

**ACT 102**

H.B. NO. 271

A Bill for an Act Relating to Real Property.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that electronic communications make it possible to conduct transactions in new forms. Some of the earliest transactions governed by law are real estate transactions. Deeds, mortgages, and leases were memorialized by words on paper with manual signatures. However, technology has advanced and electronic communications are increasingly replacing paper documents. The law of real property needs to accommodate this change. The efficiency of real estate markets makes this imminently necessary.

The Uniform Electronic Transactions Act, codified as chapter 489E, Hawaii Revised Statutes, adjusted statute of frauds provisions to enable the use of electronic records and signatures in many transactions, including basic real estate transactions. The widespread enactment of the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act make it possible to treat sales contracts, mortgage instruments, and promissory notes that are memorialized in electronic form, and with electronic signatures, as equal to paper documents that have manual signatures. However, real estate documents are excluded from those measures. This Act permits the registrar

of the bureau of conveyances to accept electronic documents with electronic signatures for recording.

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

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

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

1. By adding a new part to read:

**“PART . UNIFORM REAL PROPERTY ELECTRONIC  
RECORDING ACT**

**§502- Definitions.** As used in this part:

“Document” means information affecting title to real property that is eligible to be entered into the public records, including any plan of land prepared pursuant to section 502-17.

“Electronic” means relating to technology having electric, digital, magnetic, wireless, optical, electromagnetic, or similar properties.

“Electronic document” means a document that is stored in an electronic medium.

“Electronic signature” means an electronic sound, symbol, or process, attached to or logically associated with a document and executed or adopted by a person with the intent of affixing a signature on the document.

“Paper document” means a document that is inscribed on a tangible medium such as paper.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

**§502- Electronic document and electronic signature; validity.** (a) The registrar may accept an electronic document for recording. The electronic document shall be exempt from any requirement under this chapter that a document or instrument be:

- (1) The original document or instrument;
- (2) On paper, cloth, or other tangible medium; or
- (3) In writing.

(b) When a law requires as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) Any requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath shall be satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. It shall not be necessary to accompany an electronic signature with a physical or electronic image or a stamp, impression, or seal.

(d) In a proceeding, evidence of a document or signature shall not be excluded solely because it is in electronic form.

**§502- Recording of documents.** (a) Notwithstanding any other law to the contrary, and subject to rules adopted by the department of land and natural resources pursuant to chapter 91, the registrar may:

- (1) Accept, make, keep, enter, file, index, store, archive, and transmit electronic documents; provided that the registrar shall also continue to accept paper documents for recording and shall place entries for both types of documents in the same index;
- (2) Convert or copy paper documents that are accepted for recording into electronic form;
- (3) Convert or copy prior records of documents made in the bureau of conveyances into electronic form;
- (4) Accept fees for services rendered under this chapter electronically; and
- (5) Enter into agreements with other officials of states or political subdivisions thereof, or of the United States, on procedures or processes to electronically satisfy prior approvals and conditions precedent to recording and to facilitate the electronic payment of fees.

(b) This part shall also apply to any document that is received by the registrar of the bureau of conveyances or filed at the bureau of conveyances by the registrar of the land court pursuant to chapter 501.

(c) The department of land and natural resources shall adopt rules pursuant to chapter 91 necessary for the purposes of this part, including to determine when an electronic document shall be considered delivered to the registrar pursuant to section 502-32.

(d) To keep the standards and practices of recording in the State in harmony with the standards and practices of recording offices in other jurisdictions that enact provisions substantially similar to this part, and to keep the technology used by the registrar compatible with technology used by recording offices in other jurisdictions that enact provisions substantially similar to this part, the department of land and natural resources, so far as is consistent with the provisions of this part, in adopting rules under chapter 91, shall consider:

- (1) The standards and practices of other jurisdictions;
- (2) The most recent standards adopted by national standard setting bodies such as the Property Records Industry Association;
- (3) The views of interested persons and governmental officials and entities;
- (4) The needs of jurisdictions of varying size, population, and resources; and
- (5) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

**§502- Uniformity of application and construction.** In applying and construing this uniform Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**§502- Relation to federal Electronic Signatures in Global and National Commerce Act.** This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that Act, or authorize electronic delivery of any of the notices described in Section 103(b) of that Act.”

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

**“PART I. REGISTRAR, DEPUTY”**

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

**“PART II. [GENERAL PROVISIONS]”**

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

**“PART III. INDEXING OF RECORDS”**

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

**“PART IV. RECORDING”**

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

**“PART V. ACKNOWLEDGMENTS; PROOF OF INSTRUMENTS”**

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

**“PART VI. INTERLINEATIONS, ERASURES, ETC.”**

8. By designating sections 502-71 to 502-74 as part VII and amending the title before section 502-71 to read:

**“PART VII. RECORDS OF ACKNOWLEDGMENTS”**

9. By designating sections 502-81 to 502-85 as part VIII and amending the title before section 502-81 to read:

**“PART VIII. REQUIREMENT AND EFFECT OF  
ACKNOWLEDGING, RECORDING, NOT RECORDING”**

10. By designating sections 502-91 to 502-95 as part IX and amending the title before section 502-91 to read:

**“PART IX. PRIOR RECORDS”**

11. By designating section 502-101 as part X and amending the title before section 502-101 to read:

**“PART X. VETERANS CERTIFICATES”**

12. By designating section 502-111 as part XI and amending the title before section 502-111 to read:

**“PART XI. [OTHER PROVISIONS]”**

13. By amending section 502-21 to read:

**“§502-21 Recording of plans unlawful.** It shall not be lawful for the registrar to accept for record any plan of land, whether attached to, made a part of, or independent of, any deed, certified copy of judgment of condemnation, or other instrument; to the end and purpose that there shall be no plans recorded in the record books, but in substitution therefor there shall be a single method of filing plans in the archives of the bureau of conveyances; provided that where sketches, blueprints, or plans of land of a size not larger than 8 1/2 inches by 14 inches which legibly reproduces under photographic, electronic, or electrostatic methods are attached to instruments and made a part thereof by reference to the same in the instrument, the registrar may record the same in the record books

by means of the photographic recorder, on payment of the fee as provided in section 502-25.”

14. By amending section 502-22 to read:

“§502-22 Copies of plans furnished by registrar. The registrar shall furnish, when so requested, copies of any map or plan filed in accordance with sections 502-17 to 502-21, duly certified by the registrar’s seal of office, upon payment of the fee hereinafter mentioned. In addition, the registrar may authorize the department of accounting and general services to furnish, when so requested, copies of such maps or plans, subject to the payment of fees applicable to maps or plans furnished by the registrar. The copies of maps or plans may be furnished in photographic, electronic, or electrostatic form.”

15. By amending section 502-26 to read:

“§502-26 Copies of instruments, certificates. The registrar, when applied to, shall furnish an attested copy of any instrument or document recorded in the registrar’s office, or of any fact appearing upon the registrar’s records. The registrar may also issue nonattested documents or portions of any instrument or document recorded in the registrar’s office[-] in photographic, electronic, or electrostatic form. The registrar may issue certificates of search or [incumbrance] encumbrance when personnel is available for the making of the certificate.”

16. By amending section 502-41 to read:

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

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

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

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

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

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

3. In the case of corporations or partnerships:

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

4. In the case of a corporation acknowledging by an individual as its attorney, where the enabling power of attorney has previously been recorded, the acknowledgment of the instrument executed under the power of attorney shall be substantially in the following form:

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

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

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

On .....(insert date), before me personally appeared A.B., to me personally known, who, being by me duly sworn (or affirmed), did say that the person is the president (or other officer or agent of the corporation acting as attorney) of C.D. (here name the corporation acting as attorney) and that C.D. is the attorney-in-fact of E.F. (here name the corporation in whose behalf the attorney is acting) duly appointed under power of attorney dated ....., recorded in book..., at page.../as document no. ....; that the foregoing instrument was executed in the name and behalf of E.F. by C.D. as its attorney-in-fact; that the instrument was so executed by C.D. by authority of its board of directors; and A.B. acknowledged the instrument to be the free act and deed of E.F.

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

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

On .....(insert date), before me personally appeared A.B. (or A.B. and C.D.), to me personally known, who, being by me duly sworn (or affirmed), did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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

17. By amending section 502-92 to read:

**"§502-92 Copies of old records.** The registrar shall prepare photographic, electronic, or electrostatic copies of the records and record books in the bureau of conveyances which by reason of age, usage, or otherwise are in such condition that they can no longer be conveniently used or consulted without danger of destruction thereof, and certify to the correctness of such copies. The certified copies, and prints made from them and similarly certified, may be read in evidence with the same force and effect as the original instrument. The correctness of such copies is not conclusive but may be rebutted. All such records and record books from which the copies are made shall be deposited with the department of accounting and general services in its public archives. The registrar may convert into electronic form information or documents recorded before the registrar was given the authority to record electronic documents."

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

## **ACT 102**

**SECTION 4.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

**SECTION 5.** This Act shall take effect on July 1, 2009.

(Approved June 9, 2009.)