

A Bill for an Act Relating to Mortgage Broker Licensing.

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

SECTION 1. Section 454-3, Hawaii Revised Statutes, is amended by amending subsections (c) through (i) to read as follows:

“(c) Every person licensed as a mortgage broker shall deposit with the commissioner, prior to doing business, a bond in the amount of [~~\$50,000;~~] \$15,000 executed by the mortgage broker as principal and a surety company authorized to do business in the State as a surety[~~;~~ ~~provided that a mortgage broker who does not engage in mortgage servicing or collecting may apply to the commissioner for a lower bond requirement of \$15,000 on the application form prescribed by the commissioner.~~]. 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 the solicitors; provided that the aggregate liability of the surety ~~shall, in no event,~~ not 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 information with regard to the applicant as the commissioner may deem desirable, with due regard to the paramount interests of the public, as to the experience, financial 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, 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]~~ All fees shall be established and adopted by the director in accordance with chapter 91 and shall be deposited [by the commissioner to the credit of] into the compliance resolution fund established pursuant to section 26-9(o). Failure of any mortgage broker or mortgage solicitor to pay the [license] biennial renewal fee [for a license calendar year] on or before December 31 of [the preceding calendar] an even-numbered year shall constitute an automatic forfeiture of the [broker's or solicitor's] license. [A broker's or solicitor's] The forfeited 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. A licensee who fails to restore a license as provided in this subsection shall apply as a new applicant.

(f) ~~If the [licensee] mortgage broker 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 the]. 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.] and have two years of experience in financial transactions involving primary or subordinate mortgage financing, or equivalent experience as determined by the commissioner.~~

(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 the mortgage solicitor is employed by a different mortgage broker.] Upon request, the mortgage broker shall make available for inspection the mortgage broker's license and the licenses of any mortgage solicitors employed by the 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.] mortgage solicitor.~~

(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 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], shall issue a branch office license [specifying thereon the address of the branch office]. The mortgage broker shall designate a mortgage solicitor who has two years of experience in financial transactions involving primary or subordinate mortgage financing, or equivalent experience as determined by the commissioner, 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 2. Section 454-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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:

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- (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 the person's hands and which is not the person's property or which 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 the accounting or delivery;
- (5) Failure to place, within a reasonable time upon receipt, any money, fund, deposit, check, or draft, entrusted to the licensee by any person dealing with 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 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 made under the² authority of this chapter."

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

SECTION 4. This Act shall take effect upon its approval.

(Approved April 6, 2001.)

Notes

1. Period should not be bracketed and ~~stricken~~.
2. "The" should not be underscored.