
A BILL FOR AN ACT

RELATING TO MORTGAGE SERVICERS.

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

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



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



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

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

14 (d) Unless a longer time is permitted under the guidance
15 or directives implementing the Home Affordable Modification
16 Program, within ten business days of receiving a request from a
17 borrower or authorized representative for one or more loss
18 mitigation options, the mortgage servicer shall transmit a
19 written acknowledgement of the request to the borrower and, if
20 applicable, to the authorized representative. The
21 acknowledgement shall identify with specificity any information



1 needed from the borrower in order for the mortgage servicer to
2 review the borrower's loss mitigation request. The
3 acknowledgement shall also include an explanation of the loss
4 mitigation process, including the following, as appropriate:

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

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

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

20 (e) Within thirty days of receiving all required
21 documentation from the borrower and third parties, unless a



1 shorter time is required under applicable state or federal rules
2 or regulations pertaining to mortgage servicing or under
3 guidance or directives implementing the Home Affordable
4 Modification Program, a mortgage servicer shall complete its
5 evaluation of the borrower's eligibility for a loan modification
6 or other loss mitigation options requested by the borrower and
7 advise the borrower, and if applicable, the borrower's
8 authorized representative, in writing of the mortgage servicer's
9 determination. If the mortgage servicer approves the borrower
10 for a loan modification, including a trial modification or other
11 loss mitigation option, the written notice shall provide the
12 borrower with clear and understandable written information
13 explaining the material terms, costs, and risks of the option
14 offered. If the mortgage servicer determines that the borrower
15 cannot be approved for a loan modification or other requested
16 loss mitigation option, the written notice shall state with
17 specificity:

- 18 (1) The reasons for the determination;
19 (2) Procedures, deadlines, and contact information for a
20 person at the mortgage servicer for reconsideration,
21 dispute, or appeal of such a denial; and



1 (3) Any other foreclosure prevention alternatives for
2 which the borrower may be considered.

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

11 (f) A mortgage servicer shall take reasonable steps to
12 ensure that the mortgage servicer's staff is aware of programs
13 designed to assist borrowers to avoid foreclosure or resolve
14 delinquency. The mortgage servicer shall make available to
15 homeowners who are at least sixty days delinquent or who the
16 mortgage servicer has reason to believe are experiencing a
17 financial hardship and are in imminent risk of default, a list
18 of government approved not-for-profit housing counselors in the
19 homeowner's geographic area, as listed on the website of the
20 United States Department of Housing and Urban Development.



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

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

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



- 1 (1) A time limit for a borrower action or response,
2 including appealing or disputing a denial, or
3 providing documents;
- 4 (2) A time after which a document is considered stale or
5 too old to use; or
- 6 (3) A time during which a mortgage servicer is barred from
7 taking certain action adverse to the borrower,
8 including taking steps toward foreclosure, or
9 referring the borrower's account to foreclosure.

10 Examples of delay caused by the mortgage servicer include but
11 are not limited to the mortgage servicer's failure to timely
12 send a communication or request to the borrower, duplicative or
13 piecemeal document requests delaying completion of a file, and
14 failure to identify additional documents needed to complete a
15 borrower's loan modification application. The mortgage servicer
16 shall reasonably extend the applicable period and promptly
17 inform the borrower in writing of the specific extension period.

18 (j) Nothing in this section shall be construed to prevent
19 a mortgage servicer from offering or accepting alternative loss
20 mitigation options, including other modification programs
21 offered by the mortgage servicer, a short sale, a deed-in-lieu



1 of foreclosure, or forbearance, if the borrower requests such an
2 alternative, is not eligible for or does not qualify for a loan
3 modification under the Home Affordable Modification Program, or
4 rejects the mortgage servicer's loss mitigation proposal.

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

11 (l) A mortgage servicer shall ensure that the mortgage
12 servicer and the mortgage servicer's attorneys and agents comply
13 with the requirements of chapter 667.

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

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

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



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

4 "Business day" means Monday through Friday, excluding state
5 holidays.

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

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

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

13 "Home Affordable Mortgage Program" means the program
14 established by the United States Department of the Treasury,
15 pursuant to sections 101 and 109 of the Emergency Economic
16 Stabilization Act of 2008, as section 109 of the Act has been
17 amended by section 7002 of the American Recovery and
18 Reinvestment Act of 2009. The Home Affordable Modification
19 Program is a component of the Making Home Affordable Program,
20 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 the
8 company's core executive and administrative functions are
9 primarily carried out.

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

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

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

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



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

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

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

19 "(b) No person shall engage in the business of mortgage
20 servicing in this State unless the person providing services has



1 a physical presence in the State pursuant to section [~~454M-~~
2 ~~5(a)(5)-~~] 454M-5(b)(6)."

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

5 **"~~454M-4~~ License; fees; renewals; notices; voluntary**
6 **surrender of license[-]; bonds.** (a) [~~Am~~] The commissioner may
7 approve a license or renewal application upon receipt of a
8 complete application; provided that an applicant for licensure
9 shall file an application on a form prescribed by NMLS or by the
10 commissioner and shall pay an application fee of \$675. Each
11 license shall expire on December 31 of each calendar year[-]
12 unless such license is renewed. A [~~license~~] licensee may [~~be~~
13 renewed] apply for license renewal by filing a renewal statement
14 on a form prescribed by NMLS or by the commissioner and paying a
15 renewal fee of \$425, at least four weeks prior to December 31.
16 All fees paid pursuant to this section, including fees paid in
17 connection with an application, shall be nonrefundable. No fee
18 paid pursuant to this section shall be prorated if the license
19 is surrendered, revoked, or suspended prior to the expiration of
20 the period for which it was approved.



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

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

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

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

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

18 The applicant shall disclose whether the applicant or any of its
19 officers, directors, employees, managers, agents, partners, or
20 members have ever been issued or been the subject of an
21 injunction or administrative order pertaining to any aspect of



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

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

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

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

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

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 officers, directors, employees, managers,
10 agents, members, partners, or shareholders owning ten per
11 cent or more of the outstanding stock;

12 (3) Receiving notification of the initiation of license
13 denial, cease and desist, suspension or revocation
14 procedures, or other formal or informal regulatory
15 action by any governmental agency against the licensee
16 and the reasons for the action;

17 (4) Receiving notification of the initiation of any action
18 by the state attorney general or the attorney general of
19 any other state and the reasons for such action;

20 (5) Suspension or termination of the licensee's status as an
21 approved servicer by the Federal National Mortgage



1 Association, Federal Home Loan Mortgage Corporation, or
2 Government National Mortgage Association;

3 (6) Receiving notification that certain servicing rights of
4 the licensee will be rescinded or canceled, and the
5 reasons provided therefor;

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

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

14 [~~f~~] (i) A mortgage servicer licensed under this chapter
15 may voluntarily cease business and surrender its license by
16 giving written notice to the commissioner of its intent to
17 surrender its mortgage servicer license. Notice pursuant to
18 this subsection shall be given at least thirty days before the
19 surrender of the license and shall include:

20 (1) The date of surrender;



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

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



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

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

13 The surety bond shall be:

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

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



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

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



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

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

17 (1) The principal submits a letter of reinstatement of the
18 bond or a new bond; or

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



1 Automatic suspension by the commissioner, and subsequent
2 orders and proceedings, if any, shall be conducted pursuant to
3 section 454M-7.

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

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

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



1 "~~§454M-5~~ ~~[Duties]~~ Additional duties of a mortgage
2 servicer; ~~[disclosures,]~~ good faith[-] and fair dealing;
3 disclosures; payments, accounting, and records; assignment of
4 servicing rights. (a) A mortgage servicer licensed or acting
5 under this chapter, ~~[in]~~ has a duty of good faith and fair
6 dealing in its communications, transactions, and course of
7 dealings with each borrower in connection with the servicing of
8 the borrower's mortgage loan.

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

11 (1) Safeguard and account for any money handled for the
12 borrower;

13 (2) Follow reasonable and lawful instructions from the
14 borrower consistent with the underlying note and
15 mortgage;

16 ~~[+2]~~ (3) Act with reasonable skill, care, timeliness,
17 promptness, and diligence;

18 ~~[+3]~~ (4) Disclose to the commissioner in the servicer's
19 license application and each yearly renewal a
20 complete, current schedule of the ranges of costs and



1 fees it charges borrowers for its servicing-related
2 activities;

3 ~~[(4)]~~ (5) File a report with each yearly renewal statement
4 in a form and format acceptable to the ~~[director]~~
5 commissioner detailing the servicer's activities in
6 this State, including:

7 (A) The number of mortgage loans the servicer is
8 servicing;

9 (B) The type and characteristics of loans serviced in
10 this State;

11 (C) The number of serviced loans in default, along
12 with a breakdown of thirty-, sixty-, and ninety-
13 day delinquencies;

14 (D) Information on loss mitigation activities,
15 including details on workout arrangements
16 undertaken;

17 (E) Information on foreclosures commenced in this
18 State;

19 (F) The affiliations of the mortgage servicer,
20 including any lenders or mortgagees for which the
21 mortgage servicer provides service, any



1 subsidiary or parent entities of the mortgage
2 servicer, and a description of the authority held
3 by the mortgage servicer through its
4 affiliations; and

5 (G) Any other information that the commissioner may
6 require; and

7 ~~(5)~~ (6) Maintain an office in the State that is staffed
8 by at least one agent or employee for the purposes of
9 addressing consumer inquiries or complaints and
10 accepting service of process; provided that the
11 mortgage servicer's business constitutes at least a
12 twenty per cent share of the portion of the total
13 mortgage loan service market in the State that was
14 serviced by mortgage servicers licensed under this
15 chapter within the previous calendar year; and
16 provided further that nothing in this section shall
17 prohibit a mortgagee as defined by section 667-1 or a
18 mortgage servicer from contracting with a licensee
19 that maintains an office in this State in conformity
20 with this section for the purposes of addressing



1 consumer inquiries or complaints and accepting service
2 of process.

3 (c) A mortgage servicer shall comply with the following
4 requirements concerning handling and processing of mortgage
5 payments:

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

18 (2) Methods of payment and payment instruments shall be
19 reasonable;

20 (3) If a mortgage servicer specifies in writing
21 requirements for the borrower to follow in making



1 payments, but accepts a payment that does not conform
2 to the requirements, the mortgage servicer shall
3 credit the payment as soon as commercially
4 practicable, but in no event later than three business
5 days after receipt;

6 (4) Late payments of principal and interest shall be
7 credited before any late charge is collected; and

8 (5) If the mortgage servicer receives any payment on a
9 mortgage loan and suspenses it, does not credit it, or
10 does not treat it in accordance with this section, the
11 mortgage servicer shall, within ten days of receipt,
12 send the borrower notice by mail at the borrower's
13 last known address indicating the reason the payment
14 was suspended or was not credited or treated as
15 credited to the account, and specifying any actions by
16 the borrower necessary to make the loan current.

17 (d) A mortgage servicer shall comply with the following
18 requirements concerning escrows for the payment of taxes and
19 insurance:

20 (1) Any mortgage servicer who receives funds from a borrower
21 to be held in escrow for payment of taxes and insurance



1 premiums shall pay the taxes and insurance premiums of
2 the borrower to the appropriate taxing authority and
3 insurance company in the amount required and at the
4 time the taxes and insurance premiums are due, in
5 accordance with the requirements of the Real Estate
6 Settlement Procedures Act, including title 12 C.F.R.
7 section 1024.17, and shall be liable to the borrower
8 as provided therein;

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

19 (3) Where an escrow account has been established and a
20 mortgage servicer advances funds in paying a
21 disbursement that 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
13 subsection shall be liable to the borrower: for any penalties,
14 interest, or other charges levied by the taxing authority or
15 insurance company as a result of any violation; any actual
16 damages suffered by the borrower as a result of such violation,
17 including but not limited to any amount that would have been paid
18 by an insurer for a casualty or liability claim had the
19 insurance policy not been canceled for nonpayment by the mortgage
20 servicer; and, in the case of any successful action to enforce



1 the foregoing liability, the costs of the action together with
2 reasonable attorney's fees as determined by the court.

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

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

19 (2) A mortgage servicer shall promptly provide a borrower
20 with an accurate accounting in plain English of the
21 debt owed when requested by the borrower or borrower's



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



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

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



1 (h) A mortgage servicer shall comply with the following
2 requirements concerning handling consumer complaints and
3 inquiries:

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

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

14 (3) Within ten business days of receiving a request in
15 writing from a borrower or the borrower's authorized
16 representative, a mortgage servicer shall provide the
17 borrower with the name, address, phone number or
18 electronic mail address, if available, and other
19 relevant contact information for the owner or assignee
20 of the mortgage loan; and



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

8 (i) A mortgage servicer shall comply with the following
9 requirements concerning fees:

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



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

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

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

8 (C) The fee is not prohibited by law or the loan
9 instruments and is a reasonable fee for a

10 specific service requested by the borrower that
11 is assessed only after clear and conspicuous
12 disclosure of the fee is provided to the borrower
13 and the borrower expressly consents to pay the
14 fee in exchange for the services.

15 (3) In addition to the limitations in paragraph (2),
16 attorneys' fees charged in connection with a
17 foreclosure action shall not exceed reasonable and
18 customary fees for such work. If a foreclosure action
19 or proceeding is terminated prior to the public sale
20 because of a loss mitigation option, a reinstatement,
21 or payment in full, the borrower shall only be liable



1 for reasonable and customary fees for work actually
2 performed; and

3 (4) A mortgage servicer shall not impose any late fee or
4 delinquency charge when the only delinquency is
5 attributable to late fees or delinquency charges
6 assessed on an earlier payment and the payment is
7 otherwise a full payment for the applicable period and
8 is paid on its due date or within any applicable grace
9 period. Late charges shall not be: based on an amount
10 greater than the past due amount; collected from the
11 escrow account or from escrow surplus without the
12 approval of the borrower; or deducted from any regular
13 payment.

14 (j) Each mortgage servicer licensee shall maintain adequate
15 records of each residential mortgage loan transaction at the
16 office named in the mortgage servicer license.

17 (k) Upon assignment of servicing rights on a residential
18 mortgage loan, the mortgage servicer shall disclose to the
19 borrower:

20 (1) Any notice required by the Real Estate Settlement
21 Procedures Act, including title 12 C.F.R. section



1 1024.33, within the time periods prescribed therein;
2 and
3 (2) A schedule of the ranges and categories of the
4 mortgage servicer's costs and fees for the servicer's
5 servicing-related activities, which shall comply with
6 state and federal law and, if such disclosure is made by
7 a mortgage servicer licensee, shall not exceed those
8 reported to the commissioner in accordance with this
9 chapter.

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

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

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

20 (3) A notice in a form and content acceptable to the
21 commissioner that the servicer is licensed by the



1 commissioner and that complaints about the servicer
2 may be submitted to the commissioner.

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

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

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

18 **"§454M-6 Prohibited activities.** (a) It shall be
19 [unlawful] a violation of this chapter for any mortgage servicer
20 in the course of any mortgage loan transaction[+], or in
21 connection with any mortgage servicing business, to:



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



- 1 (6) Require any amount of funds to be remitted by means more
2 costly to the borrower than a bank or certified check or
3 attorney's check from an attorney's account to be paid
4 by the borrower;
- 5 (7) Fail to timely pay taxes or insurance premiums of the
6 borrower, if and as required by this chapter;
- 7 (8) Fail to follow procedures concerning escrows for the
8 payment of taxes and insurance as required by this
9 chapter;
- 10 (9) Place hazard, homeowner's, or flood insurance on the
11 mortgaged property when the mortgage servicer knows or
12 has reason to know that the borrower has an effective
13 policy for such insurance;
- 14 (10) Fail to provide written notice to a borrower upon taking
15 action to place hazard, homeowner's, or flood insurance
16 on the mortgaged property, including a clear and
17 conspicuous statement of the procedures by which the
18 borrower may demonstrate that the borrower has the
19 required insurance coverage and by which the mortgage
20 servicer shall terminate the insurance coverage placed
21 by the mortgage servicer and refund or cancel any



- 1 insurance premiums and related fees paid by or charged
2 to the borrower;
- 3 (11) Place hazard, homeowner's, or flood insurance on a
4 mortgaged property, or require a borrower to obtain or
5 maintain such insurance, in excess of the replacement
6 cost of the improvements;
- 7 (12) Fail to provide to the borrower a refund of unearned
8 premiums paid by a borrower or charged to the
9 borrower for hazard, homeowner's, or flood insurance
10 placed by a mortgagee or the mortgage servicer if the
11 borrower provides reasonable proof that the borrower has
12 obtained coverage such that the forced placement
13 insurance is no longer necessary and the property is
14 insured. If the borrower provides reasonable proof
15 that no lapse in coverage occurred such that the
16 forced placement was not necessary, the mortgage
17 servicer shall promptly refund the entire premium;
- 18 (13) Collect private mortgage insurance beyond the date for
19 which private mortgage insurance is required;
- 20 (14) Collect, charge, attempt to collect or charge, or use or
21 propose any agreement purporting to collect or charge,



- 1 any fee not in compliance with, or prohibited by, this
2 chapter;
- 3 (15) Fail to provide a timely and accurate statement of
4 account, as required by this chapter;
- 5 (16) Fail to handle a consumer complaint or inquiry in
6 accordance with this chapter;
- 7 (17) Provide inaccurate information to a credit bureau,
8 thereby harming a borrower's creditworthiness;
- 9 (18) Fail to report both the favorable and unfavorable
10 payment history of the borrower to a nationally
11 recognized consumer credit bureau at least annually if
12 the mortgage servicer regularly reports information to a
13 credit bureau;
- 14 (19) Fail to provide or submit a timely, complete, and
15 accurate notice, acknowledgment, statement, information,
16 explanation, reminder, communication, or other
17 information to any person as required by this chapter;
- 18 (20) Fail to comply with loss mitigation requirements of this
19 chapter;
- 20 (21) Fail to offer loan modifications in compliance with the
21 Home Affordable Modification Program guidelines or



- 1 directives, if the mortgage servicer is participating in
2 the Home Affordable Modification Program;
- 3 (22) Fail to comply with the requirements of chapter 667 and
4 ensure that the mortgage servicer's attorneys and agents
5 comply with chapter 667;
- 6 (23) Refuse to communicate with an authorized representative of
7 the borrower who provides a written authorization
8 signed by the borrower; provided that the mortgage
9 servicer may adopt procedures reasonably related to
10 verifying that the representative is in fact
11 authorized to act on behalf of the borrower;
- 12 (24) Fail to provide a timely payoff statement as required
13 by this chapter;
- 14 (25) Fail to issue a release of mortgage in accordance with
15 section 506-8;
- 16 (26) Conduct any business for which this chapter requires a
17 license without holding a valid license as required under
18 this chapter or assist or aid and abet any person in the
19 conduct of business without a valid license as required
20 under this chapter;



- 1 (27) Engage in the business of mortgage servicing without
2 complying with bonding requirements of this chapter;
- 3 (28) Transfer or assign its mortgage servicer license;
- 4 (29) Change its name or office address without complying with
5 the requirements of this chapter;
- 6 (30) Fail to maintain adequate records of each residential
7 mortgage loan transaction at the office named in the
8 mortgage servicer license; or
- 9 (31) Make any false statement or omission of a material
10 fact, in connection with any information or reports
11 filed with a governmental agency or NMLS or in
12 connection with any investigation conducted by the
13 commissioner or another governmental agency.
- 14 (b) It shall be unlawful and a violation of this chapter
15 for any mortgage servicer in the course of any mortgage loan
16 transaction to fail to comply with any:
- 17 (1) Applicable federal law or regulation related to
18 mortgage servicing, including but not limited to:
- 19 (A) The Real Estate Settlement Procedures Act,
20 including the mortgage loan servicing transfer,
21 escrow account administration, and borrower



- 1 request for information and error resolution
2 requirements;
- 3 (B) The Truth in Lending Act, title 15 United States
4 Code sections 1601 through 1667f, as amended, and
5 Regulation Z adopted thereunder, title 12 C.F.R.
6 part 226, as amended; or
- 7 (C) Rules and regulations issued or administered by
8 the Consumer Financial Protection Bureau, and
9 interpretations of such rules by the Consumer
10 Financial Protection Bureau through interpretive
11 rules, bulletins, statements of policy, and
12 statements of guidance;
- 13 (2) Agreement with a governmental entity, agency, agent,
14 or regulator, or state attorney general that applies
15 to the mortgage servicer, including but not limited
16 to:
- 17 (A) A servicer participation agreement or other
18 agreement to participate in the Home Affordable
19 Modification Program or other Making Home
20 Affordable program;



1 (B) Home Affordable Modification Program rules,
2 including guidance provided by Making Home
3 Affordable program handbooks, and supplemental
4 directives; or

5 (C) The National Mortgage Settlement reached in 2012
6 by the federal government and forty-nine states,
7 with the five largest mortgage servicers in the
8 United States, to address mortgage servicing,
9 foreclosure, and bankruptcy abuses;

10 (3) Order of a court or government regulator that applies
11 to the mortgage servicer;

12 (4) Provision of this chapter or any rule adopted pursuant
13 to this chapter; or

14 (5) Federal or state law, rule, or regulation.

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

20 (d) Notwithstanding any other provisions of this chapter,
21 a mortgage servicer shall not be in violation of this chapter if



1 performance of a requirement under this chapter would constitute
2 a violation of federal law, rules, or regulations."

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

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

- 7 (1) Stating that the power of sale foreclosure was made
8 pursuant to the power of sale provision in the
9 mortgage;
- 10 (2) Stating that the power of sale foreclosure was
11 conducted as required by this part;
- 12 (3) Summarizing what was done by the foreclosing
13 mortgagee;
- 14 (4) Attaching a copy of the recorded notice of default and
15 intention to foreclose;
- 16 (5) Attaching a copy of the last public notice of the
17 public sale;
- 18 (6) Referencing the document number of the affiliate
19 statement filed at the bureau of conveyances as
20 required under section 667-58; and
- 21 (7) Stating the date of filing and any relevant



1 referencing information assigned by the division of
2 financial institutions to the statement filed with the
3 commissioner of financial institutions of the mortgage
4 servicer affiliate statement as required under section
5 ~~[454M-5(a)(4)(F).]~~ 454M-5(b)(5)(F)."

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

8 "(c) Any notice provided by a mortgage servicer, including
9 an agent, employee, or representative of that mortgage servicer,
10 shall be issued only by a mortgage servicer that has been listed
11 in the affiliate statement filed by the foreclosing mortgagee or
12 lender under subsection (a); provided further that the mortgage
13 servicer shall be licensed under or otherwise exempt from
14 chapter 454M. The agency relationship or affiliation of the
15 mortgage servicer and the foreclosing mortgagee or lender and
16 any authority granted or conferred to that mortgage servicer
17 shall be described in the affiliate statement filed under both
18 subsection (a) and section ~~[454M-5(a)(4)(F).]~~ 454M-5(b)(5)(F)."

19 SECTION 9. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 10. This Act shall take effect upon its approval;
2 provided that section 454M-4(j) to (n), Hawaii Revised Statutes,
3 established by section 4 of this Act, shall be effective on the
4 approval date of this Act; provided further that with respect to
5 licensees in operation on the approval date of this Act, the
6 surety bond requirement under section 454M-4(j) to (n), Hawaii
7 Revised Statutes, shall take effect on the date of license
8 renewal but not later than December 31, 2015.



Report Title:

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

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. (SD1)

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