
A BILL FOR AN ACT

RELATING TO MORTGAGE BROKERS.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to title 22 to be appropriately designated
3 and to read as follows:

4 "CHAPTER

5 MORTGAGE BROKERS AND LOAN ORIGINATORS

6 § -1 **Definitions.** In this chapter, unless the context
7 or subject matter otherwise requires:

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

11 "Applicant" means a person applying for the issuance of a
12 license or a renewal of a license under this chapter.

13 "Bank" means the same as in 12 U.S.C. section 1813(a), and
14 includes a depository financial services loan company.

15 "Borrower" means the person who has applied for or obtained
16 a residential loan from or through a licensee, or from or
17 through a person required to be licensed under this chapter.



1 "Commissioner" means the commissioner of financial
2 institutions of this State.

3 "Division" means the division of financial institutions of
4 the department of commerce and consumer affairs of this State.

5 "Institutional investor" means:

- 6 (1) An insured depository institution;
- 7 (2) A real estate trust as defined in the Internal Revenue
8 Code;
- 9 (3) An insurance company;
- 10 (4) The trustee of any employee benefit plan;
- 11 (5) A trust company chartered and examined under state
12 law;
- 13 (6) An investment company as defined in the Investment
14 Company Act of 1940;
- 15 (7) A retirement plan, or pension or profit sharing plan
16 that is subject to the Employee Retirement Income
17 Security Act;
- 18 (8) A housing government sponsored enterprise that is
19 subject to the oversight of the Office of Federal
20 Housing Enterprise Oversight; and
- 21 (9) The United States or any foreign government, any state
22 or territory thereof, or any agency or corporate or



1 other instrumentality of the United States, a foreign
2 government, or of any state, territory, or political
3 subdivision thereof.

4 "Insured depository institution" means the same as in 12
5 U.S.C. section 1813(c)(2), and includes an operating subsidiary
6 of the insured depository institution that is an operating
7 subsidiary under the laws and rules applicable to the insured
8 depository institution.

9 "Licensee" means a person licensed pursuant to this
10 chapter.

11 "Loan origination activities" means engaging in any of the
12 following activities for direct or indirect compensation or
13 gain, while representing or acting on behalf of a mortgage
14 broker:

- 15 (1) Soliciting, accepting, or offering to accept an
16 application for a residential mortgage loan;
- 17 (2) Assisting a borrower or offering to assist a borrower
18 in the preparation of a residential mortgage loan
19 application; or
- 20 (3) Negotiating or offering to negotiate the terms or
21 conditions of a residential mortgage loan with a
22 borrower.



1 "Loan originator" means an individual, other than an exempt
2 person, who performs the loan origination activities described
3 in this chapter with respect to a residential mortgage loan.
4 For the purposes of this chapter, the term "loan originator"
5 does not include persons who are mortgage brokers.

6 "Mortgage broker" means any person, other than an exempt
7 person, who performs the mortgage brokering activities described
8 in this chapter with respect to a residential mortgage loan.

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

15 "Mortgage brokerage firm" means a mortgage broker licensee
16 that is not an individual or sole proprietorship.

17 "Mortgage brokering activities" means engaging in any of
18 the following activities for direct or indirect compensation or
19 gain with any person making residential mortgage loans;

- 20 (1) Accepting or offering to accept an application for a
21 residential mortgage loan;



1 (2) Assisting or offering to assist in the preparation of
2 an application for a residential mortgage loan; or

3 (3) Negotiating or offering to negotiate the terms or
4 conditions of a residential mortgage loan.

5 "Person" means an individual, sole proprietorship,
6 partnership, corporation, limited liability company, limited
7 liability partnership, or other association of individuals,
8 however organized.

9 "Principal mortgage broker" means an individual mortgage
10 broker licensee under this chapter, designated as such pursuant
11 to section -6, who has the duty to directly manage and
12 supervise a mortgage brokerage firm and its licensees.

13 "Residential mortgage loan" means any loan, including a
14 loan to refinance a residential mortgage loan, secured primarily
15 by a lien on residential real property, the proceeds of which
16 loan will be used primarily for personal, family or household
17 use.

18 "Residential real property" means:

19 (1) Real property located in this State that is improved
20 or will be improved by the proceeds of the mortgage
21 loan by a structure or structures designed principally
22 for occupancy of one to four families, including



1 individual units of condominiums and cooperatives, and
2 any related interests, such as a share in the
3 cooperative or right to occupancy of the unit; or

4 (2) A manufactured home used primarily for occupancy by
5 one to four families.

6 "Savings association" means the same as in 12 U.S.C.
7 section 1813(b).

8 "Uniform multistate automated licensing system" means a
9 system that may involve one or more states, the District of
10 Columbia, Territory of Guam, or the Commonwealth of Puerto Rico
11 established to facilitate the sharing of regulatory information
12 and the licensing and application processes, by electronic or
13 other means, for mortgage brokers and loan originators.

14 **§ -2 Exemptions.** This chapter does not apply to the
15 following:

16 (1) Any person that is licensed or chartered or authorized
17 under the laws of any state or federal law to engage
18 in the activity of an insured depository institution,
19 including a bank or savings association, and any
20 employee of an insured depository institution;



- 1 (2) Any of the following persons licensed or chartered
2 under the laws of any state or federal law to do
3 business as:
- 4 (A) A credit union;
 - 5 (B) A trust company;
 - 6 (C) An insurance company;
 - 7 (D) A financial services loan company; or
 - 8 (E) A federally licensed small business investment
9 company,
- 10 including any employee of these companies;
- 11 (3) An individual who is an exclusive agent of a single
12 bank or savings association;
- 13 (4) A person making or acquiring a residential mortgage
14 loan with the person's own funds for the person's own
15 investment without intent to resell the residential
16 mortgage loan;
- 17 (5) A person licensed to practice law in the State, not
18 actively and principally engaged in the business of
19 negotiating residential mortgage loans, when the
20 person renders services in the course of the person's
21 practice as an attorney;



- 1 (6) A person licensed as a real estate broker or
2 salesperson in the State, not actively engaged in the
3 business of negotiating residential mortgage loans,
4 when the person renders services in the course of the
5 person's practice as a real estate broker or
6 salesperson;
- 7 (7) An institutional investor negotiating, entering into,
8 or performing under a residential mortgage loan
9 purchase agreement for its portfolio, for subsequent
10 resale to other institutional investors, or for
11 placement of the residential mortgage loans into pools
12 or packaging them into mortgage-backed securities. As
13 used in this paragraph, "residential mortgage loan
14 purchase agreement" means an agreement or arrangement
15 under which an insured depository institution, credit
16 union, financial services loan company, or other
17 financial institution authorized to do business in the
18 State agrees to sell residential mortgage loans or
19 obtain funding therefor, with or without the transfer
20 of servicing rights, to an institutional investor;
- 21 (8) A person licensed under chapter 467 as a real estate
22 broker or salesperson selling time share interests as



1 an authorized representative of, and on behalf of a
2 time share plan developer that is licensed as a
3 mortgage broker under this chapter; provided that:

4 (A) The acts or conduct of a developer's authorized
5 representative shall be deemed to be the acts or
6 conduct of the developer for the purposes of
7 sections -17 and -19; and

8 (B) If the person engages in acts or conduct
9 prohibited under this chapter, the acts or
10 conduct shall constitute grounds for disciplinary
11 action under section 467-14; and

12 (9) Persons employed by, or who contract with a licensee
13 under this chapter to perform only clerical or
14 administrative functions on behalf of such licensee,
15 and who do not solicit borrowers or negotiate the
16 terms of residential mortgage loans.

17 **§ -3 Requirement of licensure.** No person required to be
18 licensed under this chapter shall act, attempt to act, or hold
19 oneself out as or otherwise engage in the activity of a mortgage
20 broker or loan originator without a license as provided in this
21 chapter, and no person not licensed under this chapter shall
22 charge or receive any commission, fee, or bonus in connection



1 with arranging for, negotiating, or selling a residential
2 mortgage loan.

3 **§ -4 Engaging in activities of a loan originator.** A
4 loan originator may not engage in the activity of a loan
5 originator unless licensed under this chapter and under the
6 control, direction, and supervision of a mortgage broker
7 licensee or a principal mortgage broker in a mortgage broker
8 firm.

9 **§ -5 Principal mortgage broker.** (a) A principal
10 mortgage broker shall have the duty to directly manage and
11 supervise a mortgage brokerage firm and its licensees.

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

- 13 (1) Supervising the maintenance of client trust accounts,
14 the disbursements from those accounts, and the
15 accounting practices of the mortgage brokerage firm;
- 16 (2) Supervising the maintenance of the records, contracts,
17 and documents of the mortgage brokerage firm;
- 18 (3) Supervising all mortgage brokerage agreements and
19 mortgage loan documents of the mortgage brokerage firm
20 and the handling of these documents by the licensees
21 of the mortgage brokerage firm;



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



- 1 (10) Notifying the commissioner within ten days of any
- 2 licensee who commences or terminates a relationship
- 3 with the mortgage brokerage firm; and
- 4 (11) Ensuring that the records, agreements, including the
- 5 mortgage brokerage agreement, and loan documents are
- 6 retained for seven years in paper or electronic format
- 7 by the mortgage brokerage firm.

8 **§ -6 Mortgage broker licensing requirements.** (a) If
9 the applicant is other than an individual, no license shall be
10 granted unless the applicant first registers to do business in
11 this State with the business registration division of the
12 department of commerce and consumer affairs, and has designated
13 in the application the name of the individual who holds a
14 mortgage broker license as the principal mortgage broker for the
15 mortgage brokerage firm. A foreign lender conducting business
16 in accordance with part II of chapter 207 is not required to
17 register pursuant to this section. The designated principal
18 mortgage broker shall have two years of experience as a mortgage
19 broker, and shall have management and supervision
20 responsibilities over the mortgage brokerage firm as well as the
21 mortgage brokerage firm's licensees.



1 (b) If the applicant for a mortgage broker license is a
2 sole proprietorship individual, upon licensure, the individual
3 mortgage broker shall have two years experience in residential
4 mortgage lending and shall perform the duties of a principal
5 mortgage broker under section -5.

6 **§ -7 Pre-license written examination.** (a) For a
7 mortgage broker license, the individual applicant or the
8 designated principal mortgage broker shall pass a written
9 examination prior to licensure. For a loan originator license,
10 the individual applicant shall pass a written examination prior
11 to licensure.

12 (b) The commissioner shall determine the examination
13 score, which all applicants must receive to pass the written
14 examination. The examination shall test the knowledge of the
15 applicant concerning a residential mortgage loan transaction,
16 the residential mortgage loan laws and rules of the State and
17 relevant federal statutes, and the duties and responsibilities
18 of a principal mortgage broker, mortgage broker, or loan
19 originator, as appropriate.

20 (c) The commissioner may make arrangements, including
21 contracting with an outside testing service, for administering
22 examinations and collecting fees. The fees collected shall be



1 nonrefundable. An applicant who fails to appear for the
2 examination as scheduled or fails to pass the examination shall
3 reapply for an examination and remit all required fees and forms
4 before being rescheduled for another examination. An
5 applicant's examination scores shall be valid for two years from
6 the date of the examination.

7 **§ -8 Continuing education for licensees.** (a) An
8 applicant for a renewal of a license shall certify on a form
9 provided by the commissioner that the licensee or the designated
10 principal mortgage broker for a mortgage broker licensee that is
11 not an individual has completed six hours for a mortgage broker
12 license or four hours for a loan originator license of
13 continuing education or its equivalent as determined by the
14 commissioner during the one-year period preceding the
15 application for renewal. The certification shall be under oath,
16 if required by the commissioner. In addition to the
17 certification, the commissioner may require any licensee to
18 submit further evidence satisfactory to the commissioner
19 demonstrating compliance with this section. Upon failure to
20 satisfy the continuing education requirement by the license
21 expiration date, the renewed license shall be placed on inactive
22 status.



1 (b) The course of study for continuing education shall be
2 approved by the National Association of Mortgage Brokers or any
3 other course of study approved by the commissioner, and shall
4 include instruction on primary and subordinate residential
5 mortgage loan transactions and the appropriate laws governing
6 these transactions, including at least three hours of
7 instruction in compliance with federal and state regulations of
8 mortgage loans and at least one hour in business ethics for a
9 license, except that the commissioner may adjust the required
10 hours and course work to comply with any federal law on
11 continuing education for mortgage brokers and loan originators.

12 (c) To reactivate a license that has been placed on an
13 inactive status for failure to complete the required continuing
14 education courses, the licensee shall submit to the
15 commissioner:

- 16 (1) Proof of having satisfied the continuing education
17 requirement of this section;
- 18 (2) An application to reactivate the license setting forth
19 the information as may be prescribed or required by
20 the commissioner; and
- 21 (3) *Payment of the proper reactivation fee.*



1 (d) A false certification to the commissioner shall be
2 deemed a violation and shall subject the licensee to
3 disciplinary proceedings, including denial of the application
4 for renewal of the license. Within sixty days after receipt of
5 notification of the forfeiture, a licensee may request an
6 administrative hearing pursuant to chapter 91 to review the
7 forfeiture.

8 § -9 **Bonding requirements.** (a) Every person licensed
9 as a mortgage broker, except an individual mortgage broker who
10 is under the direct management and supervision of another
11 licensed mortgage broker and is covered by the bond of the other
12 licensed mortgage broker, shall deposit with the commissioner,
13 prior to doing business, a bond in the amounts set forth below
14 and executed by the mortgage broker as principal and a surety
15 company authorized to do business in the State as a surety:

16 (1) A sole proprietorship or a mortgage brokerage firm
17 with one to five mortgage brokers or loan originators
18 shall post a bond 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 (b) The bond shall be conditioned upon the faithful
5 compliance of the mortgage broker and any of its mortgage
6 brokers or loan originators with this chapter and the rules
7 adopted under this chapter. The bond shall run to the State for
8 the benefit of any person injured by the wrongful act, default,
9 fraud, or misrepresentation of the mortgage broker or its
10 mortgage brokers or loan originators; provided that the
11 aggregate liability of the surety shall not exceed the sum of
12 the bond. The surety may cancel the bond by giving sixty days'
13 prior notice in writing to the commissioner and shall thereafter
14 be relieved of any liability for any breach of condition
15 occurring after the effective date of cancellation. A mortgage
16 broker license and the licenses of any of its mortgage brokers
17 and its loan originators shall not be in effect at any time when
18 the bond is not in full force and effect.

19 (c) The failure, refusal, or neglect of a licensee to
20 maintain the applicable bond in full force and effect shall
21 cause the forfeiture of the license, effective as of the date of
22 expiration or cancellation of the bond. The commissioner shall



1 not restore any forfeited license until satisfactory proof of
2 bonding is submitted to the commissioner, as required by this
3 section. Failure to submit proof sufficient to restore a
4 license within sixty days after the date of forfeiture shall
5 result in the forfeiture of all fees and shall require the
6 licensee to apply as a new applicant.

7 **§ -10 Application.** (a) Each application for a mortgage
8 broker or loan originator license shall be made in writing, on
9 the forms and in the manner and accompanied by evidence in
10 support of the application as prescribed by the commissioner.
11 Applications shall be accompanied by an application fee of
12 \$2,000 in the case of a mortgage broker or \$500 in the case of a
13 loan originator, or an amount as the commissioner shall
14 establish by rule pursuant to chapter 91.

15 (b) When an application for licensure is abandoned,
16 denied, or withdrawn, the commissioner shall retain all fees
17 paid by the applicant.

18 (c) The commissioner shall require information with regard
19 to the applicant as the commissioner may deem desirable, with
20 due regard to the paramount interests of the public, as to the
21 experience, financial integrity, and competency of the applicant



1 as to financial transactions involving primary or subordinate
2 residential mortgage financing.

3 (d) Upon obtaining approval for a license, an initial
4 license fee shall be paid to the commissioner in the amount of
5 \$100 or such other amount as the commissioner shall establish by
6 rule pursuant to chapter 91. Each license under this section
7 shall remain in full force and effect unless the licensee does
8 not satisfy the renewal requirements of this chapter, or the
9 license is relinquished, suspended, forfeited, or revoked.

10 (e) An application for license may be denied if the
11 commissioner finds that:

12 (1) The financial responsibility, character, and fitness
13 of the applicant, or of the officers and directors if
14 the applicant is a corporation, the partners if the
15 applicant is a partnership, the members or managers if
16 the applicant is a limited liability company, or the
17 designated principal mortgage broker are not such as
18 to warrant belief that the business will be operated
19 honestly and fairly within the purposes of this
20 chapter;

21 (2) The designated principal mortgage broker in charge of
22 each of the applicant's places of business does not



- 1 have a minimum of two years' experience in residential
2 mortgage lending;
- 3 (3) The applicant has been convicted of a crime involving
4 dishonesty;
- 5 (4) The applicant has had a license, substantially
6 equivalent to a license under this chapter and issued
7 by any state or jurisdiction under the control of the
8 United States, that was denied, revoked, or suspended
9 under the laws of such state or jurisdiction under the
10 control of the United States;
- 11 (5) The applicant has filed an application for a license
12 that is false or misleading with respect to any
13 material fact;
- 14 (6) The applicant or any officer, director, partner,
15 member, manager, employee, or agent of the applicant
16 has violated this chapter or any rule or order
17 lawfully made pursuant to this chapter;
- 18 (7) The applicant or any officer, director, partner,
19 member, manager, employee, or agent of the applicant
20 has violated any state or federal law, rule, or
21 regulation pertaining to residential mortgage loans;



1 (8) The applicant or in the case of an applicant that is
2 not an individual or sole proprietorship, the
3 applicant's designated principal mortgage broker has
4 failed to pass a written examination established by
5 the commissioner; or

6 (9) The applicant has not provided information on the
7 application as required by the commissioner.

8 (f) The commissioner is empowered to conduct any
9 investigation that the commissioner may deem necessary to
10 determine whether any of the circumstances set forth in
11 subsection (e) exist.

12 (g) If the commissioner orders the denial of the issuance
13 of a license, the order shall be made pursuant to chapter 91.

14 (h) The commissioner may suspend action upon a mortgage
15 broker or loan originator license application pending resolution
16 of any criminal charges against an applicant before any court of
17 competent jurisdiction if that applicant's conviction would
18 disqualify the applicant.

19 (i) The commissioner may suspend action upon a mortgage
20 broker or loan originator license application pending resolution
21 of any civil action or administrative proceeding against an
22 applicant if the civil action or administrative proceeding



1 involves any aspect of a financial services business and the
2 outcome could disqualify the applicant.

3 **§ -11 Principal office; branches.** (a) Each mortgage
4 broker shall display the certificate of license issued by the
5 commissioner in plain view in its principal office, except a
6 mortgage broker who is a foreign lender conducting business in
7 accordance with part II of chapter 207, who is not required to
8 have an office in Hawaii, shall not be required to display the
9 certificate of license. Upon request, a mortgage broker shall
10 make available for inspection the mortgage broker's license and
11 the licenses of any of its mortgage brokers or loan originators.

12 (b) The commissioner may, on application, issue branch
13 licenses to a mortgage broker licensee upon compliance with all
14 the provisions of this chapter. Applications shall be filed in
15 the manner prescribed by the commissioner, shall contain any
16 information as the commissioner may reasonably require,
17 including the name of the licensed mortgage broker in charge of
18 the branch who has two years of experience as a mortgage broker.
19 The application shall be accompanied by an application fee of
20 \$500 or such other amount as the commissioner shall establish by
21 rule pursuant to chapter 91. Upon obtaining approval for a
22 license for a branch office, an initial license fee for each



1 branch office shall be paid to the commissioner in the amount of
2 \$100 or an amount as the commissioner shall establish by rule
3 pursuant to chapter 91. A separate branch license shall be
4 required for each place of business from which mortgage
5 brokering activities are conducted.

6 (c) The licensee shall give the commissioner written
7 notice at least fifteen days before the effective date of any
8 change in its designated principal mortgage broker or mortgage
9 broker in charge of any branch, or within thirty days of an
10 unanticipated vacancy. The notice shall contain the effective
11 date of the change, and the name of the successor designated
12 principal mortgage broker or mortgage broker in charge of the
13 branch.

14 (d) No licensee shall change the location of any place of
15 business, or consolidate two or more locations, without giving
16 the commissioner at least thirty days' prior written notice.

17 (e) A licensee under this section shall give written
18 notice to the commissioner within five days of the closure of
19 any branch location licensed under this chapter. Written notice
20 of the closure of a branch office location shall include a
21 detailed explanation of the disposition of all files and records
22 and the original branch license.



1 **§ -12 Renewal of licenses; annual reports.** (a) By
2 December 31 of each year, every mortgage broker and loan
3 originator licensed under this chapter shall pay an annual
4 license renewal fee of \$1,000 in the case of mortgage brokers
5 and \$250 in the case of loan originators, or amounts as the
6 commissioner shall establish by rule pursuant to chapter 91, and
7 file with the commissioner a renewal form containing such
8 information as the commissioner may require.

9 (b) If the commissioner orders denial of the renewal of a
10 license, the order shall be made pursuant to chapter 91.

11 **§ -13 Uniform multistate automated licensing system.**

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

- 20 (1) To modify by rule the license renewal dates;
21 (2) To establish by rule such new requirements as are
22 necessary for the State to participate in a multistate



1 automated licensing system upon the commissioner's
2 finding that each new requirement is consistent with
3 both the public interest and the purposes of this
4 chapter; and

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



1 (b) Nothing in this section shall authorize the
2 commissioner to require any person exempt under section -2,
3 or employees or exclusive agents of any exempt person, to submit
4 information to, or participate in, the uniform multistate
5 licensing system.

6 **§ -14 Written agreements.** For any transaction between a
7 mortgage broker or a loan originator and a borrower, the
8 following requirements shall apply:

9 (1) A mortgage broker and a loan originator shall comply
10 with all provisions of the Real Estate Settlement
11 Procedures Act, the Truth in Lending Act, and the
12 Equal Credit Opportunity Act, as those laws currently
13 exist or as they may be amended;

14 (2) Any written commitment letter to make a residential
15 mortgage loan with specified terms, including loan
16 amount, interest rate, points, and payment terms,
17 which is issued by a mortgage broker and accepted by a
18 borrower, shall be honored by the mortgage broker if
19 the borrower has completely satisfied all of the
20 conditions of the commitment in a timely manner and
21 prior to the specified expiration date of the
22 commitment. A loan originator may not issue a written



1 commitment letter. A written commitment letter shall
2 specify the conditions precedent to closing the
3 residential mortgage loan and the lender that has the
4 ultimate authority to fund and close the mortgage
5 loan;

6 (3) A mortgage broker or loan originator shall provide the
7 borrower with the following notice (or substantially
8 similar notice) of the borrower's rights and
9 obligations, not longer than one page in length and in
10 twelve-point font, regarding the terms of the
11 residential mortgage loan transaction not later than
12 the time the notice is required under the notice
13 provision contained in 12 C.F.R. section 226.31(c), as
14 amended:

15 "CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

16 You are not required to complete this
17 agreement merely because you have signed a loan
18 application. If you obtain this loan, the lender
19 will have a mortgage on your home. You could
20 lose your home, and any money you have put into
21 it, if you do not meet your obligations.



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

12 The mortgage broker or loan originator shall provide
13 the notice to the borrower and shall secure a signed
14 acknowledgement of receipt by the borrower of a copy
15 of the notice. The notice requirements of this
16 paragraph shall not apply when a similar disclosure is
17 required under federal law, including but not limited
18 to home equity loans and high cost loans under the
19 Home Ownership and Equity Protection Act of 15 U.S.C.
20 section 1639; and

21 (4) Within three business days of receipt of a borrower's
22 completed residential mortgage loan application by the



1 licensee, and before the borrower gives the licensee
2 any moneys except for an application fee, the licensee
3 shall sign a mortgage brokerage agreement with the
4 borrower. The mortgage brokerage agreement shall be
5 with the mortgage broker employing the mortgage broker
6 or loan originator. The mortgage brokerage agreement
7 shall be in writing, and signed and dated by both the
8 borrower and the licensee. The mortgage brokerage
9 agreement shall include a clear and conspicuous
10 statement:

- 11 (A) Explaining that a copy shall be made available,
12 upon request, to the borrower or the borrower's
13 attorney for review prior to signing;
- 14 (B) Explaining whether the licensee is a fiduciary
15 for the borrower;
- 16 (C) Explaining the nature of the licensee's
17 compensation, and if the licensee is a loan
18 originator, explaining the compensation of the
19 mortgage brokerage firm that the loan originator
20 is employed by, and whether the mortgage broker
21 and loan originator may receive compensation from
22 the borrower, the lender, or both;



- 1 (D) Describing the services the licensee will perform
- 2 for the borrower;
- 3 (E) Setting forth the conditions under which the
- 4 borrower is obligated to pay fees to the
- 5 licensee; the manner in which the borrower may
- 6 cancel the mortgage brokerage agreement; the
- 7 borrower's liabilities for fees and costs; and
- 8 the mortgage broker's contact information for
- 9 dispute resolution; or
- 10 (F) If the licensee makes materially false or
- 11 misleading statements or omissions in the
- 12 mortgage brokerage agreement, explaining that the
- 13 borrower, upon written notice, may:
 - 14 (i) Void the mortgage brokerage agreement;
 - 15 (ii) Recover moneys paid to the licensed mortgage
 - 16 broker and loan originator by the borrower
 - 17 for which no services have been performed;
 - 18 and
 - 19 (iii) Recover actual costs, including attorney
 - 20 fees, for enforcing the borrower's rights
 - 21 under the mortgage brokerage agreement.



1 A copy of the fully signed mortgage brokerage
2 agreement shall be given to the borrower by the
3 mortgage broker or loan originator immediately after
4 signing the mortgage brokerage agreement.

5 **§ -15 Advertising.** (a) It shall be a violation of this
6 chapter for any person to:

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

10 (2) When inviting the recipient of the advertisement to
11 refinance an existing residential mortgage loan,
12 disclose the name of the lender who made the existing
13 residential mortgage loan in the advertisement.

14 (b) A mortgage broker or loan originator may not advertise
15 in any misleading or deceptive manner, such as advertising in a
16 manner that is likely to cause the recipient to believe that the
17 advertisement is from the mortgagee of record of the existing
18 residential mortgage loan.

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

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



- 1 (2) Causing, permitting, or allowing the placement of any
2 sign or marking on or in any building, vehicle, or
3 structure;
- 4 (3) Placing an advertisement in any newspaper, magazine,
5 or on the Internet;
- 6 (4) Listing or advertising in any directory under a
7 classification or heading that includes the words
8 "mortgage broker", "loan originator", or the like;
- 9 (5) Broadcasting commercials by airwave or internet
10 transmission; or
- 11 (6) Transmitting any written communication, including:
- 12 (A) A letter or a postcard that encourages a person
13 to borrow from or through a mortgage broker; or
- 14 (B) A written communication that encourages a person
15 to refinance the person's existing residential
16 mortgage loan and mentions that a new residential
17 mortgage loan will reduce the monthly payment the
18 borrower will pay on the new residential mortgage
19 loan or reduce the interest rate on the
20 borrower's existing residential mortgage loan.

21 **s -16 Voluntary surrender of license.** A mortgage broker
22 or loan originator may voluntarily cease activity for which a



1 license to operate is required by this chapter and surrender its
2 license in the manner prescribed by rule.

3 **§ -17 Suspension and revocation.** (a) In addition to
4 any other actions authorized by law, the commissioner may revoke
5 or suspend a license issued under this chapter, condition the
6 right of a licensee to use the license, or fine any person
7 holding a license issued under this chapter, for any cause
8 authorized by law, including engaging in any prohibited acts or
9 practices.

10 (b) Prohibited acts or practices shall include, but not be
11 limited to:

12 (1) Making a false promise likely to influence, persuade,
13 or induce, or pursuing a course of misrepresentation
14 or false promises through agents, licensees,
15 advertising, or otherwise;

16 (2) Misrepresenting or concealing of any material fact
17 with respect to any residential mortgage loan
18 transaction resulting in injury to any party;

19 (3) Failing to disburse funds in accordance with an
20 agreement;

21 (4) Failing to account or deliver to any person any
22 personal property such as money, fund, deposit, check,



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

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

17 (6) Delivering a misleading or deceptive communication or
18 advertising, whether written, electronic, or oral,
19 when marketing or soliciting a mortgage loan. A
20 communication or advertisement that uses the name or
21 trademark of another financial institution, as defined
22 in section 412:1-109, or its affiliates or



1 subsidiaries, or infers that the communication or
2 advertisement is from, endorsed by, is related to, or
3 is the responsibility of the financial institution is
4 a misleading or deceptive communication;

5 (7) Offering an annuity to the borrower prior to the
6 closing of a residential mortgage loan or before the
7 expiration of the right of the borrower to rescind the
8 residential mortgage loan, or referring the borrower
9 to anyone or referring anyone to the borrower, for the
10 offering, soliciting, or selling of an annuity prior
11 to the closing of the residential mortgage loan or
12 before the expiration of the right of the borrower to
13 rescind the mortgage agreement;

14 (8) Brokering or making any mortgage loan as a direct
15 result of offering, soliciting, or selling such
16 mortgage loan at the dwelling of a borrower without a
17 prearranged appointment initiated by and at the
18 invitation of the borrower;

19 (9) Filling in, without the consent of the borrower, any
20 blank on a residential mortgage loan application that
21 requests information, including financial information;



- 1 (10) Filling in, without the consent of the borrower, any
2 blank on any instrument evidencing or securing the
3 residential mortgage loan, which blank relates to the
4 amount, interest rate, or monthly payment of the
5 residential mortgage loan;
- 6 (11) Making payment directly or indirectly, of any kind, to
7 any appraiser licensed or certified under section 466K
8 to influence the valuation of the residential real
9 property that will secure a residential mortgage loan;
- 10 (12) Conditioning compensation of an appraiser on
11 establishing a certain value for such residential real
12 property; or
- 13 (13) Failing to comply with this chapter or any order or
14 rule made under the authority of this chapter.
- 15 (c) Any licensee may surrender the license by notifying
16 the division in writing of its surrender, but this surrender
17 shall not affect the licensee's liability for acts previously
18 committed, and may not occur after the filing of a notice of
19 hearing for suspension or revocation of the license.
- 20 (d) The commissioner shall have the discretion to
21 reinstate a license or terminate a suspension of a person whose
22 license has been suspended if no fact or condition then exists,



1 which would justify the commissioner in refusing to grant the
2 license.

3 **§ -18 Power to examine and investigate.** (a) The
4 commissioner may conduct examinations of mortgage brokers and
5 loan originators under this chapter for the purpose of
6 determining whether the mortgage broker or loan originator is in
7 compliance with all applicable laws and rules, or orders issued
8 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, managers, and agents of the licensee being
14 examined 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 mortgage brokers and
20 loan originators examined by the commissioner or the
21 commissioner's staff. The hourly fee shall be an amount as the
22 commissioner shall establish by rule pursuant to chapter 91. In



1 addition to the examination fee, the commissioner may charge any
2 licensed mortgage broker or loan originator examined or
3 investigated by the commissioner or the commissioner's staff
4 additional amounts for travel, per diem, mileage, and other
5 reasonable expenses incurred in connection with the examination
6 or investigation.

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

11 **§ -19 Cease and desist orders; grounds for issuance.**

12 Whenever it appears to the commissioner that any person has
13 engaged or is about to engage in any act or practice
14 constituting a violation of:

15 (1) This chapter; or

16 (2) A rule adopted or order issued under this chapter,
17 the commissioner may, in the commissioner's discretion, issue a
18 cease and desist order to enforce compliance with this chapter,
19 or with any rule adopted or order issued under this chapter.

20 The commissioner shall have the discretion to include in the
21 order an assessment of an administrative fine against any person
22 who violates this chapter.



1 **§ -20 Cease and desist orders; procedure; hearing;**
2 **enforcement.** (a) The notice of charges and proposed cease and
3 desist order shall be in writing and shall be served upon the
4 mortgage broker, or loan originator and upon any other affected
5 party wherever those persons can be located and served by the
6 commissioner. The notice of charges shall state the alleged
7 violations or wrongful practices and a summary of the facts in
8 support of the allegations. The notice shall be accompanied by
9 a proposed order that states the commissioner's intent to
10 require discontinuance of the violation or practice and the
11 immediate compliance with all requirements of any applicable
12 agreement, condition of approval, order, rule, or law. The
13 proposed order may also direct affirmative action as may be
14 necessary to correct the alleged violation or wrongful practice.
15 The notice of charges shall set forth a time and place for a
16 hearing to determine whether the proposed order shall be issued.
17 (b) Within twenty days after service of a notice of
18 charges, unless an earlier date or later date is set by the
19 commissioner upon request of the affected party, the
20 commissioner or the commissioner's designee shall hold a hearing
21 in accordance with chapter 91. If no appearance is made at the
22 scheduled hearing by the party or its duly authorized



1 representative, the party shall be deemed to have consented to
 2 the issuance of the cease and desist order, and the commissioner
 3 may issue the order. Any cease and desist order issued after a
 4 hearing held in accordance with this subsection shall become
 5 effective after service upon the affected party and shall remain
 6 effective until modified or terminated by the commissioner. Any
 7 appeal of a cease and desist order shall be made to the circuit
 8 court in accordance with chapter 91.

9 (c) On or after the effective date of any cease and desist
 10 order, the commissioner may apply for enforcement of the order
 11 to the circuit court. The application may also contain a
 12 petition for such other relief or remedies as may be appropriate
 13 in the circumstances.

14 § -21 **Consent; cease and desist orders.** Any affected
 15 party may waive its rights to a hearing on any notice of charges
 16 by stipulating and consenting to the issuance of a cease and
 17 desist order. Any cease and desist order issued by consent
 18 shall be effective as of the date specified therein and shall
 19 remain effective until modified by consent or terminated.

20 § -22 **Powers of commissioner.** The commissioner may
 21 adopt rules pursuant to chapter 91 as the commissioner deems
 22 necessary for the administration of this chapter.



1 In addition to any other powers provided by law, the
2 commissioner shall have the authority to:

- 3 (1) Administer and enforce the provisions and requirements
4 of this chapter;
- 5 (2) Adopt, amend, or repeal rules, issue declaratory
6 rulings or informal nonbinding interpretations, and
7 conduct contested case proceedings pursuant to chapter
8 91;
- 9 (3) Grant, deny, forfeit, renew, reinstate, or restore the
10 license of any mortgage broker or loan originator;
- 11 (4) Revoke, suspend, or otherwise limit the license of any
12 mortgage broker or loan originator for any violation
13 of this chapter, or any rule or order of, or agreement
14 with the commissioner;
- 15 (5) Develop requirements for licensure through rules,
16 including establishing the content of the written
17 examinations required under section -7 and
18 determining the criteria for a passing grade;
- 19 (6) Investigate and conduct hearings regarding any
20 violation of this chapter, and any rule or order of or
21 agreement with the commissioner;



- 1 (7) Prepare, administer, and grade examinations; provided
2 that the commissioner may contract with a testing
3 agency to provide those services, and the commissioner
4 may also reserve the right to modify, amend, change,
5 or regrade the examination;
- 6 (8) Create fact-finding committees that may make
7 recommendations to the commissioner for the
8 commissioner's deliberations;
- 9 (9) Require the applicant and any of its officers,
10 directors, employees, partners, members, managers, and
11 agents to disclose the relevant criminal history and
12 request a criminal history record check in accordance
13 with section 846-2.7;
- 14 (10) Contract with qualified persons, including
15 investigators who may be exempt from chapter 76 and
16 who shall assist the commissioner in exercising the
17 commissioner's powers and duties;
- 18 (11) Require that all fees, fines, and charges collected by
19 the commissioner under this chapter be deposited into
20 the compliance resolution fund established pursuant to
21 section 26-9(o);



1 (12) Subpoena witnesses and documents, administer oaths,
2 and receive affidavits and oral testimony, including
3 telephonic communications, and do any and all things
4 necessary or incidental to the exercise of the
5 commissioner's power and duties, including the
6 authority to conduct contested case proceedings under
7 chapter 91; and

8 (13) Require a mortgage broker or loan originator to comply
9 with any rule, guidance, guideline, statement,
10 supervisory policy or any similar proclamation issued,
11 adopted, or promulgated by the Federal Deposit
12 Insurance Corporation to the same extent and in the
13 same manner as a bank chartered by the State or in the
14 alternative, any policy position of the Conference of
15 State Bank Supervisors.

16 **§ -23 Fees, commissions, and charges.** (a) A licensed
17 mortgage broker or loan originator shall not require a borrower
18 to pay any fees or charges prior to the residential mortgage
19 loan closing, except for:

20 (1) Charges to be incurred by the licensed mortgage broker
21 and loan originator on behalf of the borrower for
22 services from third parties necessary to process the



1 residential mortgage loan application, such as credit
2 reports and appraisals;

3 (2) An application fee;

4 (3) A rate lock fee;

5 (4) A commitment fee upon approval of the residential
6 mortgage loan; and

7 (5) A loan cancellation fee.

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

13 (1) The need to change the higher fee was not reasonably
14 foreseeable at the time the good faith estimate was
15 written; and

16 (2) The licensee has provided to the borrower, no less
17 than three business days prior to the signing of the
18 mortgage loan documents, a clear written explanation
19 of the increase in the fee and the reason for charging
20 a fee that exceeds what was previously disclosed.



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

4 (d) The commissioner may also adopt rules concerning
5 maximum fees, commissions, and charges on residential mortgage
6 loan transactions. The maximum fees, commissions, and charges
7 shall be related to the actual amount of money made available to
8 the borrower, over and above the indebtedness of prior
9 mortgages. The commissioner may also adopt rules concerning the
10 full disclosure of the fees, commissions, and charges.

11 **§ -24 Confidentiality of records.** (a) The commissioner
12 and all employees, contractors, attorneys contracted or employed
13 by the State, and appointees of the commissioner shall not
14 divulge or furnish any information in their possession or
15 obtained by them in the course of their official duties to
16 persons outside the division of financial institutions, except
17 to the director of commerce and consumer affairs, and to
18 administrators of the uniform multistate automated licensing
19 system, or unless otherwise permitted by this section or any
20 other law regulating the licensees. The disclosures prohibited
21 by this section shall include, without limitation, information
22 that is:

- 1 (1) Privileged or exempt from disclosure under any federal
2 or state law;
- 3 (2) Related to an examination performed by or on behalf of
4 the commissioner or contained in any report of
5 examination;
- 6 (3) Contained in any report or application submitted to,
7 or for the use of the commissioner, except for the
8 nonproprietary portions of reports and applications;
- 9 (4) Related to the business, personal, or financial
10 affairs of any person and is furnished to, or for the
11 use of, the commissioner in confidence;
- 12 (5) Privileged or confidential and related to trade
13 secrets and commercial or financial information
14 obtained from a person;
- 15 (6) Obtained pursuant to any lawful investigation for the
16 purpose of enforcing the laws regulating licensees;
- 17 (7) Related solely to the internal personnel rules or
18 other internal practices of the commissioner;
- 19 (8) Contained in personnel, medical, and similar files,
20 including financial files, the disclosure of which
21 would constitute a clearly unwarranted invasion of
22 personal privacy; or



1 (9) Contained in inter-agency and intra-agency
2 communications, whether or not contained in written
3 memoranda, letters, tapes, or records, that would not
4 be routinely available by law to a private party,
5 including memoranda, reports, and other documents
6 prepared by the staff of the commissioner.

7 (b) Any information identified in subsection (a) is
8 confidential and not subject to subpoena or other legal process.

9 (c) The commissioner shall furnish a copy of each report
10 of examination to the licensee examined. The report and its
11 contents shall remain the property of the commissioner and shall
12 not be disclosed to any person who is not an officer, director,
13 partner, member, manager, employee, agent, authorized auditor,
14 attorney, other consultant, or advisor of the licensee. Any
15 person who has received the report from the licensee shall be
16 bound by the confidentiality provisions of this section. The
17 report and its contents shall not be subject to subpoena or
18 other legal process requiring disclosure.

19 (d) The commissioner may furnish reports of examination,
20 other information relating to the examination of a licensee, and
21 information relating to the supervision and regulation of a
22 licensee to:



1 (1) The governor, the attorney general, and heads of other
2 state governmental agencies having regulatory
3 authority over the licensee;

4 (2) Federal or state regulatory agencies if the requesting
5 agency agrees to use the information only for
6 functions directly related to the exercise of its
7 appropriate supervisory authority;

8 (3) Other agencies of the United States or a state for use
9 where necessary to investigate regulatory, civil, or
10 criminal charges in connection with the affairs of any
11 licensee under the supervision of the commissioner;
12 and

13 (4) Administrators of the uniform multistate automated
14 licensing system for use in administering the uniform
15 multistate automated licensing system.

16 (e) The commissioner may disclose statistical data
17 regarding the number of consumer complaints filed against a
18 licensee, the general nature of the complaints, and the
19 resolution of the complaints.

20 **§ -25 Penalty.** (a) A violation of this chapter shall
21 be punishable by a fine of not more than \$5,000 or imprisonment
22 of not more than one year, or both.



1 (b) Any person who, in the course of engaging in conduct
2 that requires a license under this chapter, commits a violation
3 of this chapter or the rules adopted pursuant to this chapter,
4 and the violation includes conduct that is directed towards,
5 targets, or is committed against an elder, may be fined an
6 amount not to exceed \$10,000 for each violation in addition to
7 any other fine or penalty.

8 (c) As used in this chapter, "elder" means a consumer who
9 is sixty-two years of age or older."

10 SECTION 2. Section 241-1, Hawaii Revised Statutes, is
11 amended by amending the definition of "mortgage loan company" to
12 read as follows:

13 "Mortgage loan company" means any company licensed under
14 chapter 454[+] or chapter _____."

15 SECTION 3. Section 412:3-502, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§412:3-502 Foreign financial institution.** No foreign
18 financial institution shall receive deposits, lend money, or pay
19 checks, negotiate orders of withdrawal or share drafts from any
20 principal office, branch, agency, automatic teller machine, or
21 other location in this State, unless expressly authorized by
22 this chapter, other laws of this State, or federal law; provided



1 that nothing in this section shall prohibit any foreign
2 financial institution from participating in the disbursement of
3 cash through an automatic teller machine network or from
4 operating from any location in this State as a mortgage broker
5 licensed under chapter 454[7] or _____, or as a real estate
6 collection servicing agent."

7 SECTION 4. Section 454-3, Hawaii Revised Statutes, is
8 amended by amending subsection (e) to read as follows:

9 "(e) All fees shall be established and adopted by the
10 director in accordance with chapter 91 and shall be deposited
11 into the compliance resolution fund established pursuant to
12 section 26-9(o) [7]; provided that in order to establish
13 regulatory practices for residential mortgage lending, a
14 surcharge of \$400 shall be charged to a mortgage broker renewing
15 a mortgage broker license and a surcharge of \$100 shall be
16 charged to a mortgage solicitor renewing a mortgage solicitor
17 license. Failure of any mortgage broker or mortgage solicitor
18 to pay the biennial renewal fee and surcharge on or before
19 December 31 of an even-numbered year shall constitute an
20 automatic forfeiture of the license. The forfeited license may
21 be restored; provided that application for restoration is made
22 within six months of the forfeiture and a penalty fee is paid in



1 addition to the delinquent license fee[-] and surcharge. A
 2 licensee who fails to restore a license as provided in this
 3 subsection shall apply as a new applicant[-]; provided that,
 4 after January 1, 2011, a licensee who fails to restore a license
 5 as provided in this subsection shall apply as a new applicant
 6 under chapter _____."

7 SECTION 5. Section 477E-2, Hawaii Revised Statutes, is
 8 amended by amending the definition of "creditor" to read as
 9 follows:

10 "Creditor" means any bank; savings and loan association;
 11 trust company; financial services loan company or small loan
 12 company; credit union; mortgage banker, broker, or solicitor[+],
 13 or loan originator; pawnbroker; mutual or fraternal benefit
 14 society; debt adjuster; the issuer of a credit card as defined
 15 in section 708-800; any person who initiates, extends, renews,
 16 or continues loans of money or credit; any person who regularly
 17 arranges for the initiation, extension, renewal, or continuation
 18 of a loan of money or credit; or any assignee of an original
 19 creditor who participates in the decision to grant, extend,
 20 renew, or to continue such loan or credit."

21 SECTION 6. Section 667-21, Hawaii Revised Statutes, is
 22 amended by amending subsection (b) to read as follows:



1 (b) As used in this part:

2 "Borrower" means the borrower, maker, cosigner, or
3 guarantor under a mortgage agreement.

4 "Foreclosing mortgagee" means the mortgagee that intends to
5 conduct a power of sale foreclosure; provided that the mortgagee
6 is a federally insured bank, a federally insured savings and
7 loan association, a federally insured savings bank, a depository
8 financial services loan company, a nondepository financial
9 services loan company, a credit union insured by the National
10 Credit Union Administration, a bank holding company, a foreign
11 lender as defined in section 207-11, or an institutional
12 investor [~~as defined in section 454-1~~].

13 "Mailed" means to be sent by regular mail, postage prepaid,
14 and by certified, registered, or express mail, postage prepaid
15 and return receipt requested.

16 "Mortgage" means a mortgage, security agreement, or other
17 document under which property is mortgaged, encumbered, pledged,
18 or otherwise rendered subject to a lien for the purpose of
19 securing the payment of money or the performance of an
20 obligation.

21 "Mortgage agreement" includes the mortgage, the note or
22 debt document, or any document amending any of the foregoing.



1 "Mortgaged property" means the property that is subject to
2 the lien of the mortgage.

3 "Mortgagee" means the current holder of record of the
4 mortgagee's or the lender's interest under the mortgage, or the
5 current mortgagee's or lender's duly authorized agent.

6 "Mortgagor" means the mortgagor or borrower named in the
7 mortgage and, unless the context otherwise indicates, includes
8 the current owner of record of the mortgaged property whose
9 interest is subject to the mortgage.

10 "Open house" means a public showing of the mortgaged
11 property during a scheduled time period.

12 "Power of sale" or "power of sale foreclosure" means a
13 nonjudicial foreclosure under this part when the mortgage
14 contains, authorizes, permits, or provides for a power of sale,
15 a power of sale foreclosure, a power of sale remedy, or a
16 nonjudicial foreclosure.

17 "Property" means property (real, personal, or mixed), an
18 interest in property (including fee simple, leasehold, life
19 estate, reversionary interest, and any other estate under
20 applicable law), or other interests that can be subject to the
21 lien of a mortgage.



1 "Record" or "recorded" means a document is recorded or
2 filed with the office of the assistant registrar of the land
3 court under chapter 501 or recorded with the registrar of
4 conveyances under chapter 502, or both, as applicable.

5 "Served" means to have service of the notice of default
6 made in accordance with the service of process or the service of
7 summons under the Hawaii rules of civil procedure, and under
8 sections 634-35 and 634-36."

9 SECTION 7. Section 846-2.7, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) Criminal history record checks may be conducted by:

12 (1) The department of health on operators of adult foster
13 homes or developmental disabilities domiciliary homes
14 and their employees, as provided by section 333F-22;

15 (2) The department of health on prospective employees,
16 persons seeking to serve as providers, or
17 subcontractors in positions that place them in direct
18 contact with clients when providing non-witnessed
19 direct mental health services as provided by section
20 321-171.5;

21 (3) The department of health on all applicants for
22 licensure for, operators for, and prospective



1 employees, and volunteers at one or more of the
2 following: skilled nursing facility, intermediate
3 care facility, adult residential care home, expanded
4 adult residential care homes, assisted living
5 facility, home health agency, hospice, adult day
6 health center, special treatment facility, therapeutic
7 living program, intermediate care facility for the
8 mentally retarded, hospital, rural health center and
9 rehabilitation agency, and, in the case of any of the
10 above-related facilities operating in a private
11 residence, on any adult living in the facility other
12 than the client as provided by section 321-15.2;

13 (4) The department of education on employees, prospective
14 employees, and teacher trainees in any public school
15 in positions that necessitate close proximity to
16 children as provided by section 302A-601.5;

17 (5) The counties on employees and prospective employees
18 who may be in positions that place them in close
19 proximity to children in recreation or child care
20 programs and services;

21 (6) The county liquor commissions on applicants for liquor
22 licenses as provided by section 281-53.5;



- 1 (7) The department of human services on operators and
2 employees of child caring institutions, child placing
3 organizations, and foster boarding homes as provided
4 by section 346-17;
- 5 (8) The department of human services on prospective
6 adoptive parents as established under section
7 346-19.7;
- 8 (9) The department of human services on applicants to
9 operate child care facilities, prospective employees
10 of the applicant, and new employees of the provider
11 after registration or licensure as provided by section
12 346-154;
- 13 (10) The department of human services on persons exempt
14 pursuant to section 346-152 to be eligible to provide
15 child care and receive child care subsidies as
16 provided by section 346-152.5;
- 17 (11) The department of human services on operators and
18 employees of home and community-based case management
19 agencies and operators and other adults, except for
20 adults in care, residing in foster family homes as
21 provided by section 346-335;



- 1 (12) The department of human services on staff members of
2 the Hawaii youth correctional facility as provided by
3 section 352-5.5;
- 4 (13) The department of human services on employees,
5 prospective employees, and volunteers of contracted
6 providers and subcontractors in positions that place
7 them in close proximity to youth when providing
8 services on behalf of the office or the Hawaii youth
9 correctional facility as provided by section 352D-4.3;
- 10 (14) The judiciary on employees and applicants at detention
11 and shelter facilities as provided by section 571-34;
- 12 (15) The department of public safety on employees and
13 prospective employees who are directly involved with
14 the treatment and care of persons committed to a
15 correctional facility or who possess police powers
16 including the power of arrest as provided by section
17 353C-5;
- 18 (16) The department of commerce and consumer affairs on
19 applicants for private detective or private guard
20 licensure as provided by section 463-9;
- 21 (17) Private schools and designated organizations on
22 employees and prospective employees who may be in



1 positions that necessitate close proximity to
2 children; provided that private schools and designated
3 organizations receive only indications of the states
4 from which the national criminal history record
5 information was provided as provided by section
6 302C-1;

7 (18) The public library system on employees and prospective
8 employees whose positions place them in close
9 proximity to children as provided by section
10 302A-601.5;

11 (19) The State or any of its branches, political
12 subdivisions, or agencies on applicants and employees
13 holding a position that has the same type of contact
14 with children, dependent adults, or persons committed
15 to a correctional facility as other public employees
16 who hold positions that are authorized by law to
17 require criminal history record checks as a condition
18 of employment as provided by section 78-2.7;

19 (20) The department of human services on licensed adult day
20 care center operators, employees, new employees,
21 subcontracted service providers and their employees,
22 and adult volunteers as provided by section 346-97;



- 1 (21) The department of human services on purchase of
2 service contracted and subcontracted service providers
3 and their employees serving clients of the adult and
4 community care services branch, as provided by section
5 346-97;
- 6 (22) The department of human services on foster grandparent
7 program, senior companion program, and respite
8 companion program participants as provided by section
9 346-97;
- 10 (23) The department of human services on contracted and
11 subcontracted service providers and their current and
12 prospective employees that provide home and community-
13 based services under Section 1915(c) of the Social
14 Security Act (42 U.S.C. §1396n(c)), as provided by
15 section 346-97; [~~and~~]
- 16 (24) The department of commerce and consumer affairs on the
17 applicant, or any of its officers, directors,
18 partners, members, managers, employees or agents, if
19 it is an applicant for a mortgage broker license as
20 provided by section -10;



1 (25) The department of commerce and consumer affairs on the
2 applicant for a loan originator license, as provided
3 by section -10; and

4 [~~24~~] (26) Any other organization, entity, or the State,
5 its branches, political subdivisions, or agencies as
6 may be authorized by state law."

7 SECTION 8. After December 31, 2010, no new license shall
8 be issued and no license renewal shall be effectuated under
9 chapter 454, Hawaii Revised Statutes. After December 31, 2010,
10 a person who is required to be licensed under this Act shall
11 obtain a license under section 1 of this Act; provided that a
12 mortgage broker or mortgage solicitor licensed under chapter
13 454, Hawaii Revised Statutes, as of January 1, 2011, shall not
14 be required to be licensed under this Act until January 1, 2013;
15 provided that:

16 (1) A mortgage broker or mortgage lender who files an
17 application for a license pursuant to this Act by
18 January 1, 2012, and whose application is determined
19 to be complete by the commissioner by March 31, 2012,
20 shall be deemed in compliance with the licensing
21 provisions of this Act until such time as the license
22 is issued or denied by the commissioner; and



1 (2) A mortgage solicitor who files an application for a
2 license pursuant to this Act between May 1, 2012, and
3 June 30, 2012, and whose application is determined to
4 be complete by the commissioner by August 31, 2012,
5 shall be deemed in compliance with the licensing
6 provisions of this Act until such time as the license
7 is issued or denied by the commissioner.

8 SECTION 9. There is appropriated out of the compliance
9 resolution fund of the State of Hawaii the sum of \$140,000 or so
10 much thereof as may be necessary for fiscal year 2008-2009 to
11 carry out the purposes of this Act, including the hiring of one
12 permanent clerical assistant and six permanent examiners, exempt
13 from chapter 76, Hawaii Revised Statutes, in the department of
14 commerce and consumer affairs, division of financial
15 institutions, to implement this Act.

16 The sum appropriated shall be expended by the department of
17 commerce and consumer affairs for the purposes of this Act.

18 SECTION 10. Chapter 454, Hawaii Revised Statutes, is
19 repealed; provided that, except for license and renewal
20 provisions, the repeal does not affect rights and duties that
21 matured, penalties that were incurred, and proceedings that were
22 begun, before its repeal.



1 SECTION 11. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 12. This Act shall take effect on July 1, 2025;
4 provided that section 10 shall take effect on January 1, 2013.



Report Title:

Mortgage Brokers

Description:

Allows the commissioner of financial institutions to regulate, license, examine, and enforce laws relating to mortgage brokers and loan originators. Repeals chapter 454, Hawaii Revised Statutes, relating to mortgage brokers and solicitors. Eff. 7/1/2025. (SD2)

