

Committee Substitute for  
Committee Substitute for Senate Bill No. 2038

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

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

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

695.27 Uniform Real Property Electronic Recording Act.—

(1) SHORT TITLE.—This section may be cited as the “Uniform Real Property Electronic Recording Act.”

(2) DEFINITIONS.—As used in this section:

(a) “Document” means information that is:

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

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

(b) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(c) “Electronic document” means a document that is received by a county recorder in an electronic form.

(d) “Electronic signature” means an electronic sound, symbol, or process that is executed or adopted by a person with the intent to sign the document and is attached to or logically associated with a document such that, when

recorded, it is assigned the same document number or a consecutive page number immediately following such document.

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

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

### (3) VALIDITY OF ELECTRONIC DOCUMENTS.—

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

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

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

### (4) RECORDING OF DOCUMENTS.—

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

(b) A county recorder:

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

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

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

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

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

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

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

(5) ADMINISTRATION AND STANDARDS.—

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

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

2. One attorney appointed by the Real Property, Probate and Trust Law Section of The Florida Bar Association.

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

4. One member appointed by the Florida Bankers Association.

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

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

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

(e) To keep the standards and practices of county recorders in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this section and to keep the technology used by county recorders in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this section, the Department of State, in consultation with the committee, so far as is consistent with the purposes, policies, and provisions of this section, in adopting, amending, and repealing standards, shall consider:

1. Standards and practices of other jurisdictions.

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

3. The views of interested persons and governmental officials and entities.
4. The needs of counties of varying size, population, and resources.
5. Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.
- (f) The committee shall terminate on July 1, 2010.

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

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

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

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

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

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

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

(3) If the return required by this section is not executed and filed, the clerk of the circuit court is required to execute and file the return, on paper or electronically, with the department. The clerk shall be compensated 1.0 percent of the tax paid on deeds as the cost of processing the return required by this section in the form of a deduction from the amount of the tax due and remitted by the clerk, and the department shall allow the deduction to the clerk paying and remitting the tax in the manner provided by the department. However, no deduction or allowance shall be granted when there is a manifest failure to maintain proper records or make proper reports. The compensation provided herein shall be in addition to that provided in s. 201.11(2).

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

Approved by the Governor June 27, 2007.

Filed in Office Secretary of State June 27, 2007.