

D R A F T
FOR DISCUSSION ONLY

UNIFORM REAL PROPERTY ELECTRONIC RECORDATION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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WITH PREFATORY NOTE AND REPORTER'S NOTES

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ON UNIFORM STATE LAWS

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**DRAFTING COMMITTEE ON UNIFORM REAL PROPERTY ELECTRONIC
RECORDATION ACT**

DAVID D. BIKLEN, 153 N. Beacon St., Hartford, CT 06105, *Chair*

OWEN L. ANDERSON, University of Oklahoma, College of Law, 300 Timberdell Rd.,
Norman, OK 73019

PATRICK C. GUILLOT, 8140 Walnut Hill Lane, Suite 30, Dallas, TX 75231

CARL H. LISMAN, 84 Pine St., P.O. Box 728, Burlington, VT 05402, *Enactment Plan
Coordinator*

JAMES J. WHITE, University of Michigan Law School, 625 S. State St., Room 300, Ann Arbor,
MI 48109-1215

W. JACKSON WILLOUGHBY, 309 Roundhill Ct., Roseville, CA 95747

LEE YEAKEL, P.O. Box 164196, Austin, TX 78716-4196

ARTHUR R. GAUDIO, Western New England College School of Law, 1215 Wilbraham Rd.,
Springfield, MA 01119, *Reporter*

EX OFFICIO

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Norman,
OK 73019, *President*

LANI LIU EWART, Suite 1800, Alii Pl., 1099 Alakea St., Honolulu, HI 96813, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

DALE WHITMAN, University of Missouri-Columbia, 216 Hulston Hall, Columbia, MO 65211,
American Bar Association Advisor

EXECUTIVE DIRECTOR

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL
35487-0382, *Executive Director*

WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195
www.nccusl.org

UNIFORM REAL PROPERTY ELECTRONIC RECORDATION ACT

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UNIFORM REAL PROPERTY ELECTRONIC RECORDATION ACT

Prefatory Note

The status of electronic information technology has progressed rapidly in recent years, making it technically feasible to execute real estate transactions electronically. The Uniform Electronic Transactions Act (UETA) was approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1999 and has already been adopted in at least 41 states and is under consideration in six others. The federal Electronic Signatures in Global and National Commerce Act (E-Sign) was adopted in 2000. The two acts have now made it legally feasible to execute real estate transactions electronically. While the documents that result from those electronic transactions are valid and enforceable between the parties to the transaction, there is no agreement as to whether those documents may be recorded in the local land records. Current state laws and regulations generally describe a recordable instrument as one that is in writing or on paper, thus leading to a concern that electronic documents are not recordable.

Nor is there any guidance as to the procedures and standards for accepting and processing those documents by recorders. Limited experiments with recording electronic documents have been initiated in a few counties in a few states. These approaches have resulted from the initiatives of individual recorders. However, they are piecemeal and have little or no interoperability. To date, there are no standards for the acceptance and processing of electronic documents either within a state or across state lines.

Study committees in several states have begun to consider the question of electronic recording of real estate documents and would benefit by the availability of a uniform act authorizing the recording of those documents. In 2002 a drafting committee was established by the NCCUSL Executive Committee to draft a Uniform Real Property Electronic 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 document is a draft of that act. It provides that an electronic recording system is one that, in its fullest form, involves the creation, receipt and retrieval of documents in an electronic form. Its fundamental principle is that requirements of state law describing or even requiring that documents be in paper or written form are satisfied by a document in an electronic form. It also provides that guidelines or regulations for the recording, storage and retrieval of electronic documents are to be formulated either by the recorder or by a state board.

1 **UNIFORM REAL PROPERTY ELECTRONIC RECORDATION ACT**

2

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

4 Electronic Recordation Act.

5 *Reporter's Notes*

6 This act enables the recording of electronic documents.

7

8

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

10 (1) "Document" means a record that is eligible to be recorded in the land records in the

11 office of the recorder.

12 (2) "Electronic" means relating to technology having electrical, digital, magnetic,

13 wireless, optical, electromagnetic, or similar capabilities.

14 (3) "Electronic document" means a document that is received by the recorder in

15 electronic form.

16 (4) "Electronic recording system" means a system, including its databases, duplicate

17 archives, hardware, and software, established under this [act] for the electronic [recordation]

18 [registration] of documents.

19 (5) "Electronic signature" means an electronic sound, symbol, or process attached to or

20 logically associated with an electronic document and executed or adopted by a person with the

21 intent to authenticate the electronic document.

22 (6) "Person" means an individual, corporation, business trust, estate, trust, partnership,

23 limited liability company, association, joint venture, public corporation, or government;

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

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

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

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

9 ***Reporter’s Notes***

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

16
17 In terms of the Uniform Electronic Transactions Act (UETA) § 2(13), a document is a
18 record that affects an interest in real property. This definition of the term “document” accepts
19 that concept by referring to a document as a “record.” However, in selecting the defined term
20 “document” for use throughout the act, an explicit decision was made not to use the term
21 “record,” as is done in UETA. The term “record” has a different meaning in real estate recording
22 law and practice than it has in UETA. If the term “record” were used generally in this act, it
23 would lead to confusion and misinterpretation.

24
25 In UETA the term “record” refers to information on a tangible or electronic medium as
26 does the term “document” in this act. (See the definition of the term “record,” below.) In this
27 act, however, depending on syntax, the term “record” could have several different meanings, all
28 of which deal with the official storage of real estate information and not the information itself.
29 For example, this act deals with the *recording* process through which a person can *record* a
30 document. The governmental officer who oversees the land *records* office is the *recorder*.
31 These terms are so ingrained in the lexicon of real estate recording law and practice that it would
32 not be productive to attempt to change them by this act.
33

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

9 The definition in this act has the same meaning as it has in UETA § 2(5). The comments
10 to that subsection are equally applicable to this subsection.
11

12 (3) Electronic document. An electronic document is a “document” that is in an
13 “electronic” form. Both of these terms are previously defined. However, this definition adds a
14 specific aspect to the nature of the defined term “electronic document.” It is an electronic
15 document that is received by the recorder in electronic form.
16

17 A document may have a prior or subsequent existence in an “electronic” form, while not
18 being an “electronic document” for purposes of this act. For example, the document may have
19 been created by an electronic process or existed in an electronic form before being converted to,
20 and received by the recorder in, a paper form. Similarly, after arriving in the recorder’s office in
21 a paper form it may have been converted to an electronic form prior to, or as part of, the
22 recording process. Neither of these documents is an electronic document as defined in this act.
23 By comparison, a document received by the recorder electronically, but subsequently converted
24 to a paper form will be an electronic document, nonetheless. For example, a document received
25 electronically and printed in a paper form, such as a FAX, is an electronic document. Similarly, a
26 document received and recorded in electronic format, but subsequently printed on paper is an
27 electronic document. This act only applies to documents that are received by the recorder in an
28 electronic form and enables those documents to be recorded. The recordability of documents not
29 received by the recorder in electronic form continues to depend on other state law.
30

31 A specific definition is not given for a “paper document” inasmuch as that term is
32 intended to include all documents in a tangible form that are currently accepted by the recorder.
33 As such it is defined elsewhere under state law. The continued acceptability of “paper
34 documents” is stated in section 4 of the act.
35

36 (4) Electronic recording system. The electronic recording system is inclusive of all
37 aspects of that system. It consists of the hardware on which the recorded information is stored as
38 well as the software by which it operates. It includes the databases that are stored in the system
39 as well as the duplicate archives in which copies of the databases are preserved, even the archive
40 not located on-site. Furthermore, since electronic documents must be communicated to and from
41 the recorder, it also includes the hardware and software that form the means of communication
42 with the recorder’s office.
43

1 The term “electronic recording system” also applies to any “Torrens” title registration
2 system that is converted into an electronic form. Thus, a recorder who operates such a title
3 registration system may accept “registration” information in an electronic form.
4

5 (5) Electronic signature. The term “electronic signature” has essentially the same
6 definition in this act as in UETA § 2(8), except to the extent that that subsection makes reference
7 to the term “record.” The comments to that subsection are also applicable to this subsection,
8 except as they use the term “record.” However, this definition substitutes the word
9 “authenticate” for the word “sign” as used in UETA for the purpose of clarifying a signature as a
10 means of authenticating the document as the instrument executed by the signator.
11

12 (6) Person. The definition of “person” is the same as contained in UETA § 2(12). It
13 includes individuals, associations of individuals, and corporate entities.
14

15 (7) Record. When used as a noun, the term “record” means information stored on a
16 tangible medium or in an electronic form. Although it is used as a noun for definitional purposes
17 in this section, it is not otherwise used as a noun in the act because to do so would lead to
18 confusion. (See Reporter’s Notes regarding the term “document” above.) It’s meaning, as used
19 here, is the same as in UETA, to the extent that it is there used as a noun.
20

21 A record must be in, or capable of being retrieved in, perceivable form. Electronic text
22 recorded in a computer memory that could be printed or displayed from that memory constitutes
23 a record. Similarly, text that is written on a paper medium also constitutes a record.
24

25 (8) Recorder. “Recorder” is given a definition in this section for the purpose of easing
26 the use of the term elsewhere in the act. The intent is to permit the state legislature to insert the
27 appropriate governmental officer who administers the land records office under local law, such as
28 the county recorder, town recorder, registrar, or similar term.
29

30 (9) State. This is the definition of “state” as used in Uniform Acts.
31
32

33 **SECTION 3. ELECTRONIC DOCUMENTS.** A recorder may accept an electronic
34 document that meets the requirements set out in the [guidelines] [regulations] adopted pursuant
35 to Section 5 and [record] [register] it in an electronic recording system. Any requirement by law
36 other than this [act] that a document must be on paper or in writing in order to be eligible to be
37 recorded does not prevent the recording of an electronic document.

38 *Reporter’s Notes*

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

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

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

20 This act does not state the type of electronic documents that may be accepted by a
21 recorder. Nor does it state the type of electronic signatures that may be accepted. Those matters
22 are the subject of guidelines or regulations adopted pursuant to section 5 of the act.
23 If the recorder registers titles under a "Torrens" title registration system, then this act also applies
24 to the acceptance of electronic documents for that title registration system.
25
26

27 **SECTION 4. PAPER DOCUMENTS.**

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

32 (b) A paper document [recorded] [registered] before establishment of an electronic
33 recording system may be indexed and converted into electronic form and stored in the system.

34 *Reporter's Notes*

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

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

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

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

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

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

1 might index (and possibly convert) old documents only back to the date specified by local law or
2 custom as the limit of the period of search, thus saving the expense of indexing (and converting)
3 generally unused documents while continuing to make them available in traditional paper
4 formats. If the old documents are not indexed or converted, they will be indexed and stored by
5 traditional means as part of the services of the recorder and available for search.
6
7

8 **SECTION 5. ELECTRONIC DOCUMENT RECORDING [GUIDELINES]**

9 **[REGULATIONS].**

10 **Alternative A:**

11 (a) Subject to the law of this state other than this [act], the recorder shall promulgate
12 guidelines regarding:

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

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

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

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

24 **Alternate B:**

1 (a) A [state board] consisting of [number] members appointed by [appointing authority]
2 is hereby created. The majority of the members of the [state board] must be recorders. The
3 members of the [state board] shall receive no compensation but may be reimbursed for
4 reasonable expenses.

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

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

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

12 (3) processes and procedures to ensure adequate preservation, disposition,
13 integrity, security, confidentiality, and auditability of electronic documents; and

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

16 (c) In promulgating regulations under subsection (b) the board shall, to the extent
17 feasible, consult with recorders in the state, professional associations of recorders, and other
18 electronic recording industry associations for the purposes of obtaining guidance and assuring
19 uniformity.

1 *Reporter's Notes*

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

7
8 Subsections (a) (1), (2) and (3) of Alternative A and subsections (b) (1), (2), (3) and (4) of
9 Alternative B are derived from subsection 18(b) of UETA. As set out in that act, the provisions
10 broadly authorized state agencies to receive electronic documents and signatures from non-
11 governmental persons under standards set by a specified governmental agency or officer. Similar
12 provisions are also contained in this act setting out those functions to be performed by the
13 recorder under Alternative A and a state board under Alternative B.

14
15 A state adopting UETA might decide to allocate the functions specified in this act to the
16 same board identified in its version of UETA subsection 18(b). If so, the state would adopt
17 Alternative B of this section and identify the same board.

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

28
29 **Alternative A:**

30
31 Alternative A allocates the duty to specify the recording requirements for his or her office
32 to each recorder. The usual process currently used to establish similar requirements for recording
33 paper documents is by guideline. The recorder adopts and publishes the guidelines for recording
34 documents in his or her office. This Alternative takes the same approach. The guideline process
35 may be less formal and may not be considered a rule or regulation under the state's
36 administrative procedure act. However, if the administrative procedure act does require a more
37 formal adoption process, the recorder's process must comply with its provisions. To
38 acknowledge this limitation, the section begins with the condition "Except as required by law
39 other than this [act]."

40
41 Subsection (a) specifies two specific aspects for the recorder to consider, plus a more
42 general aspect regarding other attributes of electronic recording. The three aspects are:

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

8
9 The subsection lists the formatting attributes that are relevant. They deal with the
10 electronic means by which the document is created; the electronic means by which it is submitted
11 to, and received by, the recorder's office; the electronic means by which the recorder will return
12 the electronic document to the submitter; and the means by which title searchers can retrieve
13 information from the electronic recording system.

14
15 (2) The second subsection deals with the type or types of electronic signature required,
16 the manner and format in which the signature is affixed to a document, and the identity of, or
17 criteria for, third parties in the electronic signature process. Under this subsection, the recorder
18 will identify the acceptable type or types of electronic signature. The recorder may, for example,
19 require a private key/public key digital signature (electronic signature using a secure private key
20 to create it but allowing a public key to read it). Or the recorder may permit another form of
21 electronic signature that provides a secure process. The recorder can establish other types of
22 electronic signatures as may be appropriate and change those designations from time to time.
23 The recorder will also identify the acceptable certifying authorities for those digital or other
24 electronic signatures and the criteria for approving a certifying authority.

25
26 (3) The third subsection is a catch-all provision allowing the recorder to specify the other
27 attributes of electronic documents as are reasonably necessary for proper administration of the
28 electronic recording system.

29
30 Subsection (b) seeks to promote uniformity across the state and provides a means for
31 assisting recorders in achieving that uniformity. Other recorders in the state may already have
32 adopted similar electronic recording systems and could provide a wealth of information to a
33 recorder. More broadly the recorder's associations and electronic recording organizations, such
34 the Property Records Industry Association, could supply important information and guidance.
35 Thus, this subsection requires that the recorder consult with other recorders, recorders
36 associations and other organizations for assistance in developing guidelines and adopt, to the
37 extent feasible, guidelines that are uniform on a statewide basis.

38 39 **Alternative B:**

40
41 Alternative B allocates the duty to specify the recording requirements to a state board. By
42 allocating the determination of electronic recording requirements to a state board there will
43 inherently be a collaborative and consultative process. Nonetheless the state board should also

1 consult with recorders' associations and organizations as described in subsection (c) so as to
2 obtain their assistance and guidance and to promote uniformity.

3
4 The state board should promote the electronic recording abilities of the recorders by
5 education, training and other means. Also being a statewide board, this entity should promote
6 uniformity in electronic recording systems across the state. Nonetheless, since there may be
7 special circumstances and practices in any given recorder's venue, there should be a process to
8 allow variation as long as variation accomplishes the overall goals of this section.

9
10 The means by which the state board will adopt the recording requirements should be
11 determined by the legislature. If the process is to be less formal, similar to that currently in
12 existence in many recorders' offices, the guideline option should be selected. If the process is to
13 be more formal and subject to the state's administrative procedure act, the regulation option
14 should be selected.

15
16 Subsection (a) creates the state board and states its general makeup. The exact size of the
17 board is to be determined by the legislature. Other than stating that recorders are to be on the
18 board and make up its majority, it does not specify the other members. Those other members
19 might be mortgage lenders, real estate attorneys, representatives from the title and escrow
20 industries, notaries, and others, including public members. The subsection also states by whom
21 the members of the board will be appointed.

22
23 This subsection also states that the state board is a voluntary one and that the members
24 are not paid a salary. However, they are to be reimbursed for reasonable expenses. Although not
25 stated in the subsection, the board will, in all likelihood, function, for administrative purposes, as
26 a part of a state office and the staffing of the operations of the board should be provided by that
27 office.

28
29 Subsection (b) specifies three specific aspects for the board to consider, plus a more
30 general aspect regarding other attributes of electronic recording. The four aspects are:

31
32 (1) The first subsection deals with the manner and format in which an electronic
33 document is created and communicated. The state board will specify the format of the electronic
34 documents. The specified format might be for a self-extracting XML document (digital
35 document from which data can be automatically extracted to the index). Alternatively it might be
36 for a document in a graphic format, whether originally electronic or a copy of a paper document.
37 Or it might allow two or more of these formats or specify other formats yet to be determined.
38 The state board will specify the acceptable format and the requirements of each.
39 The subsection lists the formatting attributes that are relevant. They deal with the electronic
40 means by which the document is created; the electronic means by which it is submitted to, and
41 received by, the recorder's office; the electronic means by which the recorder will return the
42 electronic document to the submitter; and the means by which title searchers can retrieve
43 information from the electronic recording system.

1 (2) The second subsection deals with the type or types of electronic signature required,
2 the manner and format in which the signature is affixed to a document, and the identity of, or
3 criteria for, third parties in the electronic signature process. Under this subsection, the state
4 board will identify the acceptable type or types of electronic signature. The state board may, for
5 example, require a private key/public key digital signature (electronic signature using a secure
6 private key to create it but allowing a public key to read it). Or the state board may permit
7 another form of electronic signature that provides a secure process. The state board can establish
8 other types of electronic signatures as may be appropriate and change those designations from
9 time to time. The state board will also identify the acceptable certifying authorities for those
10 digital or other electronic signatures and the criteria for approving a certifying authority.
11

12 (3) The third subsection deals with the processes and procedures necessary to assure
13 adequate preservation of electronic documents. Under this subsection, the state board will
14 designate the nature and types of the storage systems and the means to assure that they are secure.
15

16 Although this is also an appropriate issue for recorders to consider under Alternative A, it
17 is not stated there as an item for which guidelines must be created because these processes and
18 procedures are an internal matter to the operation of the individual recording office, whereas
19 under Alternative B it is part of the statewide guidance, uniformity and security functions of the
20 state board.
21

22 (4) The fourth subsection is a catch-all provision allowing the state board to specify the
23 other attributes of electronic documents as are reasonably necessary for proper administration of
24 the electronic recording system.
25

26 Subsection (c) seeks to promote uniformity and obtain valuable input from recorders and
27 associations with expertise in the subject. Informed recorders in the state may provide a wealth
28 of information to the board. More broadly the recorder's associations and electronic recording
29 organizations, such the Property Records Industry Association, could supply important
30 information and guidance. Thus, this subsection requires that the board consult with recorders,
31 recorders associations and other organizations for assistance in developing guidelines.
32
33

34 **SECTION 6. VERIFICATION.** A requirement that a document or an associated
35 signature be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the
36 electronic signature of the person authorized to perform that act, together with all other
37 information required to be included by law of this state other than this [act], is attached to or

1 logically associated with the signature or document in accordance with [guidelines] [regulations]
2 of the [recorder] [state board].

3 ***Reporter's Notes***

4 The section is derived from section 11 or the Uniform Electronic Transactions Act. The
5 Comments to that section are generally relevant to this section also.

6
7 This section permits a notary public and other authorized officers to act electronically
8 without the need to do so on paper or similar tangible medium. However, it does not eliminate
9 the requirements that may be established elsewhere in state law for notarizing, acknowledging, or
10 verifying a document or an associated signature. It merely states that those requirements may be
11 satisfied electronically for an electronic document. Furthermore, no personal or corporate seals
12 or stamps will be required as long as the document contains the information specified in the seal
13 or stamp.

14
15
16 **SECTION 7. SATISFACTION OF CONDITIONS PRECEDENT TO**

17 **RECORDING.** The recorder and other governmental officials may agree on procedures or
18 processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to
19 recording and the electronic payment of fees and taxes.

20 ***Reporter's Notes***

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

27
28 For example, a document may first need to be submitted to the county assessor or auditor
29 to determine whether prior taxes have been paid or whether current ones are due. Under current
30 practice, that submission might be accomplished in a process independent from the electronic
31 recording process. Furthermore, if a tax or fee must be paid, that sum might currently be paid by
32 check or other non-electronic process. Procedures such as these will delay the electronic
33 recording process and limit the desire for a speedy, efficient electronic recording process.
34

1 This section permits and encourages the recorder to enter into agreements with various
2 county and state offices for the purpose of adopting a process for the immediate, electronic
3 satisfaction of conditions precedent to recording and the payment of all fees and taxes relevant to
4 the transaction. Any fees and taxes paid by the recording party will subsequently be allocated
5 between the recorder and the other offices in accordance with the agreements.
6 The objective of this section is to encourage the recorder and other county and state offices to
7 enter the agreements and protocols so as to allow for the satisfaction of all conditions precedent
8 and the payment of all fees and taxes in a single, speedy electronic recording process.
9

10 **SECTION 8. FEES [AND TAXES].**

12 (a) The recorder shall collect all applicable recording fees [and taxes]. [The recorder
13 may also collect [an electronic recording system fee [of \$ per document]] [and] [an access fee
14 for searching the electronic recording system] that shall be used to plan, implement, maintain,
15 and improve an electronic recording system].

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

19 ***Reporter's Notes***

20 Subsection (a) provides that the recorder may collect three different fees and taxes,
21 depending on the enactment choices made by the legislature. First of all, the recorder will collect
22 all applicable recording fees and taxes. The amounts of these fees and are not stated but are to be
23 determined by other laws or ordinances.
24

25 Unstated is the unit basis for the charging of the recording fees. The traditional means of
26 charging recording fees for paper documents is based on document pages, usually with an initial
27 per document minimum. With some forms of electronic documents the traditional concept of
28 pages is largely irrelevant; pages are imaginary and do not explain the size of the electronic
29 document. There will also be considerable differences between the sizes of various electronic
30 documents. Several possible approaches suggest themselves, but there is no clear choice. There
31 might simply be a charge per document, although a truly large document would not seem to pay
32 its fair share of storage costs and it might invite the continuance of less efficient means of
33 document generation. A charge based on kilobytes is also possible, but it's not clear what the
34 future of file sizes might be.

1 This subsection also permits the recorder to collect an electronic recording system fee in
2 an amount to be specified. A person recording a document in the electronic recording system,
3 regardless of whether it an electronic or paper document, will pay the electronic recording system
4 fee. The fee will be used to plan, implement, maintain and improve an electronic recording
5 system. Since the fee may be used to plan and implement an electronic recording system, it may
6 be collected even prior to the actual establishment of the system. However, the fee may not be
7 used for other functions of the recorder's office.
8

9 Finally, this subsection provides that the recorder may charge an access fee to a person
10 searching the electronic recording system. The amount or method of computing the access fee is
11 not stated. It may vary depending on the type of searcher and means of access. The fee may be a
12 per-access fee or a subscription fee for continuous access. The access may be from a terminal in
13 the recorder's office or from a private terminal. This fee will also be used to plan, implement,
14 maintain and improve an electronic recording system. This fee may not be used for other
15 functions of the recorder's office.
16

17 The charging of an access fee might potentially raise issues of freedom of information. In
18 most recording districts today, there is no charge simply for searching the land records office.
19 The data are considered open documents available for the public to see. However, fees are
20 imposed for making copies of the information and documents. This fee is, in effect, a fee for
21 providing electronic copies of the documents, much as is currently charged for making paper
22 copies. There are two reasons for suggesting the access fee.
23

24 First of all, the provision of land records information is a function of government that
25 must be paid for in some fashion. A system that places the cost of the system, through the means
26 of a delivery fee, on the user of the service is generally acceptable and reasonable. In order to
27 maintain that proposition, however, the fee may not be designed to preclude access by anyone
28 who wishes to do so as long as he is willing to pay a reasonable fee for the service.
29

30 Secondly, totally free access without any gateway limitations would potentially raise a
31 problem with casual browsers overusing and overloading the system, especially during times of
32 peak demand. There is limited bandwidth available for access to any system. If one or more
33 persons should request large, graphical documents and then seek to download those documents
34 the system could become overloaded. If the electronic land records system is available to the
35 casual browser who can search for and download those files without charge, the potential for
36 problems is increased. While the usage fee is not designed to prohibit access to anyone, it will
37 likely tend to act as a gateway and limit casual browsing of the electronic recording system for no
38 purpose other than "surfing the net."
39

40 Subsection (b) provides that any fee or tax that is collected under this section, section 7 of
41 this act, or under any other provision of law may be collected through an electronic payment
42 system. The achievement of a speedy and efficient electronic recording system would not be
43 possible without a means for paying the applicable fees and taxes electronically. The nature and

1 operation of that system is not specified. The recorder might establish a subscription service
2 based on regular billing, a prepayment system with access charges made against a deposited
3 amount, or an individual pay per-service system.
4

5 6 **SECTION 9. SECURITY AND PRESERVATION OF ELECTRONIC**

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

10 *Reporter's Notes*

11 The preservation and security of the electronic recording system is extremely important to
12 the commercial acceptability of an electronic recording system. As used in this section,
13 “preserve” refers to the process of maintaining and backing up the electronic recording system,
14 while “protect” refers to securing the system from access or tampering by unauthorized persons.
15 To assure that information in the electronic recording system is available to restart the system if
16 there should be an error or failure in the system, this section requires that the recorder take the
17 measures necessary to archive the databases in the electronic recording system. It specifically
18 requires that the electronic recording system be preserved regularly in a duplicate archive that is
19 reasonable distant from the locale of the electronic recording databases in order to assure
20 recovery from catastrophic situations.
21

22 Security from computer “hackers” and intruders is also critical. This section requires the
23 recorder to protect the system from unauthorized access and tampering. In addition to these
24 measures, the backup system will help assure that any errors caused by an intrusion can be
25 rectified.
26

27
28 **SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
29 applying and construing this Uniform Act, consideration must be given to the need to promote
30 uniformity of the law with respect to its subject matter among states that enact it.

31 *Reporter's Notes*

32 This is a standard provision in Uniform Acts for the purpose of reciting the importance of
33 considering the need for uniform among the enacting states when applying and construing the
34 act.

SECTION 11. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND

NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

Reporter's Notes

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