

# **TASK FORCE ON ELECTRONIC RECORDING OF OFFICIAL DOCUMENTS BY COUNTY CLERKS**

## **Minutes of the 4th Meeting of the 2019 Interim**

**November 20, 2019**

### **Call to Order and Roll Call**

The 4th meeting of the Task Force on Electronic Recording of Official Documents by County Clerks was held on Wednesday, November 20, 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; Senators Morgan McGarvey and Stephen West; Representative Brandon Reed; Don Blevins, Michael Chodos (via audio), Debbie Donnelly, Brent Eisele, Russell Ford, Erica Galyon, Mark Ladd, John McGarvey, Stephanie Schumacher, Debra Stamper (via audio), Gabrielle Summe, Pam Thompson (via audio), Barry Tuemler, and Tim Vaughan.

Guests:

LRC Staff: Dale Hardy, Randall Roof, and Yvonne Beghtol.

### **Approval of the Minutes**

Representative Reed made a motion to approve the October 2, 2019 minutes, seconded by Don Blevins, approved by voice vote.

Chairman Fischer began by affirming that this Task Force Committee is scheduled to meet four times during the 2020 Interim and will then issue a report to the General Assembly.

### **Kentucky Land Title Association**

Barry Tuemler, 1<sup>st</sup> American Title Insurance Company, stated the priority for real estate professionals is to have uniform regulations adopted and implemented across the state. Mr. Tuemler suggested a draft of regulations that mimic those from other states that have adopted RULONA. Two areas the American Land Title Association considers of utmost importance are digital certification to ensure tamper-proof documents and identity verification.

In response to Chairman Fischer, Mark Ladd, Simplifile, confirmed that these two topics are addressed in other states' regulations. Erica Galyon, Assistant Secretary of State, stated that the regulations presented by Mr. Tuemler are similar to those the Secretary of State's Office recently sent to the general counsel of the Uniform Law Commission, and will be put into effect by January 1, 2020. Mr. Tuemler confirmed that if these regulations are adopted, the 1<sup>st</sup> American Title Insurance Company will be able to issue title insurance in Kentucky.

In response to John McGarvey, Morgan Pottinger McGarvey PSC, Chairman Fischer confirmed that the Kentucky Land Title Association will provide a Word document version of the handout so comparisons with the promulgated regulations will be easier.

### **PRIA Standards**

Mark Ladd, Simplifile, informed the committee that Property Records Industry Association (PRIA) sets the national best practices and technical standards for county recorders regarding electronic recording. PRIA is comprised of the public sector, title companies, and technology vendors. Technology standards can be modified to meet local requirements. The extensible markup language (XML) enables computers to talk to each other. The second version of XML is currently in use, and PRIA is working on the third version. All of the technology vendors in this realm have products based on the PRIA standards. PRIA's XML coordinates between the mortgage and land title industries to ensure inter-operability across the life of a loan. PRIA has published a recorder's guide, a submitter's guide, and eRecording best practices for recorders. The general recording best practices includes the indexing of names and parties, notary best practices, real estate document formatting, land record management systems, and traditional assurances for electronically recorded documents. Mr. Ladd reviewed the Midwest model versus the west coast, and encourages the Midwest standards. Mr. Ladd added that policy needs to be set not only for online notarization, but also for in-person electronic notarization. Mr. Ladd highly recommends the comprehensive and concise PRIA eRecording regulations adopted by Connecticut.

In response to Mr. McGarvey, Mr. Ladd stated that PRIA will provide as much advance notice as possible when updates and changes to PRIA's standards are being made, so the regulations can be amended as needed.

In response to Ms. Summe, Senator West stated that it would be best to have changes to regulations made explicitly. Ms. Galyon added that the Secretary of State's office does not have the statutory authority to regulate electronic recording. Don Blevins, Fayette County Clerk, verified that there is no entity to oversee or maintain a manual for county clerks to record documents, and suggests that one be established. Mr. Ladd added that most states do not have oversight by a state regulatory body and have commissioned a rule-making authority. In response to Mr. McGarvey, Mr. Blevins stated that clerks would welcome the adoption of statewide standards and would like to have representation with

any future entity that would create those standards. Senator West stated that implementing the process for new regulations will take approximately two years and the focus now needs to be on regulations for implementing RULONA to achieve uniformity.

In response to Brent Eisele, Foundation Title and Escrow, Ms. Summe confirmed that the county clerks association adopted the PRIA standards for recording. Ms. Summe stated that holographic wills fall under a different category, but deeds would have to be typed. Mr. Ladd stated that PRIA standards does not directly address the issue of a deed that met the standards of it time, was lost, then found, and is now unrecordable. Ms. Summe stated that most county clerk would handle this under a common sense action and not reject it based on a formatting issue. In response to Chairman Fischer, Mr. Ladd stated that Wisconsin accepts documents found in the previous format and records it rather than adhering to the recently adopted formatting guidelines.

In response to Brent Eisele, Ms. Summe confirmed that contracts will need to be typed. If a portion is handwritten it would not invalidate the contract.

Mr. Blevins stated that fee language and some other issues that were not intended under SB 114 need to be addressed in the upcoming session. Ms. Summe would like the language pertaining to document storage fee to be more protected on behalf of the clerks. Currently, 75 percent of the fee is available to county clerks for use while the other 25 percent goes to the fiscal courts. Some counties do not turn over the excess fees until their term ends, whereas other counties submit it on a yearly basis. Chairman Fischer suggested putting these issues into bill form and submitting it to him to relay to Representative Petrie.

Mr. McGarvey mentioned that a uniform act on electronic wills will be a future legislative priority, but no states have adopted it at this time.

In response to Mr. Eisele, Ms. Summe stated she is putting together a resolution for the adoption of the PRIA standards.

## **Adjournment**

There being no further business, the meeting adjourned at 12:10 PM.