

HAWAII ESCROW ASSOCIATION

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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 Association
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 agree 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,

A handwritten signature in black ink, appearing to read "DKaehu" with a stylized flourish at the end.

Denise M. Kaehu
President
Hawaii Escrow & Title, Inc.
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(808) 532-2977, ext. 1301

The Association came up with the following tentative recommendations for SB 2760

Page 1	449-2	Rules	(b) Out
Page 1	449.4	Administrative Penalty	Leave "wilfully" in
Page 2	449-5.5	Net capital	Net capital gain - \$100,000
Page 3	449-9	Escrow depository'a bond	Escrow depository bond - \$100,000
		Delete "The aggregate liability",and (b), (1), (2) & (3)	
Page 5	449-11	Fidelity bonds;deposit	Fidelity bond - \$100,000
			Deductible - \$10,000
Page 6	449-12	Errors and omissions	Errors and omissions insurance not less than \$250,000 with deductible of \$10,000
Page 6	449-14	Fees	(1) Okay
			(2) \$75
			(3) \$75
			(4) Okay
			(5) \$100
			(6) \$100
			(7) Delete additional charge of \$250/ day
		(b)	(1) Hourly fee shall be \$40
Page 8			(d) Delete in its entirety