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## A BILL FOR AN ACT

RELATING TO ESCROW DEPOSITORIES.

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

1           SECTION 1. This Act shall be known as the "Escrow  
2    Depositories Improvement Act of 2007."

3           SECTION 2. Chapter 449, Hawaii Revised Statutes, is  
4    amended by adding five new sections to be appropriately  
5    designated and to read as follows:

6           "§449-A Informational and comment proceeding. (a) An  
7    informational and comment proceeding on the application shall  
8    not be mandatory and the decision to hold an informational and  
9    comment proceeding shall be within the commissioner's sole  
10   discretion, regardless of whether any person has requested one.

11           (b) If the commissioner decides to hold an informational  
12    and comment proceeding, the commissioner shall provide at least  
13    ten days advance notice to the applicant and all other  
14    interested persons with the date, time, and place of the  
15    proceeding.

16           §449-B Conversion to another type of organization. (a)  
17    An escrow depository that has been incorporated as a Hawaii  
18    corporation may convert to a Hawaii limited liability company,



1 and an escrow depository that has been organized as a Hawaii  
2 limited liability company may convert to a Hawaii corporation if  
3 the escrow depository has complied with all requirements of this  
4 section and of chapter 414 or 428, as applicable.

5 (b) The converting escrow depository shall file an  
6 application to convert in the form prescribed by the  
7 commissioner. Unless waived by the commissioner, the  
8 application shall contain the following:

9 (1) A copy of the articles of conversion that the  
10 converting escrow depository will deliver to the  
11 director of commerce and consumer affairs if the  
12 application to convert is approved by the  
13 commissioner;

14 (2) Information concerning any proposed changes in persons  
15 owning ten per cent or more of the voting securities  
16 of the resulting escrow depository, directors,  
17 officers, designated principal escrow officer, and any  
18 branch escrow officers; and

19 (3) Any other information that the commissioner reasonably  
20 may require.

21 (c) The director of commerce and consumer affairs shall  
22 not file the articles of conversion until the application to



1 convert is approved by the commissioner in writing. The  
2 commissioner may impose any restrictions and conditions on the  
3 operation of the converted escrow depository as the commissioner  
4 deems appropriate and consistent with this chapter.

5 (d) The commissioner shall reissue the main office license  
6 and any branch office license of the escrow depository to  
7 reflect the name of the converted escrow depository effective as  
8 of the date of filing of the certificate of conversion by the  
9 director of commerce and consumer affairs upon receipt of:

10 (1) Evidence that the converted escrow depository is in  
11 compliance with sections 449-5.5, 449-9, 449-11, and  
12 449-12; and

13 (2) A copy of the filed certificate of conversion.

14 **§449-C Main office and branch office violations.** Wilful  
15 failure to comply with the requirements to establish, terminate,  
16 or relocate a main office or a branch office pursuant to this  
17 chapter shall be grounds for the commissioner to impose an  
18 administrative penalty of not more than \$100 per day for each  
19 day that the escrow depository is in violation of this chapter.

20 **§449-D Receivership.** (a) A receiver may be appointed to  
21 take possession and control of an escrow depository if such  
22 escrow depository:



- 1       (1) Is insolvent or has failed to maintain the net capital  
2       required in section 449-5.5;
- 3       (2) Has violated or is violating laws or rules, or has  
4       committed or is committing an unsafe or unsound  
5       practice, and such violation or practice is likely to  
6       cause insolvency or substantial dissipation of assets,  
7       or is likely to severely weaken the escrow  
8       depository's condition or otherwise seriously  
9       prejudice the interests of the parties to an escrow;
- 10       (3) Has wilfully violated or is wilfully violating any  
11       order issued by the commissioner;
- 12       (4) Has concealed from or has refused to provide to the  
13       commissioner without lawful cause the escrow  
14       depository's books, records, information, or assets  
15       for examination by the commissioner or by any lawful  
16       agent of the commissioner; or
- 17       (5) Has engaged in conduct constituting fraudulent or  
18       dishonest dealings.
- 19       (b) Upon application by the commissioner demonstrating  
20       grounds for the appointment of a receiver, the circuit court may  
21       appoint a receiver to take over, operate, or liquidate any  
22       escrow depository in this State.



1        (c) The commissioner, deputy commissioner, or other  
2 qualified person may serve as a receiver. Except for the  
3 commissioner or deputy commissioner, every receiver shall  
4 consent in writing to serve in such capacity and shall sign an  
5 engagement agreement with the commissioner before assuming such  
6 position.

7        (d) Upon assuming office, the receiver may:

8        (1) Immediately take possession of the assets, escrow  
9 accounts, books, and records of the escrow depository  
10 with all the rights and powers of the shareholders,  
11 directors, and officers, with the authority to conduct  
12 all business of the escrow depository; and

13        (2) Take such action as may be necessary to carry out the  
14 purposes of the receivership, consistent with the  
15 receiver's appointment order, and as may be required  
16 by law, by the commissioner, or by any court having  
17 jurisdiction over the matter. The receiver shall at  
18 all times be subject to the direction and supervision  
19 of the commissioner.

20        , **§449-E Termination of escrow depository operations.** (a)

21 When the escrow depository terminates its escrow depository



1 operations, all branch offices shall terminate escrow depository  
2 operations.

3 (b) A solvent escrow depository that meets the net capital  
4 requirement in section 449-5.5 and that has not received a  
5 notice of charges and proposed suspension or revocation order  
6 pursuant to section 449-17 may terminate its escrow depository  
7 operations and surrender its license in the following manner:

8 (1) The board of directors shall adopt a resolution  
9 approving a plan to terminate escrow depository  
10 operations. The plan shall comply with this chapter.  
11 If applicable, the plan shall include provisions for  
12 the sale, exchange, or disposition of all outstanding  
13 escrow accounts or other business for which an escrow  
14 depository license is required. The board of  
15 directors shall designate a responsible person to  
16 implement the plan. "Responsible person" means an  
17 officer, director, designated principal escrow  
18 officer, or person holding ten per cent or more of the  
19 voting securities of the escrow depository. The  
20 commissioner may allow a person other than a  
21 responsible person as defined in this paragraph to  
22 assume these duties;



1       (2) At least thirty days before closing its escrow  
2       depository operations, the escrow depository shall  
3       provide, to all parties to each escrow whose account  
4       has an outstanding balance, written notice of the  
5       termination of the escrow depository's operations and  
6       the specific arrangements to handle the particular  
7       escrow;

8       (3) At least thirty days before closing its escrow  
9       depository operations, the escrow depository shall  
10       provide written notice to the commissioner. The  
11       notice shall include:

12       (A) The intended date escrow depository operations  
13       will be terminated;

14       (B) The name, address, and telephone number of the  
15       responsible person designated to implement the  
16       plan to terminate escrow depository operations;

17       (C) A copy of the plan to terminate escrow depository  
18       operations, certified by one officer of the  
19       escrow depository as having been duly adopted by  
20       the board of directors;

21       (D) Any application that may be required pursuant to  
22       section 449-8.6, if applicable;



- 1           (E) A copy of the notice sent by the escrow  
2           depository to all parties to each escrow whose  
3           account had an outstanding balance; and
- 4           (F) Any other information that the commissioner may  
5           require;
- 6           (4) Within five days after closing its escrow depository  
7           operations, the escrow depository shall surrender all  
8           escrow depository licenses to the commissioner;
- 9           (5) Within ninety days after terminating its escrow  
10           depository operations, the escrow depository shall  
11           submit to the commissioner:
- 12           (A) An itemized accounting of funds held in trust at  
13           the time of closure, including the names of the  
14           parties to the escrow, the escrow number, the  
15           amount of funds held, and the purpose of the  
16           funds;
- 17           (B) The location, including street address, where the  
18           books and records are stored; and
- 19           (C) The name, address, and telephone number of a  
20           contact person who shall be responsible for  
21           answering questions and providing documents on  
22           closed escrows. This individual, or any



1           successor, shall continue to perform this task,  
2           and shall notify the commissioner of any changes  
3           in the information concerning the contact person  
4           and the location of the escrow records until the  
5           earlier of six years or the lapse of the  
6           applicable statutes of limitations.

7       (6) If any escrow account has an outstanding balance on  
8       the date the escrow depository operations is  
9       terminated, the responsible person shall provide the  
10       commissioner with monthly reconciliations of the  
11       escrow account to the trial balance, until the earlier  
12       of:

13       (A) Six months after the date the escrow depository  
14       operations is terminated; or

15       (B) The date the escrow account balance is zero. The  
16       reconciliations shall be submitted to the  
17       commissioner within twenty days of the end of the  
18       period;

19       (7) Any balance remaining in an escrow account six months  
20       after the date the escrow depository operations is  
21       terminated shall be presumed abandoned, and shall be



1           reported and paid or delivered to the director of  
 2           finance in accordance with chapter 523A; and  
 3       (8) All escrow records shall be maintained in accordance  
 4           with section 449-21.

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

8           SECTION 3. Section 449-1, Hawaii Revised Statutes, is  
 9 amended to read as follows:

10           "**§449-1 Definitions.** As used in this chapter:

11           ~~["Acquisition of control" means acquisition by a person or~~  
 12 ~~persons acting in concert of the power to vote fifty-one per~~  
 13 ~~cent or more of any voting securities of a licensee.]~~

14           "Commissioner" means the commissioner of financial  
 15 institutions of this State.

16           "Control" means owning or having the power to vote more  
 17 than fifty per cent of any class of voting securities of an  
 18 escrow depository, whether directly or indirectly, solely or  
 19 through another person or transaction, or in concert with  
 20 another.

21           "Director" means a director of a corporation, or a manager  
 22 of a limited liability company, or other person who has



1 authority substantially similar to that of a director of a  
2 corporation.

3 "Division" means the division of financial institutions of  
4 the department of commerce and consumer affairs.

5 "Escrow" means any transaction affecting the title to real  
6 or personal property, including leaseholds, proprietary  
7 leaseholds, and condominiums, in which a person not a party to  
8 the transaction and neither having nor acquiring any interest in  
9 the title receives from one party to the transaction, holds  
10 until the happening of an event or performance of a condition  
11 and then delivers to another party to the transaction, any money  
12 or other consideration or any instrument affecting the title to  
13 that real or personal property, all in accordance with the terms  
14 of the agreement between the parties to the transaction.

15 "Escrow account" means any escrow depository account with a  
16 financial institution to which cash or items are deposited with  
17 respect to any escrow.

18 "Escrow depository" means the corporation or limited  
19 liability company which, in an escrow, and for compensation,  
20 receives, holds, and delivers the money, other consideration,  
21 real or personal property, or instrument affecting title to real  
22 or personal property.



1 "Financial institution" means any bank, savings bank,  
2 savings and loan association, [~~financial services loan company,~~  
3 or credit union doing business in the State whose accounts are  
4 insured by the Federal Deposit Insurance Corporation, the  
5 National Credit Union Share Insurance Fund or other similar or  
6 successor program of federal insurance.

7 "Item" means any check (including a cashier's or certified  
8 check), negotiable order of withdrawal, draft, traveler's check,  
9 or money order.

10 "Net worth" means total assets less total liabilities.

11 "Officer" means an officer of a corporation or of a limited  
12 liability company, or other person who has authority  
13 substantially similar to that of an officer of a corporation.

14 "Person" means [~~in addition to the singular, persons,~~  
15 ~~group of persons, cooperative association, company, firm,~~  
16 ~~partnership, corporation, or other legal entity, and includes~~  
17 ~~the agents and employees of any person.] a natural person,  
18 entity, or organization, including without limitation, an  
19 individual, corporation, joint venture, partnership, sole  
20 proprietorship, association, cooperative, estate, trust, or  
21 governmental unit.~~



1       "Shareholder" means an owner of any interest in a  
2 corporation or in a limited liability company, including a  
3 member of a limited liability company.

4       "Valid funds" means all funds necessary to close an escrow  
5 and which have been deposited with and credited to the escrow  
6 account upon the earlier of:

7       (1) The scheduled closing or recordation; or

8       (2) The time specified in the escrow instructions agreed  
9 upon by the escrow depository and the parties to the  
10 escrow.

11 To assure the timely delivery of valid funds and the closing of  
12 the escrow, the escrow depository may require that all funds be  
13 timely deposited with the escrow depository by electronic  
14 transfer.

15       "Voting securities" means certificates or other evidence of  
16 the voting stock of a corporation or of the voting ownership  
17 interests in a limited liability company."

18       SECTION 4. Section 449-1.5, Hawaii Revised Statutes, is  
19 amended to read as follows:

20       "~~§~~449-1.5~~§~~ **Applicability of chapter.** This chapter  
21 shall apply to all escrow depositories and to any ~~other~~  
22 ~~corporations~~ persons that, by violating any of the provisions



1 of this chapter, shall be subject to the penalties and fines  
2 provided in this chapter."

3 SECTION 5. Section 449-1.6, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "~~{}~~§449-1.6~~{}~~ **Name of escrow depository.** (a) The name  
6 of every escrow depository licensed to engage in business in  
7 this State shall be subject to the approval of the commissioner,  
8 and shall have the following characteristics:

9 (1) It shall be unique;

10 (2) It shall not be confusing or likely to mislead the  
11 public into believing that the escrow depository is  
12 related to or part of another company, if it is not so  
13 related; and

14 (3) It shall contain the words "escrow" or "escrow  
15 depository" ~~[, and~~

16 ~~(4) It may but need not contain the words "Corporation",~~  
17 ~~"Incorporated", "Corp.", "Inc.", "Limited" or "Ltd."].~~

18 (b) This section shall not apply to escrow depositories  
19 which were licensed on January 1, 1992. Where an escrow  
20 depository that is not required to comply with this section is  
21 subsequently sold or acquired, the commissioner may require the  
22 acquired company to comply with this section."



1 SECTION 6. Section 449-1.7, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[~~+~~]~~§449-1.7~~[~~+~~] **Indicia of escrow depository prohibited.**

4 Unless licensed under this chapter to engage in the business of  
5 an escrow depository, no person may use the [~~word~~] terms  
6 "escrow", "escrow depository", or words of similar import, or  
7 translations of those words, [~~as a facetious or fanciful name,~~  
8 ~~or~~] in a manner that might suggest or tend to lead others into  
9 believing that the person is an escrow depository."

10 SECTION 7. Section 449-1.8, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[~~+~~]~~§449-1.8~~[~~+~~] ~~Confidential portion of application or~~

13 Confidentiality of records. (a) Information contained in any  
14 application or record shall be made available to the public with  
15 not less than thirty days advance notice to the escrow  
16 depository [~~unless that information may be withheld from public~~  
17 ~~disclosure by the commissioner under chapter 92F.~~], except for  
18 information that:

19 (1) Is related to an examination performed by or on behalf  
20 of the commissioner or contained in any report of  
21 examination;



1       (2) Is related to the business, personal, or financial  
2       affairs of any person and is furnished to or for the  
3       use of the commissioner in confidence;

4       (3) Is related to commercial or trade secrets obtained  
5       from a person and is privileged or confidential; or

6       (4) May be withheld from public disclosure by the  
7       commissioner under chapter 92F.

8       (b) The report of examination and its contents shall  
9       remain the property of the commissioner and shall not be  
10      disclosed to any person who is not an officer, director,  
11      employee, or authorized auditor, attorney, or other consultant  
12      or advisor of the escrow depository. Any person that has  
13      received the report from the escrow depository shall be bound by  
14      the confidentiality provisions of this section. Subpoenas of or  
15      other legal process to obtain reports of examination or  
16      information contained therein shall be directed to the  
17      commissioner and not to the escrow depository that is the  
18      subject of the examination.

19      (c) The commissioner may furnish reports of examination  
20      and other information relating to the examination of an escrow  
21      depository to:



1       (1) The governor, the attorney general, and the heads of  
2       other state governmental agencies having regulatory  
3       authority over the escrow depository; and

4       (2) Agencies of the United States or a state for use where  
5       the requesting agency agrees to use the information  
6       only for functions directly related to the exercise of  
7       its appropriate supervisory authority or where  
8       necessary to investigate civil or criminal charges in  
9       connection with the affairs of any escrow depository  
10      under the supervision of the commissioner.

11      (d) The commissioner may disclose statistical data  
12      regarding the number of consumer complaints filed against an  
13      escrow depository, the general nature of the complaint, and the  
14      resolution of the complaint.

15      (e) Any person who wilfully violates this section shall be  
16      guilty of a misdemeanor punishable pursuant to sections 706-640  
17      and 706-663. Such person shall also be subject to an  
18      administrative penalty pursuant to section 449-4. If such  
19      person is an employee, contractor, or appointee of the State,  
20      such person shall be subject to immediate dismissal or  
21      termination proceedings without violating such person's  
22      contract, if any."



1 SECTION 8. Section 449-3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§449-3 Excepted from this chapter.** This chapter does not  
4 apply to any of the following when acting as escrow  
5 depositories:

6 (1) [~~Banks,~~] Financial institutions and trust companies[~~,~~  
7 ~~and savings and loan associations,~~] authorized under  
8 any law of this State or of the United States to do  
9 business in the State;

10 (2) Any person licensed as a real estate broker in the  
11 State who is the broker for a party to the escrow,  
12 provided the person does not charge any escrow fee;  
13 and

14 (3) Any person licensed to practice law in the State who[~~,~~  
15 ~~in escrow,~~] does not charge any escrow fee and is not  
16 acting as the employee of a corporation[~~,~~ ~~provided the~~  
17 ~~person does not charge any escrow fee.~~] or a limited  
18 liability company."

19 SECTION 9. Section 449-4, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 **"§449-4 Administrative penalty.** Any person who wilfully  
22 violates any of the provisions of this chapter, shall be subject



1 to an administrative [~~fine~~] penalty of \$5,000 for each  
2 violation. No [~~licensee~~] escrow depository shall be subject to  
3 this penalty for a violation of section 449-16(b) or (c) if the  
4 violation was not intentional or resulted from a bona fide  
5 error, notwithstanding the maintenance of procedures reasonably  
6 adopted to avoid that error. Examples of bona fide errors  
7 include, but are not limited to, clerical miscalculations,  
8 computer malfunction, printing errors, and computer programming  
9 errors."

10 SECTION 10. Section 449-5, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§449-5 License required to act as escrow depository.** No  
13 person shall act as an escrow depository in this State unless  
14 [~~it is a corporation~~] licensed to do so by the commissioner.

15 [~~No person subject to the provisions of this chapter not~~  
16 ~~licensed or exempted under this chapter shall transact any~~  
17 ~~business under any name, title or descriptive term which~~  
18 ~~contains the words "escrow", "escrow depository" or any other~~  
19 ~~word or phrase having the same or similar meaning.]~~

20 It shall be unlawful to act as an escrow depository as to  
21 property located in this State from out-of-state locations



1 unless a license to act as a Hawaii escrow depository is  
2 obtained from the commissioner."

3 SECTION 11. Section 449-5.5, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 **"§449-5.5 Net [~~capital.~~] worth.** The net [~~capital~~] worth  
6 of any [~~corporation~~] escrow depository engaging in [~~the escrow~~  
7 ~~depository~~] business under this chapter shall be not less than  
8 [~~\$50,000. A corporation in~~] \$250,000. In lieu of the net  
9 [~~capital~~] worth requirement, an escrow depository may  
10 [~~alternatively~~] file a bond for [~~\$50,000~~] \$250,000 that is made  
11 conditional upon [~~its~~] the escrow depository's satisfactory  
12 performance of escrow conditions and satisfaction of all escrow  
13 liabilities. The amount of the minimum net [~~capital~~] worth of  
14 [~~\$50,000,~~] \$250,000 or the bond[~~, or a combination of both net~~  
15 ~~capital or bond totalling \$50,000~~] shall be maintained at all  
16 times by the [~~licensee.~~

17 ~~Licensees in operation on May 24, 1973, pursuant to this~~  
18 ~~chapter with a net capital of less than \$50,000 shall increase~~  
19 ~~its net capital to \$50,000 or file a bond for \$50,000, or take~~  
20 ~~action so that a combination of its net capital and bond totals~~  
21 ~~\$50,000, before May 24, 1978.] escrow depository."~~



1 SECTION 12. Section 449-6, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§449-6 Application for license. (a) Any corporation or  
4 limited liability company desiring to be licensed as an escrow  
5 depository shall file an application [~~upon forms to be~~  
6 ~~furnished~~] in the form prescribed by the commissioner. The  
7 application shall be accompanied by a filing fee no part of  
8 which shall be refundable.

9 (b) [~~The~~] Unless waived by the commissioner, the  
10 application shall contain the following information:

11 (1) The [~~corporate~~] name [~~, amount of capital,~~] and main  
12 office address of the applicant;

13 (2) The applicant's net worth, of which a minimum of  
14 \$250,000 initially shall be in cash;

15 (3) The terms of the acquisition or lease of the proposed  
16 site of the main office and any branches, including  
17 the names and addresses of the parties, the size of  
18 the premises in square feet, and, if applicable, the  
19 duration of the lease, the monthly rent, and details  
20 of any option for a lease extension;

21 [~~(2)~~] (4) The names of [~~the stockholders,~~] shareholders  
22 holding ten per cent or more of the voting securities



- 1           of the applicant, officers, [~~and~~] directors, proposed  
2           designated principal escrow officer, and any branch  
3           escrow officers of the applicant;
- 4       ~~[(3)]~~ (5) Evidence of the character, financial  
5           responsibility, experience, and ability of the  
6           officers [~~and~~], directors[~~;~~~~and~~  
7       ~~(4) The names of the proposed escrow officers and their~~  
8       ~~qualifications.],~~ proposed designated principal escrow  
9       officer, and any branch escrow officers;
- 10       (6) The fingerprints of the officers, directors, proposed  
11       designated principal escrow officer, and any branch  
12       escrow officers of the applicant, submitted on a  
13       fingerprint card to be obtained from the division and  
14       accompanied by payment of the applicable fee for each  
15       criminal history record check; and
- 16       (7) Any other information that the commissioner may  
17       require.
- 18       (c) The commissioner may request a criminal history record  
19       check of the officers, directors, designated principal escrow  
20       officer, and any branch escrow officers of an applicant for a  
21       license as an escrow depository in accordance with section 846-  
22       2.7."



1 SECTION 13. Section 449-7, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 ~~"§449-7 [Investigation and ruling. The commissioner shall~~  
4 ~~make an investigation into the information furnished by the~~  
5 ~~applicant and may require the applicant to furnish additional~~  
6 ~~information. If the commissioner is satisfied, with or without~~  
7 ~~a hearing upon the application, that the applicant has met all~~  
8 ~~the criteria set forth for approval, the commissioner shall~~  
9 ~~approve the application.]~~ **Publication of notice.** (a) When the

10 application for a license is complete and has been accepted by  
11 the commissioner, the applicant shall publish a notice at least  
12 once in a newspaper of general circulation in this State.

13 (b) The notice shall be in a form prescribed by the  
14 commissioner and shall state:

15 (1) The fact that an application has been filed;

16 (2) The name of the applicant;

17 (3) The location or locations at which the applicant  
18 proposes to engage in business; and

19 (4) That within fifteen days after the publication of the  
20 notice, any person may file with the commissioner:

21 (A) Written comments on the application; or



1           (B) A request for an informational and comment  
2           proceeding to present information and comments to  
3           the commissioner, which request shall be  
4           accompanied by a brief statement of the person's  
5           interest in the application, the matters to be  
6           discussed at the informational and comment  
7           proceeding, and the reasons why written comments  
8           will not suffice in lieu of an informational and  
9           comment proceeding."

10           SECTION 14. Section 449-7.4, Hawaii Revised Statutes, is  
11 amended to read as follows:

12           "~~+~~**\$449-7.4**~~+~~ **Grant of approval.** (a) Following the  
13 ~~[hearing]~~ informational and comment proceeding on the  
14 application, if any, the commissioner shall issue a written  
15 decision and order. If the commissioner decides in favor of the  
16 application, the commissioner shall issue a license to act as an  
17 escrow depository pursuant to section 449-8.

18           (b) Approval shall be granted only if the commissioner  
19 finds that the character, financial responsibility, experience,  
20 ability, and general fitness of the officers ~~[and]~~, directors,  
21 designated principal escrow officer, and any branch escrow  
22 officers are such as to command the confidence of the community



1 in the State and to warrant the [~~beliefs~~] belief that the  
2 officers [~~and~~], directors, designated principal escrow officer,  
3 and any branch escrow officers are competent to successfully  
4 manage an escrow business and the applicant will be an honest  
5 and efficient escrow depository.

6 (c) In granting approval, the commissioner may impose such  
7 conditions and restrictions as shall be in the public interest,  
8 including without limitation requiring an applicant to fulfill  
9 representations contained in its application and agreements made  
10 during the application process.

11 (d) After approval of the application and payment of the  
12 license fee, the commissioner shall issue to the applicant a  
13 license to act as an escrow depository. The license shall be  
14 effective only upon the applicant's filing with the commissioner  
15 an escrow depository's bond and evidence that fidelity bonds or  
16 fidelity insurance, and errors and omissions insurance, or cash,  
17 an unconditional and irrevocable letter of credit, or securities  
18 deposits permitted in lieu thereof, have been obtained, as  
19 provided in sections 449-9, 449-11, and 449-12."

20 SECTION 15. Section 449-7.5, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "~~§449-7.5~~ §449-5.3 Licensing requirements~~[-]~~; principal  
2 escrow officer. (a) Every corporation or limited liability  
3 company desiring to be licensed as an escrow depository shall be  
4 incorporated or so organized in this State and shall have and  
5 maintain a principal place of business in the State for the  
6 transaction of its escrow depository business.

7           (b) An escrow depository that is a limited liability  
8 company shall be managed by one or more managers who shall be  
9 natural persons, and its articles of organization and operating  
10 agreement shall not include any provision for the automatic  
11 termination, dissolution, or suspension of the company upon the  
12 happening of some event including the death, disability,  
13 bankruptcy, expulsion, or withdrawal of a member.

14           ~~[(b)]~~ (c) A license issued under this chapter shall be  
15 prominently displayed in the place or places of business of the  
16 escrow depository.

17           ~~[(c)]~~ (d) The escrow depository business shall be under  
18 the direct management of an officer, or an employee, designated  
19 by its board of directors as the company's principal escrow  
20 officer ~~[for the corporation and if the designated escrow~~  
21 ~~officer terminates the escrow officer's employment with the~~  
22 ~~escrow depository, the licensee shall notify the commissioner in~~



1 ~~writing at least fifteen days before the termination date of the~~  
2 ~~designated escrow officer. The licensee shall also inform the~~  
3 ~~commissioner in writing of the new escrow officer for the~~  
4 ~~corporation designated by its board of directors before the~~  
5 ~~present escrow officer terminates the present escrow officer's~~  
6 ~~employment with the company, setting forth the experience,~~  
7 ~~integrity, and competency of the new designated escrow officer~~  
8 ~~in handling escrow transactions, and such other information as~~  
9 ~~required by the commissioner].~~ The designated principal escrow  
10 officer shall possess experience and knowledge commensurate with  
11 the officer's duties and responsibilities and with the size and  
12 complexity of the operations to be supervised.

13 (e) The escrow depository shall give the commissioner  
14 written notice at least fifteen days before the effective date  
15 of any change of the designated principal escrow officer, or  
16 within fifteen days of an unanticipated vacancy. The notice  
17 shall specify:

18 (1) The effective date of any change of the designated  
19 principal escrow officer;

20 (2) The name of the successor designated principal escrow  
21 officer designated by the board of directors; and



1        (3) The experience, integrity, and competency of the  
2                    successor designated principal escrow officer in  
3                    handling escrow transactions."

4            SECTION 16. Section 449-8, Hawaii Revised Statutes, is  
5 amended to read as follows:

6            "~~§449-8 [Issuance and renewal of license. After approval~~  
7 ~~of the application, and payment of the license fee, the~~  
8 ~~commissioner shall issue to the applicant a license to act as an~~  
9 ~~escrow depository. The license shall be effective only upon the~~  
10 ~~applicant's filing with the commissioner an escrow depository's~~  
11 ~~bond and evidence that fidelity bonds and errors and omissions~~  
12 ~~insurance, or cash or securities deposits permitted in lieu~~  
13 ~~thereof, have been obtained, all as provided in sections 449-9,~~  
14 ~~449-11, and 449-12.] Renewal of license. (a) The escrow~~  
15 depository license shall be renewed annually, as of July 1[~~7~~  
16 ~~upon payment of the annual]].~~

17            (b) The renewal [fee and the finding of the commissioner,  
18 ~~from the] application shall be filed in the form prescribed by  
19 the commissioner, shall be accompanied by the annual license  
20 renewal fee, and shall contain the following information  
21 [contained in the annual corporate exhibit of the licensee or  
22 investigation or hearing,] unless waived by the commissioner:~~



- 1        (1) The name, main office address, telephone number, and
- 2        main office license number of the applicant;
- 3        (2) The name of the designated principal escrow officer;
- 4        (3) The effective date of the principal escrow officer's
- 5        designation by the board of directors;
- 6        (4) The address and license number of every branch office;
- 7        and
- 8        (5) Evidence of each bond and insurance coverage required
- 9        by this chapter, showing the bond or insurance policy
- 10       number, the type of bond or insurance coverage, the
- 11       amount of coverage including the amount of any
- 12       deductible, and the period of coverage.
  
- 13       (c) If the commissioner is satisfied that the [licensee]
- 14       applicant continues to meet the qualifications for licensing and
- 15       has continued in force the bonds and insurance or the cash or
- 16       securities deposits permitted in lieu thereof[-], the
- 17       commissioner shall renew the license.
  
- 18       (d) An applicant who is denied license renewal may request
- 19       a hearing before the commissioner in accordance with chapter 91.
- 20       Any final decision of the commissioner denying an applicant a
- 21       license renewal may be appealed to the circuit court as provided
- 22       in chapter 91."



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

3 "[+]§449-8.6[+] **Sale or transfer of license or change in**  
4 **control.** (a) No escrow depository license shall be sold or  
5 transferred.

6 (b) A bona fide sale of all or substantially all of the  
7 ongoing operations of [~~a licensee~~] an escrow depository shall  
8 not result in the assignment or transfer of the escrow  
9 depository license. The purchaser of all or substantially all  
10 of the ongoing operations of [~~a licensee~~] an escrow depository  
11 shall file an application for approval in accordance with this  
12 chapter and shall not act as an escrow depository unless it has  
13 been licensed by the commissioner.

14 (~~(c) [If the licensee is a corporation, any intended~~  
15 ~~transfer of its voting stock which may result in the acquisition~~  
16 ~~of control of the licensee may be considered a transfer of~~  
17 ~~license. Any intended transfer of the voting stock which may~~  
18 ~~result in the acquisition of control shall be reported to the~~  
19 ~~commissioner in writing. Upon determination by the commissioner~~  
20 ~~that the intended transfer will result in the acquisition of~~  
21 ~~control, the transferee of the stock shall file an application~~  
22 ~~for approval to act as an escrow depository and shall not~~



1 ~~acquire control of an escrow depository until the transferee has~~  
2 ~~been approved by the commissioner.] A person who is not already~~  
3 ~~in control of an escrow depository shall not acquire control~~  
4 ~~without the prior approval of the commissioner. To request the~~  
5 ~~commissioner's approval, the person shall file a written~~  
6 ~~application containing the following unless waived by the~~  
7 ~~commissioner:~~

8       (1) Information regarding the proposed acquirer;  
9       (2) Details concerning the proposed acquisition; and  
10       (3) The names and fingerprints of any proposed new  
11             officers, directors, designated principal escrow  
12             officer, and branch escrow officers of the escrow  
13             depository, submitted on a fingerprint card to be  
14             obtained from the division and accompanied by payment  
15             of the applicable fee for a criminal history record  
16             check for each such person.

17       (d) The commissioner may request a criminal history record  
18 check of the officers, directors, designated principal escrow  
19 officer, and any branch escrow officers of an applicant for a  
20 license as an escrow depository in accordance with section 846-  
21 2.7."



1 SECTION 18. Section 449-9, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§449-9 Escrow depository's bond.** (a) Before an escrow  
4 depository's license becomes effective, the escrow depository  
5 shall give a bond to the commissioner in the penal sum of not  
6 less than [~~\$100,000~~] \$250,000 executed by a surety insurer  
7 authorized in this State, conditioned:

8 (1) That the escrow depository will honestly, faithfully,  
9 and with diligence apply all funds, other  
10 consideration, or property and instruments affecting  
11 title in accordance with the instructions under which  
12 the same were deposited with it, and will promptly  
13 account for the same; and

14 (2) That the escrow depository will satisfy all judgments  
15 and decrees which may be recovered against it in any  
16 action or proceeding brought under this chapter.

17 (b) The amount of the escrow depository bond shall be  
18 \$250,000.

19 (c) The aggregate liability of the surety for all breaches  
20 of the conditions of the bond shall, in no event, exceed the  
21 penal sum of the bond. In lieu of the bond, an escrow  
22 depository may deposit cash, [~~an~~] an unconditional and



1 irrevocable letter of credit, or securities under such terms and  
2 conditions as are acceptable to the commissioner."

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

5 "~~§449-11 Fidelity bonds[+] or fidelity insurance; deposit.~~

6 [A] For all of its directors, officers, and employees who have  
7 access to money or negotiable securities or instruments in their  
8 possession or under their control, a licensed escrow depository  
9 shall at all times either:

10 (1) Maintain a fidelity bond [~~executed~~] or fidelity  
11 insurance bond issued by a surety insurer authorized  
12 to do business in the State in an amount not less than  
13 [~~\$25,000; provided that any bond which is subject to a~~  
14 ~~deductible thereunder in excess of \$5,000 per~~  
15 ~~occurrence shall require the prior approval of the~~  
16 ~~commissioner, who may take into consideration, among~~  
17 ~~other factors, the amount of the proposed bond,]~~  
18 \$250,000; or

19 (2) Deposit an equivalent amount of cash, an unconditional  
20 and irrevocable letter of credit, or securities under  
21 such terms and conditions as are acceptable to the  
22 commissioner[~~7~~



1 ~~upon all of its directors, officers, and employees who have~~  
 2 ~~access to money or negotiable securities or instruments in its~~  
 3 ~~possession or under its control. Notwithstanding the above~~  
 4 ~~provision, the escrow depository may carry bonds or deposit cash~~  
 5 ~~or securities above the amounts required by the commissioner]."~~

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

8 **"§449-12 Errors and omissions insurance; deposit. A**  
 9 licensed escrow depository shall at all times either:

- 10 (1) Maintain a policy of errors and omissions insurance  
 11 executed by an insurer authorized to do business in  
 12 the State in an amount not less than [~~\$100,000;~~  
 13 ~~provided that any policy which is subject to a~~  
 14 ~~deductible thereunder in excess of \$10,000, per~~  
 15 ~~occurrence, shall require the prior approval of the~~  
 16 ~~commissioner, who may take into consideration, among~~  
 17 ~~other factors, the amount of the proposed coverage;]~~  
 18 \$250,000; or
- 19 (2) Deposit an equivalent amount of cash, an unconditional  
 20 and irrevocable letter of credit, or securities under  
 21 such terms and conditions as are acceptable to the  
 22 commissioner."



1 SECTION 21. Section 449-13, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§449-13 Cancellation of bonds or insurance; withdrawal of**  
4 **deposits.** None of the bonds or insurance or deposits in lieu  
5 thereof required by this chapter shall be [~~cancelled~~] canceled  
6 or withdrawn as to future accruing liability except upon prior  
7 written notice to the commissioner: sixty days' notice for the  
8 bonds or deposits, and thirty days' notice for the insurance.  
9 The license of any [~~licensee~~] escrow depository shall be  
10 suspended upon cancellation of any bond or insurance or upon  
11 withdrawal of any deposit in lieu thereof."

12 SECTION 22. Section 449-14, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

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

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



1 (2) For an application for approval to establish a branch  
2 office;

3 (3) For an application for approval to relocate an  
4 existing main office or branch[+] office;

5 (4) For initial issuance [~~and annual renewal~~] of an escrow  
6 depository's license, \$100;

7 (5) For annual renewal of an escrow depository's license,  
8 \$100;

9 (6) For an application for approval to convert an escrow  
10 depository to a corporation or a limited liability  
11 company, \$100;

12 [~~(5)~~] (7) For initial issuance [~~and annual renewal~~] of a  
13 branch office license, \$50;

14 (8) For annual renewal of a branch office license, \$50;  
15 and

16 [~~(6)~~] (9) For reissuance of a license [~~for the change in~~  
17 the business address of its office, \$25; and], \$25.

18 [~~(7)~~] ~~For an application for approval to cease business as~~  
19 ~~an escrow depository.]"~~

20 SECTION 23. Section 449-15, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           **"§449-15 Audited statements.** (a) Each escrow depository,  
2 at its own expense, shall submit to the commissioner within  
3 ninety days after the close of its fiscal year its annual  
4 financial statements accompanied by a report of an independent  
5 certified public accountant who has [~~prepared or~~] examined those  
6 statements. For good cause, the commissioner may grant [~~a~~  
7 ~~licensee~~] an escrow depository an extension of an additional  
8 thirty days to file the reports required by this section.

9           (b) The audited financial statements shall be prepared in  
10 accordance with generally accepted accounting principles and the  
11 examination by the independent certified public accountant shall  
12 be performed in accordance with generally accepted auditing  
13 standards. The financial statements and the independent  
14 certified public accountant's report shall include but not be  
15 limited to the following:

16           (1) An unqualified opinion on the fair presentation of the  
17 financial statements taken as a whole. To the extent  
18 that this is not possible, then a detailed footnote  
19 explaining the reason why an unqualified opinion could  
20 not be given shall suffice;

21           (2) A direct verification of escrow funds and escrow  
22 liabilities. If less than a one hundred per cent



1 verification is performed, there shall be a separate  
2 letter from the independent certified public  
3 accountant indicating: the number of accounts  
4 verified; the percentage of the verification; the  
5 basis for determining the sample size; the method used  
6 in selecting the sample items to verify; a description  
7 of the sampling technique used; the discrepancies  
8 noted; and how the discrepancies were resolved;

9 (3) Footnotes to the audited financial statement showing  
10 the escrow funds and escrow liabilities and, to the  
11 extent that these amounts differ, a reconciliation of  
12 the amounts; and

13 (4) A statement as to whether the escrow depository is in  
14 compliance with this chapter. If the independent  
15 certified public accountant reports any incident  
16 involving noncompliance, the statement shall address  
17 whether the noncompliance may have a material adverse  
18 impact on the ongoing operations of the [~~company.~~]  
19 escrow depository.

20 (c) Except with the written approval of the commissioner,  
21 an escrow depository shall not be deemed in compliance with this  
22 section if the independent certified public accountant expresses



1 a qualified or adverse opinion or a disclaimer of opinion. A  
2 request for approval shall be filed by the escrow depository  
3 concurrently with the filing of the audited financial statements  
4 and the independent certified public accountant's report. The  
5 request shall be in letter form and shall [~~contain the arguments~~  
6 ~~as to~~] explain why the audited financial statements and the  
7 independent certified public accountant's report should be  
8 considered acceptable. Failure to comply with this section  
9 shall be grounds for the suspension or revocation of the escrow  
10 depository's license in accordance with section 449-17. Failure  
11 to comply with this section shall authorize the commissioner to  
12 order an independent audit at the expense of the escrow  
13 depository.

14 (d) Failure to [~~furnish any report or information as and~~  
15 ~~when required under~~] comply with this section shall be grounds  
16 for the commissioner to [~~impose an administrative penalty of~~  
17 ~~\$200 per day for each day that the audit is overdue. In~~  
18 ~~addition, if the report or information is not filed within~~  
19 ~~thirty days of the required deadline, the commissioner may~~  
20 ~~prohibit the escrow depository from accepting new business until~~  
21 ~~the report or information is filed.]:~~



1        (1) Suspend or revoke the escrow depository's license in  
2        accordance with section 449-17;

3        (2) Order an independent audit at the expense of the  
4        escrow depository; and

5        (3) Impose an administrative penalty of \$200 per day for  
6        each day that the escrow depository is not in  
7        compliance with this section.

8        (e) If the audited financial statements and report are not  
9        filed within thirty days of the required deadline, the  
10       commissioner may prohibit the escrow depository from accepting  
11       new business until the audited financial statements and report  
12       are filed."

13       SECTION 24. Section 449-16, Hawaii Revised Statutes, is  
14       amended to read as follows:

15       **"§449-16 Accounting for moneys, property, etc.** (a) Every  
16       [~~licensee under this chapter~~] escrow depository shall have the  
17       responsibility of a trustee for all moneys, other consideration,  
18       or instruments received by it. No [~~licensee~~] escrow depository  
19       shall [~~mingle~~] commingle any such moneys or other property with  
20       its own moneys or other property, or with moneys or other  
21       property held by it in any other capacity. All moneys held by  
22       [~~a licensee~~] an escrow depository in escrow [~~as herein defined~~]



1 shall be deposited in financial institutions [~~payable on~~  
2 ~~demand~~]. Under this chapter, deposits in financial institutions  
3 are limited to sweep accounts as described in this section,  
4 checking accounts, money market deposit accounts, [~~and~~] savings  
5 accounts, [~~with no specified maturity date.~~] and time deposit  
6 accounts. Deposits at financial institutions may be held in  
7 sweep accounts, provided that:

8 (1) The [~~licensee~~] escrow depository using the sweep  
9 account shall have a net worth of not less than  
10 \$1,000,000;

11 (2) The sweep account is a deposit account administered by  
12 a financial institution in which the moneys over a  
13 minimum balance are periodically transferred into a  
14 money market mutual fund account invested only in  
15 obligations of:

16 (A) The United States government;

17 (B) Agencies backed by the full faith and credit of  
18 the United States government; or

19 (C) Agencies originally established or chartered by  
20 the United States government to serve public  
21 purposes; and

22 periodically recredited to the sweep account; and



1           (3) The [~~licensee~~] escrow depository is liable for all  
2           moneys transferred to the money market mutual fund  
3           account under the sweep account, including any loss of  
4           value.

5           (b) [~~No licensee~~] Except as provided in subsection (c), no  
6           escrow depository shall disburse funds from an escrow account  
7           until [~~cash~~] it holds valid funds [~~and~~] or items sufficient to  
8           fund any disbursements from the account have been received and  
9           deposited to the account [~~, and with respect to such items the~~  
10          ~~licensee complies with the provisions of either paragraphs (1)~~  
11          ~~or (2) hereof.~~

12          ~~(1) Where an item has been received and submitted for~~  
13          ~~collection, no licensee shall disburse funds from an~~  
14          ~~escrow account with respect to the item until final~~  
15          ~~settlement of the item has been received by the~~  
16          ~~financial institution to which the item has been~~  
17          ~~submitted for collection.~~

18          ~~(2) No licensee shall disburse funds from the escrow~~  
19          ~~account with respect to an item drawn on a financial~~  
20          ~~institution until the licensee confirms that~~  
21          ~~sufficient collected funds are on deposit in the~~  
22          ~~drawer's account].~~



1 (c) [~~A licensee~~] An escrow depository may deliver any  
2 money, consideration, or instrument affecting the [~~title to real~~  
3 ~~property~~] escrow prior to valid funds becoming available for  
4 disbursement under subsection (b) [~~if it has received the~~  
5 ~~written consent of the parties to the transaction.~~] only upon  
6 the approval of the escrow depository and the parties to the  
7 transaction."

8 SECTION 25. Section 449-17, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "**§449-17 Revocation and suspension of licenses.** (a) The  
11 commissioner may revoke any license issued hereunder, or suspend  
12 the right of [~~the licensee~~] an escrow depository to use the  
13 license, for any of the following causes:

- 14 (1) Making any material misrepresentation concerning any  
15 escrow [~~transaction~~];
- 16 (2) Making any false promises concerning any escrow  
17 [~~transaction~~] of a character likely to mislead  
18 another;
- 19 (3) Pursuing a continued and flagrant course of  
20 misrepresentation, or making of false promises,  
21 through advertising or otherwise;



- 1           (4) ~~[Without first having obtained the written consent so~~  
2           ~~to do of both parties involved in any escrow~~  
3           ~~transaction, acting]~~ Acting for both parties in  
4           connection with ~~[such transaction,]~~ an escrow, or  
5           collecting or attempting to collect commissions or  
6           other compensation for its services from ~~[both of]~~ the  
7           parties~~[+]~~ without having obtained the written consent  
8           of the parties involved in the escrow;
- 9           (5) Failing, within a reasonable time, to account for any  
10          moneys belonging to others which may be in the  
11          possession or under the control of the ~~[licensee,]~~  
12          escrow depository;
- 13          (6) ~~[Any]~~ Engaging in any other conduct constituting  
14          fraudulent or dishonest dealings;
- 15          ~~[+7] Violating any of the provisions of this chapter or the~~  
16          ~~rules promulgated pursuant thereto;~~
- 17          ~~+8]~~ (7) Splitting fees with or otherwise compensating  
18          others not licensed hereunder for referring business;
- 19          ~~[+9]~~ (8) Commingling the moneys or other property of  
20          ~~[others]~~ an escrow with its own~~[+]~~ moneys or other  
21          property, or with moneys or other property held by it  
22          in any other capacity;



1        [~~10~~] (9) Engaging in an unsafe or unsound practice that is  
 2                likely to cause insolvency or substantial dissipation  
 3                of assets or earnings of the [~~licensee;~~] escrow  
 4                depository;

5        [~~11~~] (10) Failing to maintain books and records that are  
 6                sufficiently complete and accurate so as to permit the  
 7                commissioner to determine the financial condition of  
 8                the [~~licensee; and~~] escrow depository;

9        (11) Wilfully violating any order issued by the  
 10                commissioner; and

11        (12) Ceasing, for a period of six consecutive months or  
 12                more, to engage in the business for which its license  
 13                was granted.

14        (b) No license shall be suspended for longer than five  
 15 years and no [~~corporation~~] escrow depository whose license has  
 16 been revoked shall be eligible to apply for a new license until  
 17 the expiration of five years. An escrow depository whose  
 18 license has been suspended or revoked may request a hearing  
 19 before the commissioner in accordance with chapter 91. Any  
 20 final decision of the commissioner suspending or revoking a  
 21 license may be appealed to the circuit court as provided in  
 22 chapter 91.



1        (c) The commissioner shall have discretion to issue a new  
 2 license to an escrow depository whose license has been revoked  
 3 after no less than five years from the date of revocation or to  
 4 reinstate any suspended license, if the grounds for ordering the  
 5 suspension or revocation are no longer present."

6        SECTION 26. Section 449-20, Hawaii Revised Statutes, is  
 7 amended to read as follows:

8        "~~[+]§449-20[+]~~ **Branch offices.** (a) No escrow depository  
 9 may establish a branch office without [first] obtaining prior  
 10 written approval from the commissioner. [The application shall  
 11 set forth the reasons for the branch office and other  
 12 information that may be required by the commissioner.]

13        (b) Each branch office shall have a designated branch  
 14 escrow officer who shall supervise and be responsible for all  
 15 activities at that branch office.

16        (c) An application to establish a branch office shall be  
 17 filed in the form prescribed by the commissioner and shall  
 18 contain the following information:

19        (1) The exact location of the proposed branch office,  
 20 including street address;

21        (2) The terms of the acquisition or lease for the proposed  
 22 branch office including the names and addresses of the



1           parties, the size of the premises in square feet, and,  
 2           if applicable, the duration of the lease, the monthly  
 3           rent, and details of any option for a lease extension;  
 4           and

5           (3) The name and qualifications of the proposed designated  
 6           branch escrow officer who will supervise the branch  
 7           office.

8           (d) The application shall be accompanied by any required  
 9           application fee no part of which shall be refundable."

10           SECTION 27. Section 449-20.5, Hawaii Revised Statutes, is  
 11           amended to read as follows:

12           "~~[+]§449-20.5[+]~~   **[Closing] Terminating branch office.**   (a)

13           An escrow depository shall give the commissioner notice of its  
 14           intent to ~~[close]~~ terminate any branch office at least ~~[thirty]~~  
 15           fifteen days prior to the ~~[closing.]~~ termination. The notice  
 16           shall:

17           (1) State the intended date of ~~[closing,]~~ termination; and

18           (2) Specify the reasons for the ~~[closing,]~~ termination;  
 19           [and

20           ~~(3) Contain a certification by the secretary or other~~  
 21           ~~authorized officer of the escrow depository that the~~



1           ~~decision to close was duly approved by its board of~~  
2           ~~directors].~~

3           (b) After [~~closing~~] terminating a branch office, the  
4 escrow depository shall promptly [~~thereafter~~] surrender to the  
5 commissioner the branch office license for that location."

6           SECTION 28. Section 449-21, Hawaii Revised Statutes, is  
7 amended by amending subsection (d) to read as follows:

8           "(d) Every escrow depository shall preserve all of its  
9 records for a minimum of six years or for such greater or lesser  
10 period as the commissioner may prescribe. For the records of  
11 any escrow handled by or through the escrow depository, the six  
12 years shall begin from the final disbursement of funds after the  
13 completion of the escrow, which includes the disbursement of all  
14 funds and the distribution of all documents."

15           SECTION 29. Section 449-22, Hawaii Revised Statutes, is  
16 amended by amending subsections (b) and (c) to read as follows:

17           "(b) The commissioner shall have full access to the  
18 vaults, books, and [~~papers~~] records of the escrow depository and  
19 may make such inquiries as may be necessary to ascertain the  
20 condition of the [~~corporation.~~] escrow depository. All  
21 directors, [~~incorporators,~~] officers, employees, and agents of  
22 an [~~institution~~] escrow depository being examined shall



1 cooperate fully with the commissioner and the commissioner's  
2 examiners, and shall answer all inquiries and furnish all  
3 information pertaining to the same, to the best of their  
4 knowledge and ability.

5 (c) The [~~licensee~~] escrow depository shall bear the  
6 expenses of any examination [~~or investigation~~] by the  
7 commissioner."

8 SECTION 30. Section 449-23, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "[~~+~~]**\$449-23**[~~+~~] **Removal of officers or directors**[~~-~~] or  
11 prohibition. (a) The commissioner may either order the removal  
12 of any officer or director from office or employment with an  
13 escrow depository [~~and~~] or prohibit the person's affiliation or  
14 participation in the affairs of the escrow depository, or both,  
15 if the commissioner determines that any of the following  
16 circumstances exist:

17 (1) The person has violated [~~a state law regulating escrow~~  
18 ~~depositories, violated a cease and desist order,~~] this  
19 chapter or any rules issued pursuant to this chapter,  
20 engaged or participated in an [~~unsafe or~~] unsound  
21 practice in connection with the escrow depository, or  
22 breached a fiduciary duty;



1 (2) As a result of a statutory or regulatory violation,  
2 unsound practice, or breach of fiduciary duty, the  
3 escrow depository has suffered or will probably suffer  
4 financial loss or other damage, the interests of the  
5 escrow depository's clients have been or may be  
6 prejudiced, or the person has received financial gain  
7 or other benefit as a result of [~~such~~] the violation,  
8 unsound practice, or breach[+] of fiduciary duty; or

9 (3) [~~The~~] A statutory or regulatory violation, unsound  
10 practice, or breach of fiduciary duty involves the  
11 person's personal dishonesty, or demonstrates the  
12 person's wilful or continuing disregard for the safety  
13 or soundness of the escrow depository.

14 (b) The commissioner may also either order the removal of  
15 any person from office or employment with an escrow depository  
16 or prohibit the person's affiliation or participation in the  
17 affairs of the escrow depository, or both, if the commissioner  
18 determines that:

19 (1) The person has been charged in any information,  
20 indictment, or complaint authorized by a United States  
21 attorney, state attorney general, or similar legal  
22 officer, with the commission of, or participation in,



1           a crime involving dishonesty or breach of trust that  
2           is punishable by imprisonment for a term exceeding one  
3           year under state or federal law; and

4           (2) The continued service by the person may pose a threat  
5           to the interests of the escrow depository's clients or  
6           may threaten to impair public confidence in the escrow  
7           depository.

8           ~~(b)~~ (c) The commissioner shall serve the officer or  
9           director and the board of directors of the escrow depository  
10          with written notice containing the alleged violations, unsound  
11          practices, or breaches~~(r)~~ of fiduciary duty, a summary of the  
12          facts upon which the allegations are based, and a statement of  
13          the commissioner's intention to remove the person from office or  
14          prohibit the person's affiliation with the escrow depository, or  
15          both. If the commissioner deems it necessary for the protection  
16          of the escrow depository or its clients, the notice may also  
17          suspend the officer or director from office or prohibit the  
18          party from further participation in any manner in the conduct of  
19          the affairs of the escrow depository, or both.

20          ~~(e)~~ (d) Upon request of the person made within ten days  
21          after service of notice, the commissioner shall hold a hearing  
22          at which any pertinent evidence may be presented and after which



1 the commissioner shall issue findings and a determination. If  
2 no hearing is timely requested, the commissioner may proceed to  
3 issue orders of removal or prohibition, or both, on the basis of  
4 the facts set forth in the written notice.

5 ~~[(d)]~~ (e) No officer or director whose removal or  
6 prohibition has been ordered pursuant to this section shall  
7 thereafter participate in any manner in the conduct of the  
8 affairs of the ~~[affiliated]~~ escrow depository as long as the  
9 order remains in effect. Any violation of the order shall  
10 constitute a violation of law~~[, and shall be sufficient for the~~  
11 ~~issuance of a cease and desist order to the escrow depository]."~~

12 SECTION 31. Section 846-2.7, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14 "(b) Criminal history record checks may be conducted by:  
15 (1) The department of health on operators of adult foster  
16 homes or developmental disabilities domiciliary homes  
17 and their employees, as provided by section 333F-22;  
18 (2) The department of health on prospective employees,  
19 persons seeking to serve as providers, or  
20 subcontractors in positions that place them in direct  
21 contact with clients when providing non-witnessed



1 direct mental health services as provided by section  
2 321-171.5;

3 (3) The department of health on all applicants for  
4 licensure for, operators for, and prospective  
5 employees, and volunteers at one or more of the  
6 following: skilled nursing facility, intermediate  
7 care facility, adult residential care home, expanded  
8 adult residential care homes, assisted living  
9 facility, home health agency, hospice, adult day  
10 health center, special treatment facility, therapeutic  
11 living program, intermediate care facility for the  
12 mentally retarded, hospital, rural health center and  
13 rehabilitation agency, and, in the case of any of the  
14 above-related facilities operating in a private  
15 residence, on any adult living in the facility other  
16 than the client as provided by section 321-15.2;

17 (4) The department of education on employees, prospective  
18 employees, and teacher trainees in any public school  
19 in positions that necessitate close proximity to  
20 children as provided by section 302A-601.5;

21 (5) The counties on employees and prospective employees  
22 who may be in positions that place them in close



- 1           proximity to children in recreation or child care  
2           programs and services;
- 3           (6) The county liquor commissions on applicants for liquor  
4           licenses as provided by section 281-53.5;
- 5           (7) The department of human services on operators and  
6           employees of child caring institutions, child placing  
7           organizations, and foster boarding homes as provided  
8           by section 346-17;
- 9           (8) The department of human services on prospective  
10          adoptive parents as established under section  
11          346-19.7;
- 12          (9) The department of human services on applicants to  
13          operate child care facilities, prospective employees  
14          of the applicant, and new employees of the provider  
15          after registration or licensure as provided by section  
16          346-154;
- 17          (10) The department of human services on persons exempt  
18          pursuant to section 346-152 to be eligible to provide  
19          child care and receive child care subsidies as  
20          provided by section 346-152.5;
- 21          (11) The department of human services on operators and  
22          employees of home and community-based case management



1 agencies and operators and other adults, except for  
2 adults in care, residing in foster family homes as  
3 provided by section 346-335;

4 (12) The department of human services on staff members of  
5 the Hawaii youth correctional facility as provided by  
6 section 352-5.5;

7 (13) The department of human services on employees,  
8 prospective employees, and volunteers of contracted  
9 providers and subcontractors in positions that place  
10 them in close proximity to youth when providing  
11 services on behalf of the office or the Hawaii youth  
12 correctional facility as provided by section 352D-4.3;

13 (14) The judiciary on employees and applicants at detention  
14 and shelter facilities as provided by section 571-34;

15 (15) The department of public safety on employees and  
16 prospective employees who are directly involved with  
17 the treatment and care of persons committed to a  
18 correctional facility or who possess police powers  
19 including the power of arrest as provided by section  
20 353C-5;



1 (16) The department of commerce and consumer affairs on  
2 applicants for private detective or private guard  
3 licensure as provided by section 463-9;

4 (17) Private schools and designated organizations on  
5 employees and prospective employees who may be in  
6 positions that necessitate close proximity to  
7 children; provided that private schools and designated  
8 organizations receive only indications of the states  
9 from which the national criminal history record  
10 information was provided as provided by section  
11 302C-1;

12 (18) The department of commerce and consumer affairs on  
13 officers, directors, the designated principal escrow  
14 officer, and branch escrow officers of an applicant  
15 for a license as an escrow depository as provided by  
16 section 449-6;

17 (19) The department of commerce and consumer affairs on  
18 proposed new officers, directors, the designated  
19 principal escrow officer, and branch escrow officers  
20 of an escrow depository named in an application for  
21 change of control as provided by section 449-8.6; and



1     ~~[(18)]~~ (20)   The public library system on employees and  
2           prospective employees whose positions place them in  
3           close proximity to children as provided by section  
4           302A-601.5;

5     ~~[(19)]~~ (21)   The State or any of its branches, political  
6           subdivisions, or agencies on applicants and employees  
7           holding a position that has the same type of contact  
8           with children, dependent adults, or persons committed  
9           to a correctional facility as other public employees  
10          who hold positions that are authorized by law to  
11          require criminal history record checks as a condition  
12          of employment as provided by section 78-2.7;

13    ~~[(20)]~~ (22)   The department of human services on licensed  
14          adult day care center operators, employees, new  
15          employees, subcontracted service providers and their  
16          employees, and adult volunteers as provided by section  
17          346-97;

18    ~~[(21)]~~ (23)   The department of human services on purchase of  
19          service contracted and subcontracted service providers  
20          and their employees serving clients of the adult and  
21          community care services branch, as provided by section  
22          346-97;



1       [~~(22)~~] (24) The department of human services on foster  
2           grandparent program, senior companion program, and  
3           respite companion program participants as provided by  
4           section 346-97;

5       [~~(23)~~] (25) The department of human services on contracted  
6           and subcontracted service providers and their current  
7           and prospective employees that provide home and  
8           community-based services under Section 1915(c) of the  
9           Social Security Act (42 U.S.C. §1396n(c)), as provided  
10          by section 346-97; and

11       [~~(24)~~] (26) Any other organization, entity, or the State,  
12          its branches, political subdivisions, or agencies as  
13          may be authorized by state law."

14          SECTION 32. Section 449-24, Hawaii Revised Statutes, is  
15       repealed.

16          [~~"§449-24 Termination of escrow depository operations.~~  
17       ~~(a) A solvent escrow depository whose capital is not impaired~~  
18       ~~and that has not received a notice of charges and proposed~~  
19       ~~suspension or revocation order pursuant to section 449-17 may~~  
20       ~~cease its business and surrender its license in the following~~  
21       ~~manner:~~



- 1       ~~(1) The board of directors shall adopt a resolution~~  
2       ~~approving a plan to cease activity for which a license~~  
3       ~~to operate as an escrow depository is required. If~~  
4       ~~applicable, the plan shall include provisions for the~~  
5       ~~sale, exchange, or disposition of all outstanding~~  
6       ~~escrow accounts or other business for which an escrow~~  
7       ~~depository license is required by this chapter;~~
- 8       ~~(2) The escrow depository shall:~~
- 9           ~~(A) Notify in writing all buyers and sellers whose~~  
10          ~~accounts still contain outstanding balances of~~  
11          ~~the termination of the escrow depository's~~  
12          ~~operations and the specific arrangements to~~  
13          ~~handle the particular transaction; and~~
- 14          ~~(B) Submit to the commissioner, in writing, the name,~~  
15          ~~address, and telephone number of a contact person~~  
16          ~~who shall be responsible for answering questions~~  
17          ~~and providing documents on closed accounts. This~~  
18          ~~individual or the successor thereof shall~~  
19          ~~continue to perform this task, and shall notify~~  
20          ~~the commissioner of any changes in the~~  
21          ~~information concerning the contact person, until~~



1                   ~~the applicable statutes of limitations have~~  
2                   ~~lapsed;~~

3           ~~(3) The escrow depository shall file an application with~~  
4           ~~the commissioner in the prescribed form for approval~~  
5           ~~to cease activity for which a license to operate as an~~  
6           ~~escrow depository is required. The application shall~~  
7           ~~be accompanied by:~~

8           ~~(A) A copy of the plan to cease activity for which a~~  
9           ~~license to operate as an escrow depository is~~  
10           ~~required, certified by two executive officers of~~  
11           ~~the escrow depository as having been duly adopted~~  
12           ~~by the board;~~

13           ~~(B) Any application that may be required pursuant to~~  
14           ~~section 449-8.6, if applicable;~~

15           ~~(C) A copy of the notice sent by the escrow~~  
16           ~~depository to all buyers and sellers whose~~  
17           ~~accounts still contain outstanding balances; and~~

18           ~~(D) Any other information that the commissioner may~~  
19           ~~require;~~

20           ~~(4) The commissioner may require that an audit report,~~  
21           ~~prepared by a certified public accountant at the~~  
22           ~~expense of the escrow depository, be submitted showing~~



- 1           ~~the final accounting of the company's operations,~~  
2           ~~should circumstances so warrant;~~
- 3       ~~(5) The commissioner shall approve the application to~~  
4           ~~cease activity for which a license to operate as an~~  
5           ~~escrow depository is required if:~~
- 6           ~~(A) The commissioner is satisfied with the plan;~~  
7           ~~(B) The conditions for approval contained in section~~  
8           ~~449-8.6 have been met, if applicable; and~~
- 9           ~~(C) No other reason exists to deny the application;~~  
10           ~~provided that the commissioner may impose any~~  
11           ~~restrictions and conditions that the commissioner~~  
12           ~~deems appropriate; and~~
- 13       ~~(6) Upon receipt of the commissioner's approval, an escrow~~  
14           ~~depository that has filed:~~
- 15           ~~(A) A plan attesting that the company does not retain~~  
16           ~~any outstanding escrow accounts or other business~~  
17           ~~for which an escrow depository license is~~  
18           ~~required by this chapter, shall forthwith~~  
19           ~~surrender to the commissioner all of its escrow~~  
20           ~~depository licenses; or~~
- 21           ~~(B) A plan that includes provisions for the sale,~~  
22           ~~exchange, or disposition of outstanding escrow~~



1 ~~accounts or other business, upon receipt of the~~  
2 ~~commissioner's approval, shall proceed with its~~  
3 ~~plan to cease activity for which a license to~~  
4 ~~operate as an escrow depository is required.~~  
5 ~~Upon completion of its plan, the escrow~~  
6 ~~depository shall file a written notification with~~  
7 ~~the commissioner, signed by its president and~~  
8 ~~secretary, certifying that there are no~~  
9 ~~outstanding escrow liabilities. Filing of the~~  
10 ~~written notification shall be accompanied by the~~  
11 ~~surrender of all escrow depository licenses.~~

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

15 SECTION 33. All acts passed by the legislature during this  
16 regular session of 2007, whether enacted before or after the  
17 effective date of this Act, shall be amended to conform to this  
18 Act unless such acts specifically provide that this Act is being  
19 amended.

20 SECTION 34. In codifying the new sections added by section  
21 2 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 35. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 36. This Act shall take effect on January 1, 2008.

6

INTRODUCED BY: Mark Caldwell  
MC

JAN 22 2007



**Report Title:**

Escrow Depositories

**Description:**

Amends and updates provisions for the licensing and regulation of escrow depositories.

