



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: District Attorney
Department No.: 021
For Agenda Of: July 10, 2007
Placement: Departmental
Estimated Time: 20 minutes
Continued Item:
If Yes, date from:
Vote Required: Vote

TO: Board of Supervisors

FROM: District Attorney Christie Stanley, 2308
Contact Info: Dave Saunders, 2359

SUBJECT: Hearing to Consider Adoption of \$2 Recording Fee to Finance Implementation of a Real Estate Fraud Prosecution Unit in the District Attorney's Office

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence: Other

As to form: County Clerk/Recorder/Assessor

Recommended Actions:

1. Authorize establishment of a new County program, effective August 1, 2007, to implement the provisions of California Government Code section 27388, and creation of the local Real Estate Fraud Designation;
2. Adopt the enclosed resolution implementing section 27388 of the California Government Code, (as Amended in Stats 2003, Chapter 46 section 1 (AB 241)) in Santa Barbara County, effective August 1, 2007. The adoption will result in an increase of \$2 in the fee paid at the time certain real estate instruments are recorded for the purposes of funding enhanced local efforts to deter, investigate, and prosecute real estate fraud;
3. Authorize establishment of the Real Estate Fraud Prosecution Committee to distribute funds in the Designated-Real Estate Fraud account. This committee shall be comprised

of the District Attorney, the County Executive Officer, and the Auditor-Controller, each of whom may appoint representatives of their offices to serve on the committee;

4. Adopt the attached Budget Revision that establishes the revenue for designation and appropriations in the amount of \$ 81,000 in the District Attorney's budget; and
5. Adopt a Personnel Resolution adding:
One (1.0) Criminal Investigator I-II, Range 5934-6234 (\$4,680-6,635/mo), effective 8/27/2007.

Summary Text:

The District Attorney requests authorization to implement the provisions of California Government Code section 27388, which establishes a \$2.00 recording fee to fund a program to deter, investigate and prosecute real estate fraud crimes. The County Clerk-Recorder-Assessor will collect this \$2.00 fee at the time of recording real estate instruments, paper, or notices required or permitted by law, estimated to generate \$90,000 in fiscal year 07-08. Up to 10% of this money can be used to fund the costs they incur, with the balance utilized by the District Attorney to finance a criminal investigator dedicated to the investigation of real estate fraud.

Background:

Senate Bill 537, signed into law by the Governor on October 15, 1995,¹ enacted section 27388 of the California Government Code authorizing counties to impose a \$2 recordation fee to be paid to the County at the time of recording certain legal real estate instruments (i.e. Deed of Trust, Assignment of Deed of Trust, Notice of Default, Reconveyance, and Request for Notice). The use of the funds, after deduction of administrative costs, is strictly limited to finance eligible programs which enhance the capacity of the local district attorneys (and law enforcement where there is already a program in place) to deter, investigate, and prosecute real estate fraud crimes.

Real estate related fraud schemes have grown to become a nationwide concern. Victims of real estate fraud and predatory lending schemes in Santa Barbara County are most often senior citizens and people with limited English speaking abilities. In some cases, these victims have lost thousands of dollars to unethical and often unlicensed "real estate professionals," "mortgage sales associates," and others. Real estate fraud strikes at the heart of the American dream, where a sophisticated criminal can victimize dozens of people at a time by stealing their life savings and their most valuable asset -- their homes.

The number of homeowners in Santa Barbara County who have fallen behind in their house payments has quadrupled over the past two years as the real estate market has cooled and many low, introductory mortgage interest rates have risen.²

¹ Chapter 942 of the Statutes of 1995, Amended by Chapter 765 of the Statutes of 2000 (SB 762), and Amended by Chapter 46 of the Statutes of (AB 241).

² Lompoc Record, May 22, 2007, "Making the Mortgage is Getting Tougher," Malia Spencer

A recent article in the Lompoc Record cited the following relevant statistics:

- In 2005, there were 400 notices of default in Santa Barbara County; 24 properties went back to the lender and 116 properties were sold by lenders, according to county data.
- Between 2005 and 2006, notices of default more than doubled, increasing by 110 percent, from 400 to 841 and lenders took 129 properties.
- In 2007, default notices are projected to more than double again, from @ 800 to as high as 1800.
- Santa Barbara County officials estimate that as many as 1700 homes may go into default this year and up to 450 properties will be taken by lenders.
- According to county officials, April 2007 made the top 10 list of highest-volume months since 1989 for notices of default and trustees' deeds - when a lender forecloses and takes ownership.³

In a report on the nationwide increase in real estate fraud investigations, the United States Department of the Treasury, Internal Revenue Service said:

In recent years, the booming real estate market has helped increase mortgage fraud and other phony real estate related schemes. The perpetrators of these schemes range from mortgage brokers looking to make a fast buck to drug dealers laundering their ill-gotten gains. Every year, these fraudulent schemes victimize individuals and businesses from many walks of life, including struggling low-income families lured into home loans they can't afford, legitimate lenders saddled with over-inflated mortgages, and honest real estate investors fleeced out of their investment dollars.⁴

Real estate related fraud schemes can only be prevented through community outreach and focused investigative programs designed to reach those most likely to be victimized. At this time, no centralized real estate fraud prevention, investigation and prosecution program exists in Santa Barbara County. Authorizing the creation of such a program, similar to those in existence in at least eight other California counties, will directly address a growing problem in our non-English speaking and elder communities.

Cases of "real estate fraud" generally break down into three areas: home equity fraud; securities fraud tied to real estate; and lender fraud. Historically, the District Attorney has handled very few real estate fraud cases, as economic crimes are very labor intensive, requiring specialized expertise and intense preparation prior to filing criminal charges. Insufficient funding has been available to effectively investigate and prosecute each case where fraud might be suspected.

The intent of the Legislature in enacting Government Code section 27388 is to have an impact on real estate fraud involving the largest number of victims. To the extent possible, an emphasis will be placed on fraud against individuals whose residences are in danger of, or are in, foreclosure as defined under subdivision (b) of section 1695.1 of the Civil Code. Case filing decisions continue to be in the discretion of the prosecutor. No money collected pursuant to this section shall be expended to offset a reduction in any other source of funds. Funds from the Real Estate Fraud Prosecution Designation shall be used only in connection with criminal investigations or prosecutions involving recorded real estate documents.

³ Ibid

⁴ Internal Revenue Service, FS-2003-18, December 2003

Performance Measure:

As required by statute, the Real Estate Fraud Prosecution Committee will annually review the effectiveness of the program. The District Attorney will submit an annual report to your Board for review of the effectiveness of the prosecution program. The report will include statistics on the cases filed and investigated, as well as an accounting of funds received and expended. Furthermore, the District Attorney’s Office will present an average of at least one training session or real estate fraud prevention seminar per month.

Fiscal and Facilities Impacts:

A Budget Revision Request is attached to establish the appropriations and revenues.

Fiscal Analysis:

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
General Fund	\$ -	\$ -	
State			
Federal			
Fees	\$ 81,000.00	\$ 100,000.00	
Other:			
Total	\$ 81,000.00	\$ 100,000.00	\$ -

The Santa Barbara County Clerk-Recorder-Assessor’s Office estimates there will be about 45,000 applicable real estate documents recorded, which would generate an estimated \$90,000 in FY 07-08. The statute allows the county to deduct administrative costs not to exceed 10 percent of the fees paid pursuant to this program. The balance of fees collected by the Recorder will be placed in a Real Estate Fraud Protection Designation, to be distributed by the County Auditor-Controller. The legislation provides that the District Attorney receive 100 percent of the funds deposited into the Real Estate Fraud Prosecution Designation in a county where the investigation of real estate fraud is done exclusively by the District Attorney.

Staffing Impacts:

<u>Legal Positions:</u>	<u>FTEs:</u>
Criminal InvestigatorI-II	1.0

The addition of a Criminal Investigator is required to investigate and refer real estate fraud cases for prosecution.

Special Instructions: Please return an executed resolution to DA: Chief Investigator Dave Saunders and Rose Rodarte, CRA Fiscal Manager.

Attachments:Board of Supervisors Resolution
 Budget Revision Request
 Personnel Resolution

Authored by: David M. Saunders