



Agenda _____ November 20, 2012

November 6, 2012

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, CA 94612

Dear Board Members:

SUBJECT: Resolution Increasing Existing Fee on Real Estate Instrument Recording From \$3 to \$10 and Modifying Definition of Eligible Instruments for Real Estate Fraud Investigation and Prosecution

RECOMMENDATION:

It is requested that your Board implement recent amendments to Section 27388 of the California Government Code and adopt a resolution increasing the current recording fee for real estate fraud investigation and prosecution from \$3.00 to \$10.00 and amending the scope of eligible "real estate instruments" consistent with amendments to Section 27388. These fees will be collected at the time of recording of every eligible real estate instrument as defined in Section 27388.

SUMMARY:

SB 1342 amends Government Code § 27388 (effective January 1, 2013) to allow the Board of Supervisors to impose a fee of up to \$10 for the recording of designated real estate instruments to fund the Real Estate Fraud Prosecution Trust Fund. (Stats. 2012, ch. 104.) This is an increase from the current fee of \$3. The legislative findings in section 1 of the bill state, "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 Bill further modifies and defines eligible "real estate instruments" for purposes of the assessment. The current list of eligible instruments include: Deeds of Trust; Assignment of Trust; Reconveyance; Request for Notice; Notice of Default; Substitution of Trustee; Notice of Trustee Sale; and Notice of Rescission of Declaration of Default.

The added instruments for which the fee can be assessed include: Amended Deed of Trust; Abstract of Judgment; Affidavit; Assignment of Rents; Assignment of Lease;

Construction Trust Deed; Covenants, Conditions and Restrictions (CC&Rs); Declaration of Homestead; Easement; Lease; Lien, Lot Line Adjustment; Mechanic's Lien; Modification of Dead of Trust; Notice of Completion; Quitclaim Deed; Subordination Agreement; Trustee's Deed upon Sale; and any Uniform Commercial Code amendment, assignment, continuation, statement or termination.

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.

HISTORY:

This Board previously implemented the recording fees authorized by Section 27388(a) and established the Real Estate Fraud Prosecution Trust Fund in December of 1995. The recording fee approved at that time was two dollars (\$2) per instrument, the maximum allowed by the statute.

In January of 2009, the Board approved a resolution to increase the recording fee to fund the Real Estate Fraud Prosecution Trust Fund to three dollars (\$3) per instrument as authorized by the passage of Senate Bill 1396.

DISCUSSION:

Our State Legislature has determined that the Real Estate Fraud Prosecution Trust Fund is insufficient to adequately fund real estate fraud prosecutions and needs to be increased. This is true in Alameda County. With the current economic downturn, many homeowners have been targeted by certain predatory businesses offering assistance with refinancing or help avoiding foreclosure. These businesses have focused on the most vulnerable, including the elderly and non-English speakers. The intent of the Legislature in enacting this section is to have an impact on real estate fraud involving the largest number of victims. To the extent possible, the emphasis is placed on fraud against individuals whose residences are in danger of, or are in, foreclosure.

The District Attorney currently maintains a Real Estate Fraud Unit consisting of one Senior Deputy District Attorney, one Deputy District Attorney and two Inspectors. This is a comprehensive unit, which addresses everything from community education and prevention to the original investigation and prosecution of real estate fraud. The unit is responsible for the District Attorney's Homeowner Education and Loan Protection Program (H.E.L.P.). This highly-regarded public education program is designed to educate consumers about real estate fraud and prevent homeowners and potential homeowners from predatory practices. It has become a model for surrounding counties. Those efforts are in addition to the District Attorney's more traditional function of investigating and prosecuting crime. In the last two fiscal years, the District Attorney's Real Estate Fraud Unit has conducted 182 investigations into allegations of

real estate fraud. These are original investigations undertaken by the District Attorney, not referrals from local law enforcement. Those investigations culminated in sixty (60) charged criminal cases involving 338 victims. Although some of those cases are ongoing, the District Attorney has already obtained 32 criminal convictions and recovered more than \$1 million in restitution for these victims.

The current fee of \$3 per recorded instrument is insufficient to meet the ongoing expense of the District Attorney's Real Estate Fraud Unit. If the fee increase is approved, the District Attorney anticipates adding an additional Deputy District Attorney to the unit and allocating funds for a part-time Forensic Auditor to work on the more complex fraud cases. The fee increase from three dollars (\$3.00) to ten dollars (\$10.00) is reasonable and necessary for the funding of the investigation and prosecution of real estate fraud performed by the District Attorney's Office.

Pursuant to Government Code Section 27388(d), the District Attorney submits annual reports to the Board of Supervisors describing the District Attorney's efforts at investigating and prosecuting real estate fraud which include an accounting of funds received and expended from the Real Estate Trust Fund during the previous year. In this way, the Board retains oversight over the amount of fees collected and can ensure that the collected fees do not surpass the costs of services they are designed to support.

The authorization for the fee increase does not have a sunset clause. The District Attorney's Office shall administer the funds and submit the necessary reports as required by law.

The current fee to record the first page of an eligible real estate instrument in Alameda County is eighteen dollars (\$18), which includes the three-dollar (\$3) real estate fraud fee. Increase of the real estate fraud fee to ten dollars (\$10) would raise the total first-page recording fee on specified real estate instruments to twenty-five dollars (\$25).

FINANCING:

There is no net county cost as a result of this action. No appropriation or revenue adjustment is necessary at this time. It is anticipated that funds will be appropriated at such time as claims are made by the District Attorney and the Recorder for program services.

Sincerely,



NANCY E. O'MALLEY
District Attorney



PATRICK J. O'CONNELL
Auditor-Controller/Clerk-Recorder

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA,
STATE OF CALIFORNIA

RESOLUTION NUMBER R- _____

WHEREAS, California Government Code Section 27388 authorizes the County Board of Supervisors to impose a fee at the time of recording on every real estate instrument, paper, or notice required or permitted by law to be recorded within the County for purposes of funding the investigation and prosecution of real estate fraud performed by the District Attorney's Office; and

WHEREAS, California Government Code Section 27388 was recently amended (effective January 1, 2013) to increase the maximum required fee from Three Dollars (\$3.00) to Ten Dollars (\$10.00) and to expand the definition of "real estate instruments" subject to the fee; and

WHEREAS, the increase from Three Dollars (\$3.00) to Ten Dollars (\$10.00) is reasonable and necessary for the funding of the investigation and prosecution of real estate fraud performed by the District Attorney's Office; and

WHEREAS, the amount of the fee increase will be no more than necessary to cover the reasonable costs of the investigation and prosecution of real estate fraud performed by the District Attorney's Office; and

WHEREAS, the manner in which those costs and the fee increase are allocated to a payor bear a fair and reasonable relationship to the payor's burdens on, and benefits received from, the District Attorney's Office's activities;

NOW, THEREFORE BE IT RESOLVED that an increase in the following fee is warranted and that the following fee may be charged and collected by the County for the:

Recording Fee on Real Estate Instruments To Fund Real Estate Fraud Investigation and Prosecution: Ten Dollars (\$10.00)

BE IT FURTHER RESOLVED, that the County hereby adopts the revised definition of "real estate instruments" as stated in California Government Code Section 27388 for purposes of this fee.

BE IT FURTHER RESOLVED, that the imposition and collection of this fee shall be effective as of January 1, 2013.

AYES:

NOES:

EXCUSED:

NATE MILEY
PRESIDENT, BOARD OF SUPERVISORS

ATTEST:
Clerk of the
Board of Supervisors

Approved as to Form
Donna R. Ziegler, County Counsel

By _____

By  _____
Farand C. Kan, Deputy County Counsel