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KEALI'S. LOPEZ
DIRECTOR

TO THE
HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2012

Monday, March 12, 2012
2:10 p.m.

TESTIMONY ON S.B. NO. 2760, S.D. 1
RELATING TO ESCROW DEPOSITORIES

TO THE HONORABLE ROBERT 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 strong support of Senate Bill No. 2760 with the proposed amendments.

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 have been for years, puts these new fees in a more reasonable light.

We are asking for the increase in fees for this and other programs as we need to show a stable source of income for the upcoming audit on DFI through Conference of State Bank Supervisors. In order to be self-sustaining, DFI must seek additional fees (1) to keep pace with costs to DFI, as the time spent on this licensee increased due to the increased regulatory oversight required by recent federal regulations and (2) to attempt to replace the funding source should DFI not receive its share of the franchise tax.

Escrow Depository Program Costs

All costs are based on staff time charged at \$60 an hour, which is a fraction of the actual costs for the staff time spent on reviewing applications from escrow depositories.

The various escrow bond amounts have been proposed to reflect the increased amounts in the real estate transactions. The average real estate transaction is approximately \$400,000, and the bond requirements reflect the increased transaction size since 1987. The amounts also reflect the trust consumers place in the escrow companies to be the independent third party in the real estate transaction.

The services provided to escrow depositories take time for staff to process and review. These fees are only assessed if a company requests the service.

The DFI and the escrow companies have started a discussion about the bill provisions. DFI has committed to work with any of the escrow companies to update the existing law during the summer. To that end, DFI proposed the following amendments to the bill to the escrow companies. Because of the time frame of the legislative hearings, we were unable to meet again before today's hearing. However, these are the proposals:

1. Page 1, lines 15-17 – delete subsection (b) and delete (a).
2. Page 2, line 13 – add: Penalties shall be computed based on several factors including the severity of the violation, the severity of harm to consumers, mitigating actions taken by the company, the company's understanding of the laws, if the company had been warned of the violation and continued to engage in the prohibited or unlawful activity, past compliance with laws and any pattern or practice in violating laws.
3. Page 3, line 17 – delete "amount set forth in subsection (b),"
4. Page 3, lines 13 to 17 – keep existing original law language (no changes to the law)
5. Page 4, lines 12 – 22 to Page 5, line 16 - – delete section (b) (c); note this will be part of our summer project to update the escrow depository laws.

6. Page 6, line 6 – add after depository “, in the event the escrow depository is insolvent.”

7. Page 7, line 7 – change the amount of the bond to \$200,000, which is an amount required by some western states. This amount may change after the review of the laws during the summer.

8. Page 8, line 7 – change the amount of the deductible to \$100,000. The escrow companies are willing to pay the higher deductible cost.

9. Page 9 line 10 – change the application for approval to establish a new branch amount to \$100

10. Page 9, line 12 – change the application for approval to relocate an existing office or branch to \$100.

11. Page 10, line 3 – add new subsection: (8) \$2,000 for the annual renewal of an escrow depository license and \$100 for the annual renewal of each branch office.

12. Page 11, lines 5 – 21 – delete subsection (d)

As this is still a work in progress, we will continue to work with any escrow company willing to discuss the bill provisions.

For all of these reasons, DFI supports Senate Bill No. 2760, S.D. 1, and respectfully asks that the measure be passed with the proposed amendments.

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

TESTIMONY ON SENATE BILL NO. 2760, S.D. 1
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Exhibit A

FINANCIAL
 PLAN - DEI

	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14
	<i>act</i>	<i>act</i>	<i>act</i>	<i>act</i>	<i>act</i>	<i>act</i>	<i>act</i>	<i>act</i>	<i>act</i>	<i>act</i>	<i>est</i>	<i>est</i>	<i>est</i>
Revenues:	2,745,917	1,888,789	2,239,073	2,175,645	2,180,745	2,798,163	2,620,852	2,599,918	2,822,798	3,429,771	3,146,015	3,108,440	3,101,965
Expenditure	(1,439,447)	(1,533,551)	(1,739,489)	(1,928,179)	(1,944,171)	(1,881,023)	(2,104,693)	(2,421,699)	(2,185,440)	(2,456,854)	(2,631,432)	(3,384,920)	(3,384,920)
Rev Over/Under	1,306,470	355,238	499,584	247,466	236,574	917,140	516,159	178,219	637,358	972,918	514,583	(276,480)	(282,955)
Exp	(475,416)	(2,569,185)	(300,314)	(311,093)	(266,812)	(497,749)	(509,619)	(520,108)	(398,804)	(586,818)	(528,368)	(528,368)	(528,368)
Adjustments													
Net (Rev+Exp+ Adj)	831,054	(2,213,947)	199,270	(63,628)	(30,238)	419,391	6,540	(341,889)	238,554	386,100	(13,785)	(804,848)	(811,323)
Carryover													
Begin Bal	5,121,434	5,952,488	3,738,540	3,937,811	3,874,183	3,843,945	4,263,336	4,269,876	3,927,987	4,166,540	4,552,640	4,538,855	3,734,007
Ending Bal	5,952,488	3,738,540	3,937,811	3,874,183	3,843,945	4,263,336	4,269,876	3,927,987	4,166,540	4,552,640	4,538,855	3,734,007	2,922,684
Ending Bal(mo.)	25.2	16.9	18.4	17.2	16.8	16.6	15.8	13.0	15.2	13.2	14.2	11.7	9.2

Exhibit B

Scope of Service	Staff hrs @\$60/hr	Staff Duties
New application	100.	<ul style="list-style-type: none"> • Review: <ul style="list-style-type: none"> ○ pro forma financial statements, ○ knowledge in the area of licensure, ○ knowledge of the escrow officer, ○ organizational structure to determine if the licensee is responsible for the actions of company & employees or another organization up the corporate ladder ○ whether the company has sufficient capital ○ whether the company is legally organized in Hawaii ○ the market area • Investigate the owners of the organization for any past financial crimes
Establish a new branch or relocate	12	<ul style="list-style-type: none"> • Review <ul style="list-style-type: none"> ○ financial statements with the inclusion of the new branch lease and additional staff ○ knowledge of the escrow officer ○ whether the company has sufficient capital ○ whether the company is legally organized in Hawaii
Initial issuance of branch license or reissuance of branch license	1.5 The charge is to cover the paper license, postage.	<ul style="list-style-type: none"> • Determine whether a license is necessary. We've made this process more efficient by not identifying the actual address, only identifying the name of the branch. • Update our electronic recordkeeping system and clerical staff prepares the license for signature
Reinstatement of a lapsed license	20	<ul style="list-style-type: none"> • Determine why the license lapsed • Review <ul style="list-style-type: none"> ○ financial statements ○ knowledge of the escrow officer ○ organizational structure to determine if the licensee is responsible for the actions of company & employees or another organization up the corporate ladder ○ whether the company has sufficient capital ○ whether the company is legally organized in Hawaii
Examination	Varies on the size of the escrow depository; generally DFI sends 2-3 people for 5 days. Other states charge from \$80 to \$145 an hour.	<ul style="list-style-type: none"> • Exams now include (due to federal law changes) review of RESPA/HUD forms, privacy disclosures • CFPB has not determined additional areas of review, however, DFI, in anticipation of the increased review items have started reviewing individual escrow accounts based on an independent method to include residential mortgage loans, second mortgages, investor mortgages, commercial loans to determine if consumers have been harmed.

HAWAII ESCROW ASSOCIATION

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March 9, 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: SB 2760, SD 1 -Relating to Escrow Depositories 2012
Hearing Date: Monday, March 12, 2012
Conference Room 325-2:10 pm

Honorable Representatives Herkes, Representative Yamane and Members of the House Committee on Consumer Protection and Commerce
Honorable Rep Gilbert S. C. Keith-Agaran, Chair, Representative Karl Rhoads, Vice Chair and Members of the Committee on Committee on Judiciary:

Thank you for allowing us to testify on Senate Bill 2760, SD1. The Hawaii Escrow Association, whose members consist of all licensed escrow depositories in the State of Hawaii, is in support of certain amendments to the current version of the Senate Bill, with the exceptions as noted below. Although we understand the intentions of the Bill 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 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. Our Association has met with and discussed this Bill with Commissioner Catalani.

We would like to recommend the following amendments to the Bill:

449-2 Rules (b), this paragraph be removed at this time as this would allow without notice an increase of fees, as per compromise with Commissioner Catalani.

449-4 Administrative Penalty- allow the verbiage "willfully to remain, as per compromise with Commissioner Catalani. We do not agree at this time to the insertion of the Commissioner's request of "Penalties shall be computed based on several factors including the severity of the violation, severity of harm to consumers, mitigating actions taken by the company, the company's understanding of the laws, if the company had been warned of the violation and continued to engage in the prohibited or unlawful activity, past compliance with laws and any pattern or practiced in violating laws." However, we ask that procedures be established for the notification and response process of a violation, the escrow depository be notified in writing of the violation, be given a written warning with a time period to come into compliance. In the event that were harm to any consumer with the absence of a definition of escrow's fiduciary responsibilities and duties a prudent determination of an undefined offense or violation cannot be determined at this time. We ask that this be deterred until our Association can meet with the Commissioner to work this and other changes to the statute.

449-5.5 Net Capital- A compromise to an increase to \$100,000.00 as stated through out this paragraph, as per compromise with Commissioner Catalani.

449-9- Escrow depository's bond in the current amount of \$100,000.00

449-9 (2) (b,c) be deleted in it's entirety as per compromise with Commissioner Catalani.

449-9(2) (d2) add after depository in the event of the escrow depositories insolvency

449-11 Fidelity bonds: deposit, we request that this amount be increased to \$100,000.00 due to the high costs of insurance and we feel that this amount is sufficient for consumer protection

449-12 Errors and omission insurance; deposit, we have reached a compromise with Commissioner Catalani of an increase to \$250,000.00 with a deductible of \$100,000.00

449-14 (2,3,,5,6,7, b1,7 d(1,2,3,4,5,) Fees-

(2)A compromise with the Commissioner of fees increases in the respective amounts of \$100.00

(3)\$100.00

(7) \$250.00 per day with the insertion of if the lapse continues after a 30 day period, as the fee of \$1,000.00 has already been assessed and this may be waived by the Commissioner if there is a valid reason for the non-renewal.

(7B1) We also ask that the audit fees remain at \$40.00 per hour, these fees were not collected at all prior to 2009 and were waived by the then Commissioner Griffith, however we have been charged this rate since 2009.

(7bd) Delete in its entirety, as per compromise with Commissioner Catalani.

(8) We disagree to the additional fee for the annual renewal of an escrow depository license fee in the amount of \$2,000.00 as we again feel this amount to be excessive; we ask that the fee be increased to \$500.00 with \$50.00 per each additional branch office. This is only a renewal and the review is not comprehensive as is the original license application process and is an excessive increase from the current rates.

As a note, The Hawaii Escrow Association has met with and agreed upon certain compromises to the current Bill. We have also agreed that our Association will form a committee and work with the Commissioner's Task Team after the completion of this Legislative Session as per Commissioner Catalani's request. We will work on the deficiencies of the current Statute and hope that any new Bill may be presented in the Legislative session in 2013. Our goal will be to make suggestions to amend the current statute so that it would not only benefit the consumer, but also the escrow companies as well. We hope that this will provide a concise description of our duties as an escrow depository and eliminate the necessity of unwarranted litigation and problems that our industry currently faces. As an example our definition attempts to define "escrow" but does not define specifically any of the duties and fiduciary responsibilities of escrow nor does it properly define who the parties to the escrow are. This needs to be included for the benefit of the consumer, escrow 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, office closures, insolvency closure plans etc with special procedures that must be followed with the occurrence of these events. We strongly urge you to not pass this Bill unamended and we ask that we be granted the opportunity to work with the Department has been able to address all of the necessary issues that are important to all concerned and be able to delivery a new Bill in 2013 that addresses all of these important issues.

If you have any specific questions, we will be available to address them at the hearing.

We are looking forward to working together with the Department to work on and come to an agreement that truly will benefit the consumers and the escrow depositories so that we may again return to a prosperous future in Hawaii. The Association hopes that you will consider these suggestions and thank the Chairs and the Committee for allowing our testimony.

Sincerely,



Denise M. Kaehu, President

Hawaii Escrow Association

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