

S.B. NO. 2760

JAN 25 2012

A BILL FOR AN ACT

RELATING TO ESCROW DEPOSITORIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 449, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§449- Compliance resolution fund. Any law to the
5 contrary notwithstanding, all fees, fines, and payments
6 collected and any other charges assessed by the commissioner
7 pursuant to this chapter shall be deposited into the compliance
8 resolution fund established pursuant to section 26-9(o)."

9 SECTION 2. Section 449-2, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§449-2 Rules. (a) Subject to chapter 91, the
12 commissioner may adopt such rules as the commissioner deems
13 necessary for the effective administration and enforcement of
14 this chapter.

15 (b) Notwithstanding the fees provided in this chapter, the
16 commissioner may raise or lower any fee by rule, and may
17 establish new fees by rule."

1 SECTION 3. Section 449-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§449-4 Administrative penalty.** Any person who [~~wilfully~~]
4 violates any of the provisions of this chapter, [~~shall~~] may be
5 subject to an administrative fine of [~~\$5,000~~] not more than
6 \$10,000 for each violation. No licensee shall be subject to
7 this penalty for a violation of section 449-16(b) or (c) if the
8 violation was not intentional or resulted from a bona fide
9 error, notwithstanding the maintenance of procedures reasonably
10 adopted to avoid that error. Examples of bona fide errors
11 include[~~, but are not limited to,~~] clerical miscalculations,
12 computer malfunction, printing errors, and computer programming
13 errors."

14 SECTION 4. Section 449-5.5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§449-5.5 Net capital.** The net capital of any corporation
17 engaging in the escrow depository business under this chapter
18 shall be not less than [~~\$50,000.~~] \$250,000. A corporation in
19 lieu of the net capital requirement may alternatively file a
20 bond for [~~\$50,000~~] \$250,000 conditional upon its satisfactory
21 performance of escrow conditions and satisfaction of all escrow
22 liabilities. The amount of the minimum net capital of

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1 [~~\$50,000,~~] \$250,000, or the bond, or a combination of both net
2 capital or bond totalling [~~\$50,000~~] \$250,000 shall be maintained
3 at all times by the licensee.

4 [~~Licensees~~] Every licensee in operation on [~~May 24, 1973,~~]
5 July 1, 2012, pursuant to this chapter with a net capital of
6 less than [~~\$50,000~~] \$250,000 shall increase its net capital to
7 [~~\$50,000~~] \$250,000 or file a bond for [~~\$50,000,~~] \$250,000, or
8 take action so that a combination of its net capital and bond
9 totals [~~\$50,000,~~] \$250,000, before [~~May 24, 1978.~~] July 1,
10 2016."

11 SECTION 5. Section 449-9, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§449-9 Escrow depository's bond.** (a) Before an escrow
14 depository's license becomes effective, the [~~escrow depository~~]
15 applicant shall give a bond to the commissioner in the [~~penal~~
16 ~~sum of not less than \$100,000 executed by a surety insurer~~
17 ~~authorized in this State,~~] amount set forth in subsection (b),
18 conditioned:

19 (1) That the escrow depository will honestly, faithfully,
20 and with diligence apply all funds, other
21 consideration, or property and instruments affecting
22 title in accordance with the instructions under which

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1 the same were deposited with it, and will promptly
2 account for the same; and

3 (2) That the escrow depository will satisfy all judgments
4 and decrees which may be recovered against it in any
5 action or proceeding brought under this chapter.

6 The aggregate liability of the surety for all breaches of
7 the conditions of the bond shall, in no event, exceed the [~~penal~~
8 ~~sum~~] amount of the bond. In lieu of the bond, an escrow
9 depository may deposit cash, a letter of credit, or securities
10 under such terms and conditions as are acceptable to the
11 commissioner.

12 (b) Every escrow depository shall maintain an escrow
13 depository bond, executed by a surety insurer authorized in this
14 State, with the licensee named as principal, and in the amount
15 of:

16 (1) \$100,000 for an escrow depository upon its initial
17 licensure and for an escrow depository with average
18 month-end escrow trust account balances of less than
19 \$500,000;

20 (2) \$150,000 for an escrow depository with average month-
21 end escrow trust account balances of at least \$500,000
22 but less than \$750,000;

1 (3) \$200,000 for an escrow depository with average month-
2 end escrow trust account balances of at least \$750,000
3 but less than \$1,000,000; and

4 (4) \$250,000 for an escrow depository with average month-
5 end escrow trust account balance of \$1,000,000 or
6 more.

7 For purposes of this subsection, "average month-end escrow trust
8 account balances" shall be based on the average month-end trust
9 balance of the licensee's escrow trust accounts for the
10 preceding calendar year.

11 (c) The escrow depository bond shall be placed on file
12 with the commissioner and insurance coverage shall be continuous
13 during the period of licensure of the licensee whether or not
14 the bond is renewed, continued, reinstated, reissued, or
15 otherwise extended, replaced, or modified, including increases
16 or decreases in the bond amount.

17 (d) The escrow depository bond shall be for the benefit of
18 any person entitled to a claim on the bond:

19 (1) The State, for payment of any costs incurred and
20 charges made in connection with any escrow
21 depository's insolvency or default, including costs

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1 and charges relating to an examination and
2 receivership of any escrow depository; and
3 (2) Any person who has a cause of action against the
4 principal on the bond based on any default or
5 violation of any duty or obligation of the escrow
6 depository.

7 (e) In lieu of the bonds required by this section, a
8 certificate of deposit issued by a financial institution
9 authorized to conduct business in this State and made payable to
10 the commissioner may be provided to the commissioner in the same
11 principal amount as required for the bonds. The interest on the
12 certificate of deposit shall be payable to the escrow depository
13 licensee. The certificate of deposit shall be maintained at all
14 times during which the licensee is authorized to engage in
15 business as an escrow depository under this chapter, and shall
16 provide that it will remain in effect for at least three years
17 following discontinuance of operations unless released earlier
18 by the commissioner.

19 (f) The commissioner may, in the public interest and for
20 good cause shown, waive or modify any requirements of this
21 section."

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1 SECTION 6. Section 449-11, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§449-11 Fidelity bonds; deposit.** A licensed escrow
4 depository shall at all times either:

5 (1) Maintain a fidelity bond executed by a surety insurer
6 authorized to do business in the State in an amount
7 not less than [~~\$25,000~~] \$250,000; provided that any
8 bond which is subject to a deductible thereunder in
9 excess of [~~\$5,000~~] \$10,000 per occurrence shall
10 require the prior approval of the commissioner, who
11 may take into consideration, among other factors, the
12 amount of the proposed bond; or

13 (2) Deposit an equivalent amount of cash or securities
14 under such terms and conditions as are acceptable to
15 the commissioner,
16 upon all of its directors, officers, and employees who have
17 access to money or negotiable securities or instruments in its
18 possession or under its control. Notwithstanding the above
19 provision, the escrow depository may carry bonds or deposit cash
20 or securities above the amounts required by the commissioner."

21 SECTION 7. Section 449-12, Hawaii Revised Statutes, is
22 amended to read as follows:

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1 "**§449-12 Errors and omissions insurance; deposit.** A

2 licensed escrow depository shall at all times either:

3 (1) Maintain a policy of errors and omissions insurance

4 executed by an insurer authorized to do business in

5 the State in an amount not less than [~~\$100,000;~~

6 \$250,000; provided that any policy which is subject to

7 a deductible thereunder in excess of \$10,000, per

8 occurrence, shall require the prior approval of the

9 commissioner, who may take into consideration, among

10 other factors, the amount of the proposed coverage; or

11 (2) Deposit an equivalent amount of cash or securities

12 under such terms and conditions as are acceptable to

13 the commissioner."

14 SECTION 8. Section 449-14, Hawaii Revised Statutes, is

15 amended to read as follows:

16 "**§449-14 Fees.** (a) [~~The following fees shall be paid by~~

17 ~~licensed]~~ Every escrow [~~depositories]~~ depository shall pay a fee

18 to the commissioner [~~and, together with any administrative~~

19 ~~penalty or other charge assessed under this chapter, shall be~~

20 ~~deposited into the compliance resolution fund established~~

21 ~~pursuant to section 26-9(o):]~~ as follows:

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- 1 (1) ~~[For filing]~~ A nonrefundable fee of \$2,000 for review
2 and investigation of an escrow depository's
3 application for license~~[\$2,000]~~. In addition, the
4 applicant shall be charged \$60 per employee hour
5 expended in excess of eighty employee hours for the
6 review of the application and attendant investigations
7 not to exceed an aggregate payment of \$10,000. The
8 hourly fee will be billed and shall be paid prior to
9 preliminary approval of the license;
- 10 (2) ~~[For]~~ \$500 for an application for approval to
11 establish a branch office;
- 12 (3) ~~[For]~~ \$500 for an application for approval to relocate
13 an existing office or branch;
- 14 (4) ~~[For]~~ \$500 for initial issuance ~~[and annual renewal]~~
15 of an escrow depository's license~~[\$100]~~;
- 16 (5) ~~[For]~~ \$100 for initial issuance ~~[and annual renewal]~~
17 of a branch office license~~[\$50]~~;
- 18 (6) ~~[For]~~ \$100 for reissuance of a license for the change
19 in the business address of its office~~[\$25]~~; and
- 20 (7) ~~[For an application for approval to cease business as~~
21 ~~an escrow depository.]~~ \$1,000 for reinstatement of a

1 license that has lapsed, plus \$250 for each day that
2 the license was lapsed.

3 (b) For all escrow depositories examined by the
4 commissioner or the commissioner's staff, the commissioner:

5 (1) May charge an examination fee based upon the cost per
6 hour per examiner. The hourly fee shall be [~~\$40;~~
7 \$60;

8 (2) May charge additional amounts for travel, per diem,
9 mileage, and other reasonable expenses incurred in
10 connection with the examination; and

11 (3) Shall bill the affected escrow depository for
12 examination fees and expenses as soon as feasible
13 after the close of the examination or investigation.
14 The affected escrow depository shall pay the division
15 within thirty days following the billing. [~~All~~
16 ~~payments shall be deposited into the compliance~~
17 ~~resolution fund established pursuant to section 26-~~
18 ~~9(e).~~] Any dispute by the affected escrow depository
19 relating to these billings shall be reviewed by the
20 commissioner who may modify, waive, or suspend any
21 billing.

1 (c) An escrow depository that fails to make a payment
2 required by this section shall be subject to an administrative
3 penalty of not more than \$200 per day for each day it is in
4 violation of this section.

5 (d) ~~[Any fee authorized by this section may be set or~~
6 ~~modified by the commissioner by rule adopted pursuant to chapter~~
7 ~~91.] Every escrow depository shall pay a renewal fee to the~~
8 commissioner as follows:

9 (1) \$5,000 for escrow trust account fiscal year-end
10 balance of less than \$5,000,000;

11 (2) \$7,500 for escrow trust account fiscal year-end
12 balance of at least \$5,000,000 but less than
13 \$10,000,000;

14 (3) \$10,000 for escrow trust account fiscal year-end
15 balance of at least \$10,000,000 but less than
16 \$25,000,000;

17 (4) \$12,500 for escrow trust account fiscal year-end
18 balance of at least \$25,000,000 but less than
19 \$50,000,000; and

20 (5) \$15,000 for escrow trust account fiscal year-end
21 balance of \$50,000,000 or more."

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1 SECTION 9. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 10. This Act shall take effect upon its approval.

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5

INTRODUCED BY: 

6

BY REQUEST

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Report Title:

Escrow Depositories; Fees; Bonds

Description:

Amends the fee structure for services provided by the Division of Financial Institutions of the Department of Commerce and Consumer Affairs for escrow depository regulation; amends fines for violations of escrow depository regulations; and adjusts bond requirements for escrow depositories.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO ESCROW DEPOSITORIES.

PURPOSE: To amend chapter 449, Hawaii Revised Statutes, to reflect changes in the regulation environment and ongoing monitoring of the escrow industry for the benefit of consumers.

MEANS: Add a new section to chapter 449 and amend sections 449-2, 449-4, 449-5.5, 449-9, 449-11, 449-12, and 449-14, Hawaii Revised Statutes.

JUSTIFICATION: Escrow depository fees have not been reviewed since 1992. Escrow companies hold funds for the buyer and seller in real estate transactions. The funds are held in a trust account in the borrower's name to pay obligations such as property taxes and insurance premiums.

An escrow is a deposit of funds, a deed, or other instrument made by one party for the delivery to another party upon completion of a real estate transaction. The escrow holder has the obligation to safeguard the funds, documents, or both while they are in the possession of the escrow holder, and to disburse funds, convey title, or both only when all provisions of the escrow have been complied with.

The duties of an escrow holder include: following the instructions given by the principals and parties to the transaction in a timely manner; handling the funds and documents in accordance with the instructions; paying all bills as authorized; responding to authorized

requests from the principals; closing the escrow only when all terms are completed and funds transferred in accordance with escrow instructions; and providing an accounting for the transaction.

Consumers depend on escrow companies to provide this service. Because the escrow companies hold funds in trust, consumers should be protected against fraud and misuse of the funds. Consequently, the fidelity bond, capital bond, and errors and omission bond amounts have been increased to cover part of a residential real estate transaction in escrow. The fidelity bond is a debt obligation serving to protect an employer from loss in the transaction from damages caused by its employees through dishonest or negligent action. The capital bond is used to secure the capital necessary to conduct business as an escrow depository. The errors and omission bond focuses on allegations of failure to perform the services and financial loss caused by an error or omission.

The cost of reviewing the financial condition annually has been adjusted to address the asset size of the escrow company. The larger the company, the more in depth the year-end report of condition has become.

Impact on the public: Provides greater protections for consumers in real estate transactions using escrow depository companies.

Impact on the department and other agencies: The department would be allowed to collect fees that are more in line with the amount of work performed for licensure.

GENERAL FUND: None.

OTHER FUNDS: None.

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PPBS PROGRAM
DESIGNATION: CCA-104.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.