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TO THE
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
THE TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2010

Wednesday, March 10, 2010
2:00 p.m.

TESTIMONY ON S.B. NO. 2921, S.D.1 - RELATING TO ESCROW DEPOSITORIES

THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nick Griffin, Commissioner of Financial Institutions ("Commissioner"),
testifying on behalf of the Department of Commerce and Consumer Affairs ("Department").
We appreciate the opportunity to testify on Senate Bill No. 2921, S.D.1. The Department
opposes the measure in its present form unless requested amendments are made.

This measure, as presently drafted, would amend Section 449-5, Hawaii Revised
Statutes ("HRS") to delete certain language in subsection (a) thereof and add a new
subsection (b).

The Department is not conceptually opposed to new subsection (b), which will have the result of requiring persons who wish to act from an out-of-state location as an escrow depository as to property located in this State to obtain an escrow depository license from the Commissioner. In order to do so, an out-of-state person would be required, pursuant to other provisions of Chapter 449, HRS, to incorporate a domestic Hawaii corporation as the entity that would apply to be licensed as a Hawaii escrow depository, and that company would also be required to maintain a principal office in Hawaii. The practical result of these requirements is that out-of-state entities for the most part, may likely be deterred from applying for a Hawaii escrow depository license in view of the significant costs that will be involved over and above the application and initial license fees. From a regulatory and consumer protection standpoint, that result might well be salutary, given the fact that Hawaii consumers are currently exposed to the possibility that other states that regulate escrow companies may, and occasionally do decline to assist a Hawaii consumer if either the consumer's legal residence or property is located outside the state where the escrow company is licensed. Under the proposed amendment, Hawaii consumers would know with certainty that the Hawaii Division of Financial Institutions ("DFI") will be available to assist any consumer anywhere who has a complaint against a licensed Hawaii escrow depository, regardless of whether the licensee is headquartered within or outside the State of Hawaii.

However, as the Department previously testified before the Senate Committee on Commerce and Consumer Protection, we are firmly opposed to the deletion of any of the existing language in proposed subsection 449-5(a), HRS. In the first place, the proposed deletions are unnecessary to secure the objective contemplated by proposed new subsection (b). Moreover, if the objective of the proposed amendments in subsection (a) is to enable escrow depositories to be organized in some form other than as a corporation, further amendments throughout Chapter 449, HRS, would be required to attain that result. The amendment of Section 449-5, HRS, alone, would be legally insufficient to achieve that outcome. In fact, the Department had proposed, in several prior legislative sessions, a more comprehensive update to Chapter 449, HRS, which included the necessary amendments to allow escrow depositories to be organized other than as a corporation. While the Department's prior proposals were not enacted, the present measure does not adequately achieve that outcome, if indeed that is one of the objectives of the proposed amendment to subsection (a).

In addition, the deletion of the second paragraph of proposed subsection (a) would, by removing the prohibitions in the law presently therein contained, ostensibly now permit a person who is not licensed under Chapter 449, HRS, nevertheless to transact business under a name, title, or descriptive term which contains the words "escrow", "escrow depository", or any other word or phrase having the same or similar meaning, potentially creating the misleading appearance that the person is a licensed

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escrow depository, which the Department regards as a clearly undesirable and objectionable result.

Accordingly, the Department must oppose this measure unless all deletions presently proposed in subsection 449-5(a), HRS, are not made.

Thank you for the opportunity to testify. I would be happy to respond to any questions you may have.



Title Guaranty Escrow Services, Inc.

235 QUEEN STREET, HONOLULU, HI 96813 • P.O. BOX 1678, HONOLULU, HI 96806
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March 8, 2010

The Honorable Robert N. Herkes, Chair
Members of the House Committee on Consumer Protection & Commerce
Hawaii State Capitol
415 South Beretania Street, Room 320
Honolulu, HI 96813

Re: Senate Bill Relating to Escrow Depositories, SB No. 2921

Dear Representative Herkes & Members of the House Committee on Consumer Protection and Commerce:

We submit this testimony on behalf of Title Guaranty Escrow Services, Inc. in support of Senate Bill No. 2921, as amended, with Section 1 in the form attached hereto as Exhibit A. Exhibit A differs somewhat from Senate Draft 1 because of certain concerns raised by the Division of Financial Institutions. We have discussed this matter with the Division of Financial Institutions and we are in agreement with the version attached as Exhibit A.

Escrow transactions involve large sums of money and the handling of documents affecting title to real property. Escrow companies are charged with fiduciary duties to the parties to the transaction. Because of this, Hawaii has implemented statutes and DCCA regulations and requirements for the protection of these parties.

Escrow transactions concerning Hawaii real estate should therefore be handled by escrow depositories licensed in this State and subject to Hawaii regulations. Since in-State escrow companies are subject to regulation by the DCCA then in all fairness out of State escrow companies performing escrow services for Hawaii transactions should also be subject to Chapter 449. Under Chapter 449, in-State escrow companies are required to maintain an escrow depository bond with the Commissioner, a fidelity bond, and errors & omissions insurance. In-State escrow depository also must submit to the commissioner an annual financial statement. Presently, these requirements are not applicable to out of State companies or entities who perform closing or escrow services because Chapter 449 is only applicable to in-State escrow companies. This Bill will increase protection for the consumer and allow consistency for all companies performing escrow services relating to Hawaii real property.

We respectfully request that the Committee pass this Bill with the attached proposed amendment. We would be happy to answer any further questions that the Committee may have. Thank you for this opportunity to submit this testimony.

Very truly yours,

David T. Pietsch, Jr.
President

enclosure



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EXHIBIT A

Section 449-5, Hawaii Revised Statutes, is amended to read as follows:

"§449-5 License required to act as escrow depository. (a) No person shall act as an escrow depository in this State unless it is a corporation licensed to do so by the commissioner.

No person subject to the provisions of this chapter not licensed or exempted under this chapter shall transact any business under any name, title, or descriptive term which contains the words "escrow", "escrow depository" or any word or phrase having the same or similar meaning.

(b) It shall be unlawful to act as an escrow depository as to property located in this State from out-of-state locations unless a license to act as a Hawaii escrow depository is obtained from the commissioner."