

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 365**

BY SENATORS GAUNCH, KARNES, KIRKENDOLL, BOSO,

PALUMBO AND UNGER

[Introduced January 21, 2016;

Referred to the Committee on Government Organization.]

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 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 Real Property Electronic  
14 Recording Standards Committee to develop standards necessary to electronically record  
15 real property documents; authorizing Commissioner of Highways to promulgate legislative  
16 rule; providing for report and recommendations to the Legislature; providing that members  
17 of Real Property Electronic Recording Standards Committee pay their own expenses;  
18 setting forth areas for consideration when adopting or changing standards; providing for  
19 uniformity of application and construction of the act; and providing that this act modifies,  
20 limits and supersedes certain parts of the federal Electronic Signatures in Global and  
21 National Commerce Act.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
2 article, 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 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 Electronic Recording Act.

**§39A-4-2. Definitions.**

1           In this article:

2           (1) "Commissioner" means the Commissioner of the Division of Highways.

3           (2) "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 called "county clerk" or "clerk".

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

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

12           (5) "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           (6) "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           (7) "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 section five of this article;

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 a uniform searchable  
14 electronic form;

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

17 (7) May accept electronically any fee or tax relating to electronic recording of real property

18 documents that the clerk is authorized to collect;

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

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

**§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 with  
7 the purposes, policies and provisions of this article, assist in the adoption, amendment and repeal  
8 of standards and practices.

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

11 (1) At least three persons who are attorneys who specialize 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) Three representatives 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 Association of Realtors;
- 27           (16) At least one representative from the mineral extraction industry;
- 28           (17) An actively practicing real estate appraiser;
- 29           (18) A representative of the office of the West Virginia State Treasurer; and
- 30           (19) A person representing land companies.
- 31           (c) In establishing, amending and repealing standards and practices for the recording of
- 32 documents in electronic form, storing electronic records and setting up systems for searching for
- 33 and retrieving these land records, the committee shall consider:
- 34           (1) Standards and practices of other jurisdictions;
- 35           (2) The most recent standards promulgated by national standard-setting bodies such as
- 36 the Property Records Industry Association;
- 37           (3) The views of interested persons and governmental officials and entities;
- 38           (4) The needs of counties of varying size, population and resources; and
- 39           (5) Standards requiring adequate information security protection to ensure that electronic
- 40 documents are accurate, authentic, adequately preserved and resistant to tampering.
- 41           (d) The Commissioner of the Division of Highways, or his or her designee, shall serve as
- 42 Chair of the Real Property Electronic Recording Standards Advisory Committee.

43 (e) The commissioner shall:

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

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

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

49 (g) The commissioner shall submit a report to the Legislative Manager on or before  
50 January 1 of each year until its tasks are complete. The report shall include its efforts to adopt  
51 standards in accordance with the requirements of this article and recommendations for further  
52 legislative 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, the  
2 Advisory Committee shall consider the need to promote uniformity of the law with respect to its  
3 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 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 create the Uniform Real Property Electronic Recording Act.

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

This bill is recommended for passage by the Legislature during its 2016 Regular Session by the Commission on Interstate Cooperation.