

JAN 28 2015

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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  
5 loss 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  
17 modification or other loss mitigation assistance, the mortgage  
18 servicer shall:

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

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

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

17       (1) The borrower demonstrates that the borrower has  
18       experienced a financial hardship, and is either unable  
19       to maintain the payment at the current amount required  
20       under the mortgage loan or is unable to make up the  
21       delinquent payments; and

22       (2) The net present value of the income stream expected of  
23       the modified loan is greater than the net present

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1 value of the income stream that is expected to be  
2 recovered through the disposition of the property  
3 through a foreclosure sale.

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

12 (d) Unless a longer time is permitted under the guidance  
13 or directives implementing the Home Affordable Modification  
14 Program, within ten business days of receiving a request from a  
15 borrower or authorized representative for one or more loss  
16 mitigation options, the mortgage servicer shall transmit a  
17 written acknowledgement of the request to the borrower and, if  
18 applicable, to the authorized representative. The  
19 acknowledgement shall identify with specificity any information  
20 needed from the borrower in order for the mortgage servicer to  
21 review the borrower's loss mitigation request. The  
22 acknowledgement shall also include an explanation of the loss  
23 mitigation process, including, as appropriate, the following:

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1       (1) The information that the borrower may be asked to  
2       provide, and third party approvals that may be  
3       required, for the mortgage servicer to evaluate and  
4       complete the request for a loan modification or other  
5       loss mitigation option;

6       (2) The average length of time for a decision to be made  
7       regarding a loan modification or other loss mitigation  
8       option; and

9       (3) A notification of the actions the mortgage servicer,  
10       lender, or owner of the mortgage may take during the  
11       loss mitigation process, such as whether the borrower  
12       may continue to receive collection letters or  
13       foreclosure notices, whether the foreclosure process  
14       will continue, or whether and to what extent collection  
15       and foreclosure will be stayed.

16       (e) Within thirty days of receiving all required  
17       documentation from the borrower and third parties, unless a  
18       shorter time is required under applicable state or federal rules  
19       or regulations pertaining to mortgage servicing, or under  
20       guidance or directives implementing the Home Affordable  
21       Modification Program, a mortgage servicer shall complete its  
22       evaluation of the borrower's eligibility for a loan modification  
23       or other loss mitigation options requested by the borrower and

1 advise the borrower, and if applicable, the borrower's  
2 authorized representative, in writing of its determination.  
3 Where the mortgage servicer approves the borrower for a loan  
4 modification, including a trial modification or other loss  
5 mitigation option, the written notice shall provide the borrower  
6 with clear and understandable written information explaining the  
7 material terms, costs, and risks of the option offered. If the  
8 mortgage servicer determines that the borrower cannot be  
9 approved for a loan modification or other requested loss  
10 mitigation option, the written notice shall state with  
11 specificity:

- 12 (1) The reasons for the determination;
- 13 (2) Procedures, deadlines, and contact information for a  
14 person at the mortgage servicer for reconsideration,  
15 dispute, or appeal of such a denial; and
- 16 (3) Any other foreclosure prevention alternatives for  
17 which the borrower may be considered.

18 In addition, the written notice shall include the following  
19 statement, in boldface type and in print no smaller than the  
20 largest print used elsewhere in the main body of the denial:  
21 "If you believe your loss mitigation request has been wrongly  
22 denied, you may file a complaint with the state division of  
23 financial institutions at [insert current division phone number]

1 or [insert current division website address for consumer  
2 complaints]".

3 (f) A mortgage servicer shall take reasonable steps to  
4 ensure that its staff is aware of programs designed to assist  
5 borrowers to avoid foreclosure or resolve delinquency. The  
6 mortgage servicer shall make available to homeowners who are at  
7 least sixty days delinquent or who they have reason to believe  
8 are experiencing a financial hardship and are in imminent risk  
9 of default, a list of government approved not-for-profit housing  
10 counselors in the homeowner's geographic area as listed on the  
11 website of the U.S. Department of Housing and Urban Development  
12 which lists HUD-approved housing counseling agencies.

13 (g) A mortgage servicer shall maintain and make available  
14 to borrowers and borrowers' authorized representatives current  
15 contact information to communicate and negotiate with the  
16 mortgage servicer's designated loss mitigation staff who are  
17 authorized to discuss and negotiate loss mitigation options.  
18 The contact information shall include all toll-free telephone  
19 numbers for direct communication with a loss mitigation staff  
20 person, fax numbers for receipt of documents, and e-mail  
21 addresses.

22 (h) The mortgage servicer shall have a process through  
23 which borrowers may bring disagreements to a supervisory level

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1 where a separate review of the borrower's eligibility or  
2 qualification for a loss mitigation option can be performed. A  
3 mortgage servicer shall not require a homeowner to waive legal  
4 claims and defenses as a condition of a loan modification,  
5 forbearance, or repayment plan.

6 (i) Delay caused by the mortgage servicer shall not be  
7 counted in calculating the passage of time where a Home  
8 Affordable Modification Program, proprietary, or other loan  
9 modification program specifies:

- 10 (1) A time limit for a borrower action or response,  
11 including appealing or disputing a denial, or  
12 providing documents;  
13 (2) A time after which a document is considered stale or  
14 too old to use; or  
15 (3) A time during which a mortgage servicer is barred from  
16 taking certain action adverse to the borrower,  
17 including taking steps toward foreclosure, or  
18 referring the borrower's account to foreclosure.

19 Examples of delay caused by the mortgage servicer include but  
20 are not limited to the mortgage servicer's failure to timely  
21 send a communication or request to the borrower, duplicative or  
22 piecemeal document requests delaying completion of a file, and  
23 failure to identify additional documents needed to complete a

1 borrower's loan modification application. The mortgage servicer  
2 shall reasonably extend the applicable period, and promptly  
3 inform the borrower in writing of the specific extension period.

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

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

18 (l) A mortgage servicer shall ensure that the mortgage  
19 servicer and its attorneys and agents comply with the  
20 requirements of chapter 667.

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



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

3 (1) By adding thirteen new definitions to be appropriately  
4 inserted and to read as follows:

5 "Bankruptcy code" refers to title 11 United States Code,  
6 as amended.

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

9 "C.F.R." means Code of Federal Regulations.

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

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

16 "Home Affordable Mortgage Program" means the program  
17 established by the United States Department of the Treasury  
18 pursuant to sections 101 and 109 of the Emergency Economic  
19 Stabilization Act of 2008, as section 109 of the Act has been  
20 amended by section 7002 of the American Recovery and  
21 Reinvestment Act of 2009. The Home Affordable Modification  
22 Program is a component of the Making Home Affordable Program,  
23 which is also known as the MHA Program.

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

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

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

10       "Received" means, in the context of the date of payment,  
11 the date that the payment instrument or other means of payment  
12 reaches the mortgage servicer, in accordance with 12 CFR section  
13 1026.36(c).

14       "Real Estate Settlement Procedures Act" refers to title 12  
15 United States Code chapter 27, as amended, and regulations  
16 adopted thereunder which are also sometimes known as Regulation  
17 X and found at 12 C.F.R. part 1024.

18       "Servicing" means the business activity of a mortgage  
19 servicer.

20       "State" means State of Hawaii."

21       (2) By amending the definition of "borrower" to read as  
22 follows:

1            "\"Borrower\" means the obligor, maker, cosigner, or  
2 guarantor under a mortgage loan agreement. In this chapter, a  
3 borrower may also be referred to as a consumer.\"

4            (3) By amending the definition of \"mortgage servicer\" to  
5 read as follows:

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 payments  
12 to the owner of the loan or other third parties of principal and  
13 interest and such other payments with respect to the amounts  
14 received from the borrower as may be required pursuant to the  
15 terms of the mortgage servicing loan documents or servicing  
16 contract. In the case of a home equity conversion mortgage or  
17 reverse mortgage as referenced in this chapter, servicing  
18 includes making payments to the borrower.\"

19            SECTION 3. Section 454M-4, Hawaii Revised Statutes, is  
20 amended to read as follows:

21            "**§454M-4 License; fees; renewals; notices; voluntary**  
22 **surrender of licenses [~~-~~]; bonds.** (a) [~~An~~] The commissioner may  
23 approve a license or renewal application upon receipt of a

1 complete application, provided that an applicant for licensure  
2 shall file an application on a form prescribed by NMLS or by the  
3 commissioner and shall pay an application fee of \$675. Each  
4 license shall expire on December 31 of each calendar year[-]  
5 unless such license is renewed. A [~~license~~] licensee may [~~be~~  
6 ~~renewed~~] apply for license renewal by filing a renewal statement  
7 on a form prescribed by NMLS or by the commissioner and paying a  
8 renewal fee of \$425, at least four weeks prior to December 31.  
9 All fees paid pursuant to this section, including fees paid in  
10 connection with an application, shall be nonrefundable. No fee  
11 paid pursuant to this section shall be prorated if the license  
12 is surrendered, revoked, or suspended prior to the expiration of  
13 the period for which it was approved.

14 (b) To fulfill the purposes of this chapter, the  
15 commissioner may establish relationships or contracts with NMLS  
16 or other entities designated by NMLS to collect and maintain  
17 records and process transaction fees or other fees related to  
18 licensees or other persons subject to this chapter.

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

22 (d) The commissioner may use NMLS as an agent for  
23 requesting information from and distributing information to the

1 United States Department of Justice, any governmental agency, or  
2 any other source, as directed by the commissioner.

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

5 (1) Form and place of organization;

6 (2) Tax identification number; and

7 (3) Proposed method of doing business.

8 The applicant shall disclose whether the applicant or any of its  
9 officers, directors, employees, managers, agents, partners, or  
10 members have ever been issued or been the subject of an  
11 injunction or administrative order pertaining to any aspect of  
12 the lending business, have ever been convicted of a misdemeanor  
13 involving the lending industry or any aspect of the lending  
14 business, or have ever been convicted of any felony.

15 (f) A mortgage servicer license is not transferable or  
16 assignable. No licensee may use any name other than its legal name  
17 or a fictitious name approved by the commissioner, provided no  
18 licensee may use its legal name if the commissioner disapproves of  
19 the use of the licensee's legal name.

20 (g) A mortgage servicer licensee may change its name or  
21 the address of any of its offices specified on the most recent  
22 filing with NMLS if:

1        (1) The licensee files the change with NMLS and, in the  
2        case of the principal office or a branch office,  
3        provides, directly to the commissioner, a bond rider or  
4        endorsement, or addendum, as applicable, to any bond on  
5        file with the commissioner that reflects the new name  
6        or address of the principal office or branch office; and

7        (2) The commissioner approves the change in writing.

8        (h) The mortgage servicer licensee shall file with NMLS or, if  
9        the information cannot be filed with NMLS, directly notify the  
10       commissioner, in writing, no later than five business days after  
11       the licensee has reason to know of the occurrence of any of the  
12       following events:

13       (1) Filing for bankruptcy, or the consummation of a  
14       corporate restructuring, of the licensee;

15       (2) Filing of a criminal indictment against the licensee or  
16       receiving notification of the filing of any criminal  
17       felony indictment or felony conviction of any of the  
18       licensee's officers, directors, employees, managers,  
19       agents, members, partners, or shareholders owning ten  
20       per cent or more of the outstanding stock;

21       (3) Receiving notification of the initiation of license  
22       denial, cease and desist, suspension or revocation  
23       procedures, or other formal or informal regulatory

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1 action by any governmental agency against the licensee  
2 and the reasons for the action;

3 (4) Receiving notification of the initiation of any action  
4 by the Hawaii attorney general or the attorney general  
5 of any other state and the reasons for such action;

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

10 (6) Receiving notification that certain servicing rights of  
11 the licensee will be rescinded or cancelled, and the  
12 reasons provided therefor;

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

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

21 [~~(f)~~] (i) A mortgage servicer licensed under this chapter  
22 may voluntarily cease business and surrender its license by  
23 giving written notice to the commissioner of its intent to

1 surrender its mortgage servicer license. Notice pursuant to  
2 this subsection shall be given at least thirty days before the  
3 surrender of the license and shall include:

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

22 Voluntary surrender of a license shall be effective upon  
23 the date of surrender specified on the written notice to the



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

6 (j) Before a mortgage servicer's license becomes effective,  
7 the applicant or licensee shall file with the commissioner a  
8 surety bond written by a surety authorized to write such bonds  
9 in this State, covering its principal office and any branch  
10 office from which it acts as mortgage servicer, in a penal sum of  
11 one hundred thousand dollars. No mortgage servicer licensee  
12 shall act as a mortgage servicer in this State without maintaining  
13 the surety bond required by this section.

14 (1) The surety bond shall be:

15 (A) In a form approved by the attorney general of this  
16 State; and

17 (B) Conditioned upon the mortgage servicer licensee  
18 faithfully performing any and all written  
19 agreements or commitments with or for the benefit  
20 of borrowers and mortgagees, truly and  
21 faithfully accounting for all funds received  
22 from a borrower or mortgagee in the person's  
23 capacity as a mortgage servicer, and conducting

1           the mortgage business consistent with the  
2           provisions of this chapter to perform any written  
3           agreements or commitments.

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

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1 bond, the commissioner may require the filing of a new  
2 bond and immediately on recovery on any action on the  
3 bond, the principal shall file a new bond.

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

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

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

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

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

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

4       (5) The surety bond requirements of this section shall be  
5       effective on the approval date of this Act; provided  
6       that with respect to licensees in operation on the  
7       approval date of this Act, the surety bond requirement  
8       shall take effect on the date of license renewal but  
9       not later than December 31, 2015."

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

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

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

22       (1) Safeguard and account for any money handled for the  
23       borrower;

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1        (2) Follow reasonable and lawful instructions from the  
2                    borrower consistent with the underlying note and  
3                    mortgage;

4        [~~2~~] (3) Act with reasonable skill, care, timeliness,  
5                    promptness, and diligence;

6        [~~3~~] (4) Disclose to the commissioner in the servicer's  
7                    license application and each yearly renewal a  
8                    complete, current schedule of the ranges of costs and  
9                    fees it charges borrowers for its servicing-related  
10                   activities;

11       [~~4~~] (5) File a report with each yearly renewal statement  
12                   in a form and format acceptable to the [~~director~~]  
13                   commissioner detailing the servicer's activities in  
14                   this State, including:

15                   (A) The number of mortgage loans the servicer is  
16                   servicing;

17                   (B) The type and characteristics of loans serviced in  
18                   this State;

19                   (C) The number of serviced loans in default, along  
20                   with a breakdown of thirty-, sixty-, and ninety-  
21                   day delinquencies;

- 1 (D) Information on loss mitigation activities,  
2 including details on workout arrangements  
3 undertaken;
- 4 (E) Information on foreclosures commenced in this  
5 State;
- 6 (F) The affiliations of the mortgage servicer,  
7 including any lenders or mortgagees for which the  
8 mortgage servicer provides service, any  
9 subsidiary or parent entities of the mortgage  
10 servicer, and a description of the authority held  
11 by the mortgage servicer through its  
12 affiliations; and
- 13 (G) Any other information that the commissioner may  
14 require.
- 15 [~~(5)~~] (6) Maintain an office in the State that is staffed by  
16 at least one agent or employee for the purposes of  
17 addressing consumer inquiries or complaints and  
18 accepting service of process; provided that the  
19 mortgage servicer's business constitutes at least a  
20 twenty per cent share of the portion of the total  
21 mortgage loan service market in the State that was  
22 serviced by mortgage servicers licensed under this  
23 chapter within the previous calendar year; and

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1 provided further that nothing in this section shall  
2 prohibit a mortgagee as defined by section 667-1 or a  
3 mortgage servicer from contracting with a licensee  
4 that maintains an office in this State in conformity  
5 with this section for the purposes of addressing  
6 consumer inquiries or complaints and accepting service  
7 of process.

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

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



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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 must 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 it, does not credit it, or  
14       does not treat it in accordance with this section, the  
15       mortgage servicer shall, within ten days of receipt,  
16       send the borrower notice by mail at the borrower's  
17       last known address indicating the reason the payment  
18       was suspended or was not credited or treated as  
19       credited to the account, and specifying any actions by  
20       the borrower necessary to make the loan current.

21       (d) A mortgage servicer shall comply with the following  
22       requirements concerning escrows for the payment of taxes and  
23       insurance:

- 1        (1) Any mortgage servicer who receives funds from a borrower  
2        to be held in escrow for payment of taxes and insurance  
3        premiums shall pay the taxes and insurance premiums of  
4        the borrower to the appropriate taxing authority and  
5        insurance company in the amount required and at the  
6        time the taxes and insurance premiums are due, in  
7        accordance with the requirements of the Real Estate  
8        Settlement Procedures, including 12 C.F.R. section  
9        1024.17, and shall be liable to the borrower as  
10       provided therein;
- 11       (2) If the amount held in the escrow account as of the date  
12       the taxes and insurance premiums are due is insufficient  
13       to pay the taxes and insurance premiums, the mortgage  
14       servicer shall pay the taxes and insurance premiums from  
15       its own funds provided that the borrower has paid to  
16       the mortgage servicer the amounts required to be paid  
17       into the escrow account, as determined by the mortgage  
18       servicer, for all amounts scheduled to be paid to the  
19       mortgage servicer prior to the date the taxes and  
20       insurance premiums are due; and
- 21       (3) Where an escrow account has been established and a  
22       mortgage servicer advances funds in paying a  
23       disbursement, which is not the result of a borrower's

1           payment default under the underlying mortgage  
2           document, the mortgage servicer shall conduct an  
3           escrow account analysis to determine the reasons for  
4           and extent of the deficiency and shall provide a  
5           written explanation to the borrower before seeking  
6           repayment of the funds from the borrower. The  
7           mortgage servicer shall then give the borrower the  
8           option of paying the shortage over a period of not  
9           less than one year. The mortgage servicer shall not  
10          charge or collect interest on any shortage during the  
11          one-year period.

12 Any mortgage servicer who violates any provision of this subsection  
13 shall be liable to the borrower for any penalties, interest, or  
14 other charges levied by the taxing authority or insurance company  
15 as a result of any violation; any actual damages suffered by the  
16 borrower as a result of such violation, including, but not limited  
17 to, any amount which would have been paid by an insurer for a  
18 casualty or liability claim had the insurance policy not been  
19 cancelled for nonpayment by the mortgage servicer; and, in the  
20 case of any successful action to enforce the foregoing liability,  
21 the costs of the action together with reasonable attorney's fees as  
22 determined by the court.

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

3        (1) At least once annually, within thirty days of the end  
4 of the computation year, a mortgage servicer shall  
5 deliver to the borrower a plain language statement of  
6 the borrower's account showing the unpaid principal  
7 balance of the mortgage loan at the end of the  
8 immediately preceding twelve-month period, the  
9 interest paid during that period, and the amounts  
10 deposited into escrow and disbursed from escrow during  
11 the period. The annual escrow statement may be  
12 provided separately from the annual statement showing  
13 the unpaid principal and interest paid. The format  
14 and content of the annual escrow statement shall  
15 comply with the requirements of the Real Estate  
16 Settlement Procedures Act, including 12 C.F.R. section  
17 1024.17;

18        (2) A mortgage servicer shall promptly provide a borrower  
19 with an accurate accounting in plain English of the  
20 debt owed when requested by the borrower or borrower's  
21 authorized representative. Within thirty days of  
22 receipt of a request from the borrower or the  
23 borrower's authorized representative, a mortgage

1 servicer shall deliver to the borrower a payment  
2 history for the last thirty-six months (unless a  
3 different period is requested) of the borrower's  
4 account showing the date and amount of all payments  
5 made or credited to the account and the total unpaid  
6 balance. The mortgage servicer shall have sixty days  
7 to deliver a payment history where the request is for  
8 a period longer than the last thirty-six months;

9 (3) A fee shall not be charged to the borrower for the  
10 annual escrow statement or for one payment history  
11 furnished to a borrower in a twelve-month period; and

12 (4) A shortage, surplus, or deficiency in the escrow  
13 account shall be handled in accordance with the  
14 provisions of the Real Estate Settlement Procedures  
15 Act, including 12 C.F.R. section 1024.17.

16 Alternatively, with the consent of the borrower, an  
17 excess balance may be applied to the principal  
18 balance.

19 (f) Except where inconsistent with the automatic stay  
20 provisions of the Bankruptcy Code with respect to a borrower in  
21 a pending bankruptcy proceeding, a mortgage servicer shall send  
22 a payment reminder notice to a borrower at the borrower's last  
23 known address no later than seventeen days after the payment

1 becomes due and remains unpaid, provided that a mortgage  
2 servicer is not required to send a separate payment reminder  
3 notice for each consecutive month in which the mortgage loan  
4 continues to remain unpaid.

5 (g) A mortgage servicer shall provide a clear,  
6 understandable, and accurate statement of the total amount that  
7 is required to pay off the mortgage loan as of a specified date,  
8 within a reasonable time, but in any event no more than five  
9 business days after receipt of a request from the borrower or  
10 borrower's authorized representative. No borrower shall be  
11 charged a fee for being informed or receiving a payoff statement  
12 or for being provided with a release upon full prepayment,  
13 provided that a mortgage servicer may charge a reasonable fee  
14 for providing a payoff statement after five or more requests in  
15 any calendar year.

16 (h) A mortgage servicer shall comply with the following  
17 requirements concerning handling consumer complaints and  
18 inquiries:

19 (1) A mortgage servicer shall follow the requirements of  
20 the Real Estate Settlement Procedures Act, including  
21 requests for information and error resolution  
22 procedures under 12 C.F.R. sections 1024.35 and  
23 1024.36;

- 1        (2) In addition to the requirements of the Real Estate  
2        Settlement Procedures Act, a mortgage servicer shall  
3        establish and maintain a system to respond to and  
4        resolve borrower inquiries and complaints in a prompt  
5        and appropriate manner;
- 6        (3) Within ten business days of receiving a request in  
7        writing from a borrower or the borrower's authorized  
8        representative, a mortgage servicer shall provide the  
9        borrower with the name, address, phone number or email  
10       address, if available, and other relevant contact  
11       information for the owner or assignee of the mortgage  
12       loan; and
- 13       (4) In addition to the information required to be  
14       disclosed under this section, a mortgage servicer may,  
15       at its option, provide any other information regarding  
16       the servicing of the loan that it believes would be  
17       helpful to a borrower, provided that any additional  
18       information does not contradict or obscure the  
19       required disclosures.
- 20       (i) A mortgage servicer shall comply with the following  
21       requirements concerning fees:
- 22       (1) A mortgage servicer shall maintain and keep current a  
23       schedule of standard or common fees that it charges

1 borrowers for its servicing-related activities, such  
2 as nonsufficient fund fees. The schedule shall  
3 identify each fee, provide a plain English explanation  
4 of the fee, and state the amount of the fee or range  
5 of amounts. If there is no standard fee, the schedule  
6 shall explain how the fee is calculated or determined.  
7 A mortgage servicer shall make its schedule available  
8 on its website and to the borrower or the borrower's  
9 authorized representative upon request;

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

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

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

17 (C) The fee is not prohibited by law or the loan  
18 instruments and is a reasonable fee for a  
19 specific service requested by the borrower that  
20 is assessed only after clear and conspicuous  
21 disclosure of the fee is provided to the borrower  
22 and the borrower expressly consents to pay the  
23 fee in exchange for the services.



- 1       (3) In addition to the limitations in subsection (i)(2),  
2       attorneys fees charged in connection with a  
3       foreclosure action shall not exceed reasonable and  
4       customary fees for such work. If a foreclosure action  
5       or proceeding is terminated prior to the public sale,  
6       because of a loss mitigation option, a reinstatement,  
7       or payment in full, the borrower shall only be liable  
8       for reasonable and customary fees for work actually  
9       performed; and
- 10       (4) A mortgage servicer shall not impose any late fee or  
11       delinquency charge when the only delinquency is  
12       attributable to late fees or delinquency charges  
13       assessed on an earlier payment, and the payment is  
14       otherwise a full payment for the applicable period and  
15       is paid on its due date or within any applicable grace  
16       period. Late charges shall not be (A) based on an  
17       amount greater than the past due amount; (B) collected  
18       from the escrow account or from escrow surplus without  
19       the approval of the borrower; or (C) deducted from any  
20       regular payment.
- 21       (j) Each mortgage servicer licensee shall maintain adequate  
22       records of each residential mortgage loan transaction at the  
23       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 12 C.F.R. section 1024.33,  
6 within the time periods prescribed therein; and

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

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

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

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

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

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

13          (m) Where this chapter requires compliance with the Real  
14          Estate Settlement Procedures Act, that requirement applies to  
15          any person subject to this chapter, whether or not the Real  
16          Estate Settlement Procedures Act applies to that person or  
17          transaction."

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

20          "**§454M-6 Prohibited activities.** (a) It shall be  
21          ~~[unlawful]~~ a violation of this chapter for any mortgage servicer  
22          in the course of any mortgage loan transaction[+], or in  
23          connection with any mortgage servicing business, to:

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- 1 (1) ~~[To misrepresent]~~ Misrepresent or conceal material  
2 facts, to make false promises, or ~~[to]~~ pursue a course  
3 of misrepresentation through its agents or otherwise;
- 4 (2) ~~[To engage]~~ Engage in any transaction, practice, or  
5 course of business that is not in good faith, does not  
6 constitute fair dealing, or that constitutes a fraud  
7 upon any person, in connection with the servicing,  
8 purchase, or sale of any mortgage loan;
- 9 ~~[(3) To fail to comply with the mortgage loan servicing  
10 transfer, escrow account administration, or borrower  
11 inquiry response requirements imposed by sections 6  
12 and 10 of the Real Estate Settlement Procedures Act,  
13 12 United States Code sections 2605 and 2609, and  
14 regulations adopted thereunder by the Secretary of  
15 Housing and Urban Development; or~~
- 16 ~~(4) To fail to comply with applicable federal laws and  
17 regulations related to mortgage servicing.]~~
- 18 (3) Obtain property by fraud or misrepresentation;
- 19 (4) Misapply residential mortgage loan payments;
- 20 (5) Misapply payments to escrow accounts;
- 21 (6) Require any amount of funds to be remitted by means more  
22 costly to the borrower than a bank or certified check or

1 attorney's check from an attorney's account to be paid  
2 by the borrower;

3 (7) Fail to timely pay taxes or insurance premiums of the  
4 borrower, if and as required by this chapter;

5 (8) Fail to follow procedures concerning escrows for the  
6 payment of taxes and insurance as required by this  
7 chapter;

8 (9) Place hazard, homeowner's, or flood insurance on the  
9 mortgaged property when the mortgage servicer knows or  
10 has reason to know that the borrower has an effective  
11 policy for such insurance;

12 (10) Fail to provide written notice to a borrower upon taking  
13 action to place hazard, homeowner's, or flood insurance  
14 on the mortgaged property, including a clear and  
15 conspicuous statement of the procedures by which the  
16 borrower may demonstrate that the borrower has the  
17 required insurance coverage and by which the mortgage  
18 servicer shall terminate the insurance coverage placed  
19 by it and refund or cancel any insurance premiums and  
20 related fees paid by or charged to the borrower;

21 (11) Place hazard, homeowner's, or flood insurance on a  
22 mortgaged property, or require a borrower to obtain or

- 1 maintain such insurance, in excess of the replacement  
2 cost of the improvements;
- 3 (12) Fail to provide to the borrower a refund of unearned  
4 premiums paid by a borrower or charged to the  
5 borrower for hazard, homeowner's, or flood insurance  
6 placed by a mortgagee or the mortgage servicer if the  
7 borrower provides reasonable proof that the borrower has  
8 obtained coverage such that the forced placement  
9 insurance is no longer necessary and the property is  
10 insured. If the borrower provides reasonable proof  
11 that no lapse in coverage occurred such that the  
12 forced placement was not necessary, the mortgage  
13 servicer shall promptly refund the entire premium;
- 14 (13) Collect private mortgage insurance beyond the date for  
15 which private mortgage insurance is required;
- 16 (14) Collect, charge, attempt to collect or charge, or use or  
17 propose any agreement purporting to collect or charge,  
18 any fee not in compliance with, or prohibited by, this  
19 chapter;
- 20 (15) Fail to provide a timely and accurate statement of  
21 account, as required by this chapter;
- 22 (16) Fail to handle a consumer complaint or inquiry in  
23 accordance with this chapter;

- 1        (17) Provide inaccurate information to a credit bureau,  
2        thereby harming a borrower's creditworthiness;
- 3        (18) Fail to report both the favorable and unfavorable  
4        payment history of the borrower to a nationally  
5        recognized consumer credit bureau at least annually if  
6        the mortgage servicer regularly reports information to a  
7        credit bureau;
- 8        (19) Fail to provide or submit a timely, complete, and  
9        accurate notice, acknowledgment, statement, information,  
10       explanation, reminder, communication, or other  
11       information, to any person, as required by this chapter;
- 12       (20) Fail to comply with loss mitigation requirements of this  
13       chapter;
- 14       (21) Fail to offer loan modifications in compliance with the  
15       Home Affordable Modification Program guidelines or  
16       directives, if the mortgage servicer is participating in  
17       the Home Affordable Modification Program;
- 18       (22) Fail to comply with the requirements of chapter 667, and  
19       ensure that the mortgage servicer's attorneys and agents  
20       comply with chapter 667;
- 21       (23) Refuse to communicate with an authorized representative of  
22       the borrower who provides a written authorization  
23       signed by the borrower, provided the mortgage servicer

- 1           may adopt procedures reasonably related to verifying  
2           that the representative is in fact authorized to act  
3           on behalf of the borrower;
- 4           (24) Fail to provide a timely payoff statement as required  
5           by this chapter;
- 6           (25) Fail to issue a release of mortgage in accordance with  
7           section 506-8;
- 8           (26) Conduct any business for which this chapter requires a  
9           license without holding a valid license as required under  
10          this chapter, or assist or aid and abet any person in the  
11          conduct of business without a valid license as required  
12          under this chapter;
- 13          (27) Engage in the business of mortgage servicing without  
14          complying with bonding requirements of this chapter;
- 15          (28) Transfer or assign its mortgage servicer license;
- 16          (29) Change its name or office address without complying with  
17          the requirements of this chapter;
- 18          (30) Fail to maintain adequate records of each residential  
19          mortgage loan transaction at the office named in the  
20          mortgage servicer license; or
- 21          (31) Make any false statement or omission of a material  
22          fact, in connection with any information or reports  
23          filed with a governmental agency or NMLS, or in



1 connection with any investigation conducted by the  
2 commissioner or another governmental agency.

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

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

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

13 (B) The Truth-in-Lending Act, 15 U.S.C. sections 1601  
14 through 1667f, as amended, and Regulation Z  
15 adopted thereunder, 12 C.F.R. part 226, as  
16 amended; or

17 (C) Rules and regulations issued or administered by  
18 the Consumer Financial Protection Bureau, and  
19 interpretations of such rules by the Consumer  
20 Financial Protection Bureau through interpretive  
21 rules, bulletins, statements of policy, and  
22 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 but not limited  
4        to:
- 5        (A) A Servicer Participation Agreement or other  
6        agreement to participate in the Home Affordable  
7        Modification Program or other Making Home  
8        Affordable program;
- 9        (B) Home Affordable Modification Program rules  
10       including guidance provided by Making Home  
11       Affordable program handbooks, and supplemental  
12       directives; or
- 13       (C) The National Mortgage Settlement made in 2012 by  
14       the federal government and forty-nine states,  
15       with the five largest mortgage servicers in the  
16       United States, to address mortgage servicing,  
17       foreclosure, and bankruptcy abuses;
- 18       (3) Order of a court or government regulator that applies  
19       to the mortgage servicer;
- 20       (4) Provision of this chapter or any rule promulgated  
21       pursuant to this chapter; or
- 22       (5) Federal or state law, rule, or regulation.

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1        ~~[(b)]~~ (c) It shall be ~~[unlawful]~~ a violation of this chapter  
2 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 other provisions 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 6. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

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

13

14

INTRODUCED BY:

  
BY REQUEST

15

**Report Title:**

Mortgage Servicers

**Description:**

Clarifies mortgage servicer requirements under chapter 454M, Hawaii Revised Statutes, including licensing requirements, crediting of payments, escrows for payment of taxes and insurance, payoff statements, delinquencies and loss mitigation efforts, borrower complaints, fee disclosures, record maintenance, assignment of servicing rights, and prohibited activities. Establishes bonding requirements.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

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

PURPOSE: To enhance and reinforce the mortgage servicer standards of chapter 454M (the chapter), Hawaii Revised Statutes (HRS), in the interest of consumer protection, by:

- (1) Adding a new section to require mortgage servicers to make reasonable and good faith efforts to engage in appropriate loss mitigation options, including loan modifications, to avoid foreclosure. Provides guidance as to when a servicer should consider a loan modification as an alternative to foreclosure. If a borrower does not qualify for a loss mitigation option, the mortgage servicer must inform the borrower of the reasons for the denial and provide a procedure for supervisory level review. If a borrower is being considered for a loss mitigation option or is not more than thirty days in default under a loan modification agreement, the mortgage servicer shall avoid taking steps to foreclose or referring a borrower to foreclosure. The servicer must establish and maintain a system for servicing delinquent loans. As the chapter currently lacks provisions addressing loss mitigation, this section will promote loss mitigation workouts between homeowners and servicers as an alternative to foreclosure.
- (2) Amending section 454M-4 to:
  - (a) Clarify that the commissioner may approve a license or renewal application on a complete application, and that fees paid in connection with

applications are not refundable. Licensees fees are not prorated if the license is surrendered, revoked, or suspended;

- (b) Clearly state that mortgage servicer licenses are not transferable or assignable;
  - (c) Provide a procedure for a licensee to change its name or office address;
  - (d) Require a licensee to file notice with NMLS or the commissioner, as appropriate, promptly upon knowledge of events such as the licensee's bankruptcy filing or corporate restructuring, bankruptcy filing of key licensee personnel or large shareholders, a criminal action involving the licensee or key personnel, state, regulatory, or government sponsored entity action against the licensee, or a class action by consumers against the licensee;
  - (e) Require a surety bond for the benefit of borrowers and mortgagees. The distribution of bond funds shall be through court order. (The bond requirement has a delayed effective date for licensees in operation on the approval date of this Act);
- (3) Amending section 454M-5 to expand mortgage servicer duties to require a mortgage servicer to:
- (a) Exercise good faith and fair dealing in its communications, transactions, and dealings with borrowers;
  - (b) Follow reasonable instructions from the borrower consistent with the note and mortgage;

- (c) Credit payments by borrowers as instructed, and as the parties agreed in the mortgage, unless inconsistent with federal laws or regulations. Mortgage payments shall be credited to principal and interest, before taxes, interest, or fees. Fees may include late fees. If a mortgage servicer company does not credit a payment from a borrower, it shall inform the borrower of the reason the payment was not credited;
- (d) Calculate the escrow amount required from the borrower for payments of taxes and insurance. If the servicer collected insufficient funds, it shall advance payments for taxes and insurance from its own funds if the borrower has paid the amounts for the escrow account required by the servicer;
- (e) Provide a statement of account to the borrower at least annually showing the unpaid principal balance of the mortgage loan, the interest paid, and the amounts deposited to, and disbursed from, the escrow account. The mortgage servicer may not assess a fee for one statement of account. A mortgage servicer shall handle a shortage, surplus, or deficiency in the escrow account in accordance with the provisions of the federal Real Estate Settlement Procedures Act (RESPA). Alternatively, with borrower consent, the excess may be applied to the principal balance;
- (f) Send a late payment reminder notice to the last known address of a borrower, unless inconsistent with bankruptcy laws. The mortgage servicer may send just one notice while the payment is late for consecutive months;

- (g) Provide a payoff statement within five business days of a request from the borrower or borrower's authorized representative. The mortgage servicer may charge a reasonable fee for the payoff statement after five or more requests in a calendar year;
  - (h) Follow RESPA requirements including requests for information and error resolution procedures. A mortgage servicer shall establish and maintain a system to appropriately respond to borrower's complaints or inquiries. Within ten days of request, the mortgage servicer shall provide the borrower with contact information for the owner or assignee of the mortgage loan;
  - (i) Maintain a current schedule of standard or common fees for servicing related activities. Attorney's fees are limited in connection with a foreclosure action. Mortgage servicers are prohibited from charging a late fee on the non-payment of late fees;
  - (j) Maintain records and to make the records available to the commissioner upon request; and
  - (k) Provide notice to the borrower that complies with 12 CFR section 1024.33, and a schedule of fees, when servicing rights are assigned to a new mortgage servicer.
- (4) Amending section 454M-6 to clarify that prohibited activities and chapter violations include:
- (a) Obtaining property by fraud or misrepresentation;



- (b) Misapplying residential mortgage loan payments;
- (c) Misapplying payments to escrow accounts;
- (d) Requiring any amount of funds to be remitted by means more costly to the borrower than a bank or certified check or attorney's check from an attorney's account to be paid by the borrower;
- (e) Failing to timely pay taxes or insurance premiums of the borrower, if and as required by this chapter;
- (f) Failing to follow procedures concerning escrows for the payment of taxes and insurance as required by this chapter;
- (g) Placing hazard, homeowner's, or flood insurance on the mortgaged property when the mortgage servicer knows or has reason to know that the borrower has an effective policy for such insurance;
- (h) Failing to provide written notice to a borrower upon taking action to place hazard, homeowner's, or flood insurance on the mortgaged property;
- (i) Placing hazard, homeowner's, or flood insurance on a mortgaged property, or require a borrower to obtain or maintain such insurance, in excess of the replacement cost of the improvements;
- (j) Failing to provide to the borrower a refund of unearned premiums paid by a borrower or charged to the borrower for hazard, homeowner's, or flood insurance if the borrower provides reasonable proof that the borrower has

- obtained coverage such that the forced placement insurance is no longer necessary and the property is insured;
- (k) Collecting private mortgage insurance beyond the date for which private mortgage insurance is required;
  - (l) Collecting, charging, attempting to collect or charge, or using or proposing any agreement purporting to collect or charge, any fee prohibited by chapter 454M;
  - (m) Failing to provide a timely and accurate statement of account, as required by this chapter;
  - (n) Failing to handle a consumer complaint or inquiry in accordance with this chapter;
  - (o) Providing inaccurate information to a credit bureau;
  - (p) Failing to report both the favorable and unfavorable payment history of the borrower to a nationally recognized consumer credit bureau at least annually;
  - (q) Failing to provide or submit a timely, complete, and accurate notice, acknowledgment, statement, information, explanation, reminder, communication, or other information, to any person, as required by this chapter;
  - (r) Failing to comply with loss mitigation requirements of this chapter;
  - (s) Failing to offer loan modifications in compliance with the Home Affordable Mortgage Program guidance or directives, if the mortgage servicer is participating in the Home Affordable Mortgage Program;

- (t) Failing to comply with the requirements of chapter 667, and to ensure that the mortgage servicer's attorneys and agents comply with chapter 667;
- (u) Refusing to communicate with an authorized representative of the borrower who provides a written authorization signed by the borrower;
- (v) Failing to provide a timely payoff statement as required by chapter 454M;
- (w) Failing to issue a release of mortgage in accordance with section 506-8;
- (x) Conducting any business, or assisting or abetting in any business, for which chapter 454M requires a license without holding a valid license as required under that chapter;
- (y) Engaging in the business of mortgage servicing without complying with the bonding requirements of this chapter;
- (z) Transferring or assigning its mortgage servicer license;
- (aa) Changing its name or office address without complying with the requirements of this chapter;
- (bb) Failing to maintain adequate records of each residential mortgage loan transaction at the office named in the mortgage servicer license;
- (cc) Making any false statement or making any omission of a material fact in connection with any information or reports filed with a governmental agency or NMLS or in connection with any investigation conducted by the commissioner or another governmental agency;

- (dd) Failing to comply with any agreement with a governmental agency, entity, agent, or regulator or state attorney general; or
- (ee) Violating any federal or State law, rule, regulation, or court order, including chapter 454M and rules adopted thereunder.
- (5) Amending section 454M-1, by adding new definitions for:
  - (a) "Bankruptcy code" to reference the federal bankruptcy code;
  - (b) "Business day" to reference Monday through Friday, excluding state and federal holidays;
  - (c) "C.F.R." to reference the Code of Federal Regulations;
  - (d) "Consumer Financial Protection Bureau" to reference the federal agency referenced in 12 United States Code chapter 53, subchapter V;
  - (e) "Division of financial institutions" or "division" to reference the division of financial institutions of the department of commerce and consumer affairs of this State;
  - (f) "Home Affordable Mortgage Program" or "HAMP" to reference the program established by the U.S. Department of the Treasury pursuant to sections 101 and 109 of the Emergency Economic Stabilization Act of 2008, as section 109 of the Act has been amended by section 7002 of the American Recovery and Reinvestment Act of 2009;
  - (g) "Loan modification" to reference a temporary or permanent change to the

terms of a borrower's existing mortgage loan agreement, mutually agreed to between a borrower and a lender;

- (h) "Loss mitigation option" to reference an alternative to foreclosure, including loan modification, reinstatement, forbearance, deed-in-lieu, and short sale;
- (i) "Principal office" to reference the office location where the company's core executive and administrative functions are primarily carried out;
- (j) "Received" to reference in the context of the date of payment, the date that the payment instrument or other means of payment reaches the mortgage servicer, in accordance with 12 CFR section 1026.36(c);
- (k) "RESPA" to reference the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. section 2601 et seq., as amended, and regulations adopted thereunder which are also sometimes known as Regulation X and found at 12 C.F.R. part 1024;
- (l) "Servicing" to reference the business activity of a mortgage servicer; and
- (m) "State" to reference the State of Hawaii.

Amending the following definitions:

- (a) "Borrower" is revised to also refer to a consumer; and
- (b) "Mortgage servicer" is revised to include mortgage payment collecting and processing.

MEANS:

Add one new section to chapter 454M and amend sections 454M-1, 454M-4, 454M-5, and 454M-6, HRS.

JUSTIFICATION:

This is primarily a consumer protection bill. It is necessitated because of the critical role that mortgage servicers play in the lives of homeowners. Annually, mortgage servicers receive billions of dollars of payments from borrowers, and are responsible for making payments to loan owners and other third parties. Improper servicing can result in a homeowner not receiving credit for their mortgage payments, suffering serious damage to their credit, being put at risk of losing their home, having to spend countless hours trying to correct servicer errors, and being unable to obtain a release needed to timely close the sale of their home, among others.

In the past two years, large banks have sold many of their servicing rights for troubled loans to nonbank mortgage servicers. The result has left nonbank mortgage servicers handling a much larger portion of outstanding mortgages, especially loans undergoing loss mitigation.

The mortgage servicer industry has shown a need for greater regulation and more consumer protection standards than currently provided by chapter 454M. Abusive practices in the mortgage servicer industry came to light in the National Mortgage Settlement (NMS) made in 2012 by the federal government and 49 states including Hawaii, with the five largest mortgage servicers in the country. While all mortgage servicers do not engage in such practices, enhanced regulation is warranted given the trend toward lender sales of mortgage servicing rights to nonbank servicers.

Nationwide, the states are strengthening their respective mortgage servicer laws and regulations, acknowledging the seriousness

of homeowner complaints against mortgage servicers submitted to their agencies, the volumes of complaints made by homeowners across the country to the federal Consumer Financial Protection Bureau (CFPB), and the specific standards for mortgage servicer conduct that had to be implemented in the NMS. As a general matter, CFPB does not take enforcement action on behalf of individual homeowners. The NMS impacts only those servicers who agreed to it, and while it may have reduced abusive mortgage servicing practices, they continue today. Poor mortgage servicing by any servicer jeopardizes homeowner housing and financial security, since the two are inextricably intertwined.

The provisions proposed would enable state regulators to protect homeowners dealing with these increasingly important companies. It would support loss mitigation alternatives to foreclosure, and help bring delinquent loans current more quickly. The provisions in this bill are especially important because while mainland mortgage servicers service loans for Hawaii homeowners, none have a physical presence in this State, which can make it very difficult for homeowners to obtain appropriate attention from their mortgage servicer.

Impact on the public:The public will be better protected by new requirements on mortgage servicers including bonding requirements, making specific information available to borrowers, loss mitigation standards, and penalties for chapter violations.

This proposal will ensure that borrowers enjoy the same protections whether their mortgage is serviced by a bank or a nonbank servicer. Nonbank mortgage servicers will be required to meet the same standards as regulated bank mortgage servicers.

Impact on the department and other agencies:  
The Division of Financial Institutions will enhance its examinations of mortgage servicers to address additional standards. The specificity of the standards will support the division's enforcement of the chapter.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: CCA 104.

OTHER AFFECTED  
AGENCIES: The Department of the Attorney General will approve the form of surety bond required of a mortgage servicer in section 454M-4(j).

EFFECTIVE DATE: Upon approval.