
A BILL FOR AN ACT

RELATING TO INTEREST ON INSURANCE PROCEEDS RELATED TO A MORTGAGE
LOAN.

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

SECTION 1. Chapter 412, Hawaii Revised Statutes, is
amended by adding a new section to article 14 to be
appropriately designated and to read as follows:

**"§412:14- Interest on insurance proceeds related to a
mortgage loan.** In the event of a state of emergency declared by
the governor pursuant to section 127A-14, a Hawaii financial
institution shall comply with the following requirements
concerning the handling, processing, and disbursement of
insurance proceeds paid to satisfy a claim associated with the
damage or destruction of a residential property that is the
subject of a mortgage, including but not limited to hazard
insurance of any kind:

(1) No later than thirty days after the Hawaii financial
institution receives the insurance proceeds, the
Hawaii financial institution shall contact the
borrower to determine whether the proceeds should be:



1 (A) Applied to the unpaid principal balance of the
2 existing mortgage loan; or

3 (B) Placed in an escrow account if:

4 (i) The borrower intends to use the insurance
5 proceeds to rebuild; or

6 (ii) Disburse funds in excess of the loan
7 balance;

8 (2) If the insurance proceeds are sufficient to pay off
9 the unpaid principal balance of the existing mortgage
10 loan, then the Hawaii financial institution, with the
11 borrower's consent, shall pay off the mortgage loan
12 and disburse any excess funds to the borrower; or

13 (3) If:

14 (A) The funds are not sufficient to pay off the
15 mortgage loan; or

16 (B) The borrower intends to use the insurance
17 proceeds to rebuild,

18 the proceeds shall be placed in an escrow account as
19 set forth in paragraph (5);

20 (4) In accordance with investor guidelines, if the funds
21 exceed the amount of the mortgage loan balance, a



1 mortgage servicer shall disburse to a borrower any
2 amount of insurance proceeds in excess of the remaining
3 amount that the borrower owes on the mortgage;

4 (5) A Hawaii financial institution shall hold in an
5 interest-bearing account, for the benefit of the
6 borrower, any insurance proceeds that the Hawaii
7 financial institution does not immediately disburse to
8 a borrower pending rebuild of a residential property.

9 The Hawaii financial institution shall ensure that the
10 interest that accrues to the account is credited to
11 the borrower's account monthly; and

12 (6) A Hawaii financial institution shall not charge the
13 borrower a fee for the maintenance or disbursement of
14 interest earned on the insurance proceeds, as set
15 forth in paragraph (5), held by the financial
16 institution for the benefit of the borrower."

17 SECTION 2. Section 454M-5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§454M-5, Additional duties of a mortgage servicer; good**
20 **faith and fair dealing; disclosures; payments, accounting, and**
21 **records; assignment of servicing rights. (a) A mortgage**



1 servicer licensed or acting under this chapter, has a duty of
2 good faith and fair dealing in its communications, transactions,
3 and course of dealings with each borrower in connection with the
4 servicing of the borrower's mortgage loan.

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

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

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

12 (3) Act with reasonable skill, care, timeliness,
13 promptness, and diligence;

14 (4) Disclose to the commissioner in the servicer's license
15 application and each yearly renewal a complete,
16 current schedule of the ranges of costs and fees it
17 charges borrowers for its servicing-related
18 activities;

19 (5) File a report with each yearly renewal statement in a
20 form and format acceptable to the commissioner



1 detailing the servicer's activities in this State,
2 including:

3 (A) The number of mortgage loans the servicer is
4 servicing;

5 (B) The type and characteristics of loans serviced in
6 this State;

7 (C) The number of serviced loans in default, along
8 with a breakdown of thirty-, sixty-, and ninety-
9 day delinquencies;

10 (D) Information on loss mitigation activities,
11 including details on workout arrangements
12 undertaken;

13 (E) Information on foreclosures commenced in this
14 State;

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



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

3 (6) Maintain an office in the State that is staffed by at
4 least one agent or employee for the purposes of
5 addressing consumer inquiries or complaints and
6 accepting service of process; provided that the
7 mortgage servicer's business constitutes at least a
8 twenty per cent share of the portion of the total
9 mortgage loan service market in the State that was
10 serviced by mortgage servicers licensed under this
11 chapter within the previous calendar year; and
12 provided further that nothing in this section shall
13 prohibit a mortgagee as defined by section 667-1 or a
14 mortgage servicer from contracting with a licensee
15 that maintains an office in this State in conformity
16 with this section for the purposes of addressing
17 consumer inquiries or complaints and accepting service
18 of process.

19 (c) A mortgage servicer shall comply with the following
20 requirements concerning handling and processing of mortgage
21 payments:



(1) Except as provided in paragraph (4), all payments received by a mortgage servicer on a mortgage loan at the address where the borrower has been instructed in writing to make payments shall be accepted and credited, or treated as credited, on the business day received, to the extent that the borrower has provided sufficient information to credit the account. For all mortgage loans originated after July 1, 2015, except where inconsistent with federal law or regulation, payments shall be credited to the principal and interest due on the home loan before crediting the payments to taxes, insurance, or fees;

(2) Methods of payment and payment instruments shall be reasonable;

(3) If a mortgage servicer specifies in writing requirements for the borrower to follow in making payments, but accepts a payment that does not conform to the requirements, the mortgage servicer shall credit the payment as soon as commercially practicable, but in no event later than three business days after receipt;



1 (4) Late payments of principal and interest shall be
2 credited before any late charge is collected; and

3 (5) If the mortgage servicer receives any payment on a
4 mortgage loan and suspenses the payment, does not
5 credit the payment, or does not treat the payment in
6 accordance with this section, the mortgage servicer,
7 within ten days of receipt, shall send the borrower
8 notice by mail at the borrower's last known address
9 indicating the reason the payment was suspended or was
10 not credited or treated as credited to the account,
11 and specifying any actions by the borrower necessary
12 to make the loan current.

13 (d) A mortgage servicer shall comply with the following
14 requirements concerning escrows for the payment of taxes and
15 insurance:

16 (1) Any mortgage servicer who receives funds from a
17 borrower to be held in escrow for payment of taxes and
18 insurance premiums shall pay the taxes and insurance
19 premiums of the borrower to the appropriate taxing
20 authority and insurance company in the amount required
21 and at the time the taxes and insurance premiums are



1 due, in accordance with the requirements of the Real
2 Estate Settlement Procedures Act, including title 12
3 [~~C.F.R.~~] Code of Federal Regulations section 1024.17,
4 and shall be liable to the borrower as provided
5 therein;

6 (2) If the amount held in the escrow account as of the
7 date the taxes and insurance premiums are due is
8 insufficient to pay the taxes and insurance premiums,
9 the mortgage servicer shall pay the taxes and
10 insurance premiums from the mortgage servicer's own
11 funds; provided that the borrower has paid to the
12 mortgage servicer the amounts required to be paid into
13 the escrow account, as determined by the mortgage
14 servicer, for all amounts scheduled to be paid to the
15 mortgage servicer prior to the date the taxes and
16 insurance premiums are due; and

17 (3) Where an escrow account has been established and a
18 mortgage servicer advances funds in paying a
19 disbursement that is not the result of a borrower's
20 payment default under the underlying mortgage
21 document, the mortgage servicer shall conduct an



1 escrow account analysis to determine the reasons for
2 and extent of the deficiency and shall provide a
3 written explanation to the borrower before seeking
4 repayment of the funds from the borrower. The
5 mortgage servicer shall then give the borrower the
6 option of paying the shortage over a period of not
7 less than one year. The mortgage servicer shall not
8 charge or collect interest on any shortage during the
9 payment period.

10 Any mortgage servicer who violates any provision of this
11 subsection shall be liable to the borrower: for any penalties,
12 interest, or other charges levied by the taxing authority or
13 insurance company as a result of any violation; any actual
14 damages suffered by the borrower as a result of the violation,
15 including any amount that would have been paid by an insurer for
16 a casualty or liability claim had the insurance policy not been
17 canceled for nonpayment by the mortgage servicer; and, in the
18 case of any successful action to enforce the foregoing
19 liability, the costs of the action together with reasonable
20 attorney's fees as determined by the court.



1 (e) A mortgage servicer shall comply with the following
2 requirements concerning the handling, processing, and
3 disbursement of insurance proceeds paid to satisfy a claim
4 associated with the damage or destruction of a residential
5 property that is the subject of a mortgage, including but not
6 limited to hazard insurance of any kind:

7 (1) No later than thirty days after the mortgage servicer
8 receives the insurance proceeds, the mortgage servicer
9 shall contact the borrower to determine whether the
10 proceeds should be:

11 (A) Applied to the unpaid principal balance of the
12 existing mortgage loan; or

13 (B) Placed in an escrow account if:

14 (i) The borrower intends to use the insurance
15 proceeds to rebuild; or

16 (ii) Disburse funds in excess of the loan
17 balance;

18 (2) If the insurance proceeds are sufficient to pay off
19 the unpaid principal balance of the existing mortgage
20 loan, then the mortgage servicer, with the borrower's



1 consent, shall pay off the mortgage loan and disburse
2 any excess funds to the borrower; or

3 (3) If:

4 (A) The funds are not sufficient to pay off the
5 mortgage loan; or

6 (B) The borrower intends to use the insurance
7 proceeds to rebuild,

8 the proceeds shall be placed in an escrow account as
9 set forth in paragraph (5);

10 (4) In accordance with investor guidelines, if the funds
11 exceed the amount of the mortgage loan balance, a
12 mortgage servicer shall disburse to a borrower any
13 amount of insurance proceeds in excess of the remaining
14 amount that the borrower owes on the mortgage;

15 (5) A mortgage servicer shall hold in an interest-bearing
16 account, for the benefit of the borrower, any
17 insurance proceeds that the mortgage servicer does not
18 immediately disburse to a borrower pending rebuild of
19 a residential property. A mortgage servicer shall
20 ensure that the interest that accrues to the account
21 is credited to the borrower's account monthly; and



1 (6) A mortgage servicer shall not charge the borrower a
2 fee for the maintenance or disbursement of interest
3 earned from an interest-bearing account established
4 pursuant to section 454M:-5(e) (2).

5 [~~(e)~~] (f) A mortgage servicer shall comply with the
6 following requirements concerning statements of account:

7 (1) At least once annually, within thirty days of the end
8 of the computation year, a mortgage servicer shall
9 deliver to the borrower a plain language statement of
10 the borrower's account showing the unpaid principal
11 balance of the mortgage loan at the end of the
12 immediately preceding twelve-month period, the
13 interest paid during that period, and the amounts
14 deposited into escrow and disbursed from escrow during
15 the period. The annual escrow statement may be
16 provided separately from the annual statement showing
17 the unpaid principal and interest paid. The format
18 and content of the annual escrow statement shall
19 comply with the Real Estate Settlement Procedures Act,
20 including title 12 [~~C.F.R.~~] Code of Federal
21 Regulations section 1024.17;



(2) A mortgage servicer shall promptly provide a borrower with an accurate accounting in plain English of the debt owed when requested by the borrower or borrower's authorized representative. Within thirty days of receipt of a request from the borrower or the borrower's authorized representative, a mortgage servicer shall deliver to the borrower a payment history for the last thirty-six months of the borrower's account, unless a different period is requested, showing the date and amount of all payments made or credited to the account and the total unpaid balance. The mortgage servicer shall have sixty days to deliver a payment history where the request is for a period longer than the last thirty-six months;

(3) A fee shall not be charged to the borrower for the annual escrow statement or for one payment history furnished to a borrower in a twelve-month period; and

(4) A shortage, surplus, or deficiency in the escrow account shall be handled in accordance with the Real Estate Settlement Procedures Act, including title 12 [C.F.R.] Code of Federal Regulations section 1024.17.



1 Alternatively, with the consent of the borrower, an
2 excess balance may be applied to the principal
3 balance.

4 ~~[(f)]~~ (g) Except where inconsistent with the automatic
5 stay provisions of the Bankruptcy Code with respect to a
6 borrower in a pending bankruptcy proceeding, a mortgage servicer
7 shall send a payment reminder notice to a borrower at the
8 borrower's last known address no later than seventeen days after
9 the payment becomes due and remains unpaid; provided that a
10 mortgage servicer is not required to send a separate payment
11 reminder notice for each consecutive month in which the mortgage
12 loan continues to remain unpaid.

13 ~~[(g)]~~ (h) A mortgage servicer shall provide a clear,
14 understandable, and accurate statement of the total amount that
15 is required to pay off the mortgage loan as of a specified date,
16 within a reasonable time, but in any event no more than five
17 business days after receipt of a request from the borrower or
18 borrower's authorized representative. No borrower shall be
19 charged a fee for being informed or receiving a payoff statement
20 or for being provided with a release upon full prepayment;
21 provided that a mortgage servicer may charge a reasonable fee



1 for providing a payoff statement after five or more requests in
2 any calendar year.

3 ~~[(h)]~~ (i) A mortgage servicer shall comply with the
4 following requirements concerning handling consumer complaints
5 and inquiries:

6 (1) A mortgage servicer shall follow the requirements of
7 the Real Estate Settlement Procedures Act, including
8 requests for error and information resolution
9 procedures under title 12 ~~[C.F.R.]~~ Code of Federal
10 Regulations sections 1024.35 and 1024.36;

11 (2) In addition to the requirements of the Real Estate
12 Settlement Procedures Act, a mortgage servicer shall
13 establish and maintain a system to respond to and
14 resolve borrower inquiries and complaints in a prompt
15 and appropriate manner;

16 (3) Within ten business days of receiving a request in
17 writing from a borrower or the borrower's authorized
18 representative, a mortgage servicer shall provide the
19 borrower with the name, address, phone number, or
20 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)~~] (j) A mortgage servicer shall comply with the
11 following 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



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

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

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

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

16 (C) Deducted from any regular payment.

17 [~~(j)~~] (k) Each mortgage servicer licensee shall maintain
18 adequate records of each residential mortgage loan transaction
19 at the office named in the mortgage servicer license for seven
20 years.



1 ~~[(k)]~~ (l) Upon assignment of servicing rights on a
2 residential mortgage loan, the mortgage servicer shall disclose
3 to the borrower:

4 (1) Any notice required by the Real Estate Settlement
5 Procedures Act, including title 12 ~~[G.F.R.]~~ Code of
6 Federal Regulations section 1024.33, within the time
7 periods prescribed therein; and

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

15 ~~[(l)]~~ (m) At the time a servicer accepts assignment of
16 servicing rights for a mortgage loan, the servicer shall
17 disclose to the borrower all of the following:

18 (1) Any notice required by the Real Estate Settlement
19 Procedures Act;

20 (2) A schedule of the ranges and categories of its costs
21 and fees for its servicing-related activities, which



1 shall comply with this chapter and which shall not
2 exceed those reported to the commissioner; and

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

7 [~~(m)~~] (n) Where this chapter requires a person to comply
8 with procedures, actions, standards, disclosures, notices,
9 format, content, or other requirements of the Real Estate
10 Settlement Procedures Act, the required compliance applies to any
11 person subject to this chapter, whether or not the Real Estate
12 Settlement Procedures Act applies to that person or
13 transaction."

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 2025.



Report Title:

Interest on Insurance Proceeds; Mortgage Loans; Mortgage
Servicers; Hawaii Financial Institutions

Description:

Requires Hawaii financial institutions, during a declared state of emergency, and mortgage servicers to determine whether insurance proceeds are to be applied to a mortgage or be placed into an interest-bearing escrow account. Prohibits charging a fee for the maintenance or disbursement of the interest earned from the interest-bearing escrow account. (HD1)

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

