

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

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

20 That the Code of West Virginia, 1931, as amended, be amended
21 by adding thereto a new article, designated §39A-4-1, §39A-4-2,
22 §39A-4-3, §39A-4-4, §39A-4-5, §39A-4-6 and §39A-4-7, all to read as

1 follows:

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

3 **§39A-4-1. Short title.**

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

6 **§39A-4-2. Definitions.**

7 In this article:

8 (1) "Commissioner" means the Commissioner of the Division of
9 Highways.

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

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

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

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

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

22 (5) "Electronic signature" means an electronic sound, symbol

1 or process attached to or logically associated with a document and
2 executed or adopted by a person with the intent to sign the
3 document.

4 (6) "Person" means an individual, corporation, business trust,
5 estate, trust, partnership, limited liability company, association,
6 joint venture, public corporation, government or governmental
7 subdivision, agency, instrumentality or any other legal or
8 commercial entity.

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

13 **§39A-4-3. Validity of electronic documents.**

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

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

21 (c) A requirement that a document or a signature associated
22 with a document be notarized, acknowledged, verified, witnessed or

1 made under oath is satisfied if the electronic signature of the
2 person authorized to perform that act, and all other information
3 required to be included, is attached to or logically associated
4 with the document or signature. A physical or electronic image of
5 a stamp, impression or seal need not accompany an electronic
6 signature.

7 **§39A-4-4. Recording of documents.**

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

10 (b) A county clerk:

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

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

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

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

22 (5) May convert paper documents accepted for recording into

1 electronic form;

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

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

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

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

1 adoption, amendment and repeal of standards and practices.

2 (b) The commissioner shall appoint at least sixteen persons to
3 serve on the committee. In selecting persons to serve on the
4 committee, the commissioner shall appoint:

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

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

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

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

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

12 (6) A representative of the State Auditor;

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

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

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

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

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

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

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

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

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

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

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

13 (1) Standards and practices of other jurisdictions;

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

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

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

21 (5) Standards requiring adequate information security
22 protection to ensure that electronic documents are accurate,

1 authentic, adequately preserved and resistant to tampering.

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

5 (e) The commissioner shall:

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

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

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

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

19 **§39A-4-6. Uniformity of application and construction.**

20 In applying and construing this Uniform Real Property
21 Electronic Recording Act, consideration must be given to the need
22 to promote uniformity of the law with respect to its subject matter

1 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 U. S.
6 C. §7001, et seq.) but does not modify, limit or supersede §101(c)
7 of that act (15 U. S. C. §7001(c)) or authorize electronic delivery
8 of any of the notices described in §103(b) of that act (15 U. S. C.
9 §7003(b)).

(NOTE: The purpose of this bill is to adopt the Uniform Real Property Electronic Recording Act. Under the proposed 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. In addition, 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 article 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.

This article is new; therefore, strike-throughs and underscoring have been omitted.

This bill is recommended for passage in the 2013 Regular Session by the Joint Commission on Interstate Cooperation.)