

TASK FORCE ON ELECTRONIC RECORDING OF OFFICIAL DOCUMENTS BY COUNTY CLERKS

Minutes of the 3rd Meeting of the 2019 Interim

October 2, 2019

Call to Order and Roll Call

The 3rd meeting of the Task Force on Electronic Recording of Official Documents by County Clerks was held on Wednesday, October 2, 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 Stephen West; 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, Pam Thompson, Barry Tuemler, and Tim Vaughan.

Guests:

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

Approval of the Minutes

Tim Vaughan made a motion to approve the September 10, 2019 minutes, seconded by Don Blevins, approved by voice vote.

Kentucky Bankers Association

Debra Stamper, Kentucky Bankers Association, announced that 48 states have some form of e-recording. Simplifile, CSC, Nationwide, and EPN are working with county clerk's offices to accept these filings. Because some counties and banks may never accept e-filings, availability remains on a voluntary basis.

John McGarvey, Kentucky Bankers Association, addressed benefits and concerns to be considered in implementing e-filings. Mr. McGarvey stated that e-filings will bring Kentucky into the digital world by providing e-recordings of documents. Establishing bright-line standards is necessary to ensure ease of compliance. Making Kentucky reasonably consistent with other states would benefit the process. At a local level, there needs to be some consistency between counties. Requiring multiple vendors to provide

services would be beneficial and desired. Mr. McGarvey suggests looking into the future as to the type of digital technology to pursue for recording, filing, and record retention.

In response to Chairman Fischer, Ms. Stamper has studied the regulations of surrounding states and will share that information with the committee. Some county clerks expect to offer e-filing and e-recording on January 1, 2020. Chairman Fischer noted that the law requires regulations to be in place before implementing the electronic procedures. Mr. McGarvey added that an estimation on the percentage of transactions that will take place in the counties that will be ready is another factor to consider. Don Blevins, Fayette County Clerk, stated that, while he does not believe many counties will be ready to go live by January 1, 2010, the bill passed in Session 2019 allows clerks to paper out an electronic filing. Mr. Blevins also mentioned that smaller counties may be ready before larger counties due to having software that already has the capability to accept e-filings.

Mortgage Bankers Association of Kentucky

Tim Vaughan, Mortgage Bankers Association of Kentucky, informed that the Mortgage Bankers Association of Kentucky is comprised of over 100 diverse members throughout the state.

Pam Thompson, Mortgage Bankers Association of Kentucky, stated that uniformity is critical to the success of implementation. One of the biggest concerns for members of the Mortgage Bankers Association of Kentucky, is knowing how to maneuver within the system; such as how to make corrections, the correction process, and who is responsible to make corrections. It would be beneficial to have a list from other states of issues that needed to be addressed once the procedures were put in place. Making sure the bankers and title institutions have the necessary information is critical in executing correctly. Ms. Thompson also noted that record retention and back-up is vital. Not all lenders will accept electronic transactions. Having a list of who the Mortgage Bankers Association of Kentucky can conduct business with would be helpful. Ms. Thompson believes the electronic transaction will be used more than remote.

In response to Chairman Fischer, Ms. Thompson feels the papering out option was critical in getting the bill passed and important to continue business in the state. By allowing clerks to paper out, setting the level of uniformity will not be as much of an issue. Ms. Summe, Kenton County Clerk, stated that setting the details will be the most difficult part and asked if the Property Records Industry Association (PRIA) standards are set in the regulations or by the association. Ms. Galyon, Assistant Secretary of State, said that their office is focusing on notary regulations, not e-recording. The Secretary of State does not have authority under SB 114 to issue regulations on e-recording. Ms. Summe noted that who writes the regulations as they relate to e-recording will need to be addressed. Ms. Galyon stated that the Secretary of State office is working on draft regulations and should have a copy for review by the next task force meeting. Ms. Stamper advised that the burden should be on the filer to ensure the current regulations are followed, whether papered out

or sent electronically to a county clerk. Mr. Blevins added that there is no authority to dictate what the margin requirements are at this time. The County Clerk Association will most likely adopt PRIA as is, and then promulgate that to the filers. There are no statutes or regulations to enforce so it will be used from a practical standpoint. The paper size is regulated, but not the margins. Ms. Stamper added that she thinks Library and Archives has a margin standard. Another issue Mr. Blevins would like to address is the proposed standard for rejection language, as proposed by PRIA. Branden Gross, Bingham, Greenebaum, Doll, suggested having a proposed bill for the 2020 Session to outline the margins and other concerns. Mr. McGarvey suggested that the Secretary of State's office write regulation that relates to real estate transactions in Kentucky. Ms. Summe would like to consider the practical standards from PRIA and adopt those before working on regulations and statutes. Ms. Stamper stated that a county clerk may refuse to accept a document because it is not consistent with PRIA standards, and a filer may file a lawsuit because it is not a statutory requirement. Mr. Blevins believes this would tie up the document for six months, so it is not likely to happen. Mr. Blevins stated that issues within the first six months can be addressed before the following year. Ms. Summe stated that the more consistency that can be obtained, the less confusing the process will be.

In response to Mr. Gross, Mark Ladd, Vanguard, stated that practitioners can work with one or more vendors and will be charged per transaction. In response to Chairman Fischer, the retail cost is \$5 per transaction or less, depending on volume.

Brent Eisele, Foundation Title & Escrow, asked how to handle a document that starts with the correct margins but, in the transferring process, gets changed by the time it reaches the county clerk. Mr. Eisele also believes that remote online will be used more than some may think due to the convenience of not having to be physically present to sign documents.

Senator West mentioned that he is Co-Chair for the Administrative Regulation Review Committee and suggests focusing on the regulations as they pertain to this statute and address other issues in a separate statute for the upcoming session. Chairman Fischer agrees that the committee needs to focus on how to implement e-recording and e-notarization. However, this statute is not limited to e-recording and e-notarization, and there are other technology related issues to consider. Therefore, the Secretary of State is limited by what is in the statute.

Adjournment

Chairman Fischer reminded members of the November 20th meeting. There being no further business, the meeting adjourned at 11:38 AM.