



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/30/2021 4:42:00 PM

Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Secretary Of State TITLE-SERIES: 153-48
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 153-48 Real Property Electronic Recording Standards and Regulations

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code 39A-4-4.

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

HB 2086 (2020) created the Uniform Real Property Electronic Recording Act. The bill also created the Real Property Recording Standards Advisory Committee to develop the standards necessary to electronically records real property documents and promulgate this Rule for uniformity of application and construction of the Act.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/29/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/29/2021

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule is promulgated by the Real Property Electronic Standards Advisory Committee, and establishes uniform standards and practices for West Virginia county clerks that are harmonious with the standards and practices of recording offices in other jurisdictions that substantially enact the Uniform Real Property Electronic Recording Act.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Passage of HB 2086 (2020) and subsequent proposal by the Real Property Electronic Standards Advisory Committee.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/a.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/a.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/a.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/a.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Donald Kersey -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

SERIES 48
REAL PROPERTY ELECTRONIC RECORDING STANDARDS AND REGULATIONS

§153-48-1. General.

1.1. Scope. -- This rule promulgated by the Real Property Electronic Standards Advisory Committee establishes real property electronic recording standards and practices for West Virginia county clerks that are harmonious with the standards and practices of recording offices in other jurisdictions that substantially enact the Uniform Real Property Electronic Recording Act, and to keep the technology used by West Virginia county clerks compatible with technology used by recording offices in other jurisdictions that substantially enact this Act.

1.2. Authority. -- W. Va. Code § 39A-4-4.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2027.

§153-48-2. Definitions.

2.1. "Delivery Agent" means a party who enters into an agreement with a Participating Clerk to deliver an electronic document from a Submitter to a Participating Clerk and to return the recorded document to the Submitter.

2.2. "Document" means an instrument in a tangible, electronic, or other format, on which is recorded or inscribed on by means of letters, figures, or marks, which may be relied upon as the basis, proof, or support of the matter asserted within the instrument.

2.3. "Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

2.4. "Electronic Document" means a document that exists in an electronic format.

2.5. "Electronic Document Delivery System" means an automated system for the secure transmission of an electronic document between a Submitter and a Participating Clerk.

2.6. "Electronic Recording" means the delivery and return of an electronic document, using an Electronic Document Delivery System, for the purpose of recording that document via a Land Records Management System.

2.7. "Electronic Signature" means an electronic symbol, sound, or process, which is attached to or logically associated with a document and executed or adopted by a Person with the intent to sign the document.

2.8. “Land Records Management System” means a system for recording, indexing, accessing, and maintaining land records, which produces microfilm or other legally permitted formatted copies.

2.9. “Land Records Management System Vendor” means a party who sells or provides a Land Records Management System.

2.10. “Participating Clerk” means a county clerk who has elected to accept electronic documents for recording.

2.11. “Paper Document” means a document that is in a tangible format that is not electronic.

2.12. “PDF” or “Portable Document Format” means an electronic file format that allows documents to be viewed as they were intended to appear, which is a common format for image exchange and presentation of electronic documents.

2.13. “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, instrumentality, or any other legal or commercial entity.

2.14. “PRIA” means the Property Records Industry Association.

2.15. “Recording Information” means the information included in a document at the time such document is recorded, such as the date and time of receipt of such document for record, the name and county of the recording clerk, and the book and page of such document or other suitable indication of its location approved by a public records administrator.

2.16. “Submitter” means a person who requests a county clerk to accept, approve, or record a submitted electronic document.

2.17. “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

2.18. “TIFF” or “Tagged Image File Format” means a variable-resolution bitmapped image made up of individual dots or pixels, which is a common format for high-quality black and white, gray-scaled, or color graphics of any resolutions.

2.19. “XML” or “Extensible Markup Language” means an extensible document language for specifying document content, which is a metalanguage that allows a person to specify a document type definition and design customized markup languages for different classes of documents.

§ 153-48-3. Electronic Document Data Fields, Format, and Transmission.

3.1. Electronic document recording shall meet the technical standards for electronic document data fields and formats as prescribed by the Property Records Industry Association (PRIA) in the PRIA eRecording XML standard Version 2.4, as amended from time to time. This includes:

3.1.1. PRIA Request Version 2.4.2, August 2007;

3.1.2. PRIA Response Version 2.4.2, August 2007;

3.1.3. Document Version 2.4.1, October 2007; and

3.1.4. Notary Version 2.4.1, October 2007.

3.2. These standards are available from the Property Records Industry Association, 2501 Aerial Center Parkway Ste. 103, Morrisville, NC 27560, and at <http://www.PRIA.US/>.

3.3. Electronic Documents shall be transmitted and stored as either of the following:

3.3.1. TIFF or PDF files, in accordance with the TIFF 6.0 Specification, published by the International Organization for Standardization as ISO 12639:2004, Graphic technology – prepress digital data exchange – tag image file format for image technology (TIFF/IT), as amended from time to time; or

3.3.2. PDF 1.7 specification, published by the International Organization for Standardization as ISO 32000-1:2008, Document management – portable document format – Part 1: PDF 1.7, as amended from time to time.

3.4. Participating County Clerks may choose to adopt a standardized property record document format according to the PRIA Real Estate Document Formatting referenced by this rule.

§ 153-48-4. Electronic Notarization and Certification

4.1. Documents certified using electronic means shall conform to all applicable provisions of the West Virginia Code and standards established by the Secretary of State including but not limited to those set forth in W. Va. Code §§ 39-4-37 or 39-4-38 (last amended Regular Session 2021, eff. June 17, 2021).

§ 153-48-5. Electronic Recording Processing Requirements

5.1. A Participating Clerk shall provide notice of confirmation or rejection of an electronic recording to the Submitter through the locally adopted Electronic Document Delivery System.

5.1.1. A notice of confirmation shall include recording information for the electronic document accepted for recording, and shall identify that the electronic document is accepted for recording.

5.1.2. A notice of rejection shall include a brief explanation of the reason or reasons for rejection, and shall identify that the electronic document is rejected for recording.

5.1.3. If a Participating Clerk complies with the notice requirements, failure of a Submitter to receive actual notice of confirmation or rejection of a recording shall not affect the validity of the confirmation or rejection.

5.2. A Participating Clerk may contact a Submitter prior to sending a notice of confirmation or rejection regarding an electronic document submitted for recording. The delivery agent shall ensure that the Submitter includes telephone or e-mail contact information with each such submission.

5.3. First-to-File Priority Determination; Local Processing Policy Requirements:

5.3.1. Participating Clerks will accept all recordings permitted by law via in-person delivery, mail delivery, or electronic submission in the manner adopted by the local jurisdiction under a local processing policy.

5.3.2. For purposes of determining priority, Participating Clerks shall record all documents based on the order they are submitted to their office according to a local processing policy developed under this section.

5.3.3. Participating Clerks shall develop a local processing policy that details the formal chronological order that all recordings are deemed submitted according to the provisions of subsection 5.3.4 of this rule. The local processing policy shall ensure each recording has a stamp or other legally permitted logging mechanism that provides the date and time the recording is deemed submitted, whether the recording was submitted via in-person delivery, mail delivery, or electronic delivery, and the processing policy shall be published on the local jurisdiction's website and available in hard-copy format at the local jurisdiction's office.

5.3.4. The chronological order of recordings deemed submitted shall be determined based upon the following:

5.3.4.a. In-person submissions will be processed based on the position in the queue of other paper and electronic recording documents.

5.3.4.b. Mail-in submissions will be processed based on the time of day that the mail is regularly opened in the local jurisdiction's office.

5.3.4.c. Electronic submissions will be processed based on the time of day according to the Participating Clerks' local processing policy. Provided, that electronic submissions received two-hours or less before the close of the local jurisdiction's regular business hours may, when circumstances require, be processed on the next business day.

5.3.5. Notwithstanding the local processing policy, Participating Clerks may process recordings as efficiently as possible so long as the time submitted is the key factor when determining priority.

153-48-6. Security Requirements.

6.1. Participating Clerks, Delivery Agents, and Land Records Management System Vendors shall implement and maintain procedures to ensure the security of the electronic delivery system and for recording and maintaining electronic documents within the Participating Clerk's records.

6.2. Participating Clerks shall provide a secure method for accepting electronic documents through the Electronic Document Delivery System and for recording and maintaining electronic documents within the Participating Clerk's records.

6.3. The Electronic Document Delivery Systems shall protect against system and security failures, provide data back-ups, disaster recovery, and audit trail mechanisms. Delivery Agents shall provide audit trail information to Participating Clerks upon request.

6.4. The Electronic Document Delivery Systems shall not permit any unauthorized party to modify, manipulate, insert, or delete information in electronic documents or in the public record maintained by the Participating Clerk without detection.

6.5. If a breach in security is detected by the Participating Clerk, Delivery Agent, or Submitter, the party discovering the breach shall notify the other parties immediately. All parties shall work cooperatively and immediately to take remedial action, resolve the issues, and identify and rectify the vulnerability causing the breach.

6.6. A Delivery Agent shall implement and maintain security procedures for all electronic transmissions to a Participating Clerk through the Electronic Document Delivery System and shall be responsible for maintaining the security of the Electronic Document Delivery System within the office of such Delivery Agent.

§ 153-48-7. Record Retention, Preservation, and Disclosure.

7.1. Real property records recorded and indexed shall be maintained in accordance with all applicable provisions of the West Virginia Code and agency regulations, including but not limited to those set forth by the West Virginia Records Management and Preservation Board.

§ 153-48-8. Agreements and Procedures.

8.1. The Delivery Agent and the Participating Clerk shall enter into an agreement specifying the requirements for Electronic Document recording with the county. At a minimum, the agreement shall include the following items:

8.1.1. Accepted Electronic Document types;

8.1.2. Defined technical specifications for data formats, document formats, electronic transmissions, and security;

8.1.3. If used by the Participating Clerk, indexing fields required for each Electronic Document;

8.1.4. Electronic signature and notarization requirements;

8.1.5. Payment options for recording fees and applicable taxes;

8.1.6. Hours during which Electronic Documents will be accepted and processing schedules that affect order of acceptance;

8.1.7. Electronic Document acceptance and rejection requirements and procedures;

8.1.8. Terms defining the responsibility of the Delivery Agent to review the qualifications of each potential Submitter and to approve the potential Submitter prior to granting access to the Electronic Document Delivery Systems;

8.1.9. Terms defining the responsibility of the Delivery Agent to enter into an agreement with each approved Submitter, in which the Submitter agrees to submit Electronic Documents for recording in accordance with all applicable State statutes and rules and to maintain the security of the systems; and

8.1.10 Any other procedures or requirements deemed necessary by the Participating Clerk to fully implement the provisions of the applicable statutes and this rule.