

ACT 245

H.B. NO. 2502

A Bill for an Act Relating to Mortgage Servicers.

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

SECTION 1. Chapter 454M, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§454M- Registration with Nationwide Mortgage Licensing System. The commissioner may require all mortgage servicers to register with the Nationwide Mortgage Licensing System.”

SECTION 2. Section 454M-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Nationwide Mortgage Licensing System” has the same meaning as defined in section 454F-1.”

SECTION 3. Section 454M-2, Hawaii Revised Statutes, is amended to read as follows:

“§454M-2 License required. (a) No person except those exempted under this chapter shall engage in the business of mortgage servicing without a license as provided in this chapter.

(b) No person shall engage in the business of mortgage servicing in this State unless the person providing services has a physical presence in the State pursuant to section 454M-5(a)(5).

(c) No person licensed as a mortgage servicer shall provide mortgage loan modifications or any other services that would require licensing pursuant to chapter 454F without first complying with the licensure requirements under chapter 454F.”

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

“§454M-4 License; fees; renewals; voluntary surrender of license. (a) An applicant for licensure shall file an application on a form prescribed by the Nationwide Mortgage Licensing System or by the commissioner and shall pay an application fee of \$500. Each license shall expire on June 30 of each calendar year. A license may be renewed by filing a renewal statement on a form prescribed by the Nationwide Mortgage Licensing System or by the commissioner and paying a renewal fee of \$250, on or before July 1 for licensure for the following year.

(b) To fulfill the purposes of this chapter, the commissioner may establish relationships or contracts with the Nationwide Mortgage Licensing System or other entities designated by the Nationwide Mortgage Licensing System to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(c) To the extent reasonably necessary to participate in the Nationwide Mortgage Licensing System, the commissioner may modify any or all of the requirements of section 454M-4(e) and (f).

(d) The commissioner may use the Nationwide Mortgage Licensing System as an agent for requesting information from and distributing information to the United States Department of Justice, any governmental agency, or any other source, as directed by the commissioner.

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

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

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

[(e)] (f) A mortgage servicer licensed under this chapter may voluntarily cease business and surrender its license by giving written notice to the commissioner of its intent to surrender its mortgage servicer license. Notice pursuant to this subsection shall be given at least thirty days before the surrender of the license and shall include:

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

Voluntary surrender of a license shall be effective upon the date of surrender specified on the written notice to the commissioner as required by this subsection; provided that if a mortgage servicer is required to assign, sell, or transfer the servicing of any loans, the voluntary surrender of the mortgage servicer's license shall be effective upon the effective date of the assignment, sale, or transfer of the servicing of all loans."

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

~~“[§454M-6]~~ **Prohibited activities.** (a) It shall be unlawful for any mortgage servicer in the course of any mortgage loan transaction:

- (1) To misrepresent or conceal material facts, to make false promises, or to pursue a course of misrepresentation through its agents or otherwise;
- (2) To engage in any transaction, practice, or course of business that is not in good faith, does not constitute fair dealing, or that constitutes a fraud upon any person, in connection with the servicing, purchase, or sale of any mortgage loan;
- (3) To fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by sections 6 and 10 of the Real Estate Settlement Procedures Act, 12 United States Code sections 2605 and 2609, and regulations adopted thereunder by the Secretary of Housing and Urban Development; or
- (4) To fail to comply with applicable federal laws and regulations related to mortgage servicing.

(b) It shall be unlawful for any mortgage servicer to provide any mortgage loan modifications or other services that would require licensing pursuant to chapter 454F, unless the mortgage servicer is licensed under chapter 454F.”

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

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

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.