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New York Law Permits Electronic Recording of Real Property Conveyances

October 13, 2011 by Joanna K. Slusarz

On Friday, September 23, 2011, New York Governor Andrew Cuomo signed into law Senate Bill 2373A and Assembly Bill 6870A. The bill authorizes the electronic recording (“e-recording”) of instruments affecting real property in the form of digitized images of original, executed paper instruments and of electronically executed instruments.

Modeled on the federal Uniform Electronic Transactions Act and following in the footsteps of NYSCEF which permits the filing and service of legal papers by electronic means with certain county clerks and with courts in certain types of cases, the new law, encapsulated in Real Property Section 291-i (“Validity of electronic recording”), “seeks to achieve similar efficiencies in the realm of real property conveyances by enabling county governments to modernize the manner in which real estate professional[s] and recording officers conduct their business together.”

Prior to the bills’ signing, the State’s Electronic Signatures and Records Act (“ESRA”), Article III of Chapter 57-A of the New York State Technology Law, already allowed instruments signed electronically to be received, accepted, recorded and stored by government entities in an electronic format. ESRA clarified that “signatures” made via electronic means are just as binding as hand-written signatures and that electronic records have the same legal force as those produced in other formats such as paper and microfilm.

ESRA, however, expressly did not apply “to any conveyance or any other instrument recordable under article 9 [‘Recording instruments affecting real property’] of the Real Property Law.” Real Property Section 291-i eliminates that limitation as it permits e-

recording of instruments affecting real properties and confirms the validity of digitized paper documents, electronic records, electronic signatures and electronic notarization. The bills also update the pertinent definitions in Real Property Section 290. "Real property" includes "lands, tenements and hereditaments and chattels real, except a lease for a term not exceeding three years." "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 subordinating a mortgage lien; except a will, a lease of 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."

"Recording" now also means "by an electronic process by which a record or instrument affecting real property, after delivery is incorporated into the public record." An "[e]lectronic record" is "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," whereas a "[d]igitized paper document" means "digitized image of a paper document that accurately depicts the information on the paper document in a format that cannot be altered without detection."

Section 291-i makes the e-recording option voluntary; once a county clerk opts to allow it, however, e-recording must be available to all filers. Participating recording officers are required to obey the rules and regulations of the state Office for Technology, the designated electronic facilitator under ESRA. Section 291-i also provides that where a law, rule or regulation requires, as a condition of recording, that an instrument be a signed and notarized paper original, the requirement is satisfied by a digitized paper document or an electronic record that had been electronically signed and notarized. Furthermore, the bill specifies that permissible software applications must have the capability of storing an image of the original paper documents but not permit additions, deletions or other changes to the digitized image unless such can be identified by a media trail.

Furthermore, the bills amend Real Property Section 317, which now provides that a digitized paper document or an electronic record will be considered “delivered” on the date and at the time such document or record is successfully transmitted to a recording officer. The recording officer must then record the instrument in the order it was received and immediately send an electronic or written notification of his or her receipt of the delivery stamp to the recording party. The delivery stamp, however, will be limited to the regular business hours maintained by the recording officer.

The justifications for Senate Bill 2372A cited by its author and proponent, New York State Senator Andrea Stewart-Cousins, mirror those listed in the statement of legislative intent in Chapter 314 of the Laws of 2002 which amended ESRA. They include reduction of the volume of paper documents coming into the recorders’ offices, considerable savings of money usually spent on personnel and postage for returning documents, as well as a more efficient and streamlined storage and retrieval system. The ultimate purpose of e-recording as permitted by Section 291-i is to “improve the recording process from the point of origin (e.g. title companies, banks, attorneys’ offices) to county clerks’ offices” which will “improve work flow, increase productivity, speed up the recording process and improve data accuracy.”

Supported by the New York State Association of County Clerks and the New York State Bar Association’s Real Property Law Section, among others, Real Property Section 291-i and the amended portions of Sections 290 and 317 will go into effect on September 22, 2012.

Cole, Schotz, Meisel, Forman & Leonard, P.A.

Court Plaza North
25 Main Street
Hackensack, NJ 07601
Phone: (201) 489-3000

900 Third Avenue
16th Floor
New York, NY 10022
Phone: (212) 752-8000

500 Delaware Avenue
Suite 1410
Wilmington, DE 19801
Phone: (302) 652-3131

300 East Lombard Street
Suite 2000
Baltimore, MD 21202
Phone: (410) 230-0660

301 Commerce Street
Suite 1700
Fort Worth, TX 76102
Phone: (817) 810-5250