

ACT 144

H. B. 31.

A Bill for an Act Providing for the Licensing and Regulation of Escrow Depositories.

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

SECTION 1. The Revised Laws of Hawaii 1955, as amended, are hereby amended by adding thereto a new chapter to be appropriately numbered and to read as follows:

“CHAPTER
ESCROW DEPOSITORIES

Sec. -1. Definitions. As used in this chapter:

(a) ‘Bank examiner’ means the bank examiner of this State.

(b) ‘Person’ means, in addition to the singular, persons, group of persons, cooperative association, company, firm, partnership, corporation, or other legal entity, and includes the agents and employees of any person.

(c) ‘Escrow’ means any transaction affecting the title to real property, including leaseholds, proprietary leaseholds and condominiums, in which a person not a party to the transaction and neither having nor acquiring any interest in the title receives from one party to the transaction, holds until the happening of an event or performance of a condition and then delivers to another party to the transaction, any money or other consideration or any instrument affecting the title to that real property, all in accordance with the terms of the agreement between the parties to the transaction.

(d) ‘Escrow depository’ means the person who, in an escrow, and for compensation, receives, holds and delivers the money, other consideration or instrument affecting title to real property.

Sec. -2. Rules and regulations. Subject to chapter 6C and with the approval of the governor, the bank examiner may adopt such rules and

regulations as he may deem necessary for the effective administration and enforcement of this chapter.

Sec. -3. Excepted from this chapter. This chapter does not apply to any of the following when acting as escrow depositories:

(a) Banks, trust companies, building and loan associations, savings and loan associations, and insurance companies, authorized under any law of this State or of the United States to do business in the State of Hawaii.

(b) Any person licensed as a real estate broker in the State who is the broker for a party to the escrow.

(c) Any person licensed to practice law in the State who, in escrow, is not acting as the employee of a corporation.

Sec. -4. Penalty. Any person who violates any provision of this chapter shall be fined not more than \$5,000 or imprisoned not more than six months, or both.

Sec. -5. License required to act as escrow depository. No person shall act as an escrow depository in this State unless it is a corporation licensed to do so by the bank examiner.

Sec. -6. Application for license. Any corporation desiring to be licensed as an escrow depository shall file an application with and pay a fee for investigation thereof to the bank examiner, upon forms to be furnished by the bank examiner which shall state:

(a) The corporate name, amount of capital and office address of the applicant.

(b) The names of the stockholders, officers and directors of the applicant.

(c) Evidence of the character, financial responsibility, experience and ability of the officers and directors.

Sec. -7. Investigation and ruling. The bank examiner shall make an investigation into the information furnished by the applicant and may require the applicant to furnish additional information. If he is satisfied, with or without a hearing upon the application, that the character, financial responsibility, experience, ability and general fitness of the officers and directors are such as to command the confidence of the business community in the State and to warrant the beliefs that the officers and directors are competent to successfully manage an escrow business and that the applicant will be an honest and efficient escrow depository, he shall approve the application. The bank examiner shall not disapprove an application without giving the applicant a hearing thereupon. The hearing and any appeal from a ruling of disapproval shall be conducted in accordance with chapter 6C, Revised Laws of Hawaii 1955, as amended, and rules adopted by the bank examiner in accordance with that chapter.

Sec. -8. Issuance and renewal of license. After approval of the application, and payment of the license fee, the bank examiner shall issue to the applicant a license to act as an escrow depository. The license shall be effective only upon the applicant's filing with the bank examiner an escrow

depository's bond and evidence that fidelity bonds and errors and omissions insurance have been obtained, all as provided in sections 9, 11 and 12 hereafter following. The license shall be renewed annually, as of July 1, upon payment of the annual renewal fee and the finding of the bank examiner, from the information contained in the annual corporate exhibit of the licensee or investigation or hearing, that the licensee continues to meet the qualifications for licensing and has continued in force said bonds and insurance. An escrow depository's license may not be transferred.

Sec. -9. Escrow depository's bond. Before an escrow depository's license shall become effective, the escrow depository shall give a bond to the bank examiner in the penal sum of not less than \$100,000 executed by a surety insurer authorized in this State, conditioned:

(a) That the escrow depository will honestly, faithfully and with diligence apply all funds, other consideration or property and instruments affecting title in accordance with the instructions under which the same were deposited with it, and will promptly account for the same, and

(b) That the escrow depository will satisfy all judgments and decrees which may be recovered against it in any action or proceeding brought under this Act.

(c) The aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the penal sum of the bond. In lieu of such bond, an escrow depository may deposit cash or securities acceptable to the bank examiner.

Sec. -10. Suit on bond. The bank examiner, or any person claiming to have sustained damage by reason of the failure of the escrow depository to comply with the provisions of its bond, may bring an action on such bond to recover said damage therefrom.

Sec. -11. Fidelity bonds. A licensed escrow depository shall at all times maintain fidelity bonds executed by a surety insurer authorized to do business in the State and in amounts of not less than \$5,000 and not more than \$25,000, to be approved by the bank examiner, upon all of its 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 above the amounts required by the bank examiner.

Sec. -12. Errors and omissions insurance. A licensed escrow depository shall at all times maintain a policy of errors and omissions insurance executed by an insurer authorized to do business in the State in an amount of not less than \$50,000, and not more than \$100,000, to be approved by the bank examiner.

Sec. -13. Cancellation of bonds or insurance. None of the bonds or insurance hereinabove required by sections 9, 11 and 12 shall be cancelled as to future accruing liability except upon sixty days' written notice to the bank examiner. An escrow depository's license shall not be in effect at any time when any of said bonds or insurance is not in full force and effect.

Sec. -14. Fees. The following fees shall be paid by licensed escrow depositories to the bank examiner and into the general fund.

(a) For filing and investigation of an escrow depository's application for license: \$40.

(b) For initial issuance and annual renewal of an escrow depository's license: \$25.

Sec. -15. Audited statements. Each escrow depository shall at its own expense submit to the bank examiner within 90 days after the close of its fiscal year a certified audit of its books and records made by an independent certified public accountant. The audit shall include a direct verification of all deposits of money made with or by the escrow depository. The failure to comply with this section shall be grounds for the suspension or revocation of the escrow depository's license and such failure shall authorize the bank examiner to order an independent audit at the expense of the escrow depository.

Sec. -16. Accounting for monies, property, etc. Every licensee under this chapter shall have the responsibility of a trustee for all monies, other consideration, or instruments received by it. No licensee shall mingle any such monies or other property with its own monies or other property, or with monies or other property held by it in any other capacity. All monies held by a licensee in escrow as herein defined shall be held intact and deposited in insured Hawaii banks, payable on demand; provided, however, that the bank examiner may, by adopting appropriate rules and regulations, permit deposits in other insured Hawaii depositories.

Sec. -17. Revocation and suspension of licenses. The bank examiner may revoke any license issued hereunder, or suspend the right of the licensee to use such license, for any of the following causes:

(a) Making any misrepresentation concerning any escrow transaction;

(b) Making any false promises concerning any escrow transaction of a character likely to mislead another;

(c) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;

(d) Without first having obtained the written consent so to do of both parties involved in any escrow transaction, acting for both such parties in connection with such transaction, or collecting or attempting to collect commissions or other compensation for its services from both of such parties;

(e) Failing, within a reasonable time, to account for any monies belonging to others which may be in the possession or under the control of the licensee;

(f) Any other conduct constituting fraudulent or dishonest dealings;

(g) Violating any of the provisions of this chapter or the rules and regulations promulgated pursuant thereto;

(h) Splitting fees with or otherwise compensating others not licensed hereunder for referring business;

(i) Commingling the monies or other property of others with its own.

No licensee shall be suspended for longer than two years and no cor-

poration whose license has been revoked shall be eligible to apply for a new license until the expiration of two years.

Sec. -18. Power to investigate. If the bank examiner has reason to believe that a licensee has violated any of the provisions of this chapter or the rules and regulations adopted pursuant thereto, or that any license issued under this chapter may be subject to suspension or revocation, the bank examiner may make such investigation as he deems necessary and is hereby granted the power to examine such licensee's offices and place of business, books, accounts, records, papers, files, safes and vaults which are necessary to carry out the investigation. The licensee shall bear the expenses of such investigation."

Sec. -19. This Act shall take effect upon its approval; provided that it shall not apply to escrows in process at the effective date of this Act and that persons acting as escrow depositories at that date need not obtain an escrow depository's license for new escrows until January 1, 1968.

(Approved May 29, 1967.)