

**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2009**

---

**ON THE FOLLOWING MEASURE:**

S.B. NO. 1349, RELATING TO NOTARIES PUBLIC.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

**DATE:** Tuesday, February 10, 2009 **TIME:** 9:00 AM

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or Shari Wong, Deputy Attorney General

---

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General is concerned with section 2 of this bill, which seeks to amend subsection (a) of section 456-21, Hawaii Revised Statutes (HRS). The purpose of requiring notaries to authenticate every acknowledgment or jurat with a certification statement is to prevent the fraudulent use of notary stamps or seals. Previously, notarized documents without a descriptive certification statement could have their notarized pages detached and "switched" to a different document for fraudulent purposes. The enactment of section 456-21 in 2008 now requires a certification statement that includes certain descriptive elements of the document, such as identification of the document and statement of the number of pages and date of the document.

This bill proposes to allow a notary public to state that the number of pages is unknown if the number of pages cannot be readily ascertained. While we understand that it may be difficult to determine the number of pages of a document not yet finalized, a notary public can nonetheless count the number of pages in a document at the time of notarization. We believe a statement such as "20 pages, at the time of notarization", provides valuable information and have been advising notaries public that this is an acceptable way to meet this

requirement. Even if the document ultimately results in 30 pages when it is finalized, at the very least, the notarized page cannot be detached and fraudulently switched to a five-page document, for example.

With respect to the second proposal in section 1 (page 2, lines 11-18, changes ratified by the parties to a document after notarization), the intent of this new provision is unclear. We are aware of many benign situations that this new provision may address (e.g., amendment of a contract). However, we can also envision situations in which this provision is used for fraudulent or malevolent purposes (e.g., change in a document recorded at the Bureau of Conveyances or Land Court). We may, in the future, have additional comments on this new proposal, pending further explanation or clarification.

We respectfully urge deletion of section 2 of this bill.



# Title Guaranty of Hawaii, Inc.

235 QUEEN STREET, HONOLULU, HI 96813 • P.O. BOX 3084, HONOLULU, HI 96802

LEGAL DEPARTMENT Phone (808) 533-5842 Fax (808) 521-0287 email: [lhirano@tghawaii.com](mailto:lhirano@tghawaii.com)

February 9, 2009

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

The Honorable Brian T. Taniguchi, Chair  
The Honorable Dwight Y. Takamine, Vice Chair  
Members of The Senate Committee On Judiciary  
And Government Operations  
415 South Beretania Street, Conference Room 016  
Honolulu, Hawaii 96813

Re: Senate Bill 1349 Relating to Notaries Public  
Hearing Date: February 10, 2009  
Hearing Time: 9:00 a.m.

Dear Senators Taniguchi and Takamine, and Members of the Senate Committee on Judiciary and Government Operations:

I am writing in support of Senate Bill 1349 Relating to Notaries Public. We very much appreciate the consideration being given by the Committee. Act 175 of the 2008 Regular Session of the Legislature had the admirable purpose of targeting fraud with respect to notarized documents. We agree with and support the philosophy behind the law.

The processing of real estate transactions involves the coordination of many moving parts. Documenting the transaction often requires the participation of many different parties, some of whom may be located in other states and countries. It also involves satisfying the requirements of lenders, and ultimately the documents must be acceptable to the bureau of conveyances and the office of the assistant registrar of the Land Court.

Transaction documents are sometimes signed and notarized before the date of closing is determined, and the parties therefore leave the document undated at the time of signing. Sometimes there are blanks in the document for recording information to be supplied by the bureau of conveyances. This information must be filled in at the time of closing, but this necessarily occurs after the document has been signed and notarized. Other times, there are inadvertent typographical errors that are later detected and must be corrected, or updated pages and exhibits that must be inserted. When this happens and there is insufficient time to return the documents back to the parties for re-signing, the parties must allow for corrections to be made to avoid costly delays.


The purpose of Senate Bill 1349 is to facilitate the ability of the parties to conform their transaction documents to the form which they intend them to be without the specter

of a criminal sanction against them. It allows the parties to ratify a correction or a change that may be necessitated by their agreement or by a requirement of the bureau of conveyances or the Land Court.

We respectfully request that this Committee view this measure favorably and recommend its passage.

Thank you very much for your consideration and attention to this matter.

Sincerely,



Lorrin Hirano  
Legal Counsel