

COMMITTEE SUBSTITUTE

FOR

H. B. 4250

(BY DELEGATES DOYLE, RODIGHIERO, FERRO,
FRAZIER, REYNOLDS, STORCH AND WALTERS)

(Originating in the Committee on the Judiciary)
[January 25, 2012]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §39A-4-1, §39A-4-2, §39A-4-3, §39A-4-4, §39A-4-5, §39A-4-6 and §39A-4-7, all relating to creating the Uniform Real Property Electronic Recording Act; clarifying validity of electronic documents and electronic signatures; providing for recording of electronic documents; requiring any county clerk implementing the provisions of the act to comply with established standards; authorizing county clerks to receive, index, store, archive and transmit electronic documents; authorizing county clerks to allow public access, search and retrieval of electronic

documents; allowing county clerks to convert paper documents accepted for recording into electronic documents; authorizing county clerks to collect electronically any tax or fee relating to electronic recording of real property documents they are authorized by law to collect; authorizing county clerks to agree with other jurisdictions on procedures or processes necessary for electronic recording of documents; creating the Real Property Electronic Recording Standards Advisory Committee to develop the standards necessary to electronically record real property documents; authorizing a legislative rule; providing for a report and recommendations to the Legislature; providing that members of the Real Property Electronic Recording Standards Advisory Committee pay their own expenses; setting forth areas for consideration when adopting or changing standards; providing for uniformity of application and construction of the act; and providing that this act modifies, limits and supersedes certain parts of the federal Electronic Signatures in Global and National Commerce Act.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §39A-4-1, §39A-4-2, §39A-4-3, §39A-4-4, §39A-4-5, §39A-4-6 and §39A-4-7, all to read as follows:

ARTICLE 4. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT.

§39A-4-1. Short title.

- 1 This article may be cited as the Uniform Real Property
- 2 Electronic Recording Act.

§39A-4-2. Definitions.

- 1 In this article:
- 2 “Document” means information that is:
- 3 (1) Inscribed on a tangible medium or that is stored in an
- 4 electronic or other medium and is retrievable in perceivable
- 5 form; and
- 6 (2) Eligible to be recorded in the land records maintained
- 7 by the clerk of the county commission, herein after “county
- 8 clerk” or “clerk”.
- 9 “Electronic” means relating to technology having
- 10 electrical, digital, magnetic, wireless, optical, electromagnetic
- 11 or similar capabilities.

12 “Electronic document” means a document that is received
13 by the county clerk in an electronic form.

14 “Electronic signature” means an electronic sound,
15 symbol, or process attached to or logically associated with a
16 document and executed or adopted by a person with the
17 intent to sign the document.

18 “Person” means an individual, corporation, business trust,
19 estate, trust, partnership, limited liability company,
20 association, joint venture, public corporation, government or
21 governmental subdivision, agency, instrumentality or any
22 other legal or commercial entity.

23 “State” means a state of the United States, the District of
24 Columbia, Puerto Rico, the United States Virgin Islands or
25 any territory or insular possession subject to the jurisdiction
26 of the United States.

§39A-4-3. Validity of electronic documents.

1 (a) If a law requires, as a condition for recording, that a
2 document be an original, be on paper or another tangible
3 medium or be in writing, the requirement is satisfied by an

4 electronic document satisfying the requirements of this
5 article.

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

9 (c) A requirement that a document or a signature
10 associated with a document be notarized, acknowledged,
11 verified, witnessed or made under oath is satisfied if the
12 electronic signature of the person authorized to perform that
13 act, and all other information required to be included, is
14 attached to or logically associated with the document or
15 signature. A physical or electronic image of a stamp,
16 impression or seal need not accompany an electronic
17 signature.

§39A-4-4. Recording of documents.

1 (a) In this section, “paper document” means a document
2 that is received by the county clerk in a form that is not
3 electronic.

4 (b) A county clerk:

5 (1) Who implements any of the functions listed in this
6 section shall do so in compliance with standards established
7 by the Real Property Electronic Recording Standards Council
8 pursuant to section five of this article;

9 (2) May receive, index, store, archive and transmit
10 electronic documents;

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

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

17 (5) May convert paper documents accepted for recording
18 into electronic form;

19 (6) May convert information recorded before the clerk
20 began to record electronic documents into electronic form;

21 (7) May accept electronically any fee or tax relating to
22 electronic recording of real property documents that the clerk
23 is authorized to collect;

24 (8) May agree with other officials of a state or a political
25 subdivision thereof, or of the United States, on procedures or
26 processes to facilitate the electronic satisfaction of prior
27 approvals and conditions precedent to recording and the
28 electronic payment of fees and taxes; and

29 (9) May not accept a document written in a language
30 other than English unless it is accompanied by a certified
31 translation into English. In such a case, the document to be
32 recorded shall consist of (1) the English translation; (2) a
33 certification of the accuracy of the translation, signed by the
34 translator and acknowledged; and (3) the original foreign
35 language document.

§39A-4-5. Administration and standards.

1 (a) For the purpose of keeping the standards and practices
2 of county clerks in this state in harmony with the standards
3 and practices of recording offices in other jurisdictions that
4 enact substantially the Uniform Real Property Electronic
5 Recording Act and to keep the technology used by clerks in

6 this state compatible with technology used by recording
7 offices in other jurisdictions that enact substantially this act,
8 the Commissioner of the Division of Highways shall
9 establish the Real Property Electronic Recording Standards
10 Advisory Committee, to, so far as is consistent with the
11 purposes, policies, and provisions of this article, assist in the
12 adoption, amendment and repeal of standards and practices.

13 (b) The Commissioner, shall appoint at least sixteen
14 persons to serve on the committee. In selecting persons to
15 serve on the committee, the Commissioner shall appoint:

16 (1) At least one person who is an attorney who
17 specializes in title work;

18 (2) At least one person who is a specialist in geographic
19 information system (GIS) mapping;

20 (3) A representative of the Secretary of State;

21 (4) A representative of the County Clerks' Association;

22 (5) A representative of the County Commissioners'
23 Association;

24 (6) A representative of the State Auditor;

25 (7) A representative of the Governor's Office of
26 Technology;

27 (8) A representative of the Division of Culture and
28 History;

29 (9) A representative of the Community Bankers of West
30 Virginia;

31 (10) A representative of the West Virginia Bankers
32 Association;

33 (11) A representative of the West Virginia Housing
34 Development Fund;

35 (12) A representative of the Real Estate Division of the
36 Department of Administration;

37 (13) A representative of the Property Tax Division of the
38 Department of Tax and Revenue;

39 (14) A representative of the West Virginia Board of
40 Professional Surveyors;

41 (15) A representative of the West Virginia Real Estate
42 Commission; and

43 (16) At least one representative of the mineral extraction
44 industry.

45 (c) In establishing, amending and repealing standards and
46 practices for the recording documents in electronic form,
47 storing electronic records, and setting up systems for
48 searching for and retrieving these land records, the committee
49 shall consider:

50 (1) Standards and practices of other jurisdictions;

51 (2) The most recent standards promulgated by national
52 standard-setting bodies such as the Property Records Industry
53 Association;

54 (3) The views of interested persons and governmental
55 officials and entities;

56 (4) The needs of counties of varying size, population and
57 resources; and

58 (5) Standards requiring adequate information security
59 protection to ensure that electronic documents are accurate,
60 authentic, adequately preserved and resistant to tampering.

61 (d) The Commissioner of the Division of Highways, or
62 his or her designee, shall serve as chair of the Real Property
63 Electronic Recording Standards Advisory Committee.

64 (e) The Commissioner shall:

65 (1) Provide administrative support to the committee; and

66 (2) Propose rules for legislative approval in accordance
67 with the provisions of article three, chapter twenty-nine-a of
68 this code that contain the standards to implement this article.

69 (f) Each person, agency, board and organization on the
70 committee shall cover his or her own expenses necessitated
71 by participation on the committee.

72 (g) The Commissioner shall submit a report to the
73 Legislative Manager on or before January 1 of each year until
74 its tasks are complete. The report shall include its efforts to
75 adopt standards in accordance with the requirements of this
76 article and recommendations for further legislative action
77 necessary to effectuate the purposes of this article.

§39A-4-6. Uniformity of application and construction.

1 In applying and construing this Uniform Real Property
2 Electronic Recording Act, consideration must be given to the
3 need to promote uniformity of the law with respect to its
4 subject matter among states that enact it.

§39A-4-7. Relation to electronic signatures in global and national commerce act.

1 This article modifies, limits, and supersedes the federal
2 Electronic Signatures in Global and National Commerce Act
3 (15 U.S.C. §7001, et seq.) but does not modify, limit or
4 supersede §101(c) of that act (15 U.S.C. §7001(c)) or
5 authorize electronic delivery of any of the notices described
6 in §103(b) of that act (15 U.S.C. §7003(b)).