
A BILL FOR AN ACT

RELATING TO REAL PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that electronic
2 communications make it possible to conduct transactions in new
3 forms. Some of the earliest transactions governed by law are
4 real estate transactions. Deeds, mortgages, and leases were
5 memorialized by words on paper with manual signatures. However,
6 technology has advanced and electronic communications are
7 increasingly replacing paper documents. The law of real
8 property will need to transition to accommodate this change.
9 The efficiency of real estate markets make this imminently
10 necessary.

11 The Uniform Electronic Transactions Act, as codified under
12 section 489E-5, Hawaii Revised Statutes, adjusted statute of
13 fraud provisions to enable electronic records and signatures for
14 the memorializing of a multitude of transactions, including
15 basic real estate transactions. The widespread enactment of the
16 Uniform Electronic Transactions Act and the federal Electronic
17 Signatures in Global and National Commerce Act made it possible
18 to treat sales contracts, mortgage instruments, and promissory



1 notes that are memorialized in electronic form, and with
2 electronic signatures, equal to the same paper documents that
3 have manual signatures. However, real estate documents must be
4 recorded on public record to be effective. This Act permits the
5 registrar of the bureau of conveyances to accept electronic
6 documents with electronic signatures for recording.

7 This Act is not intended to affect land court registration
8 pursuant to chapter 501, Hawaii Revised Statutes, except to
9 permit the registrar of the bureau of conveyances to accept,
10 make, keep, enter, file, index, store, archive, or convert any
11 document received by the registrar of the bureau of conveyances,
12 or filed at the bureau of conveyances, by the registrar of the
13 land court. The land court is an adjudicating body with rules
14 regarding the processing of land court documents and
15 instruments. Special consideration should be given to what
16 effect electronic recording may have on the adjudication of land
17 court applications.

18 The purpose of this Act is to:

19 (1) Permit the registrar of the bureau of conveyances to
20 accept electronic documents with electronic signatures
21 for recording; and



1 (2) Require the judiciary to study what effect electronic
2 recording may have on the adjudication of land court
3 applications, and permissible uses for electronic
4 recording, under chapter 501, Hawaii Revised Statutes.

5 SECTION 2. Chapter 502, Hawaii Revised Statutes, is
6 amended by adding a new part to be appropriately designated and
7 to read as follows:

8 **"PART XII. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT**

9 **§502-A Definitions.** As used in this part:

10 "Document" means information affecting title to real
11 property that is eligible to be entered into the public records,
12 including any plan of land prepared pursuant to section 502-17.

13 "Electronic" means relating to technology having
14 electronic, digital, magnetic, wireless, optical,
15 electromagnetic, or similar capabilities.

16 "Electronic document" means a document that is stored in an
17 electronic medium.

18 "Electronic signature" means an electronic sound, symbol,
19 or process attached to or logically associated with a document
20 and executed or adopted by a person with the intent of affixing
21 a signature on the document.



1 "Paper document" means a document that is inscribed on a
2 tangible medium such as paper.

3 "Person" means an individual, corporation, business trust,
4 estate, trust, partnership, limited liability company,
5 association, joint venture, public corporation, government, or
6 governmental subdivision, agency, or instrumentality, or any
7 other legal or commercial entity.

8 "State" means a state of the United States, the District of
9 Columbia, Puerto Rico, the United States Virgin Islands, or any
10 territory or insular possession subject to the jurisdiction of
11 the United States.

12 **§502-B Electronic document and electronic signature;**

13 **validity.** (a) The registrar may accept an electronic document
14 for recording. The electronic document shall be exempt from any
15 requirement under this chapter that a document or instrument be:

- 16 (1) Original;
17 (2) On paper, cloth, or other tangible medium; or
18 (3) In writing.

19 (b) The registrar may accept an electronic signature as an
20 original signature for purposes of this chapter.

21 (c) Any requirement that a document or a signature
22 associated with a document be notarized, acknowledged, verified,



1 witnessed, or made under oath shall be satisfied if the
2 electronic signature of the person authorized to perform that
3 act, and all other information required to be included, is
4 attached to or logically associated with the document or
5 signature. It shall not be necessary to accompany an electronic
6 signature with a physical or electronic image or a stamp,
7 impression, or seal.

8 (d) In a proceeding, evidence of a document or signature
9 shall not be excluded solely because it is in electronic form.

10 **§502-C Recording of documents.** (a) Notwithstanding any
11 other law to the contrary, and subject to any rules adopted by
12 the department of land and natural resources pursuant to chapter
13 91, the registrar may:

14 (1) Accept, make, keep, enter, file, index, store,
15 archive, and transmit electronic documents; provided
16 that the registrar shall continue to accept paper
17 documents for recording, as well, and shall place
18 entries for both types of documents in the same index;

19 (2) Convert or copy paper documents that are accepted for
20 recording into electronic form;

21 (3) Convert or copy prior records of documents made in the
22 bureau of conveyances into electronic form;



1 (4) Accept fees for services rendered under this chapter
2 electronically; and

3 (5) Enter into agreements with other officials of a state
4 or a political subdivision thereof, or of the United
5 States, on procedures or processes to facilitate the
6 electronic satisfaction of prior approvals and
7 conditions precedent to recording and the electronic
8 payment of fees.

9 (b) This part shall also apply to any document that is
10 received by the registrar or assistant registrar, or filed at
11 the bureau of conveyances, by the registrar of the land court
12 pursuant to chapter 501.

13 (c) The department of land and natural resources shall
14 adopt rules pursuant to chapter 91 necessary for the purposes of
15 this part, including when an electronic document shall be
16 considered delivered to the registrar pursuant to section
17 502-32.

18 (d) To keep the standards and practices of recording in
19 the State in harmony with the standards and practices of
20 recording offices in other jurisdictions that enact
21 substantially this part and to keep the technology used by the
22 registrar compatible with technology used by recording offices



1 in other jurisdictions that enact substantially this part, the
2 department of land and natural resources, so far as is
3 consistent with the provisions of this part, in adopting rules
4 under chapter 91, shall consider:

- 5 (1) The standards and practices of other jurisdictions;
- 6 (2) The most recent standards adopted by national
7 standard-setting bodies such as, the Property Records
8 Industry Association;
- 9 (3) The views of interested persons and governmental
10 officials and entities;
- 11 (4) The needs of jurisdictions of varying size,
12 population, and resources; and
- 13 (5) Standards requiring adequate information security
14 protection to ensure that electronic documents are
15 accurate, authentic, adequately preserved, and
16 resistant to tampering.

17 **§502-D Uniformity of application and construction.** In
18 applying and construing this uniform Act, consideration shall be
19 given to the need to promote uniformity of the law with respect
20 to its subject matter among states that enact it.

21 **§502-E Relation to federal Electronic Signatures in Global**
22 **and National Commerce Act.** This part modifies, limits, and



1 supersedes the federal Electronic Signatures in Global and
2 National Commerce Act, 15 U.S.C. section 7001, et seq., but does
3 not modify, limit, or supersede section 101(c) of the federal
4 Electronic Signatures in Global and National Commerce Act,
5 15 U.S.C. section 7001(c), or authorize electronic delivery of
6 any of the notices described in section 103(b) of the federal
7 Electronic Signatures in Global and National Commerce Act,
8 15 U.S.C. section 7003(b)."

9 SECTION 3. Chapter 502, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By designating sections 502-1 to 502-4 as part I and
12 amending the subdivision heading before section 502-1 to read:

13 **PART I. REGISTRAR, DEPUTY**

14 2. By designating sections 502-7 to 502-8 as part II and
15 amending the subdivision heading before section 502-7 to read:

16 **PART II. [{}GENERAL PROVISIONS[{}]**

17 3. By designating sections 502-11 to 502-27 as part III
18 and amending the subdivision heading before section 502-11 to
19 read:

20 **PART III. INDEXING OF RECORDS**

21 4. By designating sections 502-31 to 502-34 as part IV and
22 amending the subdivision heading before section 502-31 to read:



1 **PART IV. RECORDING**

2 5. By designating sections 502-41 to 502-54 as part V and
3 amending the subdivision heading before section 502-41 to read:

4 **PART V. ACKNOWLEDGMENTS; PROOF OF INSTRUMENTS**

5 6. By designating sections 502-61 to 502-64 as part VI and
6 amending the subdivision heading before section 502-61 to read:

7 **PART VI. INTERLINEATIONS, ERASURES, ETC.**

8 7. By designating sections 502-71 to 502-74 as part VII
9 and amending the subdivision heading before section 502-71 to
10 read:

11 **PART VII. RECORDS OF ACKNOWLEDGMENTS**

12 8. By designating sections 502-81 to 502-85 as part VIII
13 and amending the subdivision heading before section 502-81 to
14 read:

15 **PART VIII. REQUIREMENT AND EFFECT OF ACKNOWLEDGING,**
16 **RECORDING, NOT RECORDING**

17 9. By designating sections 502-91 to 502-95 as part IX and
18 amending the subdivision heading before section 502-91 to read:

19 **PART IX. PRIOR RECORDS**

20 10. By designating section 502-101 as part X and amending
21 the subdivision heading before section 502-101 to read:

22 **PART X. VETERANS CERTIFICATES**



1 11. By designating section 502-111 as part XI and amending
2 the subdivision heading before section 502-111 to read:

3 **PART XI. [+]OTHER PROVISIONS[+]**"

4 SECTION 4. Section 502-41, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§502-41 Certificate of acknowledgment; natural persons,
7 corporations.** Except as otherwise provided by [~~sections 502-50
8 to 502-52,~~] law, to entitle any conveyance or other instrument
9 to be recorded there shall be endorsed, subjoined, or attached
10 thereto an acknowledgment in the form provided or authorized in
11 any of sections 502-42, 502-43, or 502-45, or in substantially
12 the following form:

13 (Begin in all cases by a caption specifying the state or
14 territory and the place where the acknowledgment is taken.)

15 1. In the case of natural persons acting in their own
16 right:

17 On(insert date), before me personally appeared
18 A.B. (or A.B. and C.D.), to me known to be the person or persons
19 described in and who executed the foregoing instrument, and
20 acknowledged that the person or persons executed the same as the
21 person's or persons' free act and deed.

22 2. In the case of natural persons acting by attorney:



1 On(insert date), before me personally appeared
 2 A.B., to me known to be the person who executed the foregoing
 3 instrument in behalf of C.D. and acknowledged that the person
 4 executed the same as the free act and deed of said C.D.

5 3. In the case of corporations or partnerships:

6 On(insert date), before me appeared A.B., to
 7 me personally known, who, being by me duly sworn (or affirmed),
 8 did say that the person is the president (or other officer,
 9 partner, or agent of the corporation, or partnership) of
 10 (describing the corporation or partnership), and that the
 11 instrument was signed in behalf of the corporation (or
 12 partnership) by authority of its board of directors (partners or
 13 trustees), and A.B. acknowledged the instrument to be the free
 14 act and deed of the corporation (or partnership).

15 4. In the case of a corporation acknowledging by an
 16 individual as its attorney, where the enabling power of attorney
 17 has previously been recorded, the acknowledgment of the
 18 instrument executed under the power of attorney shall be
 19 substantially in the following form:

20 On(insert date), before me personally appeared
 21 A.B., to me personally known, who being by me duly sworn (or
 22 affirmed), did say that the person is the attorney-in-fact of



1 C.D. (here name the corporation) duly appointed under power of
 2 attorney dated, recorded in book...., at
 3 page..../as document no.; and that the foregoing instrument
 4 was executed in the name and behalf of said C.D. by A.B. as its
 5 attorney-in-fact; and A.B. acknowledged the instrument to be the
 6 free act and deed of C.D.

7 In case the enabling power of attorney has not previously
 8 been recorded, omit the reference to its place of record and
 9 insert in lieu thereof the words "which power of attorney is now
 10 in full force and effect".

11 5. In the case of a corporation acknowledging by another
 12 corporation as its attorney, where the enabling power of
 13 attorney has previously been recorded, the acknowledgment of the
 14 instrument executed under the power of attorney shall be
 15 substantially in the following form:

16 On(insert date), before me personally appeared
 17 A.B., to me personally known, who, being by me duly sworn (or
 18 affirmed), did say that the person is the president (or other
 19 officer or agent of the corporation acting as attorney) of C.D.
 20 (here name the corporation acting as attorney) and that C.D. is
 21 the attorney-in-fact of E.F. (here name the corporation in whose
 22 behalf the attorney is acting) duly appointed under power of



1 attorney dated, recorded in book...., at
 2 page..../as document no.; that the foregoing instrument was
 3 executed in the name and behalf of E.F. by C.D. as its attorney-
 4 in-fact; that the instrument was so executed by C.D. by
 5 authority of its board of directors; and A.B. acknowledged the
 6 instrument to be the free act and deed of E.F.

7 In case the enabling power of attorney has not previously
 8 been recorded, omit the reference to its place of record and
 9 insert in lieu thereof the words "which power of attorney is now
 10 in full force and effect".

11 6. The following form may be used in lieu of any of the
 12 foregoing forms:

13 On(insert date), before me personally appeared
 14 A.B. (or A.B. and C.D.), to me personally known, who, being by
 15 me duly sworn (or affirmed), did say that such person executed
 16 the foregoing instrument as the free act and deed of such
 17 person, and if applicable in the capacity shown, having been
 18 duly authorized to execute such instrument in such capacity.

19 In all cases add signature and title of the officer taking
 20 the acknowledgment."

21 SECTION 5. (a) The judiciary shall:



1 (1) Study what effect electronic recording may have on the
2 adjudication of land court applications under chapter
3 501, Hawaii Revised Statutes; and

4 (2) Determine the permissible uses for electronic
5 recording under chapter 501, Hawaii Revised Statutes.

6 (b) The judiciary shall report its findings and
7 recommendations for legislation to the legislature no later than
8 twenty days prior to the convening of the 2009 regular session.

9 SECTION 6. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun, before its effective date.

12 SECTION 7. In codifying the new sections added by section
13 2 of this Act, the revisor of statutes shall substitute
14 appropriate section numbers for the letters used in designating
15 the new sections in this Act.

16 SECTION 8. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect upon its approval.
19

INTRODUCED BY: Kirk Caldwell

[Handwritten signatures]



Report Title:

Uniform Real Property Electronic Recording Act

Description:

Permits the registrar of the bureau of conveyances to accept electronic documents with electronic signatures for recording. Requires the judiciary to study what effect electronic recording may have on the adjudication of land court applications, determine permissible uses for electronic recording, and report its findings to the legislature prior to 2009 regular session.

