



LATE TESTIMONY
LATE TESTIMONY

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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KEALI'I S. LOPEZ
INTERIM DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

TO THE
HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE
THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2011

Monday, March 14, 2011
2:00 p.m.

TESTIMONY ON S.B. NO. 646, S.D.1 RELATING TO ESCROW DEPOSITORIES

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 ("Department"). We appreciate the opportunity to submit testimony in support of Senate Bill No. 646, S.D.1, with the two changes we are requesting. We understand the intent of the bill, which is to protect consumers from unlicensed activity by mortgage loan originators ("MLOs") and mortgage loan originator companies ("MLOCs"). DFI's purview now includes licensing, investigating, and examining MLOs and MLOCs. DFI believes it

will have the tools it needs, with the passage of Senate Bill No. 1519, S.D.3, Proposed H.D.1, to protect the public from unlicensed MLO and MLOC activity.

Sections 1 and 6 of this measure, as presently drafted, erroneously make reference to mortgage loan applications submitted to an escrow depository. In fact, mortgage loan applications are rarely, if ever, submitted to an escrow depository. The intent of the measure is essentially to ensure that the unique identifier of every person required by Chapter 454F, Hawaii Revised Statutes ("HRS"), to maintain a unique identifier through the Nationwide Mortgage Licensing System is submitted to an escrow depository in every escrow transaction that involves a Hawaii residential mortgage loan closing. That being the case, we recommend that Section 1 of the measure be amended such that lines 4 through 13 on page 1 of S.D.1 should now read as follows:

"§449- Nationwide Mortgage Licensing System unique identifier required; reporting requirement. (a) In every real estate transaction involving an escrow depository and a person required by chapter 454F to maintain a unique identifier through the Nationwide Mortgage Licensing System, an escrow depository shall require that the lender's instructions to escrow shall include each such person's unique identifier. An escrow depository shall not accept any lender's instructions for a real estate transaction subject to this section that do not include the required unique identifier(s).

Consistent therewith, Section 6 of the measure should be amended such that lines 6 through 9 of page 8 of S.D.1 should now read as follows:

(b) The unique identifier of every person subject to section 454F-1.5 shall be included on lender's instructions to escrow for each residential mortgage loan transaction involving that person that is submitted to an escrow depository."

We would like to provide comments on the bill for your committee to consider. The federally regulated financial institutions verify the broker's and company's unique identifier before accepting any loan package from brokers.

There may be some unintended consequences for consumers. First, with the verification required by the escrow companies, escrow companies may charge consumers for the additional work required to verify and report any unlicensed activity. Second, if there are typos on the lender's instructions, the process of completing the HUD-1 form, relating to payment processing, may be delayed.

There may be some unintended consequences for the escrow companies. First, recognizing that there may be up to 7 MLO numbers for escrow companies to verify, since there may be an initial broker, broker's company, broker's processor and company, broker's underwriter and company, and the lender's employee(s), all of these persons would need to be verified before they may be paid. Second, escrow companies will need to train their employees to know where to verify the MLO unique numbers and to recognize which MLOs and companies need licenses and which MLOs and companies only need to be registered, so that escrow companies do not mistakenly report valid MLOs and companies and so that the DFI will not waste valuable employee time investigating MLOs and companies that are validly licensed.

TESTIMONY ON SENATE BILL NO. 646, S.D.1
March 14, 2011, 2:00 p.m.
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The Department supports this bill with the changes requested. Thank you for the opportunity to testify. I would be happy to respond to any questions you may have.



Title Guaranty Escrow Services, Inc.

235 Queen Street, Honolulu, HI 96813
TEL: (808) 533-5842

March 11, 2011

The Honorable Robert N. Herkes, Chair
The Honorable Ryan Yamane, Vice Chair
Members of the House Committee on Consumer Protection and Commerce
Hawaii State Capitol, Room 325
Honolulu, Hawaii 96813

Re: Senate Bill 646, SD1 Relating To Escrow Depositories
Hearing Date: March 14, 2011 2:00 p.m.
House Conference Room 325

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

On behalf of Title Guaranty Escrow Services, Inc., we respectfully oppose Senate Bill 646.

The obligation to maintain and use a correct unique identifier number under HRS Chapter 454F lies and should lie with the mortgage loan originator. This bill would require escrow companies to "police" the loan originators, and would unfairly penalize escrow companies for not verifying the loan originator's correct identifier number and reporting any discrepancy.

Section 1 of the Bill also creates an impractical situation. A typical escrow transaction involves many different documents, some of which are submitted only on behalf of one party or the other, and many of which have nothing to do with the loan. Many documents are submitted before a mortgage loan originator is even identified for the transaction. The Bill, however, requires the escrow depository to reject documents if the loan originator's unique identifier is not included. Many escrow transactions cannot be processed under the restrictions contained in the current bill.

Escrow should not be required to put its own license in jeopardy because a loan originator fails to follow its regulations. The Bill's focus is misplaced, and will increase the cost to consumers. We therefore respectfully oppose such a measure.

Thank you for your consideration and the opportunity to testify.

Very truly yours,

Lorrin Hirano
Sr. Vice President & Legal Counsel



ISLAND
TITLE
CORPORATION

March 14, 2011

The Honorable Robert N. Herkes, Chair
The Honorable Ryan Yamane, Vice Chair
Members of the House Committee on Consumer Protection and Commerce
Hawaii State Capitol, Room 325
Honolulu, Hawaii 96813

Re: Senate Bill 646, SD1 Relating To Escrow Depositories
Hearing Date: March 14, 2011 2:00 p.m.
House Conference Room 325

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

As a member of the Escrow Association of Hawaii, Island Title Corporation respectfully opposes Senate
Bill 646.

If passed, Senate Bill 646 would make escrow depositories enforcement agents by imposing the
obligation of verifying a mortgage loan originator's unique identifier number as well as reporting any
discrepancies to the Department of Commerce and Consumer Affairs. Failure of an escrow depository to
report a licensing discrepancy by a loan originator would unfairly subject escrow to administrative
sanctions. With all due respect, this should not be escrow's responsibility. Furthermore, if this obligation
is imposed it will increase the cost of doing business both because of the additional services required and
because of the increased liability, and this in turn would be an undue hardship on escrow depositories and
ultimately increase the costs to consumers.

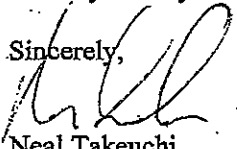
Section 1 of the Bill is also virtually impossible to comply with. The borrower's loan application is not a
document that escrow normally receives, and requiring escrow to review it to verify the loan originator's
identifier number raises serious privacy concerns. The Bill further makes the escrow depository
responsible for requiring that the loan originator's "unique identifier [be included] on all documents
relating to the real estate transaction..." There are many documents that are submitted at various times
during an escrow transaction by one or both parties involved and at times even before a mortgage loan
originator is identified. There are situations where the loan is not approved and a new loan originator is
selected. The Bill would require all escrow documents to include the number even on documents that do
not involve the loan originator. These requirements make the processing of an escrow transaction
impractical.

Section 3 of the Bill, which requires the escrow company's auditor to verify escrow's reporting of the
unique identifiers, adds cost to the audits. As it stands, escrow companies must already absorb the costs
of the audits as well as keep accurate records of a multitude of items.

Island Title Corporation respectfully oppose Senate Bill 646.

Thank you for your consideration.

Sincerely,


Neal Takeuchi
Sr. Vice President
Island Title Corporation

Guardian Escrow Services, Inc.

Guardian Escrow Bldg., 2nd Floor, 2347 So. Beretania Street, Honolulu, Hawaii 96826

Ph. No.: (808) 951-6991 / Fax: (808) 951-6995 / Email: fgoo@guardianescrow.com

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March 14, 2011

The Honorable Robert N. Herkes, Chair
The Honorable Ryan Yamane, Vice Chair
Members of the House Committee on Consumer Protection and Commerce
Hawaii State Capitol, Room 325
Honolulu, Hawaii 96813

Re: Senate Bill 646, SD1 Relating To Escrow Depositories
Hearing Date: March 14, 2011 2:00 p.m.
House Conference Room 325

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

As a member of the Escrow Association of Hawaii, Guardian Escrow Services, Inc. respectfully opposes Senate Bill 646.

If passed, Senate Bill 646 would make escrow depositories enforcement agents by imposing the obligation of verifying a mortgage loan originator's unique identifier number as well as reporting any discrepancies to the Department of Commerce and Consumer Affairs. Failure of an escrow depository to report a licensing discrepancy by a loan originator would unfairly subject escrow to administrative sanctions. With all due respect, this should not be escrow's responsibility. Furthermore, if this obligation is imposed it will increase the cost of doing business both because of the additional services required and because of the increased liability, and this in turn would be an undue hardship on escrow depositories and ultimately increase the costs to consumers.

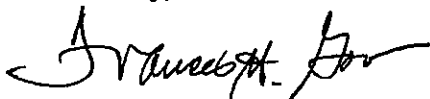
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Section 3 of the Bill, which requires the escrow company's auditor to verify escrow's reporting of the unique identifiers, adds cost to the audits. As it stands, escrow companies must already absorb the costs of the audits as well as keep accurate records of a multitude of items.

Guardian Escrow Services, Inc. respectfully oppose Senate Bill 646.

Thank you for your consideration.

Sincerely,



Frances H. Goo (Mrs.)
President



Mar. 14. 2011 10:23AM

HAWAII ESCROW & TITLE

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March 14, 2011

The Honorable Robert N. Herkes, Chair
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Members of the House Committee on Consumer Protection and Commerce
Hawaii State Capitol, Room 325
Honolulu, Hawaii 96813

Re: Senate Bill 646, SD1 Relating To Escrow Depositories
Hearing Date: March 14, 2011 2:00 p.m.
House Conference Room 325

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

As a member of the Escrow Association of Hawaii, HAWAII ESCROW & TITLE, INC. respectfully opposes Senate Bill 646.

If passed, Senate Bill 646 would make escrow depositories enforcement agents by imposing the obligation of verifying a mortgage loan originator's unique identifier number as well as reporting any discrepancies to the Department of Commerce and Consumer Affairs. Failure of an escrow depository to report a licensing discrepancy by a loan originator would unfairly subject escrow to administrative sanctions. With all due respect, this should not be escrow's responsibility. Furthermore, if this obligation is imposed it will increase the cost of doing business both because of the additional services required and because of the increased liability, and this in turn would be an undue hardship on escrow depositories and ultimately increase the costs to consumers.

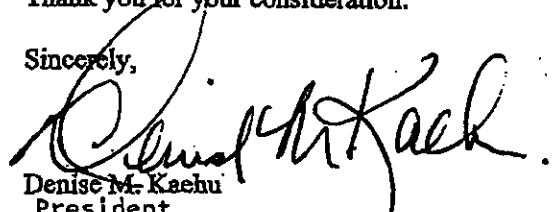
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Section 3 of the Bill, which requires the escrow company's auditor to verify escrow's reporting of the unique identifiers, adds cost to the audits. As it stands, escrow companies must already absorb the costs of the audits as well as keep accurate records of a multitude of items.

HAWAII ESCROW & TITLE, INC. respectfully oppose Senate Bill 646.

Thank you for your consideration.

Sincerely,


Denise M. Kaehu
President

Hawaii Escrow & Title, Inc.



OLD REPUBLIC TITLE COMPANY

A MEMBER OF THE OLD REPUBLIC TITLE INSURANCE GROUP

900 Fort Street Mall Honolulu, Hawaii 96813

March 14, 2011

The Honorable Robert N. Herkes, Chair
The Honorable Ryan Yamane, Vice Chair
Members of the House Committee on Consumer Protection and Commerce
Hawaii State Capitol, Room 325
Honolulu, Hawaii 96813

Re: Senate Bill 646, SD1 Relating To Escrow Depositories
Hearing Date: March 14, 2011 2:00 p.m.
House Conference Room 325

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

As a member of the Escrow Association of Hawaii, Old Republic respectfully opposes Senate Bill 646.

If passed, Senate Bill 646 would make escrow depositories enforcement agents by imposing the obligation of verifying a mortgage loan originator's unique identifier number as well as reporting any discrepancies to the Department of Commerce and Consumer Affairs. Failure of an escrow depository to report a licensing discrepancy by a loan originator would unfairly subject escrow to administrative sanctions. With all due respect, this should not be escrow's responsibility. Furthermore, if this obligation is imposed it will increase the cost of doing business both because of the additional services required and because of the increased liability, and this in turn would be an undue hardship on escrow depositories and ultimately increase the costs to consumers.

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Section 3 of the Bill, which requires the escrow company's auditor to verify escrow's reporting of the unique identifiers, adds cost to the audits. As it stands, escrow companies must already absorb the costs of the audits as well as keep accurate records of a multitude of items.

Old Republic Title & Escrow of Hawaii respectfully oppose Senate Bill 646.

Thank you for your consideration.

Sincerely

Sam Carlisi
Executive Vice President
Old Republic Title & Escrow of Hawaii, Ltd



First American Title Company

Patsy Saiki – Senior Vice President & General Counsel
psaiki@firstam.com

1177 Kapiolani Boulevard
Honolulu, Hawaii 96814

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March 14, 2011

The Honorable Robert N. Herkes, Chair
The Honorable Ryan Yamane, Vice Chair
Members of the House Committee on Consumer Protection and Commerce
Hawaii State Capitol, Room 325
Honolulu, Hawaii 96813

Re: Senate Bill 646, SD1 Relating To Escrow Depositories
Hearing Date: March 14, 2011 2:00 p.m.
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Dear Representative Herkes, Representative Yamane and Members of the House
Committee on
Consumer Protection and Commerce:

As a member of the Escrow Association of Hawaii, First American Title Company, Inc.
respectfully opposes Senate Bill 646.

If passed, Senate Bill 646 would make escrow depositories enforcement agents by imposing the obligation of verifying a mortgage loan originator's unique identifier number as well as reporting any discrepancies to the Department of Commerce and Consumer Affairs. Failure of an escrow depository to report a licensing discrepancy by a loan originator would unfairly subject escrow to administrative sanctions. With all due respect, this should not be escrow's responsibility. Furthermore, if this obligation is imposed it will increase the cost of doing business both because of the additional services required and because of the increased liability, and this in turn would be an undue hardship on escrow depositories and ultimately increase the costs to consumers.

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First American Title Company

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Section 3 of the Bill, which requires the escrow company's auditor to verify escrow's reporting of the unique identifiers, adds cost to the audits. As it stands, escrow companies must already absorb the costs of the audits as well as keep accurate records of a multitude of items.

First American Title Company, Inc. respectfully opposes Senate Bill 646.

Thank you for your consideration.

Sincerely,

Patsy K. Saiki
Senior Vice President and General Counsel
First American Title Company, Inc.



ISLAND
TITLE
CORPORATION

Personalized Service with Aloha

Patsy Saiki - Vice President
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March 14, 2011

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The Honorable Ryan Yamane, Vice Chair
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ISLAND
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Island Title Corporation respectfully opposes Senate Bill 646.

Thank you for your consideration.

Sincerely,

Patsy K. Saiki
Vice President
Island Title Corporation