

E-RECORDING

HISTORY

Kansas Legislature passed the Uniform Real Property Electronic Recording Act in 2006, effective July 1st of that year. The Kansas Electronic Recording Commission (KEREC) has been created to adopt standards to implement this act. This act allows the Register of Deeds to electronically record documents, provided that they do so in compliance with standards established by the KEREC, per K.S.A. 58-4404b(1). You can find the 2015 “Report from the Kansas Electronic Recording Commission” version 1.5 effective July 1, 2015 at the following link: <http://www.sedgwickcounty.org/deeds/kurpera.pdf> or can be found on the Register of Deeds web page. In the introduction it states that the “KEREC 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”. You will find a list of documents that PRIA has published with beneficial information on eRecording in a following section.

Report from the Kansas Electronic Recording Commission

The “**Report from the Kansas Electronic Recording Commission**” addresses 7 main topics.

1. Data Standards
 - a. eRecording Models; See Appendix C
 - b. also read; eRecording_levels_models_profiles_v3_04_08_2015
 - c. also read; The Models of eRecording a Continuum of Electronic Recording Updated adopted by the PRIA Board on August 27, 2013
2. Security
 - a. Read the current “**PRIA eRecording XML Implementation Guide**” chapter 6
3. Electronic Signatures
 - a. Registers of Deeds are only required to accept electronic signatures that they have the technology to support.
4. Notary Acknowledgement
 - a. Must comply with K.S.A. 16-1611 et seq. and K.A.R. 7-43-1 et seq.
 - b. Read: **Electronic Notarization** 11/11/2015
5. Document Formats for Electronic Recording
 - a. See Appendix F
6. Records Retention and Preservation
 - a. See Appendix F
7. Payment of Recording Fees
 - a. ACH (Automated Clearing House) is the main way to receive payment, see section II-7 for more options

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The Memorandum of Understanding (MOU) is a contract between the e-Recording vender (Company) and the Government Recording Office (GRO) which outlines the rules by which the GRO and Company will follow. In the model MOU found in the “**Report from the Kansas Electronic Recording Commission**” it lists the following topics, which I have highlighted selected text from each section. You may need to edit this MOU to meet your specific needs. You may also want your County Attorney to read over it and give his/her approval.

1. Electronic Recording: (page 70) Three levels of automation
2. Program Eligibility: (page 71) “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”
3. County Requirements:(page 71)
 - a. Attachment A defines the technical specifications
 - b. Attachment B contains the document and indexing specifications
 - i. Documents that cannot be e-Recorded. You may choose more, it is up to you.
 1. IRS Tax Lien
 2. Multi County Mortgages
 3. Plats
 - c. Attachment C contains the processing schedules and hours of operation
 - d. Attachment D provides the payment options supported
4. Company Responsibilities:(page 72) “Company shall ensure that only original documents are used to create the electronic documents”
5. County Responsibilities:(page 73)
6. General Understanding: (page 73) “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”

PRIA – documents of interest

1. **Recordable Instrument Implementation Guide** for eRecording adopted by the PRIA Board on 03/09/2016
2. eRecording **Best Practices** for Recorders adopted by the PRIA Board on May 13, 2015
3. The **Models of eRecording** a Continuum of Electronic Recording Updated adopted by the PRIA Board on August 27, 2013
4. eRecording **Portals White Paper** adopted by the PRIA Board on 01/08/2013
5. **How to Get Ready for Electronic Recording Part 1 The Recorder’s Guide** Adopted by the PRIA Board on July 14, 2009
6. eRecording **XML Implementation Guide** for Version 2.4.1 Revision 2 Updated 03/05/2007
7. **eRecording_levels_models_profiles_v3_04_08_2015**
8. **Electronic Notarization** 11/11/2015

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K.A.R. – Kansas Administrative Regulations

Regulations are enacted by an agency to implement or interpret legislation and are filed in the Secretary of State's office and published in the Kansas Administrative Regulations (K.A.R.). Agency #7, the Secretary of State, regulates the **Kansas Uniform Electronic Transaction Act** under Article 41 and **Electronic Notarization** under Article 43. Below is a link to read these regulations. The regulations can also be found in the “**Report from the Kansas Electronic Recording Commission**” starting on page 46.

Kansas Administrative Regulations (K.A.R)

http://www.sos.ks.gov/pubs/kar/2009/1%20007_7-Secretary%20of%20State,%202009%20KAR%20Vol%201.pdf

Article 41.—KANSAS UNIFORM ELECTRONIC TRANSACTIONS ACT

Article 43.—ELECTRONIC NOTARIZATION

Kansas Notary Handbook

The Kansas Secretary of State regulates and oversees the process of becoming an Electronic Notary Republic. They have rules in place but have not completed the course materials to become an Electronic Notary at this time. They hope to have this done in the near future. Below I have copied the Electronic Notarization section from the Kansas Notary Handbook for you to read. You can view or download the entire handbook from the Kansas Secretary of States web site.

The Uniform Electronic Transaction Act (UETA) authorizes the use of electronic signatures. However, any electronic notarization must still comply with Kansas notary laws and regulations (K.S.A. 16- 1611 (b)).

Notaries offering electronic notarizations must **register with the secretary of state, attend a course of instruction approved by the secretary of state and pass an examination.**

Kansas administrative regulations also require a notary public to **obtain a Kansas digital signature** issued through the Kansas Secretary of State for purposes of electronic notarization (K.A.R. 7-43-1 et seq.). This digital signature offers a high level of security and reliability to a notarized document.

The general rules of notarization apply to all electronic notarizations: personal appearance by the signer, verification of the signer's identity, requirement of the notarial block, etc. The only difference is the method of signature.

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Example Documents on pages following the statutes

- Example #1 - Digital signature
- Example #2 - Deed with Clerk stamp
- Example #3 - Document scanned in color
- Example #4 - Document scanned legal to letter
- Example #5 - E-Record with SVQ

UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT (UPRERA)

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

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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.

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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.

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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.

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UNIFORM ELECTRONIC TRANSACTION ACT (UETA)

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.

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- (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, health care, commercial or governmental affairs.

History: L. 2000, ch. 120, § 2; L. 2011, ch. 114, § 35; L. 2012, ch. 166, § 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:

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- (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. 2015 Supp. 84-1-306 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; L. 2007, ch. 89, § 26; July 1, 2008.

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:

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- (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

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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.

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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:

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- (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.

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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.

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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. 2015 Supp. 84-1-201(b)(21), 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), or 84-9-308, or K.S.A. 2015 Supp. 84-7-501, 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

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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; L. 2007, ch. 89, § 27; L. 2007, ch. 195, § 8; July 1, 2008.

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. 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.

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16-1618. Rules and regulations. The secretary may adopt rules and regulations to implement the provisions of K.S.A. 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. 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.

Other Statutes of Interest listed in the:

“Report from the Kansas Electronic Recording Commission”

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

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

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

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

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