
A BILL FOR AN ACT

RELATING TO MORTGAGE BROKERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 454, Hawaii Revised Statutes, is
2 amended by adding four new sections to be appropriately
3 designated and to read as follows:

4 "§454-A Principal mortgage broker. The duties of a
5 principal mortgage broker shall include:

6 (1) The direct management and supervision of the mortgage
7 brokerage firm and its licensees; and

8 (2) Responsibility for:

9 (A) The client trust accounts, disbursements from
10 those accounts, and the mortgage brokerage firm's
11 accounting practices;

12 (B) The mortgage brokerage firm's records, contracts,
13 and documents;

14 (C) All mortgage brokerage agreements and mortgage
15 loan documents of the mortgage brokerage firm and
16 the handling of those agreements and documents by
17 the employed or associated licensees;



1 (D) The proper handling of any application, including
2 the application of the mortgage brokerage firm
3 supervised and managed by the principal mortgage
4 broker, for a license or renewal application that
5 the principal mortgage broker of the mortgage
6 brokerage entity expressly agrees to handle on
7 behalf of the applicant, including without
8 limitation, verifying the completeness of the
9 application and the inclusion of appropriate
10 fees, and mailing or delivering the appropriate
11 documents to the commissioner by the required
12 deadline;

13 (E) Developing policies and procedures for the
14 mortgage brokerage firm concerning the handling
15 of mortgage loan transactions and the conduct of
16 the employed and associated licensees and other
17 staff, and educating licensed staff about
18 enforcing the policies and procedures;

19 (F) Setting a policy on continuing education
20 requirements for all employed and associated
21 licensees in compliance with the statutory
22 requirement;



- 1 (G) Ensuring that the licenses of all employed and
2 associated licensees and the mortgage brokerage
3 firm's license are current and active and any
4 required bond or statutorily permissible
5 substitute is valid and not cancelled;
- 6 (H) Establishing and maintaining a training program
7 for all employed and associated licensees;
- 8 (I) Ensuring that all employed and associated
9 licensees are provided with information and
10 training on the latest amendments to licensing
11 laws and rules, as well as other related laws and
12 rules;
- 13 (J) Notifying the commissioner of all licensees
14 employed by or associated with such mortgage
15 brokerage firm as an independent contractor;
- 16 (K) Notifying the commissioner of any licensee who
17 withdraws from the mortgage brokerage firm as an
18 independent contractor associated with such firm
19 or employed by such firm; and
- 20 (L) Retaining the mortgage brokerage firm's records,
21 agreements, including the mortgage brokerage
22 agreement, and loan documents for seven years in

1 paper or electronic format by the mortgage
2 brokerage firm.

3 **§454-B Employer-employee relationship.** Nothing in this
4 chapter or in any of the rules adopted to implement this chapter
5 shall be deemed to create an employer-employee relationship
6 between a mortgage broker and the licensees associated with the
7 mortgage broker as an independent contractor; provided that the
8 commissioner shall have all power necessary to regulate the
9 relationships, duties, and liabilities among mortgage brokers
10 and licensees to protect the public.

11 **§454-C Fees, commissions, and changes.** (a) A licensee
12 shall not require a borrower to pay any fees or charges prior to
13 the mortgage loan closing, except:

14 (1) Charges to be incurred by the licensee on behalf of
15 the borrower for services from third parties necessary
16 to process the mortgage loan application, such as
17 credit reports and appraisals; and

18 (2) An application fee.

19 (b) A licensee shall not charge any fee that inures to the
20 benefit of the licensee if it exceeds the fee disclosed on the
21 most recent good faith estimate required by the federal Real
22 Estate Settlement Procedures Act, unless:



1 (1) The need to charge the higher fee was not reasonably
2 foreseeable at the time the good faith estimate was
3 written; and

4 (2) The licensee has provided to the borrower, no less
5 than three business days prior to the signing of the
6 mortgage loan documents, a clear written explanation
7 of the increase in the fee and the reason for charging
8 a fee that exceeds that which was previously
9 disclosed.

10 (c) Within thirty days after any rejection, withdrawal, or
11 closing, any fees collected in excess of actual costs shall be
12 returned.

13 (d) The commissioner may adopt rules concerning:

14 (1) Maximum fees, commissions, and charges on mortgage
15 loan transactions, which maximum fees, commissions,
16 and charges shall be related to the actual amount of
17 money made available to the borrower, over and above
18 the indebtedness of prior mortgages; and

19 (2) The full disclosure of fees, commissions, and charges.

20 **§454-D Advertising.** (a) It is a misdemeanor for any
21 person to:



- 1 (1) Advertise as a mortgage broker or loan originator
2 unless the person holds a valid license under this
3 chapter to provide the services advertised; or
- 4 (2) Include in the advertising the name of the lender who
5 made the existing mortgage loan.
- 6 (b) A licensee may not advertise in any misleading or
7 deceptive manner, including any manner likely to cause the
8 recipient to believe that the advertisement is from the
9 mortgagor of record of the existing mortgage loan.
- 10 (c) As used in this section, "advertise" includes:
- 11 (1) The issuance of any card, sign, or device to any
12 person;
- 13 (2) Causing, permitting, or allowing the placement of any
14 sign or marking on or in any building, vehicle, or
15 structure;
- 16 (3) Placing an advertisement in any newspaper, magazine,
17 or on the Internet;
- 18 (4) Any listing or advertisement in any directory under a
19 classification or heading that includes the word
20 "mortgage broker", "loan originator", or the like;
- 21 (5) Commercials broadcast by airwave or Internet
22 transmission; or



1 (6) Any written communication, including a letter or a
2 postcard, that asks the recipient to borrow from or
3 through a mortgage broker, including a communication
4 encouraging a person to refinance the person's
5 existing mortgage loan and stating or implying that a
6 new mortgage loan will reduce the borrower's monthly
7 mortgage loan payment or the interest rate on the
8 borrower's existing mortgage loan."

9 SECTION 2. Section 454-1, Hawaii Revised Statutes, is
10 amended:

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

13 "Applicant" means a person applying for the issuance of a
14 license, or a renewal of a license, to such person.

15 "Bank" has the same meaning as in title 12 United States
16 Code section 1813(a), and includes a depository financial
17 services loan company.

18 "Business purpose loan" means a loan primarily for a
19 business, commercial, or agricultural purpose as defined by
20 Regulation Z issued by the Board of Governors of the Federal
21 Reserve System (12 C.F.R. part 226) and construed in accordance
22 with judicial interpretations of Regulation Z, official staff



1 interpretations of Regulation Z, and official staff commentary
2 to Regulation Z.

3 "Insured depository institution" has the same meaning as in
4 title 12 United States Code section 1813(c)(2), and includes an
5 operating subsidiary of the insured depository institution that
6 is an operating subsidiary under laws and rules applicable to
7 the insured depository institution.

8 "Loan originator" means an individual not licensed as a
9 mortgage broker and not exempt under section 454-2 who:

10 (1) Performs any of the functions set forth in the
11 definition of mortgage broker;

12 (2) Is employed directly or indirectly by a mortgage
13 broker; or

14 (3) Is an independent contractor in association with a
15 mortgage broker,

16 whose mortgage loan transactions are under the direction,
17 control, supervision, or management of a mortgage broker.

18 "Mortgage brokerage agreement" means the written agreement
19 between a mortgage broker and a prospective borrower for the
20 services of the mortgage broker to be performed for and on
21 behalf of the borrower, and does not include a promissory note



1 and mortgage or any other document or instrument evidencing or
2 securing the mortgage loan.

3 "Residential real property" means:

4 (1) Real property located in this state that is improved
5 by or will be improved by the proceeds of the mortgage
6 loan;

7 (2) Any structure designed principally for occupancy by
8 one to four families including individual units of
9 condominiums and cooperatives and any related
10 interests such as a share in the cooperative or right
11 to occupancy of the unit; or

12 (3) A manufactured home.

13 "Savings association" has the same meaning as in title 12
14 United States Code section 1813(b)."

15 2. By amending the definitions of "institutional
16 investor", "licensee", "mortgage commissioner", and "mortgage
17 loan" to read:

18 "Institutional investor" means and includes [~~(a) banks,~~
19 ~~savings and loan institutions, trust companies, insurance~~
20 ~~companies, investment]~~:

21 (1) An insured depository institution;



- 1 (2) A real estate investment trust as defined in the
2 Internal Revenue Code;
- 3 (3) An insurance company;
- 4 (4) The trustee or trustees of any employee benefit plan;
- 5 (5) A trust company chartered and examined under the laws
6 of a state;
- 7 (6) Investment companies as defined in the Investment
8 Company Act of 1940;
- 9 (7) A retirement plan, pension or profit sharing [trusts,
10 ~~any of the class of persons permitted to qualify as~~
11 ~~foreign lenders under section 207-11, or other~~
12 ~~financial institutions or institutional buyers,~~
13 ~~whether acting for themselves or as fiduciaries; (b)~~
14 ~~the] plan that is subject to the Employee Retirement
15 Security Act;~~
- 16 (8) A government-sponsored housing enterprise that is
17 subject to the oversight of the Office of Federal
18 Housing Enterprise Oversight; and
- 19 (9) The United States or any foreign government, any state
20 or territory thereof, or any agency or corporate or
21 other instrumentality of the United States, a foreign



1 government, or of any state, territory or political
2 subdivision thereof.

3 "Licensee" means a person, whether mortgage broker or
4 ~~[mortgage solicitor,]~~ loan originator, who is or is required to
5 be licensed under this chapter.

6 "Mortgage commissioner" or "commissioner" means the
7 ~~[director of commerce and consumer affairs.]~~ commissioner of
8 financial institutions.

9 "Mortgage loan" means a loan ~~[secured by a mortgage on real~~
10 ~~property.]~~ home equity loan, reverse mortgage loan, installment
11 sales contract, land contract, agreement for sale, or a
12 temporary financing loan such as a construction loan, which is
13 secured by a first or subordinate lien on residential real
14 property, including a refinancing of any secured loan on
15 residential real property, upon which there is or will be
16 constructed with the proceeds of the mortgage loan:

- 17 (1) A structure or structures designed principally for
18 occupancy of from one to four families, including
19 individual units of condominiums and cooperatives and
20 any related interests, such as a share in the
21 cooperative or right to occupancy of the unit; or



1 (2) A manufactured home located or that will be placed on
2 the real property, using proceeds of the loan.

3 A business purpose loan shall not be considered a mortgage
4 loan."

5 3. By repealing the definition of "mortgage solicitor".

6 [~~"Mortgage solicitor" means an individual not licensed as~~
7 ~~a mortgage broker who performs any of the functions set forth in~~
8 ~~the definition of mortgage broker and who is employed by a~~
9 ~~mortgage broker or whose business transactions are under the~~
10 ~~direction, control, or management of a mortgage broker."]~~

11 SECTION 3. Section 454-2, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§454-2 Exemptions.** This chapter [~~does~~] shall not apply
14 to the following:

15 (1) [~~Banks, operating subsidiaries of a bank established~~
16 ~~and operating under section 412:5-203, trust~~
17 ~~companies, savings associations, pension trusts,~~
18 ~~credit unions, insurance companies, financial services~~
19 ~~loan companies, or federally licensed small business~~
20 ~~investment companies, authorized under any law of this~~
21 ~~State or of the United States to do business in the~~
22 ~~State,]~~ Any person that is chartered or authorized



1 under the laws of a state or of the United States of
 2 America to engage in the activity of an insured
 3 depository institution, including a bank or savings
 4 association, including any officer or employee of such
 5 person;

6 (2) Any of the following persons: a credit union, credit
 7 union service organization, trust company, insurance
 8 company, financial services loan company, or federally
 9 licensed small business investment company, including
 10 any officer or employee of such person;

11 (3) An individual who is an exclusive agent of a bank or
 12 savings association;

13 [+2+] (4) A person making or acquiring a mortgage loan with
 14 one's own funds for one's own investment without
 15 intent to resell the mortgage loan;

16 [+3+] (5) A person licensed to practice law in the [State,] 7
 17 state, not actively and principally engaged in the
 18 business of negotiating loans secured by real
 19 property, when the person renders services in the
 20 course of the person's practice as an attorney;

21 [+4+] (6) A person licensed as a real estate broker or
 22 salesperson in the [State,] 7 state, not actively



1 engaged in the business of negotiating loans secured
2 by real property, when the person renders services in
3 the course of the person's practice as a real estate
4 broker or salesperson;

5 ~~[(5)]~~ (7) An institutional investor negotiating, entering
6 into, or performing under a loan purchase agreement
7 for its portfolio, for subsequent resale to other
8 institutional investors, or for placement of the
9 mortgages into pools or packaging them into mortgage-
10 backed securities. As used in this paragraph, "loan
11 purchase agreement" means an agreement or arrangement
12 under which ~~[a bank, savings and loan,]~~ an insured
13 depository institution, credit union, financial
14 services loan company, or other financial institution
15 registered to do business in the State of Hawaii
16 agrees to sell mortgage loans or obtain funding
17 therefor, with or without the transfer of servicing
18 rights, to an institutional investor; and

19 ~~[(6) Foreign lender as defined in section 207-11; and~~

20 ~~(7)]~~ (8) A person licensed under chapter 467 as a real
21 estate broker or salesperson selling time share
22 interests on behalf of a time share plan developer



1 that is licensed as a mortgage broker under this
2 chapter; provided that:

3 (A) The acts or conduct of a developer's authorized
4 representative shall be deemed to be the acts or
5 conduct of the developer for the purposes of
6 section 454-4; and

7 (B) If the person engages in acts or conduct
8 prohibited under this chapter, including section
9 454-4(a), the acts or conduct shall constitute
10 grounds for disciplinary action under section
11 467-14."

12 SECTION 4. Section 454-3, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§454-3 Licensing, requirements, application.** (a) No
15 person shall act as a mortgage broker or [~~mortgage solicitor~~]
16 loan originator without a license therefor as provided in this
17 chapter, and no person not licensed under this chapter shall
18 charge or receive any commission, fee, or bonus in connection
19 with arranging for, negotiating, or selling a mortgage loan.

20 (b) No mortgage broker or [~~mortgage solicitor~~] loan
21 originator license shall be granted to any person who is not
22 eighteen years of age or older. If the applicant is a person



1 other than an individual, no license shall be granted unless the
2 applicant first registers to do business in this [State] state
3 with the business registration division of the department of
4 commerce and consumer affairs[-] and shall have designated in
5 the application an individual then holding a mortgage broker
6 license as the principal mortgage broker for the mortgage
7 brokerage firm. The designated principal mortgage broker shall
8 have two years of experience as a mortgage broker and shall have
9 the management and supervision responsibilities for the mortgage
10 brokerage firm and the licensees employed by or in an
11 independent contractor association with such applicant. If the
12 applicant for a mortgage broker's license is an individual, the
13 individual shall perform the duties of a principal mortgage
14 broker upon licensure.

15 (c) Every person licensed as a mortgage broker shall
16 deposit with the commissioner, prior to doing business, a bond
17 [~~in the amount of \$15,000~~] executed by the mortgage broker as
18 principal and a surety company authorized to do business in the
19 State as a surety[-] in the following amounts:

20 (1) A mortgage brokerage firm with one to five mortgage
21 brokers and loan originators shall post a bond in the
22 amount of \$25,000;



1 (2) A mortgage brokerage firm with six to ten mortgage
 2 brokers and loan originators shall post a bond in the
 3 amount of \$50,000; and

4 (3) A mortgage brokerage firm with eleven or more mortgage
 5 brokers and loan originators shall post a bond in the
 6 amount of \$75,000.

7 The bond shall be conditioned upon the faithful compliance of
 8 the broker with this chapter. The bond shall run to the State
 9 for the benefit of any person injured by the wrongful act,
 10 default, fraud, or misrepresentation of the broker or the
 11 solicitors; provided that the aggregate liability of the surety
 12 shall not exceed the sum of the bond. The surety may cancel the
 13 bond by giving sixty days' notice in writing to the commissioner
 14 and shall thereafter be relieved of any liability for any breach
 15 of condition occurring after the effective date of cancellation.
 16 A mortgage broker's license shall not be in effect at any time
 17 when the bond is not in full force and effect.

18 (d) The failure, refusal, or neglect of any licensee to
 19 maintain the applicable bond under subsection (c) in full force
 20 and effect shall cause the automatic forfeiture of the license,
 21 effective as of the date of expiration or cancellation of the
 22 bond. The commissioner shall not restore the forfeited license



1 until satisfactory proof of bonding is submitted to the
2 commissioner as required by this section. Failure to submit
3 proof sufficient to restore a license within sixty days after
4 the date of forfeiture shall result in the forfeiture of all
5 fees and shall require the licensee to apply as a new applicant.
6 The commissioner may as a condition of restoration of a license
7 forfeited under this section:

8 (1) Assess a fee not to exceed \$1,000;

9 (2) Impose a bonding requirement in addition to the bond
10 requirement of subsection (c); and

11 (3) Restrict the license.

12 ~~[(d)]~~ (e) Each application for a license or its renewal
13 shall be made in writing, on the forms and in the manner and
14 accompanied by evidence in support of the applications as
15 prescribed by the commissioner. The commissioner shall require
16 information with regard to the applicant as the commissioner may
17 deem desirable, with due regard to the paramount interests of
18 the public, as to the experience, financial integrity, and
19 competency of the applicant as to financial transactions
20 involving primary or subordinate mortgage financing.

21 Notwithstanding any other law to the contrary, the commissioner
22 shall require the applicant to disclose the applicant's arrest



1 and conviction record, including an arrest for which the
2 applicant received a deferred acceptance of a guilty plea or the
3 benefit of a pre-trial diversion program. In the event the
4 commissioner orders denial of issuance or of renewal of a
5 license, the order shall be made only pursuant to chapter 91.

6 (f) (1) An applicant for a license shall pass a written
7 examination prior to licensure. The examination shall
8 test the knowledge of the applicant concerning a
9 mortgage loan transaction, the mortgage loan laws and
10 rules of this State as well as relevant federal
11 statutes and regulations, and as appropriate, the
12 duties and responsibilities of a principal mortgage
13 broker, mortgage broker, or loan originator.

14 (2) The commissioner may make arrangements, including
15 contracting with an outside testing service, for
16 administering examinations and collecting fees. The
17 fees collected shall be nonrefundable.

18 (3) An applicant who fails to appear for the examination
19 as scheduled or fails to pass the examination shall
20 reapply for an examination and remit all required fees
21 and forms before being rescheduled for another
22 examination.



1 (4) An applicant's examination scores shall be valid for
2 two years from the date of the examination.

3 (g) (1) An applicant for the renewal of a license shall
4 certify on a form provided by the commissioner that
5 the licensee has completed the following hours of
6 continuing education or their equivalent as determined
7 by the commissioner during the two-year period
8 preceding the application for renewal:

9 (A) Twelve hours for a mortgage broker; and

10 (B) Nine hours for a loan originator.

11 The certification shall be under oath if required by
12 the commissioner. In addition to the certification,
13 the commissioner may require any licensee to submit
14 further evidence satisfactory to the commissioner
15 demonstrating compliance with this section. Upon
16 failure to satisfy the continuing education
17 requirement by the license expiration date, the
18 renewed license shall be placed on inactive status.

19 (2) The course of study for continuing education shall be
20 approved by the National Association of Mortgage
21 Brokers, or an accredited business school, college,
22 university, community college, vocational school, or



1 any other course of study approved by the
2 commissioner, and shall include instruction on primary
3 and subordinate mortgage loan transactions and the
4 appropriate laws governing such transactions,
5 including at least four hours of instruction in
6 compliance with federal and state regulation of
7 mortgage loans and at least two hours in mortgage
8 broker business ethics.

9 (3) To reactivate a license that has been placed on an
10 inactive status, the licensee shall submit to the
11 commissioner:

12 (A) Proof of having satisfied the continuing
13 education requirement of this section;

14 (B) A complete application setting forth the
15 information as may be prescribed or required by
16 the commissioner; and

17 (C) Payment of the proper fee.

18 (4) A licensee, within sixty days after receipt of
19 notification of the forfeiture, may request an
20 administrative hearing pursuant to chapter 91 to
21 review the forfeiture.



1 ~~[(e)]~~(h) All fees shall be established and adopted by the
2 director in accordance with chapter 91 and shall be deposited
3 into the compliance resolution fund established pursuant to
4 section 26-9(o). Failure of any mortgage broker or ~~[mortgage~~
5 ~~solicitor]~~ loan originator to pay the biennial renewal fee on or
6 before December 31 of an even-numbered year shall constitute an
7 automatic forfeiture of the license. The forfeited license may
8 be restored; provided that application for restoration is made
9 within six months of the forfeiture and a penalty fee is paid in
10 addition to the delinquent license fee. A licensee who fails to
11 restore a license as provided in this subsection shall apply as
12 a new applicant.

13 ~~[(f)]~~ ~~If the mortgage broker is a person other than an~~
14 ~~individual, the license issued to it entitles one officer or~~
15 ~~member thereof, on behalf of the corporation, partnership,~~
16 ~~association, or other organization, to engage in the business of~~
17 ~~mortgage broker. The officer or member shall be designated in~~
18 ~~the application for license and have two years of experience in~~
19 ~~financial transactions involving primary or subordinate mortgage~~
20 ~~financing, or equivalent experience as determined by the~~
21 ~~commissioner. For the purposes of this subsection, the~~
22 ~~commissioner shall consider as equivalent experience, two years~~



1 ~~of experience as a licensed insurance producer under chapter~~
2 ~~431; provided that:~~

3 ~~(1) The licensed insurance producer only arranges mortgage~~
4 ~~loans with one insured depository institution, as~~
5 ~~defined in 12 U.S.C. section 1813(c)(2), that is a~~
6 ~~wholly owned subsidiary of an insurer, or an affiliate~~
7 ~~of an insurer with which such insurance producer has~~
8 ~~an exclusive insurance agency relationship;~~

9 ~~(2) The licensed insurance producer and the insured~~
10 ~~depository institution shall certify that the~~
11 ~~insurance producer only arranges mortgage loans with~~
12 ~~the insured depository institution and no other; and~~

13 ~~(3) The license shall be terminated as of the date the~~
14 ~~insurance producer ceases to arrange mortgage loans~~
15 ~~with the insured depository institution.~~

16 ~~(g)]~~ (i) Upon request, the mortgage broker shall make
17 available for inspection the mortgage broker's license and the
18 licenses of any [~~mortgage solicitors~~] loan originators employed
19 by or in association with the mortgage broker~~[-]~~ as an
20 independent contractor.

21 ~~[-h)]~~ (j) Immediately upon the [~~mortgage solicitor's~~] loan
22 originator's withdrawal from the employ of or association with



1 the mortgage broker, the mortgage broker shall return the
2 [~~mortgage solicitor's~~] loan originator's license to the
3 [~~mortgage solicitor.~~] loan originator and immediately notify the
4 commissioner.

5 [~~(i)~~](k) Every licensed mortgage broker shall have and
6 maintain a principal place of business in the [~~State~~] state for
7 the transaction of business. In the event the mortgage broker
8 maintains a branch office or offices, the commissioner, upon
9 application and payment of a fee, shall issue a branch office
10 license. The mortgage broker shall designate a mortgage
11 [~~solicitor~~] broker who has two years of experience in financial
12 transactions involving primary or subordinate mortgage
13 financing, or equivalent experience as determined by the
14 commissioner, to be in charge of each branch office. [~~For the~~
15 ~~purposes of this subsection, the commissioner shall consider as~~
16 ~~equivalent experience, two years of experience as a licensed~~
17 ~~insurance producer under chapter 431; provided that:~~

18 ~~(1) The licensed insurance producer only arranges mortgage~~
19 ~~loans with one insured depository institution, as~~
20 ~~defined in 12 U.S.C. section 1813(c)(2), that is a~~
21 ~~wholly owned subsidiary of an insurer, or an affiliate~~



1 ~~of an insurer with which such insurance producer has~~
2 ~~an exclusive insurance agency relationship;~~
3 ~~(2) The licensed insurance producer and the insured~~
4 ~~depository institution shall certify that the~~
5 ~~insurance producer only arranges mortgage loans with~~
6 ~~the insured depository institution and no other; and~~
7 ~~(3) The license shall be terminated as of the date the~~
8 ~~insurance producer ceases to arrange mortgage loans~~
9 ~~with the insured depository institution.]"~~

10 SECTION 5. Section 454-3.1, Hawaii Revised Statutes, is
11 amended to read as follows:

12 " ~~[§]~~ **§454-3.1** ~~[§]~~ **Written agreements.** For any transaction
13 between a mortgage broker or a ~~[mortgage solicitor]~~ loan
14 originator and a borrower, the following requirements shall
15 apply:

16 (1) A mortgage broker and a ~~[mortgage solicitor]~~ loan
17 originator shall comply with all provisions of the
18 Real Estate Settlement Procedures Act, the Truth in
19 Lending Act, and the Equal Credit Opportunity Act, as
20 those laws currently exist or as they may be
21 amended~~[.]~~;



1 (2) Any written commitment letter to make a mortgage loan
2 with specified terms, including loan amount, interest
3 rate, points, and payment terms, which is issued by a
4 mortgage broker or [~~solicitor~~] loan originator and
5 accepted by a borrower, [~~must~~] shall be honored by the
6 mortgage broker or [~~solicitor~~] loan originator if the
7 borrower has completely satisfied all of the
8 conditions of the commitment in a timely manner and
9 prior to the specified expiration date of the
10 commitment. A written commitment letter shall specify
11 the conditions precedent to closing the mortgage loan
12 and the lender that has the ultimate authority to fund
13 and close the mortgage loan;

14 (3) A mortgage broker or loan originator shall provide the
15 borrower with the following or a substantially similar
16 consumer counseling and home ownership notice, not
17 longer than one page in length and in twelve-point
18 font, not later than the time the applicable auditor
19 disclosure is required under title 12 Code of Federal
20 Regulations section 226.31(c), as amended.

21 "CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING
22 NOTICE You are not required to complete this



1 agreement merely because you have signed a loan
2 application. If you obtain this loan, the lender
3 will have a mortgage on your home. You could
4 lose your home, and any money you have put into
5 it, if you do not meet your loan obligations.
6 If you are uncertain about your rights and
7 obligations under this loan agreement, you should
8 consider consulting a qualified independent
9 housing counselor or other experienced financial
10 adviser regarding the rate, fees, and provisions
11 of this mortgage loan before you proceed. For
12 information on contacting a qualified housing
13 counselor, call the United States Department of
14 Housing and Urban Development's counseling and
15 referral line at 1-800-569-4287 or go to
16 www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm for
17 a list of housing counseling agencies."

18 The mortgage broker or solicitor shall provide the
19 notice to the borrower and shall secure a signed
20 acknowledgement of receipt by the borrower of a copy
21 of the notice. The notice requirements of this
22 paragraph shall not apply when a similar disclosure is



1 required under federal law, including but not limited
2 to home equity loans and high cost loans under the
3 Home Ownership and Equity Protection Act of title 15,
4 United States Code, section 1639;

5 (4) The licensee, within three business days of receipt of
6 a borrower's completed mortgage loan application, and
7 before the borrower gives the licensee any moneys,
8 shall sign a mortgage brokerage agreement with the
9 borrower; provided that if the licensee is a loan
10 originator, the mortgage brokerage agreement shall be
11 with the mortgage broker with whom the loan originator
12 is associated with or employed. The mortgage
13 brokerage agreement shall be in writing, and signed
14 and dated by both the borrower and the licensee;

15 (5) The mortgage brokerage agreement shall include a clear
16 and conspicuous statement:

17 (A) Providing that, upon request, a copy shall be
18 made available to the borrower or the borrower's
19 attorney for review prior to signing;

20 (B) Explaining whether the licensee is or is not a
21 fiduciary for the borrower;



- 1 (C) Explaining the nature of the licensee's
2 compensation, and if the licensee is a loan
3 originator, the nature of the compensation of the
4 mortgage brokerage firm that the loan originator
5 is employed by or associated with as an
6 independent contractor, and whether the mortgage
7 broker and loan originator may receive
8 compensation from the borrower, the lender, or
9 both;
- 10 (D) Describing the services the licensee will perform
11 for the borrower;
- 12 (E) Setting forth:
- 13 (i) The conditions under which the borrower is
14 obligated to pay fees to the licensee;
- 15 (ii) The manner in which the borrower may cancel
16 the mortgage brokerage agreement;
- 17 (iii) What rights the borrower has regarding the
18 loan documentation;
- 19 (iv) The borrower's liabilities for fees and
20 costs; and
- 21 (v) The mortgage broker's contact information
22 for dispute resolution;



1 (F) Providing that if the licensee makes materially
2 false or misleading statements or omissions in
3 the mortgage brokerage agreement, the borrower
4 may, upon written notice:

5 (i) Void the mortgage brokerage agreement;

6 (ii) Recover moneys paid to the licensed mortgage
7 broker and loan originator by the borrower
8 for which no services have been performed;
9 and

10 (iii) Recover actual costs, including attorney's
11 fees, for enforcing the borrower's rights
12 under the mortgage brokerage agreement;

13 and

14 (6) A copy of the fully-signed mortgage brokerage
15 agreement shall be given to the borrower by the
16 mortgage broker or loan originator immediately after
17 signing the mortgage brokerage agreement."

18 SECTION 6. Section 454-4, Hawaii Revised Statutes, is
19 amended by amending subsections (a) and (b) to read as follows:

20 "~~(a) [The commissioner may suspend a license for any of~~
21 ~~the following acts or conduct of a licensee.]~~ In addition to any
22 other actions authorized by law, the commissioner may:



- 1 (1) Revoke a license issued under this chapter;
- 2 (2) Suspend a license issued under this chapter;
- 3 (3) Condition the right of a licensee to use the license;
- 4 (4) Fine any person holding a license issued under this
- 5 chapter; or
- 6 (5) Terminate any license issued under this chapter, for
- 7 any cause authorized by law, including any of the
- 8 following acts or conduct of a licensee:

- 9 [~~+1~~] (A) Making a false promise [~~tending~~] likely to
- 10 influence, persuade, or induce, or pursuing a
- 11 course of misrepresentation or false promises
- 12 through agents, [~~solicitors,~~] licensees,
- 13 advertising, or otherwise;
- 14 [~~+2~~] (B) Misrepresentation or concealment of any material
- 15 fact with respect to any transaction resulting in
- 16 injury to any party;
- 17 [~~+3~~] (C) Failure to disburse funds in accordance with an
- 18 agreement;
- 19 [~~+4~~] (D) Failure to account or deliver to any person any
- 20 personal property such as money, fund, deposit,
- 21 check, draft, mortgage, or other document or
- 22 thing of value which has come into the person's



1 hands and which is not the person's property or
2 which the person is not in law or equity entitled
3 to retain, and at the time which has been agreed
4 upon, or is required by law, or, in the absence
5 of a fixed time, upon demand of the person
6 entitled to the accounting or delivery;

7 ~~[-5-]~~ (E) Failure to place, within a reasonable time upon
8 receipt, any money, fund, deposit, check, or
9 draft, entrusted to the licensee by any person
10 dealing with the licensee [~~as a broker~~], in
11 escrow pursuant to a written agreement, or to
12 deposit the funds in a trust or escrow bank
13 account maintained by the licensee [~~with a~~] in a
14 bank located and doing business in the [~~State,~~]
15 state, wherein the funds shall be kept until
16 disbursement thereof is authorized; [~~or~~]

17 (F) Delivering a misleading or deceptive
18 communication or advertisement, whether written,
19 electronic, or oral, when marketing or soliciting
20 a mortgage loan. A communication or
21 advertisement that uses the name or trademark of
22 another financial institution, as defined in



1 section 412:1-109, or its affiliates or
 2 subsidiaries, or infers that the communication or
 3 advertisement is from, endorsed by, is related
 4 to, or is the responsibility of the financial
 5 institution, is a misleading or deceptive
 6 communication;

7 (G) Brokering or making any mortgage loan as a direct
 8 result of offering, soliciting, or selling such
 9 mortgage loan at the dwelling of a borrower
 10 without a prearranged appointment initiated by
 11 and at the invitation of the borrower; or

12 [+6+] (H) Failure to comply with this chapter or any order
 13 or rule made under the authority of this
 14 chapter.

15 (b) The commissioner may revoke a license if the
 16 application for the license or for its reactivation or renewal
 17 contains a material misstatement, the licensee demonstrates by a
 18 course of conduct negligence or incompetence in performing any
 19 act for which the licensee is required to be licensed under this
 20 chapter, or the licensee for a second time is responsible for
 21 misconduct which warrants suspension under subsection (a)."

1 SECTION 7. Section 454-5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§454-5 Power to examine, investigate, and enjoin. [~~(a)~~**
4 ~~If the commissioner has reason to believe that a licensee or any~~
5 ~~person has violated this chapter, or the rules adopted pursuant~~
6 ~~thereto, or that any license issued under this chapter may be~~
7 ~~subject to suspension or revocation, the commissioner may make~~
8 ~~an investigation as the commissioner deems necessary and may~~
9 ~~examine the books, records, accounts, and files of any licensee~~
10 ~~or person. If the commissioner finds from satisfactory evidence~~
11 ~~that any licensee or person has violated this chapter, the~~
12 ~~commissioner may bring an action in the name of the State in any~~
13 ~~court of competent jurisdiction against the licensee or person~~
14 ~~to enjoin the licensee or person from continuing the violation~~
15 ~~or engaging therein or doing any act or acts in furtherance~~
16 ~~thereof.~~

17 ~~(b) Any person having reason to believe that this chapter~~
18 ~~or the rules adopted pursuant thereto, have been violated or~~
19 ~~that a license issued under this chapter is subject to~~
20 ~~suspension or revocation, may file with the commissioner a~~
21 ~~written complaint setting forth the details of the alleged~~
22 ~~violation or grounds for suspension or revocation.]~~



1 (a) The commissioner may conduct examinations of mortgage
2 brokers and loan originators under this chapter for the purpose
3 of determining whether the mortgage broker is in compliance with
4 all laws, rules, or orders issued by the commissioner.

5 (b) The commissioner shall have full access to the vaults,
6 books, accounts, records, and documents of the licensee and may
7 make any inquiries as may be necessary to ascertain the
8 condition of the licensee. All officers, directors, employees,
9 partners, and members of the licensee being examined shall
10 cooperate fully with the commissioner and the commissioner's
11 staff, and shall answer all inquiries and furnish all
12 information pertaining to the same, to the best of their
13 knowledge and ability.

14 (c) The commissioner may charge an examination fee based
15 upon the cost per hour per examiner for all mortgage brokers
16 examined by the commissioner or the commissioner's staff. The
17 hourly fee shall be \$40 in the case of a mortgage brokerage
18 firm, \$20 in the case of an individual mortgage broker, or such
19 amount as the commissioner shall establish by rule pursuant to
20 chapter 91. In addition to the examination fee, the
21 commissioner may charge any licensed mortgage broker examined or
22 investigated by the commissioner or the commissioner's staff



1 additional amounts for travel, per diem, mileage, and other
2 reasonable expenses incurred in connection with the examination
3 or investigation.

4 (d) Notwithstanding chapter 92F, the examination process
5 and related information and documents, including the reports of
6 examination, are confidential and are not subject to discovery
7 in civil and criminal lawsuits or disclosure under federal or
8 state law.

9 (e) If the commissioner has reason to believe that a
10 licensee or any person has violated this chapter, or the rules
11 adopted pursuant thereto, or that any license issued under this
12 chapter may be subject to suspension or revocation, the
13 commissioner may make an investigation as the commissioner deems
14 necessary and may examine the vaults, books, records, accounts,
15 and documents of any licensee or person. If the commissioner
16 finds from satisfactory evidence that any licensee or person has
17 violated this chapter, the commissioner in addition to any other
18 remedy provided by law may bring an action in the name of the
19 State in any court of competent jurisdiction against the
20 licensee or person to enjoin the licensee or person from
21 continuing the violation or engaging therein or doing any act or
22 acts in furtherance thereof.



1 (f) Any person having reason to believe that this chapter
2 or the rules adopted pursuant thereto have been violated or that
3 a license issued under this chapter is subject to suspension or
4 revocation, may file with the commissioner a written complaint
5 setting forth the details of the alleged violation or grounds
6 for suspension or revocation."

7 SECTION 8. Section 454-6, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§454-6 Power of commissioner.** The commissioner may adopt
10 rules pursuant to chapter 91, as amended, as the commissioner
11 deems necessary for the administration of this chapter. [~~The~~
12 ~~rules shall include, but not be limited to the following:~~

13 ~~(1) Advertising;~~

14 ~~(2) Solicitation; and~~

15 ~~(3) Specifications as to the forms and procedures to be~~
16 ~~used in the making of any mortgage loan.]~~

17 In addition to any other acts authorized by law, the
18 commissioner may:

19 (1) Adopt, amend, or repeal rules, issue declaratory
20 rulings or informal nonbinding interpretations, and
21 conduct contested case proceedings pursuant to chapter
22 91;



- 1 (2) Grant, deny, forfeit, renew, reinstate, or restore the
- 2 license of any mortgage broker or loan originator;
- 3 (3) Revoke, suspend, or otherwise limit the license of any
- 4 mortgage broker or loan originator for any violation
- 5 of the provisions in this chapter, or any rule or
- 6 order of, or agreement with the commissioner;
- 7 (4) Develop requirements for licensure through rules;
- 8 (5) Investigate and conduct hearings regarding any
- 9 violation of this chapter, and any rule or order of or
- 10 agreement with the commissioner;
- 11 (6) Prepare, administer, and grade examinations; provided
- 12 that the commissioner may contract with a testing
- 13 agency to provide those services, and the commissioner
- 14 may also reserve the right to modify, amend, change,
- 15 or regrade the examination;
- 16 (7) Create fact-finding committees that may make
- 17 recommendations to the commissioner for the
- 18 commissioner's deliberations;
- 19 (8) Request a criminal history record check of an
- 20 applicant and any of its officers, directors,
- 21 employees, partners, and members in accordance with
- 22 section 846-2.7;



- 1 (9) Contract with qualified persons without regard to
2 chapter 76, including investigators, who shall assist
3 the commissioner in exercising the commissioner's
4 powers and duties;
- 5 (10) Subpoena witnesses and documents, administer oaths,
6 receive affidavits and oral testimony, including
7 telephonic communications, and do any and all things
8 necessary or incidental to the exercise of the
9 commissioner's power and duties, including conducting
10 contested case proceedings under chapter 91; and
- 11 (11) Require a mortgage broker or loan originator to comply
12 with any rule, guidance, guideline, statement,
13 supervisory policy, or any similar proclamation
14 issued, adopted, or promulgated by the Federal Deposit
15 Insurance Corporation to the same extent and in the
16 same manner as a bank chartered by the State or, in
17 the alternative, any policy position of the Conference
18 of Bank Supervisors."

19 SECTION 9. Section 454-8, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§454-8 Penalty, contracts void.** Violation of this
22 chapter shall be punishable by a fine of not more than [~~\$1,000~~



1 ~~or~~] \$2,000, imprisonment of not more than one year, or both.

2 [~~Any contract entered into by any person with any unlicensed~~
3 ~~mortgage broker or solicitor shall be void and unenforceable.~~]"

4 SECTION 10. Section 454-7, Hawaii Revised Statutes, is
5 repealed.

6 [~~"**454-7 Fees, commissions, and charges.** The commissioner~~
7 ~~may also adopt rules concerning maximum fees, commissions, and~~
8 ~~charges on mortgage loan transactions. The maximum fees,~~
9 ~~commissions, and charges shall be related to the actual amount~~
10 ~~of money made available to the borrower, over and above the~~
11 ~~indebtedness of prior mortgages. The commissioner may also~~
12 ~~adopt rules concerning the full disclosure of the fees,~~
13 ~~commissions, and charges."~~]

14 SECTION 11. In codifying the new sections added by section
15 1 of this Act, the revisor of statutes shall substitute
16 appropriate section numbers for the letters used in designating
17 the new sections in this Act.

18 SECTION 12. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 13. This Act shall take effect upon its approval;
21 provided that section 454-A, Hawaii Revised Statutes, in section
22 1 of this Act, shall take effect on July 1, 2010.



1

INTRODUCED BY: _____

A handwritten signature in black ink, appearing to be a stylized name, is written above a horizontal line.

JAN 17 2008



Report Title:

Mortgage Brokers

Description:

Revises the law regulating mortgage brokers.

