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# A BILL FOR AN ACT

RELATING TO THE MORTGAGE LOAN RECOVERY FUND.

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

1           SECTION 1. Section 454F-41, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§454F-41 Mortgage loan recovery fund; use of fund; fees.**

4           (a) The commissioner shall establish and maintain a fund that  
5 shall be known as the mortgage loan recovery fund, from which  
6 any person aggrieved by an act, representation, transaction, or  
7 conduct of a mortgage loan originator company licensee involving  
8 fraud, misrepresentation, or deceit in violation of this chapter  
9 may recover, by [~~order~~] final judgment of the circuit court or  
10 district court of the county where the violation occurred, an  
11 amount of ten per cent of the residential mortgage loan, but not  
12 more than \$150,000, including court costs and fees as set by law  
13 and reasonable attorney fees as determined by the court, for  
14 damages sustained by the fraud, misrepresentation, or deceit of  
15 a mortgage loan originator company licensee.

16           [~~(b)~~] In addition to application fees and any fees  
17 required by NMLS, a mortgage loan originator licensee shall pay



1 to the division a mortgage loan recovery fund fee [~~as follows~~  
2 ~~for deposit in the mortgage loan recovery fund:~~

3 ~~(1) The sum of \$300 for each principal office location of~~  
4 ~~a mortgage loan originator company;~~

5 ~~(2) The sum of \$250 for each branch office location of a~~  
6 ~~mortgage loan originator company; and~~

7 ~~(3) The sum of \$200 for each mortgage loan originator.] in~~  
8 ~~the sum of \$200.~~

9 [~~e~~] Upon application for renewal of a license under this  
10 chapter, a mortgage loan originator licensee shall pay, in  
11 addition to the licensee's license renewal fee and fees required  
12 by NMLS, to the division a mortgage loan recovery fund fee [~~as~~  
13 ~~follows for deposit in the mortgage loan recovery fund:~~

14 ~~(1) The sum of \$200 for each principal office location of~~  
15 ~~a mortgage loan originator company;~~

16 ~~(2) The sum of \$100 for each branch office location of a~~  
17 ~~mortgage loan originator company; and~~

18 ~~(3) The sum of \$100 for each mortgage loan originator.] in~~  
19 ~~the sum of \$100.~~



1 Mortgage loan recovery fund fees collected pursuant to this  
2 subsection shall be refundable upon the denial of a license  
3 renewal by the commissioner.

4 ~~[(d)]~~ (b) When the mortgage loan recovery fund attains a  
5 funding level of \$750,000, the commissioner may make a finding  
6 to adjust the fees payable to the fund or may determine that  
7 payments made by mortgage loan originator licensees shall cease.  
8 If acceptance of payments is ceased, it shall remain ceased  
9 until the funding level falls below \$750,000. If the funding  
10 level falls below \$250,000 after the first five years of the  
11 establishment of the fund, the commissioner may adjust the fees  
12 to a reasonable level ~~[for the purpose of attaining]~~ to attain a  
13 funding level of \$750,000.

14 ~~[(e)]~~ (c) The commissioner or the commissioner's designee,  
15 as the manager of the mortgage loan recovery fund, shall be  
16 authorized to expend moneys in the mortgage loan recovery fund  
17 to:

18 (1) Retain private legal counsel to represent the  
19 commissioner or the division in any action that  
20 involves or may result in payment from the mortgage  
21 loan recovery fund;



- 1           (2) Retain a certified public accountant for accounting
- 2                   and auditing of the mortgage loan recovery fund;
- 3           (3) Employ necessary personnel, not subject to chapter 76,
- 4                   to assist the commissioner in exercising the
- 5                   commissioner's powers and duties with respect to the
- 6                   mortgage loan recovery fund; and
- 7           (4) Retain a consultant to recover and collect any
- 8                   payments from the mortgage loan recovery fund, plus
- 9                   interest from the judgment debtor."

10           SECTION 2. Section 454F-42, Hawaii Revised Statutes, is  
11 amended to read as follows:

12           "**§454F-42 Statute of limitation; recovery from fund.** (a)  
13 No action for a judgment that subsequently results in an order  
14 for collection from the mortgage loan recovery fund shall be  
15 commenced later than six years from the accrual of the cause of  
16 action. When any aggrieved person commences an action for a  
17 judgment that may result in collection from the mortgage loan  
18 recovery fund, the aggrieved person shall notify the  
19 commissioner in writing at the time of the commencement of the  
20 action and shall submit to the commissioner any documents



1 required by the commissioner pursuant to rules issued in  
2 accordance with chapter 91.

3 (b) When any aggrieved person receives a valid judgment  
4 upon the grounds of fraud, misrepresentation, or deceit that  
5 occurred before the effective date of section 454F-41 against  
6 any licensee from any circuit or district court where the  
7 violation occurred, the aggrieved person shall proceed against  
8 the bond covering the license that was in force prior to the  
9 enactment of section 454F-41 and establishment of the mortgage  
10 loan recovery fund.

11 (c) The court shall proceed upon an application to recover  
12 from the mortgage loan recovery fund in a summary manner and, at  
13 hearing, the aggrieved person shall be required to show:

14 (1) The person is not a spouse of the judgment debtor or  
15 the personal representative of a spouse of the  
16 judgment debtor;

17 (2) The person has complied with all the requirements of  
18 this section;

19 (3) The person has obtained a judgment pursuant to section  
20 454F-41(a) that states the amount of the judgment and



1 the amount owed on the judgment debt as of the date of  
2 the application;

3 (4) The person has made all reasonable searches and  
4 inquires to ascertain whether the judgment debtor is  
5 possessed of real or personal property or other assets  
6 liable to be sold or applied in satisfaction of the  
7 judgment; and

8 (A) The search has uncovered no personal or real  
9 property or other assets liable to be sold or  
10 applied; or

11 (B) The search has uncovered personal or real  
12 property or other assets liable to be sold or  
13 applied, the person has taken all necessary  
14 action and completed all necessary proceedings  
15 for the realization thereof, and the amount  
16 realized was insufficient to satisfy the  
17 judgment; provided that the person shall state  
18 the amount realized and the balance remaining due  
19 on the judgment after application of the amount  
20 realized; and



1 (5) That where the licensee is a judgment debtor in a  
2 bankruptcy proceeding, the aggrieved person has  
3 obtained an order from the bankruptcy court declaring  
4 the judgment against the licensee to be non-  
5 dischargeable.

6 (d) Upon hearing, if the court is satisfied of the truth  
7 of all matters required by subsection (c) and that the aggrieved  
8 person has fully pursued and exhausted all remedies available to  
9 the person for recovering the amount awarded by the judgment of  
10 the court, the court shall issue an order directing the  
11 commissioner to pay from the mortgage loan recovery fund  
12 whatever sum the court finds to be payable upon the claim in  
13 accordance with the limitations contained in this section.

14 (e) The commissioner may also consider applications to  
15 recover from the mortgage loan recovery fund. An aggrieved  
16 person who has obtained a final judgment from the court may  
17 submit the person's application to the commissioner. If the  
18 commissioner is satisfied as to the truth of the application,  
19 and that despite reasonable efforts the person has been unable  
20 to recover on the judgment, the commissioner may issue an order  
21 approving payment from the fund.



1           [~~(e)~~] (f) Notwithstanding any other provision, the  
2 liability of the mortgage loan recovery fund shall not exceed  
3 the sum of \$100,000 against any one licensee."

4           SECTION 3. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6           SECTION 4. This Act shall take effect on July 1, 2021.



**Report Title:**

Mortgage Loan Recovery Fund; Mortgage Loan Originator;  
Restitution; Chapter 454F

**Description:**

Allows a person aggrieved by the fraud, misrepresentation, or deceit of a mortgage loan originator company licensee to receive restitution payment upon a final court order. Repeals fees paid by mortgage loan originator companies and their branch office locations to the Mortgage Loan Recovery Fund. Provides the Commissioner of Financial Institutions with the authority to consider applications to recover from the fund. (SD1)

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