
A BILL FOR AN ACT

RELATING TO RESIDENTIAL MORTGAGE PRACTICES.

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.

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

15 "Institutional investor" means:

16 (1) An insured depository institution;

17 (2) A real estate trust as defined in the Internal Revenue
18 Code;



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

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



1 "Licensee" means a person who is a mortgage broker, loan
2 originator, or a person who is required to be licensed under
3 this chapter.

4 "Loan originator" means an individual not licensed as a
5 mortgage broker and not exempt under section -2:

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

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

20 "Mortgage commissioner" or "commissioner" means the
21 commissioner of financial institutions.



1 "Person" means an individual, sole proprietorship,
2 partnership, corporation, limited liability company, limited
3 liability partnership, or other association of individuals,
4 however organized.

5 "Residential mortgage loan" means any loan, including a
6 loan to refinance a residential mortgage loan, secured primarily
7 by a lien on residential real property, the proceeds of which
8 loan will be used primarily for personal, family or household
9 use.

10 "Residential real property" means:

11 (1) Real property located in the State that is improved by
12 or will be improved by the proceeds of the mortgage
13 loan, and is improved by a structure or structures
14 designed principally for occupancy of one to four
15 families, including individual units of condominiums
16 and cooperatives, and any related interests, such as a
17 share in the cooperative or right to occupancy unit;

18 or

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

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



1 "Uniform multistate automated licensing system" means a
2 system involving one or more states, the District of Columbia,
3 Territory of Guam, or the Commonwealth of Puerto Rico
4 established to facilitate the sharing of regulatory information
5 and the licensing and application processes, by electronic or
6 other means, for mortgage brokers, mortgage lenders, and loan
7 originators.

8 **§ -2 Exemptions.** This chapter does not apply to the
9 following:

- 10 (1) Any person that is chartered or authorized under the
11 laws of any state or federal law to engage in the
12 activity of an insured depository institution,
13 including a bank or savings association, and any
14 employee of an insured depository institution;
- 15 (2) Any of the following persons:
- 16 (A) A credit union;
- 17 (B) A credit union service organization;
- 18 (C) A trust company;
- 19 (D) An insurance company;
- 20 (E) A financial services loan company; or
- 21 (F) A federally licensed small business investment,
22 including an officer or employee of the person;



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



1 purchase agreement" means an agreement or arrangement
2 under which an insured depository institution, credit
3 union, financial services loan company, or other
4 financial institution registered to do business in the
5 State agrees to sell mortgage loans or obtain funding
6 therefor, with or without the transfer of servicing
7 rights, to an institutional investor;

8 (8) A person licensed under chapter 467 as a real estate
9 broker or salesperson selling time share interests on
10 behalf of a time share plan developer that is licensed
11 as a mortgage broker under this chapter; provided
12 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 -4; and

17 (B) If the person engages in acts or conduct
18 prohibited under this chapter, including section
19 -11(a), the acts or conduct shall constitute
20 grounds for disciplinary action under section
21 467-14; and



1 (9) Persons employed by, or who contract with a licensee
2 under this chapter to perform only clerical or
3 administrative functions on behalf of such licensee,
4 and who do not solicit borrowers or negotiate the
5 terms of loans on behalf of the licensee or borrower.

6 **§ -3 Requirement of licensure.** No person required to be
7 licensed under this chapter shall act as or otherwise engage in
8 the activity of a mortgage broker or loan originator without a
9 license as provided in this chapter, and no person not licensed
10 under this chapter shall charge or receive any commission, fee,
11 or bonus in connection with arranging for, negotiating, or
12 selling a mortgage loan.

13 **§ -4 Loan originator.** A loan originator may not engage
14 in the activity of a loan originator unless licensed under this
15 chapter, employed by a mortgage broker, and under the control,
16 direction, and supervision of a principal mortgage broker.

17 **§ -5 Principal mortgage broker.** (a) A principal
18 mortgage broker shall have the duty to directly manage and
19 supervise a mortgage brokerage firm and its licensees.

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



- 1 (1) Supervising the maintenance of client trust accounts,
2 the disbursements from those accounts, and the
3 accounting practices of the mortgage brokerage firm;
- 4 (2) Supervising the maintenance of the records, contracts,
5 and documents of the mortgage brokerage firm;
- 6 (3) Supervising all mortgage brokerage agreements and
7 mortgage loan documents of the mortgage brokerage firm
8 and the handling of these documents by the employed
9 licensees of the mortgage brokerage firm;
- 10 (4) Supervising the proper handling of any licensee
11 employed by the mortgage brokerage firm;
- 12 (5) Developing policies and procedures for the mortgage
13 brokerage firm relating to the handling of residential
14 mortgage loan transactions and the conduct of the
15 employed licensees and other staff, and educating and
16 enforcing these policies and procedures;
- 17 (6) Setting a policy on continuing education requirements
18 for all employed licensees of the mortgage brokerage
19 firm to be in compliance with any statutory or rule
20 requirements;
- 21 (7) Ensuring that the licenses of all employed licensees
22 and the license of the mortgage brokerage firm are



- 1 current and active, and any required bond or
2 statutorily permissible substitute is valid and not
3 cancelled;
- 4 (8) Establishing and maintaining a training program for
5 all employed licensees of the mortgage brokerage firm;
- 6 (9) Ensuring that all employed licensees of the mortgage
7 brokerage firm are provided adequate information and
8 training on the latest amendments to licensing laws
9 and rules, and any other related laws and rules;
- 10 (10) Notifying the commissioner of any licensee employed by
11 the mortgage brokerage firm who terminates employment
12 with the mortgage brokerage firm and immediately
13 returns the license to the licensee; and
- 14 (11) Ensuring that the records, agreements, including the
15 mortgage brokerage agreement, and loan documents are
16 retained for seven years in paper or electronic format
17 by the mortgage brokerage firm.

18 **§ -6 Licensing requirements.** (a) If the applicant is a
19 person other than an individual, no license shall be granted
20 unless the applicant first registers to do business in this
21 State with the business registration division of the department
22 of commerce and consumer affairs, and has designated in the



1 application the name of the individual who holds a mortgage
2 broker license as the principal mortgage broker for the mortgage
3 brokerage firm. The designated principal mortgage broker shall
4 have two years of experience as a mortgage broker, and shall
5 have management and supervision responsibilities for the
6 mortgage brokerage firm and the licensees employed by the
7 applicant.

8 (b) If the applicant for a mortgage broker license is a
9 solo proprietorship individual, upon licensure, the individual
10 mortgage broker shall perform the duties of a principal mortgage
11 broker under section -5.

12 (c) An applicant shall pass a written examination prior to
13 licensure. The commissioner shall determine the examination
14 score, which all applicants must receive to pass the written
15 examination. The examination shall test the knowledge of the
16 applicant concerning a residential mortgage loan transaction,
17 the residential mortgage loan laws and rules of the State and
18 relevant federal statutes, and the duties and responsibilities
19 of a principal mortgage broker, mortgage broker, or loan
20 originator, as appropriate. The commissioner may make
21 arrangements, including contracting with an outside testing
22 service, for administering examinations and collecting fees.



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

7 (d) An applicant for a renewal of a license shall certify
8 on a form provided by the commissioner that the licensee has
9 completed twelve hours for a mortgage broker or nine hours for a
10 loan originator of continuing education or its equivalent as
11 determined by the commissioner during the two-year period
12 preceding the application for renewal. The certification shall
13 be under oath, if required by the commissioner. In addition to
14 the certification, the commissioner may require any licensee to
15 submit further evidence satisfactory to the commissioner
16 demonstrating compliance with this section. Upon failure to
17 satisfy the continuing education requirement by the license
18 expiration date, the renewed license shall be placed on inactive
19 status.

20 The course of study for continuing education shall be
21 approved by the National Association of Mortgage Brokers or any
22 other course of study approved by the commissioner, and shall



1 include instruction on primary and subordinate residential
2 mortgage loan transactions and the appropriate laws governing
3 these transactions, including at least four hours of instruction
4 in compliance with federal and state regulations of mortgage
5 loans and at least two hours in business ethics for a license,
6 except that the commissioner may adjust the required hours and
7 course work to comply with any federal law on continuing
8 education for mortgage brokers and loan originators.

9 To reactivate a license that has been placed on an inactive
10 status for failure to complete the required continuing education
11 courses, the licensee shall submit to the commissioner:

- 12 (1) Proof of having satisfied the continuing education
13 requirement of this section;
- 14 (2) A complete application setting forth the information
15 as may be prescribed or required by the commissioner;
16 and
- 17 (3) Payment of the proper fee.

18 A false certification to the commissioner shall be deemed a
19 violation and shall subject the licensee to disciplinary
20 proceedings, including denial of the application for renewal of
21 the license. Within sixty days after receipt of notification of



1 the forfeiture, a licensee may request an administrative hearing
2 pursuant to chapter 91 to review the forfeiture.

3 (e) Every person licensed as a mortgage broker shall
4 deposit with the commissioner, prior to doing business, a bond
5 in the amounts set forth below and executed by the mortgage
6 broker as principal and a surety company authorized to do
7 business in the State as a surety:

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

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

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

17 The bond shall be conditioned upon the faithful compliance
18 of the broker with this chapter. The bond shall run to the
19 State for the benefit of any person injured by the wrongful act,
20 default, fraud, or misrepresentation of the broker or the
21 solicitors; provided that the aggregate liability of the surety
22 shall not exceed the sum of the bond. The surety may cancel the



1 bond by giving sixty days' notice in writing to the commissioner
2 and shall thereafter be relieved of any liability for any breach
3 of condition occurring after the effective date of cancellation.
4 A mortgage broker's license shall not be in effect at any time
5 when the bond is not in full force and effect.

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

- 17 (1) Assess a fee not to exceed \$1,000;
- 18 (2) Impose a bonding requirement in addition to the bond
19 requirement under subsection (c); or
- 20 (3) Restrict the license as a condition of restoration of
21 a license forfeited under this section.



1 **§ -7 Application.** (a) Each application for a license
2 or its renewal shall be made in writing, on the forms and in the
3 manner and accompanied by evidence in support of the
4 applications as prescribed by the commissioner. The
5 commissioner shall require information with regard to the
6 applicant as the commissioner may deem desirable, with due
7 regard to the paramount interests of the public, as to the
8 experience, financial integrity, and competency of the applicant
9 as to financial transactions involving primary or subordinate
10 mortgage financing. Notwithstanding any other law to the
11 contrary, the commissioner shall require the applicant to
12 disclose any arrest and conviction records of the applicant,
13 including an arrest for which the applicant was granted a
14 deferred acceptance of a guilty plea or the benefit of a
15 pre-trial diversion program. If the commissioner orders denial
16 of issuance or of renewal of a license, the order shall be made
17 only pursuant to chapter 91.

18 (b) An application for license may be denied if the
19 commissioner finds that:

20 (1) The financial responsibility, character, and fitness
21 of the applicant, or of the officers and directors if
22 the applicant is a corporation, the partners if the



1 applicant is a partnership, the members or managers if
2 the applicant is a limited liability company, or the
3 designated principal mortgage broker are not such as
4 to warrant belief that the business will be operated
5 honestly and fairly within the purposes of this
6 chapter;

7 (2) The designated principal mortgage broker in charge of
8 the applicant's places of business does not have a
9 minimum of two years' experience in residential
10 mortgage lending;

11 (3) The applicant has been charged or indicted for a
12 crime, or dishonesty, which resulted in a conviction
13 by nolo contendere or otherwise, a defined acceptance
14 of guilt plea or a pre-trial discussion program and
15 dismissal of the charge or indictment;

16 (4) The applicant has had a license, substantially
17 equivalent to a license under this chapter and issued
18 by any state or jurisdiction under the control of the
19 United States, that was denied, revoked or suspended
20 under the laws of such state or jurisdiction under the
21 control of the United States;



- 1 (5) The applicant has filed an application for a license
2 which is false or misleading with respect to any
3 material fact;
- 4 (6) The applicant or any officer, director, partner,
5 member, manager, employee, or agent of the applicant
6 has materially violated this chapter or any rule or
7 order lawfully made pursuant to this chapter;
- 8 (7) The applicant or any officer, director, partner,
9 member, manager, employee, or agent of the applicant
10 has materially violated any state or federal law,
11 rule, or regulation pertaining to residential mortgage
12 loans;
- 13 (8) The applicant or the applicant's designee has failed
14 to pass a written examination established by the
15 commissioner; or
- 16 (9) The applicant has not provided information on the
17 application as reasonably required by the
18 commissioner.
- 19 (c) The commissioner is empowered to conduct any
20 investigation that the commissioner may deem necessary to
21 determine whether any of the circumstances set forth in
22 subsection (b) exist.



1 (d) If the commissioner orders the denial of the issuance
2 or renewal of a license, the order shall be made pursuant to
3 chapter 91.

4 (e) Each mortgage broker shall display the certificate of
5 license issued by the commissioner in plain view in its
6 principle office and in each branch office except a mortgage
7 broker who is not required to have an office in Hawaii shall not
8 be required to display the certificate of license. Upon
9 request, the mortgage broker shall make available for inspection
10 the mortgage broker's license and the licenses of any mortgage
11 broker or loan originator employed by the mortgage broker.

12 (f) Except for a mortgage broker who qualifies as a
13 foreign lender under section 207-11, every licensed mortgage
14 broker shall have and maintain a principal place of business in
15 the State for the transaction of business. In the event the
16 mortgage broker desires to maintain a branch office or offices,
17 the commissioner, upon application and payment of a fee, shall
18 issue a branch office license. The mortgage broker shall
19 designate a loan originator who has two years of experience in
20 financial transactions involving primary or subordinate mortgage
21 financing, or equivalent experience as determined by the
22 commissioner, to be in charge of each branch office.



1 **§ -8 Uniform multistate automated licensing system.** (a)

2 The legislature has determined that a uniform multistate
3 administration of an automated licensing system for mortgage
4 brokers and individual loan originators is consistent with both
5 the public interest and the purposes of this chapter. For the
6 sole purpose of participating in the establishment and
7 implementation of a multistate automated licensing system for
8 mortgage brokers and loan originators, the commissioner is
9 authorized:

- 10 (1) To modify by rule the license renewal dates;
- 11 (2) To establish by rule such new requirements as are
12 necessary for the State to participate in a multistate
13 automated licensing system upon the commissioner's
14 finding that each new requirement is consistent with
15 both the public interest and the purposes of this
16 chapter; and

17 (b) Nothing in this section shall authorize the
18 commissioner to require any person exempt under section -2,
19 or employees or exclusive agents of any such exempt person, to
20 submit information to, or participate in, the uniform multistate
21 licensing system.



1 **§ -9 Written agreements.** For any transaction between a
2 mortgage broker or a loan originator and a borrower, the
3 following requirements shall apply:

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

9 (2) Any written commitment letter to make a residential
10 mortgage loan with specified terms, including loan
11 amount, interest rate, points, and payment terms,
12 which is issued by a mortgage broker and accepted by a
13 borrower, must be honored by the mortgage broker if
14 the borrower has completely satisfied all of the
15 conditions of the commitment in a timely manner and
16 prior to the specified expiration date of the
17 commitment. A loan originator may not issue a written
18 commitment letter. A written commitment letter shall
19 specify the conditions precedent to closing the
20 residential mortgage loan and the lender, which has
21 the ultimate authority to fund and close the mortgage
22 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
11 agreement 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 provide
6 the notice to the borrower and shall secure a signed
7 acknowledgement of receipt by the borrower of a copy
8 of the notice. The notice requirements of this
9 paragraph shall not apply when a similar disclosure is
10 required under federal law, including but not limited
11 to home equity loans and high cost loans under the
12 Home Ownership and Equity Protection Act of 15 U.S.C.
13 section 1639; and

14 (4) Within three business days of receipt of a borrower's
15 completed residential mortgage loan application by the
16 licensee, and before the borrower gives the licensee
17 any moneys except for an application fee, the licensee
18 shall sign a mortgage brokerage agreement with the
19 borrower. The mortgage brokerage agreement shall be
20 with the mortgage broker employing the mortgage broker
21 or loan originator. The mortgage brokerage agreement
22 shall be in writing, and signed and dated by both the



1 borrower and the licensee. The mortgage brokerage
2 agreement shall include a clear and conspicuous
3 statement:

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

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

9 (C) Explaining the nature of the licensee's
10 compensation, and if the licensee is a loan
11 originator, explaining the compensation of the
12 mortgage brokerage firm that the loan originator
13 is employed by, and whether the mortgage broker
14 and loan originator may receive compensation from
15 the borrower, the lender, or both;

16 (D) Describing the services the licensee will perform
17 for the borrower;

18 (E) Setting forth the conditions under which the
19 borrower is obligated to pay fees to the
20 licensee; the manner in which the borrower may
21 cancel the mortgage brokerage agreement; the
22 borrower's liabilities for fees and costs; and



1 the mortgage broker's contact information for
2 dispute resolution; or
3 (F) If the licensee makes materially false or
4 misleading statements or omissions in the
5 mortgage brokerage agreement, explaining that the
6 borrower, upon written notice, may:
7 (i) Void the mortgage brokerage agreement;
8 (ii) Recover moneys paid to the licensed mortgage
9 broker and loan originator by the borrower
10 for which no services have been performed;
11 and
12 (iii) Recover actual costs, including attorney
13 fees, for enforcing the borrower's rights
14 under the mortgage brokerage agreement.

15 A copy of the fully signed mortgage brokerage
16 agreement shall be given to the borrower by the
17 mortgage broker or loan originator immediately after
18 signing the mortgage brokerage agreement.

19 **§ -10 Advertising.** (a) It shall be a violation of this
20 chapter for any person to:



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

4 (2) When inviting the recipient of the advertisement to
5 refinance an existing residential mortgage loan,
6 disclose the name of the lender who made the existing
7 residential mortgage loan in the advertisement.

8 (b) A mortgage broker or loan originator may not advertise
9 in any misleading or deceptive manner, such as advertising in a
10 manner that is likely to cause the recipient to believe that the
11 advertisement is from the mortgagor of record of the existing
12 residential mortgage loan.

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

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

15 (2) Causing, permitting, or allowing the placement of any
16 sign or marking on or in any building, vehicle, or
17 structure;

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

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



- 1 (5) Broadcasting commercials by airwave or internet
- 2 transmission; or
- 3 (6) Transmitting any written communication, including:
- 4 (A) A letter or a postcard that encourages a person
- 5 to borrow from or through a mortgage broker; or
- 6 (B) A written communication that encourages a person
- 7 to refinance the person's existing residential
- 8 mortgage loan and mentions that a new residential
- 9 mortgage loan will reduce the monthly payment the
- 10 borrower will pay on the new residential mortgage
- 11 loan or reduce the interest rate on the
- 12 borrower's existing residential mortgage loan.

13 **§ -11 Suspension and revocation.** (a) In addition to
 14 any other actions authorized by law, the commissioner may revoke
 15 or suspend a license issued under this chapter, condition the
 16 right of a licensee to use the license, or fine any person
 17 holding a license issued under this chapter, for any cause
 18 authorized by law, including any of the following acts or
 19 conduct of a licensee:

- 20 (1) Making a false promise likely to influence, persuade,
- 21 or induce, or pursuing a course of misrepresentation

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



1 bank located and doing business in the State, wherein
2 the funds shall be kept until disbursement thereof is
3 authorized;

4 (6) Delivering a misleading or deceptive communication or
5 advertising, whether written, electronic, or oral,
6 when marketing or soliciting a mortgage loan. A
7 communication or advertisement that uses the name or
8 trademark of another financial institution, as defined
9 in section 412:1-109, or its affiliates or
10 subsidiaries, or infers that the communication or
11 advertisement is from, endorsed by, is related to, or
12 is the responsibility of the financial institution is
13 a misleading or deceptive communication;

14 (7) 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 (8) Without the express consent of the potential borrower,
20 filling in any blank on a residential mortgage loan
21 application which blank requests material information,
22 including material financial information;



- 1 (9) Without the express consent of the borrower, filling
2 in any blank on any instrument evidencing or securing
3 the residential mortgage loan which blank relates to
4 the amount, interest rate, or monthly payment of the
5 residential mortgage loan;
- 6 (10) Make 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 (11) Conditioning compensation of an appraiser on
11 establishing a certain value for such residential real
12 property; or
- 13 (12) Failure to comply with this chapter or any order or
14 rule made under the authority of this chapter.

15 **§ -12 Power to examine and investigate.** (a) The
16 commissioner may conduct examinations of mortgage brokers and
17 loan originators under this chapter for the purpose of
18 determining whether the mortgage broker is in compliance with
19 all laws, rules, or orders issued by the commissioner.

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



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

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

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



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

7 **§ -13 Cease and desist orders; grounds for issuance.**

8 Whenever it appears to the commissioner that any person has
9 engaged or is about to engage in any act or practice
10 constituting a violation of:

11 (1) This chapter; or

12 (2) A rule adopted or order issued under this chapter,
13 the commissioner may, in the commissioner's discretion, issue a
14 cease and desist order to enforce compliance with this chapter,
15 or with any rule adopted or order issued under this chapter.

16 The commissioner shall have the discretion to include in the
17 order an assessment of an administrative fine against any person
18 who violates this chapter.

19 **§ -14 Cease and desist orders; procedure; hearing;**

20 **enforcement.** (a) The notice of charges and proposed cease and
21 desist order shall be in writing and shall be served upon the
22 mortgage broker, mortgage lender, or loan originator at its



1 principal office in this State and upon any other affected party
2 wherever that person can be located and served by the
3 commissioner. The notice of charges shall state the alleged
4 violations or wrongful practices and a summary of the facts in
5 support of the allegations. The notice shall be accompanied by
6 a proposed order that states the commissioner's intent to
7 require discontinuance of the violation or practice and the
8 immediate compliance with all requirements of any applicable
9 agreement, conditions of approval, order, rule, or law. The
10 proposed order may also direct affirmative action as may be
11 necessary to correct the alleged violation or wrongful practice.
12 The notice of charges shall set forth a time and place for a
13 hearing to determine whether the proposed order shall be issued.

14 (b) Within twenty days after service of a notice of
15 charges, unless an earlier date or later date is set by the
16 commissioner upon request of the affected party, the
17 commissioner or the commissioner's designee shall hold a hearing
18 in accordance with chapter 91. If no appearance is made at the
19 scheduled hearing by the party or its duly authorized
20 representative, the party shall be deemed to have consented to
21 the issuance of the cease and desist order, and the commissioner
22 may issue the order. Any cease and desist order issued after a



1 hearing held in accordance with this subsection shall become
2 effective after service upon the affected party and shall remain
3 effective until modified or terminated by the commissioner. Any
4 appeal of a cease and desist order shall be made to the circuit
5 court in accordance with chapter 91.

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

11 **§ -15 Consent; cease and desist orders.** Any affected
12 party may waive its rights to a hearing on any notice of charges
13 by stipulating and consenting to the issuance of a cease and
14 desist order. Any cease and desist order issued by consent
15 shall be effective as of the date specified therein and shall
16 remain effective until modified by consent or terminated.

17 **§ -16 Powers of commissioner.** The commissioner may
18 adopt rules pursuant to chapter 91 as the commissioner deems
19 necessary for the administration of this chapter.

20 In addition to any other powers provided by law, the
21 commissioner may:



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



- 1 may also reserve the right to modify, amend, change,
2 or regrade the examination;
- 3 (8) Create fact-finding committees that may make
4 recommendations to the commissioner for the
5 commissioner's deliberations;
- 6 (9) Require the applicant and any of its officers,
7 directors, employees, partners, members, and agent
8 disclose the relevant criminal history and request a
9 criminal history record check in accordance with
10 section 846-2.7;
- 11 (10) Contract with qualified persons, including
12 investigators who may be exempt from chapter 76 and
13 who shall assist the commissioner in exercising the
14 commissioner's powers and duties;
- 15 (11) Require that all fees, fines and charges collected by
16 the commissioner under this chapter be deposited into
17 the compliance resolution fund established pursuant to
18 section 26-9(o);
- 19 (12) Subpoena witnesses and documents, administer oaths,
20 and receive affidavits and oral testimony, including
21 telephonic communications, and do any and all things
22 necessary or incidental to the exercise of the



1 commissioner's power and duties, including the
2 authority to conduct contested case proceedings under
3 chapter 91; and

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

12 **§ -17 Fees, commissions, and charges.** (a) A licensed
13 mortgage broker and loan originator shall not require a borrower
14 to pay any fees or charges prior to the mortgage loan closing,
15 except for:

16 (1) Charges to be incurred by the licensed mortgage broker
17 and loan originator on behalf of the borrower for
18 services from third parties necessary to process the
19 mortgage loan application, such as credit reports and
20 appraisals;

21 (2) An application fee;

22 (3) A rate lock fee;



1 (4) A commitment fee upon approval of the residential
2 mortgage loan; and

3 (5) A loan cancellation fee.

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

- 17 (1) Privileged or exempt from disclosure under any federal
18 or state law;
- 19 (2) Related to an examination performed by or on behalf of
20 the commissioner or contained in any report of
21 examination;



- 1 (3) Contained in any report submitted to, or for the use
2 of the commissioner, except for the nonproprietary
3 portions of applications;
- 4 (4) Related to the business, personal, or financial
5 affairs of any person and is furnished to, or for the
6 use of, the commissioner in confidence;
- 7 (5) Privileged or confidential and related to trade
8 secrets and commercial or financial information
9 obtained from a person;
- 10 (6) Obtained pursuant to any lawful investigation for the
11 purpose of enforcing the laws regulating licensees;
- 12 (7) Related solely to the internal personnel rules or
13 other internal practices of the commissioner;
- 14 (8) Contained in personnel, medical, and similar files,
15 including financial files, the disclosure of which
16 would constitute a clearly unwarranted invasion of
17 personal privacy; or
- 18 (9) Contained in inter-agency and intra-agency
19 communications, whether or not contained in written
20 memoranda, letters, tapes, or records, that would not
21 be routinely available by law to a private party,



1 including memoranda, reports, and other documents
2 prepared by the staff of the commissioner.

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

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

15 (d) The commissioner may furnish reports of examination,
16 other information relating to the examination of a licensee, and
17 information relating to the supervision and regulation of a
18 licensee to:

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



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

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

10 (4) Administrators of the uniform multistate automated
11 licensing system for use in administering the uniform
12 multistate automated licensing system.

13 **§ -19 Penalty, contracts void.** (a) Violation of this
14 chapter shall be punishable by a fine of not more than \$2,000 or
15 imprisonment of not more than one year, or both.

16 (b) Any person who, in the course of engaging in conduct
17 that requires a license under this chapter, commits a violation
18 of this chapter or the rules adopted pursuant to this chapter,
19 and the violation includes conduct that is directed towards,
20 targets, or is committed against an elder, may be fined an
21 amount not to exceed \$10,000 for each violation in addition to
22 any other fine or penalty.



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

3 SECTION 2. Section 846-2.7, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

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

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

9 (2) The department of health on prospective employees,
10 persons seeking to serve as providers, or
11 subcontractors in positions that place them in direct
12 contact with clients when providing non-witnessed
13 direct mental health services as provided by section
14 321-171.5;

15 (3) The department of health on all applicants for
16 licensure for, operators for, and prospective
17 employees, and volunteers at one or more of the
18 following: skilled nursing facility, intermediate
19 care facility, adult residential care home, expanded
20 adult residential care homes, assisted living
21 facility, home health agency, hospice, adult day
22 health center, special treatment facility, therapeutic



- 1 living program, intermediate care facility for the
2 mentally retarded, hospital, rural health center and
3 rehabilitation agency, and, in the case of any of the
4 above-related facilities operating in a private
5 residence, on any adult living in the facility other
6 than the client as provided by section 321-15.2;
- 7 (4) The department of education on employees, prospective
8 employees, and teacher trainees in any public school
9 in positions that necessitate close proximity to
10 children as provided by section 302A-601.5;
- 11 (5) The counties on employees and prospective employees
12 who may be in positions that place them in close
13 proximity to children in recreation or child care
14 programs and services;
- 15 (6) The county liquor commissions on applicants for liquor
16 licenses as provided by section 281-53.5;
- 17 (7) The department of human services on operators and
18 employees of child caring institutions, child placing
19 organizations, and foster boarding homes as provided
20 by section 346-17;



- 1 (8) The department of human services on prospective
2 adoptive parents as established under section
3 346-19.7;
- 4 (9) The department of human services on applicants to
5 operate child care facilities, prospective employees
6 of the applicant, and new employees of the provider
7 after registration or licensure as provided by section
8 346-154;
- 9 (10) The department of human services on persons exempt
10 pursuant to section 346-152 to be eligible to provide
11 child care and receive child care subsidies as
12 provided by section 346-152.5;
- 13 (11) The department of human services on operators and
14 employees of home and community-based case management
15 agencies and operators and other adults, except for
16 adults in care, residing in foster family homes as
17 provided by section 346-335;
- 18 (12) The department of human services on staff members of
19 the Hawaii youth correctional facility as provided by
20 section 352-5.5;
- 21 (13) The department of human services on employees,
22 prospective employees, and volunteers of contracted



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



1 information was provided as provided by section
2 302C-1;

3 (18) The public library system on employees and prospective
4 employees whose positions place them in close
5 proximity to children as provided by section
6 302A-601.5;

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

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

19 (21) The department of human services on purchase of
20 service contracted and subcontracted service providers
21 and their employees serving clients of the adult and



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



1 ~~[(24)]~~ (26) Any other organization, entity, or the State,
2 its branches, political subdivisions, or agencies as
3 may be authorized by state law."

4 SECTION 3. After December 31, 2010, no new license shall
5 be issued and no license renewal shall be effectuated under
6 chapter 454, Hawaii Revised Statutes. After December 31, 2010,
7 a person who would be regulated under this Act shall be required
8 to be licensed under this Act, except that a mortgage broker or
9 mortgage solicitor licensed under chapter 454 as of January 1,
10 2011, shall not be required to be licensed under this Act until
11 October 1, 2012; provided that:

12 (1) A mortgage broker or mortgage lender who files an
13 application for a license pursuant to this Act by
14 October 1, 2011, and whose application is determined
15 to be complete by the commissioner by December 31,
16 2011, shall be deemed in compliance with the licensing
17 provisions of this Act until such time as the license
18 is issued or denied by the commissioner; and

19 (2) A mortgage solicitor who files an application for a
20 license pursuant to this Act between March 1, 2012,
21 and April 30, 2012, and whose application is
22 determined to be complete by the commissioner by



1 June 30, 2012, shall be deemed in compliance with the
2 licensing provisions of this Act until such time as
3 the license is issued or denied by the commissioner.

4 SECTION 4. A person licensed under this Act prior to
5 October 1, 2011, shall not be required to be licensed under
6 chapter 454, Hawaii Revised Statutes, and shall not be subject
7 to the provisions of that chapter upon the effective date of the
8 person's licensure under this Act; provided that this section
9 shall not affect rights and duties that matured, penalties that
10 were incurred, and proceedings that were begun, before the
11 effective date of the person's licensure under this Act.

12 SECTION 5. There is appropriated out of the compliance
13 resolution fund of the State of Hawaii the sum of \$140,000 or so
14 much thereof as may be necessary for fiscal year 2008-2009 to
15 carry out the purposes of this Act, including the hiring of one
16 permanent clerical assistant and six permanent examiners, exempt
17 from chapter 76, Hawaii Revised Statutes, in the division of
18 financial institutions, to implement this Act.

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

21 SECTION 6. Chapter 454, Hawaii Revised Statutes, is
22 repealed; provided that the repeal does not affect rights and



1 duties that matured, penalties that were incurred, and
2 proceedings that were begun, before its repeal.

3 SECTION 7. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 8. This Act shall take effect on July 1, 2050.



Report Title:

Mortgage Brokers

Description:

Repeals the law on mortgage brokers and solicitors under chapter 454, Hawaii Revised Statutes, and replaces it with a statute that provides for regulation of mortgage brokers and loan originators by the division of financial institutions. (SD1)

