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S.B. NO. 179

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

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

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

“§454-1 Definitions. In this chapter unless the context or subject matter otherwise requires:

- (1) “Person” means an individual, partnership, corporation, association, or other organization.
- (2) “Mortgage loan” means a loan secured by a mortgage on real property.
- (3) “Mortgage broker” means a person not exempt under section 454-2 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 485.
- (4) “Mortgage solicitor” means an individual not licensed as a mortgage broker who performs any of the functions set forth in paragraph (3) 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.
- (5) “Mortgage commissioner” or “commissioner” means the director of [regulatory agencies who is hereinafter referred to as the “commissioner.”] commerce and consumer affairs.
- (6) “Licensee” means a person, whether mortgage broker or mortgage solicitor, licensed under this chapter.
- (7) “License” means a license issued under this chapter.
- (8) “Institutional investor” means and includes (a) banks, savings and loan institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, any of the class of persons permitted to qualify as foreign lenders under section 207-11, or other financial institutions or institutional buyers, whether acting for themselves or as fiduciaries; (b) the United States or any foreign government, any state or territory thereof, or any agency or corporate or other instrumentality of the

United States, a foreign government, or of any state, territory or political subdivision thereof.”

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

“§454-2 Exemptions. This chapter does not apply to the following:

- (1) 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[.];
- (2) A person making or acquiring a mortgage loan with [his] one’s own funds for [his] one’s own investment without intent to resell the mortgage loan[.];
- (3) 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] the person renders services in the course of [his] the person’s practice as an attorney[.]; and
- (4) 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] the person renders services in the course of [his] the person’s practice as a real estate broker or salesman.”

SECTION 3. Section 454-3, Hawaii Revised Statutes, is amended to read as follows:

“§454-3 Licensing, requirements, application. (a) No person shall act as a mortgage broker or mortgage solicitor without a license therefor as provided in this chapter, and no person not licensed under this chapter 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] eighteen years of age or older. If the applicant is a person other than an individual, no license shall be granted unless the applicant first registers to do business in this State with the business registration division of the department of commerce and consumer affairs.

(c) Every person licensed as a mortgage broker shall deposit with the [mortgage] 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 chapter. 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] the solicitors; provided, that the aggregate liability of the surety shall, in no event, exceed the sum of the 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 the bond is not in full force and effect. Only one bond shall be required of any person.

(d) Each application for a license or 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] the commissioner 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] the order shall be made only pursuant to chapter 91.

(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 by the commissioner with the director of finance to the credit of the general fund. Failure of any mortgage broker or mortgage solicitor to pay the license fee for a license calendar year on or before December 31 of the preceding calendar year shall constitute an automatic forfeiture of the broker's or solicitor's license. A broker's or solicitor's license which is forfeited for nonpayment of the license fee may be restored; provided that application for restoration is made within six months of the forfeiture and a penalty fee in the amount of \$100 for mortgage brokers and \$25 for mortgage solicitors is paid in addition to the delinquent license fee.

(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] the 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 chapter.

(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, 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] the mortgage solicitor 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] the 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 the branch office. The mortgage broker shall designate a

mortgage solicitor to be in charge of each 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 4. Section 454-3.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[§454-3.5]] Restrictions.** Notwithstanding any exemption provision contained in chapter 485, no mortgage broker or mortgage solicitor licensed under this chapter shall directly or indirectly sell, offer to sell or negotiate mortgage loans to more than twenty-five persons, other than institutional investors, during a period of twelve consecutive months. Each mortgage broker and mortgage solicitor shall respond to all appropriate inquiries and investigations conducted by the [mortgage] commissioner in this regard."

SECTION 5. Section 454-4, Hawaii Revised Statutes, is amended to read as follows:

"**§454-4 Suspension, revocation.** (a) The [mortgage] 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] the person's hands and which is not [his] the person's property or which [he] the person 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] the accounting or delivery;
- (5) Failure to place, within a reasonable time upon receipt, any money, fund, deposit, check, or draft, entrusted to [him] the licensee by any person dealing with [him] the licensee as a broker, in escrow pursuant to a written agreement, or to deposit the funds in a trust or escrow bank account maintained by [him] the licensee with a bank located and doing business in the State, wherein the funds shall be kept until disbursement thereof is authorized; or
- (6) Failure to comply with this chapter or any order[, or rule[, or regulation] made under the authority of this chapter.

(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] the licensee is required to be licensed under this chapter, 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] the party as an individual.

(d) Orders for suspension or revocation shall be made only pursuant to chapter 91."

SECTION 6. Section 454-5, Hawaii Revised Statutes, is amended to read as follows:

"§454-5 Power to investigate and enjoin. (a) If the [mortgage] commissioner has reason to believe that a licensee or any person has violated this chapter, or the rules [and regulations] adopted pursuant thereto, or that any license issued under this chapter may be subject to suspension or revocation, the commissioner may make [such] an investigation as [he] the commissioner deems necessary and may examine the books, records, accounts, and files of any licensee or person. If the commissioner finds from satisfactory evidence that any licensee or person has violated this chapter, [he] the commissioner may bring an action in the name [of the people] of the State in any court of competent jurisdiction against the 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 chapter or the rules [and regulations] adopted pursuant thereto, have been violated or that a license issued under this chapter 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. Section 454-6, Hawaii Revised Statutes, is amended to read as follows:

"§454-6 Power of commissioner. The [mortgage] commissioner may [promulgate such] adopt rules [and regulations] pursuant to chapter 91, as amended, as [he] the commissioner deems necessary for the administration of this chapter. The rules [and regulations] shall include, but not be limited to the following:

- (1) Advertising;
- (2) Solicitation; and
- (3) Specifications as to the forms and procedures to be used in the making of any mortgage loan."

SECTION 8. Section 454-7, Hawaii Revised Statutes, is amended to read as follows:

"§454-7 Fees, commissions, and charges. The [mortgage] commissioner may also [promulgate] adopt 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

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commissioner may also [promulgate] adopt rules [and regulations] concerning the full disclosure of the fees, commissions, and charges.”

SECTION 9. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 18, 1983.)