

As Passed by the Senate

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Sub. H. B. No. 53

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Perry, Reidelbach, Schmidt, Seaver, Setzer, Sferra, D. Stewart, J. Stewart,
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Senators Mumper, Herington, Schuler

A B I L L

To amend sections 5309.24, 5309.25, 5309.95, 5309.96, 1
5309.98, 5310.03, and 5310.07 and to enact section 2
5309.031 of the Revised Code to allow a county 3
recorder to maintain registered land records by 4
the use of photographic, magnetic, electronic, or 5
certain other processes, means, or displays. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5309.24, 5309.25, 5309.95, 5309.96, 7
5309.98, 5310.03, and 5310.07 be amended and section 5309.031 of 8
the Revised Code be enacted to read as follows: 9

Sec. 5309.031. (A) Notwithstanding any provision of this 10
chapter or Chapter 5310. of the Revised Code to the contrary, and 11
in accordance with the rules adopted by the county recorder under 12

division (C) of this section, the recorder may perform any of the 13
following functions by nonpaper means: 14

(1) Transcribe a certified copy of a decree of registration 15
sent by the clerk of a probate court pursuant to section 5309.25 16
of the Revised Code; 17

(2) Enter any memorial, notation, or memorandum pertaining to 18
registered land; 19

(3) Register a subsequent transfer of registered land and 20
carry forward in connection with the registration any memorial, 21
notation, or memorandum; 22

(4) Enter, index, and, if applicable, file any registered 23
land record, including, but not limited to, documents relating to 24
cancellations, releases, discharges, or satisfactions; 25

(5) Maintain each of the following: 26

(a) The register of titles kept pursuant to section 5309.25 27
of the Revised Code; 28

(b) The records of surveys of registered land kept pursuant 29
to section 5309.32 of the Revised Code; 30

(c) The tract indexes, if any, required by the board of 31
county commissioners pursuant to section 5309.33 of the Revised 32
Code and the alphabetical indexes kept pursuant to that section; 33

(d) The record of trusts and exceptional estates in 34
registered land kept pursuant to section 5309.35 of the Revised 35
Code; 36

(e) The entry book kept pursuant to section 5309.38 of the 37
Revised Code; 38

(f) The records of liens on registered land kept pursuant to 39
section 5309.50 of the Revised Code and the record of leases on 40
registered land kept pursuant to that section. 41

(6) Fulfill any other requirement of this chapter or Chapter 5310. of the Revised Code concerning the recorder's maintenance of registered land records. 42
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(B) If a county recorder maintains registered land records by nonpaper means under division (A) of this section, all of the following shall apply: 45
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(1) The recorder shall 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, to fulfill requests made under section 149.43 of the Revised Code. 48
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(2) Photographs, microphotographs, films, or microfilms shall be placed and kept in conveniently accessible, fireproof, and insulated files, cabinets, or containers. 53
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(3) Notwithstanding any rules adopted by a county records commission under section 149.38 of the Revised Code specifying the length of time original paper records must be retained in that format, the recorder may dispose of the register of titles kept in book format and any other original paper registered land record provided for in section 5309.25 of the Revised Code after it has been transcribed, registered, entered, indexed, or filed by nonpaper means under division (A) of this section, in accordance with the rules adopted under division (C) of this section. The recorder shall adhere to all other applicable records retention rules adopted by a county records commission under section 149.38 of the Revised Code. 56
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(C)(1) A county recorder choosing to maintain registered land records by nonpaper means under division (A) of this section shall adopt rules for implementing this section. These rules shall be subject to approval by the board of county commissioners and shall do all of the following: 68
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<u>(a) Specify the type of nonpaper means that the county recorder will use to perform registered land functions;</u>	73 74
<u>(b) 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;</u>	75 76 77
<u>(c) Specify the form of the record maintained by nonpaper means that will be deemed the original certificate of title under division (B) of section 5309.25 of the Revised Code;</u>	78 79 80
<u>(d) Provide for preserving, safekeeping, using, examining, exhibiting, projecting, and enlarging photographs, microphotographs, films, and microfilms;</u>	81 82 83
<u>(e) 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;</u>	84 85 86 87
<u>(f) 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;</u>	88 89 90
<u>(g) Provide for any other policies, procedures, or practices necessary for the maintenance of registered land records by nonpaper means.</u>	91 92 93
<u>(2) All registered land functions of a county recorder and all registered land records maintained by nonpaper means under division (A) of this section shall comply with the otherwise applicable requirements of this chapter and Chapter 5310. of the Revised Code.</u>	94 95 96 97 98
<u>(3) Any rules adopted under division (C)(1) of this section dealing with secure storage and computer or other security processes for nonpaper records may be approved in an executive session of a board of county commissioners.</u>	99 100 101 102

(D) As used in this section and sections 5309.24, 5309.25, 5309.95, 5309.96, and 5309.98 of the Revised Code, "nonpaper means" means at least one process from each of the following categories, which process provides a medium of copying, recording, or reproducing applicable registered land records, including, but not limited to, memoranda, certificates, affidavits, or decrees:

(1) Any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process;

(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. 5309.24. (A) Every decree of registration in land registration cases shall bear the year, month, day, hour, and minute of its entry and shall be signed by the clerk of the probate court. It shall give the place of residence and post-office address of the owner of the land registered, state whether the owner is married or unmarried, and, if the owner is married, state the name of the owner's spouse. If the owner is under disability, the decree shall state the nature of the disability and, if the owner is a minor, shall state the minor's age. The decree shall contain an accurate description and plat of each separate parcel of the land as finally determined and adopted by the probate court, shall set forth the estate of the owner, and, in a manner that shows their relative priority, but subject to division (B) of this section, shall set forth all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of spouses, to which the land or the owner's estate is subject, all suits pending by or against the owner or any of the owner's predecessors in title in any court of record in the county the judgments in which might affect the land or the owner's title to the land, and all suits of that nature

elsewhere pending if they were brought to the attention of the 134
probate court by the pleadings or evidence in the case. The decree 135
may contain any other matter properly to be determined by the 136
court under this chapter and Chapter 5310. of the Revised Code. 137
The decree shall be stated in a form convenient for physical 138
transcription upon, transcription by any of the applicable 139
nonpaper means referred to in division (D) of section 5309.031 of 140
the Revised Code upon, or binding in the register of ~~certificates~~ 141
~~of title~~ titles described in section 5309.25 of the Revised Code, 142
shall be in a form suitable to constitute the decree as a 143
certificate of title, and shall give insofar as possible the full 144
name, place of residence, and post-office address of each owner 145
and holder of any interest in or lien, charge, or encumbrance upon 146
the lands or any part of the lands, except as provided in division 147
(B) of this section. The clerk, under the direction of the court, 148
shall make and keep indexes of all applications and of all decrees 149
of registration. 150

(B) On and after ~~the effective date of this amendment~~ March 151
30, 1999, a decree of registration in a land registration case 152
shall not set forth pursuant to division (A) of this section any 153
restrictive covenant that appears to apply to the land or any part 154
of the land, if any inclusion of the restrictive covenant in a 155
transfer, rental, or lease of housing accommodations, any honoring 156
or exercising of the restrictive covenant, or any attempt to honor 157
or exercise the restrictive covenant constitutes an unlawful 158
discriminatory practice under division (H)(9) of section 4112.02 159
of the Revised Code. 160

Sec. 5309.25. (A) Immediately upon the entry of the decree of 161
registration as provided in sections 5309.23 and 5309.24 of the 162
Revised Code, the clerk of the probate court or the clerk of the 163
court of common pleas shall send a certified copy ~~thereof~~ of the 164

decree, under the seal of the court, to the county recorder for 165
the county in which the land or any part ~~thereof~~ of the land lies, 166
~~and the.~~ The recorder shall transcribe or bind the decree in a 167
book to be called the register of titles, in which leaves in 168
consecutive order shall be devoted exclusively to each title, with 169
appropriate blanks for the entry of memorials and notations. ~~Such~~ 170
The recorder shall note in ~~such~~ the register the day, hour, and 171
minute when ~~said~~ the decree is filed with ~~him~~ the recorder. ~~The~~ 172

The entry made by the recorder in ~~such~~ the register in each 173
case shall be the original certificate of title, and shall be 174
signed by ~~him~~ the recorder. Each certificate of title with ~~such~~ 175
its blanks for memorials and notations shall constitute a separate 176
folium of ~~such~~ the register. All memorials and notations that may 177
be entered upon the register under ~~sections 5309.02 to 5310.21,~~ 178
~~inclusive,~~ this chapter or Chapter 5310. of the Revised Code, 179
shall be entered upon the folium constituted by the last 180
certificate of title of the land to which they relate. 181

All certificates of title shall be numbered consecutively, 182
beginning with number one. The recorder shall in each case make an 183
exact physical duplicate of the original certificate, ~~but shall~~ 184
put on ~~such~~ the duplicate "Owner's duplicate certificate," and 185
deliver it to the owner or to ~~his~~ the owner's authorized attorney. 186
In case of a variance between the owner's duplicate certificate 187
and the original certificate, the original shall prevail. ~~The~~ 188

The certified copy of the decree of registration shall, in 189
case it is transcribed into the ~~registration book~~ register, be 190
filed and numbered by the recorder, with a reference noted on it 191
to the place of record of the original certificate of title. The 192
recorder may rebind or retranscribe the certificates in new 193
volumes of ~~registration books~~ the register containing respectively 194
canceled and uncanceled certificates and prepare new indexes for 195

the uncanceled certificates. ~~If~~ 196

If an application includes land lying in more than one 197
county, the court shall cause the part lying in each county to be 198
platted and described separately by metes and bounds or other 199
definite description in the decree of registration, ~~and~~; the clerk 200
shall send to the recorder for each county a copy of the decree 201
containing a plat and description of the land within that county; 202
and the recorder shall register it and issue an owner's duplicate 203
~~therefor~~ certificate of title; ~~and~~ thereafter, for all matters 204
pertaining to registration, the portion in each county shall be 205
treated as a separate parcel of land. If more than one entire and 206
distinct parcel of land lying wholly in the county is included in 207
the application and decree, the clerk shall, if required by the 208
applicant, send ~~such~~ the recorder certified copies of the decree 209
~~so far insofar~~ as it relates to each of ~~said~~ the separate and 210
distinct parcels, giving plat and description ~~thereof, and of each~~ 211
parcel; separate registration of each parcel shall be made 212
accordingly by the recorder. ~~The~~ 213

The clerk shall, at once in every cause, make a final record 214
of ~~such~~ the cause and immediately thereafter deliver to the 215
recorder all papers in the case, taking ~~his~~ the recorder's receipt 216
~~therefor, which for those papers~~ the. The recorder shall file, 217
index, and carefully preserve, and note on the original 218
certificate in ~~his~~ the recorder's office ~~such~~, the filing and the 219
number or other designation under which ~~they~~ those papers may be 220
found. 221

(B) If the county recorder maintains registered land records 222
by nonpaper means under section 5309.031 of the Revised Code, the 223
record that the recorder designates under division (C)(1)(c) of 224
that section shall be deemed the original certificate of title for 225
the registered land. 226

Sec. 5309.95. All books, blanks, papers, and other things 227
necessary for administering ~~sections 5309.02 to 5310.21,~~ 228
~~inclusive,~~ this chapter and Chapter 5310. of the Revised Code, 229
including, but not limited to, equipment, machines, and materials 230
related to the registered land functions of a county recorder and 231
the maintenance of registered land records by nonpaper means under 232
division (A) of section 5309.031 of the Revised Code, shall be 233
furnished by the board of county commissioners. 234

Sec. 5309.96. No record, instrument or papers, paper, or 235
other document required by ~~sections 5309.02 to 5310.21, inclusive,~~ 236
this chapter or Chapter 5310. of the Revised Code, to be filed or 237
kept in the office of the county recorder, including, but not 238
limited to, any registered land record maintained by nonpaper 239
means under division (A) of section 5309.031 of the Revised Code, 240
shall be taken or otherwise caused to be removed from ~~such the~~ 241
recorder's office except by a subpoena duces tecum issued for and 242
served upon the recorder by a court of record. When any record, 243
instrument, paper, or other document is registered, the recorder, 244
on demand, and the tendering of the proper fee being tendered 245
therefor for it, shall deliver to any person ~~certified copies a~~ 246
copy of ~~such the record,~~ instrument, paper, or other document 247
with, when applicable, all memorandums memoranda, memorials, and 248
indorsements thereon notations on it, certified under ~~his the~~ 249
recorder's hand and seal of office. The recorder shall ~~indorse~~ 250
endorse, in writing, across the face of all such copies, in red 251
ink, "copy; no rights conveyed hereby." 252

Every copy of original records, instruments, papers, or other 253
documents, certified as provided ~~for~~ in this section, shall be 254
received in all cases in place of the original record, instrument, 255
paper, or other document and shall have the same effect in 256
evidence as the original record, instrument, paper, or other 257

document. 258

Sec. 5309.98. The Except for registered land records 259
maintained by nonpaper means under division (A) of section 260
5309.031 of the Revised Code, which shall be governed by the rules 261
adopted under division (C) of that section, the court of appeals 262
in any appellate district may prescribe rules of practice and 263
procedure for the guidance of ~~the~~ each county recorder, and the 264
conduct of proceedings in the probate courts or courts of common 265
pleas, within ~~such districts~~ the district, in any matter arising 266
under ~~sections 5309.02 to 5310.21, inclusive,~~ this chapter or 267
Chapter 5310. of the Revised Code. 268

Sec. 5310.03. The original certificate of title in the 269
~~registration book~~ register of titles, any copy ~~thereof~~ of it 270
certified under the signature of the county recorder, and the 271
owner's duplicate of the original certificate of title, shall be 272
received as evidence in all the courts of the state and shall be 273
conclusive as to all matters contained ~~therein~~ in it, except as 274
provided in ~~sections 5309.02 to 5310.21, inclusive,~~ this chapter 275
or Chapter 5309. of the Revised Code. All subsequent certificates 276
of title and memorials ~~thereon~~ on them shall be conclusive in 277
favor of bona fide owners and holders except subsequent 278
certificates and memorials ~~thereon~~ on them procured by forgery. 279

Sec. 5310.07. A person who, without negligence on ~~his~~ the 280
person's part, sustains loss or damage, or is deprived of land or 281
of any interest ~~therein~~ in land, after the original registration 282
of land, by the registration of another person as owner of ~~such~~ 283
the land or of any interest ~~therein~~ in the land, through fraud, or 284
in consequence of any error, omission, mistake, or misdescription 285
in any certificate of title or in any entry or memorandum in the 286
~~registration book~~ register of titles, may bring an action in the 287

court of common pleas of the county in which the land is situated 288
against the treasurer of state for the recovery of compensation 289
for ~~such that~~ loss or damage, or for ~~such that~~ land or interest 290
~~therein in land~~, from the assurance fund. If the person who is 291
deprived of land or of any interest ~~therein in land~~ in the manner 292
stated in this section has a right of action, or ~~either~~ another 293
remedy for the recovery of the land, or ~~of~~ the interest ~~therein in~~ 294
land, ~~he~~ the person shall exhaust ~~such that~~ remedy before 295
resorting to the action of contract provided in this section. This 296
section does not deprive the plaintiff of any action ~~of~~ in tort 297
~~which he~~ that the plaintiff may have against any person for ~~such~~ 298
the loss or damage, or the deprivation of any land or of any 299
interest ~~therein in~~ land. 300

Section 2. That existing sections 5309.24, 5309.25, 5309.95, 301
5309.96, 5309.98, 5310.03, and 5310.07 of the Revised Code are 302
hereby repealed. 303