#### SUNSET EVALUATION REPORT REGULATION OF MORTGAGE AND COLLECTION SERVICING AGENTS

Chapter 454D, Hawaii Revised Statutes

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by

Legislative Auditor of the State of Hawaii Honolulu, Hawaii

Report No. 88-20 December 1988

#### **FOREWORD**

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specific times unless they are reestablished by the Legislature. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, scheduled for termination 38 licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report evaluates the regulation of mortgage and collection servicing agents under Chapter 454D, Hawaii Revised Statutes. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate mortgage and collection servicing agents to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Act 136, SLH 1986, draft legislation intended to improve the regulatory program is incorportated in this report as Appendix B.

We acknowledge the cooperation and assistance extended to our staff by the Department of Commerce and Consumer Affairs and other officials contacted during the course of our examination. We also appreciate the assistance of the Legislative Reference Bureau which drafted the recommended legislation.

Clinton T. Tanimura Legislative Auditor State of Hawaii

December 1988

#### TABLE OF CONTENTS

Chapter		Page
1	INTRODUCTION	1
	Objective of the Evaluation Scope of the Evaluation Organization of the Report Framework for Evaluation	1
2	BACKGROUND	. 5
	History of the Industry Occupational Characteristics Regulation in Hawaii	5 6 9
3	EVALUATION OF THE REGULATION OF MORTGAGE AND COLLECTION SERVICING AGENTS	11
	Summary of Findings  Need for Regulation  Conclusion  Recommendations	11 11 18 18
	NOTES	19
Appendix A:	Comments on Agency Responses	A-1
Appendix B:	Proposed Legislation	B-1

#### Chapter 1

#### INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 occupational licensing programs over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law (Chapter 26H, Hawaii Revised Statutes) to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. In 1980, the Legislature further amended the law to require the Legislative Auditor to evaluate the effectiveness and efficiency of the licensing program, even if the Auditor determines that the program should not be reenacted.

#### Objective of the Evaluation

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 454D, HRS.

#### Scope of the Evaluation

This report examines the history of the statute on the regulation of mortgage and collection servicing agents and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

#### Organization of the Report

This report consists of three chapters: Chapter 1, this introduction and the framework for evaluating the licensing program; Chapter 2, background information on the regulated industry and the enabling legislation; and Chapter 3, our evaluation and recommendations.

#### Framework for Evaluation

Hawaii's Sunset Law reflects rising public antipathy toward what is seen as unwarranted government interference in citizens' lives. The Sunset Law sets up a timetable terminating various occupational licensing programs. Unless reestablished, the programs disappear or "sunset" on a prescribed date.

In the Sunset Law, the Legislature established policies on the regulation of professions and vocations. The law requires each occupational licensing program to be assessed against these policies in determining whether the program should be reestablished or permitted to expire as scheduled. These policies are:

- 1. The regulation and licensing of professions and vocations by the State shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation.
- 2. Where regulation of professions and vocations is reasonably necessary to protect consumers, government regulation in the form of full licensure or other restrictions on the professions or vocations should be retained or adopted.
- 3. Professional and vocational regulation shall be imposed where necessary to protect consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the services.
- 4. Evidence of abuses by providers of the services shall be accorded great weight in determining whether government regulation is desirable.
- 5. Professional and vocational regulation which artificially increases the costs of goods and services to the consumer should be avoided.
- 6. Professional and vocational regulation should be eliminated where its benefits to consumers are outweighed by its costs to taxpayers.
- 7. Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons.

We translated these policy statements into the following framework for evaluating the continuing need for the various occupational licensing statutes.

Licensing of an occupation or profession is warranted if:

- 1. There exists an identifiable potential danger to public health, safety, or welfare from the operation or conduct of the occupation or profession.
  - 2. The public that is likely to be harmed is the consuming public.
- 3. The potential harm is one against which the public cannot reasonably be expected to protect itself.

- 4. There is a reasonable relationship between licensing and protection of the public from potential harm.
- 5. Licensing is superior to other alternative ways of restricting the profession or vocation to protect the public from the potential harm.
  - 6. The benefits of licensing outweigh its costs.

**The potential harm.** For each regulatory program under review, the initial task is to identify the purpose of regulation and the dangers from which the public is to be protected.

Not all potential dangers warrant the exercise of the State's licensing powers. The exercise of such powers is justified only when the potential harm is to public health, safety, or welfare. "Health" and "safety" are fairly well understood. "Welfare" means well-being in any respect and includes physical, social, and economic well-being.

This policy that the potential danger be to the public health, safety, or welfare is a restatement of general case law. As a general rule, a state may exercise its police power and impose occupational licensing requirements only if such requirements tend to promote the public health, safety, or welfare. Courts have held that licensing requirements for paperhangers, housepainters, operators of public dancing schools, florists, and private land surveyors could not be justified. In Hawaii, the State Supreme Court ruled in 1935 that legislation requiring photographers to be licensed bore no reasonable relationship to public health, safety, or welfare and constituted an unconstitutional encroachment on the right of individuals to pursue an innocent profession. The court held that mere interest in the practice of photography or in ensuring quality in professional photography did not justify the use of the State's licensing powers.

The public. The Sunset Law further states that for the exercise of the State's licensing powers to be justified, the potential harm must be to the health, safety, or welfare of that segment of the public consisting mainly of consumers of the services provided by the regulated occupation. The law makes it clear that the focus of protection should be the consuming public and not the regulated occupation or profession itself.

Consumers are all those who may be affected by the services provided by the regulated occupation. Consumers do not have to purchase the services directly. The provider of services may have a direct contractual relationship with a third party and not with the consumer, but the criterion is met if the provider's services ultimately flow to and adversely affect the consumer. For example, the services of an automobile mechanic working for a garage or for a U-drive establishment flow directly to the employer, but the mechanic's workmanship ultimately affects the consumer who brings a car in for repairs or who rents a car from the employer.

Consumer disadvantage. The exercise of the State's licensing powers is not warranted if the potential harm is one against which the consumers can reasonably be expected to protect themselves. Consumers are expected to be able to protect themselves unless they are at a disadvantage in selecting or dealing with the providers of services.

Consumer disadvantage can arise from a variety of circumstances. It may result from a characteristic of the consumer or from the nature of the occupation or profession being regulated. Age is an example of a consumer characteristic which may cause the consumer to be at a disadvantage. The highly technical and complex nature of an occupation is an illustration of occupational characteristic that may place the consumer at a disadvantage. Medicine and law fit into the latter illustration. Medicine and law were the first occupations to be licensed on the theory that the general public lacked sufficient knowledge about medicine and law to be able to make judgments about the relative competencies and about the quality of services provided to them by the doctors and lawyers of their choice.

However, unless otherwise indicated, consumers are generally assumed to be knowledgeable and able to make rational choices and to assess the quality of services being provided them.

Relationship between licensing and protection. Occupational licensing cannot be justified unless it reasonably protects the consumers from the identified potential harm. If the potential harm to the consumer is physical injury arising from possible lack of competence on the part of the provider of service, the licensing requirements must ensure the competence of the provider. If, on the other hand, the potential harm is the likelihood of fraud, the licensing requirements must be such as to minimize the opportunities for fraud.

Alternatives. Licensing may not be the most appropriate method for protecting consumers. Instead, prohibiting certain business practices, governmental inspection, or the inclusion of the occupation within another existing business regulatory statute may be preferable, appropriate, or more effective in protecting the consumers. Increasing the powers, duties, or role of the consumer protector is another possibility. For some programs, a nonregulatory approach may be appropriate, such as consumer education.

Benefit costs. Even when all other criteria set forth in this framework are met, the exercise of the State's licensing powers may not be justified if the costs of doing so outweigh the benefits to be gained. The term "costs" in this regard means more than direct money outlays or expenditure for a licensing program. "Costs" include opportunity costs or all real resources used up by the licensing program; they include indirect, spillover, and secondary costs. Thus, the Sunset Law asserts that regulation which artificially increases the costs of goods and services to the consumer should be avoided; and regulation should not unreasonably restrict entry into professions and vocations by all qualified persons.

#### Chapter 2

#### BACKGROUND

Chapter 454D, HRS, regulates two occupations: (1) mortgage servicing agents and (2) collection servicing agents.

As defined in Section 454D-1 (2), a person engages in the business of mortgage servicing agent or collection servicing agent if "the person by oneself or through others offers to undertake...to collect for another person the amounts due under any agreement which provides for installment payments and which is secured by an interest in real property, including without limitation mortgage loans and agreements of sale."

The following sections provide a brief history and description of the industry and a summary of Chapter 454D.

#### History of the Industry

There was a time when anyone who took out a mortgage loan from a commercial bank or savings and loan association would make installment payments directly to the lender. Problems with late payments or questions about interest rate increases were usually resolved in person.

When money was tight and prospective buyers had difficulty qualifying for a mortgage loan, buyers, especially in Hawaii, relied on alternate means such as an agreement of sale, where the buyer would pay the seller the purchase price in installments,\* or a purchase money mortgage where the seller would agree to take a second mortgage from the buyer.\*\* Other than having

<sup>\*</sup>An agreement of sale is an agreement between the seller and buyer for the purchase of real property. The purchase price is paid in installments over the period of the contract with the balance due at maturity. When the buyer completes the required payments, the seller is obligated to deliver title to the buyer by way of a deed or assignment of lease, if leasehold property. Under the terms of the agreement of sale, the buyer is given possession of the property, and is said to have "equitable title" to the property, while the seller retains legal title.

<sup>\*\*</sup>A purchase money mortgage is a mortgage given to the seller as part of the buyer's consideration for the purchase of real property. It is used to fill the "gap" between the buyer's down payment and a new first mortgage, as when the buyer pays ten percent of the purchase price in cash, obtains an 80 percent first mortgage from a lending institution, and the seller takes back from the buyer, a purchase money second mortgage for the remaining ten percent.

an escrow company close the transaction, i.e., perform the title search, prepare and record documents, and disburse funds, all transactions were confined to the individuals involved and the buyer made installment payments directly to the seller.

All of this has changed dramatically in the last 20 years. Mortgagors today rarely know who holds the mortgage. In many cases, installment payments are made to mainland companies that serve as mortgage servicing agents for mortgage owners. Homeowners who purchase real property under agreements of sale or purchase money mortgages no longer deal directly with the sellers. Instead, they make monthly installment payments to unknown individuals or companies that serve as collection servicing agents between the two parties.

The characteristics specific to mortgage servicing agents and collection servicing agents are described below.

#### Occupational Characteristics

Mortgage servicing agents. Mortgage servicing agents include banks, mortgage banking firms, savings and loan associations, industrial loan companies, and all other financial institutions which are either (1) approved to originate and service residential first mortgage loans guaranteed or insured by the Veterans Administration (VA)\* or the Federal Housing Administration (FHA),\*\* or (2) approved to originate and service residential first mortgage loans on behalf of the Federal National Mortgage Association (FNMA/Fannie Mac)\*\*\* or the Federal Home Loan Mortgage

<sup>\*</sup>A Veterans Administration (VA) loan is available to eligible veterans, and unremarried widows of veterans. VA does not lend money itself. It guarantees loans (payment of principal and interest) on real property made by approved lending institutions and the program is administered by the U.S. Department of Housing and Urban Development (HUD). The maximum loan amount VA will guarantee is \$144,000.

<sup>\*\*</sup>A Federal Housing Administration (FHA) loan is available to prospective buyers who meet FHA's eligibility requirements. Like VA, FHA is administered by HUD and does not loan funds. Rather, it insures the lender against loss. The maximum amount that it will insure is set at \$144,000.

<sup>\*\*\*</sup> Federal National Mortgage Association (FNMA/Fannie Mae) was created in 1938 by the federal government to provide liquidity in the mortgage market by establishing a secondary market for loans originated by lending institutions. Fannie Mae is now a private corporation which is owned by some 35,000 stockholders. FNMA will purchase first mortgages secured by one to four residential units in Hawaii. The loans for one to four units must be for no more than \$253,050, \$323,700, \$391,200, and \$486,225, respectively.

Corporation (FHLMC/Freddie Mac).\* Companies such as excrow depositories and trust companies that are not "approved" lenders of government insured mortgage funds, but collect installment payments under mortgage contracts, are also mortgage servicing agents.

Today, the financial institutions that originate residential first mortgage loans generally sell these loans in what is known as the "secondary mortgage market." This is done to reduce their holdings in mortgage loans in order to have funds for liquidity, reinvestment, or other purposes. They may either retain the servicing function or sell the loans together with the servicing rights.

The secondary mortgage market. Sellers in the secondary mortgage market are those financial institutions originating first mortgage loans. The largest buyers of residential first mortgage loans are the federally supported FNMA and FHLMC.

FNMA and FHLMC buy mortgages from a large number of approved loan originators located throughout the United States, including Hawaii; pool them in amounts ranging from \$250,000 to \$100 million, and sell the loan pools to private institutional investors such as insurance companies, pension and retirement funds, commercial banks, and thrift companies.

They also sell "pass through certificates" (PC's) for ownership of an interest in a pool of mortgage loans and "mortgage backed securities" (MBS's) which are bonds secured by pools of mortgages to investors. These two types of mortgage securities enable investors to make the equivalent of a mortgage investment simply by purchasing a certificate or security. FNMA and FHLMC also hold large pools of mortgages in their own asset portfolios.

To date, FNMA alone has supplied \$400 billion in mortgage funds to eight million families and bought the financing for one out of every eight mortgages currently outstanding in the U.S.<sup>1</sup> Together, FNMA and FHLMC have provided more than \$6 billion in mortgage funds to Hawaii.<sup>2</sup>

The Government National Mortgage Association (GNMA/Ginnie Mae) does not buy loans but sells certificates to investors which are based on and backed by pools of FHA-insured or VA-guaranteed mortgage loans. Originators of FHA and VA loans transmit these loans in pools to approved custodial banks where they are held as security for trust certificates issued by GNMA.

<sup>\*</sup>Federal Home Loan Mortgage Corporation (FHLMC/Freddie Mac) was established in 1970 to buy mortgages in the secondary market from commercial banks which have insured deposits or from federally insured savings and loans associations and other financial institutions which belong to the Federal Home Loan Bank system. FHLMC will also purchase mortgages secured by one to four units within the same amounts established by FNMA.

The loan originator normally remains in the picture to service the underlying mortgage, becoming mortgage servicing agents for investors/clients. Such services include collecting monthly installment payments from individual homeowners, remitting the principal and interest payment to the appropriate mortgage note, certificate or bond holder; holding in trust and disbursing the amounts for home-related expenses such as property taxes, insurance premiums, etc; supervising the loan by giving proper notification and accounting of all funds received and disbursed; preventing any delinquencies; and taking proper remedial action in the event of delinquency.

Collection servicing agents. Collection servicing agents are companies and individuals who act as conduits or middlemen between buyers and sellers under agreements of sale or purchase money mortgages. These agents came into existence in Hawaii during the late 1960s as a result of Hawaii's acceptance and extensive use of the agreement of sale as a means to finance residential real property purchases.

They fluorished during the late 1970s and early 1980s because of a combination of three conditions: (1) rapidly appreciating property values and high interest rates; (2) extensive use of agreements of sale, as opposed to new first mortgages, to finance residential real property purchases; and (3) the void created when the lending institutions found that they could not profitably service these unique instruments.<sup>3</sup>

Because all three conditions must be in place for collection servicing agents to remain profitable, the number of companies engaged in the business fluctuates with the level of real estate activity and the availability and cost of money. In 1980 and 1981, there were more than 30 companies servicing more than \$1 billion in agreements of sale in Hawaii.<sup>4</sup> Today there are only 11 servicing less than \$65 million.<sup>5</sup>

Due to the unstable nature of the business, collection servicing agents do not limit their activities to loan servicing. Rather, loan servicing is only one of several business activities. Other activities may include residential and/or commercial property management, real estate sales, resort development, and computer programming.

Collection servicing agents perform much the same services for their customers that mortgage servicing agents perform for their investor/clients.

In general, the buyer remits the monthly loan and interest payment, or interest only, together with a prorata portion of home-related expenses such as property taxes, insurance premiums, etc., to the collection servicing agent. The agent, in accordance with the terms agreed upon by the buyer and seller in the sales document and in the collection contract, disburses all amounts as required. This may include amounts due under an existing first mortgage, home-related

expenses, and any remaining balance to the seller. The agent may hold funds collected in trust accounts to pay certain obligations when due, such as home-related expenses.

Unlike mortgage servicing agents, collection servicing agents do not take any action against the buyer in the event of delinquency. Their only obligation is to notify the seller of the delinquent status of the account, and it is the seller's responsibility to pursue the matter.

#### Regulation in Hawaii

In 1982, the State began regulating the activities of mortgage and collection servicing agents. The impetus for regulation came after Real Estate Finance Corporation, an industrial loan company and a mortgage servicing agency, went into bankruptcy in early 1982 after it failed to pay some \$900,000 in real property tax bills on behalf of more than 1,700 Hawaii homeowners. The company was an approved mortgage servicing agent for the FHA, the VA, and mainland financial institutions, and it processed mortgage and other home-related payments received from Hawaii homeowners through trust accounts for these federal agencies and mainland institutions.

The Legislature responded during the 1982 session by enacting Act 287. The law required servicing agents, other than those exempted, to post a \$25,000 surety bond that would run to the State for the benefit of any person injured by the wrongful act or default of the agent. The law established a fiduciary relationship between the agent and its customers and required that agents who service Hawaii mortgage loans have a designated agent in the State to act on their behalf. It also required that trust funds collected from customers be maintained in a federally insured depository; that records of all receipts and disbursements for each customer be located in the State, either in the agent's office or that of its designated agent; and that records be kept for at least six years following the last installment payment.

The law outlined the penalties for failure to comply with the requirements. There was a general penalty for willful violation of Chapter 454D as well as sanctions for making false entries, destroying records, and commingling, embezzling, or misapplying customer trust funds.

Banks, collection agencies, credit unions, escrow depositories, industrial loan companies, savings and loan associations, and trust companies are exempted from Chapter 454D. Also exempted from regulation are those financial institutions approved to make loans for the United States Department of Housing and Urban Development (HUD), and certain persons, including those performing as servicing agents under order of any court; those servicing agents who service no more than five agreements at any one time; and licensed real estate brokers and salesmen engaged in the regular course of their business as brokers or salesmen.

The current law regulating mortgage and collection servicing agents is essentially the same as that enacted in 1982 although several amendments have been made.

In 1983, Act 42 increased the bond requirement from \$25,000 to \$50,000 and allowed servicing agents to post an irrevocable letter of credit in lieu of a bond.

In 1986, Act 142 added a new section to the law which set forth the powers and duties of the Director of DCCA to register mortgage and collection servicing agents; enforce Chapter 454D and the rules adopted; investigate the actions of agents believed to be in violation of the statute or rules; fine, suspend, or revoke a registration; refuse to grant registration for cause; seek a court injunction to restrain any violators; and establish registration and biennial renewal fees for mortgage and collection agents.

The act provided for automatic termination of the registration upon expiration or cancellation of the required bond and added language to clarify that remedies or penalties be cumulative to each other and to other remedies or penalties as provided by law. The act also clarified several exemptions by specifying that real estate brokers and salesmen are exempt only if their services are incidental to a real estate transaction or if there is an errors and omissions policy in effect which provides coverage for activities relating to mortgage and collection services.

Significantly, Act 142 amended the law to narrow the exemption of HUD-approved lenders, limiting the exemption to those financial institutions which service only FHA and VA loans. This had the effect of bringing mortgage bankers under the regulation of Chapter 454D. Since most mortgage bankers service conventional loans as well as FHA and VA loans, all except one<sup>8</sup> became subject to Chapter 454D.

Unlike the majority of the State's regulatory programs, mortgage and collection serving agents are not regulated by a board. Agents are only required to register with DCCA, provide a "Certificate of Good Standing" from the department's business registration division, and post either a \$50,000 bond or letter of credit. The program is administered on a day-to-day basis by a program specialist who is authorized to review and approve applications for registration.

The department has developed rules to implement the program. The rules were adopted in May 1988 and became effective on September 19, 1988.

#### Chapter 3

### EVALUATION OF THE REGULATION OF MORTGAGE AND COLLECTION SERVICING AGENTS

This chapter contains our evaluation of the regulation of mortgage and collection servicing agents under Chapter 454D, Hawaii Revised Statutes. It includes our assessment of the need for regulation and the effectiveness of the regulatory program.

#### **Summary of Findings**

We find that:

- 1. Continued state regulation of collection servicing agents is warranted to protect consumers from the economic harm that can result from dishonest practices and improper recordkeeping. In addition, there is evidence of a need to strengthen regulation through statutory changes.
- 2. However, mortgage servicing agents should not be regulated under Chapter 454D. These mortgage servicing agents are mortgage bankers who are also licensed as mortgage brokers under Chapter 454, and their regulation as mortgage servicing agents is unnecessary and confusing.
- 3. Chapter 454D cannot be effectively implemented for mortgage servicing agents since the scope of activities of mortgage bankers who act as mortgage servicing agents differs significantly from that of collection servicing agents. The two occupations cannot be regulated effectively under the same law.

#### **Need For Regulation**

Home ownership is typically the largest financial investment made by the average consumer. Homeowners who rely on servicing agents to make proper and timely payments on their loans and other related obligations must be protected from harm in the event servicing agents fail to fulfill their fiduciary obligations.

We find that continued regulation of collection servicing agents is necessary to protect consumers from dishonest and substandard practices. We also find, however, that mortgage servicing agents should be exempt from Chapter 454D.

Need to regulate collection servicing agents. Regulation of collection servicing agents is justified and necessary because there exists a potential for significant economic harm to

consumers when incompetent or dishonest agents are entrusted to collect and disburse funds under agreements of sale, purchase money mortgages, and any other type of contract executed between individual buyers and sellers of residential real property.

Prior to enactment of Chapter 454D, there were no performance requirements for servicing agents or protection for buyers and sellers in terms of accountability for services rendered and financial capacity to protect consumers in the event funds were mishandled or misappropriated. Homeowners who entered into agreements of sale and other methods of real property financing had to take on faith an individual agent's honesty, financial integrity, and competency to adequately perform the duties under the collection contract.

Regulation is also justified because collection servicing agents serve in a fiduciary capacity, i.e., in a position of trust or confidence where they are entrusted to hold money for others. Among the obligations a fiduciary owes to the buyer and the seller are full disclosure; the use of skill, care and diligence; and the duty to account for all monies.

State imposed standards such as bonding of agents and other requirements are necessary because buyers and sellers under agreements of sale are at a disadvantage in selecting and relying on servicing agents. They often cannot adequately judge the professional competence of servicing agents, and they may lack sufficient knowledge of the occupation to assess the quality of services provided to them by the agent. Institutions that contract for mortgage services can be expected to have the required expertise and knowledge to protect their financial interests. However, individual buyers and sellers who contract with collection servicing agents often do not have the needed information to protect themselves.

The Legislature sought to protect the consumers' interest by requiring registration, bonding, maintenance of customer trust accounts, and permanent records; by statutorily establishing a fiduciary relationship between the agent and the customers; and by imposing fines and penalities for those found in violation of the law.

We find no evidence to indicate that the need to regulate collection servicing agents has in any way diminished in importance since enactment of Chapter 454D. Moreover, regulation should be strengthened to more effectively protect consumers. In particular, statutory and rule changes should be made to require collection servicing agents to provide clients with annual and closing statements.

Lack of requirement for annual and closing statements. Most collection contracts state that the agent will provide both buyer and seller with an annual accounting of monies received and disbursed. However, complaints filed with the Regulated Industries Complaint Office (RICO) indicate that some agents are not making these statements available, even upon request. The

need for an accounting of funds received and disbursed becomes even more important upon final payment, especially to the seller who is entitled to receive the net proceeds from the sale.

The law requires that servicing agents maintain permanent records of all receipts and disbursements for each customer. However, there is no provision in the law requiring them to provide annual statements to buyers and sellers. Neither is there a provision requiring them to provide closing statements to each party when the agreement is fully satisfied.

The law should be amended to require servicing agents to disclose the amounts received and disbursed, together with any remaining balances, at least annually and upon satisfaction of the agreement of sale.

Inappropriate regulation of mortgage servicing agents. While collection servicing agents should continue to be regulated under Chapter 454D, mortgage servicing agents should not be regulated under this law.

The only mortgage servicing agents subject to Chapter 454D are mortgage banking companies.

Mortgage banking companies are financial institutions which, like banks and savings and loan associations, are the traditional suppliers of funds in the primary mortgage market. They originate first mortgage loans with their own funds and in their own name and then sell these loans in the secondary market in order to accommodate the need for liquidity. Mortgage banking firms, banks, S&L's and all other financial institutions that sell loans to the federally-backed agencies may continue to service the loans. It is not uncommon for them to sell, as well as buy, loan servicing contracts from other loan originators. All these institutions are subject to the same regulations including certain types of bonds and insurance, reporting requirements, and auditing by the federally-backed agencies and independent CPA firms.

Except for mortgage bankers, all other mortgage loan servicers, such as banks and savings and loan associations, are exempt. The rationale is that these entities are sufficiently regulated under other statutes.

As discussed earlier, mortgage bankers who act as mortgage servicing agents became regulated under Chapter 454D when the exemption was limited to those lenders approved by the U. S. Department of Housing and Urban Development who service only FHA and VA loans. Since most mortgage bankers originate conventional loans in addition to FHA and VA loans, they became subject to Chapter 454D. The amendment was intended to clarify the exemption for HUD-approved lenders; instead, it has resulted in confusion since mortgage bankers now fall under two different statutes with differing regulatory requirements: Chapter 454 relating to mortgage brokers and solicitors and Chapter 454D relating to mortgage and collection servicing agents.

The duplication is undesirable since it requires mortgage bankers to meet two different sets of requirements. Mortgage bankers should only be regulated as mortgage brokers under Chapter 454 since it provides more substantive protection to consumers in terms of mortgage banking activities. Other controls, such as those imposed by the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), also protect consumers.

Mortgage bankers should be exempted from regulation as mortgage servicing agents under Chapter 454D since it subjects them to outdated and inappropriate requirements.

Duplication in regulatory statutes. Currently, mortgage bankers are also licensed as mortgage brokers under Chapter 454 which defines a mortgage broker as a person or firm, who for "compensation or gain, or in the expectation of compensation or gain, either directly or indirectly makes, negotiates, acquires, or sells, or offers to make, negotiate, acquire or sell a mortgage loan..."

Since mortgage bankers provide their own funds for mortgage financing and write the mortgage in their own name, they fall under this definition. Mortgage brokers perform the same mortgage financing function by acting as intermediaries between the borrower and lender. Both mortgage bankers and mortgage brokers service loans.

The regulation of mortgage bankers under two separate statutes results in such inconsistent requirements as differing bonding requirements. Chapter 454 requires mortgage bankers to post a \$15,000 bond. As mortgage servicing agents under Chapter 454D, they must post a \$50,000 bond or irrevocable letter of credit in the same amount. There is no rationale for subjecting them to two separate and inconsistent statutes.

Stronger regulation under Chapter 454. There have been relatively few complaints about the mortgage servicing activities of mortgage bankers. Those that have been filed were all investigated by RICO under Chapter 454 or the mortgage broker program. This is primarily because the laws governing their activities as brokers have far more substance than the laws governing them as mortgage servicing agents, to wit, a mortgage broker may have a license suspended for at least two years for any of the following acts:

- . Failure to disburse funds in accordance with any agreement;
- . Failure to account or deliver to another, such things as money, fund, deposit, check, draft, mortgage, or other document or thing of value, at the agreed upon time, or as required by law, or upon request;
- . Failure to place, within a reasonable time upon receipt, any money, fund, deposit, check, or draft, 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 is authorized.<sup>2</sup>

These problems are not addressed by the mortgage and collection servicing law (Chapter 454D) even though they are an integral part of a mortgage bankers activities as a loan servicer.

Other controls. In addition to provisions in the mortgage broker law (Chapter 454), the competency and financial accountability of mortgage bankers as loan servicers are influenced through the following controls. First, the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) have safeguards to ensure that consumers with conventional mortgage loans will not suffer financial loss as a result of poor or improper business practices. Second, the mortgage servicing guidelines developed by the Mortgage Bankers Association of America<sup>3</sup> serve as recommended standards for loan servicers.

Requirements imposed by FNMA and FHLMC. FNMA and FHLMC, the two largest buyers of conventional loans, impose the same requirements on mortgage banking companies that they do on banks, savings and loan associations, and all institutions exempt from Chapter 454D.

All must maintain a fidelity bond, surety bond, and a mortgage errors and omissions policy in amounts relating to the size of the servicing portfolio; have a minimum net worth based on the outstanding principal balance of the servicing portfolio, and be a member of the Federal Home Loan Bank. They are subject to annual audits by the two federal agencies and independent certified public accountants.

It is in the self-interest of mortgage bankers to use extreme care in servicing loans since they rely on the federal sector for their survival. They also depend on institutional investors for repeat business. To date, not a single Hawaii homeowner with a conventional loan, originated and serviced by an "approved" mortgage banker, has ever suffered from financial harm.<sup>4</sup>

Mortgage servicing guidelines. The "Mortgage Servicing Guidelines" developed by the Mortgage Bankers Association of America set forth the responsibilities and duties of mortgage bankers as buyers and sellers of mortgage loans.

Among other things, buyers of servicing contracts should:

- . Send a notice of the transfer of servicing to mortgagors;
- Ensure that facilities and staff are available to set up loan information from transferred files; and
- Conduct a legal review of state requirements before buying servicing, in order to ensure compliance with state laws, statutes, and regulations and with industry standards;

Likewise, sellers of servicing contracts should:

- . Send a notice of transfer of servicing to mortgagors which includes the date of transfer to buyer, the toll free number, the contact person, interim payments, if any, optional mortgage insurance, and reassurance that the transfer of servicing does not affect the terms and conditions of the mortgage;
- . Notify mortgage insurance company, fire insurance carrier and taxing authority of the transfer;
- Bring escrow accounts current by paying outstanding bills and transfer balances to buyer together with any interest owing to the mortgagor;\* and
- Provide buyer with necessary documents and information, i.e., loan files, insurance policies, contracts, servicing history, collection history, etc.<sup>5</sup>

The guidelines also include procedures for new loan and payment processing, analysis and payment of taxes and insurance, and complaint handling.

One law cannot be effectively implemented for two different occupations. Some of the requirements imposed on mortgage bankers under Chapter 454D are outdated and do not reflect developments in the secondary market and the mortgage correspondent system, i.e., the various ways in which buying and selling is done by institutions in the secondary market. However, these same requirements are appropriate for collection servicing agents. The same problem occurs in developing rules to implement Chapter 454D. Some rules that are appropriate for collection servicing agents cannot be applied to mortgage servicing agents. Some examples of this conflict are described below.

Inapplicable statutory provisions. Physical presence. The law states that "no servicing agent may engage in business in this State unless it has a designated agent in the State authorized to act on its behalf." The nature of the secondary market and the workings of the mortgage correspondent system render this provision unenforceable for mortgage bankers although it is a desirable provision for collection servicing agents.

<sup>\*</sup>Some banks deposit trust/escrow funds in interest earning accounts and are required to remit any interest earned to the mortgagor. They are not permitted to earn interest on behalf of the institution. However, because there are problems in prorating the interest earned to numerous mortgagors, banks, savings and loan associations, mortgage banking firms and most financial institutions that service loans do not deposit escrow funds in interest bearing accounts.

Mortgage bankers originate first mortgage loans with their own funds and in their own name and then sell the loans in the secondary market through the mortgage correspondent system. Bankers sell pools of unconventional loans or what the industry refers to as "government loans" (FHA and VA loans) to FNMA. They may also transmit these loan pools to approved custodial banks which hold the loans as security for GNMA-backed certificates issued and sold to private investors. They also sell pools of conventional loans to FNMA and FHLMC as well as to private investors.

The mortgage banker who originates the loan may initially service the underlying mortgage for the federally sponsored agency or private investor. However, with approval from the appropriate agency or investor, it may subsequently sell the servicing contracts to another approved servicer.

What this means is that several different servicers may hold the servicing contract over the life of the mortgage. Some in the industry claim that one out of every six mortgagors will remit loan payments to more than one servicing agent over the term of the loan. Numerous Hawaii homeowners are currently making installment payments to servicing agents with no local office. It is virtually impossible for the State to enforce the provision that a servicing agent must maintain an office in the State or appoint a designated agent located in the State to act on its behalf.

According to the Mortgage Bankers Association, there are some 1500 mortgage banking companies nationwide approved to service (and originate) loans for FNMA, FHLMC and HUD,<sup>7</sup> and it is impossible for the State to determine which of these companies are servicing Hawaii loans, especially since servicing rights are being continually traded.

Maintenance of customer records. Chapter 454D requires that "(e)very servicing agent . . . shall keep at its principal office in the State or office of its agent located in this State permanent records of all of its receipts and disbursements for each customer."

Mortgage banking companies doing business in Hawaii do not maintain customer records locally. This is because local offices are only branch offices of large mainland-based companies, and they are only authorized to originate loans. The Hawaii loans are transmitted to the companies' head offices where they are pooled with loans originated in other states and sold in the secondary market. Should the company retain the servicing rights, the Hawaii homeowner is directed to remit payment directly to the main office.

The provision requiring servicing agents to maintain customer records locally was probably an attempt to provide homeowners ready access to account records. Toll free numbers, "FAX" and express mail service, all of which are used by mortgage bankers in Hawaii, adequately fulfill

this requirement. The absence of customer records has not resulted in harm to homeowners, and there is little evidence that they are being inconvenienced.

#### Conclusion

Collection servicing agents should continue to be regulated under Chapter 454D. However, mortgage servicing agents should be exempted. Mortgage servicing agents are mortgage bankers who are required to be licensed mortgage brokers, and the laws governing brokers sufficiently regulate all activities relating to loan servicing. Other controls imposed by the federally backed agencies and the Mortgage Bankers Association increase the level of protection to consumers. The exemption is also appropriate since the scope of activities of mortgage bankers differs from that of collection servicing agents.

#### Recommendations

We recommend that:

Chapter 454D, Hawaii Revised Statutes be reenacted to provide for the continued regulation of collection servicing agents and to exempt mortgage bankers who act as mortgage servicing agents. The statute should be amended to accomplish the following:

- . exempting mortgage banking companies and changing the chapter's name to "Real Estate Collection Servicing Agents" to reflect accurately the scope of activity; and
- . requiring servicing agents to provide each customer with annual and closing statements which show the amounts received and disbursed together with any remaining balances.

#### NOTES

#### Chapter 1

- 1. See discussion in 51 American Jurisprudence, 2d., "Licenses and Permits," Sec. 14.
- 2. Terr. v. Fritz Kraft, 33 Haw. 397.

#### Chapter 2

- 1. "Happy Birthday Fannie Mae," Mortgage Banking, March 1988, p. 115.
- 2. Interview with Alan Peviani, Senior Negotiator-Hawaii District, Federal National Mortgage Association, Westwood, California.
- 3. Interview with Stanley Baird, Vice-President, Hawaiian Trust Company, March 4, 1988.
- 4. Hawaii, Department of Business and Economic Development, *The State of Hawaii Data Book; a statistical abstract.* Honolulu, December 1986, Table 623, p. 572.
- 5. Hawaii, Department of Business and Economic Development, *The State of Hawaii Data Book; a statistical abstract.* Honolulu, November 1987, Table 648, p. 590.
- 6. James Dooley, "Firms' Failures Led To Allegations; Matsukage Investigation At Grand Jury," *Honolulu Advertiser*, March 21, 1984.
- 7. Testimony on House Bill 2836 submitted by Ralph Warner, consultant to Honolulu Mortgage Company to the Hawaii Senate Committee on Consumer Protection and Commerce, March 24, 1982.
- 8. Independence One Mortgage Company, Southfield, Michigan, October 28, 1987.

#### Chapter 3

- 1. Hawaii Revised Statutes, sec. 454-1(3), (1985).
- 2. Hawaii Revised Statutes, sec. 454-4(a)(3) 454(a)(5), (1985).

- 3. Mortgage Servicing Guidelines, Washington, D.C., Mortgage Bankers Association of America, September 1986.
- 4. Interview with Stanley Baird, Vice President, Hawaiian Trust Company, March 4, 1988.
- 5. Mortgage Servicing Guidelines, p. 4-7.
- 6. Hawaii Revised Statutes, sec. 454D-4, (1985).
- 7. Interview with Mary Pfaff, Assistant Director, Mortgage Bankers Association of America, May 26, 1988.
- 8. Hawaii Revised Statutes, sec. 454D-5 (1985).

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-	APPENDICES
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#### APPENDIX A

#### **COMMENTS ON AGENCY RESPONSE**

A preliminary copy of this Sunset Evaluation Report was transmitted on October 25, 1988, to the Department of Commerce and Consumer Affairs for its review and comments. A copy of the transmittal letter to the department is included as Attachment 1 of this Appendix. The response from the department is included as Attachment 2.

In the same letter, the department responded to both our Sunset Evaluation Report on Mortgage and Collection Servicing Agents and our Sunset Evaluation Report on Mortgage Brokers and Solicitors. Here we comment on the department's response to Chapter 454D on the regulation of mortgage and collection servicing agents.

The department agrees with our recommendation to reenact Chapter 454D to provide for continued regulation of collection servicing agents. It also agrees with our recommendation to require servicing agents to provide customers with annual and closing statements. Finally, it "will not dispute the rationale" that mortgage bankers should be exempt from Chapter 454D since they are already regulated under Chapter 454 relating to mortgage brokers. However, the department is concerned that the bonding requirement for mortgage brokers under Chapter 454 would be only \$15,000 instead of the \$50,000 they are now subject to under Chapter 454D.

The department says that we made no recommendation on what the bond amount should be for mortgage brokers under Chapter 454. This is because we do not believe that a change in the bond amount in Chapter 454 is needed. In addition, we had raised the question of the appropriate amount of bonding in some recent sunset evaluation reports and the department had responded that it was reviewing the issue. If the department finds in its overall review of bonding that an increase is warranted it should recommend appropriate amendments to the statute to the Legislature.

CLINTON T. TANIMURA

THE OFFICE OF THE AUDITOR STATE OF HAWAII 465 S. KING STREET, RM. 500 HONOLULU, HAWAII 96813

October 25, 1988

COPY

Mr. Robert A. Alm, Director Department of Commerce and Consumer Affairs State of Hawaii 1010 Richards Street Honolulu, Hawaii 96813

Dear Mr. Alm:

Enclosed are three preliminary copies, numbered 4 through 6, of our Sunset Evaluation Report, Regulation of Mortgage and Collection Servicing Agents, Chapter 454D, Hawaii Revised Statutes.

The report contains our recommendations relating to the regulation of mortgage and collection servicing agents. If you have any comments on our recommendations, we would appreciate receiving them by November 25, 1988. Any comments we receive will be included as part of the final report which will be submitted to the Legislature.

Since the report is not in final form and changes may possibly be made to it, we request that you limit access to the report to those officials whom you wish to call upon for assistance in your response. Please do not reproduce the report. Should you require additional copies, please contact our office. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the assistance and cooperation extended to us.

n T. Janemura

Sincerely,

Clinton T. Tanimura Legislative Auditor

Enclosures

#### ATTACHMENT 2

JOHN WAIHEE GOVERNOR



ROBERT A. ALM
DIRECTOR
COMMISSIONER OF SECURITIES

SUSAN DOYLE

#### STATE OF HAWAII

### OFFICE OF THE DIRECTOR DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

P. O. BOX 541
HONOLULU, HAWAII 96809

December 2, 1988

RECEIVED

DEC. 7 3 43 PM '88

Mr. Clinton Tanimura
Legislative Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813

OFC. OF THE AUDITOR
STATE OF HAWAII

Dear Mr. Tanimura:

We appreciate the opportunity to provide a consolidated response to your sunset evaluation reports of Chapter 454D, HRS, Mortgage and Collection Servicing Agents and Chapter 454, HRS, Mortgage Brokers and Solicitors. In that you have recommended changes to Chapter 454D which impact Chapter 454, our response will provide a total overview of your comments.

In addressing first the recommendations to Chapter 454D, on Mortgage and Collections Servicing Agents, we agree that this chapter should be reenacted to provide for the continued regulation of servicing agents.

Further, we can support the recommendation to amend Chapter 454D to require servicing agents to provide customers with annual and closing statements which show the amounts the servicing agent received, disbursed, together with any remaining balances.

Moreover, we will not dispute the rationale to exempt mortgage bankers from Chapter 454D as you feel they should be regulated only as mortgage brokers under Chapter 454. However, there is one very important point that failed to be mentioned with the merger of mortgage bankers with mortgage brokers and that is that there is a sizeable disparity in the bonding requirement for the two areas. Currently, mortgage bankers under Chapter 454D require a \$50,000 bond. Mortgage brokers on the other hand require only a \$15,000 bond under Chapter 454. With your proposal no recommendation was provided on what should be done regarding the bonding

Mr. Clinton Tanimura December 2, 1988 Page 2

requirements with such a merger. We strongly believe that the current \$50,000 bonding requirement should be retained, and as such the bond requirements for mortgage brokers needs to be increased from \$15,000 to \$50,000. Whether you thought of this impact is unknown, but it is a substantive issue that needs to be reviewed and commented upon as you respond to the Legislature.

Amending the title of Chapter 454D to exclude "Mortgage" Agents is acceptable; provided the regulation of mortgage agents under Chapter 454 carries with it the same bonding requirement of \$50,000.

We now would like to address your recommendations with regard to Chapter 454, Mortgage Brokers and Solicitors.

We agree that Chapter 454 should be reenacted to provide for continued regulation; statutory clarification is appropriate to amend the definition for "mortgage brokers" to cover the broker's activities in relationship to borrowers; deletion of the restriction to no more than 25 transactions a year by a broker is acceptable; and that provisions be enacted to require mortgage brokers to prepare an "Honor Agreement" identifying the respective responsibilities of the borrowers and the mortgage brokers including disclosing all fees, closing costs, refund conditions, and referral fees received.

With regard to the recommendation to place the mortgage brokers and solicitors program with the Commissioner of Financial Institutions (hereafter referred to as "CFI"), we offer the following:

(1) Given the concerns raised with the current administration of the program, simply placing the program with the CFI will not in itself make the situation better and, in fact, may make the situation worse. Key to shifting the responsibility to the CFI is providing the necessary resources needed to implement a new program beyond their current jurisdiction and resources available. As you were able to observe, several staff members within the Professional and Vocational Licensing Division handled the administration of the program.

Mr. Clinton Tanimura December 2, 1988 Page 3

Absent any comparable staff being awarded to the CFI, the program cannot be implemented. We note that there is no mention of additional resources to the CFI which we believe to be a major oversight to the goals you wish to have accomplished.

- (2) Assuming the CFI accepts jurisdiction of the program resources become even more crucial in working with the law and developing rules that afford the protection deemed necessary by the CFI. Thought has been given by the CFI to strengthen the law including adding provisions on prohibited practices, cease and desist authority and including the provisions recommended for rules (page 24, No. 2.) in the statute. Considerable time, effort and adequate training of staff will be necessary to make the program fully enforceable.
- (3) While you stress that the CFI has the ability to examine financial institutions pursuant to Chapter 401, HRS, the scope is limited in fact only to financial institutions. If it is intended for the CFI to examine mortgage brokers, then clear statutory authority is needed. Expanding examination functions to include mortgage brokers will necessitate resources beyond what is described above.

In conclusion we find that many important aspects to fully effectuate the changes recommended in your reports were not addressed and we appreciate the opportunity to add them in in order that the Legislature can adequately assess the situation.

Very truly yours,

Robert A. Alm

Director

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#### APPENDIX B

#### DIGEST

#### A BILL FOR AN ACT RELATING TO REAL ESTATE COLLECTION SERVICING AGENTS

Deletes mortgage bankers and mortgage servicing agents from the purview of the mortgage and collection servicing agents law and retitles the law to "real estate collection servicing agents". Extends the repeal date of the law regulating real estate collection servicing agents to 12/31/95. Requires real estate servicing agents to provide written annual and final statements to each buyer and seller of all the amounts received and disbursed, together with any remaining balances.

S.B. W.

STATE OF HAWAII

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## A BILL FOR AN ACT

RELATING TO REAL ESTATE COLLECTION SERVICING AGENTS.

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

1	SECT	ION 1. Section 26H-4, Hawaii Revised Statutes, is
2	amended t	o read as follows:
3	"\$26	H-4 Repeal dates. (a) The following chapters are
4	hereby re	pealed effective December 31, 1989:
5	(1)	Chapter 444 (Contractors License Board)
6	(2)	Chapter 448E (Board of Electricians and Plumbers)
7	(3)	Chapter 464 (Board of Registration of Professional
8		Engineers, Architects, Surveyors and Landscape
9		Architects)
10	(4)	Chapter 466 (Board of Public Accountancy)
11	(5)	Chapter 467 (Real Estate Commission)
12	(6)	Chapter 439 (Board of Cosmetology)
13	(7)	Chapter 454 (Mortgage Brokers and Solicitors)
14	[(8)	Chapter 454D (Mortgage and Collection Servicing
15		Agents)]
16	(b)	The following chapter and sections are hereby repealed
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17		

1	effective	December 31, 1990:
2	(1)	Chapter 466J (Board of Radiologic Technology)
3	(2)	Sections 321-13 to 321-15 (midwives, laboratory
4		directors, laboratory technologists, laboratory
5		supervisors, laboratory technicians, tattoo artists,
6		electrologists, and sanitarians)
7	(c)	The following chapters are hereby repealed effective
8	December 3	31, 1991:
9	(1)	Chapter 447 (Dental Hygienists)
10	(2)	Chapter 453 (Board of Medical Examiners)
11	(3)	Chapter 457 (Board of Nursing)
12	(4)	Chapter 458 (Board of Dispensing Opticians)
13	(5)	Chapter 460J (Pest Control Board)
14	(6)	Chapter 462A (Pilotage)
15	(7)	Chapter 438 (Board of Barbers)
16	(8)	Chapter 468K (Travel Agencies)
17	(d)	The following chapters are hereby repealed effective
18	December 3	31, 1992:
19	(1)	Chapter 448H (Elevator Mechanics Licensing Board)
20	(2)	Chapter 451A (Board of Hearing Aid Dealers and Fitters)
21	(3)	Chapter 457B (Board of Examiners of Nursing Home
22		Administrators)
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1	(4)	Chapter 460 (Board of Osteopathic Examiners)
2	(5)	Chapter 461 (Board of Pharmacy)
3	(6)	Chapter 461J (Board of Physical Therapy)
4	(7)	Chapter 463E (Podiatry)
5	(e)	The following chapters are hereby repealed effective
6	December	31, 1993:
7	(1)	Chapter 437 (Motor Vehicle Industry Licensing Board)
8	(2)	Chapter 437B (Motor Vehicle Repair Industry Board)
9	(3)	Chapter 440 (Boxing Commission)
10	(4)	Chapter 446 (Debt Adjusters)
11	(5)	Chapter 436E (Board of Acupuncture)
12	(f)	The following sections are hereby repealed effective
13	December	31, 1993:
14	(1)	Sections 445-21 to 38 (Auctions)
15	(2)	Sections 445-131 to 136 (Pawnbrokers)
16	(3)	Sections 445-171 to 172 (Secondhand Dealers)
17	(4)	Sections 445-231 to 235 (Scrap Dealers)
18	(g)	The following chapters are hereby repealed effective
19	December	31, 1994:
20	(1)	Chapter 441 (Cemetery and Funeral Trusts)
21	(2)	Chapter 443B (Collection Agencies)
22	(3)	Chapter 452 (Board of Massage)
23		
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1	(4) Chapter 455 (Board of Examiners in Naturopathy)
2	(5) Chapter 459 (Board of Examiners in Optometry)
3	(6) Chapter 442 (Board of Chiropractic Examiners)
4	(7) Chapter 373 (Commercial Employment Agencies)
5	(8) Chapter 448 (Board of Dental Examiners)
6	(9) Chapter 465 (Board of Psychology)
7	(10) Chapter 468E (Speech Pathology and Audiology)
8	(h) The following chapter is hereby repealed effective
9	December 31, 1995:
10	(1) Chapter 454D (Real Estate Collection Servicing Agents)
11	[(h)] (i) The following chapters are hereby repealed
12	effective December 31, 1997:
13	(1) Chapter 463 (Board of Private Detectives and Guards)
14	(2) Chapter 471 (Board of Veterinary Examiners)."
15	SECTION 2. Chapter 454D, Hawaii Revised Statutes, is
16	amended as follows:
17	1. By amending the title to read:
18	"[MORTGAGE AND] REAL ESTATE
19	COLLECTION SERVICING AGENTS"
20	2. By amending section 454D-1 to read:
21	"[[]§454D-1[]] Definitions. As used in this chapter:
22	[(1)] "Person" includes an individual, partnership, joint
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venture, corporation, association, business, trust, or any organized group of persons, or any combination thereof.

- [(2) A person shall be deemed to engage in the business of a "mortgage servicing agent" or "collection servicing agent" if the person] "Real estate collection servicing agent" means a person who by oneself or through others offers to undertake or holds oneself out as being able to undertake or does undertake to collect for another person the amounts due under any agreement which provides for installment payments and which is secured by an interest in real property, including without limitation mortgage loans and agreements of sale, whether or not such real estate collection servicing agent receives any compensation or other consideration for the agent's services. When referred to collectively in this chapter, such persons shall be called "servicing agents".
- [(3)] "Installment payments" shall be deemed to include principal and interest and any expenses due in connection with the real property securing such agreement, including without limitation real property taxes, lease rent, insurance premiums, maintenance fees, and similar expenses."
  - 3. By amending section 454D-2 to read:
- "§454D-2 Exemptions. This chapter shall not apply to the

#### following persons:

- (1) Real estate brokers and salesmen licensed under chapter 467 and residing in the State who provide collection and mortgage services where the services are limited to those incident to a particular real estate transaction, or where the broker, or the salesman's broker, has an errors and commissions insurance policy in effect which has, as part of the insurance policy, coverage for activities relating to collection and mortgage services and where a copy of the insurance policy is filed annually with the department of commerce and consumer affairs;
- (2) Banks, collection agencies, credit unions, escrow depositories, industrial loan companies, savings and loan associations, and trust companies authorized to do business in the State;
- (3) [A financial institution which services only Federal Housing Administration and Veterans Administration loans and has been approved as a lender by the United States Department of Housing and Urban Development; provided that the financial institution files annually with the department of commerce and consumer affairs

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certification that it is still an approved lender by
the United States Department of Housing and Urban
Development and continues to service only Federal
Housing Administration and Veterans Administration
loans; ] Any financial institution which is an approved
lender for programs administered by the United States
Department of Housing and Urban Development; provided
that the financial institution files annually with the
department of commerce and consumer affairs
satisfactory proof of that status;

- (4) Persons performing the services normally rendered by servicing agents under order of any court; and
- (5) Persons performing the services normally rendered by servicing agents, but with respect to fewer than five agreements at any one time that would otherwise come within the purview of this chapter."
- 4. By amending section 454D-2.5 to read:
- "[[]\$454D-2.5[]] Powers and duties of the director of commerce and consumer affairs. In addition to any other powers and duties granted by this chapter, the director of commerce and consumer affairs shall:
  - (1) Register [mortgage and] real estate collection

1		servicing agents pursuant to this chapter;
2	(2)	Enforce this chapter and rules adopted pursuant
3		thereto;
4	(3)	Investigate the actions of any person acting in the
5		capacity of a [mortgage and] real estate collection
6		servicing agent if there is reason to believe that
7		there may be a violation of this chapter or the rules
8		adopted pursuant thereto;
9	(4)	Fine, suspend, or revoke a registration for any cause
10		prescribed by this chapter, or for any violation of the
11		rules, and refuse to grant registration for any cause
12		which would be grounds for suspension or revocation of
13		the registration;
14	(5)	Apply to a court having competent jurisdiction for an
15		injunction to restrain any violation of this chapter;
16		and
17	(6)	Establish registration and biennial renewal fees for
18		[mortgage and] real estate collection servicing
19		agents."
20	5.	By amending section 454D-5 to read:
21	"[[]]"	§454D-5[]] Trust accounts, records. (a) Every
22	servicing	agent shall maintain a separate trust account in a
23		
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1	federally insured depository institution for funds collected in
2	behalf of its customers, and shall keep at its principal office
3	in this State or office of its agent located in this State
4	permanent records of all of its receipts and disbursements for
5	each customer. Such records shall be kept, as to each
6	installment payment agreement, for a period of at least six years
7	following the last installment payment collected pursuant to such
8	agreement.
9	(b) Every servicing agent shall provide to each buyer and
10	seller a written statement of all the amounts received and
11	disbursed, together with any remaining balances annually and upon
12	satisfaction of the agreement of sale."
13	SECTION 3. Statutory material to be repealed is bracketed.
14	New statutory material is underscored.
15	SECTION 4. This Act shall take effect upon its approval.
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17	INTRODUCED BY:
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