



GOV. MSG. NO. **723**

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

June 10, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 10, 2009, the following bill was signed into law:

HB1071 HD3 SD2 CD1

A BILL FOR AN ACT
RELATING TO MORTGAGE SERVICERS.
ACT 106 (09)

Sincerely,



LINDA LINGLE

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

14 "Person" means an individual, partnership, corporation,
15 association, or other organization.

16 "Residential mortgage loan" means a mortgage loan, home
17 equity loan, or reverse mortgage loan, that is secured by a
18 first or subordinate lien on residential real property located
19 in Hawaii, including a refinancing of any secured loan on
20 residential real property located in Hawaii, upon which:

21 (1) There is or will be constructed a structure or
22 structures designed principally for occupancy by one



1 to four families, including individual units of
2 condominiums and cooperatives; or

3 (2) A manufactured home is located or will be placed on
4 the real property, using proceeds of the loan.

5 § -2 License required. (a) No person except those
6 exempted under this chapter shall engage in the business of
7 mortgage servicing without a license as provided in this
8 chapter.

9 (b) A person is engaged in the business of mortgage
10 servicing if the person provides those services in this state
11 even if the person providing services has no physical presence
12 in the state.

13 § -3 Exemptions. This chapter shall not apply to the
14 following:

15 (1) Any persons chartered or authorized under the laws of
16 any state or federal law to engage in the activity of
17 an insured depository institution as defined in Title
18 12 United States Code Section 1813(c)(2), including
19 banks or savings associations, and operating
20 subsidiaries of an insured depository institution;



- 1 (2) Trust companies, credit unions, insurance companies,
2 and financial service loan companies licensed by the
3 State;
- 4 (3) The Federal Deposit Insurance Corporation, in
5 connection with assets acquired, assigned, sold, or
6 transferred pursuant to Section 13(c) of the Federal
7 Deposit Insurance Act or as receiver or conservator of
8 an insured depository institution;
- 9 (4) The Federal National Mortgage Association; the Federal
10 Home Loan Mortgage Corporation; the Federal Deposit
11 Insurance Corporation; the United States Department of
12 Housing and Urban Development, and the Government
13 National Mortgage Association and the Federal Housing
14 Administration, and cases in which a mortgage insured
15 under the National Housing Act, 12 United States Code
16 Section 1701 et seq, is assigned to the United States
17 Department of Housing and Urban Development; the
18 National Credit Union Administration; the Farmers Home
19 Administration or its successor agency under Public
20 Law 103-354; and the Department of Veterans Affairs,
21 in any case in which the assignment, sale, or transfer
22 of the servicing of the mortgage loan is preceded by



1 termination of the contract for servicing the loan for
2 cause, commencement of proceedings for bankruptcy of
3 the servicer, or commencement of proceedings by the
4 Federal Deposit Insurance Corporation for
5 conservatorship or receivership of the servicer or an
6 entity by which the servicer is owned or controlled;
7 and

- 8 (5) Any person making or acquiring contemporaneously no
9 more than five residential mortgage loans with that
10 person's own funds for that person's own investment.

11 **§ -4 License; fees; renewals.** (a) An applicant for
12 licensure shall file an application on a form prescribed by the
13 commissioner and shall pay an application fee of \$500. Each
14 license shall expire on June 30 of each calendar year. A
15 license may be renewed by filing a renewal statement on a form
16 prescribed by the commissioner and paying a renewal fee of \$250,
17 on or before July 1 for licensure for the following year.

18 (b) The applicant shall submit any other information that
19 the commissioner may require, including:

- 20 (1) The applicant's form and place of organization;
21 (2) The applicant's tax identification number; and
22 (3) The applicant's proposed method of doing business.



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

8 § -5 Duties of a mortgage servicer; disclosures; good
9 faith. (a) A mortgage servicer licensed or acting under this
10 chapter, in addition to duties imposed by law, shall:

- 11 (1) Safeguard and account for any money handled for the
12 borrower;
- 13 (2) Act with reasonable skill, care, timeliness,
14 promptness, and diligence;
- 15 (3) Disclose to the commissioner in the application and
16 yearly renewal a complete, current schedule of the
17 ranges of costs and fees it charges borrowers for its
18 servicing-related activities; and
- 19 (4) File with the commissioner upon request a report in a
20 form and format acceptable to the director detailing
21 the servicer's activities in this state, including:



- 1 (A) The number of mortgage loans the servicer is
2 servicing;
- 3 (B) The type and characteristics of such loans in
4 this state;
- 5 (C) The number of serviced loans in default, along
6 with a breakdown of thirty-, sixty-, and ninety-
7 day delinquencies;
- 8 (D) Information on loss mitigation activities,
9 including details on workout arrangements
10 undertaken;
- 11 (E) Information on foreclosures commenced in this
12 state; and
- 13 (F) Any other information that the commissioner may
14 require.
- 15 (b) At the time a servicer accepts assignment of servicing
16 rights for a mortgage loan, the servicer shall disclose to the
17 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;
- 21 (2) A schedule of the ranges and categories of its costs
22 and fees for its servicing-related activities, which



1 shall comply with this chapter and which shall not
2 exceed those reported to the commissioner; and

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

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

15 § -6 Prohibited activities. It shall be unlawful for
16 any mortgage servicer in the course of any mortgage loan
17 transaction:

18 (1) To misrepresent or conceal material facts, to make
19 false promises, or to pursue a course of
20 misrepresentation through its agents or otherwise;

21 (2) To engage in any transaction, practice, or course of
22 business that is not in good faith, does not



1 constitute fair dealing, or that constitutes a fraud
2 upon any person, in connection with the servicing,
3 purchase, or sale of any mortgage loan;

4 (3) To fail to comply with the mortgage loan servicing
5 transfer, escrow account administration, or borrower
6 inquiry response requirements imposed by Sections 6
7 and 10 of the Real Estate Settlement Procedures Act,
8 12 United States Code Sections 2605 and 2609, and
9 regulations adopted thereunder by the Secretary of
10 Housing and Urban Development; or

11 (4) To fail to comply with applicable federal laws and
12 regulations related to mortgage servicing.

13 § -7 License sanctions; suspension, revocation, denial,
14 condition, and refusal to renew, reinstate, or restore. In
15 addition to any other actions authorized by law, the
16 commissioner may suspend, revoke, deny, condition in any manner,
17 or refuse to renew, reinstate, or restore, any license issued
18 under this chapter, or fine any person holding a license issued
19 under this chapter, for any violation of this chapter. All such
20 orders shall be made pursuant to chapter 91.

21 § -8 Powers of commissioner. In addition to any other
22 acts or conditions provided by law, the commissioner may:



- 1 (1) Adopt, amend, or repeal rules, issue declaratory
2 rulings or informal nonbinding interpretations, and
3 investigate and act upon written consumer complaints;
- 4 (2) Grant, deny, forfeit, renew, reinstate, or restore the
5 license of any mortgage servicer;
- 6 (3) Revoke, suspend, or otherwise limit the license of any
7 mortgage servicer for any violation of the provisions
8 in this chapter, or any rule or order of, or agreement
9 with the commissioner;
- 10 (4) Report any violation of this chapter or violation of
11 federal or state law to the United States Commissioner
12 of Housing and Urban Development or other federal
13 agency having jurisdiction over the licensee;
- 14 (5) Investigate and conduct hearings regarding any
15 violation of this chapter, or any rule or order of or
16 agreement with the commissioner; and
- 17 (6) Do any and all things necessary or incidental to the
18 exercise of the commissioner's power and duties,
19 including the authority to conduct contested case
20 proceedings under chapter 91.

21 § -9 Private right of action. Nothing in this chapter
22 shall be construed to preclude any individual or entity that



1 suffers loss as a result of a violation of this chapter from
2 maintaining a civil action to recover damages and, as provided
3 by statute, attorney's fees.

4 § -10 Penalty. Any person who violates any provision of
5 this chapter may be subject to an administrative fine of not
6 more than \$5,000 for each violation.

7 § -11 Compliance resolution fund. Any law to the
8 contrary notwithstanding, fees and fines collected by the
9 commissioner shall be deposited into the compliance resolution
10 fund established pursuant to section 26-9(o)."

11 SECTION 2. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 3. This Act shall take effect on July 1, 2010.

APPROVED this 10 day of JUN , 2009



GOVERNOR OF THE STATE OF HAWAII

