

JOSH GREEN, M.D.
GOVERNOR



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MATTHEW S. DVONCH
FIRST DEPUTY ATTORNEY GENERAL

November 16, 2023

The Honorable Ronald D. Kouchi
President and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Department of the Attorney General's Report on Administratively Established Funds and Accounts. In accordance with section 93-16, HRS, I am also informing you that the report may be viewed electronically at <http://ag.hawaii.gov/publications/reports/reports-to-the-legislature/>.

If you have any questions or concerns, please feel free to call me at (808) 586-1500.

Sincerely,

Anne E. Lopez
Attorney General

c: Josh Green, M.D., Governor
Sylvia Luke, Lieutenant Governor
Legislative Reference Bureau (Attn: Karen Mau)
Leslie H. Kondo, State Auditor
Luis Salaveria, Director of Finance, Department of Budget and Finance
Stacey A. Aldrich, State Librarian, Hawaii State Public Library System
David Lassner, Ph.D., President, University of Hawaii

Enclosure

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REPORT ON ADMINISTRATIVELY ESTABLISHED FUNDS AND ACCOUNTS

Pursuant to Section 37-52.5, Hawaii Revised Statutes

Fiscal Year 2022-2023

Submitted to the Thirty-Second State Legislature
Regular Session of 2024

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I. INTRODUCTION

Section 37-52.5, Hawaii Revised Statutes (HRS), requires that, except for the Judiciary, any department that administratively establishes a new fund or account must submit a report to the Legislature and, at least twenty days prior to the convening of each regular session, must submit a report that shall include (1) a list of all administratively established accounts or funds and (2) all revenues, expenditures, encumbrances, and ending balances of each account or fund. The Department of the Attorney General administers one administratively established fund and one final

disposition pending account: the National Mortgage Settlement Trust Fund and the Seized Funds – Final Disposition Pending Account, respectively.

II. NATIONAL MORTGAGE SETTLEMENT TRUST FUND

A. Overview of the National Mortgage Settlement Trust Fund

The National Mortgage Settlement Trust Fund, appropriation number T-916-N, was established pursuant to a consent judgment that was filed in the United States District Court for the District of Columbia on April 4, 2012. Hawaii, along with 48 other states and several departments and agencies of the federal government, reached a national mortgage settlement with the nation's five largest banks and mortgage servicers on April 4, 2012. Pursuant to the United States District Court's judgment approving the settlement, Hawaii received \$7,911,883 in direct settlement funds. The court's order approving the settlement requires that the Hawaii funds be expended as follows:

The monies are to be held in trust for the benefit of homeowners and others in the State of Hawaii who are, have been, or may be affected by mortgage loan proceedings. This includes, but is not limited to, those who have been subject to foreclosure, are in foreclosure, are at risk of foreclosure, have delinquent mortgage loan payments, have negative equity in their homes, have lost their homes due to foreclosure, have been unable to refinance their mortgage loans, or are leasing a dwelling affected by foreclosure. The monies shall be used for housing and financial counseling, public education, mediation, dispute resolution, and enforcement of laws and agreements protecting the rights of homeowners and lessees. The monies shall be used only for these purposes. The monies shall be deposited into an administrative trust account to be administered by the Attorney General of the State of Hawaii, who as custodian shall have sole discretion to make determinations as to the amounts and the purposes for which the monies are to be expended.

Then Attorney General, David M. Louie, convened a task force on March 22, 2012, to provide recommendations on how best to expend the funds that Hawaii received pursuant to the settlement. The task force was comprised of Senators Rosalyn Baker and David Ige; Representatives Robert Herkes and Marcus Oshiro; Department of Commerce and Consumer Affairs Director Kealii Lopez and Acting Deputy Director Jo Ann Uchida; Judiciary Staff Attorney Julia Verbrugge and Center for Alternative Dispute Resolution mediator Elizabeth Kent; and Attorney General David Louie.

B. Details of Revenues and Expenditures

In accordance with recommendations from the task force and the federal court consent order, the Attorney General established the Foreclosure Assistance Program and the National Mortgage Settlement Trust Fund to expend the settlement funds.

During Fiscal Year (FY) 2022-2023, the following significant transactions occurred in the trust fund:

REVENUES:

Revenues for FY 2022-2023 for the trust fund totaled \$1,182.08.

EXPENDITURES:

Expenditures for FY 2022-2023 for the trust fund totaled \$ 1,848.34. The expenditures were for registration and airfare for a Deputy Attorney General to attend the 2023 Summer Mortgage Conference of the National Consumer Law Center in Philadelphia, Pennsylvania.

Financial Data for Fiscal Years 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021, 2021-2022, and 2022-2023:

The following tables detail the revenues and expenditure for the National Mortgage Settlement Fund account from Fiscal Years 2012-2013 through 2022-2023.

| | FY 2012-2013 | FY 2013-2014 | FY 2014-2015 | FY 2015-2016 |
|------------------------|---------------------|---------------------|---------------------|---------------------|
| Beginning Cash Balance | \$0.00 | \$1,529,243.00 | \$1,324,990.75 | \$1,066,320.25 |
| Beginning Encumbrances | | \$0.00 | \$0.00 | \$0.00 |
| Revenues | \$7,911,883.00 | | \$3,840.73 | \$4,364.99 |
| Expenditures | \$6,382,640.00 | \$204,252.25 | \$262,511.23 | \$958,785.00 |
| Transfers | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Ending Cash Balance | \$1,529,243.00 | \$1,324,990.75 | \$1,066,320.25 | \$111,900.24 |

| | FY 2016-2017 | FY 2017-2018 | FY 2018-2019 | FY 2019-2020 |
|------------------------|---------------------|---------------------|--------------------------|---------------------|
| Beginning Cash Balance | \$111,900.24 | \$99,411.76 | \$65,363.89 ¹ | \$66,015.06 |
| Beginning Encumbrances | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Revenues | \$824.35 | \$599.48 | \$651.17 | \$0.00 |
| Expenditures | \$13,312.83 | \$34,647.00 | \$0.00 | \$1,530.00 |
| Transfers | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Ending Cash Balance | \$99,411.76 | \$65,364.24 | \$66,015.06 | \$64,485.06 |

| | FY 2020-2021 | FY 2021-2022 | FY 2022-2023 |
|------------------------|---------------------|---------------------|---------------------|
| Beginning Cash Balance | \$64,485.06 | \$64,227.80 | \$61,114.10 |
| Beginning Encumbrances | \$0.00 | \$0.00 | \$0.00 |
| Revenues | \$238.63 | \$705.26 | \$1,182.08 |
| Expenditures | \$495.89 | \$3,818.96 | \$1,848.34 |
| Transfers | \$0 | \$0 | \$0 |
| Ending Cash Balance | \$64,227.80 | \$61,114.10 | \$60,447.84 |

Revenue by Source Code:

| Source Code | Description | Revenue |
|-------------|------------------------------|-------------------|
| 0288 | INVESTMENT POOL ACCOUNT | \$1,182.08 |
| 787 | MISCELLANEOUS CLAIMS | 0.00 |
| 1492 | SALE OF SERVICES – UTILITIES | 0.00 |
| | Total Revenue | \$1,182.08 |

Expenditure by Object Code:

| Object Code | Description | Expenditure |
|-------------|--------------------------|-------------------|
| 6800 | JUDGMENTS and CLAIMS | \$0.00 |
| 7221 | OTHER CURRENT EXPENSES | \$1,848.34 |
| | Total Expenditure | \$1,848.34 |

¹ The Beginning Cash Balance of \$65,363.89 for FY 2018-2019 differs by \$0.35 from the Ending Cash Balance of FY 2017-2018. This de minimus amount appears to be a minor computational error in the accounting process.

III. SEIZED FUNDS – FINAL DISPOSITION PENDING ACCOUNT

A. Overview of the Seized Funds – Final Disposition Pending Account: FY 2022-2023

In 1988, the Legislature enacted chapter 712A, HRS, the Hawaii Omnibus Criminal Forfeiture Act. Chapter 712A, HRS, provides for the forfeiture of property used or acquired in connection with the commission of certain criminal offenses and for the distribution of the property, or its proceeds, to law enforcement agencies for law enforcement purposes. The Asset Forfeiture Program (program) was created in 1988 by a law enforcement coalition consisting of the Attorney General and the four county prosecutors and police chiefs. The program operates pursuant to chapter 712A, HRS, and provides a mechanism to enable law enforcement to take away the means by which criminals engage in their unlawful activity and the benefits derived from that unlawful activity. A detailed history and explanation of the program is provided in the Annual Report of Proceedings under the Hawaii Omnibus Criminal Forfeiture Act submitted annually by the Attorney General pursuant to section 712A-16(6), HRS.

The Seized Funds - Final Disposition Pending Account, account number T-906, was administratively established in 1988 as a "holding" account. Currency seized pending the outcome of forfeiture proceedings can be deposited into the T-906 account. The currency seized for administrative or judicial forfeiture may be ordered returned to a claimant, forfeited to the State, or divided between the claimant and the State pursuant to a judicial or administrative settlement agreement. This account generates no actual revenue because it operates as a trust account. Disbursements from the account include amounts returned to a claimant if the seized funds are not forfeited. If the seized funds are ordered forfeited, the funds are transferred to the Criminal Forfeiture Fund established in section 712A-16, HRS, which is discussed more fully in the Annual Report of Proceedings under the Hawaii Omnibus Criminal Forfeiture Act.

The amounts in the Seized Funds - Final Disposition Pending Account may not reflect the total seized currency for a fiscal year. This is primarily due to cases where petitions are filed, but the deposits into the T-906 account related to the filed petitions are not completed within the same fiscal year. New petition deposit transaction times can often span from three to six months, or longer if a petition is refiled. Other reasons for delays may include, but are not limited to, evidentiary requirements in a criminal case, currency handling procedures within the seizing agencies, and other additional processing times required by seizing agencies and the Attorney General's Fiscal Offices to finalize a currency transaction in and out of the T-906 account.

B. Transactions

During Fiscal Year (FY) 2022-2023, the following significant transactions occurred in the Seized Funds – Final Disposition Pending Account:

| | |
|---|----------------------|
| BEGINNING CASH BALANCE: | \$ 591,136.45 |
| TRANSFERS INTO ACCOUNT: | |
| Maui County Police Department | \$ 310,177.00 |
| Kauai Police Department | \$ 34,743.00 |
| Interest payments / Transfer | \$ 7,834.66 |
| Transfer from T-21-906 | <u>\$ 173.30</u> |
| Total Transfers In | \$ 352,927.96 |
| TRANSFERS OUT OF ACCOUNT: | |
| Transfers to the Criminal Forfeiture Fund | \$ 129,168.25 |
| Returned to Kauai Police Department (Dismissed With Prejudice, as Ordered) | \$ 16,554.00 |
| Returned to Maui Police Department (Withdrawal - funds ordered returned) | <u>\$ 4,130.00</u> |
| Total Transfers Out | \$ 149,852.25 |
| ENDING CASH BALANCE: | \$ 794,212.16 |