

ACT 122

S.B. NO. 2850

A Bill for an Act Relating to Mortgage Industry Regulation.

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

SECTION 1. The purpose of this Act is to make various amendments to the mortgage loan originators law, chapter 454F, Hawaii Revised Statutes, and the mortgage servicers law, chapter 454M, Hawaii Revised Statutes. This measure clarifies the scope of activities subject to each of the two chapters, which regulate related industries, including by moving mortgage servicer provisions that currently appear in chapter 454F to chapter 454M and deleting provisions and references relating to servicer companies currently in chapter 454F as this class of licenses are regulated entirely under chapter 454M. This measure also makes the terminology used in each chapter consistent with the other and updates references to controlling federal laws.

SECTION 2. Chapter 454M, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§454M- Confidentiality. (a) Except as otherwise provided in Public Law 110-289, section 1512, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to NMLS, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material shall continue to apply to the information or material after the information or material has been disclosed to NMLS. The information and material may be shared with all state and federal regulatory officials with mortgage servicer industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

(b) For these purposes, the commissioner is authorized to enter into agreements or sharing arrangements with other governmental agencies, the

Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule or order of the commissioner.

(c) Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to:

- (1) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or a state; or
- (2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by NMLS applicable to the information or material; provided that the person to whom the information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(d) Notwithstanding chapter 92F, the examination process and related information and documents, including the reports of examination, are confidential and are not subject to discovery or disclosure in civil or criminal lawsuits.

(e) Notwithstanding any law to the contrary, the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with subsection (a) shall be superseded by the requirements of this section.

(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 servicers that are included in NMLS for access by the public.”

SECTION 3. Section 454F-1, Hawaii Revised Statutes, is amended as follows:

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

“C.F.R.” means the Code of Federal Regulations.

“Consumer Financial Protection Bureau” means the Bureau of Consumer Financial Protection established under title 12 United States Code chapter 53, subchapter V.

“Dwelling” means a residential structure or mobile home that contains one to four family housing units or individual units of condominiums or cooperatives.

“Mortgage servicer” means a person licensed or required to be licensed under chapter 454M.”

2. By amending the definitions of “borrower”, “federal banking agencies”, “licensee”, “residential mortgage loan”, and “residential mortgage loan modification” to read:

“Borrower” means [a person who has applied for] the obligor, maker, cosigner, or [obtained] guarantor under a residential mortgage loan [from or through a licensed mortgage loan originator or mortgage loan originator company or from a person required to be licensed as a mortgage loan originator or mortgage loan originator company under this chapter:] agreement. For purposes of this chapter, a borrower is included in the term consumer.

“Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, [the Office of Thrift Supervision,] the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

“Licensee” means [a mortgage loan originator, a mortgage loan originator company, a mortgage servicer company, unless exempt under chapter 454M,

~~or~~] a person who is licensed or required to be licensed under this chapter. Licensee does not include an exempt registered mortgage loan originator, exempt sponsoring mortgage loan originator company, or nonprofit organization as defined by this section.

“Residential mortgage loan” or [~~“residential mortgage transaction”~~] “mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling [~~as defined in section 103(v) of the Truth in Lending Act, 15 United States Code section 1602~~] or residential real estate[~~;~~] upon which is constructed or intended to be constructed a dwelling, and includes refinancings, reverse mortgages, home equity lines of credit, and other first and additional lien loans that meet the qualifications listed in this definition.

“Residential [~~mortgage~~] loan modification” or “loan modification” means[~~:~~

- (1) ~~Modification of~~ a temporary or permanent change to the terms of a borrower’s existing residential mortgage [~~loans which generally includes a change in interest, principal, or term of loan; or~~
- (2) The processing of the approval of loan assumptions[~~;~~] loan agreement, mutually agreed to between a borrower and a lender.

[~~“Residential mortgage loan modification” does not include origination of mortgage loans.”~~]

3. By deleting the definition of “loan modification”.

[~~““Loan modification” means a temporary or permanent change to the terms of a borrower’s existing loan agreement, mutually agreed to between a borrower and a lender.”~~]

4. By deleting the definition of “mortgage servicer company”.

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

SECTION 4. Section 454F-1.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All mortgage loan originators, mortgage loan originator companies, exempt registered mortgage loan originators, exempt sponsoring mortgage loan originator companies, nonprofit organizations, [~~mortgage servicer companies,~~] and every other person in this State that originates a residential mortgage loan, unless exempt under section 454F-2, shall register with NMLS.”

SECTION 5. Section 454F-1.6, Hawaii Revised Statutes, is amended to read as follows:

“**§454F-1.6 Presumption of control.** An individual is presumed to control a mortgage loan originator company [~~or a mortgage servicer company~~] if that individual is a director, general partner, managing member, or executive officer who directly or indirectly has the right to vote ten per cent or more of a class of voting securities or has the power to sell or direct the sale of ten per cent or more of a class of voting securities of that [~~mortgage loan originator company or mortgage servicer company~~] licensee or applicant.”

SECTION 6. 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~~];~~, except as otherwise provided by this chapter;
- (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;
- (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;
- (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);
- (5) An exempt sponsoring mortgage loan originator company as defined by this chapter except as otherwise provided by this chapter;
- (6) An insured depository institution;
- (7) An institution regulated by the Farm Credit Administration;
- (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; or~~
- ~~(10)~~ (9) A seller of real property who offers or negotiates terms of a residential mortgage loan that is financed by the seller and secured by the seller's own real property; provided that:
 - (A) The seller is a person, estate, or trust that transacts three or fewer residential mortgage loans in one calendar year;
 - (B) The seller is not a loan originator for purposes of the loan originator qualification requirements in 12 ~~[Code of Federal Regulations]~~ C.F.R. section 1026.36(f) and (g);
 - (C) The seller has not constructed or acted as the construction contractor for the residence on the property in the ordinary course of the seller's business;
 - (D) The interest rate for the loan does not exceed the State's usury limit; provided that the exemptions from usury specified in section 478-8 shall not apply to transactions subject to this paragraph;
 - (E) The seller shall provide to the buyer the terms of the financing including:
 - (i) A current title search including any liens against the property;
 - (ii) The interest rate;
 - (iii) Monthly principal and interest payments;
 - (iv) Any prepayment penalty;
 - (v) Any late payment charges;
 - (vi) The payment schedule;
 - (vii) The total amount of interest that the mortgagor will pay over the term of the loan expressed as a percentage of the loan amount;

- (viii) A calculation of projected aggregate monthly payments including principal and interest;
 - (ix) Estimated closing costs if closing costs are included in loan costs and estimated cash to close if closing costs are not included in loan costs. For purposes of this paragraph, closing costs shall include recording fees, transfer taxes, prepaid costs such as homeowner's insurance premiums or property taxes, and appraisal costs charged to the mortgagor;
 - (x) The seller's contact information including name, address, phone number, electronic mail address, and alternate contact information to the extent available; and
 - (xi) A statement that the seller will acquire a security interest in the buyer's dwelling and that the buyer may lose the dwelling in the event of a loan default;
- (F) The seller shall provide a disclaimer, to be initialed by the buyer, which states, "BUYER ACKNOWLEDGES RECEIVING FINANCING FROM THE SELLER IN THIS TRANSACTION AND GRANTING THE SELLER A MORTGAGE. THIS CAN HAVE SERIOUS CONSEQUENCES SHOULD BUYER FAIL TO MAKE ANY PAYMENTS INCLUDING BUT NOT LIMITED TO FORECLOSURE AND THE LOSS OF BUYER'S PROPERTY. THEREFORE, IT IS IMPORTANT THAT BUYER UNDERSTANDS ALL FINANCING TERMS AND OBLIGATIONS AND OBTAINS PROFESSIONAL EXPERT ADVICE TO THE EXTENT NECESSARY TO ENSURE BUYER IS FULLY ADVISED IN THIS MATTER."; and
- (G) A residential mortgage loan shall be recorded with the land court or bureau of conveyances as applicable."

SECTION 7. Section 454F-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Effective January 1, 2011, or such later date approved by the United States Department of Housing and Urban Development pursuant to the authority granted under Public Law 110-289, section 1508(e), title 12 United States Code section 5107(e), a person, unless specifically exempted from this chapter, shall not engage in the business of a mortgage loan originator or mortgage loan originator company with respect to any dwelling located in this State without first obtaining and maintaining annually, a license under this chapter. Each licensed mortgage loan originator~~;~~ or mortgage loan originator company~~;~~ ~~or mortgage servicer company~~ shall register with and maintain a valid unique identifier issued by NMLS and shall submit to NMLS any reports that shall be in a form and contain information as NMLS may require."

SECTION 8. Section 454F-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The commissioner shall not issue a license pursuant to this chapter unless the commissioner makes at a minimum the following findings:

- (1) The applicant, ~~if~~ or in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has never had a mortgage loan originator or a mortgage loan originator company

- license revoked in any jurisdiction; provided that a subsequent formal vacation of a revocation shall not be deemed a revocation;
- (2) The applicant, [if] or in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has not been convicted of, or pled guilty or nolo contendere, or been granted a deferred acceptance of a guilty plea under federal law or under chapter 853 to a felony in a domestic, foreign, or military court:
 - (A) During the seven-year period preceding the date of the application for licensing and registration; or
 - (B) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

provided that any pardon of a conviction shall not be deemed a conviction for purposes of this section;
 - (3) The applicant, [if] or in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has demonstrated financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the applicant shall operate honestly, fairly, and efficiently pursuant to this chapter. For purposes of this paragraph, a person is not financially responsible when the person has shown a disregard in the management of the person's financial condition. A determination that a person has shown a disregard in the management of the person's financial condition may be based on:
 - (A) Current outstanding judgments, except judgments solely as a result of medical expenses;
 - (B) Current outstanding tax liens or other government liens and filings;
 - (C) Foreclosures within the past three years; and
 - (D) A pattern of seriously delinquent accounts within the past three years;
 - (4) The applicant, [if] or in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has not been convicted of, plead guilty or nolo contendere to, or been granted a deferred acceptance of a guilty plea under federal law or chapter 853 to any misdemeanor involving an act of fraud, dishonesty, breach of trust, or money laundering;
 - (5) The applicant, [if] or in the case of an applicant that is not an individual, each individual mortgage loan originator who is employed by the mortgage loan originator company or who provides exclusive services to the applicant as a mortgage loan originator, has completed the pre-licensing education requirement described in section 454F-6;
 - (6) The applicant, [if] or in the case of an applicant that is not an individual, each individual mortgage loan originator who is employed by the mortgage loan originator company or who provides exclusive services to the applicant as a mortgage loan originator, has passed a written test that meets the test requirements in section 454F-7; and
 - (7) The applicant has met the mortgage loan recovery fund requirement as required in section 454F-41."

SECTION 9. Section 454F-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An applicant for licensure as a mortgage loan originator shall complete at least twenty hours of pre-licensing education approved in accordance with subsection (b) that includes:

- (1) Three hours of federal law and regulations and three hours of [state] the State’s law and rules;
- (2) Three hours of ethics, [that] which shall include instruction on fraud, consumer protection, and fair lending issues; and
- (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

Upon completion of the pre-licensing education, an individual has up to twelve months to submit an application for licensure as a mortgage loan originator. An individual who submits an application after the twelve months have expired will be required to repeat the pre-licensing education requirements.”

SECTION 10. Section 454F-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) unless the test adequately measures the applicant’s knowledge and comprehension in appropriate subject areas, including:

- (1) Ethics;
- (2) Federal law and regulations pertaining to mortgage origination;
- (3) [State] The State’s law and rules pertaining to mortgage origination; and
- (4) Federal and [state] the State’s law, rules, and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.”

SECTION 11. Section 454F-8, Hawaii Revised Statutes, is amended to read as follows:

“**§454F-8 Standards for license renewal.** (a) The minimum standards for license renewal for mortgage loan originators shall include the following:

- (1) The mortgage loan originator continues to meet the minimum standards for licensure under section 454F-5;
- (2) The mortgage loan originator has satisfied the annual continuing education requirements in section 454F-9 prior to requesting renewal; and
- (3) The mortgage loan originator has paid all required fees for renewal of the license.

(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;
- (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.

~~[(e) 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;~~
- ~~(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.~~

~~(d)] (c) The license of a mortgage loan originator[;] or mortgage loan originator company[; or mortgage servicer company] that fails to satisfy the minimum standards for license renewal shall expire. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with section 454F-8.5 and the standards established by NMLS.”~~

SECTION 12. Section 454F-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each year, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with subsection (b) that shall include:

- (1) Three hours of federal law and regulations;
- (2) One hour of [state] the State’s law and rules;
- (3) Two hours of ethics that shall include instruction on fraud, consumer protection, and fair lending issues; and
- (4) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.”

SECTION 13. Section 454F-10, Hawaii Revised Statutes, is amended to read as follows:

“**§454F-10 Authority to require license.** In addition to any other duties imposed upon the commissioner, the commissioner shall require mortgage loan originators[;] and mortgage loan originator companies[; ~~and mortgage servicer companies~~] to be licensed and registered through NMLS. The commissioner is authorized to participate in NMLS. The commissioner may establish by rule pursuant to chapter 91, requirements for mortgage loan originators[;] and mortgage loan originator companies, [~~and mortgage servicer companies;~~] including:

- (1) Background checks of:
 - (A) Criminal history through fingerprint or other databases;
 - (B) Civil or administrative records;
 - (C) Credit history; and
 - (D) Any other source deemed necessary by NMLS;
- (2) Fees to apply for or renew licenses through NMLS;
- (3) The setting or resetting as necessary of license renewal and reporting dates;
- (4) Requirements for amending or surrendering a license; and
- (5) Any other activity the commissioner deems necessary to participate in NMLS.”

SECTION 14. 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[;] and mortgage loan originator

companies~~[, and mortgage servicer companies]~~ that are included in NMLS for access by the public.”

SECTION 15. Section 454F-17, Hawaii Revised Statutes, is amended to read as follows:

“**§454F-17 Prohibited practices.** It shall be a violation of this chapter for a licensee or person subject to this chapter to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Engage in any unfair or deceptive practice related to mortgage loan origination activities toward any person;
- (3) Obtain property by fraud or misrepresentation;
- (4) Solicit or enter into any contract with a borrower or an applicant for a residential mortgage loan that provides in substance that the person or individual subject to this chapter may earn a fee or commission through “best efforts” to obtain a residential mortgage loan even though no loan is actually obtained for the borrower~~[;]~~ or applicant for a residential mortgage loan;
- (5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- (6) Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter;
- (7) Fail to make disclosures as required by this chapter and any other applicable state or federal law including rules or regulations adopted pursuant to state or federal law;
- (8) Fail to comply with this chapter or any order or rule issued or adopted under the authority of this chapter, or fail to comply with any other state or federal law, including the rules and regulations adopted pursuant to state or federal law applicable to any business authorized or conducted pursuant to this chapter;
- (9) Make, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;
- (10) Negligently or knowingly make any false statement or provide any misleading information or knowingly and wilfully make any omission of material fact in connection with any information or reports filed with a governmental agency or NMLS, including an application for a license under this chapter, or in connection with any examination or investigation conducted by the commissioner or another government agency;
- (11) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property for the purpose of influencing the independent judgment of the appraiser with respect to the value of a property;
- (12) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

- (13) Fail to truthfully account for moneys belonging to a party to a residential mortgage loan ~~[transaction]~~;
- (14) Deliver a misleading or deceptive communication or advertisement, whether written, electronic, or oral, when marketing or soliciting a residential mortgage loan; provided that:
 - (A) A communication or advertisement that uses the name or trademark of a financial institution as defined in section 412:1-109 or its affiliates or subsidiaries, or infers that the communication or advertisement is from, endorsed by, is related to, or is the responsibility of the financial institution is a misleading or deceptive communication; and
 - (B) Advertising that a specific interest rate, points, or financial terms are available when the rates, points, or financial terms are not actually available is a misleading or deceptive communication;
- (15) Fill in or complete any blank on a final residential mortgage loan application that requests material information including financial information without adequate supporting documentation provided by the borrower;
- (16) Fill in or complete any blank on any mortgage or note evidencing or securing the residential mortgage loan which relates to the amount, interest rate, term, or monthly payment of the residential mortgage loan;
- (17) Originate a residential mortgage loan based primarily on the current market value of the borrower's collateral rather than on the borrower's ability to repay the loan according to its terms; provided that the sale of the property is made to a bona fide buyer; and provided further that this paragraph shall not apply to a reverse mortgage as defined under title 12 ~~[Code of Federal Regulations]~~ C.F.R. section [226.33;] 1026.33;
- (18) Advertise terms of a residential mortgage loan in violation of ~~[section 226.16] title 12 C.F.R. section 1026.16 or [226.24 of Regulation Z of the Board of Governors of the Federal Reserve System;] 1026.24;~~ or
- (19) Encourage a borrower to misrepresent, inflate, or fabricate the source or amount of a borrower's actual income or assets in the application or underwriting process for a residential mortgage loan."

SECTION 16. Section 454F-22, Hawaii Revised Statutes, is amended to read as follows:

"§454F-22 Mortgage loan originator, mortgage loan originator company, exempt sponsoring mortgage loan originator company, and nonprofit ~~[organizations, and mortgage servicer company] organization~~ fees. (a) Except as provided in subsection (b), a mortgage loan originator shall pay the following fees to obtain and maintain a valid mortgage loan originator license:

- (1) Initial application fee of \$600;
- (2) Annual license renewal fee of \$350;
- (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.

(b) A sole 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.

(c) A mortgage loan originator company shall pay the following fees to maintain a valid mortgage loan originator company license or branch license:

- (1) Fees payable for a principal office of a mortgage loan originator company:
 - (A) Initial application fee of \$900;
 - (B) Processing fee of \$35 for each control person;
 - (C) Annual license renewal fee of \$600;
 - (D) Reinstatement fee of \$100;
 - (E) Late fee of \$25 per day; and
 - (F) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91, for each control person, executive officer, director, general partner, and manager; and

- (2) Fees payable for each branch office of a mortgage loan originator company:
 - (A) Initial application fee of \$250;
 - (B) Annual license renewal fee of \$100;
 - (C) Reinstatement fee of \$100; and
 - (D) Late fee of \$25 per day.

(d) An exempt sponsoring mortgage loan originator company shall pay the following fees to maintain a valid registration in NMLS:

- (1) Initial registration fee of \$200;
- (2) Annual registration renewal fee of \$150; and
- (3) Late fee of \$25 per day.

(e) A nonprofit organization shall pay the following fees to maintain a valid registration as a nonprofit organization in NMLS:

- (1) Initial registration fee of \$200;
- (2) Annual registration renewal fee of \$150; and
- (3) Late fee of \$25 per day.

~~(f) A mortgage servicer company shall pay for a principal office the following fees to maintain a valid mortgage loan 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 control person, executive officer, director, general partner, and managing member.~~

~~(g)~~ (f) In addition to fees charged by NMLS, a licensee shall pay to the commissioner a fee of \$100 for each of the following amendments to information provided to NMLS that require the review of the commissioner:

- (1) Change of physical location or mailing address for branch office or principal place of business;
- (2) Addition or deletion of a “d/b/a” assignment;

- (3) Change of mortgage loan originator's sponsor;
- (4) Change of qualified individual;
- (5) Change of branch manager; and
- (6) Change of mortgage loan originator company's legal name.

The commissioner, upon a showing of good cause, may waive any fee set forth in this subsection.

~~[(h)]~~ (g) The fees established by this section are nonrefundable and are in addition to any fees established and charged by NMLS, an approved educational course provider, an approved educational testing provider, a law enforcement agency for fingerprints and background checks, or a credit reporting agency used by NMLS.

~~[(h)]~~ (h) The commissioner may establish, by rule pursuant to chapter 91, any other fees or charges necessary for the administration of this chapter."

SECTION 17. Section 454F-24, Hawaii Revised Statutes, is amended to read as follows:

"§454F-24 ~~[Mortgage servicer companies]~~ Limited exemption for mortgage loan originators[-] employed by mortgage servicers. 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 provides~~] employee's mortgage loan originator services [~~only with respect to~~] are limited to [a] residential [mortgage] loan [modification.] modifications and processing the approval of loan assumptions."

SECTION 18. Section 454F-41, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) In addition to application fees and any fees required by NMLS, a licensee shall pay to the division a mortgage loan recovery fund fee as follows for deposit in the mortgage loan recovery fund:

- (1) The sum of \$300 for each principal office location of a mortgage loan originator company [~~or mortgage servicer company~~];
- (2) The sum of \$250 for each branch office location of a mortgage loan originator company; and
- (3) The sum of \$200 for each mortgage loan originator.

(c) Upon application for renewal of a license under this chapter, a licensee shall pay, in addition to the licensee's license renewal fee and fees required by NMLS, a mortgage loan recovery fund fee as follows for deposit in the mortgage loan recovery fund:

- (1) The sum of \$200 for each principal office location of a mortgage loan originator company [~~or a mortgage servicer company~~];
- (2) The sum of \$100 for each branch office location of a mortgage loan originator company; and
- (3) The sum of \$100 for each mortgage loan originator.

Mortgage loan recovery fund fees collected pursuant to this subsection shall be refundable upon the denial of a license renewal by the commissioner."

SECTION 19. Section 454M-1, Hawaii Revised Statutes, is amended as follows:

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

“Affiliated entity” means a person or other entity that is controlled, controlled by, or under common control with a developer.

“Control” means the power to direct management or policies of a company, whether through ownership of securities, by contract, or otherwise.

“Developer” means a person whose time share plan is accepted by the director for registration under chapter 514E.

“Director” means the director of commerce and consumer affairs.

“Dwelling” means a residential structure or mobile home that contains one to four family housing units or individual units of condominiums or cooperatives.

“Residential real estate” means any real property located in this State, upon which a dwelling is constructed or intended to be constructed.

“Time share interest” means that interest purchased in a time share plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a time share plan.

“Time share plan” has the same meaning as defined in title 11 United States Code section 101(53D).”

2. By amending the definitions of “borrower”, “loan modification”, “person”, and “residential mortgage loan” to read:

“Borrower” means the obligor, maker, cosigner, or guarantor under a mortgage loan agreement. For purposes of this chapter, a borrower [may also be referred to as a] is included in the term consumer.

“[Loan] Residential loan modification” or “loan modification” means a temporary or permanent change to the terms of a borrower’s existing residential mortgage loan agreement, mutually agreed to between a borrower and a lender.

“Person” means an individual, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other association[, or other organization:] of individuals, however organized.

“Residential mortgage loan” or “mortgage loan” means [a mortgage loan, home equity loan, or reverse mortgage] any loan[;] primarily for personal, family, or household use 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,] mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate and includes refinancings, reverse mortgages, home equity lines of credit, and other first and additional lien loans that meet the qualifications listed in this definition.”

SECTION 20. Section 454M-2, Hawaii Revised Statutes, is amended to read as follows:

“§454M-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) No person shall engage in the business of mortgage servicing in this State unless the person providing services has a physical presence in the State pursuant to section 454M-5(b)(6).

~~[(e) No person licensed as a mortgage servicer shall provide mortgage loan modifications or any other services that would require licensing pursuant to chapter 454F without first complying with the licensure requirements under chapter 454F.]”~~

SECTION 21. Section 454M-3, Hawaii Revised Statutes, is amended to read as follows:

~~“[§454M-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 conservatorship 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~~[-]; and~~
- (6) A developer of a time share plan, or an affiliated entity of a developer of a time share plan, servicing a loan that is:
 - (A) Made by the developer or the developer’s affiliated entity; and
 - (B) Secured by a lien on a time share interest.”

SECTION 22. Section 454M-4, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The commissioner may approve a license or license renewal application upon receipt of a complete application; provided that an applicant for licensure shall file an application on a form prescribed by NMLS or by the com-

missioner and shall pay an application fee of \$675. Each license shall expire on December 31 of each calendar year unless the license is renewed. A licensee may apply for license renewal by filing a renewal statement on a form prescribed by NMLS or by the commissioner and paying a renewal fee of ~~[\$425,]~~ \$600, at least four weeks prior to December 31. The minimum standards for license renewal shall include the following:

- (1) The licensee continues to meet the minimum standards for licensure established pursuant to this section;
- (2) The licensee has paid all required fees for renewal of the license; and
- (3) The licensee is registered with the business registration division of the department of commerce and consumer affairs.

All fees paid pursuant to this section, including fees paid in connection with an application, shall be nonrefundable. No fee paid pursuant to this section shall be prorated if the license is surrendered, revoked, or suspended prior to the expiration of the period for which it was approved.”

2. By amending subsection (g) to read:

“(g) A mortgage servicer licensee may change the licensee’s name or the address of any of the licensee’s offices specified on the most recent filing with NMLS if:

- (1) The licensee files the change with NMLS and~~[- in the case of the principal office or a branch office,]~~ provides directly to the commissioner a bond rider or endorsement, or addendum, as applicable, to any bond on file with the commissioner that reflects the new name or address ~~[of the principal office or branch office; and];~~
- (2) The commissioner approves the change in writing~~[-]; and~~
- (3) The mortgage servicer pays to the commissioner a fee of \$100 and any fees charged by NMLS.”

3. By amending subsection (j) to read:

“(j) Before a mortgage servicer’s license becomes effective, the applicant or licensee shall file with the commissioner a surety bond written by a surety authorized to write surety bonds in this State, covering the applicant or ~~[licensee’s principal office and any branch office from which the applicant or licensee acts as a mortgage servicer,]~~ licensee in a penal sum of \$100,000. No mortgage servicer licensee shall act as a mortgage servicer in this State without maintaining the surety bond required by this section.

The surety bond shall be:

- (1) In a form approved by the attorney general of this State; and
- (2) Conditioned upon the mortgage servicer licensee faithfully performing any and all written agreements or commitments with or for the benefit of borrowers and mortgagees, truly and faithfully accounting for all funds received from a borrower or mortgagee in the person’s capacity as a mortgage servicer, and conducting the mortgage business consistent with the provisions of this chapter to perform any written agreements or commitments.”

SECTION 23. Section 454M-5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (j) to read:

“(j) Each mortgage servicer licensee shall maintain adequate records of each residential mortgage loan transaction at the office named in the mortgage servicer license~~[-]~~ for seven years.”

2. By amending subsection (m) to read:

“(m) Where this chapter requires ~~[compliance with]~~ a person to comply with procedures, actions, standards, disclosures, notices, format, content, or

other requirements of the Real Estate Settlement Procedures Act, the required compliance applies to any person subject to this chapter, whether or not the Real Estate Settlement Procedures Act applies to that person or transaction.”

SECTION 24. Section 454M-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) It shall be a violation of this chapter for any mortgage servicer in the course of any mortgage loan transaction to fail to comply with any:

- (1) Applicable federal law or regulation related to mortgage servicing, including but not limited to:
 - (A) The Real Estate Settlement Procedures Act, including the mortgage loan servicing transfer, escrow account administration, and borrower request for information and error resolution requirements;
 - (B) The Truth in Lending Act, title 15 United States Code sections 1601 through 1667f, as amended, and Regulation Z adopted thereunder, title 12 C.F.R. part [226,] 1026, as amended; or
 - (C) Rules and regulations issued or administered by the Consumer Financial Protection Bureau, and interpretations of the rules by the Consumer Financial Protection Bureau through interpretive rules, bulletins, statements of policy, and statements of guidance;
- (2) Agreement with a governmental entity, agency, agent, or regulator, or state attorney general that applies to the mortgage servicer, including:
 - (A) A servicer participation agreement or other agreement to participate in the Home Affordable Modification Program or other Making Home Affordable program;
 - (B) Home Affordable Modification Program rules, including guidance provided by Making Home Affordable program handbooks, and supplemental directives; or
 - (C) The National Mortgage Settlement reached in 2012 by the federal government and forty-nine states, with the five largest mortgage servicers in the United States, to address mortgage servicing, foreclosure, and bankruptcy abuses;
- (3) Order of a court or government regulator that applies to the mortgage servicer;
- (4) Provision of this chapter or any rule adopted pursuant to this chapter; or
- (5) Federal or state law, rule, or regulation.”

SECTION 25. Section 454M-8.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(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,~~] servicers employees, independent contractors, agents, and customers of the [~~licensed mortgage loan originator,~~] licensee or person subject to this chapter concerning their business.”

SECTION 26. Section 454M-10, Hawaii Revised Statutes, is amended to read as follows:

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“§454M-10 Penalty. Any person who violates any provision of this chapter may be subject to an administrative fine of not more than \$7,000 for each violation; provided that if the aggregate fine amount exceeds \$7,000, \$1,000 of the aggregate fine amount shall be deposited into the mortgage foreclosure dispute resolution special fund established pursuant to section 667-86.”

SECTION 27. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 28. This Act shall take effect on July 1, 2016.

(Approved June 22, 2016.)

Note

1. Edited pursuant to HRS §23G-16.5.