
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 needs to accommodate this change. The efficiency of
9 real estate markets makes this imminently necessary.

10 The Uniform Electronic Transactions Act, codified as
11 chapter 489E, Hawaii Revised Statutes, adjusted statute of
12 frauds provisions to enable the use of electronic records and
13 signatures in many transactions, including basic real estate
14 transactions. The widespread enactment of the Uniform
15 Electronic Transactions Act and the federal Electronic
16 Signatures in Global and National Commerce Act make it possible
17 to treat sales contracts, mortgage instruments, and promissory
18 notes that are memorialized in electronic form, and with

1 electronic signatures, as equal to paper documents that have
2 manual signatures. However, real estate documents are excluded
3 from those measures. This Act permits the registrar of the
4 bureau of conveyances to accept electronic documents with
5 electronic signatures for recording.

6 This Act is not intended to affect land court registration
7 pursuant to chapter 501, Hawaii Revised Statutes, except to
8 permit the registrar of the bureau of conveyances to accept,
9 make, keep, enter, file, index, store, archive, or convert any
10 document received in electronic form by the registrar of the
11 bureau of conveyances, or filed at the bureau of conveyances in
12 electronic form.

13 The purpose of this Act is to permit the registrar of the
14 bureau of conveyances to accept electronic documents with
15 electronic signatures for recording.

16 SECTION 2. Chapter 502, Hawaii Revised Statutes, is
17 amended as follows:

18 1. By adding a new part to read:

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

20 **§502-A Definitions.** As used in this part:

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

4 "Electronic" means relating to technology having electric,
5 digital, magnetic, wireless, optical, electromagnetic, or
6 similar properties.

7 "Electronic document" means a document that is stored in an
8 electronic medium.

9 "Electronic signature" means an electronic sound, symbol,
10 or process attached to or logically associated with a document
11 and executed or adopted by a person with the intent of affixing
12 a signature on the document.

13 "Paper document" means a document that is inscribed on a
14 tangible medium such as paper.

15 "Person" means an individual, corporation, business trust,
16 estate, trust, partnership, limited liability company,
17 association, joint venture, public corporation, government, or
18 governmental subdivision, agency, or instrumentality, or any
19 other legal or commercial entity.

20 "State" means a state of the United States, the District of
21 Columbia, Puerto Rico, the United States Virgin Islands, or any

1 territory or insular possession subject to the jurisdiction of
2 the United States.

3 **§502-B Electronic document and electronic signature;**

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

7 (1) The original document or instrument;

8 (2) On paper, cloth, or other tangible medium; or

9 (3) In writing.

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

13 (c) Any requirement that a document or a signature
14 associated with a document be notarized, acknowledged, verified,
15 witnessed, or made under oath shall be satisfied if the
16 electronic signature of the person authorized to perform that
17 act, and all other information required to be included, is
18 attached to or logically associated with the document or
19 signature. It shall not be necessary to accompany an electronic
20 signature with a physical or electronic image or a stamp,
21 impression, or seal.

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

3 **§502-C Recording of documents.** (a) Notwithstanding any
4 other law to the contrary, and subject to rules adopted by the
5 department of land and natural resources pursuant to chapter 91,
6 the registrar may:

- 7 (1) Accept, make, keep, enter, file, index, store,
8 archive, and transmit electronic documents; provided
9 that the registrar shall also continue to accept paper
10 documents for recording and shall place entries for
11 both types of documents in the same index;
- 12 (2) Convert or copy paper documents that are accepted for
13 recording into electronic form;
- 14 (3) Convert or copy prior records of documents made in the
15 bureau of conveyances into electronic form;
- 16 (4) Accept fees for services rendered under this chapter
17 electronically; and
- 18 (5) Enter into agreements with other officials of states
19 or political subdivisions thereof, or of the United
20 States, on procedures or processes to electronically
21 satisfy prior approvals and conditions precedent to

1 recording and to facilitate the electronic payment of
2 fees.

3 (b) This part shall also apply to any document that is
4 received by the registrar of the bureau of conveyances or filed
5 at the bureau of conveyances by the registrar of the land court
6 pursuant to chapter 501.

7 (c) The department of land and natural resources shall
8 adopt rules pursuant to chapter 91 necessary for the purposes of
9 this part, including to determine when an electronic document
10 shall be considered delivered to the registrar pursuant to
11 section 502-32.

12 (d) To keep the standards and practices of recording in
13 the State in harmony with the standards and practices of
14 recording offices in other jurisdictions that enact provisions
15 substantially similar to this part and to keep the technology
16 used by the registrar compatible with technology used by
17 recording offices in other jurisdictions that enact provisions
18 substantially similar to this part, the department of land and
19 natural resources, so far as is consistent with the provisions
20 of this part, in adopting rules under chapter 91, shall
21 consider:

22 (1) The standards and practices of other jurisdictions;

1 (2) The most recent standards adopted by national standard
2 setting bodies such as the Property Records Industry
3 Association;

4 (3) The views of interested persons and governmental
5 officials and entities;

6 (4) The needs of jurisdictions of varying size,
7 population, and resources; and

8 (5) Standards requiring adequate information security
9 protection to ensure that electronic documents are
10 accurate, authentic, adequately preserved, and
11 resistant to tampering.

12 **§502-D Uniformity of application and construction.** In
13 applying and construing this uniform Act, consideration shall be
14 given to the need to promote uniformity of the law with respect
15 to its subject matter among states that enact it.

16 **§502-E Relation to federal Electronic Signatures in Global
17 and National Commerce Act.** This part modifies, limits, and
18 supersedes the federal Electronic Signatures in Global and
19 National Commerce Act, 15 United States Code section 7001, et
20 seq., but does not modify, limit, or supersede section 101(c) of
21 that Act, or authorize electronic delivery of any of the notices
22 described in section 103(b) of that Act."

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

3 **PART I. REGISTRAR, DEPUTY"**

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

6 **PART II. [†]GENERAL PROVISIONS[†]"**

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

9 **PART III. INDEXING OF RECORDS"**

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

12 **PART IV. RECORDING"**

13 6. By designating sections 502-41 to 502-54 as part V and
14 amending the title before section 502-41 to read:

15 **PART V. ACKNOWLEDGMENTS; PROOF OF INSTRUMENTS"**

16 7. By designating sections 502-61 to 502-64 as part VI and
17 amending the title before section 502-61 to read:

18 **PART VI. INTERLINEATIONS, ERASURES, ETC."**

19 8. By designating sections 502-71 to 502-74 as part VII
20 and amending the title before section 502-71 to read:

21 **PART VII. RECORDS OF ACKNOWLEDGMENTS"**

1 9. By designating sections 502-81 to 502-85 as part VIII
2 and amending the title before section 502-81 to read:

3 **PART VIII. REQUIREMENT AND EFFECT OF ACKNOWLEDGING,**
4 **RECORDING, NOT RECORDING"**

5 10. By designating sections 502-91 to 502-95 as part IX
6 and amending the title before section 502-91 to read:

7 **PART IX. PRIOR RECORDS"**

8 11. By designating section 502-101 as part X and amending
9 the title before section 502-101 to read:

10 **PART X. VETERANS CERTIFICATES"**

11 12. By designating section 502-111 as part XI and amending
12 the title before section 502-111 to read:

13 **PART XI. [†]OTHER PROVISIONS[†]"**

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

15 **"§502-21 Recording of plans unlawful.** It shall not be
16 lawful for the registrar to accept for record any plan of land,
17 whether attached to, made a part of, or independent of, any
18 deed, certified copy of judgment of condemnation, or other
19 instrument; to the end and purpose that there shall be no plans
20 recorded in the record books, but in substitution therefor there
21 shall be a single method of filing plans in the archives of the
22 bureau of conveyances; provided that where sketches, blueprints,

1 or plans of land of a size not larger than 8 1/2 inches by 14
2 inches which legibly reproduces under photographic, electronic,
3 or electrostatic methods are attached to instruments and made a
4 part thereof by reference to the same in the instrument, the
5 registrar may record the same in the record books by means of
6 the photographic recorder, on payment of the fee as provided in
7 section 502-25."

8 14. By amending section 502-22 to read:

9 **"§502-22 Copies of plans furnished by registrar.** The
10 registrar shall furnish, when so requested, copies of any map or
11 plan filed in accordance with sections 502-17 to 502-21, duly
12 certified by the registrar's seal of office, upon payment of the
13 fee hereinafter mentioned. In addition, the registrar may
14 authorize the department of accounting and general services to
15 furnish, when so requested, copies of such maps or plans,
16 subject to the payment of fees applicable to maps or plans
17 furnished by the registrar. The copies of maps or plans may be
18 furnished in photographic, electronic, or electrostatic form."

19 15. By amending section 502-26 to read:

20 **"§502-26 Copies of instruments, certificates.** The
21 registrar, when applied to, shall furnish an attested copy of
22 any instrument or document recorded in the registrar's office,

1 or of any fact appearing upon the registrar's records. The
 2 registrar may also issue nonattested documents or portions of
 3 any instrument or document recorded in the registrar's office[~~-~~]
 4 in photographic, electronic, or electrostatic form. The
 5 registrar may issue certificates of search or [~~incumbrance~~]
 6 encumbrance when personnel is available for the making of the
 7 certificate."

8 16. By amending section 502-41 to read:

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

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

18 1. In the case of natural persons acting in their own
 19 right:

20 On(insert date), before me personally appeared
 21 A.B. (or A.B. and C.D.), to me known to be the person or persons
 22 described in and who executed the foregoing instrument, and

1 acknowledged that the person or persons executed the same as the
2 person's or persons' free act and deed.

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

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

8 3. In the case of corporations or partnerships:

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

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

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1 On(insert date), before me personally appeared
2 A.B., to me personally known, who being by me duly sworn (or
3 affirmed), did say that the person is the attorney-in-fact of
4 C.D. (here name the corporation) duly appointed under power of
5 attorney dated, recorded in book...., at
6 page..../as document no.; and that the foregoing instrument
7 was executed in the name and behalf of said C.D. by A.B. as its
8 attorney-in-fact; and A.B. acknowledged the instrument to be the
9 free act and deed of C.D.

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

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

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

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

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

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

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

1 In all cases add signature and title of the officer taking
2 the acknowledgment."

3 17. By amending section 502-92 to read:

4 "**§502-92 Copies of old records.** The registrar shall
5 prepare photographic, electronic, or electrostatic copies of the
6 records and record books in the bureau of conveyances which by
7 reason of age, usage, or otherwise are in such condition that
8 they can no longer be conveniently used or consulted without
9 danger of destruction thereof, and certify to the correctness of
10 such copies. The certified copies, and prints made from them
11 and similarly certified, may be read in evidence with the same
12 force and effect as the original instrument. The correctness of
13 such copies is not conclusive but may be rebutted. All such
14 records and record books from which the copies are made shall be
15 deposited with the department of accounting and general services
16 in its public archives. The registrar may convert into
17 electronic form information or documents recorded before the
18 registrar was given the authority to record electronic
19 documents."

20 SECTION 3. This Act does not affect rights and duties that
21 matured, penalties that were incurred, and proceedings that were
22 begun, before its effective date.

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

5 SECTION 5. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 6. 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, to provide electronic documents in response to a request, and to convert existing records to electronic format. (SD1)