

1-1 By: Carona S.B. No. 335
1-2 (In the Senate - Filed February 2, 2005; February 7, 2005,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 March 14, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; March 14, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 335 By: Wentworth

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the recording of electronic documents.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Title 3, Property Code, is amended by adding
1-13 Chapter 15 to read as follows:
1-14 CHAPTER 15. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT
1-15 Sec. 15.001. SHORT TITLE. This chapter may be cited as the
1-16 Uniform Real Property Electronic Recording Act.
1-17 Sec. 15.002. DEFINITIONS. In this chapter:
1-18 (1) "Document" means information that is:
1-19 (A) inscribed on a tangible medium or that is
1-20 stored in an electronic or other medium and is retrievable in
1-21 perceivable form; and
1-22 (B) eligible to be recorded in the real property
1-23 records maintained by a county clerk.
1-24 (2) "Electronic" means relating to technology having
1-25 electrical, digital, magnetic, wireless, optical, electromagnetic,
1-26 or similar capabilities.
1-27 (3) "Electronic document" means a document that is
1-28 received by a county clerk in an electronic form.
1-29 (4) "Electronic signature" means an electronic sound,
1-30 symbol, or process attached to or logically associated with a
1-31 document and executed or adopted by a person with the intent to sign
1-32 the document.
1-33 (5) "Paper document" means a document that is received
1-34 by a county clerk in a form that is not electronic.
1-35 Sec. 15.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
1-36 In applying and construing this chapter, consideration must be
1-37 given to the need to promote uniformity of the law with respect to
1-38 the subject matter of this chapter among states that enact a law
1-39 substantially similar to this chapter.
1-40 Sec. 15.004. VALIDITY OF ELECTRONIC DOCUMENTS. (a) If a
1-41 law requires, as a condition for recording, that a document be an
1-42 original, be on paper or another tangible medium, or be in writing,
1-43 the requirement is satisfied by an electronic document that
1-44 complies with the requirements of this chapter.
1-45 (b) If a law requires, as a condition for recording, that a
1-46 document be signed, the requirement is satisfied by an electronic
1-47 signature.
1-48 (c) A requirement that a document or a signature associated
1-49 with a document be notarized, acknowledged, verified, witnessed, or
1-50 made under oath is satisfied if the electronic signature of the
1-51 person authorized to perform that act, and all other information
1-52 required to be included, is attached to or logically associated
1-53 with the document or signature. A physical or electronic image of a
1-54 stamp, impression, or seal need not accompany an electronic
1-55 signature.
1-56 Sec. 15.005. RECORDING OF DOCUMENTS. (a) A county clerk
1-57 who implements any of the functions described by this section shall
1-58 act in compliance with rules adopted by the Texas State Library and
1-59 Archives Commission under Chapter 195, Local Government Code, and
1-60 standards established by the Texas State Library and Archives
1-61 Commission under Section 15.006.
1-62 (b) A county clerk may:
1-63 (1) receive, index, store, archive, and transmit

2-1 electronic documents;

2-2 (2) provide for access to, and for search and
2-3 retrieval of, documents and information by electronic means;

2-4 (3) convert paper documents accepted for recording
2-5 into electronic form;

2-6 (4) convert into electronic form information recorded
2-7 before the county clerk began to record electronic documents;

2-8 (5) accept electronically any fee or tax that the
2-9 county clerk is authorized to collect; and

2-10 (6) agree with other officials of a state, a political
2-11 subdivision of a state, or the United States on procedures or
2-12 processes to facilitate the electronic satisfaction of prior
2-13 approvals and conditions precedent to recording and the electronic
2-14 payment of fees and taxes.

2-15 (c) A county clerk who accepts electronic documents for
2-16 recording shall:

2-17 (1) continue to accept paper documents; and

2-18 (2) place entries for paper documents and electronic
2-19 documents in the same index.

2-20 Sec. 15.006. UNIFORM STANDARDS. (a) The Texas State
2-21 Library and Archives Commission by rule shall adopt standards to
2-22 implement this chapter.

2-23 (b) To keep the standards and practices of county clerks in
2-24 this state in harmony with the standards and practices of recording
2-25 offices in other jurisdictions that enact a law that is
2-26 substantially similar to this chapter and to keep the technology
2-27 used by county clerks in this state compatible with technology used
2-28 by recording offices in other jurisdictions that enact a law that is
2-29 substantially similar to this chapter, the Texas State Library and
2-30 Archives Commission, so far as is consistent with the purposes,
2-31 policies, and provisions of this chapter, in adopting, amending,
2-32 and repealing standards shall consider:

2-33 (1) standards and practices of other jurisdictions;

2-34 (2) the most recent standards promulgated by national
2-35 standard-setting bodies, such as the Property Records Industry
2-36 Association;

2-37 (3) the views of interested persons and governmental
2-38 officials and entities; and

2-39 (4) the needs of counties of varying size, population,
2-40 and resources.

2-41 Sec. 15.007. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
2-42 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and
2-43 supersedes the federal Electronic Signatures in Global and National
2-44 Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify,
2-45 limit, or supersede Section 101(c) of that Act (15 U.S.C. Section
2-46 7001(c)) or authorize electronic delivery of any of the notices
2-47 described in Section 103(b) of that Act (15 U.S.C. Section
2-48 7003(b)).

2-49 Sec. 15.008. CONSTRUCTION WITH OTHER LAW. Except as
2-50 otherwise provided by this chapter, Chapter 195, Local Government
2-51 Code, and the rules adopted by the Texas State Library and Archives
2-52 Commission under that chapter apply to electronic documents filed
2-53 in accordance with this chapter.

2-54 SECTION 2. Section 191.009, Local Government Code, is
2-55 amended to read as follows:

2-56 Sec. 191.009. ELECTRONIC FILING AND RECORDING. (a) A
2-57 county clerk may accept electronic documents and other instruments
2-58 by electronic filing and record the electronic documents and other
2-59 instruments electronically if the filing or recording complies with
2-60 the rules adopted by the Texas State Library and Archives
2-61 Commission under Chapter 195. [~~Such an instrument is an electronic~~
2-62 ~~record, as defined by Section 43.002, Business & Commerce Code.]~~

2-63 (b) An electronic document or other instrument that is filed
2-64 electronically in compliance with the rules adopted under Chapter
2-65 195 is considered to have been filed in compliance with any law
2-66 relating to the filing of instruments with a county clerk.

2-67 (c) For purposes of this section:

2-68 (1) an instrument is an electronic record, as defined
2-69 by Section 43.002, Business & Commerce Code; and

3-1 (2) "electronic document" has the meaning assigned by
 3-2 Section 15.002, Property Code.

3-3 SECTION 3. Section 195.001, Local Government Code, is
 3-4 amended by adding Subdivision (3) to read as follows:

3-5 (3) "Electronic document" has the meaning assigned by
 3-6 Section 15.002, Property Code.

3-7 SECTION 4. Sections 195.002 through 195.007 and Section
 3-8 195.009, Local Government Code, are amended to read as follows:

3-9 Sec. 195.002. ADOPTION OF RULES. (a) The commission
 3-10 shall adopt rules by which a county clerk may accept electronic
 3-11 documents and other instruments by electronic filing and record
 3-12 electronic documents and other instruments electronically under
 3-13 Section 191.009.

3-14 (b) The rules must provide for:

3-15 (1) the electronic filing with and recording by the
 3-16 county clerk of:

3-17 (A) real property records; and

3-18 (B) except for records maintained under Section
 3-19 192.006, other instruments filed with and recorded by the county
 3-20 clerk as determined by the commission;

3-21 (2) the means by which an electronic document or other
 3-22 instrument may be electronically transmitted to a county clerk for
 3-23 filing;

3-24 (3) the means by which a county clerk may
 3-25 electronically record an electronic document or other instrument
 3-26 filed electronically;

3-27 (4) requiring that the means adopted under Subdivision
 3-28 (2) or (3) be generally available, nonproprietary technology; and

3-29 (5) security standards to prevent the filing and
 3-30 recording of fraudulent electronic documents or other instruments
 3-31 or alteration of electronic documents or other instruments that
 3-32 were previously filed and recorded electronically.

3-33 (c) Rules adopted by the commission under this section that
 3-34 permit the use of digital signatures in the electronic filing of
 3-35 electronic documents or other instruments with the county clerk
 3-36 must be, to the extent practicable, consistent with rules governing
 3-37 digital signatures adopted by the Department of Information
 3-38 Resources under Section 2054.060, Government Code [~~as added by~~
 3-39 ~~Chapter 528, Acts of the 75th Legislature, Regular Session, 1997~~].

3-40 (d) Before adopting or amending a rule under this section,
 3-41 the commission shall consider the recommendations of the Electronic
 3-42 Recording Advisory Committee established under Section 195.008.

3-43 (e) Notwithstanding Sections 43.017 and 43.018, Business &
 3-44 Commerce Code, a county clerk may accept any filed electronic
 3-45 record, as defined by Section 43.002, Business & Commerce Code, or
 3-46 electronic document and may electronically record that electronic
 3-47 document or record if the filing and recording of that electronic
 3-48 document or record complies with rules adopted by the commission
 3-49 under this section.

3-50 Sec. 195.003. PERSONS AUTHORIZED TO FILE ELECTRONICALLY.
 3-51 The following persons may file electronic documents or other
 3-52 documents electronically for recording with a county clerk that
 3-53 accepts electronic filing and recording under this chapter:

3-54 (1) an attorney licensed in this state;

3-55 (2) a bank, savings and loan association, savings
 3-56 bank, or credit union doing business under laws of the United States
 3-57 or this state;

3-58 (3) a federally chartered lending institution, a
 3-59 federal government-sponsored entity, an instrumentality of the
 3-60 federal government, or a person approved as a mortgagee by the
 3-61 United States to make federally insured loans;

3-62 (4) a person licensed to make regulated loans in this
 3-63 state;

3-64 (5) a title insurance company or title insurance agent
 3-65 licensed to do business in this state; or

3-66 (6) an agency of this state.

3-67 Sec. 195.004. NOTICE OF CONFIRMATION. (a) A county clerk
 3-68 that accepts electronic filing and recording under this chapter
 3-69 shall confirm or reject an electronic filing of an electronic

4-1 document or other instrument not later than the first business day
4-2 after the date the electronic document or other [an] instrument is
4-3 filed. Notice under this section must be made:

4-4 (1) by electronic means if possible; or
4-5 (2) if notice under Subdivision (1) is not possible,
4-6 by telephone or electronic facsimile machine.

4-7 (b) If the county clerk fails to provide notice of rejection
4-8 within the time provided by Subsection (a), the electronic document
4-9 or other instrument is considered accepted for filing and may not
4-10 subsequently be rejected.

4-11 Sec. 195.005. TIME ELECTRONIC DOCUMENT OR OTHER INSTRUMENT
4-12 CONSIDERED FILED OR RECORDED. An electronic document or other
4-13 instrument that is recorded electronically under this chapter is
4-14 considered to be recorded in compliance with a law relating to the
4-15 recording of electronic documents or other instruments as of the
4-16 county clerk's business day on which the electronic document or
4-17 other instrument is filed electronically. An electronic document
4-18 or other instrument filed electronically under this chapter must be
4-19 recorded as timely as an instrument filed by any other means.

4-20 Sec. 195.006. ADDITIONAL FEE PROHIBITED. The fee to file or
4-21 record an electronic document or other instrument electronically
4-22 under this chapter is the same as the fee for filing or recording
4-23 the instrument by other means, and a county clerk may not charge an
4-24 additional fee for filing or recording an electronic document or
4-25 other instrument electronically under this chapter.

4-26 Sec. 195.007. ACCESS TO ELECTRONIC DOCUMENT OR OTHER
4-27 INSTRUMENT RECORDED ELECTRONICALLY. (a) An electronic document
4-28 or other instrument filed or recorded electronically must be
4-29 available for public inspection in the same manner and at the same
4-30 time as an instrument filed or recorded by other means.

4-31 (b) The county clerk shall provide a requestor, as defined
4-32 by Section 552.003, Government Code, of an electronic document or
4-33 other instrument filed or recorded electronically under this
4-34 chapter with electronic copies of the electronic document or other
4-35 instrument in a form that is capable of being processed by the use
4-36 of technology that is generally available and nonproprietary in
4-37 nature. The county clerk shall provide the copies to the requestor
4-38 at the cost of producing the copies in accordance with Section
4-39 552.262, Government Code.

4-40 Sec. 195.009. FILING. For purposes of this chapter, an
4-41 electronic document or other instrument is filed with the county
4-42 clerk when it is received by the county clerk, unless the county
4-43 clerk rejects the filing within the time and manner provided by this
4-44 chapter and rules adopted under this chapter.

4-45 SECTION 5. (a) The change in law made by this Act applies
4-46 only to a document that is filed for recording on or after the
4-47 effective date of this Act. A document that is filed for recording
4-48 before the effective date of this Act is covered by the law in
4-49 effect at the time the document was filed, and that law is continued
4-50 in effect for that purpose.

4-51 (b) A rule adopted before the effective date of this Act by
4-52 the Texas State Library and Archives Commission under Chapter 195,
4-53 Local Government Code, applies to an electronic document filed for
4-54 recording in accordance with Chapter 15, Property Code, as added by
4-55 this Act, on or after the effective date of this Act.

4-56 SECTION 6. This Act takes effect September 1, 2005.

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