

ACT 218

S.B. NO. 298

A Bill for an Act Relating to Mortgage Brokers and Solicitors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

“§26H-4 Repeal dates. (a) The following chapters are hereby repealed effective December 31, 1989:

- (1) Chapter 444 (Contractors License Board)
- (2) Chapter 448E (Board of Electricians and Plumbers)
- (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)
- (4) Chapter 466 (Board of Public Accountancy)
- (5) Chapter 467 (Real Estate Commission)
- (6) Chapter 439 (Board of Cosmetology)
- [(7) Chapter 454 (Mortgage Brokers and Solicitors)]
- (8)] (7) Chapter 454D (Mortgage and Collection Servicing Agents)

(b) The following chapter and sections are hereby repealed effective December 31, 1990:

- (1) Chapter 466J (Board of Radiologic Technology)
- (2) Sections 321-13 to 321-15 (midwives, laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, tattoo artists, electrologists, and sanitarians)

(c) The following chapters are hereby repealed effective December 31, 1991:

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 457 (Board of Nursing)
- (4) Chapter 458 (Board of Dispensing Opticians)
- (5) Chapter 460J (Pest Control Board)
- (6) Chapter 462A (Pilotage)
- (7) Chapter 438 (Board of Barbers)
- (8) Chapter 468K (Travel Agencies)

(d) The following chapters are hereby repealed effective December 31, 1992:

- (1) Chapter 448H (Elevator Mechanics Licensing Board)
- (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (3) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (4) Chapter 460 (Board of Osteopathic Examiners)
- (5) Chapter 461 (Board of Pharmacy)
- (6) Chapter 461J (Board of Physical Therapy)

- (7) Chapter 463E (Podiatry)
- (e) The following chapters are hereby repealed effective December 31, 1993:
 - (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
 - (2) Chapter 437B (Motor Vehicle Repair Industry Board)
 - (3) Chapter 440 (Boxing Commission)
 - (4) Chapter 446 (Debt Adjusters)
 - (5) Chapter 436E (Board of Acupuncture)
- (f) The following sections are hereby repealed effective December 31, 1993:
 - (1) Sections 445-21 to 38 (Auctions)
 - (2) Sections 445-131 to 136 (Pawnbrokers)
 - (3) Sections 445-171 to 172 (Secondhand Dealers)
 - (4) Sections 445-231 to 235 (Scrap Dealers)
- (g) The following chapters are hereby repealed effective December 31, 1994:
 - (1) Chapter 441 (Cemetery and Funeral Trusts)
 - (2) Chapter 443B (Collection Agencies)
 - (3) Chapter 452 (Board of Massage)
 - (4) Chapter 455 (Board of Examiners in Naturopathy)
 - (5) Chapter 459 (Board of Examiners in Optometry)
 - (6) Chapter 442 (Board of Chiropractic Examiners)
 - (7) Chapter 373 (Commercial Employment Agencies)
 - (8) Chapter 448 (Board of Dental Examiners)
 - (9) Chapter 465 (Board of Psychology)
- (10) Chapter 468E (Speech Pathology and Audiology)
- (h) The following chapter is hereby repealed effective December 31, 1995:
 - (1) Chapter 454 (Mortgage Brokers and Solicitors)
- [(h)] (i) The following chapters are hereby repealed effective December 31,

1997:

- (1) Chapter 463 (Board of Private Detectives and Guards)
- (2) Chapter 471 (Board of Veterinary Examiners)."

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

"§454- Written agreements. For any transaction between a mortgage broker or a mortgage solicitor and a borrower, the following requirements shall apply:

- (1) A mortgage broker and a mortgage solicitor shall comply with all provisions of the Real Estate Settlement Procedures Act, the Truth in Lending Act, and the Equal Credit Opportunity Act, as those laws currently exist or as they may be amended.
- (2) Any written commitment letter to make a mortgage loan with specified terms, including loan amount, interest rate, points, and payment terms, which is issued by a mortgage broker or solicitor and accepted by a borrower, must be honored by the mortgage broker or solicitor if the borrower has completely satisfied all of the conditions of the commitment in a timely manner and prior to the specified expiration date of the commitment."

SECTION 3. Section 454-1, Hawaii Revised Statutes, is amended to read as follows:

"§454-1 Definitions. In this chapter unless the context or subject matter otherwise requires:

[(1) "Person" means an individual, partnership, corporation, association, or other organization.

[(2)] "Mortgage loan" means a loan secured by a mortgage on real property.

[(3)] "Mortgage broker" means a person not exempt under section 454-2 who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly makes, negotiates, acquires, [or sells] or offers to make, negotiate, or acquire[, or sell] a mortgage loan[, but excluding transactions involving the sale or purchase of notes or bonds secured by mortgages which are subject to registration under chapter 485.] on behalf of a borrower seeking a mortgage loan.

[(4)] "Mortgage solicitor" means an individual not licensed as a mortgage broker who performs any of the functions set forth in [paragraph (3) of this section] the definition of mortgage broker and who is employed by a mortgage broker or whose business transactions are under the direction, control, or management of a mortgage broker.

[(5)] "Mortgage commissioner" or "commissioner" means the director of commerce and consumer affairs.

[(6)] "Licensee" means a person, whether mortgage broker or mortgage solicitor, licensed under this chapter.

[(7)] "License" means a license issued under this chapter.

[(8)] "Institutional investor" means and includes (a) banks, savings and loan institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, any of the class of persons permitted to qualify as foreign lenders under section 207-11, or other financial institutions or institutional buyers, whether acting for themselves or as fiduciaries; (b) the United States or any foreign government, any state or territory thereof, or any agency or corporate or other instrumentality of the United States, a foreign government, or of any state, territory or political subdivision thereof."

SECTION 4. Section 454-2, Hawaii Revised Statutes, is amended to read as follows:

"§454-2 Exemptions. This chapter does not apply to the following:

- (1) Banks, trust companies, building and loan associations, pension trusts, credit unions, insurance companies, industrial loan companies, or federally licensed small business investment companies, authorized under any law of this State or of the United States to do business in the State;
- (2) A person making or acquiring a mortgage loan with one's own funds for one's own investment without intent to resell the mortgage loan;
- (3) A person licensed to practice law in the State, not actively and principally engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as an attorney; [and]
- (4) A person licensed as a real estate broker or salesman in the State, not actively engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as a real estate broker or salesman[.]; and
- (5) An institutional investor negotiating, entering into, or performing under a loan purchase agreement for its portfolio, for subsequent resale to other institutional investors, or for placement of the mortgages into pools or packaging them into mortgage-backed securities. As used in this subsection "loan purchase agreement" means an agreement or arrangement under which a bank, savings and loan, credit union, industrial loan company, or other financial institution registered to do business in the State of Hawaii agrees to sell mortgage loans or obtain funding therefor, with or without the transfer of servicing rights, to an institutional investor."

SECTION 5. Section 454-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Every person licensed as a mortgage broker shall deposit with the commissioner, prior to doing business, a bond in the amount of [\$15,000,] \$50,000, executed by the mortgage broker as principal and a surety company authorized to do business in the State as a surety. The bond shall be conditioned upon the faithful compliance of the broker with the provisions of this chapter. The bond shall run to the State for the benefit of any person injured by the wrongful act, default, fraud, or misrepresentation of the broker or the solicitors; provided that the aggregate liability of the surety shall, in no event, exceed the sum of the bond. The surety may cancel the bond by giving sixty days’ notice in writing to the commissioner and shall thereafter be relieved of any liability for any breach of condition occurring after the effective date of cancellation. A mortgage broker’s license shall not be in effect at any time when the bond is not in full force and effect. Only one bond shall be required of any person.”

SECTION 6. Section 454-3.5, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval.

(Approved June 8, 1989.)

Note

1. Edited pursuant to HRS §23G-16.5.