

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2086

BY DELEGATE STORCH

[Introduced January 9, 2019; Referred
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §39A-4-1, §39A-4-2, §39A-4-3, §39A-4-4, §39A-4-5, §39A-4-6, and §39A-4-7,
3 all relating to creating the Uniform Real Property Electronic Recording Act; providing short
4 title; defining terms; clarifying validity of electronic documents and electronic signatures;
5 providing for recording of electronic documents; requiring any county clerk implementing
6 the provisions of the act to comply with established standards; authorizing county clerks
7 to receive, index, store, archive and transmit electronic documents; authorizing county
8 clerks to allow public access, search and retrieval of electronic documents; allowing
9 county clerks to convert paper documents accepted for recording into electronic
10 documents; authorizing county clerks to collect electronically any tax or fee relating to
11 electronic recording of real property documents they are authorized by law to collect;
12 authorizing county clerks to agree with other jurisdictions on procedures or processes
13 necessary for electronic recording of documents; creating the Real Property Electronic
14 Recording Standards Council to develop the standards necessary to electronically record
15 real property documents; authorizing a legislative rule; providing for a report and
16 recommendations to the Legislature; providing that members of the Real Property
17 Electronic Recording Standards Council pay their own expenses; setting forth areas for
18 consideration when adopting or changing standards; providing for uniformity of application
19 and construction of the act; and providing that the article modifies, limits and supersedes
20 certain parts of the federal Electronic Signatures in Global and National Commerce Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT.

§39A-4-1. Short title.

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

§39A-4-2. Definitions.

1 In this article:

2 “Commissioner” means the Commissioner of the Division of Highways.

3 “Document” means information that is:

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

6 (B) Eligible to be recorded in the land records maintained by the clerk of the county
7 commission, herein after “county clerk” or “clerk”.

8 “Electronic” means relating to technology having electrical, digital, magnetic, wireless,
9 optical, electromagnetic or similar capabilities.

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

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

15 “Person” means an individual, corporation, business trust, estate, trust, partnership,
16 limited liability company, association, joint venture, public corporation, government or
17 governmental subdivision, agency, instrumentality or any other legal or commercial entity.

18 “State” means a state of the United States, the District of Columbia, Puerto Rico, the
19 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the
20 United States.

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

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

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

6 (c) A requirement that a document or a signature associated with a document be notarized,

7 acknowledged, verified, witnessed or made under oath is satisfied if the electronic signature of
8 the person authorized to perform that act, and all other information required to be included, is
9 attached to or logically associated with the document or signature. A physical or electronic image
10 of a stamp, impression or seal need not accompany an electronic signature.

§39A-4-4. Recording of documents.

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

3 (b) A county clerk:

4 (1) Who implements any of the functions listed in this section shall do so in compliance
5 with standards established by the Real Property Electronic Recording Standards Council pursuant
6 to §39A-4-5 of this code;

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

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

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

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

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

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

18 (8) May agree with other officials of a state or a political subdivision thereof, or of the
19 United States, on procedures or processes to facilitate the electronic satisfaction of prior
20 approvals and conditions precedent to recording and the electronic payment of fees and taxes.

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

1 (a) For the purpose of keeping the standards and practices of county clerks in this state in
2 harmony with the standards and practices of recording offices in other jurisdictions that enact
3 substantially the Uniform Real Property Electronic Recording Act and to keep the technology used
4 by clerks in this state compatible with technology used by recording offices in other jurisdictions
5 that enact substantially this act, the Commissioner of the Division of Highways shall establish the
6 Real Property Electronic Recording Standards Advisory Committee, to, so far as is consistent
7 with the purposes, policies, and provisions of this article, assist in the adoption, amendment and
8 repeal of standards and practices.

9 (b) The commissioner shall appoint at least 16 persons to serve on the committee. In
10 selecting persons to serve on the committee, the commissioner shall appoint:

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

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

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

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

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

17 (6) A representative of the State Auditor;

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

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

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

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

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

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

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

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

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

27 (16) At least one representative representing the mineral extraction industry.

28 (c) In establishing, amending and repealing standards and practices for the recording
29 documents in electronic form, storing electronic records, and setting up systems for searching for
30 and retrieving these land records, the committee shall consider:

31 (1) Standards and practices of other jurisdictions;

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

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

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

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

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

40 (e) The commissioner shall:

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

42 (2) Propose rules for legislative approval in accordance with the provisions of §29A-3-1 et
43 seq. of this code that contain the standards to implement this article.

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

46 (g) The commissioner shall submit a report to the legislative manager on or before January
47 1 of each year until its tasks are complete. The report shall include its efforts to adopt standards
48 in accordance with the requirements of this article and recommendations for further legislative
49 action 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 Electronic Recording Act,
2 consideration must be given to the need to promote uniformity of the law with respect to its subject
3 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 Electronic Signatures in Global
2 and National Commerce Act (15 U.S.C. §7001, et seq.) but does not modify, limit or supersede
3 §101(c) of that act (15 U.S.C. §7001(c)) or authorize electronic delivery of any of the notices
4 described in §103(b) of that act (15 U.S.C. §7003(b)).

NOTE: The purpose of this bill is to adopt the Uniform Real Property Electronic Recording Act. Under the bill, any requirement of state law describing or requiring that a land record document be an original, on paper, or in writing are satisfied by a document in electronic form. The bill provides that any requirement that the document contain a signature or acknowledgment is satisfied by an electronic signature or acknowledgment. The bill authorizes the clerk to accept electronic documents for recording and to index and store those documents. The bill does not provide a means of funding the establishment or operation of an electronic recording system. No single approach is recommended and in fact, the commissioners recognized that the best approach for a state may involve multiple systems. The bill requires the Real Property Electronic Recording Standards Council to develop a legislative rule containing standards for electronic recording to be used by each county. The standards are to be developed with a vision toward fostering intra and interstate harmony and uniformity in the electronic recording process. The council will engage in a stakeholder type rule making process to assure that all of the affected parties have the opportunity to participate in the process.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.