

By: Carona

S.B. No. 335

A BILL TO BE ENTITLED

AN ACT

relating to the recording of electronic documents.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 3, Property Code, is amended by adding Chapter 15 to read as follows:

CHAPTER 15. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

Sec. 15.001. SHORT TITLE. This chapter may be cited as the Uniform Real Property Electronic Recording Act.

Sec. 15.002. DEFINITIONS. In this chapter:

(1) "Document" means information that is:

(A) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(B) eligible to be recorded in the real property records maintained by a county clerk.

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

(3) "Electronic document" means a document that is received by a county clerk in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

1           (5) "Paper document" means a document that is received  
2 by a county clerk in a form that is not electronic.

3           Sec. 15.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
4 In applying and construing this chapter, consideration must be  
5 given to the need to promote uniformity of the law with respect to  
6 the subject matter of this chapter among states that enact a law  
7 substantially similar to this chapter.

8           Sec. 15.004. VALIDITY OF ELECTRONIC DOCUMENTS. (a) If a  
9 law requires, as a condition for recording, that a document be an  
10 original, be on paper or another tangible medium, or be in writing,  
11 the requirement is satisfied by an electronic document that  
12 complies with the requirements of this chapter.

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

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

24           Sec. 15.005. RECORDING OF DOCUMENTS. (a) A county clerk  
25 who implements any of the functions described by this section shall  
26 act in compliance with rules adopted by the Texas State Library and  
27 Archives Commission under Chapter 195, Local Government Code, and

1 standards established by the Texas State Library and Archives  
2 Commission under Section 15.006.

3 (b) A county clerk may:

4 (1) receive, index, store, archive, and transmit  
5 electronic documents;

6 (2) provide for access to, and for search and  
7 retrieval of, documents and information by electronic means;

8 (3) convert paper documents accepted for recording  
9 into electronic form;

10 (4) convert into electronic form information recorded  
11 before the county clerk began to record electronic documents;

12 (5) accept electronically any fee or tax that the  
13 county clerk is authorized to collect; and

14 (6) agree with other officials of a state, a political  
15 subdivision of a state, or the United States on procedures or  
16 processes to facilitate the electronic satisfaction of prior  
17 approvals and conditions precedent to recording and the electronic  
18 payment of fees and taxes.

19 (c) A county clerk who accepts electronic documents for  
20 recording shall:

21 (1) continue to accept paper documents; and

22 (2) place entries for paper documents and electronic  
23 documents in the same index.

24 Sec. 15.006. UNIFORM STANDARDS. (a) The Texas State  
25 Library and Archives Commission by rule shall adopt standards to  
26 implement this chapter.

27 (b) To keep the standards and practices of county clerks in

1 this state in harmony with the standards and practices of recording  
2 offices in other jurisdictions that enact a law that is  
3 substantially similar to this chapter and to keep the technology  
4 used by county clerks in this state compatible with technology used  
5 by recording offices in other jurisdictions that enact a law that is  
6 substantially similar to this chapter, the Texas State Library and  
7 Archives Commission, so far as is consistent with the purposes,  
8 policies, and provisions of this chapter, in adopting, amending,  
9 and repealing standards shall consider:

10 (1) standards and practices of other jurisdictions;

11 (2) the most recent standards promulgated by national  
12 standard-setting bodies, such as the Property Records Industry  
13 Association;

14 (3) the views of interested persons and governmental  
15 officials and entities; and

16 (4) the needs of counties of varying size, population,  
17 and resources.

18 Sec. 15.007. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL  
19 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and  
20 supersedes the federal Electronic Signatures in Global and National  
21 Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify,  
22 limit, or supersede Section 101(c) of that Act (15 U.S.C. Section  
23 7001(c)) or authorize electronic delivery of any of the notices  
24 described in Section 103(b) of that Act (15 U.S.C. Section  
25 7003(b)).

26 Sec. 15.008. CONSTRUCTION WITH OTHER LAW. Except as  
27 otherwise provided by this chapter, Chapter 195, Local Government

1 Code, and the rules adopted by the Texas State Library and Archives  
2 Commission under that chapter apply to electronic documents filed  
3 in accordance with this chapter.

4 SECTION 2. Section 191.009, Local Government Code, is  
5 amended to read as follows:

6 Sec. 191.009. ELECTRONIC FILING AND RECORDING. (a) A  
7 county clerk may accept electronic documents and other instruments  
8 by electronic filing and record the electronic documents and other  
9 instruments electronically if the filing or recording complies with  
10 the rules adopted by the Texas State Library and Archives  
11 Commission under Chapter 195. [~~Such an instrument is an electronic~~  
12 ~~record, as defined by Section 43.002, Business & Commerce Code.~~]

13 (b) An electronic document or other instrument that is filed  
14 electronically in compliance with the rules adopted under Chapter  
15 195 is considered to have been filed in compliance with any law  
16 relating to the filing of instruments with a county clerk.

17 (c) For purposes of this section:

18 (1) an instrument is an electronic record, as defined  
19 by Section 43.002, Business & Commerce Code; and

20 (2) "electronic document" has the meaning assigned by  
21 Section 15.002, Property Code.

22 SECTION 3. Section 195.001, Local Government Code, is  
23 amended by adding Subdivision (3) to read as follows:

24 (3) "Electronic document" has the meaning assigned by  
25 Section 15.002, Property Code.

26 SECTION 4. Sections 195.002 through 195.007 and Section  
27 195.009, Local Government Code, are amended to read as follows:

1           Sec. 195.002. ADOPTION OF RULES. (a) The commission  
2 shall adopt rules by which a county clerk may accept electronic  
3 documents and other instruments by electronic filing and record  
4 electronic documents and other instruments electronically under  
5 Section 191.009.

6           (b) The rules must provide for:

7                 (1) the electronic filing with and recording by the  
8 county clerk of:

9                         (A) real property records; and

10                        (B) except for records maintained under Section  
11 192.006, other instruments filed with and recorded by the county  
12 clerk as determined by the commission;

13                 (2) the means by which an electronic document or other  
14 instrument may be electronically transmitted to a county clerk for  
15 filing;

16                 (3) the means by which a county clerk may  
17 electronically record an electronic document or other instrument  
18 filed electronically;

19                 (4) requiring that the means adopted under Subdivision  
20 (2) or (3) be generally available, nonproprietary technology; and

21                 (5) security standards to prevent the filing and  
22 recording of fraudulent electronic documents or other instruments  
23 or alteration of electronic documents or other instruments that  
24 were previously filed and recorded electronically.

25           (c) Rules adopted by the commission under this section that  
26 permit the use of digital signatures in the electronic filing of  
27 electronic documents or other instruments with the county clerk

1 must be, to the extent practicable, consistent with rules governing  
2 digital signatures adopted by the Department of Information  
3 Resources under Section 2054.060, Government Code[, ~~as added by~~  
4 ~~Chapter 528, Acts of the 75th Legislature, Regular Session, 1997~~].

5 (d) Before adopting or amending a rule under this section,  
6 the commission shall consider the recommendations of the Electronic  
7 Recording Advisory Committee established under Section 195.008.

8 (e) Notwithstanding Sections 43.017 and 43.018, Business &  
9 Commerce Code, a county clerk may accept any filed electronic  
10 record, as defined by Section 43.002, Business & Commerce Code, or  
11 electronic document and may electronically record that electronic  
12 document or record if the filing and recording of that electronic  
13 document or record complies with rules adopted by the commission  
14 under this section.

15 Sec. 195.003. PERSONS AUTHORIZED TO FILE ELECTRONICALLY.  
16 The following persons may file electronic documents or other  
17 documents electronically for recording with a county clerk that  
18 accepts electronic filing and recording under this chapter:

19 (1) an attorney licensed in this state;

20 (2) a bank, savings and loan association, savings  
21 bank, or credit union doing business under laws of the United States  
22 or this state;

23 (3) a federally chartered lending institution, a  
24 federal government-sponsored entity, an instrumentality of the  
25 federal government, or a person approved as a mortgagee by the  
26 United States to make federally insured loans;

27 (4) a person licensed to make regulated loans in this

1 state;

2 (5) a title insurance company or title insurance agent  
3 licensed to do business in this state; or

4 (6) an agency of this state.

5 Sec. 195.004. NOTICE OF CONFIRMATION. (a) A county clerk  
6 that accepts electronic filing and recording under this chapter  
7 shall confirm or reject an electronic filing of an electronic  
8 document or other instrument not later than the first business day  
9 after the date the electronic document or other [~~an~~] instrument is  
10 filed. Notice under this section must be made:

11 (1) by electronic means if possible; or

12 (2) if notice under Subdivision (1) is not possible,  
13 by telephone or electronic facsimile machine.

14 (b) If the county clerk fails to provide notice of rejection  
15 within the time provided by Subsection (a), the electronic document  
16 or other instrument is considered accepted for filing and may not  
17 subsequently be rejected.

18 Sec. 195.005. TIME ELECTRONIC DOCUMENT OR OTHER INSTRUMENT  
19 CONSIDERED FILED OR RECORDED. An electronic document or other  
20 instrument that is recorded electronically under this chapter is  
21 considered to be recorded in compliance with a law relating to the  
22 recording of electronic documents or other instruments as of the  
23 county clerk's business day on which the electronic document or  
24 other instrument is filed electronically. An electronic document  
25 or other instrument filed electronically under this chapter must be  
26 recorded as timely as an instrument filed by any other means.

27 Sec. 195.006. ADDITIONAL FEE PROHIBITED. The fee to file or



1 record an electronic document or other instrument electronically  
2 under this chapter is the same as the fee for filing or recording  
3 the instrument by other means, and a county clerk may not charge an  
4 additional fee for filing or recording an electronic document or  
5 other instrument electronically under this chapter.

6 Sec. 195.007. ACCESS TO ELECTRONIC DOCUMENT OR OTHER  
7 INSTRUMENT RECORDED ELECTRONICALLY. (a) An electronic document  
8 or other instrument filed or recorded electronically must be  
9 available for public inspection in the same manner and at the same  
10 time as an instrument filed or recorded by other means.

11 (b) The county clerk shall provide a requestor, as defined  
12 by Section 552.003, Government Code, of an electronic document or  
13 other instrument filed or recorded electronically under this  
14 chapter with electronic copies of the electronic document or other  
15 instrument in a form that is capable of being processed by the use  
16 of technology that is generally available and nonproprietary in  
17 nature. The county clerk shall provide the copies to the requestor  
18 at the cost of producing the copies in accordance with Section  
19 552.262, Government Code.

20 Sec. 195.009. FILING. For purposes of this chapter, an  
21 electronic document or other instrument is filed with the county  
22 clerk when it is received by the county clerk, unless the county  
23 clerk rejects the filing within the time and manner provided by this  
24 chapter and rules adopted under this chapter.

25 SECTION 5. (a) The change in law made by this Act applies  
26 only to a document that is filed for recording on or after the  
27 effective date of this Act. A document that is filed for recording

1 before the effective date of this Act is covered by the law in  
2 effect at the time the document was filed, and that law is continued  
3 in effect for that purpose.

4 (b) A rule adopted before the effective date of this Act by  
5 the Texas State Library and Archives Commission under Chapter 195,  
6 Local Government Code, applies to an electronic document filed for  
7 recording in accordance with Chapter 15, Property Code, as added by  
8 this Act, on or after the effective date of this Act.

9 SECTION 6. This Act takes effect September 1, 2005.