



*The Judiciary, State of Hawaii*

**Testimony to the Twenty-Fourth State Legislature, 2008 Session**  
Senate Committee on Commerce, Consumer Protection, and Affordable Housing  
The Honorable Russell S. Kokubun, Chair  
The Honorable David Y. Ige, Vice Chair

Senate Committee on Judiciary and Labor  
The Honorable Brian T. Taniguchi, Chair  
The Honorable Clayton Hee, Vice Chair

Tuesday, March 18, 2008, 9:30 a.m.  
State Capitol, Conference Room 229

by  
Russell Tellio  
Court Administrator  
First Circuit Court

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 2302, H.D. 2, Relating to Real Property

**Judiciary's Position:**

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

House Bill No. 2302, H.D. 2 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 the Judiciary is unable to give its full support to any electronic filing system that may be proposed by this measure.



House Bill No. 2302, H.D. 2, Relating to Real Property  
Senate Committee on Commerce, Consumer Protection, and Affordable Housing  
Senate Committee on Judiciary and Labor  
March 18, 2008  
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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 installed at the Bureau of Conveyances, it is recommended that this measure be amended to provide for legislative and judicial oversight of the proposed system.

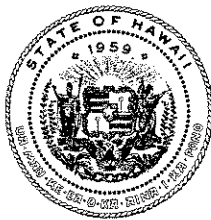
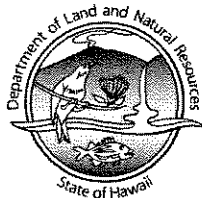
We note the following statement in the report submitted by the legislative investigative committee:

*“ . . . 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.*

In view of the findings contained in that report and in consideration of the on-going investigations by the Office of the Attorney General and Ethics Commission, the Judiciary further recommends that problems that may be detailed in any report or investigation relating to the integrity of operations, data security, or internal controls in the current electronic data system be fully resolved prior to the implementation of any new electronic data systems that may be contemplated by this measure.

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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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

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

On House Bill 2302, House Draft 2 – Relating To Real Property

BEFORE THE SENATE COMMITTEES ON  
COMMERCE, CONSUMER PROTECTION, AND AFFORDABLE HOUSING  
and  
JUDICIARY AND LABOR

March 18, 2008

House Bill 2302, House Draft 2 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). The Department supports this measure although the Department prefers the language from the Administration's proposal, House Bill 3172/Senate Bill 3094 (Relating To Electronic Filings In The Bureau Of Conveyances And The Office Of The Assistant Registrar) to effectively and efficiently 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.

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 Department respectfully asks for the following amendment to be made to this measure:

**"§502-92 Copies of old records.** The registrar shall prepare photographic, electronic, or electrostatic copies of the records and record books in the bureau of conveyances which by reason of age, usage, or otherwise are in such condition that they can no longer be conveniently used or consulted without danger of destruction thereof, and certify to the correctness of such copies. The certified copies, and prints made from

them and similarly certified, may be read in evidence with the same force and effect as the original instrument. The correctness of such copies is not conclusive but may be rebutted. All such records and record books from which the copies are made shall be deposited with the department of accounting and general services in its public archives. The registrar may convert into electronic form, information or documents, before recording the electronic documents."

In order to accomplish the goal of electronic filing, the Department additionally respectfully requests amendments to this bill to indicate how the document will be stamped with the date, time, and document number and how endorsements or other notations can be made to documents filed electronically. These amendments are as follows:

**Section 501-20, Hawaii Revised Statutes**, be amended as follows:

“(1) By adding the new definition to be appropriately inserted and to read:  
""Endorse", "endorsed", or "endorsing", or "indorse", "indorsed", or "indorsing" means to write or to electronically note title or memorandums.

"Endorsement" or "indorsement" means a written or electronic notation that is made upon, attached to, or logically associated with an instrument."

**Section 501-107, Hawaii Revised Statutes**, be amended as follows:

**"§501-107 Entry record; duplicates and certified copies.** The assistant registrar shall keep a record in which shall be entered all deeds and other voluntary instruments, and all copies of writs or other process filed or recorded with the assistant registrar relating to registered land. The assistant registrar shall note in the record the date of reception of all instruments. The instruments shall be stamped ~~[with]~~, have attached to, or have logically associated with the instrument the date, hour, and minute of reception and shall be regarded as registered from the date and time so noted, and the memorandum of each instrument when made on the certificate of title to which it refers shall bear the same date.”

**Section 501-108 (a), Hawaii Revised Statutes**, be amended as follows:

**"§501-108 Conveyance of fee; procedure.** (a) An owner desiring to convey in fee registered land or any portion thereof shall execute a deed of conveyance, which the grantor or the grantee may present to the assistant registrar in the bureau of conveyances; provided that no deed, mortgage, lease, or other voluntary instrument shall be accepted by the assistant registrar for registration unless a reference to the number of the certificate of title of the land affected by such instrument is incorporated in the body of the instrument tendered for registration. If the certificate reference in the instrument is not current, an endorsement of the current certificate of title shall be required.

The assistant registrar shall note upon, attach to, or logically associate with all instruments filed or recorded concurrently with the recorded instrument the document number and the certificate of title number ~~[in the spaces provided therefor]~~ wherever required.

The assistant registrar shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee. The assistant registrar shall note upon the original certificate the date of transfer, and a reference by number to the last prior certificate. The original certificate shall be stamped "canceled". The deed of conveyance shall be filed or recorded and endorsed with, have attached to, or have logically associated with the number and place of registration of the certificate of title of the land conveyed.

**Section 501-117, Hawaii Revised Statutes, be amended as follows:**

**"§501-117 Procedure.** Registration of a mortgage shall be made in the manner following: the mortgage shall be presented to the assistant registrar who shall enter upon the original certificate of title a memorandum of the purport of the mortgage, the time of filing or recording, the document number of the mortgage, and shall sign the memorandum. The assistant registrar shall also note upon the mortgage, attach to, or logically associate with the mortgage, the time of filing or recording, and a reference to the volume and page of the registration book where it is registered."

**Section 501-131, Hawaii Revised Statutes, be amended as follows:**

**"§501-131 Transfer in trust; procedure.** Whenever a deed or other instrument is filed or recorded for the purpose of transferring registered land in trust, or upon any equitable condition or limitation expressed therein, or for the purpose of creating or declaring a trust or other equitable interest in land without transfer, the particulars of the trust, condition, limitation, or other equitable interest shall not be entered on the certificate; but a memorandum thereon shall be entered by the words "in trust", or "upon condition", or other apt words, and by a reference by number to the instrument authorizing or creating the same. The assistant registrar shall note upon, attach to, or logically associate with the original instrument creating or declaring the trust or other equitable interest a reference by number of the certificate of title to which it relates. If the instrument creating or declaring a trust or other equitable interest is already recorded in the bureau of conveyances or admitted to probate, or any order of a federal court creating or declaring a trust in real property has been made, a certified copy may be filed or recorded by the assistant registrar and registered."

**Section 502-7, Hawaii Revised Statutes, be amended as follows:**

“(1) By adding the new definition to be appropriately inserted and to read:

“"Endorse", "endorsed", or "endorsing", or "indorse", "indorsed", or "indorsing" means to write or to electronically note title or memorandums.

"Endorsement" or "indorsement" means a written or electronic notation that is made upon, attached to, or logically associated with an instrument."

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 a need to study this issue and report to the Legislature in 2009.

In addition to this measure, the Administration has proposed House Bill 1389 (Relating To Time Shares in Land Court). House Bill 1389 would remove time share interests from Land Court registration. This proposal will assist the Bureau in becoming more efficient and up to date with its functions.



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March 15, 2008

**The Honorable Russell S. Kokubun, Chair**  
Senate Committee on Commerce, Consumer Protection,  
and Affordable Housing

**The Honorable Brian T. Taniguchi, Chair**  
Senate Committee on Judiciary and Labor  
State Capitol, Room 229  
Honolulu, Hawaii 96813

**RE: H.B. 2302, HD2 Relating to Real Property**  
**Hearing Date: Tuesday, March 18, 2008 @ 9:30 a.m., Room 229**

Dear Chairs Kokubun and Taniguchi and Members of the Senate Joint Committees on Commerce, Consumer Protection, and Affordable Housing and Judiciary and Labor:

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) **supports the intent of H.B 2302, HD2.**

H.B. 2302, HD2 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.

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

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March 15, 2008

TO: **The Honorable Russell S. Kokubun, Chair**  
Senate Committee on Commerce, Consumer Protection,  
and Affordable Housing  
**The Honorable Brian T. Taniguchi, Chair**  
Senate Committee on Judiciary and Labor  
State Capitol, Room 229  
Honolulu, Hawaii 96813

Via Email: [testimony@Capitol.hawaii.gov](mailto:testimony@Capitol.hawaii.gov)

FROM: Joanna Markle

RE **H.B. 2302, HD2 Relating to Real Property**  
**Hearing Date: Tuesday, March 18, 2008 @ 9:30 a.m., Room 229**

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Dear Chairs Kokubun and Taniguchi and Members of the Senate Joint Committees on Commerce, Consumer Protection, and Affordable Housing and Judiciary and Labor:

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. 2302, HD2 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.



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

**ON H.B. No. 2302, H.D.2  
RELATING TO REAL PROPERTY.**

**BEFORE THE SENATE COMMITTEE ON COMMERCE, CONSUMER  
PROTECTION, AND AFFORDABLE HOUSING and COMMITTEE ON  
JUDICIARY AND LABOR**

**DATE:** Tuesday, March 18, 2008, at 9:30 a.m.  
Conference Room 229, State Capitol

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

C:/CPUL2008/TES-HB 2302 HD2 Real Property 3/18/08

E-MAIL to [testimony@capitol.hawaii.gov](mailto:testimony@capitol.hawaii.gov).

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Chairs Kokubun and Taniguchi, Vice Chairs Ige and Hee, and Members of the Senate Committees on Commerce, Consumer Protection, and Affordable Housing, and on Judiciary and Labor:

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. 2, 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 URPERA 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.<sup>1</sup> In addition, URPERA has been introduced in five (5) other states.<sup>2</sup>

Because it is a uniform act, we are hopeful that the rules, procedures, and systems adopted in other jurisdictions that have enacted URPERA can provide models for Hawai'i, and create a uniform system of registration amongst the different U.S. jurisdictions.

In summary, we support H.B. No. 2302, H.D. 2.

Thank you very much for this opportunity to testify.

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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](http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-urpera.asp)

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



# Uniform Law Commissioners

The National Conference of Commissioners on Uniform State Laws

## 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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LATE



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March 17, 2008

TO: Senator Russell Kokubun, Chair  
Senator David Ige, Vice Chair  
Committee on Commerce, Consumer Protection, and Affordable Housing

Senator Brian Taniguchi, Chair  
Senator Clayton Hee, Vice Chair  
Committee on Judiciary and Labor

FROM: ARDA-Hawaii  
Contact: Donalyn Dela Cruz, PMCI Hawaii

RE: **CPH/JDL Hearing**  
**Tuesday, March 18, 2008**  
**Room 229, 9:30 a.m.**  
**House Bill 2302, HD2; Relating to Real Property**

Dear Chairs Kokubun and Taniguchi, and members of the committee:

ARDA-Hawaii is the local chapter of the national timeshare trade association. Hawaii's timeshare industry currently accounts for over eight percent of the State's lodging inventory.

ARDA-Hawaii **supports** HB 2302, HD2 which would permit the bureau of conveyances to accept electronic documents with electronic signatures for recording. This measure also takes into account the effects that electronic recording may have on the adjudication of land court applications.

Passage of this measure would help the Bureau become more efficient in its recording process. Thank you very much for the opportunity to offer testimony on this measure.