
A BILL FOR AN ACT

RELATING TO MORTGAGE SERVICERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER
5 MORTGAGE SERVICERS

6 § -1 Definitions. In this chapter, unless the context
7 or subject matter otherwise requires:

8 "Applicant" means a person applying for a license under
9 this chapter.

10 "Borrower" means the obligor, maker, cosigner, or guarantor
11 under a mortgage agreement.

12 "Department" means the department of commerce and consumer
13 affairs.

14 "Director" means the director of commerce and consumer
15 affairs.

16 "License" means a license issued under this chapter.



1 "Licensee" means a person licensed or required to be
2 licensed under this chapter.

3 "Mortgage servicer" means the person responsible for
4 receiving any scheduled periodic payments from a borrower
5 pursuant to the terms of any residential mortgage loan,
6 including amounts for escrow accounts under Section 10 of the
7 Real Estate Settlement Procedures Act, 12 United States Code
8 Section 2609, and making the payments to the owner of the loan
9 or other third parties of principal and interest and such other
10 payments with respect to the amounts received from the borrower
11 as may be required pursuant to the terms of the mortgage
12 servicing loan documents or servicing contract. In the case of
13 a home equity conversion mortgage or reverse mortgage as
14 referenced in this chapter, servicing includes making payments
15 to the borrower.

16 "Person" means an individual, partnership, corporation,
17 association, or other organization.

18 "Residential mortgage loan" means a mortgage loan, home
19 equity loan, or reverse mortgage loan, which is secured by a
20 first or subordinate lien on residential real property located
21 in Hawaii, including a refinancing of any secured loan on
22 residential real property located in Hawaii, upon which:



(1) There is or will be constructed a structure or structures designed principally for occupancy by one to four families, including individual units of condominiums and cooperatives; or

(2) A manufactured home is located or will be placed on the real property, using proceeds of the loan.

§ -2 License required. (a) No person except those exempted under this chapter shall engage in the business of mortgage servicing without a license as provided in this chapter.

(b) A person is engaged in the business of mortgage servicing if the person provides those services even if the person providing services has no physical presence in the state.

§ -3 Exemptions. This chapter shall not apply to the following:

(1) Any persons chartered or authorized under the laws of any state or federal law to engage in the activity of an insured depository institution as defined in Title 12 United States Code Section 1813(c)(2), including banks or savings associations, and operating subsidiaries of an insured depository institution as



1 defined in Title 12 United States Code Section

2 1813(c)(2);

3 (2) Trust companies, credit unions, insurance companies,
4 and financial service loan companies licensed by this
5 state;

6 (3) The Federal Deposit Insurance Corporation, in
7 connection with assets acquired, assigned, sold, or
8 transferred pursuant to Section 13(c) of the Federal
9 Deposit Insurance Act or as receiver or conservator of
10 an insured depository institution;

11 (4) The Federal National Mortgage Association; the Federal
12 Home Loan Mortgage Corporation; the Federal Deposit
13 Insurance Corporation; the United States Department of
14 Housing and Urban Development, including the
15 Government National Mortgage Association and the
16 Federal Housing Administration, including cases in
17 which a mortgage insured under the National Housing
18 Act (12 United States Code Section 1701 et seq.) is
19 assigned to the United States Department of Housing
20 and Urban Development; the National Credit Union
21 Administration; the Farmers Home Administration or its
22 successor agency under Public Law 103-354; and the



1 Department of Veterans Affairs, in any case in which
2 the assignment, sale, or transfer of the servicing of
3 the mortgage loan is preceded by termination of the
4 contract for servicing the loan for cause,
5 commencement of proceedings for bankruptcy of the
6 servicer, or commencement of proceedings by the
7 Federal Deposit Insurance Corporation for
8 conservatorship or receivership of the servicer or an
9 entity by which the servicer is owned or controlled;
10 and

11 (5) Any person making or acquiring contemporaneously no
12 more than five residential mortgage loans with that
13 person's own funds for that person's own investment.

14 **§ -4 License; fees; renewals.** (a) An applicant for
15 licensure shall file an application on a form prescribed by the
16 director and shall pay an application fee of \$. Each such
17 license shall expire on June 30 of each calendar year. A
18 license may be renewed by filing a renewal statement on a form
19 prescribed by the director and paying a renewal fee of \$, on
20 or before July 1 for licensure for the following year.

21 (b) The applicant shall submit any other information that
22 the department may require including but not limited to:



- (1) The applicant's form and place of organization;
- (2) The applicant's tax identification number; and
- (3) The applicant's proposed method of doing business.

The applicant shall disclose whether the applicant or any of its officers, directors, employees, managers, agents, partners, or members has ever been issued or been the subject of an injunction or administrative order pertaining to any aspect of the lending business, has ever been convicted of a misdemeanor involving the lending industry or any aspect of the lending business, or has ever been convicted of any felony.

§ -5 Duties of a mortgage servicer; disclosures; good faith. (a) A mortgage servicer licensed or acting under this chapter, in addition to duties imposed by law, shall:

- (1) Safeguard and account for any money handled for the borrower;
- (2) Act with reasonable skill, care, timeliness, promptness, and diligence;
- (3) Disclose to the department in the application and yearly renewal a complete, current schedule of the ranges of costs and fees it charges borrowers for its servicing-related activities; and



1 (4) File with the department upon request a report in a
2 form and format acceptable to the director detailing
3 the servicer's activities in this state, including:

4 (A) The number of mortgage loans the servicer is
5 servicing;

6 (B) The type and characteristics of such loans in
7 this state;

8 (C) The number of serviced loans in default, along
9 with a breakdown of thirty-, sixty-, and ninety-
10 day delinquencies;

11 (D) Information on loss mitigation activities,
12 including details on workout arrangements
13 undertaken;

14 (E) Information on foreclosures commenced in this
15 state; and

16 (F) Any other information that the department may
17 require.

18 (b) At the time a servicer accepts assignment of servicing
19 rights for a mortgage loan, the servicer shall disclose to the
20 borrower all of the following:



1 (1) Any notice required by the Real Estate Settlement
2 Procedures Act (12 United States Code Section 2601 et
3 seq.) or by regulations promulgated thereunder;

4 (2) A schedule of the ranges and categories of its costs
5 and fees for its servicing-related activities, which
6 shall comply with this chapter and which shall not
7 exceed those reported to the department; and

8 (3) A notice in a form and content acceptable to the
9 director that the servicer is licensed by the
10 department and that complaints about the servicer may
11 be submitted to the department.

12 (c) In the event of a delinquency or other act of default
13 on the part of the borrower, the servicer shall act in good
14 faith to inform the borrower of the facts concerning the loan
15 and the nature and extent of the delinquency or default, and, if
16 the borrower replies, to negotiate with the borrower, subject to
17 the servicer's duties and obligations under the mortgage
18 servicing contract, if any, to attempt a resolution or workout
19 relating to the delinquency.

20 § -6 License sanctions; suspension, revocation, denial,
21 condition, and refusal to renew, reinstate, or restore. In
22 addition to any other actions authorized by law, the department



1 may suspend, revoke, deny, condition in any manner, or refuse to
2 renew, reinstate, or restore, any license issued under this
3 chapter, or fine any person holding a license issued under this
4 chapter, for any violation of this chapter. All such orders
5 shall be made pursuant to chapter 91.

6 **§ -7 Powers of department.** In addition to any other
7 acts or conditions provided by law, the department may:

- 8 (1) Adopt, amend, or repeal rules, issue declaratory
9 rulings or informal nonbinding interpretations, and
10 investigate and act upon written consumer complaints;
11 (2) Grant, deny, forfeit, renew, reinstate, or restore the
12 license of any mortgage servicer;
13 (3) Revoke, suspend, or otherwise limit the license of any
14 mortgage servicer for any violation of the provisions
15 in this chapter, or any rule or order of, or agreement
16 with the department;
17 (4) Report any violation of this chapter or violation of
18 federal or state law to the United States Department
19 of Housing and Urban Development or other federal
20 agency having jurisdiction over the licensee;



(5) Investigate and conduct hearings regarding any violation of this chapter, or any rule or order of or agreement with the department; and

(6) Do any and all things necessary or incidental to the exercise of the department's power and duties, including the authority to conduct contested case proceedings under chapter 91.

§ -8 Private right of action. Nothing in this chapter shall be construed to preclude any individual or entity that suffers loss as a result of a violation of this chapter from maintaining a civil action to recover damages and, as provided by statute, attorney's fees.

§ -9 Penalty. Any person who violates any provision of this chapter may be subject to an administrative fine of not more than \$5,000 for each violation.

§ -10 Compliance resolution fund. Any law to the contrary notwithstanding, fees and fines collected by the department shall be deposited into the compliance resolution fund established pursuant to section 26-9(o)."

SECTION 2. This Act shall take effect on January 1, 2010.



Report Title:

Mortgage Servicers; Regulation

Description:

Provides for the licensing and regulation of mortgage servicers that service residential mortgage loans secured by real property located in the State of Hawaii. (HB1071 HD2)

