

DRAFT Request for AG opinion—EMRoberts for ERER Legal Subcommittee

Monday, January 14, 2002

Congress passed the Federal Electronic Signatures in Global and National Commerce Act (“E-Sign”) in June 2000. Section 101(a) of E-Sign provides that electronic signatures and electronic records generally satisfy legal requirements for signatures or writings. Section 102(a) of E-Sign provides that an individual state may avoid E-Sign's preemptive effect if it enacts legislation that is either the Uniform Electronic Transactions Act as approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1999 (UETA), or adopts an alternative framework for recognizing electronic records and signatures that is consistent with E-Sign and technology neutral.

Section 3 of UETA, which defines the scope of the Act, states in part (a) that UETA applies to electronic records and electronic signatures relating to a *transaction*, which in turn is defined in Section 2(16) as “an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.” Section 3(b)(4) of UETA allows an individual state to exclude a transaction from UETA's scope to the extent that the transaction is governed by provisions of other laws as identified by the state. Section 102(a) also provides that if a state legislature accepts NCCUSL's invitation set out in 3(b)(4), it must do so in a manner that is technology neutral and is otherwise consistent with E-Sign's provisions, or else such exclusion will be preempted.

The Minnesota Legislature enacted its version of UETA in 2000, codifying it as Chapter 325L of Minnesota Statutes (MN-UETA). Taking advantage of the exemption provision of UETA, the Legislature provided in Section 325L.03(b) that MN-UETA “does not apply to a transaction to the extent it is governed by . . . section 507.24, relating to requirements for recording any conveyance, power of attorney, or other instrument affecting real estate”

With respect to E-Sign and MN-UETA, we have these two questions:

(1) Is MN-UETA's exclusion of transactions governed by Section 507.24 inconsistent with E-Sign such that it would be preempted by the federal law? And, if so, what is the practical effect of such preemption on the ability of county recorders and other government agencies (as that term is defined in UETA) to record real estate conveyances that are electronically filed?

(2) If the Minnesota Legislature establishes an electronic real estate recording system for the state, to be administered through its 87 counties, may individual counties elect to opt out of that system?