

1 SB90  
2 105127-3  
3 By Senators Marsh, Dixon, and Bedford  
4 RFD: Governmental Affairs  
5 First Read: 03-FEB-09

1 SB90

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4 ENROLLED, An Act,

5 To adopt the Alabama Uniform Real Property  
6 Electronic Recording Act; to provide standards for electronic  
7 filing of real property documents and signatures on such  
8 documents; to provide for the validity of electronic  
9 documents; to provide for the compliance with standards  
10 adopted by the Electronic Recording Commission; to create the  
11 Electronic Recording Commission and to provide for its  
12 membership, powers, and duties regarding the adoption of  
13 standards for electronic practices that are consistent with  
14 real property recording offices of other states; to require  
15 the Secretary of State to implement duly adopted commission  
16 standards; to provide for the scope of the standards as they  
17 relate to altering substantive state law with limited  
18 exceptions and to certain federal law; and to provide for  
19 uniformity of application and construction of the act.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. SHORT TITLE. This act may be cited as the  
22 Alabama Uniform Real Property Electronic Recording Act.

23 Section 2. DEFINITIONS.

24 In this act:

25 (1) "Document" means information that is:

1           a. Inscribed on a tangible medium or that is stored  
2 in an electronic or other medium and is retrievable in  
3 perceivable form.

4           b. Eligible to be recorded in the land records  
5 maintained by the judge of probate.

6           (2) "Electronic" means relating to technology having  
7 electrical, digital, magnetic, wireless, optical,  
8 electromagnetic, or similar capabilities.

9           (3) "Electronic document" means a document that is  
10 received by the judge of probate in an electronic form.

11           (4) "Electronic signature" means an electronic  
12 sound, symbol, or process attached to or logically associated  
13 with a document and executed or adopted by a person with the  
14 intent to sign the document.

15           (5) "Person" means an individual, corporation,  
16 business trust, estate, trust, partnership, limited liability  
17 company, association, joint venture, public corporation,  
18 government, or governmental subdivision, agency, or  
19 instrumentality, or any other legal or commercial entity.

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

24           Section 3. VALIDITY OF ELECTRONIC DOCUMENTS.

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

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

8           (c) A requirement that a document or a signature  
9 associated with a document be notarized, acknowledged,  
10 verified, witnessed, or made under oath is satisfied if the  
11 electronic signature of the person authorized to perform that  
12 act, and all other information required to be included, is  
13 attached to or logically associated with the document or  
14 signature. A physical or electronic image of a stamp,  
15 impression, or seal need not accompany an electronic  
16 signature.

17           Section 4. RECORDING OF DOCUMENTS.

18           (a) In this section, "paper document" means a  
19 document that is received by the judge of probate in a form  
20 that is not electronic.

21           (b) A judge of probate:

22           (1) Who implements any of the functions listed in  
23 this section shall do so in compliance with standards  
24 established by the Electronic Recording Commission.

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

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

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

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

11           (6) May convert into electronic form information  
12 recorded before the judge of probate began to record  
13 electronic documents.

14           (7) May accept electronically any fee or tax that  
15 the judge of probate is authorized to collect.

16           (8) May agree with other officials of a state or a  
17 political subdivision thereof, or of the United States, on  
18 procedures or processes to facilitate the electronic  
19 satisfaction of prior approvals and conditions precedent to  
20 recording and the electronic payment of fees and taxes as  
21 provided for in the standards to implement this act.

22           Section 5. ADMINISTRATION AND STANDARDS.

23           (a) The Electronic Recording Commission consisting  
24 of 14 members is created to adopt standards to implement this  
25 act. The members shall be appointed as follows:

1           (1) Six judges of probate or chief clerks appointed  
2 by the Alabama Probate Judges Association.

3           (2) Two practicing attorneys appointed by the  
4 Alabama State Bar Association.

5           (3) One person engaged in the business of title  
6 insurance in the State of Alabama appointed by the Alabama  
7 Land Title Association, a division of the Dixie Land Title  
8 Association.

9           (4) One person appointed by the Alabama Bankers  
10 Association.

11           (5) One person appointed by the Association of  
12 County Commissions of Alabama.

13           (6) The Chief Examiner of the Alabama Department of  
14 Examiners of Public Accounts, or his or her designee.

15           (7) The Director of the Alabama Department of  
16 Archives and History, or his or her designee.

17           (8) One person appointed by the Alabama Association  
18 of Realtors.

19           (b) To keep the standards and practices of judges of  
20 probate in this state in harmony with the standards and  
21 practices of recording offices in other jurisdictions that  
22 enact substantially this act and to keep the technology used  
23 by judges of probate in this state compatible with technology  
24 used by recording offices in other jurisdictions that enact  
25 substantially this act, the Electronic Commission, so far as

1 is consistent with the purposes, policies, and provisions of  
2 this act in adopting, amending, and repealing standards, shall  
3 consider:

4 (1) Standards and practices of other jurisdictions.

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

8 (3) The views of interested persons and governmental  
9 officials and entities.

10 (4) The needs of counties of varying size,  
11 population, and resources.

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

16 (c) The Electronic Recording Commission shall adopt  
17 standards pursuant to this act. The commission shall prescribe  
18 uniform standards for electronic recording of real estate  
19 records for any county participating in the electronic  
20 recording of real estate in the county. The Secretary of  
21 State, pursuant to the Alabama Administrative Procedure Act,  
22 shall immediately implement the standards adopted by the  
23 Electronic Recording Commission without change.

24 Section 6. SCOPE AND RESTRICTIONS.

1           Except as expressly provided in this act or the  
2 standards adopted by the Electronic Recording Commission,  
3 nothing in this act or any rule adopted pursuant to this act  
4 may amend, alter, or repeal the substantive law of this state  
5 as it relates to the requirements of any real property  
6 recording.

7           Section 7. UNIFORMITY OF APPLICATION AND  
8 CONSTRUCTION.

9           In applying and construing this uniform act,  
10 consideration must be given to the need to promote uniformity  
11 of the law with respect to its subject matter among states  
12 that enact it.

13           Section 8. RELATION TO ELECTRONIC SIGNATURES IN  
14 GLOBAL AND NATIONAL COMMERCE ACT.

15           This act modifies, limits, and supersedes the  
16 federal Electronic Signatures in Global and National Commerce  
17 Act (15 U.S.C. Section 7001, et seq.) but does not modify,  
18 limit, or supersede Section 101(c) of that act (15 U.S.C.  
19 Section 7001(c)) or authorize electronic delivery of any of  
20 the notices described in Section 103(b) of that act (15 U.S.C.  
21 Section 7003(b)).

22           Section 9. This act takes effect January 1, 2010.



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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB90  
Senate 12-FEB-09  
I hereby certify that the within Act originated in and passed  
the Senate, as amended.

McDowell Lee  
Secretary

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House of Representatives  
Passed: 07-MAY-09

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By: Senator Marsh