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# A BILL FOR AN ACT

RELATING TO MORTGAGE SERVICERS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 454M, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:  
4           "§454M- Residential mortgage loan delinquencies and loss  
5 mitigation efforts. (a) Mortgage servicers shall make  
6 reasonable and good faith efforts consistent with this chapter  
7 to engage in appropriate loss mitigation options, including loan  
8 modifications, to assist borrowers to avoid foreclosure.  
9 Mortgage servicers shall provide timely and appropriate  
10 responses to borrower inquiries and complaints regarding  
11 available loss mitigation options and ensure that borrowers are  
12 not required to submit multiple copies of required documents  
13 during consideration for any loss mitigation option. In the  
14 event of a delinquency or other act of default on the part of  
15 the borrower, or whenever a borrower who is at imminent risk of  
16 default contacts the mortgage servicer with respect to a loan



1 modification or other loss mitigation option, the mortgage  
2 servicer shall:

3 (1) Inform the borrower of the facts concerning the loan,  
4 the nature and extent of the delinquency or default,  
5 the mortgage servicer's loss mitigation option  
6 protocols, and the loss mitigation options and  
7 services offered by the mortgage servicer in  
8 accordance with this chapter; and

9 (2) Pursue loss mitigation options with the borrower,  
10 including a loan modification whenever possible, in  
11 accordance with this chapter, and, if the borrower  
12 replies, negotiate with the borrower, subject to the  
13 mortgage servicer's lawful duties and obligations  
14 under the mortgage servicing contract, if any, to  
15 attempt a resolution or workout of the delinquency or  
16 to prevent the borrower's default.

17 (b) Mortgage servicers shall consider a loan modification  
18 as an alternative to foreclosure when:

19 (1) The borrower demonstrates that the borrower has  
20 experienced a financial hardship and is either unable  
21 to maintain the payment at the current amount required



1           under the mortgage loan or is unable to make up the  
2           delinquent payments; and

3           (2) The net present value of the income stream expected of  
4           the modified loan is greater than the net present  
5           value of the income stream that is expected to be  
6           recovered through the disposition of the property  
7           through a foreclosure sale.

8           (c) Mortgage servicers that are participating in the Home  
9 Affordable Modification Program shall offer loan modifications  
10 in compliance with the Home Affordable Modification Program  
11 guidance and directives, including using reasonable efforts to  
12 remove prohibitions or impediments to the mortgage servicer's  
13 authority, and obtain third party consents and waivers that are  
14 required by contract or law to effectuate a loan modification  
15 under the Home Affordable Modification Program.

16           (d) Unless a longer time is permitted under the guidance  
17 or directives implementing the Home Affordable Modification  
18 Program, within ten business days of receiving a request from a  
19 borrower or the borrower's authorized representative for one or  
20 more loss mitigation options, the mortgage servicer shall  
21 transmit a written acknowledgment of the request to the borrower



1 and, if applicable, to the authorized representative. The  
2 acknowledgment shall identify with specificity any information  
3 needed from the borrower for the mortgage servicer to review the  
4 borrower's loss mitigation option request. The acknowledgment  
5 shall also include an explanation of the loss mitigation option  
6 process, including the following, as appropriate:

- 7       (1) The information that the borrower may be asked to  
8       provide and third party approvals that may be required  
9       for the mortgage servicer to evaluate and complete the  
10       request for a loan modification or other loss  
11       mitigation option;
- 12       (2) The average length of time for a decision to be made  
13       regarding a loan modification or other loss mitigation  
14       option; and
- 15       (3) A notification of the actions the mortgage servicer,  
16       lender, or owner of the mortgage may take during the  
17       loss mitigation option process, such as whether the  
18       borrower may continue to receive collection letters or  
19       foreclosure notices, whether the foreclosure process  
20       will continue, or whether and to what extent  
21       collection and foreclosure will be stayed.



1       (e) Within thirty days of receiving all required  
2 documentation from the borrower and third parties, unless a  
3 shorter time is required under applicable state or federal rules  
4 or regulations pertaining to mortgage servicing or under  
5 guidance or directives implementing the Home Affordable  
6 Modification Program, a mortgage servicer shall complete its  
7 evaluation of the borrower's eligibility for a loan modification  
8 or any other loss mitigation option requested by the borrower  
9 and advise the borrower, and if applicable, the borrower's  
10 authorized representative, in writing of the mortgage servicer's  
11 determination.

12       If the mortgage servicer approves the borrower for a loan  
13 modification, including a trial loan modification, or other loss  
14 mitigation option, the written notice shall provide the borrower  
15 with clear and understandable written information explaining the  
16 material terms, costs, and risks of the loss mitigation option  
17 offered.

18       If the mortgage servicer determines that the borrower  
19 cannot be approved for a loan modification or other requested  
20 loss mitigation option, the written notice shall state with  
21 specificity:



- 1       (1) The reasons for the determination;  
2       (2) Procedures, deadlines, and contact information for a  
3       person at the mortgage servicer for reconsideration,  
4       dispute, or appeal of the determination; and  
5       (3) Any other loss mitigation option for which the  
6       borrower may be considered.

7       In addition, the written notice shall include the following  
8       statement, in boldface type and in print no smaller than the  
9       largest print used elsewhere in the main body of the written  
10       notice: "If you believe your loss mitigation option request has  
11       been wrongly denied, you may file a complaint with the state  
12       division of financial institutions at [insert current division  
13       telephone number] or [insert current division website address  
14       for consumer complaints]".

15       (f) A mortgage servicer shall take reasonable steps to  
16       ensure that the mortgage servicer's staff is aware of programs  
17       designed to assist borrowers to avoid foreclosure or resolve  
18       delinquency. The mortgage servicer shall make available to  
19       borrowers who are at least sixty days delinquent or who the  
20       mortgage servicer has reason to believe are experiencing a  
21       financial hardship and are in imminent risk of default, a list



1 of government approved not-for-profit housing counselors in the  
2 borrower's geographic area, as listed on the website of the  
3 United States Department of Housing and Urban Development.

4 (g) A mortgage servicer shall maintain and make available  
5 to borrowers and borrowers' authorized representatives current  
6 contact information to communicate and negotiate with the  
7 mortgage servicer's designated loss mitigation option staff who  
8 are authorized to discuss and negotiate loss mitigation options.  
9 The contact information shall include all toll-free telephone  
10 numbers for direct communication with a loss mitigation option  
11 staff person, fax numbers for receipt of documents, and  
12 electronic mail addresses.

13 (h) The mortgage servicer shall establish and maintain a  
14 process through which borrowers may bring disagreements to a  
15 supervisory level where a separate review of the borrower's  
16 eligibility or qualification for a loss mitigation option can be  
17 performed. A mortgage servicer shall not require a borrower to  
18 wave legal claims and defenses as a condition of a loan  
19 modification, forbearance, or repayment plan.

20 (i) Delay caused by the mortgage servicer shall not be  
21 counted in calculating the passage of time where a Home



1 Affordable Modification Program, proprietary, or other loan  
2 modification program specifies:

3 (1) A time limit for a borrower action or response,  
4 including appealing or disputing a denial of a request  
5 for a loss mitigation option under subsection (e), or  
6 providing documents;

7 (2) A time after which a document is considered stale or  
8 too old to use; or

9 (3) A time during which a mortgage servicer is barred from  
10 taking certain action adverse to the borrower,  
11 including taking steps toward foreclosure or referring  
12 the borrower's account to foreclosure.

13 Examples of delay caused by the mortgage servicer include the  
14 mortgage servicer's failure to timely send a communication or  
15 request to the borrower, duplicative or piecemeal document  
16 requests delaying completion of a file, and failure to identify  
17 additional documents needed to complete a borrower's loan  
18 modification application. The mortgage servicer shall  
19 reasonably extend the applicable period and promptly inform the  
20 borrower in writing of the specific extension period.



1        (j) Nothing in this section shall be construed to prevent  
2 a mortgage servicer from offering or accepting alternative loss  
3 mitigation options, including other modification programs  
4 offered by the mortgage servicer, a short sale, a deed-in-lieu  
5 of foreclosure, or forbearance, if the borrower requests such an  
6 alternative, is not eligible for or does not qualify for a loan  
7 modification under the Home Affordable Modification Program, or  
8 rejects the mortgage servicer's loss mitigation option proposal.

9        (k) A mortgage servicer shall avoid taking steps to  
10 foreclose or to refer a borrower to foreclosure if the borrower  
11 has requested and is being considered for a loss mitigation  
12 option or if the borrower is in a trial or permanent loan  
13 modification and is not more than thirty days in default under  
14 the loan modification agreement.

15        (l) A mortgage servicer shall ensure that the mortgage  
16 servicer and the mortgage servicer's attorneys and agents comply  
17 with the requirements of chapter 667.

18        (m) A mortgage servicer shall establish and maintain a  
19 system for servicing delinquent loans."

20        SECTION 2. Section 454M-1, Hawaii Revised Statutes, is  
21 amended as follows:



1           1. By adding twelve new definitions to be appropriately  
2 inserted and to read:

3           "Bankruptcy code" refers to the United States Bankruptcy  
4 Code, title 11 United States Code, section 101 et seq., as  
5 amended.

6           "Business day" means Monday through Friday, excluding state  
7 holidays.

8           "C.F.R." means the Code of Federal Regulations.

9           "Consumer Financial Protection Bureau" means the agency of  
10 the United States government referenced in title 12 United  
11 States Code chapter 53, subchapter V.

12           "Division of financial institutions" or "division" means  
13 the division of financial institutions of the department of  
14 commerce and consumer affairs.

15           "Home Affordable Modification Program" means the program  
16 established by the United States Department of the Treasury,  
17 pursuant to sections 101 and 109 of the Emergency Economic  
18 Stabilization Act of 2008, as section 109 of the Act has been  
19 amended by section 7002 of the American Recovery and  
20 Reinvestment Act of 2009. The Home Affordable Modification



1 Program is a component of the Making Home Affordable Program,  
2 also known as the MHA Program.

3 "Loan modification" means a temporary or permanent change  
4 to the terms of a borrower's existing mortgage loan agreement,  
5 mutually agreed to between a borrower and a lender.

6 "Loss mitigation option" means an alternative to  
7 foreclosure, including loan modification, reinstatement,  
8 forbearance, deed-in-lieu, and short sale.

9 "Principal office" means the office location where the  
10 company's core executive and administrative functions are  
11 primarily carried out.

12 "Real Estate Settlement Procedures Act" means title 12  
13 United States Code chapter 27, as amended, and regulations  
14 adopted thereunder also known as Regulation X, title 12 C.F.R.  
15 part 1024.

16 "Received" means, in the context of the date of payment,  
17 the date that the payment instrument or other means of payment  
18 reaches the mortgage servicer, in accordance with title 12  
19 C.F.R. section 1026.36(c).

20 "Servicing" means the business activity of a mortgage  
21 servicer."



1           2. By amending the definitions of "borrower" and "mortgage  
2 servicer" to read:

3            "Borrower" means the obligor, maker, cosigner, or  
4 guarantor under a mortgage loan agreement. For purposes of this  
5 chapter, a borrower may also be referred to as a consumer.

6            "Mortgage servicer" means the person responsible for  
7 collecting, receiving, and processing any scheduled periodic  
8 payments from a borrower pursuant to the terms of any  
9 residential mortgage loan, including amounts for escrow accounts  
10 under [~~section 10 of~~] the Real Estate Settlement Procedures Act,  
11 [~~12 United States Code section 2609,~~] and for making the  
12 payments to the owner of the loan or other third parties of  
13 principal and interest and such other payments with respect to  
14 the amounts received from the borrower as may be required  
15 pursuant to the terms of the mortgage servicing loan documents  
16 or servicing contract. In the case of a home equity conversion  
17 mortgage or reverse mortgage as referenced in this chapter,  
18 servicing includes making payments to the borrower."

19           SECTION 3. Section 454M-2, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:



1           "(b) No person shall engage in the business of mortgage  
2 servicing in this State unless the person providing services has  
3 a physical presence in the State pursuant to section ~~[454M-~~  
4 ~~5(a)(5)-]~~ 454M-5(b)(6)."

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

7           "~~§454M-4~~ License; fees; renewals; notices; voluntary  
8 surrender of license~~[-];~~ bonds. (a) ~~[Am]~~ The commissioner may  
9 approve a license or license renewal application upon receipt of  
10 a complete application; provided that an applicant for licensure  
11 shall file an application on a form prescribed by NMLS or by the  
12 commissioner and shall pay an application fee of \$675. Each  
13 license shall expire on December 31 of each calendar year~~[-]~~  
14 unless the license is renewed. A ~~[license]~~ licensee may ~~[be~~  
15 ~~renewed]~~ apply for license renewal by filing a renewal statement  
16 on a form prescribed by NMLS or by the commissioner and paying a  
17 renewal fee of \$425, at least four weeks prior to December 31.  
18 All fees paid pursuant to this section, including fees paid in  
19 connection with an application, shall be nonrefundable. No fee  
20 paid pursuant to this section shall be prorated if the license



1 is surrendered, revoked, or suspended prior to the expiration of  
2 the period for which it was approved.

3 (b) To fulfill the purposes of this chapter, the  
4 commissioner may establish relationships or contracts with NMLS  
5 or other entities designated by NMLS to collect and maintain  
6 records and process transaction fees or other fees related to  
7 licensees or other persons subject to this chapter.

8 (c) To the extent reasonably necessary to participate in  
9 NMLS, the commissioner may modify any or all of the requirements  
10 of subsections (e) and [~~(f)~~] (i).

11 (d) The commissioner may use NMLS as an agent for  
12 requesting information from and distributing information to the  
13 United States Department of Justice, any governmental agency, or  
14 any other source, as directed by the commissioner.

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

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

20 The applicant shall disclose whether the applicant or any of its  
21 officers, directors, employees, managers, agents, partners, or



1 members have ever been issued or been the subject of an  
2 injunction or administrative order pertaining to any aspect of  
3 the lending business, have ever been convicted of a misdemeanor  
4 involving the lending industry or any aspect of the lending  
5 business, or have ever been convicted of any felony.

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

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

15 (1) The licensee files the change with NMLS and, in the  
16 case of the principal office or a branch office,  
17 provides directly to the commissioner a bond rider or  
18 endorsement, or addendum, as applicable, to any bond on  
19 file with the commissioner that reflects the new name  
20 or address of the principal office or branch office; and  
21 (2) The commissioner approves the change in writing.



- 1        (h) The mortgage servicer licensee shall file with NMLS  
2 or, if the information cannot be filed with NMLS, directly  
3 notify the commissioner in writing no later than five business  
4 days after the licensee has reason to know of the occurrence of any  
5 of the following events:
- 6        (1) Filing for bankruptcy or the consummation of a  
7        corporate restructuring of the licensee;
- 8        (2) Filing of a criminal indictment against the licensee or  
9        receiving notification of the filing of any criminal  
10       felony indictment or felony conviction of any of the  
11       licensee's officers, directors, employees, managers,  
12       agents, members, partners, or shareholders owning ten per  
13       cent or more of the outstanding stock of the licensee;
- 14       (3) Receiving notification of the initiation of license  
15       denial, cease and desist, suspension or revocation  
16       procedures, or other formal or informal regulatory  
17       action by any governmental agency against the licensee  
18       and the reasons for the action;
- 19       (4) Receiving notification of the initiation of any action  
20       against the licensee by the state attorney general or



1           the attorney general of any other state and the reasons  
2           for the action;

3           (5) Suspension or termination of the licensee's status as an  
4           approved servicer by the Federal National Mortgage  
5           Association, Federal Home Loan Mortgage Corporation, or  
6           Government National Mortgage Association;

7           (6) Receiving notification that certain servicing rights of  
8           the licensee will be rescinded or canceled, and the  
9           reasons provided therefor;

10          (7) Receiving notification of filing for bankruptcy of any  
11          of the licensee's officers, directors, members,  
12          managers, agents, partners, or shareholders owning ten  
13          per cent or more of the outstanding stock of the  
14          licensee; or

15          (8) Receiving notification of the initiation of a class action  
16          lawsuit on behalf of consumers against the licensee that  
17          is related to the operation of the licensed business.

18          ~~(f)~~ (i) A mortgage servicer licensed under this chapter  
19 may voluntarily cease business and surrender its license by  
20 giving written notice to the commissioner of its intent to  
21 surrender its mortgage servicer license. Notice pursuant to



1 this subsection shall be given at least thirty days before the  
2 surrender of the license and shall include:

- 3 (1) The date of surrender;
- 4 (2) The name, address, telephone number, facsimile number,  
5 and electronic address of a contact individual with  
6 knowledge and authority sufficient to communicate with  
7 the commissioner regarding all matters relating to the  
8 licensee during the period that it was licensed  
9 pursuant to this chapter;
- 10 (3) The reason or reasons for surrender;
- 11 (4) The original license issued pursuant to this chapter  
12 to the mortgage servicer; and
- 13 (5) If applicable, a copy of all notices to affected  
14 borrowers required by the Real Estate Settlement  
15 Procedures Act [~~7, title 12 United States Code section~~  
16 ~~2601 et seq., or by regulations adopted pursuant to~~  
17 ~~the Real Estate Settlement Procedures Act,~~] of the  
18 assignment, sale, or transfer of the servicing of all  
19 relevant loans that the licensee is currently  
20 servicing under the license being surrendered.



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

8 (j) Before a mortgage servicer's license becomes  
9 effective, the applicant or licensee shall file with the  
10 commissioner a surety bond written by a surety authorized to  
11 write surety bonds in this State, covering the applicant or  
12 licensee's principal office and any branch office from which the  
13 applicant or licensee acts as a mortgage servicer, in a penal sum  
14 of \$100,000. No mortgage servicer licensee shall act as a  
15 mortgage servicer in this State without maintaining the surety  
16 bond required by this section.

17 The surety bond shall be:

18 (1) In a form approved by the attorney general of this  
19 State; and

20 (2) Conditioned upon the mortgage servicer licensee  
21 faithfully performing any and all written agreements or



1 commitments with or for the benefit of borrowers and  
2 mortgagees, truly and faithfully accounting for all  
3 funds received from a borrower or mortgagee in the  
4 person's capacity as a mortgage servicer, and  
5 conducting the mortgage business consistent with the  
6 provisions of this chapter to perform any written  
7 agreements or commitments.

8 (k) The commissioner, or any person claiming to have  
9 sustained damage by reason of the failure of the mortgage  
10 servicer to comply with the mortgage servicer's bond, or by the  
11 wrongful conversion of funds paid by a borrower to the mortgage  
12 servicer, may bring an action on the bond to recover the damage  
13 therefrom. The commissioner may deposit with a court of  
14 competent jurisdiction all or any part of the sum of the bond.  
15 The proceeds of the bond, even if mixed with other assets of the  
16 principal, shall be deemed by operation of law to be held in  
17 trust for the benefit of claimants against the principal in the  
18 event of bankruptcy of the principal and shall be immune from  
19 attachment by creditors and judgment creditors. The surety bond  
20 shall run concurrently with the period of the license for the  
21 principal office of the mortgage servicer and the aggregate



1 liability under the bond shall not exceed the penal sum of the  
2 bond. The principal shall notify the commissioner of the  
3 commencement of an action on the bond. When an action is  
4 commenced on a principal's bond, the commissioner may require the  
5 filing of a new bond and immediately on recovery on any action on  
6 the bond, the principal shall file a new bond.

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

20 (1) The principal submits a letter of reinstatement of the  
21 bond or a new bond; or



1       (2) The mortgage servicer licensee has ceased business in  
2           this State and has surrendered all licenses in  
3           accordance with this chapter.

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

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



1        (n) For purposes of this section, "principal" means, in the  
2 context of a surety bond requirement, the primary party who will  
3 perform the contractual obligation."

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

6        "§454M-5 ~~[Duties]~~ Additional duties of a mortgage  
7 servicer; ~~[disclosures;]~~ good faith~~[-]~~ and fair dealing;  
8 disclosures; payments, accounting, and records; assignment of  
9 servicing rights. (a) A mortgage servicer licensed or acting  
10 under this chapter, ~~[is]~~ has a duty of good faith and fair  
11 dealing in its communications, transactions, and course of  
12 dealings with each borrower in connection with the servicing of  
13 the borrower's mortgage loan.

14        (b) In addition to any other duties imposed by law, a  
15 mortgage servicer shall:

- 16        (1) Safeguard and account for any money handled for the  
17        borrower;
- 18        (2) Follow reasonable and lawful instructions from the  
19        borrower consistent with the underlying note and  
20        mortgage;



- 1        ~~[(2)]~~ (3) Act with reasonable skill, care, timeliness,  
2                      promptness, and diligence;
- 3        ~~[(3)]~~ (4) Disclose to the commissioner in the servicer's  
4                      license application and each yearly renewal a  
5                      complete, current schedule of the ranges of costs and  
6                      fees it charges borrowers for its servicing-related  
7                      activities;
- 8        ~~[(4)]~~ (5) File a report with each yearly renewal statement  
9                      in a form and format acceptable to the ~~[director]~~  
10                     commissioner detailing the servicer's activities in  
11                     this State, including:
- 12                     (A) The number of mortgage loans the servicer is  
13                     servicing;
- 14                     (B) The type and characteristics of loans serviced in  
15                     this State;
- 16                     (C) The number of serviced loans in default, along  
17                     with a breakdown of thirty-, sixty-, and ninety-  
18                     day delinquencies;
- 19                     (D) Information on loss mitigation activities,  
20                     including details on workout arrangements  
21                     undertaken;



- 1 (E) Information on foreclosures commenced in this  
2 State;
- 3 (F) The affiliations of the mortgage servicer,  
4 including any lenders or mortgagees for which the  
5 mortgage servicer provides service, any  
6 subsidiary or parent entities of the mortgage  
7 servicer, and a description of the authority held  
8 by the mortgage servicer through its  
9 affiliations; and
- 10 (G) Any other information that the commissioner may  
11 require; and
- 12 ~~[-(5)-]~~ (6) Maintain an office in the State that is staffed  
13 by at least one agent or employee for the purposes of  
14 addressing consumer inquiries or complaints and  
15 accepting service of process; provided that the  
16 mortgage servicer's business constitutes at least a  
17 twenty per cent share of the portion of the total  
18 mortgage loan service market in the State that was  
19 serviced by mortgage servicers licensed under this  
20 chapter within the previous calendar year; and  
21 provided further that nothing in this section shall



1 prohibit a mortgagee as defined by section 667-1 or a  
2 mortgage servicer from contracting with a licensee  
3 that maintains an office in this State in conformity  
4 with this section for the purposes of addressing  
5 consumer inquiries or complaints and accepting service  
6 of process.

7 (c) A mortgage servicer shall comply with the following  
8 requirements concerning handling and processing of mortgage  
9 payments:

10 (1) Except as provided in paragraph (4), all payments  
11 received by a mortgage servicer on a mortgage loan at  
12 the address where the borrower has been instructed in  
13 writing to make payments shall be accepted and  
14 credited, or treated as credited, on the business day  
15 received, to the extent that the borrower has provided  
16 sufficient information to credit the account. For all  
17 mortgage loans originated after July 1, 2015, except  
18 where inconsistent with federal law or regulation,  
19 payments shall be credited to the principal and  
20 interest due on the home loan before crediting the  
21 payments to taxes, insurance, or fees;



- 1        (2) Methods of payment and payment instruments shall be  
2        reasonable;
- 3        (3) If a mortgage servicer specifies in writing  
4        requirements for the borrower to follow in making  
5        payments, but accepts a payment that does not conform  
6        to the requirements, the mortgage servicer shall  
7        credit the payment as soon as commercially  
8        practicable, but in no event later than three business  
9        days after receipt;
- 10       (4) Late payments of principal and interest shall be  
11       credited before any late charge is collected; and
- 12       (5) If the mortgage servicer receives any payment on a  
13       mortgage loan and suspenses the payment, does not  
14       credit the payment, or does not treat the payment in  
15       accordance with this section, the mortgage servicer,  
16       within ten days of receipt, shall send the borrower  
17       notice by mail at the borrower's last known address  
18       indicating the reason the payment was suspended or was  
19       not credited or treated as credited to the account,  
20       and specifying any actions by the borrower necessary  
21       to make the loan current.



1        (d) A mortgage servicer shall comply with the following  
2 requirements concerning escrows for the payment of taxes and  
3 insurance:

4        (1) Any mortgage servicer who receives funds from a borrower  
5 to be held in escrow for payment of taxes and insurance  
6 premiums shall pay the taxes and insurance premiums of  
7 the borrower to the appropriate taxing authority and  
8 insurance company in the amount required and at the  
9 time the taxes and insurance premiums are due, in  
10 accordance with the requirements of the Real Estate  
11 Settlement Procedures Act, including title 12 C.F.R.  
12 section 1024.17, and shall be liable to the borrower  
13 as provided therein;

14        (2) If the amount held in the escrow account as of the date  
15 the taxes and insurance premiums are due is insufficient  
16 to pay the taxes and insurance premiums, the mortgage  
17 servicer shall pay the taxes and insurance premiums from  
18 the mortgage servicer's own funds; provided that the  
19 borrower has paid to the mortgage servicer the amounts  
20 required to be paid into the escrow account, as  
21 determined by the mortgage servicer, for all amounts



1 scheduled to be paid to the mortgage servicer prior to  
2 the date the taxes and insurance premiums are due; and  
3 (3) Where an escrow account has been established and a  
4 mortgage servicer advances funds in paying a  
5 disbursement that is not the result of a borrower's  
6 payment default under the underlying mortgage  
7 document, the mortgage servicer shall conduct an  
8 escrow account analysis to determine the reasons for  
9 and extent of the deficiency and shall provide a  
10 written explanation to the borrower before seeking  
11 repayment of the funds from the borrower. The  
12 mortgage servicer shall then give the borrower the  
13 option of paying the shortage over a period of not  
14 less than one year. The mortgage servicer shall not  
15 charge or collect interest on any shortage during the  
16 payment period.

17 Any mortgage servicer who violates any provision of this  
18 subsection shall be liable to the borrower: for any penalties,  
19 interest, or other charges levied by the taxing authority or  
20 insurance company as a result of any violation; any actual  
21 damages suffered by the borrower as a result of the violation,



1 including any amount that would have been paid by an insurer for  
2 a casualty or liability claim had the insurance policy not been  
3 anceled for nonpayment by the mortgage servicer; and, in the  
4 case of any successful action to enforce the foregoing liability,  
5 the costs of the action together with reasonable attorney's fees as  
6 determined by the court.

7 (e) A mortgage servicer shall comply with the following  
8 requirements concerning statements of account:

9 (1) At least once annually, within thirty days of the end  
10 of the computation year, a mortgage servicer shall  
11 deliver to the borrower a plain language statement of  
12 the borrower's account showing the unpaid principal  
13 balance of the mortgage loan at the end of the  
14 immediately preceding twelve-month period, the  
15 interest paid during that period, and the amounts  
16 deposited into escrow and disbursed from escrow during  
17 the period. The annual escrow statement may be  
18 provided separately from the annual statement showing  
19 the unpaid principal and interest paid. The format  
20 and content of the annual escrow statement shall



1 comply with the Real Estate Settlement Procedures Act,  
2 including title 12 C.F.R. section 1024.17;  
3 (2) A mortgage servicer shall promptly provide a borrower  
4 with an accurate accounting in plain English of the  
5 debt owed when requested by the borrower or borrower's  
6 authorized representative. Within thirty days of  
7 receipt of a request from the borrower or the  
8 borrower's authorized representative, a mortgage  
9 servicer shall deliver to the borrower a payment  
10 history for the last thirty-six months of the  
11 borrower's account, unless a different period is  
12 requested, showing the date and amount of all payments  
13 made or credited to the account and the total unpaid  
14 balance. The mortgage servicer shall have sixty days  
15 to deliver a payment history where the request is for  
16 a period longer than the last thirty-six months;  
17 (3) A fee shall not be charged to the borrower for the  
18 annual escrow statement or for one payment history  
19 furnished to a borrower in a twelve-month period; and  
20 (4) A shortage, surplus, or deficiency in the escrow  
21 account shall be handled in accordance with the Real



1 Estate Settlement Procedures Act, including title 12  
2 C.F.R. section 1024.17. Alternatively, with the  
3 consent of the borrower, an excess balance may be  
4 applied to the principal balance.

5 (f) Except where inconsistent with the automatic stay  
6 provisions of the Bankruptcy Code with respect to a borrower in  
7 a pending bankruptcy proceeding, a mortgage servicer shall send  
8 a payment reminder notice to a borrower at the borrower's last  
9 known address no later than seventeen days after the payment  
10 becomes due and remains unpaid; provided that a mortgage  
11 servicer is not required to send a separate payment reminder  
12 notice for each consecutive month in which the mortgage loan  
13 continues to remain unpaid.

14 (g) A mortgage servicer shall provide a clear,  
15 understandable, and accurate statement of the total amount that  
16 is required to pay off the mortgage loan as of a specified date,  
17 within a reasonable time, but in any event no more than five  
18 business days after receipt of a request from the borrower or  
19 borrower's authorized representative. No borrower shall be  
20 charged a fee for being informed or receiving a payoff statement  
21 or for being provided with a release upon full prepayment;



1 provided that a mortgage servicer may charge a reasonable fee  
2 for providing a payoff statement after five or more requests in  
3 any calendar year.

4 (h) A mortgage servicer shall comply with the following  
5 requirements concerning handling consumer complaints and  
6 inquiries:

7 (1) A mortgage servicer shall follow the requirements of  
8 the Real Estate Settlement Procedures Act, including  
9 requests for error and information resolution  
10 procedures under title 12 C.F.R. sections 1024.35 and  
11 1024.36;

12 (2) In addition to the requirements of the Real Estate  
13 Settlement Procedures Act, a mortgage servicer shall  
14 establish and maintain a system to respond to and  
15 resolve borrower inquiries and complaints in a prompt  
16 and appropriate manner;

17 (3) Within ten business days of receiving a request in  
18 writing from a borrower or the borrower's authorized  
19 representative, a mortgage servicer shall provide the  
20 borrower with the name, address, phone number or  
21 electronic mail address, if available, and other



1           relevant contact information for the owner or assignee  
2           of the mortgage loan; and

3           (4) In addition to the information required to be  
4           disclosed under this section, a mortgage servicer may,  
5           at its option, provide any other information regarding  
6           the servicing of the loan that the mortgage servicer  
7           believes would be helpful to a borrower; provided that  
8           any additional information does not contradict or  
9           obscure the required disclosures.

10           (i) A mortgage servicer shall comply with the following  
11 requirements concerning fees:

12           (1) A mortgage servicer shall maintain and keep current a  
13           schedule of standard or common fees that the mortgage  
14           servicer charges borrowers for the servicer's  
15           servicing-related activities, such as nonsufficient  
16           fund fees. The schedule shall identify each fee,  
17           provide a plain English explanation of the fee, and  
18           state the amount of the fee or range of amounts. If  
19           there is no standard fee, the schedule shall explain  
20           how the fee is calculated or determined. A mortgage  
21           servicer shall make its schedule available on the



1 mortgage servicer's website and to the borrower or the  
2 borrower's authorized representative upon request;

3 (2) A mortgage servicer may only collect a fee if the fee  
4 is for services actually rendered and one of the  
5 following conditions is met:

6 (A) The fee is clearly and conspicuously disclosed by  
7 the loan instruments and not prohibited by law;

8 (B) The fee is expressly permitted by law and not  
9 prohibited by the loan instruments; or

10 (C) The fee is not prohibited by law or the loan  
11 instruments and is a reasonable fee for a  
12 specific service requested by the borrower that  
13 is assessed only after clear and conspicuous  
14 disclosure of the fee is provided to the borrower  
15 and the borrower expressly consents to pay the  
16 fee in exchange for the services;

17 (3) In addition to the limitations in paragraph (2),  
18 attorneys' fees charged in connection with a  
19 foreclosure action shall not exceed reasonable and  
20 customary fees for the work. If a foreclosure action  
21 or proceeding is terminated prior to the public sale



1 because of a loss mitigation option, a reinstatement,  
2 or payment in full, the borrower shall only be liable  
3 for reasonable and customary fees for work actually  
4 performed; and

5 (4) A mortgage servicer shall not impose any late fee or  
6 delinquency charge when the only delinquency is  
7 attributable to late fees or delinquency charges  
8 assessed on an earlier payment and the payment is  
9 otherwise a full payment for the applicable period and  
10 is paid on its due date or within any applicable grace  
11 period. Late charges shall not be:

12 (A) Based on an amount greater than the past due  
13 amount;

14 (B) Collected from the escrow account or from escrow  
15 surplus without the approval of the borrower; or

16 (C) Deducted from any regular payment.

17 (j) Each mortgage servicer licensee shall maintain adequate  
18 records of each residential mortgage loan transaction at the  
19 office named in the mortgage servicer license.



1        (k) Upon assignment of servicing rights on a residential  
2 mortgage loan, the mortgage servicer shall disclose to the  
3 borrower:

4        (1) Any notice required by the Real Estate Settlement  
5 Procedures Act, including title 12 C.F.R. section  
6 1024.33, within the time periods prescribed therein;  
7 and

8        (2) A schedule of the ranges and categories of the  
9 mortgage servicer's costs and fees for the servicer's  
10 servicing-related activities, which shall comply with  
11 state and federal law and, if the disclosure is made by  
12 a mortgage servicer licensee, shall not exceed those  
13 reported to the commissioner in accordance with this  
14 chapter.

15        ~~[(b)]~~ (1) At the time a servicer accepts assignment of  
16 servicing rights for a mortgage loan, the servicer shall  
17 disclose to the borrower all of the following:

18        (1) Any notice required by the Real Estate Settlement  
19 Procedures Act [~~, 12 United States Code section 2601 et~~  
20 ~~seq., or by regulations promulgated thereunder~~];

1 (2) A schedule of the ranges and categories of its costs  
2 and fees for its servicing-related activities, which  
3 shall comply with this chapter and which shall not  
4 exceed those reported to the commissioner; and

5 (3) A notice in a form and content acceptable to the  
6 commissioner that the servicer is licensed by the  
7 commissioner and that complaints about the servicer  
8 may be submitted to the commissioner.

9 ~~[(c) In the event of a delinquency or other act of default  
10 on the part of the borrower, the servicer shall act in good  
11 faith to inform the borrower of the facts concerning the loan  
12 and the nature and extent of the delinquency or default, and, if  
13 the borrower replies, shall negotiate with the borrower, subject  
14 to the servicer's duties and obligations under the mortgage  
15 servicing contract, if any, to attempt a resolution or workout  
16 relating to the delinquency.]~~

17 (m) Where this chapter requires compliance with the Real  
18 Estate Settlement Procedures Act, the required compliance  
19 applies to any person subject to this chapter, whether or not  
20 the Real Estate Settlement Procedures Act applies to that person  
21 or transaction."



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

3 "§454M-6 Prohibited activities. (a) It shall be  
4 ~~[unlawful]~~ a violation of this chapter for any mortgage servicer  
5 in the course of any mortgage loan transaction~~[-]~~, or in  
6 connection with any mortgage servicing business, to:

- 7 (1) ~~[To misrepresent]~~ Misrepresent or conceal material  
8 facts, ~~[to]~~ make false promises, or ~~[to]~~ pursue a  
9 course of misrepresentation through its agents or  
10 otherwise;
- 11 (2) ~~[To engage]~~ Engage in any transaction, practice, or  
12 course of business that is not in good faith, does not  
13 constitute fair dealing, or that constitutes a fraud  
14 upon any person, in connection with the servicing,  
15 purchase, or sale of any mortgage loan;
- 16 ~~[-(3) To fail to comply with the mortgage loan servicing~~  
17 ~~transfer, escrow account administration, or borrower~~  
18 ~~inquiry response requirements imposed by sections 6~~  
19 ~~and 10 of the Real Estate Settlement Procedures Act,~~  
20 ~~12 United States Code sections 2605 and 2609, and~~



- 1 ~~regulations adopted thereunder by the Secretary of~~  
2 ~~Housing and Urban Development; or~~
- 3 ~~(4) To fail to comply with applicable federal laws and~~  
4 ~~regulations related to mortgage servicing.]~~
- 5 (3) Obtain property by fraud or misrepresentation;  
6 (4) Misapply residential mortgage loan payments;  
7 (5) Misapply payments to escrow accounts;  
8 (6) Require any amount of funds to be remitted by means more  
9 costly to the borrower than a bank or certified check or  
10 attorney's check from an attorney's account to be paid  
11 by the borrower;
- 12 (7) Fail to timely pay taxes or insurance premiums of the  
13 borrower, if and as required by this chapter;
- 14 (8) Fail to follow procedures concerning escrows for the  
15 payment of taxes and insurance as required by this  
16 chapter;
- 17 (9) Place hazard, homeowner's, or flood insurance on the  
18 mortgaged property when the mortgage servicer knows or  
19 has reason to know that the borrower has an effective  
20 policy for such insurance;



1       (10) Fail to provide written notice to a borrower upon taking  
2       action to place hazard, homeowner's, or flood insurance  
3       on the mortgaged property, including a clear and  
4       conspicuous statement of the procedures by which the  
5       borrower may demonstrate that the borrower has the  
6       required insurance coverage and by which the mortgage  
7       servicer shall terminate the insurance coverage placed  
8       by the mortgage servicer and refund or cancel any  
9       insurance premiums and related fees paid by or charged  
10       to the borrower;

11       (11) Place hazard, homeowner's, or flood insurance on a  
12       mortgaged property, or require a borrower to obtain or  
13       maintain such insurance, in excess of the replacement  
14       cost of the improvements;

15       (12) Fail to provide to the borrower a refund of unearned  
16       premiums paid by a borrower or charged to the  
17       borrower for hazard, homeowner's, or flood insurance  
18       placed by a mortgagee or the mortgage servicer if the  
19       borrower provides reasonable proof that the borrower has  
20       obtained coverage such that the forced placement  
21       insurance is no longer necessary and the property is



- 1           insured. If the borrower provides reasonable proof  
2           that no lapse in coverage occurred such that the  
3           forced placement was not necessary, the mortgage  
4           servicer shall promptly refund the entire premium;
- 5       (13) Collect private mortgage insurance beyond the date for  
6           which private mortgage insurance is required;
- 7       (14) Collect, charge, attempt to collect or charge, or use or  
8           propose any agreement purporting to collect or charge,  
9           any fee not in compliance with, or prohibited by, this  
10           chapter;
- 11       (15) Fail to provide a timely and accurate statement of  
12           account, as required by this chapter;
- 13       (16) Fail to handle a consumer complaint or inquiry in  
14           accordance with this chapter;
- 15       (17) Provide inaccurate information to a credit bureau,  
16           thereby harming a borrower's creditworthiness;
- 17       (18) Fail to report both the favorable and unfavorable  
18           payment history of the borrower to a nationally  
19           recognized consumer credit bureau at least annually if  
20           the mortgage servicer regularly reports information to a  
21           credit bureau;



- 1        (19) Fail to provide or submit a timely, complete, and  
2        accurate notice, acknowledgment, statement, information,  
3        explanation, reminder, communication, or other  
4        information to any person as required by this chapter;
- 5        (20) Fail to comply with loss mitigation option requirements  
6        of this chapter;
- 7        (21) Fail to offer loan modifications in compliance with the  
8        Home Affordable Modification Program guidelines or  
9        directives, if the mortgage servicer is participating in  
10       the Home Affordable Modification Program;
- 11       (22) Fail to comply with the requirements of chapter 667 and  
12       ensure that the mortgage servicer's attorneys and agents  
13       comply with chapter 667;
- 14       (23) Refuse to communicate with an authorized representative of  
15       the borrower who provides a written authorization  
16       signed by the borrower; provided that the mortgage  
17       servicer may adopt procedures reasonably related to  
18       verifying that the representative is in fact  
19       authorized to act on behalf of the borrower;
- 20       (24) Fail to provide a timely payoff statement as required  
21       by this chapter;



- 1        (25) Fail to issue a release of mortgage in accordance with  
2        section 506-8;
- 3        (26) Conduct any business for which this chapter requires a  
4        license without holding a valid license as required under  
5        this chapter or assist or aid and abet any person in the  
6        conduct of business without a valid license as required  
7        under this chapter;
- 8        (27) Engage in the business of mortgage servicing without  
9        complying with bonding requirements of this chapter;
- 10       (28) Transfer or assign its mortgage servicer license;
- 11       (29) Change its name or office address without complying with  
12       the requirements of this chapter;
- 13       (30) Fail to maintain adequate records of each residential  
14       mortgage loan transaction at the office named in the  
15       mortgage servicer license; or
- 16       (31) Make any false statement or omission of a material  
17       fact, in connection with any information or reports  
18       filed with a governmental agency or NMLS or in  
19       connection with any investigation conducted by the  
20       commissioner or another governmental agency.



1        (b) It shall be a violation of this chapter for any  
2 mortgage servicer in the course of any mortgage loan transaction  
3 to fail to comply with any:

4        (1) Applicable federal law or regulation related to  
5 mortgage servicing, including but not limited to:

6        (A) The Real Estate Settlement Procedures Act,  
7 including the mortgage loan servicing transfer,  
8 escrow account administration, and borrower  
9 request for information and error resolution  
10 requirements;

11       (B) The Truth in Lending Act, title 15 United States  
12 Code sections 1601 through 1667f, as amended, and  
13 Regulation Z adopted thereunder, title 12 C.F.R.  
14 part 226, as amended; or

15       (C) Rules and regulations issued or administered by  
16 the Consumer Financial Protection Bureau, and  
17 interpretations of the rules by the Consumer  
18 Financial Protection Bureau through interpretive  
19 rules, bulletins, statements of policy, and  
20 statements of guidance;



- 1        (2) Agreement with a governmental entity, agency, agent,  
2        or regulator, or state attorney general that applies  
3        to the mortgage servicer, including:
- 4        (A) A servicer participation agreement or other  
5        agreement to participate in the Home Affordable  
6        Modification Program or other Making Home  
7        Affordable program;
- 8        (B) Home Affordable Modification Program rules,  
9        including guidance provided by Making Home  
10       Affordable program handbooks, and supplemental  
11       directives; or
- 12       (C) The National Mortgage Settlement reached in 2012  
13       by the federal government and forty-nine states,  
14       with the five largest mortgage servicers in the  
15       United States, to address mortgage servicing,  
16       foreclosure, and bankruptcy abuses;
- 17       (3) Order of a court or government regulator that applies  
18       to the mortgage servicer;
- 19       (4) Provision of this chapter or any rule adopted pursuant  
20       to this chapter; or
- 21       (5) Federal or state law, rule, or regulation.



1        ~~[(b)]~~ (c) It shall be ~~[unlawful]~~ a violation of this  
2 chapter for any mortgage servicer to provide any mortgage loan  
3 modifications or other services that would require licensing  
4 pursuant to chapter 454F, unless the mortgage servicer is  
5 licensed under chapter 454F.

6        (d) Notwithstanding any other provision of this chapter, a  
7 mortgage servicer shall not be in violation of this chapter if  
8 performance of a requirement under this chapter would constitute  
9 a violation of federal law, rules, or regulations."

10        SECTION 7. Section 667-32, Hawaii Revised Statutes, is  
11 amended by amending subsection (a) to read as follows:

12        "(a) After the public sale is held, the foreclosing  
13 mortgagee shall sign an affidavit under penalty of perjury:

14            (1) Stating that the power of sale foreclosure was made  
15            pursuant to the power of sale provision in the  
16            mortgage;

17            (2) Stating that the power of sale foreclosure was  
18            conducted as required by this part;

19            (3) Summarizing what was done by the foreclosing  
20            mortgagee;

21            (4) Attaching a copy of the recorded notice of default and



- 1 intention to foreclose;
- 2 (5) Attaching a copy of the last public notice of the
- 3 public sale;
- 4 (6) Referencing the document number of the affiliate
- 5 statement filed at the bureau of conveyances as
- 6 required under section 667-58; and
- 7 (7) Stating the date of filing and any relevant
- 8 referencing information assigned by the division of
- 9 financial institutions to the statement filed with the
- 10 commissioner of financial institutions of the mortgage
- 11 servicer affiliate statement as required under section
- 12 [~~454M-5(a)(4)(F).~~] 454M-5(b)(5)(F)."

13 SECTION 8. Section 667-58, Hawaii Revised Statutes, is  
14 amended by amending subsection (c) to read as follows:

15 "(c) Any notice provided by a mortgage servicer, including  
16 an agent, employee, or representative of that mortgage servicer,  
17 shall be issued only by a mortgage servicer that has been listed  
18 in the affiliate statement filed by the foreclosing mortgagee or  
19 lender under subsection (a); provided further that the mortgage  
20 servicer shall be licensed under or otherwise exempt from  
21 chapter 454M. The agency relationship or affiliation of the



1 mortgage servicer and the foreclosing mortgagee or lender and  
2 any authority granted or conferred to that mortgage servicer  
3 shall be described in the affiliate statement filed under both  
4 subsection (a) and section [~~454M-5(a)(4)(F)~~] 454M-5(b)(5)(F)."

5 SECTION 9. For persons holding a current license under  
6 chapter 454M, Hawaii Revised Statutes, on the effective date of  
7 this Act, the surety bond requirements under section 454M-4(j)  
8 to (n), Hawaii Revised Statutes, established by section 4 of  
9 this Act, shall apply as of the date of the licensee's next  
10 license renewal under chapter 454M, Hawaii Revised Statutes,  
11 immediately following the effective date of this Act, but in no  
12 case later than December 31, 2015.

13 SECTION 10. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 11. This Act shall take effect upon its approval.



**Report Title:**

Mortgage Servicers; Mortgage Loan Delinquencies; Loss Mitigation; License; Bond; Duties; Prohibited Activities

**Description:**

Updates mortgage servicer licensing and regulatory requirements including crediting of payments, payment of taxes and insurance, delinquencies and loss mitigation efforts, borrower complaints, fee and information disclosures, record maintenance, assignment of servicing rights, and prohibited activities. (SB1093 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

