

## ACT 75

H.B. NO. 989

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- Enforcement authorities.** (a) If the commissioner has reason to believe that a person has violated or is violating section 454M-2, the commissioner may issue orders or directives under this chapter as follows:

- (1) Order or direct persons subject to this chapter to cease and desist from conducting business, including immediate temporary orders to cease and desist;
- (2) Order or direct persons subject to this chapter to cease any harmful activities or violations of this chapter, including immediate temporary orders to cease and desist;
- (3) Enter immediate temporary orders to cease doing business under a license issued pursuant to the authority granted under this chapter if the commissioner determines that the license was erroneously granted or the licensee or any person subject to this chapter is currently in violation of this chapter; or
- (4) Order or direct any other affirmative action as the commissioner deems necessary.

(b) An order to cease and desist becomes effective upon service of the order upon the person.

(c) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to chapter 91.

(d) The commissioner shall commence an administrative proceeding within twenty days after issuing an order to cease and desist.”

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

**“§454M-4 License; fees; renewals; notices; voluntary surrender of license; bonds.** (a) The commissioner may approve a license or license renewal application upon receipt of a complete application; provided that an applicant for licensure shall file an application on a form prescribed by NMLS or by the commissioner and shall pay an application fee of \$675. Each license shall expire on December 31 of each calendar year unless the license is renewed. A licensee may apply for license renewal by filing a renewal statement on a form prescribed by NMLS or by the commissioner and paying a renewal fee of \$600, at least four weeks prior to December 31. The minimum standards for license renewal shall include the following:

- (1) The licensee continues to meet the minimum standards for licensure established pursuant to this section;
- (2) The licensee has paid all required fees for renewal of the license; and
- (3) The licensee is registered with the business registration division of the department of commerce and consumer affairs.

All fees paid pursuant to this section, including fees paid in connection with an application, shall be nonrefundable. No fee paid pursuant to this section shall be prorated if the license is surrendered, revoked, or suspended prior to the expiration of the period for which it was approved.

(b) To fulfill the purposes of this chapter, the commissioner may establish relationships or contracts with NMLS or other entities designated by NMLS 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 NMLS, the commissioner may modify any or all of the requirements of subsections (e) and (i).

(d) The commissioner may use NMLS 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.

(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 executive officers, directors, general partners, or managing 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.

(f) A mortgage servicer license shall not be transferable or assignable. No licensee shall use any name other than the licensee's legal name or a fictitious name approved by the commissioner; provided that no licensee shall use the licensee's legal name if the commissioner disapproves of the use of the licensee's legal name.

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

- (1) The licensee files the change with NMLS and provides directly to the commissioner a bond rider or endorsement, or addendum, as applicable, to any bond on file with the commissioner that reflects the new name or address;
- (2) The commissioner approves the change in writing; and
- (3) The mortgage servicer pays to the commissioner a fee of \$100 and any fees charged by NMLS.

(h) The mortgage servicer licensee shall file with NMLS or, if the information cannot be filed with NMLS, directly notify the commissioner in writing no later than five business days after the licensee has reason to know of the occurrence of any of the following events:

- (1) Filing for bankruptcy or the consummation of a corporate restructuring of the licensee;
- (2) Filing of a criminal indictment against the licensee or receiving notification of the filing of any criminal felony indictment or felony

conviction of any of the licensee's executive officers, directors, employees, managers, agents, managing members, general partners, or shareholders owning ten per cent or more of the outstanding stock of the licensee;

- (3) Receiving notification of the initiation of license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action by any governmental agency against the licensee and the reasons for the action;
- (4) Receiving notification of the initiation of any action against the licensee by the state attorney general or the attorney general of any other state and the reasons for the action;
- (5) Suspension or termination of the licensee's status as an approved servicer by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Government National Mortgage Association;
- (6) Receiving notification that certain servicing rights of the licensee will be rescinded or canceled, and the reasons provided therefor;
- (7) Receiving notification of filing for bankruptcy of any of the licensee's executive officers, directors, managing members, general partners, or shareholders owning ten per cent or more of the outstanding stock of the licensee; or
- (8) Receiving notification of the initiation of a class action lawsuit on behalf of consumers against the licensee that is related to the operation of the licensed business.

(i) 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 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.

(j) Before a mortgage servicer's license becomes effective, the applicant or licensee shall file with the commissioner a surety bond written by a surety authorized to write surety bonds in this State, covering the applicant or licensee in a penal sum of \$100,000. No mortgage servicer licensee shall act as a mortgage servicer in this State without maintaining the surety bond required by this section.

The surety bond shall be:

- (1) In a form approved by the attorney general of this State; and
- (2) Conditioned upon the mortgage servicer licensee faithfully performing any and all written agreements or commitments with or for the benefit of borrowers and mortgagees, truly and faithfully accounting for all funds received from a borrower or mortgagee in the person's capacity as a mortgage servicer, and conducting the mortgage business consistent with the provisions of this chapter to perform any written agreements or commitments.

(k) The commissioner, or any person claiming to have sustained damage by reason of the failure of the mortgage servicer to comply with the mortgage servicer's bond, or by the wrongful conversion of funds paid by a borrower to the mortgage servicer, may bring an action on the bond to recover the damage therefrom. The commissioner may deposit with a court of competent jurisdiction all or any part of the sum of the bond. The proceeds of the bond, even if mixed with other assets of the principal, shall be deemed by operation of law to be held in trust for the benefit of claimants against the principal in the event of bankruptcy of the principal and shall be immune from attachment by creditors and judgment creditors. The surety bond shall run concurrently with the period of the license for the principal office of the mortgage servicer and the aggregate liability under the bond shall not exceed the penal sum of the bond. The principal shall notify the commissioner of the commencement of an action on the bond. When an action is commenced on a principal's bond, the commissioner may require the filing of a new bond and immediately on recovery on any action on the bond, the principal shall file a new bond.

(l) A surety may cancel the surety bond required by this section at any time by a written notice to the principal stating the date cancellation shall take effect. The notice shall be sent by certified mail to the principal at least thirty days prior to the date of cancellation. A surety bond shall not be canceled unless the surety notifies the commissioner, in writing, not less than thirty days prior to the effective date of cancellation. After receipt of the notification from the surety, the commissioner shall give written notice to the principal of the date the cancellation shall take effect. The commissioner shall automatically suspend the license of a mortgage servicer on that date. No automatic suspension or inactivation shall occur if, prior to the date that the bond cancellation shall take effect:

- (1) The principal submits a letter of reinstatement of the bond or a new bond; or
- (2) The mortgage servicer licensee has ceased business in this State and has surrendered all licenses in accordance with this chapter.

Automatic suspension of a mortgage servicer license by the commissioner, and subsequent orders and proceedings, if any, shall be conducted pursuant to section 454M-7.

(m) If the commissioner finds that the financial condition of a mortgage servicer so requires, as evidenced by the reduction of tangible net worth, financial losses, or potential losses as a result of a violation of law or rule, the commissioner may require one or more additional bonds that meet the requirements of this section. The licensee shall file any additional bonds no later than ten days after receipt of the commissioner's written notice of the requirement for one or more additional bonds. A mortgage servicer or mortgage lender licensee shall file, as the commissioner may require, any bond rider or endorsement or addendum, as applicable, to any bond on file with the commissioner to reflect any changes necessary to maintain the surety bond required by this section.

(n) Notwithstanding any provision of law to the contrary, any document required to be filed or submitted under this chapter shall be filed or submitted through NMLS; provided that NMLS is able to accept the document.

~~[(n)]~~ (o) For purposes of this section, “principal” means, in the context of a surety bond requirement, the primary party who will perform the contractual obligation.”

SECTION 3. Section 454M-7, Hawaii Revised Statutes, is amended to read as follows:

~~“[§454M-7] License sanctions; [suspension, revocation, denial, condition, and refusal to renew, reinstate, or restore.] cease and desist and other orders.~~

(a) In addition to any other actions authorized by law, the commissioner may suspend[;]; revoke[;]; deny[;]; condition in any manner[;]; or refuse to renew, reinstate, or restore, any license issued under this chapter, or fine any person holding a license issued under this chapter, for any violation of this chapter. All such orders shall be made pursuant to chapter 91[;], except as provided by section 454M- or another provision of this chapter.

(b) If the commissioner finds that a violation of this chapter or a rule adopted or an order issued under this chapter by a licensee is likely to cause immediate and irreparable harm to the licensee, the licensee’s customers, or the public as a result of the violation, or is likely to cause insolvency or significant dissipation of assets of the licensee, then the commissioner may issue an order requiring the licensee to cease and desist from the violation. The order becomes effective upon service of the order upon the licensee.

(c) The commissioner may enter into a consent order at any time with a person to resolve a matter arising under this chapter. A consent order shall be signed by the person to whom the order is issued or by the person’s authorized representative and shall indicate agreement with the terms of the order. A consent order may provide that it does not constitute an admission by a person that this chapter or a rule adopted or an order issued under this chapter has been violated.”

SECTION 4. Section 454M-8, Hawaii Revised Statutes, is amended to read as follows:

**“§454M-8 Powers of commissioner.** In addition to any other acts or conditions provided by law, the commissioner may:

- (1) Adopt, amend, or repeal rules, issue declaratory rulings or informal nonbinding interpretations, and investigate and act upon written consumer complaints;
- (2) Grant, deny, forfeit, renew, reinstate, or restore the license of any mortgage servicer;
- (3) Revoke, suspend, or otherwise limit the license of any mortgage servicer for any violation of the provisions in this chapter, or any rule or order of, or agreement with the commissioner;
- (4) Issue orders to cease and desist and enter into consent orders;
- ~~[(4)]~~ (5) Report any violation of this chapter or violation of federal or state law to the Consumer Financial Protection Bureau or other federal agency having jurisdiction over the licensee;
- ~~[(5)]~~ (6) Investigate and conduct hearings regarding any violation of this chapter, or any rule or order of or agreement with the commissioner; and
- ~~[(6)]~~ (7) Do any and all things necessary or incidental to the exercise of the commissioner’s power and duties, including the authority to conduct contested case proceedings under chapter 91.”

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

**“§454M-10 Penalty.** Any person who violates any provision of this chapter, rule adopted or order issued pursuant to this chapter, or agreement with the commissioner may be subject to an administrative fine of not more than \$7,000 for each violation; provided that if the aggregate fine amount exceeds \$7,000, \$1,000 of the aggregate fine amount shall be deposited into the mortgage foreclosure dispute resolution special fund established pursuant to section 667-86.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

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

(Approved June 7, 2019.)

### Note

1. Edited pursuant to HRS §23G-16.5.