

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

**ON THE FOLLOWING MEASURE:
H.B. NO. 1639, RELATING TO NOTARIES PUBLIC.**

**BEFORE THE:
HOUSE COMMITTEE ON WATER & LAND**

DATE: Tuesday, February 3, 2026 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 411

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Tina M. Tsuchiyama, Deputy Attorney General

Chair Hashem and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

This bill requires the Bureau of Conveyances of the State of Hawaii (Bureau) to void any recorded instrument that contains a fraudulent notarial act or seal after receiving an attestation from the purported notary public whose notarial act or seal was allegedly fraudulently used on the document. This bill further requires the Bureau to suspend recordation of additional documents against real property if the owner requests it.

This bill may raise constitutionality concerns under the Contracts Clause of the U.S. Constitution and State Constitution because it requires the Bureau to "void" purportedly fraudulently notarized contracts that while fraudulently notarized, may still be valid and currently in effect. This bill may raise further constitutionality concerns under section 14 of article III of the State Constitution because it can be interpreted as addressing multiple subjects.

The Contracts Clause, U.S. Const. art. I, § 10, cl. 1, prohibits state laws that impair the obligation of contracts. To determine if a state law has violated the Contracts Clause, a Hawaii court will evaluate the following three criteria: (1) whether the state law operated as a substantial impairment of a contractual relationship; (2) whether the state law was designed to promote a significant and legitimate public purpose; and

(3) whether the state law was a reasonable and narrowly-drawn means of promoting the significant and legitimate public purpose. *Applications of Herrick*, 82 Haw. 329, 340, 922 P.2d 942, 953 (1996).

The threshold question is whether the bill substantially impairs private contracts. Here, this bill requires the Bureau to automatically void a contract after receiving attestation from the notary public, which is a substantial impairment. To that end, Hawaii courts have long held that forged deeds are void and do not pass title. *Palau v. Helemano Land Co.*, 22 Haw. 357, 361 (1914). However, a forged notarial act or instrument does not necessarily mean that the contract itself was forged but may be voidable if the party who signed was deceived by a misrepresentation. *In re Hokulani Square, Inc.*, 413 B.R. 706, 715 (Bankr. D. Haw. 2009). The distinction between void and voidable contracts is important as it impacts the rights and potential claims against a subsequent bona fide purchaser of that property.

We recommend that the bill be modified to provide the parties to the contract in question the opportunity to void the purportedly fraudulently notarized contract by requiring the Bureau not to void the contract, but to notify the parties that the Bureau received attestation from the notary public whose notarial act or seal was allegedly fraudulently used on the document. Such notification will provide the parties with the opportunity to seek appropriate legal remedies to address the matter and would also allow a court to weigh in on whether the use of a notarial act or seal constituted fraud—a mixed question of fact and law that would be nearly impossible for an agency like the Bureau to unilaterally investigate, determine, and execute consistent with due process and Contract Clause concerns.

We further recommend inserting a purpose section to strengthen the bill against potential Contract Clause challenges. Even where a law is found to impair a pre-existing contract, a court may uphold the law if the state law advances a significant and legitimate public purpose. In *Galima v. Ass'n of Apartment Owners of Palm Ct. by & Through Bd. of Directors*, 453 F. Supp. 3d 1334, 1355-56 (D. Haw. 2020), the U.S. District Court for the District of Hawaii applied a two-step test and concluded that Act 282, Session Laws of Hawaii 2019, was unconstitutional because (1) the act impaired

Testimony of the Department of the Attorney General

Thirty-Third Legislature, 2026

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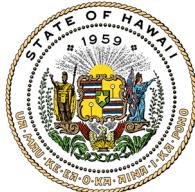
pre-existing contracts, and (2) the act did not appear to be for the public good because it benefitted a favored group and not a basic societal interest. This bill plainly impairs certain recorded instruments with fraudulently acquired notarial acts by invalidating them altogether. As such, to guard the bill against potential challenges, the purpose section of the bill should not only identify a significant and legitimate public purpose but also explain how the remedies in the bill appropriately and reasonably advance the bill's stated purpose.

Additionally, article III, section 14, of the State Constitution requires each Hawaii law to embrace one subject matter as expressed in its title. The title of this bill reads "Relating to Notaries Public." In addition to requiring the Bureau to void any recorded instrument that was purportedly fraudulently notarized and clarifying relevant statutes related to the validity of notarial acts, section 1 of this bill adds a new section 502-B, page 1, line 11, to page 2, lines-4, to require the Bureau to suspend recordation of additional documents against real property if the owner requests it, with no apparent nexus to notaries public. Accordingly, to guard the bill against potential challenges, we recommend revising this amendment to have a clearer nexus to notaries public or removing it from the bill altogether.

Thank you for the opportunity to offer comments.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
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**Testimony of
RYAN K.P. KANAKA'OLE
Acting Chairperson**

**Before the House Committee on
WATER & LAND**

**Tuesday, February 3, 2026
9:00 AM
State Capitol, Conference Room 411**

**In consideration of
HOUSE BILL 1639
RELATING TO NOTARIES PUBLIC**

House Bill 1639 requires the Bureau of Conveyances of the State of Hawaii (the “Bureau”) to void any recorded instrument that was fraudulently notarized when attested to by the purported notary public and to allow title holders to suspend additional recordings affecting their title, subject to certain limitations. House Bill 1639 also requires the Bureau of Conveyances to suspend further recordation of certain documents against the subject property if requested by the title holder. **The Department of Land and Natural Resources (Department) offers the following comments.**

The Bureau performs highly specialized and critical functions that ensure the integrity, reliability, and accessibility of Hawai'i's land title records under both the Regular System and the Land Court System. Last year, the Bureau reviewed and recorded over 278,000 total documents or approximately 1,000 to 1,300 documents a day.

The Bureau operates in a ministerial capacity and relies on clear statutory standards to ensure consistent, objective, and non-adjudicative administration of recording requirements. Because the Bureau operates in an administrative role, implementation of this measure should be guided by objective statutory criteria and preserve the courts' role as the final arbiter of disputed property rights. Suspending the recording of instruments would necessitate clear public notice to maintain transparency and protect reliance on the public land records.

Under current law, the Bureau does not have a general mechanism to void recorded instruments or suspend the recordation of certain documents at the request of the title holder. Documents may be expunged only pursuant to a recorded court order or through corrective action expressly authorized by statute. Because the Bureau operates in a ministerial, non-adjudicatory capacity, the Department respectfully requests guidance to define the procedures the Bureau is expected

to follow when voiding a document under this measure, including clarification of the form and sufficiency of a notary's attestation and the extent to which the Bureau is expected to verify such attestations, in order to ensure consistent administration without requiring the Bureau to resolve factual disputes. The Bureau also requests clarification of whether the option to suspend recordation of certain documents is limited to certain title holders who may have notices of purported fraudulent notarial acts.

Implementation of this measure would require additional staffing, system modifications, and administrative support, and the Department respectfully requests consideration of appropriate funding to support these new responsibilities.

Mahalo for the opportunity to comment on this measure.



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

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NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKALE

DEAN I. HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKALE

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Water and Land
Tuesday, February 3, 2026
9:00 a.m.
Via Videoconference
Conference Room 411**

**On the following measure:
H.B. 1639, RELATING TO NOTARIES PUBLIC**

Chair Hashem and Members of the Committee:

My name is Emma Olsen, and I am an Enforcement Attorney at the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department supports this measure and offers the following comments.

The purpose of this bill is to strengthen protections for real property owners against deed fraud, or home title theft. It requires the Bureau of Conveyances (Bureau) to void any recorded instrument that was fraudulently notarized when the notary public reports the fraud. The bill also authorizes a real property owner to initiate a title freeze, temporarily suspending the recording of instruments affecting title, except liens or judgments, until the owner lifts the freeze.

Deed fraud harms property owners across the nation, including here in Hawai'i. Scammers may fraudulently claim ownership by recording a fake deed, then attempt to sell the property to an unsuspecting buyer or use it as collateral to secure a loan. These

schemes devastate property owners, as well as their heirs, purchasers, realtors, lenders, and the public. Currently, the only remedy is to hire an attorney and petition the court to expunge the fraudulent deed. Based on the time and expense involved, even if the homeowner successfully restores title, the homeowner will never be made whole financially.

We strongly support enhanced protections for property owners facing deed fraud, and the approach in this bill may indeed enhance protections, but there are drawbacks to relying only on notaries to report fraud. Notaries are not trained to recognize fraud. Currently, the Bureau's recording system does not index documents by notary name or seal, leaving notaries with no practical way to find documents that might misuse their credentials. A notary who suspects fraud might fail to come forward for fear of retaliation from individuals with criminal records. Notaries could be complicit in the fraud and would therefore not report it.

We strongly support H.B. 2615, which authorizes government agencies to record a notice of pendency of investigation and creates a stronger and more dependable framework for uncovering and addressing deed fraud. By empowering our office, the Attorney General's office, and any county attorney or prosecuting attorney, to place these notices on record, H.B. 2615 ensures that entities best equipped to investigate fraud bear the responsibility for warning the public and protecting homeowners.

We respectfully request that the Committee pass this measure and view this measure as one part of a more comprehensive approach to combat deed fraud together with H.B. 2615.

Thank you for the opportunity to testify on this bill.

February 3, 2026

The Honorable Mark J. Hashem, Chair

House Committee on Water & Land

State Capitol, Conference Room 325 & Videoconference

RE: House Bill 1639, Relating to Notaries Public

HEARING: Tuesday, February 3, 2026, at 9:00 a.m.

Aloha Chair Hashem, Vice Chair Morikawa, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawaii and its over 10,000 members. HAR **supports** House Bill 1639, which requires the Bureau of Conveyances to void any recorded instrument that was fraudulently notarized when attested to by the purported notary public. Requires the Bureau of Conveyance to allow title holders to suspend additional recordings on their title, unless given prior authorization by the title holder, subject to certain limitations.

Fraudulent title activity, particularly deed forgery, is a growing problem both nationwide and in Hawai'i.¹ Scammers often forge deeds in an attempt to unlawfully obtain ownership of property, transferring land titles without the knowledge or consent of the rightful owner.

These scams often force victims to pursue costly and time-consuming court action to reverse the fraud and restore rightful ownership. This measure would provide an additional safeguard to help protect homeowners who become victims of title fraud and help strengthen the integrity of Hawaii's land recording system.

Mahalo for the opportunity to provide testimony on this measure.

¹ Huff, Darryl. (November 24, 2025). Hawaii News Now. Deed forgery scheme impacts properties across Oahu. www.hawaiinewsnow.com/2025/11/25/deed-forgery-scheme-impacts-properties-across-oahu/

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law
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February 3, 2026

Rep. Mark J. Hashem, Chair
Rep. Dee Morikawa, Vice Chair
and members of the House Committee on Water & Land
Honolulu, Hawaii 96813

Re: **H.B. 1639 (Notaries Public)**
Hearing Date/Time: Tuesday, February 3, 2026, 9:00 a.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 about this Bill.**

This Bill: (a) requires the Bureau of Conveyances to void any recorded instrument that was fraudulently notarized when attested to by the purported notary public; and (b) requires the Bureau of Conveyance to allow title holders to suspend additional recordings on their title, unless given prior authorization by the title holder, subject to certain limitations.

Support for the intent of this Bill.

We support the apparent intent of this Bill which is to stop deed fraud and the misuse of notary seals. Reasonable steps are important for real property owners to detect and prevent fraudulent recordings on their title. Enabling the Bureau of Conveyances to deal with clearly fraudulent documents can (a) protect homeowners and lenders, and (b) keep the land title records accurate.

Concern about the scope of this Bill’s title.

The HFSA has a drafting concern. This Bill’s title, “Relating to Notaries Public,” appears to be rather narrow in scope even though this Bill makes substantive changes to the Bureau of Conveyances procedure for recording and blocking recording of real property documents.

Because this Bill affects land-title recording and the ability of owners to prevent or delay recordings, all of which go beyond just the notary public’s practice, perhaps a short-form bill with a broader title might be needed as a vehicle to more accurately reflect this Bill’s full subject and to reduce the risk of challenges.

Other concerns.

We have several other concerns:

1. Risk to innocent parties.

This Bill enables the Bureau of Conveyances to void “any recorded deed or interest in real property” if a notary public later states that the act or seal was used fraudulently. Problematically, this action could negatively affect mortgages and the interests of innocent parties (e.g., lenders, purchasers, title companies)

H.B. 1639 (Notaries Public)

Testimony of Hawaii Financial Services Association

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who had relied on the public record, even though they had no knowledge of the alleged fraud. There is no clear procedure in this Bill for notice, for an opportunity to be heard, or for court review before those interests are affected.

2. Unclear standards and procedures.

In this Bill, the action voiding a recorded title document would simply occur after a single attestation by a notary public. However, this Bill does not detail what evidence is required, how disputes will be handled, or how to protect good-faith parties who relied on the recording in the Bureau of Conveyances. This lack of specificity could create legal uncertainty for banks, purchasers, and title companies.

3. Impact of “suspending” recordings on transactions.

Allowing an owner of a real property to suspend most document recordings on their property could slow or disrupt legitimate transactions. Unfortunately, the recording suspension mechanism could be used tactically by financially distressed or uncooperative owners to complicate or delay the recording of important documents. While liens and judgments are excluded in this Bill, the recording of other documents used in lending or foreclosures (e.g., correction documents, deeds in lieu of foreclosure, notices of pendency of action [*lis pendens*]) could be halted or delayed if the owner does not promptly lift the suspension. This situation could result in: closing delays for escrow sale or loan transactions; increased attorney's fees and costs; and more disputes, especially in time-sensitive foreclosure or loan workout situations.

4. Interaction with existing laws.

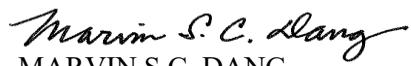
Hawaii's statute governing mortgage foreclosures is Chapter 667, Hawaii Revised Statutes. There are also court remedies (e.g., quiet title actions and lawsuits to cancel or reform instruments) which can be used to address fraudulent or defective documents. There should be a clear interplay between those other remedies and the voiding authority and title-suspension mechanism in this Bill.

Recommendation.

Accordingly, we recommend that your Committee:

1. Determine whether the Bill's title of "Notary Public" is broad enough to cover both notary public conduct and the substantive changes to the Bureau of Conveyances and real property recording procedures;
2. Add provisions to protect innocent parties (e.g., lenders, purchasers, title companies) who had relied on the public record;
3. Provide notice and objection procedures; and
4. Structure the recording-suspension mechanism so it does not slow down or prevent legitimate lending, sale, and foreclosure activity.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association



February 2, 2026

Re: House Bill 1639
Hearing Date: Tuesday, February 3, 2026; 9:00 A.M.
Conference Room 411
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Honorable Representative Mark J. Hashem, Chair, Honorable Representative Dee Morikawa, Vice Chair, and Members of the House Committee on Water & Land:

My name is Jerome Bundalian and I am the President of the Hawaii Land Title Association, a non-profit association comprised of title insurance companies and underwritten title companies.¹

Although we fully recognize the damage that fraud wreaks on innocent property owners and we appreciate the Legislature's efforts to combat it, we respectfully oppose the remedy that House Bill 1639 proposes. We believe that the jurisdiction for dealing with forged and fraudulently recorded documents should remain with law enforcement including consumer protection government agencies, and the judiciary.

The Bureau of Conveyances recording system is a race-notice system and is designed to be one repository for "public records." Any document that facially fits the statutory requirements -- for example, 8 ½" x 11" paper, sufficient margins, legible type, and an acknowledgement or jurat -- can and ought to be accepted for indexing in that public record. Any delay or additional administrative burden on a recording undermines the Bureau's function and usability by the general public.

A forged signature of a grantor or mortgagor on a fraudulently notarized deed or mortgage -- even if recorded -- is legally void, it does not convey or encumber title to the property. Expunging the fraudulent instrument from the Bureau of Conveyance's records does not substantively change the fact that the instrument does not bind the

¹ Old Republic National Title Insurance Company
Title Guaranty of Hawaii LLC
Fidelity National Title Insurance Company
First American Title Insurance Company
First Hawaii Title Corporation
Premier Title & Escrow, Inc.
Hawaii Title Agency
NexTitle, a Title & Escrow Co.
First American Title, Vacation Ownership Division

real owner, but we are concerned about the unintended effects that requiring the Bureau of Conveyances to void previously-recorded instruments may have.

We recognize and do not minimize the anguish and burden that a forged or fraudulent instrument causes to the victim when it appears in the public record. However, putting the responsibility and power on a notary public and the registrar of conveyances to alter the public record, without due process safeguards in place, may outweigh the benefit of removing an instrument from the public record. For those of us who rely on the public records to help consumers, banks and businesses to conduct transactions in the marketplace, having documents removed from recordation without notice will undermine faith in and the ability to rely on the recording system. In addition, under the proposed §502-B of the Bill, allowing the registrar of conveyances to suspend or delay recordings will cause damages to consumers who need to pay off mortgages or sell property for legitimate purposes in a timely manner.

We respectfully submit that the remedy to combat and catch the bad actors should remain with law enforcement and consumer protection agencies, the legal system, and the judiciary. We also note that the Bureau of Conveyances already has a Property Watch tool that automatically sends an email to a person who requests it if an instrument indexed under the name of a person inputted into the system is recorded.

Again, we are working hard at the transactional level to combat fraud. The title insurance industry expends substantial amounts of money, research, and labor to protect consumers and banks. We appreciate the Legislature's efforts to help with the battle and we are willing to participate in further discussions as to how to improve the detection and remediate real estate fraud.

Jerome Bundalian
President, HAWAII LAND TITLE ASSOCIATION
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Email: JBundalian@ortc.com

HB-1639

Submitted on: 1/31/2026 10:32:53 AM
Testimony for WAL on 2/3/2026 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Gerald L. Crow	Individual	Support	Written Testimony Only

Comments:

Honorable Representative Mark Hashem Chair and Dee Morikawa Vice Chair

Thank you for working on the Home Title fraud and theft of landowners property rights. I believe this is a good step in the right direction to reduce the chance of title theft and fraudsters taking out second mortgages. At some point, the mortage lenders have to also be made responsible for not verifying the paperwork and processing fraudulent claims.

I fully support this first step in the process to help secure homeowners property rights.

Thank for submitting this bill.

Warmest Aloha,

Gerald Crow

HB-1639

Submitted on: 2/1/2026 10:29:34 AM
Testimony for WAL on 2/3/2026 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Renee ING	Individual	Support	In Person

Comments:

I am **Totally in Favor** of this body passing bill HB 1639.

It is a proactive preventive measure this legislature needs to take to protect Hawaii's people from scammers who ruin our lives.

As a Senior citizen, like many others, I bought a small apartment to keep my housing costs manageable and affordable. Scammers who have illegally stolen people's housing are a threat that causes us great concern.

A threat feared not only by Senior Citizens who may become part of the predicted Surge in Senior Homeless in the near future, but by all Hawaii citizens struggling with unaffordable housing costs.

Please pass HB 1639.