July 18, 2019   2019 JUL 18 PM 2: 05

MEMO TO: GET-19 File

F R O M: Michael J. Molina, Chair
Governance, Ethics, and Transparency Committee

SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO BANK OF AMERICA'S COMMITMENT TO PROVIDE MORTGAGES FOR NATIVE HAWAIIANS ON HAWAIIAN HOME LANDS** (GET-19)

The attached legislative proposal pertains to Item 19 on the Committee's agenda.

get:ltr:019amc01:dr

Attachment

Resolution

No. _____

ENCOURAGING THE STATE ATTORNEY
GENERAL TO EMPLOY OUTSIDE COUNSEL TO
PURSUE LEGAL REMEDIES FOR FRAUDULENT
BANKING ACTIVITY

WHEREAS, banks bringing foreclosure actions even when they cannot prove their legal possession of the underlying notes and mortgages has been recognized as fraudulent in Hawaiʻi and elsewhere; and

WHEREAS, in the case of <u>Bank of America, N.A. v. Reyes-Toledo</u>, 139 Hawaii 361 (2017), the Supreme Court of Hawaiʻi recognized and discussed the problems associated with modern mortgage securitization practices, including fraudulent banking activity; and

WHEREAS, the problems with fraudulent banking activity have also been documented in books such as "The Big Short: Inside the Doomsday Machine" (2010) by Michael Lewis and "Chain of Title: How Three Ordinary Americans Uncovered Wall Street's Great Foreclosure Fraud" (2017) by David Dayen; and

WHEREAS, in a later stage of the same case, <u>Bank of America, N.A. v. Reyes-Toledo</u>, 143 Hawaii 249 (2018), the Supreme Court of Hawaiʻi held that "a mortgagor may bring a wrongful foreclosure claim before a foreclosure decree is entered"; and

WHEREAS, fraudulent banking activity has exacerbated the State's affordable-housing crisis, negatively impacted the State's economy, and resulted in a greater need for social services throughout the State; and

WHEREAS, the State, therefore, has legal interests and an ability to pursue legal action to impose sanctions or other legal remedies against entities engaged in fraudulent banking activity; and

WHEREAS, in addition, Bank of America has an "outstanding $150 million commitment to the Hawaiian people on their homelands," according to Governor David Ige's correspondence, dated April 18, 2018, to Catherine P. Bessant, Chief Operations and Technology Officer, Bank of America; and

Resolution No. _____

WHEREAS, on November 2, 2018, the Council adopted Resolution 18-178, entitled "SUPPORTING THE GOVERNOR'S EFFORTS TO INTERVENE BETWEEN NA POE KOKUA, THE HAWAII FAIR LENDING COALITION, AND THE BANK OF AMERICA TO REACH A SETTLEMENT AGREEMENT RELATING TO A $150 MILLION LOAN COMMITMENT FOR NATIVE HAWAIIANS ON HAWAIIAN HOME LANDS"; and

WHEREAS, on April 4, 2019, the Hawai`i State Senate adopted Senate Concurrent Resolution 19-245, Senate Draft 1, entitled "SUPPORTING THE GOVERNOR'S EFFORTS IN INVESTIGATING AND URGING THE BANK OF AMERICA TO RETURN TO HAWAII TO MEET WITH NA PO'E KŌKUA AND THE HAWAII FAIR LENDING COALITION REGARDING A $150,000,000 LOAN COMMITMENT FOR NATIVE HAWAIIANS ON HAWAIIAN HOMELANDS"; and

WHEREAS, Bank of America's failure to resolve its $150 million loan commitment to Native Hawaiians may constitute fraudulent banking activity; and

WHEREAS, the retention of outside counsel with successful experience in persuading courts to provide legal remedies for fraudulent banking activity would be beneficial to the State and its residents; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the Council encourages Clare E. Connors, Attorney General, State of Hawaii, to employ outside counsel to pursue legal remedies for fraudulent banking activity; and

2. That certified copies of this resolution be transmitted to the Honorable David Y. Ige, Governor, State of Hawaii; Clare E. Connors, Attorney General, State of Hawaii; the Honorable Scott D. Saiki, Speaker of the House, State of Hawaii; the Honorable Ronald D. Kouchi, Senate President, State of Hawaii; Maui County's delegation to the State Legislature; the Honorable Michael P. Victorino, Mayor, County of Maui; and Moana Lutey, Corporation Counsel, County of Maui.

chr:misc:reso19a01:dr