

SB 2910

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Title Guaranty Escrow Services, Inc.

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The Honorable Rosalyn H. Baker, Chair
Members of the Senate Commerce and Consumer Protection Committee
415 South Beretania Street, Conference Room 325
Honolulu, HI 96813

Re: Senate Bill Relating to Escrow Depositories, SB No. 2910

Dear Senator Baker and Members of the Senate Commerce and Consumer Protection Committee:

We submit this testimony on behalf of Title Guaranty Escrow Services, Inc. in support of Senate Bill No. 2910.

The purpose of this bill is to amend Chapter 667, Hawaii Revised Statutes ("HRS"), with the goal of protecting a buyer who bids and buys property from a foreclosing mortgagee from unfair use of the mortgagee's leverage to demand that the buyer use title insurers and escrow agents with whom the bank/lender has an established relationship.

One consequence of the foreclosure crisis has been that banks or other lending institutions increasingly are entering the residential real estate market as sellers and use their institutional leverage to require that their foreclosure buyers use the bank's favored service providers, especially title insurance and escrow services, even though the buyer is generally the one who pays for the service. The practice of requiring buyers to use the seller's service providers also has the potential adverse consequence of excluding smaller, local businesses from the title insurance and escrow market. This Bill will help to level the playing field.

The Bill adds a section to Chapter 667 (which regulates mortgage foreclosures) to generally prohibit a lender or other party that acquires title to and seeks to sell a foreclosed residential property from requiring a buyer to purchase title insurance or escrow services from a particular company chosen by the seller. California passed a similar law in October 2009.

The federal Real Estate Settlement Procedures Act or RESPA prohibits a seller from requiring the buyer to purchase title insurance from a particular insurer as a condition of the sale – regardless of whether or not the property was acquired by foreclosure. This federal law applies to title insurance and not escrow services. In addition, despite this RESPA regulation, there is no enforcement by HUD. Here, a similar State law should be passed to protect our consumers and allow State enforcement.

We would be happy to answer any further questions that the Committee may have. Thank you for this opportunity to submit this testimony.

Very truly yours,

David T. Pietsch, Jr.
President