



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

ON THE FOLLOWING MEASURE:

S.C.R. NO. 39, DIRECTING THE ATTORNEY GENERAL OF THE STATE OF HAWAII TO INVESTIGATE CASES WHERE FRAUDULENT TRANSFERS AND ASSIGNMENTS OF MORTGAGE LOAN DOCUMENTS ARE ALLEGED.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Tuesday, March 13, 2012 **TIME:** 10:15 a.m.

LOCATION: State Capitol, Room 229

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

Chair Baker 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 investigation and enforcement efforts called for by this resolution. 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 could conflict with some of the investigative and enforcement actions contemplated by this resolution. However, the settlement does not release individual consumer's claims or defenses, does not release claims against Mortgage Electronic Registration Systems, Inc. or any third party vendors, and does not release any criminal liability. Additionally, the settlement also mandates many procedures that will require clear proof of a servicer's or holder's right to foreclose.

One key 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. Five separate consent judgments were filed in the United States District Court for the District of Columbia on March 12, 2012. Those judgments are fully enforceable in the federal court and servicers face significant monetary penalties for failure to comply with the settlement terms, including the terms relating to proper documentation of the mortgage interest and the right to foreclose.

Our office is engaged in ongoing investigations and will pursue both civil and criminal claims as appropriate. As always we will continue to work collaboratively with the legislature in instances where our laws can be improved to protect Hawaii homeowners.

LATE

Testimony for CPN 3/13/2012 10:15:00 AM SCR39

Conference room: 229

Testifier position: Support

Testifier will be present: No

Submitted by: Ann Evans

Organization: Individual

E-mail: mauimagic5711@hotmail.com

Submitted on: 3/12/2012

Comments:

We need to set a moratorium on ALL foreclosures, statewide, until this mess is settled, say two years. Hawaii(the people AND our elected officials)need to stand and do the right thing! People are confused, lost and HOMELESS, because of the irresponsible and inhumane actions of the past few years. Even those NOT in foreclosure are paying, after doing the right thing for years, losing value in their homes.

Many states in the US are already doing the right thing, with moratoriums.

Please, please follow suit, and bring the people of Hawaii some much needed help.

We are calling on our officials to do what is right.

LATE

Testimony for CPN 3/13/2012 10:15:00 AM SCR39

Conference room: 229
Testifier position: Support
Testifier will be present: No
Submitted by: Christopher Kasak
Organization: Individual
E-mail: peepail@gmail.com
Submitted on: 3/13/2012

Comments:

The foreclosure mill machine is out of control and needs to stop stealing homes and wrecking innocent families immediately. Impose a Foreclosure Mortgage Moratorium until the unholy mess of confusion, illegality, and outright fraud may be sorted out. We certainly should not be seeing the adjudication process devolve into the rubber stamping of claims merely put into the bureau of conveyances records in finding against rightful homeowners in favor of not even banks, but compounded securitization holding companies where mortgage titles have been commodified, insured and then bet against in a doubling down resecuritization, by hurriedly tossed together gold-bricking gold rush holding scammers. Show me the title!!! If they can't produce full (not 1/3 of 1/9 of a mortgage) legal documents of holding, they shouldn't be able to corrupt and abuse our legal and enforcement systems to carry out their shady underhanded practices.

Expect us in OccupyWallSt.-MAUI's Occupy Our Homes WG to be watching these developments closely, organizing around these issues, and making a big stink to hold the system to proper account until it is made pono.