



**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:** September 17, 2013  
**Placement:** Set Hearing  
**Estimated Time:** 20 min on Oct 15, 2013  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

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**TO:** Board of Supervisors

**FROM:** Dept Head: Joyce E. Dudley, District Attorney, x 2308  
Contact Info: Kimbra McCarthy, Director of Administration, x 2304

**SUBJECT:** Increase Real Estate Fraud Program Recording Fee from \$3 to \$10

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: Yes

**Recommended Actions:** It is recommended that the Board of Supervisors:

Set a public hearing for October 15, 2013, to consider the following:

1. Adopt a Fee Resolution effective October 15, 2013, authorizing the Clerk-Recorder-Assessor to increase the Recording Fee from \$3 to \$10 as authorized by Government Code section 27388 for the Real Estate Fraud Prosecution Program in the District Attorney's Office;
2. Adopt a Personnel Resolution effective October 15, 2013, adding to Budget Unit 2865:
  - a) One (1.0 FTE) Deputy District Attorney I/II/III/IV/Senior position (2250/2251/2252/2253/2254; \$5,696-\$6,954/ \$6,293-\$7,683 / \$7,309-\$8,923 / \$8,458-\$12,083/ \$9,834-\$13,751 approximately per month
  - b) One (1.0 FTE) Legal Office Professional I/II/III position (97004/7005,7006; \$2,545-\$3,153/ \$3,327-\$4,121,/ \$4,348-\$5,386 approximately per month); and
3. Receive and file the FY 2009-10 and FY 2012-13 Real Estate Fraud Prosecution Program Annual Reports.

**Summary Text:**

In August 2007, the Board of Supervisors authorized the District Attorney to implement the provisions of California Government Code section 27388, which established a \$2 recording fee to fund a Real Estate Fraud Prosecution Program in order to deter, investigate and prosecute real estate fraud crimes. In September 2007, the County Clerk-Recorder-Assessor began collecting this fee when certain real estate instruments, paper, or notices were recorded. The Clerk-Recorder-Assessor retains 10% of the funds collected for administrative costs, with 100% of the balance utilized by the District Attorney to finance salaries and benefits dedicated to the investigation and prosecution of real estate fraud.

In 2009, Senate Bill 1396 amended section 27388 to authorize a fee increase from \$2 to \$3 and also added additional documents to the definition of “real estate instrument” for purposes of fee collection. The Board subsequently approved an increase of the fee from \$2 to \$3 in January 2010.

In 2012, the California State Legislature determined that the statutory fee allotment of \$3 was inadequate. Senate Bill 1342 was approved in July 2012 to amend section 27388 to authorize a fee of up to \$10 for the recording of real state instruments in order to provide a consistent source of funding for an effective law enforcement response to the real estate fraud epidemic in our state. The legislative findings in the bill state that, “The current recording fee collected to fund the Real Estate Fraud Prosecution Trust Fund is insufficient to adequately fund real estate fraud prosecutions and needs to be increased.”

The legislation expanded the list of “real estate instruments” that are subject to the fee (see attached list). Also, in order to promote housing and home ownership opportunities, section 27388 specifically exempts application of the fee for any recording made in connection with a sale of real property or those for which the County would otherwise impose a documentary transfer tax as set out in Section 11911 of the Revenue and Taxation Code.

Since section 27388 was further amended in 2012, nine counties have increased their recording fees: Ventura; Alameda; Santa Clara; Yolo; Fresno; San Luis Obispo; Sacramento; Monterey; and Riverside.

**Background:**

California continues to have a significant number of residences facing foreclosure, which renders our county vulnerable to real estate fraud perpetrators preying on desperate homeowners. Accordingly, foreclosure rescue and related schemes are the most prevalent type of real estate fraud. Criminals perpetrating this type of fraud frequently target the elderly and Spanish-speaking individuals. As the market evolves, so do the perpetrators, who constantly endeavor to manipulate unsuspecting victims.

The investigation and prosecution of these crimes is extremely labor and time-intensive. In fact, in the past three fiscal years alone, the unit has completed numerous investigations and filed cases amounting to a staggering amount of monetary loss. Three-year statistics include:

- 100 referrals
- 92 investigations
- 28 filed cases
- 163 victims in filed cases
- 6 convictions
- \$25.4 million aggregate monetary loss suffered by victims

The unit is currently in the sixth year of operation. Efforts are comprehensive and include community education, outreach, and prevention, as well as the original investigation and prosecution of real estate fraud. Efforts to educate both real estate industry professionals and the general public on the risks inherent in real estate fraud continue to be a primary focus of the unit. For example, staff has sent thousands of letters to homeowners facing default and potential foreclosure providing information on how to avoid falling victim to scams and predators. The unit actively partners with numerous real estate professionals and law enforcement agencies including: Federal Bureau of Investigation; California Department of Real Estate; California Attorney General's Office; State Bar of California; Department of Justice; and the Department of Corporations.

The Real Estate Fraud Investigator is also featured at a variety of media events, seminars, and community presentations throughout the year, including most recently speaking for the second year in a row at a tri-county event hosted by Fidelity National Title Company.

The District Attorney Real Estate Fraud Unit has achieved these accomplishments with current staff of only 1.0 FTE investigator and .10 FTE attorney. By increasing the fee from \$3 to \$10, the Real Estate Fraud Unit can appropriately expand staffing to perform a greater number of investigations and prosecutions and conduct additional community outreach.

Highlights of the District Attorney's continuing implementation efforts and accomplishments are included in the attached FY 2012-13 Annual Report. In addition, the department recently became aware that the FY 2009-10 Annual Report was inadvertently not filed due to administrative staffing changes that occurred when the report was due. That report is also attached.

#### **Fiscal and Facilities Impacts:**

Document fees collected by the District Attorney in FY 2012-13 totaled \$170,896, which partially financed salary and benefit expenses for an experienced 1.0 FTE Investigator assigned to this effort, in addition to a .10 FTE Deputy District Attorney and Victim Witness Advocate as needed. The Real Estate Fraud restricted fund balance has a current balance of \$28,122.

While the number of "real estate instruments" to which the fee applies was increased in the amended code, the actual fiscal impact of this change is challenging to quantify. However, the Clerk-Recorder-Assessor has conservatively estimated a total number of 68,400 recorded documents that would be subject to the \$10 fee. This equates to approximately \$684,000 in annual revenue supporting the efforts of the Real Estate Fraud Prosecution Program. Estimated staffing costs for the expanded unit are approximately \$669,000.

Any revenue received in excess of costs will be designated as restricted fund balance for use in future years for the purpose of deterring, investigating, and prosecuting real estate fraud. In addition, the recording fee will be evaluated annually to determine its appropriateness as compared to program costs.

Projected staffing for the expanded unit includes the current 1.0 FTE Investigator, reassignment of an additional 1.0 FTE Investigator, a new 1.0 FTE Deputy District Attorney, and a new 1.0 FTE Legal Office Professional. The department will not fill the Legal Office Professional position if revenues do not support it.

**Staffing Impacts:**

<b>Legal Positions</b>	<b>FTEs</b>
Investigator	2.0 (existing positions)
Deputy District Attorney	1.0 (new position)
Legal Office Professional	1.0 (new position)

**Special Instructions:**

1. Request the Clerk of the Board to publish notice of this hearing, per the attached Notice of Public Hearing, in a publication of general circulation, 10 days prior to the hearing and again 5 days prior to the hearing, in accordance with Government Code 6062(a).
2. Return the signed and executed Fee Resolution, Personnel Resolution, and Minute Order to the District Attorney's Office, Attn: Kimbra McCarthy

**Attachments:**

1. Notice of Public Hearing
2. Proposed Fee Resolution
3. Proposed Personnel Resolution
4. List of Applicable Real Estate Instruments
5. FY 2009-10 Annual Report
6. FY 2012-13 Annual Report

**Authored by:** Kimbra McCarthy, DA Director of Administration

**cc:** Melinda Greene, Assistant County Clerk-Recorder-Assessor