

**ACT 64**

S.B. NO. 1105

A Bill for an Act Relating to the Mortgage Loan Recovery Fund.

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

SECTION 1. Section 454F-41, Hawaii Revised Statutes, is amended to read as follows:

**“§454F-41 Mortgage loan recovery fund; use of fund; fees.** (a) The commissioner shall establish and maintain a fund that shall be known as the mortgage loan recovery fund, from which any person aggrieved by an act, rep-

resentation, transaction, or conduct of a mortgage loan originator company licensee involving fraud, misrepresentation, or deceit in violation of this chapter may recover, by ~~[order]~~ final judgment of the circuit court or district court of the county where the violation occurred, an amount of ten per cent of the residential mortgage loan, but not more than \$150,000, including court costs and fees as set by law and reasonable attorney fees as determined by the court, for damages sustained by the fraud, misrepresentation, or deceit of a mortgage loan originator company licensee.

~~[(b)]~~ In addition to application fees and any fees required by NMLS, a mortgage loan originator licensee shall pay to the division a mortgage loan recovery fund fee ~~[as follows for deposit in the mortgage loan recovery fund:~~

- ~~(1) The sum of \$300 for each principal office location of a mortgage loan originator company;~~
- ~~(2) The sum of \$250 for each branch office location of a mortgage loan originator company; and~~
- ~~(3) The sum of \$200 for each mortgage loan originator.]~~

in the sum of \$200.

~~[(e)]~~ Upon application for renewal of a license under this chapter, a mortgage loan originator licensee shall pay~~;~~ to the division, in addition to the licensee's license renewal fee and fees required by NMLS, a mortgage loan recovery fund fee ~~[as follows for deposit in the mortgage loan recovery fund:~~

- ~~(1) The sum of \$200 for each principal office location of a mortgage loan originator company;~~
- ~~(2) The sum of \$100 for each branch office location of a mortgage loan originator company; and~~
- ~~(3) The sum of \$100 for each mortgage loan originator.]~~

in the sum of \$100.

~~[Mortgage]~~ The \$100 mortgage loan recovery fund ~~[fees]~~ fee collected pursuant to this subsection shall be refundable upon the denial of a license renewal by the commissioner.

~~[(d)]~~ (b) When the mortgage loan recovery fund attains a funding level of \$750,000, the commissioner may make a finding to adjust the fees payable to the fund or may determine that payments made by mortgage loan originator licensees shall cease. If acceptance of payments is ceased, it shall remain ceased until the funding level falls below \$750,000. If the funding level falls below \$250,000 after the first five years of the establishment of the fund, the commissioner may adjust the fees to a reasonable level ~~[for the purpose of attaining]~~ to attain a funding level of \$750,000.

~~[(e)]~~ (c) The commissioner or the commissioner's designee, as the manager of the mortgage loan recovery fund, shall be authorized to expend moneys in the mortgage loan recovery fund to:

- (1) Retain private legal counsel to represent the commissioner or the division in any action that involves or may result in payment from the mortgage loan recovery fund;
- (2) Retain a certified public accountant for accounting and auditing of the mortgage loan recovery fund;
- (3) Employ necessary personnel, not subject to chapter 76, to assist the commissioner in exercising the commissioner's powers and duties with respect to the mortgage loan recovery fund; and
- (4) Retain a consultant to recover and collect any payments from the mortgage loan recovery fund, plus interest from the judgment debtor."

SECTION 2. Section 454F-42, Hawaii Revised Statutes, is amended to read as follows:

**“§454F-42 Statute of limitation; recovery from fund.** (a) No action for a judgment that subsequently results in an order for collection from the mortgage loan recovery fund shall be commenced later than six years from the accrual of the cause of action. When any aggrieved person commences an action for a judgment that may result in collection from the mortgage loan recovery fund, the aggrieved person shall notify the commissioner in writing at the time of the commencement of the action and shall submit to the commissioner any documents required by the commissioner pursuant to rules issued in accordance with chapter 91.

(b) When any aggrieved person receives a valid judgment upon the grounds of fraud, misrepresentation, or deceit that occurred before the effective date of section 454F-41 against any licensee from any circuit or district court where the violation occurred, the aggrieved person shall proceed against the bond covering the license that was in force prior to the enactment of section 454F-41 and establishment of the mortgage loan recovery fund.

(c) The court shall proceed upon an application to recover from the mortgage loan recovery fund in a summary manner and, at hearing, the aggrieved person shall be required to show:

- (1) The person is not a spouse of the judgment debtor or the personal representative of a spouse of the judgment debtor;
- (2) The person has complied with all the requirements of this section;
- (3) The person has obtained a judgment pursuant to section 454F-41(a) that states the amount of the judgment and the amount owed on the judgment debt as of the date of the application;
- (4) The person has made all reasonable searches and inquires to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment; and
  - (A) The search has uncovered no personal or real property or other assets liable to be sold or applied; or
  - (B) The search has uncovered personal or real property or other assets liable to be sold or applied, the person has taken all necessary action and completed all necessary proceedings for the realization thereof, and the amount realized was insufficient to satisfy the judgment; provided that the person shall state the amount realized and the balance remaining due on the judgment after application of the amount realized; and
- (5) That where the licensee is a judgment debtor in a bankruptcy proceeding, the aggrieved person has obtained an order from the bankruptcy court declaring the judgment against the licensee to be non-dischargeable.

(d) Upon hearing, if the court is satisfied of the truth of all matters required by subsection (c) and that the aggrieved person has fully pursued and exhausted all remedies available to the person for recovering the amount awarded by the judgment of the court, the court shall issue an order directing the commissioner to pay from the mortgage loan recovery fund whatever sum the court finds to be payable upon the claim in accordance with the limitations contained in this section.

(e) In addition to the procedure provided in subsections (c) and (d), the commissioner may also consider applications to recover from the mortgage loan recovery fund. An aggrieved person who has obtained a final judgment from the court may submit the person's application to the commissioner. If the commis-

## ACT 64

sioner is satisfied as to the truth of the application, and that, despite reasonable efforts the person has been unable to recover on the judgment, the commissioner may issue an order approving payment from the mortgage loan recovery fund.

~~[(e)]~~ (f) Notwithstanding any other provision, the liability of the mortgage loan recovery fund shall not exceed the sum of \$100,000 against any one licensee.”

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

SECTION 4. This Act shall take effect on July 1, 2022.

(Approved June 17, 2022.)