The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter’s notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporters. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.
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# UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

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Prefatory Note

The status of electronic information technology has progressed very rapidly in recent years, making it technically feasible to execute real estate transactions electronically. The Uniform Electronic Transactions Act 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 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, however, no recognized structure for recording, storing and protecting them and providing access to them for title searching purposes.

Limited experiments with recording electronic documents have been initiated by a few counties in a few states. These approaches have resulted from the initiatives of individual county recorders. However, they are piecemeal and have little or no interoperability. They are no uniform standards for the acceptance and processing of electronic documents. Some venues accept one type of electronic document while others accept yet another type. The reliability of accepted electronic signatures in these venues also varies considerably. Any expansion of the current situation without the guidance of a model for a secure uniform system will risk propagating the lack of interoperability and raising concerns about adequate maintenance and preservation of electronic records. 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.

In 2002 a drafting committee was established by the NCCUSL Executive Committee to draft a Uniform Real Property Electronic Recording Act. The Committee’s decision followed a recommendation of the NCCUSL Committee on Scope and Program. Their actions were in recognition of a strong recommendation from the Joint Editorial Board on Uniform Real Property Acts that a uniform act be drafted.

The following document is a first draft for discussion by the drafting committee. It proposes a uniform structure for the recording, storage and retrieval of electronic documents. It also seeks to provide a model for security, maintenance and preservation of electronic documents as they are accepted and stored in the system.
UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

Reporter’s Notes

This first draft of the Uniform Real Property Electronic Recording Act endeavors to incorporate a wide range of features. A recording system must accommodate not only the receipt of a document, but also the processing and storage of that document, and ultimately the retrieval of that document by a title examiner. Developing a recording system for electronic documents should consider the seamless movement of documents through that system.

In addition to establishing a basic recording process for electronic documents, this draft continues to authorize the acceptance of paper documents that will undoubtedly persist for some time. However, it melds the management of electronic and paper documents into a single storage and retrieval system.

It provides a structure (electronic land records index and electronic document record) in which electronic documents are indexed and stored. It adopts a parcel identifier number system to promote efficient and error-free recording and searching. It states when a prospective purchaser of real property will have constructive notice of an electronically recorded document.

It provides for recording uniformity within the state via two processes. It creates a Real Property Records Director to propose and adopt regulations to implement the provisions of the Act in a uniform statewide fashion. It also employs a primary system located in the office of the Secretary of State that is connected electronically to each of the local recorder’s offices. The primary system is an extension of the local recorder’s office and forms a unified system to store electronic documents. Although employing a primary system as the locus for the storage of electronic documents, it retains the centrality of the local recorder in the recording process. It also calls for cooperation between and among states for the purpose of achieving an appropriate countrywide uniformity.

It establishes a process by which titles may be searched on the primary system. It deals with the conversion of paper records currently existing in the various recording offices throughout the state into an electronic format. It provides for coordination of the electronic land records system with various other offices throughout the state, such as the clerks of court and the UCC filing office or offices. It also deals with a number of other important issues, such as backup of the primary system and the security of the recording system, and it provides for 24 hour a day, 7 day-a-week operation.

In drafting this act, it was recognized that there may be more than one way to implement the objectives of the act. It was also recognized that electronic systems are a relatively new technology that will undoubtedly change in the future. It should not be necessary to amend this act in order to permit new implementing variations or changes in technology. Thus, the act is a “shell” under which many variations and technologies may operate. To the extent that additional mandatory directives should be necessary, they may be implemented by regulation or rule.

Despite its breadth, other provisions could be added that would broaden the document preservation and recording processes of this act. By similar measure, various components in this draft are, to some extent, severable and need not be a part of the ultimate proposal.
Preliminary Comments on Types of Electronic Documents and Electronic Signatures

A. Comments on Types of Electronic Documents

1. Computer Graphics Files: Created at the Recording Office

The first type of electronic document is quite simple and involves very little change from current practice, at least in those recording offices currently using computer graphics files to copy and preserve documents. In fact, the document itself is not electronic, only the ultimate copy is electronic.

In this system, the document begins its life as a paper document in the scrivener’s office. After it is drafted, signed by the necessary parties, and acknowledged, it is physically delivered to the recorder’s office. There, the document is electronically scanned into a computer graphic file and stored in the electronic land records storage file. Index information is also extracted from the paper document, or provided separately by the party filing the document. The index information is stored in the electronic index, which is a database of index information for all documents in the electronic land records storage file. The information in the index is hyperlinked or otherwise cross-linked to the documents in the electronic land records storage file.

While this type of document hardly qualifies as a true electronic document in its origins, it would qualify as such after it is converted into a graphic file by the recorder. Indeed, this type of document may be necessary during the (probably lengthy) transition period from paper documents to electronic ones.

However, the shortcomings of this type of system are obvious and many. The original document must still be physically delivered to the recorder, whether by personal delivery or by mail. It must then be converted into a computer graphic file, with all of the possible errors inherent in the process. Furthermore, since the document is “unintelligent,” information cannot be extracted from it by an automated computer process. Consequently, creating the index for the document would entail manual entry of the index information, thereby introducing the potential for further error. Finally, the recording process will be just as time consuming, and potentially more expensive, since there is the need to produce and work with both paper and electronic documents.

2. Computer Graphics Files: Sent to the Recording Office

A second type of electronic document is, in many ways, very similar to the one described

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2. The primary purpose of presenting this material here is to provide an introduction to some aspects of electronic recording. For ease of discussion, some of the shorthand labels used in these Introductory Comments will be employed in the subsequent Reporter’s Notes.

3. An example is a .tiff file.

4. One should not expect that all attorneys, businesses, and individuals would be emotionally or financially able to make a transition to an all-electronic form of conveyancing immediately upon adoption of a statute allowing it. More likely, a considerable number of years will pass before all conveyances can be recorded in electronic format.

5. As a graphic file, it exists only as a picture of the original paper document; it does not contain individual words and letters that can be searched and extracted.

6. However, it would not be as time consuming as a search of the records.
7. Problems exist as to the ability to confirm the veracity of the signature and acknowledgement. Additional problems exist with regard to assuring that the document has not been intercepted and tampered with after it leaves the presence of the executing parties and before it is received by the recorder.


10. This signature process is much as one might experience with certain credit purchases at various stores in which an actual graphic of the purchaser’s signature is created.

above. It, too, begins its existence as a paper document in the scrivener’s office. It is drafted, signed by the parties, and acknowledged, just as any other paper document. However, unlike the previously described document, it is converted into an electronic document in the scrivener’s office. There, it is scanned and copied into a computer graphics file and the copy becomes the electronic document. The copy, along with any necessary index information, is sent electronically to the recorder’s office.

There are several possible means of electronically delivering the document to the recorder’s office. Any additional information required by the recorder could also be included. Once the electronic document is received by the recorder, it will be verified, to the extent possible, and stored in the electronic land records. An entry will also be made in the electronic index, quite similar to that described previously. Searching of the electronic land records system will be similar to that previously described.

The clear advantage of this type of electronic document is that it is converted from paper into an electronic format before it is sent to the recorder’s office, thereby sharply reducing the time and cost of transmitting the document to the recorder. Nevertheless, there are disadvantages. While reducing some costs and saving some time in the recorder’s office, the costs and processing time in the scrivener’s office are increased due to the document conversion process. The conversion process, as in the previously described process, would also raise the potential for error. Further, since each scrivener may use proprietary software and hardware, which each recorder would also need to possess, these costs to the recorder would be increased. Such proprietary software and hardware would also introduce difficulties in any efforts to achieve uniformity in the system.

Finally, the document sent to the recorder’s office would not be the original document—that remains the paper document in the scrivener’s office. This raises questions about the legal status of the electronic copy, as well as security issues about its veracity, such as whether the copy has been manipulated or changed from the original before arriving at the recorder’s office.


A third type of electronic document begins its existence in a true electronic format with no previously executed paper version. Since there is no paper version and no written signature, it depends on UETA or the federal E-SIGN Act for its validity.

The format of this type of document is, in the first instance, a graphic file. It is created in the attorney’s or mortgagee’s office by the use of appropriate hardware and software. The substantive content of the document (i.e., the various agreements of the parties) is reduced to a graphic or picture of words that form the agreement. An electronic signature may then be appended to the graphic electronic document. The signature may be a “holographic” image of the actual handwriting of the signator. When completed, the graphic file presents an on-screen picture of what one would expect of a paper version of the same document, including a
This electronic document is sent to the recorder’s office electronically. When the document arrives at the recorder’s office, it is stored in the electronic land records storage file. Since the document is a graphic file, and index information cannot readily be extracted from it, additional information will likely be required by the recorder when preparing the index. The recorder will obtain that information either from supplemental information supplied by the scrivener, or the recorder will need to read or scan the graphic file to obtain it. The searching of the electronic land records system will be similar to that previously described.

The major advantage of this form of electronic document over those previously described is that it is a true electronic document. There is no need to create a paper original and convert it into a graphic electronic document. It thus enhances productivity by reducing the time and cost of creating the document. As with the former example, it also reduces the time and effort needed for transmittal and recording.

However, a major shortcoming is the fact that it is an “unintelligent” document. It is merely a graphic file and information for the electronic index or for other searching purposes is difficult to extract from it. Thus, supplemental information must be transmitted to the recorder by the attorney or mortgagee. Alternatively, the recorder will be required to extract the information by human intervention. Either of these alternatives adds time and cost as well as increases the potential of mistake due to human error. Further inefficiencies are introduced because of the potential of many different proprietary versions of the technology necessary to create these electronic documents.

### 4. HTML and XML Protocols

A fourth type of electronic document available under current technology makes use of HTML and XML (XHTML) protocols. These protocols are part of an open software architecture and are available for use by programmers and end users. The document is thus readable by all parties involved in the transaction, as well as the recorder, without the need for expensive proprietary software and hardware.

A document created with these protocols uses generally recognized embedded “tags” to designate various data entries, such as “grantor,” “grantee,” “PIN,” and other document contents. Each of the entries is an individual set of data that is readable and extractable electronically. Unlike the previously described documents, this type of electronic document is not a graphic file but rather one containing information in discrete, readable data sets. The document is drafted by the scrivener directly in the electronic format; there is no prior paper document. Nevertheless, it will be readable on-screen much as a traditional paper document would be. It may then be signed by using a digital signature.

After the document is created and signed by the party, it is sent electronically to the recorder’s office. Upon arrival at the recorder’s office, it will be verified and stored in the electronic land records. Index information can be extracted directly from this document and need not be separately sent to the recorder. Based on established standards, information delimited with certain “tags” can be routinely extracted and entered into the electronic index.

The searching process is much the same as previously described. However, since the document consists of individual “words” that can be searched as well as extracted, the title searcher can, if the system is so set up, not only look for information by searching the index, but may also search the actual electronic document. Thus, it will be possible to use the information for a multitude of purposes. Non-standard information can be searched across documents even
B. Comments on Verification – Electronic Signatures

There are security concerns with electronic documents that arise from the potential of an initial forgery of the document or from tampering with the electronic document during transit after it leaves the signator and before it arrives at the recorder’s office. Although different in operation, these concerns also exist with paper documents. Any system of accepting and recording electronic documents should perform essentially the same verification process as currently exists for paper documents.

There are several methods of signing documents electronically, some more secure than others. Within the secure methods, some provide more security and are easier to use than others. Among the obvious insecure methods are simple typed messages and attachments as are currently used in general e-mail communication. Anyone may “sign” a person’s name, even one other than his own, simply by typing it. Even if signed by the purported signator, the e-mail document may be intercepted in transit and its contents changed. Thus, simple e-mail documents are not satisfactory for electronic recording.\(^\text{11}\)

Another type of document security involves biometrics. With these processes, certain unique bodily features can be used to identify the signing party. These include fingerprint scans, retina scans, and even unique blood characteristics. However, these processes are currently not very satisfactory, although increasing in their potential. The technology needed is expensive and generally not widely available. There is also difficulty associated with the recorder’s ability to verify the biometric scan.\(^\text{12}\) Finally, there are serious privacy issues that must be resolved before these methods of identification can be widely used.

There are two types of electronic signatures that currently enjoy some usage or acceptance, but provide different degrees of security. One type involves a “holographic” picture of an actual signature that is made by the party and imbedded in the document. The second form of technology, sometimes known as a digital signature, involves a unique set of characters that is imbedded in the document by means of a secure algorithm.

1. The Holographic Signature

The “holographic” signature is a graphic of the signator’s actual signature. It has been used most often with the graphic original document described in document Type 3, above. The image of the signature and the acknowledgement, if required, is obtained by means of a handwriting stylus. The signature image is then attached to the graphic electronic document and is visible on the computer screen.\(^\text{13}\) Once the signature is attached to the document itself, it presents a close rendition of what one would normally see on a paper document.

A “holographic” signature could be verified by the use of an acknowledgement, the method currently employed in verifying paper documents. The notary could witness the signature or take the acknowledgement and thereupon attach his or her own signature and certification. Both

11. To the extent that this means of signature has been used, the enabling acts or recorder practices have limited acceptance of documents so signed to “trusted signators” – persons or entities that might be assumed to be reliable. See, e.g., Ala. Rev. Stat. § 11-461 (C) (2001); Cal. Gov’t Code § 27279.2 (2002). Of course, this does not assure that they were not forged, nor does it assure that there was no tampering with the document in transit.

12. This will require a database of retina scans, fingerprints, and/or blood characteristics.

13. This signature process is much as one might experience with certain credit card purchases where the purchaser signs with a special pen or stylus.
signatures would then be a part of the document and be transmitted to the recorder’s office.

However, without more, either the signature or the acknowledgement could be tampered with or the document subsequently changed. Thus, by itself, this form of electronic signature is not very secure. Various proprietary vendors may offer secure procedures by the use of passwords, but they are still subject to the same issues. The proprietary nature of these processes also raises issues regarding the ability of the recorder to verify the signature without actually possessing a copy of the proprietary software and hardware.

2. Digital Signature Technology

Digital signature technology involves the use of a private key and a public key (PKI). The private key allows both the execution and the reading of the document, while the public key only permits reading of the document. A certification authority issues a digital signature to a subscribing party. The signature consists of a unique string of characters assigned to the subscriber. The subscriber is issued a private key containing that signature. The document can be signed only by using the private key. The public key is made generally available to the public and allows another party, such as the recorder or title examiner, to verify the signature executed by the subscriber.

The PKI technology may also be incorporated into a “smart card,” that is, a “credit” card that allows the signator to “sign” the document by using the card. This card is similar to a credit card with a computer chip imbedded in it, containing the PKI information. By this means, the document can be verified by tracing it back to the “smart card” issued to the signator.

When the document is “signed” using this technology, an algorithm is applied to the entire document that combines the electronic document with the digital signature in such a way that it is extremely difficult, if not practically impossible, to tamper with the document after it leaves the presence of the signator. If the document has been tampered with, the fact of tampering will be revealed when the document is read using the public key. This form of secure signature is generally associated with the XHTML document described in document Type 4, above. It may also be used to “wrap” the graphical signature and the acknowledgement to the document itself, as described in document Type 3, above.

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UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

SECTION 1. TITLE.

This [Act] may be cited as the Uniform Real Property Electronic Recording Act.

Reporter’s Notes

This is the title of the act as designated by the Executive Committee of the National Conference of Commissioners on Uniform State Laws.

SECTION 2. DEFINITIONS.

In this [Act]:

(1) “Document” means any instrument that creates, transfers, asserts or explains an interest in real property, and includes a deed, patent, mortgage, will, lien instrument, grant of easement, affidavit, court order or decree, notice, and any other instrument that affects an interest in real property. It refers either to an electronic document or a paper document.

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

(3) “Electronic document” means a document that is created, generated, sent, communicated, received or stored by electronic means.

(4) “Electronic recording system” means the information, databases, hardware and software that form the recording system established by this Act. It includes all components of the both the primary system and those in the county [other governmental unit] recorders’ offices and the means of communication between them.

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

(6) “Index information” consists of the following:

(a) the parcel identifier number of the real estate;
(b) the address of the real estate, to the extent available;
(c) the names of the parties to the document;
(d) the marital, corporate, partnership, or other similar legal status of a person
who is a party to the document,
(e) the date of the document; and
(f) any other information as required by the Secretary of State [other state
officer], by [regulation][rule].

(7) “Paper document” means a document that is created and stored on paper or
similar medium.

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

(9) “Primary system” means that portion of the electronic recording system
maintained by the Office of the Secretary of State [other state officer] for the storage and
recording of all documents affecting real property in the state. It is comprised of all components
of the system, including the information, databases, hardware and software.

(10) “Real property” means any interest in real estate located in the state, whether
that interest is considered real property or personal property for purposes of any other statute or
legal decision.

(11) “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.

**Reporter’s Notes**

(1) **Document.** A document is any agreement, conveyance, lien, or other instrument that
affects an interest in real property. The document may either be on a tangible medium (paper
document), or on an electronic medium with the information retrievable in a perceivable form.
In terms of the Uniform Electronic Transactions Act (UETA) § 2(13), a document is a record that
affects an interest in real property.
In selecting the term “document” as used in this act, an explicit decision was made not to use
the term “record,” as employed in UETA. The term “record” has a different meaning in real
estate recording law and practice than it has in UETA. If the term “record” were used in this act,
it would undoubtedly lead to confusion and misinterpretation. In UETA the term “record” refers
to information on a tangible or electronic medium. In this act, depending on syntax, the term would have several different meanings, all of which deal with the official storage of real estate information and not the information itself. For example, this act deals with the recording process through which a person can record a document. The governmental officer who oversees the land records is the recorder. These terms are so ingrained in the lexicon of real estate recording law and practice that it would not be productive to attempt to change them by this act.

(2) **Electronic.** The term “electronic” has the same definition in this act as it has in UETA § 2(5). The comments to that subsection are equally applicable to this subsection.

(3) **Electronic document.** An electronic document is a “document” that is in an “electronic” format. Both of those terms are previously defined. The definition in this act parallels that of an “electronic record” as defined in UETA § 2(7). The comments to that subsection, other than those that refer to the use of the term “record,” are equally applicable to this subsection.

(4) **Electronic recording system.** The electronic recording system is inclusive of all aspects of that system. It consists of the hardware on which the recorded information is stored and through which it is transmitted, as well as the software by which it operates. It also includes the information and databases that are stored on the system.

The electronic recording system, as conceived in this proposal, is a statewide system. The components of the system include both the primary system located in the Secretary of State’s office as well as the various local systems located in the county recorders’ offices. Together they form a seamless and transparent system for the recording of real estate information throughout the state.

(5) **Electronic signature.** The term “electronic signature” has the same definition in this act as in UETA § 2(8), except to the extent that that subsection makes reference to the term “record.” The comments to that subsection are also applicable to this subsection, except as they refer to the term “record.”

(6) **Index information.** As with currently existing land records systems, documents recorded on the electronic recording system will be located by means of an index. Current land records indices are of two types – a grantor-grantee index or a tract index. These indices contain limited but important information about the recorded document as well as its location in the land records system. The electronic land records index defined in section 7 is not limited to one type or the other. It allows for the location of documents by either a grantor-grantee approach or a tract approach.

Index information is information that is either necessary or highly valuable for the proper indexing of a document. It will provide important information that will allow a searcher to determine the relevance of the document to his search. The index entry will also be linked to the recorded document.

The **parcel identifier number** is described in sections 9 and 10 of this act. It is the means by which a parcel of land is described. A person examining a title might search the land records by means of the parcel identifier number and will, in that process, locate all the transactions affecting the parcel.

The **address of the real estate** is not essential to the index, but it would be highly valuable information. A person performing a search might not initially have the parcel identifier number of a parcel or the names of the grantors and grantees involved in a transaction affecting it. She might, however, have the address of the real estate. By means of that address, the searcher could
determine the other, more common search indicia.

The names of the parties to the document form another method to search a land records system. In a traditional grantor-grantee search the title history of a parcel is traced backwards in time by means of multiple searches of the grantee index and then verified forward by means of the grantor index. For most purposes, a search using the parcel identifier number of the parcel will be quicker, more efficient and more accurate. However, a limited search to locate a single document in the electronic document record might be quicker if done by means of the grantor or the grantee on the document or both. More significantly a lien search must, very often, be performed by using the name of the owner of the real property, i.e. the grantee. Many liens are filed personally against a person by name rather than in rem against a parcel of real estate. As a result, all the real property owned by the named debtor is subject to the lien even though the real property is not actually listed in the lien. A search of names will allow the lien searcher to locate all parcels of real estate in which the named debtor has an interest.

The legal status of a person who is a party to the document is also not essential to the index, but would provide valuable information. It allows for a quick determination of the marital, corporate, partnership and other similar status of the parties.

The date of the document provides a reference point for the document and helps to identify it. It affords quick information as to where the transaction fits in the title history of the property. It also helps to establish how quickly the document was recorded after it was delivered.

Because certain information may be uniquely important to the recording process under the law of a particular state, the act allows for the requirement of other information by means of a regulation promulgated by the Secretary of State.

(7) Paper document. A paper document is a traditional document that is created and stored on paper or a similar medium. It is usually printed but may be handwritten or produced by other visible means.

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

(9) Primary system. The database in the Secretary of State’s (or other state officer’s) office is the primary system and the actual locale on which land title information will be stored. Nevertheless, the electronic recording system is a statewide system and consists of the receiving, processing and inputting systems located in each county (or other governmental unit), the primary system located in the Secretary of State’s office, and the means of communication between them. Together they form a semi-centralized statewide electronic recording system.

Documents will be received initially by the county recorders who will review them for accuracy, completeness and compliance with this act and other provisions of law. When the processing is completed the document will be entered in a workstation in the county recorder’s office and transmitted in a transparent fashion to the primary system. There the index information will be stored in the electronic land records index (see section 7) and the electronic document will be stored in the electronic document record (see section 8).

(10) Real Property. Real property is an interest in a parcel of real estate physically located in the state.

(11) State. This is the definition of “state” as used in Uniform Acts.
SECTION 3. PRIMARY ELECTRONIC RECORDING SYSTEM.

The Secretary of State [other state officer] shall establish and maintain the primary system for the recording of all documents affecting real property in the state. The system shall consist of the electronic land records index described in Section 7 and the electronic document record described in Section 8. After a document is entered in a workstation by the county [other governmental unit] recorder, it shall be transmitted electronically to the primary system where it shall be indexed in the electronic land records index and stored in the electronic document record.

On completion of the indexing and recording of a document in the primary system as provided in this Act, the document shall be considered recorded.

Reporter’s Notes

This section establishes the basic primary system to which all the land records offices in the state will be linked. The approach helps to accomplish the objectives of uniformity, efficiency, reliability and security. Nevertheless, it also recognizes the importance of the position of the local recorders in the recording system and maintains their operations and functions. The recorder will continue to provide document review to assure the correctness of documents and compliance with the recording requirements of this act and other state law.

Uniformity is essential to an efficient and speedy recording process. Increasingly, landowners and their attorneys and mortgagees are located in counties or states other than those in which the real estate is located and where the document will be recorded. These parties may regularly deal with land located in many different recording districts. It is important that recording procedures and requirements be substantially similar among the various districts so that scriveners can be confident that a document they draft will be acceptable in any recording district in the state. In today’s economy it would not be to the advantage of lenders or landowners if it were necessary to obtain separate information about each district in which recording is desired and to incur the expense of drafting accordingly. The system proposed here will better assure that uniform requirements and procedures are implemented throughout the various recording districts in the state.

The cost of establishing and maintaining separate and independent electronic recording systems in each recording district in the state will be considerably higher than it will be with the semi-centralized system proposed here. Although this act provides that documents will continue to be entered into the system through the various local recorders’ offices, it will be necessary to incur the expense of establishing and maintaining only one primary system actually storing land records information. If this system were adopted, instead of establishing more than 3,600 separate and independent electronic recording systems in each of the various recording districts across the nation, there will only be one primary system per state. The overall costs will be significantly less. The cost of maintaining fewer, although larger, systems will also be significantly less.

Reliability and security are also important. If trained personnel can not be found and paid in
each of the separate recording districts, those systems will be less reliable. Although finding
those personnel in larger recording districts should not be a difficult matter, in many of the
smaller recording districts hiring qualified personnel might be very difficult. If adequate security
systems and qualified personnel to maintain the systems are not available, disgruntled “hackers”
could cause serious damage to land records. It is believed that better maintenance and security
could be provided for the 50 primary systems than for each of 3,600 independent systems. The
semi-centralized systems can be relied upon to perform better and without serious security risks,
thus assuring reliability and security to the people and economy of the country.

The Secretary of State will establish the primary system on which will be located the two
parts of the recording system – an electronic land records index and an electronic document
record. The electronic land records index will contain index information that will be used to
locate documents in the electronic document record. Index information will be linked to the
related document in the electronic document record. The electronic document record will
contain copies of the actual electronic documents (or electronic copies of the paper documents)
as they were presented to the recorders. Only when the title information is entered into the
electronic land records index and the electronic document record, will it constitute notice to all
persons of the interests revealed therein.

SECTION 4. DOCUMENT ENTRY INTO ELECTRONIC RECORDING SYSTEM.

Except as otherwise provided in sections 20 and 21, the entry of each document into the
electronic recording system shall be performed by the county [other governmental unit] recorder
in which the real property is located. The entry shall be made on a workstation in the recorder’s
office that is electronically linked with the primary system.

Reporter’s Notes

As stated in the Reporter’s Notes to the previous section, the local recorder will continue to
enter the information into the recording system. The local recorder will receive the documents
from the recording parties, whether in electronic or paper formats. The recorder will examine the
documents to assure that the information is correct and adequate, that all requirements of law
have been met, and that all fees and taxes have been paid. The recorder will then enter or
transfer the document and its index information into the primary system from workstations that
are located in the recorders’ offices, and which are linked with the server in the Secretary of
State’s Office. The interoperability of the local system and the primary system will be seamless
and transparent.

SECTION 5. BACKUP OF INFORMATION AND SECURITY.

For security purposes, the electronic land records index and the electronic document record
shall be backed up on a daily basis or at more frequent intervals as determined by the Secretary of
State [other state officer] or replicated at sites physically separate from the locale of the primary
system. The Office of the Secretary of State [other state officer] shall take all measures necessary to protect the primary system against the loss of index information in the electronic land records index and documents in the electronic documents record. It shall also take all measures necessary to protect the primary system from access or tampering by unauthorized persons.

**Reporter’s Notes**

Assurance of the security and integrity of the electronic recording system is extremely important to the commercial acceptability of an electronic recording system. To assure that system information is available to restart the system if there should be an error or failure in the system, this section requires that the information on the primary system be backed up on, at least, a daily basis. Indeed, it is likely that the information will be backed up on an even more frequent basis. The backup will be located at a site physically separate from the primary system to assure recovery from catastrophic situations.

It may be preferable that the Secretary of State maintain two or more servers with the additional servers simultaneously operating replicated copies of the primary system. Not only can the additional servers act as a back up to the other(s), but each server may operate as part of the primary system. This might prove especially beneficial during periods of high usage by alleviating the actual load on a single server.

Security from computer “hackers” and intruders is also critical. In addition to taking measures that will protect the electronic recording system from an intrusion, the backup system will help assure that any intrusion can be rectified. This section also allows the Secretary of State to take whatever other steps are necessary to prevent unauthorized access and tampering.

**SECTION 6. ACCESS TO INFORMATION.**

Except during periods of routine or necessary maintenance, the data in the primary system shall be accessible 24 hours per day, 7 days per week to county [other governmental unit] recorders and to persons searching the system for real property information. The Office of the Secretary of State [other state officer] shall maintain and update the primary system to assure speedy access and functionality.

**Reporter’s Notes**

By recording through the local county recorders, the system will employ human intervention to help assure that information is correct and adequate and that all requirements have been met. The actual staffing and hours of those local offices should be a matter determined by the local recorder. Thus, no specific provision is made regarding the accessibility of the recorders’ offices for recording of documents.
However, the searching process should seldom require human intervention at the primary system venue. Staffing and hours are not as critical for this purpose. Thus, the primary system will be available for searching 24 hours a day, 7 days per week. Availability of the primary system on a 24 hour a day, 7 day a week basis will also accommodate the local recorders if they should decide to keep their offices open for longer hours. It will also allow for information entry “after hours” by the local recorder if backlogs should arise. This may be particularly important to allow for conversion of paper documents into an electronic format. However, it should be noted that any such “after hour” entry will detract from the “real time” notice that the electronic recording system is designed to provide. If entry is delayed until “after hours” the information will not be available for searching and will not provide the expected notice, either constructive or actual.

SECTION 7. ELECTRONIC LAND RECORDS INDEX.

The electronic land records index shall contain the index information for each document creating, transferring, asserting or explaining any interest in real property that is recorded in the electronic recording system. Each entry of index information shall be electronically linked to the electronic document record that it references.

Reporter’s Notes

The electronic land records index will contain index information that will be used to locate documents in the electronic document record. Index information will be linked to the related document in the electronic document record.

SECTION 8. ELECTRONIC DOCUMENT RECORD.

The electronic document record shall contain an electronic version of each document that is recorded in the electronic recording system.

Reporter’s Notes

The electronic document record will contain copies of the actual electronic documents (or electronic copies of the paper documents) as they were presented to the recorders. These documents will be linked to the index information to which they relate.
SECTION 9. PARCEL IDENTIFIER NUMBERS.

(a) The county [other governmental unit] recorder shall assign a parcel identifier number unique to each separately described parcel of real estate located in the county [other governmental unit].

(b) The Secretary of State [other state officer] shall establish a different prefix number for use by each county [other governmental unit] recorder when assigning the parcel identifier number for that county [other governmental unit]. When assigning the parcel identifier number, the prefix number shall be followed by a combination of numbers and alphabetical letters that provide a unique number for each parcel of real estate located in the county [other governmental unit].

(c) The county [other governmental unit] recorder shall ascertain each separately described parcel of real estate in the county [other governmental unit] as previously conveyed and recorded and shall assign to it a unique parcel identifier number. When used in a document, the parcel identifier number shall be deemed to incorporate the parcel’s legal description existing in the county’s [other governmental unit’s] land records prior to the establishment of the electronic recording system. All subsequent transfers shall refer to the parcel identifier number. The county [other governmental unit] recorder shall maintain a database of all parcel identifier numbers and the corresponding land description as previously used to convey that parcel.

Reporter’s Notes

Historically, the earliest type of land records index was a grantor-grantee index. That system depends on the ability to trace the names of grantees and grantors through a parcel’s title history. It originated largely because of the inadequacies of land descriptions. Its great shortcoming is that it requires a review of each index entry retrieved from the system to ascertain both that the correct grantee and grantor have been identified and that the document deals with the correct parcel.

A significant improvement in that system came about with the implementation of tract indices in many states and recording districts. Even if not adopted as the official index by a state or district, title examiners often use such a system in their own title plant. This system operates by identifying a parcel of land by description and then following it through its title history. Various systems of describing or identifying a parcel have been used. However, the more verbose the system, the more difficult it is to use in an electronic land records system.

When searching for title information electronically, it is important that the search criteria be
entered precisely as it exists in the electronic index. Failure to do so will cause a failure in the search. For example, if the description of a parcel of land, as contained in an entry in the electronic index, should contain a comma, but the search criteria do not, the document would not be located or retrieved. To complicate the search even more, one index entry might contain the comma and another may not. Land descriptions, especially metes and bounds descriptions, can be very long and knowing whether the entered description contains a comma, semi-colon, or other punctuation is virtually impossible. Beyond the punctuation differences are genuine differences in the description of the parcel. For example, if the correct call in a metes and bounds description, as contained in the electronic index, were N 10° 20’ 30” E, but the entered search criteria were N 10° 20’ 30” W, the document would not be located. However obvious these errors are in hindsight, they are nevertheless common. It should also be noted that the error need not be on the part of the title searcher. The index entry may contain the error totally unbeknownst to the title searcher. For example, this might occur if the index information were not self-extracting; the county recorder would have to hand-enter the description in the index and that would create the possibly of a human error.

The method of avoiding (or at least substantially reducing) this problem is to use parcel identifier numbers (PINS). A PIN is an alpha-numeric combination that is unique to the parcel of land and not duplicated for any other parcel in the state. Once applied to a parcel, that parcel can be searched, conveyed, mortgaged or otherwise transferred simply by reference to that PIN. Rather than applying the PIN to the parcel in a Torrens Registration System, which would be costly, time consuming and fraught with controversy, the system proposed here assigns the PIN to the description currently used for the parcel. The allocation of PINs to parcels would be maintained in a separate database.

The use of a PIN is not meant to suggest that the description assigned to the PIN is precise or even correct. It is simply a shortcut for describing the land. If the description currently used for the parcel is incorrect, it can be changed by a boundary line agreement or quiet title action and the new description can then be assigned to the PIN, as described in the next section.

SECTION 10. CHANGES TO PARCEL IDENTIFIER NUMBERS.

(a) If the legal description of a parcel of real estate is changed, whether by agreement of the parties or by operation of law, the county [other governmental unit] recorder shall assign a new unique parcel identifier number to it. Any document forming the basis of the change shall be recorded in the electronic recording system. The title history of the parcel shall include the prior parcel identifier number for the period prior to the assignment of the new number.

(b) If a parcel of real estate is subdivided, the county [other governmental unit] recorder shall assign a new unique parcel identifier number to the subdivided parcel. Any document forming the basis of the change shall be recorded in the electronic recording system. The title history of each subdivided parcel shall include the title history of the parcel from which it was
subdivided for the period prior to the subdivision.

(c) If a parcel of real estate is assembled from two or more existing parcels, the county
[other governmental unit] recorder shall assign a new unique parcel identifier number to the
assembled parcel. Any document forming the basis of the change shall be recorded in the
electronic recording system. The title history of the assembled parcel shall include the title
history of each parcel from which it was assembled for the period prior to the assemblage.

Reporters Notes

The assignment of PINs must accommodate the possibility that parcels will be further
subdivided or, to the contrary, consolidated. The description of the parcel may also be changed
by the interested party or parties or by operation of law. At the time of the subdivision,
consolidation or change in description a new PIN will be assigned to apply thereafter. The
recording history of old parcels and their PINs, up to the date of the subdivision or consolidation,
will then become part of the history of the new parcel or parcels and their PINs. Since the
document accomplishing the subdivision, consolidation or change in description would have to
have a new PIN in order to be recorded, the body (and perhaps the index entry) should refer to
the old PIN.

SECTION 11. ELECTRONIC DOCUMENTS.

An electronic document shall consist of (1) the index information for the electronic document
in a searchable, self-extractable electronic format, (2) the electronic text of the electronic
document, (3) an electronic signature, and (4) if applicable, electronic graphical information.

Reporters Notes

An electronic document consists of three and perhaps four parts. It will contain the index
information in an electronic format, the electronic text of the document, an electronic signature,
and possibly electronic graphical information. The index information will not need to be hand-
entered by the recorder since it will be automatically self-extracted into the electronic land
records index.

The electronic text of the document will be the main body of the document. Although the
index information will be a part of the electronic body text, undoubtedly additional information,
such as recitals and covenants, will be in the document. The electronic text may include a
description in addition to that contained in the parcel identifier number. This might be useful for
several reasons. For example, an easement might be “across the north 10 feet of PIN 12-34567.”
In this example, the PIN is “12-34567” and is for a parcel of land of some size. However, the
precise location of the easement is not across the entire parcel but only across the north ten feet
of the parcel. The text might also include a reference to another recorded document. For
example, a standard form of mortgage document may be recorded in the electronic land records
system and subsequent mortgages may incorporate that document, or portions of it, by reference.
The signature on the electronic document is in an electronic format and must comply with the requirements of section 12, below.

Finally, the document may contain graphical information such as a plat or drawing. Information of that sort will not be a textual format, but rather will be in a graphical one. Since it is, in reality, an attachment, it must be securely “wrapped” with the rest of the electronic document by the electronic signature process. Also, since it is not in a textual format, it will not be searchable electronically as will the rest of the document.

This section expressly provides that the only form of electronic document that is acceptable is one that has index information in a self-extractable format. As written, the proposal envisions the index information to be extractable from the electronic document itself without the need of hand entry by the recorder. This is a Type 4 document, as described in the Introductory Comments.

Thus, the act does not permit the use of electronic documents that would require the recorder to perform a visual review of the document to ascertain the index information and then separately enter that information into the electronic land records index. The primary reasons for this choice are efficiency and precision. It would not require the recorder to make hand entries of index information, with the attendant time requirements and potentials for error. The documents excluded would be Types 2 and Type 3 documents, as described in the Introductory Comments.

However, this approach in the act could be modified or changed entirely. For example, a minor amendment would make Type 2 or Type 3 documents acceptable if index information were provided in a self-extractable form in an “attached” summary information memorandum. The scrivener would prepare the summary information memorandum and “wrap” it to the electronic document by means of the electronic signature. Appropriate security provisions should be added to assure that the summary information memorandum is valid. (Of course, this opens the potential for error if the index information is attached to the wrong document by the scrivener.)

In the alternative, the requirement for a self-extracting document or summary information memorandum could be eliminated entirely. This would impose fewer restrictions but it would also introduce greater potentials for error and entail time delays that might not be appropriate in an electronic system.

SECTION 12. STANDARD FORMATTING; TECHNOLOGY PROCESSES; SIGNATURES.

The acceptable format for any electronic document and the technological processes and issuing authority for any electronic signature shall be determined by the Secretary of State [other state officer]. The Secretary of State [other state officer] shall approve only the formats for electronic documents, and the technological processes and issuing authorities for electronic signatures that are capable of assuring that:

(1) the party indicated to have signed the electronic document is the party who actually
signed the electronic document, and

(2) the electronic document and its electronic signature have not been changed after it was executed.

Reporter’s Notes

This section sets forth the essential requirements for security of electronic documents. The requirements are technology neutral and permit accommodation to new forms of electronic signatures as they develop and become available.

It sets forth two requirements: the security system must assure that (1) the party indicated to have signed the electronic document is the party who actually signed it, and (2) the electronic document and its electronic signature have not been changed after it was executed. The objective here is to assure that the document is not fraudulent, i.e. not forged initially or changed subsequently. If electronic signatures are not secure, then the public will not accept and trust the system.

The burden of approving formats for electronic documents as well as their technological processes and issuing authorities is placed on the Secretary of State. It provides more assurance than generally exists in most states today that the issuing authority will only issue digital signatures to the appropriate parties and that they are sufficiently secure so as to permit dependence on them in the stream of commerce. For example, the Secretary of State should not approve electronic signatures by an issuing authority if that authority issues electronic signatures on an unverified basis to applicants. However, the Secretary may approve the electronic signatures by an issuing authority if that authority requires verification of the applicant by means of a notarized application or personal appearance before an agent of the issuer.

This section does not require that the signature in the document be acknowledged. Much has been written about the use of acknowledgements, but the reasons for their use can be reduced to essentially two. First, they assure that the signature is that of the signator and is not forged. Second, they assure that the signator was not suffering from duress or undue pressure by another person to sign the document.

The first objective for using an acknowledgement is satisfied by the use of an electronic signature meeting the requirements of this section. That is, the Secretary of State will only approve electronic signatures from issuing authorities that can assure “the party indicated to have signed the electronic document is the party who actually signed the electronic document.” Since the objective of assuring that the signature is not forged is satisfied by the electronic signature process itself, it seems unnecessary to employ the use of an acknowledgement to accomplish the same purpose. It would be redundant.

Furthermore, the electronic signature provides more assurance than does an acknowledgement. It also assures that the electronic document has not been tampered with after it left the presence of the signator. An acknowledgement can not perform that service. To the extent that this assurance can be accomplished when using paper documents it is done by the recorder in her examination of the document for obvious erasures and changes. The electronic signature will add greater assurance in this respect.

Nevertheless, in some situations an electronic acknowledgement might prove beneficial. For example, if electronic signature technology is lost, stolen or otherwise compromised, a document could be fraudulently signed using that technology. Using an electronic acknowledgement
should provide an additional layer of security since the person using the lost or stolen signature technology would have to identify him or herself to the notary in order to obtain the electronic acknowledgement. However, as currently occurs with lower tech fraudulent endeavors of this sort, false identities can be used that will pass the notary’s rather limited ability to screen for this type of identity fraud. Furthermore, as with any stolen credit card, the party to whom it is issued should immediately notify the issuing authority so that the validity and functionality of the electronic signature technology can be terminated.

To the extent that the second purpose of an acknowledgement is actually accomplished (i.e., the prevention of duress or undue influence), the use of an electronic signature as provided in this section will not meet the same objective. Since the document’s signator will be in possession of the actual electronic signature technology, another person could apply duress or undue influence to obtain the signator’s execution of a document. Ideally a notary could isolate the signator and query him or her to determine whether there is any duress or undue influence occurring in the transaction. However, it is questionable how often a notary today actually intervenes in such a transaction to prevent the exercise of undue influence or duress. Furthermore, some protection may be provided from some forms of economic duress by means of cooling-off periods, and it is seldom that a notary will interdict that form of duress either. It is also highly probable that most electronic conveyances or mortgages of real estate will be executed in the presence of attorneys or closing officers, who will perform the same evaluation function as is performed by a notary.

Nevertheless if an electronic acknowledgement should be desired, it may be added to the provisions of this section. A further requirement could be inserted stating that the document must have an electronic acknowledgement in order to be acceptable for recording. However, it is not recommended that the two currently-stated requirements in Section 12 for the approval of the format, technological process and issuing authority be changed since they are valuable and will enhance the effectiveness of the acknowledgement.

If it should be decided to permit the use of Type 2 and Type 3 documents, the use of acknowledgements might be valuable for those documents. Document of these types involve the use of a graphic of the signator’s signature as part of the electronic document. The validity of the original signature can be verified by means of an acknowledgement, which would also be a graphic in the electronic document. While the signature graphic and the acknowledgement graphic might be tampered with, the acknowledgement would at least provide facial assurance that the document is valid. Of course, it might be possible to avoid the issue by requiring that these types of documents also be signed with the same type of electronic signature as described in this section. However, that would require some further identity verification, i.e. verification that the electronic signature and the graphic signature are those of the same person.
SECTION 13. RECORDING ELECTRONIC DOCUMENT.

Except as provided in sections 20 and 21, an electronic document shall be submitted to the county [other governmental unit] recorder in the county [other governmental unit] in which the real estate is located. The recorder shall review the electronic document to ascertain that it contains the appropriate electronic index information, body text, and signature and complies with other requirements of law. In accordance with procedures established by the Secretary of State [other state officer] by [regulation][rule], the recorder shall also review the electronic signature to assure, to the extent possible, that it is a valid electronic signature. As soon as the recorder has ascertained compliance with the requirements of this subsection, the recorder shall enter the electronic document into the electronic recording system.

Reporter’s Notes

This section states the process by which the recording of an electronic document is accomplished. When the recorder receives the electronic document (presumably by an electronic transmission from the signator or his agent), the recorder will examine it to determine whether it contains the required electronic index information in a self-extractable format and appropriate electronic body text. She will also review the electronic signature and check information from the issuing authority to assure that it is proper and valid. For example, if the electronic signature is a public key-private key electronic signature, she would check the issuing authority’s public key to determine that the signature is valid. Finally, she will review the document to assure that it complies with other requirements of law and that the person recording the document has paid the applicable fees and taxes (see section 22). When all requirements have been met, the recorder will enter the document into the electronic recording system. It will be transmitted to the primary system where the electronic index information will automatically be extracted and inserted into the electronic land records index and the document will be placed in the electronic document record (see section 16).

SECTION 14. PAPER DOCUMENTS.

A paper document shall consist of (1) index information for the paper document, (2) the text of the paper document, (3) a signature, [(4) an acknowledgement,] and (5) if applicable, graphical information.
Human nature and economics suggest that not everyone will, at least immediately, changeover to electronic real estate documents. It will be a number of years before electronic documents become dominant and probably many years beyond that before paper documents disappear from the conveyancing process. In recognition of that fact, this and the next section provide for the continued recording of paper documents. However, it melds the recording of paper documents with the recording of electronic documents so that both forms of documents can be recorded in the same electronic recording system.

This section provides for the same essential parts of a paper document as stated for an electronic document in section 11 of the act. However, it adds an acknowledgement to the list. The addition is optional, however, since some states may not wish to require an acknowledgment or may wish to insert a different means of verification.

SECTION 15. RECORDING PAPER DOCUMENTS.

(a) Except as provided in sections 20 and 21, a paper document shall be submitted to the county [other governmental unit] recorder in the county which the real estate is located. The recorder shall ascertain that the paper document contains the appropriate index information, text, signature [and acknowledgement], and complies with other requirements of law. As soon as the recorder has ascertained compliance with the requirements of this subsection, the recorder shall make an electronic copy of the document in an electronic graphical format and shall enter the index information and the electronic copy of the document in the electronic recording system.

(b) The technology and format of the electronic graphical format shall be prescribed by the Secretary of State [other state officer] by [regulation][rule]. The technology shall assure that the electronic copy has not been changed after it is entered into the electronic recording system. The recorder shall keep the paper document until the recording process is completed.
Just as with electronic documents, when the recorder receives a paper document (presumably by personal delivery or postal mail), the recorder will examine it to determine whether it contains the required index information and appropriate text. She will also review the signature and confirm that it has been properly acknowledged. Finally, she will review the document to assure that it complies with other requirements of law and that the person recording the document has paid the applicable fees and taxes (see section 22). When all requirements have been met, the recorder will enter an electronic copy of the document into the electronic recording system. It will be transmitted to the primary system where the index information will be inserted into the electronic land records index and the electronic copy of the document will be placed in the electronic document record (see section 16).

This section provides that paper documents will be converted into electronic copies. It is assumed that the electronic copies will be graphical electronic documents, Type 1 documents as described in the Introductory Comments. This is the format currently in general use today for the copying of paper documents in many recorders’ offices. The act provides that the Secretary of State will prescribe the format of the electronic copy. This authority is granted to the Secretary in order to assure that the electronic graphical copy is compatible with the electronic recording system and can be stored in the same electronic document record as electronic documents.

Since neither the original paper document nor the electronic graphical copy will contain self-extracting index information, the recorder will have to glean this information from the document. After doing so she will hand enter the index information into the electronic land records index, with the accompanying opportunities for error. Alternatively, the act could require that the person submitting the document for recording must also submit a summary information memorandum that separately contains the index information, as is employed in some recording districts today.

Both the process of converting the document into an electronic format and the process of hand entry of the index information involve delays. However, since it will be impossible to completely and immediately eliminate paper documents, those delays and opportunities for error must be accommodated.

It might be noted that if hand entry of the index information is permitted for paper documents, then it might also be permitted for Type 2 and Type 3 documents. See discussion in the Reporter’s Notes to Section 11, above.
SECTION 16. RECORDING IN PRIMARY SYSTEM.

An electronic document or electronic copy of a paper document and its related index information shall be electronically transmitted from the county [other governmental unit] recorder’s office to the primary system. The index information shall be entered in the electronic land records index in the primary system. The electronic document or electronic copy of a paper document shall be stored in the electronic document record in the primary system. Upon completion of the indexing and recording process in the primary system, the recording process shall constitute constructive notice to all persons as provided in Section 29.

Reporter’s Notes

When the county recorder has completed reviewing an electronic document (see Section 13) or a paper document (see Section 15), she will enter the electronic document or an electronic copy of the paper document, along with its index information, into the electronic recording system. It will then be transmitted immediately to the primary system.

Upon receipt by the primary system the electronic document will immediately be stored into the electronic document record and the index information will simultaneously be extracted from it and inserted in the electronic land records index. Similarly, when the primary system receives an electronic copy of a paper document, the electronic copy will be stored in the electronic document record and the accompanying index information that was prepared by the county recorder will be inserted into the electronic land records index.

When that processing is completed the document will be considered recorded and it will constitute constructive notice to all parties. Until the document is properly recorded and indexed, a subsequent purchaser does not have any means to ascertain the existence or content of the document. Thus, no constructive notice should be attributed until that time (see Hanson v. Zoller, 187 N.W.2d 47 (N.D. 1971)). It rejects the premise that a document deposited with the recorder is recorded despite the fact that it is not indexed or improperly indexed (see Haner v. Bruce, 499 A.2d 792 (Vt. 1985)).

SECTION 17. CONFIRMATION OF RECORDING IN PRIMARY SYSTEM.

Upon completion of the recording process, the Secretary of State [other state officer] shall transmit a confirmation of recording to the county [other governmental unit] recorder who entered the document into the electronic recording system. The confirmation of recording shall contain the date and time of the completion of the recording along with summary information about the recorded document. The format of the confirmation of recording and the summary
information shall be determined by the Secretary of State [other state officer] by
[regulation][rule]. At the same time that the confirmation of recording is sent to the county
recorder, the Secretary of State [other state officer] shall also send a copy of the confirmation of
recording to the party recording the document. The confirmation of recording may be sent to the
party electronically, or by postal mail or other means, as requested by the party.

Reporter’s Notes

This section provides that the Secretary of State will confirm that the document has been
recorded to both the local county recorder as well as to the party submitting the document for
recording. Because the structure of a semi-centralized recording system as proposed in this act is
novel, there is no practice or legal authority for transmitting a confirmation of the recording to
the county recorder. However, this is a good approach for at least two reasons.

First of all, without some response from the Secretary’s office such as proposed here, there is
nothing inherent in the nature of electronic communications that would necessarily tell the
county recorder that the document was not received and thus not processed by the primary
system. The recorder might rightfully presume that the transmission of the document occurred
without difficulty when, in fact, the transmission was not complete or totally faulty. Under the
system proposed here, if the recorder does not receive a confirmation of recording within a
customary time (as determined by actual practice), she should inquire about whether the
document was received and, if necessary, retransmit it.

Secondly, Section 15(b) provides that the county recorder will retain the paper document
until the recording process is completed. In the event that there is a failure in the transmission of
the document to the primary system, the county recorder has the substantive information with
which to retransmit the document to the primary system. Receipt of the confirmation of
recording by the recorder will act as notice that the recording process is then complete.
Thereafter, she can confidently return the paper document to the party who submitted the
document for recording.

Under general practice today, the county recorder notifies the party who submitted the
document for recording that it has been recorded. Usually this is done by returning the paper
document together with certain reference information as to the time of recording and the location
of the recorded document in the land records written or stamped on it. This section provides that
the Secretary of State will perform that function by sending the confirmation of recording to the
submitting party. This notification can be sent either electronically or by normal postal mail. (It
seems likely that confirmations of recording for electronic documents will be sent electronically
and confirmations of recording for paper documents will be sent by postal mail. In either case
the Secretary will need the appropriate addresses of the submitting parties.)

Although this proposal selects the Secretary as the person who will send the confirmation of
recording to the submitting party, that job could easily be given to the county recorder. The
reason that it was given to the Secretary in this proposal is based on the fact that, at least with
regard to electronic documents, the electronic confirmation could easily be sent to both the
county recorder and the submitting party simultaneously as part of a single process. Admittedly,
as to paper documents a separate mailing would likely be necessary and the county recorder
could, perhaps more easily, send that confirmation along with the return of the paper document.
However, since it is expected that over a relatively short time electronic documents will become
the predominant form of real estate documents, the choice was made to give that function to the Secretary initially and not to cause confusion by bifurcating the confirmation process.

SECTION 18. OTHER ENTRIES INTO ELECTRONIC RECORDING SYSTEM.

No person shall make an entry into the electronic recording system unless it is based on an electronic document or a paper document submitted and entered into the electronic recording system.

Reporter’s Notes

This section sets forth the simple principle that every entry into the electronic recording system must be based on an electronic or paper document submitted and entered in the electronic recording system. It would appear obvious that no document should be entered into the electronic document record without the supporting electronic or paper document having been submitted. Without that supporting document, entry of a document into the electronic document record would be fraudulent.

Similarly, this section also states that no additions may be made to the electronic land records index without also being based on an electronic or paper document. The recorded document provides a “paper” trail for each entry in the index. If the original document contains an error, it must be corrected by the parties executing a new document correcting the error and then recording the latter document in the electronic recording system.

The full operation of this section should be considered in light of the next section.

SECTION 19. CORRECTING DOCUMENT.

(a) A correcting document is a document that contains a correction to the electronic document record or the electronic land records index that may be necessary to conform it to the original document.

(b) If an error occurs in the recording process that requires a correction either to the electronic document record or the electronic land records index, the correction may be made only by means of a correcting document. The correcting document shall be recorded in the electronic recording system in such a manner as to link it to both the original parcel and party.

(c) The correcting entry may be executed by the county [other governmental unit] recorder without prior notice or consent of the any party affected by the correcting document.
The recorder shall immediately give each party notice of the correcting document. A party may object to the correcting document in an appropriate document submitted to the county [other governmental unit] recorder. The document containing the objection shall be indexed and recorded in the electronic recording system.

Reporter’s Notes

It might occur that after a document has been recorded and indexed, an error is discovered in either the electronic land records index or the electronic document record. The error described here would be of a nature that the index or record does not conform to the actual document, as filed. Such an error is most likely to occur when preparing index information from a paper document. As provided in section 15(a), the index information is prepared manually by the county recorder by reviewing the actual document. This manual intervention provides an opportunity for human error. The recorder might misread the information as contained in the document or might make a typographical error when entering the information into the electronic recording system. It is not likely that such errors will occur with index information obtained from electronic documents since that information will be automatically retrieved from the document. Whatever is entered on the original document should also be entered into the electronic land records index. It is also unlikely that there will be errors in the electronic document record, whether the document is an electronic one or a paper one. In either case actual copies, whether textual or graphical, of the original document will be stored in the electronic document record. There is little or no chance for human error. However, it cannot be stated without doubt that no errors will occur.

In the event of an error of this sort, the recorder should not simply change the electronic land records index (or the electronic document record if such an error should occur). If she were to do so, the history of the index entry would be wiped out without any record of its prior content. A party having relied on that entry will no longer be able to find the basis for his reliance. He will not be able to prove that he did not (or that another party did) have notice of the transaction. This section avoids that difficulty by requiring that the correction not be made without a correcting document. That correcting document will be stored in the electronic document record and an index entry will be made in the electronic land records index based on it. The original document and, more importantly, its original index entry will be maintained in the electronic land records system. The new index entry will give notice of the correct contents of the original document to parties who deal with the real property from the date of the new entry forward.

Subsection (c) recognizes that the recorder may discover this error and that an immediate correction should be made. However, it would take time to notify the parties to the recorded document of the error and it is quite possible that one or more of them would object, despite the appropriateness of the correction. In order to avoid the resulting impasse, this section authorizes the recorder to make the change without prior notice. However, the recorder must immediately give notice of the correction document to the parties to the original document. Should one or more of them object to the change, they may submit an appropriate document asserting that objection to the recorder, who will record and index it. When so recorded and indexed the objecting document will give notice to subsequent purchasers that the party has opposition to the correction.
SECTION 20. COORDINATION WITH OTHER OFFICES.

The filing of documents creating, transferring or terminating interests in real property in other offices in the county [other governmental unit] shall be coordinated with the electronic recording system established by this act. The documents may be filed in the applicable office in the county [other governmental unit] in which the real estate is located either in electronic or paper format. The information contained in a document, whether in electronic or paper format, shall be transmitted electronically to the county [other governmental unit] recorder’s office in a method and format prescribed by the Secretary of State [other state officer] by [regulation] [rule]. As soon as the recorder has ascertained that the information complies with the requirements of the [regulation] [rule], the recorder shall enter the index information and the electronic document into the electronic recording system.

Reporter’s Notes

This section recognizes that not all real property information is recorded in the county recorders’ offices. The nature and number of the alternative locales and what is recorded in them varies considerably from state to state. Probably most common among these locales are the offices of the clerks of court. Again depending on the jurisdiction, interests such as judgment liens, lis pendens and mechanics’ liens might be recorded there. Also the orders or decrees of court in quiet title actions, probate proceedings, judicial mortgage foreclosures and similar legal proceedings might also located there. Other alternative locales where real estate information might be located include the county and/or city office where real estate tax liens are filed, the federal Bankruptcy Court for the district in which the real estate is located, as well as other federal courts. (U.C.C. Article 9 filings are a special case and are dealt with in the next section).

The first issue is whether this proposed act should deal with documents in those locales at all. It might be suggested, with just cause, that the variations are too wide-ranging to manage in a uniform act. Since the basic documents pertaining to real estate, i.e. deeds and mortgages, are provided for in the act the purpose of the act is accomplished.

Before, however, the drafting committee decides not to deal with this issue in the uniform act, the committee should consider, at least, these two points. First of all, if the purpose of this act is provide an efficient system from which real estate information can be retrieved electronically, not dealing with these matters may form a significant gap in the real estate information that is available electronically. For example, for prospective mortgage lenders some of the most important information that they would want and that might not be available from the electronic recording system is lien information. A separate lien search prior to closing the mortgage would still have to be conducted in the various alternative locales, particularly the clerk of court’s office and the city and/or county office in which real estate tax liens are filed.

Secondly, just as electronic versions of mortgages, deeds, and related documents will increase in future years, the same will occur with the other real estate interests filed in these
alternative locales. For example, courts are increasingly using electronic means to file legal
documents. As the electronic transformation continues to move forward, it is realistic to expect
that judicial decrees and orders along with judgment liens and lis pendens will also be entered
electronically. As a result the approach taken in this draft is to provide at least some basis on
which the land records might be coordinated with these other offices.

Assuming that it is decided to coordinate these alternative offices with the electronic land
records system, the second issue is how to accomplish that objective. Four basic approaches are
available that one might take in doing so. One approach might be simply to require the various
alternative offices to establish electronic systems in their offices that are compatible with the
electronic land records system. Then a link could be established between the electronic land
records system and the alternative office. The title searcher could perform separate search in the
alternative office for the relevant real estate information.

A second approach might be to expand the statewide electronic recording system to include
these alternative offices. When the alternative office receives a document affecting an interest in
real property, the officer would follow substantially the same procedures provided in this act for
county recorders and transmit the electronic document or electronic copy of a paper document
directly to the primary system.

A third approach might be to require the person owning the interest filed in the alternative
office to file it also with the county recorder in order for it to provide notice to subsequent
purchasers. Although effective between the parties when filed in the alternative office, it would
require further filing to give proper notice. This is not unlike the system used in some
jurisdiction with regard to judgment liens and lis pendens today. It puts the burden of filing on
the party owning the interest to file in the county recorder’s office.

A fourth approach, and the one tentatively set forth in this proposal, is to have the alternative
office transmit information about the real estate interest to the recorder in the county in which the
real estate is located. This information would be in a format and transmitted by a method
approved by the Secretary of State, thus assuring that it is compatible with the electronic land
records system. It would also provide the opportunity for a person experienced in these issues,
the county recorder, to review it before it is entered in the electronic land records system.

SECTION 21. UNIFORM COMMERCIAL CODE FILINGS.

(a) The filing of documents creating, transferring or terminating security interests
affecting real property under Article 9 of the Uniform Commercial Code shall be coordinated
with the electronic recording system established by this Act. The Secretary of State [other state
officer] shall maintain an electronic security interests system consisting of an electronic land
records index and electronic document record.

(b) Documents creating, transferring or terminating security interests shall be submitted
either in electronic format, or in paper format and converted to electronic format. If the
document is filed with the county [other governmental unit] recorder, the recorder shall transmit
the electronic document or an electronic copy of the paper document to the Office of the
Secretary of State [other state officer], where it shall be indexed and recorded in the electronic
security interest system. If the document is filed with the Office of the Secretary of State, it shall
be indexed and recorded in the electronic security interest system. In either case, the information
contained in the primary electronic security interest system shall be coordinated with the
electronic recording system so that a search of the primary system will disclose the creation,
transfer or termination of the security interest.

Reporter’s Notes

The recording of U.C.C. Article 9 security interests is a subset of the situation described in
section 20 above, but is nevertheless a special case. Article 9 security interests affecting real
property are usually filed in an alternative office and not that of the county recorder. Generally,
those security interests are filed with the Secretary of State or other state officer (UCC § 9-501(b)). However, certain Article 9 security interests are instead filed with the local county
recorder (UCC § 9-501(a) – interest in fixtures and timber; the local filing office stated in that
section is the “office designated for the filing or recording of a mortgage on real property”).

Since the Secretary of State has jurisdiction over both the U.C.C. filing system and the
primary system as provided in this act, he is presumably free to structure a coordination of
Article 9 security interests in real property with the electronic recording system as defined in this
act.

In general, this act states that the Secretary will maintain a filing system for electronic
security interests that is compatible with the electronic recording system created in this act. The
electronic security interests system will have an electronic land records index and an electronic
document record. Security interest documents may be submitted in either electronic or paper
format. If submitted in paper format, they will be converted to an electronic format. If they are
submitted directly to the Secretary of State, they will be entered directly into the electronic land
records index and electronic document record of the electronic security interests system. If they
are submitted to the county recorder, the recorder will transmit the electronic security interest
document or the electronic copy of a paper security interests document to the Secretary’s office
where it will be recorded in the electronic security interests system. The electronic land records
system and the electronic security interests system are to be coordinated in such a way that the
search of the electronic land records system will disclose the Article 9 security interest.

Once again, as stated in the Reporter’s Notes to the prior section, more than one approach
might be taken to bring about this coordination. The other approach (of those mentioned in the
prior section) that would seem to be appropriate in the case of Article 9 security interests would
be the first one – a simple directive that the Article 9 security interests system be linked with the
electronic land records system so that a title examiner could easily perform a separate search for
Article 9 security interests. On the assumption that the Secretary already has in place an
electronic filing system for Article 9 security interests, this might be accomplished by the
deletion of this entire section other than the first sentence of subsection (a) and the addition of a
sentence to the effect that “The information in the filing system for Article 9 security interests
will be linked with the electronic land records system in order to enable a search of Article 9 security interests.”

SECTION 22. RECORDING FEES AND TAXES.

(a) Persons recording a document in the electronic recording system shall pay the applicable fees and taxes to the county [other governmental unit] recorder. The fees payable to the recorder shall include an electronic recording system fee of [$ ] per document.

(b) A person recording an electronic document shall have an account established with the county [other governmental unit] recorder. The recorder shall establish an account for a person upon demonstration of financial ability to pay the filing fees and taxes for documents recorded under authority of the account.

Reporter’s Notes

Subsection (a) states that person recording a document in the electronic recording system, regardless of whether it is an electronic or paper document, must pay the applicable fees and taxes as well as an electronic recording system fee. This act does not attempt to set the amount of the recording fees or taxes and leaves those issues to other state law or local options. It does state that a special fee must be paid for use of the electronic recording system. Even if the document is a paper document it is appropriate to require the payment of that fee since an electronic copy of the document will be recorded in the electronic recording system. Also the paper must be copied electronically and that is an effort that will incur the expense of time and money.

The proposal does not state how these funds are to be shared between the county recorder and the Secretary of State. This is an issue that is likely to have serious political and economic overtones. It should be discussed and a decision made regarding whether any attempt to should be made to devise a means of sharing the funds.

Also unstated is the unit basis for the charging of the fees. The traditional means of charging recording fees for paper documents is based on document pages, usually with an initial per document minimum. With true electronic documents the traditional concept of pages is largely irrelevant; pages are imaginary and do not explain the size of a true electronic document. There will also be considerable differences between the size of a graphical copy of a paper document and the size of a comparable truly electronic document. Several possible approaches suggest themselves, but there is no clear choice. There might simply be a charge per document, although a truly large document would not seem to pay its fair share of storage costs and it might invite the continuance of less efficient means of document generation. A charge based on kilobytes is also possible, but it’s not clear what the future of file sizes might be.

Subsection (b) states that a person recording a document must have an account with the county recorder. That account might be a traditional one under which payment is made to the county recorder at regular periods. It might also be an account set up by the use of a credit card
or under the various electronic payment systems that are now available or will become available in the future.

SECTION 23. SEARCHING PROCESS.

A person may search for real property information in the electronic recording system by accessing the primary electronic recording system as described in section 24. A search of the primary electronic recording system may be performed based on the parcel identifier number, the name of a grantor or grantee, the name of a current or former owner of real property, or the address of the real estate, if available. The electronic recording system shall be designed so that a search will disclose the index information and a document contained in the electronic recording system pertaining to the search criteria. If a searcher should request a verified [certified] copy of a document, the copy shall be supplied electronically or in such other format as the Secretary of State [other state officer] shall determine.

Reporter’s Notes

A person may perform a search of the electronic land records system by electronically accessing the office of the Secretary of State. The search will be made on primary system located in the Secretary’s office.

The search may be performed based on the parcel identifier number (PIN), the name of a grantor or grantee in a document, the name of a record owner of real property or, to the extent available, the address of the real estate (see Reporter’s Notes for section 2(7)). Probably the most common means of searching will be by PIN since it is quicker, more accurate and can disclose the entire title history of a parcel in a single search. However, lien searches will also be very common. Those searches will usually be based on the name of a proposed record owner of real property. The search engine might be structured in such a way as to allow the search to be date-limited since most liens only last for a stated number of years.

The immediate results of the search will include a display of the index information pertaining to the search criteria. This draft of the act proposes that the actual document also be displayed on-line, if so requested by the searcher. The searcher could print copies of the index information and document from his computer as he desires. However, they would not be official copies and are informational only. Should he desire a certified/verified copy of the document he must request that copy from the Secretary of State who will certify/verify it and send it as requested. As will be stated in the next section, that service will incur an additional fee.

SECTION 24. ACCESS TO SEARCH; PAYMENT OF FEES.
(a) A person may obtain access to search the electronic recording system by establishing an account with the Secretary of State [other state officer]. The Secretary of State [other state officer] may establish a usage fee based upon time on-line, number of searches in a session, and other criteria. Viewing of index information or a document shall be at no additional cost to the searcher. If a searcher requests a verified [certified] copy of the document, the searcher shall pay a fee based on size of the document and method of delivery. The Secretary of State [other state officer] shall issue a person an account upon demonstration of financial ability to pay the fees incurred under authority of the account.

(b) A person may search the electronic recording system by using a workstation established for that purpose in the county [other governmental unit] recorder’s office. The use of a workstation in the recorder’s office is subject to the supervision of the recorder and payment of the usage fee established by the Secretary of State [other state officer]. Viewing of index information or a document shall be at no additional cost to the searcher. If a searcher also requests a verified [certified] copy of the document, the searcher shall pay a fee based on the size of the document and method of delivery.

**Reporter’s Notes**

Subsection (a) states that the Secretary may establish a usage fee based on time on-line, search frequency and other criteria. No additional fees will be charged for viewing of the index information or related documents, but an additional fee will be charged for the delivery of a verified/certified copy of the document.

The charging of a usage fee might potentially raise issues of freedom of information. In most recording districts today there is no change for simply searching the land records office. The data are considered open documents available for the public to see. Fees are imposed for making copies of the information and documents. However, totally open access raises conflicting issues involving payment for the electronic land records system and access demands placed on the system by casual browsers.

First of all, the provision of land records information is a function of government that must be paid for in some fashion. A system that places the cost of the system, at least in part, on the user of the service is generally accepted and reasonable. In order to maintain that proposition, however, the fee may not be designed to preclude access by anyone who wishes to do so as long as he is willing to pay a reasonable fee for the service. This payment system is similar to the usage fees charged by the providers of on-line legal databases.

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

Subsection (b) recognizes that not all persons will have computers or on-line access and may
wish to access the electronic land records system from the county recorder’s office. It also
recognizes that the county recorder will inherently have access to the electronic land records
system. It would be a simple matter for the recorder to set up a workstation in her office either to
be available for usage by the public or dedicated to public usage. In other respects the access and
costs are the same as described for access under subsection (a).

SECTION 25. APPLICABILITY.

The provisions of this Act shall apply only to documents filed after the effective date of this
Act. Indices and records of paper documents filed in the county [other governmental unit]
recorder’s office before the effective date of this Act shall continue to be maintained by the
county [other governmental unit] recorder.

Reporter’s Notes

The electronic land records system established by this act only applies to documents filed
after the effective date of the act. The county recorder will maintain indices and records of paper
documents (whether on a paper, photographic film, photocopy, or electronic format) in the
county recorder’s office. Conversion of old records for use in the electronic land records system
is discussed in the next section.

SECTION 26. CONVERSION OF PRIOR DOCUMENTS.

[Within [three] years after the effective date of this Act] The county [other governmental
unit] recorder shall convert all paper documents recorded in the recorder’s office [during the
thirty years prior to the effective date of this Act] into an electronic format compatible with the
electronic recording system. Upon conversion into an electronic format the converted documents
shall be entered into the electronic recording system and be available for search and retrieval of
information.]
Dealing with old documents is an extremely difficult matter due primarily to the cost of converting the old documents and the time necessary to do so. On the other hand, failure to do so limits the usefulness of the electronic land records system as a means of searching for land title information, at least for a good number of years to come. Three models are available to deal with this problem.

The first model is simply not to convert the documents. The old records will be maintained as part of the services of the local county recorder and available for search. It is unquestionable that this approach will save money in the short term for the state. However, other costs are very high. Under this model, searches of the electronic land records system will only gradually begin to have any value as time progresses. To the extent that records older than the enactment of the electronic land records system must be searched, two searches would have to be performed—one in the electronic land records system for current transactions and one in the county recorder’s office for documents predating the system. In all likelihood, the cost would be higher to the searcher than a simple search in a single system. The benefits presumed to be produced by the electronic system would be long delayed, undoubtedly causing considerable dissatisfaction with the system. Nevertheless, the entire section is bracketed to allow its deletion by an enacting jurisdiction.

The second model is the obvious answer to that situation—make electronic copies of the old paper records and place those copies in the electronic document record and convert the old indices to an electronic format and insert them in the electronic land records index. However, as indicated above, the cost of that conversion can be extremely high and the time necessary for the conversion very lengthy unless a lot of funding is allocated to perform the conversion quickly. The proposal set forth here uses a three-year time frame for the conversion, and that would seem to be very optimistic and costly. Thus, it too is bracketed and a longer completion time could be used. However, the longer that the completion of the conversion is delayed, the longer it will be until the full benefits of the electronic system can be enjoyed.

The second time-based issue is the number of historical years the conversion must cover. The longer that period, the longer the conversion will take to complete and the more expensive it will be. The period selected in this proposal is 30 years and is based on the Uniform Marketable Title Act. However, even this period is not very satisfactory for several reasons.

First of all, the Uniform Marketable Title Act cuts off interests only if recorded prior to the root of title and not subsequently preserved. The root of title is the last title transaction recorded more than 30 years prior to the date marketability is being determined. Thus, the root of title may as little as 30 years and one day or perhaps as long as 100 years prior to the current date. It will vary depending on the title history of the individual parcel. Accordingly, 30 years is initially not a long enough period. However, as time passes after the effective date of the act the roots of title of more parcels will begin to fall within the prescribed period and thus it will begin to have more effectiveness.

Nevertheless, 30 years is not a safe period for all title examinations. If one were to perform an electronic search the title history of a parcel of real property after the documents were converted to an electronic format and were to discover that the root of title was not disclosed by the search, the searcher would have to do an extended search. He would have to search the old paper records in the county recorder’s office to locate the root of title. Thus, although the period is not sufficient in all cases, it may be accommodated by an extended title search.

The second difficulty with using the 30-year period is that not all states have adopted the
Uniform Marketable Title Act. The periods of search in many jurisdictions may be a matter of contract between the abstracter and the customer, or it may be a matter of local law or custom. That period might be 30 years plus such further time as necessary to reach a root of title, just as in the Uniform Act. However, it might be longer.

The third problem with the 30-year period is that under the Model Marketable Title Act, which existed prior to the Uniform Marketable Title Act, the period of marketability was 40 years and such time as necessary to locate the root of title. Several states adopted the Model Act provision with the 40-year provision. Thus, as proposed in this act the 30 year period is bracketed and a state may insert the time period that would fit its local law and custom best.

The third model for dealing with old paper documents is suggested by a recent proposal of the Iowa Real Estate Modernization Project, a committee of the Iowa State Bar Association that has developed an electronic recording system for the State of Iowa. It has been presented to the Iowa Legislature but it has not yet been acted upon.

Iowa is unique in that for over 50 years the sale of title insurance has not been permitted in the state. In response to the secondary mortgage market’s demand for title assurance beyond a lawyer’s title opinion, in the mid-1980s the legislature enacted its Title Guarantee system. The system is essentially a lawyer’s title insurance system with the ultimate guarantor being the state-backed Title Guarantee Division. The committee making the electronic recording proposal looked at the question of converting old documents. The cost of converting would be very high and would have to be borne by the State. It proposed an alternative that it believes will be considerably less costly. Instead of converting the old documents, they would remain as paper documents in the various county recorders’ office. When Title Guarantee writes a title guarantee policy based on a search that included those records, it will file a notice in the land records stating that the search has been made and listing the interests disclosed by that search. Unlike normal title insurance, the guaranty it writes as to the search of the paper records would be available to subsequent purchasers. Consequently an examination of the paper records need not be repeated. The cost of this approach would be the additional underwriting costs assumed by the state-backed agency to guaranty any loss to a subsequent purchaser based on an undiscovered title defect in the paper records. Nevertheless, the committee believes that the costs would be considerably less than the costs of a full-scale conversion of real estate records for a 40 year period, as would be suggested by their adoption of the 40 Year Model Marketable Title Act.

While no other state has a state-backed agency guaranteeing titles as exists in Iowa, the model might be adjusted for use with private title insurance companies. For a reasonable additional fee, a title insurance company might be willing to write the type of policy described above assuring subsequent purchasers that the prior paper documents disclosed only listed title defects. Any subsequent purchaser and his or her title examiner could rely on that search of the paper records need not repeat it. In some ways, this would not be unlike the current in-house title insurance company practice. If the title company has a title plant for the area in which the real estate is located and has made a search of the same title history some time ago, the new search begins at the date the old search ends and continues forward. The title company does not repeat the prior search. There is an additional issue that must be considered also. Who should pay for the added cost of underwriting? Should it be the state, as in the Iowa proposal, or should it be the users of the system by paying an increase in the cost of title insurance?

This concept presents a very interest possibility but is not included in this proposal because too many very significant issues are unresolved. Would title insurance companies write such a policy? Who should pay for the added cost of title insurance – the insured or the state? Would consumers find the proposal reasonable? Would the state find the idea acceptable?
SECTION 27. [REGULATIONS] [RULES].

The Secretary of State [other state officer] may propose and adopt [regulations][rules] to implement the provisions of this Act. The [regulations][rules] shall be designed to promote a uniform system of real property information throughout the state and, to the extent feasible, to coordinate with the [regulations][rules] adopted by the appropriate officers in other states.

Reporter’s Notes

This section gives the Secretary of State the authority to propose and adopt rules or regulations to implement the various provisions of the act. The specifics of the regulations are to be ascertained from the next section as well as from the various sections of this act that state some function is given to the Secretary for which rules or regulations must be adopted. This section specifically states that the rules and regulations are to be designed to promote a uniform system of real estate information within the state as well to coordinate with similar rules and regulations in other states.

SECTION 28. REAL PROPERTY RECORDS DIRECTOR.

(a) The Secretary of State [other state officer] shall establish in the Secretary’s office the position of Real Property Records Director. The Real Property Records Director shall report, and be responsible, to the Secretary of State [other state officer].

(b) As delegated by the Secretary of State [other state officer], the Real Property Records Director shall have the following authority and duties regarding the electronic recording system as well as the entry of information in counties [other governmental units] in which the recorders have implemented the recording system:

(1) To propose and adopt [regulations][rules] to implement the provisions of this Act in a uniform fashion statewide, considering the status of technology, the promotion of commerce, the protection of privacy, the enhancement of system security, and the need for land records interoperability within the state and between states;

(2) To enforce the provisions of this Act and the rules adopted pursuant to it; and

(3) To exercise any other authority or duty the Secretary may consider appropriate and delegate.
This section establishes the position of Real Property Records Director in the Secretary of State’s office. The Director is responsible, and reports, to the Secretary. The functions of Director include oversight of the entry of information into the electronic recording system in the counties.

The Director is also delegated the authority to propose and adopt rules or regulations to implement the provisions of the act in a uniform fashion, while considering a number of factors such as the status of technology, the promotion of commerce, the protection of privacy, the enhancement of security and the need for land records interoperability within the state and between the states. The Director is given the authority to enforce the provisions of the act, such as requiring that information be entered in a fashion that it is compatible with the primary system. The Director also has such other authority as the Secretary may delegate to her.

SECTION 29. RECORDING AND NOTICE.

A document is of no validity against a subsequent purchaser [for a valuable consideration], [without notice] [and who records first] unless the document is recorded in the electronic recording system as provided in this Act. When a document has been recorded and indexed in the primary system it shall give constructive notice to all persons acquiring an interest in the real property affected by the document.

The first sentence provides that a document is of no validity against a subsequent purchaser unless that document is recorded in the electronic recording system. Whether that subsequent purchaser must be without notice or record first or both, i.e. whether the state is a notice, race or race notice jurisdiction, is left to the state. Also the question of whether the state requires that the subsequent purchaser must be for a valuable consideration is left to the state. Any of those notice variations may be implemented in this act. Indeed, a state might desire to insert its existing recording act, with appropriate revisions, in this section. What is different and important is the statement in the last portion of the first sentence that the document must be recorded in the electronic recording system to give notice. That idea is made specifically clear in the second sentence. As to the second sentence, see Section 16 where the same concept is stated. Its purpose here is to coordinate it with the revision of the recording act as stated in the first sentence.

SECTION 30. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.
This is a standard provision in Uniform Acts for the purpose of reciting the importance of considering the need for uniformity among the enacting states when applying and construing the act.

SECTION 31. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This [Act] modifies, limits, or 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 of that act (15 U.S.C. Section 7001(a)) or authorize electronic delivery of any of the notices described in Section 103 of that Act.

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.