

ACT 228

H. B. 32.

A Bill for an Act Relating to Mortgage Brokers and Mortgage Solicitors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Short title.** This Act may be cited as the “Mortgage Brokerage Act.”

SECTION 2. Definitions. In this Act unless the context or subject matter otherwise requires:

(a) "Person" means an individual, partnership, corporation, association or other organization.

(b) "Mortgage loan" means a loan secured by a mortgage on real property.

(c) "Mortgage broker" means a person not exempt under section 3 of this Act who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly makes, negotiates, acquires or sells or offers to make, negotiate, acquire or sell a mortgage loan, but excluding transactions involving the sale or purchase of notes or bonds secured by mortgages which are subject to registration under chapter 199, Revised Laws of Hawaii 1955, as amended.

(d) "Mortgage solicitor" means an individual not licensed as a mortgage broker who performs any of the functions set forth in subsection (c) of this section and who is employed by a mortgage broker or whose business transactions are under the direction, control or management of a mortgage broker.

(e) "Mortgage commissioner" means the director of regulatory agencies who is hereinafter referred to as the "commissioner."

(f) "Licensee" means a person, whether mortgage broker or mortgage solicitor, licensed under this Act.

(g) "License" means a license issued under this Act.

SECTION 3. Exemptions. This Act does not apply to the following:

(a) Banks, trust companies, building and loan associations, pension trusts, credit unions, insurance companies, industrial loan companies or federally licensed small business investment companies, authorized under any law of this State or of the United States to do business in the State of Hawaii.

(b) A person making or acquiring a mortgage loan with his own funds for his own investment without intent to resell the mortgage loan.

(c) A person licensed to practice law in the State, not actively and principally engaged in the business of negotiating loans secured by real property, when such person renders services in the course of his practice as an attorney.

(d) A person licensed as a real estate broker or salesman in the State, not actively engaged in the business of negotiating loans secured by real property, when such person renders services in the course of his practice as a real estate broker or salesman.

SECTION 4. Licensing, requirements, application. (a) No person shall act as a mortgage broker or mortgage solicitor without a license therefor as provided in this Act, and no person not licensed under this Act shall charge or receive any commission, fee or bonus in connection with arranging for, negotiating or selling a mortgage loan.

(b) No mortgage broker or mortgage solicitor license shall be granted

to any person who is not a citizen of the United States, or who is not twenty years of age or older.

(c) Every person licensed as a mortgage broker shall deposit with the commissioner, prior to doing business as such, a bond in the amount of \$15,000, executed by the mortgage broker as principal and a surety company authorized to do business in the State as a surety. The bond shall be conditioned upon the faithful compliance of the broker with the provisions of this Act. The bond shall run to the State for the benefit of any person injured by the wrongful act, default, fraud or misrepresentation of the broker or his solicitors; provided, however, that the aggregate liability of the surety shall, in no event, exceed the sum of such bond. The surety may cancel the bond by giving sixty days' notice in writing to the commissioner and shall thereafter be relieved of any liability for any breach of condition occurring after the effective date of cancellation. A mortgage broker's license shall not be in effect at any time when said bond is not in full force and effect. Only one bond shall be required of any person.

(d) Each application for a license or for its renewal shall be made in writing, on the forms and in the manner and accompanied by evidence in support of the applications as prescribed by the commissioner. The commissioner shall require such information with regard to the applicant as he may deem desirable, with due regard to the paramount interests of the public, as to the experience, integrity and competency of the applicant as to financial transactions involving primary or subordinate mortgage financing. In the event the commissioner orders denial of issuance or of renewal of a license, such order shall be made only pursuant to chapter 6C, Revised Laws of Hawaii 1955, as amended.

(e) The license fee for a license calendar year or any part thereof shall be \$100 for a mortgage broker and \$25 for a mortgage solicitor, which fees shall be deposited with the director of finance to the credit of the general fund.

(f) If the licensee is a person other than an individual, the license issued to it entitles one officer or member thereof, on behalf of the corporation, partnership, association or other organization, to engage in the business of mortgage broker, and such officer or member shall be designated in the application for license. Each officer or member, other than the officer or member so designated through whom it engages in the business of mortgage broker, shall be required to be licensed as a mortgage solicitor as provided in this Act.

(g) A license shall be prominently displayed in the office of the mortgage broker. A mortgage solicitor's license shall remain in the possession of the licensed mortgage broker employer until canceled or until the mortgage solicitor leaves the employ of the mortgage broker. A license shall not be transferable or assignable; provided, however, that upon payment of a reissuance fee of \$3, a new license may be issued to a mortgage solicitor, valid for the remainder of the calendar year in which it is issued, when he is employed by a different mortgage broker.

(h) Immediately upon the mortgage solicitor's withdrawal from the employ of the mortgage broker, the mortgage broker shall return the mortgage solicitor's license to the commissioner for cancellation.

(i) Every licensed mortgage broker shall have and maintain a principal place of business in the State for the transaction of business. The license shall specify the address of said principal place of business. In the event the mortgage broker maintains a branch office or offices, the commissioner shall, upon application and payment of a fee of \$2, issue a branch office license specifying thereon the address of such branch office. In case the address of the principal place of business or of any branch office is changed, the licensee shall notify the commissioner of the change of address, and the commissioner shall endorse the change of address on the license without charge.

SECTION 5. Suspension, revocation. (a) The commissioner may suspend a license for a period not exceeding two years for any of the following acts or conduct of a licensee:

(1) Making a false promise tending to influence, persuade or induce, or pursuing a course of misrepresentation or false promises through agents, solicitors, advertising or otherwise.

(2) Misrepresentation or concealment of any material fact with respect to any transaction resulting in injury to any party.

(3) Failure to disburse funds in accordance with an agreement.

(4) Failure to account or deliver to any person any personal property such as money, fund, deposit, check, draft, mortgage or other document or thing of value which has come into his hands and which is not his property or which he is not in law or equity entitled to retain, and at the time which has been agreed upon, or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to such accounting or delivery.

(5) Failure to place, within a reasonable time upon receipt, any money, fund, deposit, check or draft, entrusted to him by any person dealing with him as a broker, in escrow pursuant to a written agreement, or to deposit said funds in a trust or escrow bank account maintained by him with a bank located and doing business in the State, wherein said funds shall be kept until disbursement thereof is authorized.

(6) Failure to comply with this Act or any order, rule or regulation made under the authority of this Act.

(b) The commissioner may revoke a license if the application for the license contains a material misstatement, the licensee demonstrates by a course of conduct negligence or incompetence in performing any act for which he is required to be licensed under this Act or the licensee for a second time is responsible for misconduct which warrants suspension under subsection (a) of this section.

(c) For a licensee other than an individual, it shall be sufficient cause for the suspension or revocation of the license that any officer, director or member of the licensed corporation, partnership, association or other organization has so acted as would be cause for suspension or revocation of a license to such party as an individual.

(d) Orders for suspension or revocation shall be made only pursuant to chapter 6C, Revised Laws of Hawaii 1955, as amended.

SECTION 6. Power to investigate and enjoin. (a) If the commissioner has reason to believe that a licensee or any person has violated this Act, or the rules and regulations adopted pursuant thereto, or that any license issued under this Act may be subject to suspension or revocation, the commissioner may make such investigation as he shall deem necessary and is hereby granted the power to examine books, records, accounts and files of any licensee or person. If the commissioner finds from satisfactory evidence that any licensee or person has violated any of the provisions of this Act, he may bring an action in the name of the people of the State in any court of competent jurisdiction against any such licensee or person to enjoin the licensee or person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.

(b) Any person having reason to believe that this Act or the rules and regulations adopted pursuant thereto, have been violated or that a license issued under this Act is subject to suspension or revocation, may file with the commissioner a written complaint setting forth the details of the alleged violation or grounds for suspension or revocation.

SECTION 7. Power of commissioner. The commissioner may promulgate such rules and regulations pursuant to chapter 6C, Revised Laws of Hawaii 1955, as amended, as he may deem necessary for the administration of this Act. The rules and regulations shall include, but not be limited to the following:

- (a) Advertising;
- (b) Solicitation;
- (c) Specifications as to the forms and procedures to be used in the making of any mortgage loan.

SECTION 8. Fees, commissions and charges. The commissioner may also promulgate rules and regulations concerning maximum fees, commissions and charges on mortgage loan transactions. The maximum fees, commissions and charges shall be related to the actual amount of money made available to the borrower, over and above the indebtedness of prior mortgages. The commissioner may also promulgate rules and regulations concerning the full disclosure of the fees, commissions and charges.

SECTION 9. Penalty, contracts void. Violation of this Act shall be punishable by a fine of not more than \$1,000 or imprisonment of not more than one year, or both fine and imprisonment. Any contract entered into by any person with any unlicensed mortgage broker or solicitor shall be void and unenforceable.

SECTION 10. There is hereby appropriated out of the general revenues of the State, not otherwise appropriated, the sum of \$10,000, or so much thereof as may be necessary, to be expended by the department of regulatory agencies for the purposes of this Act.

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SECTION 11. Effective date. This Act shall take effect January 2, 1968.

(Approved June 6, 1967.)