

ACT 166

S.B. NO. 1067

A Bill for an Act Relating to Escrow Depositories.

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

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

“§449- Powers of commissioner. In addition to any other powers provided by law, the commissioner may:

- (1) Administer and enforce the provisions and requirements of this chapter;
- (2) Adopt, amend, or repeal rules or declaratory rulings pursuant to chapter 91 to effectuate the purposes of this chapter;

- (3) Issue informal nonbinding interpretations to effectuate the purposes of this chapter;
- (4) Investigate and conduct hearings regarding any violation of this chapter or any rule or order of the commissioner;
- (5) Contract with or employ qualified persons, including investigators, examiners, or auditors who shall be exempt from chapter 76 and who shall assist the commissioner in exercising the commissioner's powers and duties;
- (6) Deposit all fees, fines, and charges collected by the commissioner under this chapter into the compliance resolution fund established pursuant to section 26-9(o);
- (7) Process and investigate complaints, subpoena witnesses and documents, administer oaths, and receive affidavits and oral testimony, including through electronic means, and conduct contested case proceedings; and
- (8) Report any violation of this chapter or violation of federal or state law to the United States Commissioner of Housing and Urban Development or any other federal agency having jurisdiction over the licensee."

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

"Branch office" means any location, separate from the principal place of business of the escrow depository, that is identified by any means to the public or customers as a location at which the licensee holds itself out as an escrow depository."

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

§449-4 Administrative penalty. (a) Any person who [wilfully] violates any of the provisions of this chapter, shall be subject to an administrative fine of a maximum of \$5,000 for each violation. The commissioner may impose an administrative fine on a licensee or person subject to this chapter if the commissioner finds on the record after notice and opportunity for hearing that the licensee or person subject to this chapter has violated or failed to comply with any requirement of this chapter or any rule prescribed by the commissioner under this chapter or order issued under the authority of this chapter.

(b) Each violation under this chapter or failure to comply with any directive or order of the commissioner shall be a separate and distinct violation.

(c) Notwithstanding section 480-13.5, any violation of this chapter that is directed toward, targets, or injures an elder may be subject to an additional civil penalty not in excess of \$10,000 for each violation in addition to any other fines or penalties assessed for the violation.

(d) No licensee shall be subject to this penalty for a violation of section 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 4. Section 449-5.5, Hawaii Revised Statutes, is amended to read as follows:

“§449-5.5 Net capital. The net capital of any corporation engaging in the escrow depository business under this chapter shall not be less than ~~[\$50,000. A corporation in lieu of the net capital requirement may alternatively file a bond for \$50,000 conditional upon its satisfactory performance of escrow conditions and satisfaction of all escrow liabilities.]~~ \$100,000. The amount of the minimum net capital of ~~[\$50,000, or the bond, or a combination of both net capital or bond totaling \$50,000]~~ \$100,000 shall be maintained at all times by the licensee.

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

SECTION 5. Section 449-7.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

~~“(c) The escrow depository business shall be under the direct management of an officer, or an employee, designated by its board of directors as escrow officer for the corporation [and if the designated escrow officer terminates the escrow officer’s employment with the escrow depository, the licensee shall notify the commissioner in writing at least fifteen days before the termination date of the designated escrow officer. The licensee shall also inform the commissioner in writing of the new escrow officer for the corporation designated by its board of directors before the present escrow officer terminates the present escrow officer’s employment with the company, setting forth the experience, integrity, and competency of the new designated escrow officer in handling escrow transactions, and such other information as required by the commissioner]. The licensee shall inform the commissioner in writing of any change to the designated escrow officer for the corporation at least fifteen days prior to the change, unless the change occurs so unexpectedly that the licensee is unable to provide fifteen days’ prior notice; provided that when unexpected circumstances prevent prior notice, the licensee shall provide notice within five business days after the change. Within five business days of the designation of a new escrow officer by its board of directors, the licensee shall inform the commissioner in writing of the new escrow officer for the corporation, setting forth the experience, integrity, and competency of the new designated escrow officer in handling escrow transactions, and such other information as may be required by the commissioner.”~~

SECTION 6. Section 449-8.6, Hawaii Revised Statutes, is amended to read as follows:

~~“[§449-8.6] Sale or transfer of license or change in control.~~ (a) No escrow depository license shall be transferred~~[-]~~ except as provided in subsection (c).

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

(c) If the licensee is a corporation, any intended transfer of its voting stock which may result in the acquisition of control of the licensee may be considered a transfer of license. Any intended transfer of the voting stock which may result in the acquisition of control shall be reported to the commissioner in writing. Upon determination by the commissioner that the intended transfer will result in the acquisition of control, the transferee of the stock shall file an

application for approval to act as an escrow depository and shall not acquire control of an escrow depository until the transferee has been approved by the commissioner.

(d) The fee for the transfer and change in control of an escrow depository license shall be \$5,000."

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

"§449-11 Fidelity bonds~~;~~ deposit~~;~~ insurance or other security devices. A licensed escrow depository shall at all times either:

- (1) Maintain a fidelity bond executed by a surety insurer authorized to do business in the State in an amount not less than ~~[\$25,000;]~~ \$100,000; provided that any bond which is subject to a deductible thereunder in excess of ~~[\$5,000]~~ \$10,000 per occurrence shall require the prior approval of the commissioner, who may take into consideration, among other factors, the amount of the proposed bond; or
- (2) Deposit an equivalent amount of cash or ~~[securities]~~ other security device under such terms and conditions as are acceptable to the commissioner,

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

SECTION 8. Section 449-12, Hawaii Revised Statutes, is amended to read as follows:

"§449-12 Errors and omissions insurance~~;~~ deposit~~;~~ or other security devices. A licensed escrow depository shall at all times either:

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

SECTION 9. Section 449-14, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

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

- (1) For filing and investigation of an escrow depository's application for license, ~~[\$2,000;]~~ \$5,000;
- (2) For an application for approval to establish a branch office~~;~~, \$100;
- (3) For an application for approval to relocate an existing office or branch~~;~~, \$100;
- (4) For ~~initial issuance and~~ annual renewal of an escrow depository's license, ~~[\$100;]~~ \$2,000;

- (5) For initial issuance and annual renewal of a branch office license, ~~[\$50;]~~ \$100;
- (6) For reissuance of a license for the change in the business address of its office, ~~[\$25;]~~ \$50; provided that a reissuance caused by changes to the address by the United States Postal Service shall not require payment of a fee; and
- (7) For an application for approval to cease business as an escrow depository~~[-],~~ \$0.
- (b) For all escrow depositories examined by the commissioner or the commissioner's staff, the commissioner:
 - (1) May charge an examination fee based upon the cost per hour per examiner. The hourly fee shall be ~~[\$40;]~~ \$60;
 - (2) May charge additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination; and
 - (3) Shall bill the affected escrow depository for examination fees and expenses as soon as feasible after the close of the examination or investigation. The affected escrow depository shall pay the division within thirty days following the billing. All payments shall be deposited into the compliance resolution fund established pursuant to section 26-9(o). Any dispute by the affected escrow depository relating to these billings shall be reviewed by the commissioner who may modify, waive, or suspend any billing."

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect upon its approval; provided that sections 4, 7, and 8 of this Act shall take effect on January 1, 2014; provided further that with respect to licensees in operation on the approval date of this Act, sections 7 and 8 shall take effect on the date of the renewal of the security device, but not later than July 1, 2014.

(Approved June 21, 2013.)

Note

- 1. Edited pursuant to HRS §23G-16.5.