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S.B. NO. 255

A Bill for an Act Relating to Real Estate Collection Servicing Agents.

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 (a) The following chapters are hereby repealed effective December 31, 1989: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) 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(b) The following chapter and sections are hereby repealed effective December 31, 1990: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(c) The following chapters are hereby repealed effective December 31, 1991: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(d) The following chapters are hereby repealed effective December 31, 1992: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(e) The following chapters are hereby repealed effective December 31, 1993: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(f) The following sections are hereby repealed effective December 31, 1993: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 454D (Real Estate Collection Servicing Agents)
- 1997:
 - (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 454D, Hawaii Revised Statutes, is amended as follows:

1. By amending the title to read:

**"[MORTGAGE AND] REAL ESTATE
COLLECTION SERVICING AGENTS"**

2. By amending section 454D-1 to read:

"[§454D-1] Definitions. As used in this chapter:

[(1)] "Person" includes an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons, or any combination thereof.

[(2)] A person shall be deemed to engage in the business of a "mortgage servicing agent" or "collection servicing agent" if the person] "Real estate collection servicing agent" means a person who by oneself or through others offers to undertake or holds oneself out as being able to undertake or does undertake to collect for another person the amounts due under any agreement which provides for installment payments and which is secured by an interest in real property, including without limitation mortgage loans and agreements of sale, whether or not such real estate collection servicing agent receives any compensation or other consideration for the agent's services. When referred to collectively in this chapter, such persons shall be called "servicing agents".

[(3)] "Installment payments" shall be deemed to include principal and interest and any expenses due in connection with the real property securing such agreement, including without limitation real property taxes, lease rent, insurance premiums, maintenance fees, and similar expenses."

3. By amending section 454D-2 to read:

"§454D-2 Exemptions. This chapter shall not apply to the following persons:

- (1) Real estate brokers and salesmen licensed under chapter 467 and residing in the State who provide collection and mortgage services where the services are limited to those incident to a particular real estate transaction, or where the broker, or the salesman's broker, has an errors and commissions insurance policy in effect which has, as part of the insurance policy, coverage for activities relating to collection and mortgage services and where a copy of the insurance policy is filed annually with the department of commerce and consumer affairs;
 - (2) Banks, collection agencies, credit unions, escrow depositories, industrial loan companies, savings and loan associations, and trust companies authorized to do business in the State;
 - (3) [A financial institution which services only Federal Housing Administration and Veterans Administration loans and has been approved as a lender by the United States Department of Housing and Urban Development; provided that the financial institution files annually with the department of commerce and consumer affairs certification that it is still an approved lender by the United States Department of Housing and Urban Development and continues to service only Federal Housing Administration and Veterans Administration loans;] Any financial institution which is an approved lender for programs administered by the United States Department of Housing and Urban Development; provided that the financial institution files annually with the department of commerce and consumer affairs satisfactory proof of that status;
 - (4) Persons performing the services normally rendered by servicing agents under order of any court; and
 - (5) Persons performing the services normally rendered by servicing agents, but with respect to fewer than five agreements at any one time that would otherwise come within the purview of this chapter."
4. By amending section 454D-2.5 to read:

"[§454D-2.5] Powers and duties of the director of commerce and consumer affairs. In addition to any other powers and duties granted by this chapter, the director of commerce and consumer affairs shall:

- (1) Register [mortgage and] real estate collection servicing agents pursuant to this chapter;
 - (2) Enforce this chapter and rules adopted pursuant thereto;
 - (3) Investigate the actions of any person acting in the capacity of a [mortgage and] real estate collection servicing agent if there is reason to believe that there may be a violation of this chapter or the rules adopted pursuant thereto;
 - (4) Fine, suspend, or revoke a registration for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant registration for any cause which would be grounds for suspension or revocation of the registration;
 - (5) Apply to a court having competent jurisdiction for an injunction to restrain any violation of this chapter; and
 - (6) Establish registration and biennial renewal fees for [mortgage and] real estate collection servicing agents."
5. By amending section 454D-5 to read:

"[§454D-5] Trust accounts, records. (a) Every servicing agent shall maintain a separate trust account in a federally insured depository institution for funds collected in behalf of its customers, and shall keep at its principal office in this State or office of its agent located in this State permanent records of all of its

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receipts and disbursements for each customer. Such records shall be kept, as to each installment payment agreement, for a period of at least six years following the last installment payment collected pursuant to such agreement.

(b) Every servicing agent shall provide to each buyer and seller a written statement of all the amounts received and disbursed, together with any remaining balances annually and upon satisfaction of the agreement of sale."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 19, 1989.)