

Uniform Real Property Electronic Recording Act

By Carmelo D. Bramante

Electronic recording of real estate documents is happening in over 70 counties in 21 states across the country. In the early days of eRecording, around 1997-1998, certain states amended their recording statutes to legally allow recorders to accept electronic documents for recording. These states included California, Arizona, Washington and Virginia. Images of scanned paper, i.e., digitized documents, were transmitted to recorders for recording. This became known as Model 1 of eRecording. Since the late 90s, two additional models of eRecording emerged: Model 2 is images with data and Model 3 is all electronic documents where the data and the presentation of the document are locked in one electronic record. Model 3 is sometimes commonly referred to as digital documents.

In 1999, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved the Uniform Electronic Transactions Act (UETA) to address the various state and federal laws that were limiting the enforceability of electronic documents. (NCCUSL is the same organization that drafted other state uniform acts, such as the Uniform Commercial Code (UCC), Revised Article 9 and the Uniform Mortgage Satisfaction Act.) In addition to addressing the enforceability of electronic documents by allowing the legal use of electronic records and signatures, UETA also allows state and local governments to accept electronic documents or records in addition to or in place of paper documents (specifically under UETA Sections 17, 18 and 19). Currently there are 46 states, the District of Columbia and the U.S.

Virgin Islands that have adopted the UETA.

In 2000, the U.S. Congress adopted the federal Electronic Signatures in Global and National Commerce Act (ESIGN). Both UETA and ESIGN give legal effect to real estate transactions that are executed electronically and allow them to be enforced between the parties to the transaction.

These two acts accomplish this by creating an "overlay" to any and all state laws that require writing and a signature. What this means is that, instead of having each state review and amend all laws that require a writing and signature, and then amending each law in a particular state to allow the use of electronic records and signatures to replace paper and ink signatures, UETA and ESIGN simply "overlays" the use of electronic records and signatures in every state law that requires a paper writing and ink signature without adopted individual legislation for each state law.

Despite these legal changes over the last few years, there has been some confusion and uncertainty as to whether recorders have the legal authority to accept and record electronically real estate documents from their submitters, usually title companies, closing agents and mortgage servicers. This confusion and uncertainty stems from whether a state, when adopting UETA, included Sections 17, 18 and 19, which cover state and local governments transacting electronically; ESIGN just covering the authority of the federal and state governments to transact electronically and remaining silent on local governments authority; and legacy state laws and regulations that limit the

form in which a recordable document may be submitted to a county recorder (in spite of the "overlay" concept of UETA which allows paper writings and ink signatures to be replaced with electronic records and signatures).¹

NCCUSL addressed the confusion and uncertainty with the Uniform Real Property Electronic Recording Act (URPERA). Over a two-year period, from February 2003 through November 2004, the NCCUSL URPERA Drafting Committee held six drafting sessions, adopted the final version in August 2004 and published and referred the act to the states in November 2004. Members of a work group from PRIA became official observers during each of the drafting sessions and assisted the committee in the development of the act.

The URPERA contains eight sections, including the title (Section 1) and effective date (Section 8). Section 2, Definitions, includes new terms and clarifying terms that extend those found in the UETA. Sections 3 and 4 were written to clarify the validity of electronic documents, signatures and notarizations, and the recordability of electronic documents with electronic signatures and notarizations respectively. Section 5 gives States the authority to set up a commission or committee to develop, maintain and administer electronic recording standards, based on national standards, such as those developed by the PRIA. Having states develop electronic recording standards that are derived from national PRIA standards would assure consistency and interoperability across recording jurisdictions within a given state

and across state lines. Section 6 addresses the uniform nature of the act and Section 7 explains the URPERA in relation to the federal ESIGN Act.

As of this writing, the URPERA has been introduced in a number of state legislatures, including North Carolina, Pennsylvania, Connecticut and the District of Columbia, and recently adopted in Virginia and Arizona.

PRIA has asked Carmelo Bramante, principal of CDB Consultancy LLC, and John L. Jones, president of Arion Zoe Corp., to write the "URPERA Enactment and Standards Implementation Guide." The purpose of the PRIA URPERA Guide is to: (1) explain the uniform nature of the URPERA

and its relationship with the UETA and federal ESIGN; (2) describe the need for state and local electronic recording standards based on the national PRIA eRecording standards for the approximate 3,600 recording jurisdictions and the industry's trading partners, such as title companies, closing agents and mortgage servicers; (3) educate state and local officials, private sector partners and other interested parties about the URPERA and national standards; (4) provide guidance to state legislators regarding the enactment of the URPERA and, most importantly, (5) provide guidance on the development, maintenance and administration of state and local eRecording standards.

Bramante and Jones completed a first draft of the PRIA URPERA

Guide which is currently under review by the PRIA URPERA Workgroup. Any revisions will be incorporated into a revised draft and published for comment. After the comment period, ending in mid-June, PRIA will publish the Guide. Publication is anticipated in the middle of third quarter of 2005.

¹ See pp. 1-2 of the final published version (November 2004) of the "Uniform Real Property Electronic Recording Act" with prefatory note and comments at www.law.upenn.edu/bll/ulc/ulc_frame.htm. Also, the National Conference of Commissioners for Uniform State Laws may be found at www.nccusl.org.