



The Judiciary, State of Hawaii

Testimony to the Twenty-Fourth State Legislature, 2008 Session

House Committee on Consumer Protection & Commerce

The Honorable Robert N. Herkes, Chair

The Honorable Angus L.K. McKelvey, Vice Chair

House Committee on Judiciary

The Honorable Tommy Waters, Chair

The Honorable Blake K. Oshiro, Vice Chair

Thursday, February 14, 2008, 2:00 p.m.

State Capitol, Conference Room 325

by

Russell Tellio

Court Administrator

First Circuit Court

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2302, H.D. 1, Relating to Real Property

Judiciary's Position:

The Judiciary takes no position on this measure but submits the following comments for consideration by the committee.

House Bill No. 2302, H.D. 1 would permit the registrar of the Bureau of Conveyances to accept electronic documents with electronic signatures for recording and would further require 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 its 2009 regular session.

While the Judiciary supports the concept of electronic filing for all legal documents, including the recordation of real estate documents, without more detailed information regarding the system being proposed we are unable to determine whether documents filed in the Bureau of Conveyances electronic recording system will meet the current rules of evidence or be compatible with the data storage systems currently being considered by the Judiciary.



House Bill No. 2302, Relating to Real Property
House Committees on Consumer Protection & Commerce and Judiciary
February 14, 2008
Page 2

We respectfully submit that in consideration of the many questions that have been raised by the Joint Senate-House Investigative Committee on the Bureau of Conveyances with regards to the electronic record keeping system already in place at the Bureau of Conveyances, this committee should perhaps consider examining the details of the proposed electronic documents filing system so that its reliability and internal controls can be scrutinized before such a system is adopted rather than to require the Judiciary to conduct a study to determine possible shortcomings after the fact.

The following is a excerpt from the draft report of the investigative committee, “. . . *Despite the computer system’s extensive and integral role as the electronic repository of all recorded documents processed by the Bureau, the Bureau failed to exert the appropriate oversight with respect to the system’s installation, maintenance, and upgrading as well as subsequent installations and maintenance of computer servers and software. The Bureau’s lack of computer system oversight and management could ultimately affect the integrity of the Bureau’s operations, resulting in potentially enormous security ramifications.*” Draft Report Joint Senate-House Investigative Committee on the Bureau of Conveyances, at page 39-40.

Thank you for the opportunity to comment on this measure.

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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LAND
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

On House Bill 2302 House Draft 1 – Relating To Real Property

**BEFORE THE HOUSE COMMITTEES ON
CONSUMER PROTECTION AND COMMERCE
and
JUDICIARY**

February 14, 2008

House Bill 2302 House Draft 1 proposes to permit the Registrar of the Bureau of Conveyances (Bureau) of the Department of Land and Natural Resources (Department) to accept electronic documents with electronic signatures for recording, and require the Judiciary to study what effect electronic recording may have on the adjudication of land court applications, and permissible uses for electronic recording, under Chapter 501, Hawaii Revised Statutes (HRS). While the Department supports the intent of this bill, the Department nonetheless prefers the Administration proposal, House Bill 3172 (Relating To Electronic Filings In The Bureau Of Conveyances And The Office Of The Assistant Registrar) to effectively address accepting electronic documents with electronic signatures for recording in the Bureau and the Office of the Assistant Registrar.

Presently, the Bureau and the Office of the Assistant Registrar accepts only original paper instruments with original signatures for recordation in the Regular System and the Land Court System. This bill will allow the Bureau and the Office of the Assistant Registrar to accept electronic documents for recordation once the Bureau and the Office of the Assistant Registrar have the capabilities to do so and the Department adopts rules specifying the format of acceptable electronic documents. An electronic cover sheet will be required to be filed together with the electronic document that will allow for faster indexing of documents.

The Department notes that the Administration proposal (House Bill 3172) allows for the acceptance of electronic documents through amendment to Chapters 501 and 502, HRS, without the necessity of adding an entirely new section to the Statutes.

Additionally, it is critical that the Bureau be authorized to archive the documents in a digital format. Currently, the Bureau must scan the documents to a digital format as well as a microfilm format. The Administration proposal, House Bill 3172 authorizes the Bureau to archive documents in the digital format.

00033

The Department disagrees with the request that the Judiciary conduct a study on the effect of electronic recording. The Department is confident that it will be able to implement accepting documents in an electronic format. The Department does not feel there is no need to study this issue and report to the Legislature in 2009.

The Department offers that it is open to transferring the recording process to the Judiciary if they want to manage the process by which documents are recorded.

In addition to this legislation, the Administration has proposed House Bill 3170 (Relating To Social Security Number) and House Bill 3171 (Relating To Land Court System). House Bill 3170 proposes to require only the last four digits of an individual's social security number on judgments, court orders or decrees submitted to the Bureau for recording. House Bill would remove time share interests from Land Court registration and allows landowners to opt out of Land Court and register their properties in the Regular System at the Bureau. Both of these proposals will assist the Bureau in becoming more efficient and up to date with the functions of the Bureau.

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

**ON H.B. No. 2302, H.D.1
RELATING TO REAL PROPERTY.**

**BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION &
COMMERCE, AND THE HOUSE COMMITTEE ON JUDICIARY**

DATE: Thursday, February 14, 2008, at 2:00 p.m.
Conference Room 325, State Capitol

PERSON(S) TESTIFYING: PETER HAMASAKI
Commission to Promote Uniform Legislation

C:/CPUL2008/TES-HB 2302 Real Property 2-14-08

E-MAIL to CPCtestimony@Capitol.hawaii.gov.

Chairs Herkes and Waters, Vice-Chairs McKelvey and Oshiro, and Members of the Committees:

On behalf of the State of Hawai'i Commission to Promote Uniform Legislation (CPUL), thank you very much for this opportunity to testify in support of H.B. No. 2302, H.D. 1, relating to real property.

Section 2 of this bill enacts, with some modifications, the Uniform Real Property Electronic Recording Act ("URPERA") that was developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 2004. A summary of the Uniform Real Property Electronic Recording Act prepared by the NCCUSL is appended to this testimony.

URPERA equates electronic documents and electronic signatures to original paper documents and manual signatures, so that any requirement for originality (paper document or manual signature) is satisfied by an electronic document and signature.

URPERA is designed to help state administrative agencies meet the demands of the public for quick identification of title ownership. It also should streamline the real estate transaction at a benefit to consumers and every facet of the real estate industry. URPERA is an essential complement to those states that have already adopted UETA (HRS Chapter 489E), acting as an extension of that law's effectiveness.

The basic goal of the Uniform Real Property Electronic Recording Act is to create

legislation authorizing land records officials to begin accepting records in electronic form, storing electronic records, and setting up systems for searching for and retrieving these land records. The intent is only to authorize such activities, not to mandate them.

URPERA has been adopted in fifteen (15) states since it was approved by NCCUSL in 2004.¹ In addition, URPERA has been introduced in five (5) other states.²

In summary, we support H.B. No. 2302, H.D. 1.

Thank you very much for this opportunity to testify.

1 Arizona, Arkansas, Delaware, District of Columbia, Florida, Idaho, Illinois, Kansas, Nevada, New Mexico, North Carolina, Tennessee, Texas, Virginia and Wisconsin. See http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-urpera.asp

2 Kentucky, Massachusetts, Oklahoma, South Carolina, and Washington. See id.



SUMMARY

Uniform Real Property Electronic Recording Act

Electronic communications make it possible to conduct old transactions in new forms. Some of the oldest kinds of transactions governed by law are transactions in real estate: for example, sales, leases and mortgages. In the Middle Ages transactions in real estate were conducted symbolically, without paper or signatures. Most people were illiterate. Writing, printing and more universal literacy brought paper deeds, mortgages and leases, memorialized by words on paper with manual signatures. These were filed in public records to establish who had rightful title to any piece of land. Several centuries have gone by since that initial migration to the then new technology of paper documents and manual signatures. A new technology of computers, software to run them and electronic communications have come to replace paper. The law of real property must now make a transition to accommodate the new technology. The efficiency of real estate markets make this imminently necessary.

This long dependence on paper, however, casts up certain barriers to using electronic communications to carry on real estate transactions. The law of the states of the United States has many "statute of fraud" requirements that inhibit the use of electronic communications. Statute of fraud requirements put total and express reliance upon paper documents and manual signatures to make transactions enforceable. No paper, no enforcement. These same requirements have also made it more difficult to develop electronic analogues to transactions in paper that are equally enforceable.

The first step to remedy the problem took place in 1999 when the Uniform Law Commissioners promulgated the Uniform Electronic Transactions Act (UETA). This act adjusted statute of fraud provisions to include electronic "records" and "signatures" for the memorialization of all kinds of transactions, including basic transactions in real estate. It is possible to have sale contracts, mortgage instruments (in whatever form a jurisdiction uses) and promissory notes memorialized in electronic form with electronic signatures that will now be treated the equal of the same paper documents with manual signatures. This is the result of the wide-spread enactment of UETA and of the subsequent enactment of the Electronic Signatures in Global and National Commerce Act (E-Sign) by Congress.

Real estate transactions, however, require another step not addressed by either UETA or E-Sign. Real estate documents must be recorded on public records to be effective. Recording takes place in most states in a county office devoted to keeping these records. Recording protects current interests in real estate by clarifying who holds those interests. The chain of title leading to the current title-holder, meaning the historic record of documents relating to transactions for a specific piece of real estate, establishes the marketability of that piece of real estate by the current owner of interests in it. The real estate records establish this chain of title. State law governs these local recording offices, and there are requirements in the law of every state relating to the originality and authenticity of paper documents that are presented for

recording. These are themselves "statute of fraud" provisions that must be specifically adjusted before electronic recording may take place. Neither UETA nor E-Sign help.

There must be an orderly conversion of every recording office in the United States for electronic recording to become accepted universally. That will be a complex process, but it needs a starting point in the law. The **Uniform Real Property Electronic Recording Act (URPERA)**, promulgated by the Uniform Law Commissioners in 2004, is that essential start.

The act does three fairly simple things that will have monumental effect. First, it establishes that any requirement for originality, for a paper document or for a writing manually signed before it may be recorded, is satisfied by an electronic document and signature. This is essentially an extension of the principles of UETA and E-Sign to the specific requirements for recording documents relating to real estate transactions in any state. Second, it establishes what standards a recording office must follow and what it must do to make electronic recording effective. For example, the office must comply with standards set by the board established in a state to set them. It must set up a system for searching and retrieving electronic documents. There are a minimum group of requirements established in URPERA. Third, URPERA establishes the board that sets state-wide standards and requires it to set uniform standards that must be implemented in every recording office.

These may be simple steps in the law, but the entire process of implementing electronic recording of electronic real estate documents will be complex from state to state. Inserting URPERA in the law of a state requires careful scrutiny of its real estate law. If paper documents are effective, for example, when they are time-stamped when delivered to a recording office, when should electronic documents that may be delivered electronically when an office is closed be considered effective? Answers to questions like this one will take some work and some complex decisions as URPERA is considered for enactment in any state.

Notwithstanding this need for careful effort, it is important to make the start on electronic recording of real estate documents. Real estate transactions involve billions of dollars in the United States. The efficiency of real estate markets depends upon the adoption of technology to make them faster and more competitive. After UETA and E-Sign, the key is URPERA. Every state needs to consider it as soon as possible.

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February 12, 2008

On the Following Measure:

HB 3172, Relating to Electronic filings in the Bureau of Conveyances and the Office of the Assistant Registrar.

HB 2302, HD1, Relating to Real Property.

Before The: COMMITTEE ON CONSUMER PROTECTION & COMMERCE
COMMITTEE ON JUDICIARY

Date: Thursday, February 14, 2008 Time: 2:00 p.m.

Place: State Capitol, Conference Room 325

Testifier(s): Hawaii Land Title Association
Hawaii Escrow Association
Denise M. Kaehu, President HLTA
Denise M. Kaehu, President HEA

Chair Robert N. Herkes, Chair Tommy Waters and members of the Committee:

The Hawaii Land Title Association and the Hawaii Escrow Association support HB 3172, Relating to Electronic filing in the Bureau of Conveyances and the Office of the Assistant Registrar over and above HB 2302. Our respective Associations represent the eleven Hawaii Title and Escrow companies in our state which account for over 90% of the documents submitted for recordation at the Bureau.

Our members realize the importance of the Bureau being able to provide reliable recording services for Hawaii consumers and consumers worldwide. The Bureau is greatly in need of legislation that will authorize them to accept electronic signatures and electronically filed documents in lieu of original documents with original signatures. HB 3172 will allow documents to be archived in digital format, in lieu of micro-fiche as a means of archiving.

Studies have been previously conducted dating back to 1990's studying how to improve the efficiency of the Bureau by streamlining the recording procedures and by automating process flows with technology. Technology decreases the amount of redundancy of re-keying information, increases productivity, and creates efficiency which allows the staff to dedicate more time to customer service and addressing its backlog. Time more wisely spent helps create higher moral for the employees.

As a Committee member of DLNR's Chair Laura Thielen's Special Working Group I have first hand knowledge of her plan to automate the Bureau which will require the revision of our current statute to allow electronic signatures and electronically file documents. Our Committee members have worked together as representatives of the professional industry organizations which interact with the Bureau on a daily basis including representatives of the HGEA and the Attorney General's office. Our goals

00039

were to increase the security level of the records database, improve customer service and streamline the recording process. Many states are already using electronic recording systems.

We had initially supported HB2302, with the exception of requiring the Judiciary to study Land Court filings and digital archiving.

In the proposal for the design of software to automate the Bureau it would be inclusive of both recordings systems. The intent of the software is to streamline the data processing, not to change the rules governing the recording requirements of either recording system. Currently the Land Court backlog for endorsing Transfer Certificates of Title is roughly eighteen months in arrears which causing problems in verifying recorded data. The current format of the documents would only change slightly, but the mandatory information that must be provided within the body of the document would not change. You would essentially be receiving the same documents as we do now, with the exception of it being electronically transmitted, therefore the need for the change in the current statute. There will still be a review of the documents by the Bureau staff, but confirmation of recording, payment for the recording fees, conveyance tax, penalty and interest all would be handled via a cashiering module within the system. Reporting features, electronic cashiering, automatic calculation of fees, indexing and verification, secure online access to document images for consumers, electronic warehouse for document images, privacy information requirements and a disaster recovery plan would be incorporated within the software. Electronic images are the wave of the future and we owe it to our consumers to provide them with accurate and current recorded data. We may even be able to create additional modules that will help create Transfer Certificates of Title electronically within the same day.

We respectfully request passage of this measure with our recommendations. This will allow us to proceed with our goal to automate in the near future, improve efficiency, productivity, secure private information, archive documents electronically, provide a disaster plan for the State and greatly improve the level of customer service.



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February 14, 2008

The Honorable Robert N. Herkes, Chair
House Committee on Consumer Protection & Commerce

The Honorable Tommy Waters, Chair

House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 2302, HD1 Relating to Real Property
Hearing Date: February 14, 2008 @ 2:00 p.m., Room 325

Dear Chairs Herkes and Waters and members of the House Committees on Consumer Protection & Commerce and Judiciary:

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) **supports the intent of H.B 2302, HD1.**

H.B. 2302, HD1 proposes to permit the registrar of the Bureau of Conveyances to accept electronic documents with electronic signatures for recording. HAR supports the streamlining of the process to record real estate documents at the Bureau of Conveyances.

Mahalo for the opportunity to testify.

00041

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February 13, 2008

TO: **The Honorable Robert N. Herkes, Chair**
House Committee on Consumer Protection & Commerce
The Honorable Tommy Waters, Chair
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813
Via Email: CPCtestimony@Capitol.hawaii.gov

FROM: Joanna Markle

RE **H.B. 2302, HD1 Relating to Real Property**
Hearing Date: February 14, 2008 @ 2:00 p.m., Room 325

Dear Chairs Herkes and Waters and members of the House Committees on Consumer Protection & Commerce and Judiciary:

I am Joanna Markle testifying on behalf of Wyndham Worldwide. Wyndham Worldwide has substantial interests in Hawaii that include Wyndham Vacation Ownership, with its new resort at Waikiki Beach Walk.

Wyndham Worldwide strongly supports H.B. 3172 to permit the registrar of the Bureau of Conveyances to accept electronic documents with electronic signatures for recording. This measure will allow for increased efficiency of the recording of documents.

Thank you very much for your consideration and for this opportunity to submit testimony.