
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 eight new sections to be appropriately
3 designated and to read as follows:

4 "§454F-A 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-B 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-C 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 which



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-D Tangible net benefit. (a) For purposes of
16 section 454F-17, the factors to be considered in determining if
17 a borrower receives a reasonable, tangible net benefit shall
18 include whether:

19 (1) The borrower's new monthly payment is lower than the
20 total of all monthly obligations being financed,
21 taking into account all costs and fees disclosed in
22 the United States Department of Housing and Urban



1 Development settlement statement, if applicable,
2 regardless of whether the disclosed costs and fees are
3 incorporated into and financed through the new
4 residential mortgage loan or loans; provided that:

5 (A) If either the original or renegotiated
6 residential mortgage loan is a financial product
7 other than a conventional fixed rate residential
8 mortgage loan, the borrower's monthly payment
9 shall fully amortize the loan at the fully
10 indexed rate; provided that for open-end credit
11 loans, the new monthly payment shall be based on
12 the amount drawn by the borrower at the time the
13 new residential mortgage loan is made;

14 (B) The time for recouping the costs and fees as
15 disclosed in the United States Department of
16 Housing and Urban Development settlement
17 statement, if applicable, shall be calculated
18 over a period of three years and this amount
19 shall be added to the borrower's new monthly
20 payment;



- 1 (2) There is a change that is beneficial to the borrower
2 in the amortization period of a new higher-priced
3 mortgage loan;
- 4 (3) The borrower or a person designated by the borrower
5 receives a reasonable amount of cash in excess of all
6 costs and fees, regardless of whether costs and fees
7 are incorporated into and financed through the new
8 higher-priced mortgage loan paid by the borrower as
9 disclosed in the United States Department of Housing
10 and Urban Development settlement statement, if
11 applicable, as part of the refinancing;
- 12 (4) The borrower's rate of interest is reduced or, in the
13 event that more than one loan is refinanced, the
14 weighted average of the rates of interest of the
15 previous loans is reduced;
- 16 (5) There is a change from an adjustable rate loan to a
17 fixed rate loan; and
- 18 (6) The refinancing is necessary to respond to a bona fide
19 personal need, as reasonably determined by the
20 borrower, or an order of a court of competent
21 jurisdiction.



1 (b) The determination of whether a borrower has received a
2 reasonable, tangible net benefit shall be based on an analysis
3 of all of the factors contained in this section; provided that
4 any one factor may be determinative, depending on the totality
5 of the circumstances.

6 §454F-E Abandoned applications. (a) An application for
7 licensure pursuant to this chapter shall be considered to be
8 abandoned if an applicant fails to provide evidence of continued
9 efforts to complete the licensing process for six consecutive
10 months. No refund of filing fees shall be provided to an
11 applicant for an abandoned application. The commissioner shall
12 not be required to act on any abandoned application and is not
13 required to retain abandoned applications or supporting
14 documents. The commissioner has the authority to withdraw
15 abandoned applications from the Nationwide Mortgage Licensing
16 System.

17 (b) For purposes of this section, failure to provide
18 evidence of continued efforts to complete the licensing process
19 includes:

20 (1) Failure to submit the required documents and other
21 information requested by the commissioner within six



1 months from the last date the documents or other
2 information were requested; or

3 (2) Failure to provide the commissioner with any written
4 communication during six months indicating that the
5 applicant is attempting to complete the licensing
6 process.

7 (c) If the application is deemed abandoned by the
8 commissioner, the applicant may reapply for licensure after
9 payment of applicable fees and compliance with the licensing
10 requirements in effect at the time of reapplication.

11 (d) An applicant may withdraw an application that has been
12 submitted under this chapter at any time, provided that no
13 refund will be issued. The commissioner shall treat a withdrawn
14 application as an abandoned application according to this
15 section.

16 §454F-F Restrictions on loan terms. No licensee shall
17 originate a residential mortgage loan that includes the
18 following terms:

19 (1) Caps on payment increases that are less than those
20 necessary to reduce principal and amortize the loan
21 over the entire term of the loan regardless of



- 1 interest rate adjustments resulting in negative
- 2 amortization;
- 3 (2) More than two periodic payments required under the
- 4 loan are consolidated and paid in advance from the
- 5 loan proceeds provided to the borrower;
- 6 (3) Penalties or premiums for prepayment of the balance or
- 7 any portion of the principal of the indebtedness; or
- 8 (4) For adjustable rate loans other than a home equity
- 9 line of credit:
- 10 (A) Interest rates and payment terms that change more
- 11 frequently than annually during the term of the
- 12 loan;
- 13 (B) An initial interest rate that may be increased by
- 14 more than two per cent for loans with initial
- 15 periods of less than five years and six per cent
- 16 for loans with initial periods greater than or
- 17 equal to five years;
- 18 (C) A periodic interest rate that may be increased by
- 19 more than two per cent; or
- 20 (D) A lifetime interest rate cap of more than six per
- 21 cent over the initial rate.



1 §454F-G Duties of qualified individual and branch manager.

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

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

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

- 18 (1) Supervising the maintenance and accounting of client
19 trust accounts and disbursements from those accounts;
20 (2) Supervising the maintenance of all records, contracts,
21 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 independent contractors of the mortgage loan
18 originator company upon the termination of employment
19 or the independent contractor relationship; and

20 (11) Ensuring that the records, loan documents and
21 agreements including mortgage loan originator
22 agreements are retained for seven years in paper or



1 electronic format by the mortgage loan originator
2 company.

3 §454F-H Fees, commissions, and charges payable to mortgage
4 loan originators and mortgage loan originator companies. (a) A
5 licensee shall not require a borrower to pay any fees or charges
6 prior to the closing of a residential mortgage loan except:

7 (1) Charges to be incurred by the licensee on behalf of
8 the borrower for services from third parties necessary
9 to process the residential mortgage loan application,
10 such as credit reports and appraisals;

11 (2) An application fee;

12 (3) A rate lock fee;

13 (4) A commitment fee upon approval of the residential
14 mortgage loan; and

15 (5) A loan cancellation fee.

16 (b) Within thirty days after any rejection, withdrawal, or
17 closing, any fees collected by a mortgage loan originator in
18 excess of actual costs shall be returned to the borrower.

19 (c) The commissioner shall adopt rules setting maximum
20 fees, commissions, and charges on residential mortgage loan
21 transactions and requiring full disclosure of fees, commissions,
22 and charges. Maximum fees, commissions, and charges shall be



1 related to the actual amount of money made available to the
2 borrower, over and above the indebtedness of prior mortgages."

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

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

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

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

18 "Qualified individual" means an individual who is
19 responsible for oversight of mortgage loan originators that are
20 employed by or contracted to perform work for a mortgage loan
21 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 101(53D) of Title 11, United States
13 Code;

14 (7) An exempt [~~registered~~] sponsoring mortgage loan
15 originator company as defined by this chapter[~~7~~]
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 an
4 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, and
8 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 an applicant that is not an individual,
13 each of the applicant's control persons, executive
14 officers, directors, general partners, and managing
15 members in a form prescribed by the Nationwide
16 Mortgage Licensing System including the submission of
17 authorization for the Nationwide Mortgage Licensing
18 System and the commissioner to obtain:

19 (A) An independent credit report obtained from a
20 consumer reporting agency described in section
21 603(p) of the Fair Credit Reporting Act, 15
22 United States Code 1681 et seq.; and



1 (B) Information related to any administrative, civil,
2 or criminal findings by any governmental
3 jurisdiction[-];
4 provided that the commissioner may use any information obtained
5 pursuant to this subsection or through the Nationwide Mortgage
6 Licensing System to determine an applicant's demonstrated
7 financial responsibility, character, and general fitness for
8 licensure."

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

11 " ~~[§] §454F-4.5 [§]~~ **Automatic secondary review of license**
12 **application.** ~~[The commissioner shall establish, by rule~~
13 ~~pursuant to chapter 91, a procedure for the secondary review of]~~

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

- 18 (1) Overall character and fitness of the applicant, taking
19 into account all relevant circumstances and weighing
20 all mitigating factors appropriately; and
21 (2) Assurance that non-discretionary licensing criteria
22 have been applied correctly.



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

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

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

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

17 (2) The applicant, or in the case of an applicant that is
18 not an individual, each of the applicant's control
19 persons, executive officers, directors, general
20 partners, and managing members, has not been convicted
21 of, or pled guilty or nolo contendere, or been granted
22 a deferred acceptance of a guilty plea under federal



1 law or under chapter 853 to a felony in a domestic,
2 foreign, or military court:

3 (A) During the seven-year period preceding the date
4 of the application for licensing and
5 registration; or

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

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

11 (3) The applicant, or in the case of an applicant that is
12 not an individual, each of the applicant's control
13 persons, executive officers, directors, general
14 partners, and managing members, has demonstrated
15 financial responsibility, character, and general
16 fitness to command the confidence of the community and
17 to warrant a determination that the applicant shall
18 operate honestly, fairly, and efficiently pursuant to
19 this chapter. For purposes of this paragraph, a
20 person is not financially responsible when the person
21 has shown a disregard in the management of the
22 person's financial condition. A determination that a



1 person has [~~not shown financial responsibility~~] shown
2 a disregard in the management of the person's
3 financial condition may be based on:

4 (A) Current outstanding judgments, except judgments
5 solely as a result of medical expenses;

6 (B) Current outstanding tax liens or other government
7 liens and filings;

8 (C) Foreclosures within the past three years; and

9 (D) A pattern of seriously delinquent accounts within
10 the past three years;

11 (4) The applicant, or in the case of an applicant that is
12 not an individual, each of the applicant's control
13 persons, executive officers, directors, general
14 partners, and managing members, has not been convicted
15 of, plead guilty or nolo contendere to, or been
16 granted a deferred acceptance of a guilty plea under
17 federal law or chapter 853 to any misdemeanor
18 involving an act of fraud, dishonesty, breach of
19 trust, or money laundering;

20 (5) The applicant, or in the case of an applicant that is
21 not an individual, each individual mortgage loan
22 originator who is employed by the mortgage loan



1 originator company or who provides exclusive services
2 to the applicant as a mortgage loan originator, has
3 completed the pre-licensing education requirement
4 described in section 454F-6;

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

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

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

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

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

21 (2) The mortgage loan originator company's [~~qualified~~]
22 branch manager [~~has~~] and qualified individual have



1 satisfied the minimum standards for license renewal;
2 and

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

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

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

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

15 "~~[+] §454F-10.5 []~~ **Authorized places of business;**
16 **designation of qualified individuals and branch managers; branch**
17 **offices [-]; out-of-state headquarters; relocation.** (a) Every
18 mortgage loan originator company licensed under this chapter
19 shall have and maintain a principal place of business in the
20 State and shall designate a qualified individual who is licensed
21 as a mortgage loan originator pursuant to this chapter to
22 oversee mortgage loan originators employed or contracted by the



1 company. If the qualified individual is physically located at a
2 branch office, the qualified individual may also be designated
3 as the branch manager.

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

15 (c) A mortgage loan originator company shall not relocate
16 any office in this State without the prior written approval of
17 the commissioner. An application to relocate an office shall
18 set forth the reasons for the relocation, the street address of
19 the proposed relocated office, and other information that may be
20 required by the commissioner. An application to relocate an
21 office pursuant to this subsection shall be submitted with a
22 nonrefundable fee as required by section 454F-22.



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

4 (1) State the intended date of closing; and

5 (2) Specify the reasons for the closing.

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

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

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

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

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

19 "(b) The commissioner shall approve a request for change
20 of control under subsection (a) if, after investigation, the
21 commissioner determines that the person or group of persons
22 [~~requesting approval has~~] who will obtain control are licensed



1 pursuant to this chapter; have the competence, experience,
2 character, and general fitness to control the licensee or person
3 in control of the licensee in a lawful and proper manner[7]; and
4 that the interests of the public will not be jeopardized by the
5 change of control."

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

8 "(a) Except as otherwise provided in Public Law 110-289,
9 section 1512, the requirements under any federal or state law
10 regarding the privacy or confidentiality of any information or
11 material provided to the Nationwide Mortgage Licensing System,
12 and any privilege arising under federal or state law, including
13 the rules of any federal or state court, with respect to the
14 information or material shall continue to apply to the
15 information or material after the information or material has
16 been disclosed to the Nationwide Mortgage Licensing System. The
17 information and material may be shared with all state and
18 federal regulatory officials with mortgage industry oversight
19 authority without the loss of privilege or the loss of
20 confidentiality protections provided by federal or state law.

21 Notwithstanding any allowable disclosure under the
22 applicable law and rules, no material contained in any



1 application or record shall be made available to the public if
2 it is determined by the commissioner to be confidential.

3 Information that shall be considered confidential includes:

4 (1) Commercial or financial information that if disclosed
5 would likely result in substantial competitive harm to
6 the licensee;

7 (2) Information of which disclosure could seriously affect
8 the financial condition of the applicant or licensee;

9 (3) Personal information, including information contained
10 in criminal background checks and credit reports, that
11 if disclosed would likely constitute an unwarranted
12 invasion of privacy;

13 (4) Personal information relating to pre- or post-
14 licensing testing and continuing education, including
15 test scores; and

16 (5) Other information of which disclosure is prohibited by
17 this chapter and other applicable law."

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

20 "**§454F-17 Prohibited practices.** It shall be a violation
21 of this chapter for a licensee or person subject to this chapter
22 to:



- 1 (1) Directly or indirectly employ any scheme, device, or
2 artifice to defraud or mislead borrowers or lenders or
3 to defraud any person;
- 4 (2) Engage in any unfair or deceptive practice related to
5 mortgage loan origination activities toward any
6 person;
- 7 (3) Obtain property by fraud or misrepresentation;
- 8 (4) Solicit or enter into any contract with a borrower
9 that provides in substance that the person or
10 individual subject to this chapter may earn a fee or
11 commission through "best efforts" to obtain a loan
12 even though no loan is actually obtained for the
13 borrower;
- 14 (5) Solicit, advertise, or enter into a contract for
15 specific interest rates, points, or other financing
16 terms unless the terms are actually available at the
17 time of soliciting, advertising, or contracting;
- 18 (6) Conduct any business covered by this chapter without
19 holding a valid license as required under this
20 chapter, or assist or aid and abet any person in the
21 conduct of business under this chapter without a valid
22 license as required under this chapter;



- 1 (7) Fail to make disclosures as required by this chapter
2 and any other applicable state or federal law
3 including rules or regulations thereunder;
- 4 (8) Fail to comply with this chapter or any order or rule
5 issued or adopted under the authority of this chapter,
6 or fail to comply with any other state or federal law,
7 including the rules and regulations adopted
8 thereunder, applicable to any business authorized or
9 conducted pursuant to this chapter;
- 10 (9) Make, in any manner, any false or deceptive statement
11 or representation, including with regard to the rates,
12 points, or other financing terms or conditions for a
13 residential mortgage loan, or engage in bait and
14 switch advertising;
- 15 (10) Negligently or knowingly make any false statement or
16 provide any misleading information or knowingly and
17 wilfully make any omission of material fact in
18 connection with any information or reports filed with
19 a governmental agency or the Nationwide Mortgage
20 Licensing System, including an application for a
21 license under this chapter, or in connection with any



- 1 examination or investigation conducted by the
2 commissioner or another government agency;
- 3 (11) Make any payment, threat, or promise, directly or
4 indirectly, to any person for the purposes of
5 influencing the independent judgment of the person in
6 connection with a residential mortgage loan, or make
7 any payment, threat, or promise, directly or
8 indirectly, to any appraiser of a property for the
9 purpose of influencing the independent judgment of the
10 appraiser with respect to the value of a property;
- 11 ~~[(12) Collect, charge, attempt to collect or charge, or use~~
12 ~~or propose any agreement purporting to collect or~~
13 ~~charge any fee prohibited by this chapter;~~
- 14 ~~+(13)]~~ (12) Cause or require a borrower to obtain property
15 insurance coverage in an amount that exceeds the
16 replacement cost of the improvements as established by
17 the property insurer;
- 18 ~~[(14)]~~ (13) Fail to truthfully account for moneys belonging
19 to a party to a residential mortgage loan transaction;
20 ~~[or]~~
- 21 ~~[(15)]~~ (14) Deliver a misleading or deceptive communication
22 or advertisement, whether written, electronic, or



1 oral, when marketing or soliciting a residential
2 mortgage loan. A communication or advertisement that
3 uses the name or trademark of a financial institution
4 as defined in section 412:1-109 or its affiliates or
5 subsidiaries, or infers that the communication or
6 advertisement is from, endorsed by, is related to, or
7 is the responsibility of the financial institution is
8 a misleading or deceptive communication[-

9 Advertising]; provided that advertising that a
10 specific interest rate, points, or financial terms are
11 available when the rates, points, or financial terms
12 are not actually available is a misleading or
13 deceptive communication[-];

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

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



- 1 (17) Knowingly and intentionally originate a residential
2 mortgage loan that refinances an existing residential
3 mortgage loan if the new loan does not provide a
4 reasonable, tangible net benefit to the borrower
5 considering the totality of the circumstances
6 including the terms of both loans, the cost of the new
7 loan, and the borrower's circumstances;
- 8 (18) Originate a residential mortgage loan without
9 consideration and documentation of the borrower's
10 ability to repay the loan pursuant to its terms;
11 provided that a borrower's ability to repay a loan
12 shall be demonstrated through reasonably reliable
13 documentation that may include payroll records, tax
14 returns, bank records, asset and credit evaluations,
15 mortgage payment history, and other similarly reliable
16 documents; and provided further that this paragraph
17 shall not apply to the following, so long as the
18 borrower receives a reasonable, tangible net benefit:
- 19 (A) Refinancing of a residential mortgage loan
20 originated pursuant to a government streamline
21 program or a streamline program administered by a
22 government-sponsored enterprise;



- 1 (B) A reverse mortgage insured as part of a
- 2 government program; or
- 3 (C) Loss mitigation activities of a mortgage servicer
- 4 or lender with which the borrower has a current
- 5 relationship;

- 6 (19) Originate a residential mortgage loan without
- 7 determining the borrower's ability to pay the
- 8 applicable costs including principal, interest, real
- 9 estate taxes, property insurance, property
- 10 assessments, mortgage insurance premiums, and other
- 11 scheduled long-term monthly debt payments; provided
- 12 that in the case of an adjustable rate mortgage loan,
- 13 ability to pay shall be determined based on a fully
- 14 indexed rate and a repayment schedule that achieves
- 15 full amortization over the life of the loan;

- 16 (20) Originate a residential mortgage loan based primarily
- 17 on the foreclosure or liquidation value of the
- 18 borrower's collateral rather than on the borrower's
- 19 ability to repay the loan according to its terms;

- 20 (21) Advertise terms of a residential mortgage loan
- 21 including interest rates, margins, discount points,
- 22 fees, commissions, limitations, or other material



1 facts unless the licensee is able to make the
2 advertised loan and terms available to a reasonable
3 number of qualified applicants;

4 (22) Misrepresent a borrower's credit rating; or

5 (23) Misrepresent, inflate, or fabricate, or encourage a
6 borrower to misrepresent, inflate, or fabricate the
7 source or amount of a borrower's actual income or
8 assets in the application or underwriting process for
9 a residential mortgage loan."

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

12 " [†] §454F-22 [†] Mortgage loan originator [and], mortgage
13 loan originator company, and exempt sponsoring mortgage loan
14 originator company fees. (a) A mortgage loan originator shall
15 pay the following fees to obtain and maintain a valid mortgage
16 loan originator license:

- 17 (1) Initial application fee of \$500;
18 (2) Annual license renewal fee of \$300;
19 (3) Reinstatement fee of \$100;
20 (4) Late fee of \$25 per day; and



1 (5) Criminal background check fee of \$35, or of an amount
2 determined by the commissioner by rule pursuant to
3 chapter 91.

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

7 (1) Fees payable for a principal office of a mortgage loan
8 originator company:

9 (A) Initial application fee of \$900;

10 (B) Annual license renewal fee of \$600;

11 (C) Reinstatement fee of \$100;

12 (D) Late fee of \$25 per day; and

13 (E) Criminal background check fee of \$35, or of an
14 amount determined by the commissioner by rule
15 pursuant to chapter 91, for each control person,
16 executive officer, director, general partner, and
17 manager; and

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

20 (A) Initial application fee of \$250;

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

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



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

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

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

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

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

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

13 (1) Change of physical location, including address change
14 for branch or principal place of business;

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

16 (3) Change of manager; or

17 (4) Change of legal name.

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

20 [~~d~~] (e) The fees established by this section are
21 nonrefundable and are in addition to any fees established and
22 charged by the Nationwide Mortgage Licensing System, an approved



1 educational course provider, an approved educational testing
2 provider, a law enforcement agency for fingerprints and
3 background checks, or a credit reporting agency used by the
4 Nationwide Mortgage Licensing System.

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

8 SECTION 15. Section 454F-42, Hawaii Revised Statutes, is
9 amended by amending subsection (c) to read as follows:

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

13 (1) The person is not a spouse of the judgment debtor or
14 the personal representative of a spouse of the
15 judgment debtor;

16 (2) The person has complied with all the requirements of
17 this section;

18 (3) The person has obtained a judgment ~~[or settlement]~~
19 pursuant to section 454F-41(a) that states the amount
20 of the judgment and the amount owed on the judgment
21 debt as of the date of the application;



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

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

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

19 (5) That where the licensee is a judgment debtor in a
20 bankruptcy proceeding, the aggrieved person has
21 obtained an order from the bankruptcy court declaring



1 the judgment against the licensee to be non-
2 dischargeable."

3 SECTION 16. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 17. This Act shall take effect upon its approval.

6



Report Title:

Mortgage Loan Originators

Description:

Amends the secure and fair enforcement for mortgage licensing act to require all mortgage loan originators to work under the sponsorship of a registered entity; specifies standards for processing denied, abandoned, and withdrawn applications; specifies additional prohibited practices and prohibited loan terms; specifies duties and qualifications for supervisory staff of sponsoring entities; restricts fees payable to a licensee; clarifies confidentiality provisions for applications; establishes licensing fees for sponsoring entities; makes conforming amendments. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

