

JAN 25 2012

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.

S.B. NO. 2764

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

S.B. NO. 2764

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;

S.B. NO. 2764

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

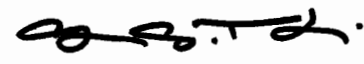
S.B. NO. 2764

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
10
11

INTRODUCED BY: 

BY REQUEST

S.B. NO. 2764

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.