

## ACT 142

H.B. NO. 2033-86

A Bill for an Act Relating to Mortgage and Collection Servicing Agents.

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

SECTION 1. Chapter 454D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§454D- Powers and duties of the director of commerce and consumer affairs.** In addition to any other powers and duties granted by this chapter, the director of commerce and consumer affairs shall:

- (1) Register mortgage and collection servicing agents pursuant to this chapter;
- (2) Enforce this chapter and rules adopted pursuant thereto;
- (3) Investigate the actions of any person acting in the capacity of a mortgage and collection servicing agent if there is reason to believe that there may be a violation of this chapter or the rules adopted pursuant thereto;
- (4) Fine, suspend, or revoke a registration for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant registration for any cause which would be grounds for suspension or revocation of the registration;
- (5) Apply to a court having competent jurisdiction for an injunction to restrain any violation of this chapter; and
- (6) Establish registration and biennial renewal fees for mortgage and collection servicing agents.”

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

**“[ ]§454D-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.] who provide collection and mortgage services where the services are limited to those incident to a particular real estate transaction, or where the broker, or the salesman’s broker, has an errors and commissions insurance policy in effect which has, as part of the insurance policy, coverage for activities relating to collection and mortgage services and where a copy of the insurance policy is filed annually with the department of commerce and consumer affairs;
- (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] A financial institution which [is an] services only Federal Housing Administration and Veterans Administration loans and has been approved as a 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 commerce and consumer affairs [satisfactory proof of that status;] certification that it is still an approved lender by the United States Department of Housing and Urban Development and continues to service only Federal Housing Administration and Veterans Administration loans;

- (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.”

SECTION 3. Section 454D-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The bond shall be [obtained from an insurance] issued by a surety company authorized to [transact the business of a surety in this State,] do business in this State, and shall be conditioned upon the full and faithful compliance with all requirements of this or any other [statutes] statute 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] amount of the bond[.] issued to the servicing agents. The bond shall remain in full force and effect unless terminated or canceled by the surety, and shall by its terms provide that any [such] termination or cancellation of the bond shall not be effective unless written notice thereof is delivered by the surety to the director of commerce and consumer affairs at least thirty days prior to the date of termination or cancellation. The director of commerce and consumer affairs shall forthwith give notice thereof to the servicing agent affected by the termination or cancellation that the registration of the servicing agent shall be suspended upon termination or cancellation of the bond, unless prior thereto, a new bond has been filed with the director. Failure, refusal, or neglect of a servicing agent to maintain in full force and effect a bond as required by this section shall cause the automatic suspension of the registration of the servicing agent effective as of the date of expiration or cancellation of its bond. The director of commerce and consumer affairs shall not reinstate the registration of the servicing agent until satisfactory proof of bond coverage is submitted to the director as required by this section. Failure to effect a reinstatement of a suspended registration within sixty days of the expiration of the bond shall cause the termination of the registration, thereby forfeiting all registration and biennial renewal fees. A servicing agent, within fifteen days after receipt of the notification of the registration termination, may request an administrative hearing to review the termination pursuant to chapter 91.”

SECTION 4. Section 454D-7, Hawaii Revised Statutes, is amended to read as follows:

“[ [ ]§454D-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.] Remedies or penalties cumulative. The remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved May 12, 1986.)

**Note**

1. Edited pursuant to HRS §23G-16.5.