

By the Committee on Judiciary; and Senator Bennett

590-2331-06

1   A bill to be entitled

2           An act relating to real property electronic

3           recording; creating s. 695.27, F.S.; providing

4           a short title; providing definitions; providing

5           for the validity of electronic documents

6           relating to real property; providing for the

7           recording of electronic documents by the county

8           recorder; granting the Department of State

9           rulemaking authority; creating the Electronic

10          Recording Council; requiring the department to

11          make specific written findings if any of the

12          council's recommendations are rejected;

13          providing for membership and meetings of the

14          council; providing that council members shall

15          serve without compensation and may not claim

16          per diem and travel expenses from the Secretary

17          of State; providing guidelines for the

18          department, in consultation with the council,

19          to consider in adopting, amending, and

20          repealing standards; providing for uniformity

21          of application and construction; specifying the

22          relation to a federal act; providing an

23          effective date.

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25   Be It Enacted by the Legislature of the State of Florida:

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27           Section 1.   Section 695.27, Florida Statutes, is

28   created to read:

29           695.27 Uniform Real Property Electronic Recording

30   Act.--

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1           (1) SHORT TITLE.--This section may be cited as the  
2 "Uniform Real Property Electronic Recording Act."  
3           (2) DEFINITIONS.--As used in this section:  
4           (a) "Document" means information that is:  
5               1. Inscribed on a tangible medium or that is stored in  
6 an electronic or other medium and is retrievable in  
7 perceivable form; and  
8               2. Eligible to be recorded in the land records  
9 maintained by a county recorder pursuant to s. 28.222.  
10           (b) "Electronic" means relating to technology having  
11 electrical, digital, magnetic, wireless, optical,  
12 electromagnetic, or similar capabilities.  
13           (c) "Electronic document" means a document that is  
14 received by a county recorder in an electronic form.  
15           (d) "Electronic signature" means an electronic sound,  
16 symbol, or process attached to or logically associated with a  
17 document and executed or adopted by a person with the intent  
18 to sign the document.  
19           (e) "Logically associated" means information recorded  
20 simultaneously with the document to which it pertains and  
21 assigned the same document number or a consecutive page number  
22 immediately following such document.  
23           (f) "Person" means an individual, corporation,  
24 business trust, estate, trust, partnership, limited liability  
25 company, association, joint venture, public corporation, or  
26 government; governmental subdivision, agency, or  
27 instrumentality; or any other legal or commercial entity.  
28           (g) "State" means a state of the United States, the  
29 District of Columbia, Puerto Rico, the United States Virgin  
30 Islands, or any territory or insular possession subject to the  
31 jurisdiction of the United States.

1           (3) VALIDITY OF ELECTRONIC DOCUMENTS.--

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

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

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

19           (4) RECORDING OF DOCUMENTS.--

20           (a) In this subsection, the term "paper document"  
21 means a document that is received by the county recorder in a  
22 form that is not electronic.

23           (b) A county recorder:

24           1. Who implements any of the functions listed in this  
25 section shall do so in compliance with standards established  
26 by rule by the Department of State.

27           2. May receive, index, store, archive, and transmit  
28 electronic documents.

29           3. May provide for access to, and for search and  
30 retrieval of, documents and information by electronic means.

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1           4. Who accepts electronic documents for recording  
2 shall continue to accept paper documents as authorized by  
3 state law and shall place entries for both types of documents  
4 in the same index.

5           5. May convert paper documents accepted for recording  
6 into electronic form.

7           6. May convert into electronic form information  
8 recorded before the county recorder began to record electronic  
9 documents.

10           7. May agree with other officials of a state or a  
11 political subdivision thereof, or of the United States, on  
12 procedures or processes to facilitate the electronic  
13 satisfaction of prior approvals and conditions precedent to  
14 recording.

15           (5) ADMINISTRATION AND STANDARDS.--

16           (a) The Department of State, by rule pursuant to ss.  
17 120.536(1) and 120.54, shall prescribe standards to implement  
18 this section in consultation with the Electronic Recording  
19 Council, which is hereby created. The Secretary of State shall  
20 provide administrative support to the council, appoint the  
21 members of the council, and appoint the chair of the council.  
22 The Department of State shall make specific written findings  
23 if any of the council's recommendations are rejected. The  
24 council shall consist of nine members, as follows:

25           1. Five clerks of circuit court or county recorders.

26           2. Two persons working in the title insurance industry  
27 who are members of the Florida Land Title Association.

28           3. One banker who is a member of the Florida Bankers  
29 Association.

30           4. One attorney who is a member of the Real Property,  
31 Probate and Trust Law Section of The Florida Bar.

1           (b) The first meeting of the council shall be held on  
2 or before July 30, 2006. Thereafter, the council shall meet at  
3 the call of the chair.

4           (c) The members of the council shall serve without  
5 compensation and shall not claim per diem and travel expenses  
6 from the Secretary of State.

7           (d) To keep the standards and practices of county  
8 recorders in this state in harmony with the standards and  
9 practices of recording offices in other jurisdictions that  
10 enact substantially this section and to keep the technology  
11 used by county recorders in this state compatible with  
12 technology used by recording offices in other jurisdictions  
13 that enact substantially this section, the Department of  
14 State, in consultation with the council, so far as is  
15 consistent with the purposes, policies, and provisions of this  
16 section, in adopting, amending, and repealing standards, shall  
17 consider:

18           1. Standards and practices of other jurisdictions.

19           2. The most recent standards adopted by national  
20 standard-setting bodies, such as the Property Records Industry  
21 Association.

22           3. The views of interested persons and governmental  
23 officials and entities.

24           4. The needs of counties of varying size, population,  
25 and resources.

26           5. Standards requiring adequate information security  
27 protection to ensure that electronic documents are accurate,  
28 authentic, adequately preserved, and resistant to tampering.

29           (6) UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In  
30 applying and construing this section, consideration must be  
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1 given to the need to promote uniformity of the law with  
2 respect to its subject matter among states that enact it.

3 (7) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND  
4 NATIONAL COMMERCE ACT.--This section modifies, limits, and  
5 supersedes the federal Electronic Signatures in Global and  
6 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but this  
7 section does not modify, limit, or supersede s. 101(c) of that  
8 act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of  
9 any of the notices described in s. 103(b) of that act, 15  
10 U.S.C. s. 7003(b).

11 Section 2. This act shall take effect upon becoming a  
12 law.

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                                   COMMITTEE SUBSTITUTE FOR  
3   Senate Bill 2106  
4                   The committee substitute makes the following changes to the  
5                   underlying bill:  
6                   --    Adds short title of "Uniform Real Property Electronic  
7                                   Recording Act";  
8                   --    Clarifies the recorder of electronic documents is a  
9                                   county recorder pursuant to s. 28.222;  
10                   --   Adds definition for "logically associated" and "person"  
11                                   to definition list;  
12                   --   Removes the phrase "relating to land records" after the  
13                                   term "document";  
14                   --   Removes provision allowing recorders to accept  
15                                   electronically any fee or tax that the recorders are  
16                                   authorized to collect  
17                   --   Changes the administering body from the Electronic  
18                                   Recording Commission to the Electronic Recording Council;  
19                   --   Provides that the Secretary of State provides  
20                                   administrative support for the council and appoints the  
21                                   members and chair of the council;  
22                   --   Clarifies the membership of the council to consist of  
23                                   five clerks of circuit court or county recorders, two  
24                                   persons working in the title insurance industry who are  
25                                   members of the Florida Land Title Association, one banker  
26                                   who is a member of the Florida Bankers Association, and  
27                                   one attorney who is a member of the Real Property,  
28                                   Probate and Trust Law Section of the Florida Bar;  
29                   --   Prohibits the Council from claiming per diem and travel  
30                                   expenses from the Secretary of State;  
31                   --   Adds to the list of things to consider in making  
                                 standards for electronic recording whether adequate  
                                 information security protection is in place to ensure the  
                                 safety and authenticity of electronic documents;  
                 --   Changes the effective date to upon becoming a law.