

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 951 Recording of Real Property Documents

SPONSOR(S): Albritton

TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Woodburn	Bond
2) Judiciary Committee			

SUMMARY ANALYSIS

Instruments affecting title to real property are recorded in the public records in order to provide a public record of the chain of title to the property, together with a record of encumbrances against the title.

Prior law only allowed original papers, properly signed, to be presented for recording. Recently, state law was amended to allow for electronic recording of real property instruments. However, several of the clerks of the court and county recorders were accepting electronic recordings relating to real property prior to the 2007 adoption of the Uniform Real Property Electronic Recording Act. Others began accepting electronic documents for recording before rules contemplated in the Act were formally adopted.

The bill retroactively and prospectively ratifies the validity of all such electronic documents submitted to and accepted by a county recorder for recordation, whether or not the electronic documents were in strict compliance with the statutory or regulatory framework in effect at that time. This bill provides that all such recorded documents are deemed to provide constructive notice of ownership and encumbrances. The bill also clarifies that changes made by the bill do not alter the duty of a clerk or county recorder to comply with the Uniform Real Property Electronic Recording Act or rules adopted by the Department of State pursuant to that act.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Record of Conveyance of Real Estate

Chapter 965, F.S., provides that a record of a conveyance of real property, a mortgage of real property, or any other related document affecting title to real property, is valid when recorded with the clerk of the court (or county recorder) in the county in which the real property lies. Prior law required that a person present for recording an original signed paper documenting the transfer or encumbrance. With the advent of technology, clerk's offices began to accept electronic recordings.

Uniform Electronic Transaction Act and Uniform Real Property Electronic Recording Act

In 2000, the Legislature adopted the Uniform Electronic Transaction Act (UETA).¹ This act was based on work by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Many, including NCCUSL, believed the UETA allowed the electronic creation, submission, and recording of electronic documents affecting real property.

Some county recorders began accepting electronic recordings based on the authority facially granted under the UETA. As such, a significant number of electronic documents were filed.

Some legal commentators disagreed, feeling the UETA alone did not authorize the recording of electronic documents affecting title to real property. That disagreement, and the natural conservative nature of most real estate professionals, resulted in a limitation on the use and acceptability of electronic documents in real estate transactions.

To address this problem, NCCUSL promulgated a separate uniform law to address these perceived shortcomings. A variation of the NCCUSL uniform law was adopted by the Legislature in 2007 and is referred to as the Uniform Real Property Electronic Recording Act (URPERA).²

The adoption of the URPERA, as a matter of statutory interpretation, called into question the efficacy of electronic documents recorded pursuant to UETA. The URPERA requires the Department of State, by rule, to prescribe standards to implement the act in consultation with the Electronic Recording Advisory Committee.³ URPERA also provides that any county recorder who elects to receive, index, store, archive, and transmit electronic documents to do so in compliance with standards established by rules adopted by the Department of State.⁴

Before the Department of State could begin establishing rules, several county recorders began accepting electronic recordings and, as a result, discovered significant cost and labor savings. Rule 1B-31 of the Florida Administrative Code implements the URPERA and provides guidelines for accepting electronic documents.

Effect of the Bill

The bill creates s. 695.28, F.S., to retroactively and prospectively ratify the validity of all electronic documents affecting title to real property submitted to and accepted by a clerk of court or county recorder for recordation, notwithstanding possible technical defects.

¹ See s. 668.50, F.S.

² See s. 695.27, F.S.

³ Section 695.27(5)(a), F.S. This section creates the Electronic Recording Advisory Committee. It also requires the Florida Association of Court Clerks and Comptrollers to provide administrative support to the Department of State and the committee at no charge. The committee is composed of nine members who serve one year terms.

⁴ Section 695.27(4)(b), F.S.

The bill provides that all documents, previously or hereafter accepted by a clerk of court or county recorder for recordation electronically, whether under the UETA or the URPERA, are deemed to be validly recorded and provide notice to all persons notwithstanding that:

- Such documents may have been received and recorded before the formal adoption of rules by the Department of State; or
- Defects in, deviations from, or the inability to demonstrate strict compliance with any statute, rule, or procedure to electronically record documents that may have been in effect at the time the electronic documents were submitted for recording.

The bill also provides that the newly created s. 695.28, F.S., does not alter the duty of the clerk or recorder to comply with the URPERA or rules adopted by the Department of State pursuant to that act.

B. SECTION DIRECTORY:

Section 1 creates s. 695.28, F.S., regarding validity of recorded electronic documents.

Section 2 provides that the act is intended to clarify and applies prospectively and retroactively.

Section 3 provides that the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

This bill provides that it is intended to be clarifying and remedial and shall apply retroactively. Retroactive application of legislation can implicate the due process provisions of the Constitution.⁵ As a general matter, statutes which do not alter vested rights but relate only to remedies or procedure can be applied retroactively.⁶

The Florida Supreme Court has ruled that statutes enacted soon after a controversy over the meaning of legislation may be considered a legislative interpretation of the original law and not substantive change:

When, as occurred here, an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof. This Court has recognized the propriety of considering subsequent legislation in arriving at the proper interpretation of the prior statute.⁷

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁵ See *State Department of Transportation v. Knowles*, 402 So.2d 1155 (Fla. 1981).

⁶ See *Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So.2d. 494 (Fla. 1999).

⁷ *Lowry v. Parole and Probation Commission*, 473 So.2d 1248, 1250 (Fla. 1985)(internal citations omitted).