

**KANSAS**  
**UNIFORM REAL PROPERTY ELECTRONIC**  
**RECORDING ACT**



**REPORT FROM THE KANSAS**  
**ELECTRONIC RECORDING COMMISSION**

*Pursuant to K.S.A. 58-4401 et seq.*

Effective July 1, 2007

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***The Electronic Recording Commission is responsible for the adoption of standards to implement the Kansas Uniform Real Property Electronic Recording Act (Kansas URPERA), K.S.A. §§ 58-4401 - 4407 (Senate Bill 336, approved April 19, 2006, published Chapter 145, 2006 Session Laws of Kansas).***

**Kansas Electronic Recording Commission**  
**Kansas Electronic Recording Standards**  
**Version 1.0**  
**July 1, 2007**

**Section I: Introduction**

The Kansas legislature established the Kansas Electronic Recording Commission (**KERC**) to adopt standards to implement the Uniform Real Property Electronic Recording Act (**URPERA**). Passed during the 2006 legislative session, the Kansas URPERA authorizes county Registers of Deeds to accept electronic documents for recording, provided that they do so in compliance with standards established by the KERC. The KERC is composed of 15 members representing a range of stakeholders in the real property recording process:

- Registers Of Deeds
- Title Industry
- Construction Industry
- Oil And Gas Industry
- Banking Industry
- Mortgage Industry
- Land Surveying
- Real Estate Industry
- Agricultural Industry
- Kansas Bar Association
- Secretary Of State
- State Archivist

The KERC, in accordance with the provisions of its authorizing legislation, used the electronic recording standards issued by the Property Records Industry Association (PRIA) as the foundation for Kansas standards, expanding upon or clarifying the PRIA standards when necessary. KERC standards address the following issues:

- Data standards
- Security (transactional and organizational)
- Electronic signatures
- Notary acknowledgment
- File formats for electronic recording
- Records retention and preservation
- Payment of fees

The Kansas Electronic Recording Standards will be updated periodically in response to changes in the technological environment.

For a glossary of terms referenced in this document, see Appendix A. For acronyms referenced in this document, see Appendix B. For an explanation of electronic recording models, see Appendix C. For applicable Kansas statutes pertaining to electronic recording, see Appendix D.

## Section II: Kansas Electronic Recording Standards

**1) Data Standards. The KERC adopts the PRIA standards on electronic document formatting and document data fields.**

### Comments

PRIA data and document standards are the preferred standard for use by industry participants of electronic document recording. See Appendix E for a list of the PRIA standards and supporting documents.

It is further recommended that eRecording be offered and conducted at all three models of submission. See Appendix C for an explanation of e-recording models from the PRIA Implementation Guide.

**2) Security. Participants of electronic recording shall develop security standards and policies based on industry accepted security practices and protocols.**

### Comments

**Transactional Security:** All electronic documents must be secured in such a way that both the transmitting and receiving parties are assured of each other's identity, and that no unauthorized party can view or alter the electronic document during transmission, processing, and delivery. If the electronic document has been subject to those security measures identified in Chapter 6 of the "PRIA eRecording XML Implementation Guide For Version 2.4.1, Revision 2, Updated 03/0/2007" throughout the entire electronic document process of execution through recording, then the security obligations under these standards have been satisfied.

**Organizational Security:** Each Register of Deeds office, which elects to accept electronic documents for recordation pursuant to K.S.A. §58-4401, et. seq., shall implement reasonable measures such that each electronic document accepted for recordation is protected from alteration and unauthorized access.

**3) Electronic Signatures. While UETA and URPERA allow many types of electronic signatures, Registers of Deeds are only required to accept electronic signatures that they have the technology to support.**

**4) Notary Acknowledgement. Transactions filed pursuant to K.S.A. 58-4401 et seq. must comply with K.S.A. 16-1611 et seq. and K.A.R. 7-43-1 et seq. as amended from time to time.**

**5) Document Formats for Electronic Recording. The KERC recommends that electronic recordings be converted to (if necessary) and preserved as TIFF or PDF files**

**along with their associated metadata. Model 3 submissions should be converted to TIFF or PDF until the viability of preserving these eRecordings in their native format (i.e. XML, XHTML) has been demonstrated.**

### Comments

#### Recommended Preservation File Formats (See Appendix F):

**TIFF:** The Tagged Image File Format (TIFF) is widely adopted within the property recording industry and by registers who have imaging systems. TIFF is a non-proprietary format that is recommended for storing scanned images.

**PDF:** Portable Document Format (PDF) is another commonly used file format in the property recording industry. PDF files capture the appearance of the original document, can store both text and images, are difficult to modify, and can be rendered with free, cross-platform viewer software. PDF is based on publicly available specifications, and as of January 2007 Adobe, the creator of the format, is releasing the 1.7 version of the format to become an international standard through the International Standards Organization (ISO).

**XML:** Extensible Markup Language (XML) is the recommended file format for long-term preservation of any metadata.

**Metadata:** Metadata is commonly described as "data about data". Metadata is used to locate and manage information resources by classifying those resources and by capturing information not inherent in the resource. In the eRecording context, metadata may be generated automatically or created manually and it may be internal or external to the digital object itself. Regardless of how it is created or stored, maintaining accurate and reliable metadata is essential to the long-term preservation of eRecordings. See Appendix F for more information about metadata.

**Microfilm:** The archival process for electronic records will require consistent and complex management in order to maintain authenticity and integrity. Digital preservation requires a well-developed plan and implementation with specific policies and procedures. Electronic records are subject to the same threats of destruction as other mediums such as natural or human-made disasters. There are the added challenges of hardware and software obsolescence, media longevity and migration, infrastructure failures and accidental damage from improper handling.

The majority of records in the custody of the Register of Deeds must be preserved permanently. The durability of electronic records has not been proven to be as enduring as microfilm. In order to secure and preserve information created and stored electronically, security microfilm is recommended. Microfilm is an analog technology that allows documents to be read with magnification and a light source. If necessary, microfilm can be converted into a digital format. Producing microfilm that is created within the guidelines of the American National Standards Institute (ANSI) and properly stored and handled should provide secure records for hundreds of years.

**6) Records Retention and Preservation. Registers of Deeds must retain all records in their custody in accordance with requirements detailed in the County Registers of Deeds Retention and Disposition Schedule, approved by the Kansas State Records Board and published by the Kansas State Historical Society.**

**Comments**

The Register of Deeds records schedule is available at:  
<http://www.kshs.org/government/records/localgovt/countyregisterofdeeds.htm>.

See Appendix F for guidance on the long-term preservation of electronic recordings.

**7) Payment of Recording Fees. Electronic payment of recording fees shall be collected by public agencies as prescribed by state and local statutes and in accordance with accepted industry standards without incurring unreasonable electronic processing fees.**

**Comments**

Payments are a prerequisite to all methods of recording. Whether or not a payment is attached or an authorization of payment is included in a recording submission, the submission must incorporate some methodology for payment of fees associated with a particular document or set of documents.

Typical payment options include: ACH (Automated Clearing House), internal escrow accounts, credit and debit cards, and journal vouchers. The majority of jurisdictions interviewed currently engaged in electronic recording collect payment through ACH or by internal escrow accounts.

Fees are to be collected according to statute and in a manner consistent with the promotion of electronic recording, and in accordance with accepted industry standards. Each county recorder may collect electronic recording fees in a manner compatible with its internal software and county financial practices.

### Section III: Appendices

#### APPENDICES

- A) Glossary of Terms
- B) Acronyms Used In This Document
- C) Electronic Recording Models Explained
- D) Related Statutes (Enabling legislation, notary, e-signature, UETA, URPERA)
- E) PRIA Standards and Guidelines
- F) Records Retention and Preservation Guidelines
- G) Kansas Real Estate Sales Validation Questionnaire (SVQ) Form and Extensions
- H) Model Memorandum of Understanding
- I) Survey Results
  - Part 1: Kansas Bar Association
  - Part 2: Kansas Registers of Deeds Association
- J) Frequently Asked Questions
- K) Kansas Electronic Recording Commission Bylaws

## **Appendix A**

### **Glossary of Terms**

**Asymmetric encryption:** A method that uses two keys – a public key and a private key. Together, the keys constitute a key pair. Though the keys are mathematically related, it is not possible to deduce one from the other. The public key is published in a public repository and can be freely distributed. The private key remains secret, known only to the key holder.

**Authentication:** The act of tying an action or result to the person claiming to have performed the action. Authentication generally requires a password or encryption key to perform, and the process will fail if the password or key is incorrect.

**Digital signature:** A type of electronic signature consisting of a transformation of an electronic message using an asymmetric crypto system such that a person having the initial message and the signer's public key can accurately determine whether:

- (1) the transformation was created using the private key that corresponds to the signer's public key; and
- (2) the initial message has not been altered since the transformation was made.

**Digitized signature:** A representation of a person's handwritten signature, existing as a computerized image file. Digitized signatures are just one of several types of electronic signatures, and have no relation to digital signatures.

**Document type definition (DTD):** A document created using the Standard Generalized Markup Language (SGML) that defines a unique markup language (such as XHTML or XML). A DTD includes a list of tags, attributes, and rules of usage.

**Electronic commerce:** Also known as e-commerce, it refers to trade that occurs electronically, usually over the Internet. Electronic commerce often involves buying, selling, and sharing information, extending both new and traditional services to customers via electronic means. E-commerce allows business to take advantage of email, the Web, and other online innovations to improve the business process and offer consumers more ways to access products, faster information transfer and ultimately decreasing costs.

**Electronic document:** A document that is received by the Register of Deeds in an electronic form.

**Electronic record:** A record created, generated, sent, communicated, received or stored by electronic means.

**Electronic notary:** A notary public who has registered with the Secretary of State and who provides electronic notarial acts using a digital certificate authorized by the Secretary of State. (See also K.A.R 7-43-1)

**Electronic signature:** An electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document. (See also K.S.A. 16-1602(i) and K.S.A. 58-4402(d))

**Encrypt:** To apply an encryption key to a message in order to make it unreadable in an effort to prevent unintended use of the information. **Extensible Markup Language (XML):** A computer language used to create markup languages. XML allows developers to specify a document type definition (DTD) or schema in order to devise new markup languages for general or specific uses.

**Hash function:** A mathematical algorithm that takes an electronic document and creates a document fingerprint. The document fingerprint is much smaller than the original document, and does not allow the reconstitution of the original document from the fingerprint. A slightly different document, processed through the same hash function, would produce very different document fingerprint. A hash function helps to secure data by providing a way to ensure that data is not tampered with.

**Kansas Real Estate Sales Validation Questionnaire (SVQ):** Statutory sales disclosure document required by Kansas statute to accompany the recording of a deed.

**Key pair:** A set of keys, including a private key and a public key, used in asymmetric cryptography. Sometimes a key pair will be reserved for specific uses, such as creating digital signatures (signing pair) or encrypting secret information (encryption pair).

**Metadata:** Commonly described as "data about data". Metadata is used to locate and manage information resources by classifying those resources and by capturing information not inherent in the resource.

**Nonrepudiation:** Effectively implementing a process in such a way that the creator of a digital signature cannot deny having created it. Nonrepudiation involves supplying enough evidence about the identity of the signer and the integrity of a message so that the origin, submission, delivery, and integrity of the message cannot be denied. Protection of a user's private key is also a critical factor in ensuring nonrepudiation. The entire Public Key Infrastructure (PKI) industry exists to create and ensure the trust necessary for nonrepudiation.

**Notary public:** "Notary public" and "notary" mean any person appointed by the Secretary of State to perform notarial acts.

**Portable Document Format (PDF):** A file format created by Adobe Systems, Inc. that uses the PostScript printer description language to create documents. PDF files capture the appearance of the original document, can store both text and images, are difficult to modify, and can be rendered with free, cross-platform viewer software.

**Portal:** In eRecording terms, an electronic location where submitters can send their documents for further processing and delivery. A fully featured portal will incorporate specific index rules and information from other tables that assure conformity with the receiving County's backend recording system. A portal should be capable of receiving various document types from various submitting parties and be able to deliver them to virtually any county regardless of their back end recording system or physical location.

**Private Key:** A large, randomly generated prime number used in asymmetric encryption. The private key is used to encrypt a document fingerprint (the result of processing an electronic document through a hash function) to create a digital signature. A private key is generated by its holder at the same time a related public key is created. While the public half of

a key pair is made available to anyone who wants it, the private key is only known by its owner, who must keep it absolutely secret to maintain its integrity.

**Proprietary:** Indicates that software or other employed technology is owned or controlled exclusively by the vendor. These solutions are not transferable to other systems and must be used only on the vendor's systems.

**Public Key:** A large, randomly generated prime number that is used to decrypt an electronic document that has been encrypted with a private key. A public key is generated by its holder at the same time a related private key is created. Within the Public Key Infrastructure (PKI), public keys are used to verify digital signatures. Public keys are contained in digital certificates, published and otherwise distributed by the issuing certificate authority (CA).

**Public Key Infrastructure (PKI):** The framework of different entities working together to create trust in electronic transactions. The PKI industry facilitates signed transactions by using asymmetric cryptography to ensure security and verifiable authenticity. The PKI includes all parties, policies, agreements and technologies to a transaction. This sophisticated infrastructure allows all concerned parties to trust electronic transactions created within the standards set by the PKI industry.

**Real Estate Sales Validation Questionnaire (RESVQ):** See Kansas Real Estate Sales Validation Questionnaire.

**Schema:** A method for specifying the structure and content of specific types of electronic documents which use XML.

**Secure Socket Layer (SSL):** A security technology that uses both asymmetric and symmetric cryptography to protect data transmitted over the Internet.

**Signature Authentication:** The process by which a digital signature is used to confirm a signer's identity and a document's validity.

**Signed Digital Document:** An electronic document that includes an embedded digital signature. The digital signature contains an encrypted document fingerprint, which allows anyone receiving the document to verify its validity using the process of signature authentication.

**SMART Doc™:** A SMART Doc™ is a technical framework for representing documents in an electronic format. This format links data, the visual representation of the form, and signature. The visual representation of the documents can utilize a variety of technologies such as XHTML, PDF, and TIFF. Previously SMART docs™ were called eMortgage documents. In order to better describe the actual capabilities of the technology, the word "eMortgage" was replaced by the acronym "SMART" which represents: Securable, Manageable, Archivable, Retrievable, and Transferable.

**Submitting Party:** The entity that originates an electronic document. This is usually a bank, title company, attorney or anyone that inputs data into a specific template and/or associates an image and wishes to send the documentation for electronic recordation at the County.

**SVQ:** See Kansas Real Estate Sales Validation Questionnaire.

**Tagged information file format (TIFF):** An image file format commonly used for photos, scanned documents, or other graphics. TIFF images are graphics that are made up of individual dots or pixels. Files in the TIFF format are distinguished by a .tif filename extension.

**Third party vendor:** Entity that may act as a middle man or liaison to an electronic transaction. The vendor will usually have some added value to the transaction such as verifying accuracy and completeness of index entries, authentication of the submitting party, or any other County specific requirement.

**Uniform Electronic Transactions Act (UETA):** A body of recommended legislation drafted in 1999 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for adoption by state legislatures. UETA allows electronic documents and digital signatures to stand as equals with their paper counterparts. Kansas adopted a modified version of UETA (see K.S.A. § 16-1601 et seq.).

**Uniform Real Property Electronic Recording Act (URPERA):** A body of recommended legislation drafted in 2004 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for adoption by state legislatures. URPERA authorizes Registers of Deeds to accept electronic documents for recording in accordance with established standards. Kansas adopted a modified version of URPERA (see K.S.A. § 58-4401 et seq.).

**Wet signature:** An original representation of a person's name applied to a document. Wet signatures are often highly stylized, sometimes bearing little resemblance to the name they are supposed to represent.

**XML:** See Extensible Markup Language.

**XML Schema:** See Schema.

**Appendix B**  
**Acronyms Used In This Document**

<b>ACH</b>	Automated Clearing House
<b>ANSI</b>	American National Standards Institute
<b>DTD</b>	Document Type Definition (see Glossary)
<b>E-SIGN</b>	Electronic Signatures in Global & National Commerce
<b>FTP</b>	File Transfer Protocol
<b>HTML</b>	HyperText Markup Language
<b>HTTP</b>	HyperText Transfer Protocol
<b>HTTPS</b>	HyperText Transfer Protocol Secure
<b>ISO</b>	International Standards Organization
<b>KERC</b>	Kansas Electronic Recording Commission
<b>MISMO</b>	Mortgage Industry Standards Maintenance Organization
<b>MOU</b>	Memorandum of Understanding
<b>NCCUSL</b>	National Conference of Commissioners on Uniform State Laws
<b>OAIS</b>	Open Archival Information Systems
<b>PDF</b>	Portable Document Format
<b>PKI</b>	Public Key Infrastructure (see Glossary)
<b>PRIA</b>	Property Records Industry Association
<b>RESVQ</b>	See SVQ
<b>SSL</b>	Secure Socket Layer (see Glossary)
<b>SVQ</b>	Kansas Real Estate Sales Validation Questionnaire
<b>TIFF</b>	Tagged Information File Format (see Glossary)
<b>UETA</b>	Uniform Electronic Transaction Act
<b>URPERA</b>	Uniform Real Property Electronic Recording Act
<b>VPN</b>	Virtual Private Network
<b>XHTML</b>	Extensible Hyper Text Markup Language
<b>XML</b>	Extensible Markup Language (see Glossary)

**Appendix C**  
**eRecording Models (or Models) Explained**  
*From the PRIA I-Guide*©

### **2.3 eRecording Models**

Electronic recordings, whether as pilot projects or live production initiatives, have occurred in twenty states. From these efforts, three distinct models have emerged. The models are referred to as Models 1, 2 and 3. Each has distinctive characteristics. Each also brings certain benefits to the submitters.

Over time the improvements in delivery methods and document formats have improved the processes as well. From scanned paper documents, to electronically-signed images of the documents wrapped with XML data and securely signed, to completely electronic, XML-integrated documents using electronic and digital signatures, these models bring continuing benefits to participating recorders and document submitters. Ongoing progress with increasing value from added benefits are expected as mortgage, legal and recording industry standards are implemented.

#### **2.3.1 Model 1**

##### **Description**

This model is an extension of the paper-based closing or payoff processes. Documents are prepared and printed. The parties sign and notarize the paper documents with ink signatures. When complete, the signed and notarized paper documents are scanned and electronically sent to the recorder. Transmission is done by the submitting parties logging on to the recorder's computer system over a secure network after first identifying, or authenticating, themselves to the recorder's computer. The recorder makes the same determination of record-ability as with paper documents, visually inspecting them for such things as signatures and acknowledgments as well as determining the recording fees. Fees are usually paid from an escrow account the submitter maintains with the recorder.

Once the recorder accepts the documents for recording the scanned image is "burned" with the recording information, including recording date and time as well as the unique recording reference number, such as book and page number or instrument number. Indexing is performed by the indexing staff of the recorder's office, as are paper documents. A copy of the recorded images is returned to the submitter. Usually a recording receipt, together with the recording endorsement data, is returned to the submitter, who uses the data to create and print a label with the recording endorsement information. The label is affixed to the paper document, which is then processed as usual by the submitter. In other jurisdictions, the paper document is fed through a printer and the recording endorsement information is printed on document (usually on the upper, right-hand corner of the first page).

In jurisdictions that use Model 1, such as Orange County, California, and Maricopa County, Arizona, the average elapsed time for the process is usually under an hour from the time the recorder receives the image until the receipt and data are returned to the submitter.

### **2.3.2 Model 2**

#### **Description**

Model 2 recordings may be paper or electronic based. A document image whether from a scanned paper document signed and notarized by ‘wet ink’ signatures or from an electronic document electronically signed and notarized, is wrapped in an XML wrapper containing the data necessary for processing, indexing and returning the document. In the case of a scanned paper document, Model 2 further extends Model 1 by adding data that improves the process, specifically the indexing process in the recorder’s office. In the case of an electronic document, it begins to improve the process for the settlement agent, lender or loan servicer submitting the document.

The model may support one or more of a number of graphics formats. Uncompressed TIFF (Tagged Image File Format) images are commonly used, because this format preserves the image in the most accurate and legible form.

The recordable documents are generally delivered to the county recorder’s site by whatever means the parties agree, including hypertext transport protocol secure (HTTPS), web services, file transport protocol (FTP) and even email. Most counties require some authentication of the submitter, typically based on an account and personal identification number (PIN), although some use digital signatures and certificates in lieu of, or in addition to, the former. The documents are stored in a secure area on the recorder’s web site until the recorder’s system retrieves them.

Once imported into the recorder’s system, the recorder’s legacy system handles the recording functions. In this case the system imports the data from an XML wrapper, including index data. The recording process is partially automated, but the image must be visually inspected to determine that it meets recording requirements as well as possibly to validate against the data in the XML wrapper. The indexing data in the embedded image is not linked to the index data in the XML, so the recorder has no automated means to verify that it is the same.

If a document meets the requirements, it is recorded. The recording information is “burned” onto the image and returned to the submitter by means agreed upon by the parties. In some jurisdictions that use Model 2, the electronic recorded document is embedded into an XML wrapper with the recording information added so that the submitter can use the data in its internal processes.

The average elapsed time from receipt to returning the recorded electronic documents is about five minutes for Broward County, Florida. That compares to about five days for similar closing documents delivered by settlement agents. Average turn around for mail-in documents is about seven days.

### **2.3.3 Model 3**

#### **Description**

In a number of counties electronic reconveyances of deeds of trust and satisfactions of mortgages are prepared by loan servicers and electronically submitted. Under Model 3, these real estate documents are generated on a vendor’s document preparation system in XHTML

(extensible hypertext mark-up language) format. The document preparation person logs on to the system and enters the information necessary to complete the generation of the document. Once the document has been generated, the person signs it if she has the authority, or notifies the person with signing authority to sign. Secure access is required for all parties that must sign the document because signing is done by digital signature.

Once the documents are electronically signed and notarized, they are released for recording. The document preparation system compares each document against recording rules to ensure its recordability, and then calculates recording fees. Documents may be submitted in batches. Submission is by secure hypertext transport protocol (HTTPS) through the vendor's recording server to the recorder's office.

Documents received at the recorder's system are re-checked against the rules to determine whether or not they may be recorded. If not, they are returned to the submitter. Otherwise they are accepted for recording and the data for recording is extracted from the documents and passed to the legacy recording system. The endorsement data is received from the legacy system and entered onto the respective documents in XML format. If required, the XHTML is transformed to TIFF images for the recorder's archives and the XHTML documents with the recording endorsements are returned to the submitter.

Fee payment information is passed to the legacy system after the rules determine that the recording fees are correct. The recorder collects the fees from escrow accounts maintained by the respective submitters, or by Automated Clearing House (ACH) payment processing.

The average turn around time is approximately 30 seconds from the time the recorder receives the document until the recorded document is returned. This time includes the entire process, from quality control verification to indexing, when run in an "unattended" or "lights-out" mode.

Characteristics of different eRecording Models

	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>
<b>Document Type</b>	Paper closings are scanned as TIFF images; no data is associated with the TIFF image. The recorder views the TIFF images to process the submission.	Electronic or paper closings are supported. The electronic document, whether image or other format is embedded in an XML "wrapper" of index data and other information. The recorder processes the submission primarily from the data "wrapper." The recorder also has the option to view the document to validate data or image quality, or review the document to meet other requirements.	A single electronic file with both the signed document and indexing data is submitted and able to be processed by the recorder. Currently the XHTML format (XML data + HTML formatting) is used, or other similar formats, such as MISMO's SMART Doc format or PDF's Intelligent Document, that incorporate the XML data and link it to the content displayed
<b>Signature Type</b>	Ink signatures for borrowers and notary; documents are then scanned.	Electronic signatures (holographic signing/stylus & signing pad)	Current adopters are using digital signatures and certificates for signers, notary and recorder. This model supports other forms of electronic signatures.
<b>Security</b>	Virtual Private Network (VPN)	Digital Signature and Certificate (Closing Agent and Recorder) / SSL (Transmission)	Digital signature and certificate used as a tamper-evident signature for the document and for access control identification for transactions / SSL (Transmission)
<b>Preparer</b>	Title companies, Closing Agents and Lenders scan paper & transmit images.	Title companies, Closing Agents, and Lenders transmit 2 files in one electronic record: document images and XML data	Currently title companies and lenders adopters prepare electronic documents in XHTML format; it supports preparation in compatible formats that provide the functionality of this model.
<b>Recorder</b>	Traditional processing; but no paper. Recorder examines, records, indexes and archives TIFF images	Recorder examines, records and archives images; automated indexing by extracting XML data (QC process only)	All processes can be automated, including examination and indexing; or, the recorder can choose manual processing
<b>Recorded Document</b>	Recorder transmits recorded TIFF ("burned") copy; label data sent also for paper docs	Recorder transmits recorded image ("burned") to preparer	Recorder's system adds recording information to the electronic document as XML data for use by the preparer; converts the recorded electronic document to TIFF for archiving
<b>Payment</b>	"Draw-down" or escrow account for payment	"Draw-down" or escrow account for payment / ACH transaction	"Draw-down" or escrow account; debit account; ACH transaction

**Benefits from different eRecording Models**

<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>
Reduces recording time / Improves the amount of documents processed.	Reduces recording time / Improves throughput	Reduces recording time / Improves throughput
Reduces costs to recorder only.	Reduces costs to the recorder and title company, closing agent, or lender.	Reduces costs to the recorder and title company
Improves productivity to recording office only.	Improves productivity for both document submitter and recorder.	Improves productivity for both document submitter and recorder.
Improves customer service and satisfaction	Reduces the probability of documents being altered after transaction is closed/ Encrypted "wrapper"	Reduces the probability of documents being altered after transaction is closed / Secure signatures
	Uses open and non-proprietary systems and formats	Standardizes processes and formats
	Improves customer service and satisfaction	"SMART" documents automate processes and systems
		Uses open and non-proprietary systems and formats
		Improves customer service and satisfaction

**Issues concerning different eRecording Models**

<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>
Complexity of the process of scanning and labeling for submitters	Images are unintelligent	Payment and electronic transaction disconnected; adds complexity to process.
TIFF image is unintelligent; data is not extractable	Electronic document and XML data are disconnected; possible need for reconciliation.	
Costs increase to submitters; may be greater than or equal to paper	Closed system architecture and proprietary software	
Closed system architecture (proprietary)	Payment and electronic transaction disconnected adds complexity to process	
Payment and electronic transaction disconnected; adds complexity to process	Lacks embedded business rules	
Costs for proprietary software and data connection	Process and transport are cumbersome.	
Lacks embedded business rules		
Process and transport are cumbersome.		

**Appendix D**  
**Related Statutes and Regulations**

**Kansas URPERA: Kansas Uniform Real Property Electronic Recording Act (K.S.A. § 58-4401 et seq.):**

**58-4401. Citation.** This act shall be known and may be cited as the uniform real property electronic recording act.

**History:** L. 2006, ch. 145, § 1; July 1.

**58-4402. Definitions.** In this act unless the context otherwise requires:

(a) "Document" means information that is:

(1) Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(2) eligible to be recorded in the land records maintained by the register of deeds.

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

(c) "Electronic document" means a document that is received by the register of deeds in an electronic form.

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

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

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

**History:** L. 2006, ch. 145, § 2; July 1.

**58-4403. Requirement for original, on paper, in writing satisfied by electronic document; requirement for signature satisfied by electronic signature.** On and after July 1, 2007: (a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this act.

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

**History:** L. 2006, ch. 145, § 3; July 1.

**58-4404. Register of deeds authorized to implement act.** On and after July 1, 2007:

(a) In this section, "paper document" means a document that is received by the register of deeds in a form that is not electronic.

(b) A register of deeds:

(1) Who implements any of the functions listed in this section shall do so in compliance with standards established by the electronic recording commission;

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

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

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

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

(6) may convert into electronic form information recorded before the register of deeds began to record electronic documents;

(7) may accept electronically any fee or tax that the register of deeds is authorized to collect; and

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

**History:** L. 2006, ch. 145, § 4; July 1.

**58-4405. Electronic recording commission created; duties.** (a) An electronic recording commission is created to adopt standards to implement this act. The commission shall consist of 15 persons who shall be appointed as follows:

(1) Three members who are registers of deeds appointed by the Kansas register of deeds association;

(2) two members of the title industry appointed by the Kansas land title association;

(3) one member who is an attorney appointed by the Kansas bar association;

(4) one member of the construction industry appointed by the governor;

- (5) one member of the oil and gas industry appointed by the legislative coordinating council;
- (6) one member of the banking industry appointed by the legislative coordinating council;
- (7) one member of the mortgage industry appointed by the legislative coordinating council;
- (8) one member who is a surveyor appointed by the legislative coordinating council;
- (9) one member who is a realtor appointed by the legislative coordinating council;
- (10) one member of the agricultural industry appointed by the governor;
- (11) the state archivist or the archivist's designee; and
- (12) the secretary of state or the secretary's designee.

(b) To keep the standards and practices of registers of deeds in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this act and to keep the technology used by registers of deeds in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this act, the electronic recording commission, so far as is consistent with the purposes, policies, and provisions of this act, in adopting, amending and repealing standards shall consider:

- (1) Standards and practices of other jurisdictions;
- (2) the most recent standards promulgated by national standard-setting bodies, such as the property records industry association;
- (3) the views of interested persons and governmental officials and entities;
- (4) the needs of counties of varying size, population and resources; and
- (5) standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved and resistant to tampering.

**History:** L. 2006, ch. 145, § 5; July 1.

**58-4406. Uniformity of act.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**History:** L. 2006, ch. 145, § 6; July 1.

**58-4407. Modification, limitation, superceding of federal acts.** This act modifies, limits and supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. section 7001, et seq.) but does not modify, limit or supersede section 101(c) of that act

(15 U.S.C. section 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. section 7003(b)).

**History:** L. 2006, ch. 145, § 7; July 1.

**Kansas UETA: Kansas Uniform Electronic Transactions Act (K.S.A. § 16-1601 et seq.):**

**16-1601. Short title.** This act shall be known and may be cited as the uniform electronic transactions act.

**History:** L. 2000, ch. 120, § 1; July 1.

**16-1602. Definitions.** In this act:

(a) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(b) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction.

(c) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(d) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this act and other applicable law.

(e) "Digital signature" means a type of electronic signature consisting of a transformation of an electronic message using an asymmetric crypto system such that a person having the initial message and the signer's public key can accurately determine whether:

(1) The transformation was created using the private key that corresponds to the signer's public key; and

(2) the initial message has not been altered since the transformation was made.

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

(g) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(h) "Electronic record" means a record created, generated, sent, communicated, received or stored by electronic means.

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

(j) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality or other political subdivision of a state.

(k) "Information" means data, text, images, sounds, codes, computer programs, software, databases or the like.

(l) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information.

(m) "Message" means a digital representation of information.

(n) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(o) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(p) "Registered certification authority" means a person providing certification of a digital signature who is, or is certified by, a member of the group of certification authorities approved by and registered with the secretary.

(q) "Secretary" means the Kansas secretary of state.

(r) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, callback or other acknowledgment procedures.

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

(t) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, insurance, commercial or governmental affairs.

**History:** L. 2000, ch. 120, § 2; July 1.

**16-1603. Scope.** (a) Except as otherwise provided in subsection (b), this act applies to electronic records and electronic signatures relating to a transaction.

(b) This act does not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils or testamentary trusts; and

(2) the uniform commercial code, other than K.S.A. 84-1-107 and 84-1-206 and articles 2 and 2a of chapter 84 of the Kansas Statutes Annotated, and amendments thereto.

(c) This act applies to an electronic record or electronic signature otherwise excluded from the application of this act under subsection (b) to the extent it is governed by a law other than those specified in subsection (b).

(d) A transaction subject to this act is also subject to other applicable substantive law.

**History:** L. 2000, ch. 120, § 3; July 1.

**16-1604. Prospective application.** This act applies to any electronic record or electronic signature created, generated, sent, communicated, received or stored on or after the effective date of this act.

**History:** L. 2000, ch. 120, § 4; July 1.

**16-1605. Use of electronic records and electronic signatures; state agency written standards governing use of electronic signatures; rules and regulations governing use of digital signatures by state agencies.** (a) This act does not require a record or signature to be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.

(b) This act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this act, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this act of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this act and other applicable law.

(f) The uniform electronic transactions act does not require any person to use electronic signatures.

(g) Any state agency that offers or provides the option of using an electronic signature to persons doing business with that state agency shall establish written standards governing the use of those electronic signatures as follows:

(1) On or before December 31, 2002, for electronic signature applications that are in use by the state agency before July 1, 2002; or

(2) before offering or providing the option of using an electronic signature for any applications implemented on or after July 1, 2002.

(h) The uniform electronic transactions act does not require any person to use or permit the use of digital signatures.

(i) The secretary of state shall adopt rules and regulations governing the use of digital signatures by state agencies. Each state agency offering or providing the option of using a digital signature to persons doing business with that state agency shall implement digital signatures in a manner consistent with the regulations of the secretary of state, except that the state agency may adopt rules and regulations governing that agency's use of digital signatures that exceed the minimum standards established by the rules and regulations of the secretary of state.

**History:** L. 2000, ch. 120, § 5; L. 2002, ch. 183, § 4; July 1.

**16-1606. Construction and application.** This act must be construed and applied:

(a) To facilitate electronic transactions consistent with other applicable law;

(b) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(c) to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

**History:** L. 2000, ch. 120, § 6; July 1.

**16-1607. Legal recognition of electronic records, electronic signatures and electronic contracts.** (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

**History:** L. 2000, ch. 120, § 7; July 1.

**16-1608. Provision of information in writing; presentation of records.** (a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send or deliver information in writing to another person, the requirements is satisfied if the information is provided, sent or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this act requires a record (1) to be posted or displayed in a certain manner, (2) to be sent, communicated or transmitted by a specified method, or (3) to contain information that is formatted in a certain manner, the following rules apply:

(A) The record must be posted or displayed in the manner specified in the other law.

(B) Except as otherwise provided in subsection (d)(2), the record must be sent, communicated or transmitted by the method specified in the other law.

(C) The record must contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, but:

(1) To the extent a law other than this act requires information to be provided, sent or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) that the information be in the form of an electronic record capable of retention also may be varied by agreement; and

(2) a requirement under a law other than this act to send, communicate or transmit a record by first-class mail, may be varied by agreement to the extent permitted by the other law.

**History:** L. 2000, ch. 120, § 8; July 1.

**16-1609. Attribution and effect of electronic records and electronic signatures.** (a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution or adoption, including the parties' agreement, if any, and otherwise as provided by law.

**History:** L. 2000, ch. 120, § 9; July 1.

**16-1610. Effect of change or error.** If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(a) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(b) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(1) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(2) takes reasonable steps, including steps that conform to the other person's reasonable instruction, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(3) has not used or received any benefit or value from the consideration, if any, received from the other person.

(c) If neither paragraph (a) nor paragraph (b) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(d) Subsections (b) and (c) may not be varied by agreement.

**History:** L. 2000, ch. 120, § 10; July 1.

**16-1611. Notarization and acknowledgment; electronic notarization, rules and regulations.** (a) If a law requires a signature or record to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

(b) The secretary of state is hereby authorized to promulgate rules and regulations establishing procedures for an electronic notarization.

**History:** L. 2000, ch. 120, § 11; L. 2004, ch. 126, § 2; July 1.

**16-1612. Retention of electronic records; originals.** (a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) remains accessible for later reference.

(b) A requirement to retain a record in accordance with subsection (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated or received.

(c) A person may satisfy subsection (a) by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a).

(f) A record retained as an electronic record in accordance with subsection (a) satisfies a law requiring a person to retain a record for evidentiary, audit or like purposes, unless a law enacted after the effective date of this act specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

**History:** L. 2000, ch. 120, § 12; July 1.

**16-1613. Admissibility in evidence.** In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

**History:** L. 2000, ch. 120, § 13; July 1.

**16-1614. Automated transactions.** In an automated transaction, the following rules apply:

(a) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(b) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(c) The terms of the contract are determined by the substantive law applicable to it.

**History:** L. 2000, ch. 120, § 14; July 1.

**16-1615. Time and place of sending and receipt.** (a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) is in a form capable of being processed by that system; and

(3) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) it is in a form capable of being processed by that system.

(c) Subsection (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (d).

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under subsection (b) even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subsection (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under subsection (a), or purportedly received under subsection (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

**History:** L. 2000, ch. 120, § 15; July 1.

**16-1616. Transferable records.** (a) In this section, "transferable record" means an electronic record that:

(1) Would be a note under article 3 of chapter 84 of the Kansas Statutes Annotated, and amendments thereto or a document under article 7 of chapter 84 of the Kansas Statutes Annotated, and amendments thereto if the electronic record were in writing; and

(2) the issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5) and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) The person to which the transferable record was issued; or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in K.S.A. 84-1-201(20), and amendments thereto, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the uniform commercial code, including, if the applicable statutory requirements under K.S.A. 84-3-302(a), 84-7-501, or 84-9-308, and amendments thereto are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the uniform commercial code.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

**History:** L. 2000, ch. 120, § 16; July 1.

**16-1617. Registered certification authorities.** (a) Any person, before entering upon the duties of a registered certification authority, shall:

(1) Register with the secretary on forms approved and provided by the secretary;

(2) pay to the secretary an annual filing fee of \$1,000;

(3) file with the secretary a good and sufficient surety bond, certificate of insurance or other evidence of financial security in the amount of \$100,000; and

(4) be approved by the secretary as meeting the requirements of any rules and regulations adopted by the secretary, as the secretary determines appropriate, to ensure the person's financial responsibility and condition, character, qualifications and fitness to be a registered certification authority.

(b) A registered certification authority shall create, maintain and preserve all records that are necessary to demonstrate compliance with rules and regulations adopted by the secretary.

(c) If any person who is approved and registered with the secretary as a registered certification authority fails to maintain any of the qualifications listed in subsection (a) and (b) or otherwise required by rules and regulations of the secretary, the person's registration shall be deemed lapsed.

(d) Any person who violates or fails to comply with this section and any provision related to registered certification authority and the rules and regulations of the secretary promulgated

pursuant to K.S.A. 2006 Supp. 16-1618, and amendments thereto, upon notice and hearing, shall be subject to a civil penalty not to exceed \$10,000 per failure or violation.

**History:** L. 2000, ch. 120, § 17; July 1.

**16-1618. Rules and regulations.** The secretary may adopt rules and regulations to implement the provisions of K.S.A. 2006 Supp. 16-1617 and 16-1619, and amendments thereto, and related provisions thereto.

**History:** L. 2000, ch. 120, § 18; July 1.

**16-1619. Reciprocity with other jurisdictions.** The secretary shall have the authority to establish reciprocity with other states and nations for purposes of K.S.A. 2006 Supp. 16-1617 and 16-1618, and amendments thereto, and related provisions thereto.

**History:** L. 2000, ch. 120, § 19; July 1.

**16-1620. Severability.** If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

**History:** L. 2000, ch. 120, § 20; July 1.

### **Kansas Government Records Preservation Act (K.S.A. § 45-401 through 45-413)**

**45-401. Public policy concerning government records.** The legislature declares that state and local government records with enduring value should be stored in conditions which are not adverse to their permanent preservation and should be properly arranged so that appropriate public access to such records is possible. Disposition of noncurrent records which do not merit preservation will promote economy and efficiency in the day-to-day activities of government. Cooperation among agencies at all levels of government is necessary in order to achieve proper preservation of records with enduring value.

**History:** L. 1981, ch. 331, § 1; July 1.

**45-402. Definitions.** As used in this act:

(a) "State agency" means any department, board, commission, or authority of the executive branch of state government.

(b) "Local agency" means any department, board, commission, officer or authority of a county, city, township, school district or other tax-supported governmental subdivision of the state.

(c) "Board" means the state records board established pursuant to K.S.A. 75-3502 and amendments thereto.

(d) "Government records" means all volumes, documents, reports, maps, drawings, charts, indexes, plans, memoranda, sound recordings, microfilms, photographic records and other data, information or documentary material, regardless of physical form or characteristics, storage media or condition of use, made or received by an agency in pursuance of law or in connection with the transaction of official business or bearing upon the official activities and functions of any governmental agency. Published material acquired and preserved solely for reference purposes, extra copies of documents preserved only for convenience of reference and stocks of publications, blank forms and duplicated documents are not included within the definition of government records.

(e) "Noncurrent government records" means all government records which no longer are necessary for the handling of ordinary official public business by the agency and which are not required by law to be retained in the immediate custody of the agency for a longer period of time.

(f) "Government records with enduring value" means all government records which merit preservation for historical, legal, fiscal or administrative reasons, or for research purposes.

(g) "Retention and disposition schedules" means lists of series of government records, prepared pursuant to K.S.A. 45-404 and subsections (c) and (d) of K.S.A. 45-406, and amendments thereto, specifying which series of records have enduring value, authorizing disposition of certain other series of records, and indicating how long certain series of records should be retained before disposition of them.

**History:** L. 1981, ch. 331, § 2; L. 1984, ch. 188, § 1; July 1.

**45-403. Government records are public property; destruction prohibited, except as permitted by retention and disposition schedules.** (a) All government records made or received by and all government records coming into the custody, control or possession of a state or local agency, in the course of its public duties, and all government records deposited in the state archives, shall be public property and shall not be mutilated, destroyed, transferred, removed, damaged or otherwise disposed of, in whole or in part, except as provided by law, or as may be authorized in the retention and disposition schedules.

(b) Authority for the disposition of records on a continuing basis approved for state agencies by the state records board, or for county officers by the state archivist, prior to adoption of this act shall be null and void, after adoption of the appropriate retention and disposition schedules.

**History:** L. 1981, ch. 331, § 3; July 1.

**45-404. Duties of state records board; disposition of county records.** The state records board shall:

(a) Approve or modify retention and disposition schedules and records manuals prepared pursuant to subsections (c) and (d) of K.S.A. 45-406 and amendments thereto. Once approved by the board the retention and disposition schedules for state agencies shall be filed with the secretary of state. Without further action by the board, noncurrent records of state agencies scheduled for disposition may be disposed of as provided in the schedules and noncurrent

records scheduled for retention may be transferred to the state archives, subject to approval by the state archivist and in accordance with procedures to be established by the state archivist.

(b) Pass upon any proposed revisions in the retention and disposition schedules and upon requests for authority to dispose of records of state agencies or counties not listed in the schedules. No records of state agencies or counties shall be disposed of before the retention periods designated in the schedules have elapsed without the approval of the board. No state agency or county shall be required to destroy records which it chooses to retain, even though the retention and disposition schedules authorize their destruction. The retention and disposition schedules for all local agencies except counties shall be recommendations and shall not alter or replace current statutes authorizing or restricting the disposition of government records by local agencies.

(c) Any board of county commissioners may order disposition of any noncurrent county government records after minimum retention periods set forth in the schedules prepared pursuant to subsection (d) of K.S.A. 45-406 and amendments thereto. Any board of county commissioners may petition the state records board for amendments to the schedules, for authority to depart from specific provisions of the schedules or for authority to implement schedules applicable to only a single county.

(d) With the approval of the state archivist, the board of county commissioners of any county may transfer any noncurrent county government records to the custody of the state historical society. The board of county commissioners of any county may transfer any noncurrent county government records which have been determined by the state archivist to be records, which are not required by law to be confidential or restricted, to the custody of a county historical society, a genealogical society, a public library, a college or university library or another local or regional repository in Kansas, determined by the state archivist to be suitable, which will accept such records, except that under authority of this subsection no records relating to the mental or physical health of any person shall be so transferred.

(e) Pass upon recommendations by the state archivist for transfer to the state archives of any noncurrent government records with enduring value which are held by a state agency opposing such a transfer. When the state archivist makes such a recommendation, the state agency opposing the transfer shall defend before the board its reasons for wanting to retain the records in its custody, and the board shall determine whether the transfer shall occur.

(f) Approve or modify recommended microphotographic standards prepared by the state archivist and pass upon requests for authority to dispose of original government records of state agencies following reproduction on film, as provided in K.S.A. 45-412 and amendments thereto.

**History:** L. 1981, ch. 331, § 4; L. 1984, ch. 188, § 2; L. 1988, ch. 366, § 11; June 1.

**45-405. State archives; transfer of records thereto; discard or disposition of certain materials.** (a) The state historical society shall serve as the official state archives and shall assist state and local agencies in the preservation of government records with enduring value.

(b) Any state or local agency may transfer to the state archives any noncurrent government records accepted by the state archivist and all state agencies shall transfer to the state archives

any noncurrent government records when directed to do so by the state records board. With the approval of the state archivist, noncurrent legislative and judicial records also may be deposited in the state archives for preservation.

(c) The secretary of state shall not be prevented by any statute from depositing in the state archives any noncurrent government records accepted by the state archivist.

(d) The provisions of this act shall not prohibit discarding or otherwise disposing of extraneous, worthless or duplicate material found in government records when processed by the state archives staff. Any records placed in the state archives may be disposed of in any manner approved by the board and the state archivist upon a determination that such records no longer have enduring value.

**History:** L. 1981, ch. 331, § 5; L. 1984, ch. 188, § 3; L. 1992, ch. 29, § 1; July 1.

**45-406. State archivist's duties.** Under the supervision of the secretary of the state historical society, the state archivist shall:

(a) Seek, negotiate for, acquire and receive noncurrent government records with enduring value from agencies and branches of state government and from local agencies.

(b) Properly arrange, store, preserve and make accessible to the public the records in the state archives, in accordance with appropriate archival procedures and in accordance with the provisions of K.S.A. 45-407 and amendments thereto. Provide advice and assistance to state and local agencies and to branches of state government with regard to proper arrangement, storage, preservation and accessibility of the government records with enduring value remaining in their custody.

(c) Advise and assist state agencies in the preparation of retention and disposition schedules for government records.

(d) Prepare, publish and distribute to the appropriate public officers and to other interested persons records manuals containing retention and disposition schedules for government records of local agencies. Recommendations for proper arrangement, storage and preservation of records with enduring value and an analysis of state and federal legislation relevant to government records in Kansas also shall be included in these records manuals. Appropriate public officers of the state and its governmental subdivisions shall be consulted during the preparation of the records manuals.

(e) Review the contents of the records manuals annually and distribute any revisions which are made to the appropriate public officers. The contents of the records manuals and subsequent revisions shall be approved by the state records board.

(f) Assist in preparing and making available to the public comprehensive inventories containing general information about the nature, scope, contents and location of government records of the agencies and branches of state government and of local agencies in Kansas.

(g) Prepare or permit the preparation of copies of government records deposited in the state archives, as required by current statutes, unless public access to the records is restricted as provided in K.S.A. 45-407 and amendments thereto. When certified by the state archivist such copies shall have all the force and effect as if made by the officer originally in custody of them. Reasonable fees may be charged for preparation of such copies. The state archivist shall not allow copies to be made by methods which might damage the original records.

(h) Exercise such other duties and functions as the secretary of the state historical society may direct or as may be provided by law.

**History:** L. 1981, ch. 331, § 6; L. 1984, ch. 188, § 4; July 1.

**45-407. Public access or restriction of records; state archivist access to restricted records; disclosure prohibited; misdemeanor.** (a) All government records deposited subsequent to adoption of this act in the state archives shall remain subject to any current state or federal statutes, or administrative regulations authorized by statute, which require public access or restrict public access to the records while retained by the state or local agency or the branch of state government making the deposit. The state or local agency or the branch of state government making the deposit may require continued application to government records deposited in the state archives of any discretionary restrictions on public access which are authorized by statute or by administrative regulations authorized by statute, if such requirements are specified at the time of the deposit. No fees shall be charged for the examination of government records held by the state archives.

(b) Any discretionary restrictions placed on public access to government records deposited in the state archives shall be enforced for periods designated at the time of the deposit which shall not exceed, and preferably will be much less than, 70 years after creation of the records.

(c) The state archivist, or representatives of the state archivist may examine records deposited in the state archives to which public access is restricted by statute or by administrative regulations authorized by statute, to the extent necessary to properly arrange, store and preserve them and provide proper public access.

(d) Statutes or administrative regulations authorized by statute restricting public access to certain types of records shall not prohibit the state archivist or authorized representatives of the state archivist from examining any government records held by a state or local agency in order to prepare comprehensive inventories containing general information about the nature, scope, contents and location of each record series, or in order to assist in properly arranging, storing and preserving government records with enduring value. No confidential information found in such restricted government records shall be revealed to any person by the state archivist or by representatives of the state archivist. Violation of this subsection shall be punishable as a class B misdemeanor.

**History:** L. 1981, ch. 331, § 7; July 1.

**45-408. State agencies required to cooperate with state records board and state archivist; rules and regulations of board.** Each agency of state government shall:

(a) Obtain authority from the state records board before disposing of any government record, unless the disposition is authorized by statute or in the retention and disposition schedules, or unless the record is being deposited in the state archives; obtain authority from the board before disposing of any government record prior to termination of the minimum retention period listed in the retention and disposition schedules.

(b) Provide storage conditions for all government records with enduring value which are not seriously adverse to their preservation and which will not prevent providing proper public access to the records; adopt reasonable security measures to protect government records from theft or damage.

(c) Cooperate with efforts by the state archivist or representatives of the state archivist to inspect records and the conditions in which they are stored, to prepare comprehensive inventories of government records, to microfilm noncurrent records with enduring value and to improve the arrangement, storage and physical condition of noncurrent government records with enduring value in accordance with appropriate archival techniques. Agencies shall not be required to provide funds or staff time for these purposes, but they shall give careful consideration to requests and recommendations made by the state archivist.

(d) Comply with rules and regulations, standards and procedures adopted by the state records board and the state archivist pursuant to the provisions of this act.

**History:** L. 1981, ch. 331, § 8; July 1.

**45-409. Local agencies to cooperate.** Each local agency shall:

(a) Give careful consideration to the recommended retention and disposition schedules prepared by the state archivist when considering the disposition of government records and comply with all statutes governing the disposition of government records.

(b) Cooperate with efforts by the state archivist or representatives of the state archivist to inspect government records and the conditions in which they are stored, to prepare comprehensive inventories of government records, to microfilm noncurrent government records with enduring value and to improve the arrangement, storage and physical condition of noncurrent government records with enduring value in accordance with appropriate archival techniques. Local agencies shall not be required to provide funds or staff time for these purposes, but they shall give careful consideration to requests and recommendations made by the state archivist.

**History:** L. 1981, ch. 331, § 9; July 1.

**45-410. Legislative records; legislative coordinating council control.** The state records board shall have no control over the disposition of legislative records. Subject to the approval of the legislative coordinating council, those records with enduring value as determined by the state archivist may be transferred to the state archives. Recommended retention and disposition schedules for legislative records may be prepared by the state archivist. The correspondence and other papers of an individual legislator shall be considered the personal property of the individual legislator.

**History:** L. 1981, ch. 331, § 10; July 1.

**45-411. Judicial records; supreme court rules.** The state records board shall have no control over the disposition of judicial records. The supreme court shall make appropriate rules regarding the preservation or disposition of state judicial records, including appellate, district and other courts.

**History:** L. 1981, ch. 331, § 11; July 1.

**45-412. Microphotographic or optical disc copies of records; image recognition and information storage systems; original record destruction, when.** (a) The state archivist shall prepare recommendations, to be approved by the state records board, based on the current standards of the federal government and the American national standards institute, for the quality of film or optical disc, proper arrangement of materials, suitable filming or other image reproduction techniques and equipment, quality of photographic or optical disc images, film processing results, and film or optical disc storage conditions which should be achieved or utilized by state and local agencies in making microphotographic or optical disc copies of government records with enduring value pursuant to K.S.A. 12-122, 19-250 or 75-3506, and amendments thereto, and for information recorded and stored using an image recognition and information storage system. Whenever microphotographic or optical disc copies of records with enduring value fail to meet the standards recommended by the state archivist and approved by the state records board, the state archivist shall urge state and local agencies to retain the original records.

(b) Whenever photographs, microphotographs or other reproductions on film or optical disc have been prepared pursuant to K.S.A. 75-3506, and amendments thereto, and have been placed in conveniently accessible files and provisions made for preserving, examining and using the same, and when a negative copy of the film or a master copy of the optical disc has been deposited in a secure place where it will not be subject to use except in making additional positive copies, any state agency, with the approval of the state records board or as authorized by the retention and disposition schedules, may cause the original records from which the photographs, microphotographs or other reproductions on film or optical disc have been made, or any part thereof, to be destroyed. Such records shall not be destroyed and shall be retained by the agency or transferred to the state archives or temporarily to another suitable place designated by the board, if the board judges such materials to have enduring value in their original form.

(c) Except as provided by subsection (b) of K.S.A. 12-120, and amendments thereto, whenever photographs, microphotographs or other reproductions on film have been prepared as provided in K.S.A. 12-122 or 19-250, and amendments thereto, and have been placed in conveniently accessible files and provisions made for preserving, examining and using the same, and when a negative copy of the film has been deposited in a secure place where it will not be subject to use except in making additional positive copies, a local agency may retain the original records in its custody at any suitable location, may deposit them in collections established pursuant to K.S.A. 12-1658 and 12-1660, and amendments thereto, or K.S.A. 19-2648 and 19-2649, and amendments thereto, or may dispose of the original records as provided in the retention and disposition schedules. If there are no relevant provisions in the retention and disposition schedules, the original records shall be offered to the state historical society prior to other disposition of them.

(d) The state historical society may prepare and deposit in the state archives a microfilm or other copy of any noncurrent government record which is retained by a state or local agency, unless public access to the record is restricted by statute or by administrative regulation authorized by statute.

**History:** L. 1981, ch. 331, § 12; L. 1988, ch. 71, § 2; L. 1989, ch. 269, § 1; L. 1996, ch. 157, § 4; Apr. 18.

**45-413. Citation of act.** This act shall be known and may be cited as the government records preservation act.

**History:** L. 1981, ch. 331, § 13; July 1.

### **Kansas Public Records Act (K.S.A. § 75-3501 through 75-3518)**

**75-3501. Records defined.** For the purposes of this act: "Records" mean all documents, correspondence, original papers, maps, drawings, charts, indexes, plans, memoranda, sound recordings, microfilm, motion-picture or other photographic records, or other materials bearing upon the activities and functions of the department or agency or its officers or employees.

**History:** L. 1945, ch. 306, § 1; L. 1957, ch. 452, § 1; April 10.

**75-3502. State records board; members, chairman, secretary.** For the purpose of the permanent preservation of important state records and to provide an orderly method for the disposition of other state records, there is hereby created the state records board, consisting of the attorney general, state librarian, secretary of administration, secretary of the state historical society, or their designated representatives, the state archivist, and such ex officio members as are hereinafter provided. The attorney general shall be the chairman and the state archivist shall be the secretary of the board.

**History:** L. 1945, ch. 306, § 2; L. 1957, ch. 452, § 2; L. 1974, ch. 364, § 26; Jan. 13, 1975.

**75-3502a. Same; attached to department of administration.** The state records board created by K.S.A. 75-3502 is hereby attached to the department of administration, and from and after the effective date of this act shall be within the department of administration as a part thereof.

**History:** L. 1972, ch. 332, § 27; July 1.

**75-3503. Same; ex officio members.** The elective state officer, director, chairman, or other officer, the records of whose department or agency are being considered, or his or her designated representative, and the head of the specific division to which the records under consideration appertain shall be ex officio members of the board.

**History:** L. 1945, ch. 306, § 3; L. 1957, ch. 452, § 3; April 10.

**75-3504. State records board; authority to order disposition of records; establishment of disposal schedules; rules and regulations.** The board shall pass upon the requests of the state departments or other agencies for the destruction or other disposition of records, and shall have power to order the destruction, reproduction, temporary or permanent retention, and disposition of the public records of any department or agency of the state, to establish records disposal schedules for the orderly retirement of records, and to adopt such other rules and regulations as they may deem necessary to accomplish the purposes of this act. The disposal schedules shall be filed by the board with the secretary of state. Records so scheduled may be transferred to the state records center at regular intervals, in accordance with procedures to be established by the center, without further action by the board. In all its acts the board shall be specifically required to safeguard the legal, financial and historical interests of the state in such records.

**History:** L. 1945, ch. 306, § 4; L. 1957, ch. 452, § 4; L. 1965, ch. 506, § 39; L. 1988, ch. 366, § 26; June 1.

**75-3505. Public officer defined.** As used in this act, the term "public officer" means any officer, board, commission or agency of the state.

**History:** L. 1945, ch. 331, § 1; June 28.

**75-3506. Reproduction of records on film or disc.** Any public officer of the state may cause any or all records, papers or documents kept by the public officer to be photographed, microphotographed, reproduced on film or optical disc. Such photographic film or optical disc shall comply with standards recommended by the state archivist and approved by the state records board pursuant to K.S.A. 45-412, and amendments thereto, and the device used to reproduce such records on such film or optical disc shall be one which accurately reproduces the original thereof in all details.

**History:** L. 1945, ch. 331, § 2; L. 1972, ch. 41, § 4; L. 1989, ch. 269, § 2; L. 1989, ch. 270, § 1; July 1.

**75-3507. Reproduction of records on film or disc; evidence in courts or administrative agencies.** Such photographs, microphotographs, photographic film or reprinted images from an optical disc shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification, or certified copy of the original.

**History:** L. 1945, ch. 331, § 3; L. 1989, ch. 269, § 3; July 1.

**75-3508.**

**History:** L. 1945, ch. 331, § 4; L. 1957, ch. 452, § 5; Repealed, L. 1981, ch. 331, § 14; July 1.

**75-3509. State records center; purpose; powers and duties of secretary of state historical society.** There is hereby established, under the supervision and control of the state

historical society, a state records center which shall serve as a depository for inactive records of state agencies and departments. The secretary of the state historical society shall have authority to obtain a suitable building or buildings to be used as a records center, to employ personnel for the records center staff, and to supervise all operations of the center. No expenditures shall be made under this act or expense incurred except in pursuance of specific appropriations therefor.

**History:** L. 1957, ch. 459, § 1; L. 1959, ch. 341, § 1; L. 1989, ch. 271, § 1; July 1.

**75-3510. Same; receiving and disposition of records; "ultimate disposition" defined.** In accordance with records retention and disposal schedules established by the state records board in cooperation with the agencies and departments concerned, the records center shall receive, store, and ultimately dispose of, inactive and noncurrent records of state agencies and departments. Ultimate disposition shall be defined as meaning destruction, reproduction followed by destruction, or, if a record shall be determined to have permanent value, transfer to the state archives or to another agency if deemed more appropriate. In cases where the agencies and departments are equipped to provide storage space, or where the transfer of records to the center is not practical for other reasons, such inactive records may be stored elsewhere and disposed of as the records board may direct.

**History:** L. 1957, ch. 459, § 2; April 8.

**75-3511. Same; availability of records in records center.** Records stored in the records center shall be available promptly when called for by the originating agencies or departments, but they shall not be used by others except with the approval of the originating department.

**History:** L. 1957, ch. 459, § 3; April 8.

**75-3512 to 75-3514.**

**History:** L. 1959, ch. 207, §§ 1 to 3; Repealed, L. 1973, ch. 186, § 42; Jan. 1, 1974.

**75-3515. Real estate transactions of state agencies; definitions.** As used in this act, unless the context otherwise requires:

(a) "Real estate transaction" means to acquire real estate, or any right, title or interest therein, by purchase, grant, gift, devise, lease or otherwise or to sell, convey, lease, exchange, transfer or otherwise dispose of real estate, or any right, title or interest therein, but does not include the lease or rental of real estate, or any right, title or interest therein, for a term of five (5) years or less.

(b) "State agency" means any state office, officer, department, board, commission, institution, bureau or any other state authority, which is authorized by law to engage in any real estate transaction for and in the name of the state of Kansas.

**History:** L. 1979, ch. 278, § 1; July 1.

**75-3516. Real estate transactions; custody of records; inventory records of real property.** (a) Each state agency shall have the legal custody of all deeds to real estate held or acquired by such state agency for and in the name of the state of Kansas, together with the abstracts of title thereto and the title insurance policies therefor, and of all other original instruments relating to real estate transactions of such state agency. Each state agency shall keep, preserve and file all such deeds, abstracts of title, title insurance policies and other instruments, and all such instruments in the custody of the secretary of state on the effective date of this act shall be and are hereby transferred to the custody of the respective state agencies.

(b) Each state agency shall record or cause to be recorded all deeds to real estate acquired by the state agency with the register of deeds of the county where the real estate is located and any other instruments relating to the agency's real estate transactions provided by law to be recorded.

(c) The director of accounts and reports shall maintain inventory records of the real property owned by the state, which records shall reflect all real property held and every real estate transaction engaged in by each state agency except the secretary of transportation. Such inventory records shall include, but not be limited to, the acreage, the location by city and county, a brief legal description and the use and purpose of each lot, tract or parcel of land held by a state agency.

(d) (1) The secretary of transportation shall deliver to the secretary of the senate and the chief clerk of the house of representatives on or before January 30, 2002, and January 30th of each year thereafter, a written report concerning the department of transportation's system of inventory of records pertaining to all real property owned by the department of transportation and all real estate transactions engaged in by the department of transportation. Each report shall describe the current status of the inventory system and the steps taken during the past year to improve such inventory system and comply with the requirements of this section. The secretary of transportation shall notify each member of the legislature of the availability of copies of the report.

(2) On or before January 30, 2002, and January 30th of each year thereafter, the secretary of transportation shall make a presentation to the joint committee on state building construction on the report described in paragraph (1).

**History:** L. 1979, ch. 278, § 2; L. 2001, ch. 153, § 3; July 1.

**75-3517. Records and documents to be produced on acid-free paper.** All records and printed documents created by state agencies shall be produced on acid-free paper having a minimum pH of 7.0, unless use of such paper is infeasible because of excessive costs or inadequate availability of the paper.

**History:** L. 1992, ch. 179, § 1; July 1.

**75-3518. Designation of records and documents to be produced on permanent paper;** duties of state records board. The state records board shall designate certain types of records and printed documents produced by state agencies which must be created on paper conforming to the American national standards for permanent paper for printed library materials

(ANSI Z39.48-1984). When notified prior to September 1 by the state records board that a designated record series or printed document title shall be produced on permanent paper, the agency responsible for creating the record or document shall comply during the following fiscal year. The customary symbol indicating use of permanent paper shall be included in such printed documents.

**History:** L. 1992, ch. 179, § 2; July 1.

**Kansas Registers of Deeds Fee (K.S.A. §§ 28-101, 28-115, 28-115a)**

**28-101. Prescription of fees and compensation.** That the officers and persons herein mentioned except in counties having a population of 90,000 or over, shall be entitled to receive for their services the fees and compensation herein allowed and no other, except such as may be otherwise provided by law.

**History:** L. 1913, ch. 197, § 1; July 1; R.S. 1923, 28-101.

**28-115. Fees of register of deeds; monthly billing to internal revenue service; standards for documents to be filed; disposition of fees.** (a) The register of deeds of each county shall charge and collect the following fees:

For recording deeds, mortgages or other instruments of writing, for first page, not to exceed legal size page--8 ½" x 14" .....	\$6.00
For second page and each additional page or fraction thereof.....	2.00
Recording town plats, for each page.....	20.00
Recording release or assignment of real estate mortgage.....	5.00
Certificate, certifying any instrument on record.....	1.00
Acknowledgment of a signature.....	50
For filing notices of tax liens under the internal revenue laws of the United States.....	5.00
For filing releases of tax liens, certificates of discharge, under the internal revenue laws of the United States or the revenue laws of the state of Kansas .....	5.00
For filing liens for materials and services under K.S.A. 58-201, and amendments thereto.....	5.00

(b) In addition to the fees required to be charged and collected pursuant to subsection (a), the register of deeds shall charge and collect an additional fee of \$2 per page for recording:

(1) The first page of any deeds, mortgages or other instruments of writing, not to exceed legal size--8 ½" x 14";

(2) the second page and each additional page or fraction of any deeds, mortgages or instruments of writing; and

(3) a release or assignment of real estate mortgage.

Any fees collected pursuant to this subsection shall be paid by the register of deeds to the county treasurer. The county treasurer shall deposit such funds in the register of deeds technology fund as provided by K.S.A. 2006 Supp. 28-115a, and amendments thereto.

(c) For any filing or service provided for in the uniform commercial code, the amount therein provided, shall be charged and collected. No fee shall be charged or collected for any filing made by the department of revenue as required under the provisions of the Kansas inheritance tax act, and amendments thereto.

(d) If the name or names of the signer or signers or any notary public to any instrument to be recorded are not plainly typed or printed under the signatures affixed to the instrument, the register of deeds shall charge and collect a fee of \$1 in addition to all other fees provided in this section.

(e) If sufficient space is not provided for the necessary recording information and certification on a document, such recording information shall be placed on an added sheet and such sheet shall be counted as a page. The document shall be of sufficient legibility so as to produce a clear and legible reproduction thereof. If a document is judged not to be of sufficient legibility so as to produce a clear and legible reproduction, such document shall be accompanied by an exact copy thereof which shall be of sufficient legibility so as to produce a clear and legible reproduction thereof and which shall be recorded contemporaneously with the document and shall be counted as additional pages. The register of deeds may reject any document which is not of sufficient legibility so as to produce a clear and legible reproduction thereof.

(f) Any document which was filed on or after January 1, 1989, which was of a size print or type smaller than 8-point type but which otherwise was properly filed shall be deemed to be validly filed.

(g) All fees required to be collected pursuant to this section, except those charged for the filing of liens and releases of tax liens under the internal revenue laws of the United States, shall be due and payable before the register of deeds shall be required to do the work. If the register of deeds fails to collect any of the fees provided in this section, the amount of the fees at the end of each quarter shall be deducted from the register's salary.

(h) Except as otherwise provided by subsection (b), all fees required to be collected pursuant to this section shall be paid by the register of deeds to the county treasurer and deposited into the general fund of the county.

**History:** L. 1913, ch. 197, § 15; R.S. 1923, 28-115; L. 1949, ch. 260, § 4; L. 1955, ch. 214, § 1; L. 1959, ch. 184, § 1; L. 1965, ch. 564, § 401; L. 1967, ch. 215, § 1; L. 1970, ch. 148, § 1; L. 1973, ch. 174, § 1; L. 1976, ch. 194, § 1; L. 1979, ch. 316, § 13; L. 1983, ch. 129, § 1; L. 1988, ch. 125, § 1; L. 1989, ch. 114, § 1; L. 2002, ch. 98, § 1; July 1.

**28-115a. Register of deeds technology fund.** (a) There is hereby created in each county a register of deeds technology fund.

(b) Upon receipt thereof, the county treasurer shall credit to the register of deeds technology fund of the county all moneys attributable to the fees collected pursuant to subsection (b) of K.S.A. 28-115, and amendments thereto.

(c) Moneys in the register of deeds technology fund shall be used by the register of deeds to acquire equipment and technological services for the storing, recording, archiving, retrieving, maintaining and handling of data recorded or stored in the office of the register of deeds.

(d) Moneys in such fund shall not be subject to the provisions of K.S.A. 79-2925 through 79-2937, and amendments thereto. In making the budget of the county, the amounts credited to, and the amount on hand in, such special fund and the amount expended from such fund shall be shown on the budget for the information of the taxpayers of the county. Any action taken by the register of deeds under this subsection shall be in accordance with K.S.A. 19-1202, and amendments thereto.

(e) Moneys in such fund may be invested in accordance with the provisions of K.S.A. 10-131, and amendments thereto, with interest thereon credited to such fund.

(f) The fund shall be administered by the county treasurer who shall pay out moneys from the fund upon orders signed by the register of deeds.

(g) At the end of any calendar year, if the balance in such fund exceeds \$50,000 and the register of deeds indicates that such amount in excess of \$50,000 shall not be needed and is not designated for technology, the county commission may authorize the transfer and use of such excess moneys by other county offices for equipment or technological services relating to the land or property records filed or maintained by the county.

(h) If a charter form of government is adopted and implemented pursuant to K.S.A. 19-2680 et seq., and amendments thereto, the provisions of this section shall apply to the official, department or office which performs the duties and functions prescribed for the office of the register of deeds.

**History:** L. 2002, ch. 98, § 2; July 1.

### **Electronic Notary Administrative Regulations (K.A.R. 7-43-1 through K.A.R. 7-43-6)**

**7-43-1 Definitions.** As used in this article, the following terms shall have the meanings specified in this regulation:

(a) “Digital signature” has the meaning specified in K.S.A. 16-1602, and amendments thereto.

(b) “Electronic” has the meaning specified in K.S.A. 16-1602, and amendments thereto.

(c) “Electronic notary public,” “electronic notary,” and “e-notary” mean a notary public who has registered with the secretary of state and who provides electronic notarial acts using a digital

certificate authorized by the secretary of state.

(d) “Electronic document” means information that is created, generated, sent, communicated, received, or stored by electronic means.

(e) “Electronic notarial act” and “electronic notarization” mean any act involving electronic documents that an electronic notary public is authorized to perform under Kansas law.

(f) “Electronic notary seal” means the information within a notarized electronic document that includes the notary's name, jurisdiction of appointment, and expiration date of the appointment.

(g) “Electronic signature” has the meaning specified in K.S.A. 16-1602, and amendments thereto.

(h) “Notarial act” and “notarization” mean any act that a notary public is authorized to perform under Kansas law.

(i) “Notarial certificate” means the portion of a notarized document that is completed by the notary, bears the notary's signature and seal, and states the facts attested by the notary in a particular notarization.

(j) “Notary public” and “notary” mean any person appointed by the secretary of state to perform notarial acts.

(k) “Principal” means the person for whom an electronic notary is providing a notarial act. (Authorized by and implementing K.S.A. 2004 Supp.16-1611; effective Dec. 30, 2005.)

**7-43-2 Registration requirements.** Each individual who wants to become an electronic notary shall meet the following requirements:

(a) Complete a course of instruction approved by the secretary of state;

(b) pass an examination approved by the secretary of state on the course of instruction specified in subsection (a);

(c) obtain a digital certificate authorized by the secretary of state;

(d) register with the secretary of state on a form prescribed by the secretary of state, which shall include providing proof of compliance with subsections (a), (b), and (c); and

(e) pay an information and services fee of \$20. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611 and 75-438; effective Dec. 30, 2005.)

**7-43-3 Notarization requirements.** (a) Each electronic notary shall use a digital signature when performing any electronic notarization. Before performing any electronic notarization, each electronic notary shall take reasonable steps to ensure that the digital certificate used to create the digital signature is valid and has not expired, been revoked, or been terminated by its registered certification authority.

(b) When performing any electronic notarization, each electronic notary shall complete a notarial certificate, which shall be attached to, or logically associated with, the electronic document. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005.)

**7-43-4 Personal appearance requirement.** Notwithstanding any security measures used in performing any electronic notarization, an electronic notary public shall not perform any electronic notarial act if the principal does not appear in person before the electronic notary at the time of notarization. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005.)

**7-43-5 Form of evidence of authenticity of electronic notarial act.** If electronic evidence of the authenticity of the official signature and seal of an electronic notary of this state is required on any notarized electronic document transmitted to another state or nation, the electronic evidence shall be attached to, or logically associated with, the document and shall be in a form prescribed by the secretary of state in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the United States. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005.)

**7-43-6 Applicability of statutes.** Except as otherwise provided in these regulations, the provisions of K.S.A. 53-101 et seq., and amendments thereto, governing notaries public and K.S.A. 16-1601 et seq., and amendments thereto, governing electronic transactions shall apply to each electronic notary public. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005.)

### **Kansas Real Estate Sales Validation Questionnaire (K.S.A. § 79-1437)**

#### **79-1437.**

History: L. 1949, ch. 224, § 3; L. 1965, ch. 516, § 3; L. 1967, ch. 489, § 4; L. 1972, ch. 362, § 4; L. 1974, ch. 428, § 3; L. 1982, ch. 397, § 2; L. 1985, ch. 311, § 6; L. 1986, ch. 374, § 1; L. 1989, ch. 2, § 8 (Special Session); Repealed, L. 1992, ch. 131, § 10; July 1.

#### **79-1437a.**

History: L. 1967, ch. 489, § 5; Repealed, L. 1992, ch. 131, § 10; July 1.

#### **79-1437b.**

History: L. 1971, ch. 298, § 1; Repealed, L. 1985, ch. 314, § 30; July 1.

**79-1437c. Real estate sales validation questionnaires; required to accompany transfers of title; retention time; use of information.** No deed or instrument providing for the transfer of title to real estate or affidavit of equitable interest in real estate shall be recorded in the office of the register of deeds unless such deed, instrument or affidavit shall be accompanied by a real estate sales validation questionnaire completed by the grantor or grantee or the agent of such grantor or grantee concerning the property transferred. Such questionnaire shall not be filed of record by the register of deeds but shall be retained for a period of five years at which time they shall be destroyed. The register of deeds shall in conjunction with the county clerk use the information derived from such questionnaires in cooperating with and assisting the director of property valuation in developing the information as provided for in K.S.A. 79-1487, and amendments thereto.

History: L. 1991, ch. 162, § 3; L. 1992, ch. 159, § 1; L. 1992, ch. 282, § 18; L. 1995, ch. 252, § 25; Jan. 1, 1996.

**79-1437d. Same; devised by director of property valuation; approval by legislature; information to be contained therein.** The real estate sales questionnaire shall be devised by the director of property valuation, and the director shall furnish copies thereof to the register of deeds. Upon proposing modifications or changes to the real estate sales validation questionnaire devised and used prior to 1992 or any validation questionnaire approved by the legislature in 1992 or thereafter, the director of property valuation shall submit such proposal to the legislature. Upon the failure of the legislature to enact legislation modifying the director's proposal within 60 days of submission thereof, such proposal shall be deemed to be approved, and the director's modified questionnaire may be utilized at anytime thereafter. The questionnaire shall be devised to obtain information regarding the identification and location of the property, name and address of the purchaser, sales price, date of sale, the classification and subclassification to which such property belongs, nature and circumstances peculiar to the sale, whether any personal property was included in the sales price, whether the purchaser assumed any mortgages or liens, loans, leases or taxes, the method of financing, whether any special assessments are levied against the property and such other information as the director of property valuation shall require. No information shall be requested in such questionnaire which would require the disclosure of the interest rate paid by the purchaser or the specific term of any mortgage.

History: L. 1991, ch. 162, § 4; July 1.

**79-1437e. Same; inapplicability to certain transfers of title.** (a) The real estate sales validation questionnaire required by this act shall not apply to transfers of title:

- (1) Recorded prior to the effective date of this act;
- (2) made solely for the purpose of securing or releasing security for a debt or other obligation;
- (3) made for the purpose of confirming, correcting, modifying or supplementing a deed previously recorded, and without additional consideration;
- (4) by way of gift, donation or contribution stated in the deed or other instrument;

- (5) to cemetery lots;
- (6) by leases and transfers of severed mineral interests;
- (7) to or from a trust, and without consideration;
- (8) resulting from a divorce settlement where one party transfers interest in property to the other;
- (9) made solely for the purpose of creating a joint tenancy or tenancy in common;
- (10) by way of a sheriff's deed;
- (11) by way of a deed which has been in escrow for longer than five years;
- (12) by way of a quit claim deed filed for the purpose of clearing title encumbrances;
- (13) when title is transferred to convey right-of-way or pursuant to eminent domain;
- (14) made by a guardian, executor, administrator, conservator or trustee of an estate pursuant to judicial order;
- (15) when title is transferred due to repossession; or
- (16) made for the purpose of releasing an equitable lien on a previously recorded affidavit of equitable interest, and without additional consideration.

(b) When a real estate sales validation questionnaire is not required due to one or more of the exemptions provided in subsection (a), the exemption shall be clearly stated on the document being filed.

History: L. 1991, ch. 162, § 5; L. 1992, ch. 159, § 2; L. 1994, ch. 275, § 12; L. 2002, ch. 22, § 1; July 1.

**79-1437f. Same; disposition and use of contents thereof, to and by whom.** Except as otherwise provided by K.S.A. 79-1460, and amendments thereto, contents of the real estate sales validation questionnaire shall be made available only to the following people for the purposes listed hereafter:

(a) County officials for cooperating with and assisting the director of property valuation in developing the information as provided for in K.S.A. 79-1487, and amendments thereto;

(b) any property owner, or the owner's representative, for prosecuting an appeal of the valuation of such owner's property or for determining whether to make such an appeal, but access shall be limited to the contents of those questionnaires concerning the same constitutionally prescribed subclass of property as that of such owner's property;

(c) the county appraiser and appraisers employed by the county for the appraisal of property located within the county;

(d) appraisers licensed or certified pursuant to K.S.A. 58-4101 et seq., and amendments thereto, for appraisal of property and preparation of appraisal reports;

(e) financial institutions for conducting appraisals and evaluations as required by federal and state regulators;

(f) the county appraiser or the appraiser's designee, hearing officers or panels appointed pursuant to K.S.A. 79-1602 or 79-1611, and amendments thereto, and the state board of tax appeals for conducting valuation appeal proceedings;

(g) the board of county commissioners for conducting any of the board's statutorily prescribed duties;

(h) the director of property valuation for conducting any of the director's statutorily prescribed duties; and

(i) a person licensed pursuant to the real estate brokers' and salespersons' act for purposes of fulfilling their fiduciary duties to clients and providing information on market value of property to clients.

History: L. 1991, ch. 162, § 6; L. 1992, ch. 282, § 19; L. 1999, ch. 123, § 2; L. 2002, ch. 23, § 1; L. 2006, ch. 151, § 3; July 1.

**79-1437g. Same; penalty for violations.** Any person who shall falsify the value of real estate transferred shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$500.

History: L. 1991, ch. 162, § 7; L. 1992, ch. 159, § 3; April 30.

## Appendix E PRIA Standards and Guidelines

The most current version of the following PRIA standards and guidelines may be found at: [www.pria.us](http://www.pria.us)

### Technical Standards

- PRIA Document Version 2.4.1 (XML)  
([https://maxvps029.maximumasp.com/V029U14MFC/PRIA/xmldocuments/FinalDocs2006/September/PRIA\\_DOCUMENT\\_v2\\_4\\_1.zm9](https://maxvps029.maximumasp.com/V029U14MFC/PRIA/xmldocuments/FinalDocs2006/September/PRIA_DOCUMENT_v2_4_1.zm9))
  
- PRIA Notary Version 2.4.1 (XML)  
([https://maxvps029.maximumasp.com/V029U14MFC/PRIA/xmldocuments/FinalDocs2006/September/PRIA\\_NOTARY\\_v2\\_4\\_1.zm9](https://maxvps029.maximumasp.com/V029U14MFC/PRIA/xmldocuments/FinalDocs2006/September/PRIA_NOTARY_v2_4_1.zm9))
  
- PRIA Request Version 2.4.1 (XML)  
([https://maxvps029.maximumasp.com/V029U14MFC/PRIA/xmldocuments/FinalDocs2006/PRIA\\_REQUEST\\_2\\_4\\_1.zip](https://maxvps029.maximumasp.com/V029U14MFC/PRIA/xmldocuments/FinalDocs2006/PRIA_REQUEST_2_4_1.zip))
  
- PRIA Response Version 2.4.1 (XML)  
([https://maxvps029.maximumasp.com/V029U14MFC/PRIA/xmldocuments/FinalDocs2006/PRIA\\_RESPONSE\\_2\\_4\\_1.zip](https://maxvps029.maximumasp.com/V029U14MFC/PRIA/xmldocuments/FinalDocs2006/PRIA_RESPONSE_2_4_1.zip))

### Guidelines

- PRIA URPERA Enactment and eRecording Standards Implementation Guide  
([http://www.pria.us/uniformelectronicrecording/PRIAURPERAGuide3\\_1\\_05\\_Cert.pdf](http://www.pria.us/uniformelectronicrecording/PRIAURPERAGuide3_1_05_Cert.pdf))
  
- PRIA eRecording XML Implementation Guide (Technical iGuide)  
([https://maxvps029.maximumasp.com/V029U14MFC/PRIA/Papers/iGuide/PRIATechnical\\_iGuide\\_10\\_2006.zip](https://maxvps029.maximumasp.com/V029U14MFC/PRIA/Papers/iGuide/PRIATechnical_iGuide_10_2006.zip))

## **Appendix F**

### **Records Retention and Preservation Guidelines**

#### **Records Management Policy**

Government entities, including county Registers of Deeds, must manage and retain records created or received as part of doing business. According to Kansas state law:

- Government records are public property and cannot be destroyed without authorization from the State Records Board or through an approved retention and disposition schedule (K.S.A 45-403).
- Unless specifically exempted, government records are to be kept open for public inspection. (K.S.A. 75-215 through 75-223)

These records must be managed in a comprehensive manner, overseen by official policy. The records management policy should have the support and approval of county management. The policy should include the following elements:

- Purpose of the overall records management program;
- A general statement of responsibility for the program;
- Program objectives;
- Applicable retention and disposition schedules; and
- Records management responsibilities.

Implementation of the policy will help ensure long-term success of an effective records management program.

#### **Records Retention and Disposition Schedules**

Registers of Deeds must retain all records in their custody in accordance with requirements detailed in the County Registers of Deeds Retention and Disposition Schedule, approved by the Kansas State Records Board and published by the Kansas State Historical Society (<http://www.kshs.org/government/records/localgovt/countyregisterofdeeds.htm>). The retention and disposition schedule lists and describes the numerous record series created and maintained by Registers of Deeds, sets a minimum retention period for each series, and establishes disposition requirements for each record series after records meet the minimum retention period. Most Kansas Registers of Deeds records are scheduled for permanent retention. It should be noted that retention and disposition requirements apply to records regardless of physical form or format, be that paper, microform, or digital.

#### **File Formats for Electronic Recording**

**TIFF:** TIFF is widely adopted within the property recording industry and by registers who have imaging systems. TIFF is a non-proprietary format that is recommended for storing scanned images.

**PDF/A:** Portable Document Format, PDF, has been put forth as an option for long-term preservation of e-recorded documents. PDF is accessible across multiple formats. It captures the appearance and searchability of the original document. It is easy to extract text from the PDF file, and the format is fairly stable and universal. The PDF document is difficult to modify and the format provides improved document security and authenticity. It is based on publicly available specifications, and as of January 2007 Adobe, the creator of the format, is releasing the 1.7 version of the format to become an international standard through the International Standards Organization (ISO). But the PDF standard itself raises some issues when it comes to long-term viability of the file. PDF is designed for presentation not for preservation. The format allows individual documents to be encrypted, which can be a barrier to access. Each file may not be self-contained, e.g. fonts used in the document may be stored separately from the document itself. And there are many different versions of PDF, which can complicate preservation of the files. This feature-rich nature of PDF can add complexity to preservation efforts over the multitude of generations that Register of Deeds offices are required to keep property records.

What is needed is a preservation format that combines the advantages of standard PDF with features that help ensure long-term preservation. An answer lies in a relatively new digital preservation standard, PDF/Archive. The move toward this preservation standard started with the Administrative Office of the U.S. Courts as it searched as a way to preserve and maintain access to court documents. Soon librarians, archivists, information professionals, and software developers (including Adobe, Global Graphics, Appligent, Apago, and others) came together to work on a standard based on PDF 1.4 for submission to and approval by ISO. Approval came about in 2005.

What makes PDF/A different from standard PDF? First off, PDF/A is a non-proprietary standard. It is based on a proprietary standard, PDF, but is a totally open format. It was developed by an inclusive set of stakeholders and subject to rigorous technical review. It has minimal restrictions necessary to facilitate long-term preservation and is not reliant on the existence of any particular reader. PDF/A is intended to address three primary issues:

- Define a file format that preserves the static visual appearance of electronic documents over time;
- Provide a framework for recording metadata about electronic documents;
- Provide a framework for defining the logical structure and semantic properties of electronic documents.

PDF/A may not be the last preservation formation required, but it should result in reliable, predictable and unambiguous access to the full information content of electronic documents.

Generally PDF/A prohibits encrypted documents, and other features of PDF that are considered difficult to preserve. LZW compression -- restricted by copyright -- is also prohibited, as are embedded files, Java scripts, sound and video media types, and other optional content. PDF/A requires all graphics consist of device independent color and embedded color spaces. Fonts are required to be embedded in the file to ensure unlimited, universal rendering. The Extensible Metadata Platform (XMP) format, which is used for metadata creation, processing, and interchange, is required for any document level metadata. There is also no restriction on the use of digital signatures in documents, as defined by PDF 1.4.

The current PDF/A standard based on PDF version 1.4, ISO 19005-1, is available now. Work is being done to extend the standard to subsequent versions of PDF, such as 1.6. A number of tools for creation and validation of PDF/A documents currently on the market, as well as tools to convert standard PDF documents to PDF/A. While PDF/A goes a long way toward ensuring preservation, it is not the final answer. PDF/A must be used in conjunction with quality control procedures, suitable media and environmental storage, refreshing of storage media, disaster preparedness and recovery, proper handling, and monitoring developments in digital preservation.

**XML:** XML is the recommended file format for long-term preservation of any metadata.

**Microfilm:** The archival process for electronic records will require consistent and complex management in order to maintain authenticity and integrity. Digital preservation requires a well-developed plan and implementation with specific policies and procedures. Electronic records are subject to the same threats of destruction as other mediums such as natural or human-made disasters. There are the added challenges of hardware and software obsolescence, media longevity and migration, infrastructure failures and accidental damage from improper handling.

The majority of records in the custody of the Register of Deeds must be preserved permanently. The durability of electronic records has not been proven to be as enduring as microfilm. In order to secure and preserve information created and stored electronically, security microfilm is recommended. Microfilm is an analog technology that allows documents to be read with magnification and a light source. If necessary, microfilm can be converted into a digital format. Producing microfilm that is created within the guidelines of the American National Standards Institute (ANSI) and properly stored and handled should provide secure records for hundreds of years.

**Metadata:** Metadata is commonly described as "data about data." Metadata is used to locate and manage information resources by classifying those resources and by capturing information not inherent in the resource.

Metadata can be divided into several categories:

- **Descriptive metadata** -- Information about the content of the eRecording that facilitates future retrieval.
  - Examples
    - Grantor/grantee names
    - Legal description of the property
    - Type of document (e.g. deed, mortgage, easement, etc.)
- **Structural metadata** -- Information about the internal structure of the eRecording and the relationships between their parts.
  - Examples
    - Links between pages of multi-page documents
    - Links to associated documents
- **Administrative metadata** -- Information necessary to manage an eRecording. This metadata can be associated with an individual document or a group of documents.

- Examples:
  - Book and page number
  - Retention and disposition requirements
  - Access restrictions
- **Preservation metadata** -- Information needed to preserve the authenticity and integrity of an eRecording over time.
  - Examples
    - Software and hardware used to create the record
    - File formats
    - Audit trails
    - Preservation actions taken over time and the effects of those actions
    - Authentication mechanisms (e.g. electronic signatures, checksums)

In the eRecording context, metadata may be generated automatically or created manually and it may be internal or external to the digital object itself. Regardless of how it is created or stored, maintaining accurate and reliable metadata is essential to the long-term preservation of eRecordings.

**Metadata Standards:**

- PRIA XML standards ([www.pria.us](http://www.pria.us) )
- Preservation Metadata Implementation Strategies (PREMIS) ([www.loc.gov/standards/premis/](http://www.loc.gov/standards/premis/))

**Storage Media:** Technological obsolescence poses the greatest threat to digital storage media longevity. The storage media of today likely will become obsolete before it physically deteriorates. Nevertheless, digital storage best practices can serve to promote long-term preservation of electronic records.

**Storage Options**

**Hard Disks:** Considering the precipitous declines in the cost of hard drives in recent years, it is recommended that Registers of Deeds use magnetic hard disk storage for their digital records. Networked storage systems using RAID (redundant array of independent disks) -- a way of storing the same data in different places (thus, redundantly) on multiple hard disks -- are relatively affordable and are the preferred method for storing electronic records with long-term or permanent retention periods. Ideally, a Register of Deeds should strive for complete storage redundancy by having a duplicate storage system at an off-site location.

**Optical Media (CD-R, DVD):** Registers of Deeds are strongly discouraged from using optical media -- CD-R's or DVD's -- to store digital records. Optical media has a relatively short lifespan (3-5 years) and is not suitable for long-term preservation.

**Magnetic Tape:** Magnetic tape, while acceptable for periodic backups of data, also is not recommended for long-term preservation of eRecordings.

**Backup, Disaster Preparedness and Recovery:** Registers of Deeds shall have a security backup policy in place, and procedures or a Service Model Agreement for disaster preparedness and recovery.

**Long Term Preservation Strategies:** Since most eRecordings must be retained permanently, it is essential that Registers of Deeds develop and implement long term preservation strategies. Numerous approaches to digital preservation should be evaluated and those appropriate to the technological and organizational environment should be adopted. The digital strategies described below are based upon Cornell University's Digital Preservation Management Tutorial ([http://www.library.cornell.edu/iris/tutorial/dpm/eng\\_index.html](http://www.library.cornell.edu/iris/tutorial/dpm/eng_index.html)).

**Bitstream Copying:** The bitstream is the underlying "1's" and "0's" that constitute a digital record. Bitstream copying refers to backing up important data by creating and storing an exact duplicate of the data on a separate device, preferably in an off-site location. Although essential to digital preservation, bitstream copying is a short-term disaster preparedness and recovery activity and, as such, is not a long-term preservation strategy on its own.

**Refreshing:** Refreshing is the act of copying digital information from one storage medium to another without any change in the underlying bitstream. For examples, refreshing could involve copying data from a CD-R to a hard disk or copying data from one hard disk to another hard disk. Registers of deeds should employ some form of digital "fingerprinting" technology (e.g. checksums or hash functions) so that unanticipated changes to the bitstream can be detected during the refreshing process. Refreshing, like bitstream copying, is an essential digital preservation activity but is not sufficient on its own; it addresses media decay and media obsolescence issues but not software obsolescence.

**Migration:** Migration is the act of converting digital information from one hardware/software configuration to another hardware/software configuration to address technological obsolescence issues. Migration differs from refreshing in that it may involve changes to the underlying bitstream in order to provide continued access to the digital information using new technology. For example, an eRecording captured and stored as a PDF file may need to be converted to an updated version of PDF or even a different file format altogether in order for the record to be rendered by a future hardware/software configuration. This conversion may involve a change in the "1's" and "0's" that constitute the original PDF file. Because of this, migration presents significant challenges to ensuring the authenticity, reliability, and integrity of eRecordings. Registers of Deeds should thoroughly document all migration activities and preserve the migration documentation along with the eRecordings.

**Emulation:** Emulation refers to writing special software called an emulator to allow digital information created using one hardware/software configuration to be rendered on a different, generally newer, hardware/software configuration. For example, emulators have been created to allow old computer games to be played on modern hardware. The same concept could be used as a preservation strategy for other types of digital information, including eRecordings.

**Microfilm:** As stated elsewhere in these guidelines, silver halide microfilm copies of eRecordings can serve as an important analog backup to the digital records. While microfilm cannot retain all properties of the digital data (searching, lossless copying, ease of sharing), it can preserve the essential content of eRecordings. Therefore, Registers of Deeds are strongly encouraged to produce microfilm backups of eRecordings.

Digital preservation strategies, like technology itself, inevitably will evolve over time. Registers of Deeds must stay abreast of changes to the technologies that impact eRecordings and to the potential strategies for preserving digital information.

**Appendix G**  
**Kansas Real Estate Sales Validation Questionnaire (SVQ)**  
**Form and Extensions**

## KANSAS REAL ESTATE SALES VALIDATION QUESTIONNAIRE

<b>FOR COUNTY USE ONLY:</b>		COV # _____	CO. NO. _____	MAP _____	SEC. _____	SHEET _____	QTR. _____	BLOCK _____	PARCEL _____	OWN _____	
DEED BOOK _____ PAGE _____	RECORDING DATE ____/____/____										
		TYPE OF INSTRUMENT _____		SPLIT <input type="checkbox"/>		MO YR TY		AMOUNT		S V	
		CR _____ RA _____ DE _____		MULTI <input type="checkbox"/>							

SELLER (Grantor) NAME _____	BUYER (Grantee) NAME _____
MAILING _____	MAILING _____
CITY/ST/ZIP _____	CITY/ST/ZIP _____
PHONE NO. (____) _____	PHONE NO. (____) _____

**IF AGENT SIGNS FORM, BOTH BUYER AND SELLER TELEPHONE NUMBERS MUST BE ENTERED.**

BRIEF LEGAL DESCRIPTION _____ _____ _____	Property / Situs Address: _____ Name and Mailing Address for Tax Statements _____ _____
--	--

**CHECK ANY FACTORS THAT APPLY TO THIS SALE:** (See Instructions on back of form.)

<p><b>1. SPECIAL FACTORS</b></p> <input type="checkbox"/> Sale between immediate family members: SPECIFY THE RELATIONSHIP _____	<p><b>6. ARE YOU AWARE OF ANY CHANGES IN THE PROPERTY SINCE JAN. 1?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <input type="checkbox"/> Demolition <input type="checkbox"/> New Construction <input type="checkbox"/> Remodeling <input type="checkbox"/> Additions Date Completed _____
<input type="checkbox"/> Sale involved corporate affiliates belonging to the same parent company	<p><b>7. WERE ANY DELINQUENT TAXES ASSUMED BY THE PURCHASER?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ _____</p>
<input type="checkbox"/> Auction Sale	<p><b>8. METHOD OF FINANCING (check all that apply):</b></p> <input type="checkbox"/> New loan(s) from a Financial Institution <input type="checkbox"/> Seller Financing <input type="checkbox"/> Assumption of Existing Loan(s) <input type="checkbox"/> All Cash <input type="checkbox"/> Trade of Property <input type="checkbox"/> Not Applicable
<input type="checkbox"/> Deed transfer in lieu of foreclosure or repossession	<p><b>9. WAS THE PROPERTY MADE AVAILABLE TO OTHER POTENTIAL PURCHASERS?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO If not, explain _____</p> <p style="text-align: center;"><b>(SEE #9 INSTRUCTION ON BACK)</b></p>
<input type="checkbox"/> Sale by judicial order (by a guardian, executor, conservator, administrator, or trustee of an estate)	<p><b>10. DOES THE BUYER HOLD TITLE TO ANY ADJOINING PROPERTY?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO</p>
<input type="checkbox"/> Sale involved a government agency or public utility	<p><b>11. ARE THERE ANY FACTS WHICH WOULD CAUSE THIS SALE TO BE A NON-ARMS LENGTH / NON-MARKET VALUE TRANSACTION?</b> <b>(SEE #11 INSTRUCTION ON BACK)</b> <input type="checkbox"/> YES <input type="checkbox"/> NO</p>
<input type="checkbox"/> Buyer (new owner) is a religious, charitable, or benevolent organization, school or educational association	<p><b>12. TOTAL SALE PRICE \$ _____</b></p> <p>DEED DATE ____/____/____</p>
<input type="checkbox"/> Buyer (new owner) is a financial institution, insurance company, pension fund, or mortgage corporation	<p><b>13. I CERTIFY THAT THE ADDRESS TO WHICH TAX STATEMENTS FOR THE PROPERTY ARE TO BE SENT IS CORRECT. I ALSO CERTIFY I HAVE READ ITEM NO. 13 ON THE REVERSE SIDE AND HEREBY CERTIFY THE ACCURACY OF THE INFORMATION AND THAT I AM AWARE OF THE PENALTY PROVISIONS OF K.S.A. 79-1437g.</b></p> <p>PRINT NAME _____</p> <p>SIGNATURE _____</p>
<input type="checkbox"/> Would this sale qualify for one of the exceptions listed on the reverse side of this form? (Please indicate # _____)	<p><input type="checkbox"/> GRANTOR (SELLER) <input type="checkbox"/> GRANTEE (BUYER)</p> <p><input type="checkbox"/> AGENT DAYTIME PHONE NO. (____) _____</p>
<input type="checkbox"/> Sale of only a partial interest in the real estate	
<input type="checkbox"/> Sale involved a trade or exchange of properties	
<p><b>2. CHECK USE OF PROPERTY AT THE TIME OF SALE:</b></p> <input type="checkbox"/> Single Family Residence <input type="checkbox"/> Agricultural Land <input type="checkbox"/> Farm/Ranch With Residence <input type="checkbox"/> Mineral Rights Included? <input type="checkbox"/> Condominium Unit <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Vacant Land <input type="checkbox"/> Apartment Building <input type="checkbox"/> Other: (Specify) _____ <input type="checkbox"/> Commercial/Industrial Bldg.	
<p><b>3. WAS THE PROPERTY RENTED OR LEASED AT THE TIME OF SALE?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO</p>	
<p><b>4. DID THE SALE PRICE INCLUDE AN EXISTING BUSINESS?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO</p>	
<p><b>5. WAS ANY PERSONAL PROPERTY (SUCH AS FURNITURE, EQUIPMENT, MACHINERY, LIVESTOCK, CROPS, BUSINESS FRANCHISE OR INVENTORY, ETC.) INCLUDED IN THE SALE PRICE?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>If yes, please describe _____</p> <p>Estimated value of all personal property items included in the sale price \$ _____</p> <p>If <b>Mobile Home</b> Year _____ Model _____</p>	

### INSTRUCTIONS FOR COMPLETING THE SALES VALIDATION QUESTIONNAIRE

- ITEM 1** Please check all boxes which pertain.
- ITEM 2** Check the box which describes the current or most recent use of the property at the time of sale. Check all boxes which are applicable if the property has multiple uses.
- ITEM 3** Check yes; if the buyer assumed any long term lease(s) (more than 3 years remaining) at the time of sale.
- ITEM 4** Check yes; if the purchase price included an operating business, franchise, trade license, patent, trademark, stock, bonds, technology, and/or goodwill.
- ITEM 5** Check yes; if any tangible and portable items of property were included in the sale price. If possible, provide a brief description and your estimate of the total value of all personal property included in the sale price.
- ITEM 6** Check yes; if the property characteristics have been changed since January 1. Indicate what type of change(s) took place by marking the appropriate box. Indicate the date the change(s) took place.
- ITEM 7** Check yes; if any delinquent taxes were assumed by the purchaser and included as part of the sale price. Do not consider any prorated taxes for the year in which the property was sold that are part of normal escrow closings.
- ITEM 8** Check the predominate method of financing used to acquire the property. Check "Not Applicable" if no money exchanged hands or refinancing of an existing loan.
- ITEM 9** Check yes; if the property was either advertised on the open market, displayed a for sale sign, listed with a real estate agent or offered by word of mouth.
- ITEM 10** Check yes; if the buyer owns or controls the property adjoining or adjacent to the property being purchased.
- ITEM 11** Provide an explanation if you believe the buyer or seller did not act prudently, was not fully informed about the property or knowledgeable of the local market, poorly advised, did not use good judgement in the negotiations, was acting under duress, or compelled out of necessity. Use an additional sheet of paper if necessary.
- ITEM 12** Provide the total sale price and date of sale. The date should be the date that either the deed or the contract for deed was signed, not the date the deed was recorded.
- ITEM 13** Please sign the questionnaire and list your phone number. The county appraiser may need to make a follow up phone call to clarify unusual terms or conditions.

**K.S.A. 79-1437g. Same; penalty for violations.** Any person who shall falsify the value of real estate transferred shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$500. (L. 1991, ch. 162, sec. 7; L. 1992, ch. 159, sec. 3; April 30.)

### TRANSFERS OF TITLE THAT DO NOT REQUIRE A SALES VALIDATION QUESTIONNAIRE ARE AS FOLLOWS:

- (1) Recorded prior to the effective date of this act, i.e., July 1, 1991;
  - (2) made solely for the purpose of securing or releasing security for a debt or other obligation;
  - (3) made for the purpose of confirming, correcting, modifying or supplementing a deed previously recorded, and without additional consideration;
  - (4) by way of gift, donation or contribution stated in the deed or other instruments;
  - (5) to cemetery lots;
  - (6) by leases and transfers of severed mineral interests;
  - (7) to or from a trust, and without consideration;
  - (8) resulting from a divorce settlement where one party transfers interest in property to the other;
  - (9) made solely for the purpose of creating a joint tenancy or tenancy in common;
  - (10) by way of a sheriff's deed;
  - (11) by way of a deed which has been in escrow for longer than five years;
  - (12) by way of a quit claim deed filed for the purpose of clearing title encumbrances;
  - (13) when title is transferred to convey right-of-way or pursuant to eminent domain;
  - (14) made by a guardian, executor, administrator, conservator or trustee of an estate pursuant to judicial order;
  - (15) when title is transferred due to repossession; or
  - (16) made for the purpose of releasing an equitable lien on a previously recorded affidavit of equitable interest, and without additional consideration.
- (b) **When a real estate sales validation questionnaire is not required due to one or more of the exemptions provided in 1-15 above, the exemption shall be clearly stated on the document being filed.**

If you have any questions or need assistance completing this form, please call the county appraiser's office.

The following XML code defines the transport data document between the submitter and the recorder.

```
<?xml version="1.0" encoding="utf-8" ?>
= <xs:schema targetNamespace="http://tempuri.org/XMLSchema.xsd"
  elementFormDefault="qualified" xmlns="http://tempuri.org/XMLSchema.xsd"
  xmlns:mstns="http://tempuri.org/XMLSchema.xsd"
  xmlns:xs="http://www.w3.org/2001/XMLSchema">
  = <!--
    File: KS_SVQ_DOCUMENT
    Author: Jeffrey Scott Ragan
      Organization: Sedgwick County, Kansas
      Version 1.0
    Description: This is the XML Schema for the Kansas Real Estate Sales
    Validation Questionnaire(SVQ) xml document.
    SVQ REV: 06/04

  -->
  <xs:include schemaLocation="MISMO_SIGNATURE_Type.xsd" />
  <xs:include schemaLocation="PRIA_DOCUMENT_v2_4_1.XSD" />
  <xs:element name="KS_SVQ" type="KS_SVQ_DOCUMENT" />
= <xs:complexType name="KS_SVQ_DOCUMENT">
= <xs:sequence>
  <xs:element name="Grantor" type="GrantorInfo" />
  <xs:element name="Grantee" type="GranteeInfo" />
  <xs:element name="BriefLegalDescription" type="xs:string" />
  <xs:element name="PropertySitusAddress" type="xs:string" />
  <xs:element name="NameAndMailingAddressForTaxStatements" type="xs:string" />
  <xs:element name="Factors" type="SVQFactors" />
  </xs:sequence>
= <xs:attribute name="PriaDocumentID" type="xs:ID" use="required">
= <xs:annotation>
  <xs:documentation>The value of this attribute needs to be the same value as the _ID
  attribute of the pertained PRIA_DOCUMENT in order to link the two documents
  together.</xs:documentation>
  </xs:annotation>
  </xs:attribute>
```

```

    </xs:complexType>
= <xs:complexType name="GrantorInfo">
= <xs:sequence>
  <xs:element ref="PRIA_GRANTOR_Type" />
  <xs:element name="PhoneNumber" type="xs:string" />
</xs:sequence>
</xs:complexType>
= <xs:complexType name="GranteeInfo">
= <xs:sequence>
  <xs:element ref="PRIA_GRANTEE_Type" />
  <xs:element name="PhoneNumber" />
</xs:sequence>
</xs:complexType>
= <xs:complexType name="SVQFactors">
= <xs:sequence>
  <xs:element name="SVQFactor1" type="Factor1" />
  <xs:element name="SVQFactor2" type="Factor2" />
  <xs:element name="SVQFactor3" type="Factor3" />
  <xs:element name="SVQFactor4" type="Factor4" />
  <xs:element name="SVQFactor5" type="Factor5" />
  <xs:element name="SVQFactor6" type="Factor6" />
  <xs:element name="SVQFactor7" type="Factor7" />
  <xs:element name="SVQFactor8" type="Factor8" />
  <xs:element name="SVQFactor9" type="Factor9" />
  <xs:element name="SVQFactor10" type="Factor10" />
  <xs:element name="SVQFactor11" type="Factor11" />
  <xs:element name="SVQFactor12" type="Factor12" />
  <xs:element name="SVQFactor13" type="Factor13" />
</xs:sequence>
</xs:complexType>
= <xs:complexType name="Factor1">

```

```

=> <xs:annotation>
  <xs:documentation>SPECIAL FACTORS</xs:documentation>
</xs:annotation>
=> <xs:sequence>
=> <xs:element name="FactorCheck1" type="xs:boolean">
=> <xs:annotation>
  <xs:documentation>Sale between immediate family members:</xs:documentation>
</xs:annotation>
</xs:element>
=> <xs:element name="SpecifyRelationship" type="xs:string">
=> <xs:annotation>
  <xs:documentation>SPECIFY THE RELATIONSHIP</xs:documentation>
</xs:annotation>
</xs:element>
=> <xs:element name="Factor1Check2" type="xs:boolean">
=> <xs:annotation>
  <xs:documentation>Sale involved corporate affiliates belonging to the same parent
  company</xs:documentation>
</xs:annotation>
</xs:element>
=> <xs:element name="Factor1Check3" type="xs:boolean">
=> <xs:annotation>
  <xs:documentation>Auction Sale</xs:documentation>
</xs:annotation>
</xs:element>
=> <xs:element name="Factor1Check4" type="xs:boolean">
=> <xs:annotation>
  <xs:documentation>Deed transfer in lieu of foreclosure or
  repossession</xs:documentation>
</xs:annotation>
</xs:element>
=> <xs:element name="Factor1Check5" type="xs:boolean">

```

```

=> <xs:annotation>
  <xs:documentation>Sale by judicial order (by a guardian, executor, conservator,
    administrator, or trustee of an estate</xs:documentation>
  </xs:annotation>
</xs:element>

=> <xs:element name="Factor1Check6" type="xs:boolean">
=> <xs:annotation>
  <xs:documentation>Sale involved a government agency or public
    utility</xs:documentation>
  </xs:annotation>
</xs:element>

=> <xs:element name="Factor1Check7" type="xs:boolean">
=> <xs:annotation>
  <xs:documentation>Buyer(new owner) is a religious, charitable, or benevolent
    organization, school or education association</xs:documentation>
  </xs:annotation>
</xs:element>

=> <xs:element name="Factor1Check8" type="xs:boolean">
=> <xs:annotation>
  <xs:documentation>Buyer(new owner) is a financial institution, insurance company,
    pension fund, or mortgage corporation</xs:documentation>
  </xs:annotation>
</xs:element>

=> <xs:element name="Factor1Check9" type="xs:boolean">
=> <xs:annotation>
  <xs:documentation>Would this sale qualify for one of the exceptions listed on the
    reverse side of this form?</xs:documentation>
  </xs:annotation>
</xs:element>

=> <xs:element name="Factor1Check9Exception" type="SVQExceptions">
=> <xs:annotation>
  <xs:documentation>(Please indicate)</xs:documentation>
  </xs:annotation>

```

```

    </xs:element>
  - <xs:element name="Factor1Check10" type="xs:boolean">
  - <xs:annotation>
    <xs:documentation>Sale of only a partial interest in the real
      estate</xs:documentation>
    </xs:annotation>
  </xs:element>
  - <xs:element name="Factor1Check11" type="xs:boolean">
  - <xs:annotation>
    <xs:documentation>Sale involved a trade or exchange or
      properties</xs:documentation>
    </xs:annotation>
  </xs:element>
  - <xs:element name="Factor1Check12" type="xs:boolean">
  - <xs:annotation>
    <xs:documentation>NONE OF THE ABOVE</xs:documentation>
    </xs:annotation>
  </xs:element>
</xs:sequence>
</xs:complexType>
- <xs:complexType name="Factor2">
- <xs:annotation>
  <xs:documentation>CHECK USE OF PROPERTY AT THE TIME OF
    SALE:</xs:documentation>
  </xs:annotation>
- <xs:sequence>
  <xs:element name="SingleFamilyResidence" type="xs:boolean" />
  <xs:element name="FarmRanchWithResidence" type="xs:boolean" />
  <xs:element name="CondominiumUnit" type="xs:boolean" />
  <xs:element name="VacantLand" type="xs:boolean" />
  <xs:element name="Other" type="xs:boolean" />
  <xs:element name="AgriculturalLand" type="xs:boolean" />

```

```

<xs:element name="MineralRightsIncludedYes" type="xs:boolean" />
<xs:element name="ApartmentBuilding" type="xs:boolean" />
<xs:element name="CommercialIndustrialBldg" type="xs:boolean" />
<xs:element name="OtherSpecification" type="xs:string" />
  </xs:sequence>
</xs:complexType>
= <xs:complexType name="Factor3">
= <xs:annotation>
  <xs:documentation>WAS THE PROPERTY RENTED OR LEASED AT THE TIME OF
    SALE?</xs:documentation>
  </xs:annotation>
= <xs:sequence>
  <xs:element name="Factor3Yes" type="xs:boolean" />
  </xs:sequence>
</xs:complexType>
= <xs:complexType name="Factor4">
= <xs:annotation>
  <xs:documentation>DID THE SALE PRICE INCLUDE AN EXISTING
    BUSINESS?</xs:documentation>
  </xs:annotation>
= <xs:sequence>
  <xs:element name="Factor4Yes" type="xs:boolean" />
  </xs:sequence>
</xs:complexType>
= <xs:complexType name="Factor5">
= <xs:annotation>
  <xs:documentation>WAS ANY PERSONAL PROPERTY (SUCH AS FURNITURE,
    EQUIPMENT, MACHINERY, LIVESTOCK, CROPS, BUSINESS FRANCHISE OR
    INVENTORY, ETC.) INCLUDED IN THE SALE PRICE?</xs:documentation>
  </xs:annotation>
= <xs:sequence>
  <xs:element name="Factor5Yes" type="xs:boolean" />

```

```

<xs:element name="Factor5YesSpecification" type="xs:string" />
<xs:element name="EstimatedValue" type="xs:decimal" />
<xs:element name="MobileHomeYear" type="xs:nonNegativeInteger" />
<xs:element name="MobileHomeModel" type="xs:string" />
  </xs:sequence>
</xs:complexType>
= <xs:complexType name="Factor6">
= <xs:annotation>
  <xs:documentation>ARE YOU AWARE OF ANY CHANGES IN THE PROPERTY SINCE
    JAN 1?</xs:documentation>
  </xs:annotation>
= <xs:sequence>
  <xs:element name="ChangesYes" type="xs:boolean" />
  <xs:element name="Demolition" type="xs:boolean" />
  <xs:element name="NewConstruction" type="xs:boolean" />
  <xs:element name="Remodeling" type="xs:boolean" />
  <xs:element name="Additions" type="xs:boolean" />
  <xs:element name="DateCompleted" type="xs:date" />
  </xs:sequence>
</xs:complexType>
= <xs:complexType name="Factor7">
= <xs:annotation>
  <xs:documentation>WERE ANY DELINQUENT TAXES ASSUMED BY THE
    PURCHASER?</xs:documentation>
  </xs:annotation>
= <xs:sequence>
  <xs:element name="Factor7Yes" type="xs:boolean" />
  <xs:element name="Amount" type="xs:decimal" />
  </xs:sequence>
</xs:complexType>
= <xs:complexType name="Factor8">
= <xs:annotation>

```

```

<xs:documentation>METHOD OF FINANCING (check all the
supply):</xs:documentation>
</xs:annotation>
= <xs:sequence>
<xs:element name="NewLoansFromAFinancialInstitution" type="xs:boolean" />
<xs:element name="SellerFinancing" type="xs:boolean" />
<xs:element name="AssumptionOfExistingLoans" type="xs:boolean" />
<xs:element name="AllCash" type="xs:boolean" />
<xs:element name="TradeOfProperty" type="xs:boolean" />
<xs:element name="NotApplicable" type="xs:boolean" />
</xs:sequence>
</xs:complexType>
= <xs:complexType name="Factor9">
= <xs:annotation>
<xs:documentation>WAS THE PROPERTY MADE AVAILABLE TO OTHER POTENTIAL
PURCHASERS?</xs:documentation>
</xs:annotation>
= <xs:sequence>
<xs:element name="Factor9Yes" type="xs:boolean" />
<xs:element name="Factor9NoSpecification" type="xs:string" />
</xs:sequence>
</xs:complexType>
= <xs:complexType name="Factor10">
= <xs:annotation>
<xs:documentation>DOES THE BUYER HOLD TITLE TO ANY ADJOINING
PROPERTY?</xs:documentation>
</xs:annotation>
= <xs:sequence>
<xs:element name="Factor10Yes" type="xs:boolean" />
</xs:sequence>
</xs:complexType>
= <xs:complexType name="Factor11">

```

```

= <xs:annotation>
  <xs:documentation>ARE THERE ANY FACTS WHICH WOULD CAUSE THIS SALE TO BE
    A NON-ARMS LENGTH / NON-MARKET VALUE TRANSACTION?</xs:documentation>
</xs:annotation>
= <xs:sequence>
  <xs:element name="Factor10Yes" type="xs:boolean" />
  <xs:element name="Factor10Check11Specification" type="xs:string" />
</xs:sequence>
</xs:complexType>
= <xs:complexType name="Factor12">
= <xs:annotation>
  <xs:documentation>TOTAL SALE PRICE</xs:documentation>
</xs:annotation>
= <xs:sequence>
  <xs:element name="TotalSalePrice" type="xs:decimal" />
  <xs:element name="DeedDate" type="xs:date" />
</xs:sequence>
</xs:complexType>
= <xs:complexType name="Factor13">
= <xs:annotation>
  <xs:documentation>I CERTIFY THAT THE ADDRESS TO WHICH TAX STATEMENTS
    FOR THE PROPERTY ARE TO BE SENT IS CORRECT.</xs:documentation>
  <xs:documentation>I ALSO CERTIFY I HAVE READ ITEM NO. 13 ON THE REVERSE
    SIDE AND HEREBY CERTIFY THE ACCURACY OF THE INFORMATION AND THAT I AM
    AWARE OF THE PENALTY PROVISIONS OF K.S.A. 79-1437g.</xs:documentation>
</xs:annotation>
= <xs:sequence>
  <xs:element name="Signature" type="MISMO_SIGNATURE_TYPE" />
  <xs:element name="GrantorOrSeller" type="xs:boolean" />
  <xs:element name="GranteeOrBuyer" type="xs:boolean" />
  <xs:element name="Agent" type="xs:boolean" />
  <xs:element name="DayTimePhoneNumber" type="xs:string" />

```

```
</xs:sequence>
</xs:complexType>
= <xs:simpleType name="SVQExceptions">
= <xs:restriction base="xs:integer">
<xs:minInclusive value="1" />
<xs:maxInclusive value="16" />
</xs:restriction>
</xs:simpleType>
</xs:schema>
```

**Appendix H**  
**Model Memorandum of Understanding**

**The following Memorandum of Understanding (MOU) is included as a model form, and is not intended to be a complete or final document. Each Kansas Register of Deeds that offers electronic recording of documents will need to revise and/or modify this model MOU to describe specific login parameters, transmission protocols, and other technical and legal requirements.**

**KANSAS REGISTER OF DEEDS**  
**ELECTRONIC/DIGITAL RECORDING**  
**MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING (MOU)**, dated \_\_\_\_\_ is between \_\_\_\_\_ County and \_\_\_\_\_ (Company). This MOU shall become effective on the date of execution by all parties, subject to any approvals provided for in this MOU and shall continue in force until modified, amended or terminated.

County desires to offer recording of real property documents by electronically receiving and transmitting documents electronically in substitution for conventional paper based documents and to assure that transactions are not legally invalid or unenforceable as a result of the use of available electronic technologies for the mutual benefit of the parties of the transactions.

County and Company acknowledge that this MOU is subject to the Kansas Electronic Recording Standards, as adopted by the Kansas Electronic Recording Commission, and as subsequently amended. This MOU shall be construed and interpreted to be consistent with and in conformance to those standards.

**1. Electronic Recording:** For purposes of this Memorandum of Understanding, Electronic Recording is defined based on the level of automation and structure of the transaction. (See Attachment A for Accepted Levels for Electronic Recording). The three levels of automation are as follows:

Level 1: Submitting organizations transmit scanned image original of ink signed documents to the county. The county completes the recording process in the same way as paper using the imaged copy as the source document. An electronic recording endorsement is returned to the

organization in the form of a label or printing process in order for the submitting organization to append that information to the original paper document.

Level 2: Submitting organizations transmit scanned images of ink signed documents along with electronic indexing information to the county. The county performs an electronic examination of the imaged documents and indexing data, and then completes the recording process using the imaged copy and electronic indexing information. The electronic version of the recorded document is made available to the submitting organization.

Level 3: Submitting organizations transmit documents which have been created, signed and notarized electronically along with the electronic indexing information or a Smart documents which are a single object containing the electronic version of the document in such a way that enables the electronic extraction of data from the object. Smart documents are required to be signed and notarized electronically. Electronic signatures must comply with the Uniform Electronic Transaction Act (UETA), K.S.A. 16-1601, et seq. The county performs an electronic examination of the electronic documents and indexing information then completes the recording process using the electronic documents. Electronic and Smart documents are made available to the submitting organization.

**2. Program Eligibility:** Electronic Recording mandates a close working relationship as well as mutual trust between the County and the submitting entity. All parties of the Electronic Recording transaction desire to operate and maintain a secure recording system that safeguards parties to recordation from deceit, fraud and forgery. This Memorandum of Understanding outlines the procedures and rules for the trusted relationship between the County and Company to facilitate a safe and secure Electronic Recording relationship. Participation in the Electronic Recording program is voluntary and the decision to do so is a business judgment. There will be no added fees or costs of any kind charged by the County for Electronic Recording.

**3. County Requirements:** The Electronic Recording Program of \_\_\_\_\_ County is defined by the requirements attached to this Memorandum of Understanding.

Attachment A defines the technical specifications including format, levels of recording supported, transmission protocols, and security requirements of the electronic records required by County. Company agrees to provide the transmission to the County following the specifications outlined. Company understands that the specifications may change from time to time. In the event changes to the specification are required, the County will provide a written notice to the Company within a reasonable timeframe.

Attachment B contains the document and indexing specifications for the Electronic Recording program. For each document, the County specific document code is provided along with the

required indexing information. Any County specific editing rules will also be described in this attachment. All indexing specifications must follow the Property Records Industry Association (PRIA) standards as set out on their website. [www.pria.us](http://www.pria.us).

Attachment C contains the processing schedules and hours of operation for the Electronic Recording Program.

Attachment D provides the payment options supported for the Electronic Recording program.

**4. Company Responsibilities:** Company acknowledges that Electronic Recording permits them to prepare, sign and/or transmit in electronic formats documents and business records and the documents or records shall be considered as the “original” record of the transaction in substitution for, and with the same intended effect as, paper documents and, in the case that such documents bear a digital or electronic signature, paper documents bearing handwritten signatures.

Company shall ensure that only original documents are used to create the electronic documents. Company shall be diligent in ensuring that documents submitted for Electronic Recording have been checked before submission for errors, omissions, scanning defects, illegible areas, and other deficiencies that would affect the Recorder’s ability record the document and the public notice to be created thereby.

By use of electronic or digital certificates to sign documents Company intends to be bound to those documents for all purposes as fully as if paper versions of the documents had been manually signed.

By use of electronic or digital certificates to sign documents, Company intends to be bound by those electronic signatures affixed to any documents and such electronic signature shall have the same legal effect as if that signature was manually affixed to a paper version of the document.

By use of digital certificates to seal electronic files containing images of original paper documents or documents bearing manual signatures, Company shall recognize such sealed images for all purposes as fully as the original paper documents and shall be responsible for any failure by Company to comply with quality control procedures for assuring the accuracy and completeness of the electronic files.

The Company and/or its employees attest to the accuracy and completeness of the electronic records and acknowledge responsibility for the content of the documents submitted through the Electronic Recording Program. Should a dispute or legal action arise concerning an electronic transaction, the County will be held harmless and not liable for any damages.

Company is responsible for the costs of the system or services provided by a third party that enables Company to meet the Electronic Recording Program requirements.

Company will immediately notify County of any security incident, including but not limited to attempts to or actual unauthorized access to Company's pathway, which could compromise or otherwise adversely affect the County's data systems.

Company shall work to insure that all security measures and credentials implemented are protected. Company assumes all responsibility for documents submitted through unique credentials provided to Company for the purposes of engaging in Electronic Recording.

Company is responsible for receiving receipt of documents recorded by County insuring that the source of the receipt is known to be the County. Company is responsible for forwarding these documents to County insuring that the source of the documents is known to be the Company who has been authenticated and that the documents to be recorded pass from Company to County without modification. Company must maintain an audit trail of all activity, available to County, at its request, to resolve issues or investigate potential fraudulent activity. The audit trail must contain, at a minimum, submitter ID, submitted content at point of receipt from Company, submitted content as at point of delivery to County, dates and times submitted, size, and checksum.

Company is responsible for supporting any technical issues associated with Electronic Recording. Company shall work, in good faith, with County to resolve issues with the Electronic Recording process.

Company shall provide end user support to County through which problems or issues can be reported and addressed. In the event that problem is determined to be with the Electronic Recording software and not the infrastructure provided the Company shall work to resolve issues with County.

Company is responsible for coordinating all technical problems and issues through County.

**5. County Responsibilities:** County shall attempt to protect the integrity of the Recordation process through ongoing monitoring of documents received and recorded through Electronic Recording means.

County shall test and maintain Electronic Recording software and hardware required to operate the Electronic Recording capability. County, however, shall be held harmless and not liable for any damages resulting from software or equipment failure and assumes no contractual liability for any damages whatsoever via any part of this document.

County shall apply the same level of diligence in handling documents submitted electronically as those submitted through the normal manual process.

**6. General Understandings:** The County will not incur any liability for the information electronically transmitted by the Company, included but not limited to any breach of security, fraud or deceit.

The County and Company will attempt in good faith to resolve any controversy or claim arising out of or relating to Electronic Recording through negotiation prior to initiating litigation.

Either party may terminate this Memorandum of Understanding for any reason by providing thirty (30) days written notice of termination.

The County and Company acknowledge that the electronic recording process is an emerging technology and that State and National standards will continue to evolve. To further the technology and the electronic recording process, the County and Company will meet as needed to discuss changes and additions to this Memorandum of Understanding.

The County and Company understand that submission, acceptance and recording of any document must comply with all other applicable federal, state and local laws.

Documents may be rejected in accordance with Kansas law, including, but not limited to the following reasons: document errors, failure to pay the filing or other fees due, the document is not a type the Register of Deeds is authorized to accept for recording, or the document fails to meet any other applicable legal requirement.

Company's right to submit documents under this MOU is subject to County's review and acceptance of Company's pathway standards and procedures. Such approval will not be unreasonably withheld by County. This review will be directed to confirming that Company's pathway is secure and meets all requirements imposed by Kansas law or this MOU. Company agrees that following initial approval by County of Company's pathway, if Company materially modifies its pathway standards and procedures, County will be notified within a reasonable time, and County will be able to review and approve said material modifications.

County may suspend Company's right to electronically submit documents for recording for good cause, including, but not limited to failure to comply with any obligations imposed by Kansas law or this MOU. Notice of suspension will be immediately provided to Company by County. Company may be reinstated upon satisfactory resolution of the County's concern.

Any amendments or modifications to this MOU shall be in writing duly executed by each party's authorized official, which shall become effective at a time mutually agreed upon by the parties.

No alteration or variation of the terms of this MOU shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or MOU not incorporated herein shall be binding on either party.

This MOU is not assignable by the Company either in whole or part, without the written consent of the County.

The Company agrees that all personal information which is considered privileged and confidential under Kansas law contained within the documents will not be released by the Company to any individual or other legal entity who would not otherwise have access to such information. Any release of information by the Company to any unauthorized individual or other legal entity may result in the County terminating this MOU. Notwithstanding any other time limits herein, County may terminate this MOU for unauthorized use or disclosure by written notice to the Company. Written notice to be effective upon facsimile (FAX) transmission to Company or five (5) days from the date of mailing of such notice.

Except for payment and indemnity obligations hereunder, neither party shall be deemed in default, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligation hereunder due to earthquake, flood, fire, storm, natural disaster, act of God, war, armed conflict, terrorist action, labor strike, lockout, boycott, provided that the party relying upon this paragraph: (a) shall have given the other party written notice thereof promptly and, in any event, within five (5) days of discovery thereof and, (b) shall take all reasonable steps reasonably necessary under the circumstances to mitigate the effects of the

force majeure event upon which such notice is based; provided further, that in the event the force majeure event described in this paragraph extends for a period in excess of thirty (30) days in aggregate, the other party immediately may terminate this agreement.

This MOU is entered into in the State of Kansas and is governed by the provisions of the statutes of the State of Kansas.

If any provision of this MOU, or the application thereof, is for any reason and to any extent found to be invalid or unenforceable, provision to other persons or circumstances shall not be affected by such finding of invalidity or unenforceability, and shall be interpreted in a manner that shall reasonably carry out the intent of the MOU.

Any party wishing to challenge any or all conditions of this MOU must do so in a court located within the County of \_\_\_\_\_, State of Kansas.

**Agreed and Accepted:**

By \_\_\_\_\_ (Company)

Name \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_ (County)

Name \_\_\_\_\_

Date \_\_\_\_\_

**Attachment A**  
**Technical Specifications**

Format of the transmitted File

**Property Records Industry Association (PRIA)/Mortgage Industry Standards Maintenance Organization (MISMO) file format standard will be used. Any multi-page storage format as specified by the County.**

Communications Protocol and Options

**Transmission Control Protocol/Internet Protocol (TCP/IP), HTTP and HTTPS**

Security Framework

**Encryption will be a minimum 128 bit file and image encryption. Secure Socket Layer (SSL) and user login/password will be employed. User passwords are controlled by the Company and should be monitored/or changed periodically to ensure security. Computers on which documents originate must have all critical operating system patches applied , must have a firewall (hardware or software) installed, and must have up to date virus scan software.**

Returned File Format

**Property Records Industry Association (PRIA)/Mortgage Industry Standards Maintenance Organization (MISMO) file format standard will be used. Any multi-page storage format as specified by the County.**

Levels of Electronic Recording Supported

**Levels 2 and 3 or as specified by the County.**

Electronic Signatures and Use of Digital Certificates

**The use of Electronic Signatures and Digital Certificates will need to adhere to the guidelines set out in any applicable Kansas Secretary of State administrative rules.**

Imaging Standards

**Documents will be scanned at a minimum of 300 dpi.**

**Documents will be scanned in portrait mode.**

**Document images will be captured in any multi page storage format as specified by the County.**

**Scanned documents will be legible and reproducible – including signatures and notary seals.**

**Document details, such as margins, font size, and other similar requirements, must meet all applicable state or local standards.**

**Documents must be scanned to original size.**

**Attachment B**  
**Documents and Indexing Specifications**

Eligible Document Types

**Mortgage releases**

**Assignments of Mortgages**

County Specific Document Type Coding

**Please refer to PRIA website for the Logical Data Dictionary, which lists all the acceptable “Document Types”. [www.pria.us](http://www.pria.us) It is the County’s intention to not reject documents based on “incorrect or non-County specific document types. The County will correct the document type as part of the acceptance process.**

Indexing Fields for each Document Code

**All documents submitted will require the minimum index fields:**

**Grantor(s) or equivalent**

**Grantee(s) or equivalent**

**Document Type**

**Recording Fee**

**Related (original document number, in the case of releases, assignment, amendments, etc.).**

**Legal Description Fields as specified by County**

**Standard PRIA tags defined for these fields must be used. [www.pria.us](http://www.pria.us)**

Document Imaging Quality Control Standards

**The xhtml document must display in W3C (World Wide Web Consortium) Standards.**

Notary Requirements per Document

**It is the responsibility of the Company to confirm that notary signatures and seals are present on all documents that require them.**

**Inked notary seals are strongly recommended, in place of embossed notary seals, which require “darkening” by the Company prior to submittal.**

**All electronic notaries must adhere to the Kansas Secretary of State Standards for electronic notaries.**

Eligible Document Batches

**Document batches will be submitted by a standard naming convention as specified by the County.**

**The maximum size of electronic document batches will be determined by the County.**

Cover Sheet

**Each document submitted shall be accompanied by a cover sheet in the form as follows:**

---

Name of company submitting document: BANK OF SEDGWICK COUNTY KANSAS

When recorded mail to: BANK OF SEDGWICK COUNTY KANSAS  
525 N MAIN  
WICHITA KS 67203

Title of Document: REAL ESTATE MORTGAGE

Mortgage Amount: \$10,000

Previously Paid Mortgage Amount: \$50,000 See Affidavit on Page: 13

Original Document Date: 5/18/2003

Grantor(s): JOHN DOE

Grantee(s): JANE SMITH

Full Legal Description: LOT 1 BLOCK 1 WESTLINK 3<sup>rd</sup> ADDITION, SEDGWICK COUNTY,  
KANSAS

\*\*Please note that if you do not have room to enter the complete legal description, list the page number that the legal description is printed on.

Book(s): 0953 and Page(s): 2577 Document Number: 28814355

---

**Attachment C**  
**Service Offering**

Hours of Operation

**Documents may be submitted at any time during the week. Documents will only be processed between 8:00 a.m. and 5:00 p.m. on those days that the County Recording Office is open to the public for business.**

**Documents will not be processed on county holidays, weekends, snow days, declared emergencies, etc. or in the event of network or equipment failure. County will attempt to notify Company of any disruption in service.**

Processing Schedules

**Document batches must be received by 5:00 p.m. local standard or daylight savings time to be recorded or rejected on the date received.**

Alternative Delivery Options

**There are no other electronic delivery options at this time.**

Return Options

**Submitted documents that are accepted for recording will be made available to the Company in electronic format after recording.**

**Submitted documents that are rejected will be made available to the Company in electronic format after rejection, along with a description of the reason(s) for rejection.**

Service Help Contact Information

**County:**

**County eRecording Vendor:**

**Company:**

**Attachment D**  
**Payment Options**

**Payment Options**

**The Company must sign authorization form, allowing an Automated Clearing House (ACH) transaction against the account being used to process fees for documents submitted by Company.**

**It will be the Company's responsibility to inform County of any changes that may effect an ACH transaction at least 10 days before the change.**

**Notwithstanding any other time limits set forth herein, County may terminate this MOU by written notice to the Company for failure to report changes in ACH as required in this MOU. Written notice to be effective upon facsimile (FAX) transmission to Company or five (5) days from the date of mailing of such notice.**

**The Company will not be able to access the E-Record system if applications have been accepted and the fees have not been collected.**

**Appendix I  
Survey Results**

**Part 1**

**A survey was distributed electronically to members of the Kansas Bar Association. The form of survey, and the survey responses, are as follows:**

**KANSAS ELECTRONIC RECORDING COMMISSION SURVEY**

The 2006 Kansas Legislature enacted the Uniform Real Property Electronic Recording Act (Senate Bill 336). This Act established the Kansas Electronic Recording Commission (the "Commission") to adopt uniform standards to implement this Act, which standards shall become effective on and after July 1, 2007.

The decision to implement e-recording by a Register of Deeds in the State of Kansas, and to accept electronic documents for recording, is voluntary on a county-by-county basis. However, if a Register of Deeds determines to implement the Act, they shall do so in compliance with the electronic standards established by the Commission, and shall continue to accept paper documents as authorized by State law.

Survey questions:

1. What is your awareness of e-recording? For example, what do you know about it, and have you ever recorded a document electronically?
2. What obstacles does your firm or organization have in implementing e-recording and e-notarization, as an option to the traditional methods of recording and notarizing documents?
3. What concerns do you have about e-recording and e-notarization?
4. How do you see e-recording being utilized among attorneys in the Real Property Section of the Bar, and the banking, title and settlement industry?

Voluntary:

Your name \_\_\_\_\_

Your County \_\_\_\_\_

Contact Info. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

On behalf of the Kansas Electronic Recording Commission, thank you for your time and attention to this request for survey information. Please forward (mail, fax or email) your response, if possible, by December 12, 2006, to:

**AWARENESS:**

What is your awareness of e-recording? For example, what do you know about it, and have you ever recorded a document electronically?	
1	Our office handles a high volume of real estate foreclosures in the State of Kansas, on average over 400 per month throughout all 105 counties. We are very supportive of advances in e-recording. We typically record Assignments of Mortgages, Releases, and Sheriff's Deeds. I would anticipate more than 750 per month. We spend a considerable amount of administrative support time and resources to record documents in the various counties. Our frequent concerns are time delays, lost documents and inconsistent "local" idiosyncrasies at the Register of Deeds' offices.
2	Have filed federal bankruptcy court pleadings electronically.
3	We are currently in the research stage. We have attended a few seminars on the matter 1) Johnson, Wyandotte, Miami - Laredo; 2) Cass Co. - Mobilis Technologies, LLC. We have not done any E-recording yet.
4	Aware that it is used in some states and that something was proposed a year or two ago. I have never used it.
5	Nothing, No.
6	I am aware, have filed documents electronically and was responsible for the first implementing of such a system for counties in the state of Kansas.

**CONCERNS, PROBLEMS AND OBSTACLES:**

<p>What obstacles does your firm or organization have in implementing e-recording and e-notarization, as an option to the traditional methods of recording and notarizing? What concerns do you have about e-recording and e-notarization?</p>	
1	<p>Some suggestions: The Recorder’s Office would need to have the ability to electronically “confirm” receipt of the document and respond with the concurrent recording information (date recorded, instrument number, book, page, etc.). Secondly, there would need to be in place the ability to accept e-payment (maybe thorough a preferred e-invoice vendor selected by the Commission) that would be consistent across the state. Rejections could be handled through a uniform rejection report or other exception report to be ratified by the Commission. E-signatures have already been approved at the state and federal level, including notaries, witnesses, etc. Security can be manifested through public/private encryption vendors such as Verisign, all of which already exist for public consumption.</p>
2	<p>Don’t know about e-notarization. What is required other than notarizing and scanning in? Bankruptcy court signatures shown with /s/ – is that available for signatures by parties? notaries? What happens if Register of Deeds rejects legitimate documents? How will payment of fees be handled, especially in counties where not worth having an ongoing account?</p>
3	<p>Knowledge, lack of information, training costs, equipment; customers may object to extra charge for E-recording?</p>
4	<p>Do not know what would be required so I do not know possible problems. Authentication of actual signatures and susceptibility to “loss” and fraud.</p>
5	<p>Education, training, equipment</p> <p>Opportunity for fraud seems great and the risk seems to outweigh any perceived benefits.</p>
6	<p>Software incompatibility, uniform forms, uniform procedures, problems with different mainframe/computer language among counties. None - implementation and uniforms are big problems. One system for all counties.</p>

**USAGE OF E-RECORDING:**

How do you see e-recording being utilized among attorneys in the Real Property Section of the Bar, and the banking, title and settlement industry?	
1	Our office is completely paperless and to be able to e-record would allow us to leverage technology to everyone's benefit. We welcome future implementation of SB 336. I would be more than happy to volunteer to be on any future liaison committee at the bar level.
2	As an efficient way to do business in other counties, especially.
3	Paperless, time saver, less cost, storage...This is what the industry is moving towards.
4	Not much in non-metro areas, but all will have to accept it due to mortgage companies now being national in scope. Banking and settlement industries will probably like it.
5	The practice of real estate law is not limited to members of this section. Those recording routine volumes of documents will have a decided advantage over others who only occasionally will do so. This will breed competitive disadvantages that are not healthy.
6	Should be utilized by attorneys, but more so by closing agents and real estate agents.

## Part 2

A survey was also distributed electronically to members of the Kansas Register of Deeds Association. A total of 39 of the 105 counties responded to the survey. The form of survey, and the survey responses, are as follows:

### **KANSAS ELECTRONIC RECORDING COMMISSION SURVEY**

The 2006 Kansas Legislature enacted the Uniform Real Property Electronic Recording Act (Senate Bill 336). This Act established the Kansas Electronic Recording Commission (the “Commission”) to adopt uniform standards to implement this Act, which standards shall become effective on and after July 1, 2007.

The decision to implement e-recording by a Register of Deeds in the State of Kansas, and to accept electronic documents for recording, is voluntary on a county-by-county basis. However, if a Register of Deeds determines to implement the Act, they shall do so in compliance with the electronic standards established by the Commission, and shall continue to accept paper documents as authorized by State law.

Sally Akers, Morton County, Rebecca Seeman, Saline County and John Bartolac, Johnson County, are the Register of Deeds Association members on this Commission. We are seeking your input regarding electronic recording through a brief survey. Please complete and submit your responses before Friday, December 8, 2006.

#### Survey questions:

1. What is your awareness of e-recording? For example, what do you know about it, and have you ever recorded a document electronically?
2. What obstacles do you see to implementing e-recording and e-notarization, as an option to the traditional methods of recording and notarizing documents?
3. What concerns do you have about e-recording and e-notarization?

4. Do you see e-recording fitting into you business plan?
5. Do you plan to offer e-recording?
6. Do you plan to spend funds to become e-recording capable?
7. Will you purchase vendor-supplied e-recording software?

The attached responses are a collective representation of the answers received.

### **AWARENESS:**

What is your awareness of e-recording? For example, what do you know about it and have you ever recorded a document electronically?

1. I have very little knowledge of e-recording. We have never recorded electronically
2. I do not know much about it.
3. I am aware of it but have recorded electronically.
4. I have limited knowledge based on brief discussions at our meetings
5. I have not and do not want to.
6. I am currently learning about the process.

### **CONCERNS, PROBLEMS AND OBSTACLES**

1. Cost
2. Fraud
3. Concerns for additional errors
4. Time and staffing
5. Getting away from original signatures and notaries
6. Having the proper technology in place to accommodate the process
7. We don't have imaging now and don't expect it in the future
8. Trailing accountability
9. Proper training and education
10. Payment methods
11. Current recording problems (legal descriptions, notaries, proper ownership) could get worse.
12. Security
13. Cost Justification

**USAGE OF E-RECORDING:**

1. Yes, possible within 5 years.
2. Not at the present time.
3. After I see that it is working.
4. Someday
5. I think it will fit into our model.
6. I need more information. I am concerned about costs.
7. No, not while I am in office.
8. Yes.

**SPENDING/PURCHASE:**

1. Yes/Not sure.
2. Yes/Not any time soon.
3. Not any time soon/Will wait and see what vendors develop.
4. When funds allow/Yes
5. No/No
6. Yes/Already visiting with my vendor

## **Appendix J Frequently Asked Questions**

- 1. What are the minimum hardware requirements to implement eRecording?**
- 2. What other requirements would there be?**
- 3. What document types can be electronically recorded?**
- 4. At which models may documents be received?**
- 5. What is a SMART Doc™?**
- 6. Why are standards important?**
- 7. What are the three proven methods of delivery in eRecording?**
- 8. How does the size of a county affect its ability to participate in eRecording?**
- 9. What is the relationship between URPERA, UETA and E-SIGN?**
- 10. What are the implications if Electronic Recording Commissions or state agencies overseeing the commission or committee adopt standards that are not aligned with the standards adopted by other states?**
- 11. What types of output are generated by an Electronic Recording Commission?**
- 12. Will the private industry solely drive the standards based on early adopters and the information they have already accumulated or will it be a collaborative effort by the early adopters from across the nation or state in both the private and public sectors?**
- 13. What are significant national standards that guide eRecording today?**
- 14. What is MISMO's relevance in eRecording?**
- 15. What is PRIA's relevance in eRecording?**
- 16. How much security is needed in eRecording?**
- 17. What are the differences and benefits of digital signatures and digital certificates in eRecording?**
- 18. Are digital signatures and electronic signatures the same?**
- 19. What is the difference between a digital signature and a digitized signature?**
- 20. What kinds of electronic signatures should be used? For which signatures?**
- 21. How are electronic and paper documents meshed together?**
- 22. Do current indexing standards also apply to electronic documents?**
- 23. How can costs be reduced and controlled?**
- 24. Are there more fraud concerns with electronic recording?**
- 25. Can I use a sound as my signature?**

- 26. How are recording fees paid?**
- 27. If a Kansas SVQ is required, how is that handled in an electronic recording?**
- 28. Can a Register of Deeds accept a document transmitted by facsimile for recording?**
- 29. Will all Kansas counties accept electronic recording?**

**1. What are the minimum hardware requirements to implement eRecording?**

At a minimum, a county would need to have a server with enough disk space to enable a web services program. This program would typically be developed and provided by a vendor or portal solution at little or no cost to the county.

**2. What other requirements would there be?**

The county would also need to have access to the Internet and have a web browser such as Internet Explorer, which is usually already included in the computer's packaged software when the unit was purchased.

**3. What document types may be electronically recorded?**

All document types lend themselves to electronic recording. Plats or maps filed electronically may require special handling.

**4. At which models can documents be received?**

Documents that can automatically be created by a template and have embedded index data submitted with the recording payload, and can be electronically signed and/or notarized, can be received by a Register of Deeds if the Register of Deeds system is capable of accepting model 3. Examples of these "Smart Docs" would be Satisfactions and possibly Assignments.

Documents that require the original executed instrument to be recorded lend themselves to model 2 recording since an actual copy of the document with wet signatures must accompany the index data. Examples of this would be Deeds and Mortgages.

**5. What is a SMART Doc™?**

A SMART Doc™ is found only on model 3 transactions. It gets its name from the fact that a human doesn't need to view or handle it for it to be recorded. SMART Docs™ contain all of the necessary information to create index entries and to electronically create a document that can be recorded. This is accomplished by virtue of the submitter organizing and labeling the data payload in a standard format that the recorder also subscribes to.

**6. Why are standards important?**

Standards are important because they allow various parties to communicate and understand each other in a predefined manner. Without standards there would be constant interpreting and deciphering of information. In the eRecording world standards allow

each party to organize and submit data to the other in a universal manner, without having to employ the use of custom integration points, and in order to facilitate interstate communication.

**7. What are the three proven methods of delivery in eRecording?**

The three methods are point-to-point-integration, third party vendor, and a portal. In the beginning when eRecording was a new concept, the third party vendor method was popular due to the lack of document preparation software available at the submitter's site.

As eRecording's popularity caught on submitters sometimes found it beneficial to eliminate the costs of a third party vendor and develop a point-to-point integration directly with the county. This was typically true with larger counties where greater recording volumes are common.

Inherent with many submitters trying to send to many counties and not wanting to develop unique integration and data schemes for each, the concept of a portal was born. The portal was designed to be a central clearinghouse for submitters and counties. As proven, a submitter can deliver various documents intended for several different counties nationwide to the portal. The portal has the ability to verify that specific county index standards have been met and then deliver each document to the specific county for which it is intended.

**8. How does the size of a county affect its ability to participate in eRecording?**

Because there are many methods in which to participate, a county's size has little bearing on its ability to implement eRecording. A small county that has Internet access could use a web services program to receive and return documents. A medium or large county that has more volume could use a vendor solution or agree to a point-to-point integration directly with the submitter. A portal could be used with any size county since the portal doesn't care or factor in the size of a county to perform its functionality, or to deliver and return recorded documents from that county.

**9. What is the relationship between URPERA, UETA and E-SIGN?**

E-SIGN and UETA are federal and uniform state laws, respectively, enacted to enable electronic commerce. While E-SIGN covers some additional issues, they are complementary acts. They are similar in their application to electronic documents and electronic signatures based on voluntary agreement between parties. Both are self-implementing. Between them they remove barriers on both interstate and intrastate levels. E-SIGN explicitly preempts certain state laws that do not conform to E-SIGN even where a state enacts UETA.

URPERA is a follow up act to UETA with the purpose of clarifying ancillary recording issues. It also establishes a method for adopting standards on a statewide basis that has the potential for implementing uniform standards nationally.

**10. What are the implications if Electronic Recording Commissions or state agencies overseeing the commission or committee adopt standards that are not aligned with the standards adopted by other states?**

Since mortgage lending and title insurance have become national businesses that are utilized by citizens, this is a significant question. Adopting multiple standards that are not aligned will result in higher costs for both document submitters and county recorders. Computer systems for mortgage lenders, attorneys, settlement agents, title insurance companies and county recorders will have to be designed to accommodate multiple sets of standards. Each different set will need to be mapped to the MISMO standards used by the industry. Even then, with incompatible specifications mapping may be inadequate.

Current national standards are driven by the private sector needs of interoperability among trading partners. Standards developed by PRIA reuse industry (MISMO) architecture, structure and data points. Likewise, MISMO reuses PRIA standards for those pieces unique to recording.

**11. What types of output are generated by an Electronic Recording Commission?**

Document deliverables can be in two forms. One is to generate the standards, even if adopting from sources such as PRIA, in the format of XML Document Type Definitions (DTDs) or schema, data dictionaries, implementation guides, etc. The other is to issue compiled references to adopted specifications, citing the source and location of the specifications adopted.

**12. Will the private industry solely drive the standards based on early adopters and the information they have already accumulated or will it be a collaborative effort by the early adopters from across the nation or state in both the private and public sectors?**

The latter. Standards development has already been a collaborative effort, both by trading partners in the private sector and county recorders. However, the collaboration includes more than early adopters. A number of large entities have participated in the standards process even though they have not yet implemented electronic transaction solutions.

**13. What are significant national standards that guide eRecording today?**

PRIA eRecording; PRIA Notary; MISMO Closing, Servicing, Origination, Request and Response envelopes, eMortgage SMART Doc™, eMortgage eRegistry, eMortgage ePackage; PDF, TIFF; XML.

**14. What is MISMO's relevance in eRecording?**

MISMO is the primary standards setting body for the financial services organizations where the lending process begins and whose work efforts result in recordable documents. Their standards will be used by those organizations to create documents and share data. Since this group includes those who create the vast majority of documents to be recorded, their standards will be a major factor in documents processed by county recorders.

**15. What is PRIA's relevance in eRecording?**

PRIA is a public/private cooperative entity with both recorders and submitters among its members. Its mission is to create and maintain standards. Four technical standards have been developed specific to electronic recording by PRIA. Two are envelopes for submitting and returning recordings. A third is the specification for the document

information. The final specification is for notarial information included in notarial certificates and incorporates notary signatures and commission information.

The PRIA technical specifications were developed in close coordination with the private sector (MISMO) to ensure the interoperability of the technical standards. In fact, PRIA reuses a number of the data elements developed by MISMO and as well as the MISMO architecture. In turn, MISMO has adopted the PRIA data elements specific to recording for incorporation into its data dictionary and technical specifications.

Ultimately, widespread adoption of a standard will facilitate electronic commerce in the real estate finance industry. Neither the private nor the public sector can afford applications that accommodate different interfaces with each different trading partner or customer. PRIA offers a universal interface for recorders that submitters can rely on.

#### **16. How much security is needed in eRecording?**

Security is a matter of quality rather than quantity. The quality must be sufficient to protect the assets to the degree that it covers the risk inherent in the process. Once completed the documents will be public record, so protection against prying eyes is not a high priority. On the other hand, documents must be secure from interception that results in their being delayed or not delivered, from substitution by different documents, or from alteration. And because recordings include payment of fees and taxes, the payment system must be secured.

Recorders need to prevent viruses, worms, Trojan horses and other malicious software from infecting their networks and systems. They also need to ensure unauthorized parties do not gain access to the parts of their networks that are not authorized to be accessed by the public.

It is not the Register of Deeds' responsibility to ensure the accuracy or legality of the documents themselves, except insofar as they qualify to be recorded. Security for that lies outside the scope of recording.

#### **17. What are the differences and benefits of digital signatures and digital certificates in eRecording?**

Digital signatures enable both the recorders and the submitters to determine whether a document or set of documents was altered so they can decide whether or not to continue the process or rely on the resulting recording. While digital signatures require signers to use a key they control to complete the signature, the resulting signatures do not identify the signers in the same manner that a signature on a paper document is identifiable.

Digital certificates can provide a model of certainty that the signers are who they claim to be, thus providing a degree of trust. From a security aspect this can be an important tool insofar as the recorders can use it to decide who to accept documents from. Conversely, submitters or other parties can determine that particular recordings are authentic when documents are returned from the recorder's office with endorsement of recording information.

#### **18. Are digital signatures and electronic signatures the same?**

Yes and no. A digital signature is a kind of electronic signature. Not all electronic signatures are digital signatures in the same way not all pens are fountain pens.

**19. What is the difference between a digital signature and a digitized signature?**

As described in the Glossary found in Addendum A:

Digital signature: A complex string of electronic data that contains encoded information about a document and the person who signed it. Because they use powerful asymmetric encryption technology, digital signatures are the most secure type of electronic signature.

Digitized signature: A scanned image of a person’s handwritten signature, which is captured using special digitizing hardware and stored as a computer file.

**20. What kinds of electronic signatures should be used? For which signatures?**

This is a matter of agreement between parties, except as to government entities that may have the authority to establish performance standards for signatures under certain circumstances. Even so, government entities need to exercise caution that one technology is not given a higher legal standing than others. E-SIGN claims preemption in such cases.

**21. How are electronic and paper documents meshed together?**

The concept of “meshing” electronic and paper documents together does not really exist. Once the electronic document is received into the Register of Deeds system, the process of calculating fees, assigning time, book & page, instrument numbers is the same as for paper documents.

Depending on the model of the electronic document, the image may be transported automatically into the Register of Deeds system for public retrieval along side the paper document that was scanned by Register of Deeds staff.

**22. Do current indexing standards also apply to electronic documents?**

Registers of Deeds have the same responsibility for indexing documents received electronically as paper documents received in person, by US mail, and by express methods.

**23 How can costs be reduced and controlled?**

One option being studied is the establishment of a “portal” that would accept documents submitted electronically from ANY system and transmit those documents to the appropriate register’s office, no matter what vendor they use for their back end system. This concept would eliminate the need for specific software between a submitter and each recorder with whom they file. Different versions of the “portal” concept are being used in other states, some more successfully than others.

**24 Are there more fraud concerns with electronic recording?**

There is less chance of a document being altered at the recording counter or en route to Register of Deeds offices than might exist during the prior activities which occurred in the

attorney's or title offices. Moreover, intentional fraud is a moral issue and will not be controlled by recording statutes or methods.

**25. Can I use a sound as my signature?**

URPERA authorizes the use of many types of electronic signatures. A county's memorandum of understanding will detail what technology is supported by that county.

**26. How are recording fees paid?**

Fees are to be collected according to statute and in a manner consistent with the promotion of electronic recording, and in accordance with accepted industry standards. Each county recorder may collect electronic recording fees in a manner compatible with its internal software and county financial practices. (See Standard 7 for more information.)

**27. If a Kansas SVQ is required, how is that handled in an electronic recording?**

There is an electronic version of the Kansas Real Estate Sales Validation Questionnaire. See Appendix G for details.

**28. Can a Register of Deeds accept a document transmitted by facsimile for recording?**

No, a facsimile is an electronic document without an electronic signature, and does not include the requisite transactional and organizational security standards to be accepted for recording.

**29. Will all Kansas counties accept electronic recording?**

No, K.S.A. 58-4404 provides that implementation of electronic recording is optional county by county.

**Appendix K**  
**Kansas Electronic Recording Commission Bylaws**

**KANSAS ELECTRONIC**  
**RECORDING COMMISSION**

*Enacted by the Legislature of the State of Kansas*

*Senate Bill 336, Approved April 19, 2006*

*Published Chapter 145, 2006 Session Laws of Kansas*

**BYLAWS**

**ARTICLE I**  
**ORGANIZATION**

**Section 1. Name.** The name of this organization shall be the *Kansas Electronic Recording Commission* (referred to as the "**Commission**").

**Section 2. Principal Office.** The Commission shall, by resolution of the members of the Commission (referred to as the "**Board**"), designate from time to time the specific location of its principal office as designated herein.

**Section 3. Duration.** The existence of the Commission shall be perpetual, except that it may be terminated by the Kansas Legislature.

**Section 4. Fiscal Year.** The Commission, by resolution of its Board, shall have the authority to establish and change, from time to time, the fiscal year of such Commission for all purposes. Until further notice or resolution of the Board, the fiscal year of the Commission shall begin on the first day of January of every year.

**Section 5. Effective Date.** These Bylaws shall be effective from and after approval by the affirmative vote of at least seventy five percent (75%) of the entire Board.

**ARTICLE II**  
**PURPOSE**

The purposes of the Commission shall be in accordance and consistent with those purposes set forth in the *Uniform Real Property Electronic Recording Act* (the "**Act**"), as

adopted and amended from time to time by the Kansas Legislature, and to establish and adopt electronic recording standards for the State of Kansas to implement the Act, and to review and revise such electronic recording standards from time to time, and to conduct other business incidental to the affairs of the Commission.

### **ARTICLE III**

#### **Board**

**Section 1. Board.** The governance of the Commission, the control of its property (if any), and the general management of its affairs, shall be vested in a Board consisting of not more than fifteen (15) members. Each member of the Board shall serve for an initial term of one (1) year, and thereafter until such member shall resign, or until their successor is appointed and qualified. Each member of the Board shall be appointed, as follows:

1. Three members who are Registers of Deeds appointed by the Kansas Register of Deeds Association;
2. Two members of the title industry appointed by the Kansas Land Title Association;
3. One member who is an attorney appointed by the Kansas Bar Association;
4. One member of the construction industry appointed by the Governor;
5. One member of the oil and gas industry appointed by the Legislative Coordinating Council;
6. One member of the banking industry appointed by the Legislative Coordinating Council;
7. One member of the mortgage industry appointed by the Legislative Coordinating Council;
8. One member who is a surveyor appointed by the Legislative Coordinating Council;
9. One member who is a realtor appointed by the Legislative Coordinating Council;
10. One member of the agricultural industry appointed by the Governor;
11. The State Archivist or the archivist's designee; and
12. The Secretary of State or the Secretary's designee.

**Section 2. Powers and Duties of the Board.** The duties of the Board shall commence at the first meeting of the Board following the adoption of the Act, and the powers and duties of the Board shall be and continue in accordance with the Act and these Bylaws. The Board may, from time to time, adopt such rules as may be deemed advisable for conducting the business of the Commission and the guidance of its Officers, committees and meeting guests. The Board shall have the power to appoint delegates to deliberative gatherings, and, in general, to do such things as may be intended to increase the efficiency and add to the usefulness of the

Commission and to carry out the purposes of its formation. The Commission, acting through its Board, shall have the power and oversight to conduct and carry on the business incidental to and fostering of the implementation of the Act and, in general, to do any and all things necessary and proper to be done to fulfill and consummate the purposes of the Commission set forth in the Act and these Bylaws.

**Section 3. Unexcused Absence.** If any member of the Board is absent from two consecutive regular meetings of the Board, without permission from the Chair of the Board, then the Chair of the Board shall notify the appointing authority of such absent Board member and request that a new appointment be made to replace the absent Board member. If any member of the Board shall otherwise refuse or neglect to discharge the duties of a member of the Board, as determined by the affirmative vote of a majority of the entire Board, then the Chair of the Board shall notify the appointing authority of such vote and request that a new appointment be made to replace such Board member.

**Section 4. Board Vacancies.** Any vacant position on the Board shall be filled in accordance with Section 1 of Article III of these Bylaws. A Board member appointed to fill a vacancy shall meet the qualifications for a Board member set forth in these Bylaws, and shall serve until the term of the vacant Board position shall expire or until a successor is appointed and qualified.

**Section 5. Compensation.** No member of the Board shall receive any salary or other compensation for serving as a member of the Board. However, by resolution of the Board, a member of the Board may be reimbursed for actual expenses reasonably incurred in attending meetings and rendering service to the Commission in the administration of its affairs.

**Section 6. Resignation.** Any Officer or member of the Board may resign by mailing or delivering written notice of resignation to the Secretary. Such resignation shall be in writing and shall be effective immediately or upon its acceptance by the Board as such resignation may provide.

**Section 7. Voting; Proxy.** Decisions of the Board shall require a simple majority vote, unless a higher percentage vote is expressly required by these Bylaws. Each member of the Board present in person, by telecommunication, or by written proxy, at any duly called meeting of the Board shall be entitled to cast one vote on each matter coming before the Commission at such meeting for decision. Any reference in these Bylaws to a “written proxy” shall mean, and be limited to, a written proxy granted to another member of the Board and to no other person.

**Section 8. Majority of the Board.** The phrase “entire Board”, as used in these Bylaws, shall mean the actual appointed members serving on the Board, and shall exclude Board vacancies. Any reference in these Bylaws to voting by a majority of the entire Board, or to some other percentage of the entire Board, shall be determined based upon the number of actual appointed members serving on the Board at such time, and shall exclude Board vacancies.

## **ARTICLE IV**

### **OFFICERS**

**Section 1. Officers.** The Board shall elect from their own number the following Officers: (i) Chair of the Board, (ii) Vice-Chair of the Board, (iii) Secretary, and (iv) a Treasurer (collectively referred to as the “**Officers**”). The Officers shall serve in such capacity for a term of one year, or until their successors are elected and qualified. In the absence or disability of the Chair of the Board, the Vice-Chair shall act as Chair of the Board.

**Section 2. Executive Committee.** The Officers shall constitute the executive committee of the Board (the “**Executive Committee**”), and shall serve in such capacity for a term of one year, or until their successors are elected and qualified.

**Section 3. Chair.** The Chair of the Board shall preside at all meetings of the Board, shall perform all duties incident to the office of the Chair of the Board, and shall be responsible to carry into effect all directions and resolutions of the Board. The Chair of the Board shall have such other or further duties or authority as may be prescribed elsewhere in these Bylaws, or from time to time by the Board.

**Section 4. Vice-Chair.** The Vice-Chair of the Board shall work in cooperation with the Chair of the Board, and shall perform such duties as the Board may assign. In the event of the death, absence, incapacity, inability or refusal to act of the Chair of the Board, the Vice-Chair of the Board shall be vested with all of the powers and perform all of the duties of the office of Chair of the Board, until the Board otherwise provides. The Vice-Chair of the Board shall have such other or further duties or authority as may be prescribed elsewhere in these Bylaws, or from time to time by the Board.

**Section 5. Treasurer.** The Treasurer shall be the chief financial and accounting Officer of the Commission and shall have and perform such other duties, responsibilities and authorities as may be prescribed from time to time by the Board. Upon request, the Treasurer shall render to the Board an account of all the Commission financial transactions and a report of the financial condition of the Commission.

**Section 6. Secretary.** It shall be the duty of the Secretary to conduct the official correspondence of the Commission; preserve all books, documents, and communications of the Commission; maintain the accurate record of the proceedings of the Board and all committees; compile and keep information and statistics of value to the Board; submit minutes of prior meetings to the Board if desired; and perform such other duties as may be determined by the Board.

## **ARTICLE V**

### **MEETINGS**

**Section 1. Regular Board Meetings.** The regular meetings of the Board shall be held at least twice each fiscal year within the State of Kansas, for the purpose of electing Officers, reporting and considering the affairs of the Commission, and transacting any other business which is within the power of the Board. The designated time and place of the regular meetings of the Board shall be approved from time to time by resolution of the Board.

**Section 2. Special Board Meetings.** Special meetings of the Board may be held at such other times as the Chair of the Board may determine, provided that the meeting notice shall contain a statement of the purpose of the meeting, and shall be issued at least two weeks preceding the meeting.

**Section 3. Board Quorum.** The presence in person, by telecommunication, or by written proxy of at least eight (8) members of the Board shall constitute a quorum at any regular or special meeting of the Board. The members present at a duly called or held meeting of the Board at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

**Section 4. Executive Board Session.** Upon motion of any Board member, the Board may, by a majority vote of a quorum present, go into executive session at any meeting of the Board.

**Section 5. Notices.** Any notice provided or required to be given to any Board member may be waived in writing, or by electronic transmission, by the affected Board member, whether before or after the time stated therein. Attendance of any Board member at a meeting shall constitute a waiver of notice of such meeting, except where the Board member attends a meeting for the limited purpose of objecting to the transaction of any business because the meeting is not properly called or convened.

**Section 6. Action Without a Meeting.** Any action required or permitted to be taken by the Board at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members and filed in the minutes of the proceedings of the Board.

**Section 7. Meetings by Telephone.** Meetings of the Board, or any committee designated the Board, may participate in a meeting of the Board or a meeting of such committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear one another, and such participation in a meeting shall constitute presence in person at the meeting.

**Section 8. Presumption of Assent.** Any member of the Board who is present at a meeting of the Board at which action on any Commission matter is taken shall be presumed to have assented to the action taken, unless that member's contrary vote or abstention is recorded or that member's dissent or abstention is otherwise entered in the minutes of the meeting, or unless that member shall file a written dissent or abstention to such action with the Secretary before the adjournment thereof or shall promptly forward such dissent or abstention in writing to the Secretary after the adjournment of the meeting. Such right of dissent or abstention shall not apply to a member of the Board who voted in favor of such action.

## **ARTICLE VI**

### **COMMITTEES**

**Section 1. Committees.** The Board shall authorize and define the powers and duties of all committees.

**Section 2. Appointment.** Except as provided in these Bylaws to the contrary, the Chair of the Board shall appoint all committee Chairs, subject to confirmation by the Board.

**Section 3. Authority of Committees.** It shall be the function of the Board committees to perform their assigned duties and to make recommendations to the Board, and their reports shall be in writing, unless otherwise specified. No standing or special committee shall represent the Commission or the Board in advocacy of or opposition to any subject or matter without the prior and specific approval of the Board, or such other approval as may be clearly granted under the general powers delegated by the Board to the committee.

**Section 4. Committee Meetings.** Meetings of the Board committees may be called at any time by the Chair of the Board, or by the Chair of any such committee.

**Section 5. Notice of Committee Meetings.** Either the Chair of the Board, the Chair of any such committee, or the Secretary shall give notice of all Board committee meetings to each member of the Board by or through (i) personal notice, (ii) mailed notice, or (iii) electronic mail. Such notice may be made in advance of the Board committee meeting, or may be given to Board members at the next regular or special meeting of the Board following such Board committee meeting.

**Section 6. Action Without a Meeting.** Any action required or permitted to be taken by a Board committee may be taken without a meeting if a consent in writing or by electronic mail, setting forth the action so taken, shall be obtained from a quorum of the members of the Board committee and filed in the minutes of the proceedings of that committee.

**Section 7. Committee Quorum.** A majority of the number of committee members present in person or by written proxy at any duly called meeting of a Board committee shall constitute a quorum for the transaction of business by such committee.

**Section 8. Ex-Officio Committee Members.** The Chair of the Board shall be an ex-officio member of all Board committees, unless otherwise ordered.

**Section 9. Non-Member Advisory Committees.** The Board may from time to time appoint persons who are not members of the Commission to any advisory committee as the Board may choose. Such non-member persons serving on advisory committees will not be members of the Board, and will not have any voting rights whatsoever.

## **ARTICLE VII**

### **RULES**

**Section 1. Privileges of the Floor.** No person other than a member of the Board shall address the Board at any regular Board meeting, except by the consent of the Chair of the Board.

**Section 2. Comments.** It shall be the duty of Board members to report in writing to the Secretary any comments, or offer any suggestions, with a view to improvement in the methods of management, and the Secretary shall submit the same to the entire Board at its next regular meeting.

**Section 3. Resolutions.** All resolutions to be offered at any meeting of the Board must be submitted to the Secretary in writing at least ten (10) days prior to the date of such meeting.

**Section 4. Parliamentary Rules.** The proceedings of all Board meetings shall be governed by and conducted according to the parliamentary procedures set forth in the latest edition of *Robert's Rules of Order*, as amended from time to time.

**Section 5. Waiver and Amendment.** The rules of the Board may be revised, altered, modified, amended or supplemented, from time to time, by resolution of the Board.

**Section 6. Waiver of Notice.** Whenever notice is required to be given under any provision of these Bylaws, a written waiver signed by the person entitled to notice, or a waiver by electronic transmission from the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

**Section 1. Annual Reports.** The Chair of the Board and the Treasurer shall submit to the Board a report of the condition and finances of the Commission, together with a review of the year's activities, within sixty (60) days following the close of the Commission's fiscal year.

**Section 2. Fidelity Bonds.** Any Officer or member of the Board responsible for the funds of the Commission may be bonded at the Commission's expense in such amounts as the Commission, by resolution of the Board, shall designate from time to time.

**Section 3. Loans.** No money shall be borrowed and no loans shall be incurred for the Commission by any Officer or member of the Board without the affirmative vote of at least seventy five percent (75%) of the entire Board present in person, by telecommunication, or by written proxy, at any duly called meeting of the Board. In addition, the Commission shall not make any loan to any Officer or member of the Board.

**Section 4. Severability.** If, for any reason, any provision of these Bylaws shall be held or determined to be invalid, such invalidity shall not effect any other provision of these Bylaws not held so invalid, and each such other provision shall to the full extent consistent with law continue in full force and effect. If any provision of these Bylaws shall be held or determined to be invalid in part, such invalidity shall in no way effect the rest of such provision not held so invalid, and the rest of such provision, together with all of the other provisions of these Bylaws, shall to the full extent consistent with law continue in full force and effect.

**Section 5. No Personal Liability.** The Officers and members of the Board are not individually or personally liable for the debts, liabilities or obligations of the Commission

**Section 6. Indemnification.** Any person who at anytime shall serve, or shall have served, as an Officer or member of the Board or of any other committee or enterprise at the request of the Board, and the heirs, executors, and administrators of each such person, shall be indemnified by the Commission against all costs and expenses (including but not limited to attorneys' fees, amounts of judgments paid, and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit, or proceeding, whether civil,

criminal, administrative, or other, in which such person may be involved by virtue of such person's being or having been an Officer or member of the Board if (i) such person, in connection with all matters having to do with such claim, action, suit, or proceeding, acted in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Commission, and (ii) with respect to any criminal action or proceeding, as to which such person had no reasonable cause to believe his or her conduct to have been unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest or its equivalent, shall not, or itself, create a presumption that such person did not act in good faith or not in a manner reasonably believed to be in or not opposed to the best interests of the Commission, or that such person had reasonable cause to believe his or her conduct to have been unlawful. The foregoing indemnification shall not be deemed exclusive of any rights to which those indemnified hereby may be entitled under any other applicable bylaw, agreement, statute, or otherwise.

## **ARTICLE IX**

### **AMENDMENTS**

These Bylaws may be revised, altered, modified, amended or supplemented by the affirmative vote of at least seventy five percent (75%) of the entire Board present in person, by telecommunication, or by written proxy, at any duly called meeting of the Board, provided that written notice explaining the nature of the proposed change shall have been sent to each member of the Board at least ten (10) days prior to the date of the Board meeting at which any such amendment is to be considered.

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***CERTIFICATE***

The undersigned, being the duly elected and acting Secretary of the Commission, does hereby certify that the above and foregoing Bylaws were duly adopted as the Bylaws of the Commission, by the Board of the Commission, on January 24, 2007.

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Secretary