

TASK FORCE ON ELECTRONIC RECORDING OF OFFICIAL DOCUMENTS BY COUNTY CLERKS

Minutes of the 2nd Meeting of the 2019 Interim

September 10, 2019

Call to Order and Roll Call

The 2nd meeting of the Task Force on Electronic Recording of Official Documents by County Clerks was held on Tuesday, September 10, 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: Representative Joseph M. Fischer, Co-Chair; Senator Morgan McGarvey; Representatives Angie Hatton and Brandon Reed; Don Blevins, Michael Chodos (via audio), Debbie Donnelly, Brent Eisele, Russell Ford, Erica Galyon, Branden Gross, Mark Ladd (via audio), John McGarvey, Stephanie Schumacher, Debra Stamper, Gabrielle Summe, and Tim Vaughan.

Guests: Mike Nickles, Secretary of State's Office

LRC Staff: Dale Hardy, Matt Trebelhorn, and Yvonne Beghtol

Approval of the Minutes

Representative Reed motioned to approve the August 21, 2019 minutes, seconded by Debra Stamper, approved by voice vote.

Update on Status of SB 114 Regulations

Erica Galyon, Assistant Secretary of State, began by reviewing the existing status of notary laws. Ms. Galyon then discussed changes under SB 114 and why changes were necessary.

There are 4.5 million notaries in the United States. Kentucky processed 160,000 notary applications in 2018. There are currently 82,000 notaries commissioned in Kentucky.

Ms. Galyon reviewed the differences between traditional, electronic, and remote notarizations. To be an electronic or remote notary you first have to go through the traditional notary application process, and then a separate process to become an electronic or remote notary.

In April of 2016, the National Association of Secretaries of State (NASS) created a task force to promote a greater understanding of the issues and policies surrounding remote/video notarizations in an effort protect the credibility of the process, prevent identity fraud, and provide accountability to the public in order to advance secure electronic commerce.

Remote notarization will make it easier to find a notary, will benefit military and overseas transaction, as well as “after hour” transactions, will reduce operating costs, and provide more accurate transactions.

In the process of drafting regulations to implement SB 114, the Secretary of State is considering issues regarding identity verification, tamper evident technology, acknowledgements, the Uniform Electronic Transaction Act (UETA) and Uniform Real Property Electronic Recording Act (URPERA), consumer’s choice of who to do business with, and interstate recognition to notaries across the states. Other considerations include witnesses, unauthorized access, and repository and custodian provisions. Kentucky is the 22nd state to authorize remote notarization.

Ms. Galyon presented the new qualifications for notaries based on SB 114. A \$1,000 surety bond is required to be licensed or authorized to do business in Kentucky.

The disqualifications under SB 114 allows the Secretary of State to refuse to renew, revoke, suspend or impose a condition on a notary’s commission for acts or omissions demonstrating the notary’s lack of honesty, integrity, competence, or reliability to act as a notary.

Mike Nickles, Secretary of State’s Office, added that there are a variety of ways in which different states implement disqualifying factors. In regards to criminal background checks, some states list the crimes that would disqualify an individual to be a notary. In response to Chairman Fischer, Mr. Nickles stated that there were no defined disqualifying factors before SB 114.

Ms. Galyon reviewed the administrative regulations SB 114 authorizes the Secretary of State to issue.

Ms. Galyon stated that the notary portal is currently in use, but not by all clerks. Mr. Nickles advised that the Secretary of State’s office is to maintain an online service listing all notaries. A separate portal is available which allows the county clerks to see who has applied, and who has been approved. This portal allows clerks to generate a notary certificate for approved individuals.

In response to Branden Gross, Ms. Galyon stated that SB 114 applies to Kentucky notaries. The notary can notarize a document for someone outside of Kentucky, but the portal is for Kentucky notaries. Mr. Nickles added that the portal will indicate if the notary is authorized for electronic and online notarizations. States that have adopted the uniform law have similar portals. Mr. Nickles agrees that adding links to other state portals so the public can look-up notaries from other states would be helpful.

In response to Don Blevins, Ms. Galyon will contact county clerks for examples of how to remedy fraud cases and will share their draft of regulations when developed. In response to Chairman Fischer, Ms. Galyon said that January 1, 2020 is their deadline to complete the regulations.

SB 114 Cleanup Items

Don Blevins; Fayette County Clerk, Gabrielle Summe; Kenton County Clerk, Stephanie Schumacher; Mason County Clerk, and Debbie Donnelly; Hardin County Clerk, presented the impacts of SB 114 as discussed among the county clerks.

Mr. Blevins began by stating the primary concerns after SB 114's passage are the fee structure, and updating the document recording manual. Mr. Blevins believes there may be a need for a clean-up bill to SB 114 to address manufactured home documents, legal process taxes, certificates of delinquency, certified copy fees, and moving fixture filings and assignment of leases and rents into the flat fee structure. Other issues of concern include certified copy impact, definition of signature, power of attorney requirements, and retention and permanent record types.

In response to Russell Ford, Mr. Blevins clarified that they want to be consistent throughout the process. A wet signature cannot be required at the counter if you don't require it from the scanned copy. Mr. Ford suggested contacting Indiana to find what they require for signatures.

In response to John McGarvey, Mr. Blevins agreed to look at the definition of a signature in Article 9 of KRS Chapter 355.

In response to Brent Eisele, Mr. Blevins confirmed that the issue is not accepting a copy at the desk when the individual can use the same copy to submit online. Many times a document is flawed and the original signer is no longer available. Now they can use a copy and it would not be questioned.

Gabrielle Summe, Kenton County Clerk, discussed the retention issues involving permanent records. Many records previously considered permanent no longer need to be permanent.

In response to Mr. Gross, Mr. Blevins said that, technically, the documents at some point are microfiche and stored in the state archives. An individual would have to come to Frankfort to obtain a copy. After a number of years, the clerks would like to be able to purge some documents. Ms. Summe stated that the original document of records such as deeds, mortgages, and state tax liens only exist for 11 years, yet the release of the lien is considered a permanent record. If the original document no longer exists and the copy is not of use legally, then the retention period needs to be the same. If the Kentucky Department of Library and Archives (KDLA) maintains a record, the clerks would like to purge their files.

In response to Debra Stamper, Mr. Blevins agrees that having the documents housed in different locations is best.

Chairman Fischer asked that the clerks submit the clean-up bill to the committee as quickly as possible. Mr. Blevins said he would appreciate a sponsor to assist them in getting the bill completed.

Chairman Fischer announced October 2nd, and November 20th at 11:00 AM as the upcoming meeting dates.

Adjournment

There being no further business, the meeting adjourned at 11:54 AM.