

No. 2012-100

AN ACT

HB 970

Providing for the validity of electronic documents; authorizing county recorders of deeds to receive electronic documents as a means for recording real property; granting powers and duties to the county recorders of deeds; establishing the Electronic Recording Commission; and prescribing standards of uniformity.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Uniform Real Property Electronic Recording Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Commission." The Electronic Recording Commission established in section 5.

"Department." The Department of State of the Commonwealth.

"Document." 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 land records maintained by the recorder.

"Electronic." As defined under section 103 of the act of December 16, 1999 (P.L.971, No.69), known as the Electronic Transactions Act.

"Electronic document." A document that is received by the recorder in an electronic form.

"Electronic signature." As defined under section 103 of the act of December 16, 1999 (P.L.971, No.69), known as the Electronic Transactions Act.

"Nonelectronic document." A document that is received by the recorder in a form that is not electronic, including a document on paper or microfilm.

"Person." Includes any of the following:

(1) A corporation.

(2) A partnership.

(3) A limited liability company.

(4) A business trust.

(5) An association.

(6) A government entity, including the Commonwealth.

(7) An estate.

(8) A trust.

(9) A foundation.

(10) An individual.

"Recorder." A county recorder of deeds or a county official responsible for the recordation of documents in counties without recorders of deeds.

"State." A state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

Section 3. Validity of electronic documents.

(a) Requirement for original.—If a law requires, as a condition for recording, that a document be an original, either on paper or another tangible medium or be in writing, the requirement is satisfied by an electronic document that complies with the provisions of this act.

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

(c) Notarization.—The following shall apply:

(1) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed or made under oath is satisfied if:

(i) 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.

(ii) The act comports with the requirements of Chapters 1, 3 and 5 of the act of December 16, 1999 (P.L.971, No.69), known as the Electronic Transactions Act.

(iii) With respect to notarizations, the act comports with the requirements and procedures of the act of August 21, 1953 (P.L.1323, No.373), known as The Notary Public Law, pertaining to electronic notarization, acknowledgment and verification.

(2) A physical or electronic image of a stamp, impression or seal need not accompany an electronic signature.

(d) Record retention.—This act does not preclude the Pennsylvania Historical and Museum Commission from specifying additional requirements for retention of a record subject to the commission's jurisdiction, including the requirement that the recorder retain a record in a nonelectronic form.

Section 4. Recording of documents.

(a) Recorder powers and duties.—

(1) A recorder who implements any of the functions listed in this section shall do so in compliance with standards established by the commission.

(2) A recorder may receive, index, store, archive and transmit electronic documents. A recorder who accepts electronic documents for recording shall index the documents in compliance with standards established by the commission.

(3) A recorder may provide for access to and for search and retrieval of documents and information by electronic means. A recorder who accepts electronic documents for recording shall continue to accept nonelectronic documents as authorized by State law and shall place entries for both types of documents in the same index.

(4) A recorder may convert nonelectronic paper documents accepted for recording into electronic form.

(5) A recorder may convert into electronic form information recorded before the recorder began to record electronic documents.

(6) A recorder may accept electronically any fee or tax that the recorder is authorized to collect by any reasonable method of payment, including electronic payment.

(7) A recorder may agree with other officials of a state or a political subdivision of a state, or of the United States, concerning procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.

(b) No requirement.—This act does not require a recorder to accept and record electronic documents.

(c) Jurisdiction.—Recording or causing a document to be recorded pursuant to this act, either directly or through an agent, shall constitute transacting business in this Commonwealth for purposes of empowering a tribunal of this Commonwealth to exercise personal jurisdiction over a person, including an agent, and authorizing service of process outside of this Commonwealth pursuant to 42 Pa.C.S. § 5322 (relating to bases of personal jurisdiction over persons outside this Commonwealth).

Section 5. Commission.

(a) Establishment; administration of act.

(1) The Electronic Recording Commission is established as an administrative board within the department. The department shall supply adequate administrative support to the commission in accordance with section 214 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, including personnel, office space and any other assistance required by the commission to carry out its duties under this act. Policy determinations regarding the implementation of this act shall be made by the commission and shall not be subject to review or approval by the department.

(2) The commission shall administer this act.

(b) Membership.—The commission shall consist of the following members:

(1) Eight members shall be appointed as follows:

(i) The President pro tempore of the Senate shall appoint two members. One member under this subparagraph must be a sitting recorder serving in a county of the first class through fourth class, and one member under this subparagraph must be a sitting recorder serving in a county of the fifth class through eighth class.

(ii) The Minority Leader of the Senate shall appoint two members. One member under this subparagraph must be a sitting recorder serving in a county of the first class through fourth class, and one member under this subparagraph must be a sitting recorder serving in a county of the fifth class through eighth class.

(iii) The Speaker of the House of Representatives shall appoint two members. One member under this subparagraph must be a sitting recorder serving in a county of the first class through fourth class, and one member under this subparagraph must be a sitting recorder serving in a county of the fifth class through eighth class.

(iv) The Minority Leader of the House of Representatives shall appoint two members. One member under this subparagraph must be

a sitting recorder serving in a county of the first class through fourth class, and one member under this subparagraph must be a sitting recorder serving in a county of the fifth class through eighth class.

(2) The Governor shall appoint five members, one from and representing each of the following entities from a nomination list containing a minimum of four nominees provided to the Governor by each entity, as follows:

- (i) The Pennsylvania Historical and Museum Commission.
- (ii) The department.
- (iii) The Pennsylvania Association of Notaries.
- (iv) The Pennsylvania Land Title Association.
- (v) The Pennsylvania Bankers Association.

(c) Terms.—

(1) Except as set forth in paragraph (2), each member shall serve a three-year term.

(2) For initial terms under subsection (b)(1), each appointing authority shall make one appointment for a one-year term and one appointment for a two-year term.

(d) Vacancies.—A vacancy in membership shall be filled in the same manner as the original appointment.

(e) Chair.—

(1) A member of the commission who is a recorder shall annually be elected by the members of the commission to serve as chair of the commission.

(2) A member of the commission may be elected chair of the commission more than once.

(3) Should the chair of the commission leave the commission or resign as chair, a member of the commission who is a recorder shall be elected by the members of the commission to complete the chair's annual term.

(f) Compensation.—Members of the commission shall not receive compensation, but may be reimbursed for reasonable expenses incurred in performing official duties.

(g) Department.—In order to provide adequate administrative support pursuant to subsection (a)(1), the department may enter into cooperative agreements with other public or private organizations to provide such resources to the commission.

Section 6. Administration and standards.

(a) Standards for implementation.—The commission shall adopt standards to implement this act in the form of administrative regulations. This act shall not impair the validity of electronic documents and electronic signatures utilized prior to the effective date of the standards adopted under this subsection, except that such electronic documents or electronic signatures shall comport with:

(1) Chapters 1, 3 and 5 of the act of December 16, 1999 (P.L.971, No.69), known as the Electronic Transactions Act.

(2) With respect to notarizations, the requirements and procedures of the act of August 21, 1953 (P.L.1323, No.373), known as The Notary

Public Law, pertaining to electronic notarization, acknowledgment and verification.

(b) Manner of formulating standards.—To keep the standards and practices of recording offices in this Commonwealth in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this act and to keep the technology used by recorders in this Commonwealth compatible with technology used by recording offices in other jurisdictions that enact substantially this act, the commission, so far as is consistent with the purposes, policies and provisions of this act, in adopting, amending and repealing standards, shall do all of the following:

(1) Consult with electronic recording commissions in other states.

(2) Consider the most recent standards promulgated by the Property Records Industry Association or any successor organization.

(3) Consider the standards and practices of and the technology used by the other states.

(4) Consider the views of interested persons for the purposes of obtaining guidance and assuring uniformity.

(5) Consider the needs of counties of varying size, population and resources.

(6) Provide for adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved and resistant to tampering.

(7) Consider the need to prevent and detect fraud.

(8) Provide methods to ensure that any person submitting electronic documents for recording is approved as a trusted submitter by the recording office and has provided sufficient information to enable the recording office to identify and contact the person if necessary to correct errors and prevent fraud.

(9) Provide methods to ensure that information is provided in connection with recording that is adequate to identify and serve process upon a person or any agent of a person causing a document to be recorded so as to facilitate the availability of remedies for the improper or fraudulent recording of documents.

(c) Procedure.—

(1) Initial standards under this section shall be promulgated as temporary regulations, in accordance with the following:

(i) The rulemaking shall be exempt from all of the following:

(A) Sections 201, 202, 203, 204 and 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(B) Sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

(C) The act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(ii) The temporary regulations shall not be effective for more than two years.

(2) The commission shall promulgate permanent regulations in accordance with law.

(d) Conflict.—

(1) The powers and duties of the following may not be exercised in a manner which is inconsistent with the powers and duties exercised by the commission under this section:

(i) The county and Local Government Records Committees under the act of May 9, 1949 (P.L.908, No.250), entitled, as amended, "An act relating to public records of political subdivisions other than cities and counties of the first class; authorizing the recording and copying of documents, plats, papers and instruments of writing by digital, photostatic, photographic, microfilm or other process, and the admissibility thereof and enlargements thereof in evidence; providing for the storage of duplicates and sale of microfilm and digital copies of official records and for the destruction of other records deemed valueless; and providing for the services of the Pennsylvania Historical and Museum Commission to political subdivisions."

(ii) An officer of a county of the first class or of a city of the first class under the act of May 11, 1949 (P.L.1076, No.311), entitled, as amended, "An act authorizing the recording, copying and recopying, of documents, plats, papers, written instruments, records and books on file or of record, and the replacement and certification of originals previously filed and of record, by officers of counties of the first class and of cities of the first class, by photostatic, photographic, microphotographic, microfilm, or other mechanical process; relating to the effect and use of such copies, records, reproductions, replacements and transcripts, or certified copies thereof; providing for a recording fee and its use; and providing for revision of and entries to be made on originals and copies so produced or replaced."

(2) Standards under this section shall supersede standards, policies and procedures of the persons listed in paragraph (1) to the extent of any inconsistency.

(e) Sunset.—The commission shall terminate on January 1 of the fourth year after the effective date of this act, unless it is reestablished by action of the General Assembly. Prior to termination, the commission may offer recommendations to the General Assembly, including recommendations to modify the date the commission shall terminate.

Section 7. Construction of act.

As far as practicable, the commission shall administer this act so as to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 8. Relation to Electronic Signatures in Global and National Commerce Act.

Under the authority granted by section 102 of the Electronic Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C. § 7002), this act modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act but does not modify, limit or supersede section 101(c) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7003(b)).

Section 9. Savings provision.

Nothing in this act shall be construed to repeal any of the following acts or parts of acts:

(1) Section 5 of the act of March 18, 1875 (P.L.32, No.36), entitled "An act requiring recorders of deeds to prepare and keep in their respective offices general, direct and ad sectum indexes of deeds and mortgages recorded therein, prescribing the duty of said recorders and declaring that the entries in said general indexes shall be notice to all persons."

(2) Section 10 of the act of April 1, 1909 (P.L.91, No.53), entitled "An act relating to deeds for conveying or releasing lands, construing words and phrases used therein, and prescribing a form of deed and acknowledgment which may be used for conveying or releasing lands."

(3) Section 3 of the act of April 24, 1931 (P.L.48, No.40), entitled "An act requiring the recording of certain written agreements pertaining to real property, and prescribing the effect thereof as to subsequent purchasers, mortgagees, and judgment creditors of the parties thereto."

(4) The act of January 15, 1988 (P.L.1, No.1), known as the Uniform Parcel Identifier Law.

Section 10. Repeal.

(a) Specific.—The following acts and parts of acts are repealed insofar as they prohibit electronic filing of satisfaction pieces allowed by this act:

(1) Sections 3 and 7 of the act of March 15, 1956 (1955 P.L.1280, No.392), entitled "An act relating to the satisfaction of mortgages in cities and counties of the first class by the recording of a satisfaction piece, prescribing forms therefor, and fixing the fees thereof."

(2) Section 4 of the act of July 26, 1961 (P.L.887, No.382), entitled, as amended, "An act relating to the satisfaction of mortgages in counties of the second, second A, third, fourth, fifth, sixth, seventh and eighth class by the recording of a satisfaction piece, prescribing forms therefor, and fixing fees for the recording thereof."

(3) The act of December 9, 2002 (P.L.1530, No.197), known as the Mortgage Satisfaction Act.

(b) General.—All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 11. Effective date.

This act shall take effect immediately.

APPROVED—The 5th day of July, A.D. 2012

TOM CORBETT