

ACT 46

S.B. NO. 950

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 two new sections to be appropriately designated and to read as follows:

“§454M- Change in control of a licensee; fees. (a) A licensee shall submit to the commissioner an application requesting approval of a proposed change of control of the licensee, accompanied by a nonrefundable application fee of \$500, payable to the division.

(b) The commissioner shall approve an application requesting approval of a proposed change of control under subsection (a) if, after investigation, the commissioner determines that:

- (1) The person or group of persons who will obtain control will be in compliance with this chapter upon approval of the application;
- (2) The person or group of persons who will obtain control has the competence, experience, character, and general fitness to control the

licensee or person in control of the licensee in a lawful and proper manner; and

- (3) The interests of the public will not be jeopardized by the change of control.

§454M- Presumption of control. An individual is presumed to control an entity if that individual is:

- (1) An executive officer of the entity; or
- (2) A director, general partner, or managing member who directly or indirectly has the right to vote ten per cent or more of a class of voting securities of the entity or has the power to sell or direct the sale of ten per cent or more of a class of voting securities of the entity."

SECTION 2. Section 454M-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Executive officer" means a president, chairperson of an executive committee, senior officer responsible for the business of the subject entity or organization, chief financial officer, or any other person who performs similar functions related to the subject entity or organization."

SECTION 3. Section 454M-4, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (e) to read:

"(e) The applicant shall submit any other information that the commissioner may require, including the applicant's:

- (1) Form and place of organization;
- (2) Tax identification number; and
- (3) Proposed method of doing business.

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

2. By amending subsection (h) to read:

"(h) The mortgage servicer licensee shall file with NMLS or, if the information cannot be filed with NMLS, directly notify the commissioner in writing no later than five business days after the licensee has reason to know of the occurrence of any of the following events:

- (1) Filing for bankruptcy or the consummation of a corporate restructuring of the licensee;
- (2) Filing of a criminal indictment against the licensee or receiving notification of the filing of any criminal felony indictment or felony conviction of any of the licensee's executive officers, directors, employees, managers, agents, managing members, general partners, or shareholders owning ten per cent or more of the outstanding stock of the licensee;
- (3) Receiving notification of the initiation of license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action by any governmental agency against the licensee and the reasons for the action;
- (4) Receiving notification of the initiation of any action against the licensee by the state attorney general or the attorney general of any other state and the reasons for the action;

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- (5) Suspension or termination of the licensee's status as an approved servicer by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Government National Mortgage Association;
- (6) Receiving notification that certain servicing rights of the licensee will be rescinded or canceled, and the reasons provided therefor;
- (7) Receiving notification of filing for bankruptcy of any of the licensee's executive officers, directors, managing members, [~~managers; agents;~~] general partners, or shareholders owning ten per cent or more of the outstanding stock of the licensee; or
- (8) Receiving notification of the initiation of a class action lawsuit on behalf of consumers against the licensee that is related to the operation of the licensed business."

SECTION 4. Section 454M-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) It shall be a violation of this chapter for any mortgage servicer to provide any [~~mortgage-loan-modifications-or-other~~] services that would require licensing pursuant to chapter 454F, unless the mortgage servicer is licensed under chapter 454F."

SECTION 5. 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 executive officers, directors, managing members, general partners, principals, mortgage [~~servicers~~] servicer's employees, independent contractors, agents, and customers of the licensee or person subject to this chapter concerning their business."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on September 1, 2017.

(Approved June 20, 2017.)

Note

1. Edited pursuant to HRS §23G-16.5.