GOV. MSG. NO. 1326

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 9, 2015

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
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 July 9, 2015, the following bill was signed into law:

SB756 SD1 HD2 CD1

RELATING TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT
ACT 225 (15)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

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Approved by the Governor
on JUL 9 2015

THE SENATE
TWENTY-EIGHTH LEGISLATURE, 2015
STATE OF HAWAII

ACT 225

S.B. NO. 756 S.D. 1 H.D. 2 C.D. 1

A BILL FOR AN ACT

RELATING TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT.

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

SECTION 1. The legislature finds that seller financing is a useful tool in the credit market. It expands the pool of potential buyers for a seller and gives buyers the opportunity to make a purchase that would otherwise be out of reach, particularly in situations where the purchaser may qualify for traditional financing, but the traditional lender does not accept the property because of its location or condition.

Although a seller financing exemption was not originally included in Hawaii's Secure and Fair Enforcement for Mortgage Licensing Act, the legislature finds that with adequate consumer protection, seller financing is a key component in the Hawaii real estate market. Seller financing can assist intra-family transactions and transfers of property that may be subject to environmental and natural hazards that are unique to Hawaii.

Accordingly, the purpose of this Act is to establish a mortgage license exemption for a seller to engage in seller financing.

1 SECTION 2. Section 454F-2, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "§454F-2 **Exemptions.** This chapter shall not apply to the
4 following:
5 (1) An exempt registered mortgage loan originator when
6 acting for an insured depository institution or an
7 institution regulated by the Farm Credit
8 Administration;
9 (2) A licensed attorney who negotiates the terms of a
10 residential mortgage loan on behalf of a client as an
11 ancillary matter to the attorney's representation of
12 the client unless the attorney is compensated by a
13 lender, a mortgage loan originator company, or other
14 mortgage loan originator or by an agent of a lender,
15 mortgage loan originator company, or other mortgage
16 loan originator;
17 (3) A person or entity that only performs real estate
18 brokerage activities and is licensed or registered by
19 the State unless the person or entity is compensated
20 by a lender, a mortgage loan originator company, or
21 other mortgage loan originator or by an agent of the

lender, mortgage loan originator company, or other mortgage loan originator;

(4) A person or entity solely involved in extensions of credit relating to timeshare plans, as the term is defined in title 11 United States Code section 101(53D);

(5) An exempt sponsoring mortgage loan originator company as defined by this chapter except as otherwise provided by this chapter;

(6) An insured depository institution;

(7) An institution regulated by the Farm Credit Administration;

(8) Employees of government agencies or of housing finance agencies who act as mortgage loan originators; [~~or~~]

(9) A mortgage servicer company that is exempt from chapter 454M, pursuant to section 454M-3[~~.~~]; or

(10) A seller of real property who offers or negotiates terms of a residential mortgage loan that is financed by the seller and secured by the seller's own real property; provided that:

(A) The seller is a person, estate, or trust that transacts three or fewer residential mortgage loans in one calendar year;

(B) The seller is not a loan originator for purposes of the loan originator qualification requirements in 12 Code of Federal Regulations section 1026.36(f) and (g);

(C) The seller has not constructed or acted as the construction contractor for the residence on the property in the ordinary course of the seller's business;

(D) The interest rate for the loan does not exceed the State's usury limit; provided that the exemptions from usury specified in section 478-8 shall not apply to transactions subject to this paragraph;

(E) The seller shall provide to the buyer the terms of the financing including:

(i) A current title search including any liens against the property;

(ii) The interest rate;

(iii) Monthly principal and interest payments;

(iv) Any prepayment penalty;

(v) Any late payment charges;

(vi) The payment schedule;

(vii) The total amount of interest that the mortgagor will pay over the term of the loan expressed as a percentage of the loan amount;

(viii) A calculation of projected aggregate monthly payments including principal and interest;

(ix) Estimated closing costs if closing costs are included in loan costs and estimated cash to close if closing costs are not included in loan costs. For purposes of this paragraph, closing costs shall include recording fees, transfer taxes, prepaid costs such as homeowner's insurance premiums or property taxes, and appraisal costs charged to the mortgagor;

(x) The seller's contact information including name, address, phone number, electronic mail

address, and alternate contact information to the extent available; and

(xi) A statement that the seller will acquire a security interest in the buyer's dwelling and that the buyer may lose the dwelling in the event of a loan default;

(F) The seller shall provide a disclaimer, to be initialed by the buyer, which states, "BUYER ACKNOWLEDGES RECEIVING FINANCING FROM THE SELLER IN THIS TRANSACTION AND GRANTING THE SELLER A MORTGAGE. THIS CAN HAVE SERIOUS CONSEQUENCES SHOULD BUYER FAIL TO MAKE ANY PAYMENTS INCLUDING BUT NOT LIMITED TO FORECLOSURE AND THE LOSS OF BUYER'S PROPERTY. THEREFORE, IT IS IMPORTANT THAT BUYER UNDERSTANDS ALL FINANCING TERMS AND OBLIGATIONS AND OBTAINS PROFESSIONAL EXPERT ADVICE TO THE EXTENT NECESSARY TO ENSURE BUYER IS FULLY ADVISED IN THIS MATTER."; and

(G) A residential mortgage loan shall be recorded with the land court or bureau of conveyances as applicable."

1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.
3 SECTION 4. This Act shall take effect upon its approval.
4

APPROVED this 9 day of JUL , 2015

GOVERNOR OF THE STATE OF HAWAII