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IRIS IKEDA CATALANI  
COMMISSIONER

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DEPUTY COMMISSIONER

STATE OF HAWAII  
DIVISION OF FINANCIAL INSTITUTIONS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
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TO THE  
HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

THE TWENTY-SIXTH STATE LEGISLATURE  
REGULAR SESSION OF 2012

Monday, January 30, 2012  
2:00 p.m.

TESTIMONY ON H.B. 2498  
RELATING TO ESCROW DEPOSITORIES

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

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("DCCA") in support of House Bill No. 2498.

The Division of Financial Institutions (DFI) in DCCA has the responsibility to ensure that customers of escrow depositories receive the services they contract for. To do this, DFI must review the financial condition of each escrow depository annually which includes a thorough analysis of the financial strength of each company. Currently, the fees are low and have not been reviewed or adjusted for the most part since 1987. While some of

these increases or additional fees may seem high at first, an understanding of how low they've been for years, puts these new fees in a more reasonable light.

Because escrows by consumers are growing in size, the bonding requirements should more closely coincide with the escrow accounts amounts. Escrow companies hold funds in trust. To protect consumers against fraud and misuse of these funds, escrow companies must maintain fidelity bonds, capital bonds, and errors and omissions bonds. Because the required amounts of these bonds has also not been reviewed or adjusted over the past 20 years, the amounts of the bonds required have been raised to more accurately reflect today's escrow transaction amount.

The Net Capital bonds (Section 4, page 3) is a bond to meet the capital requirements of the company. In recognition that the bonding requirements are much higher than current requirements, DFI believes that a transitional period is reasonable to allow companies to find bonds or increase net capital to meet the requirements. Any licensee who holds a valid license as of July 1, 2012 will have to July 1, 2016 to meet the requirements.

The escrow depository bond (Section 5, page 3) is bond to be used to satisfy all judgments and decrees that may be recovered against the company. This bond requirement is tiered based on risk on the size of the company.

The fidelity bond is used to satisfy all judgments or decrees that may be recovered by consumers against directors, officers and employees who have access to money or

negotiable securities or instruments. The bond requirement was adjusted to reflect the amount of fraud which may be perpetrated against a company over a period of time.

The errors and omissions insurance (Section 7, page 8) is a form of liability insurance that helps protect professional service companies and individuals from bearing the full cost of defending against a negligence claim made by a customer and damages awarded in a civil lawsuit. The coverage focuses on the alleged failure to perform the service. This requirement was adjusted to recognize that the size of the escrow transactions are larger than 1987 and an error would potentially be more than \$100,000.

The proposed fees have been adjusted to reflect the time spent by staff to review each one of the requests. The current fee structure and the proposed fee structure is attached as Appendix A to my testimony.

The proposed annual renewal fee is the amount of fees DFI will use in its budget analysis to determine any funding needs. Currently, based on the proposed annual fee, DFI projects it will receive \$80,000 in annual fees. Currently, DFI receives \$3,050 in annual fees. The analysis for the renewal includes review of the financial statements, confirm that the company is in compliance with business registration laws, confirm that the owners of the company are still the same, confirm that the company has adequate capital and the appropriate bonds, and confirm that the company's offices are up-to-date.

Finally, the change to the administrative penalty section (Section 3, page 2) is suggested to allow DFI to penalize a company for violations of law. DFI has encountered several examples of violations of law where it could not exact a penalty as it could not

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prove the violation was willful. For example, several companies have relocated or closed offices without the approval of the Commissioner. Companies have admitted that they understood they needed prior approval by the Commissioner before relocating or closing an office, however, have argued that this is only a violation of the law, not a willful violation. We believe that these violations should be subject to penalty.

For all of these reasons, DFI supports House Bill No. 2498, and respectfully asks that the measure be passed.

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

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Appendix A

Statutory Section	Current fee	Proposed fee
449-4 Administrative Penalty	5000 per wilful violation	not more than \$10,000 for each violation
449-5.5 Net Capital (or bond) - note effective 07.01.16	\$50,000	\$250,000
449-9 ED bond	not less than \$100,000	\$100,000 for an escrow depository upon its initial licensure and for an escrow depository with average month-end escrow trust account balances of less than \$500,000; \$150,000 for an escrow depository with average month-end escrow trust account balances of at least \$500,000 but less than \$750,000; \$200,000 for an escrow depository with average month-end escrow trust account balances of at least \$750,000 but less than \$1,000,000; and \$250,000 for an escrow depository with average month-end escrow trust account balance of \$1,000,000 or more
449-11 Fidelity bonds	not less than \$25,000 & deductable of \$5,000	not less than \$250,000 & deductible of \$10,000
449-12 Errors & omissions insurance	not less than \$100,000	not less than \$250,000
449-14 Fees		
new application	\$2,000	\$2,000 + \$60/hour over 80 hours of review; not more than \$10,000.
establish a new branch office		\$500
relocate an existing office or branch		\$500

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initial issuance and annual renewal of an escrow depository's license	\$100	\$ 500 for the initial license
initial issuance and annual renewal of a branch office license	\$50	\$100 for the initial license for each branch
reissuance of a license for the change in the business address of its office	\$25	\$100
reinstatement of a license that has lapsed		\$1,000 for reinstatement of a license that has lapsed, plus \$250 for each day that the license lapsed.
examination fee	\$40	\$60
renewal fees	\$100 + \$50 per branch	\$5,000 for escrow trust account fiscal year-end balance of less than \$5,000,000;
		\$7,500 for escrow trust account fiscal year-end balance of at least \$5,000,000 but less than \$10,000,000;
		\$10,000 for escrow trust account fiscal year-end balance of at least \$10,000,000 but less than \$25,000,000;
		\$12,500 for escrow trust account fiscal year-end balance of at least \$25,000,000 but less than \$50,000,000; and
		\$15,000 for escrow trust account fiscal year-end balance of \$50,000,000 or more.



## Title Guaranty Escrow Services, Inc.

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TEL: (808) 521-0211 FAX: (808) 521-0287

January 27, 2012

Via CPCTestimony@Capitol.Hawaii.gov

The Honorable Robert N. Herkes, Chair  
The Honorable Ryan I. Yamane, Vice Chair  
Members of the House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
415 South Beretania Street, Room 325  
Honolulu, Hawai'i 96813

Re: House Bill 2498 Relating to Escrow Depositories  
Hearing Date: January 30, 2012  
Hearing Time: 2:00 p.m.

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

Thank you very much for allowing us to testify on House Bill 2498. Title Guaranty Escrow Services, Inc. ("TGES") is generally in support of the intent of the Bill, but wishes to comment on the fee increases and express our opposition to some of the proposed provisions.

TGES opposes the proposed change to Section 449-4 in Section 3 of HB 2498. The Bill would delete the word "willfully" with respect to violations of Chapter 449 that may result in administrative fines. The imposition of fines for non-willful violations of the statute is too harsh. If the Bill is adopted with this provision, negligent or even unsubstantial incidents of non-compliance may subject an escrow depository to a \$10,000 fine. TGES believes that the increase in fees set forth in the Bill should allow the Division of Financial Institutions to adequately monitor escrow companies' compliance with the statute.

With respect to Section 5, page 6, line 6 of the Bill, TGES respectfully requests that a clause be added as follows: ". . . but only in the event of the escrow depository's insolvency." The reason for this suggestion is that the Bill appears to allow any escrow customer to make a direct claim against the surety bond without first resolving the claim with the escrow depository. This would be burdensome to the Division of Financial Institutions and unnecessarily increases administrative costs for escrow depositories who would have to renew or replace the bonds if such a claim were sustained.

With respect to the proposed fee increases, TGES understands and agrees that with the increasing size of real estate transactions, it is important that escrow companies that handle the parties' moneys be financially stable. TGES further understands that some of the statutory charges currently set forth in Chapter 449 need to be adjusted. TGES, however, respectfully contends that some of the proposed increases are burdensome, and TGES requests a revision of the following items:

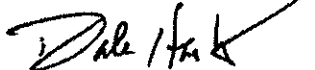
In Section 7, page 8, line 7, TGES requests that the amount of the deductible be increased to \$100,000 instead of \$10,000. It is TGES' experience that it has become increasingly difficult to obtain a \$10,000 deductible at higher amounts of errors and omissions coverage for a reasonable premium.

In Section 7, page 9, line 12, TGES' position is that a \$500 fee for an application for approval to relocate an existing office or branch is too high. The fee for an application for an initial branch office license is \$100, and relocating a branch should not be subjected to a fee higher than this.

In Section 8, page 11, subsection (d), these renewal fees are too high and there is no justification for creating tiers based on trust account balances. The current renewal fee is \$100 for the main escrow license plus \$150 for the first branch and \$50 per branch thereafter. TGES' renewal fee for 2011 was therefore \$950. The proposed renewal fee by comparison, even at the proposed lowest level of \$5,000 would be a nearly 500% increase and could be as high as a 1500% increase. This amount is excessive and TGES respectfully requests that these increases be deleted.

Thank you again for your attention to House Bill 2498. If you have any questions, we would be happy to make ourselves available to address them.

Respectfully submitted,



Dale Hastie

Sr. Vice President/Regional Manager



**HAWAII ESCROW & TITLE, INC.**

1100 Alakea Street, #501  
Honolulu, Hawaii 96813  
(808) 532-2977

January 27, 2012

The Honorable Robert N. Herkes, Chair  
The Honorable Ryan I. Yamane, Vice Chair  
House of Representatives  
Members of the House Committee on Consumer Protection & Commerce  
415 South Beretania Street  
Honolulu, Hawaii 96813  
Hawaii State Capital Room 320  
Fax-(808) 586-8404  
Email-CPCtetimony@Capitol.hawaii.gov

Testifier: Hawaii Escrow & Title, Inc.  
Denise M. Kaehu, President

Re: House Bill 2498-Relating to Escrow Depositories 2012  
Hearing Date: Monday, January 30, 2012  
Conference Room 325

Honorable Representatives Herkes, Representative Yamane and Members of the House Committee on Consumer Protection and Commerce:

Thank you for allowing us to testify on House Bill 2498. Hawaii Escrow & Title, Inc. ("HET") is generally in support of some of the intentions of the Bill, but we wish to comment on the fee increases and express our opposition to some of the proposed provisions.

The members of the Hawaii Escrow Association (whose testimonies will be submitted separately for this hearing) strongly feel that this Bill will cause undue additional hardship to the Escrow companies in the State of Hawaii to significantly increase all of the liability amounts for the cash, insurance requirements and also the new proposed fees for costs associated with license fees, fines and other costs of administration. We do understand that the escrow companies who handle the consumers funds are financially stable and that some adjustments must be made, however many of the increases are extremely burdensome in consideration of these current economic times.

Due to the unusual and extreme current conditions of the current economy we feel that this Bill will be detrimental to the successful recovery of the Real Estate industry's Escrow companies at this time and in the near future. It is predicted that a full market recovery may not take place until the year 2015 due to the uncertainty of the ability of the economy to increase the market sales, stop the declining land values, keep the interest rate at an affordable percentage rate, decrease the rate of foreclosures, decrease the number of employment lay offs, make the mortgage qualifications not unduly restrictive and most importantly increase consumer confidence. We feel that increasing our daily costs of doing business in the State of Hawaii would place an additional undue burden on the Escrow companies ability to continue in business as we have already been faced with multiple employee lay offs, cuts in pay for our employees, extreme decreases in monthly income and branch closures throughout the islands in the past few years.

HET opposes the following proposed changes to:

1. Section 449-2 (b) Rules-This change would not allow the escrow companies any say in amending the fees and therefore would not be beneficial to both parties.
2. Section 449-4 in Section 3 of HB 2498. The Bill would delete the word "willfully" with respect to violations of Chapter 449 that may result in administrative fines. We request that the word "willfully remain". The imposition of fines for non-willful violations of the statute is too harsh. If the Bill is adopted with this provision, negligent or even unsubstantial incidents of non-compliance may subject an escrow depository to a \$10,000 fine. This fine should not increase. Depending on the circumstances this fine could cause a severe hardship on the escrow companies and be unwarranted. There has been no demonstration/communication of any fees being imposed that we are aware of or have been informed of.
3. Section 4-5.5 Net Capital- We respectfully ask that this increase be gradual, but not until 2016.
4. Section 5-449-9 Escrow Depository Bond-, page 6, line 6 of the Bill, we agree to Title Guaranty's request that a clause be added as follows: ". . . . but only in the event of the escrow depository's insolvency." The reason for this suggestion is that the Bill appears to allow any escrow customer to make a direct claim against the surety bond without first resolving the claim with the escrow depository. This would be burdensome to the Division of Financial Institutions and unnecessarily increases administrative costs for escrow depositories who would have to renew or replace the bonds if such a claim were sustained.
5. Section 5- 449-9 (2) (b) 1-4 With respect to the proposed fee increases, we understand and agrees that with the increasing size of real estate transactions, it is important that escrow companies that handle the parties' moneys be financially stable. We further understand that some of the statutory charges currently set forth in Chapter 449 need to be adjusted.

however, respectfully comment that some of the proposed increases are burdensome and unreasonable. The basis of the average month end escrow account balances fluctuate so much it will cause an additional burden once again on our staffs and would constantly require an adjustment to bond. 449-9 (2) (d) (2)-This will allow any party to be able to seek enrichment when the default or violation duty and obligation has never been defined within the statute and also the parties via the Escrow Instructions are obligated to settle any disputes via Mediation/Arbitration and should not have the State involved with legal matters that normally reside with the parties to the transaction. 449-9 (2) (d) (f) again no definition of public interest, good cause to add this provision.

6. Section 7, page 8, line 7 and 449-11 (1), we agree with TGES requests that the amount of the deductible be increased to \$100,000 instead of \$10,000. It is TGES' experience that it has become increasingly difficult to obtain a \$10,000 deductible at higher amounts of errors and omissions coverage for a reasonable premium. We also suggest discussion In Section 7, page 9, line 12, HET's position is that the fees are too high for an application for approval to relocate an existing office or branch, to establish a branch and for the initial issuance is too high. The fee for an application for an initial branch office license is \$100, and relocating a branch should not be subjected to a fee higher than this.
7. In Section 8, page 11, subsection (d), these renewal fees are too high and there is no justification for creating tiers based on trust account balances. The current renewal fee is \$100 for the main escrow license plus \$150 for the first branch and \$50 per branch thereafter. The proposed renewal fee by comparison, even at the proposed lowest level of \$5,000 would be a nearly 500% increase and could be as high as a 1500% increase. The reinstatement fee and the daily rate are also excessive. This amount is excessive and HET respectfully requests that these increases be deleted. Section 8-449-14 (b)(3) the due date for the audit fees should allow for a 45-60 day window for payment and the commissioner should not be allowed the discretion without to modify with set circumstances that should be public knowledge.

As a note, The Hawaii Escrow Association has worked on revisions to the Statute with our Legislative Committee for the past few years and did submit our suggestions to then Commissioner Griffith. After the last attempt to make changes Senator Baker in the last hearing held had strongly recommended and instructed the Commissioner and his department make all efforts to work with the Escrow Association to review and make suggestions to amend the current statute so that it would not only benefit the consumer, but also the escrow companies as well. Due to with the new administration we have not yet been afforded the opportunity to have these discussions. As an example as recited in the Justification Sheet it attempts to define "escrow" and also to define some of the duties and judiciary responsibilities of escrow, but needless to say we need to include for the benefit of the consumer and any other party to the escrow what our duties and responsibilities are. Other benefits to the escrow companies and the consumer which

should be addressed specifically are the Policies and Procedures, Guidelines and or requirements that the Department currently is requesting is escrow file content. Upon annual audit by the State there is nothing within the statute or any where else that gives both the consumer and escrow the criteria of the documentation that should be contained within each file, nor are there any sections of the Statute that address company mergers, bankruptcy etc with special procedures that must be followed with these events. I strongly urge you to not pass this Bill until the effected companies and the Department has been able to address all of the necessary issues that are important to all concerned.

If you have any questions, we will be available to address any of them.

We are looking forward to working together with the Department to work on and come to an agreement that truly will benefit our consumers and ourselves so that we may again return to a prosperous future in Hawaii. The Association hopes that you will consider these unusual circumstances and will be open to our suggestions.

Sincerely,



Denise M. Kaehu  
President  
Hawaii Escrow & Title, Inc.  
[dkaehu@hetinc.com](mailto:dkaehu@hetinc.com)  
(808) 532-2977, ext. 1301

**HAWAII ESCROW ASSOCIATION**

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January 27, 2012

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Frances Goo  
Guardian Escrow