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# 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 makes 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 as follows:

7 1. By adding a new part to read:

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) When a law requires as a condition for recording, that  
20 a document be signed, the requirement is satisfied by an  
21 electronic signature.



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

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

12 **§502-C Recording of documents.** (a) Notwithstanding any  
13 other law to the contrary, and subject to any rules adopted by  
14 the department of land and natural resources pursuant to chapter  
15 91, the registrar may:

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

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



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

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

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

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

15 (c) The department of land and natural resources shall  
16 adopt rules pursuant to chapter 91 necessary for the purposes of  
17 this part, including when an electronic document shall be  
18 considered delivered to the registrar pursuant to section  
19 502-32.

20 (d) To keep the standards and practices of recording in  
21 the state in harmony with the standards and practices of  
22 recording offices in other jurisdictions that enact



1 substantially this part and to keep the technology used by the  
2 registrar compatible with technology used by recording offices  
3 in other jurisdictions that enact substantially this part, the  
4 department of land and natural resources, so far as is  
5 consistent with the provisions of this part, in adopting rules  
6 under chapter 91, shall consider:

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

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



1           §502-E Relation to federal Electronic Signatures in Global  
2 and National Commerce Act. This part modifies, limits, and  
3 supersedes the federal Electronic Signatures in Global and  
4 National Commerce Act, 15 United States Code Section 7001, et  
5 seq., but does not modify, limit, or supersede Section 101(c) of  
6 the federal Electronic Signatures in Global and National  
7 Commerce Act, 15 United States Code Section 7001(c), or  
8 authorize electronic delivery of any of the notices described in  
9 Section 103(b) of the federal Electronic Signatures in Global  
10 and National Commerce Act, 15 United States Code Section  
11 7003(b)."

12           2. By designating sections 502-1 to 502-4 as part I and  
13 amending the title before section 502-1 to read:

14                           "PART I. REGISTRAR, DEPUTY"

15           3. By designating sections 502-7 to 502-8 as part II and  
16 amending the title before section 502-7 to read:

17                           "PART II. [ ] GENERAL PROVISIONS [ ]"

18           4. By designating sections 502-11 to 502-27 as part III  
19 and amending the title before section 502-11 to read:

20                           "PART III. INDEXING OF RECORDS"

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







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

2            13. By amending section 502-21 to read:

3            **"§502-21 Recording of plans unlawful.** It shall not be  
4 lawful for the registrar to accept for record any plan of land,  
5 whether attached to, made a part of, or independent of, any  
6 deed, certified copy of judgment of condemnation, or other  
7 instrument; to the end and purpose that there shall be no plans  
8 recorded in the record books, but in substitution therefor there  
9 shall be a single method of filing plans in the archives of the  
10 bureau of conveyances; provided that where sketches, blueprints,  
11 or plans of land of a size not larger than 8 1/2 inches by 14  
12 inches which legibly reproduces under photographic, electronic,  
13 or electrostatic methods are attached to instruments and made a  
14 part thereof by reference to the same in the instrument, the  
15 registrar may record the same in the record books by means of  
16 the photographic recorder, on payment of the fee as provided in  
17 section 502-25."

18            14. By amending section 502-41 to read:

19            **"§502-41 Certificate of acknowledgment; natural persons,**  
20 **corporations.** Except as otherwise provided by [~~sections 502-50~~  
21 ~~to 502-52,~~] law, to entitle any conveyance or other instrument  
22 to be recorded there shall be endorsed, subjoined, or attached



1 thereto an acknowledgment in the form provided or authorized in  
2 any of sections 502-42, 502-43, or 502-45, or in substantially  
3 the following form:

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

6 1. In the case of natural persons acting in their own  
7 right:

8 On .....(insert date), before me personally appeared  
9 A.B. (or A.B. and C.D.), to me known to be the person or persons  
10 described in and who executed the foregoing instrument, and  
11 acknowledged that the person or persons executed the same as the  
12 person's or persons' free act and deed.

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

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

18 3. In the case of corporations or partnerships:

19 On .....(insert date), before me appeared A.B., to  
20 me personally known, who, being by me duly sworn (or affirmed),  
21 did say that the person is the president (or other officer,  
22 partner, or agent of the corporation, or partnership) of



1 (describing the corporation or partnership), and that the  
2 instrument was signed in behalf of the corporation (or  
3 partnership) by authority of its board of directors (partners or  
4 trustees), and A.B. acknowledged the instrument to be the free  
5 act and deed of the corporation (or partnership).

6 4. In the case of a corporation acknowledging by an  
7 individual as its attorney, where the enabling power of attorney  
8 has previously been recorded, the acknowledgment of the  
9 instrument executed under the power of attorney shall be  
10 substantially in the following form:

11 On .....(insert date), before me personally appeared  
12 A.B., to me personally known, who being by me duly sworn (or  
13 affirmed), did say that the person is the attorney-in-fact of  
14 C.D. (here name the corporation) duly appointed under power of  
15 attorney dated ....., recorded in book...., at  
16 page..../as document no. ....; and that the foregoing instrument  
17 was executed in the name and behalf of said C.D. by A.B. as its  
18 attorney-in-fact; and A.B. acknowledged the instrument to be the  
19 free act and deed of C.D.

20 In case the enabling power of attorney has not previously  
21 been recorded, omit the reference to its place of record and



1 insert in lieu thereof the words "which power of attorney is now  
2 in full force and effect".

3 5. In the case of a corporation acknowledging by another  
4 corporation as its attorney, where the enabling power of  
5 attorney has previously been recorded, the acknowledgment of the  
6 instrument executed under the power of attorney shall be  
7 substantially in the following form:

8 On .....(insert date), before me personally appeared  
9 A.B., to me personally known, who, being by me duly sworn (or  
10 affirmed), did say that the person is the president (or other  
11 officer or agent of the corporation acting as attorney) of C.D.  
12 (here name the corporation acting as attorney) and that C.D. is  
13 the attorney-in-fact of E.F. (here name the corporation in whose  
14 behalf the attorney is acting) duly appointed under power of  
15 attorney dated ....., recorded in book...., at  
16 page.../as document no. ....; that the foregoing instrument was  
17 executed in the name and behalf of E.F. by C.D. as its attorney-  
18 in-fact; that the instrument was so executed by C.D. by  
19 authority of its board of directors; and A.B. acknowledged the  
20 instrument to be the free act and deed of E.F.

21 In case the enabling power of attorney has not previously  
22 been recorded, omit the reference to its place of record and



1 insert in lieu thereof the words "which power of attorney is now  
2 in full force and effect".

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

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

11 In all cases add signature and title of the officer taking  
12 the acknowledgment."

13 SECTION 3. (a) The judiciary shall:

14 (1) Study what effect electronic recording may have on the  
15 adjudication of land court applications under chapter  
16 501, Hawaii Revised Statutes; and

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

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



1 SECTION 4. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun, before its effective date.

4 SECTION 5. In codifying the new sections added by section  
5 2 of this Act, the revisor of statutes shall substitute  
6 appropriate section numbers for the letters used in designating  
7 the new sections in this Act.

8 SECTION 6. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 7. This Act shall take effect upon its approval.



**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.  
(HB2302 HD2)

