

ACT 106

H.B. NO. 1071

A Bill for an Act Relating to Mortgage Servicers.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
MORTGAGE SERVICERS**

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

“Applicant” means a person applying for a license under this chapter.

“Borrower” means the obligor, maker, cosigner, or guarantor under a mortgage agreement.

“Commissioner” means the commissioner of financial institutions of this state.

“License” means a license issued under this chapter.

“Licensee” means a person licensed or required to be licensed under this chapter.

“Mortgage servicer” means the person responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of any residential mortgage loan, including amounts for escrow accounts under Section

10 of the Real Estate Settlement Procedures Act, 12 United States Code Section 2609, and for making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this chapter, servicing includes making payments to the borrower.

“Person” means an individual, partnership, corporation, association, or other organization.

“Residential mortgage loan” means a mortgage loan, home equity loan, or reverse mortgage loan, that is secured by a first or subordinate lien on residential real property located in Hawaii, including a refinancing of any secured loan on residential real property located in Hawaii, upon which:

- (1) There is or will be constructed a structure or structures designed principally for occupancy by one to four families, including individual units of condominiums and cooperatives; or
- (2) A manufactured home is located or will be placed on the real property, using proceeds of the loan.

§ -2 **License required.** (a) No person except those exempted under this chapter shall engage in the business of mortgage servicing without a license as provided in this chapter.

(b) A person is engaged in the business of mortgage servicing if the person provides those services in this state even if the person providing services has no physical presence in the state.

§ -3 **Exemptions.** This chapter shall not apply to the following:

- (1) Any persons chartered or authorized under the laws of any state or federal law to engage in the activity of an insured depository institution as defined in Title 12 United States Code Section 1813(c)(2), including banks or savings associations, and operating subsidiaries of an insured depository institution;
- (2) Trust companies, credit unions, insurance companies, and financial service loan companies licensed by the State;
- (3) The Federal Deposit Insurance Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to Section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution;
- (4) The Federal National Mortgage Association; the Federal Home Loan Mortgage Corporation; the Federal Deposit Insurance Corporation; the United States Department of Housing and Urban Development, and the Government National Mortgage Association and the Federal Housing Administration, and cases in which a mortgage insured under the National Housing Act, 12 United States Code Section 1701 et seq, is assigned to the United States Department of Housing and Urban Development; the National Credit Union Administration; the Farmers Home Administration or its successor agency under Public Law 103-354; and the Department of Veterans Affairs, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the Federal Deposit Insurance Corporation for con-

servatorship or receivership of the servicer or an entity by which the servicer is owned or controlled; and

- (5) Any person making or acquiring contemporaneously no more than five residential mortgage loans with that person's own funds for that person's own investment.

§ -4 License; fees; renewals. (a) An applicant for licensure shall file an application on a form prescribed by the commissioner and shall pay an application fee of \$500. Each license shall expire on June 30 of each calendar year. A license may be renewed by filing a renewal statement on a form prescribed by the commissioner and paying a renewal fee of \$250, on or before July 1 for licensure for the following year.

(b) The applicant shall submit any other information that the commissioner may require, including:

- (1) The applicant's form and place of organization;
- (2) The applicant's tax identification number; and
- (3) The applicant's proposed method of doing business.

The applicant shall disclose whether the applicant or any of its officers, directors, employees, managers, agents, partners, or members has ever been issued or been the subject of an injunction or administrative order pertaining to any aspect of the lending business, has ever been convicted of a misdemeanor involving the lending industry or any aspect of the lending business, or has ever been convicted of any felony.

§ -5 Duties of a mortgage servicer; disclosures; good faith. (a) A mortgage servicer licensed or acting under this chapter, in addition to duties imposed by law, shall:

- (1) Safeguard and account for any money handled for the borrower;
 - (2) Act with reasonable skill, care, timeliness, promptness, and diligence;
 - (3) Disclose to the commissioner in the application and yearly renewal a complete, current schedule of the ranges of costs and fees it charges borrowers for its servicing-related activities; and
 - (4) File with the commissioner upon request a report in a form and format acceptable to the director detailing the servicer's activities in this state, including:
 - (A) The number of mortgage loans the servicer is servicing;
 - (B) The type and characteristics of such loans in this state;
 - (C) The number of serviced loans in default, along with a breakdown of thirty-, sixty-, and ninety-day delinquencies;
 - (D) Information on loss mitigation activities, including details on workout arrangements undertaken;
 - (E) Information on foreclosures commenced in this state; and
 - (F) Any other information that the commissioner may require.
- (b) At the time a servicer accepts assignment of servicing rights for a mortgage loan, the servicer shall disclose to the borrower all of the following:
- (1) Any notice required by the Real Estate Settlement Procedures Act, 12 United States Code Section 2601 et seq., or by regulations promulgated thereunder;
 - (2) A schedule of the ranges and categories of its costs and fees for its servicing-related activities, which shall comply with this chapter and which shall not exceed those reported to the commissioner; and

- (3) A notice in a form and content acceptable to the commissioner that the servicer is licensed by the commissioner and that complaints about the servicer may be submitted to the commissioner.

(c) In the event of a delinquency or other act of default on the part of the borrower, the servicer shall act in good faith to inform the borrower of the facts concerning the loan and the nature and extent of the delinquency or default, and, if the borrower replies, shall negotiate with the borrower, subject to the servicer's duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout relating to the delinquency.

§ -6 Prohibited activities. It shall be unlawful for any mortgage servicer in the course of any mortgage loan transaction:

- (1) To misrepresent or conceal material facts, to make false promises, or to pursue a course of misrepresentation through its agents or otherwise;
- (2) To engage in any transaction, practice, or course of business that is not in good faith, does not constitute fair dealing, or that constitutes a fraud upon any person, in connection with the servicing, purchase, or sale of any mortgage loan;
- (3) To fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by Sections 6 and 10 of the Real Estate Settlement Procedures Act, 12 United States Code Sections 2605 and 2609, and regulations adopted thereunder by the Secretary of Housing and Urban Development; or
- (4) To fail to comply with applicable federal laws and regulations related to mortgage servicing.

§ -7 License sanctions; suspension, revocation, denial, condition, and refusal to renew, reinstate, or restore. In addition to any other actions authorized by law, the commissioner may suspend, revoke, deny, condition in any manner, or refuse to renew, reinstate, or restore, any license issued under this chapter, or fine any person holding a license issued under this chapter, for any violation of this chapter. All such orders shall be made pursuant to chapter 91.

§ -8 Powers of commissioner. In addition to any other acts or conditions provided by law, the commissioner may:

- (1) Adopt, amend, or repeal rules, issue declaratory rulings or informal nonbinding interpretations, and investigate and act upon written consumer complaints;
- (2) Grant, deny, forfeit, renew, reinstate, or restore the license of any mortgage servicer;
- (3) Revoke, suspend, or otherwise limit the license of any mortgage servicer for any violation of the provisions in this chapter, or any rule or order of, or agreement with the commissioner;
- (4) Report any violation of this chapter or violation of federal or state law to the United States Commissioner of Housing and Urban Development or other federal agency having jurisdiction over the licensee;
- (5) Investigate and conduct hearings regarding any violation of this chapter, or any rule or order of or agreement with the commissioner; and

- (6) Do any and all things necessary or incidental to the exercise of the commissioner's power and duties, including the authority to conduct contested case proceedings under chapter 91.

§ -9 **Private right of action.** Nothing in this chapter shall be construed to preclude any individual or entity that suffers loss as a result of a violation of this chapter from maintaining a civil action to recover damages and, as provided by statute, attorney's fees.

§ -10 **Penalty.** Any person who violates any provision of this chapter may be subject to an administrative fine of not more than \$5,000 for each violation.

§ -11 **Compliance resolution fund.** Any law to the contrary notwithstanding, fees and fines collected by the commissioner shall be deposited into the compliance resolution fund established pursuant to section 26-9(o)."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. This Act shall take effect on July 1, 2010.

(Approved June 10, 2009.)