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A BILL FOR AN ACT

RELATING TO MORTGAGE SERVICERS.

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

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

4           "§454M-           Registration with Nationwide Mortgage Licensing  
5 System. The commissioner may require all mortgage servicers to  
6 register with the Nationwide Mortgage Licensing System."

7           SECTION 2. Section 454M-2, Hawaii Revised Statutes, is  
8 amended to read as follows:

9           "§454M-2 License required. (a) No person except those  
10 exempted under this chapter shall engage in the business of  
11 mortgage servicing without a license as provided in this  
12 chapter.

13           (b) No person shall engage in the business of mortgage  
14 servicing in this State unless the person providing services has  
15 a physical presence in the State pursuant to section 454M-  
16 5(a)(5).

17           (c) No person licensed as a mortgage servicer shall  
18 provide mortgage loan modification services without first

1 complying with the licensure requirements for mortgage servicers  
2 under chapter 454F."

3 SECTION 3. Section 454M-4, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§454M-4 License; fees; renewals; voluntary surrender of**  
6 **license.** (a) An applicant for licensure shall file an  
7 application on a form prescribed by the Nationwide Mortgage  
8 Licensing System or by the commissioner and shall pay an  
9 application fee of \$500. Each license shall expire on June 30  
10 of each calendar year. A license may be renewed by filing a  
11 renewal statement on a form prescribed by the Nationwide  
12 Mortgage Licensing System or by the commissioner and paying a  
13 renewal fee of \$250, on or before July 1 for licensure for the  
14 following year.

15 (b) To fulfill the purposes of this chapter, the  
16 commissioner may establish relationships or contracts with the  
17 Nationwide Mortgage Licensing System or other entities  
18 designated by the Nationwide Mortgage Licensing System to  
19 collect and maintain records and process transaction fees or  
20 other fees related to licensees or other persons subject to this  
21 chapter.

1        (c) For the purpose and the extent necessary to  
2 participate in the Nationwide Mortgage Licensing System, the  
3 commissioner may waive or modify, in whole or in part, by rule  
4 or order, any or all of the requirements of this chapter and  
5 establish new requirements as reasonably necessary to  
6 participate in the Nationwide Mortgage Licensing System.

7        (d) The commissioner may use the Nationwide Mortgage  
8 Licensing System as an agent for:

9            (1) Requesting information from and distributing  
10            information to the United States Department of Justice  
11            or any governmental agency; and

12            (2) Requesting and distributing information to and from  
13            any source directed by the commissioner.

14        [~~b~~] (e) The applicant shall submit any other information  
15 that the commissioner may require, including the applicant's:

16            (1) Form and place of organization;

17            (2) Tax identification number; and

18            (3) Proposed method of doing business.

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

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

4 [~~(e)~~] (f) A mortgage servicer licensed under this chapter  
5 may voluntarily cease business and surrender its license by  
6 giving written notice to the commissioner of its intent to  
7 surrender its mortgage servicer license. Notice pursuant to  
8 this subsection shall be given at least thirty days before the  
9 surrender of the license and shall include:

- 10 (1) The date of surrender;
- 11 (2) The name, address, telephone number, facsimile number,  
12 and electronic address of a contact individual with  
13 knowledge and authority sufficient to communicate with  
14 the commissioner regarding all matters relating to the  
15 licensee during the period that it was licensed  
16 pursuant to this chapter;
- 17 (3) The reason or reasons for surrender;
- 18 (4) The original license issued pursuant to this chapter  
19 to the mortgage servicer; and
- 20 (5) If applicable, a copy of all notices to affected  
21 borrowers required by the Real Estate Settlement  
22 Procedures Act, Title 12 United States Code Section

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1           2601 et seq., or by regulations adopted pursuant to  
2           the Real Estate Settlement Procedures Act, of the  
3           assignment, sale, or transfer of the servicing of all  
4           relevant loans that the licensee is currently  
5           servicing under the license being surrendered.

6           Voluntary surrender of a license shall be effective upon  
7           the date of surrender specified on the written notice to the  
8           commissioner as required by this subsection; provided that if a  
9           mortgage servicer is required to assign, sell, or transfer the  
10          servicing of any loans, the voluntary surrender of the mortgage  
11          servicer's license shall be effective upon the effective date of  
12          the assignment, sale, or transfer of the servicing of all  
13          loans."

14          SECTION 4. Section 454M-6, Hawaii Revised Statutes, is  
15          amended to read as follows:

16          "~~§~~**454M-6**~~§~~ **Prohibited activities.** (a) It shall be  
17          unlawful for any mortgage servicer in the course of any mortgage  
18          loan transaction:

19               (1) To misrepresent or conceal material facts, to make  
20               false promises, or to pursue a course of  
21               misrepresentation through its agents or otherwise;

1           (2) To engage in any transaction, practice, or course of  
2           business that is not in good faith, does not  
3           constitute fair dealing, or that constitutes a fraud  
4           upon any person, in connection with the servicing,  
5           purchase, or sale of any mortgage loan;

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

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

15          (b) It shall be unlawful for any mortgage servicer to  
16 provide any mortgage loan modifications or other services which  
17 would require licensing pursuant to chapter 454F, unless the  
18 mortgage servicer is licensed under chapter 454F."

19           SECTION 5. Section 454M-10, Hawaii Revised Statutes, is  
20 amended to read as follows:

21           "**§454M-10 Penalty.** Any person who violates any provision  
22 of this chapter may be subject to an administrative fine of [at

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1 ~~least \$1,000 and]~~ not more than \$7,000 for each violation;  
2 provided that \$1,000 of the aggregate fine amount per order  
3 shall be deposited into the mortgage foreclosure dispute  
4 resolution special fund established pursuant to section 667-86."

5 SECTION 6. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 7. This Act shall take effect upon its approval.

8  
9 INTRODUCED BY: \_\_\_\_\_

*Calvin K. Boy*

10 BY REQUEST

11 JAN 23 2012

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**Report Title:**

Mortgage Servicers

**Description:**

Requires every mortgage servicer who provides loan modification services that would require licensure as a mortgage loan originator to be licensed as a mortgage loan originator in addition to being licensed as a mortgage servicer.

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



JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

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

PURPOSE: The purpose of this bill is to amend the mortgage servicers licensing provisions to clarify that every mortgage servicer who also provides mortgage loan modification services must meet the requirements of chapter 454F, Hawaii Revised Statutes (HRS).

MEANS: Add a new section to chapter 454M and amend sections 454M-2, 454M-4, 454M-6, and 454M-10, HRS.

JUSTIFICATION: Mortgage service companies who also provide mortgage loan modification services perform services that would be considered mortgage loan originator activities such as taking a residential mortgage loan application; or offering or negotiating terms of a residential mortgage loan.

Mortgage loan originators and mortgage loan originator companies are licensed under chapter 454F. Thus, this bill requires mortgage servicers to obtain licensure under that chapter as well.

Impact on the public: Consumers who use the services of their mortgage servicer can be assured that the mortgage loan modification services provided are performed by a licensed company. A mortgage servicer will hold two licenses:

- (1) Mortgage servicer; and
- (2) Mortgage loan originator company if it provides those services for its customers.

Impact on the department and other agencies:  
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: CCA-104.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.