



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2019

The Honorable David Willborn
Guadalupe County Attorney
211 West Court Street
Seguin, Texas 78155-5779

Opinion No. KP-0233

Re: Whether a county clerk whose office does not accept electronic documents for recording must accept and record a printed copy of an electronic document under particular circumstances (RQ-0235-KP)

Dear Mr. Willborn:

You ask about a county clerk's duty to accept printed copies of electronic documents for recording under particular circumstances.¹ You tell us that the Guadalupe County Clerk's office does not accept documents electronically for recording purposes. Request Letter at 1. You relay that some filers accustomed to the acceptance of electronic recording in other counties "assume that all they have to do is print a copy of the electronic document and then deliver it to" the county clerk's office in order to record the document in Guadalupe County. *Id.* On behalf of the Guadalupe County Clerk, you ask whether the clerk must accept various categories of such printed documents for recording.² *Id.* at 2.

The county clerk is the recorder of the county. TEX. CONST. art. V, § 20; TEX. LOC. GOV'T CODE § 191.001(a). County clerks must accept a written document for recording if a statute authorizes, requires, or permits the recording. *See Turrentine v. Lasane*, 389 S.W.2d 336, 337 (Tex. Civ. App.—Waco 1965, no writ); *see also* TEX. LOC. GOV'T CODE § 191.001(c) (requiring a clerk to "record . . . the contents of each instrument that is filed for recording and that the clerk is authorized to record"). Conversely, if no statute authorizes the filing and recording of a document, a clerk may not accept it for that purpose. Tex. Att'y Gen. Op. No. GA-0450 (2006) at 2 ("[A] county clerk is prohibited from filing and recording a document that no statute authorizes, requires, or permits the clerk to accept."). The majority of instruments filed with a county clerk relate to the conveyance of real property, such as deed records and deeds of trust, but other

¹See Letter and attachment from Honorable David Willborn, Guadalupe Cty. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. (June 1, 2018), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> ("Request Letter" and "Attachment," respectively) (Attachment on file with the Op. Comm.).

²Your request excludes "documents submitted for filing in either Civil or Criminal court case files," and we limit our opinion accordingly. Request Letter at 1.

documents, such as assumed name certificates and state water permits, do not.³ In each instance, a county clerk must determine whether the instrument presented for filing and recording meets the requirements of the pertinent statutory provision authorizing its recording, which will vary depending on the document. See TEX. LOC. GOV'T CODE § 193.001(c) (outlining the recording procedure for a clerk to follow “[i]f an instrument that is filed for recording is acknowledged or proved *in the manner prescribed by law* for [the] record” (emphasis added)). You present three categories of documents, each based on the state of the signature information contained in the documents, and ask whether a county clerk must “accept for recording a paper document that fits” each category. Request Letter at 2.

We begin with Category 1, which you tell us encompasses “documents which, if containing original signatures would otherwise be recordable, but only reflect an ‘electronic signature’ of the signatory, the Notary, or both.” *Id.* You further relay that the “signatures are either a ‘facsimile stamp’ or a copy of the original or contain ‘/s/.’” *Id.* Based on your letter as a whole, we assume you to ask about the effect of a paper copy of a signature that originated as a form of “electronic signature” in a different context. You assert “that documents submitted in this manner do not meet the requirements of Section 12.0011 [of the Property Code] and may be rejected for recording purposes.” *Id.* at 2–3. Generally, “[a]n instrument concerning real or personal property may be recorded if it has been acknowledged, sworn to with a proper jurat, or proved according to law.” TEX. PROP. CODE § 12.001(a); see also *id.* § 12.001(b) (providing that if the instrument conveys real property, it must be “signed and acknowledged or sworn to by the grantor in the presence of two or more credible subscribing witnesses or acknowledged or sworn to before and certified by an officer authorized to take acknowledgements or oaths”).⁴ Subsection 12.0011 of the Property Code dictates particular signature requirements for recording paper documents concerning real or personal property.⁵ See *id.* § 12.0011(b); see also *id.* § 12.0011(a) (defining “paper document” for purposes of subsection 12.0011 as “a document received by a county clerk in a form that is not electronic”). “A paper document concerning real or personal property may not be recorded . . . unless [it] contains an original signature or signatures that are acknowledged, sworn to with a proper jurat, or proved according to law” or “the paper document is attached as an exhibit to a paper affidavit or other document” meeting the acknowledgement, swearing, or proving requirements. *Id.* § 12.0011(b)(1)–(2). But subsection 12.0011(c) contains an exception to the original signature requirement “for an *electronic instrument or other document* that complies with the requirements of” specified statutes “or other applicable law.” *Id.* § 12.0011(c) (emphasis

³See generally OFFICE OF CT. ADMIN., CTY. CLERK PROCEDURE MANUAL ch. 2 (2013) (“Recording and Filing of Instruments”), <http://www.txcourts.gov/publications-training/training-materials/manuals-bench-books/clerk/>.

⁴Certain statements filed pursuant to the Business and Commerce Code do not require acknowledgement or swearing. See TEX. PROP. CODE § 12.001(c).

⁵In 2004, prior to the passage of section 12.0011 of the Property Code, this office issued GA-0228, concluding that a county clerk is not required to accept real estate filings that contain a paper copy of either an electronic signature or an electronically transmitted notary seal. See Tex. Att’y Gen. Op. No. GA-0228 (2004) at 10–12. Consistent with this opinion, the Legislature in 2007 added section 12.0011 to specify that a paper document concerning real or personal property must generally “have an original ‘wet’ signature or signatures that were sworn to before a judge, notary public, or other person authorized to take oaths.” HOUSE RESEARCH ORG., BILL ANALYSIS, Tex. H.B. 732, 80th Leg., R.S. (2007) at 1–2 (noting that an original or “wet signature” is “signed on the document being recorded”); see also Act of May 8, 2007, 80th Leg., R.S., ch. 213, § 1, 2007 Tex. Gen. Laws 299, 299 (codified at TEX. PROP. CODE § 12.0011).

added). By definition, a printed hard-copy of a document handed to a county clerk is received by the clerk “in a form that is not electronic” and is thereby a “paper document,” regardless of its content or the fact that at one time it may have existed in electronic form. *Id.* § 12.0011(a). Thus, the documents you ask about would not qualify for the original signature exception as an “electronic instrument.” *See id.* § 12.0011(c). The exception, however, also applies to “other documents.” *See id.* Thus, the question is whether a paper document with a copied image of an electronic signature is a “document that complies with the requirements of” any of the statutes listed in subsection 12.0011(c) such that the document could be recorded without an original pen-and-ink signature. *See id.*

The first statute referenced in subsection 12.0011(c) is chapter 15 of the Property Code, which is the Uniform Real Property Electronic Recording Act. *See generally id.* §§ 15.001–.008. Section 15.004(b) of that statute provides that “[i]f a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.” *Id.* § 15.004(b). An “electronic signature” is “an *electronic* sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.” *Id.* § 15.002(4) (emphasis added); *see also id.* § 15.002(2) (defining “electronic” as “relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities”). As you describe them, the documents in Category 1 only reflect a copied image of an electronic signature of the signatory in paper-copy format. *See* Request Letter at 2. Thus, the signatures on the documents are no longer “electronic signatures” in and of themselves when presented to a clerk. *See* TEX. PROP. CODE § 15.002(2), (4). Accordingly, the documents cannot satisfy the requirements of Property Code chapter 15. *See* Tex. Att’y Gen. Op. No. GA 0228 (2004) at 10 (noting that a paper copy of an electronic signature is not the equivalent of an electronic signature).⁶

Next, subsection 12.0011(c) references chapter 195 of the Local Government Code, which governs electronic filing and recording of records by a county clerk. *See generally* TEX. LOC. GOV’T CODE §§ 195.001–.009. Chapter 195 directs the Texas State Library and Archives Commission to adopt rules providing “the means by which a county clerk may electronically record an *electronic document* or other instrument *filed electronically*.” *Id.* § 195.002(b)(3) (emphases added); *see also id.* § 195.001(3) (adopting the definition of “electronic document” found in section 15.002 of the Property Code); TEX. PROP. CODE § 15.002(3) (defining “electronic document” as “a document that is received by a county clerk in an electronic form”). Again, the county clerk receives the documents you ask about in hard-copy format, not electronic format. Thus, they are not “electronic documents” under Local Government Code chapter 195.

Finally, subsection 12.0011(c) refers to chapter 322 of the Business and Commerce Code, which is the Uniform Electronic Transactions Act. *See generally* TEX. BUS. & COM. CODE §§ 322.001–.021. Subsection 322.007(d) provides that “[i]f a law requires a signature, an

⁶Briefing received from the Texas State Library and Archives Commission explains that converting digitized documents to paper format can result in the loss of certain metadata necessary to identify, authenticate, and contextualize records. *See* Brief from Mr. Craig Kelso, Dir. and State Records Adm’r, Tex. State Library & Archives Comm’n, to Charlotte M. Harper, Deputy Chair, Op. Comm., Office of the Tex. Att’y Gen. at 1–3 (July 13, 2018) (on file with the Op. Comm.).

electronic signature satisfies the law.” *Id.* § 322.007(d) (emphasis added). Subsection 322.011 additionally provides that “[i]f a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the *electronic signature* [of the authorized person] is attached to or logically associated with the signature or record.” *Id.* § 322.011 (emphasis added). For purposes of chapter 322, an “electronic signature” means “an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” *Id.* § 322.002(8); *see also id.* § 322.002(5) (defining “electronic” as “relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities”). Again, the signatures on the hard-copy documents you describe are no longer “electronic signatures” in and of themselves when presented to the clerk. As such, they would not fall within the purview of chapter 322.⁷

To summarize, a paper document with a copied image of an electronic signature is neither an “electronic instrument” nor a document complying with the provisions that subsection 12.0011(c) of the Property Code would require in order for the document to qualify for recording without an original signature. Absent other applicable law, to the extent that the paper documents in Category 1 concern real or personal property, a court would likely conclude that they must contain an original signature that meets the requirements of subsection 12.0011(b) to be recorded. *See* TEX. PROP. CODE § 12.0011(c) (applying the original signature exception to an electronic instrument or other document that complies with the requirements of the specified statutes “or other applicable law”). If they do not, a county clerk may not accept them for recording.

Category 2 contains copies of documents previously filed with a state agency that you tell us are either “not certified” or “only contain a copy of an electronic ‘certification’ signature.” Request Letter at 2. You include examples of such documents filed with the Secretary of State, including articles of amendment of a corporation (Exhibit A), articles of incorporation of a property owners’ association (Exhibit B), and a certificate of merger of a limited liability company and a limited partnership (Exhibit C). *See* Attachment at 1–16. You tell us that the certification in these sample documents “is merely a copy of the original certification and/or the signatures were never original in the first place and a ‘signature stamp’ was used.” Request Letter at 3. Again, a county clerk must determine whether the instrument presented meets the requirements of the particular statutory provision authorizing the recording of the document. *See* TEX. LOC. GOV’T CODE §§ 191.001(c), 193.001(c). In light of the specific examples you provide, we turn to provisions governing corporate filings.

Subsection 4.005(b) of the Business Organizations Code provides that a public office or official body, such as a county clerk, may “record a certificate or certified copy” of a document issued or accepted by the Secretary of State as described in subsection 4.005(a). TEX. BUS. ORG. CODE § 4.005(b); *see also id.* § 4.005(a) (“A . . . public office . . . shall accept a certificate issued

⁷Chapter 322 as a whole “applies to electronic records and electronic signatures relating to a transaction,” except in certain instances not relevant here. TEX. BUS. & COM. CODE § 322.003(a). Furthermore, it applies “only to transactions between parties each of which has agreed to conduct transactions by electronic means.” *Id.* § 322.005(b). As explained in the State Bar Committee Comments to section 322.003, such “a conveyance, effective between the parties, would not be recordable in the deed records of the particular county until the county had adopted an electronic filing system in accordance with Chapter 195, Local Government Code.” *Id.* § 322.003 cmt. 2 (State Bar Committee Comments).

... by the secretary of state or a copy of a filing instrument accepted by the secretary of state for filing ... that is certified by the secretary of state as prima facie evidence of the facts stated in the certificate or instrument.”). Unlike the provisions governing the recording of documents concerning real or personal property, the statute here makes no direct reference to an acknowledgement, jurat, or proof requirement for recording purposes. Nor does it require original signatures. Subsection 4.005(b) requires only that the document be “a certificate or certified copy described by Subsection (a)” in order to be recorded. *Id.* § 4.005(b). Thus, to the extent the document in question is a certificate issued by the Secretary of State or a filing instrument accepted and certified by the Secretary of State, a county clerk may generally accept a copy of it for recording. In certain instances, a statute will mandate that a particular type of corporate document be filed with the county clerk, in which case the clerk should consult the specific recording provision.

Category 3 documents, you tell us, “do not contain an acknowledgement or original signatures but might be covered for filing purposes in a separate statute.” Request Letter at 2. The example you provide is an amendment to a certificate of adjudication filed with the Texas Commission on Environmental Quality (the “Commission”). *See* Attachment at 17–19. You relay that the document “did not contain original signatures, was not sworn to or acknowledged and did not, in the vicinity of the signature, contain the current seal of the Commission.” Request Letter at 3. As noted above, a county clerk must determine whether the instrument presented meets the requirements of the particular statutory provision authorizing the recording of the document. Section 11.324 of the Water Code requires the Commission to “transmit [a] certificate of adjudication or a true copy to the county clerk of each county in which the appropriation [of water] is made.” TEX. WATER CODE § 11.324(a). “On receipt of the recording fee from the holder of the certificate, the county clerk shall file and record the certificate” *Id.* § 11.324(b). The recording statute references no signature or seal requirements. Thus, a certificate of adjudication transmitted by the Commission must be filed and recorded by a county clerk upon receipt of the appropriate recording fee. To summarize the answer to your questions regarding Categories 2 and 3, a county clerk must accept for recording a paper document that complies with the requirements of the particular statutory provision authorizing the recording of the document.

Lastly, you ask whether our answers would change “if these same documents [were] submitted to a County Clerk’s office that does accept the electronic recording of documents.” Request Letter at 4. If by the phrase “these same documents” you mean paper copies, then our answers would not change because the relevant statutes apply to printed documents irrespective of whether a particular clerk’s office also accepts electronic filing. If you mean the same documents in electronic form, then our answers may or may not change, depending on the circumstances. Section 191.009(a) of the Local Government Code authorizes a county clerk to “accept electronic documents and other instruments by electronic filing and record the electronic documents and other instruments electronically if the filing or recording complies with the rules adopted by the Texas State Library and Archives Commission under Chapter 195.” TEX. LOC. GOV’T CODE § 191.009(a); *see also id.* § 195.002(b) (setting forth the required content of the rules, which must provide for electronic filing and recording of “real property records” and, with certain exceptions, “other instruments . . . as determined by” the Texas State Library and Archives Commission); 13 TEX. ADMIN. CODE §§ 7.141–.145 (2018) (Tex. State Library & Archives Comm’n, Electronic Filing & Recording) (the “Rules”) (to date providing for the electronic filing and recording of real

property records only). Chapter 195 further governs the electronic filing of records with and recording by a county clerk. *See generally* TEX. LOC. GOV'T CODE §§ 195.001–.009. For example, the statute limits the authority to file electronically to certain persons and entities only. *See id.* § 195.003(a), (a-1); *see also* 13 TEX. ADMIN. CODE § 7.142(c), (d) (requiring an authorized filer to apply for enrollment in a participating county clerk's electronic filing and recording program and to enter into an agreement governing terms and conditions with the county clerk). With respect to real property in particular, the Uniform Real Property Electronic Recording Act in chapter 15 of the Property Code validates complying electronic documents for purposes of certain recording requirements that would otherwise apply to a paper document, such as signatures, notarization, acknowledgement, and seals, among others. *See* TEX. PROP. CODE § 15.004(a)–(c); *see also id.* § 15.005(a) (requiring a county clerk, when receiving electronic documents, to comply with both the Rules and certain uniform standards established by the Texas State Library and Archives Commission).

Thus, in answer to your last question, our answer will depend on whether (1) the document in question is an electronic real property record filed by an authorized filer who completed the requisite enrollment and agreement with the county clerk; and (2) the electronic document otherwise meets the requirements for recording of real property records submitted electronically.

S U M M A R Y

The county clerk must accept a paper document presented for recording if the document complies with the requirements of the particular statutory provision authorizing the recording of the document. To the extent a printed copy of an electronic document presented for recording by the county clerk concerns real or personal property, it must contain an original signature that meets the requirements of subsection 12.0011(b) of the Property Code to be recorded by a county clerk.

To the extent a county clerk has implemented electronic filing and recording in accordance with state law, the clerk's obligation to accept a document submitted electronically for recording depends on whether the document (1) is a real property record; (2) is submitted by an authorized filer who has completed the requisite enrollment and agreement with the county clerk; and (3) otherwise meets the requirements for recording of real property records submitted electronically.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

BECKY P. CASARES
Assistant Attorney General, Opinion Committee