
A BILL FOR AN ACT

RELATING TO MORTGAGE SERVICERS.

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

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

4 "§454M- Education programs; requirements. Each licensee
5 shall establish an education program, which shall include:

6 (1) Development of internal policies, procedures, and
7 controls; and

8 (2) An ongoing employee training program, which includes
9 testing of employees' knowledge."

10 SECTION 2. Section 454M-1, Hawaii Revised Statutes, is
11 amended by adding a new definition to be appropriately inserted
12 and to read as follows:

13 "Nonprofit organization" means an organization that:

14 (1) Has the status of a tax-exempt organization under
15 section 501(c)(3) of the Internal Revenue Code of
16 1986, as amended;



1 (2) Conducts its activities in a manner that serves public
2 or charitable purposes, rather than commercial
3 purposes;

4 (3) Receives funding and revenue and charges fees in a
5 manner that does not incentivize it or its employees
6 to act other than in the best interests of its
7 clients;

8 (4) Compensates its employees in a manner that does not
9 incentivize employees to act other than in the best
10 interests of its clients; and

11 (5) Offers or provides one or more services of a mortgage
12 servicer."

13 SECTION 3. Section 454M-4, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§454M-4 License; fees; renewals; notices; voluntary**
16 **surrender of license; bonds.** (a) The commissioner may approve
17 a license or license renewal application upon receipt of a
18 complete application; provided that an applicant for licensure
19 shall file an application on a form prescribed by NMLS or by the
20 commissioner and shall pay [an] the application fee [~~of \$675.~~]
21 required in subsection (b). Each license shall expire on



1 December 31 of each calendar year unless the license is renewed.

2 A licensee may apply for license renewal by filing a renewal
3 statement on a form prescribed by NMLS or by the commissioner
4 and paying [a] the renewal fee [of ~~\$600,~~] required in subsection
5 (b). at least four weeks prior to December 31. The minimum
6 standards for license renewal shall include the following:

- 7 (1) The licensee continues to meet the minimum standards
8 for licensure established pursuant to this section;
- 9 (2) The licensee has paid all required fees for renewal of
10 the license; and
- 11 (3) The licensee is registered with the business
12 registration division of the department of commerce
13 and consumer affairs.

14 All fees paid pursuant to this section, including fees paid in
15 connection with an application, shall be nonrefundable. No fee
16 paid pursuant to this section shall be prorated if the license
17 is surrendered, revoked, or suspended prior to the expiration of
18 the period for which it was approved.

19 (b) Fees payable pursuant to this section shall be as
20 follows:

- 21 (1) A mortgage servicer shall pay a fee of:



- 1 (A) \$675 for an initial application; and
- 2 (B) \$600, upon application for an annual license
- 3 renewal; and

4 (2) A nonprofit organization shall pay a fee of:

- 5 (A) \$200 for an initial application; and
- 6 (B) \$150, upon application for an annual license
- 7 renewal.

8 ~~(b)~~ (c) To fulfill the purposes of this chapter, the
9 commissioner may ~~establish~~:

- 10 (1) Establish relationships or contracts with NMLS or
- 11 other entities designated by NMLS to collect and
- 12 maintain records and process transaction fees or other
- 13 fees related to licensees or other persons subject to
- 14 this chapter~~[-]~~; and

15 ~~(e)~~ (2) To the extent reasonably necessary to
16 participate in NMLS, ~~[the commissioner may]~~ modify any
17 or all of the requirements of subsections (e) and (i).

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



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

- 3 (1) Form and place of organization;
4 (2) Tax identification number; and
5 (3) Proposed method of doing business.

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

13 (f) A mortgage servicer license shall not be transferable or
14 assignable. No licensee shall use any name other than the
15 licensee's legal name or a fictitious name approved by the
16 commissioner; provided that no licensee shall use the licensee's
17 legal name if the commissioner disapproves of the use of the
18 licensee's legal name.

19 (g) A mortgage servicer licensee may change the licensee's
20 name or the address of any of the licensee's offices specified
21 on the most recent filing with NMLS if:



1 (1) The licensee files the change with NMLS and provides
2 directly to the commissioner a bond rider or
3 endorsement, or addendum, as applicable, to any bond on
4 file with the commissioner that reflects the new name
5 or address;

6 (2) The commissioner approves the change in writing; and

7 (3) The mortgage servicer pays to the commissioner a fee
8 of \$100 and any fees charged by NMLS.

9 (h) The mortgage servicer licensee shall file with NMLS
10 or, if the information cannot be filed with NMLS, directly
11 notify the commissioner in writing no later than five business
12 days after the licensee has reason to know of the occurrence of any
13 of the following events:

14 (1) Filing for bankruptcy or the consummation of a
15 corporate restructuring of the licensee;

16 (2) Filing of a criminal indictment against the licensee or
17 receiving notification of the filing of any criminal
18 felony indictment or felony conviction of any of the
19 licensee's officers, directors, employees, managers,
20 agents, members, partners, or shareholders owning ten per
21 cent or more of the outstanding stock of the licensee;



- 1 (3) Receiving notification of the initiation of license
2 denial, cease and desist, suspension or revocation
3 procedures, or other formal or informal regulatory
4 action by any governmental agency against the licensee
5 and the reasons for the action;
- 6 (4) Receiving notification of the initiation of any action
7 against the licensee by the state attorney general or
8 the attorney general of any other state and the reasons
9 for the action;
- 10 (5) Suspension or termination of the licensee's status as an
11 approved servicer by the Federal National Mortgage
12 Association, Federal Home Loan Mortgage Corporation, or
13 Government National Mortgage Association;
- 14 (6) Receiving notification that certain servicing rights of
15 the licensee will be rescinded or canceled, and the
16 reasons provided therefor;
- 17 (7) Receiving notification of filing for bankruptcy of any
18 of the licensee's officers, directors, members,
19 managers, agents, partners, or shareholders owning ten
20 per cent or more of the outstanding stock of the
21 licensee; or



1 (8) Receiving notification of the initiation of a class action
2 lawsuit on behalf of consumers against the licensee that
3 is related to the operation of the licensed business.

4 (i) A mortgage servicer licensed under this chapter may
5 voluntarily cease business and surrender its license by giving
6 written notice to the commissioner of its intent to surrender
7 its mortgage servicer license. Notice pursuant to this
8 subsection shall be given at least thirty days before the
9 surrender of the license and shall include:

- 10 (1) The date of surrender;
- 11 (2) The name, address, telephone number, facsimile number,
12 and electronic address of a contact individual with
13 knowledge and authority sufficient to communicate with
14 the commissioner regarding all matters relating to the
15 licensee during the period that it was licensed
16 pursuant to this chapter;
- 17 (3) The reason or reasons for surrender;
- 18 (4) The original license issued pursuant to this chapter
19 to the mortgage servicer; and
- 20 (5) If applicable, a copy of all notices to affected
21 borrowers required by the Real Estate Settlement



1 Procedures Act of the assignment, sale, or transfer of
2 the servicing of all relevant loans that the licensee
3 is currently servicing under the license being
4 surrendered.

5 Voluntary surrender of a license shall be effective upon
6 the date of surrender specified on the written notice to the
7 commissioner as required by this subsection; provided that if a
8 mortgage servicer is required to assign, sell, or transfer the
9 servicing of any loans, the voluntary surrender of the mortgage
10 servicer's license shall be effective upon the effective date of
11 the assignment, sale, or transfer of the servicing of all loans.

12 (j) Before a mortgage servicer's license becomes
13 effective, the applicant or licensee shall file with the
14 commissioner a surety bond written by a surety authorized to
15 write surety bonds in this State, covering the applicant or
16 licensee in a penal sum of \$100,000. No mortgage servicer
17 licensee shall act as a mortgage servicer in this State without
18 maintaining the surety bond required by this section.

19 The surety bond shall be:

20 (1) In a form approved by the attorney general of this
21 State; and



1 (2) Conditioned upon the mortgage servicer licensee
2 faithfully performing any and all written agreements or
3 commitments with or for the benefit of borrowers and
4 mortgagees, truly and faithfully accounting for all
5 funds received from a borrower or mortgagee in the
6 person's capacity as a mortgage servicer, and
7 conducting the mortgage business consistent with the
8 provisions of this chapter to perform any written
9 agreements or commitments.

10 (k) The commissioner, or any person claiming to have
11 sustained damage by reason of the failure of the mortgage
12 servicer to comply with the mortgage servicer's bond, or by the
13 wrongful conversion of funds paid by a borrower to the mortgage
14 servicer, may bring an action on the bond to recover the damage
15 therefrom. The commissioner may deposit with a court of
16 competent jurisdiction all or any part of the sum of the bond.
17 The proceeds of the bond, even if mixed with other assets of the
18 principal, shall be deemed by operation of law to be held in
19 trust for the benefit of claimants against the principal in the
20 event of bankruptcy of the principal and shall be immune from
21 attachment by creditors and judgment creditors. The surety bond



1 shall run concurrently with the period of the license for the
2 principal office of the mortgage servicer and the aggregate
3 liability under the bond shall not exceed the penal sum of the
4 bond. The principal shall notify the commissioner of the
5 commencement of an action on the bond. When an action is
6 commenced on a principal's bond, the commissioner may require the
7 filing of a new bond and immediately on recovery on any action on
8 the bond, the principal shall file a new bond.

9 (1) A surety may cancel the surety bond required by this
10 section at any time by a written notice to the principal
11 stating the date cancellation shall take effect. The notice
12 shall be sent by certified mail to the principal at least thirty
13 days prior to the date of cancellation. A surety bond shall not
14 be canceled unless the surety notifies the commissioner, in
15 writing, not less than thirty days prior to the effective date of
16 cancellation. After receipt of the notification from the surety,
17 the commissioner shall give written notice to the principal of the
18 date the cancellation shall take effect. The commissioner shall
19 automatically suspend the license of a mortgage servicer on that
20 date. No automatic suspension or inactivation shall occur if,
21 prior to the date that the bond cancellation shall take effect:



1 (1) The principal submits a letter of reinstatement of the
2 bond or a new bond; or

3 (2) The mortgage servicer licensee has ceased business in
4 this State and has surrendered all licenses in
5 accordance with this chapter.

6 Automatic suspension of a mortgage servicer license by the
7 commissioner, and subsequent orders and proceedings, if any,
8 shall be conducted pursuant to section 454M-7.

9 (m) If the commissioner finds that the financial
10 condition of a mortgage servicer so requires, as evidenced by
11 the reduction of tangible net worth, financial losses, or
12 potential losses as a result of a violation of law or rule, the
13 commissioner may require one or more additional bonds that meet the
14 requirements of this section. The licensee shall file any
15 additional bonds no later than ten days after receipt of the
16 commissioner's written notice of the requirement for one or more
17 additional bonds. A mortgage servicer or mortgage lender
18 licensee shall file, as the commissioner may require, any bond
19 rider or endorsement or addendum, as applicable, to any bond
20 on file with the commissioner to reflect any changes necessary
21 to maintain the surety bond required by this section.



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

4 SECTION 4. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect on July 1, 2050.

7



Report Title:

Mortgage Servicers; Education Program; Nonprofit Organizations;
Fees

Description:

Requires mortgage servicer licensees to establish an education program that includes development of internal policies, procedures, and controls and a continuing education program for its employees. Defines "nonprofit organization" and lowers the application fee and renewal license fee for nonprofit corporations under the State's mortgage servicer law. Effective 7/1/2050. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

