
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 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.

1 "Mortgage servicer" means the person responsible for
2 receiving any scheduled periodic payments from a borrower
3 pursuant to the terms of any residential mortgage loan,
4 including amounts for escrow accounts under Section 10 of the
5 Real Estate Settlement Procedures Act, 12 United States Code
6 section 2609, and for making payments to the owner of the loan
7 or other third parties of principal and interest and such other
8 payments as may be required pursuant to the terms of the
9 mortgage servicing loan documents or servicing contract. In the
10 case of a home equity conversion mortgage or reverse mortgage,
11 servicing includes making payments to the borrower.

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

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

19 (1) There is or will be constructed a structure or
20 structures designed principally for occupancy by one
21 to four families, including individual units of
22 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 in this State even if the person providing those
9 services has no physical presence in this State.

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

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

17 (2) Trust companies, credit unions, insurance companies,
18 and financial service loan companies licensed by this
19 State;

20 (3) The Federal Deposit Insurance Corporation, in
21 connection with assets acquired, assigned, sold, or
22 transferred pursuant to Section 13(c) of the Federal

1 Deposit Insurance Act, 12 United States Code section
2 1823(c), or as receiver or conservator of an insured
3 depository institution;

4 (4) The Federal National Mortgage Association; the Federal
5 Home Loan Mortgage Corporation; the Federal Deposit
6 Insurance Corporation; the United States Department of
7 Housing and Urban Development, including the
8 Government National Mortgage Association and the
9 Federal Housing Administration, and cases in which a
10 mortgage insured under the National Housing Act, 12
11 United States Code section 1701 et seq., is assigned
12 to the United States Department of Housing and Urban
13 Development; the National Credit Union Administration;
14 the Farmers Home Administration or its successor
15 agency; and the Department of Veterans Affairs, in any
16 case in which the assignment, sale, or transfer of the
17 servicing of the mortgage loan is preceded by
18 termination of the contract for servicing the loan for
19 cause, commencement of proceedings for bankruptcy of
20 the servicer, or commencement of proceedings by the
21 Federal Deposit Insurance Corporation for
22 conservatorship or receivership of the servicer or an

1 entity by which the servicer is owned or controlled;

2 and

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

6 § -4 **License; fees; renewals.** (a) An applicant for
7 licensure shall file an application on a form prescribed by the
8 commissioner and shall pay an application fee of \$500. Each
9 license shall expire on June 30 of each calendar year. A
10 license may be renewed by filing a renewal statement on a form
11 prescribed by the commissioner and paying a renewal fee of \$250,
12 on or before July 1 for licensure for the following year.

13 (b) The applicant shall submit any other information that
14 the commissioner may require, including:

15 (1) The applicant's form and place of organization;

16 (2) The applicant's tax identification number; and

17 (3) The applicant's proposed method of doing business.

18 The applicant shall disclose whether the applicant or any
19 of its officers, directors, employees, managers, agents,
20 partners, or members has ever been issued or been the subject of
21 an injunction or administrative order pertaining to any aspect
22 of the lending business, has ever been convicted of a

1 misdemeanor involving the lending industry or any aspect of the
2 lending business, or has ever been convicted of any felony.

3 § -5 **Duties of a mortgage servicer; disclosures; good**
4 **faith.** (a) A mortgage servicer licensed or acting under this
5 chapter, in addition to duties imposed by law, shall:

6 (1) Safeguard and account for any money handled for the
7 borrower;

8 (2) Act with reasonable skill, care, timeliness,
9 promptness, and diligence;

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

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

18 (A) The total number of mortgage loans the servicer
19 is servicing;

20 (B) The type and characteristics of such loans in
21 this State;

1 (C) The number of serviced loans in default, along
2 with a breakdown of thirty-, sixty-, and ninety-
3 day delinquencies;

4 (D) Information on loss mitigation activities,
5 including details on workout arrangements
6 undertaken;

7 (E) Information on foreclosures commenced in this
8 State; and

9 (F) Any other information that the commissioner may
10 require.

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

14 (1) Any notice required by the Real Estate Settlement
15 Procedures Act, 12 United States Code section 2601 et
16 seq., or by regulations promulgated thereunder;

17 (2) A schedule of the ranges and categories of costs and
18 fees for its servicing-related activities, which shall
19 comply with this chapter and which shall not exceed
20 those reported to the commissioner; and

21 (3) A notice that is acceptable to the commissioner in
22 form and content that the servicer is licensed by the

1 commissioner and that complaints about the servicer
2 may be submitted to the commissioner.

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

11 § -6 **Prohibited activities.** It shall be unlawful for
12 any mortgage servicer in the course of any mortgage loan
13 transaction:

- 14 (1) To misrepresent or conceal material facts, to make
15 false promises, or to pursue a course of
16 misrepresentation through its agents or otherwise;
- 17 (2) To engage in any transaction, practice, or course of
18 business that is not in good faith, does not
19 constitute fair dealing, or that constitutes a fraud
20 upon any person, in connection with the servicing,
21 purchase, or sale of any mortgage loan;

1 (3) To fail to comply with the mortgage loan servicing
2 transfer, escrow account administration, or borrower
3 inquiry response requirements imposed by sections 6
4 and 10 of the Real Estate Settlement Procedures Act,
5 12 United States Code sections 2605 and 2609, and
6 regulations adopted thereunder by the Secretary of the
7 Department of Housing and Urban Development;

8 (4) To fail to comply with applicable federal laws and
9 regulations related to mortgage servicing.

10 § -7 **License sanctions; suspension, revocation, denial,**
11 **condition, and refusal to renew, reinstate, or restore.** In
12 addition to any other actions authorized by law, the
13 commissioner may suspend, revoke, deny, condition in any manner,
14 or refuse to renew, reinstate, or restore, any license issued
15 under this chapter, or fine any person holding a license issued
16 under this chapter, for any violation of this chapter. All such
17 orders shall be made pursuant to chapter 91.

18 § -8 **Powers of commissioner.** In addition to any other
19 acts or conditions provided by law, the commissioner may:

20 (1) Adopt, amend, or repeal rules, issue declaratory
21 rulings or informal nonbinding interpretations, and
22 investigate and act upon written consumer complaints;

- 1 (2) Grant, deny, forfeit, renew, reinstate, or restore the
2 license of any mortgage servicer;
- 3 (3) Revoke, suspend, or otherwise limit the license of any
4 mortgage servicer for any violation of this chapter,
5 or any rule, order, or agreement of the commissioner;
- 6 (4) Report any violation of this chapter or violation of
7 federal or State law to the United States Department
8 of Housing and Urban Development or other federal
9 agency with jurisdiction over the licensee;
- 10 (5) Investigate and conduct hearings regarding any
11 violation of this chapter, or any rule, order, or
12 agreement of the commissioner; and
- 13 (6) Do any and all things necessary or incidental to the
14 exercise of the commissioner's power and duties,
15 conducting contested case proceedings under chapter
16 91.

17 § -9 **Private right of action.** Nothing in this chapter
18 shall be construed to preclude any individual or entity that
19 suffers loss as a result of a violation of this chapter from
20 maintaining a civil action to recover damages and attorney's
21 fees as provided by law.

1 § **-10 Penalty.** Any person who violates any provision of
2 this chapter may be subject to an administrative fine of not
3 more than \$5,000 for each violation.

4 § **-11 Compliance resolution fund.** Any law to the
5 contrary notwithstanding, fees and fines collected by the
6 commissioner shall be deposited into the compliance resolution
7 fund established pursuant to section 26-9(o)."

8 SECTION 2. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 3. This Act shall take effect on January 1, 2010.

Report Title:

Mortgage Servicers; Regulation

Description:

Provides for the licensing and regulation of mortgage servicers that service residential mortgage loans secured by real property located in the State of Hawaii. Specifies prohibited practices for mortgage servicers. Effective January 1, 2010. (SD1)