

1 electronic recording of real property documents they are
2 authorized by law to collect; authorizing county clerks to
3 agree with other jurisdictions on procedures or processes
4 necessary for electronic recording of documents; creating the
5 Real Property Electronic Recording Standards Committee to
6 develop the standards necessary to electronically record real
7 property documents; authorizing the Commissioner of Highways
8 to promulgate a legislative rule; providing for a report and
9 recommendations to the Legislature; providing that members of
10 the Real Property Electronic Recording Standards Committee pay
11 their own expenses; setting forth areas for consideration when
12 adopting or changing standards; providing for uniformity of
13 application and construction of the act; and providing that
14 this act modifies, limits and supersedes certain parts of the
15 federal Electronic Signatures in Global and National Commerce
16 Act.

17 *Be it enacted by the Legislature of West Virginia:*

18 That the Code of West Virginia, 1931, as amended, be amended
19 by adding thereto a new article, designated §39A-4-1, §39A-4-2,
20 §39A-4-3, §39A-4-4, §39A-4-5, §39A-4-6 and §39A-4-7, all to read as
21 follows:

22 **ARTICLE 4. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT.**

23 **§39A-4-1. Short title.**

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

3 **§39A-4-2. Definitions.**

4 In this article:

5 (1) "Commissioner" means the Commissioner of the Division of
6 Highways.

7 (2) "Document" means information that is:

8 (A) Inscribed on a tangible medium or that is stored in an
9 electronic or other medium and is retrievable in perceivable form;
10 and

11 (B) Eligible to be recorded in the land records maintained by
12 the clerk of the county commission, herein after called "county
13 clerk" or "clerk".

14 (3) "Electronic" means relating to technology having
15 electrical, digital, magnetic, wireless, optical, electromagnetic
16 or similar capabilities.

17 (4) "Electronic document" means a document that is received by
18 the county clerk in an electronic form.

19 (5) "Electronic signature" means an electronic sound, symbol
20 or process attached to or logically associated with a document and
21 executed or adopted by a person with the intent to sign the
22 document.

23 (6) "Person" means an individual, corporation, business trust,

1 estate, trust, partnership, limited liability company, association,
2 joint venture, public corporation, government or governmental
3 subdivision, agency, instrumentality or any other legal or
4 commercial entity.

5 (7) "State" means a state of the United States, the District
6 of Columbia, Puerto Rico, the United States Virgin Islands or any
7 territory or insular possession subject to the jurisdiction of the
8 United States.

9 **§39A-4-3. Validity of electronic documents.**

10 (a) If a law requires, as a condition for recording, that a
11 document be an original, be on paper or another tangible medium or
12 be in writing, the requirement is satisfied by an electronic
13 document satisfying the requirements of this article.

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

17 (c) A requirement that a document or a signature associated
18 with a document be notarized, acknowledged, verified, witnessed or
19 made under oath is satisfied if the electronic signature of the
20 person authorized to perform that act, and all other information
21 required to be included, is attached to or logically associated
22 with the document or signature. A physical or electronic image of
23 a stamp, impression or seal need not accompany an electronic

1 signature.

2 **§39A-4-4. Recording of documents.**

3 (a) In this section, "paper document" means a document that is
4 received by the county clerk in a form that is not electronic.

5 (b) A county clerk:

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

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

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

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

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

19 (6) May convert information recorded before the clerk began to
20 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 is
23 authorized to collect;

1 (8) May agree with other officials of a state or a political
2 subdivision thereof, or of the United States, on procedures or
3 processes to facilitate the electronic satisfaction of prior
4 approvals and conditions precedent to recording and the electronic
5 payment of fees and taxes; and

6 (9) May not accept a document written in a language other than
7 English unless it is accompanied by a certified translation into
8 English. In such a case, the document to be recorded shall consist
9 of (1) a certification of the accuracy of the translation, signed
10 by the translator and acknowledged; and (2) the original foreign
11 language document.

12 **§39A-4-5. Administration and standards.**

13 (a) For the purpose of keeping the standards and practices of
14 county clerks in this state in harmony with the standards and
15 practices of recording offices in other jurisdictions that enact
16 substantially the Uniform Real Property Electronic Recording Act
17 and to keep the technology used by clerks in this state compatible
18 with technology used by recording offices in other jurisdictions
19 that enact substantially this act, the Commissioner of the Division
20 of Highways shall establish the Real Property Electronic Recording
21 Standards Advisory Committee to, so far as is consistent with the
22 purposes, policies and provisions of this article, assist in the
23 adoption, amendment and repeal of standards and practices.

1 (b) The commissioner shall appoint at least twenty-three
2 persons to serve on the committee. In selecting persons to serve on
3 the committee, the commissioner shall appoint:

4 (1) At least three persons who are attorney's who specialize
5 in title work;

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

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

9 (4) Three representatives of the County Clerks' Association;

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

11 (6) A representative of the State Auditor;

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

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

14 (9) A representative of the Community Bankers of West
15 Virginia;

16 (10) A representative of the West Virginia Bankers
17 Association;

18 (11) A representative of the West Virginia Housing Development
19 Fund;

20 (12) A representative of the Real Estate Division of the
21 Department of Administration;

22 (13) A representative of the Property Tax Division of the
23 Department of Tax and Revenue;

1 (14) A representative of the West Virginia Board of
2 Professional Surveyors;

3 (15) A representative of the West Virginia Association of
4 Realtors;

5 (16) At least one representative from the mineral extraction
6 industry;

7 (17) An actively practicing real estate appraiser;

8 (18) A representative of the office of the West Virginia State
9 Treasurer; and

10 (19) A person representing land companies.

11 (c) In establishing, amending and repealing standards and
12 practices for the recording of documents in electronic form,
13 storing electronic records and setting up systems for searching for
14 and retrieving these land records, the committee shall consider:

15 (1) Standards and practices of other jurisdictions;

16 (2) The most recent standards promulgated by national
17 standard-setting bodies such as the Property Records Industry
18 Association;

19 (3) The views of interested persons and governmental officials
20 and entities;

21 (4) The needs of counties of varying size, population and
22 resources; and

23 (5) Standards requiring adequate information security

1 protection to ensure that electronic documents are accurate,
2 authentic, adequately preserved and resistant to tampering.

3 (d) The Commissioner of the Division of Highways, or his or
4 her designee, shall serve as Chair of the Real Property Electronic
5 Recording Standards Advisory Committee.

6 (e) The commissioner shall:

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

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

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

14 (g) The commissioner shall submit a report to the Legislative
15 Manager on or before January 1 of each year until its tasks are
16 complete. The report shall include its efforts to adopt standards
17 in accordance with the requirements of this article and
18 recommendations for further legislative action necessary to
19 effectuate the purposes of this article.

20 **§39A-4-6. Uniformity of application and construction.**

21 In applying and construing this Uniform Real Property
22 Electronic Recording Act, the Advisory Committee shall consider the
23 need to promote uniformity of the law with respect to its subject

1 matter among states that enact it.

2 **§39A-4-7. Relation to electronic signatures in Global and National**
3 **Commerce Act.**

4 This article modifies, limits and supersedes the federal
5 Electronic Signatures in Global and National Commerce Act (15
6 U.S.C. §7001, et seq.) but does not modify, limit or supersede
7 §101(c) of that act (15 U.S.C. §7001(c)) or authorize electronic
8 delivery of any of the notices described in §103(b) of that act (15
9 U.S.C. §7003(b)).