
A BILL FOR AN ACT

RELATING TO MORTGAGE SERVICERS.

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 be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **MORTGAGE SERVICERS**

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

8 "Applicant" means a person applying for a license under
9 this chapter.

10 "Borrower" means the obligor, maker, cosigner, or guarantor
11 under a mortgage agreement.

12 "Commissioner" means the commissioner of financial
13 institutions of this State.

14 "License" means a license issued under this chapter.

15 "Licensee" means a person licensed or required to be
16 licensed under this chapter.

17 "Mortgage servicer" means the person responsible for
18 receiving any scheduled periodic payments from a borrower

1 pursuant to the terms of any residential mortgage loan including
2 amounts for escrow accounts under section 10 of the Real Estate
3 Settlement Procedures Act, 12 United States Code section 2609,
4 and making the payments to the owner of the loan or other third
5 parties of principal and interest and such other payments with
6 respect to the amounts received from the borrower as may be
7 required pursuant to the terms of the mortgage servicing loan
8 documents or servicing contract. In the case of a home equity
9 conversion mortgage or reverse mortgage as referenced in this
10 chapter, servicing includes making payments to the borrower.

11 "Person" means an individual, partnership, corporation,
12 association, or other organization.

13 "Residential mortgage loan" means a mortgage loan, home
14 equity loan, or reverse mortgage loan, which is secured by a
15 first or subordinate lien on residential real property located
16 in Hawaii, including a refinancing of any secured loan on
17 residential real property located in Hawaii, upon which:

18 (1) There is or will be constructed a structure or
19 structures designed principally for occupancy of from
20 one to four families, including individual units of
21 condominiums and cooperatives; or

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

3 **§ -2 License required.** (a) No person except those
4 exempted under this chapter shall engage in the business of
5 mortgage servicing without a license as provided in this
6 chapter.

7 (b) A person is engaged in the business of mortgage
8 servicing if the person provides those services even if the
9 person providing services has no physical presence in the State.

10 **§ -3 Exemptions.** This chapter shall not apply to the
11 following:

12 (1) Any persons chartered or authorized under the laws of
13 any state or federal law to engage in the activity of
14 an insured depository institution as defined in title
15 12 United States Code section 1813(c)(2), including
16 banks or savings associations, and operating
17 subsidiaries of an insured depository institution as
18 defined in title 12 United States Code section
19 1813(c)(2);

20 (2) Trust companies, credit unions, insurance companies,
21 and financial service loan companies licensed by this
22 State;

- 1 (3) The Federal Deposit Insurance Corporation, in
2 connection with assets acquired, assigned, sold, or
3 transferred pursuant to section 13(c) of the Federal
4 Deposit Insurance Act or as receiver or conservator of
5 an insured depository institution;
- 6 (4) The Federal National Mortgage Association; the Federal
7 Home Loan Mortgage Corporation; the Federal Deposit
8 Insurance Corporation; the United States Department of
9 Housing and Urban Development, including the
10 Government National Mortgage Association and the
11 Federal Housing Administration, including cases in
12 which a mortgage insured under the National Housing
13 Act (12 U.S.C. §1701 et seq.) is assigned to the
14 United States Department of Housing and Urban
15 Development; the National Credit Union Administration;
16 the Farmers Home Administration or its successor
17 agency under Public Law 103-354; and the Department of
18 Veterans Affairs, in any case in which the assignment,
19 sale, or transfer of the servicing of the mortgage
20 loan is preceded by termination of the contract for
21 servicing the loan for cause, commencement of
22 proceedings for bankruptcy of the servicer, or

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1 commencement of proceedings by the Federal Deposit
2 Insurance Corporation for conservatorship or
3 receivership of the servicer or an entity by which the
4 servicer is owned or controlled; and

5 (5) Any person making or acquiring contemporaneously no
6 more than five residential mortgage loans with that
7 person's own funds for that person's own investment.

8 **§ -4 License; fees; renewals.** (a) An applicant for
9 licensure shall file an application on a form prescribed by the
10 commissioner and shall pay an application fee of \$500. Each
11 such license shall expire on June 30 of each calendar year. A
12 license may be renewed by filing a renewal statement on a form
13 prescribed by the commissioner and paying a renewal fee of \$250,
14 on or before July 1 for licensure for the following year.

15 (b) The applicant shall submit any other information that
16 the commissioner may require including, but not limited to, the
17 applicant's form and place of organization, the applicant's tax
18 identification number, and the applicant's proposed method of
19 doing business. The applicant shall disclose whether the
20 applicant or any of its officers, directors, employees,
21 managers, agents, partners, or members has ever been issued or
22 been the subject of an injunction or administrative order

1 pertaining to any aspect of the lending business, has ever been
2 convicted of a misdemeanor involving the lending industry or any
3 aspect of the lending business, or has ever been convicted of
4 any felony.

5 **§ -5 Duties of a mortgage servicer; disclosures; good**
6 **faith.** (a) A mortgage servicer licensed or acting under this
7 chapter, in addition to duties imposed by law, shall:

8 (1) Safeguard and account for any money handled for the
9 borrower;

10 (2) Act with reasonable skill, care, timeliness,
11 promptness, and diligence;

12 (3) Disclose to the commissioner in the application and
13 yearly renewal a complete, current schedule of the
14 ranges of costs and fees it charges borrowers for its
15 servicing-related activities; and

16 (4) File with the commissioner upon request a report in a
17 form and format acceptable to the commissioner
18 detailing the servicer's activities in this State,
19 including:

20 (A) The number of mortgage loans the servicer is
21 servicing;

- 1 (B) The type and characteristics of such loans in
- 2 this State;
- 3 (C) The number of serviced loans in default, along
- 4 with a breakdown of thirty-, sixty-, and ninety-
- 5 day delinquencies;
- 6 (D) Information on loss mitigation activities,
- 7 including details on workout arrangements
- 8 undertaken;
- 9 (E) Information on foreclosures commenced in this
- 10 State; and
- 11 (F) Any other information that the commissioner may
- 12 require.

13 (b) At the time a servicer accepts assignment of servicing
14 rights for a mortgage loan, the servicer shall disclose to the
15 borrower all of the following:

- 16 (1) Any notice required by the Real Estate Settlement
- 17 Procedures Act (12 U.S.C. § 2601 et seq.) or by
- 18 regulations promulgated thereunder;
- 19 (2) A schedule of the ranges and categories of its costs
- 20 and fees for its servicing-related activities, which
- 21 shall comply with this chapter and which shall not
- 22 exceed those reported to the commissioner; and

1 (3) A notice in a form and content acceptable to the
2 commissioner that the servicer is licensed by the
3 commissioner and that complaints about the servicer
4 may be submitted to the commissioner.

5 (c) In the event of a delinquency or other act of default
6 on the part of the borrower, the servicer shall act in good
7 faith to inform the borrower of the facts concerning the loan
8 and the nature and extent of the delinquency or default, and, if
9 the borrower replies, to negotiate with the borrower, subject to
10 the servicer's duties and obligations under the mortgage
11 servicing contract, if any, to attempt a resolution or workout
12 relating to the delinquency.

13 **§ -6 License sanctions; suspension, revocation, denial,**
14 **condition, and refusal to renew, reinstate, or restore.** In
15 addition to any other actions authorized by law, the
16 commissioner may suspend, revoke, deny, condition in any manner,
17 or refuse to renew, reinstate, or restore, any license issued
18 under this chapter, or fine any person holding a license issued
19 under this chapter, for any violation of this chapter. All such
20 orders shall be made pursuant to chapter 91.

21 **§ -7 Powers of commissioner.** In addition to any other
22 acts or conditions provided by law, the commissioner may:

- 1 (1) Adopt, amend, or repeal rules, issue declaratory
2 rulings or informal nonbinding interpretations, and
3 investigate and act upon written consumer complaints;
- 4 (2) Grant, deny, forfeit, renew, reinstate, or restore the
5 license of any mortgage servicer;
- 6 (3) Revoke, suspend, or otherwise limit the license of any
7 mortgage servicer for any violation of the provisions
8 in this chapter, or any rule or order of, or agreement
9 with the commissioner;
- 10 (4) Report any violation of this chapter or violation of
11 federal or state law to the United States Department
12 of Housing and Urban Development or other federal
13 agency having jurisdiction over the licensee;
- 14 (5) Investigate and conduct hearings regarding any
15 violation of this chapter, or any rule or order of or
16 agreement with the commissioner; and
- 17 (6) Do any and all things necessary or incidental to the
18 exercise of the commissioner's power and duties,
19 including the authority to conduct contested case
20 proceedings under chapter 91.

21 **§ -8 Private right of action.** Nothing in this chapter
22 shall be construed to preclude any individual or entity that

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1 suffers loss as a result of a violation of this chapter from
2 maintaining a civil action to recover damages and, as provided
3 by statute, attorney fees.

4 **§ -9 Penalty.** Any person who violates any provision of
5 this chapter may be subject to an administrative fine of not
6 more than \$5,000 for each violation.

7 **§ -10 Compliance resolution fund.** Any law to the
8 contrary notwithstanding, fees and fines collected by the
9 commissioner shall be deposited into the compliance resolution
10 fund established pursuant to section 26-9(o)."

11 SECTION 2. This Act shall take effect on January 1, 2010.

12
13 INTRODUCED BY: _____

Calvin K. Y. Song

14 BY REQUEST

JAN 26 2009

Report Title:

Mortgage Servicers

Description:

Enacts a new chapter of the Hawaii Revised Statutes to provide for the licensing and regulation of mortgage servicers that service residential mortgage loans secured by real property located in the State of Hawaii.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO MORTGAGE SERVICERS.

PURPOSE: The purpose of this bill is to establish a state system of licensure and regulation to ensure that servicers of residential mortgage loans secured by real property located in the State of Hawaii conduct those activities responsibly and with requisite accountability to borrowers.

MEANS: Add a new chapter to the Hawaii Revised Statutes (HRS).

JUSTIFICATION: Servicers that engage in servicing residential mortgage loans are frequently a borrower's only contact for information regarding the borrower's loan, and the only party to which the borrower may turn to address and resolve matters that can arise during the course of making payments on that loan, including but not limited to issues relating to required reserves for the payment of property tax and required hazard insurance on the property that secures a borrower's loan. A number of other states have mortgage servicer related regulatory and supervisory provisions in their statutes. However, in the absence of any regulation of these residential mortgage servicers by the State of Hawaii, a borrower who owns property in Hawaii securing a residential mortgage loan may discover that the borrower may have little, if any, recourse apart from costly litigation if a mortgage servicer mishandles its servicing responsibilities, or otherwise neglects or refuses to address problems, errors, or other concerns that may arise for the borrower during the term of the loan.

The present wave of foreclosures that is particularly impacting borrowers who obtained subprime mortgage loans has highlighted the fact that many servicers are unable or disinclined to assist borrowers in distress since the servicers may lack adequate staffing or the financial incentive to do so. In many instances, assisting a borrower by negotiating a modification or workout of a delinquent loan may be more costly to the servicer than the alternative of allowing the mortgaged property to be sold in foreclosure, which transfers the financial loss and other ensuing consequences onto the borrower and lender rather than the servicer.

A prior law regulating the activities of real estate collection servicing agents, chapter 454D, HRS, was repealed by Act 254, Session Laws of Hawaii 1999, upon the Legislature's finding that regulation of these servicers was "unnecessary" as it "does not serve to protect the public health, safety, and welfare." However, the foreclosure crisis currently being experienced by millions of homeowners nationwide has focused attention on the fact that borrowers are now losing their homes as the result of foreclosure actions that are being initiated, in many instances, by unregulated servicers.

This measure does not require that servicers agree to loan modifications, but rather provides, more generally, for the licensure and regulation of those residential mortgage servicers that service loans secured by property located in Hawaii, many of which presently may not be otherwise regulated or subject to existing state laws. One outcome will be that a borrower who owns property in Hawaii securing a residential mortgage loan will have the enhanced consumer protection afforded by an available local complaint process and the statutory enforcement powers conferred upon a Hawaii regulatory agency to

compel servicer accountability to such borrowers. Presently, such borrowers find themselves at the mercy of regulatory agencies in other states that can, and do, decline to assist a borrower if the property securing the loan in question is not also located in the state where the servicer is licensed.

This bill proposes a new chapter which defines key terms, including "mortgage servicer"; mandates the licensing of non-exempt mortgage servicers; exempts specified persons including insured depository financial institutions and their operating subsidiaries from the application of the chapter; establishes an initial license application fee of \$500 and an annual license renewal fee of \$250; specifies duties of, and required disclosures to be made by, mortgage servicers; authorizes sanctions including the suspension, revocation, and denial of a license for violations of the chapter; confers and delineates the powers and authority of the Commissioner of Financial Institutions ("Commissioner") to carry out the purposes of the chapter; acknowledges a private right of action by any person damaged as a result of a violation of the chapter; provides for an administrative penalty of not more than \$5,000 for each violation of the chapter; and provides that all fees and fines collected by the Commissioner under the chapter are to be deposited in the compliance resolution fund established pursuant to section 26-9(o), HRS.

Impact on the public: This legislation will establish a system of licensure and regulation to enhance the protection of, and accountability to, consumers owning residential real property in Hawaii by ensuring that the activities of non-exempt mortgage servicers will be subject to review by the Commissioner of Financial Institutions.

Impact on the department and other agencies:
Licensure and regulation of mortgage servicers is anticipated to have an impact on the activities of the licensing branch of the Division of Financial Institutions. At this time, there is no reliable estimate of the number of non-exempt mortgage servicers who may be subject to licensing under this bill. Therefore, the impact of a licensing program on the department is difficult to forecast; however, at least one addition to staff at the clerical entry level may be required to review and process initial license applications and subsequent renewals. It is anticipated, however, that application fees and annual license renewal fees will be adequate to ensure the self-sufficiency of this regulatory program's on-going operations. There is no immediate impact foreseen for other agencies.

GENERAL FUND:

None.

OTHER FUNDS:

Fees and fines collected by the commissioner shall be deposited into the compliance resolution fund.

PPBS PROGRAM
DESIGNATION:

CCA-104.

OTHER AFFECTED
AGENCIES:

None.

EFFECTIVE DATE:

January 1, 2010.