
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 four new sections to be appropriately
3 designated and to read as follows:

4 "§449-A 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 26-
6 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) Require a licensee to comply with any rule, guidance,
13 guideline, statement, supervisory policy, or any
14 similar proclamation issued or adopted by the federal
15 authority or in the alternative any policy position of
16 the Consumer Financial Protection Bureau.

17 **§449-B Cease and desist orders; grounds for issuance.** (a)

18 The commissioner may issue a permanent cease and desist order to
19 any escrow depository that the commissioner finds or has
20 reasonable cause to believe:



- 1 (1) Is violating, has violated, or is about to violate
2 this chapter or any rules adopted pursuant to this
3 chapter;
- 4 (2) Is violating, has violated, or is about to violate any
5 written condition imposed or order issued by the
6 commissioner on such escrow depository's authority to
7 engage in business, or any condition of a written
8 agreement between the escrow depository and the
9 commissioner;
- 10 (3) Is engaging, has engaged, or is about to engage in an
11 illegal, unauthorized, unsafe, or unsound practice; or
- 12 (4) Is failing to maintain books and records that are
13 sufficiently complete and accurate so as to permit the
14 commissioner to determine the financial condition of
15 the escrow depository named in the order.

16 §449-C Permanent cease and desist orders; procedure;
17 hearing; enforcement. (a) The notice of charges and proposed
18 permanent cease and desist order shall be in writing and shall
19 be served upon the escrow depository at its principal office in
20 this State. The notice of charges shall state the alleged
21 violations or wrongful practices and a summary of the facts in
22 support of the allegations. The notice shall be accompanied by



1 a proposed order which states the commissioner's intent to
2 require discontinuance of such violation or practice and the
3 immediate compliance with all requirements of any applicable
4 agreement, conditions of approval, order, rule, or law. The
5 proposed order may also direct such affirmative action as may be
6 necessary to prevent insolvency and to correct the alleged
7 violation or wrongful practice. The notice of charges shall set
8 forth a time and place for a hearing to determine whether the
9 proposed order shall be issued.

10 (b) Within twenty days after service of a notice of
11 charges, unless an earlier date or later date is set by the
12 commissioner upon request of the escrow depository, the
13 commissioner shall hold a hearing in accordance with chapter 91.
14 If no appearance is made at the scheduled hearing by the escrow
15 depository or its duly authorized representative, the escrow
16 depository shall be deemed to have consented to the issuance of
17 the cease and desist order and the commissioner may issue a
18 permanent cease and desist order. Any cease and desist order
19 issued after a hearing held in accordance with this subsection
20 shall become effective after service upon the escrow depository
21 and shall remain effective until modified or terminated by the
22 commissioner. Any appeal of a permanent cease and desist order



1 issued in accordance with this section shall be made to the
2 circuit court in accordance with chapter 91.

3 (c) On or after the effective date of any permanent cease
4 and desist order, the commissioner may apply for enforcement of
5 the order to the circuit court. Such application may also
6 contain a petition for such other relief or remedies as may be
7 appropriate in the circumstances. The application shall be
8 given precedence over other cases pending in court, and shall in
9 every way be expedited.

10 **§449-D Temporary cease and desist orders; effective date;**

11 **hearing; enforcement.** (a) The commissioner may issue a
12 temporary cease and desist order upon a determination that one
13 or more of the grounds for issuance listed in section 449-B are
14 present. In the case of an escrow depository, the commissioner
15 shall not issue a temporary cease and desist order unless the
16 commissioner has also made a determination that the violation,
17 threatened violation, or unsafe or unsound practice is likely
18 to:

19 (1) Cause insolvency or substantial dissipation of assets;

20 (2) Seriously weaken the condition of the escrow

21 depository; or



1 (3) Otherwise seriously prejudice the interests of the
2 consumers during the period in which a permanent cease
3 and desist order can be obtained.

4 The order shall be accompanied by a notice of charges stating
5 the alleged violation or wrongful practice, a summary of the
6 facts in support of the allegation, and a time and place for a
7 hearing to determine whether the temporary order shall be made
8 permanent. The order may require discontinuance of a violation
9 or practice; require the immediate compliance with all
10 requirements of any applicable agreement, conditions of
11 approval, order, or law; and direct affirmative action as may be
12 necessary to prevent insolvency or to correct the alleged
13 violation or wrongful practice.

14 (b) The order shall be effective upon service on the
15 escrow depository. The order shall remain in effect until a
16 permanent cease and desist order is issued after a hearing, a
17 permanent cease and desist order is consented to, or the charges
18 are dismissed upon completion of a hearing. Any escrow
19 depository contesting the issuance of the temporary cease and
20 desist order may do so by applying to the circuit court for an
21 injunction.



1 (c) Within ten days after service of a notice of charges,
2 unless an earlier date or later date is set by the commissioner
3 upon request of the affected party, the commissioner shall hold
4 a hearing in accordance with chapter 91. If no appearance is
5 made at the scheduled hearing by the escrow depository or its
6 duly authorized representative, the escrow depository shall be
7 deemed to have consented to the issuance of the cease and desist
8 order and the commissioner may convert the temporary cease and
9 desist order into a permanent cease and desist order. Any
10 permanent cease and desist order issued after a hearing held in
11 accordance with this subsection shall become effective after
12 service upon the escrow depository and shall remain effective
13 until modified or terminated by the commissioner. Any appeal of
14 a permanent cease and desist order issued in accordance with
15 this section shall be made to the circuit court in accordance
16 with chapter 91.

17 (d) Any temporary cease and desist order may be enforced
18 in the circuit court upon application by the commissioner. Any
19 permanent cease and desist order issued in accordance with this
20 section may be enforced in circuit court."



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

4 "Branch manager" means an individual who is designated and
5 employed by an escrow depository to be responsible for the
6 activities in the conduct of business at a branch office of the
7 licensed escrow depository.

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

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

14 ~~"§449-4 Administrative penalty. [Any person who wilfully~~
15 ~~violates any of the provisions of this chapter, shall be subject~~
16 ~~to an administrative fine of \$5,000 for each violation.] (a)~~
17 The commissioner may impose an administrative fine on a licensee
18 or person subject to this chapter if the commissioner finds on
19 the record after notice and opportunity for hearing that the
20 licensee or person subject to this chapter has violated or
21 failed to comply with any requirement of this chapter or any



1 rule prescribed by the commissioner under this chapter or order
2 issued under the authority of this chapter.

3 (b) The maximum fine for each act or omission described in
4 subsection (a) shall be \$10,000.

5 (c) Each violation under this chapter or failure to comply
6 with any directive or order of the commissioner shall be a
7 separate and distinct violation.

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

13 (e) No licensee shall be subject to this penalty for a
14 violation of section 449-16(b) or (c) if the violation was not
15 intentional or resulted from a bona fide error, notwithstanding
16 the maintenance of procedures reasonably adopted to avoid that
17 error. Examples of bona fide errors include, but are not
18 limited to, clerical miscalculations, computer malfunction,
19 printing errors, and computer programming errors."

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



1 "~~§449-5.5~~ **Net capital.** The net capital of any corporation
2 engaging in the escrow depository business under this chapter
3 shall not be less than [~~\$50,000. A corporation in lieu of the~~
4 ~~net capital requirement may alternatively file a bond for~~
5 ~~\$50,000 conditional upon its satisfactory performance of escrow~~
6 ~~conditions and satisfaction of all escrow liabilities.]~~
7 \$100,000. The amount of the minimum net capital of [~~\$50,000, or~~
8 ~~the bond, or a combination of both net capital or bond totaling~~
9 ~~\$50,000]~~ \$100,000 shall be maintained at all times by the
10 licensee.

11 ~~[Licensees in operation on May 24, 1973, pursuant to this~~
12 ~~chapter with a net capital of less than \$50,000 shall increase~~
13 ~~its net capital to \$50,000 or file a bond for \$50,000, or take~~
14 ~~action so that a combination of its net capital and bond totals~~
15 ~~\$50,000, before May 24, 1978.] "~~

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

18 "(c) The escrow depository business shall be under the
19 direct management of an officer, or an employee, designated by
20 its board of directors as escrow officer for the corporation and
21 if the designated escrow officer or the designated branch
22 manager of a branch office terminates the escrow officer's



1 employment with the escrow depository, the licensee shall notify
2 the commissioner in writing at least fifteen days before the
3 termination date of the designated escrow officer. The licensee
4 shall also inform the commissioner in writing of the new escrow
5 officer or branch manager for the corporation designated by its
6 board of directors before the present escrow officer terminates
7 the present escrow officer's employment with the company,
8 setting forth the experience, integrity, and competency of the
9 new designated escrow officer in handling escrow transactions,
10 and such other information as required by the commissioner. The
11 licensee shall inform the commissioner in writing of any change
12 to the designated escrow officer for the corporation or branch
13 manager at least fifteen days prior to the change, unless the
14 event occurs so unexpectedly that the licensee is unable to
15 provide fifteen days' prior notice."

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

18 "[+]§449-8.6[+] **Sale or transfer of license or change in**
19 **control.** (a) No escrow depository license shall be
20 transferred.

21 (b) A bona fide sale of all or substantially all of the
22 ongoing operations of a licensee shall not result in the



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

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

17 (d) The fee for the transfer and change in control of an
18 escrow depository license shall be \$2,000."

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



1 "§449-11 Fidelity bonds [~~;-deposit-]; insurance or other~~
2 security devices. A licensed escrow depository shall at all
3 times either:

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

20 SECTION 8. Section 449-12, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§449-12 Errors and omissions insurance~~[/-deposit-]~~ or
2 other security devices. A licensed escrow depository shall at
3 all times either:

- 4 (1) Maintain a policy of errors and omissions insurance
5 executed by an insurer authorized to do business in
6 the State in an amount not less than [~~\$100,000,~~]
7 \$250,000; provided that any policy which is subject to
8 a deductible thereunder in excess of [~~\$10,000,~~]
9 \$100,000, per occurrence, shall require the prior
10 approval of the commissioner, who may take into
11 consideration, among other factors, the amount of the
12 proposed coverage; or
- 13 (2) Deposit an equivalent amount of cash or [~~securities~~]
14 other security device under such terms and conditions
15 as are acceptable to the commissioner."

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

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



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

19 SECTION 11. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 12. This Act, upon its approval, shall take effect
2 on July 1, 2050; provided that sections 4, 7, and 8 of this Act
3 shall take effect on January 1, 2014.

4



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; empowers the commissioner to issue cease and desist orders; increases net capital requirement to \$100,000. Effective July 1, 2050. (SD1)

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