

**STATE OF ALABAMA**



**ALABAMA LAW INSTITUTE**

**UNIFORM REAL PROPERTY  
ELECTRONIC RECORDING ACT**

**November 2008**

**ALABAMA LAW INSTITUTE**

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**November 2008**

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## Preface

Recording of real estate records is now available in 20 states due to the passage of the Uniform Real Property Electronic Recording Act. Tennessee, Florida, South Carolina and North Carolina have already adopted this Act.

As a result of the enactment of the Uniform Electronic Transactions Act passed by the Alabama Legislature in 2001, it is now possible to have contracts in electronic form with electronic signatures of the parties. However, real estate transactions require another step not addressed by the e-sign law.

Real estate documents must be recorded in public records in order to provide notice of the current owner of the property. Real estate records establish a chain of title based on filing the original document, preserving it by copying it, and recording the document in the probate office.

Another example of the growing use of electronic recording is the 2005 court rule by the Alabama Supreme Court, authorizing electronic filing of circuit and district court documents. Electronic filings occurs pursuant to this rule in 48 counties by registered users.

This Act does essentially 3 things:

1. Equates electronic documents and electronic signatures to original paper documents and manual signatures. Thus, any requirements for original paper documents or manual signatures are satisfied by an electronic document and signature. The process is essentially a scan-in of the document and electronic filing by email.

2. Establishes that electronic filing and storage of electronic records is purely an opt-in-option by probate offices in each of the 67 counties and does not mandate them. Those electing to have electronic recording will be able to do so while maintaining the procedure for walk-up filing of paper documents.
3. Establishes a board to set uniform standards for filing electronically in every probate office that elects to opt-in to utilize electronic filing. This 13 person board consists of probate judges, lawyers, and other officials that have an interest in the recording process.

Robert L. McCurley, Jr.  
Director

November 2008

**UNIFORM REAL PROPERTY ELECTRONIC  
RECORDING ACT**

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

**Alabama Comment**

This act applies to the recording and of documents in the real property records maintained in the offices of the probate judge of the various counties in Alabama. Other than allowing for a new method of filing and maintenance of these records, this act does not change existing substantive law relating to priorities, indexing or other statutory conveyancing requirements.

**Official Comment**

This act applies to the recording of documents in the land records office maintained by a recorder. It applies both to the filing of, and the searching for, documents in the recorder's office by whatever term or terms those functions and offices are known locally.

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

(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 Judge of Probate ~~[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 Judge of Probate ~~[recorder]~~ in an electronic form.

(4) “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.

(5) “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.

(6) “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.

## Official Comment

(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.

While a document recorded in a land records office will usually contain information affecting real property, it need not necessarily be so limited. It applies to any document that is recorded in the land records office maintained by the recorder. Deeds, grants of easements, and mortgages are documents subject to this act. Similarly, certificates and affidavits not directly affecting real property may be documents under this act if state law provides these documents are to be recorded in the land records office.

The definition of a document in this act is derived from the definition of the term “record” as contained in the Uniform Electronic Transactions Act (UETA) § 2(13). In the 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 “record” as a defined term. 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” and its variations can have several meanings, all of which deal with document storage 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* office 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” 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 specific 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).

(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. The character of a document as “electronic” or “paper” will be determined at the moment it is received by the recorder.

Even though a document may have an existence in an “electronic” form prior or subsequent to being received by the recorder it might not be 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. If, however, the document is printed 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 post-receipt conversion. (For a definition of the term "paper document," *see* § 4(a).)

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, if a document is received electronically and then printed in a paper form in the recorder's office prior to storage, it is, nonetheless, an electronic document. Thus, a document received by 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.

In many cases a document may have originally been executed in a paper form with "wet signatures" and subsequently imaged and converted into an electronic format. This act provides that, if such a converted document is received by the recorder in an electronic format, it will be considered to be an electronic document and may be recorded. (*See* § 3(a).)

This act does not state or limit the type of electronic documents that may be accepted by the recorder. Nor does it state the type of electronic signatures that are permissible. Those matters are subject to the standards adopted by the state Electronic Recording Commission or state agency pursuant to § 5.

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). However, this definition uses the word "document" instead of

“record” to identify the instrument being signed. (*See generally* paragraph 1, above, for a discussion of the reasons).

(5) **“Person.”** The definition of a “person” is the standard definition for that term used in acts adopted by the National Conference of Commissioners on Uniform State Laws. It includes individuals, associations of individuals, and corporate and governmental entities.

(6) **“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. 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 [act].

(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.

### **Alabama Comment**

Subsection (c) is drafted so as to be consistent with Alabama's adoption of the Uniform Electronic Transactions Act which provides the following at 8-1A-11:

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

Subsection (c) makes reference to various methods of proof for a document, including acknowledgment and verification, but this list is not exclusive. Nothing in this act shall limit any available method of proof allowed under Alabama law, including those set forth in 35-4-24, 35-4-25, 35-4-26, 35-4-28, and 35-4-30.

### **Official Comment**

(a) Subsection (a) 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, or standard 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, or standard 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.

This subsection also provides that any stipulation of state law requiring that a document be an original document is satisfied by an electronic document meeting the requirements of this act. For example, this section acknowledges that one form of electronic document is created by making an electronic duplicate of an original paper document. The duplicate is an electronic “picture” of the original document with all of its signatures and verifications. Under some existing state laws, the electronic duplicate may be considered to be a copy of the original paper document and not the original itself. The laws of the state may also provide that a copy of a document may not be recorded. This act corrects that circumstance and allows the electronic document containing the “picture” of the original document to be recorded. Of course, in order to be valid, the original paper document must be executed in accordance with law, including a signature and verification.

(b) Subsection (b) provides that any statute, regulation, or standard requiring that a document 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.

(c) This section provides that any statute, regulation, or standard requiring 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. It permits a

notary public or other authorized person to act electronically without the need to do so on paper.

It also provides that any statute, regulation, or standard that requires a personal or corporate stamp, impression, or seal is satisfied by an electronic signature. These physical indicia are inapplicable to a fully electronic document. Thus, the notarial stamp or impression that is required under the laws of some states is not required for an electronic notarization under this act. Nor is there a need for a corporate stamp or impression as would otherwise be required under the laws of some states to verify the action of a corporate officer. Nevertheless, this act requires that the information that would otherwise be contained in the stamp, impression, or seal must be attached to, or logically associated with, the document or signature in an electronic fashion.

#### **SECTION 4. RECORDING OF DOCUMENTS.**

(a) In this section, “paper document” means a document that is received by the Judge of Probate ~~recorder~~ in a form that is not electronic.

(b) A Probate Judge ~~recorder~~:

(1) who implements any of the functions listed in this section shall do so in compliance with standards established by the ~~Electronic Recording Commission~~ ~~name of state agency~~.

(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 Judge of Probate [~~recorder~~] began to record electronic documents.

(7) may accept electronically any fee [for tax] that the Judge of Probate [~~recorder~~] is authorized to collect.

(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 and taxes as provided for in the standards to implement this Act.

#### **Official Comment**

(a) 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,” this document form is not limited to documents on a

paper medium; the use of the word “paper” is merely a convenience. It applies to any non-electronic document that the recorder is authorized to accept.

Just as with the definition of an “electronic document” in section 2 of this act, the moment at which the character of the document will be determined is the moment it is received by the recorder. 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.

(b) Subsection (b) sets forth specific required or elective functions that apply to the recording of documents.

(1) With the exception of paragraphs (1) and (4), implementation of any functions described in subsection (b) is optional and a decision to implement one or more of them is to be made by the recorder. The act does not require that a recorder implement any or all of those functions. It merely allows each recorder to implement them when and if the recorder decides to proceed with electronic recording.

However, under paragraph (1) if a recorder does elect to implement any of the functions described in this section, the recorder must do so in accordance with the standards established by the Electronic Recording Commission or the state agency. All aspects of the functions described in this subsection are subject to the standards of the Commission or agency.

(2) Paragraph (2) provides that the recorder may choose to implement electronic recording functions. Recording functions are varied and deal with obtaining and storing of documents in a recording system. Under this paragraph, the recorder may elect to receive electronic documents. The recorder may store those electronic documents, or the information contained in them, and create an index of the documents or information. The recorder may also transmit electronic documents and communications to the recording party or to other parties. Finally, the recorder may archive the electronic documents or the information in them as

well as the index in order to preserve and protect them. This is an election to be made by the recorder that is separate from the decision to provide electronic searching, as described in paragraph (3).

Since this act also applies to “Torrens” title registration systems, a recorder who operates a title registration system may choose to implement the functions of receiving, indexing, storing, archiving, and transmitting electronic documents for the title registration system.

(3) Paragraph (3) provides that the recorder may choose to implement electronic search and retrieval functions. Searching and retrieval functions include any process by which a title searcher obtains information from the land records system. The paragraph allows a recorder to authorize persons to access documents or their information, including index information, electronically. In so doing, the recorder may allow the accessing party to search the index and the stored documents or information electronically and to retrieve them in an electronic format. This is an election to be made by the recorder that is separate from the decision to record electronic documents, as described in paragraph (2). A recorder who operates a “Torrens” title registration system also may choose to implement the functions of accessing, searching, and retrieving documents or information in the title registration system.

(4) This act does not require that persons engaging in real estate transactions use electronic documents in order to have their documents recorded. It merely permits the recorder to accept electronic documents if they are presented electronically. Economics, availability of technology, and human nature suggest that not everyone will begin to use electronic real estate documents immediately. It will likely be some time 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, paragraph (4) requires the recorder to continue to accept paper documents even after establishing an electronic recording system. This is a mandatory and not an elective provision.

This paragraph also provides that the recorder must index the 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 one index for the purpose of ascertaining all relevant instruments that were recorded after the initiation of electronic recording. 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 also suggests that the unified index would be an electronic one. It would be more efficient to store the index information from paper documents in an electronic index than to convert and store the index information from electronic documents in a paper index system. Electronic index information can be sorted and managed more easily and efficiently than paper index information. In addition, 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 index chosen by the recorder to be an electronic one.

(5) Paragraphs (5) and (6) relate to the conversion and storage of the text or information contained in paper documents in 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 paragraph (4).

Paragraph (5) relates to the conversion of "new" 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 and stored in an electronic form. It does, however, permit the recorder to make a conversion of those paper documents into an electronic form and store them with electronic documents received by the recorder. If the paper documents are not converted into an electronic form, the recorder must continue to store them and, as public documents, the recorder must continue to provide a process for accessing them.

If the recorder does not convert "new" paper documents into an electronic form, the usefulness and efficiency of the

electronic recording system may be limited. A title examiner will have to obtain physical access to the paper document information in traditional ways. Since electronic documents are stored electronically, the examiner will have to access two different storage systems – one for paper documents and one for electronic documents.

(6) Paragraph (6) relates to the conversion of information from “old” paper documents recorded prior to the implementation of an 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” document information is more challenging than dealing with “new” documents simply because of the potentially large expenditure of time and money needed to convert a significant volume of paper information extending over many past years into an electronic form. The time period over which a fully-effective conversion would extend probably spans a period of forty to sixty or more years, depending on the customary period of search in the jurisdiction. Without the conversion, the usefulness and efficiency of the electronic recording system is limited, at least until the passage of a period after the adoption of the act that is equal to the customary period of search.

(7) Paragraph (7) provides that any fee or tax that is collected by the recorder may be collected through an electronic payment system. Without a means of paying the applicable fees and taxes electronically, the achievement of a speedy and efficient electronic recording system would not be possible. Although the document could be submitted electronically, the fee would have to be paid by traditional means. The effective completion of the recording would be delayed until that payment is received by the recorder.

The nature and operation of the electronic payment system is not specified. The selection is subject to standards set by the Electronic Recording Commission or state agency and the choice

of the recorder. Among others, the alternatives might include a subscription service with a regular billing system, a prepayment system with recording and access charges applied against a deposited amount, or a payment per individual service system.

(8) Commonly, 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 or offices. If the prior approval and the fee or tax paying processes are not conjoined with the electronic recording process, it will 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 real estate taxes have been paid or whether current ones are due. Under current practice that submission and approval might have to be accomplished in a physical process independent of the electronic recording process. If a tax or fee is due, that sum might also have to be paid by check or other non-electronic process to the treasurer. Procedures such as these will delay the electronic recording process and will limit the achievement of a speedy, efficient electronic recording system.

Paragraph (8) 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 be allocated among the recorder and the other offices in accordance with their agreements.

#### **SECTION 5. ADMINISTRATION AND STANDARDS.**

(a) An {Electronic Recording Commission} consisting of 13 {number} members ~~appointed by [the governor]~~ is created to

adopt standards to implement this [act]. The members shall be appointed as follows:

(1) Six probate judges or chief clerks appointed by the Alabama Probate Judges Association;

(2) Two practicing attorneys appointed by the Alabama State Bar Association;

(3) One person engaged in the business of title insurance in the State of Alabama appointed by the Alabama Land Title Association, a division of the Dixie Land Title Association;

(4) One person appointed by the Alabama Banking Association;

(5) One person appointed by the Association of County Commissions of Alabama;

(6) The chief examiner of the Alabama Department of Examiners of Public Accounts or his or her designee; and

(7) The director of the Alabama Department of Archives and History or his or her designee.

(b) To keep the standards and practices of Probate Judges [recorders] in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact

substantially this [act] and to keep the technology used by Probate Judges ~~[recorders]~~ in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this [act], the ~~[Electronic Recording Commission]~~ ~~[name of state agency]~~, so far as is consistent with the purposes, policies, and provisions of this [act], 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.

(c) The Electronic Recording Commission shall adopt standards pursuant to this chapter. It shall be the duty of the commission to prescribe uniform standards for Electronic Recording of Real Estate records for any county participating in the electronic recording of real estate in their county. The Secretary of State shall immediately implement as a part of the Alabama Administrative Procedures Act the standards adopted by the Electronic Recording Commission without change.

#### **Alabama Comment**

The Alabama Drafting Committee opted to include alternative A of section 5 from the Uniform Act. This alternative allows for the creation of a commission, the membership of which is set forth in subsection (a), which will propose and adopt uniform standards which will address the practical and technical implementation of this act.

Subsection (c) provides that it shall be the duty of the Electronic Recording Commission to develop and draft standards for electronic recording and upon its completion of that task, the Secretary of State is to ensure that those standards are promulgated however necessary for inclusion in the Alabama Administrative Code. The Secretary of State has no other function or obligations pursuant to this act.

#### **Official Comment**

(a) This section provides two alternatives for designating the entity that will adopt standards to implement this act.

Alternative A creates a state Electronic Recording Commission and provides for its general composition. The exact size of the board is to be determined by the legislature. The appointment of the commissioners is to be made by the governor or another state official or governmental body determined by the legislature.

Under Alternative A, the majority of the members of the commission must be recorders. Recorders, by the fact that the standards adopted by the Electronic Recording Commission will affect the operation of their offices, have a professional interest in generating efficient, functional standards. If the recorders are appointed from sufficiently diverse recording venues, they can also provide valuable input as to the needs of recording districts of varying size, population and resources, as described further in subsection (b).

Alternative B delegates the duty to adopt standards to implement this act to an existing state agency. In some states this oversight of the recording process, and in some cases the electronic recording process, has already been delegated to an existing state agency. In like fashion, some state legislatures may wish to delegate these duties to an existing state agency instead of creating a new commission as is directed in Alternative A.

If the state agency has oversight of many diverse functions, it might prove useful for the agency to establish a subdivision to implement and adopt standards for this act. The agency or subdivision might also wish to establish a regular process to obtain advice from persons with expertise in the area of recordings, particularly in electronic recordings.

(b) The Electronic Recording Commission or state agency is directed to adopt standards to implement the provisions of this act. As provided in section 4, recorders implementing any of the functions of this act must comply with those standards.

One of the objectives of this act is to facilitate the efficient use of electronic recording within the state and among the various

adopting states. This subsection directs the Electronic Recording Commission or state agency to seek to keep the standards and practices of the recording offices in states using electronic recording in harmony and uniformity with each other. Ease of user access and interoperability and the promotion of interstate commerce depend highly on a similarity of standards and operating processes among the various recording offices. However, differences in operating processes and their governing standards may be justified based on legitimate differences that exist from venue to venue. The commission is not required to adopt the same standards and practices that exist in other states, but must give them serious consideration.

When adopting, amending or repealing standards the commission or agency must consider the following factors:

(1) the standards and practices of other states adopting this uniform act or a substantially similar one. In many situations, Electronic Recording Commissions or state agencies of other states may have already considered the same issue. Their research and subsequent experiences may prove very helpful to the commission or state agency in making its decision.

(2) the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association (PRIA). National standard-setting organizations such as PRIA will likely have considered the issue that is now before the commission or agency and have developed a protocol or standard to deal with it. Furthermore, since these bodies are national in scope, they will likely already have considered the needs of recording districts of varying size, population and resources when promulgating their standards.

(3) the views of interested parties. Among others, these persons should include county recorders and 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. It must also consider the views of governmental offices that may interact with the recording

offices, such as clerks of court, taxing authorities, and the office of the Secretary of State. Also included might be potential suppliers of hardware, software and services for electronic recording systems.

(4) the needs of counties of varying size, population and resources. Because most states are quite diverse in the size, population and resources of their recording venues, it is important that the Electronic Recording Commission or state agency consider all of their needs. Standards that are designed only for large, populous and well-funded recording districts may not promote the development of electronic recording in smaller, less-populous and not-as-well funded recording districts. This subsection recognizes that the standards should promote the overall good of the entire state and not just the good of certain types of recording venues. Thus, the commission is advised to consider the needs of the entire spectrum of recording districts.

(5) information security for electronic documents. When considering the adoption of standards, the commission or state agency is directed to consider a number of security concerns.

The authenticity of a documents stored in any recording system is of utmost importance. If forged or invalid documents are accepted for recording, landowners and those depending on their titles can be seriously affected. Thus, the commission or state agency is directed to consider standards that would protect an electronic recording system from accepting and recording documents that are not authentic and genuine. Furthermore, even if an electronic document is authentic in its origin, it may be possible to intercept it in transmission and change its content. Such a change could cause problems equally problematic as those caused by an originally forged document. Thus, the commission or state agency is directed to consider standards that would protect documents from tampering and inaccuracies caused during transmission.

The subsection also directs the commission or state agency to consider standards for the proper preservation of electronic

documents once they are in the electronic recording system. If an unauthorized person were to be able to “hack” or enter the electronic recording system, that person could cause considerable damage and injury to the records and persons having an interest in the affected land. Thus, the commission or state agency is directed to consider standards protecting the electronic land records system from unauthorized intrusion and tampering. Finally, the subsection directs the commission or state agency to consider adequate standards for the preservation of electronic documents. If there should only be one copy of the electronic land records and it is destroyed by an electronic or physical catastrophe, the security of the land records system would be seriously impaired. Thus, the commission or state agency should consider the means and methodology of preserving and replicating the electronic land records so that the recorder can recover from such a catastrophe with no loss of information.

**SECTION 6. SCOPE AND RESTRICTIONS.** Except as expressly provided in this Act or the standards adopted by the Electronic Recording Commission, nothing in this act or any rule adopted pursuant to this Act, shall amend, alter, or repeal the substantive law of this state as it relates to the requirements of any real property recordings.

#### **Alabama Comment**

Section 6 was added to the Alabama act in order to make clear that the provisions of this act address the administrative, clerical, technical and practical aspects of filing only and do not in any way change the substantive requirements relating to the instruments being filed. More specifically, Alabama law relating to notice, items required for acceptance of instruments, requirements for inclusions in instruments, and all other aspects

regarding the preparation of documents and their filing not specifically set forth in this act remain intact and unchanged.

**SECTION 7. 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.

**Official Comment**

This section recites the importance of uniformity among the adopting states when applying and construing the act. It is more general than the uniformity stated in section 5 for the Electronic Recording Commission or state agency when implementing or adopting standards. This section seeks uniformity in all situations when the application or interpretation of the act itself is considered or under review.

**SECTION 8. 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)).

**Official Comment**

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.

**SECTION 9. EFFECTIVE DATE.** This act takes effect January 1, 2010.

**Official Comment**

This act will become effective in the enacting jurisdiction on the designated date.