



GOV. MSG. NO. 1298

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 6, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

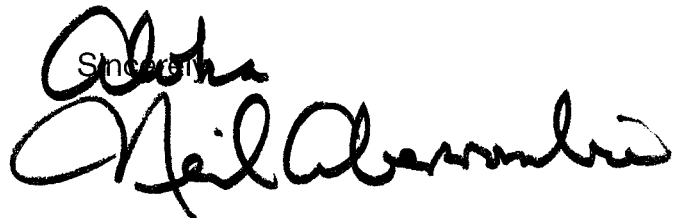
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 6, 2011, the following bill was signed into law:

SB1519 SD3 HD2 CD1

RELATING TO MORTGAGE LOAN
ORIGINATORS
Act 194 (11)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor.

on JUL 6 2011

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

ACT 194
S.B. NO. 1519
S.D. 3
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO MORTGAGE LOAN ORIGINATORS.

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

1 SECTION 1. Chapter 454F, Hawaii Revised Statutes, is
2 amended by adding five new sections to be appropriately
3 designated and to read as follows:

4 "§454F- Exempt sponsoring mortgage loan originator
5 company; registration. Any person exempt from the licensing
6 provisions of this chapter may register with the Nationwide
7 Mortgage Licensing System for the purpose of sponsoring a
8 mortgage loan originator required to be licensed by this
9 chapter.

10 §454F- Sponsorship by mortgage loan origination company
11 or exempt sponsoring mortgage loan originator company. All
12 mortgage loan originators shall be sponsored by a mortgage loan
13 originator company or by an exempt sponsoring mortgage loan
14 originator company.

15 §454F- Decision denying application subject to
16 administrative hearing. (a) Within fifteen days following
17 receipt of a decision denying an application, an applicant may
18 petition the commissioner for an administrative hearing that



1 shall be held in accordance with chapter 91 and the rules of the
2 department of commerce and consumer affairs. If a petition for
3 an administrative hearing is not filed within the time
4 specified, the commissioner's decision denying the application
5 shall become a final decision and order denying the application.

6 (b) Upon the receipt of a petition for an administrative
7 hearing, the commissioner shall assign the petition to a
8 hearings officer for further proceedings pursuant to the rules
9 of the department of commerce and consumer affairs. The
10 commissioner shall issue a written final decision and order,
11 following the hearings officer's transmittal to the commissioner
12 of the entire record together with the recommended decision, any
13 timely filed exceptions, and any timely filed statements in
14 support of the recommended decision.

15 §454F- Abandoned applications. (a) An application for
16 licensure pursuant to this chapter shall be considered abandoned
17 if an applicant fails to provide evidence of continued efforts
18 to complete the licensing process for six consecutive months.
19 No refund of filing fees shall be provided to an applicant for
20 an abandoned application. The commissioner shall not be
21 required to act on any abandoned application and is not required
22 to retain abandoned applications or supporting documents. The



1 commissioner may withdraw abandoned applications from the
2 Nationwide Mortgage Licensing System.

3 (b) For purposes of this section, failure to provide
4 evidence of continued efforts to complete the licensing process
5 includes:

6 (1) Failure to submit required documents and other
7 information requested by the commissioner within six
8 months from the last date the documents or other
9 information were requested; or

10 (2) Failure to provide the commissioner with any written
11 communication indicating that the applicant is
12 attempting to complete the licensing process for a
13 period of six months.

14 (c) If an application is deemed abandoned by the
15 commissioner, the applicant may reapply for licensure after
16 payment of applicable fees and compliance with the licensing
17 requirements in effect at the time of reapplication.

18 (d) An applicant may withdraw an application that has been
19 submitted under this chapter at any time; provided that no
20 refund shall be issued. The commissioner shall treat a
21 withdrawn application as an abandoned application according to
22 this section.



1 §454F- Duties of qualified individual and branch
2 manager. (a) A qualified individual shall have the duty to
3 manage and supervise the mortgage loan origination activities of
4 a licensed mortgage loan originator company's principal office
5 and the licensed mortgage loan originators located at or working
6 out of that location. A qualified individual shall hold a
7 license as a mortgage loan originator issued pursuant to this
8 chapter.

9 (b) A branch manager shall have the duty to directly
10 manage and supervise a licensed mortgage loan originator
11 company's branch office and the licensed mortgage loan
12 originators located at or working out of that location. A
13 branch manager shall be physically present in the branch office
14 and shall hold a license as mortgage loan originator issued
15 pursuant to this chapter.

16 (c) A qualified individual for a mortgage loan originator
17 company and a branch manager for a branch office shall be
18 responsible for:

- 19 (1) Supervising the maintenance and accounting of client
20 trust accounts and disbursements from those accounts;
21 (2) Supervising the maintenance of all records, contracts,
22 and documents of the mortgage loan originator company;



- 1 (3) Supervising all mortgage loan originator agreements
2 and mortgage loan documents and the handling of these
3 documents by the licensed mortgage loan originators
4 who are employed by or are independent contractors of
5 the mortgage loan originator company;
- 6 (4) Supervising all licensed mortgage loan originators who
7 are employed by or are independent contractors of the
8 mortgage loan originator company;
- 9 (5) Developing and enforcing policies and procedures
10 relating to the handling of residential mortgage loan
11 transactions and the professional conduct of the
12 licensed mortgage loan originators and other staff;
- 13 (6) Developing and monitoring compliance with a policy on
14 continuing education requirements for all licensed
15 mortgage loan originators who are employed by or are
16 independent contractors of the mortgage loan
17 originator company pursuant to the requirements of
18 this chapter and the rules of the commissioner;
- 19 (7) Ensuring that the licenses of all mortgage loan
20 originators who are employed by or are independent
21 contractors of the mortgage loan originator company,
22 and the license of the mortgage loan originator



1 company are current and active, and that all required
2 fees are timely paid to the mortgage loan recovery
3 fund;

4 (8) Establishing and conducting a training program for all
5 licensed mortgage loan originators who are employed by
6 or are independent contractors of the mortgage loan
7 originator company;

8 (9) Ensuring that all licensed mortgage loan originators
9 who are employed by or are independent contractors of
10 the mortgage loan originator company are provided
11 adequate information and training on the latest
12 amendments to licensing laws and rules and any other
13 applicable laws and rules;

14 (10) Notifying the commissioner of the termination of the
15 employment or independent contractor relationship of
16 licensed mortgage loan originators who were employed
17 by or were independent contractors of the mortgage
18 loan originator company upon the termination of
19 employment or the independent contractor relationship;
20 and

21 (11) Ensuring that the records, loan documents, and
22 agreements including mortgage loan originator



1 agreements are retained for seven years on paper or in
2 electronic format by the mortgage loan originator
3 company."

4 SECTION 2. Section 454F-1, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By adding four new definitions to be appropriately
7 inserted and to read:

8 "Branch manager" means an individual who is designated and
9 employed by a mortgage loan originator company to be responsible
10 for the activities in the conduct of business of the licensed
11 mortgage loan originator company's branch office, in conducting
12 the business of that mortgage loan originator company's branch
13 office.

14 "Exempt sponsoring mortgage loan originator company" means
15 any person exempt from or not included in the licensing
16 requirements of this chapter who registers with the Nationwide
17 Mortgage Licensing System for purposes of sponsoring a mortgage
18 loan originator.

19 "Qualified individual" means an individual who is
20 responsible for the oversight of mortgage loan originators that
21 are employed by or contracted to perform work for a mortgage
22 loan originator company.



1 "Sponsor" means to create a relationship through the
2 Nationwide Mortgage Licensing System for the purpose of
3 appropriately supervising a mortgage loan originator's
4 activities."

5 2. By amending the definitions of "licensee" and "mortgage
6 loan originator company" to read:

7 "'Licensee" means a mortgage loan originator, a mortgage
8 loan originator company, or a person who is required to be
9 licensed under this chapter. Licensee does not include an
10 exempt registered mortgage loan originator or exempt
11 ~~[registered]~~ sponsoring mortgage loan originator company as
12 defined by this section.

13 "Mortgage loan originator company" means:

- 14 (1) An individual not exempt under section 454F-2 who
15 engages in the business of a mortgage loan originator
16 as a sole proprietorship; or
- 17 (2) A person not exempt under section 454F-2 who employs
18 or ~~[uses the exclusive]~~ contracts for the services of
19 one or more mortgage loan originators licensed or
20 required to be licensed under this chapter."

21 3. By deleting the definition of "exempt registered
22 mortgage loan originator company".



1 ~~["Exempt registered mortgage loan originator company"~~
2 ~~means any person, including an insured depository institution,~~
3 ~~who is required to be licensed by any other state or federal law~~
4 ~~but is not required to be licensed under this chapter, and has~~
5 ~~the obligation to register with the Nationwide Mortgage~~
6 ~~Licensing System because one or more of the person's employees~~
7 ~~engage in the business of a mortgage loan originator."]~~

8 SECTION 3. Section 454F-1.5, Hawaii Revised Statutes, is
9 amended to read as follows:

10 " [†] §454F-1.5 [†] Registration with Nationwide Mortgage
11 Licensing System required. (a) All mortgage loan originators,
12 mortgage loan originator companies, exempt sponsoring mortgage
13 loan originator companies, and any other person in this State
14 that ~~[originate]~~ originates a residential mortgage loan, unless
15 exempt under section 454F-2, shall register with the Nationwide
16 Mortgage Licensing System.

17 (b) Exempt registered mortgage loan originators [~~and~~
18 ~~exempt mortgage loan originator companies~~], unless exempt under
19 section 454F-2, shall register and maintain a unique identifier
20 through the Nationwide Mortgage Licensing System, but shall not
21 be required to be licensed under this chapter."



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

3 "§454F-2 Exemptions. This chapter shall not apply to the
4 following:

- 5 (1) An exempt registered mortgage loan originator, when
6 acting for an insured depository institution, a
7 subsidiary of an insured depository institution
8 regulated by a federal banking agency, or an
9 institution regulated by the Farm Credit
10 Administration;
- 11 (2) Any individual who offers or negotiates terms of a
12 residential mortgage loan with, or on behalf of, an
13 immediate family member of the individual;
- 14 (3) Any individual who offers or negotiates terms of a
15 residential mortgage loan secured by a dwelling that
16 served as the individual's residence;
- 17 (4) A licensed attorney who negotiates the terms of a
18 residential mortgage loan on behalf of a client as an
19 ancillary matter to the attorney's representation of
20 the client unless the attorney is compensated by a
21 lender, a mortgage loan originator company, or other
22 mortgage loan originator or by an agent of a lender,



1 mortgage loan originator company, or other mortgage
2 loan originator;

3 (5) A person or entity that only performs real estate
4 brokerage activities and is licensed or registered by
5 the State unless the person or entity is compensated
6 by a lender, a mortgage loan originator company, or
7 other mortgage loan originator or by an agent of the
8 lender, mortgage loan originator company, or other
9 mortgage loan originator;

10 (6) A person or entity solely involved in extensions of
11 credit relating to timeshare plans, as the term is
12 defined in ~~[section]~~ Section 101(53D) of Title 11,
13 United States Code;

14 (7) An exempt ~~[registered]~~ sponsoring mortgage loan
15 originator company as defined by this chapter ~~[+]~~
16 except as otherwise provided by this chapter; or

17 (8) An insured depository institution."

18 SECTION 5. Section 454F-4, Hawaii Revised Statutes, is
19 amended by amending subsection (d) to read as follows:

20 "(d) In connection with an application for a license under
21 this chapter, the applicant, at a minimum, shall furnish ~~to the~~



1 ~~commissioner and~~] to the Nationwide Mortgage Licensing System
2 information concerning the applicant's identity, including:

3 (1) Fingerprints of the applicant and, [~~in the case of~~] if
4 an applicant [~~that~~] is not an individual, each of the
5 applicant's control persons, executive officers,
6 directors, general partners, and managing members for
7 submission to the Federal Bureau of Investigation[~~7~~]
8 and any governmental agency or entity authorized to
9 receive the fingerprints for a state, national, and
10 international criminal history background check; and

11 (2) Personal history and experience of the applicant and,
12 [~~in the case of~~] if an applicant [~~that~~] is not an
13 individual, each of the applicant's control persons,
14 executive officers, directors, general partners, and
15 managing members in a form prescribed by the
16 Nationwide Mortgage Licensing System including the
17 submission of authorization for the Nationwide
18 Mortgage Licensing System and the commissioner to
19 obtain:

20 (A) An independent credit report obtained from a
21 consumer reporting agency described in section



1 603(p) of the Fair Credit Reporting Act, 15
 2 United States Code 1681 et seq.; and
 3 (B) Information related to any administrative, civil,
 4 or criminal findings by any governmental
 5 jurisdiction[-];
 6 provided that the commissioner may use any information obtained
 7 pursuant to this subsection or through the Nationwide Mortgage
 8 Licensing System to determine an applicant's demonstrated
 9 financial responsibility, character, and general fitness for
 10 licensure."

11 SECTION 6. Section 454F-4.5, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 " ~~[+] §454F-4.5 [+]~~ **Automatic secondary review of license**
 14 **application.** ~~[The commissioner shall establish, by rule~~
 15 ~~pursuant to chapter 91, a procedure for the secondary review of]~~

16 (a) For each application that was determined on initial review
 17 to fail to meet the criteria for licensure[-], the commissioner
 18 shall provide a secondary level of review of the application
 19 which shall include the:

- 20 (1) Overall character and fitness of the applicant, taking
- 21 into account all relevant circumstances and weighing
- 22 all mitigating factors appropriately; and



1 (2) Assurance that non-discretionary licensing criteria
2 have been applied correctly.

3 (b) The commissioner may request that an applicant provide
4 any additional or supplemental information that the commissioner
5 deems necessary for a secondary review of an application."

6 SECTION 7. Section 454F-5, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) The commissioner shall not issue a license pursuant
9 to this chapter unless the commissioner makes at a minimum the
10 following findings:

11 (1) The applicant, [~~er in the case of~~] if an applicant
12 [~~that~~] is not an individual, each of the applicant's
13 control persons, executive officers, directors,
14 general partners, and managing members, has never had
15 a mortgage loan originator or a mortgage loan
16 originator company license revoked in any
17 jurisdiction; provided that a subsequent formal
18 vacation of a revocation shall not be deemed a
19 revocation;

20 (2) The applicant, [~~er in the case of~~] if an applicant
21 [~~that~~] is not an individual, each of the applicant's
22 control persons, executive officers, directors,



1 general partners, and managing members, has not been
2 convicted of, or pled guilty or nolo contendere, or
3 been granted a deferred acceptance of a guilty plea
4 under federal law or under chapter 853 to a felony in
5 a domestic, foreign, or military court:

6 (A) During the seven-year period preceding the date
7 of the application for licensing and
8 registration; or

9 (B) At any time preceding the date of application, if
10 the felony involved an act of fraud, dishonesty,
11 breach of trust, or money laundering;

12 provided that any pardon of a conviction shall not be
13 deemed a conviction for purposes of this section;

14 (3) The applicant, [~~or in the case of~~] if an applicant
15 [~~that~~] is not an individual, each of the applicant's
16 control persons, executive officers, directors,
17 general partners, and managing members, has
18 demonstrated financial responsibility, character, and
19 general fitness to command the confidence of the
20 community and to warrant a determination that the
21 applicant shall operate honestly, fairly, and
22 efficiently pursuant to this chapter. For purposes of



1 this paragraph, a person is not financially
2 responsible when the person has shown a disregard in
3 the management of the person's financial condition. A
4 determination that a person has [~~not shown financial~~
5 ~~responsibility~~] shown a disregard in the management of
6 the person's financial condition may be based on:

- 7 (A) Current outstanding judgments, except judgments
8 solely as a result of medical expenses;
- 9 (B) Current outstanding tax liens or other government
10 liens and filings;
- 11 (C) Foreclosures within the past three years; and
- 12 (D) A pattern of seriously delinquent accounts within
13 the past three years;
- 14 (4) The applicant, [~~or in the case of~~] if an applicant
15 [~~that~~] is not an individual, each of the applicant's
16 control persons, executive officers, directors,
17 general partners, and managing members, has not been
18 convicted of, plead guilty or nolo contendere to, or
19 been granted a deferred acceptance of a guilty plea
20 under federal law or chapter 853 to any misdemeanor
21 involving an act of fraud, dishonesty, breach of
22 trust, or money laundering;



1 (5) The applicant, [~~or in the case of~~] if an applicant
2 [~~that~~] is not an individual, each individual mortgage
3 loan originator who is employed by the mortgage loan
4 originator company or who provides exclusive services
5 to the applicant as a mortgage loan originator, has
6 completed the pre-licensing education requirement
7 described in section 454F-6;

8 (6) The applicant, [~~or in the case of~~] if an applicant
9 [~~that~~] is not an individual, each individual mortgage
10 loan originator who is employed by the mortgage loan
11 originator company or who provides exclusive services
12 to the applicant as a mortgage loan originator, has
13 passed a written test that meets the test requirements
14 in section 454F-7; and

15 (7) The applicant has met the mortgage loan recovery fund
16 requirement as required in section 454F-41."

17 SECTION 8. Section 454F-8, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) The minimum standards for license renewal for
20 mortgage loan originator companies shall include the following:



1 (1) The mortgage loan originator company continues to meet
2 the minimum standards for licensure established
3 pursuant to section 454F-5;

4 (2) The mortgage loan originator company's [~~qualified~~
5 branch manager [~~has]~~ and qualified individual have
6 satisfied the minimum standards for license renewal;
7 and

8 (3) The mortgage loan originator company has paid all
9 required fees for renewal of the license."

10 SECTION 9. Section 454F-9, Hawaii Revised Statutes, is
11 amended by amending subsection (g) to read as follows:

12 "(g) Continuing education courses as described in
13 subsection (a) and approved by the Nationwide Mortgage Licensing
14 System for any state, that are successfully completed by a
15 licensed mortgage loan originator, shall be accepted as credit
16 towards completion of continuing education requirements in this
17 State."

18 SECTION 10. Section 454F-10.5, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[+]§454F-10.5[+] Authorized places of business;
21 designation of qualified individuals and branch managers; branch
22 offices[-]; out-of-state headquarters; relocation. (a) Every



1 mortgage loan originator company licensed under this chapter
2 shall have and maintain a principal place of business in the
3 State and shall designate a qualified individual who is licensed
4 as a mortgage loan originator pursuant to this chapter to
5 oversee mortgage loan originators employed or contracted by the
6 company. If the qualified individual is physically located at a
7 branch office, the qualified individual may also be designated
8 as the branch manager.

9 (b) A mortgage loan originator company shall not maintain
10 any branch offices in the State in addition to its principal
11 place of business without the prior written approval of the
12 commissioner. An application to establish a branch office shall
13 be submitted with a nonrefundable application fee as required by
14 section 454F-22. A mortgage loan originator company that
15 ~~[established a]~~ establishes one or more branch [office] offices
16 pursuant to this subsection shall designate a branch manager for
17 each branch office located at ~~[each]~~ the branch office to
18 oversee that branch office. Every branch manager shall be
19 licensed as a mortgage loan originator pursuant to this chapter.

20 (c) A mortgage loan originator company shall not relocate
21 any office in this State without the prior written approval of
22 the commissioner. An application to relocate an office shall



1 set forth the reasons for the relocation, the street address of
2 the proposed relocated office, and other information that may be
3 required by the commissioner. An application to relocate an
4 office pursuant to this subsection shall be submitted with a
5 nonrefundable fee as required by section 454F-22.,

6 (d) A mortgage loan originator company shall give the
7 commissioner notice of its intent to close a branch office at
8 least thirty days prior to the closing. The notice shall: (1)

9 State the intended date of closing; and

10 (2) Specify the reasons for the closing.

11 (e) A mortgage loan originator company that maintains its
12 headquarters outside of the State shall:

13 (1) Designate an office in this State as its principal
14 place of business in this State;

15 (2) Apply for and obtain approval from the commissioner to
16 designate its principal place of business in this
17 State as a branch office pursuant to this section; and

18 (3) Designate a qualified individual who shall hold a
19 license as a mortgage loan originator pursuant to this
20 chapter; provided that the qualified individual may be
21 the same person designated as the branch manager."



1 SECTION 11. Section 454F-10.7, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The commissioner shall approve a request for change
4 of control under subsection (a) if, after investigation, the
5 commissioner determines that the person or group of persons
6 ~~[requesting approval has]~~ who will obtain control are licensed
7 pursuant to this chapter; have the competence, experience,
8 character, and general fitness to control the licensee or person
9 in control of the licensee in a lawful and proper manner~~[]~~i and
10 that the interests of the public will not be jeopardized by the
11 change of control."

12 SECTION 12. Section 454F-17, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§454F-17 Prohibited practices. It shall be a violation
15 of this chapter for a licensee or person subject to this chapter
16 to:

17 (1) Directly or indirectly employ any scheme, device, or
18 artifice to defraud or mislead borrowers or lenders or
19 to defraud any person;

20 (2) Engage in any unfair or deceptive practice related to
21 mortgage loan origination activities toward any
22 person;



- 1 (3) Obtain property by fraud or misrepresentation;
- 2 (4) Solicit or enter into any contract with a borrower
- 3 that provides in substance that the person or
- 4 individual subject to this chapter may earn a fee or
- 5 commission through "best efforts" to obtain a loan
- 6 even though no loan is actually obtained for the
- 7 borrower;
- 8 (5) Solicit, advertise, or enter into a contract for
- 9 specific interest rates, points, or other financing
- 10 terms unless the terms are actually available at the
- 11 time of soliciting, advertising, or contracting;
- 12 (6) Conduct any business covered by this chapter without
- 13 holding a valid license as required under this
- 14 chapter, or assist or aid and abet any person in the
- 15 conduct of business under this chapter without a valid
- 16 license as required under this chapter;
- 17 (7) Fail to make disclosures as required by this chapter
- 18 and any other applicable state or federal law
- 19 including rules or regulations [~~thereunder,~~] adopted
- 20 pursuant to state or federal law;
- 21 (8) Fail to comply with this chapter or any order or rule
- 22 issued or adopted under the authority of this chapter,



- 1 or fail to comply with any other state or federal law,
2 including the rules and regulations adopted
3 [~~thereunder,~~] pursuant to state or federal law
4 applicable to any business authorized or conducted
5 pursuant to this chapter;
- 6 (9) Make, in any manner, any false or deceptive statement
7 or representation, including with regard to the rates,
8 points, or other financing terms or conditions for a
9 residential mortgage loan, or engage in bait and
10 switch advertising;
- 11 (10) Negligently or knowingly make any false statement or
12 provide any misleading information or knowingly and
13 wilfully make any omission of material fact in
14 connection with any information or reports filed with
15 a governmental agency or the Nationwide Mortgage
16 Licensing System, including an application for a
17 license under this chapter, or in connection with any
18 examination or investigation conducted by the
19 commissioner or another government agency;
- 20 (11) Make any payment, threat, or promise, directly or
21 indirectly, to any person for the purposes of
22 influencing the independent judgment of the person in



1 connection with a residential mortgage loan, or make
2 any payment, threat, or promise, directly or
3 indirectly, to any appraiser of a property for the
4 purpose of influencing the independent judgment of the
5 appraiser with respect to the value of a property;

6 ~~[(12)] Collect, charge, attempt to collect or charge, or use~~
7 ~~or propose any agreement purporting to collect or~~
8 ~~charge any fee prohibited by this chapter;~~

9 ~~+(13)]~~ (12) Cause or require a borrower to obtain property
10 insurance coverage in an amount that exceeds the
11 replacement cost of the improvements as established by
12 the property insurer;

13 ~~[(14)]~~ (13) Fail to truthfully account for moneys belonging
14 to a party to a residential mortgage loan transaction;
15 [ex

16 ~~+(15)]~~ (14) Deliver a misleading or deceptive communication
17 or advertisement, whether written, electronic, or
18 oral, when marketing or soliciting a residential
19 mortgage loan~~[-A]~~; provided that:

20 (A) A communication or advertisement that uses the
21 name or trademark of a financial institution as
22 defined 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
3 to, or is the responsibility of the financial
4 institution is a misleading or deceptive
5 communication[~~Advertising~~];

6 (B) Advertising that a specific interest rate,
7 points, or financial terms are available when the
8 rates, points, or financial terms are not
9 actually available is a misleading or deceptive
10 communication[-];

11 (15) Fill in or complete any blank on a final residential
12 mortgage loan application that requests material
13 information including financial information without
14 adequate supporting documentation provided by the
15 borrower;

16 (16) Fill in or complete any blank on any mortgage or note
17 evidencing or securing the residential mortgage loan
18 which relates to the amount, interest rate, term, or
19 monthly payment of the residential mortgage loan;

20 (17) Originate a residential mortgage loan based primarily
21 on the current market value of the borrower's
22 collateral rather than on the borrower's ability to



1 repay the loan according to its terms; provided that
2 the sale of the property is made to a bona fide buyer;
3 and provided further that this paragraph shall not
4 apply to a reverse mortgage as defined under Title 12
5 Code of Federal Regulations Section 226.33;

6 (18) Advertise terms of a residential mortgage loan in
7 violation of section 226.16 or 226.24 of Regulation Z
8 of the Board of Governors of the Federal Reserve
9 System; or

10 (19) Encourage a borrower to misrepresent, inflate, or
11 fabricate the source or amount of a borrower's actual
12 income or assets in the application or underwriting
13 process for a residential mortgage loan."

14 SECTION 13. Section 454F-22, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "~~+~~§454F-22~~+~~ Mortgage loan originator ~~and~~, mortgage
17 loan originator company, and exempt sponsoring mortgage loan
18 originator company fees. (a) A mortgage loan originator shall
19 pay the following fees to obtain and maintain a valid mortgage
20 loan originator license:

- 21 (1) Initial application fee of \$500;
- 22 (2) Annual license renewal fee of \$300;



- 1 (3) Reinstatement fee of \$100;
- 2 (4) Late fee of \$25 per day; and
- 3 (5) Criminal background check fee of \$35, or of an amount
- 4 determined by the commissioner by rule pursuant to
- 5 chapter 91.

6 (b) A mortgage loan originator company shall pay the
7 following fees to maintain a valid mortgage loan originator
8 company license or branch license:

9 (1) Fees payable for a principal office of a mortgage loan
10 originator company:

- 11 (A) Initial application fee of \$900;
- 12 (B) Annual license renewal fee of \$600;
- 13 (C) Reinstatement fee of \$100;
- 14 (D) Late fee of \$25 per day; and
- 15 (E) Criminal background check fee of \$35, or of an
- 16 amount determined by the commissioner by rule
- 17 pursuant to chapter 91, for each control person,
- 18 executive officer, director, general partner, and
- 19 manager; and

20 (2) Fees payable for each branch office of a mortgage loan
21 originator company:

- 22 (A) Initial application fee of \$250;



1 (B) Annual license renewal fee of \$100;

2 (C) Reinstatement fee of \$100; and

3 (D) Late fee of \$25 per day.

4 (c) An exempt sponsoring mortgage loan originator company
5 shall pay the following fees to maintain a valid registration in
6 the Nationwide Mortgage Licensing System:

7 (1) Initial registration fee of \$200;

8 (2) Annual registration renewal fee of \$150; and

9 (3) Late fee of \$25 per day.

10 ~~[(e)]~~ (d) In addition to fees charged by the Nationwide
11 Mortgage Licensing System, a licensee shall pay to the
12 commissioner a fee of \$50 for each of the following amendments
13 to information provided to the Nationwide Mortgage Licensing
14 System that require the review of the commissioner:

15 (1) Change of physical location, including address change
16 for branch office or principal place of business;

17 (2) Addition or deletion of a "d/b/a" assignment;

18 (3) Change of manager; or

19 (4) Change of legal name.

20 The commissioner, upon a showing of good cause, may waive any
21 fee set forth in this subsection.



1 ~~[(d)]~~ (e) The fees established by this section are
2 nonrefundable and are in addition to any fees established and
3 charged by the Nationwide Mortgage Licensing System, an approved
4 educational course provider, an approved educational testing
5 provider, a law enforcement agency for fingerprints and
6 background checks, or a credit reporting agency used by the
7 Nationwide Mortgage Licensing System.

8 ~~[(e)]~~ (f) The commissioner may establish, by rule pursuant
9 to chapter 91, any other fees or charges necessary for the
10 administration of this chapter."

11 SECTION 14. Section 454F-42, Hawaii Revised Statutes, is
12 amended by amending subsection (c) to read as follows:

13 "(c) The court shall proceed upon an application to
14 recover from the mortgage loan recovery fund in a summary manner
15 and, at hearing, the aggrieved person shall be required to show:

16 (1) The person is not a spouse of the judgment debtor or
17 the personal representative of a spouse of the
18 judgment debtor;

19 (2) The person has complied with all the requirements of
20 this section;

21 (3) The person has obtained a judgment ~~[or settlement]~~
22 pursuant to section 454F-41(a) that states the amount



1 of the judgment and the amount owed on the judgment
2 debt as of the date of the application;

3 (4) The person has made all reasonable searches and
4 inquiries to ascertain whether the judgment debtor is
5 possessed of real or personal property or other assets
6 liable to be sold or applied in satisfaction of the
7 judgment; and

8 (A) The search has uncovered no personal or real
9 property or other assets liable to be sold or
10 applied; or

11 (B) The search has uncovered personal or real
12 property or other assets liable to be sold or
13 applied, the person has taken all necessary
14 action and completed all necessary proceedings
15 for the realization thereof, and the amount
16 realized was insufficient to satisfy the
17 judgment; provided that the person shall state
18 the amount realized and the balance remaining due
19 on the judgment after application of the amount
20 realized; and

21 (5) That where the licensee is a judgment debtor in a
22 bankruptcy proceeding, the aggrieved person has



1 obtained an order from the bankruptcy court declaring
2 the judgment against the licensee to be non-
3 dischargeable."

4 SECTION 15. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 16. This Act shall take effect upon its approval.

APPROVED this 6 day of JUL , 2011



GOVERNOR OF THE STATE OF HAWAII