

**REAL PROPERTY, PROBATE & TRUST LAW SECTION  
OF THE FLORIDA BAR**

**White Paper  
Bill Curing Certain Defects as to Electronic Documents  
and Electronically Recorded Documents**

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**I. SUMMARY**

Several of the state's clerks of the court and county recorders were accepting electronic recordings prior to the 2006 adoption of the Uniform Real Property Electronic Recording Act, §695.27 (URPERA) and others began accepting electronic documents for recording before the rules contemplated in the Act were formally adopted.

This 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 such electronic documents were in strict compliance with the statutory or regulatory framework then in effect. The bill provides that all such recorded documents are deemed to provide constructive notice.

**II. CURRENT SITUATION**

In 2000, the Florida Legislature adopted the Uniform Electronic Transaction Act, §668.50 (UETA). This Act was based on work by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Many, including NCCUSL, believed that UETA permitted the electronic creation, submission and recording of electronic documents affecting real property.

Some county recorders began accepting electronic recordings based on the authorities facially granted under UETA and a significant number of electronic documents were filed.

Some legal commentators disagreed, feeling that 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 Florida legislature in 2006 as the Florida "Uniform Real Property Electronic Recording Act, §695.27. (URPERA).

The adoption of URPERA, as a matter of statutory interpretation, called into question the efficacy of electronic documents recorded under UETA.

Subsection (5)(a) of URPERA provided that:

- (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 ....

Subsection (4)(b) of URPERA directed a county recorder who elected to receive, index, store, archive, and transmit electronic documents do so in compliance with standards established by rule by the Department of State.

A significant number of County Recorders began accepting electronic recordings and finding significant cost and labor savings. On March 22, 2008, Rule 1B-31, Florida Administrative Code, became effective implementing URPERA.

The intent of the statute, of the rule and of the parties to the Electronic Documents was that they be valid, binding, validly filed and to provide constructive notice notwithstanding timing differences or the mechanism for converting the physical signature into an electronic signature.

Because of the importance of a stable and certain record title and land conveyancing system, this bill retroactively and prospectively ratifies the validity of all such electronic documents submitted to and accepted by a county recorder for recordation, notwithstanding those types of possible technical defects.

### **III. EFFECT OF PROPOSED CHANGES**

The Bill provides that all deeds, mortgages, and other documents, previously or hereafter accepted by a county recorder for recordation, whether under UETA or URPERA, are deemed to be valid electronic documents with valid electronic signatures and to provide notice to all persons notwithstanding:

- (a) that such documents may have been recorded before the formal adoption of rules by the Florida Secretary of State or didn't fully comply with the provisions and requirements later imposed by the (then unknown) Rule 1B-31 F.A.C.; or
- (b) Technical deviations from, or the inability to prove compliance with, the any rules and procedures for electronically recorded documents which may have been in effect at the time the electronic document was submitted for recording.

### **IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

The proposal does not have a fiscal impact on state or local governments.

### **V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

The proposal should have no direct impact on the private sector.

### **VI. CONSTITUTIONAL ISSUES**

The proposal does not raise any constitutional issues.

## **VII. OTHER INTERESTED PARTIES**

It is expected that the Florida Land Title Association will have an interest in this bill and be supportive of its provisions. The Florida Clerks of Court may have an interest as well.