

S.B. NO. 3075

JAN 24 2024

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 licensee or a mortgage
8 loan originator company licensee involving fraud,
9 misrepresentation, or deceit in violation of this chapter may
10 recover, by final judgment of the circuit court or district
11 court of the county where the violation occurred, an amount of
12 ten per cent of the residential mortgage loan, but not more than
13 \$150,000, including court costs and fees as set by law and
14 reasonable attorney fees as determined by the court, for damages
15 sustained by the fraud, misrepresentation, or deceit of a
16 mortgage loan originator licensee or a mortgage loan originator
17 company licensee.

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1 In addition to application fees and any fees required by
2 NMLS, a mortgage loan originator licensee shall pay to the
3 division a mortgage loan recovery fund fee in the sum of \$200.

4 Upon application for renewal of a license under this
5 chapter, a mortgage loan originator licensee shall pay to the
6 division, in addition to the licensee's license renewal fee and
7 fees required by NMLS, a mortgage loan recovery fund fee in the
8 sum of \$100.

9 The \$100 mortgage loan recovery fund fee collected pursuant
10 to this subsection shall be refundable upon the denial of a
11 license renewal by the commissioner.

12 (b) When the mortgage loan recovery fund attains a funding
13 level of \$750,000, the commissioner may make a finding to adjust
14 the fees payable to the fund or may determine that payments made
15 by mortgage loan originator licensees shall cease. If
16 acceptance of payments is ceased, it shall remain ceased until
17 the funding level falls below \$750,000. If the funding level
18 falls below \$250,000 after the first five years of the
19 establishment of the fund, the commissioner may adjust the fees
20 to a reasonable level to attain a funding level of \$750,000.

21 (c) The commissioner or the commissioner's designee, as
22 the manager of the mortgage loan recovery fund, shall be

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1 authorized to expend moneys in the mortgage loan recovery fund
2 to:

3 (1) Retain private legal counsel to represent the
4 commissioner or the division in any action that
5 involves or may result in payment from the mortgage
6 loan recovery fund;

7 (2) Retain a certified public accountant for accounting
8 and auditing of the mortgage loan recovery fund;

9 (3) Employ necessary personnel, not subject to chapter 76,
10 to assist the commissioner in exercising the
11 commissioner's powers and duties with respect to the
12 mortgage loan recovery fund; and

13 (4) Retain a consultant to recover and collect any
14 payments from the mortgage loan recovery fund, plus
15 interest from the judgment debtor.

16 (d) On an annual basis, the division may apply up to
17 \$50,000 of moneys accumulated in the mortgage recovery fund in
18 excess of \$1,500,000 for:

19 (1) Training of the division and its attorneys in the area
20 relating to the residential mortgage industry;

21 (2) Expenses of the division to provide training for the
22 licensees;

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Report Title:

Mortgage Loan Recovery Fund; Mortgage Loan Originator Licensee;
Division of Financial Institutions

Description:

Clarifies the eligibility to recover from the Mortgage Loan Recovery Fund to include consumers aggrieved by the conduct of a mortgage loan originator licensee. Allows for the annual use of \$50,000 of the fund for training the Division of Financial Institutions and its attorneys relating to the residential mortgage industry, providing training to licensees, developing educational materials for licensees in the area relating to licensure under this chapter, and educating the public in the area relating to residential mortgage loans. Increases the restitution available to consumers from the Mortgage Loan Recovery Fund to the amount of \$150,000, bringing consistency to sections 454F-41 and 454F-42, HRS.

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JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO THE MORTGAGE LOAN RECOVERY FUND.

PURPOSE: To clarify the eligibility to recover from the Mortgage Loan Recovery Fund to include consumers aggrieved by the conduct by a mortgage loan originator licensee. To allow for the annual use of \$50,000 of the fund for training the Division of Financial Institutions and its attorneys relating to the residential mortgage industry, providing training to licensees, developing educational materials for licensees in the area relating to licensure under this chapter, and educating the public in the area relating to residential mortgage loans. To increase the restitution available to consumers from the Mortgage Loan Recovery Fund in the amount of \$150,000, bringing consistency to sections 454F-41 and 454F-42, Hawaii Revised Statutes.

MEANS: Amend sections 454F-41 and 454F-42, HRS.

JUSTIFICATION: Currently, section 454F-41, HRS, provides that consumers aggrieved by conduct of a mortgage loan originator company licensee may recover from the Mortgage Loan Recovery Fund. This bill will clarify that consumers aggrieved by conduct of any mortgage loan originator licensee may recover from the fund as well. The bill would also increase consumer protection by authorizing the use of the moneys in the fund for the education of the Division, licensees, and consumers. Finally, it would clarify the amount of restitution available to consumers by making 454F-41 and 454F-42, HRS, consistent.

Impact on the public:

- Aggrieved consumers would be able to receive restitution from the Mortgage Loan Recovery Fund for fraud, misrepresentation, or deceit by a mortgage loan originator licensee or mortgage loan originator company licensee during a mortgage origination transaction.
- Provide increased consumer protection through the education and professional development of the division.
- Increase consumer protection by providing funds for the development of educational materials for licensees and consumers.

Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-104.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2024.