
A BILL FOR AN ACT

RELATING TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE
LICENSING ACT.

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

1 SECTION 1. The legislature finds that seller financing is
2 a useful tool in the credit market. It expands the pool of
3 potential buyers for a seller and gives buyers the opportunity
4 to make a purchase that would otherwise be out of reach,
5 particularly in situations where the purchaser may qualify for
6 traditional financing, but the traditional lender does not
7 accept the property because of its location or condition.

8 Although a seller financing exemption was not originally
9 included in Hawaii's Secure and Fair Enforcement for Mortgage
10 Licensing Act, the legislature finds that with adequate consumer
11 protection, seller financing is a key component in the Hawaii
12 real estate market. Seller financing can assist intra-family
13 transactions and transfers of property that may be subject to
14 environmental and natural hazards that are unique to Hawaii.

15 Accordingly, the purpose of this Act is to establish a
16 mortgage license exemption for a seller to engage in seller
17 financing.



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

3 "§454F-2 Exemptions. This chapter shall not apply to the
4 following:

5 (1) An exempt registered mortgage loan originator when
6 acting for an insured depository institution or an
7 institution regulated by the Farm Credit
8 Administration;

9 (2) A licensed attorney who negotiates the terms of a
10 residential mortgage loan on behalf of a client as an
11 ancillary matter to the attorney's representation of
12 the client unless the attorney is compensated by a
13 lender, a mortgage loan originator company, or other
14 mortgage loan originator or by an agent of a lender,
15 mortgage loan originator company, or other mortgage
16 loan originator;

17 (3) A person or entity that only performs real estate
18 brokerage activities and is licensed or registered by
19 the State unless the person or entity is compensated
20 by a lender, a mortgage loan originator company, or
21 other mortgage loan originator or by an agent of the



- 1 lender, mortgage loan originator company, or other
2 mortgage loan originator;
- 3 (4) A person or entity solely involved in extensions of
4 credit relating to timeshare plans, as the term is
5 defined in title 11 United States Code section
6 101(53D);
- 7 (5) An exempt sponsoring mortgage loan originator company
8 as defined by this chapter except as otherwise
9 provided by this chapter;
- 10 (6) An insured depository institution;
- 11 (7) An institution regulated by the Farm Credit
12 Administration;
- 13 (8) Employees of government agencies or of housing finance
14 agencies who act as mortgage loan originators; [øx]
- 15 (9) A mortgage servicer company that is exempt from
16 chapter 454M, pursuant to section 454M-3[-]; or
- 17 (10) A seller of real property who offers or negotiates
18 terms of a residential mortgage loan that is financed
19 by the seller and secured by the seller's own real
20 property; provided that:



1 (A) The seller is a person, estate, or trust that
2 transacts three or fewer residential mortgage
3 loans in one calendar year;

4 (B) The seller is not a loan originator for purposes
5 of the loan originator qualification requirements
6 in 12 Code of Federal Regulations section
7 1026.36(f) and (g);

8 (C) The seller has not constructed or acted as the
9 construction contractor for the residence on the
10 property in the ordinary course of the seller's
11 business;

12 (D) The interest rate for the loan does not exceed
13 the State's usury limit; provided that the
14 exemptions from usury specified in section 478-8
15 shall not apply to transactions subject to this
16 paragraph;

17 (E) The seller shall provide to the buyer the terms
18 of the financing including:

19 (i) A current title search including any liens
20 against the property;

21 (ii) The interest rate;



- 1 (iii) Monthly principal and interest payments;
- 2 (iv) Any prepayment penalty;
- 3 (v) Any late payment charges;
- 4 (vi) The payment schedule;
- 5 (vii) The total amount of interest that the
6 mortgagor will pay over the term of the loan
7 expressed as a percentage of the loan
8 amount;
- 9 (viii) A calculation of projected aggregate monthly
10 payments including principal and interest;
- 11 (ix) Estimated closing costs if closing costs are
12 included in loan costs and estimated cash to
13 close if closing costs are not included in
14 loan costs. For purposes of this paragraph,
15 closing costs shall include recording fees,
16 transfer taxes, prepaid costs such as
17 homeowner's insurance premiums or property
18 taxes, and appraisal costs charged to the
19 mortgagor;
- 20 (x) The seller's contact information including
21 name, address, phone number, electronic mail



1 address, and alternate contact information
2 to the extent available; and

3 (xi) A statement that the seller will acquire a
4 security interest in the buyer's dwelling
5 and that the buyer may lose the dwelling in
6 the event of a loan default;

7 (F) The seller shall provide a disclaimer, to be
8 initialed by the buyer, which states, "BUYER
9 ACKNOWLEDGES RECEIVING FINANCING FROM THE SELLER
10 IN THIS TRANSACTION AND GRANTING THE SELLER A
11 MORTGAGE. THIS CAN HAVE SERIOUS CONSEQUENCES
12 SHOULD BUYER FAIL TO MAKE ANY PAYMENTS INCLUDING
13 BUT NOT LIMITED TO FORECLOSURE AND THE LOSS OF
14 BUYER'S PROPERTY. THEREFORE, IT IS IMPORTANT
15 THAT BUYER UNDERSTANDS ALL FINANCING TERMS AND
16 OBLIGATIONS AND OBTAINS PROFESSIONAL EXPERT
17 ADVICE TO THE EXTENT NECESSARY TO ENSURE BUYER IS
18 FULLY ADVISED IN THIS MATTER."; and

19 (G) A residential mortgage loan shall be recorded
20 with the land court or bureau of conveyances as
21 applicable."



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval.

4



Report Title:

Secure and Fair Enforcement for Mortgage Licensing Act; Seller Exemption

Description:

Establishes a mortgage license exemption for seller-financed mortgage loans, if certain conditions are met. Requires the seller to provide to the buyer the terms of the financing. Requires the seller to provide a disclaimer, to be initialed by the buyer, regarding the financing. (CD1)

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