



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

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**LATE TESTIMONY**

**ON THE FOLLOWING MEASURE:**

H.B. NO. 2103, H.D. 1, RELATING TO THE BANK OF THE STATE OF HAWAII.

**BEFORE THE:**

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

**DATE:** Wednesday, February 15, 2012      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** David M. Louie, Attorney General, or  
James C. Paige, Deputy Attorney General

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Chair Herkes and Members of the Committee:

The Department of the Attorney General submits these comments to explain the effect of the multistate mortgage foreclosure settlement on the enforcement mechanisms contained in this bill. In exchange for the multi-billion dollar payout by servicers under the settlement, and reforms to mortgage servicing procedures, 49 state attorneys general have provided certain limited releases to the settling servicers, which would conflict with the investigative and enforcement actions contemplated by this bill. However, the settlement does not release individual consumer's claims or defenses and also mandates many procedures that will require clear proof of a servicer or holders right to foreclose.

One very important aspect of the mortgage foreclosure settlement is that it requires mortgage servicers to provide documentation of the note, holder status, and chain of assignment in the mortgage process. Essentially the servicer has to show that it has an enforceable interest in the promissory note and mortgage (or deed of trust) under applicable state law, or that it is otherwise a proper party to a foreclosure action. Thus, a servicer has to set forth its right to foreclose including accounting for the note and making sure that any assignments were executed with proper legal authority. This information must be provided to borrowers, and must be done no later than 14 days before the servicer may refer the matter to a foreclosure attorney. Therefore, an individual consumer would be able to raise claims relating to holder status and other chain of title issues.

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As a final matter the Office of the Comptroller of the Currency and the new Consumer Financial Protection Bureau are the primary regulators of national banks and any referral for investigation would be more appropriately made to those agencies.

We have had an opportunity to meet with Chair Herkes to discuss these issues, and are working collaboratively with the Chair to ensure that our efforts complement each other, for the benefit of Hawaii homeowners.