

Gary Kuanoni

From: Celia.C.Suzuki@dcca.hawaii.gov on behalf of pvl@dcca.hawaii.gov
Sent: Friday, May 27, 2011 12:53 PM
To: dfi@dcca.hawaii.gov
Cc: Gary Kuanoni
Subject: Fw: Lic Requirements Wholesale Mortgage Lenders

For your division's appropriate attention. Thank you.

----- Forwarded by Celia C Suzuki/DCCA on 05/27/2011 12:52 PM -----

"Gary Kuanoni" <garyk@mirhawaii.com>

To <pvl@dcca.hawaii.gov>

cc

05/27/2011 09:03 AM

Subject Lic Requirements Wholesale Mortgage Lenders

Please respond to < garyk@MIRHawaii.com >

Aloha,

Under the new HRS 454F and new SB 1519, there isn't anything that covers out of state wholesale mortgage lenders?
The old bill only required the wholesale lender to register as a foreign corporation.

Can you please provide and reference the current requirement for this type of company to conduct business in Hawaii?

Your assistance in the matter is greatly appreciated.

Mahalo,

GARY KUANONI

Mortgage Information Resource LLC

Ph: (808) 753-9664

garyk@MIRHawaii.com

www.MIRHawaii.com

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Gary Kuanoni

From: dfi@dcca.hawaii.gov
Sent: Wednesday, June 29, 2011 5:56 PM
To: Gary Kuanoni
Subject: License Requirements Wholesale Mortgage Lenders

To: Gary Kuanoni
Mortgage Information Resource LLC
garyk@MIRHawaii.com

Fr: Division of Financial Institutions ("DFI")
State of Hawaii

Date: June 29, 2011

Re: **License Requirements Wholesale Mortgage Lenders**

This replies to your May 16, May 23, and May 27, 2011 email inquiries on the above-referenced subject. Your three inquiries to DFI all appeared to be asking the same question, namely whether Hawaii's Secure and Fair Enforcement for Mortgage Licensing Act, Chapter 454F, Hawaii Revised Statutes ("HRS"), as modified by Senate Bill No. 1519, S.D. 3, H.D.2, C.D.1, "covers" out-of-state wholesale mortgage lenders. You state that the "old bill" only required such a lender to register as a foreign corporation. You request clarification along with a statutory citation regarding any current licensing requirement for out-of-state wholesale lenders that wish to conduct business in Hawaii.

First, please note that Senate Bill No. 1519, S.D.3, H.D.2, C.D.1 has not yet been enacted. Its current status is that it is presently enrolled to the Governor and awaits his signature before it can become law.

Second, we are unclear what your reference to the "old bill" signifies. If you perhaps were referring to the law on Mortgage Brokers and Solicitors, Chapter 454, HRS, which was previously administered by the Professional & Vocational Licensing Division, please note that Chapter 454, HRS, was repealed effective January 1, 2011. Since DFI did not administer or interpret that law, we cannot officially comment on the accuracy of your statement that former Chapter 454, HRS, required out-of-state wholesale mortgage lenders to register as a foreign corporation; however, we can indicate to you that your statement in that regard is not consistent with DFI's own understanding of the matter.

As to present licensing and regulatory requirements for out-of-state wholesale mortgage lenders to conduct residential mortgage loan origination business in Hawaii, Chapter 454F, HRS, requires the licensing of all non-exempt residential mortgage loan originators ("MLOs") and mortgage loan originator companies ("MLOCs") doing business in Hawaii from January 1, 2011. Chapter 454F, HRS, is administered by DFI.

If a wholesale mortgage lender, whether located in-state or out-of-state, engages in residential mortgage lending activity in Hawaii, it will require licensing as a MLOC, as will the individual MLOs employed by that lender who would conduct those mortgage loan origination activities on the lender's behalf.

That is so because a wholesale lender typically engages in underwriting, closing, and funding loans, and those activities, even when done indirectly, clearly do trigger a licensing requirement for both the company and the individuals in the company's employ who are engaged in any of those functions.

You are advised to review the following definitions of "loan processor or underwriter", "mortgage loan originator", "mortgage loan originator company" and "taking a residential mortgage loan application" as set forth in Chapter 454F, HRS, as amended, and reproduced immediately below for your reference:

"Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under this chapter.

"Mortgage loan originator":

- (1) Means an individual who for compensation or gain or in the expectation of compensation or gain:
 - (A) Takes a residential mortgage loan application; or
 - (B) Offers or negotiates terms of a residential mortgage loan; and
- (2) Includes an independent contractor as defined in this section.

"Mortgage loan originator company" means:

- (1) An individual not exempt under section 454F-2 who engages in the business of a mortgage loan originator as a sole proprietorship; or
- (2) A person not exempt under section 454F-2 who employs or uses the exclusive services of one or more mortgage loan originators licensed or required to be licensed under this chapter.

"Taking a residential mortgage loan application" means receipt of a request or of a response to a solicitation of an offer from a borrower, either directly or indirectly, for the purpose of deciding whether or not to extend an offer of a loan to the borrower. Taking a residential mortgage loan application does not include mere physical handling or transmission of a form.

There are, of course, different business models by which one might be said to be conducting lending activities as a "wholesale lender" which, you will note, is not a term that is defined in Chapter 454F, HRS. You must look to the definitions that are provided in the statute, and in particular, you will note that "taking a residential mortgage loan application" is broadly defined to include receipt of a request from a borrower, either directly or indirectly, for the purpose of deciding whether or not to extend an offer of a loan to the borrower. To the extent that the wholesale lender would itself be deciding whether or not to extend an offer of a loan to a borrower, even if it does so indirectly, it would be taking a residential mortgage loan application in Hawaii.

Keep in mind, as well, that while any underwriters employed by the wholesale lender may not, themselves, need to be licensed as mortgage loan originators, pursuant to the definition of "loan processor or underwriter", they would need to perform their duties at the direction of, and subject to the supervision and instruction of a mortgage loan originator who is either licensed or exempt from licensing under Chapter 454F, HRS.

Note that it is a requirement under Chapter 454F, HRS, that a licensed Hawaii MLOC maintain a principal place of business in Hawaii with a licensed MLO as its onsite manager. As a result, an out-of-state wholesale lender making residential mortgage loans in Hawaii will be required to establish and maintain a brick-and-mortar presence in this State in order to be licensed under Chapter 454F, HRS.

The requirements outlined above are irrespective of whether the borrower is a resident of Hawaii or occupies the property securing the loan. Borrower occupancy and/or state residency are irrelevant in the determination of MLO and MLOC licensing requirements under the statute pursuant to the

definitions above-cited.

You may access a link to the statute, along with helpful FAQs on our website at <http://hawaii.gov/dcca/dfi/mortgage-loan-origiators>.

We hope that this information will assist you and is responsive to your inquiry.

GR:LH:kk

cc: MLO Inquiries File

2011-INQ-343&372-LF-F

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----- Forwarded by dfi/DCCA on 06/29/2011 05:53 PM -----

pvl/DCCA

Sent by: Celia C Suzuki/DCCA

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To dfi/DCCA@DCCA

cc "Gary Kuanoni" <garyk@mirhawaii.com>

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