

1 A bill to be entitled

2 An act relating to real property electronic recording;
3 creating s. 695.27, F.S.; providing a short title;
4 providing definitions; providing for the validity of
5 electronic documents relating to real property; providing
6 for the recording of electronic documents by the county
7 recorder; granting the Department of State rulemaking
8 authority; creating the Electronic Recording Advisory
9 Committee; providing the committee with certain powers and
10 duties; providing for membership and meetings of the
11 committee; providing that committee members shall serve
12 without compensation and may not claim per diem and travel
13 expenses from the Secretary of State; providing guidelines
14 for the department, in consultation with the committee, to
15 consider in adopting, amending, and repealing standards;
16 providing a termination date for the committee; providing
17 for uniformity of application and construction; specifying
18 the relation to a federal act; amending s. 201.01, F.S.;
19 providing that certain electronic documents are subject to
20 the same taxes as paper documents; amending s. 201.022,
21 F.S.; providing for the electronic filing of certain
22 required returns; providing an effective date.

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

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26 Section 1. Section 695.27, Florida Statutes, is created to
27 read:

28 695.27 Uniform Real Property Electronic Recording Act.--

29 (1) SHORT TITLE.--This section may be cited as the
30 "Uniform Real Property Electronic Recording Act."

31 (2) DEFINITIONS.--As used in this section:

32 (a) "Document" means information that is:

33 1. Inscribed on a tangible medium or that is stored in an
34 electronic or other medium and is retrievable in perceivable
35 form; and

36 2. Eligible to be recorded in the Official Records, as
37 defined in s. 28.222, and maintained by a county recorder.

38 (b) "Electronic" means relating to technology having
39 electrical, digital, magnetic, wireless, optical,
40 electromagnetic, or similar capabilities.

41 (c) "Electronic document" means a document that is
42 received by a county recorder in an electronic form.

43 (d) "Electronic signature" means an electronic sound,
44 symbol, or process attached to or logically associated with a
45 document such that, when recorded, it is assigned the same
46 document number or a consecutive page number immediately
47 following such document.

48 (e) "Person" means an individual, corporation, business
49 trust, estate, trust, partnership, limited liability company,
50 association, joint venture, public corporation, government or
51 governmental subdivision, agency, instrumentality, or any other
52 legal or commercial entity.

53 (f) "State" means a state of the United States, the
54 District of Columbia, Puerto Rico, the United States Virgin
55 Islands, or any territory or insular possession subject to the
56 jurisdiction of the United States.

57 (3) VALIDITY OF ELECTRONIC DOCUMENTS.--

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

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

65 (c) A requirement that a document or a signature
 66 associated with a document be notarized, acknowledged, verified,
 67 witnessed, or made under oath is satisfied if the electronic
 68 signature of the person authorized to perform that act, and all
 69 other information required to be included, is attached to or
 70 logically associated with the document or signature. A physical
 71 or electronic image of a stamp, impression, or seal need not
 72 accompany an electronic signature.

73 (4) RECORDING OF DOCUMENTS.--

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

77 (b) A county recorder:

78 1. Who implements any of the functions listed in this
 79 section shall do so in compliance with standards established by
 80 rule by the Department of State.

81 2. May receive, index, store, archive, and transmit
 82 electronic documents.

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

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

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

91 6. May convert into electronic form information recorded
92 before the county recorder began to record electronic documents.

93 7. May agree with other officials of a state or a
94 political subdivision thereof, or of the United States, on
95 procedures or processes to facilitate the electronic
96 satisfaction of prior approvals and conditions precedent to
97 recording.

98 (5) ADMINISTRATION AND STANDARDS.--

99 (a) The Department of State, by rule pursuant to ss.
100 120.536(1) and 120.54, shall prescribe standards to implement
101 this section in consultation with the Electronic Recording
102 Advisory Committee, which is hereby created. The Florida
103 Association of Court Clerks and Comptrollers shall provide
104 administrative support to the committee and technical support to
105 the Department of State and the committee at no charge. The
106 committee shall consist of nine members, as follows:

107 1. Five members appointed by the Florida Association of
108 Court Clerks and Comptrollers, one of whom must be an official
109 from a large urban charter county where the duty to maintain
110 official records exists in a county office other than the clerk
111 of court or comptroller.

112 2. One attorney appointed by the Real Property, Probate,

113 and Trust Law Section of The Florida Bar Association.

114 3. Two members appointed by the Florida Land Title
115 Association.

116 4. One member appointed by the Florida Bankers
117 Association.

118 (b) Appointed members shall serve a 1-year term. All
119 initial terms shall commence on the effective date of this act.
120 Members shall serve until their successors are appointed. An
121 appointing authority may reappoint a member for successive
122 terms. A vacancy on the committee shall be filled in the same
123 manner in which the original appointment was made, and the term
124 shall be for the balance of the unexpired term.

125 (c) The first meeting of the committee shall be within 60
126 days after the effective date of this act. Thereafter, the
127 committee shall meet at the call of the chair, but at least
128 annually.

129 (d) The members of the committee shall serve without
130 compensation and shall not claim per diem and travel expenses
131 from the Secretary of State.

132 (e) To keep the standards and practices of county
133 recorders in this state in harmony with the standards and
134 practices of recording offices in other jurisdictions that enact
135 substantially this section and to keep the technology used by
136 county recorders in this state compatible with technology used
137 by recording offices in other jurisdictions that enact
138 substantially this section, the Department of State, in
139 consultation with the committee, so far as is consistent with
140 the purposes, policies, and provisions of this section, in

141 adopting, amending, and repealing standards, shall consider:

142 1. Standards and practices of other jurisdictions.

143 2. The most recent standards adopted by national standard-
 144 setting bodies, such as the Property Records Industry
 145 Association.

146 3. The views of interested persons and governmental
 147 officials and entities.

148 4. The needs of counties of varying size, population, and
 149 resources.

150 5. Standards requiring adequate information security
 151 protection to ensure that electronic documents are accurate,
 152 authentic, adequately preserved, and resistant to tampering.

153 (f) The committee shall terminate on July 1, 2010.

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

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

166 Section 2. Section 201.01, Florida Statutes, is amended to
 167 read:

168 201.01 Documents taxable, generally.--There shall be

169 levied, collected, and paid the taxes specified in this chapter,
 170 for and in respect to the several documents, bonds, debentures
 171 or certificates of stock and indebtedness, and other documents,
 172 instruments, matters, writings, and things described in the
 173 following sections, or for or in respect of the vellum,
 174 parchment, ~~or paper~~, or any other medium, tangible, electronic,
 175 or otherwise, upon which such document, instrument, matter,
 176 writing, or thing, or any of them, is written, ~~or printed~~, or
 177 created electronically or otherwise, by any person who makes,
 178 signs, executes, issues, sells, removes, consigns, assigns,
 179 records, or ships the same, or for whose benefit or use the same
 180 are made, signed, executed, issued, sold, removed, consigned,
 181 assigned, recorded, or shipped in the state. Unless exempt under
 182 s. 201.24 or under any state or federal law, if the United
 183 States, the state, or any political subdivision of the state is
 184 a party to a document taxable under this chapter, any tax
 185 specified in this chapter shall be paid by a nonexempt party to
 186 the document. The documentary stamp taxes shall be paid on all
 187 recordable instruments requiring documentary stamp tax according
 188 to law, prior to recordation. With respect to mortgages or trust
 189 deeds which do not incorporate the certificate of indebtedness,
 190 a notation shall be made on the note or certificate that the tax
 191 has been paid on the mortgage or trust deed.

192 Section 3. Subsections (1) and (3) of section 201.022,
 193 Florida Statutes, are amended to read:

194 201.022 Consideration for realty; filing of return
 195 condition precedent to recordation; penalty; compensation of
 196 clerks; failure to file does not impair validity.--

197 (1) As a condition precedent to the recordation of any
198 deed transferring an interest in real property, the grantor or
199 the grantee or agent for grantee shall execute and file a return
200 with the clerk of the circuit court, who may accept the return
201 electronically. The return shall state the actual consideration
202 paid for the interest in real property. The return shall state
203 the parcel identification number maintained by the county
204 property appraiser in a manner prescribed by the department. If
205 the parcel is a split or cutout parcel, the return shall state
206 the parent parcel identification number if the parcel
207 identification number has not been assigned. The return shall
208 not be recorded or otherwise become a public record and shall be
209 confidential as provided by s. 193.074, and shall be exempt from
210 the provisions of s. 119.07(1), except that the Department of
211 Environmental Protection or, through the Department of
212 Environmental Protection, its contract appraiser, shall have
213 access to the return to verify the consideration paid in any
214 transfer of an interest in real property, when such transfer is
215 considered as part of an appraisal for a proposed land
216 acquisition project conducted pursuant to any Department of
217 Environmental Protection land acquisition program. The
218 Department of Environmental Protection or its contract appraiser
219 shall not disclose the contents of the return to any other
220 public or private entity. The original return shall be forwarded
221 to the Department of Revenue, and a copy shall be forwarded to
222 the property appraiser.

223 (3) If the return required by this section is not executed
224 and filed, the clerk of the circuit court is required to execute

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225 | and file the return, on paper or electronically, with the
226 | department. The clerk shall be compensated 1.0 percent of the
227 | tax paid on deeds as the cost of processing the return required
228 | by this section in the form of a deduction from the amount of
229 | the tax due and remitted by the clerk, and the department shall
230 | allow the deduction to the clerk paying and remitting the tax in
231 | the manner provided by the department. However, no deduction or
232 | allowance shall be granted when there is a manifest failure to
233 | maintain proper records or make proper reports. The compensation
234 | provided herein shall be in addition to that provided in s.
235 | 201.11(2).

236 | Section 4. This act shall take effect upon becoming a law.