

FIRST DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. Defendant admits the allegations contained in paragraphs 1, 2, and 6 of the Complaint.

3. Defendant denies each and every allegation contained in paragraphs 9, 11, 12, 13, 22, 24, 25, 27, 28, 30, 31, and 34 of the Complaint.

4. Defendant is without sufficient information or knowledge to admit or deny the allegations contained in paragraphs 3, 7, 14, 15, 16, 17, 18, 19, 20, and 23 of the Complaint.

5. With respect to the allegations in paragraph 4 of the Complaint, Defendant is without sufficient information or knowledge to admit or deny the allegations of paragraph 4 in that the paragraph does not identify the "mortgage" that was paid off. Based upon review of its own documentation, Defendant is aware of a mortgage executed by Plaintiff that was assigned to Countrywide and released in 2002.

6. With respect to the allegations in paragraph 5 of the Complaint, Defendant is without sufficient information or knowledge to admit or deny the allegations of paragraph 5 in that the paragraph does not identify the "transaction" for which escrow services were provided, and admits that Defendant acted as escrow agent for a refinance transaction involving Plaintiff in August 2002, and denies each and every other allegation contained in paragraph 5 of the Complaint.

7. With respect to the allegations in paragraph 8 of the Complaint, Defendant admits that a fee was charged to Plaintiff for its services related to tracking, monitoring, and if necessary, recording a release of the prior mortgage, but is without sufficient information or

knowledge to admit or deny the remaining allegations contained in paragraph 8 of the Complaint.

8. With respect to the allegations in paragraph 10 of the Complaint, Defendant admits that as an escrow agent and depository, it has a limited fiduciary duty to the parties to the escrow, but denies that it “diverted” or “did not account” for monies paid into escrow, and denies each and every other allegation contained in paragraph 10 of the Complaint.

9. With respect to the allegations in paragraph 33 of the Complaint, Defendant admits that as an escrow agent and depository, it has a limited fiduciary duty to the parties to the escrow, but denies that it “diverted” or “did not account” for monies paid into escrow, and denies each and every other allegation contained in paragraph 33 of the Complaint.

10. With respect to the allegations contained in paragraphs 21, 26, 29, and 32 of the Complaint, Defendant repeats and realleges paragraphs 1 through 7 of this Answer, and incorporates them herein by reference.

11. Defendant denies each and every allegation contained in Plaintiff’s Complaint that is not expressly admitted herein.

THIRD DEFENSE

12. Plaintiff is barred from maintaining this action against Defendant by the applicable statute of limitations, including but not limited to Hawaii Revised Statutes § 480-24.

FOURTH DEFENSE

13. Plaintiff has suffered no damages from any actual or proximate acts or omissions attributable to defendant.

FIFTH DEFENSE

14. Plaintiff lacks standing to bring some or all of the claims alleged in the

Complaint.

SIXTH DEFENSE

14. Defendant is informed and believes that if Plaintiff sustained any of the losses or damages alleged in the Complaint, such losses or damages were caused, entirely or in part, by the acts and/or omissions of third persons or entities, other than defendant, over whom defendant had or has no direction or control.

SEVENTH DEFENSE

15. Defendant is informed and believes that if Plaintiff sustained any of the losses or damages alleged in the Complaint, Defendant cannot be held responsible or liable. Plaintiff should therefore apportion the alleged losses or damages, if any, among the responsible parties, according to each party's comparative and proportionate fault or liability.

EIGHTH DEFENSE

16. The "business practices" alleged in the Complaint are not unlawful in that Defendant complied with all applicable statutes and regulations at all times relevant to this action.

NINTH DEFENSE

17. The "business practices" alleged in the Complaint are not "unfair" in that the utility of such practices described in the Complaint outweigh any potential harm they may cause.

TENTH DEFENSE

18. The claims alleged in the Complaint are preempted or otherwise precluded from serving as the basis of a claim by virtue of Hawaii Revised Statutes § 506-8.

ELEVENTH DEFENSE

19. The "business practices" alleged in the Complaint are not fraudulent nor are they likely to mislead the public.

TWELFTH DEFENSE

20. Plaintiff's causes of action and their injunctive and restitution remedies are barred in light of the fact that Plaintiff as a member of the general public has an adequate remedy at law.

THIRTEENTH DEFENSE

21. Plaintiff and the members of the general public she purports to represent have a reasonably available alternative source of supply from which to obtain title and escrow services in that numerous other companies conduct such business within the State of Hawaii, and as such, the Complaint fails to state a claim for unfair business practices.

FOURTEENTH DEFENSE

22. Plaintiff's claims are subject to mandatory and/or discretionary abstention as a consequence of a comprehensive federal statutory and regulatory scheme, including but not limited to the Real Estate Settlement Procedures Act.

FIFTEENTH DEFENSE

23. Defendant is informed and believes that Plaintiff's claims may be barred, in whole or in part, by the doctrine of estoppel as a result of Plaintiff's own conduct.

SIXTEENTH DEFENSE

24. Plaintiff's claims are barred in whole or in part due to the unreasonable delay in notifying Defendant of the alleged actionable wrongs, and by reason of the unreasonable

delay in seeking recovery requested herein, which delays have resulted in prejudice to Defendant.

SEVENTEENTH DEFENSE

25. Defendant is informed and believes that Plaintiff's claims are not common to the purported class and do not involve sufficient common issues of either law or fact.

EIGHTEENTH DEFENSE

26. Defendant is informed and believes that class treatment of the aggregate claims would not further judicial economy or be more effective than individual claims.

NINETEENTH DEFENSE

27. Defendant is informed and believes that Plaintiff is not a proper representative class Plaintiff.

WHEREFORE, Defendant prays for judgment as follows:

- A. That Plaintiff takes nothing by reason of her Complaint, and that the action be dismissed as against Defendant with prejudice;
- B. That Defendant be awarded its costs of suit; and
- C. For such other relief as the Court may deem just and appropriate.

DATED: Honolulu, Hawaii, June 26, 2007.



KARIN L. HOLMA
LORI N. TANIGAWA

Attorneys for Defendant
HAWAII ESCROW & TITLE, INC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CYNTHIA NAKAMURA, individually)	CIVIL NO. 07-1-0730-04 (SSM)
and on behalf of all others similarly)	(Class Action)
situated,)	
)	CERTIFICATE OF SERVICE
Plaintiff,)	
)	
vs.)	
)	
HAWAII ESCROW & TITLE, INC.; DOE)	
DEFENDANTS 1-50,)	
)	
Defendants.)	
)	

CERTIFICATE OF SERVICE

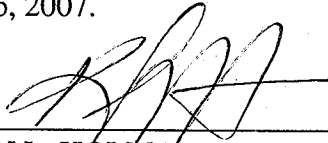
I hereby certify that copies of the foregoing document was duly served on the following parties via U.S. Mail, postage prepaid, on June 26, 2007, addressed as follows:

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DATED: Honolulu, Hawaii, June 26, 2007.



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