

Report Title:

Mortgage Brokers & Solicitors; Licensing

Description:

Requires mortgage brokers and solicitors to pass a licensing exam. Regulates advertising. Requires continuing education for license renewal. Expands definition of "mortgage broker". Requires written notice of borrower's rights. Creates right of action to recover on surety bond. (SD1)

HOUSE OF REPRESENTATIVES
TWENTY-SECOND LEGISLATURE,
2004

H.B. NO. 2788
H.D. 1

STATE OF HAWAII

S.D. 1

A BILL FOR AN ACT

relating to mortgage brokers and solicitors.

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

SECTION 1. The purpose of this Act is to increase consumer protection by enhancing mortgage broker and mortgage solicitor competence and professionalism requirements and strengthening enforcement mechanisms.

SECTION 2. Chapter 454, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

"§454- Mortgage broker and solicitor examination. (a) An applicant applying for a mortgage broker or solicitor

license shall pass a written examination. The examination shall test the knowledge of the applicant concerning a mortgage transaction, the duties and responsibilities of a broker or solicitor, and the mortgage laws and rules of this State, as well as relevant federal statutes.

(b) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting fees. The fees collected shall be nonrefundable.

(c) An applicant, who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

(d) An applicant's examination scores shall be valid for two years from the date of the examination.

§454- Advertising. (a) It is a misdemeanor for any person to advertise with or without any limiting qualifications as a mortgage broker or mortgage solicitor unless the person holds a valid license under this chapter for the services advertised.

(b) A mortgage broker or solicitor may advertise in print or broadcast medium, only if the advertisement or listing includes the mortgage broker or solicitor's applicable and current license number, and proof of the number's validity is provided to the publisher or producer of the advertising medium. Any advertisement for a branch office or trade name shall include the name of the parent company in clear and conspicuous type.

(c) Upon entry of either a final order of the commissioner pursuant to chapter 91 or a judgment by a court of competent jurisdiction finding that a mortgage broker or solicitor has advertised in violation of this section, the public utility furnishing telephone service to the broker or solicitor shall disconnect the telephone number contained in the advertisement or listing; provided that no public utility shall be subject to regulatory action for a failure to disconnect the telephone number.

(d) The publisher or producer of a print or broadcast advertising medium shall not be liable in any suit, action, or claim arising from the publisher or producer's refusal

to list or accept advertisements pursuant to subsection (b). Good faith compliance by a public utility with subsection (c) is a complete defense to any civil or criminal action brought against the public utility arising from the termination of telephone service.

(e) As used in this section, "advertise" includes:

(1) The issuance of any card, sign, or device to any person;

(2) Causing, permitting, or allowing the placement of any sign or marking on or in any building, vehicle, or structure;

(3) Placing an advertisement in any newspaper or magazine;

(4) Any listing or advertising in any directory under a classification or heading that includes the word "mortgage broker", "mortgage solicitor", or the like; or

(5) Commercials broadcast by airwave or Internet transmission.

§454- Prerequisites for license renewal. (a) At the time of renewal, a mortgage broker or solicitor shall certify on a form provided by the commissioner that the licensee has completed the following hours of continuing education or its equivalent as determined by the commissioner during the two-year period preceding the application for renewal:

(1) Eighteen hours for mortgage broker; and

(2) Twelve hours for mortgage solicitor.

The certification shall be under oath if required by the commissioner. In addition to the certification, the commissioner may require any licensee to submit further evidence satisfactory to the commissioner demonstrating compliance with this section. Upon failure to satisfy the continuing education requirement by the license expiration date the renewed license shall be placed on "inactive" status.

(b) The course of study for continuing education shall be approved by the National Association of Mortgage Brokers, the Mortgage Bankers Association, or an accredited business school, college, university, community college, vocational school, or any other course of study approved by the commissioner, and shall include instruction on primary and subordinate financing transactions and the appropriate laws governing such transactions, including at least four hours of instruction in compliance with federal and state regulation of mortgage lending and at least two hours in mortgage broker business ethics.

(c) To reactivate a license which has been placed on an "inactive" status, the licensee shall submit to the commissioner:

(1) Proof of having satisfied the continuing education requirement of this section;

(2) A complete application setting forth the information as may be prescribed or required by the commissioner; and

(3) Payment of the proper fee.

(d) A false certification to the commissioner shall be deemed a violation and shall subject the licensee to disciplinary proceedings."

SECTION 3. Section 454-1, Hawaii Revised Statutes, is amended by amending the definitions of "mortgage broker" and "mortgage solicitor" to read:

"Mortgage broker" means a person not exempt under section 454-2, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly makes, negotiates, acquires, or offers to make, negotiate, or acquire a mortgage loan on behalf of a borrower seeking a mortgage loan~~[-]~~ and includes a person who deals directly with a borrower to offer or negotiate the terms, conditions, and fees of a mortgage loan.

"Mortgage solicitor" means an individual not licensed as a mortgage broker who performs any of the functions set forth in the definition of [~~mortgage broker~~] "mortgage broker"

and who is employed by a mortgage broker or whose business transactions are under the direction, control, supervision, or management of a mortgage broker."

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

"**§454-2 Exemptions.** This chapter does not apply to the following:

(1) Banks, trust companies, building and loan associations, pension trusts, credit unions, credit union service organizations, insurance companies, financial services loan companies, or federally licensed small business investment companies, authorized under any law of this State or of the United States to do business in the State;

(2) A person making or acquiring a mortgage loan with one's own funds for one's own investment without intent to resell the mortgage loan;

(3) A person licensed to practice law in the State, not actively and principally engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as an attorney;

(4) A person licensed as a real estate broker or salesperson in the State, not actively engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as a real estate broker or salesperson;

(5) An institutional investor negotiating, entering into, or performing under a loan purchase agreement for its portfolio, for subsequent resale to other

institutional investors, or for placement of the mortgages into pools or packaging them into mortgage-backed securities. As used in this paragraph, "loan purchase agreement" means an agreement or arrangement under which a bank, savings and loan, credit union, financial services loan company, or other financial institution registered to do business in the State [~~of Hawaii~~] agrees to sell mortgage loans or obtain funding therefor, with or without the transfer of servicing rights, to an institutional investor; and

(6) Foreign lender as defined in section 207-11."

SECTION 5. Section 454-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) No person required to be licensed under this chapter shall act, attempt to act, or hold oneself out as a mortgage broker or mortgage solicitor without a license therefor as provided in this chapter~~[, and no]~~. No person [~~not~~] required to be licensed under this chapter who acts, attempts to act, or holds oneself out as a mortgage broker or mortgage solicitor without a license shall charge or receive any commission, fee, [~~or~~] bonus, salary, hourly wage, or remuneration in connection with arranging for, negotiating, or selling a mortgage loan."

2. By amending subsections (c) and (d) to read:

"(c) Every person licensed as a mortgage broker shall deposit with the commissioner, prior to doing business, a bond in the amount of [~~\$15,000,~~] \$50,000, executed by the mortgage broker as principal and a surety company authorized to do business in the State as a surety. The bond shall be conditioned upon the faithful compliance of the broker of this chapter. The bond shall run to the State for the benefit of any person injured by the wrongful act, default, fraud, or misrepresentation of the broker or the solicitors[~~+~~]. The commissioner, or any person who has been or claims to have been injured by the breach of the conditions shall have a right of action to recover on any

such bond, and to recover reasonable attorney's fees incurred to secure the recovery under the bond; provided that the aggregate liability of the surety shall not exceed the sum of the bond. The surety may cancel the bond by giving sixty days' notice in writing to the commissioner and shall thereafter be relieved of any liability for any breach of condition occurring after the effective date of cancellation. A mortgage broker's license shall not be in effect at any time when the bond is not in full force and effect.

(d) Each application for a license or its renewal shall be made in writing, on the forms and in the manner and accompanied by evidence in support of the applications as prescribed by the commissioner. The commissioner shall require information with regard to the applicant as the commissioner may deem desirable, with due regard to the paramount interests of the public, as to the experience, financial integrity, and competency of the applicant as to financial transactions involving primary or subordinate mortgage financing[~~. In the event~~] and certification that the applicant has no conviction for fraud, embezzlement, misrepresentation, or theft. If the commissioner orders denial [of issuance or] of the renewal of a license, the order shall be made only pursuant to chapter 91. The failure, refusal, or neglect of any licensed mortgage broker to maintain the applicable bond in full force and effect shall cause the automatic forfeiture of the license of the mortgage broker, effective as of the date of expiration or cancellation of the bond. The commissioner shall not restore the forfeited license until satisfactory proof of bonding is submitted to the commissioner as required by this section. Failure to submit proof sufficient to restore a license within sixty days after the date of forfeiture shall result in the forfeiture of all fees and shall require the licensee to apply as a new applicant. The commissioner may:

- (1) Assess a fee not to exceed \$1,000;
- (2) Impose a bonding requirement in addition to the bond requirement of section 454-3(c); or
- (3) Restrict the license as a condition of restoration of a license forfeited under this section.

A licensee, within sixty days after receipt of notification of the forfeiture, may request an administrative hearing pursuant to chapter 91 to review the forfeiture."

3. By amending subsection (f) to read:

"(f) If the mortgage broker is a person other than an individual, the license issued to it entitles one officer or member thereof, on behalf of the corporation, partnership, association, or other organization, to engage in the business of mortgage broker. The officer or member shall be designated in the application for license and have two years of experience in financial transactions involving primary or subordinate mortgage financing, or equivalent experience as determined by the commissioner.

For the purposes of this subsection, the commissioner shall consider, as equivalent experience, two years of experience as a licensed insurance producer under chapter 431; provided that:

(1) The licensed insurance producer only arranges mortgages with a single insured depository institution, as defined in title 12 United States Code section 1813(c)(2), that is a wholly-owned subsidiary or an affiliate of an insurer with whom the insurance producer has an exclusive agency relationship;

(2) The licensed insurance producer and the insured depository institution shall certify that the insurance producer only arranges mortgage loans with the insured depository institution and no other; and

(3) The license shall be terminated as of the date the insurance producer ceases to arrange mortgage loans with the insured depository institution."

4. By amending subsection (i) to read:

"(i) Every licensed mortgage broker shall have and maintain a principal place of business in the State for the

transaction of business. [~~In the event~~] If the mortgage broker maintains a branch office or offices, the commissioner, upon application and payment of a fee, shall issue a branch office license. The mortgage broker shall designate a mortgage solicitor who has two years of experience in financial transactions involving primary or subordinate mortgage financing, or equivalent experience as determined by the commissioner, to be in charge of each branch office.

For the purposes of this subsection, the commissioner shall consider, as equivalent experience, two years of experience as a licensed insurance producer under chapter 431; provided that:

(1) The licensed insurance producer only arranges mortgages with a single insured depository institution, as defined in title 12 United States Code section 1813(c)(2), that is a wholly-owned subsidiary or an affiliate of an insurer with whom the insurance producer has an exclusive agency relationship;

(2) The licensed insurance producer and the insured depository institution shall certify that the insurance producer only arranges mortgage loans with the insured depository institution and no other; and

(3) The license shall be terminated as of the date the insurance producer ceases to arrange mortgage loans with the insured depository institution."

SECTION 6. Section 454-3.1, Hawaii Revised Statutes, is amended to read as follows:

"~~[§]454-3.1~~ **Written agreements.** For any transaction between a mortgage broker or a mortgage solicitor and a borrower, the following requirements shall apply:

(1) A mortgage broker and a mortgage solicitor shall comply with all provisions of the Real Estate

Settlement Procedures Act, the Truth in Lending Act, and the Equal Credit Opportunity Act, as those laws currently exist or as they may be amended[-];

(2) Any written commitment letter to make a mortgage loan with specified terms, including loan amount, interest rate, points, and payment terms, which is issued by a mortgage broker or solicitor and accepted by a borrower, must be honored by the mortgage broker or solicitor if the borrower has completely satisfied all of the conditions of the commitment in a timely manner and prior to the specified expiration date of the commitment[-]; and

(3) A mortgage broker or mortgage solicitor shall provide the obligor with the following notice (or substantially similar notice) of the borrower's rights and obligations, not longer than one page in length and in twelve-point font, regarding the terms of the mortgage transaction not later than the time the notice is required under the notice provision contained in title 12 Code of Federal Regulations section 226.31(c) as amended from time to time:

"CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

You are not required to complete this agreement

merely because you have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations.

If you are uncertain about your rights and

obligations under this agreement, you should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. For information on contacting a qualified credit counselor, call the United States Department of Housing and Urban Development's counseling and referral line at 1-800-569-4287 or go to www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm for a list of housing counseling agencies."

The mortgage broker or solicitor shall provide the notice to the obligor and shall secure a signed acknowledgement of receipt by the obligor of a copy of the notice. The notice requirements of this paragraph shall not apply when a similar disclosure is required under federal law, including but not limited to home equity loans and high cost loans under the Home Ownership and Equity Protection Act of title 15, United States Code, section 1639."

SECTION 7. Section 454-4, Hawaii Revised Statutes, is amended by amending subsections (a) through (c) to read as follows:

"(a) [~~The~~] In addition to any other actions authorized by law, the commissioner may revoke a license issued under this chapter, suspend a license [~~for~~] issued under this chapter, condition the right of a licensee to use the license, fine any person holding a license issued under this chapter, or terminate any license issued under this chapter, for any cause authorized by law, including any of the following acts or conduct of a licensee:

(1) Making a false promise [~~tending~~] likely to influence, persuade, or induce[~~7~~] another, or pursuing a course of misrepresentation or false promises through agents, solicitors, advertising, or otherwise;

(2) Misrepresentation or concealment of any material fact with respect to any transaction resulting in injury to any party;

(3) Failure to disburse funds in accordance with an agreement;

(4) Failure to account or deliver to any person any personal property such as money, fund, deposit, check, draft, mortgage, or other document or thing of value which has come into the person's hands and which is not the person's property or which the person is not in law or equity entitled to retain, and at the time which has been agreed upon, or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to the accounting or delivery;

(5) Failure to place, within a reasonable time upon receipt, any money, fund, deposit, check, or draft, entrusted to the licensee by any person dealing with the licensee as a broker, in escrow pursuant to a written agreement, or to deposit the funds in a trust or escrow bank account maintained by the licensee with a bank located and doing business in the State, wherein the funds shall be kept until disbursement thereof is authorized;
[~~or~~]

(6) Brokering any mortgage loan as a direct result of offering, soliciting, or selling such mortgage loan at the dwelling of a borrower without a prearranged appointment initiated by and at the express invitation of the borrower; or

[~~(6)~~] (7) Failure to comply with this chapter or any order or rule made under the authority of this chapter.

(b) The commissioner may revoke a license if the application for the license contains a material misstatement, or the licensee demonstrates by a course of conduct negligence or incompetence in performing any act for which the licensee is required to be licensed under this chapter [~~, or the licensee for a second time is responsible for misconduct which warrants suspension under subsection (a)~~].

(c) For a licensee other than an individual, it shall be sufficient cause for the suspension or revocation of the license that any officer, director, employee, or member of the licensed corporation, partnership, association, or other organization has so acted as would be cause for suspension or revocation of a license to the party as an individual."

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

"§454-8 Penalty, contracts void. [~~Violation~~] Each violation of this chapter shall be punishable by a fine of not more than [~~\$1,000~~] \$2,000 or imprisonment of not more than one year, or both. Any contract entered into by any person with any unlicensed mortgage broker or solicitor shall be void and unenforceable."

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on January 1, 2020.