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# 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. (a) A principal  
5 mortgage broker shall have the duty to directly manage and  
6 supervise a mortgage brokerage firm and its licensees.

7           (b) A principal mortgage broker shall be responsible for:

- 8           (1) Supervising the maintenance of client trust accounts,  
9           the disbursements from those accounts, and the  
10           accounting practices of the mortgage brokerage firm;  
11           (2) Supervising the maintenance of the records, contracts,  
12           and documents of the mortgage brokerage firm;  
13           (3) Supervising all mortgage brokerage agreements and  
14           residential mortgage loan documents of the mortgage  
15           brokerage firm and the handling of these documents by  
16           the employed licensees of the mortgage brokerage firm;  
17           (4) Supervising the proper handling of any application of  
18           the mortgage brokerage firm, including an application



- 1           for a license or renewal application of any licensee
- 2           employed by the mortgage brokerage firm;
- 3       (5) Developing policies and procedures for the mortgage
- 4           brokerage firm relating to the handling of residential
- 5           mortgage loan transactions and the conduct of the
- 6           employed licensees and other staff, and educating and
- 7           enforcing these policies and procedures;
- 8       (6) Setting a policy on continuing education requirements
- 9           for all employed licensees of the mortgage brokerage
- 10          firm to be in compliance with any statutory or rule
- 11          requirements;
- 12       (7) Ensuring that the licenses of all employed licensees
- 13          and the license of the mortgage brokerage firm are
- 14          current and active, and any required bond or
- 15          statutorily permissible substitute is valid and not
- 16          cancelled;
- 17       (8) Establishing and maintaining a training program for
- 18          all employed licensees of the mortgage brokerage firm;
- 19       (9) Ensuring that all employed licensees of the mortgage
- 20          brokerage firm are provided adequate information and
- 21          training on the latest amendments to licensing laws
- 22          and rules, and any other related laws and rules;



1       (10) Notifying the commissioner of any licensee employed by  
2           the mortgage brokerage firm;

3       (11) Notifying the commissioner of any licensee employed by  
4           the mortgage brokerage firm who withdraws or is  
5           terminated from the mortgage brokerage firm; and

6       (12) Ensuring that the records, loan documents, and  
7           agreements, including the mortgage brokerage  
8           agreement, are retained for seven years in paper or  
9           electronic format by the mortgage brokerage firm.

10       **§454-B Advertising.**   (a) It shall be a violation of this  
11       chapter for any person to:

12           (1) Advertise as a mortgage broker or loan originator  
13           unless the person holds a valid license under this  
14           chapter to provide the services advertised; or

15           (2) When soliciting a refinance of an existing residential  
16           mortgage loan, to disclose the name of the lender who  
17           made the existing residential mortgage loan in the  
18           advertisement.

19           (b) A mortgage broker or loan originator may not advertise  
20       in any misleading or deceptive manner, such as advertising in a  
21       manner that is likely to cause the recipient to believe that the



1 advertisement is from the mortgagor of record of the existing  
2 residential mortgage loan.

3 (c) As used in this section, "advertise" means:

4 (1) Issuing any card, sign, or device to any person;

5 (2) Causing, permitting, or allowing the placement of any  
6 sign or marking on or in any building, vehicle, or  
7 structure;

8 (3) Placing an advertisement in any newspaper, magazine,  
9 or on the Internet;

10 (4) Listing or advertising in any directory under a  
11 classification or heading that includes the words  
12 "mortgage broker", "loan originator", or the like;

13 (5) Broadcasting commercials by airwave or Internet  
14 transmission; or

15 (6) Transmitting any written communication, including:

16 (A) A letter or a postcard that encourages a person  
17 to borrow from or through a mortgage broker; or

18 (B) A written communication that encourages a person  
19 to refinance the person's existing residential  
20 mortgage loan and mentions that a new residential  
21 mortgage loan will reduce the monthly payment the  
22 borrower will pay on the new residential mortgage



1           loan or reduce the interest rate on the  
2           borrower's existing residential mortgage loan."

3           **§454-C Licensing requirement.** (a) No person shall act as  
4 a mortgage broker or loan originator without a license as  
5 provided in this chapter. No person not licensed under this  
6 chapter shall charge or receive any commission, fee, or bonus in  
7 connection with arranging for, negotiating, or selling a  
8 residential mortgage loan. A loan originator shall not engage  
9 in the activity of a loan originator unless employed by a  
10 mortgage broker and is licensed under this chapter. No mortgage  
11 broker or loan originator license shall be granted to any person  
12 who is not eighteen years of age or older.

13           If the applicant is a person other than an individual, no  
14 license shall be granted unless the applicant first registers to  
15 do business in this state with the business registration  
16 division of the department of commerce and consumer affairs, and  
17 has designated in the application the name of the individual who  
18 holds a mortgage broker license as the principal mortgage broker  
19 for the mortgage brokerage firm. A person who qualifies as a  
20 foreign lender under section 207-11 shall not be required to  
21 register to do business in this State prior to licensure. The  
22 designated principal mortgage broker shall have two years of



1 experience as a mortgage broker, and shall have management and  
2 supervision responsibilities for the mortgage brokerage firm and  
3 the licensees employed by the applicant.

4 If the applicant for a mortgage broker license is a sole  
5 proprietorship, upon licensure, the mortgage broker operating as  
6 a sole proprietorship shall perform the duties of a principal  
7 mortgage broker under section 454-A.

8 (b) Every individual licensed as a mortgage broker and  
9 operating as a sole proprietorship and every person licensed as  
10 a mortgage broker and operating as a mortgage brokerage firm  
11 shall deposit with the commissioner, prior to doing business, a  
12 bond executed by the mortgage broker or mortgage brokerage firm  
13 as principal and a surety company authorized to do business in  
14 the state as a surety, in the amounts set forth below:

15 (1) A mortgage brokerage firm with one to five mortgage  
16 brokers or loan originators or a mortgage broker  
17 operating as a sole proprietorship shall post a bond  
18 in the amount of \$25,000;

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



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

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

16       (c) The failure, refusal, or neglect of any licensee to  
17   maintain the applicable bond in full force and effect shall  
18   cause the automatic forfeiture of the license, effective as of  
19   the date of expiration or cancellation of the bond. The  
20   commissioner shall not restore the fortified license until  
21   satisfactory proof of bonding is submitted to the commissioner,  
22   as required by this section. Failure to submit proof sufficient



1 to restore a license within sixty days after the date of  
2 forfeiture shall result in the forfeiture of all fees and shall  
3 require the licensee to apply as a new applicant. The  
4 commissioner may, as a condition of restoration of a license  
5 forfeited under this section:

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

7 (2) Impose a bonding requirement in addition to the bond  
8 requirement under subsection (c); or

9 (3) Restrict the license.

10 (d) Each application for a license or its renewal shall be  
11 made in writing, on the forms and in the manner and accompanied  
12 by evidence in support of the applications as prescribed by the  
13 commissioner. The commissioner shall require information with  
14 regard to the applicant as the commissioner may deem desirable,  
15 with due regard to the paramount interests of the public, as to  
16 the experience, financial integrity, and competency of the  
17 applicant as to financial transactions involving primary or  
18 subordinate mortgage financing. Notwithstanding any other law  
19 to the contrary, the commissioner shall require the applicant to  
20 disclose any arrest and conviction records of the applicant,  
21 including an arrest for which the applicant received a deferred  
22 acceptance of a guilty plea or the benefit of a pre-trial





1 diversion program. In the event the commissioner orders denial  
2 of issuance or of renewal of a license, the order shall be made  
3 only pursuant to chapter 91.

4 (e) An applicant shall pass a written examination prior to  
5 licensure. The commissioner shall determine the examination  
6 score which all applicants must receive to pass the written  
7 examination. The examination shall test the knowledge of the  
8 applicant concerning a residential mortgage loan transaction,  
9 the residential mortgage loan laws and rules of the State and  
10 relevant federal statutes, and the duties and responsibilities  
11 of a principal mortgage broker, mortgage broker, or loan  
12 originator, as appropriate. The commissioner may make  
13 arrangements, including contracting with an outside testing  
14 service, for administering examinations and collecting fees.  
15 The fees collected shall be nonrefundable. An applicant who  
16 fails to appear for the examination as scheduled or fails to  
17 pass the examination shall reapply for an examination and remit  
18 all required fees and forms before being rescheduled for another  
19 examination. An applicant's examination scores shall be valid  
20 for two years from the date of the examination.

21 (f) To qualify for renewal of a license the licensee shall  
22 have completed twelve hours for a mortgage broker or nine hours



1 for a loan originator of continuing education or its equivalent  
2 as determined by the commissioner during the two-year period  
3 preceding the application for renewal, and shall certify that  
4 the requirements have been completed. An applicant for a  
5 renewal of license shall certify on a form provided by the  
6 commissioner. The certification shall be under oath, if  
7 required by the commissioner. In addition to the certification,  
8 the commissioner may require any licensee to submit further  
9 evidence satisfactory to the commissioner demonstrating  
10 compliance with this section. Upon failure to satisfy the  
11 continuing education requirement by the license expiration date,  
12 the renewed license shall be placed on inactive status.

13 The course of study for continuing education shall be  
14 approved by the National Association of Mortgage Brokers or an  
15 accredited business school, college, university, community  
16 college, vocational school, or any other course of study  
17 approved by the commissioner, and shall include instruction on  
18 primary and subordinate residential mortgage loan transactions  
19 and the appropriate laws governing these transactions, including  
20 at least four hours of instruction in compliance with federal  
21 and state regulations of residential mortgage loans and at least  
22 two hours in mortgage broker business ethics.



1       To reactivate a license that has been placed on an inactive  
2 status, the licensee shall submit to the commissioner:

3       (1) Proof of having satisfied the continuing education  
4 requirement of this section;

5       (2) A complete application setting forth the information  
6 as may be prescribed or required by the commissioner;

7       and

8       (3) Payment of the proper fee.

9       A false certification to the commissioner shall be deemed a  
10 violation and shall subject the licensee to disciplinary  
11 proceedings, including denial of the application for renewal of  
12 the license, which shall be made only pursuant to chapter 91. A  
13 forfeiture of a license for failure to maintain the bond  
14 required under section 454-C(b) or to pay the biennial renewal  
15 fee shall not be considered a disciplinary proceeding and shall  
16 not be required to be made pursuant to chapter 91.

17       (g) All fees, fines, and charges shall be established and  
18 adopted by the director in accordance with chapter 91 and shall  
19 be deposited into the compliance resolution fund established  
20 pursuant to section 26-9(o). Failure of any mortgage broker or  
21 loan originator to pay the biennial renewal fee on or before  
22 December 31 of an even-numbered year shall constitute an



1 automatic forfeiture of the license. The forfeited license may  
2 be restored; provided that application for restoration is made  
3 within six months of the forfeiture and a penalty fee is paid in  
4 addition to the delinquent license fee. A licensee who fails to  
5 restore a license as provided in this subsection shall apply as  
6 a new applicant.

7 (h) Each mortgage broker shall display the certificate of  
8 license issued by the commissioner in plain view in its  
9 principal office and in each branch office except a mortgage  
10 broker who is not required to have an office in Hawaii pursuant  
11 to subsection (j) shall not be required to display the  
12 certificate of license. Upon request, the mortgage broker shall  
13 make available for inspection the mortgage broker's license and  
14 the licenses of any licensee employed by the mortgage broker.

15 (i) Immediately upon the licensee's withdrawal or  
16 termination from the employ of the mortgage broker, the mortgage  
17 broker shall return the licensee's license to the licensee and  
18 immediately notify the commissioner of the withdrawal or  
19 termination from employment.

20 (j) Except for a mortgage broker who qualifies as a  
21 foreign lender under section 207-11, every licensed mortgage  
22 broker shall have and maintain a principal place of business in



1 the state for the transaction of business. In the event the  
2 mortgage broker desires to maintain a branch office or offices,  
3 the commissioner, upon application and payment of a fee, shall  
4 issue a branch office license. The mortgage broker shall  
5 designate a licensee who has two years of experience in  
6 financial transactions involving primary or subordinate mortgage  
7 financing, or equivalent experience as determined by the  
8 commissioner, to be in charge of each branch office.

9 **§454-D Uniform multistate automated licensing system.** (a)

10 The legislature has determined that a uniform multistate  
11 administration of an automated licensing system for mortgage  
12 brokers and individual loan originators is consistent with both  
13 the public interest and the purposes of this chapter. For the  
14 sole purpose of participating in the establishment and  
15 implementation of a multistate automated licensing system for  
16 mortgage brokers and loan originators, the commissioner is  
17 authorized:

- 18 (1) To modify by rule the license renewal dates;  
19 (2) To establish by rule such new requirements as are  
20 necessary for the State to participate in a multistate  
21 automated licensing system upon the commissioner's  
22 finding that each new requirement is consistent with



1           both the public interest and the purposes of this  
2           chapter; and  
3        (3) To request a criminal history record check of the  
4           applicant or the applicant's officers, directors,  
5           partners, members, managers, employees, or agents in  
6           accordance with section 846-2.7. The information  
7           obtained thereby may be used by the commissioner to  
8           determine the applicant's eligibility for licensing  
9           under this chapter. The fee required to perform the  
10          criminal history record check shall be paid by the  
11          applicant. Information obtained or held by the  
12          commissioner pursuant to this paragraph shall be  
13          considered confidential personal information and shall  
14          be exempt from disclosure. This paragraph does not  
15          preclude the commissioner from obtaining criminal  
16          history record checks on applicants for a license  
17          prior to the time this State joins the multistate  
18          system.

19        (b) Nothing in this section shall authorize the  
20        commissioner to require any person exempt under section 454-2,  
21        or employees or exclusive agents of any such exempt person, to



1 submit information to, or participate in, the uniform multistate  
2 licensing system."

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

5 1. By adding eleven new definitions to be appropriately  
6 inserted and to read:

7 "Agent" means a person who acts with the consent and on  
8 behalf of a licensee, and is subject to the licensee's direct  
9 control.

10 "Applicant" means a person applying for the issuance of a  
11 license or a renewal of a license.

12 "Bank" means the same as in Title 12 United States Code  
13 Section 1813(a), and includes a depository financial services  
14 loan company.

15 "Insured depository institution" means the same as in Title  
16 12 United States Code Section 1813(c)(2), and includes an  
17 operating subsidiary of the insured depository institution that  
18 is an operating subsidiary under the laws and rules applicable  
19 to the insured depository institution.

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



- 1        (1) Who performs any of the functions of a mortgage  
2        broker, as defined in this chapter;
- 3        (2) Who is employed directly or indirectly by a mortgage  
4        broker; and
- 5        (3) Whose residential mortgage loan transactions are under  
6        the direction, control, supervision, or management of  
7        a mortgage broker.

8        "Mortgage brokerage agreement" means the written agreement  
9        between the mortgage broker and a prospective borrower in which  
10       a mortgage broker agrees to attempt to obtain a residential  
11       mortgage loan for the borrower or assist the borrower in  
12       obtaining a residential mortgage loan, and does not include a  
13       promissory note and mortgage, or any other document or  
14       instrument evidencing or securing the residential mortgage loan.

15       "Mortgage brokerage firm" refers to a licensee who is  
16       operating as a partnership, corporation, limited liability  
17       company, limited liability partnership, association or other  
18       organization.

19       "Residential mortgage loan" means any loan, including a  
20       loan to refinance a loan, secured primarily by a lien on  
21       residential real property, the proceeds of which loan will be





1 used primarily for personal, family or household use and secured  
2 primarily by a lien on residential real property.

3 "Residential real property" means:

4 (1) Real property located in the state that is improved  
5 by, or will be improved by the proceeds of a  
6 residential mortgage loan with a structure or  
7 structures designed principally for occupancy of one  
8 or 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 an occupancy unit; or

12 (2) A manufactured home.

13 "Savings association" means the same as in Title 12 United  
14 States Code Section 1813(b).

15 "Uniform multistate automated licensing system" means a  
16 system involving one or more states, the District of Columbia,  
17 Territory of Guam, or the Commonwealth of Puerto Rico  
18 established to facilitate the sharing of regulatory information  
19 and the licensing and application processes, by electronic or  
20 other means, for mortgage brokers and loan originators."



1           2. By amending the definitions of "institutional  
2 investor", "licensee", "mortgage broker", "mortgage  
3 commissioner", and "person" to read:

4           "~~Institutional investor" means and includes [(a) banks,~~  
5 ~~savings and loan institutions, trust companies, insurance~~  
6 ~~companies, investment companies as defined in the Investment~~  
7 ~~Company Act of 1940, pension or profit sharing trusts, any of~~  
8 ~~the class of persons permitted to qualify as foreign lenders~~  
9 ~~under section 207-11, or other financial institutions or~~  
10 ~~institutional buyers, whether acting for themselves or as~~  
11 ~~fiduciaries; (b) the United States or any foreign government,~~  
12 ~~any state or territory thereof, or any agency or corporate or~~  
13 ~~other instrumentality of the United States, a foreign~~  
14 ~~government, or of any state, territory or political subdivision~~  
15 ~~thereof.];~~

- 16           (1) An insured depository institution;  
17           (2) A real estate trust as defined in the Internal Revenue  
18           Code;  
19           (3) An insurance company;  
20           (4) The trustee of any employee benefit plan;  
21           (5) A trust company chartered and examined under state  
22           law;



- 1       (6) Investment companies as defined in the Investment
- 2       Company Act of 1940;
- 3       (7) A retirement plan, or pension or profit sharing plan
- 4       that is subject to the Employee Retirement Security
- 5       Act;
- 6       (8) A housing government-sponsored enterprise that is
- 7       subject to the oversight of the Office of Federal
- 8       Housing Enterprise Oversight; and
- 9       (9) The United States or any foreign government, any state
- 10       or territory thereof, or any agency or corporate or
- 11       other instrumentality of the United States, a foreign
- 12       government, or of any state, territory or political
- 13       subdivision thereof.

14       "Licensee" means a person[~~, whether~~] who is a mortgage  
 15 broker, including a mortgage brokerage firm [or mortgage  
 16 solicitor], loan originator, or a person who is required to be  
 17 licensed under this chapter.

18       "Mortgage broker" means a person not exempt under section  
 19 454-2, including a person operating as a mortgage brokerage  
 20 firm, who for compensation or gain, or in the expectation of  
 21 compensation or gain, either directly or indirectly makes,  
 22 negotiates, acquires, or offers to make, negotiate, or acquire a

1 residential mortgage loan on behalf of a borrower seeking a  
2 residential mortgage loan.

3 "Mortgage commissioner" or "commissioner" means the  
4 [~~director of commerce and consumer affairs.~~] commissioner of  
5 financial institutions.

6 "Person" means an individual, sole proprietorship,  
7 partnership, corporation, limited liability company, limited  
8 liability partnership, association, or other organization.

9 3. By repealing the definitions of "mortgage loan" and  
10 "mortgage solicitor".

11 [~~"Mortgage loan" means a loan secured by a mortgage on~~  
12 ~~real property.~~

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

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

20 "**§454-2 Exemptions.** This chapter does not apply to the  
21 following:



1           (1) ~~[Banks, operating subsidiaries of a bank established~~  
2           ~~and operating under section 412:5-203, trust~~  
3           ~~companies, savings associations, pension trusts,~~  
4           ~~credit unions, insurance companies, financial services~~  
5           ~~loan companies, or federally licensed small business~~  
6           ~~investment companies, authorized under any law of this~~  
7           ~~State or of the United States to do business in the~~  
8           ~~State,]~~ Any person that is chartered or authorized  
9           under the laws of any state or federal law to engage  
10          in the activity of an insured depository institution,  
11          including a bank or savings association, and any  
12          employee of an insured depository institution;

- 13          (2) Any of the following persons:
- 14            (A) A credit union;
  - 15            (B) A credit union service organization;
  - 16            (C) A trust company;
  - 17            (D) An insurance company;
  - 18            (E) A financial services loan company; or
  - 19            (F) A federally licensed small business investment  
20            company, including an officer or employee of the  
21            person;



- 1        (3) An individual who is an exclusive agent of a bank or  
2        savings association;
- 3        [~~(2)~~] (4) A person making or acquiring a residential  
4        mortgage loan with one's own funds for one's own  
5        investment without intent to resell the residential  
6        mortgage loan;
- 7        [~~(3)~~] (5) A person licensed to practice law in the State,  
8        not actively and principally engaged in the business  
9        of negotiating residential mortgage loans [~~secured by~~  
10       ~~real property~~], when the person renders services in  
11       the course of the person's practice as an attorney;
- 12       [~~(4)~~] (6) A person licensed as a real estate broker or  
13       salesperson in the State, not actively engaged in the  
14       business of negotiating residential mortgage loans  
15       [~~secured by real property~~], when the person renders  
16       services in the course of the person's practice as a  
17       real estate broker or salesperson;
- 18       [~~(5)~~] (7) An institutional investor negotiating, entering  
19       into, or performing under a loan purchase agreement  
20       for its portfolio, for subsequent resale to other  
21       institutional investors, or for placement of the  
22       mortgages into pools or packaging them into mortgage-



1 backed securities. As used in this paragraph, "loan  
 2 purchase agreement" means an agreement or arrangement  
 3 under which [~~a bank, savings and loan,~~] an insured  
 4 depository institution, credit union, financial  
 5 services loan company, or other financial institution  
 6 registered to do business in the State of Hawaii  
 7 agrees to sell residential mortgage loans or obtain  
 8 funding therefor, with or without the transfer of  
 9 servicing rights, to an institutional investor;

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

11 ~~(7)] (8) A person licensed under chapter 467 as a real  
 12 estate broker or salesperson selling time share  
 13 interests on behalf of a time share plan developer  
 14 that is licensed as a mortgage broker under this  
 15 chapter; provided that:~~

16 (A) The acts or conduct of a developer's authorized  
 17 representative shall be deemed to be the acts or  
 18 conduct of the developer for the purposes of  
 19 section 454-4; and

20 (B) If the person engages in acts or conduct  
 21 prohibited under this chapter, including section  
 22 454-4(a), the acts or conduct shall constitute



1 grounds for disciplinary action under section  
2 467-14[-];

3 (9) Employees and agents of a licensee if the licensee is  
4 an affiliate of a bank and is wholly owned by the  
5 holding company that owns the bank; and

6 (10) Persons employed by, or who contract with, a licensee  
7 under this chapter to perform only clerical or  
8 administrative functions on behalf of such licensee,  
9 and who do not solicit borrowers or negotiate the  
10 terms of residential mortgage loans on behalf of the  
11 licensee or borrower."

12 SECTION 4. Section 454-3.1, Hawaii Revised Statutes, is  
13 amended to read as follows:

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

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



1           (2) Any written commitment letter to make a residential  
2 mortgage loan with specified terms, including loan  
3 amount, interest rate, points, and payment terms,  
4 which is issued by a [~~mortgage broker or solicitor~~]  
5 licensee and accepted by a borrower, must be honored  
6 by the [~~mortgage broker or solicitor~~] licensee 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 residential  
12 mortgage loan and the name of the lender that has the  
13 ultimate authority to fund and close the residential  
14 mortgage loan;

15           (3) A licensee shall provide the borrower with the  
16 following notice (or substantially similar notice) of  
17 the borrower's rights and obligations, not longer than  
18 one page in length and in twelve-point font, regarding  
19 the terms of the residential mortgage loan transaction  
20 not later than the time the notice is required under  
21 the notice provision contained in Title 12 Code of  
22 Federal Regulations Section 226.31(c), as amended:



1 "CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

2 You are not required to complete this agreement merely  
3 because you have signed a loan application. If you  
4 obtain this loan, the lender will have a mortgage on  
5 your home. You could lose your home, and any money  
6 you have put into it, if you do not meet your  
7 obligations.

8 If you are uncertain about your rights and obligations  
9 under this agreement, you should consider consulting a  
10 qualified independent housing counselor or other  
11 experienced financial adviser regarding the rate,  
12 fees, and provisions of this mortgage loan before you  
13 proceed. For information on contacting a qualified  
14 housing counselor, call the United States Department  
15 of Housing and Urban Development's counseling and  
16 referral line or its website for a list of housing  
17 counseling agencies."

18 The mortgage broker or loan originator shall provide the  
19 notice to the borrower and shall secure a signed acknowledgement  
20 of receipt by the borrower of a copy of the notice. The notice  
21 requirements of this paragraph shall not apply when a similar  
22 disclosure is required under federal law, including but not



1 limited to home equity loans and high cost loans under the Home  
2 Ownership and Equity Protection Act (15 U.S.C. Section 1639);  
3 and

4 (4) Within three business days of receipt of a borrower's  
5 completed residential mortgage loan application by the  
6 licensee, and before the borrower gives the licensee  
7 any moneys except for an application fee, the licensee  
8 shall sign a mortgage brokerage agreement with the  
9 borrower; however, if the licensee is a loan  
10 originator, the mortgage brokerage agreement shall be  
11 with the mortgage broker employing the loan  
12 originator. The mortgage brokerage agreement shall be  
13 in writing, and signed and dated by both the borrower  
14 and the licensee. The mortgage brokerage agreement  
15 shall include a clear and conspicuous statement:

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

19 (B) Explaining whether the licensee is a fiduciary  
20 for the borrower;

21 (C) Explaining the nature of the licensee's  
22 compensation, and if the licensee is a loan



1           originator, explaining the nature of the  
2           compensation of the mortgage brokerage firm that  
3           the loan originator is employed by, and whether  
4           the mortgage broker and loan originator may  
5           receive compensation from the borrower, the  
6           lender, or both;

7           (D) Describing the services the licensee will perform  
8           for the borrower;

9           (E) Setting forth the conditions under which the  
10          borrower is obligated to pay fees to the  
11          licensee, the manner in which the borrower may  
12          cancel the mortgage brokerage agreement, what  
13          rights the borrower has regarding the loan  
14          documentation, the borrower's liabilities for  
15          fees and costs, and the mortgage broker's contact  
16          information for dispute resolution; or

17          (F) If the licensee makes materially false or  
18          misleading statements or omissions in the  
19          mortgage brokerage agreement, the borrower, upon  
20          written notice, may:

21          (i) Void the mortgage brokerage agreement;



1                   (ii) Recover moneys paid to the licensed mortgage  
2                   broker and loan originator by the borrower  
3                   for which no services have been performed;  
4                   and

5                   (iii) Recover actual costs, including attorney  
6                   fees, for enforcing the borrower's rights  
7                   under the mortgage brokerage agreement.

8                   A copy of the fully-signed mortgage brokerage  
9                   agreement shall be given to the borrower by the  
10                  mortgage broker or loan originator immediately after  
11                  the mortgage brokerage agreement is signed."

12                  SECTION 5. Section 454-4, Hawaii Revised Statutes, is  
13                  amended by amending subsection (a) to read as follows:

14                  "(a) [~~The commissioner may suspend a license for any of the~~  
15                  ~~following acts or conduct of a licensee.] In addition to any  
16                  other actions authorized by law, the commissioner may revoke a  
17                  license issued under this chapter, suspend a license issued  
18                  under this chapter, condition the right of a licensee to use the  
19                  license, or fine any person holding a license issued under this  
20                  chapter, for any cause authorized by law, including any of the  
21                  following acts or conduct of a licensee:~~

- 1 (1) Making a false promise [~~tending~~] likely to influence,  
2 persuade, or induce, or pursuing a course of  
3 misrepresentation or false promises through agents,  
4 [~~solicitors,~~] licensees, advertising, or otherwise;
- 5 (2) Misrepresentation or concealment of any material fact  
6 with respect to any residential mortgage loan  
7 transaction resulting in injury to any party;
- 8 (3) Failure to disburse funds in accordance with an  
9 agreement;
- 10 (4) Failure to account or deliver to any person any  
11 personal property such as money, fund, deposit, check,  
12 draft, mortgage, or other document or thing of value  
13 which has come into the person's hands and which is  
14 not the person's property or which the person is not  
15 in law or equity entitled to retain, and at the time  
16 which has been agreed upon, or is required by law, or,  
17 in the absence of a fixed time, upon demand of the  
18 person entitled to the accounting or delivery;
- 19 (5) Failure to place, within a reasonable time upon  
20 receipt, any money, fund, deposit, check, or draft,  
21 entrusted to the licensee by any person dealing with  
22 the licensee [~~as a broker,~~] in escrow pursuant to a



1 written agreement, or to deposit the funds in a trust  
2 or escrow bank account maintained by the licensee  
3 [~~with~~] in a bank located and doing business in the  
4 [~~State,~~] state, wherein the funds shall be kept until  
5 disbursement thereof is authorized; [~~or~~]

6 (6) Delivering a misleading or deceptive communication or  
7 advertisement, whether written, electronic, or oral,  
8 when marketing or soliciting a residential mortgage  
9 loan. A communication or advertisement that uses the  
10 name or trademark of or implies a relationship with a  
11 financial institution, as defined in section 412:1-  
12 109, or its affiliates or subsidiaries, when the  
13 communication or advertisement is not from, endorsed  
14 by, related to, or the responsibility of the financial  
15 institution, is a misleading or deceptive  
16 communication or advertisement;

17 (7) Brokering or making any residential mortgage loan as a  
18 direct result of offering, soliciting, or selling the  
19 residential mortgage loan at the dwelling of a  
20 borrower without a prearranged appointment;

21 (8) Without the express consent of the potential borrower,  
22 filling in any blank on a residential mortgage loan



1           application, which blank requests material  
2           information, including material financial information;  
3       (9) Without the express consent of the borrower, filling  
4           in any blank on any instrument evidencing or securing  
5           the residential mortgage loan, which blank relates to  
6           the residential mortgage loan amount, interest rate,  
7           or monthly payment of the residential mortgage loan;  
8       (10) Make payment directly or indirectly, of any kind, to  
9           any appraiser licensed or certified under chapter 466K  
10          to influence the valuation of the residential real  
11          property that will secure a residential mortgage loan;  
12       (11) Conditioning compensation of an appraiser on  
13           establishing a certain value for residential real  
14           property that will secure a residential mortgage loan;  
15           or  
16       [+6] (12) Failure to comply with this chapter or any order or  
17           rule made under the authority of this chapter."

18           SECTION 6. Section 454-5, Hawaii Revised Statutes, is  
19 amended to read as follows:

20           "**§454-5 Power to examine, investigate and enjoin.** [~~If the~~  
21 ~~commissioner has reason to believe that a licensee or any person~~  
22 ~~has violated this chapter, or the rules adopted pursuant~~





1 ~~thereto, or that any license issued under this chapter may be~~  
2 ~~subject to suspension or revocation, the commissioner may make~~  
3 ~~an investigation as the commissioner deems necessary and may~~  
4 ~~examine the books, records, accounts, and files of any licensee~~  
5 ~~or person.]~~ (a) The commissioner may conduct an examination of  
6 a licensee under this chapter for the purpose of determining  
7 whether the licensee is in compliance with all laws, rules, or  
8 orders issued by the commissioner.

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

18 (c) The commissioner may charge an examination fee based  
19 upon the cost per hour per examiner for all licensees examined  
20 by the commissioner or the commissioner's staff. The hourly fee  
21 shall be \$40 in the case of a mortgage brokerage firm and \$20 in  
22 the case of a mortgage broker operating as a sole



1 proprietorship, or an amount as the commissioner shall establish  
2 by rule pursuant to chapter 91. In addition to the examination  
3 fee, the commissioner may charge any licensed mortgage broker  
4 examined or investigated by the commissioner or the  
5 commissioner's staff additional amounts for travel, per diem,  
6 mileage, and other reasonable expenses incurred in connection  
7 with the examination or investigation.

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

12 (e) If the commissioner finds from satisfactory evidence  
13 that any licensee or person has violated this chapter, the  
14 commissioner may bring an action in the name of the State in any  
15 court of competent jurisdiction against the licensee or person  
16 to enjoin the licensee or person from continuing the violation  
17 or engaging therein or doing any act or acts in furtherance  
18 thereof.

19 ~~[(b)]~~ (f) Any person having reason to believe that this  
20 chapter or the rules adopted pursuant thereto, have been  
21 violated or that a license issued under this chapter is subject  
22 to suspension or revocation, may file with the commissioner a



1 written complaint setting forth the details of the alleged  
2 violation or grounds for suspension or revocation."

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

5 "~~§454-6~~ **Power of commissioner.** The commissioner may adopt  
6 rules pursuant to chapter 91, as amended, as the commissioner  
7 deems necessary for the administration of this chapter. [~~The~~  
8 ~~rules shall include, but not be limited to the following:~~

- 9 (1) ~~Advertising;~~
- 10 (2) ~~Solicitation; and~~
- 11 (3) ~~Specifications as to the forms and procedures to~~  
12 ~~be used in the making of any mortgage loan.]~~

13 In addition to any other powers provided by law, the commissioner  
14 may:

- 15 (1) Administer and enforce the provisions and requirements  
16 of this chapter;
- 17 (2) Adopt, amend, or repeal rules, and issue declaratory  
18 rulings or informal nonbinding interpretations;
- 19 (3) Grant, deny, forfeit, renew, reinstate, or restore the  
20 license of any mortgage broker or loan originator;
- 21 (4) Revoke, suspend, or otherwise limit the license of any  
22 mortgage broker or loan originator for any violation



- 1           of the provisions in this chapter, or any rule or  
2           order of, or agreement with the commissioner;
- 3           (5) Develop requirements for licensure through rules,  
4           including establishing the content of the written  
5           examinations required under section 454-C and  
6           determining the criteria for a passing grade;
- 7           (6) Investigate and conduct hearings regarding any  
8           violation of this chapter, and any rule or order of or  
9           agreement with the commissioner;
- 10          (7) Prepare, administer, and grade examinations; provided  
11          that the commissioner may contract with a testing  
12          agency to provide those services and may also reserve  
13          the right to modify, amend, change, or regrade the  
14          examination;
- 15          (8) Create fact-finding committees that may make  
16          recommendations to the commissioner for the  
17          commissioner's deliberations;
- 18          (9) Require the applicant and any of its officers,  
19          directors, employees, partners, members, and agents,  
20          to disclose any relevant criminal history and request  
21          a criminal history record check in accordance with  
22          section 846-2.7;



- 1        (10) Contract with qualified persons, including  
2                    investigators who may be exempt from chapter 76 and  
3                    who shall assist the commissioner in exercising the  
4                    commissioner's powers and duties;
- 5        (11) Subpoena witnesses and documents, administer oaths,  
6                    and 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 the  
10                   authority to conduct contested case proceedings under  
11                   chapter 91; and
- 12        (12) Require a mortgage broker or loan originator to comply  
13                    with any rule, guidance, guideline, statement,  
14                    supervisory policy or any similar proclamation issued,  
15                    adopted or promulgated by the Federal Deposit  
16                    Insurance Corporation to the same extent and in the  
17                    same manner as a bank chartered by the State or in the  
18                    alternative, any policy position of the Conference of  
19                    State Bank Supervisors."

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



1           "**§454-7 Fees, commissions, and charges.** (a) A licensed  
2 mortgage broker and loan originator shall not require a borrower  
3 to pay any fees or charges prior to the residential mortgage  
4 loan closing, except for:

5           (1) Charges to be incurred by the licensed mortgage broker  
6 and loan originator on behalf of the borrower for  
7 services from third parties necessary to process the  
8 residential mortgage loan application, such as credit  
9 reports and appraisals;

10           (2) An application fee;

11           (3) A rate lock fee;

12           (4) A commitment fee upon approval of the residential  
13 mortgage loan; and

14           (5) A residential mortgage loan cancellation fee.

15           (b) A licensed mortgage broker and loan originator shall  
16 not charge any fee that inures to the benefit of the licensee if  
17 it exceeds the fee disclosed on the most recent good faith  
18 estimate required by the federal Real Estate Settlement  
19 Procedures Act, unless:

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



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

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

10       (d) The commissioner may also adopt rules concerning  
11       maximum fees, commissions, and charges on residential mortgage  
12       loan transactions. [The maximum fees, commissions, and charges  
13       shall be related to the actual amount of money made available to  
14       the borrower, over and above the indebtedness of prior  
15       mortgages.] The commissioner may also adopt rules concerning  
16       the full disclosure of the fees, commissions, and charges."

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

19       "**§454-8 Penalty, contracts void.** Violation of this  
20       chapter shall be punishable by a fine of not more than [~~\$1,000~~]  
21       \$2,000 or imprisonment of not more than one year, or both. [~~Any~~  
22       ~~contract entered into by any person with any unlicensed mortgage~~



1 ~~broker or solicitor shall be void and unenforceable.] "~~

2 SECTION 10. Section 454-3 is repealed.

3 [~~"§454-3 Licensing, requirements, application. (a) No~~  
4 ~~person shall act as a mortgage broker or mortgage solicitor~~  
5 ~~without a license therefor as provided in this chapter, and no~~  
6 ~~person not licensed under this chapter shall charge or receive~~  
7 ~~any commission, fee, or bonus in connection with arranging for,~~  
8 ~~negotiating, or selling a mortgage loan.~~

9 ~~(b) No mortgage broker or mortgage solicitor license shall~~  
10 ~~be granted to any person who is not eighteen years of age or~~  
11 ~~older. If the applicant is a person other than an individual,~~  
12 ~~no license shall be granted unless the applicant first registers~~  
13 ~~to do business in this State with the business registration~~  
14 ~~division of the department of commerce and consumer affairs.~~

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. The bond shall be conditioned upon the~~  
20 ~~faithful compliance of the broker with this chapter. The bond~~  
21 ~~shall run to the State for the benefit of any person injured by~~  
22 ~~the wrongful act, default, fraud, or misrepresentation of the~~





1 ~~broker or the solicitors; provided that the aggregate liability~~  
2 ~~of the surety shall not exceed the sum of the bond. The surety~~  
3 ~~may cancel the bond by giving sixty days' notice in writing to~~  
4 ~~the commissioner and shall thereafter be relieved of any~~  
5 ~~liability for any breach of condition occurring after the~~  
6 ~~effective date of cancellation. A mortgage broker's license~~  
7 ~~shall not be in effect at any time when the bond is not in full~~  
8 ~~force and effect.~~

9 ~~(d) Each application for a license or its renewal shall be~~  
10 ~~made in writing, on the forms and in the manner and accompanied~~  
11 ~~by evidence in support of the applications as prescribed by the~~  
12 ~~commissioner. The commissioner shall require information with~~  
13 ~~regard to the applicant as the commissioner may deem desirable,~~  
14 ~~with due regard to the paramount interests of the public, as to~~  
15 ~~the experience, financial integrity, and competency of the~~  
16 ~~applicant as to financial transactions involving primary or~~  
17 ~~subordinate mortgage financing. In the event the commissioner~~  
18 ~~orders denial of issuance or of renewal of a license, the order~~  
19 ~~shall be made only pursuant to chapter 91.~~

20 ~~(e) All fees shall be established and adopted by the~~  
21 ~~director in accordance with chapter 91 and shall be deposited~~  
22 ~~into the compliance resolution fund established pursuant to~~



1 ~~section 26-9(o). Failure of any mortgage broker or mortgage~~  
2 ~~solicitor to pay the biennial renewal fee on or before December~~  
3 ~~31 of an even numbered year shall constitute an automatic~~  
4 ~~forfeiture of the license. The forfeited license may be~~  
5 ~~restored, provided that application for restoration is made~~  
6 ~~within six months of the forfeiture and a penalty fee is paid in~~  
7 ~~addition to the delinquent license fee. A licensee who fails to~~  
8 ~~restore a license as provided in this subsection shall apply as~~  
9 ~~a new applicant.~~

10 ~~(f) If the mortgage broker is a person other than an~~  
11 ~~individual, the license issued to it entitles one officer or~~  
12 ~~member thereof, on behalf of the corporation, partnership,~~  
13 ~~association, or other organization, to engage in the business of~~  
14 ~~mortgage broker. The officer or member shall be designated in~~  
15 ~~the application for license and have two years of experience in~~  
16 ~~financial transactions involving primary or subordinate mortgage~~  
17 ~~financing, or equivalent experience as determined by the~~  
18 ~~commissioner. For the purposes of this subsection, the~~  
19 ~~commissioner shall consider as equivalent experience, two years~~  
20 ~~of experience as a licensed insurance producer under chapter~~  
21 ~~431; provided that:~~



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

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

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

14       ~~(g) Upon request, the mortgage broker shall make available~~  
15       ~~for inspection the mortgage broker's license and the licenses of~~  
16       ~~any mortgage solicitors employed by the mortgage broker.~~

17       ~~(h) Immediately upon the mortgage solicitor's withdrawal~~  
18       ~~from the employ of the mortgage broker, the mortgage broker~~  
19       ~~shall return the mortgage solicitor's license to the mortgage~~  
20       ~~solicitor.~~

21       ~~(i) Every licensed mortgage broker shall have and maintain~~  
22       ~~a principal place of business in the State for the transaction~~



1 ~~of business. In the event the mortgage broker maintains a~~  
2 ~~branch office or offices, the commissioner, upon application and~~  
3 ~~payment of a fee, shall issue a branch office license. The~~  
4 ~~mortgage broker shall designate a mortgage solicitor who has two~~  
5 ~~years of experience in financial transactions involving primary~~  
6 ~~or subordinate mortgage financing, or equivalent experience as~~  
7 ~~determined by the commissioner, to be in charge of each branch~~  
8 ~~office. For the purposes of this subsection, the commissioner~~  
9 ~~shall consider as equivalent experience, two years of experience~~  
10 ~~as a licensed insurance producer under chapter 431; provided~~  
11 ~~that:~~

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

18 ~~(2) The licensed insurance producer and the insured~~  
19 ~~depository institution shall certify that the~~  
20 ~~insurance producer only arranges mortgage loans with~~  
21 ~~the insured depository institution and no other; and~~



1       ~~(3) The license shall be terminated as of the date the~~  
2           ~~insurance producer ceases to arrange mortgage loans~~  
3           ~~with the insured depository institution." ]~~

4           SECTION 11. This Act does not affect rights and duties  
5 that matured, penalties that were incurred, and proceedings that  
6 were begun, before its effective date.

7           SECTION 12. In codifying the new sections added by  
8 section 1 of this Act, the reviser of statutes shall substitute  
9 appropriate section numbers for the letters used in designating  
10 the new sections in this Act.

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

13          SECTION 14. This Act shall take effect on July 1, 2050.



**Report Title:**

Mortgage Brokers

**Description:**

Revises the law regulating mortgage brokers. Effective  
07/01/2050. (HB2408 HD1)

