WEST VIRGINIA CODE CHAPTER 39 ARTICLE 1

WV Legislature

§39-1-1. Power of attorney may be recorded.

A power of attorney may be admitted to record in any county.

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§39-1-2. Conditions under which county clerk shall admit deeds, contacts, etc., to record.

(a) The clerk of the county commission of any county in which any deed, contract, power of attorney, or other writing is to be, or may be, recorded, shall admit the same to record in the clerk's office, as to any person whose name is signed thereto, when it shall have been acknowledged by such person or proved by two witnesses as to such person before such clerk of the county commission.

(b) Notwithstanding the requirements of subsection (a) of this section:

(1) The clerk shall not admit to record any contract, deed, deed of trust, mortgage, or other instrument that secures the payment of any debt, unless such contract, deed, deed of trust, mortgage, or other instrument sets forth therein who, at the time of the execution and delivery thereof, is the beneficial owner of the debt secured thereby, and where he resides: *Provided*, That in the case of a mortgage or a deed of trust securing an issue of negotiable notes or bonds exceeding five in number and payable to bearer, it shall not be necessary that the mortgage or deed of trust show who are the beneficial owners of such notes or bonds, but in such case such mortgage or deed of trust shall show the name and address of the person or corporation with or by whom the notes or bonds have been, or are to be, first negotiated.

(2) The clerk shall not admit to record any quitclaim deed without consideration or any deed effecting the transfer of real property where the value of the property transferred is $100 or less for which no excise tax on the privilege of transferring real property on such instrument is paid under §11-22-1 *et seq*. of this code unless the instrument has been signed by the grantee thereon and acknowledged by the grantee or proved by two witnesses as to the grantee before such clerk of the county commission: *Provided*, That the clerk shall admit to record any transfer on death deed made pursuant to §39-12-1 *et seq*. of this code, and transfers between husband and wife, transfers between parent and child, transfers between parent and child and his or her spouse, transfers between grandparent and grandchild, or transfers between grandparent and grandchild and his or her spouse, which are without consideration or for consideration of less than $2,000, that have not been signed by the grantee thereon. Any deed recorded in violation of this section is void and no interest transfers to grantee under such recorded deed.

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§39-1-2a. Other requirements for admission to record of certain instruments.

(a) In addition to the other requirements prescribed by law, no instrument by which the title to real estate or personal property, or any interest therein or lien thereon, is conveyed, created, encumbered, assigned or otherwise disposed of, shall be recorded or admitted to record, or filed by the county clerk unless the name of the person who, and governmental agency, if any, which, prepared such instrument appears at the conclusion of such instrument and such name is either printed, typewritten, stamped, or signed in a legible manner: Provided, That the recording or filing of any instrument in violation of the provisions of this section shall not invalidate or cloud the title passing by or under such instrument or affect the validity of such instrument in any respect whatever, and such recorded or filed instrument shall constitute notice with like effect as if such instrument fully complied with the provisions of this section. An instrument will be in compliance with this section if it contains a statement in the following form: "This instrument was prepared by (name)".

(b) This section does not apply to any instrument executed prior to the effective date hereof; to any decree, order, judgment or writ of any court; to any will or death certificate; to any financing, continuation or termination statement permitted to be filed under chapter forty-six of this code; or to any instrument executed or acknowledged outside of this state.

(c) A survey document intended to be used in the transfer of real property, prepared by a licensed surveyor, and filed with a county clerk or accepted by a public official of this state shall have the licensed surveyor's signature and seal or stamp affixed thereto.

(d) If a survey document, prepared by a licensed surveyor, has been altered from its original form, it shall not be filed with a county clerk or accepted by a public official of this state, until the original licensed surveyor has initialed the changes.

(e) A document, plan, map, drawing, exhibit, sketch or pictorial representation prepared by a person exempted under the provisions of thirteen-a, chapter thirty of this code, is not required to have the signature and seal affixed thereto.

(f) A document, plan, map, drawing, exhibit, sketch or pictorial representation altered by a person not licensed under the provisions of article thirteen-a, chapter thirty of this code, shall have the alteration initialed by a surveyor licensed under the provisions of article thirteen-a, chapter thirty of this code.

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§39-1-2b. Recordation of certified copies of certain instruments.

Except as provided in this section, the clerk of the county commission of any county shall admit to record in the office of such clerk a copy of any contract, deed of trust, mortgage, lease, memorandum of lease, release, assignment, power of attorney or any other instrument or writing which has been certified by the clerk of the county commission of any other county of this state as being a true and correct copy and transcript from the records of said county. Any such recordations prior to the effective date of this section shall constitute notice with like effect as if such original instrument had been recorded therein. This section does not apply to deeds, wills or to any instrument filed in accordance with chapter forty-six of this code.

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§39-1-3. Who may take acknowledgment.

Upon the request of any person interested therein, such clerk of the county court shall also admit any such writing to record, as to any person whose name is signed thereto, upon a certificate of his acknowledgment before the president of a county court, a justice of the peace, notary public, recorder, prothonotary or clerk of any court, within the United States, the Philippine Islands, Island of Puerto Rico, Territory of Alaska, Territory of Hawaii, or any other territory, possession or dependency of the United States, or a commissioner appointed within the same by the Governor of this state, written or annexed to the same; or upon a certificate so written or annexed under the official seal of any ambassador, minister plenipotentiary, minister resident, charge d'affaires, consul general, consul, deputy consul, vice consul, consular agent, vice consular agent, commercial agent, or vice commercial agent, appointed by the government of the United States to any foreign country, or of the proper officer of any court of record of such country, or of the mayor or other chief magistrate of any city, town or corporation therein, that such writing was acknowledged by such person, or proved as to him by two witnesses, before any person having such appointment, or before such court, mayor, or chief magistrate.

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§39-1-4. Form of certificate of acknowledgment.

The certificate of acknowledgment mentioned in the preceding section may be in form or effect as follows:

State (territory or district) of ....., county of ....., to wit:

I, ..., recorder of said municipality; or I, ..., a notary public of said county; or I, ..., a clerk of the ..... court of said county; (or other officer or person authorized to take acknowledgments by section three of this article, as the case may be), do certify that ....., whose name (or names) is (or are) signed to the writing above (or hereto annexed) bearing date on the ..... day of ....., 20 ....., has (or have) this day acknowledged the same before me, in my said .....

Given under my hand this ..... day of ....., 20 .....

WV Legislature

§39-1-4a. Acknowledgment of persons in the military service of the United States of America.

Upon the request of any person interested therein, the clerk of the county court of any county in which any deed, contract, power of attorney, or other writing is to be, or may be, recorded, shall admit the same to record as to any person whose name is signed thereto who is in the military service of the United States (including the Women's Army Auxiliary Corps, Women's Appointed Volunteers for Emergency Service, Army Nurse Corps, "Spars," Women's Reserve, or similar women's auxiliary unit officially connected with the military service of the United States) or who is the spouse of any one in the military service of the United States (including the aforesaid components and auxiliary units officially connected therewith), upon the certificate of acknowledgment of such person before any commissioned officer of any branch of the military service of the United States, or auxiliary unit officially connected with such military service. Such acknowledgment may be taken at any place either within or outside of the United States of America, or any territory, possession or dependency thereof. The certificate of such acknowledgment need not state the place where same is taken and shall require no seal to be affixed thereto. The officer certifying such acknowledgment must state his rank, branch of military service, and identification number; and such certificate of acknowledgment may be in form and effect as follows:

IN THE MILITARY SERVICE OF THE UNITED STATES:

I, ..., a commissioned officer in the military service of the United States, do certify that ....., who is a member of the military service of the United States (or of ....., an auxiliary to the military forces of the United States), and/or ....., husband (or wife) of ....., a member of the military service of the United States (or of ....., an auxiliary to the military forces of the United States), whose name(s) is (are) signed to the foregoing writing bearing date on the ..... day of ....., 19....., has (have) this day acknowledged the same before me; and I further certify that I am a ..... in the ..... of the United States and (state rank) my identification number is .....

Given under my hand this ..... day of ....., 19....

.....

(Signature of Officer)

.....

(Official Title)

WV Legislature

§39-1-5. Acknowledgment by husband and wife.

When a husband and wife have signed a writing purporting to sell or convey real estate, the wife may acknowledge the same together with, or separately from her husband. Either the husband or the wife may sign and acknowledge the writing before the other has signed or acknowledged it. If both acknowledge the writing at the same time, the certificate of the acknowledgments may be in form or effect as follows:

State (territory or district) of ..... county of ....., to wit:

I, ..., a notary public of the said county of .....; or I, ..., clerk of the ..... court or county of .....; (or other officer or person authorized to take acknowledgments by section three of this article, as the case may be),* do certify ..... and ....., his or her wife whose names are signed to the writing above (or hereto annexed) bearing date the ..... day of ....., 20....., have this day acknowledged the same before me in my said .....

Given under my hand this ..... day of ....., 20.....

If the husband or wife acknowledge a deed or other writing separately from the other, the certificate of acknowledgment after the star in the foregoing form shall be in form or effect as follows: do certify that ....., the wife of ....., (or the husband of ....., as the case may be), whose name is signed to the writing above (or hereto annexed) bearing date the ..... day of ....., 20 ....., has this day acknowledged the same before me in my said .....

Given under my hand this ..... day of ....., 20 .....

WV Legislature

§39-1-6. Certificates as to wives living separate and apart to be prima facie evidence in certain cases.

The certificate of acknowledgment heretofore taken of a married woman to a deed or other writing conveying, or agreeing to sell and convey, real estate which was her sole and separate property, purporting to show that at the time of its execution and acknowledgment such married woman was living separate and apart from her husband, shall, in all cases where the validity of any such deed or other writing comes in question, be prima facie evidence of the facts therein stated.

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§39-1-7. False certificate of acknowledgment.

If any person shall in any case wilfully make any false certificate of acknowledgment, contrary to the true facts in the case, or shall certify the acknowledgment of any person whom he does not personally know to be the person whose name is signed to the writing acknowledged, he shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not more than $500, and imprisoned not more than sixty days, at the discretion of the court.

WV Legislature

§39-1-8. Form of certificate of acknowledgment by attorney in fact.

When any writing has been executed by an attorney in fact, and an acknowledgment of the execution thereof is required or authorized for any purpose, the certificate of acknowledgment may be in form or effect as provided in section four of this article as far as the words "do certify," and thence as follows: do certify that ....., whose name is signed to the writing above (or hereto annexed) bearing date the ..... day of ....., 19....., as attorney in fact for ....., has this day acknowledged the same before me in my said .....

Given under my hand this ..... day of ....., 19.....

WV Legislature

§39-1-9. Acknowledgment by corporations.

The certificate of acknowledgment of a corporation may be in form or effect as prescribed in section four of this article as far as the words "do certify" and thence as follows: do certify that ....., who signed the writing above (or hereto annexed), bearing date the ..... day of ....., 19....., for ..... (name of corporation), has this day in my said county, before me, acknowledged the said writing to be the act and deed of said corporation.

Given under my hand this ..... day of ....., 19.....

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§39-1-10. When certificate to be under official seal.

If any acknowledgment be before a notary without this state, he shall certify the same under his official seal.

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§39-1-10a. Verification by written statement under certain conditions.

Any certificate, return, form, statement, or other document which is required by the State of West Virginia, or any office, department or agency thereof, and which does not require an acknowledgment under this article or other laws of recordation of the State of West Virginia, may be verified by written declaration that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required.

Any person making any false statement in any certificate, return, statement, or other document verified by such written declaration shall be subject to the same penalties as would be applicable had the same been verified by oath duly taken and acknowledged.

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§39-1-11. Recordation of writings and plats and papers annexed; index; interlineations; filing under Uniform Commercial Code.

Every writing (except financing, continuation, and termination statements and other statements and writings permitted to be filed under chapter 46 of this code) authorized by law to be recorded, when admitted to record, shall, with all certificates of acknowledgment, and all plats, schedules, and other papers thereto annexed or thereon indorsed, be recorded by, or under the direction of, the clerk of the county commission, in a well-bound book, to be carefully preserved; and there shall be an index to such book as well in the name of the grantee as of the grantor: Provided, That the county commission may, in accordance with the provisions of §5A-8-15 of this code, authorize the clerk to scan, record, and make available online when determined to be financially feasible by the county commission all such writings and papers in electronic form rather than in well-bound books, not prepare in separate books an index of any type, and replace existing well-bound books by scanning them in an approved electronic format: Provided, however, That existing well-bound books be retained either on-site or off-site unless the provisions of §5A-8-15 of this code are followed: Provided further, That any documents in an electronic format are stored on a server off site, such as a cloud-based server, to retain a backup copy of electronic documents.

After being recorded, such writing may be delivered to the party entitled to claim under the same. If, except in those cases where such writing is recorded by photography or similar process producing exact facsimile copies, there appear upon such writing, or any paper or certificate annexed thereto, any interlineation, erasure, or alteration, of which no memorandum is contained in the writing, paper, or certificate, the clerk shall append to the record thereof a memorandum describing as accurately as may be such interlineation, erasure, or alteration; and such memorandum shall be copied into every such writing, paper, or certificate. Every such memorandum shall be prima facie evidence of what is stated therein: Provided, That the clerk of the county commission may refuse to accept for recordation any instrument printed on both sides of the paper or printed in whole or part in smaller than 10-point type with at least two points separating each line. Any failure of such instrument to be so accepted by the clerk of the county commission shall not affect the validity thereof as to the parties thereto: Provided, however, That any such instrument shall be accepted by the clerk for recording at one and one-half times the legal fee therefor.

Financing, continuation, and termination statements and other statements and writings permitted to be filed under chapter 46 of this code shall be filed in a proper file by the clerk of the county commission or the Secretary of State, as the case may be, as specified in said chapter 46. Such statements and writings filed in the office of the clerk of the county commission and such statements and writings filed in the office of the Secretary of State shall be indexed according to the name of the debtor and shall disclose the assigned file number and the address of the debtor given in the respective statement or writing. The date and hour of filing and the file number shall be noted on the statement or writing involved. A financing, continuation, or termination statement or other statement or writing permitted to

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be filed under chapter 46 of this code may, after the same ceases to be effective or lapses, as specified in said chapter 46, be removed from the files in the office of the clerk of the county commission or the Secretary of State, as the case may be, and destroyed.

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§39-1-11a. Photographic recordation.

It shall be as legal and effective in all respects to photographically record writings, plats and maps and the papers thereto annexed as if such writings, plats and maps and papers thereto annexed had been recorded by handwriting, or by the use of a typewriter, or by any other means useful for the purpose.

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§39-1-12. Special recordation of writing not acknowledged or proved for regular recordation.

If any writing which it is lawful for a clerk of the county court to admit to record, on proper acknowledgment or proof, has been or shall be lodged in his office, and has remained or shall remain therein six months without being acknowledged or proved so that it can be duly admitted to record, the clerk of the county court shall, for the preservation thereof, when required by any person interested, copy the same into a book separate from those in which writings properly acknowledged or proved are recorded, and keep an index to such book, as in the case of writings duly admitted to record. In case of the loss or destruction of any such writing, such copy shall be prima facie evidence of the contents thereof.

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§39-1-13. Duty to record plat or plan of lots.

When any tract or parcel of land within the limits of any county of the state has been or shall be hereafter subdivided into lots by any partition of land or by order of the owner or owners, or his or their agent, or otherwise and any lot or lots have been sold or conveyed, or are offered for sale, from the tract or parcel of land so divided, according to a plat or plan of subdivision, without such plat or plan of subdivision having been filed for record, it shall be the duty of the owner or owners of such tract of land, or his or their agent, authorizing such plat or plan of subdivision of such tract of land to be laid out, to file such plat or plan for record in the office of the clerk of the county court and the office of the county assessor of the county wherein such land so divided is situate.

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§39-1-13a. Consolidation order book.

The county court of any county may order the clerk of such county court to provide a book or series of books, to be entitled "Consolidation Order Book," in which such clerk shall record all real estate consolidation orders entered by the county court pursuant to section seventeen, article four, chapter eleven of this code, and likewise to provide an index therefor in which shall be entered pertinent index data consistent with the provisions of section two, article two of this chapter. The county court shall provide funds for the payment for such record book, index and other necessary supplies incident to the keeping thereof.

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§39-1-14. Notification to file plat for record.

Upon notice from the clerk of the county court wherein such land so divided is situate, or upon notice from any person owning a lot or lots (or an undivided share or any interest therein) in any such tract or parcel of land so divided, to the owner or owners or his or their agent, that the plat or plan of subdivision has not been properly filed, the owner or owners, or his or their agent, shall cause the same to be properly filed for record within sixty days from such notification.

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§39-1-15. Failure to file plat after notification.

If such owner, or owners, or his or their agent, upon having been so notified, shall fail to cause such plat or plan to be filed in such offices as aforesaid, such owner, or owners, or his or their agent, shall forfeit and pay the sum of $200 for each period of sixty days that shall elapse after such notification without such plat having been filed for record, such sum or sums to be recovered as debts of like amount are by law recoverable at the suit of any party, or parties, giving such notice. The party or parties bringing such suit shall be entitled to one half of the amount so recovered and the other half shall go to the county fund of such county.

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§39-1-16. Approval by city council or commissioners prerequisite to laying out subdivision.

In case a proposed subdivision of any lot or parcel of land is situate within the corporate limits of any municipality, or abutting thereon, it shall be the duty of the owner, or owners, or his or their agent, to submit a plat or plan of such subdivision to the council or commissioners of such municipality, showing the street and alley connections that such subdivision makes with such municipality, and furnishing full information for the purpose of determining whether the proposed subdivision will impede or prevent the further development and extension of such municipality where such subdivision is situate. Before any such subdivision is finally laid out, it shall have the approval of the council or commissioners of the municipality wherein the subdivision is situate, or upon which it abuts, and such approval and the date thereof shall be indicated on the plat or plan of such subdivision before the same is finally filed in the office of the clerk of the county court and the county assessor's office.

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§39-1-17. Duty to provide cornerstone monuments; acknowledgment or proof not necessary to recordation of plat.

It shall be the duty of the engineer in charge, or the owner, or owners, or the agent of the owner or owners, of any subdivision of land in this state to have permanent cornerstone monuments, of stone or concrete, not less than twenty-four inches in length by six inches square at the top, or not less than six inches in diameter, with proper centers, placed at the most important corners (where permanent corners do not already exist) so that there shall be not less than two permanent corners to each lot or block of any subdivision thereafter made, and the position of the same shall be indicated on the plan or map when finally filed for record. No certificate of acknowledgment, or other proof thereof, shall be necessary or prerequisite to the recordation of such plat, map or plan.

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