



SB 2128 Recording “Papered Out” Electronic Documents and Remote Online Notarized Documents in the Real Property Records

All Counties Now Must Accept

Senate Bill 2128 became law on Sept. 1, 2019. This law provides a means to record electronic documents in the real property records, including those notarized by a remote online notary. Counties that do not offer electronic recording, but only accept paper recordings, are now be able to record instruments that were digitally signed and notarized. (The COUNTY CLERK is required to record these documents under Section 12.0012 of the Property Code.)

Safety Features Are Included

The basic concept is that a notary or other officer that can take acknowledgments under Texas law may print the electronic record and declare the authenticity of the document. Importantly the notary must certify that no security features present on the electronic record indicate any changes or errors in the electronic record after its creation. The electronic record should reflect any changes or errors when opened by the notary as a safety feature. If there are any such messages, the notary cannot certify the electronic document.

Does Not Have to be Same Notary

The notary that provides the Declaration of Authenticity does not have to be the same notary that notarized the electronic instrument. Note that this recording option is available for not only remote online notarized documents, but also if parties choose to have documents executed and notarized electronically while physically present in the same room at the same time.

Section 12.0013 has been added to the Property Code to enable recording of these documents.

A notary public or other officer may declare that a paper or tangible copy of an electronic record is a true and correct copy of an electronic record by:

- Executing and attaching an official seal to a tangible paper declaration under penalty of perjury; and
- Affixing or attaching the declaration to the printed paper or tangible copy of an electronic record

The form of declaration must be substantially similar to the attached Declaration of Authenticity.

The COUNTY CLERK **shall** record a paper or tangible copy of an electronic record that:

- Contains an image of an electronic signature or signatures that are acknowledged, sworn to with a juror, or approved according to law; and
- Has been declared by a notary public or other officer who may take an acknowledgment or proves to be a true and correct copy of the electronic record

See back for attached Declaration of Authenticity

Section 193.003 of the Local Government Code has been amended to provide that such a Declaration of Authenticity must be indexed to contain names of the grantors and grantees.

DECLARATION OF AUTHENTICITY

State of _____

County of _____

The attached document, _____(insert title), dated _____ and containing ___ pages, is a true and correct copy of an electronic record printed by me or under my supervision. At the time of printing, no security features present on the electronic record indicated any changes or errors in an electronic signature or other information in the electronic record after the electronic record 's creation or execution. This declaration is made under penalty of perjury.

Signed this ____ day of _____, ____.

_____(signature of notary public or other officer)
(seal of office)

_____(printed name of notary public or other officer)

My commission expires: _____