

Preliminary Thoughts for Task Force on Electronic Recording

To introduce myself, I am a life member of the Uniform Law Commission and Professor of Law Emeritus at the University of Missouri-Columbia. I chaired the drafting committee that prepared the Uniform Electronic Transactions Act [UETA, final in 1999] and the various drafting and study committees that culminated in 2018 in the Revised Uniform Law on Notarial Acts. Over the past 30 years, through activities in various states, with organizations, vendors and other interested parties I have worked toward reasoned legal acceptance of electronic transactions in a variety of commercial and consumer settings.

Upon reading the text of Kentucky SB 114 and the provisions establishing the Task Force, my initial reaction was, and continues to be, that you have been charged with two distinct and diverse tasks. These tasks may overlap to some degree, and some of the same persons or entities will be interested in your proceedings, but they are distinct tasks and involve differing interests in your state and elsewhere. As to recording electronic records, the closest parallel to your statute in the work of the Uniform Law Commission is the Uniform Real Property Electronic Recording Act [URPERA]. According to the material I have, that 2005 act has not been enacted in Kentucky. However, Kentucky did enact the UETA. If Kentucky enacted optional sections 17-19 of UETA, legal authority to accept electronic records for recording is within the power of the recording offices. [Note, however, that if the Kentucky UETA excluded conveyances of interests in real property from the coverage of your version of UETA, the exclusion – and possibly the entire enactment of UETA – is preempted by the federal ESign Act. And as should be evident from this note, I have not reviewed the Kentucky statute enacting UETA prior to this writing.]

This has been a long way to say that I believe the chore relating to the recording of electronic records is a separate and distinct item from the charge to review notarial laws. The officials running the local recording offices should be the source of a wealth of information about the strengths and weaknesses of the existing system and generally should be charged with implementing systems to handle the recording of electronic records when the time comes. In my experience, the necessary changes are easier to implement than many fear, but I do believe these concerns are best allayed by conversations with, and demonstrations by, the vendors of such services. They are eager and quite happy to work with groups such as your task force and the local officials.

In that respect, you may wish to speak with:

Art Gaudio, Reporter for URPERA and for RULONA
Professor and Dean Emeritus Western New England University School of Law
1215 Wilbraham Rd.
Springfield, MA 01119-2612
413 796-2201
agaudio@law.wne.edu

David D. Biklen, Commissioner, Chair of URPERA Drafting Committee
799 Prospect Ave., B2
West Hartford, CT 06105
860 989-5712
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In addition to their work on the URPERA Drafting Committee, both engaged with groups in the various states as URPERA was enacted and as groups were formed within the states to implement its provisions. Commissioner Biklen was, I believe, a member of the group that did the work in his state. Both also were involved in the RULONA drafting process.

Mark Ladd, former president of Property Records Industry Association
Simplifile [vendor of electronic recording systems]
Mark.ladd@simplifile.com

Mark has been involved every step of the way, from the establishment of study committees to implementation in state and local offices. Both as a vendor and through his work within PRIA, he is knowledgeable and very helpful.

Justin Ailes
American Land Title Association
jailes@alta.org

David Ewan, ABA observer to RULONA work
Westcor Land Title Insurance Company
dewan@wltic.com

The interest of title insurers, both through their interest in enhancing the effectiveness of closing processes and in controlling the risk in insuring titles, is self-evident. ALTA has not always agreed with ULC, but has worked at all times for the betterment of recording processes.

Additional potentially interested parties:

Paul Hodnefield
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Kathleen Butler
American Society of Notaries
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Michael Chodos
Notarize [vendor]
Michael@notarize.com

The above is a long list and you may or may not choose to contact any of these individuals now or at a later time. However, I have worked with all of them and believe each could and would be helpful to the task force. If and when any of them are contacted, feel free to let them know that I provided their respective names and contact information.

Turning to the second major leg of the charge to the task force, notaries are regulated in Kentucky by your Secretary of State. Megan Walton was an observer to the RULONA drafting committee and knowledgeable about the work we did. A number of other individuals involved with the Notary Public Administrators division of the National Association of Secretaries of State were observers to the project and have implemented or are working on implementing its provisions in their respective states. Among others you may wish to contact the officers of the NPA, all of whom are extremely knowledgeable and have been involved in implementing plans for electronic notarization. They are Mike Smith, Georgia Clerks of Court, mike.smith@GSCCCA.org, Lori Hamm, Montana Secretary of State's Office, lori.hamm@mt.gov, and Maureen Ewing, Rhode Island Secretary of State, mewing@sos.ri.gov. In addition, Commissioner Michele Timmons of Minnesota worked tirelessly to secure enactment of RULONA in her state, in the face of her Secretary of State's unwillingness to adopt implementing regulations. She can be

reached at pmtimmons@msn.com. And of course the representatives of the notary associations listed above have been intensely involved in activities at all levels to insure that the laws and regulations governing notaries, including those dealing with electronic notarizations, are well-founded and effective. Again, feel free to let any of these contacts know that I provided their contact information.

I hope these notes have been helpful. I look forward to the telephone conversation this coming week.