
A BILL FOR AN ACT

RELATING TO ESCROW DEPOSITORIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. Chapter 449, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
4 "S449- Powers of commissioner. In addition to any other
5 powers provided by law, the commissioner may:
6 (1) Administer and enforce the provisions and requirements
7 of this chapter;
8 (2) Adopt, amend, or repeal rules or declaratory rulings
9 pursuant to chapter 91 to effectuate the purposes of
10 this chapter;
11 (3) Issue informal nonbinding interpretations to
12 effectuate the purposes of this chapter;
13 (4) Investigate and conduct hearings regarding any
14 violation of this chapter or any rule or order of the
15 commissioner;
16 (5) Contract with or employ qualified persons, including
17 investigators, examiners, or auditors who shall be
18 exempt from chapter 76 and who shall assist the



1 commissioner in exercising the commissioner's powers
2 and duties;

3 (6) Deposit all fees, fines, and charges collected by the
4 commissioner under this chapter into the compliance
5 resolution fund established pursuant to section
6 26-9(o);

7 (7) Process and investigate complaints, subpoena witnesses
8 and documents, administer oaths, and receive
9 affidavits and oral testimony, including through
10 electronic means, and conduct contested case
11 proceedings; and

12 (8) Report any violation of this chapter or violation of
13 federal or state law to the United States Commissioner
14 of Housing and Urban Development or any other federal
15 agency having jurisdiction over the licensee."

16 SECTION 2. Section 449-1, Hawaii Revised Statutes, is
17 amended by adding two new definitions to be appropriately
18 inserted and to read as follows:

19 "Branch office" means any location, separate from the
20 principal place of business of the escrow depository, that is
21 identified by any means to the public or customers as a location
22 at which the licensee holds itself out as an escrow depository.



1 "Examination and investigation" means a supervisory
2 inspection of an escrow depository that may include inspection
3 of every relevant piece of information including any subsidiary
4 or affiliated businesses that engage in escrow services or
5 activity."

6 SECTION 3. Section 449-4, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§449-4 Administrative penalty.** (a) Any person who
9 [~~willfully~~] violates any of the provisions of this chapter,
10 shall be subject to an administrative fine of a maximum of
11 \$5,000 for each violation. The commissioner may impose an
12 administrative fine on a licensee or person subject to this
13 chapter if the commissioner finds on the record after notice and
14 opportunity for hearing that the licensee or person subject to
15 this chapter has violated or failed to comply with any
16 requirement of this chapter or any rule prescribed by the
17 commissioner under this chapter or order issued under the
18 authority of this chapter.

19 (b) Each violation under this chapter or failure to comply
20 with any directive or order of the commissioner shall be a
21 separate and distinct violation.



1 (c) Notwithstanding section 480-13.5, any violation of
2 this chapter that is directed toward, targets, or injures an
3 elder may be subject to an additional civil penalty not in
4 excess of \$10,000 for each violation in addition to any other
5 finances or penalties assessed for the violation.

6 (d) No licensee shall be subject to this penalty for a
7 violation of section 449-16(b) or (c) if the violation was not
8 intentional or resulted from a bona fide error, notwithstanding
9 the maintenance of procedures reasonably adopted to avoid that
10 error. Examples of bona fide errors include, but are not
11 limited to, clerical miscalculations, computer malfunction,
12 printing errors, and computer programming errors."

13 SECTION 4. Section 449-5.5, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**\$449-5.5 Net capital.** The net capital of any corporation
16 engaging in the escrow depository business under this chapter
17 shall not be less than [~~\$50,000. A corporation in lieu of the~~
18 ~~net capital requirement may alternatively file a bond for~~
19 ~~\$50,000 conditional upon its satisfactory performance of escrow~~
20 ~~conditions and satisfaction of all escrow liabilities.]~~
21 \$100,000. The amount of the minimum net capital of [~~\$50,000, or~~
22 ~~the bond, or a combination of both net capital or bond totaling~~



1 ~~\$50,000~~ \$100,000 shall be maintained at all times by the
2 licensee.

3 ~~[Licensees in operation on May 24, 1973, pursuant to this~~
4 ~~chapter with a net capital of less than \$50,000 shall increase~~
5 ~~its net capital to \$50,000 or file a bond for \$50,000, or take~~
6 ~~action so that a combination of its net capital and bond totals~~
7 ~~\$50,000, before May 24, 1978.]"~~

8 SECTION 5. Section 449-7.5, Hawaii Revised Statutes, is
9 amended by amending subsection (c) to read as follows:

10 "(c) The escrow depository business shall be under the
11 direct management of an officer, or an employee, designated by
12 its board of directors as escrow officer for the corporation
13 ~~[and if the designated escrow officer terminates the escrow~~
14 ~~officer's employment with the escrow depository, the licensee~~
15 ~~shall notify the commissioner in writing at least fifteen days~~
16 ~~before the termination date of the designated escrow officer.~~
17 ~~The licensee shall also inform the commissioner in writing of~~
18 ~~the new escrow officer for the corporation designated by its~~
19 ~~board of directors before the present escrow officer terminates~~
20 ~~the present escrow officer's employment with the company,~~
21 ~~setting forth the experience, integrity, and competency of the~~
22 ~~new designated escrow officer in handling escrow transactions,~~



1 ~~and such other information as required by the commissioner].~~
2 The licensee shall inform the commissioner in writing of any
3 change to the designated escrow officer for the corporation at
4 least fifteen days prior to the change, unless the change occurs
5 so unexpectedly that the licensee is unable to provide fifteen
6 days' prior notice; provided that when unexpected circumstances
7 prevent prior notice, the licensee shall provide notice within
8 five business days after the change. Within five business days
9 of the designation of a new escrow officer by its board of
10 directors, the licensee shall inform the commissioner in writing
11 of the new escrow officer for the corporation, setting forth the
12 experience, integrity, and competency of the new designated
13 escrow officer in handling escrow transactions, and such other
14 information as may be required by the commissioner."

15 SECTION 6. Section 449-8.6, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[~~+~~]**\$449-8.6**[~~+~~] **Sale or transfer of license or change in**
18 **control.** (a) No escrow depository license shall be
19 transferred[~~-~~] except as provided in subsection (c).

20 (b) A bona fide sale of all or substantially all of the
21 ongoing operations of a licensee shall not result in the
22 assignment or transfer of the escrow depository license. The



1 purchaser of all or substantially all of the ongoing operations
2 of a licensee shall file an application for approval in
3 accordance with this chapter and shall not act as an escrow
4 depository unless it has been licensed by the commissioner.

5 (c) If the licensee is a corporation, any intended
6 transfer of its voting stock which may result in the acquisition
7 of control of the licensee may be considered a transfer of
8 license. Any intended transfer of the voting stock which may
9 result in the acquisition of control shall be reported to the
10 commissioner in writing. Upon determination by the commissioner
11 that the intended transfer will result in the acquisition of
12 control, the transferee of the stock shall file an application
13 for approval to act as an escrow depository and shall not
14 acquire control of an escrow depository until the transferee has
15 been approved by the commissioner.

16 (d) The fee for the transfer and change in control of an
17 escrow depository license shall be \$5,000."

18 SECTION 7. Section 449-11, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§449-11 Fidelity bonds[; ~~deposit.~~]; insurance or other
21 security devices. A licensed escrow depository shall at all
22 times either:



1 (1) Maintain a fidelity bond executed by a surety insurer
2 authorized to do business in the State in an amount
3 not less than [~~\$25,000;~~] \$100,000; provided that any
4 bond which is subject to a deductible thereunder in
5 excess of [~~\$5,000~~] \$10,000 per occurrence shall
6 require the prior approval of the commissioner, who
7 may take into consideration, among other factors, the
8 amount of the proposed bond; or
9 (2) Deposit an equivalent amount of cash or [~~securities~~]
10 other security device under such terms and conditions
11 as are acceptable to the commissioner,
12 upon all of its directors, officers, and employees who have
13 access to money or negotiable securities or instruments in its
14 possession or under its control. Notwithstanding the above
15 provision, the escrow depository may carry bonds or deposit cash
16 or securities above the amounts required by the commissioner."
17 SECTION 8. Section 449-12, Hawaii Revised Statutes, is
18 amended to read as follows:
19 "**§449-12 Errors and omissions insurance** [~~;- deposit-]~~ or
20 other security devices. A licensed escrow depository shall at
21 all times either:



1 (1) Maintain a policy of errors and omissions insurance
2 executed by an insurer authorized to do business in
3 the State in an amount not less than [~~\$100,000;~~
4 \$250,000; provided that any policy which is subject to
5 a deductible thereunder in excess of [~~\$10,000;~~
6 \$100,000, per occurrence, shall require the prior
7 approval of the commissioner, who may take into
8 consideration, among other factors, the amount of the
9 proposed coverage; or

10 (2) Deposit an equivalent amount of cash or [~~securities~~
11 other security device under such terms and conditions
12 as are acceptable to the commissioner."

13 SECTION 9. Section 449-14, Hawaii Revised Statutes, is
14 amended by amending subsections (a) and (b) to read as follows:

15 "(a) The following fees shall be paid by licensed escrow
16 depositories to the commissioner and, together with any
17 administrative penalty or other charge assessed under this
18 chapter, shall be deposited into the compliance resolution fund
19 established pursuant to section 26-9(o):

20 (1) For filing and investigation of an escrow depository's
21 application for license, [~~\$2,000;~~ \$5,000;



- 1 (2) For an application for approval to establish a branch
- 2 office~~[+]~~, \$100;
- 3 (3) For an application for approval to relocate an
- 4 existing office or branch~~[+]~~, \$100;
- 5 (4) For [~~initial issuance and~~] annual renewal of an escrow
- 6 depository's license, [~~\$100+~~] \$2,000;
- 7 (5) For initial issuance and annual renewal of a branch
- 8 office license, [~~\$50+~~] \$100;
- 9 (6) For reissuance of a license for the change in the
- 10 business address of its office, [~~\$25+~~] \$50; provided
- 11 that a reissuance caused by changes to the address by
- 12 the United States Postal Service shall not require
- 13 payment of a fee; and
- 14 (7) For an application for approval to cease business as
- 15 an escrow depository~~[-]~~, \$0.
- 16 (b) For all escrow depositories examined by the
- 17 commissioner or the commissioner's staff, the commissioner:
- 18 (1) May charge an examination fee based upon the cost per
- 19 hour per examiner. The hourly fee shall be [~~\$40+~~]
- 20 \$60;



1 (2) May charge additional amounts for travel, per diem,
2 mileage, and other reasonable expenses incurred in
3 connection with the examination; and
4 (3) Shall bill the affected escrow depository for
5 examination fees and expenses as soon as feasible
6 after the close of the examination or investigation.
7 The affected escrow depository shall pay the division
8 within thirty days following the billing. All
9 payments shall be deposited into the compliance
10 resolution fund established pursuant to section 26-
11 9(o). Any dispute by the affected escrow depository
12 relating to these billings shall be reviewed by the
13 commissioner who may modify, waive, or suspend any
14 billing."

15 SECTION 10. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 11. This Act, upon its approval, shall take effect
18 on January 1, 2112; provided that, with respect to licensees in
19 operation on the approval date of this Act, sections 7 and 8
20 shall take effect on the date of the renewal of the security
21 device, but not later than July 1, 2014.

Report Title:

Escrow Depositories; Commissioner of Financial Institutions;
Fees; Bond; Powers

Description:

Requires escrow depositories to report any change of their corporate designated escrow officer or branch manager to the Commissioner of Financial Institutions; establishes a statutory fee for the transfer or change in control of an escrow depository license; increases the fidelity bond maintained by escrow depositories to a minimum of \$100,000; increases the errors and omissions policy amount escrow depositories are required to carry to not less than \$250,000; increases fees; provides powers for the commissioner to supervise and regulate the industry; increases net capital requirement to \$100,000. Effective January 1, 2112. (SB1067 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

