

# Welcome to the January 28, 2020, Webinar 2021 Legislative Update

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# 2021 Legislative Update

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# Update Parameters

- ▶ It is Still Early in the 2021 Legislative Session
  - Still time remaining for bill introductions
  - AL, FL, NV and NM are not yet in session
- ▶ Categories
  - Recording legislation
  - Notary Legislation
  - COVID-19 Emergency Legislation

# Real Estate Recording Legislation

Introduced or Pre-Filed for 2021 Session

# Recording Legislation: Fees

## ▶ Arkansas House Bill 1183

- Would authorize county clerks to receive payment of recording and other fees by credit card and to charge a transaction fee to cover the costs

## ▶ Connecticut House Bill 5100

- Authorizes municipalities to establish a recording “convenience fee” to fund acquisition of open spaces

# Recording Legislation: Fees

- ▶ Iowa House Study Bill 97
  - Authorizes recorders to use excess service fees collected through eRecording for funding redaction of personally identifiable information in recorded documents, improve consistency and accessibility of land records, and facilitate integrations with other land records information systems
- ▶ Montana House Bill 49
  - Increases county clerk recording fee by \$1 per page

# Recording Legislation: Release/Satisfaction

## ▶ Texas Senate Bill 360

- Would require a mortgage servicer or mortgagee to record a release or provide it to the mortgagor within 45 days after receipt of full payment of the loan

# Recording Legislation: Fraudulent Deeds

## ▶ Georgia House Bill 74

- Would make it a crime for a person to transfer real property title to another person without the knowledge or consent of the other person with the intent to hinder, delay or defraud a creditor's rights

## ▶ New Jersey Senate Bill 3343

- Would require (i), the county recording officer to notify the transferor when recording a deed; (ii) require the person recording the deed to submit an affidavit of title as a prerequisite to recording; and (iii) authorize a \$2 increase in fees to cover the recording office costs



# Recording Legislation: Fraudulent Deeds

- ▶ New York Senate Bill 1569
  - Prohibits a recording officer from accepting any conveyance for recording unless the conveyance contains an addendum with explicit language regarding the effect of the document

# Recording Legislation: Paper Copies

- ▶ Mississippi Senate Bill 2638
  - Provides a procedure for recording a tangible copy of an electronic document in counties that lack eRecording capability
- ▶ Virginia House Bill 2064
  - Requires a clerk's office to record a paper copy of an electronic document if the document otherwise meets the requirements for recordation

# Recording Legislation: Electronic Issues

- ▶ **Indiana House Bill 1056**
  - Clarifies that "instrument" includes both electronic and paper documents and amends requirements for proof of notarial acts on instruments to be recorded
- ▶ **Oklahoma Senate Bill 569**
  - Provides that county clerks may provide certified copies of real estate records in paper or digital format in compliance with URPERA

# Recording Legislation: Electronic Issues

## ▶ Texas House Bills 947 and 949

- Removes clerks' authority to accept electronic instruments for electronic recording if the instruments convey title to or an interest in real property
- Removes instruments that convey title to or an interest in real property from application of URPERA

## ▶ Washington Senate Bill 5019

- Directs secretary of state to establish regulations that will make recording standards uniform from county to county and revises law applicable to recording standards commission

# Notary Legislation

Introduced or Pre-Filed for 2021 Session

# Notary Legislation: RULONA

- ▶ Arizona Senate Bill 1115
  - Adopts substantially RULONA with remote online notarizations
- ▶ Maine Legislative Request 1344
  - May adopt RULONA but text is not yet available
- ▶ Wyoming Senate Bill 29
  - Adopts RULONA with remote online notarization

# Notary Legislation: Remote Notary

- ▶ Florida House Bill 121 & Senate Bill 228
  - Would allow employer of an online notary to require use of certain technology, clarify online witnessing standards, amend journal requirements and require online notary providers to retain copies of AV recordings for certain period of time
- ▶ Indiana House Bill 1237
  - Authorizes remote notarization of advance healthcare directives and provide that the presence before the notary requirement in such cases can be satisfied by telephonic interaction

# Notary Legislation: Remote Notary

- ▶ Kentucky House Bill 197
  - Defines "in-person electronic notarization" and "remote electronic notarization"
- ▶ North Dakota House Bill 1439
  - Provides that an employee of a nonprofit organization providing legal services to low-income and elderly residents of ND may perform remote notarial acts for clients of the organization without making an AV recording of the notarial act or the signing of the record to be notarized



# Notary Legislation: Remote Notary

- ▶ New Hampshire House Bill 287
  - Establishes requirements for remote notarization; once signed, the requesting person must mail the signed copy of the documents to the notarial officer for certification and execution with the notarial officer's signature and the official stamp or seal
- ▶ New York Assembly Bill 399 & Senate Bill
  - Provides for electronic and remote notarization

# Notary Legislation: Remote Notary

- ▶ New York Senate Bill 558
  - Amends various state laws to permit remote online notarization
- ▶ Oregon Senate Bill 220
  - Establishes requirements remote attestation

# COVID-19 Measures

Introduced or Pre-Filed for 2021 Session

# COVID-19 Legislation

## ▶ Connecticut House Bill 5374

- Permits the remote notarization of documents by a notary public or a commissioner of the Superior Court provided there is compliance with certain safeguards; codifies Executive Order 7k dated March 23, 2020, which appears to authorize remote ink notarial acts in response to the COVID-19 emergency

## ▶ Nebraska Legislative Bill 94

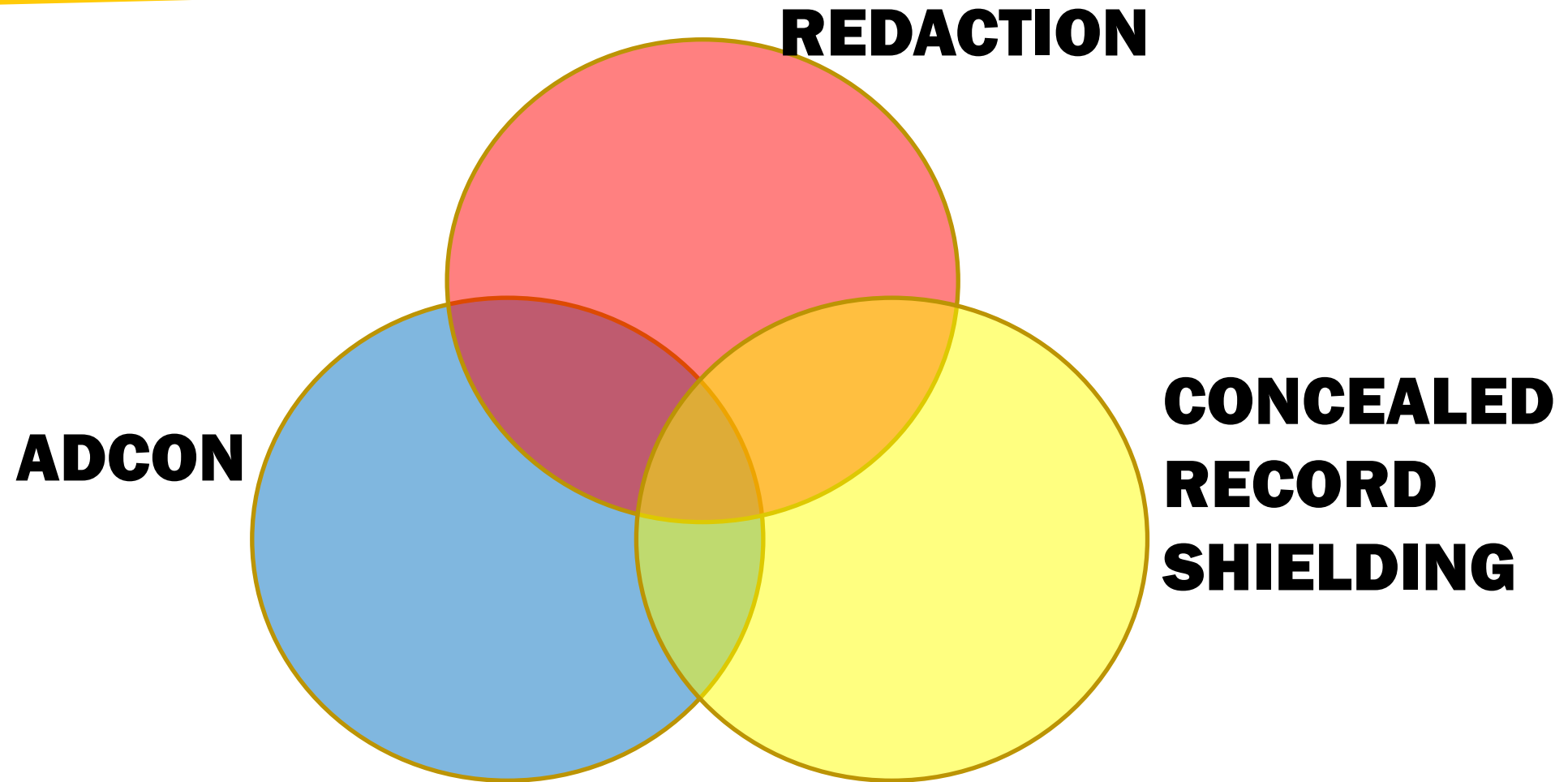
- Prohibits invalidation of notarial acts performed online under the governor's emergency order

# COVID-19 Legislation

- ▶ Indiana House Bill 1149 & Senate Bill 1578
  - Amends acknowledgement and proof requirements for a conveyance, mortgage, or instrument of writing to be recorded and to legalize acts performed after June 30, 2020, that are in compliance with the act

# Redaction & Confidential Records Shielding

# What Are We Talking About?



# Redaction/CRS Legislation

- ▶ PASSED: New Jersey Assembly 1649 “Daniel’s Law”
  - Prohibits knowing and purposeful disclosure the online publication of home address, telephone number of active or retired law enforcement or judges or their family
  - State or local government agency shall not “knowingly” post or publish on the Internet
- ▶ FAILED: Ohio House 429
  - Modifying State’s ADCON program
  - Create form for program participant to submit to Secretary of State to disclose legal description, street address, etc., and process for county recorders to release information
  - Establish rules for disclosure by recorders



# Redaction/CRS Legislation

## ▶ Arizona House 2073

- Amends AZ 11-483 which established program for shielding confidential records
- Expands class of persons who may participate in the program to include hearing officers, former public officials including judges and prosecutors

## ▶ Missouri House 59

- Electronic records retained by county recorder shall not disclose home address or any personal information of LEO, or use a “data element” that discloses the officer’s address or information, if requested
- Unlawful posting of personally identifying information is criminal if done “knowingly... to cause great bodily harm or death...” Class A misdemeanor

# Redaction/CRS Legislation

- ▶ Nevada Assembly 21
  - Amends current law under fictitious name program (ADCON) to require county recorders maintain personal information in a confidential manner
- ▶ Oklahoma Senate 858
  - Requires county clerks to keep information of law enforcement officers confidential from internet disclosure when requested
  - Personal information is home address of individual and spouses and minor children, telephone, and email

# Redaction/CRS Legislation

- ▶ Utah House 104
  - Creates ADCON program
  
- ▶ Kentucky House Bill 141 (withdrawn)
  - Exempting personally identifiable information on judges, prosecutors, law enforcement from Open Records Act
  - Create felony class for disseminating protected party information via the internet

# Florida Update

- ▶ State Senator Passidomo convened Task Force to examine the issue of redaction, specific to legislation passed in 2018
- ▶ Stakeholders from law enforcement, recorders, PRIA, Florida Bar Real Property Section, Florida Land Title Association, homebuilders, bankers, and various concerned parties all attended
- ▶ Meetings took place between August and December 2020
- ▶ SB 844 filed 1/27/21 by Senator Hooper, who introduced the original SB 248 in 2019

# Q&A – Thank You!

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# Thank You

Thank you for attending today's  
webinar.

Stay on the line for Q&A

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