

ACT 331

H.B. NO. 2844-86

A Bill for an Act Relating to Escrow Depositories.

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

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

“§449-1 Definitions. As used in this chapter:

[(1)] “Commissioner” means the commissioner of financial institutions of this State.

[(2)] “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.

[(3)] “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.

“Escrow Account” means any escrow depository account with a financial institution to which cash or items are deposited with respect to any escrow.

[(4)] “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.

“Financial Institution” means any bank, savings and loan association, finance company or credit union doing business in the State whose accounts are insured by either the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Share Insurance Fund or other similar or successor program of federal insurance.

“Item” means any check (including a cashier’s or certified check), negotiable order of withdrawal, draft, traveler’s check, or money order.”

SECTION 2. Section 449-4, Hawaii Revised Statutes, is amended to read as follows:

“§449-4 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. No licensee shall be subject to this penalty for a violation of subsections 449-16(b) or (c) if the violation was not intentional or resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid that error. Examples of bona fide errors include, but are not limited to, clerical miscalculations, computer malfunction, printing errors and computer programming errors.”

SECTION 3. Section 449-16, Hawaii Revised Statutes, is amended to read as follows:

“§449-16 Accounting for moneys, property, etc. (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 [insured Hawaii banks,] financial institutions, payable on demand; provided, that the commissioner may, by adopting appropriate rules and regulations, permit deposits in other insured Hawaii depositories].

(b) No licensee shall disburse funds from an escrow account until cash and or items sufficient to fund any disbursements from the account have been

received and deposited to the account, and with respect to such items the licensee complies with the provisions of either paragraphs (1) or (2) hereof.

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

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

(c) A licensee may deliver any money, consideration, or instrument affecting the title to real property prior to funds becoming available for disbursement under subsection (b) if it has received the written consent of the parties to the transaction.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 9, 1986.)