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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 three 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           mortgage loan documents of the mortgage brokerage firm  
15           and the handling of these documents by the employed or  
16           associated licensees of the mortgage brokerage firm;



- 1        (4) Supervising the proper handling of any application of  
2        the mortgage brokerage firm, including an application  
3        for a license or renewal application supervised and  
4        managed by the principal mortgage broker who has  
5        expressly agreed with the mortgage brokerage firm to  
6        handle on behalf of the applicant actions such as  
7        verifying the completeness and appropriateness of  
8        fees, and the mailing or delivering of the appropriate  
9        documents to the commissioner by the required  
10       deadline;
- 11       (5) Developing policies and procedures for the mortgage  
12       brokerage firm relating to the handling of mortgage  
13       loan transactions and the conduct of the employed or  
14       associated licensees and other staff, and educating  
15       and enforcing these policies and procedures;
- 16       (6) Setting a policy on continuing education requirements  
17       for all employed and associated licensees of the  
18       mortgage brokerage firm to be in compliance with any  
19       statutory or rule requirements;
- 20       (7) Ensuring that the licenses of all employed and  
21       associated licensees and the license of the mortgage  
22       brokerage firm are current and active, and any



1           required bond or statutorily permissible substitute is  
2           valid and not cancelled;

3           (8) Establishing and maintaining a training program for  
4           all employed and associated licensees of the mortgage  
5           brokerage firm;

6           (9) Ensuring that all employed and associated licensees of  
7           the mortgage brokerage firm are provided adequate  
8           information and training on the latest amendments to  
9           licensing laws and rules, and any other related laws  
10          and rules;

11          (10) Notifying the commissioner of any licensee employed by  
12          or associated with the mortgage brokerage firm who is  
13          an independent contractor;

14          (11) Notifying the commissioner of any licensee employed by  
15          or associated with the mortgage brokerage firm who  
16          withdraws from the mortgage brokerage firm as an  
17          independent contractor; and

18          (12) Ensuring that the records, agreements, including the  
19          mortgage brokerage agreement, and loan documents are  
20          retained for seven years in paper or electronic format  
21          by the mortgage brokerage firm.



1        §454-B Employer-employee relationship. Nothing in this  
2 chapter or in any of the rules adopted to implement this chapter  
3 shall be deemed to create an employer-employee relationship  
4 between the mortgage broker and the licensee associated with the  
5 mortgage broker as an independent contractor; provided that the  
6 commissioner shall have all power necessary to regulate the  
7 relationships, duties, and liabilities among mortgage brokers  
8 and licensees to protect the public.

9        §454-C Advertising. (a) It shall be a misdemeanor for  
10 any person to:

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

14        (2) Disclose the name of the lender who made the existing  
15 mortgage loan in the advertisement.

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

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

22        (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 mortgage loan  
16       and mentions that a new mortgage loan will reduce  
17       the monthly payment the borrower will pay on the  
18       new mortgage loan or reduce the interest rate on  
19       the borrower's existing mortgage loan."

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

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

3           "Applicant" means a person applying for the issuance of a  
4 license or a renewal of a license.

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

7           "Business purpose loan" means a loan primarily for a  
8 business, commercial, or agricultural purposes as defined by  
9 Regulation Z issued by the Board of Governors of the Federal  
10 Reserve System (12 C.F.R. part 226) and construed in accordance  
11 with judicial interpretations of Regulation Z, Official Staff  
12 Interpretations of Regulation Z, and Official Staff Commentary  
13 to Regulation Z.

14           "Insured depository institution" means the same as in 12  
15 U.S.C. section 1813(c)(2), and includes an operating subsidiary  
16 of the insured depository institution that is an operating  
17 subsidiary under the laws and rules applicable to the insured  
18 depository institution.

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

21           (1) Who performs any of the functions of a mortgage  
22 broker, as defined in this chapter;



1       (2) Who is employed directly or indirectly by a mortgage  
2       broker, or is an independent contractor in association  
3       with a mortgage broker; and

4       (3) Whose mortgage loan transactions are under the  
5       direction, control, supervision, or management of a  
6       mortgage broker.

7       "Mortgage brokerage agreement" means the written agreement  
8       between the mortgage broker and a prospective borrower for the  
9       services of the mortgage broker to be performed for and on  
10      behalf of the borrower, and does not include a promissory note  
11      and mortgage, or any other document or instrument evidencing or  
12      securing the mortgage loan.

13      "Residential real property" means:

14      (1) Real property located in the State that is improved  
15      by, or will be improved by the proceeds of the  
16      mortgage loan;

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

22      (3) A manufactured home.



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

3       2. By amending the definitions of "institutional  
4 investor", "licensee", "mortgage commissioner", and "mortgage  
5 loan" to read:

6       "Institutional investor" means and includes [~~(a) banks,~~  
7 ~~savings and loan institutions, trust companies, insurance~~  
8 ~~companies, investment~~]:

- 9       (1) An insured depository institution;  
10       (2) A real estate trust as defined in the Internal Revenue  
11       Code;  
12       (3) An insurance company;  
13       (4) The trustee of any employee benefit plan;  
14       (5) A trust company chartered and examined under state  
15       law;  
16       (6) Investment companies as defined in the Investment  
17       Company Act of 1940 [~~7~~];  
18       (7) A retirement plan, or pension or profit sharing  
19       ~~[trusts, any of the class of persons permitted to~~  
20       ~~qualify as foreign lenders under section 207-11, or~~  
21       ~~other financial institutions or institutional buyers,~~  
22       ~~whether acting for themselves or as fiduciaries; (b)~~





1 the] plan that is subject to the Employee Retirement  
2 Security Act;

3 (8) A housing government sponsored enterprise that is  
4 subject to the oversight of the Office of Federal  
5 Housing Enterprise Oversight; and

6 (9) The United States or any foreign government, any state  
7 or territory thereof, or any agency or corporate or  
8 other instrumentality of the United States, a foreign  
9 government, or of any state, territory or political  
10 subdivision thereof.

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

14 "Mortgage commissioner" or "commissioner" means the  
15 [~~director of commerce and consumer affairs.~~] commissioner of  
16 financial institutions.

17 "Mortgage loan" means a loan [~~secured by a mortgage on real~~  
18 ~~property.~~], home equity loan, reverse mortgage loan, installment  
19 sales contract, land contract, agreement for sale, or a  
20 temporary financing loan, such as a construction loan, that is  
21 secured by a first or subordinate lien on residential property,  
22 including a refinancing of any secured loan on residential



1 property, upon which there is or will be constructed with the  
2 proceeds of the mortgage loan:

3 (1) A structure or structures designed principally for  
4 occupancy of one to four families, including  
5 individual units of condominiums and cooperatives, and  
6 any related interests, such as a share in the  
7 cooperative or right to occupancy of the unit; or

8 (2) A manufactured home;  
9 provided that a business purpose loan shall not be considered a  
10 mortgage loan."

11 3. By deleting the definition of "mortgage solicitor".

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

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

19 "§454-2 Exemptions. This chapter does not apply to the  
20 following:

21 (1) [~~Banks, operating subsidiaries of a bank established~~  
22 ~~and operating under section 412:5-203, trust~~



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

11 (2) Any of the following persons:

12 (A) A credit union;

13 (B) A credit union service organization;

14 (C) A trust company;

15 (D) An insurance company;

16 (E) A financial services loan company; or

17 (F) A federally licensed small business investment,

18 including any officer or employee of the person;

19 (3) An individual who is any exclusive agent of a bank or  
20 savings association;



1        (4) A person making or acquiring a mortgage loan with  
2        one's own funds for one's own investment without  
3        intent to resell the mortgage loan;

4        [~~(3)~~] (5) A person licensed to practice law in the State,  
5        not actively and principally engaged in the business  
6        of negotiating loans secured by real property, when  
7        the person renders services in the course of the  
8        person's practice as an attorney;

9        [~~(4)~~] (6) A person licensed as a real estate broker or  
10       salesperson in the State, not actively engaged in the  
11       business of negotiating loans secured by real  
12       property, when the person renders services in the  
13       course of the person's practice as a real estate  
14       broker or salesperson;

15       [~~(5)~~] (7) An institutional investor negotiating, entering  
16       into, or performing under a loan purchase agreement  
17       for its portfolio, for subsequent resale to other  
18       institutional investors, or for placement of the  
19       mortgages into pools or packaging them into mortgage-  
20       backed securities. As used in this paragraph, "loan  
21       purchase agreement" means an agreement or arrangement  
22       under which [~~a bank, savings and loan,~~] an insured



1           depository institution, credit union, financial  
2           services loan company, or other financial institution  
3           registered to do business in the State of Hawaii  
4           agrees to sell mortgage loans or obtain funding  
5           therefor, with or without the transfer of servicing  
6           rights, to an institutional investor; and  
7       ~~[(6) Foreign lender as defined in section 207-11, and~~  
8       ~~(7)]~~ (8) A person licensed under chapter 467 as a real  
9           estate broker or salesperson selling time share  
10          interests on behalf of a time share plan developer  
11          that is licensed as a mortgage broker under this  
12          chapter; provided that:  
13               (A) The acts or conduct of a developer's authorized  
14               representative shall be deemed to be the acts or  
15               conduct of the developer for the purposes of  
16               section 454-4; and  
17               (B) If the person engages in acts or conduct  
18               prohibited under this chapter, including section  
19               454-4(a), the acts or conduct shall constitute  
20               grounds for disciplinary action under section  
21               467-14."



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

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

9 (b) No mortgage broker or [~~mortgage solicitor~~] loan  
10 originator license shall be granted to any person who is not  
11 eighteen years of age or older.

12 If the applicant is a person other than an individual, no  
13 license shall be granted unless the applicant first registers to  
14 do business in this State with the business registration  
15 division of the department of commerce and consumer affairs[-],  
16 and has designated in the application the name of the individual  
17 who holds a mortgage broker license as the principal mortgage  
18 broker for the mortgage brokerage firm. The designated  
19 principal mortgage broker shall have two years of experience as  
20 a mortgage broker, and shall have management and supervision  
21 responsibilities for the mortgage brokerage firm and the



1 licensees employed by or in an independent contractor  
2 association with the applicant.

3 If the applicant for a mortgage broker license is an  
4 individual, upon licensure, the individual mortgage broker shall  
5 perform the duties of a principal mortgage broker under section  
6 454-A.

7 (c) Every person licensed as a mortgage broker shall  
8 deposit with the commissioner, prior to doing business, a bond  
9 in the [~~amount of \$15,000~~] amounts set forth below and executed  
10 by the mortgage broker as principal and a surety company  
11 authorized to do business in the State as a surety[-]:

12 (1) A mortgage brokerage firm with one to five mortgage  
13 brokers or loan originators shall post a bond in the  
14 amount of \$25,000;

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

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

21 The bond shall be conditioned upon the faithful compliance of  
22 the broker with this chapter. The bond shall run to the State



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

10 (d) The failure, refusal, or neglect of any licensee to  
11 maintain the applicable bond in full force and effect shall  
12 cause the automatic forfeiture of the license, effective as of  
13 the date of expiration or cancellation of the bond. The  
14 commissioner shall not restore the forfeiture license until  
15 satisfactory proof of bonding is submitted to the commissioner,  
16 as required by this section. Failure to submit proof sufficient  
17 to restore a license within sixty days after the date of  
18 forfeiture shall result in the forfeiture of all fees and shall  
19 require the licensee to apply as a new applicant. The  
20 commissioner may:

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





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

3       (3) Restrict the license as a condition of restoration of  
4           a license forfeited under this section.

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

14 Notwithstanding any other law to the contrary, the commissioner  
15 shall require the applicant to disclose any arrest and  
16 conviction records of the applicant, including an arrest for  
17 which the applicant received a deferred acceptance of a guilty  
18 plea or the benefit of a pre-trial diversion program. In the  
19 event the commissioner orders denial of issuance or of renewal  
20 of a license, the order shall be made only pursuant to  
21 chapter 91.



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

16       (g) An applicant for a renewal of a license shall certify  
17 on a form provided by the commissioner that the licensee has  
18 completed twelve hours for a mortgage broker or nine hours for a  
19 loan originator of continuing education or its equivalent as  
20 determined by the commissioner during the two-year period  
21 preceding the application for renewal. The certification shall  
22 be under oath, if required by the commissioner. In addition to



1 the certification, the commissioner may require any licensee to  
2 submit further evidence satisfactory to the commissioner  
3 demonstrating compliance with this section. Upon failure to  
4 satisfy the continuing education requirement by the license  
5 expiration date, the renewed license shall be placed on inactive  
6 status.

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

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

19 (1) Proof of having satisfied the continuing education  
20 requirement of this section;



- 1           (2) A complete application setting forth the information  
2           as may be prescribed or required by the commissioner;  
3           and  
4           (3) Payment of the proper fee.

5           A false certification to the commissioner shall be deemed a  
6 violation and shall subject the licensee to disciplinary  
7 proceedings. Within sixty days after receipt of notification of  
8 the forfeiture, a licensee may request an administrative hearing  
9 pursuant to chapter 91 to review the forfeiture.

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



1       ~~[(f) If the mortgage broker is a person other than an~~  
2 ~~individual, the license issued to it entitles one officer or~~  
3 ~~member thereof, on behalf of the corporation, partnership,~~  
4 ~~association, or other organization, to engage in the business of~~  
5 ~~mortgage broker. The officer or member shall be designated in~~  
6 ~~the application for license and have two years of experience in~~  
7 ~~financial transactions involving primary or subordinate mortgage~~  
8 ~~financing, or equivalent experience as determined by the~~  
9 ~~commissioner. For the purposes of this subsection, the~~  
10 ~~commissioner shall consider as equivalent experience, two years~~  
11 ~~of experience as a licensed insurance producer under chapter~~  
12 ~~431, provided that:~~

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

19       ~~(2) The licensed insurance producer and the insured~~  
20 ~~depository institution shall certify that the~~  
21 ~~insurance producer only arranges mortgage loans with~~  
22 ~~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       ~~(g)~~ (i) Upon request, the mortgage broker shall make  
5 available for inspection the mortgage broker's license and the  
6 licenses of any ~~[mortgage solicitors]~~ loan originators employed  
7 by or in association with the mortgage broker~~[-]~~ as an  
8 independent contractor.

9       ~~(h)~~ (j) Immediately upon the ~~[mortgage solicitor's]~~ loan  
10 originator's withdrawal from the employ of or association with  
11 the mortgage broker, the mortgage broker shall return the  
12 ~~[mortgage solicitor's]~~ loan originator's license to the  
13 ~~[mortgage solicitor-]~~ loan originator and immediately notify the  
14 commissioner.

15       ~~(i)~~ (k) Every licensed mortgage broker shall have and  
16 maintain a principal place of business in the State for the  
17 transaction of business. In the event the mortgage broker  
18 maintains a branch office or offices, the commissioner, upon  
19 application and payment of a fee, shall issue a branch office  
20 license. The mortgage broker shall designate a ~~[mortgage~~  
21 ~~solicitor]~~ loan originator who has two years of experience in  
22 financial transactions involving primary or subordinate mortgage



1 financing, or equivalent experience as determined by the  
 2 commissioner, to be in charge of each branch office. [~~For the~~  
 3 ~~purposes of this subsection, the commissioner shall consider as~~  
 4 ~~equivalent experience, two years of experience as a licensed~~  
 5 ~~insurance producer under chapter 431; provided that:~~

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

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

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

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

21       " ~~[+] §454-3.1 [-]~~ **Written agreements.** For any transaction  
 22 between a mortgage broker or a [~~mortgage solicitor~~] loan



1 originator and a borrower, the following requirements shall  
2 apply:

3 (1) A mortgage broker and a [~~mortgage solicitor~~] loan  
4 originator shall comply with all provisions of the  
5 Real Estate Settlement Procedures Act, the Truth in  
6 Lending Act, and the Equal Credit Opportunity Act, as  
7 those laws currently exist or as they may be  
8 amended[-];

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





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

9       "CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

10       You are not required to complete this agreement  
11       merely because you have signed a loan  
12       application. If you obtain this loan, the lender  
13       will have a mortgage on your home. You could  
14       lose your home, and any money you have put into  
15       it, if you do not meet your obligations.

16       If you are uncertain about your rights and  
17       obligations under this agreement, you should  
18       consider consulting a qualified independent  
19       housing counselor or other experienced financial  
20       adviser regarding the rate, fees, and provisions  
21       of this mortgage loan before you proceed. For  
22       information on contacting a qualified housing



1           counselor, call the United States Department of  
2           Housing and Urban Development's counseling and  
3           referral line or its website for a list of  
4           housing counseling agencies."

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

- 15          (4) Within three business days of receipt of a borrower's  
16          completed mortgage loan application by the licensee,  
17          and before the borrower gives the licensee any moneys,  
18          the licensee shall sign with the borrower a mortgage  
19          brokerage agreement; however, if the licensee is a  
20          loan originator, the mortgage brokerage agreement  
21          shall be with the mortgage broker with whom the loan  
22          originator is associated with or employed. The



1 mortgage brokerage agreement shall be in writing, and  
2 signed and dated by both the borrower and the  
3 licensee. The mortgage brokerage agreement shall  
4 include a clear and conspicuous statement:

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

8 (B) Explaining whether the licensee is a fiduciary  
9 for the borrower;

10 (C) Explaining the nature of the licensee's  
11 compensation, and if the licensee is a loan  
12 originator, explaining the compensation of the  
13 mortgage brokerage firm that the loan originator  
14 is employed by or in association with as an  
15 independent contractor, and whether the mortgage  
16 broker and loan originator may receive  
17 compensation from the borrower, the lender, or  
18 both;

19 (D) Describing the services the licensee will perform  
20 for the borrower;

21 (E) Setting forth the conditions under which the  
22 borrower is obligated to pay fees to the



1           licensee; the manner in which the borrower may  
2           cancel the mortgage brokerage agreement; what  
3           rights the borrower has regarding the loan  
4           documentation; the borrower's liabilities for  
5           fees and costs; and the mortgage broker's contact  
6           information for dispute resolution; or

7       (F) If the licensee makes materially false or  
8           misleading statements or omissions in the  
9           mortgage brokerage agreement, explaining that the  
10          borrower, upon written notice, may:

11           (i) Void the mortgage brokerage agreement;

12           (ii) Recover moneys paid to the licensed mortgage  
13           broker and loan originator by the borrower  
14           for which no services have been performed;  
15           and

16           (iii) Recover actual costs, including attorney  
17           fees, for enforcing the borrower's rights  
18           under the mortgage brokerage agreement.

19       A copy of the fully signed mortgage brokerage  
20       agreement shall be given to the borrower by the  
21       mortgage broker or loan originator immediately after  
22       signing the mortgage brokerage agreement."



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

3 "(a) [~~The commissioner may suspend a license for any of~~  
4 ~~the following acts or conduct of a licensee.~~] In addition to any  
5 other actions authorized by law, the commissioner may revoke a  
6 license issued under this chapter, suspend a license issued  
7 under this chapter, condition the right of a licensee to use the  
8 license, fine any person holding a license issued under this  
9 chapter, or terminate any license issued under this chapter, for  
10 any cause authorized by law, including any of the following acts  
11 or conduct of a licensee:

- 12 (1) Making a false promise [~~tending~~] likely to influence,  
13 persuade, or induce, or pursuing a course of  
14 misrepresentation or false promises through agents,  
15 [~~solicitors,~~] licensees, advertising, or otherwise;
- 16 (2) Misrepresentation or concealment of any material fact  
17 with respect to any transaction resulting in injury to  
18 any party;
- 19 (3) Failure to disburse funds in accordance with an  
20 agreement;
- 21 (4) Failure 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) Failure 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 [~~as a broker,~~] in escrow pursuant to a  
12 written agreement, or to deposit the funds in a trust  
13 or escrow bank account maintained by the licensee  
14 [~~with~~] in a bank located and doing business in the  
15 State, wherein the funds shall be kept until  
16 disbursement thereof is authorized; [~~or~~]
- 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) Brokering or making any mortgage loan as a direct  
6           result of offering, soliciting, or selling such  
7           mortgage loan at the dwelling of a borrower without a  
8           prearranged appointment initiated by and at the  
9           invitation of the borrower; or

10          ~~[(6)]~~ (8) Failure to comply with this chapter or any order  
11           or rule made under the authority of this chapter."

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

14          "§454-5 Power to examine, investigate and enjoin. (a)  
15          The commissioner may conduct examinations of mortgage brokers  
16          and loan originators under this chapter for the purpose of  
17          determining whether the mortgage broker is in compliance with  
18          all laws, rules, or orders issued by the commissioner.

19          (b) The commissioner shall have full access to the vaults,  
20          books, accounts, records, and documents of the licensee and may  
21          make any inquiries as may be necessary to ascertain the  
22          condition of the licensee. All officers, directors, employees,



1 partners, and members of the licensee being examined shall  
2 cooperate fully with the commissioner and the commissioner's  
3 staff, and shall answer all inquiries and furnish all  
4 information pertaining to the same, to the best of their  
5 knowledge and ability.

6 (c) The commissioner may charge an examination fee based  
7 upon the cost per hour per examiner for all mortgage brokers  
8 examined by the commissioner or the commissioner's staff. The  
9 hourly fee shall be \$40 in the case of a mortgage brokerage firm  
10 and \$20 in the case of an individual mortgage broker or an  
11 amount as the commissioner shall establish by rule pursuant to  
12 chapter 91. In addition to the examination fee, the  
13 commissioner may charge any licensed mortgage broker examined or  
14 investigated by the commissioner or the commissioner's staff  
15 additional amounts for travel, per diem, mileage, and other  
16 reasonable expenses incurred in connection with the examination  
17 or investigation.

18 (d) Notwithstanding chapter 92F, the examination process  
19 and related information and documents, including the reports of  
20 examination, are confidential and are not subject to discovery  
21 in civil and criminal lawsuits or disclosure under federal or  
22 state law.





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

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

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



1           "§454-6 Power of commissioner. The commissioner may adopt  
2 rules pursuant to chapter 91, as amended, as the commissioner  
3 deems necessary for the administration of this chapter. [The  
4 ~~rules shall include, but not be limited to the following:~~

- 5           ~~(1) Advertising;~~  
6           ~~(2) Solicitation; and~~  
7           ~~(3) Specifications as to the forms and procedures to be~~  
8           ~~used in the making of any mortgage loan.]~~

9           In addition to any other acts or conditions provided by law, the  
10          commissioner may:

- 11           (1) Adopt, amend, or repeal rules, issue declaratory  
12           rulings or informal nonbinding interpretations, and  
13           conduct contested case proceedings pursuant to  
14           chapter 91;  
15           (2) Grant, deny, forfeit, renew, reinstate, or restore the  
16           license of any mortgage broker or loan originator;  
17           (3) Revoke, suspend, or otherwise limit the license of any  
18           mortgage broker or loan originator for any violation  
19           of the provisions in this chapter, or any rule or  
20           order of, or agreement with the commissioner;  
21           (4) Develop requirements for licensure through rules;



- 1        (5) Investigate and conduct hearings regarding any  
2        violation of this chapter, and any rule or order of or  
3        agreement with the commissioner;
- 4        (6) Prepare, administer, and grade examinations; provided  
5        that the commissioner may contract with a testing  
6        agency to provide those services, and the commissioner  
7        may also reserve the right to modify, amend, change,  
8        or regrade the examination;
- 9        (7) Create fact-finding committees that may make  
10       recommendations to the commissioner for the  
11       commissioner's deliberations;
- 12       (8) Request a criminal history record check of the  
13       applicant and any of its officers, directors,  
14       employees, partners, and members in accordance with  
15       section 846-2.7;
- 16       (9) Contract with qualified persons, including  
17       investigators who may be exempt from chapter 76 and  
18       who shall assist the commissioner in exercising the  
19       commissioner's powers and duties;
- 20       (10) Subpoena witnesses and documents, administer oaths,  
21       and receive affidavits and oral testimony, including  
22       telephonic communications, and do any and all things



1 necessary or incidental to the exercise of the  
2 commissioner's power and duties, including the  
3 authority to conduct contested case proceedings under  
4 chapter 91; and

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

13 SECTION 9. Section 454-7, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "§454-7 Fees, commissions, and charges. (a) A licensed  
16 mortgage broker and loan originator shall not require a borrower  
17 to pay any fees or charges prior to the mortgage loan closing,  
18 except for:

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



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

3 (2) Any application fees.

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

9 (1) The need to change the higher fee was not reasonably  
10 foreseeable at the time the good faith estimate was  
11 written; and

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

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

20 (d) The commissioner may also adopt rules concerning  
21 maximum fees, commissions, and charges on mortgage loan  
22 transactions. The maximum fees, commissions, and charges shall



1 be related to the actual amount of money made available to the  
2 borrower, over and above the indebtedness of prior mortgages.  
3 The commissioner may also adopt rules concerning the full  
4 disclosure of the fees, commissions, and charges."

5 SECTION 10. Section 454-8, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "§454-8 Penalty, contracts void. Violation of this  
8 chapter shall be punishable by a fine of not more than [~~\$1,000~~]  
9 \$2,000 or imprisonment of not more than one year, or both. [~~Any~~  
10 ~~contract entered into by any person with any unlicensed mortgage~~  
11 ~~broker or solicitor shall be void and unenforceable.]"~~

12 SECTION 11. This Act does not affect rights and duties  
13 that matured, penalties that were incurred, and proceedings that  
14 were begun, before its effective date.

15 SECTION 12. In codifying the new sections added by  
16 section 1 of this Act, the revisor of statutes shall substitute  
17 appropriate section numbers for the letters used in designating  
18 the new sections in this Act.

19 SECTION 13. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



# S.B. NO. 2306

1 SECTION 14. This Act shall take effect upon its approval;  
2 provided that section 1 relating to principal mortgage brokers  
3 shall take effect on July 1, 2010.

4

INTRODUCED BY: *Russell Kohl B/R*



**Report Title:**

Mortgage Brokers

**Description:**

Makes extensive amendments to chapter 454, Hawaii Revised Statutes, relating to regulation and licensing of mortgage brokers and solicitors.

