
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



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



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~~] that may be recovered against it
5 in any action or proceeding brought under this
6 chapter.

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

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

17 (1) \$100,000 for an escrow depository upon its initial
18 licensure and for an escrow depository with average
19 month-end escrow trust account balances of less than
20 \$500,000;

1 (2) \$150,000 for an escrow depository with average month-
2 end escrow trust account balances of at least \$500,000
3 but less than \$750,000;

4 (3) \$200,000 for an escrow depository with average month-
5 end escrow trust account balances of at least \$750,000
6 but less than \$1,000,000; and

7 (4) \$250,000 for an escrow depository with average month-
8 end escrow trust account balance of \$1,000,000 or
9 more.

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

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

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



- 1 (1) The State, for payment of any costs incurred and
2 charges made in connection with any escrow
3 depository's insolvency or default, including costs
4 and charges relating to an examination and
5 receivership of any escrow depository; and
- 6 (2) Any person who has a cause of action against the
7 principal on the bond based on any default or
8 violation of any duty or obligation of the escrow
9 depository.
- 10 (e) In lieu of any bonds required by this section, a
11 certificate of deposit issued by a financial institution
12 authorized to conduct business in this State and made payable to
13 the commissioner may be provided to the commissioner in the same
14 principal amount as required for the bond. The interest on the
15 certificate of deposit shall be payable to the escrow depository
16 licensee. The certificate of deposit shall be maintained at all
17 times during which the licensee is authorized to engage in
18 business as an escrow depository under this chapter, and shall
19 provide that it will remain in effect for at least three years
20 following discontinuance of operations unless released earlier
21 by the commissioner.



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

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

6 "**§449-11 Fidelity bonds; deposit.** A licensed escrow
7 depository shall at all times either:

- 8 (1) Maintain a fidelity bond executed by a surety insurer
9 authorized to do business in the State in an amount
10 not less than [~~\$25,000~~] \$250,000; provided that any
11 bond [~~which~~] that is subject to a deductible
12 thereunder in excess of [~~\$5,000~~] \$10,000 per
13 occurrence shall require the prior approval of the
14 commissioner, who may take into consideration, among
15 other factors, the amount of the proposed bond; or
16 (2) Deposit an equivalent amount of cash or securities
17 under such terms and conditions as are acceptable to
18 the commissioner,
19 upon all of its directors, officers, and employees who have
20 access to money or negotiable securities or instruments in its
21 possession or under its control. Notwithstanding the above



1 provision, the escrow depository may carry bonds or deposit cash
2 or securities above the amounts required by the commissioner."

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

5 "~~§449-12 Errors and omissions insurance; deposit.~~ A
6 licensed escrow depository shall at all times either:

7 (1) Maintain a policy of errors and omissions insurance
8 executed by an insurer authorized to do business in
9 the State in an amount not less than [~~\$100,000,~~
10 \$250,000; provided that any policy [~~which~~] that is
11 subject to a deductible thereunder in excess of
12 \$10,000, per occurrence, shall require the prior
13 approval of the commissioner, who may take into
14 consideration, among other factors, the amount of the
15 proposed coverage; or

16 (2) Deposit an equivalent amount of cash or securities
17 under [~~such~~] terms and conditions [~~as~~] that are
18 acceptable to the commissioner."

19 SECTION 8. Section 449-14, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "~~§449-14 Fees.~~ (a) [~~The following fees shall be paid by~~
22 ~~licensed]~~ Every escrow [depositories] depository shall pay a fee



1 to the commissioner [~~and, together with any administrative~~
2 ~~penalty or other charge assessed under this chapter, shall be~~
3 ~~deposited into the compliance resolution fund established~~
4 ~~pursuant to section 26-9(e)+~~] as follows:

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



1 (6) [~~For~~] \$100 for reissuance of a license for the change
2 in the business address of its office[, ~~\$25~~]; and

3 (7) [~~For an application for approval to cease business as~~
4 ~~an escrow depository.~~] \$1,000 for reinstatement of a
5 license that has lapsed, plus \$250 for each day that
6 the license was lapsed.

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

9 (1) May charge an examination fee based upon the cost per
10 hour per examiner. The hourly fee shall be [~~\$40,~~
11 \$60;

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

15 (3) Shall bill the affected escrow depository for
16 examination fees and expenses as soon as feasible
17 after the close of the examination or investigation.
18 The affected escrow depository shall pay the division
19 within thirty days following the billing. [~~All~~
20 ~~payments shall be deposited into the compliance~~
21 ~~resolution fund established pursuant to section 26-~~
22 ~~9(e).~~] Any dispute by the affected escrow depository

1 relating to these billings shall be reviewed by the
2 commissioner who may modify, waive, or suspend any
3 billing.

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

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

12 (1) \$5,000 for escrow trust account fiscal year-end
13 balance of less than \$5,000,000;

14 (2) \$7,500 for escrow trust account fiscal year-end
15 balance of at least \$5,000,000 but less than
16 \$10,000,000;

17 (3) \$10,000 for escrow trust account fiscal year-end
18 balance of at least \$10,000,000 but less than
19 \$25,000,000;

20 (4) \$12,500 for escrow trust account fiscal year-end
21 balance of at least \$25,000,000 but less than
22 \$50,000,000; and



1 (5) \$15,000 for escrow trust account fiscal year-end
2 balance of \$50,000,000 or more."

3 SECTION 9. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 10. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 11. This Act shall take effect on July 1, 2050.



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. Effective 7/1/2050.
(SD1)

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