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GOVERNOR OF HAWAII



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

On House Bill 2302 – Relating To Real Property

**BEFORE THE HOUSE COMMITTEE ON
WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS**

February 6, 2008

House Bill 2302 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.

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 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 to the Twenty-Fourth Legislature, 2008 Session
House Committee on Water, Land, Ocean Resources & Hawaiian Affairs
The Honorable Ken Ito, Chair
The Honorable Jon Riki Karamatsu, Vice Chair

Wednesday, February 6, 2008, 8:30 a.m.
State Capitol, Conference Room 312

by
Thomas R. Keller
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

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

Judiciary's Position:

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

House Bill No. 2302 would permit the registrar of the bureau of conveyances 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, determine permissible uses for electronic recording, and report its findings to the legislature prior to 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 cannot take a position on whether documents filed in the proposed electronic recording system will meet the current rules of evidence, be compatible with the Judiciary's data systems, or meet other standards of the Judiciary.

We respectfully submit that in consideration of the many questions that have been raised with regards to the electronic record keeping system already installed at the Bureau of Conveyances, this committee first consider requiring that the bureau provide details of a working system for electronic documents filing to ensure its reliability and internal controls can be scrutinized before such a system is adopted.

Thank you for the opportunity to comment on this measure.

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

**ON H.B. No. 2302
RELATING TO REAL PROPERTY.**

**BEFORE THE HOUSE COMMITTEE ON WATER, LAND, OCEAN
RESOURCES & HAWAIIAN AFFAIRS**

DATE: Wednesday, February 6, 2008, at 8:30 a.m.
Conference Room 312, State Capitol

PERSON TESTIFYING: PETER HAMASAKI
Commission to Promote Uniform Legislation

C:/CPUL2008 TES-HB2302 Real Property 2-6-08.doc

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

Chair Ito, Vice-Chair Karamatsu, and Members of the Committee:

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, 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 compliment to those states that have already adopted the Uniform Electronic Transactions Act (UETA), which is codified in Hawaii as chapter

489E, Hawaii Revised Statutes, 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

As noted, H.B. No. 2302 enacts a modified form of URPERA. While CPUL generally is in accord with the modifications, we would recommend that in the new HRS section 502-B(b) to be added, the proposed wording on page 4, lines 19-20, be replaced with the following from URPERA:

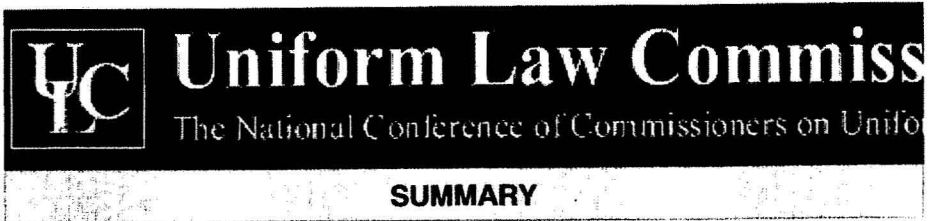
“(b) When a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.”

The foregoing amendment is to clarify that if an electronic signature complies with the applicable requirements adopted by the registrar, acceptance thereof as an original is not discretionary.

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.



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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Hawaii Government Employees Association
AFSCME Local 152, AFL-CIO

The Twenty-Fourth Legislature, State of Hawaii
Hawaii State House of Representatives

Committee on Water, Land, Ocean Resources and Hawaiian Affairs

Testimony by
Hawaii Government Employees Association – HGEA/AFSCME, Local 152
February 6, 2008

HB 2302 – RELATING TO REAL PROPERTY

HB 2302 would 1) permit the Registrar of the Bureau of Conveyances to accept electronic documents with electronic signature for recording and, 2) require the Judiciary to study the impact of electronic recording on the adjudication of land court applications and determine the permissible uses for electronic recording.

While we can support the general intent of the proposed legislation, the Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO provides the following comments.

We agree that technological changes and innovations have created many opportunities to become more efficient in communication and the way government conducts business. It is no doubt that the use of electronic communications to conduct transactions in any work operation has the potential to increase the efficiency of the current operations. However, if the infrastructure and appropriate staffing to effectively implement such a system is not in place or not prepared, efficiency can actually decrease and the impact on the work unit and staff can be devastating.

If it hasn't already been done, we would recommend that before permitting the registrar to accept electronic documents with electronic signature for recording, the department should conduct a feasibility study to determine the infrastructure and staffing needs required to implement such a system.

We are in agreement that a study should also be done to examine the effect electronic recording may have on the adjudication of land court applications, and permissible uses for electronic recording. However, we believe this study should also be done before the registrar is permitted to implement a system to accept such electronic documents with electronic signatures for recording.

Thank you for the opportunity to comment on HB 2302.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

HAWAII LAND TITLE ASSOCIATION
C/O 1100 Alakea Street, 5th floor
Honolulu, Hawaii 96813

February 5, 2008

WLHtestimony@Capitol.Hawaii.gov
House of Representatives
Committee on Water, Land, Ocean Resources & Hawaiian Affairs
415 South Beretania Street, Conference Room 312
Honolulu, Hawaii 96813

Re: Hearing Date: Wednesday, February 6, 2008, 8:30 a.m.
HB 2302 Relating to Real Property

Representative Ken Ito, Chair:

The Hawaii Land Title Association strongly recommends that the Committee pass HB 2302 which will permit the Registrar of the Bureau of Conveyances to accept electronic documents with electronic signatures for recording. Our Association has been very active with DLNR Chairwoman Laura Thielen's Bureau of Conveyances Special Working Group to automate the Bureau. The Hawaii Land Title Association represents the eleven Hawaii title companies which account for over 90% of the documents submitted for recordation at the Bureau.

In order for the State of Hawaii to automate the recording process, we need the help of the Legislature to enact or revise current statute requirements to allow various types of electronic signatures. Currently, our State does not allow this. If we do not act this year, we will fall behind in our original target date to design and implement a new automated software system for the Bureau. This new software will enhance productivity, provide new security features, increase the overall efficiency of the staff, be able to provide on-line cashiering of all funds received and provide much needed statistical reports to the management staff of the Bureau and ultimately benefit the people of Hawaii. This software system must be inclusive of the most current and up to date modules to be able to allow for state of the art technology for all consumers worldwide. An integral part of the software is the acceptance of various electronic signature formats.

We urge you to please consider all the benefits to the real estate market, associated industries and the general public in the State of Hawaii and around the world.

Respectfully submitted,

Denise M. Kaehu
President
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February 5, 2008

The Honorable Ken Ito, Chair
House Committee on Water, Land, Ocean Resources,
& Hawaiian Affairs
State Capitol, Room 420
Honolulu, Hawaii 96813

RE: H.B. 2302 Relating to Real Property
Hearing Date: February 6, 2008 @ 8:30 a.m., Room 312

Dear Chair Ito and members of the House Committee on Water, Land, Ocean Resources, & Hawaiian Affairs:

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

H.B. 2302 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.