



March 25, 2025

Representative David Tarnas
Chair, Committee on Judiciary & Hawaiian Affairs

Representative Mahina Poepoe
Vice Chair, Committee on Judiciary & Hawaiian Affairs

Re: S.B. 321, SD1, HD1 – Relating to Transportation
Hearing Date: Thursday, March 27, 2025 at 2:00 p.m.
Conference Room: 325

Dear Chair Tarnas, Vice Chair Poepoe and Members of the Committee:

The Hawaii Land Title Association is an association of the nine largest Hawaii title insurers, underwritten title companies and title agents who provide residential and commercial title insurance and settlement services for the people of Hawaii.

The Hawaii Land Title Association (HLTA) appreciates the opportunity to **submit comments** regarding **S.B. 321, SD1, HD1** which provides that fee simple absolute title of a privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail is deemed transferred to adjacent property owners or the community association if certain conditions are met.

HLTA appreciates that the intent of the bill is to provide certainty for homeowners or community associations that have been left with unclaimed private roadways, because the developers originally involved in installing these roadways are no longer active. These private roadways can present significant challenges in future work or conveyances because there is no certainty of ownership over the roadways.

However, as written, HLTA has serious concerns regarding this bill because it lacks the necessary mechanics to determine real property ownership over these private roadways, which will ultimately lead to many unintended consequences. Specifically, the bill does not provide an actual process for determining ownership and instead “deems” property to be transferred when the subdivider has dissolved or ceased to exist for five years and there has been no prior deed of conveyance to the State. This automatic transfer of ownership could give rise to situations where multiple property owners claim or disclaim ownership to a property deemed transferred and could result in disputes over title to such roadways. In addition, property registered in Land Court that is deemed transferred by way of this bill could suggest a challenge to Land Court certification of title, which is solely within the



jurisdiction of Land Court under HRS Chapter 501. The bill also does not address how easements or covenants, conditions or restrictions that may already exist over the roadway would be handled.

HLTA believes that one way to ensure certainty over ownership of private roadways would be to require a court to provide an order to transfer title of these private roadway. A court process would provide appropriate notice, define the parties and property in question, determine any maintenance obligations, settle any disputes over ownership, and provide a transfer of title that can then be recorded with the Bureau of Conveyances or Land Court. HLTA believes a court process would be simplest to provide legal certainty over title to private roadways.

We have enclosed proposed HD2 language to address these concerns and we would encourage the Committee to consider these amendments. We appreciate the opportunity to testify and are happy to answer any questions.

Sincerely,

Harry Kanehailua
Vice President
Hawaii Land Title Association



S.B. 321, SB1 HD1 – Proposed HD2

SECTION 1. Chapter 264, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

§264- Orphan streets; ownership. (a) For the purposes of this section:

“Orphan street” means a highway, road, alley, street, way, lane, bikeway, bridge, or trail, title to which is vested in a subdivider that no longer holds an interest in title to any of the other lots or portions of the lots on the plat of consolidation or subdivision which created the orphan street and which has never been dedicated by deed of conveyance naming the State or county as grantee.

“Community association” means a nonprofit homeowners or community association existing pursuant to covenants running with the land.

“Subdivider” means a person, firm, corporation, partnership, association, trust, or other legal entity or combination thereof that caused the subdivision or consolidation creating the orphan street, or the duly authorized agent or lessee thereof.

“Adjacent Owner” means a person, firm, corporation, partnership, association, trust, or other legal entity or combination thereof, including a community association, that owns property that is contiguous to the orphan street in question.

(b) Notwithstanding any provision of law to the contrary, fee simple absolute title of an orphan street shall be transferred to an adjacent owner pursuant to subsection (c), when:

- (1) If the subdivider is an entity, the subdivider has dissolved or ceased to exist for not less than five years; or
- (2) If the subdivider is an individual, the subdivider is deceased and either the heirs disclaim their interest in the orphan street or no heirs can be located with reasonable diligence and a court order authorizing notice by publication is obtained in the action described in subsection (c).

(c) An action for transfer of title pursuant to subsection (b) shall comply with the following requirements:

- (1) The action may be commenced in the circuit court for the county where the property is located by any adjacent owner.
- (2) The action shall include a sufficient survey or map to illustrate the property to be transferred and what portions will become part of any other property.



(3) The party filing the action shall serve notice on all other adjacent owners. Any adjacent owner shall be entitled to appear and raise any objection to how the petitioner proposes to transfer title to the orphan street.

(4) Notice of a hearing before the court shall be given to the parties identified in subsection (c)(3).

(5) The court may determine:

(A) If there are unpaid property taxes assessed against the orphan street, the court may require proof of payment of the taxes.

(B) The court may, if necessary, determine any issues of responsibility for existing or future maintenance obligations.

(C) If the petitioner has established the criteria required under this section and has provided a survey or map that the court determines is a proper division of the title to the orphan street, the court shall issue an order confirming the transfer of title which will be effective when the order is recorded in the Bureau of Conveyances. If the property or any portion thereof is registered with the land court, the order shall be recorded with the office of the assistant registrar of the land court and the assistant registrar shall issue a certificate of title to the prevailing adjacent owner covering the affected portion of the orphan street as described in the court order.

(d) Any transfer of title pursuant to this section shall not operate to terminate, diminish or restrict any easements, covenants, utilities, or rights of access, including implied rights of access in favor of an adjacent owner, over, under or across the orphan street that existed prior to the transfer of title.

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 3000.



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

March 26, 2025

Rep. David A. Tarnas, Chair
Rep. Mahina Poepoe, Vice Chair
Members of the House Committee on Judiciary and Hawaiian Affairs

Hearing Date: March 27, 2025
Hearing Time: 2:00 pm
Hearing Place: Hawaii State Capitol, Conference Room 325

Re: SB321 SD1 HD1 Relating to Transportation

I am Victor Brock, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate and service, or support the origination and servicing, of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation or rules, it is related only to mortgage lending and servicing.

The MBAH provides comments to SB321 SD1 HD1 with recommended amendments.

We concur with the recommended amendments provided in the testimony provided by Harry Kanehailua of the Hawaii Land Title Association (HLTA). We have been advised that roadways transferred using the method in the current version of the bill may lead to a situation in which a title company is unable to insure access to the property to a lender as part of the title insurance policy. This would lead to the property being ineligible for a refinance or purchase-money mortgage from most mortgage lenders in Hawaii. We understand that the recommended amendments would avoid this potentially adverse situation.

Thank you for the opportunity to present this testimony.

Victor Brock
Mortgage Bankers Association of Hawaii

HAWAII FINANCIAL SERVICES ASSOCIATION

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March 27, 2025

Rep. David A. Tarnas, Chair
Rep. Mahina Poepoe, Vice Chair
and members of the House Committee on Judiciary & Hawaiian Affairs
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **S.B. 321, S.D. 1, H.D. 1 (Transportation)**
Hearing Date/Time: Thursday, March 27, 2025, 2:00 p.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** (“HFSA”). The HFSA is a trade association for Hawaii’s consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA **offers comments** on this Bill.

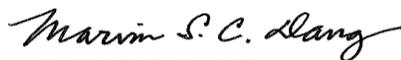
This Bill provides that fee simple absolute title of a privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail is deemed transferred to adjacent property owners or the community association if certain conditions are met.

We understand that the **Hawaii Land Title Association**, which represents Hawaii title insurers, has concerns about this Bill as drafted. A “deemed transfer” (i.e., an automatic transfer) of unclaimed roadways as proposed in this Bill doesn’t provide a process to determine ownership or a process to provide legal certainty regarding the transfer of title for unclaimed private roadways.

We also understand that the testimony of the **Hawaii Land Title Association** includes proposed language for a House Draft 2 to address these concerns by requiring that the transfer of title be done by initiating a court action and obtaining a court order.

From the perspective of mortgage lenders, legal certainty is needed so that title companies can issue appropriate title policies to both: (1) owners of real properties that are adjacent to these unclaimed private roadways, and (2) lenders making mortgage loans secured by real properties adjacent to these unclaimed private roadways. Without legal certainty and without appropriate title policies, the availability and terms of mortgage loans for the real properties could be negatively impacted. And the value and marketability of the real properties could be negatively affected.

Thank you for considering our comments in our testimony.



MARVIN S.C. DANG

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TESTIMONY IN SUPPORT OF SB321

I urge you to support this legislation. Many subdivisions were created by development corporations that established the roads and subdivided the lots. After the last lots were sold, the development corporations went inactive and were eventually dissolved. The majority of these development corporations did not transfer the title of the road lots to the communities.

The current situation is that many of the community associations who maintain these roadways do not have actual title. This situation is a problem for the community associations and for the County of Hawaii. The County has been working to acquire an easement to create an additional access road that would serve four subdivisions. Unfortunately, the title for part of that access belongs to a corporation that has been dissolved since the 1990s. Community associations entering into paving contracts with the major paving contractors do not have title to the roads they are seeking to pave. Additionally, community associations that do not have clear title to their road lots cannot secure loans to finance road work.

The remedy provided by this legislation is simple and there is no financial impact for the state or county. Any title transfer expenses would be incurred by the community associations. The benefit is that the community associations would have clear title to their own maintained roads and have fewer obstacles to entering into contracts to fund and maintain their roads.

Some examples of dissolved development corporations that still hold title to road lots:

Crescent Acres LTD – developer of Fern Acres – 2,000 properties

Hawaii Mountain View Development Corporation – developer of Eden Roc Estates – 1,800 properties

Nishimura Mitsushi Trustee – developer of Hawaiian Acres – 4,000 properties

Hilo Development Inc. – developer of Orchidland – 2,500 properties

Royal Pacific Development Corporation – developer of Aloha Estates – 300 properties

Manoa Finance Company Inc. – developer of Hawaiian Orchid Island Estates – 1,200 properties