

TASK FORCE ON ELECTRONIC RECORDING OF OFFICIAL DOCUMENTS BY COUNTY CLERKS

Minutes of the 3rd Meeting of the 2020 Interim

November 18, 2020

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, November 18, 2020, at 3:00 PM, 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; Representative Brandon Reed; Don Blevins, Debbie Donnelly, Branden Gross, Mark Ladd, John McGarvey, Pam Thompson, Barry Tuemler, and Michael Wilson.

Guests:

LRC Staff: Randall Roof and Yvonne Beghtol.

Chairman Fisher announced that the Electronic Recording of Official Documents by County Clerks Task Force was tasked to observe and promote the implementation of SB 114 and to compare Kentucky's progress in the eRecording/eNotary space with other states. The intervening of the COVID-19 pandemic has accelerated the need for the commonwealth and local governments to fully implement eFiling.

Approval of the Minutes

Not having a quorum, the August 20, 2020 and October 22, 2020 minutes were not considered for approval.

Recommendations for Legislative Changes by Task Force Members

Don Blevins stated that some of the smaller counties were experiencing issues with the fiscal courts taking the funds allocated for county clerks use. Chairman Fischer stated that a bill has been drafted to go before the committees during the upcoming Session to address these concerns.

Barry Tuemler, Kentucky Land Title Association (KYLTA), stated that their association supports legislation that would give more uniformity to the process of recording real estate documents in county clerks offices throughout the state. The KYLTA submitted

a handout listing their primary concerns to be considered regarding electronic notarizations and electronic recording of real estate documents. The first being uniform access and hours of operation, the second being an electronic filing/search engine implementation deadline, and the third being a grant fund to assist smaller counties to implement the electronic technology. Chairman Fischer agrees that the KYLTA's request for electronic filing capability in every county by January 1, 2022, and having every county clerk maintain an electronic database accessible to the public by June 30, 2024 would make title work easier.

In response to Chairman Fischer, Mr. Blevins stated that the funding to provide a new database to allow total electronic title searches is available through SB 114. However, some of the smaller counties have not scanned documents as far back in time. Therefore it may take longer to get the database built up. Branden Gross added that this is why it is important to make sure the fiscal courts are not using the funds set aside for these projects. Chairman Fischer advised that he will recommend that the General Assembly sets the end of 2021 as the deadline for county clerks to accept electronic filing.

In response to John McGarvey, Chairman Fischer agreed that staggering deadlines for electronic records databases back to a specified year to be available by the end of 2021, then further back by the end of 2022, and all records available by the end of 2024 is a good idea. Mr. Gross added that commercial titles require 60 years of recording. Mr. Tuemler stated that Kentucky does not have a marketable title act, however the industry standard is 60 years for a title search on commercial property and 30 years for residential property. Mr. Blevins agreed that staggering the implementation dates is necessary if mandated. To go back 60 years electronically would require probably \$200,000 to \$500,000 worth of third party work for Fayette County. John McGarvey suggested an initial deadline of going back 30 years. Mr. Blevins commented that if a clerk's office only has a year or two scanned, going back 30 years is a big challenge. Mr. McGarvey asked if the Kentucky Clerk's Association could provide a spreadsheet indicating the status of each county clerks office. In response to Mr. McGarvey, Mr. Blevins stated that the Kentucky Clerk's Association could possibly provide a spreadsheet indicating the status of each county clerk's office. Chairman Fischer stated that it is important to the Commonwealth that Kentucky is competitive with the systems that are in use in other states which have this electronic capability of searching titles.

Chairman Fischer announced that he received a recommendation from the Automobile Dealers Association that there be a centralized lien filing and lien release system available for automobile titles and an electronic title transfer and registration system. In response to Chairman Fischer, Mr. Blevins stated that the software and a centralized system to offer titling automobiles is being put together. The current AVIS centralized system resides on a main frame that the Commonwealth Office of Technology takes care of. Transportation is rebuilding a version that will include a centralized lien handling system which should be in full implementation within 18 to 24 month. In response to Chairman Fischer, Mr. Blevins stated that the system will not preclude or set electronic

title transferring and registration as a primary feature. Chairman Fischer stated that there needs to be more research done with the Automobile Dealers Association as to how other states handle automobile title systems. Mr. McGarvey stated that some states offer electronic motor vehicle titles, which is the ultimate step beyond just doing title work and title liens electronically, and that the Uniform Motor Vehicle Title Act has some elements that might be helpful. Mr. McGarvey added that the initial step would be allowing electronic access to a county clerk's office for the purpose of processing titles and title liens.

Michael Wilson announced that his presentation before the task force in August, 2020 suggested some clean-up items that affected KRS Chapter 423. The proposals would change some of the definitions that are somewhat ambiguous, changing electronic notarization to remote electronic notarization. Electronic notarization as it is currently defined really means an online notarization. It would change the definitions of two of the statutory terms and remove the Uniform Acknowledgment Act which is basically redundant. Chairman Fischer asked that Mr. Wilson send those proposals to the judiciary staff to be included in the bill this January, 2021.

Debbie Donnelly stated that the clerks association would like to revisit HB 337 for clean-up language with KRS 64.012. Mainly to exempt payment for extra pages and offer a flat fee to the circuit clerk's office when they submit wills to be recorded. Also, to review eRecording of wills. Mr. McGarvey stated that the Uniform Electronic Wills Act will be introduced in the upcoming session, and it includes eNotarization of self-approved wills. Chairman Fischer stated that this would be a separate discussion, but would include elements of interest for this task force. Mr. McGarvey stated that he believes Senator Westerfield is sponsoring that bill. Chairman Fischer noted that the COVID-19 pandemic emboldens people to want to sign their wills remotely.

There being no further business the meeting adjourned at 3:25 PM.