

2373--A

Cal. No. 142

2011-2012 Regular Sessions

I N S E N A T E

January 19, 2011

Introduced by Sens. STEWART-COUSINS, AVELLA, MAZIARZ, OPPENHEIMER, RITCHIE -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the state technology law and the real property law, 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:

1 Section 1. Subdivisions 3 and 4 of section 307 of the state technology  
2 law, such section as renumbered by chapter 437 of the laws of 2004, are  
3 amended to read as follows:  
4 3. [To any conveyance or other instrument recordable under article  
5 nine of the real property law.  
6 4.] To any other document that the electronic facilitator has specif-  
7 ically excepted, pursuant to the rules and regulations of the electronic  
8 facilitator, from the application of this article.  
9 S 2. Section 290 of the real property law, subdivision 4 as amended by  
10 chapter 569 of the laws of 1925, subdivision 5 as amended by chapter 317  
11 of the laws of 1943 and subdivision 6 as renumbered by chapter 227 of  
12 the laws of 1926, is amended to read as follows:  
13 S 290. Definitions; effect of article. 1. The term "real property," as  
14 used in this article, includes lands, tenements and hereditaments and  
15 chattels real, except a lease for a term not exceeding three years.  
16 2. The term "purchaser" includes every person to whom any estate or  
17 interest in real property is conveyed for a valuable consideration, and  
18 every assignee of a mortgage, lease or other conditional estate.

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

LBD07544-11-1

1 3. The term "conveyance" includes every written instrument, by which  
2 any estate or interest in real property is created, transferred, mort-  
3 gaged or assigned, or by which the title to any real property may be  
4 affected, including an instrument in execution of a power, although the  
5 power be one of revocation only, and an instrument postponing or subor-  
6 dinating a mortgage lien; except a will, a lease for a term not exceed-  
7 ing three years, an executory contract for the sale or purchase of  
8 lands, and an instrument containing a power to convey real property as  
9 the agent or attorney for the owner of such property.

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

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

24 6. "ELECTRONIC" MEANS OF OR RELATING TO TECHNOLOGY HAVING ELECTRICAL,  
25 DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC OR SIMILAR CAPA-  
26 BILITIES.

27 7. "ELECTRONIC RECORD" MEANS INFORMATION EVIDENCING ANY ACT, TRANS-  
28 ACTION, OCCURRENCE, EVENT OR OTHER ACTIVITY, PRODUCED OR STORED BY ELEC-  
29 TRONIC MEANS AND CAPABLE OF BEING ACCURATELY REPRODUCED IN FORMS PERCEP-  
30 TIBLE BY HUMAN SENSORY CAPABILITIES.

31 8. "ELECTRONIC SIGNATURE" MEANS AN ELECTRONIC SOUND, SYMBOL, OR PROC-  
32 ESS, ATTACHED TO OR LOGICALLY ASSOCIATED WITH AN ELECTRONIC RECORD AND  
33 EXECUTED OR ADOPTED BY A PERSON WITH THE INTENT TO SIGN THE RECORD.

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

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

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

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

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

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

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

1 WHERE THE INSTRUMENT EXISTS AS AN ELECTRONIC RECORD, IF THE INSTRUMENT  
2 IS SIGNED BY USE OF AN ELECTRONIC SIGNATURE;

3 (C) WHERE A LAW, RULE OR REGULATION REQUIRES, AS A CONDITION OF  
4 RECORDING, THAT AN INSTRUMENT AFFECTING REAL PROPERTY OR A SIGNATURE  
5 ASSOCIATED WITH SUCH AN INSTRUMENT BE NOTARIZED, ACKNOWLEDGED, VERIFIED,  
6 WITNESSED OR MADE UNDER OATH, THE SIGNATURE REQUIREMENT IS SATISFIED IF:  
7 (I) THE DIGITIZED IMAGE OF A WET SIGNATURE OF THE PERSON AUTHORIZED TO  
8 PERFORM THAT ACT AND ANY STAMP, IMPRESSION OR SEAL REQUIRED BY LAW TO BE  
9 INCLUDED, APPEARS ON A DIGITIZED PAPER DOCUMENT OF SUCH INSTRUMENT; OR  
10 (II) THE ELECTRONIC SIGNATURE OF THE PERSON AUTHORIZED TO PERFORM THAT  
11 ACT, AND ALL OTHER INFORMATION REQUIRED TO BE INCLUDED, IS ATTACHED TO  
12 OR LOGICALLY ASSOCIATED WITH AN ELECTRONIC RECORD OF SUCH INSTRUMENT,  
13 PROVIDED, HOWEVER THAT NO PHYSICAL OR ELECTRONIC IMAGE OF A STAMP,  
14 IMPRESSION OR SEAL SHALL BE REQUIRED TO ACCOMPANY SUCH ELECTRONIC SIGNA-  
15 TURE.

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

25 2. A DIGITIZED PAPER DOCUMENT OR DOCUMENTS SHALL BE CREATED USING A  
26 SOFTWARE APPLICATION OR OTHER ELECTRONIC PROCESS WHICH STORES AN IMAGE  
27 OF THE ORIGINAL PAPER DOCUMENT OR DOCUMENTS, AND WHICH DOES NOT PERMIT  
28 ADDITIONS, DELETIONS OR OTHER CHANGES TO THE DIGITIZED IMAGE, OR IF  
29 ADDITIONS, DELETIONS OR CHANGES ARE PERMITTED, A MEDIA TRAIL EXISTS  
30 WHICH CREATES AN ELECTRONIC RECORD WHICH MAKES IT POSSIBLE TO IDENTIFY  
31 THESE CHANGES.

32 3. NOTHING IN THIS SECTION OR ANY OTHER PROVISION OF LAW SHALL BE  
33 CONSTRUED TO REQUIRE THE RECORDING BY ELECTRONIC MEANS OF INSTRUMENTS  
34 AFFECTING REAL PROPERTY. THE DECISION BY EACH COUNTY CLERK TO PARTIC-  
35 IPATE IN ELECTRONIC RECORDING IS DISCRETIONARY. ONCE A COUNTY CLERK  
36 PERMITS ELECTRONIC RECORDING, THE COUNTY SHALL ACCEPT SUCH ELECTRONIC  
37 RECORDINGS.

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

44 5. IN ORDER TO ENSURE CONSISTENCY IN THE STANDARDS AND PRACTICES OF,  
45 AND THE TECHNOLOGY USED BY RECORDING OFFICERS IN THE STATE, THE ELEC-  
46 TRONIC FACILITATOR, AS DESCRIBED IN SECTION THREE HUNDRED THREE OF THE  
47 STATE TECHNOLOGY LAW, SHALL, CONSISTENT WITH THE PROVISIONS OF ARTICLE  
48 THREE OF THE STATE TECHNOLOGY LAW, PROMULGATE RULES AND REGULATIONS, AND  
49 AMENDMENTS THERETO, AS APPROPRIATE GOVERNING THE USE AND ACCEPTANCE OF  
50 DIGITIZED PAPER DOCUMENTS, ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES  
51 UNDER THIS ARTICLE. SUCH AUTHORITY SHALL ADDRESS AND BE LIMITED TO  
52 STANDARDS REQUIRING ADEQUATE INFORMATION SECURITY PROTECTION TO ENSURE  
53 THAT ELECTRONIC RECORDS OF INSTRUMENTS AFFECTING REAL PROPERTY DOCUMENTS  
54 ARE ACCURATE, AUTHENTIC, ADEQUATELY PRESERVED FOR LONG-TERM ELECTRONIC  
55 STORAGE AND RESISTANT TO TAMPERING. WHEN PROMULGATING RULES AND REGU-  
56 LATIONS, THE ELECTRONIC FACILITATOR MAY TAKE INTO CONSIDERATION: (A) THE

1 MOST RECENT STANDARDS PROMULGATED BY NATIONAL STANDARD-SETTING BODIES  
2 SUCH AS, WITHOUT LIMITATION, THE PROPERTY RECORDS INDUSTRY ASSOCIATION;  
3 (B) THE VIEWS OF INTERESTED PERSONS AND GOVERNMENTAL OFFICIALS AND ENTI-  
4 TIES, INCLUDING BUT NOT LIMITED TO RECORDING OFFICERS AND REPRESEN-  
5 TATIVES OF THE STATE TITLE, LEGAL AND BANKING INDUSTRIES; AND (C) THE  
6 NEEDS OF COUNTIES OF VARYING SIZE, POPULATION, AND RESOURCES.

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

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

16 S 317. Order of recording. Every instrument, entitled to be recorded,  
17 must be recorded by the recording officer in the order and as of the  
18 time of its delivery to him OR HER therefor, DURING BUSINESS HOURS MAIN-  
19 TAINED BY THE RECORDING OFFICER, and is considered recorded from the  
20 time of such delivery; PROVIDED, HOWEVER, THAT A DIGITIZED PAPER DOCU-  
21 MENT OR AN ELECTRONIC RECORD SHALL BE CONSIDERED DELIVERED FOR PURPOSES  
22 OF THIS SECTION AT THE DATE AND TIME OF RECEIPT INDICATED ON AN ELEC-  
23 TRONIC OR OTHER WRITTEN NOTIFICATION WHICH SHALL BE PROVIDED BY THE  
24 RECORDING OFFICER IMMEDIATELY UPON RECEIPT OF A DIGITIZED PAPER DOCUMENT  
25 OR ELECTRONIC RECORD.

26 S 5. This act shall take effect on the three hundred sixty-fifth day  
27 after it shall have become a law; provided, however that the electronic  
28 facilitator shall be authorized to promulgate rules, regulations, guide-  
29 lines, standards and policies to effectuate this act prior to such  
30 effective date.