

Hawaii Escrow Association  
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February 6, 2013

The Honorable Angus L.K. McKelvey, Chair  
The Honorable Derek S.K. Kawakami, Vice Chair  
House of Representatives  
Members of the House Committee on Consumer Protection & Commerce  
415 South Beretania Street  
Honolulu, Hawaii 96813  
Hawaii State Capitol Room 325  
Facsimile: (808) 586-8437

RE: House Bill 836 Relating to Escrow Depository 2013  
**Supports in part, Opposes in part**  
Hearing Date: 2:30 p.m. - Wednesday, February 6, 2013  
Conference Room 325

SB1067 Relating to Escrow Depository 2013 (companion bill)

Testifier: Hawaii Escrow Association  
William Tanaka, Legislative Chair

Dear Honorable Chairperson Mr. McKelvey, Honorable Vice-Chairperson Mr. Kawakami and Members of the House Committee on Consumer Protection and Commerce:

Thank you for allowing the Hawaii Escrow Association (the "Association") to testify on House Bill 836 (HB 836) related to the Escrow Depository Statute (Hawaii Revised Statutes Chapter 449). The Association represents of the following licensed escrow depositories in the State of Hawaii, with branches on all major islands:

- Fidelity National Title & Escrow of Hawaii, Inc.
- First American Title Company, Inc.
- First Hawaii Title Corporation
- Guardian Escrow Services, Inc. (dba Premier Escrow)
- Hawaii Escrow & Title, Inc.
- Old Republic Title & Escrow of Hawaii
- Title Guaranty Escrow Services, Inc.

At the outset, we respectfully submit that the parts of the bill that both the Association and DFI agree upon represent monumental and historic progress in the escrow law. There are significant increases in bonding and insurance requirements as well as to the increases and additions of virtually all the fees requested by the DFI Commissioner. We worked cooperatively with the DFI on those changes over the course of several years. The parts of the bill that we currently oppose are significant, substantive changes in the law. As such, we respectfully submit that we have not had sufficient time to consider them and work on a reasonable solution. We want to continue to work closely with the DFI Commissioner to continue to make progress on the amendment of the escrow statute by having comprehensive discussions after this legislative session.

The Association understands that one of DFI's objectives during the legislative session in 2012 was to increase the escrow depositories' fees to cover its costs in the regulation of the escrow industry. During the 2012 legislative session, the Association had expressed to the legislative committees and the DFI that drastic increases in capital, insurance and bonding requirements as well as increases in costs associated with license fees, fines and other costs would cause undue hardship to the escrow industry. Our escrow depositories are diverse in size and financial strengths, as some are operating as small businesses while others are national companies. These major increases would have heavily impacted the small business escrow depositories. During the 2012 legislative session, former Chairperson Mr. Robert N. Herkes had asked the Association to work with the DFI Commissioner to draft a bill that was agreeable with all.

Over the course of several months last summer, the members of the Association and the DFI Commissioner met three times to discuss amendments to the existing escrow statute that would mutually benefit our escrow industry and the needs of the State of Hawaii. After the DFI's draft proposed bill was presented to the Association in October 2012, the Association members came to an agreement on what would be considered monumental changes that will benefit consumers by increasing net capital requirements and insurance and bonding requirements, and support the State by increasing fees that we pay to do business in Hawaii, including fees we pay for State audits, licensing renewals and applications.

#### **HAWAII ESCROW ASSOCIATION AGREED TO SUPPORT FEE INCREASES**

Significantly, as the Association previously informed the DFI Commissioner in November 2012, the Association has agreed to substantial increases across the board, including increases of **100%** in net capital and fidelity bond requirements, and increase of **150%** in errors and omission insurance requirement. In addition, the Association is also agreeable to considerable increases in various fees from **100%** to **2,000%**, as well as DFI's injection of new fees ranging from **\$100 to \$2,000**. Furthermore, the Association is also agreeable to the proposed **50%** increase in its examination fee from **\$40 to \$60 per hour**.

More specifically, the Association is agreeable to the following increases and proposals in HB 836, except as noted:

Section 4

- §449-5.5 "Net Capital" – Increase the net capital requirement from \$50,000 to \$100,000 **[Increase of 100%]**

Section 6

- §449-8.6 "Sale or transfer of license or change in control" – Apply new fee of \$2,000 for transfer and/or change in control of escrow depository **[New fee of \$2,000]**

Section 7

- §449-11 "Fidelity bonds; deposit" –
  - (1) Increase the fidelity bond amount from \$25,000 to 100,000, and also increase the deductible amount from \$5,000 to \$10,000; **[Increase of 100%]**
  - (2) Add "or other security device."

Section 8

- §449-12 "Errors and omissions insurance; deposit" –
  - (1) Increase the errors and omissions insurance amount from \$100,000 to \$250,000, and also increase the deductible amount from \$10,000 to \$100,000; **[Increase of 100%]**
  - (2) Add "or other security device."

Section 9

- §449-14 "Fees" -
  - (a)(1) Please note that the Association is not agreeable to increasing the new applicant fee from \$2,000 to \$5,000. As previously discussed at our meeting, the Association would like to keep the new applicant fee at \$2,000.
  - (a)(2) Apply new fee of \$100 to establish a branch office. **[New fee of \$100]**
  - (a)(3) Apply new fee of \$100 to relocate an existing office or branch. **[New fee of \$100]**
  - (a)(4) Increase annual renewal fee for escrow depository from \$100 to \$2,000. **[Increase of 2,000%]**
  - (a)(5) Increase annual renewal fee for branch office from \$50 to \$100. **[Increase of 100%]**
  - (a)(6) Increase in fee for reissuance of license for change in business address from \$25 to \$50, provided that changes by the U.S.P.S. shall not be assessed a fee. **[Increase of 100%]**
  - (a)(7) Maintain \$0.00 fees for application for approval to cease business.
  - (b)(1) Increase "examination fee" from \$40 to **\$60 per hour. [Increase of 50%]** Please note that the Association is not agreeable to charging an "investigation fee" at this point. Similarly, the Association is not agreeable to inserting the term "or investigation" under section (b)(1) through (b)(3).

The Association has given 100% cooperation and has substantially ratified all of the DFI's requests for increases in fees across the board in an effort to move the intended bill forward and appreciates the DFI's understanding of the current changes in our industry in regards to insurance and bonding requirements.

## **HAWAII ESCROW ASSOCIATION IS READY, WILLING AND ABLE TO WORK WITH DFI ON ITS AUTHORITY AND ENFORCEMENT PROVISIONS**

As we did last year, the Association is ready, willing and able to work together with the DFI Commissioner to submit bill that would benefit the consumer, the State and the escrow industry. The Association would like to work with the DFI regarding the remaining proposals in HB 836 regarding the DFI Commissioner's power, regulatory authority and enforcement provisions, as follows:

### Section 1

- §449-\_\_\_ Powers of commissioner
- §449-\_\_\_ Cease and desist orders; grounds for issuance
- §449-\_\_\_ Permanent cease and desist orders; procedure; hearing; enforcement
- §449-\_\_\_ Temporary cease and desist orders; effective date; hearing; enforcement

### Section 2

- §449-1 Definitions of "Branch manager" and "Branch office"

### Section 4

- §449-4 Administrative penalty

### Section 5

- §449-7.5 Provision to add 15-day notice requirement in change of designated escrow officer

### Section 9

- §449-14(b) Provision to add "investigation fees and expenses"

While we appreciate the DFI's focus on consumer protection as a basis to add these powers and authority, the Association would like the committee and DFI to consider that the escrow depositories collectively employ **over 700** people across the state. Four out of the seven escrow depositories are locally owned and operated, employing over one-half of the total number of state-wide employees. If, for example, the DFI implements a cease and desist order and the small business escrow operation is shut down for even a couple of days, that escrow depository will very likely be out of business permanently. In addition, some of the proposed language can further impact our business. If we, pursuant to the proposed language for §449-7.5, had to give 15-day advance notice of a branch manager's potential termination to the DFI, then the escrow depositories would be placed in a very difficult situation since terminations at that level are generally executed immediately, and there is always the possibility that the terminations may not happen after giving notice to the DFI. A suggestion may be a requirement to give notice to the DFI within 15 days after termination. But these are just examples of issues that the Association strongly believes that we need more time to work on to balance the State's requirement with how we do business, and which can also have severe ramifications on the entire escrow industry.

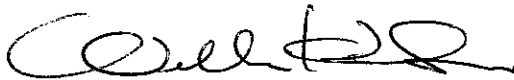
Various members of the Association have been working in or managing escrow companies in Hawaii for over 30 to 40 years. We are proud to say that during those decades, we are not aware of any serious defalcations that have occurred in our industry which we have not been able to work out together as an industry. The Association members meet on a monthly basis to address, among other things, industry-wide concerns, compliance issues and legislative issues.

To be clear, the Association is not completely opposed to providing the DFI Commissioner with more powers and regulatory authority, or to clarify that authority. However, we need additional time to review these proposals and will continue to work with the DFI on the specific language, which was not previously discussed in detail during our three months of meetings. Due to the complexity and possible ramifications of the new language, the Association requests that the above-mentioned sections are omitted in the current bill to allow for further discussions. We would like to be able to submit a bill that both the department and the Association members will give their full endorsement to.

We appreciate the Chairs and the Committee for allowing our testimony. Thank you for your consideration.

Sincerely,

HAWAII ESCROW ASSOCIATION

A handwritten signature in black ink, appearing to read 'William Tanaka', written over a horizontal line.

William Tanaka

On Behalf of Members of the Hawaii Escrow Association