



The Judiciary, State of Hawai‘i

Testimony to:

Senate Committee on Water and Land
Senator Kaiali‘i Kahele, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

and

Senate Committee on Government Operations
Senator Laura H. Thielen, Chair
Senator Lorraine R. Inouye, Vice Chair

by

Calvin C. Ching
Deputy Chief Court Administrator-First Circuit
Bess Palma, Acting Registrar-Land Court

Bill No. and Title: Senate Bill No. 917, Relating to Land.

Purpose: Requires the land court to accept valid government issued identification as evidence to prove full name. Requires land court to give full faith and credit to public acts, judgments, and orders of other states that recognize name changes by usage or other method.

Judiciary's Position:

The Judiciary supports Senate Bill No. 917 as it provides Land Court property owners, who have completed name change events outside the state of Hawaii, a direct and simplified way to prove such name change to the court.

Senate Bill No. 917 also provides a clear guideline for the court when examining evidence, such as marriage certificates issued out of state, that do not indicate a name change.

Thank you for the opportunity to testify on this measure.

SB-917

Submitted on: 2/11/2019 1:58:13 PM

Testimony for GVO on 2/14/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Testimony on Senate Bill No. 917, Relating to Land
February 21, 2019

Honorable Kaiali'i Kahele, Chair, Committee on Water and Land
Honorable Laura Thielen, Chair, Committee on Government Operations

Aloha Committee Chairs and Members:

My name is Alan Konishi and have been a Hawaii attorney since 1980. I prepare documents for real estate transactions.

The purpose of this bill is to address an issue which disproportionately affects many married women who own Land Court property, which includes most residential areas formerly owned by sugar or pineapple plantations and large ranches (e.g. Pearl City, and most of the Puna District, which is more than three times larger in size than Oahu). The bill would clarify that passports, including United States Passports, and driver's licenses, including those issued by the State of Hawaii, shall be deemed adequate evidence of identification by the Land Court of the State of Hawaii. Further, this bill requires name changes recognized by other states based on the common law doctrine of "usage" be given full faith and credit (such as by the issuance of driver's licenses after marriage.)

As stated in this bill, in order to transfer property subject to Land Court jurisdiction, current law requires that the full legal names of parties be used. Although all states permit spouses to change surnames upon marriage, unlike Hawaii, most states do not have a statutory provision similar to HRS §574-1, which requires that the certificate of marriage state the middle and last names the parties will adopt as a result of the marriage. Unlike Hawaii, a majority of states (perhaps as many as 46) recognize changes of names by the common law doctrine of "usage" (using a name consistently as long as it is not for the purposes of fraud or criminal activity.)

When owners of Land Court property are married after acquisition, a petition is required to note the marriage and name change, if any. In the past, we attached a certified copy of the certificate of marriage as evidence. About 10-15 years ago, in order to prove the name change, a copy of a government-issued id was required to be attached to an affidavit attesting to its authenticity. Because all states require drivers to obtain licenses using their legal names, accepting driver's licenses as proof of identity was very reliable, practical and efficient. It should also be noted that statements in affidavits or Land Court petitions relating to name changes are deemed to be made under oath before a Notary Public.

However, within the last few years, petitioners have been asked to prove that the jurisdiction in which the parties were married has a specific statutory provision which permits spouses to change their names as a result of marriage. Most states do not have such a specific provision probably because of reliance on usage or custom. Because validly issued driver's licenses or passports have not been accepted by the Land Court as adequate proof of identity, this has created problems for women who were married in another state (such as Nevada) or country (e.g. the Philippines) even if they have used their married surnames for decades. I have been in situations in which a Hawaii attorney and one in another state (to research that state's laws and court decisions) had participate in the preparation of a petition. It resulted in unnecessary legal expense for the clients.

This bill would provide relief for persons, primarily women, by accepting reliable documentary information from trustworthy governmental agencies.