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KAIHOLAWA ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
LAURA H. THIELEN
Chairperson

Before the House Committee on
JUDICIARY

Tuesday, February 17, 2009
2:00 PM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 271
RELATING TO REAL PROPERTY

House Bill 271 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. While the Department recognizes that this bill has merit, the Department nonetheless prefers the Administration's House Bill 1137 (Relating to Filings in The Bureau of Conveyances) to effectively address accepting electronic documents with electronic signatures for recording in the Bureau and the Office of the Assistant Registrar.

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.

The Department notes that the Administration proposal (House Bill 1137) allows for the acceptance of electronic documents through amendment to Chapters 501 and 502, Hawaii Revised Statutes (HRS), without the necessity of adding an entirely new section to the statutes.

In addition to this legislation, the Administration has proposed House Bill 1138 (Relating To Copies in the Bureau of Conveyances) and House Bill 1139 (Relating To Land Court System). House Bill 1138 proposes to allow the Bureau to archive the documents in digital format. House Bill 1139 would remove time share interests from Land Court registration and allows landowners to opt out of Land Court and register their properties in the Regular System at the Bureau. Both of these proposals will assist the Bureau in becoming more efficient and up to date with the functions of the Bureau.

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

**ON H.B. No. 271
RELATING TO REAL PROPERTY.**

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 17, 2009, at 2:00 p.m.
Conference Room 325, State Capitol

PERSON(S) TESTIFYING: PETER HAMASAKI
Commission to Promote Uniform Legislation

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Chair Karamatsu, Vice Chair Ito, and Members of the House Committee on Judiciary:

On behalf of the State of Hawai'i Commission to Promote Uniform Legislation (CPUL), thank you very much for this opportunity to testify in support of H.B. No. 271, 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. H.B. No. 271 is very similar to H.B. No. 2302 from the 2008 Regular Session, and which passed the House as House Draft 2.

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.

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 H.B. No. 271.

Thank you very much for this opportunity to testify.



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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