UNIFORM REAL PROPERTY ELECTRONIC RECORDATION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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WITH INTRODUCTORY NOTE AND COMMENTS

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ON UNIFORM STATE LAWS

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# UNIFORM REAL PROPERTY ELECTRONIC RECORDATION ACT

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UNIFORM REAL PROPERTY ELECTRONIC RECORDATION ACT

Introductory Note

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

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

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

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

In response, a few states have convened study committees or task forces to consider the question of recording electronic documents (see Report of Iowa State Bar Ass’n, Real Estate Modernization Comm., draft of Ch. 558B – Iowa Electronic Recording Act (2001); Conn. Law Revision Comm., An Act Establishing the Connecticut Real Property Electronic Recording System (Conn. Gen Assembly, Judiciary Comm., public hearing Feb. 20, 2004)). In 2002 a drafting committee was established by the NCCUSL Executive Committee to draft a Uniform Real Property Electronic Recording Act. The Committee’s decision followed a recommendation of the NCCUSL Committee on Scope and Program. Their actions were in recognition of a strong recommendation from the Joint Editorial Board on Uniform Real Property Acts that a uniform act be drafted.

The following act was drafted to authorize the receipt, recordation and retrieval of documents in electronic form. Its fundamental principle is that requirements of state law
describing or requiring that documents be on paper or in writing are satisfied by a document in electronic form. Furthermore, any requirement that the document contain a signature is satisfied by an electronic signature. The act also establishes a state electronic recording commission that is charged with adopting standards for the receipt, recordation, and retrieval of electronic documents.
UNIFORM REAL PROPERTY ELECTRONIC RECORDATION ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Real Property
Electronic Recordation Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Document” means information that is:

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

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

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

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

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

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

(6) “Person” means an individual, corporation, business trust, estate, trust, partnership,
limited liability company, association, joint venture, public corporation, government,
(7) “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.

Comments

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

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

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

The definition of a document in this act is derived from the definition of “record” as contained in the Uniform Electronic Transactions Act (UETA) § 2(13). In terms of that act, a document is a record that is eligible to be recorded in the land records maintained by the recorder. In selecting the defined term “document” for use throughout this act, an explicit decision was made not to use the defined term “record.” 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 generally in this act, it might lead to confusion and misinterpretation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) **State.** The word “state” includes any state of the United States, the District of Columbia, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
SECTION 3. RECORDING OF ELECTRONIC DOCUMENTS.

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

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

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

Comments

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

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

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

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

This act applies to “Torrens” title registration systems. Thus, a recorder who operates such a title registration system and chooses to accept electronic “registration” documents may
establish a system to receive, index, store, archive, and transmit them, as well as procedures to
access, search, and retrieve documents and information in the system.

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

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

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

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

For example, it is fair to assume that electronic recording systems will not cease to
operate when recorders lock their office doors at night or over the weekend. Indeed, it may be
quite fair to assume that electronic recording systems would accept electronic documents 24
hours per day and seven days per week. If a mortgage is filed electronically on Saturday, the
electronic recording system may collect the document in a queue to be processed and indexed on
Monday morning. If a potential purchaser searches the electronic recording system on Sunday to
determine whether there are any claims against the real estate, the purchaser will not find the
mortgage and may accept a deed and file it electronically on Sunday.
Although the mortgage was filed, it was not indexed; by its status in the queue it might not even be considered recorded. The laws of the various states are not consistent on how this issue should be addressed. It may depend on whether this document is considered delivered to the recorder when it is received by the queue or whether it is delivered when the queue is opened on Monday. It may also depend on whether the state law requires indexing in order for the recording to be complete or whether simple delivery to the recorder is sufficient. The state laws are sufficiently diverse that this act could not amend all state laws in a uniform fashion to achieve the same result. Thus, the issues of when recording should be considered to have occurred and whether indexing is required for a complete recording are issues that the legislature should consider.

SECTION 4. RECORDING OF PAPER DOCUMENTS.

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

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

Comments

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

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

Efficiency suggests that the unified index will likely be an electronic one. It would be more efficient to enter the index information from paper documents directly into an electronic index rather than convert the index information for electronic documents into a paper system;
electronic index information can be sorted and manipulated more easily than paper index information; and an electronic index can be searched more quickly and without the searcher’s physical presence in the recorder’s office. However, the act does not require the single index be an electronic one.

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

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

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

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

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

SECTION 5. STANDARDS FOR ELECTRONIC DOCUMENTS.

(a) A state electronic recording [commission] consisting of [number] members appointed by [the governor] is hereby created. [The majority of the members of the [commission] must be [recorders].] [To be eligible for appointment to the [commission], an individual must be a recorder or a person having a professional interest in electronic recording standards.] The
members of the [commission] may not receive compensation but may be reimbursed for reasonable expenses.

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

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

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

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

Comments

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

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

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

Recorders, by the fact that the standards adopted by the commission will affect the operation of their electronic recording systems, have a professional interest in the standards. In addition, informed recorders will be able to provide a wealth of information to the commission.
They very likely will have valuable input when considering standards in the light of the needs of recording districts of varying size, population, resources and capabilities, as stated in subsection (d).

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

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

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

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

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

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

(d) Because most states are quite diverse in the size, population, resources and
capabilities of their recording venues, it is important that the state electronic recording commission consider all of their needs. Standards that are designed only for large, populous and well-financed recording districts may never promote the development of electronic recording in smaller, less-populous and poorer-financed recording districts. This subsection clearly recognizes that the standards should promote the overall good of the state. Thus, the commission is advised to consider the needs of the entire spectrum of recording districts.

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

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

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

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

Comments

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

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

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

Comments

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

For example, a document may first need to be submitted to the county assessor or treasurer to determine whether prior taxes have been paid or whether current ones are due. Under current practice that submission might be accomplished in a process independent from the electronic recording process. If a tax or fee must be paid, that sum might also be paid independently by check or other non-electronic process. Procedures such as these will delay the electronic recording process and will limit the achievement of a speedy, efficient electronic recording system.
This section permits and encourages the recorder to enter into agreements with other county and state offices for the purpose of implementing processes that will allow the simultaneous satisfaction of all conditions precedent to recording and the payment of all fees and taxes in a single transaction. Any fees and taxes paid by the recording party will subsequently be allocated between the recorder and the other offices in accordance with the agreements.

SECTION 8. FEES [AND TAXES].

[Alternative A]

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

[Alternative B]

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

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

Comments

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

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

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

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

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

Unstated in this act is the unit basis for charging the recording and access fees. The traditional means of charging recording fees for paper documents is based on the number of pages contained in the document, usually with an initial per document minimum. With some forms of electronic documents the traditional concept of pages is irrelevant; pages are imaginary and do not explain the size of the electronic document. Several possible approaches may 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 even invite the continuance of less efficient means of document generation. A charge based on file size is also possible, but it’s not clear what the future of file sizes might be. This lack of a clear choice supports the approach of Alternative A which allows the commission, with its greater expertise and ability to be more flexible and adaptable, to make the decision.

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

Two additional reasons may be given for this access fee. First of all, the provision of
land records information is a function of government that must be funded in some fashion. A system that places the cost of the system, through the means of a delivery fee, on the user of the service is generally acceptable 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.

Secondly, totally free access without any gateway limitations might create a problem with casual browsers overusing and overloading the system, especially during times of peak demand. There is limited bandwidth for access to the system as well as limited system load. 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 casual browsers who can search for and download those files without charge, the potential for problems is enhanced. While the usage fee is not designed to prohibit access, its existence will tend to act as a gateway to limit casual browsing of the electronic recording system for no purpose other than “surfing the net” while not limiting serious users of the system.

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

SECTION 9. 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.

Comments

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

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

Comments

This section 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.