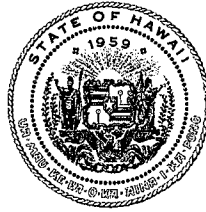
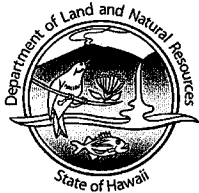


LINDA LINGLE  
GOVERNOR OF HAWAII



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

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**Testimony of  
LAURA H. THIELEN  
Chairperson**

**Before the Senate Committee on  
JUDICIARY AND GOVERNMENT OPERATIONS**

**Monday March 2, 2009  
10:30 AM  
State Capitol, Conference Room 016**

**In consideration of  
SENATE BILL 6, SENATE DRAFT 1  
RELATING TO REAL PROPERTY**

Senate Bill 6, Senate 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 to allow public records to be scanned and stored in an electronic format in the Bureau. The Department appreciates that this bill includes the intent of two of the Administration's proposals, Senate Bill 955 (RELATING TO FILINGS IN THE BUREAU OF CONVEYANCES) and Senate Bill 956 (RELATING TO COPIES IN THE BUREAU OF CONVEYANCES). As such, the Department supports this measure as a means to effectively address accepting electronic documents with electronic signatures for recording in the Bureau and the Office of the Assistant Registrar, and to allow records to be scanned and stored in an electronic format.

Presently, the Bureau and the Office of the Assistant Registrar accept 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.

Currently, records in the Bureau are allowed to be stored in photographic or electrostatic copy only. In order to improve efficiency and avoid duplication of functions at the Bureau, it is critical to allow records to be scanned and stored in an electronic format. This bill will allow the Bureau to eliminate the step to microfilm the documents which will offer a faster return of original documents to the public.

LAURA H. THIELEN  
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COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

The Department notes that this bill adds a new section to the statutes rather than allowing the acceptances of electronic documents through amendment to Chapters 501 and 502, Hawaii Revised Statutes. This section will accomplish the same outcome as amendments to Chapters 501 and 502, Hawaii Revised Statutes. Additional amendments to further achieve the goals of this legislation may be requested by the Department as this bill moves forward.

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

**ON S.B. NO. 6, S.D.1  
RELATING TO REAL PROPERTY.**

**BEFORE THE SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT  
OPERATIONS**

**DATE:** Monday, March 2, 2009, at 10:30 a.m.  
Conference Room 016, State Capitol

**WRITTEN COMMENTS ONLY**

(For further information, please contact PETER HAMASAKI, Commission to Promote Uniform Legislation (529-7333))

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Chair Taniguchi, Vice Chair Takamine and Members of the Committee on Judiciary and Government Operations:

On behalf of the State of Hawai'i Commission to Promote Uniform Legislation (CPUL), thank you very much for this opportunity submit comments in support of S.B. No. 6, S.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 URPERA 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 eighteen (18) states (Arizona, Arkansas, Connecticut, Delaware, Florida, Idaho, Illinois, Kansas, Minnesota, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin), as well as the District of Columbia, since it was approved by NCCUSL in 2004. See [http://www.nccusl.org/Update/uniformact\\_factsheets/uniformacts-fs-urpera.asp](http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-urpera.asp).

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 S.B. No. 6, S.D.1.

Thank you very much for your consideration of the foregoing comments.



# 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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