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Chapter No. 364
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HOUSE BILL NO. 599

Originated in House Don Richardson Clerk

HOUSE BILL NO. 599

AN ACT TO CREATE THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE FOR THE VALIDITY OF ELECTRONIC DOCUMENTS; TO PROVIDE FOR THE RECORDING OF ELECTRONIC DOCUMENTS; TO CREATE THE MISSISSIPPI ELECTRONIC RECORDING COMMISSION; TO PROVIDE FOR ADMINISTRATION AND STANDARDS; TO PROVIDE FOR UNIFORMITY; TO CLARIFY THE RELATION OF THIS ACT TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT; TO AMEND SECTIONS 89-3-1, 89-5-1 AND 89-5-3, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

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

SECTION 1. SHORT TITLE. This act may be cited as the Uniform Real Property Electronic Recording Act.

SECTION 2. DEFINITIONS. In this act:

(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 land records maintained by the chancery 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 the chancery 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.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company,

association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(6) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. VALIDITY OF ELECTRONIC DOCUMENTS.

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this act.

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

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if 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 the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

SECTION 4. RECORDING OF DOCUMENTS.

(a) In this section, "paper document" means a document that is received by the chancery clerk in a form that is not electronic.

(b) A chancery clerk:

(1) Who implements any of the functions listed in this section shall do so in compliance with standards established by the commission.

(2) May receive, index, store, archive, and transmit electronic documents.

(3) May provide for access to, and for search and retrieval of, documents and information by electronic means.

(4) Who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.

(5) May convert paper documents accepted for recording into electronic form.

(6) May convert into electronic form information recorded before the chancery clerk began to record electronic documents.

(7) May accept electronically any fee or tax that the chancery clerk is authorized to collect.

(8) May agree with other officials of a state or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.

SECTION 5. ADMINISTRATION AND STANDARDS.

(a) The Mississippi Electronic Recording Commission consisting of eleven (11) members is created to adopt standards to implement this act. The membership of the commission shall comprise the following:

(1) A person appointed by the Governor;

(2) A person appointed by the Lieutenant Governor;

(3) A person appointed by the Speaker of the House of Representatives;

(4) Three (3) members of the Chancery Clerks' Association;

(5) A person appointed by the Mississippi Association of Supervisors;

(6) The director of the Mississippi Information Technology Services or his designee; and

(7) Three (3) persons appointed by the Secretary of State.

Appointed members of the commission shall serve a term of two (2) years from the date of appointment as evidenced by letters to the Secretary of the Senate and the Clerk of the House of Representatives, with the appointment letter last received being the effective date of appointment. Any member serving by virtue of appointment shall serve until a successor is duly appointed. Appointed members shall be eligible for reappointment at the end of their terms.

(b) Appointments are to be made no later than October 1, 2011, and the initial meeting of the commission is to be held no later than November 1, 2011. The initial meeting is to be called at a time and place designated by the Secretary of State who shall preside until a permanent chair is elected. The election of a permanent chair shall be held at the initial meeting. The chair shall serve during the chair's tenure but shall not serve consecutive terms as chair. The commission shall establish rules to govern the conduct of its meetings and shall elect such officers as provided in the rules. A quorum shall consist of no fewer than six (6) members.

(c) To keep the standards and practices of chancery clerks in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this act and to keep the technology used by chancery clerks in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this act, the commission, so far as is consistent with the purposes, policies, and provisions of this act, in adopting, amending, and repealing standards shall consider:

(1) Standards and practices of other jurisdictions;

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

(3) The views of interested persons and governmental officials and entities;

(4) The needs of counties of varying size, population, and resources; and

(5) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

SECTION 6. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 7. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 USCS Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 USCS Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 USCS Section 7003(b)).

SECTION 8. Section 89-3-1, Mississippi Code of 1972, is amended as follows:

89-3-1. Except in cases governed by the Uniform Commercial Code, the provisions of Sections 1 through 7 of House Bill No. 599, 2011 Regular Session, or otherwise specially provided for by law, a written instrument of or concerning the sale of lands, whether the same be made for passing an estate of freehold or inheritance, or for a term of years, or for any other purpose, or any writing conveying personal estate, shall not be admitted to record in the clerk's office unless the execution thereof be first acknowledged or proved, and the acknowledgment or proof duly certified by an officer competent to take the same in the manner

directed by this chapter; and any such instrument which is admitted to record without such acknowledgment or proof shall not be notice to creditors or subsequent purchasers for valuable consideration.

SECTION 9. Section 89-5-1, Mississippi Code of 1972, is amended as follows:

89-5-1. Except as provided by Sections 1 through 7 of House Bill No. 599, 2011 Regular Session, a conveyance of land shall not be good against a purchaser for a valuable consideration without notice, or any creditor, unless it be acknowledged by the party who executed it, or be proved by one or more of the subscribing witnesses to it that such party signed and delivered the same as his or her voluntary act before some officer authorized to take such acknowledgment or proof; and a certificate of such acknowledgment or proof shall be written upon or under the conveyance, and be signed by the officer before whom it was made, and be lodged with the clerk of the chancery court of the county in which the lands are situated to be recorded; but after filing with the clerk, the priority of time of filing shall determine the priority of all conveyances of the same land as between the several holders of such conveyances.

SECTION 10. Section 89-5-3, Mississippi Code of 1972, is amended as follows:

89-5-3. Except as provided by Sections 1 through 7 of House Bill No. 599, 2011 Regular Session, all bargains and sales, and all other conveyances whatsoever of lands, whether made for passing an estate of freehold or inheritance, or for a term of years; and all instruments of settlement upon marriage wherein land, money, or other personality should be settled or covenanted to be left or paid at the death of the party, or otherwise; and all deeds of trust and mortgages whatsoever, shall be void as to all creditors and subsequent purchasers for a valuable consideration without notice, unless they be acknowledged or

proved and lodged with the clerk of the chancery court of the proper county, to be recorded in the same manner that other conveyances are required to be acknowledged or proved and recorded. Failure to file such instrument with the clerk for record shall prevent any claim of priority by the holder of such instrument over any similar recorded instrument affecting the same property, to the end that with reference to all instruments which may be filed for record under this section, the priority thereof shall be governed by the priority in time of the filing of the several instruments, in the absence of actual notice. But as between the parties and their heirs, and as to all subsequent purchasers with notice or without valuable consideration, said instruments shall nevertheless be valid and binding.

SECTION 11. This act shall take effect and be in force from and after July 1, 2011.

PASSED BY THE HOUSE OF REPRESENTATIVES
January 25, 2011

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 2, 2011

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR