GOV. MSG. NO. 1159

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

May 28, 2015

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 210
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on May 28, 2015, the following bill was signed into law:

SB1083 SD1 HD1 CD1

MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS
**ACT 059 (15)**

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

RECEIVED
SENATE
OFFICE OF THE PRESIDENT

'15 MAY 29 A8:44

RECEIVED
THE SENATE
CLERK'S OFFICE
STATE OF HAWAII

'15 MAY 29 A10:28

Approved by the Governor
on MAY 28 2015

THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2015
STATE OF HAWAII

ACT 059

S.B. NO. 1083 S.D. 1 H.D. 1 C.D. 1

# A BILL FOR AN ACT

MAKING APPROPRIATIONS FOR COLLECTIVE BARGAINING COST ITEMS.

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

PART I

SECTION 1. There are appropriated from the source of funding indicated below to health premium payments (BUF 761) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2015-2017 the Hawaii employer-union health benefits trust fund costs contained in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit (8):

| | FY 2015-2016 | FY 2016-2017 |
|---|---|---|
| General Funds | $699,889 | $1,288,485 |

SECTION 2. Funds appropriated by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated from the source of funding indicated below to health premium payments (BUF 761) the following sums or so much thereof as may be necessary to fund

for fiscal biennium 2015-2017 the Hawaii employer-union health benefits trust fund costs authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining who belong to the same compensation plans as those officers and employees within collective bargaining unit (8):

| | FY 2015-2016 | FY 2016-2017 |
|---|---|---|
| General Funds | $220,555 | $404,741 |

SECTION 4. Funds appropriated by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

PART III

SECTION 5. Cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 6. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2016, and

June 30, 2017, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect upon its approval.

APPROVED this 28 day of MAY, 2015

GOVERNOR OF THE STATE OF HAWAII

*SFS-GM1162*

GOV. MSG. NO. 1162

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

May 28, 2015

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 210
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on May 28, 2015, the following bill was signed into law:

SB1093 SD2 HD1 — RELATING TO MORTGAGE SERVICERS
**ACT 062 (15)**

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

RECEIVED
SENATE
OFFICE OF THE PRESIDENT

'15 MAY 29 A8:44

RECEIVED
THE SENATE
CLERK'S OFFICE
STATE OF HAWAII

'15 MAY 29 A10:28

Approved by the Governor
on MAY 28 2015
THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2015
STATE OF HAWAII

ACT 062
S.B. NO. 1093 S.D. 2 H.D. 1

# A BILL FOR AN ACT

RELATING TO MORTGAGE SERVICERS.

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

SECTION 1. Chapter 454M, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§454M- Residential mortgage loan delinquencies and loss mitigation efforts.** (a) Mortgage servicers shall make reasonable and good faith efforts consistent with this chapter to engage in appropriate loss mitigation options, including loan modifications, to assist borrowers to avoid foreclosure. Mortgage servicers shall provide timely and appropriate responses to borrower inquiries and complaints regarding available loss mitigation options and ensure that borrowers are not required to submit multiple copies of required documents during consideration for any loss mitigation option. In the event of a delinquency or other act of default on the part of the borrower, or whenever a borrower who is at imminent risk of default contacts the mortgage servicer with respect to a loan

modification or other loss mitigation option, the mortgage servicer shall:

(1) Inform the borrower of the facts concerning the loan, the nature and extent of the delinquency or default, the mortgage servicer's loss mitigation option protocols, and the loss mitigation options and services offered by the mortgage servicer in accordance with this chapter; and

(2) Pursue loss mitigation options with the borrower, including a loan modification whenever possible, in accordance with this chapter, and, if the borrower replies, negotiate with the borrower, subject to the mortgage servicer's lawful duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout of the delinquency or to prevent the borrower's default.

(b) Mortgage servicers shall consider a loan modification as an alternative to foreclosure when:

(1) The borrower demonstrates that the borrower has experienced a financial hardship and is either unable to maintain the payment at the current amount required

1 under the mortgage loan or is unable to make up the
2 delinquent payments; and
3 (2) The net present value of the income stream expected of
4 the modified loan is greater than the net present
5 value of the income stream that is expected to be
6 recovered through the disposition of the property
7 through a foreclosure sale.
8 (c) Mortgage servicers that are participating in the Home
9 Affordable Modification Program shall offer loan modifications
10 in compliance with the Home Affordable Modification Program
11 guidance and directives, including using reasonable efforts to
12 remove prohibitions or impediments to the mortgage servicer's
13 authority, and obtain third party consents and waivers that are
14 required by contract or law to effectuate a loan modification
15 under the Home Affordable Modification Program.
16 (d) Unless a longer time is permitted under the guidance
17 or directives implementing the Home Affordable Modification
18 Program, within ten business days of receiving a request from a
19 borrower or the borrower's authorized representative for one or
20 more loss mitigation options, the mortgage servicer shall
21 transmit a written acknowledgment of the request to the borrower

1 and, if applicable, to the authorized representative. The
2 acknowledgment shall identify with specificity any information
3 needed from the borrower for the mortgage servicer to review the
4 borrower's loss mitigation option request. The acknowledgment
5 shall also include an explanation of the loss mitigation option
6 process, including the following, as appropriate:
7 (1) The information that the borrower may be asked to
8 provide and third party approvals that may be required
9 for the mortgage servicer to evaluate and complete the
10 request for a loan modification or other loss
11 mitigation option;
12 (2) The average length of time for a decision to be made
13 regarding a loan modification or other loss mitigation
14 option; and
15 (3) A notification of the actions the mortgage servicer,
16 lender, or owner of the mortgage may take during the
17 loss mitigation option process, such as whether the
18 borrower may continue to receive collection letters or
19 foreclosure notices, whether the foreclosure process
20 will continue, or whether and to what extent
21 collection and foreclosure will be stayed.

1 (e) Within thirty days of receiving all required
2 documentation from the borrower and third parties, unless a
3 shorter time is required under applicable state or federal rules
4 or regulations pertaining to mortgage servicing or under
5 guidance or directives implementing the Home Affordable
6 Modification Program, a mortgage servicer shall complete its
7 evaluation of the borrower's eligibility for a loan modification
8 or any other loss mitigation option requested by the borrower
9 and advise the borrower, and if applicable, the borrower's
10 authorized representative, in writing of the mortgage servicer's
11 determination.
12 If the mortgage servicer approves the borrower for a loan
13 modification, including a trial loan modification, or other loss
14 mitigation option, the written notice shall provide the borrower
15 with clear and understandable written information explaining the
16 material terms, costs, and risks of the loss mitigation option
17 offered.
18 If the mortgage servicer determines that the borrower
19 cannot be approved for a loan modification or other requested
20 loss mitigation option, the written notice shall state with
21 specificity:

1 (1) The reasons for the determination;
2 (2) Procedures, deadlines, and contact information for a
3 person at the mortgage servicer for reconsideration,
4 dispute, or appeal of the determination; and
5 (3) Any other loss mitigation option for which the
6 borrower may be considered.
7 In addition, the written notice shall include the following
8 statement, in boldface type and in print no smaller than the
9 largest print used elsewhere in the main body of the written
10 notice: "If you believe your loss mitigation option request has
11 been wrongly denied, you may file a complaint with the state
12 division of financial institutions at [insert current division
13 telephone number] or [insert current division website address
14 for consumer complaints]".
15 (f) A mortgage servicer shall take reasonable steps to
16 ensure that the mortgage servicer's staff is aware of programs
17 designed to assist borrowers to avoid foreclosure or resolve
18 delinquency. The mortgage servicer shall make available to
19 borrowers who are at least sixty days delinquent or who the
20 mortgage servicer has reason to believe are experiencing a
21 financial hardship and are in imminent risk of default, a list

1 of government approved not-for-profit housing counselors in the
2 borrower's geographic area, as listed on the website of the
3 United States Department of Housing and Urban Development.
4 (g) A mortgage servicer shall maintain and make available
5 to borrowers and borrowers' authorized representatives current
6 contact information to communicate and negotiate with the
7 mortgage servicer's designated loss mitigation option staff who
8 are authorized to discuss and negotiate loss mitigation options.
9 The contact information shall include all toll-free telephone
10 numbers for direct communication with a loss mitigation option
11 staff person, fax numbers for receipt of documents, and
12 electronic mail addresses.
13 (h) The mortgage servicer shall establish and maintain a
14 process through which borrowers may bring disagreements to a
15 supervisory level where a separate review of the borrower's
16 eligibility or qualification for a loss mitigation option can be
17 performed. A mortgage servicer shall not require a borrower to
18 waive legal claims and defenses as a condition of a loan
19 modification, forbearance, or repayment plan.
20 (i) Delay caused by the mortgage servicer shall not be
21 counted in calculating the passage of time where a Home

1 Affordable Modification Program, proprietary, or other loan
2 modification program specifies:
3 (1) A time limit for a borrower action or response,
4 including appealing or disputing a denial of a request
5 for a loss mitigation option under subsection (e), or
6 providing documents;
7 (2) A time after which a document is considered stale or
8 too old to use; or
9 (3) A time during which a mortgage servicer is barred from
10 taking certain action adverse to the borrower,
11 including taking steps toward foreclosure or referring
12 the borrower's account to foreclosure.
13 Examples of delay caused by the mortgage servicer include the
14 mortgage servicer's failure to timely send a communication or
15 request to the borrower, duplicative or piecemeal document
16 requests delaying completion of a file, and failure to identify
17 additional documents needed to complete a borrower's loan
18 modification application. The mortgage servicer shall
19 reasonably extend the applicable period and promptly inform the
20 borrower in writing of the specific extension period.

1 (j) Nothing in this section shall be construed to prevent
2 a mortgage servicer from offering or accepting alternative loss
3 mitigation options, including other modification programs
4 offered by the mortgage servicer, a short sale, a deed-in-lieu
5 of foreclosure, or forbearance, if the borrower requests such an
6 alternative, is not eligible for or does not qualify for a loan
7 modification under the Home Affordable Modification Program, or
8 rejects the mortgage servicer's loss mitigation option proposal.
9 (k) A mortgage servicer shall avoid taking steps to
10 foreclose or to refer a borrower to foreclosure if the borrower
11 has requested and is being considered for a loss mitigation
12 option or if the borrower is in a trial or permanent loan
13 modification and is not more than thirty days in default under
14 the loan modification agreement.
15 (l) A mortgage servicer shall ensure that the mortgage
16 servicer and the mortgage servicer's attorneys and agents comply
17 with the requirements of chapter 667.
18 (m) A mortgage servicer shall establish and maintain a
19 system for servicing delinquent loans."
20 SECTION 2. Section 454M-1, Hawaii Revised Statutes, is
21 amended as follows:

1. By adding twelve new definitions to be appropriately inserted and to read:

""Bankruptcy code" refers to the United States Bankruptcy Code, title 11 United States Code, section 101 et seq., as amended.

"Business day" means Monday through Friday, excluding state holidays.

"C.F.R." means the Code of Federal Regulations.

"Consumer Financial Protection Bureau" means the agency of the United States government referenced in title 12 United States Code chapter 53, subchapter V.

"Division of financial institutions" or "division" means the division of financial institutions of the department of commerce and consumer affairs.

"Home Affordable Modification Program" means the program established by the United States Department of the Treasury, pursuant to sections 101 and 109 of the Emergency Economic Stabilization Act of 2008, as section 109 of the Act has been amended by section 7002 of the American Recovery and Reinvestment Act of 2009. The Home Affordable Modification

1 Program is a component of the Making Home Affordable Program,
2 also known as the MHA Program.
3 "Loan modification" means a temporary or permanent change
4 to the terms of a borrower's existing mortgage loan agreement,
5 mutually agreed to between a borrower and a lender.
6 "Loss mitigation option" means an alternative to
7 foreclosure, including loan modification, reinstatement,
8 forbearance, deed-in-lieu, and short sale.
9 "Principal office" means the office location where the
10 company's core executive and administrative functions are
11 primarily carried out.
12 "Real Estate Settlement Procedures Act" means title 12
13 United States Code chapter 27, as amended, and regulations
14 adopted thereunder also known as Regulation X, title 12 C.F.R.
15 part 1024.
16 "Received" means, in the context of the date of payment,
17 the date that the payment instrument or other means of payment
18 reaches the mortgage servicer, in accordance with title 12
19 C.F.R. section 1026.36(c).
20 "Servicing" means the business activity of a mortgage
21 servicer."

2. By amending the definitions of "borrower" and "mortgage servicer" to read:

""Borrower" means the obligor, maker, cosigner, or guarantor under a mortgage loan agreement. For purposes of this chapter, a borrower may also be referred to as a consumer.

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

SECTION 3. Section 454M-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No person shall engage in the business of mortgage servicing in this State unless the person providing services has a physical presence in the State pursuant to section [~~454M-5(a)(5).~~] 454M-5(b)(6)."

SECTION 4. Section 454M-4, Hawaii Revised Statutes, is amended to read as follows:

**"§454M-4 License; fees; renewals; notices; voluntary surrender of license[~~.~~]; bonds.** (a) [~~An~~] The commissioner may approve a license or license renewal application upon receipt of a complete application; provided that an applicant for licensure shall file an application on a form prescribed by NMLS or by the commissioner and shall pay an application fee of $675. Each license shall expire on December 31 of each calendar year[~~.~~] unless the license is renewed. A [~~license~~] licensee may [~~be renewed~~] apply for license renewal by filing a renewal statement on a form prescribed by NMLS or by the commissioner and paying a renewal fee of $425, at least four weeks prior to December 31. All fees paid pursuant to this section, including fees paid in connection with an application, shall be nonrefundable. No fee paid pursuant to this section shall be prorated if the license

is surrendered, revoked, or suspended prior to the expiration of the period for which it was approved.

(b) To fulfill the purposes of this chapter, the commissioner may establish relationships or contracts with NMLS or other entities designated by NMLS to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(c) To the extent reasonably necessary to participate in NMLS, the commissioner may modify any or all of the requirements of subsections (e) and [~~(f).~~] (i).

(d) The commissioner may use NMLS as an agent for requesting information from and distributing information to the United States Department of Justice, any governmental agency, or any other source, as directed by the commissioner.

(e) The applicant shall submit any other information that the commissioner may require, including the applicant's:

(1) Form and place of organization;

(2) Tax identification number; and

(3) Proposed method of doing business.

The applicant shall disclose whether the applicant or any of its officers, directors, employees, managers, agents, partners, or

1 members have ever been issued or been the subject of an
2 injunction or administrative order pertaining to any aspect of
3 the lending business, have ever been convicted of a misdemeanor
4 involving the lending industry or any aspect of the lending
5 business, or have ever been convicted of any felony.
6 (f) A mortgage servicer license shall not be transferable or
7 assignable. No licensee shall use any name other than the
8 licensee's legal name or a fictitious name approved by the
9 commissioner; provided that no licensee shall use the licensee's
10 legal name if the commissioner disapproves of the use of the
11 licensee's legal name.
12 (g) A mortgage servicer licensee may change the licensee's
13 name or the address of any of the licensee's offices specified
14 on the most recent filing with NMLS if:
15 (1) The licensee files the change with NMLS and, in the
16 case of the principal office or a branch office,
17 provides directly to the commissioner a bond rider or
18 endorsement, or addendum, as applicable, to any bond on
19 file with the commissioner that reflects the new name
20 or address of the principal office or branch office; and
21 (2) The commissioner approves the change in writing.

1 (h) The mortgage servicer licensee shall file with NMLS
2 or, if the information cannot be filed with NMLS, directly
3 notify the commissioner in writing no later than five business
4 days after the licensee has reason to know of the occurrence of any
5 of the following events:
6 (1) Filing for bankruptcy or the consummation of a
7 corporate restructuring of the licensee;
8 (2) Filing of a criminal indictment against the licensee or
9 receiving notification of the filing of any criminal
10 felony indictment or felony conviction of any of the
11 licensee's officers, directors, employees, managers,
12 agents, members, partners, or shareholders owning ten per
13 cent or more of the outstanding stock of the licensee;
14 (3) Receiving notification of the initiation of license
15 denial, cease and desist, suspension or revocation
16 procedures, or other formal or informal regulatory
17 action by any governmental agency against the licensee
18 and the reasons for the action;
19 (4) Receiving notification of the initiation of any action
20 against the licensee by the state attorney general or

1 the attorney general of any other state and the reasons
2 for the action;
3 (5) Suspension or termination of the licensee's status as an
4 approved servicer by the Federal National Mortgage
5 Association, Federal Home Loan Mortgage Corporation, or
6 Government National Mortgage Association;
7 (6) Receiving notification that certain servicing rights of
8 the licensee will be rescinded or canceled, and the
9 reasons provided therefor;
10 (7) Receiving notification of filing for bankruptcy of any
11 of the licensee's officers, directors, members,
12 managers, agents, partners, or shareholders owning ten
13 per cent or more of the outstanding stock of the
14 licensee; or
15 (8) Receiving notification of the initiation of a class action
16 lawsuit on behalf of consumers against the licensee that
17 is related to the operation of the licensed business.
18 [~~(f)~~] (i) A mortgage servicer licensed under this chapter
19 may voluntarily cease business and surrender its license by
20 giving written notice to the commissioner of its intent to
21 surrender its mortgage servicer license. Notice pursuant to

this subsection shall be given at least thirty days before the surrender of the license and shall include:

(1) The date of surrender;

(2) The name, address, telephone number, facsimile number, and electronic address of a contact individual with knowledge and authority sufficient to communicate with the commissioner regarding all matters relating to the licensee during the period that it was licensed pursuant to this chapter;

(3) The reason or reasons for surrender;

(4) The original license issued pursuant to this chapter to the mortgage servicer; and

(5) If applicable, a copy of all notices to affected borrowers required by the Real Estate Settlement Procedures Act [~~, title 12 United States Code section 2601 et seq., or by regulations adopted pursuant to the Real Estate Settlement Procedures Act,~~] of the assignment, sale, or transfer of the servicing of all relevant loans that the licensee is currently servicing under the license being surrendered.

1 Voluntary surrender of a license shall be effective upon
2 the date of surrender specified on the written notice to the
3 commissioner as required by this subsection; provided that if a
4 mortgage servicer is required to assign, sell, or transfer the
5 servicing of any loans, the voluntary surrender of the mortgage
6 servicer's license shall be effective upon the effective date of
7 the assignment, sale, or transfer of the servicing of all loans.
8 (j) Before a mortgage servicer's license becomes
9 effective, the applicant or licensee shall file with the
10 commissioner a surety bond written by a surety authorized to
11 write surety bonds in this State, covering the applicant or
12 licensee's principal office and any branch office from which the
13 applicant or licensee acts as a mortgage servicer, in a penal sum
14 of $100,000. No mortgage servicer licensee shall act as a
15 mortgage servicer in this State without maintaining the surety
16 bond required by this section.
17 The surety bond shall be:
18 (1) In a form approved by the attorney general of this
19 State; and
20 (2) Conditioned upon the mortgage servicer licensee
21 faithfully performing any and all written agreements or

1 commitments with or for the benefit of borrowers and
2 mortgagees, truly and faithfully accounting for all
3 funds received from a borrower or mortgagee in the
4 person's capacity as a mortgage servicer, and
5 conducting the mortgage business consistent with the
6 provisions of this chapter to perform any written
7 agreements or commitments.
8 (k) The commissioner, or any person claiming to have
9 sustained damage by reason of the failure of the mortgage
10 servicer to comply with the mortgage servicer's bond, or by the
11 wrongful conversion of funds paid by a borrower to the mortgage
12 servicer, may bring an action on the bond to recover the damage
13 therefrom. The commissioner may deposit with a court of
14 competent jurisdiction all or any part of the sum of the bond.
15 The proceeds of the bond, even if mixed with other assets of the
16 principal, shall be deemed by operation of law to be held in
17 trust for the benefit of claimants against the principal in the
18 event of bankruptcy of the principal and shall be immune from
19 attachment by creditors and judgment creditors. The surety bond
20 shall run concurrently with the period of the license for the
21 principal office of the mortgage servicer and the aggregate

1 liability under the bond shall not exceed the penal sum of the
2 bond. The principal shall notify the commissioner of the
3 commencement of an action on the bond. When an action is
4 commenced on a principal's bond, the commissioner may require the
5 filing of a new bond and immediately on recovery on any action on
6 the bond, the principal shall file a new bond.
7 (l) A surety may cancel the surety bond required by this
8 section at any time by a written notice to the principal
9 stating the date cancellation shall take effect. The notice
10 shall be sent by certified mail to the principal at least thirty
11 days prior to the date of cancellation. A surety bond shall not
12 be canceled unless the surety notifies the commissioner, in
13 writing, not less than thirty days prior to the effective date of
14 cancellation. After receipt of the notification from the surety,
15 the commissioner shall give written notice to the principal of the
16 date the cancellation shall take effect. The commissioner shall
17 automatically suspend the license of a mortgage servicer on that
18 date. No automatic suspension or inactivation shall occur if,
19 prior to the date that the bond cancellation shall take effect:
20 (1) The principal submits a letter of reinstatement of the
21 bond or a new bond; or

1 (2) The mortgage servicer licensee has ceased business in
2 this State and has surrendered all licenses in
3 accordance with this chapter.
4 Automatic suspension of a mortgage servicer license by the
5 commissioner, and subsequent orders and proceedings, if any,
6 shall be conducted pursuant to section 454M-7.
7 (m) If the commissioner finds that the financial
8 condition of a mortgage servicer so requires, as evidenced by
9 the reduction of tangible net worth, financial losses, or
10 potential losses as a result of a violation of law or rule, the
11 commissioner may require one or more additional bonds that meet the
12 requirements of this section. The licensee shall file any
13 additional bonds no later than ten days after receipt of the
14 commissioner's written notice of the requirement for one or more
15 additional bonds. A mortgage servicer or mortgage lender
16 licensee shall file, as the commissioner may require, any bond
17 rider or endorsement or addendum, as applicable, to any bond
18 on file with the commissioner to reflect any changes necessary
19 to maintain the surety bond required by this section.

(n) For purposes of this section, "principal" means, in the context of a surety bond requirement, the primary party who will perform the contractual obligation."

SECTION 5. Section 454M-5, Hawaii Revised Statutes, is amended to read as follows:

**"§454M-5 [~~Duties~~] Additional duties of a mortgage servicer; [~~disclosures;~~] good faith[~~.~~] and fair dealing; disclosures; payments, accounting, and records; assignment of servicing rights.** (a) A mortgage servicer licensed or acting under this chapter, [~~in~~] has a duty of good faith and fair dealing in its communications, transactions, and course of dealings with each borrower in connection with the servicing of the borrower's mortgage loan.

(b) In addition to any other duties imposed by law, a mortgage servicer shall:

(1) Safeguard and account for any money handled for the borrower;

(2) Follow reasonable and lawful instructions from the borrower consistent with the underlying note and mortgage;

1 [~~(2)~~] (3) Act with reasonable skill, care, timeliness,
2 promptness, and diligence;
3 [~~(3)~~] (4) Disclose to the commissioner in the servicer's
4 license application and each yearly renewal a
5 complete, current schedule of the ranges of costs and
6 fees it charges borrowers for its servicing-related
7 activities;
8 [~~(4)~~] (5) File a report with each yearly renewal statement
9 in a form and format acceptable to the [~~director~~]
10 commissioner detailing the servicer's activities in
11 this State, including:
12 (A) The number of mortgage loans the servicer is
13 servicing;
14 (B) The type and characteristics of loans serviced in
15 this State;
16 (C) The number of serviced loans in default, along
17 with a breakdown of thirty-, sixty-, and ninety-
18 day delinquencies;
19 (D) Information on loss mitigation activities,
20 including details on workout arrangements
21 undertaken;

(E) Information on foreclosures commenced in this State;

(F) The affiliations of the mortgage servicer, including any lenders or mortgagees for which the mortgage servicer provides service, any subsidiary or parent entities of the mortgage servicer, and a description of the authority held by the mortgage servicer through its affiliations; and

(G) Any other information that the commissioner may require; and

[~~(5)~~] (6) Maintain an office in the State that is staffed by at least one agent or employee for the purposes of addressing consumer inquiries or complaints and accepting service of process; provided that the mortgage servicer's business constitutes at least a twenty per cent share of the portion of the total mortgage loan service market in the State that was serviced by mortgage servicers licensed under this chapter within the previous calendar year; and provided further that nothing in this section shall

1 prohibit a mortgagee as defined by section 667-1 or a
2 mortgage servicer from contracting with a licensee
3 that maintains an office in this State in conformity
4 with this section for the purposes of addressing
5 consumer inquiries or complaints and accepting service
6 of process.
7 (c) A mortgage servicer shall comply with the following
8 requirements concerning handling and processing of mortgage
9 payments:
10 (1) Except as provided in paragraph (4), all payments
11 received by a mortgage servicer on a mortgage loan at
12 the address where the borrower has been instructed in
13 writing to make payments shall be accepted and
14 credited, or treated as credited, on the business day
15 received, to the extent that the borrower has provided
16 sufficient information to credit the account. For all
17 mortgage loans originated after July 1, 2015, except
18 where inconsistent with federal law or regulation,
19 payments shall be credited to the principal and
20 interest due on the home loan before crediting the
21 payments to taxes, insurance, or fees;

1 (2) Methods of payment and payment instruments shall be
2 reasonable;
3 (3) If a mortgage servicer specifies in writing
4 requirements for the borrower to follow in making
5 payments, but accepts a payment that does not conform
6 to the requirements, the mortgage servicer shall
7 credit the payment as soon as commercially
8 practicable, but in no event later than three business
9 days after receipt;
10 (4) Late payments of principal and interest shall be
11 credited before any late charge is collected; and
12 (5) If the mortgage servicer receives any payment on a
13 mortgage loan and suspenses the payment, does not
14 credit the payment, or does not treat the payment in
15 accordance with this section, the mortgage servicer,
16 within ten days of receipt, shall send the borrower
17 notice by mail at the borrower's last known address
18 indicating the reason the payment was suspensed or was
19 not credited or treated as credited to the account,
20 and specifying any actions by the borrower necessary
21 to make the loan current.

1 (d) A mortgage servicer shall comply with the following
2 requirements concerning escrows for the payment of taxes and
3 insurance:
4 (1) Any mortgage servicer who receives funds from a borrower
5 to be held in escrow for payment of taxes and insurance
6 premiums shall pay the taxes and insurance premiums of
7 the borrower to the appropriate taxing authority and
8 insurance company in the amount required and at the
9 time the taxes and insurance premiums are due, in
10 accordance with the requirements of the Real Estate
11 Settlement Procedures Act, including title 12 C.F.R.
12 section 1024.17, and shall be liable to the borrower
13 as provided therein;
14 (2) If the amount held in the escrow account as of the date
15 the taxes and insurance premiums are due is insufficient
16 to pay the taxes and insurance premiums, the mortgage
17 servicer shall pay the taxes and insurance premiums from
18 the mortgage servicer's own funds; provided that the
19 borrower has paid to the mortgage servicer the amounts
20 required to be paid into the escrow account, as
21 determined by the mortgage servicer, for all amounts

1 scheduled to be paid to the mortgage servicer prior to
2 the date the taxes and insurance premiums are due; and
3 (3) Where an escrow account has been established and a
4 mortgage servicer advances funds in paying a
5 disbursement that is not the result of a borrower's
6 payment default under the underlying mortgage
7 document, the mortgage servicer shall conduct an
8 escrow account analysis to determine the reasons for
9 and extent of the deficiency and shall provide a
10 written explanation to the borrower before seeking
11 repayment of the funds from the borrower. The
12 mortgage servicer shall then give the borrower the
13 option of paying the shortage over a period of not
14 less than one year. The mortgage servicer shall not
15 charge or collect interest on any shortage during the
16 payment period.
17 Any mortgage servicer who violates any provision of this
18 subsection shall be liable to the borrower: for any penalties,
19 interest, or other charges levied by the taxing authority or
20 insurance company as a result of any violation; any actual
21 damages suffered by the borrower as a result of the violation,

1 including any amount that would have been paid by an insurer for
2 a casualty or liability claim had the insurance policy not been
3 canceled for nonpayment by the mortgage servicer; and, in the
4 case of any successful action to enforce the foregoing liability,
5 the costs of the action together with reasonable attorney's fees as
6 determined by the court.
7 (e) A mortgage servicer shall comply with the following
8 requirements concerning statements of account:
9 (1) At least once annually, within thirty days of the end
10 of the computation year, a mortgage servicer shall
11 deliver to the borrower a plain language statement of
12 the borrower's account showing the unpaid principal
13 balance of the mortgage loan at the end of the
14 immediately preceding twelve-month period, the
15 interest paid during that period, and the amounts
16 deposited into escrow and disbursed from escrow during
17 the period. The annual escrow statement may be
18 provided separately from the annual statement showing
19 the unpaid principal and interest paid. The format
20 and content of the annual escrow statement shall

1 comply with the Real Estate Settlement Procedures Act,
2 including title 12 C.F.R. section 1024.17;
3 (2) A mortgage servicer shall promptly provide a borrower
4 with an accurate accounting in plain English of the
5 debt owed when requested by the borrower or borrower's
6 authorized representative. Within thirty days of
7 receipt of a request from the borrower or the
8 borrower's authorized representative, a mortgage
9 servicer shall deliver to the borrower a payment
10 history for the last thirty-six months of the
11 borrower's account, unless a different period is
12 requested, showing the date and amount of all payments
13 made or credited to the account and the total unpaid
14 balance. The mortgage servicer shall have sixty days
15 to deliver a payment history where the request is for
16 a period longer than the last thirty-six months;
17 (3) A fee shall not be charged to the borrower for the
18 annual escrow statement or for one payment history
19 furnished to a borrower in a twelve-month period; and
20 (4) A shortage, surplus, or deficiency in the escrow
21 account shall be handled in accordance with the Real

1 Estate Settlement Procedures Act, including title 12
2 C.F.R. section 1024.17. Alternatively, with the
3 consent of the borrower, an excess balance may be
4 applied to the principal balance.
5 (f) Except where inconsistent with the automatic stay
6 provisions of the Bankruptcy Code with respect to a borrower in
7 a pending bankruptcy proceeding, a mortgage servicer shall send
8 a payment reminder notice to a borrower at the borrower's last
9 known address no later than seventeen days after the payment
10 becomes due and remains unpaid; provided that a mortgage
11 servicer is not required to send a separate payment reminder
12 notice for each consecutive month in which the mortgage loan
13 continues to remain unpaid.
14 (g) A mortgage servicer shall provide a clear,
15 understandable, and accurate statement of the total amount that
16 is required to pay off the mortgage loan as of a specified date,
17 within a reasonable time, but in any event no more than five
18 business days after receipt of a request from the borrower or
19 borrower's authorized representative. No borrower shall be
20 charged a fee for being informed or receiving a payoff statement
21 or for being provided with a release upon full prepayment;

1 provided that a mortgage servicer may charge a reasonable fee
2 for providing a payoff statement after five or more requests in
3 any calendar year.
4 (h) A mortgage servicer shall comply with the following
5 requirements concerning handling consumer complaints and
6 inquiries:
7 (1) A mortgage servicer shall follow the requirements of
8 the Real Estate Settlement Procedures Act, including
9 requests for error and information resolution
10 procedures under title 12 C.F.R. sections 1024.35 and
11 1024.36;
12 (2) In addition to the requirements of the Real Estate
13 Settlement Procedures Act, a mortgage servicer shall
14 establish and maintain a system to respond to and
15 resolve borrower inquiries and complaints in a prompt
16 and appropriate manner;
17 (3) Within ten business days of receiving a request in
18 writing from a borrower or the borrower's authorized
19 representative, a mortgage servicer shall provide the
20 borrower with the name, address, phone number or
21 electronic mail address, if available, and other

1 relevant contact information for the owner or assignee
2 of the mortgage loan; and
3 (4) In addition to the information required to be
4 disclosed under this section, a mortgage servicer may,
5 at its option, provide any other information regarding
6 the servicing of the loan that the mortgage servicer
7 believes would be helpful to a borrower; provided that
8 any additional information does not contradict or
9 obscure the required disclosures.
10 (i) A mortgage servicer shall comply with the following
11 requirements concerning fees:
12 (1) A mortgage servicer shall maintain and keep current a
13 schedule of standard or common fees that the mortgage
14 servicer charges borrowers for the servicer's
15 servicing-related activities, such as nonsufficient
16 fund fees. The schedule shall identify each fee,
17 provide a plain English explanation of the fee, and
18 state the amount of the fee or range of amounts. If
19 there is no standard fee, the schedule shall explain
20 how the fee is calculated or determined. A mortgage
21 servicer shall make its schedule available on the

1 mortgage servicer's website and to the borrower or the
2 borrower's authorized representative upon request;
3 (2) A mortgage servicer may only collect a fee if the fee
4 is for services actually rendered and one of the
5 following conditions is met:
6 (A) The fee is clearly and conspicuously disclosed by
7 the loan instruments and not prohibited by law;
8 (B) The fee is expressly permitted by law and not
9 prohibited by the loan instruments; or
10 (C) The fee is not prohibited by law or the loan
11 instruments and is a reasonable fee for a
12 specific service requested by the borrower that
13 is assessed only after clear and conspicuous
14 disclosure of the fee is provided to the borrower
15 and the borrower expressly consents to pay the
16 fee in exchange for the services;
17 (3) In addition to the limitations in paragraph (2),
18 attorneys' fees charged in connection with a
19 foreclosure action shall not exceed reasonable and
20 customary fees for the work. If a foreclosure action
21 or proceeding is terminated prior to the public sale

because of a loss mitigation option, a reinstatement, or payment in full, the borrower shall only be liable for reasonable and customary fees for work actually performed; and

(4) A mortgage servicer shall not impose any late fee or delinquency charge when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period. Late charges shall not be:

(A) Based on an amount greater than the past due amount;

(B) Collected from the escrow account or from escrow surplus without the approval of the borrower; or

(C) Deducted from any regular payment.

(j) Each mortgage servicer licensee shall maintain adequate records of each residential mortgage loan transaction at the office named in the mortgage servicer license.

(k) Upon assignment of servicing rights on a residential mortgage loan, the mortgage servicer shall disclose to the borrower:

(1) Any notice required by the Real Estate Settlement Procedures Act, including title 12 C.F.R. section 1024.33, within the time periods prescribed therein; and

(2) A schedule of the ranges and categories of the mortgage servicer's costs and fees for the servicer's servicing-related activities, which shall comply with state and federal law and, if the disclosure is made by a mortgage servicer licensee, shall not exceed those reported to the commissioner in accordance with this chapter.

[~~(b)~~] (1) At the time a servicer accepts assignment of servicing rights for a mortgage loan, the servicer shall disclose to the borrower all of the following:

(1) Any notice required by the Real Estate Settlement Procedures Act,[~~, 12 United States Code section 2601 et seq., or by regulations promulgated thereunder~~];

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

(3) A notice in a form and content acceptable to the commissioner that the servicer is licensed by the commissioner and that complaints about the servicer may be submitted to the commissioner.

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

(m) Where this chapter requires compliance with the Real Estate Settlement Procedures Act, the required compliance applies to any person subject to this chapter, whether or not the Real Estate Settlement Procedures Act applies to that person or transaction."

SECTION 6. Section 454M-6, Hawaii Revised Statutes, is amended to read as follows:

"**§454M-6 Prohibited activities.** (a) It shall be [~~unlawful~~] a violation of this chapter for any mortgage servicer in the course of any mortgage loan transaction[~~:~~], or in connection with any mortgage servicing business, to:

(1) [~~To misrepresent~~] Misrepresent or conceal material facts, [~~to~~] make false promises, or [~~to~~] pursue a course of misrepresentation through its agents or otherwise;

(2) [~~To engage~~] Engage in any transaction, practice, or course of business that is not in good faith, does not constitute fair dealing, or that constitutes a fraud upon any person, in connection with the servicing, purchase, or sale of any mortgage loan;

[~~(3) To fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by sections 6 and 10 of the Real Estate Settlement Procedures Act, 12 United States Code sections 2605 and 2609, and~~

~~regulations adopted thereunder by the Secretary of Housing and Urban Development; or~~

~~(4) To fail to comply with applicable federal laws and regulations related to mortgage servicing.~~]

(3) Obtain property by fraud or misrepresentation;

(4) Misapply residential mortgage loan payments;

(5) Misapply payments to escrow accounts;

(6) Require any amount of funds to be remitted by means more costly to the borrower than a bank or certified check or attorney's check from an attorney's account to be paid by the borrower;

(7) Fail to timely pay taxes or insurance premiums of the borrower, if and as required by this chapter;

(8) Fail to follow procedures concerning escrows for the payment of taxes and insurance as required by this chapter;

(9) Place hazard, homeowner's, or flood insurance on the mortgaged property when the mortgage servicer knows or has reason to know that the borrower has an effective policy for such insurance;

1 (10) Fail to provide written notice to a borrower upon taking
2 action to place hazard, homeowner's, or flood insurance
3 on the mortgaged property, including a clear and
4 conspicuous statement of the procedures by which the
5 borrower may demonstrate that the borrower has the
6 required insurance coverage and by which the mortgage
7 servicer shall terminate the insurance coverage placed
8 by the mortgage servicer and refund or cancel any
9 insurance premiums and related fees paid by or charged
10 to the borrower;
11 (11) Place hazard, homeowner's, or flood insurance on a
12 mortgaged property, or require a borrower to obtain or
13 maintain such insurance, in excess of the replacement
14 cost of the improvements;
15 (12) Fail to provide to the borrower a refund of unearned
16 premiums paid by a borrower or charged to the
17 borrower for hazard, homeowner's, or flood insurance
18 placed by a mortgagee or the mortgage servicer if the
19 borrower provides reasonable proof that the borrower has
20 obtained coverage such that the forced placement
21 insurance is no longer necessary and the property is

1 insured. If the borrower provides reasonable proof
2 that no lapse in coverage occurred such that the
3 forced placement was not necessary, the mortgage
4 servicer shall promptly refund the entire premium;
5 (13) Collect private mortgage insurance beyond the date for
6 which private mortgage insurance is required;
7 (14) Collect, charge, attempt to collect or charge, or use or
8 propose any agreement purporting to collect or charge,
9 any fee not in compliance with, or prohibited by, this
10 chapter;
11 (15) Fail to provide a timely and accurate statement of
12 account, as required by this chapter;
13 (16) Fail to handle a consumer complaint or inquiry in
14 accordance with this chapter;
15 (17) Provide inaccurate information to a credit bureau,
16 thereby harming a borrower's creditworthiness;
17 (18) Fail to report both the favorable and unfavorable
18 payment history of the borrower to a nationally
19 recognized consumer credit bureau at least annually if
20 the mortgage servicer regularly reports information to a
21 credit bureau;

1 (19) Fail to provide or submit a timely, complete, and
2 accurate notice, acknowledgment, statement, information,
3 explanation, reminder, communication, or other
4 information to any person as required by this chapter;
5 (20) Fail to comply with loss mitigation option requirements
6 of this chapter;
7 (21) Fail to offer loan modifications in compliance with the
8 Home Affordable Modification Program guidelines or
9 directives, if the mortgage servicer is participating in
10 the Home Affordable Modification Program;
11 (22) Fail to comply with the requirements of chapter 667 and
12 ensure that the mortgage servicer's attorneys and agents
13 comply with chapter 667;
14 (23) Refuse to communicate with an authorized representative of
15 the borrower who provides a written authorization
16 signed by the borrower; provided that the mortgage
17 servicer may adopt procedures reasonably related to
18 verifying that the representative is in fact
19 authorized to act on behalf of the borrower;
20 (24) Fail to provide a timely payoff statement as required
21 by this chapter;

1 (25) Fail to issue a release of mortgage in accordance with
2 section 506-8;
3 (26) Conduct any business for which this chapter requires a
4 license without holding a valid license as required under
5 this chapter or assist or aid and abet any person in the
6 conduct of business without a valid license as required
7 under this chapter;
8 (27) Engage in the business of mortgage servicing without
9 complying with bonding requirements of this chapter;
10 (28) Transfer or assign its mortgage servicer license;
11 (29) Change its name or office address without complying with
12 the requirements of this chapter;
13 (30) Fail to maintain adequate records of each residential
14 mortgage loan transaction at the office named in the
15 mortgage servicer license; or
16 (31) Make any false statement or omission of a material
17 fact, in connection with any information or reports
18 filed with a governmental agency or NMLS or in
19 connection with any investigation conducted by the
20 commissioner or another governmental agency.

1 (b) It shall be a violation of this chapter for any
2 mortgage servicer in the course of any mortgage loan transaction
3 to fail to comply with any:
4 (1) Applicable federal law or regulation related to
5 mortgage servicing, including but not limited to:
6 (A) The Real Estate Settlement Procedures Act,
7 including the mortgage loan servicing transfer,
8 escrow account administration, and borrower
9 request for information and error resolution
10 requirements;
11 (B) The Truth in Lending Act, title 15 United States
12 Code sections 1601 through 1667f, as amended, and
13 Regulation Z adopted thereunder, title 12 C.F.R.
14 part 226, as amended; or
15 (C) Rules and regulations issued or administered by
16 the Consumer Financial Protection Bureau, and
17 interpretations of the rules by the Consumer
18 Financial Protection Bureau through interpretive
19 rules, bulletins, statements of policy, and
20 statements of guidance;

1 (2) Agreement with a governmental entity, agency, agent,
2 or regulator, or state attorney general that applies
3 to the mortgage servicer, including:
4 (A) A servicer participation agreement or other
5 agreement to participate in the Home Affordable
6 Modification Program or other Making Home
7 Affordable program;
8 (B) Home Affordable Modification Program rules,
9 including guidance provided by Making Home
10 Affordable program handbooks, and supplemental
11 directives; or
12 (C) The National Mortgage Settlement reached in 2012
13 by the federal government and forty-nine states,
14 with the five largest mortgage servicers in the
15 United States, to address mortgage servicing,
16 foreclosure, and bankruptcy abuses;
17 (3) Order of a court or government regulator that applies
18 to the mortgage servicer;
19 (4) Provision of this chapter or any rule adopted pursuant
20 to this chapter; or
21 (5) Federal or state law, rule, or regulation.

[~~(b)~~] (c) It shall be [~~unlawful~~] a violation of this chapter for any mortgage servicer to provide any mortgage loan modifications or other services that would require licensing pursuant to chapter 454F, unless the mortgage servicer is licensed under chapter 454F.

(d) Notwithstanding any other provision of this chapter, a mortgage servicer shall not be in violation of this chapter if performance of a requirement under this chapter would constitute a violation of federal law, rules, or regulations."

SECTION 7. Section 667-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) After the public sale is held, the foreclosing mortgagee shall sign an affidavit under penalty of perjury:

(1) Stating that the power of sale foreclosure was made pursuant to the power of sale provision in the mortgage;

(2) Stating that the power of sale foreclosure was conducted as required by this part;

(3) Summarizing what was done by the foreclosing mortgagee;

(4) Attaching a copy of the recorded notice of default and

intention to foreclose;

(5) Attaching a copy of the last public notice of the public sale;

(6) Referencing the document number of the affiliate statement filed at the bureau of conveyances as required under section 667-58; and

(7) Stating the date of filing and any relevant referencing information assigned by the division of financial institutions to the statement filed with the commissioner of financial institutions of the mortgage servicer affiliate statement as required under section [~~454M-5(a)(4)(F).~~] 454M-5(b)(5)(F)."

SECTION 8. Section 667-58, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any notice provided by a mortgage servicer, including an agent, employee, or representative of that mortgage servicer, shall be issued only by a mortgage servicer that has been listed in the affiliate statement filed by the foreclosing mortgagee or lender under subsection (a); provided further that the mortgage servicer shall be licensed under or otherwise exempt from chapter 454M. The agency relationship or affiliation of the

mortgage servicer and the foreclosing mortgagee or lender and any authority granted or conferred to that mortgage servicer shall be described in the affiliate statement filed under both subsection (a) and section [~~454M-5(a)(4)(F).~~] 454M-5(b)(5)(F)."

SECTION 9. For persons holding a current license under chapter 454M, Hawaii Revised Statutes, on the effective date of this Act, the surety bond requirements under section 454M-4(j) to (n), Hawaii Revised Statutes, established by section 4 of this Act, shall apply as of the date of the licensee's next license renewal under chapter 454M, Hawaii Revised Statutes, immediately following the effective date of this Act, but in no case later than December 31, 2015.

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

SECTION 11. This Act shall take effect upon its approval.

APPROVED this 28 day of MAY, 2015

GOVERNOR OF THE STATE OF HAWAII