

JAN 21 2009

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 will need to transition to accommodate this change.
9 The efficiency of real estate markets makes this imminently
10 necessary.

11 The Uniform Electronic Transactions Act, as codified under
12 section 489E-5, Hawaii Revised Statutes, adjusted statute of
13 fraud provisions to enable electronic records and signatures for
14 the memorializing of a multitude of transactions, including
15 basic real estate transactions. The widespread enactment of the
16 Uniform Electronic Transactions Act and the federal Electronic
17 Signatures in Global and National Commerce Act made it possible
18 to treat sales contracts, mortgage instruments, and promissory



1 notes that are memorialized in electronic form, and with
2 electronic signatures, equal to the same paper documents that
3 have manual signatures. However, real estate documents must be
4 recorded on public record to be effective. This Act permits the
5 registrar of the bureau of conveyances to accept electronic
6 documents with electronic signatures for recording.

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

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

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

19 1. By adding a new part to read:

20 "PART XII. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

21 §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
5 electronic, digital, magnetic, wireless, optical,
6 electromagnetic, or similar capabilities.

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) Original;
- 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 any rules adopted by
5 the department of land and natural resources pursuant to chapter
6 91, the registrar may:

7 (1) Accept, make, keep, enter, file, index, store,
8 archive, and transmit electronic documents; provided
9 that the registrar shall continue to accept paper
10 documents for recording, as well, and shall place
11 entries for 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 a state
19 or a political subdivision thereof, or of the United
20 States, on procedures or processes to facilitate the
21 electronic satisfaction of prior approvals and



1 conditions precedent to recording and the electronic
2 payment of 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 when an electronic document shall be
10 considered delivered to the registrar pursuant to section
11 502-32.

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
15 substantially this part and to keep the technology used by the
16 registrar compatible with technology used by recording offices
17 in other jurisdictions that enact substantially this part, the
18 department of land and natural resources, so far as is
19 consistent with the provisions of this part, in adopting rules
20 under chapter 91, shall consider:

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



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- 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 the federal Electronic Signatures in Global and National
22 Commerce Act, 15 United States Code Section 7001(c), or



1 authorize electronic delivery of any of the notices described in
2 Section 103(b) of the federal Electronic Signatures in Global
3 and National Commerce Act, 15 United States Code Section
4 7003(b)."

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

7 "PART I. REGISTRAR, DEPUTY"

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

10 "PART II. [{}GENERAL PROVISIONS[{}]"

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

13 "PART III. INDEXING OF RECORDS"

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

16 "PART IV. RECORDING"

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

19 "PART V. ACKNOWLEDGMENTS; PROOF OF INSTRUMENTS"

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

22 "PART VI. INTERLINEATIONS, ERASURES, ETC."



1 recorded in the record books, but in substitution therefor there
2 shall be a single method of filing plans in the archives of the
3 bureau of conveyances; provided that where sketches, blueprints,
4 or plans of land of a size not larger than 8 1/2 inches by 14
5 inches which legibly reproduces under photographic, electronic,
6 or electrostatic methods are attached to instruments and made a
7 part thereof by reference to the same in the instrument, the
8 registrar may record the same in the record books by means of
9 the photographic recorder, on payment of the fee as provided in
10 section 502-25."

11 14. By amending section 502-41 to read:

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

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

21 1. In the case of natural persons acting in their own
22 right:



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1 On(insert date), before me personally appeared
 2 A.B. (or A.B. and C.D.), to me known to be the person or persons
 3 described in and who executed the foregoing instrument, and
 4 acknowledged that the person or persons executed the same as the
 5 person's or persons' free act and deed.

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

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

11 3. In the case of corporations or partnerships:

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

21 4. In the case of a corporation acknowledging by an
 22 individual as its attorney, where the enabling power of attorney



1 has previously been recorded, the acknowledgment of the
2 instrument executed under the power of attorney shall be
3 substantially in the following form:

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

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

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



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

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

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

20 On(insert date), before me personally appeared
21 A.B. (or A.B. and C.D.), to me personally known, who, being by
22 me duly sworn (or affirmed), did say that such person executed



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1 the foregoing instrument as the free act and deed of such
2 person, and if applicable in the capacity shown, having been
3 duly authorized to execute such instrument in such capacity.

4 In all cases add signature and title of the officer taking
5 the acknowledgment."

6 SECTION 3. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun, before its effective date.

9 SECTION 4. In codifying the new sections added by section
10 2 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

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

15 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

Cytm Hle



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.

