

1 **UNIFORM REAL PROPERTY ELECTRONIC RECORDING**

2 **ACT**

3 2014 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lyle W. Hillyard**

6 House Sponsor: V. Lowry Snow

8 **LONG TITLE**

9 **General Description:**

10 This bill enacts provisions related to the Uniform Real Property Electronic Recording
11 Act.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ provides for the validity of and recording of electronic documents;
- 16 ▶ creates the Utah Electronic Recording Commission to establish electronic recording
17 standards;
- 18 ▶ requires a phased-in implementation by class of county; and
- 19 ▶ authorizes a county recorder to collect an electronic recording surcharge to recover
20 implementation costs.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides an effective date.

25 **Utah Code Sections Affected:**

26 **AMENDS:**

- 27 **17-21-1**, as last amended by Laws of Utah 2008, Chapter 97
- 28 **17-21-18.5**, as last amended by Laws of Utah 2011, Chapter 345
- 29 **17-21-20**, as last amended by Laws of Utah 2011, Chapter 88

30 57-3-106, as last amended by Laws of Utah 2011, Chapter 88

31 ENACTS:

32 17-21a-101, Utah Code Annotated 1953

33 17-21a-102, Utah Code Annotated 1953

34 17-21a-201, Utah Code Annotated 1953

35 17-21a-202, Utah Code Annotated 1953

36 17-21a-203, Utah Code Annotated 1953

37 17-21a-301, Utah Code Annotated 1953

38 17-21a-302, Utah Code Annotated 1953

39 17-21a-401, Utah Code Annotated 1953

40 17-21a-402, Utah Code Annotated 1953

41 17-21a-403, Utah Code Annotated 1953

42

43 *Be it enacted by the Legislature of the state of Utah:*

44 Section 1. Section 17-21-1 is amended to read:

45 **17-21-1. Recorder -- Document custody responsibility -- Electronic submission**
46 **procedures and guidelines.**

47 The county recorder:

48 (1) is custodian of all recorded documents and records required by law to be recorded;

49 (2) shall establish policies and procedures that the recorder considers necessary to
50 protect recorded documents and records in the recorder's custody, including determining the
51 appropriate method for the public to obtain copies of the public record under Section 17-21-19
52 and supervision of those who search and make copies of the public record; ~~and~~

53 (3) may establish procedures and guidelines to govern the electronic submission of
54 plats, records, and other documents to the county recorder's office consistent with Title 46,
55 Chapter 4, Uniform Electronic Transactions Act[-], and Chapter 21a, Uniform Real Property
56 Electronic Recording Act; and

57 (4) shall establish procedures to govern the electronic submission of plats, records, and

58 other documents to the county recorder's office consistent with standards established under
59 Chapter 21a, Uniform Real Property Electronic Recording Act, by:

- 60 (a) if in a county of the first or second class, July 1, 2016;
- 61 (b) if in a county of the third or fourth class, July 1, 2017; or
- 62 (c) if in a county of the fifth or sixth class, July 1, 2018.

63 Section 2. Section **17-21-18.5** is amended to read:

64 **17-21-18.5. Fees of county recorder.**

65 (1) The county recorder shall receive the following fees:

66 (a) for recording any instrument, not otherwise provided for, other than bonds of public
67 officers, \$10;

68 (b) for recording any instrument, including those provided for under Title 70A,
69 Uniform Commercial Code, other than bonds of public officers, and not otherwise provided
70 for, \$10 for the first page and \$2 for each additional page, and if an instrument contains more
71 than one description, \$1 for each additional description;

72 (c) for recording a right-of-way connected with or appurtenant to any tract of land
73 described in the instrument, \$1, but if the instrument contains a description of more than one
74 right-of-way, \$1 for each additional right-of-way, and if an instrument contains more than two
75 names for either the first or second party, or the plaintiffs or defendants, \$1 for each additional
76 name;

77 (d) for recording mining location notices and affidavits of labor affecting mining
78 claims, \$10 for the first page and \$2 for each additional page; and

79 (e) for a location notice, affidavit, or proof of labor which contains names of more than
80 two signers, \$1 for each additional name, and for an affidavit or proof of labor which contains
81 more than one mining claim, \$1 for each additional mining claim.

82 (2) (a) Each county recorder shall record the mining rules of the several mining
83 districts in each county without fee.

84 (b) Certified copies of these records shall be received in all tribunals and before all
85 officers of this state as prima facie evidence of the rules.

- 86 (3) The county recorder shall receive the following fees:
- 87 (a) for copies of any record or document, a reasonable fee as determined by the county
- 88 legislative body;
- 89 (b) for each certificate under seal, \$5;
- 90 (c) for recording any plat, \$30 for each sheet and \$1 for each lot or unit designation;
- 91 (d) for taking and certifying acknowledgments, including seal, \$5 for one name and \$2
- 92 for each additional name;
- 93 (e) for recording any license issued by the Division of Occupational and Professional
- 94 Licensing, \$10; and
- 95 (f) for recording a federal tax lien, \$10, and for the discharge of the lien, \$10.
- 96 (4) (a) For recording a document that is subject to and complies with the Real Estate
- 97 Settlement and Procedure Act, 12 U.S.C. Sec. 2601 et seq. for a residential property
- 98 constructed for at least one family but no more than four families, the county recorder shall
- 99 receive:
- 100 (i) \$14 for each deed of conveyance;
- 101 (ii) \$40 for each deed of trust; and
- 102 (iii) \$14 for each assignment of a deed of trust when recorded concurrently with the
- 103 assigned deed of trust.
- 104 (b) If a person submits for recording a document described in Subsection (4)(a), the
- 105 person shall notify the county recorder by including the word "RESPA" in at least 16 point font
- 106 on the front page of each document.
- 107 (c) A county recorder is not required to:
- 108 (i) refund a fee described in Subsection (4)(a); or
- 109 (ii) change a fee amount shown on a recorded document if the fee described in
- 110 Subsection (4)(a) is not collected at the time of recording.
- 111 (d) A county recorder may examine a document recorded under this Subsection (4) for
- 112 compliance with the Real Estate Settlement and Procedure Act, 12 U.S.C. Sec. 2601 et seq.
- 113 (5) In addition to any other fee that the county recorder is authorized to charge and

114 collect, if a county recorder is required to comply with the standards established under Chapter
115 21a, Uniform Real Property Electronic Recording Act, the county recorder may charge and
116 collect from a person who submits an electronic document, as defined in Section 17-21a-102,
117 for recording, a surcharge that:

118 (a) is calculated to recover the additional costs of complying with Chapter 21a,
119 Uniform Real Property Electronic Recording Act; and

120 (b) may not exceed 10% of the cost before the surcharge.

121 ~~[(5)]~~ (6) The county may determine and collect a fee for all services not enumerated in
122 this section.

123 ~~[(6)]~~ (7) A county recorder may not be required to collect a fee for services that are
124 unrelated to the county recorder's office.

125 Section 3. Section 17-21-20 is amended to read:

126 **17-21-20. Recording required -- Recorder may impose requirements on**
127 **documents to be recorded -- Prerequisites -- Additional fee for noncomplying documents**
128 **-- Recorder may require tax serial number -- Exceptions -- Requirements for recording**
129 **final local entity plat.**

130 (1) Subject to Subsections (2), (3), and (4), each paper, notice, and instrument required
131 by law to be recorded in the office of the county recorder shall be recorded unless otherwise
132 provided.

133 (2) ~~[Each document executed on or after July 1, 2007,]~~ Subject to Chapter 21a,
134 Uniform Real Property Electronic Recording Act, each document that is submitted for
135 recording to a county recorder's office shall:

136 (a) unless otherwise provided by law, be an original or certified copy of the document;

137 (b) be in English or be accompanied by an accurate English translation of the
138 document;

139 (c) contain a brief title, heading, or caption on the first page stating the nature of the
140 document;

141 (d) except as otherwise provided by statute, contain the legal description of the

142 property that is the subject of the document;

143 (e) comply with the requirements of Section 17-21-25 and Subsections 57-3-105(1)
144 and (2);

145 (f) except as otherwise provided by statute, be notarized with the notary stamp with the
146 seal legible; and

147 (g) have original signatures.

148 (3) (a) [~~Beginning September 1, 2007~~] Subject to Chapter 21a, Uniform Real Property
149 Electronic Recording Act, a county recorder may require that each paper, notice, and
150 instrument submitted for recording in the county recorder's office:

151 (i) be on white paper that is 8-1/2 inches by 11 inches in size;

152 (ii) have a margin of one inch on the left and right sides and at the bottom of each
153 page;

154 (iii) have a space of 2-1/2 inches down and 4-1/2 inches across the upper right corner
155 of the first page and a margin of one inch at the top of each succeeding page;

156 (iv) not be on sheets of paper that are continuously bound together at the side, top, or
157 bottom;

158 (v) not contain printed material on more than one side of each page;

159 (vi) be printed in black ink and not have text smaller than seven lines of text per
160 vertical inch; and

161 (vii) be sufficiently legible to make certified copies.

162 (b) A county recorder who intends to establish requirements under Subsection (3)(a)
163 shall first:

164 (i) provide formal notice of the requirements; and

165 (ii) establish and publish an effective date for the requirements that is at least three
166 months after the formal notice under Subsection (3)(b)(i).

167 (c) If a county recorder establishes requirements under this Subsection (3), the county
168 recorder may charge and collect from persons who submit a document for recording that does
169 not comply with the requirements, in addition to any other fee that the county recorder is

170 authorized to charge and collect, a fee that:

171 (i) is calculated to recover the additional cost of handling and recording noncomplying
172 documents; and

173 (ii) may not exceed \$2 per page.

174 (4) (a) To facilitate the abstracting of an instrument, a county recorder may require that
175 the applicable tax serial number of each parcel described in the instrument be noted on the
176 instrument before it may be accepted for recording.

177 (b) If a county recorder requires the applicable tax serial number to be on an instrument
178 before it may be recorded:

179 (i) the county recorder shall post a notice of that requirement in a conspicuous place at
180 the recorder's office;

181 (ii) the tax serial number may not be considered to be part of the legal description and
182 may be indicated on the margin of the instrument; and

183 (iii) an error in the tax serial number does not affect the validity of the instrument or
184 effectiveness of the recording.

185 (5) Subsections (2), (3), and (4) do not apply to:

186 (a) a map;

187 (b) a certificate or affidavit of death;

188 (c) a military discharge;

189 (d) a document regarding taxes that is issued by the Internal Revenue Service of the
190 United States Department of the Treasury;

191 (e) a document submitted for recording that has been filed with a court and conforms to
192 the formatting requirements established by the court; or

193 (f) a document submitted for recording that is in a form required by law.

194 (6) (a) As used in this Subsection (6):

195 (i) "Boundary action" has the same meaning as defined in Section [17-23-20](#).

196 (ii) "Local entity" has the same meaning as defined in Section [67-1a-6.5](#).

197 (b) A person may not submit to a county recorder for recording a plat depicting the

198 boundary of a local entity as the boundary exists as a result of a boundary action, unless:

199 (i) the plat has been approved under Section 17-23-20 by the county surveyor as a final
200 local entity plat, as defined in Section 17-23-20; and

201 (ii) the person also submits for recording:

202 (A) the original notice of an impending boundary action, as defined in Section
203 67-1a-6.5, for the boundary action for which the plat is submitted for recording;

204 (B) the original applicable certificate, as defined in Section 67-1a-6.5, issued by the
205 lieutenant governor under Section 67-1a-6.5 for the boundary action for which the plat is
206 submitted for recording; and

207 (C) each other document required by statute to be submitted for recording with the
208 notice of an impending boundary action and applicable certificate.

209 (c) Promptly after recording the documents described in Subsection (6)(b) relating to a
210 boundary action, but no later than 10 days after recording, the county recorder shall send a copy
211 of all those documents to the State Tax Commission.

212 Section 4. Section 17-21a-101 is enacted to read:

213 **CHAPTER 21a. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT**

214 **Part 1. General Provisions**

215 **17-21a-101. Title.**

216 (1) This chapter is known as the "Uniform Real Property Electronic Recording Act."

217 (2) This part is known as "General Provisions."

218 Section 5. Section 17-21a-102 is enacted to read:

219 **17-21a-102. Definitions.**

220 As used in this chapter:

221 (1) "Commission" means the Utah Electronic Recording Commission established in
222 Section 17-21a-302.

223 (2) "Document" means information that is:

224 (a) inscribed on a tangible medium or that is stored in an electronic or other medium
225 and is retrievable in perceivable form; and

226 (b) eligible to be recorded in the land records maintained by the county recorder.

227 (3) "Electronic" means relating to technology having electrical, digital, magnetic,
228 wireless, optical, electromagnetic, or similar capabilities.

229 (4) "Electronic document" means a document that is received by the county recorder in
230 an electronic form.

231 (5) "Electronic signature" means an electronic sound, symbol, or process attached to or
232 logically associated with a document and executed or adopted by a person with the intent to
233 sign the document.

234 (6) "Person" means an individual, corporation, business trust, estate, trust, partnership,
235 limited liability company, association, joint venture, public corporation, government, or
236 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

237 (7) "State" means a state of the United States, the District of Columbia, Puerto Rico,
238 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
239 of the United States.

240 Section 6. Section 17-21a-201 is enacted to read:

241 **Part 2. Electronic Documents**

242 **17-21a-201. Title.**

243 This part is known as "Electronic Documents."

244 Section 7. Section 17-21a-202 is enacted to read:

245 **17-21a-202. Validity of electronic documents.**

246 (1) If a law requires, as a condition for recording, that a document be an original, be on
247 paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic
248 document satisfying this chapter.

249 (2) If a law requires, as a condition for recording, that a document be signed, the
250 requirement is satisfied by an electronic signature.

251 (3) (a) A requirement that a document or a signature associated with a document be
252 notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic
253 signature of the person authorized to perform that act, and all other information required to be

254 included, is attached to or logically associated with the document or signature.

255 (b) A physical or electronic image of a stamp, impression, or seal need not accompany
256 an electronic signature.

257 Section 8. Section 17-21a-203 is enacted to read:

258 **17-21a-203. Recording of documents.**

259 (1) As used in this section, "paper document" means a document that is received by the
260 county recorder in a form that is not electronic.

261 (2) A county recorder:

262 (a) who implements any of the functions listed in this section shall do so in compliance
263 with standards established by the Utah Electronic Recording Commission created in Section
264 17-21a-301;

265 (b) may receive, index, store, archive, and transmit electronic documents;

266 (c) may provide for access to, and for search and retrieval of, documents and
267 information by electronic means;

268 (d) who accepts electronic documents for recording shall continue to accept paper
269 documents as authorized by state law and shall place entries for both types of documents in the
270 same index;

271 (e) may convert paper documents accepted for recording into electronic form;

272 (f) may convert into electronic form information recorded before the county recorder
273 began to record electronic documents;

274 (g) may accept electronically any fee that the county recorder is authorized to collect;
275 and

276 (h) may agree with other officials of a state or a political subdivision thereof, or of the
277 United States, on procedures or processes to facilitate the electronic satisfaction of prior
278 approvals and conditions precedent to recording and the electronic payment of fees.

279 Section 9. Section 17-21a-301 is enacted to read:

280 **Part 3. Administration and Standards**

281 **17-21a-301. Title.**

282 This part is known as "Administration and Standards."
283 Section 10. Section **17-21a-302** is enacted to read:
284 **17-21a-302. Administration and standards.**
285 (1) (a) (i) There is established the Utah Electronic Recording Commission consisting
286 of six members.
287 (ii) The commission shall adopt standards to implement this chapter.
288 (b) (i) The governor shall appoint:
289 (A) four elected county recorders with no two appointees representing the same class
290 of county; and
291 (B) one person practicing in the land title industry nominated by the Utah Land Title
292 Association.
293 (ii) The term for each appointee is four years, except that the term for:
294 (A) the first two appointed county recorders is for two years; and
295 (B) the first appointed person practicing in the land title industry is for two years.
296 (c) The five members appointed by the governor shall select one elected county
297 commissioner to serve as the sixth member of the commission for a four year term.
298 (d) (i) The members of the commission shall annually elect from its members a
299 commission chair, vice chair, and secretary.
300 (ii) The members of the commission shall serve as its own staff to the commission.
301 (e) A member of the commission may designate another person to represent the
302 member in voting and attendance of meetings.
303 (f) An action of the commission requires four affirmative votes.
304 (2) To keep the standards and practices of county recorders in this state in harmony
305 with the standards and practices of recording offices in other jurisdictions that enact
306 substantially this chapter, and to keep the technology used by county recorders in this state
307 compatible with technology used by recording offices in other jurisdictions that enact
308 substantially this chapter, the commission, so far as is consistent with the purposes, policies,
309 and provisions of this chapter, in adopting, amending, and repealing standards, shall consider:

- 310 (a) standards and practices of other jurisdictions;
- 311 (b) the most recent standards promulgated by national standard-setting bodies, such as
- 312 the Property Records Industry Association;
- 313 (c) the views of interested persons and governmental officials and entities;
- 314 (d) the needs of counties of varying size, population, and resources; and
- 315 (e) standards requiring adequate information security protection to ensure that
- 316 electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

317 Section 11. Section 17-21a-401 is enacted to read:

318 **Part 4. Relationship to Other Laws**

319 **17-21a-401. Title.**

320 This part is known as "Relationship to Other Laws."

321 Section 12. Section 17-21a-402 is enacted to read:

322 **17-21a-402. Uniformity of application and construction.**

323 In applying and construing this uniform act, consideration must be given to the need to
324 promote uniformity of the law with respect to its subject matter among states that enact it.

325 Section 13. Section 17-21a-403 is enacted to read:

326 **17-21a-403. Relation to Electronic Signatures in Global and National Commerce**

327 **Act.**

328 This chapter modifies, limits, and supersedes the federal Electronic Signatures in
329 Global and National Commerce Act (15 U.S.C. Sec. 7001, et seq.) but does not modify, limit,
330 or supersede Section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or authorize electronic delivery
331 of any of the notices described in Section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

332 Section 14. Section 57-3-106 is amended to read:

333 **57-3-106. Original documents required -- Captions -- Legibility.**

334 (1) A person may not present and a county recorder may refuse to accept a document
335 for recording if the document does not comply with this section.

336 (2) (a) Unless otherwise provided, a document presented for recording in the office of
337 the county recorder shall:

338 (i) (A) be an original; or
339 (B) be an electronic document that satisfies the requirements under Title 17, Chapter
340 21a, Uniform Real Property Electronic Recording Act;
341 (ii) contain a brief caption on the first page of the document stating the nature of the
342 document; and
343 (iii) contain a legal description of the property as required under Section [57-3-105](#).
344 (b) If a document is a master form, as defined in Section [57-3-201](#), the caption required
345 by Subsection (2)(a)(ii) shall state that the document is a master form.
346 (3) A court judgment or an abstract of a court judgment presented for recording in the
347 office of the county recorder in compliance with Section [78B-5-202](#) shall:
348 (a) be an original [or], a certified copy, or an electronic document that satisfies the
349 requirements under Title 17, Chapter 21a, Uniform Real Property Electronic Recording Act;
350 and
351 (b) include the information identifying the judgment debtor as referred to in Subsection
352 [78B-5-201](#)(4) either:
353 (i) in the judgment or abstract of judgment; or
354 (ii) as a separate information statement of the judgment creditor as referred to in
355 Subsection [78B-5-201](#)(5).
356 (4) A judgment, abstract of judgment, or separate information statement of the
357 judgment creditor does not require an acknowledgment, a legal description, or notarization to
358 be recorded.
359 (5) A foreign judgment or an abstract of a foreign judgment recorded in the office of a
360 county recorder shall include the affidavit as required in Section [78B-5-303](#).
361 (6) Any document recorded in the office of the county recorder to release, assign,
362 renew, or extend a judgment lien shall include:
363 (a) the name of any judgment creditor, debtor, assignor, or assignee;
364 (b) the date on which the instrument creating the lien was recorded in the office of the
365 county recorder;

366 (c) the entry number and book and page of the recorded instrument creating the
367 judgment lien; and

368 (d) the date on which the document is recorded.

369 (7) A document presented for recording shall be sufficiently legible for the recorder to
370 make certified copies of the document.

371 (8) (a) (i) A document that is of record in the office of the appropriate county recorder
372 in compliance with this chapter may not be recorded again in that same county recorder's office
373 unless the original document has been reexecuted by all parties who executed the document.

374 (ii) Unless exempt by statute, an original document that is reexecuted shall contain the
375 appropriate acknowledgment, proof of execution, jurat, or other notarial certification for all
376 parties who are reexecuting the document as required by Title 46, Chapter 1, Notaries Public
377 Reform Act, and Title 57, Chapter 2, Acknowledgments.

378 (iii) A document submitted for rerecording shall contain a brief statement explaining
379 the reason for rerecording.

380 (b) A person may not present and a county recorder may refuse to accept a document
381 for rerecording if that document does not conform to this section.

382 (c) This Subsection (8) applies only to documents executed after July 1, 1998.

383 (9) Minor typographical or clerical errors in a document of record may be corrected by
384 the recording of an affidavit or other appropriate instrument.

385 (10) (a) Except as required by federal law, or by agreement between a borrower under
386 the trust deed and a grantee under the trustee's deed, and subject to Subsection (10)(b), neither
387 the recordation of an affidavit under Subsection (9) nor the reexecution and rerecording of a
388 document under Subsection (8):

389 (i) divests a grantee of any real property interest;

390 (ii) alters an interest in real property; or

391 (iii) returns to the grantor an interest in real property conveyed by statute.

392 (b) A person who reexecutes and rerecords a document under Subsection (8), or
393 records an affidavit under Subsection (9), shall include with the document or affidavit a notice

394 containing the name and address to which real property valuation and tax notices shall be
395 mailed.

396 Section 15. **Effective date.**

397 (1) Except as provided in Subsection (2), this bill takes effect on July 1, 2015.

398 (2) Section 17-21a-302 takes effect on May 13, 2014.