S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

I N A S S E M B L Y

February 18, 2011

Introduced by M. of A. CASTELLI -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state technology law, the real property law and the civil practice law and rules, in relation to permitting electronic recording of instruments affecting real property

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivisions 3 and 4 of section 307 of the state technology law, such section as renumbered by chapter 437 of the laws of 2004, are amended to read as follows:

3. [To any conveyance or other instrument recordable under article nine of the real property law.

4.] To any other document that the electronic facilitator has specifically excepted, pursuant to the rules and regulations of the electronic facilitator, from the application of this article.

S 2. Section 290 of the real property law, subdivision 4 as amended by chapter 569 of the laws of 1925, subdivision 5 as amended by chapter 317 of the laws of 1943 and subdivision 6 as renumbered by chapter 227 of the laws of 1926, is amended to read as follows:

S 290. Definitions; effect of article. 1. The term "real property," as used in this article, includes lands, tenements and hereditaments and chattels real, except a lease for a term not exceeding three years.

2. The term "purchaser" includes every person to whom any estate or interest in real property is conveyed for a valuable consideration, and every assignee of a mortgage, lease or other conditional estate.

3. The term "conveyance" includes every written instrument, by which any estate or interest in real property is created, transferred, mortgaged or assigned, or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument postponing or subor-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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dinating a mortgage lien; except a will, a lease for a term not exceeding three years, an executory contract for the sale or purchase of lands, and an instrument containing a power to convey real property as the agent or attorney for the owner of such property.

4. The term "recording officer" means the county clerk of the county, except in a county having a register, where it means the register of the county.

5. "Recording" or "recorded" means the entry, at length, upon the pages of the proper record books in a plain and legible hand writing, or in print or in symbols of drawing or by photographic process or partly in writing, partly in printing, partly in symbols of drawing or partly by photographic process or by any combination of writing, printing, drawing or photography or either or any two of them, OR BY AN ELECTRONIC PROCESS BY WHICH A RECORD OR INSTRUMENT AFFECTING REAL PROPERTY, AFTER DELIVERY IS INCORPORATED INTO THE PUBLIC RECORD. "Recording" or "recorded" also means the reproduction of instruments by microphotography or other photographic process on film which is kept in appropriate files.

6. "ELECTRONIC" MEANS OF OR RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC OR SIMILAR CAPABILITIES.

7. "ELECTRONIC RECORD" MEANS INFORMATION EVIDENCING ANY ACT, TRANSACTION, OCCURRENCE, EVENT OR OTHER ACTIVITY, PRODUCED OR STORED BY ELECTRONIC MEANS AND CAPABLE OF BEING ACCURATELY REPRODUCED IN FORMS PERCEPTIBLE BY HUMAN SENSORY CAPABILITIES.

8. "ELECTRONIC SIGNATURE" MEANS AN ELECTRONIC SOUND, SYMBOL, OR PROCESS, ATTACHED TO OR LOGICALLY ASSOCIATED WITH AN ELECTRONIC RECORD AND EXECUTED OR ADOPTED BY A PERSON WITH THE INTENT TO SIGN THE RECORD.

9. "PAPER DOCUMENT" MEANS A DOCUMENT IN A FORM THAT IS NOT ELECTRONIC.

10. "DIGITIZED PAPER DOCUMENT" MEANS A DIGITIZED IMAGE OF A PAPER DOCUMENT THAT ACCURATELY DEPICTS THE INFORMATION ON THE PAPER DOCUMENT IN A FORMAT THAT CANNOT BE ALTERED WITHOUT DETECTION.

11. "WET SIGNATURE" MEANS A SIGNATURE AFFIXED IN INK OR PENCIL OR OTHER MATERIAL TO A PAPER DOCUMENT.

12. This article does not apply to leases for life or lives, or for years, heretofore made, of lands in either of the counties of Albany, Ulster, Sullivan, Herkimer, Dutchess, Columbia, Delaware or Schenectady.

S 3. The real property law is amended by adding a new section 291-i to read as follows:

S 291-I. VALIDITY OF ELECTRONIC RECORDING. 1. NOTWITHSTANDING ANY LAW TO THE CONTRARY, (A) WHERE A LAW, RULE OR REGULATION REQUIRES, AS A CONDITION FOR RECORDING, THAT AN INSTRUMENT AFFECTING REAL PROPERTY BE AN ORIGINAL, BE ON PAPER OR ANOTHER TANGIBLE MEDIUM OR BE IN WRITING, THE REQUIREMENT IS SATISFIED BY A DIGITIZED PAPER DOCUMENT OR AN ELECTRONIC RECORD OF SUCH INSTRUMENT;

(B) WHERE A LAW, RULE OR REGULATION REQUIRES, AS A CONDITION FOR RECORDING, THAT AN INSTRUMENT AFFECTING REAL PROPERTY BE SIGNED, THE REQUIREMENT IS SATISFIED, WHERE THE INSTRUMENT EXISTS AS A DIGITIZED PAPER DOCUMENT, IF THE DIGITIZED IMAGE OF A WET SIGNATURE OF THE PERSON EXECUTING SUCH INSTRUMENT APPEARS ON SUCH DIGITIZED PAPER DOCUMENT OR, WHERE THE INSTRUMENT EXISTS AS AN ELECTRONIC RECORD, IF THE INSTRUMENT IS SIGNED BY USE OF AN ELECTRONIC SIGNATURE;

(C) WHERE A LAW, RULE OR REGULATION REQUIRES, AS A CONDITION OF RECORDING, THAT AN INSTRUMENT AFFECTING REAL PROPERTY OR A SIGNATURE ASSOCIATED WITH SUCH AN INSTRUMENT BE NOTARIZED, ACKNOWLEDGED, VERIFIED, WITNESSED OR MADE UNDER OATH, THE SIGNATURE REQUIREMENT IS SATISFIED IF:

(I) THE DIGITIZED IMAGE OF A WET SIGNATURE OF THE PERSON AUTHORIZED TO PERFORM THAT ACT AND ANY STAMP, IMPRESSION OR SEAL REQUIRED BY LAW TO BE INCLUDED, APPEARS ON A DIGITIZED PAPER DOCUMENT OF SUCH INSTRUMENT; OR (II) 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 AN ELECTRONIC RECORD OF SUCH INSTRUMENT, PROVIDED, HOWEVER THAT NO PHYSICAL OR ELECTRONIC IMAGE OF A STAMP, IMPRESSION OR SEAL SHALL BE REQUIRED TO ACCOMPANY SUCH ELECTRONIC SIGNATURE.

(D) WHERE A LAW, RULE OR REGULATION REQUIRES, AS A CONDITION OF RECORDING AN INSTRUMENT AFFECTING REAL PROPERTY, THAT ANY ACCOMPANYING DOCUMENT BE FILED THEREWITH, THE REQUIREMENT IS SATISFIED IF, IN THE CASE OF RECORDING BY ELECTRONIC MEANS, A DIGITIZED PAPER DOCUMENT OR ELECTRONIC RECORD OF ANY SUCH ACCOMPANYING DOCUMENT IS PRESENTED TO THE RECORDING OFFICER AT THE SAME TIME AS SUCH INSTRUMENT IS RECORDED BY ELECTRONIC MEANS; PROVIDED THAT EACH SUCH DOCUMENT OR RECORD SHALL BE PRESENTED TO THE RECORDING OFFICER AS A SEPARATE DIGITIZED PAPER DOCUMENT OR ELECTRONIC RECORD UNTO ITSELF.

2. (A) A RECORDING OFFICER MAY RECORD A DIGITIZED PAPER DOCUMENT PURSUANT TO THIS SECTION IF SUCH DOCUMENT IS AFFIRMED AS A TRUE, ACCURATE AND COMPLETE COPY OF THE ORIGINAL PAPER DOCUMENT. THE AFFIRMATION CONCERNING SUCH DIGITIZED PAPER DOCUMENT SHALL BE MADE BY THE CUSTODIAN OF THE ORIGINAL PAPER DOCUMENT AND THE SIGNATURE OF THAT PERSON SHALL BE ACKNOWLEDGED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THIS ARTICLE GOVERNING ACKNOWLEDGEMENT OR PROOF OF A CONVEYANCE OF REAL PROPERTY. THE AFFIRMATION SHALL BE TRANSMITTED WITH SUCH DIGITIZED PAPER DOCUMENT AND SHALL BE RECORDED BY THE RECORDING OFFICER AS A PART OF THE DOCUMENT BEING RECORDED. THE AFFIRMATION CONCERNING SUCH DIGITIZED PAPER DOCUMENT MUST CONFORM SUBSTANTIALLY WITH THE FOLLOWING FORM, THE BLANKS BEING PROPERLY FILLED:

AFFIRMATION CONCERNING DIGITIZED PAPER DOCUMENTS PRESENTED FOR RECORDING

STATE OF NEW YORK)
SS:
COUNTY OF _____)

I _____ HEREBY AFFIRM, THAT THE DIGITIZED PAPER DOCUMENT(S) PRESENTED HEREWITH WAS (WERE) CREATED BY A SOFTWARE APPLICATION OR OTHER ELECTRONIC PROCESS WHICH STORES AN IMAGE OF THE ORIGINAL PAPER DOCUMENT AND WHICH DOES NOT PERMIT ADDITIONS, DELETIONS, OR CHANGES TO THE DIGITIZED IMAGE, OR IF ADDITIONS, DELETIONS, OR CHANGES ARE PERMITTED, A MEDIA TRAIL EXISTS WHICH CREATES AN ELECTRONIC RECORD WHICH MAKES IT POSSIBLE TO IDENTIFY THESE CHANGES. I AFFIRM THAT I HAVE PERSONALLY EXAMINED ALL PAGES OF THE ORIGINAL PAPER DOCUMENT(S) WHICH CONTAIN(S) A WET SIGNATURE AND COMPARED THEM TO ALL PAGES OF THE DIGITIZED PAPER DOCUMENT PRESENTED HEREWITH FOR RECORDING AND THE ATTACHED DIGITIZED PAPER DOCUMENT IS A TRUE, ACCURATE, AND COMPLETE ELECTRONIC IMAGE OF THE ORIGINAL PAPER DOCUMENT. I FURTHER AFFIRM THAT EACH SIGNATURE OR MARK ON THE ORIGINAL PAPER DOCUMENT IS A WET SIGNATURE OR MARK.

SUBSCRIBED AND AFFIRMED, UNDER THE PENALTY OF PERJURY,

by _____ on _____
PRINT NAME OF AFFIRMANT INSERT DATE

_____
SIGNATURE OF AFFIRMANT

ON THE _____ DAY OF _____ IN THE YEAR _____ BEFORE ME PERSONALLY APPEARED _____, TO MAKE THIS AFFIRMATION CONCERNING THE

DIGITIZED PAPER DOCUMENT PRESENTED FOR RECORDING AND/OR FILING, WITH WHOM I AM PERSONALLY ACQUAINTED, WHO, BEING BY ME FIRST DULY SWORN, DID DEPOSE AND SAY THAT HE/SHE RESIDES IN _____; AND THAT HE/SHE IS THE INDIVIDUAL DESCRIBED IN AND WHO EXECUTED THE FOREGOING AFFIRMATION CONCERNING DIGITIZED PAPER DOCUMENTS PRESENTED FOR RECORDING OR FILING.

(SIGNATURE OF NOTARY)

(B) FOR PURPOSES OF THIS SUBDIVISION, A CUSTODIAN OF THE ORIGINAL PAPER DOCUMENTS WHO MAKES THE AFFIRMATION REQUIRED BY THIS SUBDIVISION SHALL NOT BE REQUIRED TO KEEP, HOLD OR MAINTAIN SUCH DOCUMENTS AFTER THE DATE ON WHICH THE DIGITIZED PAPER DOCUMENTS OF SUCH ORIGINAL PAPER DOCUMENTS ARE RECORDED OR FILED.

3. NOTHING IN THIS SECTION OR ANY OTHER PROVISION OF LAW SHALL BE CONSTRUED TO REQUIRE THE RECORDING BY ELECTRONIC MEANS OF INSTRUMENTS AFFECTING REAL PROPERTY.

4. WHERE ANY RECORDING OFFICER PERMITS OR REQUIRES INSTRUMENTS AFFECTING REAL PROPERTY AND ANY ACCOMPANYING DOCUMENTS TO BE PRESENTED FOR RECORDING OR FILING AS DIGITIZED PAPER DOCUMENTS OR ELECTRONIC RECORDS PURSUANT TO THIS SECTION, SUCH RECORDING BY ELECTRONIC MEANS SHALL BE IN ACCORDANCE WITH THE RULES, REGULATIONS, GUIDELINES, STANDARDS AND POLICIES ESTABLISHED BY THE ELECTRONIC FACILITATOR PURSUANT TO SUBDIVISION FIVE OF THIS SECTION.

5. IN ORDER TO ENSURE CONSISTENCY IN THE STANDARDS AND PRACTICES OF, AND THE TECHNOLOGY USED BY RECORDING OFFICERS IN THE STATE, THE ELECTRONIC FACILITATOR, AS DESCRIBED IN SECTION THREE HUNDRED THREE OF THE STATE TECHNOLOGY LAW, SHALL, CONSISTENT WITH THE PROVISIONS OF ARTICLE THREE OF THE STATE TECHNOLOGY LAW, PROMULGATE RULES, REGULATIONS, GUIDELINES, STANDARDS AND POLICIES, AND AMENDMENTS THERETO, AS APPROPRIATE GOVERNING THE USE AND ACCEPTANCE OF DIGITIZED PAPER DOCUMENTS, ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES UNDER THIS ARTICLE, TAKING INTO CONSIDERATION: (A) THE MOST RECENT STANDARDS PROMULGATED BY NATIONAL STANDARD-SETTING BODIES SUCH AS, WITHOUT LIMITATION, THE PROPERTY RECORDS INDUSTRY ASSOCIATION; (B) THE VIEWS OF INTERESTED PERSONS AND GOVERNMENTAL OFFICIALS AND ENTITIES, INCLUDING BUT NOT LIMITED TO RECORDING OFFICERS AND REPRESENTATIVES OF THE STATE TITLE, LEGAL AND BANKING INDUSTRIES; AND (C) THE NEEDS OF COUNTIES OF VARYING SIZE, POPULATION, AND RESOURCES. SUCH PROMULGATION SHALL INCLUDE BUT NOT BE LIMITED TO STANDARDS REQUIRING ADEQUATE INFORMATION SECURITY PROTECTION TO ENSURE THAT ELECTRONIC RECORDS OF INSTRUMENTS AFFECTING REAL PROPERTY DOCUMENTS ARE ACCURATE, AUTHENTIC, ADEQUATELY PRESERVED AND RESISTANT TO TAMPERING.

6. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO AUTHORIZE A RECORDING OFFICER TO FURNISH DIGITIZED PAPER DOCUMENTS OF THE REPORTS REQUIRED BY SECTION FIVE HUNDRED SEVENTY-FOUR OF THE REAL PROPERTY TAX LAW. SUCH REPORTS SHALL BE FURNISHED AS PAPER DOCUMENTS WITH THE REQUISITE NOTATIONS THEREON, EXCEPT WHERE THE STATE BOARD OF REAL PROPERTY SERVICES HAS AGREED TO ACCEPT DATA SUBMISSIONS IN LIEU THEREOF OR HAS PROVIDED FOR THE ELECTRONIC TRANSMISSION OF SUCH DATA PURSUANT TO LAW.

S 4. Section 317 of the real property law is amended to read as follows:

S 317. Order of recording. Every instrument, entitled to be recorded, must be recorded by the recording officer in the order and as of the time of its delivery to him OR HER therefor, and is considered recorded from the time of such delivery; PROVIDED, HOWEVER, THAT A DIGITIZED PAPER DOCUMENT OR AN ELECTRONIC RECORD SHALL BE CONSIDERED DELIVERED FOR PURPOSES OF THIS SECTION AT THE DATE AND TIME OF RECEIPT INDICATED ON AN

ELECTRONIC OR OTHER WRITTEN NOTIFICATION WHICH SHALL BE PROVIDED BY THE RECORDING OFFICER IMMEDIATELY UPON RECEIPT OF A DIGITIZED PAPER DOCUMENT OR ELECTRONIC RECORD.

S 5. Clause 1 of subparagraph a of paragraph 4 of subdivision (a) of section 8021 of the civil practice law and rules, as amended by chapter 288 of the laws of 2008, is amended to read as follows:

(1) For recording, entering, indexing and endorsing a certificate on any instrument, five dollars, and, in addition thereto, three dollars for each page or portion of a page, and fifty cents for each additional town, city, block or other indices in which such instrument is to be indexed as directed by the endorsement thereon. On the assignment of a mortgage which assigns more than one mortgage or on a release of lease which releases more than one lease, then there shall be an additional fee of three dollars for every mortgage assigned or lease released in excess of one. PROVIDED, HOWEVER, THAT THERE SHALL BE NO FEE FOR A PAGE TRANSMITTED FOR RECORDING OR FILING THAT CONTAINS ONLY THE CERTIFICATION AS TO AUTHENTICITY OF DIGITIZED PAPER DOCUMENTS PRESENTED FOR RECORDING OR FILING PURSUANT TO SUBDIVISION TWO OF SECTION TWO HUNDRED NINETY-ONE-I OF THE REAL PROPERTY LAW.

S 6. This act shall take effect on the two hundred eightieth day after it shall have become a law; provided, however that the electronic facilitator shall be authorized to promulgate rules, regulations, guidelines, standards and policies to effectuate this act prior to such effective date.