so in compliance with standards established by the [electronic recording commission].

8 (b) A [recorder] may receive, index, store, archive, and transmit electronic  
9 documents.

10 (c) A [recorder] may provide for access to, search for, and retrieval of,  
11 documents and information by electronic means.

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

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

17 (f) Any fee [or tax] that a [recorder] is authorized to collect may be collected  
18 electronically.

19 (g) A [recorder] and other officials of a state or a political subdivision thereof, or  
20 of the United States, may agree on procedures or processes to facilitate the electronic satisfaction  
21 of prior approvals and conditions precedent to recording and the electronic payment of fees and  
22 taxes.

23 ***Legislative Note:*** *Although this act does not require a recorder to implement electronic*  
24 *recording, it does not preclude the possibility that other state or local law might require a*  
25 *recorder to do so. Should the state legislature wish to make such a requirement, this section*  
26 *should be amended accordingly.*

## Preliminary Comments

(a) The implementation of the functions described in this section is an option and, with the exception of subsection (d), a decision to implement one or more of them is to be made by the recorder. The act does not require that a recorder must implement any or all of these functions. It merely allows each recorder to implement them when and if the recorder decides to proceed with electronic recording.

If and when a recorder does decide to implement any of the functions described in this section, the recorder must do so in accordance with the standards established by the electronic recording commission. All aspects of the functions described in this section are subject to the standards of the electronic recording commission.

(b) Subsection (b) provides that the recorder may choose to implement electronic recording functions. It permits the recorder to receive electronic documents. The recorder may store those documents, or the information contained in them, in an electronic format and index that information in an electronic index. The recorder may also transmit or retransmit the electronic documents to the recording party or to other parties. Finally, the recorder may archive the documents or the information on them in order to preserve and protect the documents or information.

Since this act applies to “Torrens” title registration systems, a recorder who operates a title registration system may choose to implement the functions of receiving, indexing, storing, archiving, and transmitting electronic documents for the title registration system.

(c) Subsection (c) provides that the recorder may choose to implement electronic search and retrieval functions. It permits the recorder to allow persons to access documents and information in the land records electronically. In so doing the recorder may allow the accessing party to search for the documents or information electronically and to retrieve them in an electronic format.

Since this act applies to “Torrens” title registration systems, a recorder who operates such a title registration system may choose to implement the functions of accessing, searching, and retrieving documents or information in the title registration system.

(d) This act does not require that persons engaging in real estate transactions must use electronic documents in order to have their documents recorded. It merely permits the recorder to accept electronic documents if they are presented. Economics, availability of technology, and human nature suggest that not everyone will begin use electronic real estate documents immediately. It will likely be some time before the use of electronic documents becomes dominant and perhaps well beyond that before paper documents disappear altogether from the conveyancing process. In recognition of that fact, subsection (d) requires the recorder to continue to accept paper documents even after establishing an electronic recording system.

This subsection also provides that the recorder must index the paper documents together

1 with electronic documents as part of a single indexing system. This will enable a title examiner  
2 to make a single search of one index for the purpose of ascertaining all relevant instruments that  
3 were recorded after the initiation of electronic recording. It avoids the inefficient and costly  
4 process of maintaining and searching two separate indexing systems – one for electronic  
5 documents and one for paper documents.

6  
7 Efficiency suggests that the unified index should be an electronic one. It would be more  
8 efficient to store the index information from paper documents in the electronic index rather than  
9 convert and store the index information from electronic documents in the paper index system.  
10 Electronic index information can be sorted and manipulated more easily and efficiently than  
11 paper index information. In addition, an electronic index can be searched more quickly and  
12 without the searcher's physical presence in the recorder's office. However, the act does not  
13 require the single index be an electronic one.

14  
15 (e) Subsection (e) relates to the conversion and storage of the actual text or information  
16 contained in paper documents into an electronic form. It does not concern the index information  
17 that is derived from those paper documents. The treatment of index information is described in  
18 the prior subsection.

19  
20 **“New” paper documents.** The first sentence of this subsection relates to the conversion  
21 of paper documents received by the recorder after the implementation of an electronic recording  
22 system. It does not require that such newly-received paper documents be converted and stored  
23 in an electronic form. It does, however, permit the recorder to make a conversion of paper  
24 documents into an electronic form and thus store them with electronic documents. If the paper  
25 documents are not converted into an electronic form the recorder will continue to store them and,  
26 as public documents, the recorder will continue to provide a process for accessing them.

27  
28 If the conversion is not made, the usefulness and efficiency of the electronic recording  
29 system may be limited. A title examiner will have to obtain physical access to the paper  
30 document information in traditional ways. If electronic documents are stored electronically, he  
31 or she will have to access two different storage systems – one for paper documents and one for  
32 electronic documents.

33  
34 **“Old” paper information.** The second sentence of this subsection relates to the  
35 conversion of information from “old” paper documents recorded prior to the implementation of  
36 an electronic recording system. As with newly-received paper documents, the act does not  
37 require the recorder to convert previously-recorded information into an electronic form. Such a  
38 conversion is, however, permitted under the act.

39  
40 Dealing with “old” information is more difficult than dealing with “new” documents  
41 simply because of the potentially large expenditure of time and money needed to convert a  
42 significant volume of paper information extending over many past years into the new electronic  
43 form. The period needed for a fully-effective conversion would probably extend over a period of  
44 forty to sixty or more years, depending on the customary period of search in the jurisdiction.  
45 Nevertheless, as with the situation of “new” paper documents that are not converted into

1 electronic form, the usefulness and efficiency of the electronic recording system is limited, at  
2 least for the customary period of search.

3  
4 (f) Subsection (f) provides that any fee or tax that is collected by the recorder may be  
5 collected through an electronic payment system. Without a means of paying the applicable fees  
6 and taxes electronically, the achievement of a speedy and efficient electronic recording system  
7 would not be possible. Although the document could be submitted electronically, the fee would  
8 have to be paid by traditional means. The effective completion of the recording would be  
9 delayed until that payment is received by the recorder.

10  
11 The nature and operation of the electronic payment system is not specified. The selection  
12 is subject to standards set by the electronic recording commission. Among others, the  
13 alternatives might include a subscription service with a regular billing system, a prepayment  
14 system with recording and access charges applied against a deposited amount, or a payment per  
15 individual service system.

16  
17 ***Fiscal Note:*** This act does not state the means of funding the establishment or operation  
18 of an electronic recording system in the various recording venues. No single approach is  
19 inherently the best for funding electronic recording systems. This is especially true because of  
20 the range of taxation systems and cultures existing in the various states and recording venues and  
21 the diversity of the various states and recording venues in terms of population and resources. In  
22 fact, the best system for any state or recording venue might involve a combination of  
23 approaches.

24  
25 The establishment, and perhaps the operation, of an electronic recording system might be  
26 funded from the general taxes and revenues of the state or county. Because of the relatively  
27 large “front end” expenses needed to set up an electronic recording system, this approach might  
28 be very appropriate for that purpose. Whether the funding is by the county or the state is an  
29 issue as is the question of whether the funding should cover the entire cost of setting up the  
30 system or only for part of it.

31  
32 Currently, the operation of recording offices is generally funded, whether totally or  
33 partially, by recording fees and taxes charged to users of the recording system. Similar fees and  
34 taxes, perhaps supplemented by an additional electronic recording fee dedicated to the  
35 establishment or operation of an electronic recording system, could be used to fund the system.

36  
37 (g) Commonly, before a recorder may accept a document for recording it must be  
38 approved by one or more other offices in order to assure compliance with the other office’s  
39 requirements. The person submitting the document may also be required to pay fees or taxes to  
40 the other office. If the prior approval and the fee or tax paying processes are not conjoined with  
41 the electronic recording process, it may not be possible to effectuate the speedy electronic  
42 recording envisioned by this act.

43  
44 For example, a document may first need to be submitted to the county assessor or  
45 treasurer to determine whether prior taxes have been paid or whether current ones are due.



1 Under current practice that submission might have to be accomplished in a process independent  
2 from the electronic recording process. If a tax or fee must also be paid, that sum might also have  
3 to be paid independently by check or other non-electronic process. Procedures such as these will  
4 delay the electronic recording process and will limit the achievement of a speedy, efficient  
5 electronic recording system.

6  
7 Subsection (g) permits and encourages the recorder to enter into agreements with other  
8 county and state offices for the purpose of implementing processes that will allow the  
9 simultaneous satisfaction of all conditions precedent to recording and the payment of all fees and  
10 taxes in a single transaction. Any fees and taxes paid by the recording party will be allocated  
11 between the recorder and the other offices in accordance with the agreements.  
12

13 **SECTION 5. [ELECTRONIC RECORDING COMMISSION].** An [electronic  
14 recording commission] is created. It must consist of [number] members appointed by [the  
15 governor]. The majority of the members of the [commission] must be [recorders]. To be  
16 eligible for appointment to the [commission], an individual must have a professional interest in  
17 electronic recording. The members of the [commission] may not receive compensation but may  
18 be reimbursed for reasonable expenses. The [commission] may employ personnel to assist it in  
19 carrying out its responsibilities.

#### 20 **Preliminary Comments**

21 This section creates a state electronic recording commission and provides for its general  
22 makeup. The exact size of the board is to be determined by the legislature as is the length of the  
23 commissioners' term of office. The appointment of the commissioners is to be made by the  
24 governor, or other state official or governmental body determined by the legislature.  
25 Membership on the commission is voluntary and commissioners are not compensated, although  
26 they may be reimbursed for reasonable expenses.  
27

28 The majority of the members of the commission must be recorders. Recorders, by the  
29 fact that the standards adopted by the electronic recording commission will affect the operation  
30 of their offices, have a professional interest in generating functional and efficient standards. If  
31 the recorders are appointed from sufficiently diverse recording venues, they can also provide  
32 valuable input as to the needs of recording districts of varying size, population and resources, as  
33 stated in section 7 of the act.  
34

35 Other persons who might have a professional interest in electronic recording standards  
36 include, but are not limited to, real estate attorneys, mortgage lenders, representatives from the

1 title and escrow industries, real estate brokers, and notaries public. They are direct or indirect  
2 users of land records systems and, by their experience and education, are able to provide insight  
3 and assistance in adopting functional and efficient standards.  
4

## 5 **SECTION 6. UNIFORMITY AND STANDARDS.**

6 (a) The electronic recording [commission] shall adopt standards to implement  
7 this [act].

8 (b) To keep the standards and practices of recording offices in the states that use  
9 electronic recording under this [act] or a substantially equivalent law in harmony and their  
10 technology compatible, the [electronic recording commission], when adopting, amending, and  
11 repealing standards, shall:

12 (1) consult with the [electronic recording commissions] in the other  
13 states;

14 (2) consider the most recent standards promulgated by the Property  
15 Records Industry Association or any successor organization;

16 (3) consider the standards and practices of, and the technology used by,  
17 the other states;

18 (4) consider the views of interested persons for the purposes of obtaining  
19 guidance and assuring uniformity; and

20 (5) consider the needs of [counties] of varying size, population, and  
21 resources.

### 22 **Preliminary Comments**

23 (a) The electronic recording commission is directed to adopt standards to implement the  
24 provisions of this act. As provided in section 4, recorders implementing any of the functions of  
25 this act must comply with the standards adopted by the electronic recording commission.  
26

1 (b) One of the objectives of this act is to facilitate the efficient use of electronic  
2 recording within and between states. This subsection directs the electronic recording  
3 commission to seek to keep the standards and practices of the recording offices in states using  
4 electronic recording in harmony with each other and their technology compatible. The  
5 commission is not required to adopt the same standards and practices that exist in other states,  
6 but must give them serious consideration. When adopting, amending or repealing standards the  
7 commission must do the following:  
8

9 (1) The commission must consult with the electronic recording commissions of  
10 other states. In many situations, the electronic recording commission of another state may have  
11 already considered the same issue. That commission's research, findings and subsequent  
12 experience may prove very helpful to the commission is making its decision.  
13

14 (2) The commission must consult with the most recent standards promulgated by  
15 the Property Records Industry Association (PRIA). As a national standard-setting organization  
16 PRIA will likely have considered the issue before the commission and have developed a protocol  
17 or standard to deal with it. Furthermore, since PRIA is national in scope, it will likely already  
18 have considered the needs of recording districts of varying size, population and resources when  
19 promulgating its standards.  
20

21 (3) The commission must consider the standards, practices and technology used  
22 by other states. Ease of user access and interoperability depends highly on similarity of  
23 standards and operating processes among the various recording offices. However, differences in  
24 operating processes and their governing standards may be justified based on legitimate  
25 differences that exist from venue to venue.  
26

27 (4) The commission must consider the views of other interested parties. Among  
28 others, these persons might include potential users of the electronic recording system such as real  
29 estate attorneys, mortgage lenders, representatives from the title and escrow industries, real  
30 estate brokers, and notaries public. Also included might be potential suppliers of hardware,  
31 software and services for electronic recording systems.  
32

33 (5) The commission must consider the needs of counties of varying size,  
34 population and resources. Because most states are quite diverse in the size, population and  
35 resources of their recording venues, it is important that the state electronic recording commission  
36 consider all of their needs. Standards that are designed only for large, populous and well-funded  
37 recording districts may not promote the development of electronic recording in smaller, less-  
38 populous and not-as-well funded recording districts. This subsection recognizes that the  
39 standards should promote the overall good of the entire state. Thus, the commission is advised  
40 to consider the needs of the entire spectrum of recording districts.  
41

## 42 **SECTION 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

43 applying and construing this Uniform Act, consideration must be given to the need to promote

1 uniformity of the law with respect to its subject matter among states that enact it.

2 **Preliminary Comments**

3 This section recites the importance of uniformity among the adopting states when  
4 applying and construing the act. It is more general than the uniformity stated in section 6. This  
5 section seeks uniformity in all situations when the application or interpretation of the act itself is  
6 considered or under review.  
7

8 **SECTION 8. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**  
9 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal  
10 Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.)  
11 but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or  
12 authorize electronic delivery of any of the notices described in Section 103(b) of that act (15  
13 U.S.C. Section 7003(b)).

14 **Preliminary Comments**

15 This section responds to the specific language of the Electronic Signatures in Global and  
16 National Commerce Act and is designed to avoid preemption of state law under that federal  
17 legislation.  
18

19 **SECTION 9. EFFECTIVE DATE.** This [act] takes effect [date].

20 **Preliminary Comments**

21 This section provides that this act will become effective in the enacting jurisdiction on  
22 the designated date.  
23