

ACT 287

H.B. NO. 2836-82

A Bill for an Act Relating to Mortgage Servicing.

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

SECTION 1. The purpose of this Act is to regulate the activities of mortgage-servicing agencies so that homeowners will be protected against defalcation by these agencies. Mortgage-servicing agencies generally contract with mortgage lenders to collect monthly mortgage payments from individual homeowners, then make payments on their behalf to the lenders, to tax collectors and to insurance carriers for a servicing fee. The enforcement of the terms of mortgages ordinarily, require that periodic payment of principal and interest, real property taxes, fire insurance, lease rent, etc. to be made to the mortgage-servicing agency who in turn will make the various payments when required. This arrangement provides the mortgagee with assurance of payment by the homeowner of real property taxes and fire insurance, the nonpayment of which will affect the security of the mortgage. However, the homeowner is not protected against any mischief of these mortgage-servicing agencies to whom the various payments are entrusted.

The legislature finds that there is a need to regulate these agencies to protect the homeowner from suddenly finding that the agent to whom he has been making

his payments under the mortgage has not made any of the payments when due. The homeowner would then be faced with expending additional money to make his payments current, as well as possible assessment of penalties and fines as a result of the delinquency. The homeowner must be provided with adequate protection against such nonpayment.

SECTION 2. The Hawaii Revised Statutes are amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER MORTGAGE AND COLLECTION SERVICING AGENTS

§ **-1 Definitions.** As used in this chapter:

- (1) “Person” includes an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons, or any combination thereof.
- (2) A person shall be deemed to engage in the business of a “mortgage servicing agent” or “collection servicing agent” if he by himself or through others offers to undertake or holds himself out as being able to undertake or does undertake to collect for another person the amounts due under any agreement which provides for installment payments and which is secured by an interest in real property, including without limitation mortgage loans and agreements of sale, whether or not such collection servicing agent receives any compensation or other consideration for his services. When referred to collectively in this chapter, such persons shall be called “servicing agents”.
- (3) “Installment payments” shall be deemed to include principal and interest and any expenses due in connection with the real property securing such agreement, including without limitation real property taxes, lease rent, insurance premiums, maintenance fees and similar expenses.

§ **-2 Exemptions.** This chapter shall not apply to the following persons:

- (1) Real estate brokers and salesmen licensed under chapter 467 and residing in the State, to the extent they are engaged in the regular course of their business as brokers or salesmen.
- (2) Banks, collection agencies, credit unions, escrow depositories, industrial loan companies, savings and loan associations, and trust companies authorized to do business in the State;
- (3) Any financial institution which is an approved lender for programs administered by the United States Department of Housing and Urban Development; provided that the financial institution files annually with the department of regulatory agencies satisfactory proof of that status;
- (4) Persons performing the services normally rendered by servicing agents under order of any court; and
- (5) Persons performing the services normally rendered by servicing agents, but with respect to fewer than five agreements at any one time that would otherwise come within the purview of this chapter.

§ **-3 Bond required.** (a) No person shall act, assume to act or advertise himself as a servicing agent, without having in effect a surety or cash bond

previously obtained under and in compliance with this chapter, a copy of which shall be filed with the director of regulatory agencies. The amount of the bond required shall be \$25,000 until July 1, 1983, after which time the amount of the bond shall be \$50,000.

(b) The bond shall be obtained from an insurance company authorized to transact the business of a surety in this State, and shall be conditioned upon the full and faithful compliance with all requirements of this or any other statutes now in force or hereafter enacted with respect to the duties, conduct, obligations and liabilities of servicing agents. The bond shall run to the State to the benefit of any person who has received a court judgment against the servicing agent or an employee of the servicing agent; provided that the aggregate liability of the surety shall not exceed the sum of the bond. In addition to any other remedy allowed by law, every person sustaining any damage resulting from a breach of the conditions of the bond may bring an action for the recovery under the bond of any damages sustained by such person. The bond shall remain in full force and effect unless terminated or cancelled by the surety, and shall by its terms provide that any such termination or cancellation shall not be effective unless written notice thereof is delivered by the surety to the director of regulatory agencies at least thirty (30) days prior the date of termination or cancellation.

(c) The bond shall be furnished in addition to any other bond required by any other provision of law. The bond shall not preclude or preempt any additional bond that any principal of the servicing agent may, in the discretion of such principal, require of the servicing agent.

(d) Individual employees of any servicing agent need not themselves obtain a bond, provided that their employer's bond covers the acts of such employees.

§ -4 **Physical presence.** No servicing agent may engage in business in this State unless it has a designated agent in the State authorized to act on its behalf.

§ -5 **Trust accounts, records.** Every servicing agent shall maintain a separate trust account in a federally insured depository institution for funds collected in behalf of its customers, and shall keep at its principal office in this State or office of its agent located in this State permanent records of all of its receipts and disbursements for each customer. Such records shall be kept, as to each installment payment agreement, for a period of at least six years following the last installment payment collected pursuant to such agreement.

§ -6 **Fiduciary responsibility.** Every servicing agent shall be considered a fiduciary with respect to its customers and shall keep and disburse funds collected in their behalf in strict compliance with any agreement made with such customers and in compliance with all applicable laws.

§ -7 **Remedies not exclusive.** The remedies provided for in this chapter are in addition to and not exclusive of any other remedies provided by law.

§ -8 **General penalty.** Any persons who wilfully or knowingly violates any provision of this chapter for which there is no other penalty specifically provided herein, shall be fined not less than \$100 nor more than \$1,000 for each violation.

§ -9 **False entry, destruction of records; penalty.** Any person who wilfully or knowingly makes any false certificate, entry, or memorandum upon any of the books or records of any servicing agent, or who knowingly alters, destroys, mutilates, or conceals such books or records, shall be fined not more than \$1,000 or

imprisoned not more than six months, or both.

§ -10 **Commingling of funds; penalty.** Any person who wilfully or knowingly causes the commingling of the funds of a servicing agent with customer trust funds shall be fined not more than \$1,000 or imprisoned not more than six months or both.

§ -11 **Embezzlement, misappropriation; penalty.** Any person who embezzles or misapplies customer trust funds received by a servicing agent shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

SECTION 3. This Act shall take effect upon its approval; provided, that any person engaging in the business of a servicing agent on the effective day of this Act shall have ninety days within which to comply with the terms hereof.

(Approved June 18, 1982.)