
A BILL FOR AN ACT

RELATING TO MORTGAGE LOAN ORIGINATION.

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

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

4 "§454F- Mortgage servicer companies; loan originators.

5 Employees who perform mortgage loan originator activities for a
6 mortgage servicer company shall be exempt from registration and
7 licensure as a mortgage loan originator; provided that:

8 (1) The employee's actions are part of the employee's
9 duties as an employee of the mortgage servicer
10 company; and

11 (2) The employee only provides mortgage loan originator
12 services with respect to a residential mortgage loan
13 modification.

14 "§454F- Nonprofit organizations; loan originators. (a)

15 Employees who perform mortgage loan originator activities for a
16 nonprofit organization shall be exempt from registration and
17 licensure as a mortgage loan originator; provided that:



- 1 (1) The employee's actions are part of the employee's
2 duties as an employee of the nonprofit organization;
- 3 (2) The employee only provides mortgage loan originator
4 services with respect to residential mortgage loans
5 with terms favorable to the borrower; and
- 6 (3) The nonprofit organization registers with the
7 Nationwide Mortgage Licensing System and Registry.
- 8 (b) The commissioner shall periodically examine the
9 records and activities of nonprofit organizations and shall
10 revoke an organization's registration as a nonprofit
11 organization with the Nationwide Mortgage Licensing System and
12 Registry if the nonprofit organization fails to meet the
13 requirements to be a nonprofit organization.
- 14 (c) In determining whether a residential mortgage loan has
15 terms favorable to the borrower, the commissioner shall examine:
- 16 (1) The interest rate that the home loan would carry;
17 (2) The charges that are imposed on the borrower for
18 origination, application, closing, and other costs;
19 (3) Whether the mortgage includes any predatory
20 characteristics;
21 (4) The borrower's ability to repay the loan; and
22 (5) The term of the mortgage."

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

3 1. By adding four new definitions to be appropriately
4 inserted and to read:

5 "Housing finance agency" means any authority:

6 (1) That helps meet the affordable housing needs of the
7 residents of the State;

8 (2) That is supervised directly or indirectly by the State
9 and includes nonprofit organizations;

10 (3) That is subject to audit and review by the State; and

11 (4) Whose activities make it eligible to be a member of
12 the National Council of State Housing Agencies.

13 "Mortgage servicer company" means a mortgage servicer
14 company licensed under chapter 454M.

15 "Nonprofit organization" means an organization that:

16 (1) Has the status of a tax-exempt organization under
17 section 501(c)(3) of the Internal Revenue Code of
18 1986, as amended;

19 (2) Promotes affordable housing or provides homeownership
20 education or similar services;



1 (3) Conducts its activities in a manner that serves public
2 or charitable purposes, rather than commercial
3 purposes;

4 (4) Receives funding and revenue and charges fees in a
5 manner that does not incentivize it or its employees
6 to act other than in the best interests of its
7 clients;

8 (5) Compensates its employees in a manner that does not
9 incentivize employees to act other than in the best
10 interests of its clients; and

11 (6) Provides, or identifies for the borrower, residential
12 mortgage loans with terms favorable to the borrower
13 and comparable to mortgage loans and housing
14 assistance provided under government housing
15 assistance programs.

16 "Residential mortgage loan modification" means:

17 (1) Modification of existing residential mortgage loans
18 which generally includes a change in interest,
19 principal, or term of loan; or

20 (2) The processing of the approval of loan assumptions.

21 "Residential mortgage loan modification" does not include
22 origination of mortgage loans."



- 1 2. By amending the definition of "sponsor" to read:
- 2 " "Sponsor" means to [create]:
- 3 (1) Create a relationship through the Nationwide Mortgage
4 Licensing System and Registry [~~for the purpose of~~
5 ~~appropriately supervising a mortgage loan originator's~~
6 ~~activities.~~]; and
- 7 (2) Appropriately supervise a mortgage loan originator's
8 activities."

9 SECTION 3. Section 454F-1.5, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) All mortgage loan originators, mortgage loan
12 originator companies, exempt sponsoring mortgage loan originator
13 companies, nonprofit organizations, mortgage servicer companies,
14 and [~~any~~] every other person in this State that originates a
15 residential mortgage loan, unless exempt under section 454F-2,
16 shall register with the Nationwide Mortgage Licensing System and
17 Registry."

18 SECTION 4. Section 454F-1.6, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "~~[+]§454F-1.6[+]~~ **Presumption of control.** An individual is
21 presumed to control a mortgage loan originator company if that
22 individual is a director, general partner, managing [~~director,~~]



1 member, or executive officer of that mortgage loan originator
2 company."

3 SECTION 5. Section 454F-1.7, Hawaii Revised Statutes, is
4 amended to read as follows:

5 " ~~[+]§454F-1.7[+]~~ **Duties of qualified individual and branch**

6 **manager.** (a) A qualified individual shall have the duty to
7 manage and supervise the mortgage loan origination activities of
8 a licensed mortgage loan originator company's principal office
9 and the licensed mortgage loan originators located at or working
10 out of ~~[that location.]~~ the principal office and all company
11 branch offices. A qualified individual shall hold a license as
12 a mortgage loan originator issued pursuant to this chapter.

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

20 (c) A qualified individual for a mortgage loan originator
21 company ~~[and a branch manager for a branch office]~~ shall be
22 responsible for:



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



1 (7) Ensuring that the licenses of all mortgage loan
2 originators who are employed by or are independent
3 contractors of the mortgage loan originator company,
4 and the license of the mortgage loan originator
5 company are current and active, and that all required
6 fees are timely paid to the mortgage loan recovery
7 fund;

8 (8) Establishing and conducting a training program for all
9 licensed mortgage loan originators who are employed by
10 or are independent contractors of the mortgage loan
11 originator company;

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

18 (10) Notifying the commissioner of the termination of the
19 employment or independent contractor relationship of
20 licensed mortgage loan originators who were employed
21 by or were independent contractors of the mortgage
22 loan originator company upon the termination of



1 employment or the independent contractor relationship;
2 and

3 (11) Ensuring that the records, loan documents, and
4 agreements including mortgage loan originator
5 agreements are retained for seven years on paper or in
6 electronic format by the mortgage loan originator
7 company.

8 (d) A branch manager for a branch office shall be
9 responsible for supervising:

10 (1) The maintenance of all records, contracts, and
11 documents of the mortgage loan originator company
12 branch office;

13 (2) All mortgage loan originator agreements and mortgage
14 loan documents and the handling of these documents by
15 the licensed mortgage loan originators or independent
16 contractors located at or working out of the mortgage
17 loan originator company branch office; and

18 (3) All licensed mortgage loan originators who are
19 employed by, or are independent contractors of, the
20 mortgage loan originator company and who are located
21 at or working out of the mortgage loan originator
22 company branch office."



1 SECTION 6. Section 454F-1.8, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[+]§454F-1.8[+]~~ **Sponsorship by mortgage loan**
4 ~~[origination]~~ originator company ~~[ex]~~, exempt sponsoring
5 mortgage loan originator company~~[-]~~, or nonprofit organizations.

6 All mortgage loan originators shall be sponsored by a mortgage
7 loan originator company ~~[ex]~~, by an exempt sponsoring mortgage
8 loan originator company~~[-]~~, or a nonprofit organization. At no
9 time shall a mortgage loan originator be sponsored by more than
10 one Hawaii licensed mortgage loan originator company, exempt
11 sponsoring mortgage loan originator company, or nonprofit
12 organization."

13 SECTION 7. Section 454F-2, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "~~§454F-2~~ **Exemptions.** This chapter shall not apply to the
16 following:

- 17 (1) An exempt registered mortgage loan originator~~[-]~~ when
18 acting for an insured depository institution~~[-, a~~
19 ~~subsidiary of an insured depository institution~~
20 ~~regulated by a federal banking agency,~~] or an
21 institution regulated by the Farm Credit
22 Administration;



- 1 (2) Any individual who offers or negotiates terms of a
2 residential mortgage loan with, or on behalf of, an
3 immediate family member of the individual;
- 4 (3) Any individual who offers or negotiates terms of a
5 residential mortgage loan secured by a dwelling that
6 served as the individual's residence;
- 7 (4) A licensed attorney who negotiates the terms of a
8 residential mortgage loan on behalf of a client as an
9 ancillary matter to the attorney's representation of
10 the client unless the attorney is compensated by a
11 lender, a mortgage loan originator company, or other
12 mortgage loan originator or by an agent of a lender,
13 mortgage loan originator company, or other mortgage
14 loan originator;
- 15 (5) A person or entity that only performs real estate
16 brokerage activities and is licensed or registered by
17 the State unless the person or entity is compensated
18 by a lender, a mortgage loan originator company, or
19 other mortgage loan originator or by an agent of the
20 lender, mortgage loan originator company, or other
21 mortgage loan originator;



- 1 (6) A person or entity solely involved in extensions of
2 credit relating to timeshare plans, as the term is
3 defined in Title 11 United States Code section
4 101(53D) [~~of Title 11, United States Code~~];
- 5 (7) An exempt sponsoring mortgage loan originator company
6 as defined by this chapter except as otherwise
7 provided by this chapter; [~~or~~]
- 8 (8) An insured depository institution[~~[-]~~];
- 9 (9) An institution regulated by the Farm Credit
10 Administration; or
- 11 (10) Individuals who act as loan originators as employees
12 of government agencies or of housing finance
13 agencies."

14 SECTION 8. Section 454F-4.9, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) An application for licensure pursuant to this chapter
17 shall be considered abandoned if an applicant fails to provide
18 evidence of continued efforts to complete the licensing
19 application process for [~~six consecutive months.~~] thirty days.
20 The thirty-day period shall begin on the last day of contact
21 with the division by the applicant. The commissioner may extend
22 this period for good cause. No refund of filing fees shall be



1 provided to an applicant for an abandoned application. The
2 commissioner shall not be required to act on any abandoned
3 application and is not required to retain abandoned applications
4 or supporting documents. The commissioner may withdraw
5 abandoned applications from the Nationwide Mortgage Licensing
6 System and Registry."

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

- 9 "(b) The minimum standards for license renewal for
10 mortgage loan originator companies shall include the following:
- 11 (1) The mortgage loan originator company continues to meet
12 the minimum standards for licensure established
13 pursuant to section 454F-5;
- 14 (2) The mortgage loan originator company's [~~branch manager~~
15 ~~and~~] qualified individual and every branch manager
16 have satisfied the minimum standards for license
17 renewal; and
- 18 (3) The mortgage loan originator company has paid all
19 required fees for renewal of the license."

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



1 "§454F-22 Mortgage loan originator, mortgage loan
2 originator company, and exempt sponsoring mortgage loan
3 originator company fees. (a) A mortgage loan originator shall
4 pay the following fees to obtain and maintain a valid mortgage
5 loan originator license:

- 6 (1) Initial application fee of [~~\$500~~] \$600;
- 7 (2) Annual license renewal fee of [~~\$300~~] \$350;
- 8 (3) Reinstatement fee of \$100;
- 9 (4) Late fee of \$25 per day; and
- 10 (5) Criminal background check fee of \$35, or of an amount
11 determined by the commissioner by rule pursuant to
12 chapter 91.

13 (b) A mortgage loan originator company shall pay the
14 following fees to maintain a valid mortgage loan originator
15 company license or branch license:

- 16 (1) Fees payable for a principal office of a mortgage loan
17 originator company:
 - 18 (A) Initial application fee of \$900;
 - 19 (B) Annual license renewal fee of \$600;
 - 20 (C) Reinstatement fee of \$100;
 - 21 (D) Late fee of \$25 per day; and



1 (E) Criminal background check fee of \$35, or of an
2 amount determined by the commissioner by rule
3 pursuant to chapter 91, for each control person,
4 executive officer, director, general partner, and
5 manager; and

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

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

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

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

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

12 (c) An exempt sponsoring mortgage loan originator company
13 shall pay the following [~~fees~~] fees to maintain a valid
14 registration in the Nationwide Mortgage Licensing System and
15 Registry:

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

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

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

19 (d) A nonprofit organization shall pay the following fees
20 to maintain a valid registration as a nonprofit organization in
21 the Nationwide Mortgage Licensing System and Registry:

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



1 (2) Annual registration renewal fee of \$150; and
 2 (3) Late fee of \$25 per day.
 3 (e) Notwithstanding the fee schedules established by
 4 subsections (a) and (b), a mortgage loan originator who is the
 5 sole proprietor of a mortgage loan originator company shall pay
 6 the following fees to obtain and maintain a valid mortgage loan
 7 originator license:

- 8 (1) Initial application fee of \$ _____ ;
- 9 (2) Reinstatement fee of \$100;
- 10 (3) Late fee of \$25 per day; and
- 11 (4) Criminal background check fee of \$35, or of an amount
 12 determined by the commissioner by rule pursuant to
 13 chapter 91.

14 ~~[(d)]~~ (f) In addition to fees charged by the Nationwide
 15 Mortgage Licensing System and Registry, a licensee shall pay to
 16 the commissioner a fee of ~~[\$50]~~ \$100 for each of the following
 17 amendments to information provided to the Nationwide Mortgage
 18 Licensing System and Registry that require the review of the
 19 commissioner:

- 20 (1) Change of physical ~~[location, including address~~
 21 ~~change]~~ or mailing address for branch office or
 22 principal place of business;



- 1 (2) Addition or deletion of a "d/b/a" assignment;
2 (3) Change of mortgage loan originator's sponsor;
3 (4) Change of qualified individual;
4 ~~(3)~~ (5) Change of branch manager; ~~(e)~~ and
5 ~~(4)~~ (6) Change of mortgage loan originator company's
6 legal name.

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

9 ~~(e)~~ (g) The fees established by this section are
10 nonrefundable and are in addition to any fees established and
11 charged by the Nationwide Mortgage Licensing System and
12 Registry, an approved educational course provider, an approved
13 educational testing provider, a law enforcement agency for
14 fingerprints and background checks, or a credit reporting agency
15 used by the Nationwide Mortgage Licensing System and Registry.

16 ~~(f)~~ (h) The commissioner may establish, by rule pursuant
17 to chapter 91, any other fees or charges necessary for the
18 administration of this chapter."

19 SECTION 11. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 12. This Act shall take effect upon its approval.



Report Title:

Mortgage Loan Originators; Mortgage Loan Originator Companies;
Fees

Description:

Amends the Secure and Fair Enforcement for Mortgage Licensing Act to reflect recent changes to federal law and to adjust fees in consideration of the new regulatory requirements. (SB2763 HD1)

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