

CHAPTER 454
MORTGAGE BROKERS AND SOLICITORS

SECTION

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§454-1 Definitions. In this chapter unless the context or subject matter otherwise requires:

"Institutional investor" means and includes (a) banks, savings and loan institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, any of the class of persons permitted to qualify as foreign lenders under section 207-11, or other financial institutions or institutional buyers, whether acting for themselves or as fiduciaries; (b) the United States or any foreign government, any state or territory thereof, or any agency or corporate or other instrumentality of the United States, a foreign government, or of any state, territory or political subdivision thereof.

"License" means a license issued under this chapter.

"Licensee" means a person, whether mortgage broker or mortgage solicitor, licensed under this chapter.

"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.

"Mortgage commissioner" or "commissioner" means the director of commerce and consumer affairs.

"Mortgage loan" means a loan secured by a mortgage on real property.

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

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

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

- (1) Banks, operating subsidiaries of a bank established and operating under section 412:5-203, trust companies, savings associations, pension trusts, credit unions, 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;
- (6) Foreign lender as defined in section 207-11; and
- (7) A person licensed under chapter 467 as a real estate broker or salesperson selling time share interests on behalf of a time share plan developer that is licensed as a mortgage broker under this chapter; provided that:
 - (A) The acts or conduct of a developer's authorized representative shall be deemed to be the acts or conduct of the developer for the purpose of section 454-4; and
 - (B) If the person engages in acts or conduct prohibited under section 454-4(a), the acts or conduct shall constitute grounds for disciplinary action under section 467-14.

§454-3 Licensing, requirements, application. (a) No person shall act as a mortgage broker or mortgage solicitor without a license therefor as provided in this chapter, and no person not licensed under this chapter shall charge or receive any commission, fee, or bonus in connection with arranging for, negotiating, or selling a mortgage loan.

(b) No mortgage broker or mortgage solicitor license shall be granted to any person who is not eighteen years of age or older. If the applicant is a person other than an individual, no license shall be granted unless the applicant first registers to do business in this State with the business registration division of the department of commerce and consumer affairs.

(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 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 with 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; 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 the commissioner orders denial of issuance or of renewal of a license, the order shall be made only pursuant to chapter 91.

(e) All fees shall be established and adopted by the director in accordance with chapter 91 and shall be deposited into the compliance resolution fund established pursuant to section 26-9(o). Failure of any mortgage broker or mortgage solicitor to pay the biennial renewal fee on or before December 31 of an even-numbered year shall constitute an automatic forfeiture of the license. The forfeited license may be restored; provided that application for restoration is made within six months of the forfeiture and a penalty fee is paid in addition to the delinquent license fee. A licensee who fails to restore a license as provided in this subsection shall apply as a new applicant.

(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 mortgage loans with one insured depository institution, as defined in 12 U.S.C. section 1813(c)(2), that is a wholly-owned subsidiary of an insurer, or an affiliate of an insurer with which such insurance producer has an exclusive insurance 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.

(g) Upon request, the mortgage broker shall make available for inspection the mortgage broker's license and the licenses of any mortgage solicitors employed by the mortgage broker.

(h) Immediately upon the mortgage solicitor's withdrawal from the employ of the mortgage broker, the mortgage broker shall return the mortgage solicitor's license to the mortgage solicitor.

(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 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 mortgage loans with one insured depository institution, as defined in 12 U.S.C. section 1813(c)(2), that is a wholly-owned subsidiary of an insurer, or an affiliate of an insurer with which such insurance producer has an exclusive insurance 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.

[§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.

§454-3.5 REPEALED.

§454-4 Suspension, revocation. (a) The commissioner may suspend a license for any of the following acts or conduct of a licensee:

- (1) Making a false promise tending to influence, persuade, or induce, 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) 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, 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, 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.

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

§454-5 Power to investigate and enjoin. (a) If the commissioner has reason to believe that a licensee or any person has violated this chapter, or the rules adopted pursuant thereto, or that any license issued under this chapter may be subject to suspension or revocation, the commissioner may make an investigation as the commissioner deems necessary and may examine the books, records, accounts, and files of any licensee or person. If the commissioner finds from satisfactory evidence that any licensee or person has violated this chapter, the commissioner may bring an action in the name of the State in any court of competent jurisdiction against the licensee or person to enjoin the licensee or person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.

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

§454-6 Power of commissioner. The commissioner may adopt rules pursuant to chapter 91, as amended, as the commissioner deems necessary for the administration of this chapter. The rules shall include, but not be limited to the following:

- (1) Advertising;
- (2) Solicitation; and
- (3) Specifications as to the forms and procedures to be used in the making of any mortgage loan.

§454-7 Fees, commissions, and charges. The commissioner may also adopt rules concerning maximum fees, commissions, and charges on mortgage loan transactions. The maximum fees, commissions, and charges shall be related to the actual amount of money made available to the borrower, over and above the indebtedness of prior mortgages. The commissioner may also adopt rules concerning the full disclosure of the fees, commissions, and charges.

§454-8 Penalty, contracts void. Violation of this chapter shall be punishable by a fine of not more than \$1,000 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.

(This Act shall take effect on July 1, 2007)

§454- Additional sanctions for violations committed against elders. (a) Any person who, in the course of engaging in conduct that requires a license under this chapter, commits a violation of this chapter or the rules adopted pursuant to this chapter, or commits a violation of chapter 436B, and the violation includes conduct that is directed towards, targets, or is committed against an elder, may be fined an amount not to exceed \$10,000 for each violation in addition to any other fine or penalty.

(b) As used in this chapter, "elder" means a consumer who is sixty-two years of age or older.