

S.B. NO. 950

JAN 25 2017

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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 two new sections to be appropriately  
3 designated and to read as follows:  
4           "§454M- Change in control of a licensee; fees. (a) A  
5 licensee shall submit to the commissioner an application  
6 requesting approval of a proposed change of control of the  
7 licensee, accompanied by a nonrefundable application fee of  
8 \$500, payable to the division.  
9           (b) The commissioner shall approve a request for change of  
10 control under subsection (a) if, after investigation, the  
11 commissioner determines that the person or group of persons who  
12 will obtain control will be in compliance with this chapter upon  
13 approval of the application for a proposed change of control of  
14 the licensee; have the competence, experience, character, and  
15 general fitness to control the licensee or person in control of  
16 the licensee in a lawful and proper manner; and that the  
17 interests of the public will not be jeopardized by the change of  
18 control.

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1        §454M- Presumption of control. An individual is  
2 presumed to control a mortgage servicer if that individual is:

3        (1) An executive officer; or

4        (2) A director, general partner, or managing member, who  
5 directly or indirectly has the right to vote ten per  
6 cent or more of a class of voting securities or has  
7 the power to sell or direct the sale of ten per cent  
8 or more of a class of voting securities of  
9 that licensee or applicant."

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

13        "Executive officer" means a president, chairperson of an  
14 executive committee, senior officer responsible for the business  
15 of the subject entity or organization, chief financial officer,  
16 or any other person who performs similar functions related to  
17 the subject entity or organization."

18        SECTION 3. Section 454M-4, Hawaii Revised Statutes, is  
19 amended by amending subsection (e) to read as follows:

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

22        (1) Form and place of organization;

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1 (2) Tax identification number; and

2 (3) Proposed method of doing business.

3 The applicant shall disclose whether the applicant or any of its  
4 executive officers, directors, [~~employees, managers, agents,~~  
5 general partners, or managing members have ever been issued or  
6 been the subject of an injunction or administrative order  
7 pertaining to any aspect of the lending business, have ever been  
8 convicted of a misdemeanor involving the lending industry or any  
9 aspect of the lending business, or have ever been convicted of  
10 any felony."

11 SECTION 4. Section 454M-4, Hawaii Revised Statutes, is  
12 amended by amending subsection (h) to read as follows:

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

18 (1) Filing for bankruptcy or the consummation of a  
19 corporate restructuring of the licensee;

20 (2) Filing of a criminal indictment against the licensee or  
21 receiving notification of the filing of any criminal  
22 felony indictment or felony conviction of any of the

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- 1           licensee's executive officers, directors, employees,  
2           managers, agents, managing members, general partners, or  
3           shareholders owning ten per cent or more of the  
4           outstanding stock of the licensee;
- 5           (3) Receiving notification of the initiation of license  
6           denial, cease and desist, suspension or revocation  
7           procedures, or other formal or informal regulatory  
8           action by any governmental agency against the licensee  
9           and the reasons for the action;
- 10          (4) Receiving notification of the initiation of any action  
11          against the licensee by the state attorney general or  
12          the attorney general of any other state and the reasons  
13          for the action;
- 14          (5) Suspension or termination of the licensee's status as an  
15          approved servicer by the Federal National Mortgage  
16          Association, Federal Home Loan Mortgage Corporation, or  
17          Government National Mortgage Association;
- 18          (6) Receiving notification that certain servicing rights of  
19          the licensee will be rescinded or canceled, and the  
20          reasons provided therefor;
- 21          (7) Receiving notification of filing for bankruptcy of any  
22          of the licensee's executive officers, directors,

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1            managing members, [~~managers, agents,~~] general partners,  
2            or shareholders owning ten per cent or more of the  
3            outstanding stock of the licensee; or

4            (8) Receiving notification of the initiation of a class action  
5            lawsuit on behalf of consumers against the licensee that  
6            is related to the operation of the licensed business."

7            SECTION 5. Section 454M-6, Hawaii Revised Statutes, is  
8            amended by amending subsection (c) to read as follows:

9            "(c) It shall be a violation of this chapter for any  
10           mortgage servicer to provide any [~~mortgage loan modifications or~~  
11           ~~ether~~] services that would require licensing pursuant to chapter  
12           454F, unless the mortgage servicer is licensed under chapter  
13           454F."

14           SECTION 6. Section 454M-8.5, Hawaii Revised Statutes, is  
15           amended by amending subsection (c) to read as follows:

16           "(c) Each licensee or person subject to this chapter shall  
17           provide to the commissioner upon request the books and records  
18           relating to the operations of the licensee or person subject to  
19           this chapter. The commissioner shall have access to the books  
20           and records and shall be permitted to interview the executive  
21           officers, directors, managing members, general partners,  
22           principals, mortgage [~~servicers~~] servicer's employees,

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1 independent contractors, agents, and customers of the  
2 licensee or person subject to this chapter concerning their  
3 business."

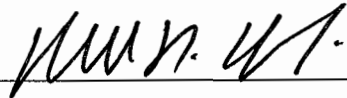
4 SECTION 7. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act, upon its approval, shall take effect  
7 on September 1, 2017.

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INTRODUCED BY: \_\_\_\_\_

A handwritten signature in black ink, appearing to be "M.M. W.", written over a horizontal line.

BY REQUEST

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**Report Title:**

Mortgage Servicers; Division of Financial Institutions; Chapter 454M; Presumption of Control; Change in Control

**Description:**

Clarifies and updates requirements under chapter 454M, Hawaii Revised Statutes, for mortgage servicers. Adds new sections for change in control, and defining "presumption of control". Adds a definition of "executive officer".

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

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## JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO MORTGAGE SERVICERS.

PURPOSE: To add clarity and consistency to various provisions of chapter 454M, Hawaii Revised Statutes (HRS), governing mortgage servicers. The bill adds two new provisions for a change in control of a licensee, and for the presumption of control; adds a definition of "executive officer"; clarifies which key persons are subject to examination requirements, and to disclosures by licensees and applicants of bankruptcy filings, lending industry violations, and criminal history; and deletes the reference to a mortgage servicer's need for a chapter 454F, HRS, license to make loan modifications, as this is no longer a requirement.

MEANS: Add two new sections to chapter 454M and amend sections 454M-1, 454M-4(e) and (h), 454M-6(c), and 454M-8.5(c), HRS.

JUSTIFICATION: Mortgage servicers service billions of dollars of mortgage payments annually. Clarification of licensee and applicant disclosures concerning key persons, as well as the Commissioner of Financial Institution's (Commissioner) access to disclosed information, will improve compliance, regulatory oversight, and the ability of the Commissioner to enforce mortgage servicer statutes. The addition of change of control and presumption of control provisions will enable the Commissioner to preapprove changes in key persons who are proposed to take over control of a licensee.

Impact on the public: This bill will promote consumer protection with respect to



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the mortgage servicer industry by providing appropriate oversight.

Impact on the department and other agencies:  
The amendments improve compliance, regulatory oversight, and the Commissioner's ability to enforce chapter 454M, HRS.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: CCA-104.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: September 1, 2017.