
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- Residential mortgage loan delinquencies and
5 loss mitigation efforts. (a) Mortgage servicers shall make
6 reasonable and good faith efforts consistent with this chapter
7 to engage in appropriate loss mitigation options, including loan
8 modifications, to assist borrowers to avoid foreclosure.
9 Mortgage servicers shall provide timely and appropriate
10 responses to borrower inquiries and complaints regarding
11 available loss mitigation options and ensure that borrowers are
12 not required to submit multiple copies of required documents
13 during consideration for any loss mitigation option. In the
14 event of a delinquency or other act of default on the part of
15 the borrower, or whenever a borrower who is at imminent risk of
16 default contacts the mortgage servicer with respect to a loan
17 modification or other loss mitigation assistance, the mortgage
18 servicer shall:

1 (1) Inform the borrower of the facts concerning the loan,
2 the nature and extent of the delinquency or default,
3 the mortgage servicer's loss mitigation protocols, and
4 the loss mitigation options and services offered by
5 the mortgage servicer in accordance with this chapter;
6 and

7 (2) Pursue loss mitigation alternatives with the borrower,
8 including a loan modification whenever possible, in
9 accordance with this chapter, and, if the borrower
10 replies, negotiate with the borrower, subject to the
11 mortgage servicer's lawful duties and obligations
12 under the mortgage servicing contract, if any, to
13 attempt a resolution or workout of the delinquency or
14 to prevent the borrower's default.

15 (b) Mortgage servicers shall consider a loan modification
16 as an alternative to foreclosure when:

17 (1) The borrower demonstrates that the borrower has
18 experienced a financial hardship, and is either unable
19 to maintain the payment at the current amount required
20 under the mortgage loan or is unable to make up the
21 delinquent payments; and

22 (2) The net present value of the income stream expected of
23 the modified loan is greater than the net present

1 value of the income stream that is expected to be
2 recovered through the disposition of the property
3 through a foreclosure sale.

4 (c) Mortgage servicers that are participating in the Home
5 Affordable Modification Program shall offer loan modifications
6 in compliance with the Home Affordable Modification Program
7 guidance and directives, including using reasonable efforts to
8 remove prohibitions or impediments to the mortgage servicer's
9 authority, and to obtain third party consents and waivers that
10 are required by contract or law in order to effectuate a loan
11 modification under the Home Affordable Modification Program.

12 (d) Unless a longer time is permitted under the guidance
13 or directives implementing the Home Affordable Modification
14 Program, within ten business days of receiving a request from a
15 borrower or authorized representative for one or more loss
16 mitigation options, the mortgage servicer shall transmit a
17 written acknowledgement of the request to the borrower and, if
18 applicable, to the authorized representative. The
19 acknowledgement shall identify with specificity any information
20 needed from the borrower in order for the mortgage servicer to
21 review the borrower's loss mitigation request. The
22 acknowledgement shall also include an explanation of the loss
23 mitigation process, including, as appropriate, the following:

- 1 (1) The information that the borrower may be asked to
2 provide, and third party approvals that may be
3 required, for the mortgage servicer to evaluate and
4 complete the request for a loan modification or other
5 loss mitigation option;
- 6 (2) The average length of time for a decision to be made
7 regarding a loan modification or other loss mitigation
8 option; and
- 9 (3) A notification of the actions the mortgage servicer,
10 lender, or owner of the mortgage may take during the
11 loss mitigation process, such as whether the borrower
12 may continue to receive collection letters or
13 foreclosure notices, whether the foreclosure process
14 will continue, or whether and to what extent collection
15 and foreclosure will be stayed.
- 16 (e) Within thirty days of receiving all required
17 documentation from the borrower and third parties, unless a
18 shorter time is required under applicable state or federal rules
19 or regulations pertaining to mortgage servicing, or under
20 guidance or directives implementing the Home Affordable
21 Modification Program, a mortgage servicer shall complete its
22 evaluation of the borrower's eligibility for a loan modification
23 or other loss mitigation options requested by the borrower and

1 advise the borrower, and if applicable, the borrower's
2 authorized representative, in writing of its determination.
3 Where the mortgage servicer approves the borrower for a loan
4 modification, including a trial modification or other loss
5 mitigation option, the written notice shall provide the borrower
6 with clear and understandable written information explaining the
7 material terms, costs, and risks of the option offered. If the
8 mortgage servicer determines that the borrower cannot be
9 approved for a loan modification or other requested loss
10 mitigation option, the written notice shall state with
11 specificity:

- 12 (1) The reasons for the determination;
13 (2) Procedures, deadlines, and contact information for a
14 person at the mortgage servicer for reconsideration,
15 dispute, or appeal of such a denial; and
16 (3) Any other foreclosure prevention alternatives for
17 which the borrower may be considered.

18 In addition, the written notice shall include the following
19 statement, in boldface type and in print no smaller than the
20 largest print used elsewhere in the main body of the denial:
21 "If you believe your loss mitigation request has been wrongly
22 denied, you may file a complaint with the state division of
23 financial institutions at [insert current division phone number]

1 or [insert current division website address for consumer
2 complaints]".

3 (f) A mortgage servicer shall take reasonable steps to
4 ensure that its staff is aware of programs designed to assist
5 borrowers to avoid foreclosure or resolve delinquency. The
6 mortgage servicer shall make available to homeowners who are at
7 least sixty days delinquent or who they have reason to believe
8 are experiencing a financial hardship and are in imminent risk
9 of default, a list of government approved not-for-profit housing
10 counselors in the homeowner's geographic area as listed on the
11 website of the U.S. Department of Housing and Urban Development
12 which lists HUD-approved housing counseling agencies.

13 (g) A mortgage servicer shall maintain and make available
14 to borrowers and borrowers' authorized representatives current
15 contact information to communicate and negotiate with the
16 mortgage servicer's designated loss mitigation staff who are
17 authorized to discuss and negotiate loss mitigation options.
18 The contact information shall include all toll-free telephone
19 numbers for direct communication with a loss mitigation staff
20 person, fax numbers for receipt of documents, and e-mail
21 addresses.

22 (h) The mortgage servicer shall have a process through
23 which borrowers may bring disagreements to a supervisory level

1 where a separate review of the borrower's eligibility or
2 qualification for a loss mitigation option can be performed. A
3 mortgage servicer shall not require a homeowner to waive legal
4 claims and defenses as a condition of a loan modification,
5 forbearance, or repayment plan.

6 (i) Delay caused by the mortgage servicer shall not be
7 counted in calculating the passage of time where a Home
8 Affordable Modification Program, proprietary, or other loan
9 modification program specifies:

- 10 (1) A time limit for a borrower action or response,
11 including appealing or disputing a denial, or
12 providing documents;
13 (2) A time after which a document is considered stale or
14 too old to use; or
15 (3) A time during which a mortgage servicer is barred from
16 taking certain action adverse to the borrower,
17 including taking steps toward foreclosure, or
18 referring the borrower's account to foreclosure.

19 Examples of delay caused by the mortgage servicer include but
20 are not limited to the mortgage servicer's failure to timely
21 send a communication or request to the borrower, duplicative or
22 piecemeal document requests delaying completion of a file, and
23 failure to identify additional documents needed to complete a

1 borrower's loan modification application. The mortgage servicer
2 shall reasonably extend the applicable period, and promptly
3 inform the borrower in writing of the specific extension period.

4 (j) Nothing in this section shall be construed to prevent
5 a mortgage servicer from offering or accepting alternative loss
6 mitigation options, including other modification programs
7 offered by the mortgage servicer, a short sale, a deed-in-lieu
8 of foreclosure, or forbearance, if the borrower requests such an
9 alternative, is not eligible for or does not qualify for a loan
10 modification under the Home Affordable Modification Program, or
11 rejects the mortgage servicer's loss mitigation proposal.

12 (k) A mortgage servicer shall avoid taking steps to
13 foreclose or to refer a borrower to foreclosure, if the borrower
14 has requested and is being considered for a loss mitigation
15 option, or if the borrower is in a trial or permanent
16 modification and is not more than thirty days in default under
17 the modification agreement.

18 (l) A mortgage servicer shall ensure that the mortgage
19 servicer and its attorneys and agents comply with the
20 requirements of chapter 667.

21 (m) A mortgage servicer shall establish and maintain a
22 system for servicing delinquent loans."

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

3 (1) By adding thirteen new definitions to be appropriately
4 inserted and to read as follows:

5 "Bankruptcy code" refers to title 11 United States Code,
6 as amended.

7 "Business day" means Monday through Friday, excluding state
8 holidays.

9 "C.F.R." means Code of Federal Regulations.

10 "Consumer Financial Protection Bureau" means the agency of
11 the United States government referenced in 12 United States Code
12 chapter 53, subchapter V.

13 "Division of financial institutions" or "division" means
14 the division of financial institutions of the department of
15 commerce and consumer affairs of this State.

16 "Home Affordable Mortgage Program" means the program
17 established by the United States Department of the Treasury
18 pursuant to sections 101 and 109 of the Emergency Economic
19 Stabilization Act of 2008, as section 109 of the Act has been
20 amended by section 7002 of the American Recovery and
21 Reinvestment Act of 2009. The Home Affordable Modification
22 Program is a component of the Making Home Affordable Program,
23 which is also known as the MHA Program.

1 "Loan modification" means a temporary or permanent change
2 to the terms of a borrower's existing mortgage loan agreement,
3 mutually agreed to between a borrower and a lender.

4 "Loss mitigation option" means an alternative to
5 foreclosure, including loan modification, reinstatement,
6 forbearance, deed-in-lieu, and short sale.

7 "Principal office" means the office location where
8 the company's core executive and administrative functions are
9 primarily carried out.

10 "Received" means, in the context of the date of payment,
11 the date that the payment instrument or other means of payment
12 reaches the mortgage servicer, in accordance with 12 CFR section
13 1026.36(c).

14 "Real Estate Settlement Procedures Act" refers to title 12
15 United States Code chapter 27, as amended, and regulations
16 adopted thereunder which are also sometimes known as Regulation
17 X and found at 12 C.F.R. part 1024.

18 "Servicing" means the business activity of a mortgage
19 servicer.

20 "State" means State of Hawaii."

21 (2) By amending the definition of "borrower" to read as
22 follows:

1 "Borrower" means the obligor, maker, cosigner, or
2 guarantor under a mortgage loan agreement. In this chapter, a
3 borrower may also be referred to as a consumer."

4 (3) By amending the definition of "mortgage servicer" to
5 read as follows:

6 "Mortgage servicer" means the person responsible for
7 collecting, receiving, and processing any scheduled periodic
8 payments from a borrower pursuant to the terms of any
9 residential mortgage loan, including amounts for escrow accounts
10 under [~~section 10 of~~] the Real Estate Settlement Procedures Act,
11 [~~12 United States Code section 2609~~] and for making the payments
12 to the owner of the loan or other third parties of principal and
13 interest and such other payments with respect to the amounts
14 received from the borrower as may be required pursuant to the
15 terms of the mortgage servicing loan documents or servicing
16 contract. In the case of a home equity conversion mortgage or
17 reverse mortgage as referenced in this chapter, servicing
18 includes making payments to the borrower."

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

21 "§454M-4 License; fees; renewals; notices; voluntary
22 surrender of licenses[-]; bonds. (a) [An] The commissioner may
23 approve a license or renewal application upon receipt of a

1 complete application, provided that an applicant for licensure
2 shall file an application on a form prescribed by NMLS or by the
3 commissioner and shall pay an application fee of \$675. Each
4 license shall expire on December 31 of each calendar year[-]
5 unless such license is renewed. A [~~license~~] licensee may [~~be~~
6 ~~renewed~~] apply for license renewal by filing a renewal statement
7 on a form prescribed by NMLS or by the commissioner and paying a
8 renewal fee of \$425, at least four weeks prior to December 31.
9 All fees paid pursuant to this section, including fees paid in
10 connection with an application, shall be nonrefundable. No fee
11 paid pursuant to this section shall be prorated if the license
12 is surrendered, revoked, or suspended prior to the expiration of
13 the period for which it was approved.

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

19 (c) To the extent reasonably necessary to participate in
20 NMLS, the commissioner may modify any or all of the requirements
21 of subsections (e) and [~~(f)~~] (i).

22 (d) The commissioner may use NMLS as an agent for
23 requesting information from and distributing information to the

1 United States Department of Justice, any governmental agency, or
2 any other source, as directed by the commissioner.

3 (e) The applicant shall submit any other information that
4 the commissioner may require, including the applicant's:

- 5 (1) Form and place of organization;
- 6 (2) Tax identification number; and
- 7 (3) Proposed method of doing business.

8 The applicant shall disclose whether the applicant or any of its
9 officers, directors, employees, managers, agents, partners, or
10 members have ever been issued or been the subject of an
11 injunction or administrative order pertaining to any aspect of
12 the lending business, have ever been convicted of a misdemeanor
13 involving the lending industry or any aspect of the lending
14 business, or have ever been convicted of any felony.

15 (f) A mortgage servicer license is not transferable or
16 assignable. No licensee may use any name other than its legal name
17 or a fictitious name approved by the commissioner, provided no
18 licensee may use its legal name if the commissioner disapproves of
19 the use of the licensee's legal name.

20 (g) A mortgage servicer licensee may change its name or
21 the address of any of its offices specified on the most recent
22 filing with NMLS if:

- 1 (1) The licensee files the change with NMLS and, in the
2 case of the principal office or a branch office,
3 provides, directly to the commissioner, a bond rider or
4 endorsement, or addendum, as applicable, to any bond on
5 file with the commissioner that reflects the new name
6 or address of the principal office or branch office; and
7 (2) The commissioner approves the change in writing.
8 (h) The mortgage servicer licensee shall file with NMLS or, if
9 the information cannot be filed with NMLS, directly notify the
10 commissioner, in writing, no later than five business days after
11 the licensee has reason to know of the occurrence of any of the
12 following events:
13 (1) Filing for bankruptcy, or the consummation of a
14 corporate restructuring, of the licensee;
15 (2) Filing of a criminal indictment against the licensee or
16 receiving notification of the filing of any criminal
17 felony indictment or felony conviction of any of the
18 licensee's officers, directors, employees, managers,
19 agents, members, partners, or shareholders owning ten
20 per cent or more of the outstanding stock;
21 (3) Receiving notification of the initiation of license
22 denial, cease and desist, suspension or revocation
23 procedures, or other formal or informal regulatory

1 action by any governmental agency against the licensee
2 and the reasons for the action;

3 (4) Receiving notification of the initiation of any action
4 by the Hawaii attorney general or the attorney general
5 of any other state and the reasons for such action;

6 (5) Suspension or termination of the licensee's status as an
7 approved servicer by the Federal National Mortgage
8 Association, Federal Home Loan Mortgage Corporation, or
9 Government National Mortgage Association;

10 (6) Receiving notification that certain servicing rights of
11 the licensee will be rescinded or cancelled, and the
12 reasons provided therefor;

13 (7) Receiving notification of filing for bankruptcy of any
14 of the licensee's officers, directors, members,
15 managers, agents, partners, or shareholders owning ten
16 per cent or more of the outstanding stock of the
17 licensee; or

18 (8) Receiving notification of the initiation of a class action
19 lawsuit on behalf of consumers against the licensee that
20 is related to the operation of the licensed business.

21 ~~(f)~~ (i) A mortgage servicer licensed under this chapter
22 may voluntarily cease business and surrender its license by
23 giving written notice to the commissioner of its intent to

1 surrender its mortgage servicer license. Notice pursuant to
2 this subsection shall be given at least thirty days before the
3 surrender of the license and shall include:

- 4 (1) The date of surrender;
- 5 (2) The name, address, telephone number, facsimile number,
6 and electronic address of a contact individual with
7 knowledge and authority sufficient to communicate with
8 the commissioner regarding all matters relating to the
9 licensee during the period that it was licensed
10 pursuant to this chapter;
- 11 (3) The reason or reasons for surrender;
- 12 (4) The original license issued pursuant to this chapter
13 to the mortgage servicer; and
- 14 (5) If applicable, a copy of all notices to affected
15 borrowers required by the Real Estate Settlement
16 Procedures Act, [~~title 12 United States Code section~~
17 ~~2601 et seq., or by regulations adopted pursuant to~~
18 ~~the Real Estate Settlement Procedures Act,~~] of the
19 assignment, sale, or transfer of the servicing of all
20 relevant loans that the licensee is currently
21 servicing under the license being surrendered.

22 Voluntary surrender of a license shall be effective upon
23 the date of surrender specified on the written notice to the

1 commissioner as required by this subsection; provided that if a
2 mortgage servicer is required to assign, sell, or transfer the
3 servicing of any loans, the voluntary surrender of the mortgage
4 servicer's license shall be effective upon the effective date of
5 the assignment, sale, or transfer of the servicing of all loans.

6 (j) Before a mortgage servicer's license becomes effective,
7 the applicant or licensee shall file with the commissioner a
8 surety bond written by a surety authorized to write such bonds
9 in this State, covering its principal office and any branch
10 office from which it acts as mortgage servicer, in a penal sum of
11 one hundred thousand dollars. No mortgage servicer licensee
12 shall act as a mortgage servicer in this State without maintaining
13 the surety bond required by this section.

14 (1) The surety bond shall be:

15 (A) In a form approved by the attorney general of this
16 State; and

17 (B) Conditioned upon the mortgage servicer licensee
18 faithfully performing any and all written
19 agreements or commitments with or for the benefit
20 of borrowers and mortgagees, truly and
21 faithfully accounting for all funds received
22 from a borrower or mortgagee in the person's
23 capacity as a mortgage servicer, and conducting

1 the mortgage business consistent with the
2 provisions of this chapter to perform any written
3 agreements or commitments.

4 The commissioner, or any person claiming to have
5 sustained damage by reason of the failure of the
6 mortgage servicer to comply with its bond, or by the
7 wrongful conversion of funds paid by a borrower to
8 the mortgage servicer, may bring an action on the bond
9 to recover the damage therefrom. The commissioner may
10 deposit with a court of competent jurisdiction all or
11 any part of the sum of the bond. The proceeds of the
12 bond, even if mixed with other assets of the principal,
13 shall be deemed by operation of law to be held in
14 trust for the benefit of claimants against the
15 principal in the event of bankruptcy of the principal
16 and shall be immune from attachment by creditors and
17 judgment creditors. The surety bond shall run
18 concurrently with the period of the license for the
19 principal office of the mortgage servicer and the
20 aggregate liability under the bond shall not exceed the
21 penal sum of the bond. The principal shall notify the
22 commissioner of the commencement of an action on the
23 bond. When an action is commenced on a principal's

1 bond, the commissioner may require the filing of a new
2 bond and immediately on recovery on any action on the
3 bond, the principal shall file a new bond.

4 (2) A surety shall have the right to cancel the surety bond
5 required by this section at any time by a written
6 notice to the principal stating the date
7 cancellation shall take effect. The notice shall be
8 sent by certified mail to the principal at least thirty
9 days prior to the date of cancellation. A surety bond
10 shall not be canceled unless the surety notifies the
11 commissioner, in writing, not less than thirty days
12 prior to the effective date of cancellation. After
13 receipt of the notification from the surety, the
14 commissioner shall give written notice to the principal
15 of the date the cancellation shall take effect. The
16 commissioner shall automatically suspend the license of
17 a mortgage servicer on that date. No automatic
18 suspension or inactivation shall occur if, prior to the
19 date that the bond cancellation shall take effect:

20 (A) The principal submits a letter of reinstatement of
21 the bond, or a new bond; or

1 (B) The mortgage servicer licensee has ceased business
2 in this State and has surrendered all licenses in
3 accordance with this chapter.

4 Automatic suspension by the commissioner, and
5 subsequent orders and proceedings if any, shall be
6 conducted pursuant to section 454M-7.

7 (3) If the commissioner finds that the financial
8 condition of a mortgage servicer so requires, as
9 evidenced by the reduction of tangible net worth,
10 financial losses, or potential losses as a result of a
11 violation of law or rule, the commissioner may require one
12 or more additional bonds meeting the standards set forth
13 in this section. The licensee shall file any additional
14 bonds no later than ten days after receipt of the
15 commissioner's written notice of this requirement. A
16 mortgage servicer or mortgage lender licensee shall
17 file, as the commissioner may require, any bond
18 rider or endorsement or addendum, as applicable, to
19 any bond on file with the commissioner to reflect any
20 changes necessary to maintain the surety bond required
21 by this section.

1 (4) In this section, "principal" means, in the context of a
2 surety bond requirement, the primary party who will
3 perform the contractual obligation.

4 (5) The surety bond requirements of this section shall be
5 effective on the approval date of this Act; provided
6 that with respect to licensees in operation on the
7 approval date of this Act, the surety bond requirement
8 shall take effect on the date of license renewal but
9 not later than December 31, 2015."

10 SECTION 4. Section 454M-5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§454M-5 ~~[Duties]~~ Additional duties of a mortgage
13 servicer; ~~[disclosures;]~~ good faith[-] and fair dealing;
14 disclosures; payments, accounting, and records; assignment of
15 servicing rights. (a) A mortgage servicer licensed or acting
16 under this chapter, ~~[in]~~ has a duty of good faith and fair
17 dealing in its communications, transactions, and course of
18 dealings with each borrower in connection with the servicing of
19 the borrower's mortgage loan.

20 (b) In addition to any other duties imposed by law, a
21 mortgage servicer shall:

22 (1) Safeguard and account for any money handled for the
23 borrower;

- 1 (2) Follow reasonable and lawful instructions from the
2 borrower consistent with the underlying note and
3 mortgage;
- 4 [~~2~~] (3) Act with reasonable skill, care, timeliness,
5 promptness, and diligence;
- 6 [~~3~~] (4) Disclose to the commissioner in the servicer's
7 license application and each yearly renewal a
8 complete, current schedule of the ranges of costs and
9 fees it charges borrowers for its servicing-related
10 activities;
- 11 [~~4~~] (5) File a report with each yearly renewal statement
12 in a form and format acceptable to the [~~director~~]
13 commissioner detailing the servicer's activities in
14 this State, including:
- 15 (A) The number of mortgage loans the servicer is
16 servicing;
- 17 (B) The type and characteristics of loans serviced in
18 this State;
- 19 (C) The number of serviced loans in default, along
20 with a breakdown of thirty-, sixty-, and ninety-
21 day delinquencies;

- 1 (D) Information on loss mitigation activities,
2 including details on workout arrangements
3 undertaken;
- 4 (E) Information on foreclosures commenced in this
5 State;
- 6 (F) The affiliations of the mortgage servicer,
7 including any lenders or mortgagees for which the
8 mortgage servicer provides service, any
9 subsidiary or parent entities of the mortgage
10 servicer, and a description of the authority held
11 by the mortgage servicer through its
12 affiliations; and
- 13 (G) Any other information that the commissioner may
14 require.
- 15 [~~5~~] (6) Maintain an office in the State that is staffed by
16 at least one agent or employee for the purposes of
17 addressing consumer inquiries or complaints and
18 accepting service of process; provided that the
19 mortgage servicer's business constitutes at least a
20 twenty per cent share of the portion of the total
21 mortgage loan service market in the State that was
22 serviced by mortgage servicers licensed under this
23 chapter within the previous calendar year; and

1 provided further that nothing in this section shall
2 prohibit a mortgagee as defined by section 667-1 or a
3 mortgage servicer from contracting with a licensee
4 that maintains an office in this State in conformity
5 with this section for the purposes of addressing
6 consumer inquiries or complaints and accepting service
7 of process.

8 (c) A mortgage servicer shall comply with the following
9 requirements concerning handling and processing of mortgage
10 payments:

11 (1) Except as provided in subsection (c) (4), all payments
12 received by a mortgage servicer on a mortgage loan at
13 the address where the borrower has been instructed in
14 writing to make payments shall be accepted and
15 credited, or treated as credited, on the business day
16 received, to the extent that the borrower has provided
17 sufficient information to credit the account. For all
18 mortgage loans originated after July 1, 2015, except
19 where inconsistent with federal law or regulation,
20 payments shall be credited to the principal and
21 interest due on the home loan before crediting the
22 payments to taxes, insurance, or fees;

- 1 (2) Methods of payment and payment instruments shall be
2 reasonable;
- 3 (3) If a mortgage servicer specifies in writing
4 requirements for the borrower to follow in making
5 payments, but accepts a payment that does not conform
6 to the requirements, the mortgage servicer shall
7 credit the payment as soon as commercially
8 practicable, but in no event later than three business
9 days after receipt;
- 10 (4) Late payments of principal and interest must be
11 credited before any late charge is collected; and
- 12 (5) If the mortgage servicer receives any payment on a
13 mortgage loan and suspenses it, does not credit it, or
14 does not treat it in accordance with this section, the
15 mortgage servicer shall, within ten days of receipt,
16 send the borrower notice by mail at the borrower's
17 last known address indicating the reason the payment
18 was suspended or was not credited or treated as
19 credited to the account, and specifying any actions by
20 the borrower necessary to make the loan current.
- 21 (d) A mortgage servicer shall comply with the following
22 requirements concerning escrows for the payment of taxes and
23 insurance:

- 1 (1) Any mortgage servicer who receives funds from a borrower
2 to be held in escrow for payment of taxes and insurance
3 premiums shall pay the taxes and insurance premiums of
4 the borrower to the appropriate taxing authority and
5 insurance company in the amount required and at the
6 time the taxes and insurance premiums are due, in
7 accordance with the requirements of the Real Estate
8 Settlement Procedures, including 12 C.F.R. section
9 1024.17, and shall be liable to the borrower as
10 provided therein;
- 11 (2) If the amount held in the escrow account as of the date
12 the taxes and insurance premiums are due is insufficient
13 to pay the taxes and insurance premiums, the mortgage
14 servicer shall pay the taxes and insurance premiums from
15 its own funds provided that the borrower has paid to
16 the mortgage servicer the amounts required to be paid
17 into the escrow account, as determined by the mortgage
18 servicer, for all amounts scheduled to be paid to the
19 mortgage servicer prior to the date the taxes and
20 insurance premiums are due; and
- 21 (3) Where an escrow account has been established and a
22 mortgage servicer advances funds in paying a
23 disbursement, which is not the result of a borrower's

1 payment default under the underlying mortgage
2 document, the mortgage servicer shall conduct an
3 escrow account analysis to determine the reasons for
4 and extent of the deficiency and shall provide a
5 written explanation to the borrower before seeking
6 repayment of the funds from the borrower. The
7 mortgage servicer shall then give the borrower the
8 option of paying the shortage over a period of not
9 less than one year. The mortgage servicer shall not
10 charge or collect interest on any shortage during the
11 one-year period.

12 Any mortgage servicer who violates any provision of this subsection
13 shall be liable to the borrower for any penalties, interest, or
14 other charges levied by the taxing authority or insurance company
15 as a result of any violation; any actual damages suffered by the
16 borrower as a result of such violation, including, but not limited
17 to, any amount which would have been paid by an insurer for a
18 casualty or liability claim had the insurance policy not been
19 cancelled for nonpayment by the mortgage servicer; and, in the
20 case of any successful action to enforce the foregoing liability,
21 the costs of the action together with reasonable attorney's fees as
22 determined by the court.

1 (e) A mortgage servicer shall comply with the following
2 requirements concerning statements of account:

3 (1) At least once annually, within thirty days of the end
4 of the computation year, a mortgage servicer shall
5 deliver to the borrower a plain language statement of
6 the borrower's account showing the unpaid principal
7 balance of the mortgage loan at the end of the
8 immediately preceding twelve-month period, the
9 interest paid during that period, and the amounts
10 deposited into escrow and disbursed from escrow during
11 the period. The annual escrow statement may be
12 provided separately from the annual statement showing
13 the unpaid principal and interest paid. The format
14 and content of the annual escrow statement shall
15 comply with the requirements of the Real Estate
16 Settlement Procedures Act, including 12 C.F.R. section
17 1024.17;

18 (2) A mortgage servicer shall promptly provide a borrower
19 with an accurate accounting in plain English of the
20 debt owed when requested by the borrower or borrower's
21 authorized representative. Within thirty days of
22 receipt of a request from the borrower or the
23 borrower's authorized representative, a mortgage

1 servicer shall deliver to the borrower a payment
2 history for the last thirty-six months (unless a
3 different period is requested) of the borrower's
4 account showing the date and amount of all payments
5 made or credited to the account and the total unpaid
6 balance. The mortgage servicer shall have sixty days
7 to deliver a payment history where the request is for
8 a period longer than the last thirty-six months;

9 (3) A fee shall not be charged to the borrower for the
10 annual escrow statement or for one payment history
11 furnished to a borrower in a twelve-month period; and

12 (4) A shortage, surplus, or deficiency in the escrow
13 account shall be handled in accordance with the
14 provisions of the Real Estate Settlement Procedures
15 Act, including 12 C.F.R. section 1024.17.

16 Alternatively, with the consent of the borrower, an
17 excess balance may be applied to the principal
18 balance.

19 (f) Except where inconsistent with the automatic stay
20 provisions of the Bankruptcy Code with respect to a borrower in
21 a pending bankruptcy proceeding, a mortgage servicer shall send
22 a payment reminder notice to a borrower at the borrower's last
23 known address no later than seventeen days after the payment

1 becomes due and remains unpaid, provided that a mortgage
2 servicer is not required to send a separate payment reminder
3 notice for each consecutive month in which the mortgage loan
4 continues to remain unpaid.

5 (g) A mortgage servicer shall provide a clear,
6 understandable, and accurate statement of the total amount that
7 is required to pay off the mortgage loan as of a specified date,
8 within a reasonable time, but in any event no more than five
9 business days after receipt of a request from the borrower or
10 borrower's authorized representative. No borrower shall be
11 charged a fee for being informed or receiving a payoff statement
12 or for being provided with a release upon full prepayment,
13 provided that a mortgage servicer may charge a reasonable fee
14 for providing a payoff statement after five or more requests in
15 any calendar year.

16 (h) A mortgage servicer shall comply with the following
17 requirements concerning handling consumer complaints and
18 inquiries:

19 (1) A mortgage servicer shall follow the requirements of
20 the Real Estate Settlement Procedures Act, including
21 requests for information and error resolution
22 procedures under 12 C.F.R. sections 1024.35 and
23 1024.36;

1 (2) In addition to the requirements of the Real Estate
2 Settlement Procedures Act, a mortgage servicer shall
3 establish and maintain a system to respond to and
4 resolve borrower inquiries and complaints in a prompt
5 and appropriate manner;

6 (3) Within ten business days of receiving a request in
7 writing from a borrower or the borrower's authorized
8 representative, a mortgage servicer shall provide the
9 borrower with the name, address, phone number or email
10 address, if available, and other relevant contact
11 information for the owner or assignee of the mortgage
12 loan; and

13 (4) In addition to the information required to be
14 disclosed under this section, a mortgage servicer may,
15 at its option, provide any other information regarding
16 the servicing of the loan that it believes would be
17 helpful to a borrower, provided that any additional
18 information does not contradict or obscure the
19 required disclosures.

20 (i) A mortgage servicer shall comply with the following
21 requirements concerning fees:

22 (1) A mortgage servicer shall maintain and keep current a
23 schedule of standard or common fees that it charges

1 borrowers for its servicing-related activities, such
2 as nonsufficient fund fees. The schedule shall
3 identify each fee, provide a plain English explanation
4 of the fee, and state the amount of the fee or range
5 of amounts. If there is no standard fee, the schedule
6 shall explain how the fee is calculated or determined.
7 A mortgage servicer shall make its schedule available
8 on its website and to the borrower or the borrower's
9 authorized representative upon request;

10 (2) A mortgage servicer may only collect a fee if the fee
11 is for services actually rendered and one of the
12 following conditions is met:

13 (A) The fee is clearly and conspicuously disclosed by
14 the loan instruments and not prohibited by law;

15 (B) The fee is expressly permitted by law and not
16 prohibited by the loan instruments; or

17 (C) The fee is not prohibited by law or the loan
18 instruments and is a reasonable fee for a
19 specific service requested by the borrower that
20 is assessed only after clear and conspicuous
21 disclosure of the fee is provided to the borrower
22 and the borrower expressly consents to pay the
23 fee in exchange for the services.

- 1 (3) In addition to the limitations in subsection (i) (2),
2 attorneys fees charged in connection with a
3 foreclosure action shall not exceed reasonable and
4 customary fees for such work. If a foreclosure action
5 or proceeding is terminated prior to the public sale,
6 because of a loss mitigation option, a reinstatement,
7 or payment in full, the borrower shall only be liable
8 for reasonable and customary fees for work actually
9 performed; and
- 10 (4) A mortgage servicer shall not impose any late fee or
11 delinquency charge when the only delinquency is
12 attributable to late fees or delinquency charges
13 assessed on an earlier payment, and the payment is
14 otherwise a full payment for the applicable period and
15 is paid on its due date or within any applicable grace
16 period. Late charges shall not be (A) based on an
17 amount greater than the past due amount; (B) collected
18 from the escrow account or from escrow surplus without
19 the approval of the borrower; or (C) deducted from any
20 regular payment.
- 21 (j) Each mortgage servicer licensee shall maintain adequate
22 records of each residential mortgage loan transaction at the
23 office named in the mortgage servicer license.

1 (k) Upon assignment of servicing rights on a residential
2 mortgage loan, the mortgage servicer shall disclose to the
3 borrower:

4 (1) Any notice required by the Real Estate Settlement
5 Procedures Act, including 12 C.F.R. section 1024.33,
6 within the time periods prescribed therein; and

7 (2) A schedule of the ranges and categories of its costs
8 and fees for its servicing-related activities, which
9 shall comply with state and federal law and, if such
10 disclosure is made by a mortgage servicer licensee,
11 shall not exceed those reported to the commissioner in
12 accordance with this chapter.

13 [~~b~~] (1) At the time a servicer accepts assignment of
14 servicing rights for a mortgage loan, the servicer shall
15 disclose to the borrower all of the following:

16 (1) Any notice required by the Real Estate Settlement
17 Procedures Act [~~, 12 United States Code section 2601 et~~
18 ~~seq., or by regulations promulgated thereunder~~];

19 (2) A schedule of the ranges and categories of its costs
20 and fees for its servicing-related activities, which
21 shall comply with this chapter and which shall not
22 exceed those reported to the commissioner; and

1 (3) A notice in a form and content acceptable to the
2 commissioner that the servicer is licensed by the
3 commissioner and that complaints about the servicer
4 may be submitted to the commissioner.

5 ~~[(c) In the event of a delinquency or other act of default
6 on the part of the borrower, the servicer shall act in good
7 faith to inform the borrower of the facts concerning the loan
8 and the nature and extent of the delinquency or default, and, if
9 the borrower replies, shall negotiate with the borrower, subject
10 to the servicer's duties and obligations under the mortgage
11 servicing contract, if any, to attempt a resolution or workout
12 relating to the delinquency.]~~

13 (m) Where this chapter requires compliance with the Real
14 Estate Settlement Procedures Act, that requirement applies to
15 any person subject to this chapter, whether or not the Real
16 Estate Settlement Procedures Act applies to that person or
17 transaction."

18 SECTION 5. Section 454M-6, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§454M-6 Prohibited activities.** (a) It shall be
21 [unlawful] a violation of this chapter for any mortgage servicer
22 in the course of any mortgage loan transaction[+], or in
23 connection with any mortgage servicing business, to:

- 1 (1) ~~[To misrepresent]~~ Misrepresent or conceal material
2 facts, to make false promises, or ~~[to]~~ pursue a course
3 of misrepresentation through its agents or otherwise;
- 4 (2) ~~[To engage]~~ Engage in any transaction, practice, or
5 course of business that is not in good faith, does not
6 constitute fair dealing, or that constitutes a fraud
7 upon any person, in connection with the servicing,
8 purchase, or sale of any mortgage loan;
- 9 ~~[(3) To fail to comply with the mortgage loan servicing~~
10 ~~transfer, escrow account administration, or borrower~~
11 ~~inquiry response requirements imposed by sections 6~~
12 ~~and 10 of the Real Estate Settlement Procedures Act,~~
13 ~~12 United States Code sections 2605 and 2609, and~~
14 ~~regulations adopted thereunder by the Secretary of~~
15 ~~Housing and Urban Development, or~~
- 16 ~~(4) To fail to comply with applicable federal laws and~~
17 ~~regulations related to mortgage servicing.]~~
- 18 (3) Obtain property by fraud or misrepresentation;
- 19 (4) Misapply residential mortgage loan payments;
- 20 (5) Misapply payments to escrow accounts;
- 21 (6) Require any amount of funds to be remitted by means more
22 costly to the borrower than a bank or certified check or

- 1 attorney's check from an attorney's account to be paid
2 by the borrower;
- 3 (7) Fail to timely pay taxes or insurance premiums of the
4 borrower, if and as required by this chapter;
- 5 (8) Fail to follow procedures concerning escrows for the
6 payment of taxes and insurance as required by this
7 chapter;
- 8 (9) Place hazard, homeowner's, or flood insurance on the
9 mortgaged property when the mortgage servicer knows or
10 has reason to know that the borrower has an effective
11 policy for such insurance;
- 12 (10) Fail to provide written notice to a borrower upon taking
13 action to place hazard, homeowner's, or flood insurance
14 on the mortgaged property, including a clear and
15 conspicuous statement of the procedures by which the
16 borrower may demonstrate that the borrower has the
17 required insurance coverage and by which the mortgage
18 servicer shall terminate the insurance coverage placed
19 by it and refund or cancel any insurance premiums and
20 related fees paid by or charged to the borrower;
- 21 (11) Place hazard, homeowner's, or flood insurance on a
22 mortgaged property, or require a borrower to obtain or

- 1 maintain such insurance, in excess of the replacement
2 cost of the improvements;
- 3 (12) Fail to provide to the borrower a refund of unearned
4 premiums paid by a borrower or charged to the
5 borrower for hazard, homeowner's, or flood insurance
6 placed by a mortgagee or the mortgage servicer if the
7 borrower provides reasonable proof that the borrower has
8 obtained coverage such that the forced placement
9 insurance is no longer necessary and the property is
10 insured. If the borrower provides reasonable proof
11 that no lapse in coverage occurred such that the
12 forced placement was not necessary, the mortgage
13 servicer shall promptly refund the entire premium;
- 14 (13) Collect private mortgage insurance beyond the date for
15 which private mortgage insurance is required;
- 16 (14) Collect, charge, attempt to collect or charge, or use or
17 propose any agreement purporting to collect or charge,
18 any fee not in compliance with, or prohibited by, this
19 chapter;
- 20 (15) Fail to provide a timely and accurate statement of
21 account, as required by this chapter;
- 22 (16) Fail to handle a consumer complaint or inquiry in
23 accordance with this chapter;

- 1 (17) Provide inaccurate information to a credit bureau,
2 thereby harming a borrower's creditworthiness;
- 3 (18) Fail to report both the favorable and unfavorable
4 payment history of the borrower to a nationally
5 recognized consumer credit bureau at least annually if
6 the mortgage servicer regularly reports information to a
7 credit bureau;
- 8 (19) Fail to provide or submit a timely, complete, and
9 accurate notice, acknowledgment, statement, information,
10 explanation, reminder, communication, or other
11 information, to any person, as required by this chapter;
- 12 (20) Fail to comply with loss mitigation requirements of this
13 chapter;
- 14 (21) Fail to offer loan modifications in compliance with the
15 Home Affordable Modification Program guidelines or
16 directives, if the mortgage servicer is participating in
17 the Home Affordable Modification Program;
- 18 (22) Fail to comply with the requirements of chapter 667, and
19 ensure that the mortgage servicer's attorneys and agents
20 comply with chapter 667;
- 21 (23) Refuse to communicate with an authorized representative of
22 the borrower who provides a written authorization
23 signed by the borrower, provided the mortgage servicer

- 1 may adopt procedures reasonably related to verifying
2 that the representative is in fact authorized to act
3 on behalf of the borrower;
- 4 (24) Fail to provide a timely payoff statement as required
5 by this chapter;
- 6 (25) Fail to issue a release of mortgage in accordance with
7 section 506-8;
- 8 (26) Conduct any business for which this chapter requires a
9 license without holding a valid license as required under
10 this chapter, or assist or aid and abet any person in the
11 conduct of business without a valid license as required
12 under this chapter;
- 13 (27) Engage in the business of mortgage servicing without
14 complying with bonding requirements of this chapter;
- 15 (28) Transfer or assign its mortgage servicer license;
- 16 (29) Change its name or office address without complying with
17 the requirements of this chapter;
- 18 (30) Fail to maintain adequate records of each residential
19 mortgage loan transaction at the office named in the
20 mortgage servicer license; or
- 21 (31) Make any false statement or omission of a material
22 fact, in connection with any information or reports
23 filed with a governmental agency or NMLS, or in

1 connection with any investigation conducted by the
2 commissioner or another governmental agency.

3 (b) It shall be unlawful and a violation of this chapter
4 for any mortgage servicer in the course of any mortgage loan
5 transaction to fail to comply with any:

6 (1) Applicable federal law or regulation related to
7 mortgage servicing, including but not limited to:

8 (A) The Real Estate Settlement Procedures Act,
9 including the mortgage loan servicing transfer,
10 escrow account administration, and borrower
11 request for information and error resolution
12 requirements;

13 (B) The Truth-in-Lending Act, 15 U.S.C. sections 1601
14 through 1667f, as amended, and Regulation Z
15 adopted thereunder, 12 C.F.R. part 226, as
16 amended; or

17 (C) Rules and regulations issued or administered by
18 the Consumer Financial Protection Bureau, and
19 interpretations of such rules by the Consumer
20 Financial Protection Bureau through interpretive
21 rules, bulletins, statements of policy, and
22 statements of guidance;

- 1 (2) Agreement with a governmental entity, agency, agent,
2 or regulator, or state attorney general that applies
3 to the mortgage servicer, including but not limited
4 to:
- 5 (A) A Servicer Participation Agreement or other
6 agreement to participate in the Home Affordable
7 Modification Program or other Making Home
8 Affordable program;
- 9 (B) Home Affordable Modification Program rules
10 including guidance provided by Making Home
11 Affordable program handbooks, and supplemental
12 directives; or
- 13 (C) The National Mortgage Settlement made in 2012 by
14 the federal government and forty-nine states,
15 with the five largest mortgage servicers in the
16 United States, to address mortgage servicing,
17 foreclosure, and bankruptcy abuses;
- 18 (3) Order of a court or government regulator that applies
19 to the mortgage servicer;
- 20 (4) Provision of this chapter or any rule promulgated
21 pursuant to this chapter; or
- 22 (5) Federal or state law, rule, or regulation.

1 ~~[(b)]~~ (c) It shall be ~~[unlawful]~~ a violation of this chapter
2 for any mortgage servicer to provide any mortgage loan
3 modifications or other services that would require licensing
4 pursuant to chapter 454F, unless the mortgage servicer is
5 licensed under chapter 454F.

6 (d) Notwithstanding other provisions of this chapter, a
7 mortgage servicer shall not be in violation of this chapter if
8 performance of a requirement under this chapter would constitute
9 a violation of federal law, rules, or regulations."

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

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

13
14 INTRODUCED BY: _____



BY REQUEST

JAN 26 2015

H.B. NO. 924

Report Title:

Mortgage Servicers

Description:

Clarifies mortgage servicer requirements under chapter 454M, Hawaii Revised Statutes, including licensing requirements, crediting of payments, escrows for payment of taxes and insurance, payoff statements, delinquencies and loss mitigation efforts, borrower complaints, fee disclosures, record maintenance, assignment of servicing rights, and prohibited activities. Establishes bonding requirements.

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: To enhance and reinforce the mortgage servicer standards of chapter 454M (the chapter), Hawaii Revised Statutes (HRS), in the interest of consumer protection, by:

- (1) Adding a new section to require mortgage servicers to make reasonable and good faith efforts to engage in appropriate loss mitigation options, including loan modifications, to avoid foreclosure. Provides guidance as to when a servicer should consider a loan modification as an alternative to foreclosure. If a borrower does not qualify for a loss mitigation option, the mortgage servicer must inform the borrower of the reasons for the denial and provide a procedure for supervisory level review. If a borrower is being considered for a loss mitigation option or is not more than thirty days in default under a loan modification agreement, the mortgage servicer shall avoid taking steps to foreclose or referring a borrower to foreclosure. The servicer must establish and maintain a system for servicing delinquent loans. As the chapter currently lacks provisions addressing loss mitigation, this section will promote loss mitigation workouts between homeowners and servicers as an alternative to foreclosure.
- (2) Amending section 454M-4 to:
 - (a) Clarify that the commissioner may approve a license or renewal application on a complete application, and that fees paid in connection with

- applications are not refundable. Licensees fees are not prorated if the license is surrendered, revoked, or suspended;
- (b) Clearly state that mortgage servicer licenses are not transferable or assignable;
 - (c) Provide a procedure for a licensee to change its name or office address;
 - (d) Require a licensee to file notice with NMLS or the commissioner, as appropriate, promptly upon knowledge of events such as the licensee's bankruptcy filing or corporate restructuring, bankruptcy filing of key licensee personnel or large shareholders, a criminal action involving the licensee or key personnel, state, regulatory, or government sponsored entity action against the licensee, or a class action by consumers against the licensee;
 - (e) Require a surety bond for the benefit of borrowers and mortgagees. The distribution of bond funds shall be through court order. (The bond requirement has a delayed effective date for licensees in operation on the approval date of this Act);
- (3) Amending section 454M-5 to expand mortgage servicer duties to require a mortgage servicer to:
- (a) Exercise good faith and fair dealing in its communications, transactions, and dealings with borrowers;
 - (b) Follow reasonable instructions from the borrower consistent with the note and mortgage;

- (c) Credit payments by borrowers as instructed, and as the parties agreed in the mortgage, unless inconsistent with federal laws or regulations. Mortgage payments shall be credited to principal and interest, before taxes, interest, or fees. Fees may include late fees. If a mortgage servicer company does not credit a payment from a borrower, it shall inform the borrower of the reason the payment was not credited;
- (d) Calculate the escrow amount required from the borrower for payments of taxes and insurance. If the servicer collected insufficient funds, it shall advance payments for taxes and insurance from its own funds if the borrower has paid the amounts for the escrow account required by the servicer;
- (e) Provide a statement of account to the borrower at least annually showing the unpaid principal balance of the mortgage loan, the interest paid, and the amounts deposited to, and disbursed from, the escrow account. The mortgage servicer may not assess a fee for one statement of account. A mortgage servicer shall handle a shortage, surplus, or deficiency in the escrow account in accordance with the provisions of the federal Real Estate Settlement Procedures Act (RESPA). Alternatively, with borrower consent, the excess may be applied to the principal balance;
- (f) Send a late payment reminder notice to the last known address of a borrower, unless inconsistent with bankruptcy laws. The mortgage servicer may send just one notice while the payment is late for consecutive months;

- (g) Provide a payoff statement within five business days of a request from the borrower or borrower's authorized representative. The mortgage servicer may charge a reasonable fee for the payoff statement after five or more requests in a calendar year;
 - (h) Follow RESPA requirements including requests for information and error resolution procedures. A mortgage servicer shall establish and maintain a system to appropriately respond to borrower's complaints or inquiries. Within ten days of request, the mortgage servicer shall provide the borrower with contact information for the owner or assignee of the mortgage loan;
 - (i) Maintain a current schedule of standard or common fees for servicing related activities. Attorney's fees are limited in connection with a foreclosure action. Mortgage servicers are prohibited from charging a late fee on the non-payment of late fees;
 - (j) Maintain records and to make the records available to the commissioner upon request; and
 - (k) Provide notice to the borrower that complies with 12 CFR section 1024.33, and a schedule of fees, when servicing rights are assigned to a new mortgage servicer.
- (4) Amending section 454M-6 to clarify that prohibited activities and chapter violations include:
- (a) Obtaining property by fraud or misrepresentation;

- (b) Misapplying residential mortgage loan payments;
- (c) Misapplying payments to escrow accounts;
- (d) Requiring any amount of funds to be remitted by means more costly to the borrower than a bank or certified check or attorney's check from an attorney's account to be paid by the borrower;
- (e) Failing to timely pay taxes or insurance premiums of the borrower, if and as required by this chapter;
- (f) Failing to follow procedures concerning escrows for the payment of taxes and insurance as required by this chapter;
- (g) Placing hazard, homeowner's, or flood insurance on the mortgaged property when the mortgage servicer knows or has reason to know that the borrower has an effective policy for such insurance;
- (h) Failing to provide written notice to a borrower upon taking action to place hazard, homeowner's, or flood insurance on the mortgaged property;
- (i) Placing hazard, homeowner's, or flood insurance on a mortgaged property, or require a borrower to obtain or maintain such insurance, in excess of the replacement cost of the improvements;
- (j) Failing to provide to the borrower a refund of unearned premiums paid by a borrower or charged to the borrower for hazard, homeowner's, or flood insurance if the borrower provides reasonable proof that the borrower has

- obtained coverage such that the forced placement insurance is no longer necessary and the property is insured;
- (k) Collecting private mortgage insurance beyond the date for which private mortgage insurance is required;
 - (l) Collecting, charging, attempting to collect or charge, or using or proposing any agreement purporting to collect or charge, any fee prohibited by chapter 454M;
 - (m) Failing to provide a timely and accurate statement of account, as required by this chapter;
 - (n) Failing to handle a consumer complaint or inquiry in accordance with this chapter;
 - (o) Providing inaccurate information to a credit bureau;
 - (p) Failing to report both the favorable and unfavorable payment history of the borrower to a nationally recognized consumer credit bureau at least annually;
 - (q) Failing to provide or submit a timely, complete, and accurate notice, acknowledgment, statement, information, explanation, reminder, communication, or other information, to any person, as required by this chapter;
 - (r) Failing to comply with loss mitigation requirements of this chapter;
 - (s) Failing to offer loan modifications in compliance with the Home Affordable Mortgage Program guidance or directives, if the mortgage servicer is participating in the Home Affordable Mortgage Program;

- (t) Failing to comply with the requirements of chapter 667, and to ensure that the mortgage servicer's attorneys and agents comply with chapter 667;
- (u) Refusing to communicate with an authorized representative of the borrower who provides a written authorization signed by the borrower;
- (v) Failing to provide a timely payoff statement as required by chapter 454M;
- (w) Failing to issue a release of mortgage in accordance with section 506-8;
- (x) Conducting any business, or assisting or abetting in any business, for which chapter 454M requires a license without holding a valid license as required under that chapter;
- (y) Engaging in the business of mortgage servicing without complying with the bonding requirements of this chapter;
- (z) Transferring or assigning its mortgage servicer license;
- (aa) Changing its name or office address without complying with the requirements of this chapter;
- (bb) Failing to maintain adequate records of each residential mortgage loan transaction at the office named in the mortgage servicer license;
- (cc) Making any false statement or making any omission of a material fact in connection with any information or reports filed with a governmental agency or NMLS or in connection with any investigation conducted by the commissioner or another governmental agency;

- (dd) Failing to comply with any agreement with a governmental agency, entity, agent, or regulator or state attorney general; or
- (ee) Violating any federal or State law, rule, regulation, or court order, including chapter 454M and rules adopted thereunder.
- (5) Amending section 454M-1, by adding new definitions for:
 - (a) "Bankruptcy code" to reference the federal bankruptcy code;
 - (b) "Business day" to reference Monday through Friday, excluding state and federal holidays;
 - (c) "C.F.R." to reference the Code of Federal Regulations;
 - (d) "Consumer Financial Protection Bureau" to reference the federal agency referenced in 12 United States Code chapter 53, subchapter V;
 - (e) "Division of financial institutions" or "division" to reference the division of financial institutions of the department of commerce and consumer affairs of this State;
 - (f) "Home Affordable Mortgage Program" or "HAMP" to reference the program established by the U.S. Department of the Treasury pursuant to sections 101 and 109 of the Emergency Economic Stabilization Act of 2008, as section 109 of the Act has been amended by section 7002 of the American Recovery and Reinvestment Act of 2009;
 - (g) "Loan modification" to reference a temporary or permanent change to the

terms of a borrower's existing mortgage loan agreement, mutually agreed to between a borrower and a lender;

- (h) "Loss mitigation option" to reference an alternative to foreclosure, including loan modification, reinstatement, forbearance, deed-in-lieu, and short sale;
- (i) "Principal office" to reference the office location where the company's core executive and administrative functions are primarily carried out;
- (j) "Received" to reference in the context of the date of payment, the date that the payment instrument or other means of payment reaches the mortgage servicer, in accordance with 12 CFR section 1026.36(c);
- (k) "RESPA" to reference the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. section 2601 et seq., as amended, and regulations adopted thereunder which are also sometimes known as Regulation X and found at 12 C.F.R. part 1024;
- (l) "Servicing" to reference the business activity of a mortgage servicer; and
- (m) "State" to reference the State of Hawaii.

Amending the following definitions:

- (a) "Borrower" is revised to also refer to a consumer; and
- (b) "Mortgage servicer" is revised to include mortgage payment collecting and processing.

MEANS: Add one new section to chapter 454M and amend sections 454M-1, 454M-4, 454M-5, and 454M-6, HRS.

JUSTIFICATION: This is primarily a consumer protection bill. It is necessitated because of the critical role that mortgage servicers play in the lives of homeowners. Annually, mortgage servicers receive billions of dollars of payments from borrowers, and are responsible for making payments to loan owners and other third parties. Improper servicing can result in a homeowner not receiving credit for their mortgage payments, suffering serious damage to their credit, being put at risk of losing their home, having to spend countless hours trying to correct servicer errors, and being unable to obtain a release needed to timely close the sale of their home, among others.

In the past two years, large banks have sold many of their servicing rights for troubled loans to nonbank mortgage servicers. The result has left nonbank mortgage servicers handling a much larger portion of outstanding mortgages, especially loans undergoing loss mitigation.

The mortgage servicer industry has shown a need for greater regulation and more consumer protection standards than currently provided by chapter 454M. Abusive practices in the mortgage servicer industry came to light in the National Mortgage Settlement (NMS) made in 2012 by the federal government and 49 states including Hawaii, with the five largest mortgage servicers in the country. While all mortgage servicers do not engage in such practices, enhanced regulation is warranted given the trend toward lender sales of mortgage servicing rights to nonbank servicers.

Nationwide, the states are strengthening their respective mortgage servicer laws and regulations, acknowledging the seriousness

of homeowner complaints against mortgage servicers submitted to their agencies, the volumes of complaints made by homeowners across the country to the federal Consumer Financial Protection Bureau (CFPB), and the specific standards for mortgage servicer conduct that had to be implemented in the NMS. As a general matter, CFPB does not take enforcement action on behalf of individual homeowners. The NMS impacts only those servicers who agreed to it, and while it may have reduced abusive mortgage servicing practices, they continue today. Poor mortgage servicing by any servicer jeopardizes homeowner housing and financial security, since the two are inextricably intertwined.

The provisions proposed would enable state regulators to protect homeowners dealing with these increasingly important companies. It would support loss mitigation alternatives to foreclosure, and help bring delinquent loans current more quickly. The provisions in this bill are especially important because while mainland mortgage servicers service loans for Hawaii homeowners, none have a physical presence in this State, which can make it very difficult for homeowners to obtain appropriate attention from their mortgage servicer.

Impact on the public:The public will be better protected by new requirements on mortgage servicers including bonding requirements, making specific information available to borrowers, loss mitigation standards, and penalties for chapter violations.

This proposal will ensure that borrowers enjoy the same protections whether their mortgage is serviced by a bank or a nonbank servicer. Nonbank mortgage servicers will be required to meet the same standards as regulated bank mortgage servicers.

Impact on the department and other agencies:
The Division of Financial Institutions will enhance its examinations of mortgage servicers to address additional standards. The specificity of the standards will support the division's enforcement of the chapter.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA 104.

OTHER AFFECTED
AGENCIES: The Department of the Attorney General will approve the form of surety bond required of a mortgage servicer in section 454M-4(j).

EFFECTIVE DATE: Upon approval.