

South Dakota Electronic Recording Commission
Teleconference
Thursday, July 26, 2018
MINUTES

The South Dakota Electronic Recording Commission met via teleconference on Thursday, July 26, 2018. The meeting was called to order by Chairperson Julie Risty 10:30 a.m. CT/9:30 a.m. MT. Roll call was made and a quorum was established with the following present:

Julie Risty, Minnehaha County Register of Deeds
Deb Young, Davison County Register of Deeds
Peggy Johnson, Sully County Register of Deeds
Elaine Reimer, Brule County Register of Deeds
Greg Wick, South Dakota Land Title Association Representative
Mitch LeFleur, South Dakota Land Title Association Representative
Haven Stuck, South Dakota Bar Association Representative
Donald Straka, South Dakota Banker's Association
Monte Watembach, Information Technology Professional

Lana Anderson, Meade County Register of Deeds, was absent, and Kris Jacobsen, Deputy Director of the SDACO, joined the conference call at approximately 10:45 am. Since Kris Jacobsen was absent for a portion of the meeting, Deb Young agreed to take the Minutes of the meeting.

A motion to approve April 19, 2018 Minutes was made Greg Wick and second by Don Straka. With no abstention or opposition, motion carried by unanimous roll-call vote.

A motion to approve the July 26th, 2018, Agenda was made by Elaine Reimer and second by Mitch LeFleur. With no abstention or opposition, motion carried by a unanimous roll-call vote.

Haven Stuck reported that a new bill for the 2019 Legislative Session for e-Notarization/remote notarization has already been drafted. A copy of that bill was provided to the Commission. It appears to be the same or very similar bill that the Legislature tabled in the 2018 Legislative Session.

Chairperson, Julie Risty, introduced special guest, Michael P. O'Neal, Vice President - Corporate Underwriting, with 1st American Title. Mr. O'Neal has been directly involved with the current Uniform Act and provided important information concerning e-Notarization and Remote Notarization. He discussed the importance of adoption of the full Uniform e-Notary Law, which addresses important standards and requirements to help maintain security and detect fraud. Mr. O'Neal also provided the following information:

1. 23 States are working on passing new e-Notarization laws that would allow remote notarization and 9 states have passed the bill.
2. We should pass legislation that is a durable law to allow for Rule-making authority on the part of the Secretary of State, which would make it simpler to update the law as technology advances.

3. There are three Uniform versions of the Uniform Notarization Law:
 - a. RULONA
 - b. MBA Alta version
 - c. Notary version

4. Mr. O'Neal clarified if we use the Uniform Notarization law then RULONA would also need to be passed. RULONA and any e-notarization/remote notarization law could be combined into one law.

Mr. O'Neal also discussed that the Uniform Law on Notarial Acts written by the Uniform Law Commission, and that currently Texas and Pennsylvania are setting standards. He also mentioned that the MISMO standards for e-notarization are followed by the banking industry, and the Secretary of State may simply follow the already-established MISMO standards. The Secretary of State offices in Pennsylvania and Texas have had *zero dollars expended* to-date to enact and implement the Uniform e-Notary Law. Discussion continued, and it was noted that it is critical that the core function of the law needs to have:

- a. Secretary of State oversight (which is present in all states with e-notarization).
- b. Multi-factor identification is needed to detect fraud. Multi-factor identification includes:
 - i. Tools such as software analysis to detect proper ID formatting -- such as having programs that will be able to tell the ID is a valid ID since the parties can't physically hold it; and
 - ii. Knowledge based authentication which is historical data known only by the party wanting to have his signature e-notarized.
 - iii. Robust tracking technology to provide a reliable auto trail of the event.

The final version of HB1170, which was tabled and may be reintroduced, does not have either of those identification protections, nor does it involve the Secretary of State to oversee the process. The latest draft also proposes exempting any filings with the Register of Deeds, which could make it questionable as to whether electronic recordings could be accepted by Registers of Deeds.

Pursuant to further discussion, Mitch LeFleur agreed to invite the Secretary of State to participate in a meeting with the South Dakota Electronic Recording Commission, as well as Michael O'Neal, so that discussion may continue with their involvement, and to also allow Mr. O'Neal to explain the process in more detail as well as the nominal cost to the state in implementing e-notarization.

Elaine Reimer reported there are 22 Counties e-Recording; and, of those 22, five are e-Recording with both CSC and Simplifile, with Simplifile being in all 22 Counties. Deb reported e-Recordings seemed to becoming more numerous.

Chairperson, Julie Risty, then asked for public comment. No one spoke at that time.

There being no further business, the motion to adjourn was made at by Mitch Lefleur and second by Don Straka. Motion carried. The meeting was adjourned.