

A Bill for an Act Relating to Mortgage Servicers.

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

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

“§454M- Investigation and examination authority. (a) In addition to any other authority under this chapter, the commissioner shall have the authority to conduct investigations and examinations in accordance with this section. The commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence that the commissioner deems relevant to the inquiry or investigation, regardless of the location, possession, control, or custody of the documents, information, or evidence.

(b) For the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the commissioner may review, investigate, or examine any licensee or person subject to this chapter, as often as necessary to carry out the purposes of this chapter. The commissioner may direct, subpoena, or order the attendance of, and examine under oath, all persons whose testimony may be required about loans or the business or subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.

(c) Each licensee or person subject to this chapter shall provide to the commissioner upon request the books and records relating to the operations of the licensee or person subject to this chapter. The commissioner shall have access to the books and records and shall be permitted to interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensed mortgage loan originator or person subject to this chapter concerning their business.

(d) Each licensee or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:

- (1) Accounting compilations;
- (2) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
- (3) Other information that the commissioner deems necessary to carry out the purposes of this section.

(e) In conducting any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records. During the period of control, no person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee or person under examination or investigation have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(f) To carry out the purposes of this chapter, the commissioner may:

- (1) Retain accountants or other professionals and specialists, who may be exempt from chapter 76, as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
- (2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;
- (3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this chapter;
- (4) Accept and rely on examination or investigation reports made by other government officials, within or without this State; and
- (5) Accept audit reports made by an independent certified public accountant for the licensee or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.

(g) The authority of this section shall remain in effect, whether a licensee or person subject to this chapter acts or claims to act under any licensing or registration law of this State, or claims to act without such authority.

(h) No licensee or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(i) The commissioner may charge an examination or investigation fee, payable to the commissioner, based upon the cost per hour per examiner for all licensees and persons subject to this chapter examined or investigated by the commissioner or the commissioner's staff. The hourly fee shall be \$60 or an amount as the commissioner shall establish by rule pursuant to chapter 91. In addition to the examination or investigation fee, the commissioner may charge any person who is examined or investigated by the commissioner or the commissioner's staff pursuant to this section additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination or investigation, payable to the commissioner.

(j) Any person having reason to believe that this chapter or the rules adopted pursuant thereto have been violated, or that a license issued under this chapter should be suspended or revoked, may file a written complaint with the commissioner setting forth the details of the alleged violation or grounds for suspension or revocation."

SECTION 2. Section 454M-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"NMLS" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the state licensing and registration of state-licensed loan originators and other financial services providers, or any system provided by the Consumer Financial Protection Bureau."

2. By deleting the definition of "Nationwide Mortgage Licensing System".

~~["Nationwide Mortgage Licensing System" has the same meaning as defined in section 454F-1.]~~

SECTION 3. Section 454M-4, Hawaii Revised Statutes, is amended by amending subsections (a), (b), (c), and (d) to read as follows:

“(a) An applicant for licensure shall file an application on a form prescribed by ~~[the Nationwide Mortgage Licensing System]~~ NMLS or by the commissioner and shall pay an application fee of ~~[\$500.]~~ \$675. 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 Nationwide Mortgage Licensing System]~~ NMLS or by the commissioner and paying a renewal fee of ~~[\$250, on or before July 1]~~ \$425, at least four weeks prior to the renewal period for licensure for the following year.

(b) To fulfill the purposes of this chapter, the commissioner may establish relationships or contracts with ~~[the Nationwide Mortgage Licensing System]~~ NMLS or other entities designated by ~~[the Nationwide Mortgage Licensing System]~~ NMLS to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(c) To the extent reasonably necessary to participate in ~~[the Nationwide Mortgage Licensing System,]~~ NMLS, the commissioner may modify any or all of the requirements of ~~[section 454M-4(e) and (f).]~~ subsections (e) and (f).

(d) The commissioner may use ~~[the Nationwide Mortgage Licensing System]~~ NMLS as an agent for requesting information from and distributing information to the United States Department of Justice, any governmental agency, or any other source, as directed by the commissioner.”

SECTION 4. Section 454M-4.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§454M-4.5]]~~ **Registration with ~~[Nationwide Mortgage Licensing System,]~~ NMLS.** The commissioner may require all mortgage servicers to register with ~~[the Nationwide Mortgage Licensing System,]~~ NMLS.”

SECTION 5. Section 454M-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§454M-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]~~ Consumer Financial Protection Bureau 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.”

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SECTION 6. A mortgage servicer who holds a license that is valid as of June 30, 2013, shall be determined to be in compliance with the licensing provisions of chapter 454M, Hawaii Revised Statutes, as amended by this Act, until December 31, 2013.

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect upon its approval.

(Approved May 31, 2013.)

Note

1. Edited pursuant to HRS §23G-16.5.