



## **Sub. H.B. 53**

125th General Assembly  
(As Passed by the General Assembly)

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**Sens. Mumper, Herington, Schuler**

**Effective date: \***

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### **ACT SUMMARY**

- Permits a county recorder to maintain registered land records and perform Registered Land Law functions by nonpaper means.
- Defines "nonpaper means" as at least two different specified storage processes that provide a medium of copying, recording, or reproducing registered land records.
- Requires a county recorder who chooses to maintain registered land records and perform Registered Land Law functions by nonpaper means to adopt implementing rules, subject to approval by the board of county commissioners.
- Specifies that the form of the record kept by nonpaper means that is designated by rule of the county recorder as the original certificate of title to registered land must be considered to be the original certificate of title for that land.

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*\* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Requires a county recorder maintaining registered land records by nonpaper means to keep and have readily available the machines and equipment necessary to permit the inspection or reproduction of the records.
- Permits a county recorder to dispose of the Register of Titles kept in book format and any other original paper registered land record provided for in the Register of Titles statute, after the record has been transcribed, registered, entered, indexed, or filed by nonpaper means.
- Specifies that registered land records maintained by nonpaper means must be governed by the rules adopted by a county recorder and approved by the board of county commissioners, instead of by rules prescribed by a court of appeals.
- Requires a board of county commissioners to furnish equipment, machines, and materials for the registered land functions of a county recorder who maintains registered land records by nonpaper means.

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## CONTENT AND OPERATION

### *General Registered Land Law requirements*

Continuing law establishes specific procedures for counties having registered land. For example, in a county having registered land, the county recorder generally must transcribe or bind a decree of registration in a book called the Register of Titles. The consecutive pages of that book must be devoted exclusively to each title, with appropriate blanks left for the entry of memorials and notations. The entry of the decree of registration in that book constitutes the

*original* certificate of title of the registered land; the county recorder must make a paper copy of that document and deliver this "owner's duplicate certificate" to the holder of the registered land's title. (Sec. 5309.25.)

Other procedures include, but are not limited to, the manner in which new or duplicate certificates of title may be issued, memorials and notations must be entered into the record, and mortgages or other encumbrances must be written and recorded (Chapters 5309. and 5310.).

### **Performance of Registered Land Law functions by nonpaper means**

#### **Records a county recorder may maintain by nonpaper means**

Notwithstanding the general paper requirements for recording and maintaining records under the Registered Land Law, the act authorizes a county recorder to perform registered land functions by nonpaper means (sec. 5309.031(A)). "Nonpaper means" means at least one process from each of the following categories that provides a medium of copying, recording, or reproducing applicable registered land records, such as memoranda, certificates, affidavits, or decrees: (1) any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process and (2) perforated tape, magnetic tape, or other magnetic means, electronic data processing or other electronic means, machine readable means, or graphic or video display (sec. 5309.031(D)).

Under the act, a county recorder may perform any of the following registered land functions by nonpaper means (sec. 5309.031(A)):

- *Transcribing a certified copy of a decree of registration sent by the clerk of a probate court.* As noted above, continuing law generally requires a certified copy of the decree to be transcribed in a book called the Register of Titles, the consecutive pages of which must be devoted exclusively to each title, with appropriate blanks left for the entry of memorials and notations. The recorder must note the day, hour, and minute when a decree is filed and must sign the entry the recorder makes in the Register. That entry then is the original certificate of title. (Sec. 5309.25.)
- *Entering any memorial, notation, or memorandum pertaining to registered land.* Continuing law generally requires notations and memorials, such as the memorial of a mortgage, encumbrance, or lien against registered land, to be entered into the Register of Titles on the page appropriate to the title of the land and on the owner's duplicate certificate of title. The recorder also must enter into the Register and on an owner's duplicate certificate of title the

satisfaction or any release or discharge of a mortgage, encumbrance, or lien. (Secs. 5309.48, 5309.49, and 5309.52--not in the act.)

- *Registering a subsequent transfer of registered land and carrying forward in connection with the registration any memorial, notation, or memorandum.* Continuing law generally requires the recorder, when registered land is transferred to a new owner, to register the title on a new page in the Register of Titles. All memorials, notations, and memorandums to which the land is subject must be carried forward and entered onto the Register pages of the new title, and an owner's duplicate certificate of title must be issued to the new owner. (Secs. 5309.36 and 5309.40--not in the act.)
- *Entering, indexing, and, if applicable, filing any registered land record, such as documents relating to cancellations, releases, discharges, or satisfactions.* Continuing law generally requires the recorder to keep an entry book in which the recorder must enter and number all deeds and other instruments filed with the recorder that relate to registered land. And, as noted above, once a mortgage, encumbrance, or lien against registered land is satisfied, released, or discharged, the recorder must enter that satisfaction, release, or discharge on the registered certificate of title in the Register of Titles. In all cases where a certificate of title or any instrument or memorandum is cancelled, the recorder must retain and file that canceled document. (Secs. 5309.38, 5309.41, and 5309.52--not in the act.)
- *Maintaining the Register of Titles.* Continuing law generally requires the Register of Titles to be kept as a book, the consecutive pages of which must be devoted exclusively to each title, with appropriate blanks left for the entry of memorials and notations (sec. 5309.25).
- *Maintaining the Records of Surveys of Registered Land.* Continuing law generally requires the recorder to keep books known as Records of Surveys of Registered Land in which the recorder must accurately copy each survey ordered by a court in an original or any subsequent registration. The volume and page number of the book in which the survey is recorded must be entered in the Register of Titles on each certificate of title to that land thereafter issued. (Sec. 5309.32--not in the act.)
- *Maintaining the tract indexes, if any, required by the board of county commissioners and maintaining the alphabetical indexes.*

Continuing law generally requires a recorder to keep tract indexes if the board of county commissioners orders the recorder to do so and provides the proper records for those indexes. In those indexes, the recorder must enter the lands registered in the numerical order of the townships, ranges, and sections, or original surveys, and the blocks and lots of subdivisions, with a reference to the volume and page in which the lands are registered. Each recorder also generally must keep alphabetical indexes in which the names of all registered owners and all other persons interested in registered land must be entered along with a description of the land, the nature of the dealing, and a reference to the volume and page in which the land is registered. (Sec. 5309.33--not in the act.)

- *Maintaining the Record of Trusts and Exceptional Estates in Registered Land.* Continuing law generally requires the recorder, upon demand of a party in interest and the payment of fees, to record in books known as the Record of Trusts and Exceptional Estates in Registered Land deeds and other instruments relating to registered land that create or declare trusts, contain unusual or exceptional covenants, restrictions, or conditions, or create unusual or exceptional interests. The page number of the record must be noted on the page of the Register of Titles containing the certificate of title of the affected land, and reference must be made to the page number in the certificate of title or memorial. (Sec. 5309.35--not in the act.)
- *Maintaining the entry book.* As noted above, continuing law generally requires the recorder to keep an entry book in which the recorder must enter and number all deeds and other instruments related to registered land. The recorder must note in the book the year, month, day, hour, and minute that all instruments or papers are received, and must, at the same time, enter the number of an instrument or paper in the Register of Titles in the appropriate blank space on the registered certificate of title for the land to which it relates. Instruments are considered registered and become effective at the time they are filed and noted. (Sec. 5309.38--not in the act.)
- *Maintaining the Records of Liens on Registered Land and the Record of Leases on Registered Land.* Continuing law generally requires the recorder, upon the written request of a lessee, mortgagee, or encumbrancer and the payment of the proper fees, to record the relevant instrument filed in the recorder's office in volumes known as the Records of Liens on Registered Land or the Record of Leases on Registered Land. The recorder must note the

fact of that recording along with its exact time, volume, and page on each instrument and on the volume and page of the Register of Titles containing the certificate of title of the affected land. (Sec. 5309.50--not in the act.)

- *Fulfill any other requirement of the Registered Land Law concerning the recorder's maintenance of registered land records.*

### **Adoption of rules implementing nonpaper registered land records**

The act requires a county recorder who chooses to maintain registered land records by nonpaper means to adopt implementing rules. Those rules are subject to approval by the board of county commissioners. Rules dealing with secure storage and computer or other security processes for nonpaper records may be approved by the board in executive sessions not open to the public. (Sec. 5309.031(A) and (C)(1) and (3).)

The recorder's performance of registered land functions and the maintenance of registered land records by nonpaper means under the rules must comply with the otherwise applicable requirements of the Registered Land Law (sec. 5309.031(C)(2)). The rules must do all of the following (sec. 5309.031(C)(1)):

- Specify the type of nonpaper means that the county recorder will use to perform registered land functions;
- Identify the registered land functions that the county recorder will perform, and the registered land records that the county recorder will maintain, by nonpaper means;
- Specify the form of the record maintained by nonpaper means that will be deemed the original certificate of title;
- Provide for preserving, safekeeping, using, examining, exhibiting, projecting, and enlarging photographs, microphotographs, films, and microfilms;
- Provide for secure storage and maintenance of nonpaper records, including, but not limited to, requiring daily backups of records stored on computer to reflect daily changes made to those records;
- Specify the manner in which the recorder will sign an original certificate of title or other registered land record that is entered, indexed, or filed by nonpaper means;

- Provide for any other policies, procedures, or practices necessary for the maintenance of registered land records by nonpaper means.

In addition to the rules that must be adopted regarding the maintenance of registered land records by nonpaper means, one specific statutory provision applies to the storage of photographs, microphotographs, films, and microfilms. The act requires these specific nonpaper record formats to be placed and kept in conveniently accessible, fireproof, and insulated files, cabinets, or containers. (Sec. 5309.031(B)(2).)

### **Determination of original certificate of title**

Under continuing general law, the original certificate of title, in a county having registered land, is the judicial decree of registration that is transcribed or bound in the Register of Titles. Since the Register likely will not be kept in book form if a county recorder opts to maintain registered land records by nonpaper means, another type of record must be deemed the original certificate of title in that situation. The act thus requires the county recorder to adopt rules, subject to approval by the board of county commissioners, designating the form of the record maintained by nonpaper means that will be deemed the original certificate of title when a decree of registration is transcribed in the Register by nonpaper means (sec. 5309.031(C)(1)(c)). The designated record will be deemed the original certificate of title for the registered land (sec. 5309.25(B)).

### **Public inspection of nonpaper registered land records; removal of records**

In order to fulfill Public Records Law requests, a county recorder must keep and have readily available the machines and equipment necessary to permit the inspection of, or to reproduce copies of, the registered land records maintained at the recorder's office by nonpaper means (sec. 5309.031(B)(1); sec. 149.43--not in the act).

However, no record, instrument, paper, or other document required to be filed or kept in the office of the county recorder, including any registered land record maintained by nonpaper means, may be taken or otherwise caused to be removed from that office except by a subpoena duces tecum issued for and served upon the recorder by a court of record. On demand and the tendering of the proper fee, the recorder must deliver to any person a copy of the record, instrument, paper, or other document, certified by the recorder. (Sec. 5309.96.)

### **Exception to Records Retention Law**

The act permits a county recorder who maintains registered land records by nonpaper means to dispose of the Register of Titles kept in book format and any

other original paper registered land record provided for in the Register of Titles statute (sec. 5309.25) after it has been transcribed, registered, entered, indexed, or filed by nonpaper means. The recorder may dispose of those records notwithstanding any rules adopted by the county records commission that specify the length of time original paper records must be retained in that format. The recorder must adhere to all other applicable records retention rules of the commission. (Sec. 5309.031(B)(3).)

### **Court duties pertaining to registered land**

Former law required every decree of land registration to be stated, by the clerk of the probate court, in a form convenient for transcription upon or binding in the Register of Titles. The act instead requires such a decree to be stated in a form convenient for physical transcription upon, transcription by any of the applicable nonpaper means upon, or binding in the Register. (Sec. 5309.24.)

The court of appeals in any appellate district, under former law, was permitted to prescribe rules of practice and procedure for the guidance of the county recorder, and the conduct of proceedings in the probate courts or courts of common pleas within the district, in any matter arising under the Registered Land Law. The act limits this authority for registered land records maintained by nonpaper means; those records must be governed instead by the rules adopted by the county recorder and approved by the board of county commissioners. (Sec. 5309.98.)

### **Necessary equipment and materials**

A board of county commissioners must furnish all books, blanks, papers, and other things necessary for administering the Registered Land Law. The act specifies that this includes, but is not limited to, equipment, machines, and materials for the registered land functions of a county recorder who maintains registered land records by nonpaper means. (Sec. 5309.95.)

### **Miscellaneous changes**

Former law included several references to the "registration book," meaning the book form in which the Register of Titles generally must be kept. The act changes these references to refer specifically to the Register of Titles, so that the cross-references are appropriate, regardless of whether a county recorder chooses to maintain registered land records in book form or by nonpaper means. (Secs. 5309.25, 5310.03, and 5310.07.)

Similarly, former law referred to "instruments" or "papers" that are registered or filed under the Registered Land Law. Since registered land

documents maintained by nonpaper means may not fit within the meaning of those terms, the act changes those references to a "record, instrument, paper, or other document" filed or kept under the Registered Land Law. (Sec. 5309.96.)

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## HISTORY

| ACTION                                                 | DATE     | JOURNAL ENTRY |
|--------------------------------------------------------|----------|---------------|
| Introduced                                             | 02-11-03 | p. 141        |
| Reported, H. County &<br>Township Government           | 03-20-03 | pp. 273-274   |
| Passed House (97-0)                                    | 04-01-03 | pp. 313-314   |
| Reported, S. State & Local<br>Gov't & Veterans Affairs | 05-27-03 | p. 379        |
| Passed Senate (33-0)                                   | 05-28-03 | pp. 392-393   |
| House concurred in Senate<br>amendments (97-0)         | 06-03-03 | pp. 532-533   |

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