

ACT 184

S.B. NO. 1060

A Bill for an Act Relating to Escrow Depositories.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 449, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

§449- Confidential portion of application or records. Information contained in any application or record shall be made available to the public unless that information may be withheld from public disclosure by the commissioner under chapter 92F.

§449- Closing branch office. (a) An escrow depository shall give the commissioner notice of its intent to close any branch office at least thirty days prior to the closing. The notice shall:

- (1) State the intended date of closing;
- (2) Specify the reasons for the closing; and
- (3) Contain a certification by the secretary or other authorized officer of the escrow depository that the decision to close was duly approved by its board of directors.

(b) After closing a branch office, the escrow depository shall promptly thereafter surrender to the commissioner the branch office license for that location.

§449- Termination of escrow depository operations. (a) A solvent escrow depository whose capital is not impaired and that has not received a notice of charges and proposed suspension or revocation order pursuant to section 449-17 may cease its business and surrender its license in the following manner:

- (1) The board of directors shall adopt a resolution approving a plan to cease activity for which a license to operate as an escrow depository is required. If applicable, the plan shall include provisions for the sale, exchange, or disposition of all outstanding escrow accounts or other business for which an escrow depository license is required by this chapter;
- (2) The escrow depository shall:
 - (A) Notify in writing all buyers and sellers whose accounts still contain outstanding balances of the termination of the escrow depository's operations and the specific arrangements to handle the particular transaction; and
 - (B) Provide information concerning a contact person for the purpose of answering questions and providing documents on closed accounts. This individual or the successor thereof shall continue to perform this task until the applicable statutes of limitations have lapsed;
- (3) The escrow depository shall file an application with the commissioner in the prescribed form for approval to cease activity for which a license to operate as an escrow depository is required. The application shall be accompanied by:
 - (A) A copy of the plan to cease activity for which a license to operate as an escrow depository is required, certified by two executive officers of the escrow depository as having been duly adopted by the board;

- (B) Any application that may be required pursuant to section 449-8.6, if applicable;
 - (C) A copy of the notice sent by the escrow depository to all buyers and sellers whose accounts still contain outstanding balances, and a copy of the notice providing information concerning a contact person for the purpose of answering questions and providing documents on closed accounts; and
 - (D) Any other information that the commissioner may require;
- (4) The commissioner may require that an audit report, prepared by a certified public accountant at the expense of the escrow depository, be submitted showing the final accounting of the company's operations, should circumstances so warrant;
- (5) The commissioner shall approve the application to cease activity for which a license to operate as an escrow depository is required if:
- (A) The commissioner is satisfied with the plan;
 - (B) The conditions for approval contained in section 449-8.6 have been met, if applicable; and
 - (C) No other reason exists to deny the application; provided that the commissioner may impose any restrictions and conditions as the commissioner deems appropriate;
- and
- (6) Upon receipt of the commissioner's approval, an escrow depository that has filed:
- (A) A plan attesting that the company does not retain any outstanding escrow accounts or other business for which an escrow depository license is required by this chapter, shall forthwith surrender to the commissioner all of its escrow depository licenses; or
 - (B) A plan that includes provisions for the sale, exchange, or disposition of outstanding escrow accounts or other business, upon receipt of the commissioner's approval, shall proceed with its plan to cease activity for which a license to operate as an escrow depository is required. Upon completion of its plan, the escrow depository shall file a written notification with the commissioner, signed by its president and secretary, certifying that there are no outstanding escrow liabilities. Filing of the written notification shall be accompanied by the surrender of all escrow depository licenses.

(b) Nothing in this section shall preclude the commissioner at any time from seeking any relief or sanction from the courts that may otherwise be permitted by law."

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

"“Division” means the division of financial institutions of the department of commerce and consumer affairs.”

SECTION 3. Section 449-11, Hawaii Revised Statutes, is amended to read as follows:

“§449-11 Fidelity bonds; deposit. A licensed escrow depository shall at all times either:

- (1) Maintain a fidelity bond executed by a surety insurer authorized to do business in the State in an amount not less than \$25,000; provided that[;] any bond which is subject to a deductible thereunder[;] in excess

of \$5,000 per occurrence[;] shall require the prior approval of the commissioner, who may take into consideration, among other factors, the amount of the proposed bond; or

(2) Deposit an equivalent amount of cash or securities under such terms and conditions as are acceptable to the commissioner, upon all of its directors, officers, and employees who have access to money or negotiable securities or instruments in its possession or under its control. Notwithstanding the above provision, the escrow depository may carry bonds or deposit cash or securities above the amounts required by the commissioner.”

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

“**§449-14 Fees.** (a) The following fees shall be paid by licensed escrow depositories to the commissioner and, together with any administrative penalty or other charge assessed under this chapter, shall be deposited into the compliance resolution fund established pursuant to [§]section[§] 26-9(o):

- (1) For filing and investigation of an escrow depository’s application for license, \$2,000;
- (2) For an application for approval to establish a branch office;
- (3) For an application for approval to relocate an existing office or branch;
- (2) (4) For initial issuance and annual renewal of an escrow depository’s license, \$100;
- (3) (5) For initial issuance and annual renewal of a branch office license, \$50; [and]
- (4) (6) For reissuance of a license [or endorsement on the license] for the change in the business address of its office, \$25[-]; and
- (7) For an application for approval to cease business as an escrow depository.

(b) For all escrow depositories examined by the commissioner or the commissioner’s staff, the commissioner:

- (1) May charge an examination fee based upon the cost per hour per examiner. The hourly fee shall be \$40;
- (2) May charge additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination; and
- (3) Shall bill the affected escrow depository for examination fees and expenses as soon as feasible after the close of the examination or investigation. The affected escrow depository shall pay the division within thirty days following the billing. All payments shall be deposited into the compliance resolution fund established pursuant to section 26-9(o). Any dispute by the affected escrow depository relating to these billings shall be reviewed by the commissioner who may modify, waive, or suspend any billing.

(c) An escrow depository that fails to make a payment required by this section shall be subject to an administrative penalty of not more than \$200 per day for each day it is in violation of this section.

(d) Any fee authorized by this section may be set or modified by the commissioner by rule adopted pursuant to chapter 91.”

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

“(a) Every licensee under this chapter shall have the responsibility of a trustee for all moneys, other consideration, or instruments received by it. No licensee shall mingle any such moneys or other property with its own moneys or other

property, or with moneys or other property held by it in any other capacity. All moneys held by a licensee in escrow as herein defined shall be ~~held intact and~~ deposited in financial institutions, payable on demand. Under this chapter, deposits in financial institutions are limited to sweep accounts as described in this section, checking accounts, money market deposit accounts, and savings accounts with no specified maturity date. Deposits at financial institutions may be held in sweep accounts, provided that:

- (1) The licensee using the sweep account shall have a net worth of not less than \$1,000,000;
- (2) The sweep account is a deposit account administered by a financial institution in which the moneys over a minimum balance are periodically transferred into a money market mutual fund account invested only in obligations of:
 - (A) The United States government;
 - (B) Agencies backed by the full faith and credit of the United States government; or
 - (C) Agencies originally established or chartered by the United States government to serve public purposes; andperiodically recredited to the sweep account; and
- (3) The licensee is liable for all moneys transferred to the money market mutual fund account under the sweep account, including any loss of value.”

SECTION 6. Section 449-16.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[§449-16.5]~~ [Interest] Earnings on funds. In all escrow agreements involving the purchase of real property or appurtenances thereon and in which an escrow depository acts as a fiduciary party holding the funds in escrow, any ~~[interest earned]~~ earnings on such funds during the holding thereof shall accrue to the credit of the purchaser in such transaction unless otherwise instructed in writing by the purchasers and sellers in the escrow.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval.

(Approved May 29, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.