

TASK FORCE ON ELECTRONIC RECORDING OF OFFICIAL DOCUMENTS BY COUNTY CLERKS

Minutes of the 1st Meeting of the 2019 Interim

August 21, 2019

Call to Order and Roll Call

The 1st meeting of the Task Force on Electronic Recording of Official Documents by County Clerks was held on Wednesday, August 21, 2019, at 11:00 AM, in Room 171 of the Capitol Annex. Representative Joseph M. Fischer, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Julie Raque Adams, Co-Chair; Representative Joseph M. Fischer, Co-Chair; Senators Morgan McGarvey and Stephen West; Representatives Angie Hatton and Brandon Reed; Don Blevins, Michael Chodos, Debbie Donnelly, Russell Ford, Branden Gross, Mark Ladd, John McGarvey, Stephanie Schumacher, Debra Stamper, Gabrielle Summe, Pam Thompson, Barry Tuemler, and Tim Vaughan.

Guests: Gino Yoscovits, Quicken Loans; and Patricia Fry, Uniform Law Commission.

LRC Staff: Dale Hardy, Katie Comstock, and Yvonne Beghtol.

Chairman Fischer began the meeting by clarifying that the goal of the Task Force Committee is to implement the eRecording law, SB 114, which passed in Session 2019. One task is to consider eClosing, and eNotarization in other states.

Business Interactions in States with RULONA

Gino Yoscovits, Director of State Government Affairs for Quicken Loans in the Southeast, reviewed the three types of eClosings: Hybrid In-Person; In-Person eNotarization (IPEN); and Remote Online Notarization (RON).

On a national level, there are currently 22 states with RON legislation approved. Twelve states are awaiting regulations and ten states have officially gone into effect.

The industry has been more focused on RON, mainly because IPEN is not vastly different from traditional notarization. In creating the standards for IPEN there are questions to be considered and answered, such as requirements to become an e-notary.

Mortgage Industry Standards Maintenance Organization (MISMO) has been setting the standards for RON. The organization is made up of groups in the mortgage industry: document providers, lenders, e-Notary providers, and RON providers. The standards should be finalized in the upcoming weeks. Tennessee and Texas are two states Mr. Yoscovits refers to for industry standards.

Mr. Yoscovits detailed standards and security measures in areas of eClosings including government IDs, audio/visual quality, storage of records, and security.

Property Records Industry Association (PRIA) developed industry standards for eRecording, to ensure acceptance and implementation of eRecording.

In response to questions and comments from John McGarvey, Mr. Yoscovits clarified that any technology device, such as Androids, tablets, iPads, and laptops can be used. Mr. Yoscovits is not aware of any states using distributed ledger in the protection of documents and has not yet considered it.

In response to Chairman Fischer, Mr. Yoscovits confirmed that MISMO and eRecording standards are incorporated in the regulations for Texas and Tennessee.

RULONA in Other States

Patricia Fry, with the Uniform Law Commission, presented via remote audio. Over 20 states have enacted the Uniform Real Property Electronic Recording Act and have regulated the use of electronic technology for recordings. Local recorders have to establish the process for recording and indexing paper and electronic submissions. St. Louis, Missouri and Iowa have established an Electronic Recording System.

States have taken different approaches as to acceptable technology for eNotarizations, eRecordings, and eClosings. Because technology and business models change constantly, statutes and regulations containing specific technology standards will soon become obsolete. Ms. Fry suggests focusing on the function rather than the technology.

Distributed Ledger Technology offers prospects for ensuring reliable copies of electronic transactions. The multiple computers on which the records are stored need to be controlled by multiple parties, making the forgery of documents more difficult.

Ms. Summe stated that all counties are required by law to “paper out” electronic submissions into books.

Mr. Blevins stated that the official storage of permanent records is in paper or microfilm. Electronic storage is not considered a permanent record.

Mr. McGarvey addressed drafting with medium neutrality and durability, and emphasized that Distributed Ledger Technology is more of a security technique and not a back-up system.

Ms. Fry clarified the difference between the record and the evidence of something having occurred. The evidence is important to the lenders, title insurers, and lawyers.

Future Task Force Meeting Topics

Chairman Fischer would like to consult with Tennessee and Texas to determine regulations that may have to be implemented, and asked that members contact Dale Hardy with topics they feel would benefit the committee.

Mr. Blevins announced that, since the passing of SB 114, the clerks have been working on updates to fees, and updating the recording manual. Some issues they have run across and would like to discuss in future meetings are: Certificates of Delinquency, the attaching/unattaching of a manufactured home to real estate, how does a paper document get recorded, and how to determine if a copy from another county is truly certified.

Mr. Blevins asked Mike Nickles, Office of Business at the Secretary of State's Office, to speak to the committee. Mr. Nickles stated that Kentucky's in-house software used to track who is a notary is largely paper based, which needs to evolve into an electronic process.

Chairman Fischer asked that the clerks and the Secretary of State's Office to present issues that they would like the committee to consider, including the proposed regulations in draft form, along with any changes in the law.

Mr. McGarvey suggested the clerks review the integration of regulations regarding eFiling with paper filing for financing statements.

Future Meeting Dates

Chairman Fischer set the date of the next meeting to Tuesday, September 10th, at 11:00 am.

Mr. Gross suggested that the committee consider modifying legislation for documents coming from out-of-state. Ms. Summe would like a more standard form to be used across the state. She would also like the financial cost of retention, microfilm, and production of books to be assessed.

Adjournment

There being no further business, the meeting was adjourned at 12:04 PM.