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

8           (1) Order or direct persons subject to this chapter to  
9           cease and desist from conducting business, including  
10           immediate temporary orders to cease and desist;

11           (2) Order or direct persons subject to this chapter to  
12           cease any harmful activities or violations of this  
13           chapter, including immediate temporary orders to cease  
14           and desist;

15           (3) Enter immediate temporary orders to cease doing  
16           business under a license issued pursuant to the  
17           authority granted under this chapter if the



1           commissioner determines that the license was  
2           erroneously granted or the licensee or any person  
3           subject to this chapter is currently in violation of  
4           this chapter; or

5           (4) Order or direct any other affirmative action as the  
6           commissioner deems necessary.

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

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

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

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

17           "**§454M-4 License; fees; renewals; notices; voluntary**  
18 **surrender of license; bonds.** (a) The commissioner may approve  
19 a license or license renewal application upon receipt of a  
20 complete application; provided that an applicant for licensure  
21 shall file an application on a form prescribed by NMLS or by the



1 commissioner and shall pay an application fee of \$675. Each  
2 license shall expire on December 31 of each calendar year unless  
3 the license is renewed. A licensee may apply for license renewal  
4 by filing a renewal statement on a form prescribed by NMLS or by  
5 the commissioner and paying a renewal fee of \$600, at least four  
6 weeks prior to December 31. The minimum standards for license  
7 renewal shall include the following:

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

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

20 (b) To fulfill the purposes of this chapter, the  
21 commissioner may establish relationships or contracts with NMLS



1 or other entities designated by NMLS to collect and maintain  
2 records and process transaction fees or other fees related to  
3 licensees or other persons subject to this chapter.

4 (c) To the extent reasonably necessary to participate in  
5 NMLS, the commissioner may modify any or all of the requirements  
6 of subsections (e) and (i).

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

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

- 13 (1) Form and place of organization;
- 14 (2) Tax identification number; and
- 15 (3) Proposed method of doing business.

16 The applicant shall disclose whether the applicant or any of its  
17 executive officers, directors, general partners, or managing  
18 members have ever been issued or been the subject of an  
19 injunction or administrative order pertaining to any aspect of  
20 the lending business, have ever been convicted of a misdemeanor



1 involving the lending industry or any aspect of the lending  
2 business, or have ever been convicted of any felony.

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

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

12 (1) The licensee files the change with NMLS and provides  
13 directly to the commissioner a bond rider or  
14 endorsement, or addendum, as applicable, to any bond on  
15 file with the commissioner that reflects the new name  
16 or address;

17 (2) The commissioner approves the change in writing; and

18 (3) The mortgage servicer pays to the commissioner a fee  
19 of \$100 and any fees charged by NMLS.

20 (h) The mortgage servicer licensee shall file with NMLS  
21 or, if the information cannot be filed with NMLS, directly



1 notify the commissioner in writing no later than five business  
2 days after the licensee has reason to know of the occurrence of any  
3 of the following events:

- 4 (1) Filing for bankruptcy or the consummation of a  
5 corporate restructuring of the licensee;
- 6 (2) Filing of a criminal indictment against the licensee or  
7 receiving notification of the filing of any criminal  
8 felony indictment or felony conviction of any of the  
9 licensee's executive officers, directors, employees,  
10 managers, agents, managing members, general partners, or  
11 shareholders owning ten per cent or more of the  
12 outstanding stock of the licensee;
- 13 (3) Receiving notification of the initiation of license  
14 denial, cease and desist, suspension or revocation  
15 procedures, or other formal or informal regulatory  
16 action by any governmental agency against the licensee  
17 and the reasons for the action;
- 18 (4) Receiving notification of the initiation of any action  
19 against the licensee by the state attorney general or  
20 the attorney general of any other state and the reasons  
21 for the action;



- 1           (5) Suspension or termination of the licensee's status as  
2           an approved servicer by the Federal National Mortgage  
3           Association, Federal Home Loan Mortgage Corporation, or  
4           Government National Mortgage Association;
- 5           (6) Receiving notification that certain servicing rights of  
6           the licensee will be rescinded or canceled, and the  
7           reasons provided therefor;
- 8           (7) Receiving notification of filing for bankruptcy of any  
9           of the licensee's executive officers, directors,  
10          managing members, general partners, or shareholders  
11          owning ten per cent or more of the outstanding stock of  
12          the licensee; or
- 13          (8) Receiving notification of the initiation of a class action  
14          lawsuit on behalf of consumers against the licensee that  
15          is related to the operation of the licensed business.
- 16          (i) A mortgage servicer licensed under this chapter may  
17          voluntarily cease business and surrender its license by giving  
18          written notice to the commissioner of its intent to surrender  
19          its mortgage servicer license. Notice pursuant to this  
20          subsection shall be given at least thirty days before the  
21          surrender of the license and shall include:



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

17 Voluntary surrender of a license shall be effective upon  
 18 the date of surrender specified on the written notice to the  
 19 commissioner as required by this subsection; provided that if a  
 20 mortgage servicer is required to assign, sell, or transfer the  
 21 servicing of any loans, the voluntary surrender of the mortgage





1 servicer's license shall be effective upon the effective date of  
2 the assignment, sale, or transfer of the servicing of all loans.

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

10 The surety bond shall be:

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



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



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

14 (1) The principal submits a letter of reinstatement of the  
15 bond or a new bond; or

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

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



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

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

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



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

3 " ~~[+] §454M-7 [+] License sanctions; [suspension, revocation,~~  
4 ~~denial, condition, and refusal to renew, reinstate, or restore.]~~  
5 cease and desist and other orders. (a) In addition to any  
6 other actions authorized by law, the commissioner may  
7 suspend~~[ ]~~; revoke~~[ ]~~; deny~~[ ]~~; condition in any manner~~[ ]~~; or  
8 refuse to renew, reinstate, or restore, any license issued under  
9 this chapter, or fine any person holding a license issued under  
10 this chapter, for any violation of this chapter. All such  
11 orders shall be made pursuant to chapter 91~~[ ]~~, except as  
12 provided by section 454M- or another provision of this  
13 chapter.

14 (b) If the commissioner finds that a violation of this  
15 chapter or a rule adopted or an order issued under this chapter  
16 by a licensee is likely to cause immediate and irreparable harm  
17 to the licensee, the licensee's customers, or the public as a  
18 result of the violation, or is likely to cause insolvency or  
19 significant dissipation of assets of the licensee, then the  
20 commissioner may issue an order requiring the licensee to cease



1 and desist from the violation. The order becomes effective upon  
2 service of the order upon the licensee.

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

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

13 "§454M-8 Powers of commissioner. In addition to any other  
14 acts or conditions provided by law, the commissioner may:

- 15 (1) Adopt, amend, or repeal rules, issue declaratory  
16 rulings or informal nonbinding interpretations, and  
17 investigate and act upon written consumer complaints;
- 18 (2) Grant, deny, forfeit, renew, reinstate, or restore the  
19 license of any mortgage servicer;
- 20 (3) Revoke, suspend, or otherwise limit the license of any  
21 mortgage servicer for any violation of the provisions



1 in this chapter, or any rule or order of, or agreement  
2 with the commissioner;

3 (4) Issue orders to cease and desist and enter into  
4 consent orders;

5 [~~4~~] (5) Report any violation of this chapter or violation  
6 of federal or state law to the Consumer Financial  
7 Protection Bureau or other federal agency having  
8 jurisdiction over the licensee;

9 [~~5~~] (6) Investigate and conduct hearings regarding any  
10 violation of this chapter, or any rule or order of or  
11 agreement with the commissioner; and

12 [~~6~~] (7) Do any and all things necessary or incidental to  
13 the exercise of the commissioner's power and duties,  
14 including the authority to conduct contested case  
15 proceedings under chapter 91."

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

18 "**§454M-10 Penalty.** Any person who violates any provision  
19 of this chapter, rule adopted or order issued pursuant to this  
20 chapter, or agreement with the commissioner may be subject to an  
21 administrative fine of not more than \$7,000 for each violation;



1 provided that if the aggregate fine amount exceeds \$7,000,  
2 \$1,000 of the aggregate fine amount shall be deposited into the  
3 mortgage foreclosure dispute resolution special fund established  
4 pursuant to section 667-86."

5 SECTION 6. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

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





**Report Title:**

Mortgage Servicers; Commissioner of Financial Institutions

**Description:**

Clarifies that documents required to be filed in conjunction with mortgage servicing licensing be filed through NMLS. Authorizes the Commissioner of Financial Institutions to issue cease and desist orders against licensees and unlicensed persons and to enter into consent orders. (HB989 CD1)

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