CHAPTER 6

Uniform Real Property Electronic Recording Act

Editor's Note

2008 Act No. 210, Section 1 provides at follows:

"The General Assembly provides for the following Prefatory Note to Chapter 6 of Title 30 contained in Section 2:

"Prefatory Note

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

"However, approaching the end of the 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 October 1, 2004, UETA had been adopted in 46 states, the District of Columbia, and the U.S. Virgin Islands. 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 to the transaction.

"Even though documents resulting from electronic transactions are valid and enforceable between the parties, there is uncertainty and confusion about whether those electronic documents may be recorded in the various local land records offices in the several states. Legacy laws and regulations in many states purport to limit recordable documents to ones that are in writing or on paper or require that they be originals. Other laws and regulations require signatures to be in writing and acknowledgments to be signed. Being electronic and not written on paper, being an electronic version of an original paper document, or having an electronic signature and acknowledgement instead of handwritten ones, an electronic document might not be recordable under the laws of these states. The continuing application of these legacy laws and regulations remain uncertain (see Op. Cal. Atty. Gen. No. 02‑112 (Sept. 4, 2002)).

"Despite these uncertainties, recorders in approximately 40 counties in several states began recording electronic documents. These efforts depend, however, on the initiatives of individual recorders and the opportunities available under the laws of those states. They are piecemeal and offer only limited interoperability among the recording venues and across state lines. They do not provide a uniform legal structure for the acceptance and processing of electronic documents.

"In response, a few states have convened study committees or task forces to consider the question of recording electronic documents (see Report of Iowa State Bar Ass'n, Real Estate Modernization Comm., draft of Ch. 558B—Iowa Electronic Recording Act (2001); Conn. Law Revision Comm., An Act Establishing the Connecticut Real Property Electronic Recording System (Conn. Gen Assembly, Judiciary Comm., Raised Bill No. 5664, 2004)). In 2002, a drafting committee was established by the NCCUSL Executive Committee to draft a Uniform Real Property Electronic Recording Act. The Committee's decision followed a recommendation of the NCCUSL Committee on Scope and Program. Their actions were in recognition of a strong recommendation from the Joint Editorial Board on Uniform Real Property Acts that a uniform act be drafted.

"The Uniform Real Property Electronic Recording Act was drafted to remove any doubt about the authority of the recorder to receive and record documents and information in electronic form. Its fundamental principle is that any requirements of state law describing or requiring that a document be an original, on paper, or in writing are satisfied by a document in electronic form. Furthermore, any requirement that the document contain a signature or acknowledgment is satisfied by an electronic signature or acknowledgement. The act specifically authorizes a recorder, at the recorder's option, to accept electronic documents for recording and to index and store those documents.

"If the recorder elects to accept electronic documents, the recorder also must comply with certain other requirements set forth in the act. In addition, the act charges an Electronic Recording Commission or an existing state agency with the responsibility of implementing the act and adopting standards regarding the receipt, recording, and retrieval of electronic documents. The Commission or agency is directed to adopt those standards with a vision toward fostering intra‑ and interstate harmony and uniformity in electronic recording processes.

"This act does not state the means of funding the establishment or operation of an electronic recording system in the various recording venues. No single approach is inherently the best for funding electronic recording systems. This is especially true because of the range of taxation systems and cultures existing in the various states and recording venues and the diversity of the various states and recording venues in terms of population and resources. In fact, the best system for any state or recording venue might involve a combination of approaches.

"The establishment, and perhaps the operation, of an electronic recording system might be funded from the general taxes and revenues of the state or county. Because of the relatively large "front end" expenses needed to set up an electronic recording system, this approach might be very appropriate for that purpose. Whether the funding is to be by the county or the state is an issue that should be resolved prior to the passage of this act. A related question is whether the funding should cover the entire cost of setting up the system or only part of it with the remaining costs to be paid by recording and searching fees dedicated to the establishment of the electronic recording system."

**SECTION 30‑6‑10.** Short title.

 This chapter may be cited as the "Uniform Real Property Electronic Recording Act".

HISTORY: 2008 Act No. 210, Section 2, eff May 13, 2008.

**SECTION 30‑6‑20.** Definitions.

 In this chapter:

 (1) "Document" means information that is:

 (a) inscribed on a tangible medium or that 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 register.

 (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 register in an electronic form.

 (4) "Electronic Recording Committee" means a committee composed of seven members and charged with developing the standards to implement this chapter. The Secretary of State shall serve as the chairman of the committee and the Governor shall appoint six members as follows:

 (a) one register from a county with a population greater than 100,000 according to the last decennial census, upon the recommendation of the South Carolina Clerks of Court and Registers of Deeds;

 (b) one register from a county with a population greater than 33,000 and less than 100,000 according to the last decennial census, upon the recommendation of the South Carolina Clerks of Court and Registers of Deeds;

 (c) one register from a county with a population less than 33,000 according to the last decennial census, upon recommendation of the South Carolina Clerks of Court and Registers of Deeds;

 (d) one representative of the title insurance industry, upon the recommendation of the Palmetto Land Title Association;

 (e) one real estate professional, upon the recommendation of the South Carolina Realtors Association; and

 (f) one attorney whose practice includes the real estate area of the law, upon the recommendation of the South Carolina Bar Association.

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

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

 (7) "Register" means the official, including the register of deeds, register of mense conveyances, or clerk of court, charged with the recording and indexing duties in Chapter 5 of Title 30.

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

HISTORY: 2008 Act No. 210, Section 2, eff May 13, 2008.

**SECTION 30‑6‑30.** Validity of electronic documents.

 (a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this chapter.

 (b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

 (c) 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 to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

HISTORY: 2008 Act No. 210, Section 2, eff May 13, 2008.

**SECTION 30‑6‑40.** Recording of documents.

 (a) In this section, "paper document" means a document that is received by the register in a form that is not electronic.

 (b) A register:

 (1) who implements any of the functions listed in this section shall do so in compliance with the standards promulgated through regulation by the Office of the Secretary of State;

 (2) may receive, index, store, archive, and transmit electronic documents.

 (3) may provide for access to, and for search and retrieval of, documents and information by electronic means.

 (4) who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.

 (5) may convert paper documents accepted for recording into electronic form.

 (6) may convert into electronic form information recorded before the register began to record electronic documents.

 (7) may accept electronically any fee that the register is authorized to collect pursuant to Section 8‑21‑310.

 (8) may agree with other officials of a state or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees.

HISTORY: 2008 Act No. 210, Section 2, eff May 13, 2008.

**SECTION 30‑6‑50.** Administration and standards.

 (a) Upon the recommendation of the Electronic Recording Committee, the Office of the Secretary of State shall promulgate regulations to adopt standards to implement this chapter.

 (b) To keep the standards and practices of registers in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this chapter and to keep the technology used by registers in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this chapter, the Office of the Secretary of State, so far as is consistent with the purposes, policies, and provisions of this chapter, in adopting, amending, and repealing standards shall consider:

 (1) standards and practices of other jurisdictions;

 (2) the most recent standards promulgated by national standard‑setting bodies, such as the Property Records Industry Association;

 (3) the views of interested persons and governmental officials and entities;

 (4) the needs of counties of varying size, population, and resources; and

 (5) standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

HISTORY: 2008 Act No. 210, Section 2, eff May 13, 2008.

**SECTION 30‑6‑60.** 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.

HISTORY: 2008 Act No. 210, Section 2, eff May 13, 2008.

**SECTION 30‑6‑70.** Relation to Electronic Signatures in Global and National Commerce Act.

 This chapter 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).

HISTORY: 2008 Act No. 210, Section 2, eff May 13, 2008.