

Report Title:

Residential Mortgages; Mortgage Broker Regulation

Description:

Replaces chapter 454, HRS, under which the Professional & Vocational Licensing Division regulates mortgage brokers & solicitors, with provisions for more specialized regulation of residential mortgage brokers by the Division of Financial Institutions. (SB770 HD1)

SB770_SD 2 HD1.doc

SB770_SD 2 HD1.doc

SB770_SD 2 HD1.doc

1 "Institutional investor" means:

2 (1) Banks, savings and loan institutions, savings banks,
3 trust companies, insurance companies, investment
4 companies as defined in the Investment Company Act of
5 1940, pension or profit sharing trusts, any of the
6 classes of persons permitted to qualify as foreign
7 lenders under section 207-11, or other financial
8 institutions or institutional buyers, whether acting
9 for themselves or as fiduciaries; and

10 (2) The United States or any foreign government, or any
11 agency or corporate or other instrumentality of the
12 United States, a foreign government, or political
13 subdivision thereof.

14 "License" means a license issued under this chapter.

15 "Licensee" means a person licensed under this chapter.

16 "Mortgage broker" means a person not exempt under section

17 -2 who for compensation or gain, or in the expectation of
18 compensation or gain, either directly or indirectly makes,
19 negotiates, acquires, or offers to make, negotiate, or acquire a
20 residential mortgage loan on behalf of a borrower seeking a
21 residential mortgage loan.

1 "Person" means an individual, partnership, corporation,
2 association, or other organization.

3 "Residential mortgage loan" means a first mortgage loan on
4 residential real property that will be used primarily for
5 personal, family, or household use and primarily secured by a
6 security interest on such residential real property.

7 **§ -2 Exemptions.** This chapter shall not apply to the
8 following:

9 (1) Banks, trust companies, savings and loan institutions,
10 savings banks, pension trusts, credit unions,
11 insurance companies, financial services loan
12 companies, or federally licensed small business
13 investment companies, authorized under any law of this
14 State or of the United States to do business in this
15 state;

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

20 (3) A person licensed to practice law in this state, not
21 actively and principally engaged in the business of
22 negotiating residential mortgage loans, when the

1 person renders services in the course of the person's
2 practice as an attorney;

3 (4) A person licensed as a real estate broker or
4 salesperson in this state, not actively and
5 principally engaged in the business of negotiating
6 residential mortgage loans, when the person renders
7 services in the course of the person's practice as a
8 real estate broker or salesperson;

9 (5) An institutional investor negotiating, entering into,
10 or performing under a residential mortgage loan
11 purchase agreement for its portfolio, for subsequent
12 resale to other institutional investors, or for
13 placement of the residential mortgage loans into pools
14 or packaging them into mortgage-backed securities. As
15 used in this paragraph, "loan purchase agreement"
16 means an agreement or arrangement under which a bank,
17 savings and loan institution, credit union, financial
18 services loan company, or other financial institution
19 authorized to do business in this state agrees to sell
20 residential mortgage loans or obtain funding therefor,
21 with or without the transfer of servicing rights, to
22 an institutional investor; and

1 (6) A foreign lender conducting business in accordance
2 with part II of chapter 207.

3 **§ -3 Prohibited acts.** (a) No person required to be
4 licensed under this chapter shall act, attempt to act, or hold
5 oneself out as a mortgage broker without a license as required
6 in this chapter. No person required to be licensed under this
7 chapter who acts, attempts to act, or holds oneself out as a
8 mortgage broker without a license shall charge or receive any
9 commission, fee, bonus, salary, hourly wage, remuneration,
10 compensation, or gain in connection with arranging for,
11 negotiating, or selling a residential mortgage loan.

12 (b) It shall also be unlawful for any person required to
13 be licensed under this chapter to:

14 (1) Provide or offer to provide any service requiring a
15 license pursuant to this chapter unless the person has
16 been issued the appropriate license or is exempt from
17 licensing;

18 (2) Disburse the residential mortgage loan proceeds to a
19 closing agent in any form other than, as applicable,
20 direct deposit to a customer's account, wire, bank or
21 certified check, attorney's check drawn on a trust

- 1 account, or such other form as specifically authorized
2 by applicable law;
- 3 (3) Disburse the proceeds of a residential mortgage loan
4 without sufficient collected funds on hand at the time
5 of the disbursement in the account upon which the
6 funds are drawn;
- 7 (4) Fail to disburse funds in accordance with a
8 residential mortgage loan commitment to make a
9 residential mortgage loan that has been accepted by
10 the borrower;
- 11 (5) Accept any fees at closing that were not disclosed as
12 required by law;
- 13 (6) Retain third party fees at closing in excess of the
14 actual cost of third party services;
- 15 (7) Require the borrower to be represented by a third
16 party service provider except under the terms
17 permitted by applicable federal law;
- 18 (8) Use any agreement or instrument in which blanks are
19 left to be filled in after execution;
- 20 (9) Participate in any exclusive dealing or exclusive
21 agency agreement with any borrower;

- 1 (10) Delay closing of any residential mortgage loan for the
2 purpose of increasing interest, costs, fees, or
3 charges payable by the borrower;
- 4 (11) Engage in unfair, deceptive, or fraudulent residential
5 mortgage loan practices;
- 6 (12) Make payment of any kind, whether directly or
7 indirectly, to any appraiser for the purpose of
8 influencing the independent judgment of the appraiser
9 with respect to the value of any real estate which is
10 to be covered by a residential mortgage loan;
- 11 (13) Knowingly make to the borrower any misrepresentation
12 or false promise likely to influence, persuade, or
13 induce, or pursue a course of misrepresentation or
14 false promises, through officers, directors,
15 independent contractors, employees, partners, agents,
16 and members, or through advertising, or otherwise;
- 17 (14) Knowingly misrepresent, circumvent, or conceal,
18 through any subterfuge or device, any of the material
19 facts or terms of a residential mortgage loan;
- 20 (15) Record a residential mortgage brokerage agreement or
21 similar document without a judgment issued by a court
22 of competent jurisdiction; or

1 (16) Make any untrue statement of a material fact in any
2 document filed with the commissioner under this
3 chapter or rules adopted thereunder, or omit any
4 material fact that is required to be stated in any
5 document.

6 **§ -4 Licensing requirements; scope of license.** (a) No
7 mortgage broker license shall be granted to any individual who
8 is not eighteen years of age or older. If the applicant is a
9 person other than an individual, no license shall be granted
10 unless the applicant first registers to do business in this
11 state with the business registration division of the department
12 of commerce and consumer affairs.

13 (b) If the applicant is an individual, the license
14 entitles all employees of the licensed mortgage broker to engage
15 in the mortgage broker business.

16 If the applicant is a person other than an individual, the
17 license issued to it entitles all officers, directors,
18 employees, partners, and members of the licensed corporation,
19 partnership, association, or other organization to engage in the
20 business of mortgage brokering if one officer, director,
21 employee, partner, or member is designated in the license as the
22 individual responsible for the person licensed under this

1 section. The mortgage broker shall be responsible for informing
2 the commissioner, in writing, of any change in the designation
3 of the responsible officer, director, employee, partner, or
4 member of a mortgage broker or of changes in the licensed
5 mortgage broker in charge of a branch office.

6 **§ -5 License application; renewal.** (a) Each
7 application for and renewal of a license shall be made in
8 writing on the forms and in the manner prescribed by the
9 commissioner. To obtain and renew a license, the applicant
10 shall satisfy the following requirements:

- 11 (1) The applicant shall have paid the fees as required by
12 law;
- 13 (2) The applicant shall have complied with section -7;
- 14 (3) The applicant, or in the case of an applicant that is
15 not an individual, any of its officers, directors,
16 employees, partners, or members, shall not have had a
17 license issued under this chapter or any similar state
18 statute suspended or revoked within five years of the
19 filing of the present application;
- 20 (4) The applicant, or in the case of an applicant that is
21 not an individual, any of its officers, directors,
22 employees, partners, or members shall not have been

1 convicted of a misdemeanor involving dishonesty or
2 financial misconduct or a felony within seven years of
3 the filing of the present application as determined in
4 a criminal background investigation which the
5 commissioner may request in accordance with section
6 846-2.7;

7 (5) The applicant, or in the case of an applicant that is
8 not an individual, the designated officer, director,
9 employee, partner, or member shall have at least two
10 years of experience in financial transactions
11 involving primary or subordinate residential mortgage
12 loan financing as:

13 (A) A mortgage broker;

14 (B) A mortgage banker or responsible individual of a
15 mortgage banking business;

16 (C) A loan officer with responsibility primarily for
17 loans secured by a lien on real estate;

18 (D) A branch manager of a lender with responsibility
19 primarily for loans secured by a lien on real
20 estate; or

21 (E) A mortgage broker with a mortgage broker or
22 similar license from another state with licensing

1 standards substantially similar to those in this
2 State, as determined by the commissioner;

3 and

4 (6) The applicant, or in the case of an applicant that is
5 not an individual, its designated officer, director,
6 employee, partner, or member shall have passed a
7 written examination, the content of which shall be
8 established by the commissioner.

9 (b) For the purposes of subsection (a), the commissioner
10 shall permit the substitution of two years of experience as a
11 licensed insurance producer under chapter 431 in place of the
12 experience requirements set forth herein, provided that:

13 (1) The licensed insurance producer only arranges mortgage
14 loans with one insured depository institution, as
15 defined in 12 U.S.C. section 1813(c)(2), that is a
16 wholly owned subsidiary of an insurer, or an affiliate
17 of an insurer with which such insurance producer has
18 an exclusive insurance agency relationship;

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

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

5 (c) If the commissioner finds that any one of these
6 conditions has not been met, the commissioner shall not issue or
7 renew the license. In the event the commissioner orders denial
8 of issuance or of renewal of a license, the order shall be made
9 only pursuant to chapter 91.

10 (d) Each license shall be renewed biennially and the
11 renewal application shall be made on a form and in the manner
12 prescribed by the commissioner.

13 **§ -6 Inspection of license; principal place of business;**
14 **branch office; change of address.** (a) Upon request, the
15 licensed mortgage broker or designated officer, director,
16 employee, partner, or member shall make available for inspection
17 the mortgage broker's license.

18 (b) Every licensed mortgage broker shall have and maintain
19 a principal place of business in this state for the transaction
20 of business. In the event the licensed mortgage broker
21 maintains a branch office, the commissioner, upon application
22 and payment of a fee by the licensed mortgage broker, shall

1 issue a license for each branch office. The licensee shall
2 designate a licensed mortgage broker to be in charge of each
3 branch office.

4 (c) In the event that the location of the principal place
5 of business or any branch office is changed, the licensed
6 mortgage broker shall notify the commissioner of the change.

7 **§ -7 Bond requirement; claims against bond.** (a) Every
8 person licensed as a mortgage broker shall deposit with the
9 commissioner, prior to doing business, a bond in the amount of
10 \$50,000 executed by the licensed mortgage broker as principal
11 and a surety company authorized to do business in this state as
12 a surety. The bond shall be conditioned upon the faithful
13 compliance of the licensed mortgage broker with this chapter and
14 the rules adopted under this chapter. The bond shall run to the
15 State for the benefit of any person injured by any violation of
16 this chapter or the rules adopted under this chapter by the
17 licensed mortgage broker or any officer, director, employee,
18 partner, or member; provided that the aggregate liability of the
19 surety shall not exceed the sum of the bond. The surety may
20 cancel the bond by giving sixty days' written notice to the
21 commissioner prior to the cancellation date of the bond and
22 shall thereafter be relieved of any liability occurring after

1 the effective date of cancellation. A license shall not be in
2 effect at any time when the licensed mortgage broker's bond is
3 not in full force and effect.

4 (b) The commissioner or any person injured by a violation
5 of this chapter or rules adopted under this chapter, may bring
6 an action against the surety bond of the licensed mortgage
7 broker who committed the violation.

8 (c) The commissioner or any person who is damaged by the
9 licensed mortgage broker's violation of this chapter or rules
10 adopted under this chapter, may bring suit upon the surety bond
11 in the circuit court in which jurisdiction over the licensed
12 mortgage broker may be obtained. In the event valid claims
13 against a bond exceed the amount of the bond, each claimant
14 shall only be entitled to a pro rata amount, based on the amount
15 of the claim as it is valid against the bond, without regard to
16 the date of filing of any claim or action. In no event shall
17 the surety bond provide payment for any trebled or punitive
18 damages.

19 (d) The remedies provided under this section are
20 cumulative and nonexclusive and do not affect any other remedy
21 available at law.

1 **§ -8 Fees; failure to pay fees.** (a) All fees shall be
2 established and adopted by the commissioner in accordance with
3 chapter 91 and shall be deposited into the compliance resolution
4 fund established pursuant to section 26-9(o).

5 (b) Failure of any licensed mortgage broker to pay the
6 renewal fee on or before the due date shall constitute an
7 automatic forfeiture of the license. The forfeited license may
8 be restored; provided that application for restoration is made
9 within six months of the forfeiture and a penalty fee is paid in
10 addition to the delinquent license fee. A licensed mortgage
11 broker who fails to restore a forfeited license as provided in
12 this subsection shall apply as a new applicant.

13 **§ -9 Continuing education requirement.** (a) Prior to
14 license renewal under this chapter, the licensed mortgage broker
15 or the designated officer, director, employee, partner, or
16 member shall satisfactorily complete twelve hours of approved
17 continuing education courses during the two-year period
18 preceding the application for renewal. Each licensed mortgage
19 broker shall file a certificate of satisfactory completion of
20 approved continuing education courses by the licensed mortgage
21 broker no later than one month prior to the license expiration
22 date. Failure to satisfy the continuing education requirement

1 prior to one month before the license expiration date shall
2 constitute an automatic forfeiture of the license. The
3 forfeited license may be restored; provided that the continuing
4 education requirement of this section is satisfied and
5 application for restoration is made within six months of the
6 forfeiture, and a penalty fee as may be prescribed by rule is
7 paid in addition to the delinquent license fee. A licensed
8 mortgage broker who fails to restore a forfeited license as
9 provided in this subsection shall apply as a new applicant.

10 (b) To receive approval of a continuing education course,
11 the course provider shall file an application with the
12 commissioner, which shall include:

- 13 (1) The title and a description of the proposed course;
14 (2) A description of the proposed course provider's
15 experience in offering this type of course; and
16 (3) A complete listing of all instructors for the proposed
17 course, including their qualifications and experience
18 teaching courses similar to this course.

19 (c) The commissioner shall review the applications filed
20 and determine whether to approve or deny the proposed course.
21 If the commissioner approves the proposed course, the

1 commissioner shall issue a certificate of approval that will be
2 effective for two years from the date of its issuance.

3 (d) The commissioner shall keep a list of approved courses
4 that will be provided to the public upon request.

5 **§ -10 Record keeping requirements.** (a) Each licensed
6 mortgage broker shall maintain at its designated principal place
7 of business in this state all books, accounts, records, and
8 documents necessary to determine the licensed mortgage broker's
9 compliance with this chapter. All such books, accounts,
10 records, and documents shall be kept available for review and
11 examination by the commissioner for a period of six years.

12 (b) The commissioner may authorize the maintenance of
13 books, accounts, records, and documents at a location other than
14 the designated principal place of business in this state,
15 provided that the licensed mortgage broker ensures that the
16 books, accounts, records, and documents shall be kept in a
17 secure location under conditions which will not lead to the
18 damage or destruction of the books, accounts, records, and
19 documents. The commissioner may require the books, accounts,
20 records, and documents to be produced and available at a
21 reasonable and convenient location in this state.

1 (c) If the commissioner determines that it is more
2 effective or cost-efficient to perform a review or examination
3 of the books, accounts, records, and documents at the licensed
4 mortgage broker's out-of-state location, the licensed mortgage
5 broker shall pay the reasonable travel expenses and per diem for
6 each member of the commissioner's staff who participates in the
7 review.

8 (d) The commissioner may prescribe the minimum information
9 to be shown in the books, accounts, records, and documents of a
10 licensed mortgage broker so that these will enable the
11 commissioner to determine the licensed mortgage broker's
12 compliance with this chapter.

13 (e) Nothing in this section shall prohibit a licensed
14 mortgage broker from using document imaging or other electronic
15 means in maintaining books, accounts, records, and documents;
16 provided that the licensed mortgage broker maintains adequate
17 safeguards against alteration, damage, or destruction of the
18 books, accounts, records, and documents.

19 **§ -11 Examinations; confidentiality.** (a) The
20 commissioner may conduct examinations of licensed mortgage
21 brokers under this chapter for the purpose of determining

1 whether the licensed mortgage broker is in compliance with all
2 laws, rules, or orders issued by the commissioner.

3 (b) The commissioner shall have full access to the vaults,
4 books, accounts, records, and documents of the licensed mortgage
5 broker and may make any inquiries as may be necessary to
6 ascertain the condition of the licensed mortgage broker. All
7 officers, directors, employees, partners, and members of the
8 licensed mortgage broker being examined shall cooperate fully
9 with the commissioner and the commissioner's staff, and shall
10 answer all inquiries and furnish all information pertaining to
11 the same, to the best of their knowledge and ability.

12 (c) The commissioner may charge an examination fee based
13 upon the cost per hour per examiner for all licensed mortgage
14 brokers examined by the commissioner or the commissioner's
15 staff. The hourly fee shall be \$40 or such amount as the
16 commissioner shall establish by rule pursuant to chapter 91. In
17 addition to the examination fee, the commissioner may charge any
18 licensed mortgage broker examined or investigated by the
19 commissioner or the commissioner's staff additional amounts for
20 travel, per diem, mileage, and other reasonable expenses
21 incurred in connection with the examination or investigation.

1 (d) Notwithstanding chapter 92F, the examination process
2 and related information and documents, including the reports of
3 examination, are confidential and are not subject to discovery
4 in civil and criminal lawsuits or disclosure under federal or
5 state law.

6 **§ -12 Written agreements.** (a) For any transaction
7 between a licensed mortgage broker and a borrower seeking a
8 residential mortgage loan, the following requirements shall
9 apply:

10 (1) A licensed mortgage broker shall comply with all
11 provisions of the Real Estate Settlement Procedures
12 Act (12 U.S.C. 1261), the Truth in Lending Act (15
13 U.S.C. 1601), the Equal Credit Opportunity Act (15
14 U.S.C. 1691), and any other applicable federal and
15 state requirements, as those laws currently exist or
16 as they may be amended;

17 (2) Any written commitment letter to make a residential
18 mortgage loan with specified terms, including loan
19 amount, interest rate, points, and payment terms,
20 which is issued by a licensed mortgage broker and
21 accepted by a borrower, shall be honored by the
22 licensed mortgage broker if the borrower has

1 completely satisfied all of the conditions of the
2 commitment in a timely manner and prior to the
3 specified expiration date of the commitment; and
4 (3) The mortgage broker shall provide the borrower with
5 the following notice of the borrower's rights and
6 obligations, not longer than one page in length and in
7 twelve-point font, regarding the terms of the
8 residential mortgage loan not later than within three
9 business days of a borrower signing a completed
10 residential mortgage loan application and before the
11 borrower gives the licensed mortgage broker any
12 consideration:

13 **"CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE**

14 If you obtain this loan, the lender will have a mortgage on
15 your home. You could lose your home, and any money you
16 have put into it, if you do not meet your obligations under
17 the loan. Mortgage loan rates and closing costs and fees
18 vary based on many factors, including your particular
19 credit and financial circumstances, your earnings history,
20 the loan-to-value requested, and the type of property that
21 will secure your loan. The loan rate and fees could also
22 vary based on which lender or mortgage broker you select.

1 If you are uncertain about your rights and obligations
2 under this agreement, you should consider consulting a
3 qualified independent credit counselor or other experienced
4 financial adviser regarding the rate, fees, and provisions
5 of this mortgage loan before you proceed. For information
6 on contacting a qualified credit counselor, call the United
7 States Department of Housing and Urban Development for a
8 list of counselors.

9 You are not required to complete any loan agreement merely
10 because you have received these disclosures or have signed
11 a loan application. If you proceed with this mortgage
12 loan, you should also remember that you may face serious
13 financial risks if you use this loan to pay off debts and
14 then later incur significant new debts.

15 Property taxes and homeowner's insurance are your
16 responsibility. Not all lenders provide escrow services
17 for these payments. You should ask your lender about these
18 services. Your payments on existing debts contribute to
19 your credit ratings. You should not accept any advice to
20 ignore your regular payments to your existing creditors."

1 (b) The licensed mortgage broker shall secure a signed
2 acknowledgment of receipt by the borrower of a copy of the
3 notice.

4 **§ -13 Disclosure of mortgage brokerage fees; return of**
5 **fees.** (a) Within three business days of receipt of a
6 borrower's completed residential mortgage loan application by
7 the licensed mortgage broker, and before the borrower gives the
8 licensed mortgage broker any consideration, the licensed
9 mortgage broker shall execute with the borrower a residential
10 mortgage brokerage agreement. The residential mortgage
11 brokerage agreement shall be in writing, and signed and dated by
12 both the borrower and the licensed mortgage broker whose
13 services to the borrower constitute mortgage brokering.

14 (b) The residential mortgage brokerage agreement shall
15 include a clear and conspicuous statement:

16 (1) That, upon request, a copy shall be made available to
17 the borrower or the borrower's attorney for review
18 prior to signing;

19 (2) Explaining whether the licensed mortgage broker serves
20 as an agent for the borrower;

21 (3) Explaining the nature of the licensed mortgage
22 broker's compensation, including whether the licensed

- 1 mortgage broker may receive compensation from the
2 borrower, the lender, or both;
- 3 (4) Describing the services the licensed mortgage broker
4 agrees to perform for the borrower;
- 5 (5) Setting forth the conditions under which the borrower
6 is obligated to pay fees to the licensed mortgage
7 broker; and
- 8 (6) That provides that if the licensed mortgage broker
9 makes materially false or misleading statements or
10 omissions in the residential mortgage brokerage
11 agreement, the borrower may, upon written notice:
- 12 (A) Void the agreement;
- 13 (B) Recover moneys paid to the licensed mortgage
14 broker for which no services have been performed;
15 and
- 16 (C) Recover actual costs, including attorney fees,
17 for enforcing the borrower's rights under the
18 residential mortgage brokerage agreement.
- 19 (c) A copy of the fully executed residential mortgage
20 brokerage agreement shall be given to the borrower by the
21 licensed mortgage broker within three business days from the
22 receipt of a borrower's completed residential mortgage loan

1 application and before accepting any consideration from the
2 borrower thereafter.

3 (d) The residential mortgage brokerage agreement shall be
4 the only agreement between the borrower and licensed mortgage
5 broker with respect to a single residential mortgage loan
6 transaction prior to the acceptance of the residential mortgage
7 loan commitment by the borrower; except that the licensed
8 mortgage broker shall also provide to the borrower disclosure
9 statements necessary to comply with the federal Truth-in-Lending
10 Act (15 U.S.C. 1601) and its associated regulations, the federal
11 Real Estate Settlement Procedures Act (12 U.S.C. 1261) and its
12 associated regulations, and any other applicable federal and
13 state requirements.

14 (e) A licensed mortgage broker shall not require a
15 borrower to pay any fees or charges prior to the residential
16 mortgage loan closing, except:

17 (1) Charges to be incurred by the licensed mortgage broker
18 on behalf of the borrower for services from third
19 parties necessary to process the residential mortgage
20 loan application, such as credit reports and
21 appraisals; and

22 (2) An application fee.

1 (f) A licensed mortgage broker shall not charge any fee
2 that inures to the benefit of the licensed mortgage broker if it
3 exceeds the fee disclosed on the most recent good faith
4 estimate, when required by the federal Real Estate Settlement
5 Procedures Act, unless:

6 (1) The need to charge the higher fee was not reasonably
7 foreseeable at the time the good faith estimate was
8 written; and

9 (2) The licensed mortgage broker has provided to the
10 borrower, no less than three business days prior to
11 the signing of the residential mortgage loan closing
12 documents, a clear written explanation of the increase
13 in the fee and the reason for charging a fee that
14 exceeds that which was previously disclosed.

15 (g) Within thirty days after any rejection, withdrawal, or
16 closing, any fees collected in excess of actual costs shall be
17 returned.

18 **§ -14 Disclosure of loan terms.** (a) Prior to accepting
19 any consideration from the borrower, a licensed mortgage broker
20 shall disclose in writing to any applicant for a residential
21 mortgage loan the following information:

1 (1) That the licensed mortgage broker may not make
2 residential mortgage loans or issue residential
3 mortgage loan commitments in the licensed mortgage
4 broker's name unless said licensed mortgage broker is
5 the residential mortgage loan lender, and except as
6 provided in subsection (b);

7 (2) That the licensed mortgage broker cannot guarantee
8 acceptance into any particular residential mortgage
9 loan program or promise any specific residential
10 mortgage loan terms or conditions;

11 (3) A good faith estimate of the fees to be collected,
12 when required by the federal Real Estate Settlement
13 Procedures Act, including a credit report fee,
14 property appraisal fee, or any other third-party fee;
15 and

16 (4) The terms and conditions for obtaining a refund of
17 fees or arranging for the transfer of third-party
18 service work products to another residential mortgage
19 loan lender or mortgage broker, if any.

20 (b) The mortgage broker may issue a residential mortgage
21 loan commitment and may furnish a lock-in of the interest rate
22 and program on behalf of the residential mortgage loan lender

1 when the licensed mortgage broker has obtained a written or
2 electronically transmitted residential mortgage loan commitment
3 or lock-in for the residential mortgage loan from the
4 residential mortgage loan lender on behalf of the borrower for
5 the residential mortgage loan. The residential mortgage loan
6 commitment issued by the licensed mortgage broker to the
7 borrower on behalf of the residential mortgage loan lender shall
8 be in the same form and substance as issued by the residential
9 mortgage loan lender and shall identify the residential mortgage
10 loan lender by name.

11 **§ -15 Establishment of trust account for borrower funds**
12 **to pay third-party providers.** Each licensed mortgage broker
13 shall as trustee hold all funds received from borrowers seeking
14 a residential mortgage loan for payment to third-party
15 providers. The funds may not be used for the benefit of the
16 licensed mortgage broker or any person not entitled to any
17 benefit, except as may be expressly permitted by law. Each
18 licensed mortgage broker shall deposit the funds in a trust
19 account maintained by the licensed mortgage broker with a bank
20 or other financial institution located and authorized to accept
21 deposits or engage in the business of a trust company in this
22 state. Each licensed mortgage broker is responsible for

1 depositing, holding, disbursing, accounting for, and otherwise
2 dealing with the funds.

3 **§ -16 License sanctions; suspension, revocation, denial,**
4 **condition, and refusal to renew, reinstate, or restore.** (a) In
5 addition to any other actions authorized by law, the
6 commissioner may suspend, revoke, deny, condition in any manner,
7 or refuse to renew, reinstate, or restore, any license issued
8 under this chapter, or fine any person holding a license issued
9 under this chapter, for any cause authorized by law, including
10 any of the following acts or conduct on the part of a licensed
11 mortgage broker or the applicant thereof:

- 12 (1) Failure to meet or maintain the conditions and
13 requirements necessary to qualify for the granting of
14 a license;
- 15 (2) Procuring or attempting to procure a license through
16 fraud, misrepresentation, or deceit;
- 17 (3) Knowingly making any misrepresentation or false
18 promise likely to influence, persuade, or induce, or
19 pursuing a course of misrepresentation or false
20 promises through officers, directors, independent
21 contractors, employees, partners, agents, and members,
22 or through advertising, or otherwise;

- 1 (4) Misrepresentation or concealment of any material fact
2 with respect to any transaction resulting in injury to
3 any party;
- 4 (5) Failure to disburse funds in accordance with an
5 agreement;
- 6 (6) Failure to account or deliver to any person any
7 personal property, including money, funds, deposit,
8 check, draft, mortgage, or other document or thing of
9 value which has come into the person's hands and which
10 is not the person's property or which the person is
11 not in law or equity entitled to retain;
- 12 (7) Failure to place, within a reasonable time upon
13 receipt, any money, funds, deposit, check, draft, or
14 thing of value, entrusted to the licensed mortgage
15 broker by any person dealing with the licensed
16 mortgage broker as a broker, in escrow pursuant to a
17 written agreement, or to deposit the money, funds
18 deposit, check, or draft in a trust or escrow bank
19 account maintained by the licensed mortgage broker
20 with a bank or other financial institution located and
21 authorized to accept deposits or engage in the
22 business of a trust company in this state, wherein the

- 1 funds shall be kept until disbursement thereof is
2 authorized;
- 3 (8) Engaging in false, fraudulent, or deceptive
4 advertising, or making untruthful or improbable
5 statements;
- 6 (9) Being a habitual user of a narcotic, barbiturate,
7 amphetamine, hallucinogen, opium, or cocaine, or other
8 drugs or derivatives of a similar nature;
- 9 (10) Practicing the licensed profession of mortgage broker
10 while impaired by alcohol, drugs, or mental
11 instability;
- 12 (11) Aiding and abetting an unlicensed person to directly
13 or indirectly perform activities requiring a license;
- 14 (12) Professional misconduct, incompetence, gross
15 negligence, or manifest incapacity in the practice of
16 the licensed profession of mortgage broker;
- 17 (13) Failure to maintain a record or history of competency,
18 trustworthiness, fair dealing, and financial
19 integrity;
- 20 (14) Conduct or practice contrary to recognized standards
21 of ethics for the licensed profession of mortgage
22 broker;

- 1 (15) Engaging in business under a past or present license
2 issued pursuant to the licensing laws, in a manner
3 causing injury to one or more members of the public;
- 4 (16) Failure to comply, observe, or adhere to any law in a
5 manner such that the commissioner deems the applicant
6 or holder to be an unfit or improper person to hold a
7 license;
- 8 (17) Revocation, suspension, or other disciplinary action
9 by another state or federal agency against a licensed
10 mortgage broker or applicant for any reason provided
11 by the licensing laws or this section;
- 12 (18) Criminal conviction, whether by nolo contendere or
13 otherwise, of a penal crime directly related to the
14 qualifications, functions, or duties of the licensed
15 profession of mortgage broker;
- 16 (19) Failure to report in writing to the commissioner any
17 disciplinary decision issued against the licensed
18 mortgage broker or the applicant in another
19 jurisdiction within thirty days of the disciplinary
20 decision;

1 (20) Employing, using, or attempting to employ or use at
2 any time any person not licensed under the licensing
3 laws where licensure is required; or

4 (21) Failure to comply with this chapter, the applicable
5 licensing laws, or any rule or order made under the
6 authority of this chapter.

7 (b) For a licensed mortgage broker other than an
8 individual, it shall be sufficient cause for the suspension or
9 revocation of the license if any officer, director, employee,
10 partner, or member of the licensed corporation, partnership,
11 association, or other organization has so acted as would be
12 cause for suspension or revocation of the license of an
13 individual.

14 (c) Orders for suspension or revocation shall be made only
15 pursuant to chapter 91.

16 **§ -17 Power to investigate and enjoin.** (a) If the
17 commissioner has reason to believe that a licensed mortgage
18 broker or any person has violated this chapter, the rules
19 adopted pursuant thereto, or an order of the commissioner or
20 that any license issued under this chapter may be subject to
21 suspension, revocation, or other sanction, the commissioner may
22 make an investigation as the commissioner deems necessary and

1 may examine the books, accounts, records, and documents of any
2 licensed mortgage broker or person. If the commissioner finds
3 from satisfactory evidence that any licensed mortgage broker or
4 person has violated this chapter, the commissioner may bring an
5 action in the name of the State in any court of competent
6 jurisdiction against the licensed mortgage broker or person to
7 enjoin the licensed mortgage broker or person from continuing
8 the violation or engaging therein or doing any act or acts in
9 furtherance thereof.

10 (b) Any person having reason to believe that this chapter
11 or the rules adopted pursuant thereto have been violated or that
12 a license issued under this chapter is subject to suspension,
13 revocation, or other sanction may file with the commissioner a
14 written complaint setting forth the details of the alleged
15 violation or grounds for suspension, revocation, or other
16 sanction.

17 **§ -18 Cease and desist orders; grounds for issuance.**

18 (a) Whenever it appears to the commissioner that any person has
19 engaged or is about to engage in any act or practice
20 constituting a violation of:

21 (1) This chapter;

22 (2) A rule adopted or order issued under this chapter; or

1 (3) A condition of an approval of request or application
2 by the commissioner or a written agreement between
3 such person and the commissioner,
4 the commissioner may, in the commissioner's discretion, issue a
5 cease and desist order to enforce compliance with this chapter,
6 with any rule adopted or order issued under this chapter, or
7 with the conditions of such approval or written agreement. The
8 commissioner shall have the discretion to include in the order
9 an assessment of an administrative fine against any person who
10 violates this chapter or who has knowingly violated a written
11 agreement with or a rule or order of the commissioner made
12 pursuant to this chapter.

13 (b) The commissioner may issue a cease and desist order to
14 any mortgage broker, or any other person including the mortgage
15 broker's officers, directors, employees, partners, or members,
16 that the commissioner finds or has reasonable cause to believe:

17 (1) Is violating, has violated, or is about to violate
18 this chapter or any rules adopted pursuant to this
19 chapter;

20 (2) Is violating, has violated, or is about to violate any
21 written condition imposed or order issued by the
22 commissioner on the mortgage broker, its officers,

1 directors, employees, partners, or members, or any
2 condition of a written agreement between the mortgage
3 broker, its officers, directors, employees, partners,
4 or members and the commissioner;

5 (3) Is engaging, has engaged, or is about to engage in an
6 illegal or unauthorized practice; or

7 (4) Is failing to maintain books, accounts, records, and
8 documents as required by this chapter.

9 **§ -19 Cease and desist orders; procedure; hearing;**
10 **enforcement.** (a) The notice of charges and proposed cease and
11 desist order shall be in writing and shall be served upon the
12 mortgage broker at its principal office in this state and upon
13 any other affected party wherever that person can be located and
14 served by the commissioner. The notice of charges shall state
15 the alleged violations or wrongful practices and a summary of
16 the facts in support of the allegations. The notice shall be
17 accompanied by a proposed order that states the commissioner's
18 intent to require discontinuance of the violation or practice
19 and the immediate compliance with all requirements of any
20 applicable agreement, conditions of approval, order, or law.
21 The proposed order may also direct affirmative action as may be
22 necessary to correct the alleged violation or wrongful practice.

1 The notice of charges shall set forth a time and place for a
2 hearing to determine whether the proposed order shall be issued.

3 (b) Within twenty days after service of a notice of
4 charges, unless an earlier date or later date is set by the
5 commissioner upon request of the affected party, the
6 commissioner or the commissioner's delegate shall hold a hearing
7 in accordance with chapter 91. If no appearance is made at the
8 scheduled hearing by the party or its duly authorized
9 representative, the party shall be deemed to have consented to
10 the issuance of the cease and desist order and the commissioner
11 may issue the order. Any cease and desist order issued after a
12 hearing held in accordance with this subsection shall become
13 effective after service upon the affected party and shall remain
14 effective until modified or terminated by the commissioner. Any
15 appeal of a cease and desist order shall be made to the circuit
16 court in accordance with chapter 91.

17 (c) On or after the effective date of any cease and desist
18 order, the commissioner may apply for enforcement of the order
19 to the circuit court. The application may also contain a
20 petition for such other relief or remedies as may be appropriate
21 in the circumstances. The application shall be given preference

1 over other cases pending in court, and shall in every way be
2 expedited.

3 **§ -20 Consent cease and desist orders.** Any affected
4 party may waive its rights to a hearing on any notice of charges
5 by stipulating and consenting to the issuance of a cease and
6 desist order. Any cease and desist order issued by consent
7 shall be effective as of the date specified therein and shall
8 remain effective until modified or terminated by the
9 commissioner.

10 **§ -21 Powers of commissioner.** In addition to any other
11 acts or conditions provided by law, the commissioner may:

12 (1) Adopt, amend, or repeal rules, issue declaratory
13 rulings or informal nonbinding interpretations, and
14 conduct contested case proceedings pursuant to chapter
15 91;

16 (2) Grant, deny, forfeit, renew, reinstate, or restore the
17 license of any mortgage broker;

18 (3) Revoke, suspend, or otherwise limit the license of any
19 mortgage broker for any violation of the provisions in
20 this chapter, or any rule or order of, or agreement
21 with the commissioner;

22 (4) Develop requirements for licensure through rules;

- 1 (5) Investigate and conduct hearings regarding any
2 violation of this chapter, and any rule or order of or
3 agreement with the commissioner;
- 4 (6) Prepare, administer, and grade examinations; provided
5 that the commissioner may contract with a testing
6 agency to provide those services, and the commissioner
7 may also reserve the right to modify, amend, change,
8 or regrade the examination;
- 9 (7) Create fact-finding committees that may make
10 recommendations to the commissioner for the
11 commissioner's deliberations;
- 12 (8) Request a criminal history record check of the
13 applicant and any of its officers, directors,
14 employees, partners, and members in accordance with
15 section 846-2.7;
- 16 (9) Contract with qualified persons, including
17 investigators who may be exempt from chapter 76 and
18 who shall assist the commissioner in exercising the
19 commissioner's powers and duties; and
- 20 (10) Subpoena witnesses and documents, administer oaths,
21 and receive affidavits and oral testimony, including
22 telephonic communications, and do any and all things

1 necessary or incidental to the exercise of the
2 commissioner's power and duties, including the
3 authority to conduct contested case proceedings under
4 chapter 91.

5 **§ -22 Summary license suspension.** (a) Notwithstanding
6 any law to the contrary, the commissioner or delegate may cause
7 the immediate suspension or restriction of a license, subject to
8 subsequent notice and hearing or other adequate procedures, upon
9 a specific determination that the failure to take such an action
10 may result in:

11 (1) An immediate and unreasonable threat to personal
12 safety; or

13 (2) Fraud or misrepresentation upon consumers, and that,
14 for the protection of the public from the possible
15 consequences of practices, the licensed mortgage
16 broker's license should be immediately suspended or
17 restricted.

18 (b) The commissioner or delegate may order the summary
19 suspension of the license for a period not to exceed twenty
20 days. The order of suspension shall be served upon the licensed
21 mortgage broker at the same time as the notice of hearing for
22 disciplinary action, and the hearing shall be scheduled prior to

1 the expiration of the order of suspension. The period of
2 suspension prior to the hearing shall not be extended beyond
3 twenty days except upon request of the licensed mortgage broker
4 for a reasonable continuance to adequately prepare the licensed
5 mortgage broker's defense. Any attempt by the licensed mortgage
6 broker to continue the licensed activity while the license has
7 been summarily suspended shall of itself be sufficient to
8 warrant a permanent revocation of the license and shall subject
9 the licensed mortgage broker to all penalties prescribed by this
10 chapter, or any rule or order of the commissioner.

11 **§ -23 Fees, commissions, and charges.** The commissioner
12 may also adopt rules concerning maximum brokerage fees,
13 commissions, and charges on brokered residential mortgage loan
14 transactions. The commissioner may also adopt rules concerning
15 the full disclosure of the brokerage fees, commissions, and
16 charges.

17 **§ -24 Private right of action.** Nothing in this chapter
18 shall be construed to preclude any individual or entity that
19 suffers loss as a result of a violation of this chapter from
20 maintaining a civil action to recover damages and, as provided
21 by statute, attorney fees.

1 **§ -25 Penalty.** Any person who violates any one
2 provision of this chapter shall be subject to an administrative
3 fine of not more than \$5,000 for each violation."

4 SECTION 2. Chapter 454, Hawaii Revised Statutes, is
5 repealed.

6 SECTION 3. This Act shall take effect on July 1, 2050.