

ACT 198

S.B. NO. 2817

A Bill for an Act Relating to Secure and Fair Enforcement for Mortgage Licensing Act.

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

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

1. By adding five new definitions to be appropriately inserted and to read:

“Elder” means an individual who is sixty-two years of age or older.

“Offers or negotiates terms of a residential mortgage loan” means:

(1) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms;

- (2) Communicates directly or indirectly with a borrower or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms; or
- (3) Takes or gathers information from a borrower or prospective borrower for the purpose of recommending, referring, or steering that borrower or prospective borrower directly or indirectly to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower.

“Principal office” means the office location where the company’s core executive and administrative functions are primarily carried out.

“Regular business hours” means Monday through Friday, between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays.

“Sole proprietorship” means a mortgage loan originator business that is solely and personally owned and operated by an individual mortgage loan originator, and where there is no legal distinction between the individual business owner and the business.”

2. By amending the definitions of “branch office”, “exempt sponsoring mortgage loan originator company”, “mortgage loan originator”, “mortgage servicer company”, “principal place of business”, and “unique identifier” to read:

~~““Branch office” means any location[, separate from the principal place of business of the mortgage loan originator company] in this State that is identified by any means to the public or customers as a location at which the licensee holds itself out as a mortgage loan originator company. [For mortgage loan originator companies headquartered out of state, a branch office may be its principal place of business.]~~

“Exempt sponsoring mortgage loan originator company” means any person exempt from or not included in the licensing requirements of this chapter who registers with [NMLS] for purposes of sponsoring a mortgage loan originator.

“Mortgage loan originator”:

- (1) Means an individual who for compensation or gain or in the expectation of compensation or gain:
 - (A) Takes a residential mortgage loan application; or
 - (B) Offers or negotiates terms of a residential mortgage loan;
- ~~(2) Means any individual who offers or negotiates the terms of a residential mortgage loan secured by a dwelling that served as the individual’s residence, including a vacation home, or inherited property that served as the deceased’s dwelling; provided that the individual does not act as a mortgage loan originator or provide financing for such sales more than three times in a calendar year;] and~~
- ~~(3) (2) Includes an independent contractor as defined in this section.~~

“Mortgage servicer company” means a mortgage servicer company licensed, or required to be licensed, under chapter 454M that ~~[employs one or more individuals who conduct] conducts~~ mortgage loan origination activity.

“Principal place of business” means a mortgage loan originator company’s main office location in this State that is ~~[separate from a branch office unless the branch office is specified as the principal place of business by a mortgage loan originator company headquartered out of state and] identified by any means to [consumers] the public or customers as a location at which the licensee holds itself out as a mortgage loan originator company.~~

“Unique identifier” means a number or other identifier assigned by protocols established by [NMLS].”

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

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

- (1) An exempt registered mortgage loan originator when acting for an insured depository institution or an institution regulated by the Farm Credit Administration;
- ~~[(2) Any individual who offers or negotiates terms of a residential mortgage loan with, or on behalf of, an immediate family member of the individual;~~
- ~~(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence;~~
- (4) ~~(2)~~ A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a lender, a mortgage loan originator company, or other mortgage loan originator or by an agent of a lender, mortgage loan originator company, or other mortgage loan originator;
- ~~[(5)]~~ (3) A person or entity that only performs real estate brokerage activities and is licensed or registered by the State unless the person or entity is compensated by a lender, a mortgage loan originator company, or other mortgage loan originator or by an agent of the lender, mortgage loan originator company, or other mortgage loan originator;
- ~~[(6)]~~ (4) A person or entity solely involved in extensions of credit relating to timeshare plans, as the term is defined in title ~~[[11]]~~ United States Code section 101(53D);
- ~~[(7)]~~ (5) An exempt sponsoring mortgage loan originator company as defined by this chapter except as otherwise provided by this chapter;
- ~~[(8)]~~ (6) An insured depository institution;
- ~~[(9)]~~ (7) An institution regulated by the Farm Credit Administration; ~~or~~
- ~~[(10)]~~ (8) Employees of government agencies or of housing finance agencies who act as mortgage loan originators~~[-]; or~~
- (9) A mortgage servicer company that is exempt from chapter 454M, pursuant to section 454M-3.”

SECTION 3. Section 454F-8, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The minimum standards for license renewal for mortgage loan originator companies shall include the following:

- (1) The mortgage loan originator company continues to meet the minimum standards for licensure established pursuant to section 454F-5;
- (2) The mortgage loan originator company's qualified individual and every branch manager have satisfied the minimum standards for license renewal; ~~and~~
- (3) The mortgage loan originator company has paid all required fees for renewal of the license~~[-]; and~~
- (4) The mortgage loan originator company is registered with the business registration division of the department of commerce and consumer affairs.

(c) The minimum standards for license renewal for a mortgage servicer company shall include the following:

- (1) The mortgage servicer company continues to meet the minimum standards for licensure established pursuant to section 454F-5; ~~[and]~~
- (2) The mortgage servicer company has paid all required fees for renewal of the license~~[-]; and~~
- (3) The mortgage servicer company is registered with the business registration division of the department of commerce and consumer affairs."

SECTION 4. Section 454F-10.5, Hawaii Revised Statutes, is amended to read as follows:

"§454F-10.5 Authorized places of business; designation of qualified individuals and branch managers; branch offices; ~~[out-of-state-headquarters]; principal office; relocation.~~ (a) Every mortgage loan originator company licensed under this chapter shall have and maintain a principal place of business in the State and shall designate a qualified individual ~~[who is licensed as a mortgage loan originator pursuant to this chapter to oversee mortgage loan originators employed or contracted by the company. If the qualified individual is physically located at a branch office, the qualified individual may also be designated as the branch manager.]~~ to fulfill the duties and responsibilities of a qualified individual set forth in section 454F-1.7.

(b) A mortgage loan originator company shall not maintain any branch offices in the State in addition to its principal place of business without the prior written approval of the commissioner. An application to establish a branch office shall be submitted through NMLS with a nonrefundable application fee as required by section 454F-22. A mortgage loan originator company shall designate a branch manager for each branch office who is physically present in the branch office to oversee that branch office~~[- Every branch manager shall be licensed as a mortgage loan originator pursuant to this chapter.]~~ and fulfill the duties and responsibilities of a branch manager set forth in section 454F-1.7. At no time shall a branch manager oversee more than one branch office or principal place of business.

(c) A mortgage loan originator company shall not relocate any office in this State without the prior written approval of the commissioner. An application to relocate an office shall be submitted to the commissioner at least thirty days prior to relocating and shall set forth the reasons for the relocation, the street address of the proposed relocated office, and other information that may be required by the commissioner. An application to relocate an office pursuant to this subsection shall be submitted with a nonrefundable fee as required by section 454F-22.

(d) A mortgage loan originator company shall give the commissioner notice of its intent to close a branch office at least thirty days prior to the closing. The notice shall:

- (1) State the intended date of closing; and
- (2) Specify the reasons for the closing.

(e) A mortgage loan originator company that maintains its ~~[headquarters]~~ principal office outside of the State shall:

- (1) Designate an office in this State as its principal place of business in this State;
- (2) Apply for and obtain approval from the commissioner to designate its principal place of business in this State as a branch office pursuant to this section; and
- (3) Designate a qualified individual ~~[who shall hold a license as a mortgage loan originator pursuant to this chapter];~~ provided that

the qualified individual may be the same person designated as the branch manager[-] of a branch office where the qualified individual is physically present.

(f) A mortgage loan originator company that maintains its [headquarters] principal office in this State shall designate a qualified individual who is physically present in the principal place of business [office] as its branch manager to oversee and manage that principal place of business [office]. Such principal place of business shall not be considered a branch office for purposes of section 454F-22(c).

(g) The principal place of business and each branch office of the mortgage loan originator company shall be identified in NMLS to consumers as a location at which the licensee holds itself out as a mortgage loan originator company. Each such location shall be open for business to the public during posted business hours which shall be during regular business hours. If a location is in a commercial building, then the business hours shall be posted on or adjacent to the main office door of the mortgage loan originator company's location, and visible to the public from outside the location. If a location is not in a commercial building, or such posting is not permitted by the commercial building, then the business hours shall be posted on the home page of the mortgage loan originator company's website, along with the address and phone number of the location. Business hours, whether posted at a location or on a mortgage loan originator company website, shall be displayed in a clear, conspicuous, and accurate manner to inform the consumer when the location will be open.

(h) The commissioner or the commissioner's authorized representatives shall be able to conduct an examination or investigation during regular business hours. If the commissioner or the commissioner's authorized representatives are denied access to any office, record, or file for any reason, such denial may be considered a violation of this chapter."

SECTION 5. Section 454F-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) To ensure the effective supervision and enforcement of this chapter, the commissioner may, pursuant to chapter 91:

- (1) Deny, suspend, revoke, condition, or decline to renew a license because of a violation of this chapter, rules, an order, or a directive entered under this chapter;
- (2) Deny, suspend, revoke, condition, or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of section 454F-4, 454F-6, or [section] 454F-8, violates section 454F-17, or withholds information or makes a material misstatement in an application for a license or renewal of a license;
- (3) Order restitution against persons subject to this chapter for violations of this chapter;
- (4) Impose fines on persons subject to this chapter; and
- (5) Issue orders or directives under this chapter as follows:
 - (A) Order or direct persons subject to this chapter to cease and desist from conducting business, including immediate temporary orders to cease and desist;
 - (B) Order or direct persons subject to this chapter to cease any harmful activities or violations of this chapter, including immediate temporary orders to cease and desist;
 - (C) Enter immediate temporary orders to cease doing business under a license issued pursuant to the authority granted under this chapter if the commissioner determines that the license

- was erroneously granted or the licensee or any person subject to this chapter is currently in violation of this chapter; or
- (D) Order or direct any other affirmative action as the commissioner deems necessary.”

SECTION 6. Section 454F-14, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) This section shall not apply to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators, mortgage loan originator companies, and mortgage servicer companies that are included in NMLS for access by the public.”

SECTION 7. Section 454F-16, Hawaii Revised Statutes, is amended to read as follows:

“**§454F-16 Mortgage call reports.** Each licensee~~;~~ and exempt sponsoring mortgage loan originator company, as may be required by title 12 United States Code sections 5101 to 5116, shall submit quarterly to NMLS reports of condition, using the form entitled “~~REPORT OF FINANCIAL CONDITION~~”~~;~~ or “**RESIDENTIAL MORTGAGE LOAN ACTIVITY**”, which shall be in the form and contain the information as NMLS may require.”

SECTION 8. Section 454F-19, Hawaii Revised Statutes, is amended to read as follows:

“**§454F-19 Unique identifier shown.** The unique identifier of any person originating a residential mortgage loan, except a person who is exempt from this chapter, shall be clearly shown on all residential mortgage loan application forms, solicitations, ~~or~~ and advertisements, including business cards or websites, and any other documents as established by rule or order of the commissioner.”

SECTION 9. Section 454F-22, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) A sole ~~proprietor~~ proprietorship mortgage loan originator shall pay the following fees to obtain and maintain a valid sole proprietor mortgage loan originator license:

- (1) Initial application fee of \$35;
- (2) Annual license renewal fee of \$35;
- (3) Reinstatement fee of \$100;
- (4) Late fee of \$25 per day; and
- (5) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91.”

2. By amending subsection (f) to read:

“(f) A mortgage servicer company shall pay for a principal office the following fees to maintain a valid mortgage loan ~~originator company~~ servicer loan modification license:

- (1) Initial application fee of \$600;
- (2) Annual license renewal fee of \$600;
- (3) Reinstatement fee of \$100;
- (4) Late fee of \$25 per day; and
- (5) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91, for each con-

trol person, executive officer, director, general partner, and managing member.”

SECTION 10. Section 454F-24, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§454F-24]] Mortgage servicer companies; mortgage loan originators.~~

An employee who performs mortgage loan originator activities for a mortgage servicer company is exempt from registration and licensure as a mortgage loan originator; provided that:

- (1) The employee’s actions are part of the employee’s duties as an employee of the mortgage servicer company; and
- (2) The employee ~~[only]~~ provides mortgage loan originator services only with respect to a residential mortgage loan modification.”

SECTION 11. Section 454F-25, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) An employee who performs mortgage loan originator activities for a nonprofit organization is exempt from registration and licensure as a mortgage loan originator; provided that:

- (1) The employee’s actions are part of the employee’s duties as an employee of the nonprofit organization;
- (2) The employee only provides mortgage loan originator services with respect to residential mortgage loans with terms favorable to the borrower; and
- (3) The nonprofit organization registers with ~~[[NMLS]]~~.

(b) The commissioner shall periodically examine the books and activities of nonprofit organizations as defined in section 454F-1 and shall revoke an organization’s registration as a nonprofit organization with ~~[[NMLS]]~~ if the nonprofit organization fails to meet the requirements to be a nonprofit organization.”

SECTION 12. Section 454F-26, Hawaii Revised Statutes, is repealed.

SECTION 13. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2014.

(Approved July 1, 2014.)

Note

1. Edited pursuant to HRS §23G-16.5.