

Honolulu, Hawaii

Feb 17, 2012

RE: H.B. No. 2498
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 2498 entitled:

"A BILL FOR AN ACT RELATING TO ESCROW DEPOSITORIES,"

begs leave to report as follows:

The purpose of this measure is to help protect homebuyers in Hawaii by amending the fee structure for services provided by the Division of Financial Institutions of the Department of Commerce and Consumer Affairs for escrow depository regulation, amending fines for violations of escrow depository regulations, and adjusting bond requirements for escrow depositories.

More specifically, this bill, among other things:

- (1) Mandates that all fees, fines, and payments collected and any other charges assessed by the Commissioner of Financial Institutions (Commissioner) pertaining to escrow depositories must be deposited into the Compliance Resolution Fund;
- (2) Allows the Commissioner to raise or lower any fee by rule and to establish new fees by rule;
- (3) Specifies that any person who violates Chapter 449, Hawaii Revised Statutes (HRS) (escrow depositories), may be subject to an administrative fine of not more than \$10,000 for each violation;



- (4) Requires that the net capital or bond, or a combination thereof, of any corporation in operation on July 1, 2012, that engages in the escrow-depository business be at least \$250,000 before July 1, 2016;
- (5) Establishes a tiered structure with respect to the amount of the escrow depository bond, executed by a surety insurer in Hawaii, that must be maintained by an escrow depository;
- (6) Requires an escrow depository to maintain at all times a fidelity bond, executed by a surety insurer authorized to do business in Hawaii, of at least \$250,000; provided that any bond that is subject to a deductible thereunder that exceeds \$10,000 per occurrence must be approved by the Commissioner;
- (7) Requires an escrow depository to maintain at all times a policy of errors and omissions insurance, executed by an insurer authorized to do business in Hawaii, of at least \$250,000;
- (8) Establishes and amends various fees that every escrow depository must pay to the Commissioner, including:
 - (A) A nonrefundable fee of \$2,000 for review and investigation of an escrow depository's application to be licensed;
 - (B) \$500 for an application for approval to establish a branch office;
 - (C) \$500 for an application for approval to relocate an existing office or branch;
 - (D) \$500 for initial issuance of an escrow depository's license;
 - (E) \$100 for initial issuance of a branch office license;
 - (F) \$100 for reissuance of a license for the change in the business address of its office; and



- (G) \$1,000 for reinstatement of a license that has lapsed, plus \$250 for each day that the license was lapsed;
- (9) Raises to \$60 the hourly examination fee that may be charged to escrow depositories examined by the Commissioner or the Commissioner's staff; and
- (10) Establishes a tiered structure with respect to the amount of the renewal fee that an escrow depository must pay to the Commissioner.

The Department of Commerce and Consumer Affairs supported this bill. The Hawaii Escrow Association and Hawaii Escrow & Title, Inc., opposed this measure. Title Guaranty Escrow Services, Inc., submitted comments.

After careful consideration, your Committee has amended this bill by, among other things:

- (1) Removing the provision allowing the Commissioner to raise or lower any fee by rule and to establish new fees by rule;
- (2) Retaining provisions specifying that a person subject to administrative penalties under Chapter 449, HRS, must have been wilful in the person's violation;
- (3) Deleting the specific amount of the administrative fine;
- (4) Deleting the specific dates pertaining to the requirement that an escrow-depository business maintain a minimum of \$250,000 in net capital or a bond, or a combination thereof;
- (5) Deleting the specific amount, including the tiered structure, of the escrow depository's bond that an escrow depository must provide to the Commissioner;
- (6) Deleting the specific excess amount of the per-occurrence deductible under the errors and omissions insurance policy that an escrow depository must maintain, for which the prior approval of the Commissioner is required;



- (7) Deleting the specific amounts of the following fees:
 - (A) Application for approval to establish a branch office;
 - (B) Application for approval to relocate an existing office or branch;
 - (C) Initial issuance of an escrow depository's license;
 - (D) Initial issuance of a branch office license; and
 - (E) Reissuance of a license for the change in the business address of its office;
- (8) Deleting the specific amount, including the tiered structure, of the renewal fee that an escrow depository must pay to the Commissioner;
- (9) Changing its effective date to January 1, 3000, to encourage further discussion; and
- (10) Making technical, nonsubstantive amendments for purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2498, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2498, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



ROBERT N. HERKES, Chair



