

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: District Attorney

BOARD AGENDA # *B-11

Urgent

Routine

AGENDA DATE January 6, 2009

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Authorize an Increase of the Real Estate Fraud Fee from Two Dollars (\$2.00) to Three Dollars (\$3.00) for virtually all Real Estate Transactions Filed in Stanislaus County

STAFF RECOMMENDATIONS:

1. Approve a Resolution to increase the fee collected under Government Code Section 27388, concerning real estate fraud, from the current fee of two dollars (\$2.00) to three dollars (\$3.00).

FISCAL IMPACT:

In Fiscal Year 2005-2006, the monthly revenue received in the Real Estate Fraud Prosecution Trust Fund from the real estate transactions averaged \$20,407. Since the beginning of the economic crisis, there has been a steady decline in revenue for the fund. The average monthly revenue for Fiscal Year 2006-07 was \$15,338, Fiscal Year 2007-08 was \$9,216 and year to date for Fiscal Year 2008-09 is \$6,523. Estimated revenue on the proposed new Real Estate Fraud Fee would be approximately \$148,000, rather than \$96,000 if the fee stayed at \$2.00. Up to 10% of this money can be used to fund costs incurred by the County to administer the provisions of Government Code Section 27388. (continued)

BOARD ACTION AS FOLLOWS:

No. 2009-40

On motion of Supervisor Grover, Seconded by Supervisor O'Brien
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST:

Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No.

FISCAL IMPACT (CONTINUED):

The Clerk-Recorder will continue to collect this fee on behalf of the District Attorney. The Clerk-Recorder will retain 5%, or approximately \$7,440, of the total collected to fully offset the administrative costs incurred by their office. The District Attorney will retain 5% of the monies for its administrative costs. The remainder of the fee, which is estimated to be at least \$133,920, will be deposited into the Real Estate Fraud Prosecution Trust Fund to enhance the capacity of the District Attorney to deter, investigate and prosecute real estate fraud crimes. There is no increased net County cost associated with this item.

DISCUSSION:

In 1995, Governor Pete Wilson signed Senate Bill 537 into law, which added section 27388 to the Government Code. This law allowed counties to establish a Real Estate Fraud Prosecution Trust Fund. In 2005 this board approved a resolution adopting Government Code Section 27388 and creating the Real Estate Fraud Trust Fund. Recognizing the increasing cost of prosecuting real estate fraud, Governor Arnold Schwarzenegger signed SB 1396 into law in 2008. This bill modified section 27388 of the California Government Code to increase the previous two dollar (\$2.00) fee to three dollars (\$3.00.) It also increased the number of real estate instruments to which the fee applies.

The fee would apply to virtually all real estate documents recorded in the County. Documents excluded from this are listed in Government Code Section 27388 and include documents where the recording fee is waived, such as recordings by another government agency, and deeds that have been recorded and a transfer tax has been paid on the transfer. It is estimated that the typical cost associated with this increased fee would be passed on by the mortgage companies to the buyer. For a typical home sale in Stanislaus County, the fee would be \$6.00 to \$9.00 per home.

The trust fund is funded by the collection of the fee on each real estate instrument filed at the County Recorder's Office. The funds collected shall be expended only in connection with civil and criminal investigations or prosecutions involving recorded real estate documents. None of the monies collected shall be expended to offset a reduction in other sources of funds. The intent of the legislature in enacting section 27388 of the Government Code was to have an impact on real estate fraud involving the largest number of victims. Emphasis is placed on fraud against individuals whose residences are in danger of, or are in, foreclosure.

Real estate fraud is a multi-million dollar "industry" in California especially in areas where property is bought and sold at a premium. Successful investigation and prosecution requires personnel that have been specially trained to deal with the complex nature of this type of fraud. In June 2005, pursuant to Senate Bill

537 (California Government Code section 27388), the Board of Supervisors approved a \$2.00 surcharge for the recording of specific documents related to real estate in order to fund the County's Real Estate Fraud Prosecution Trust Fund. This is the funding source for the District Attorney's Real Estate Fraud Unit, which began on January 2nd, 2006. The unit investigates and prosecutes real estate fraud cases in order to deter and punish those who commit real estate related fraud and to help obtain restitution for victims.

In 2006, the unit received 42 complaints. In 2007, the number jumped to 111 cases of reported fraud. Of those 111 cases, 24 had insufficient evidence to prosecute, 11 were found to be civil rather than criminal cases and one was referred to the Federal Bureau of Investigation for prosecution by federal agencies. Eleven criminal cases have been filed and are currently in the criminal court process. Of those eleven cases, four are multi-defendant actions. The remaining cases are under investigation. In 2008 the number of real estate fraud cases has not diminished. The Unit is investigating and prosecuting several multi-defendant multi-million dollar loss cases. The remaining cases are under investigation.

Many real estate fraud cases are extremely complex and require a great deal of time and expertise to adequately prosecute. They involve multiple jurisdictions and include defendants from outside the county who victimize Stanislaus County residents. The District Attorney is working with the United States Attorney and the Federal Bureau of Investigation to have the investigators and the prosecutor for the unit cross-designated for federal prosecution. This cross-designation will allow the unit to utilize federal resources to efficiently investigate and prosecute the largest and most complex real estate fraud cases and to obtain the most severe sentences for those perpetrating these crimes.

Although the number of reported cases has almost tripled, the Real Estate Fraud Unit still consists of only 3 positions: 1 attorney, 1 full time investigator and 1 extra-help investigator. The unit is the primary investigative unit for real estate related fraud cases in Stanislaus County. Further, this unit has participated in the development of a Northern California Real Estate Fraud Task Force that includes multiple jurisdictions and federal agencies.

This unit works closely with those who assist and investigate crimes against the elderly, such as Adult Protective Services, the Stanislaus Elder Abuse Prevention Alliance (SEAPA) and Catholic Charities. The unit has focused on education in the community, placing great emphasis on educating elders, real estate agents and brokers, as well as title industry and mortgage professionals. In addition, this unit provides training, advice and assistance to local law enforcement agencies. It is the goal of the unit to reduce and deter real estate fraud through education and outreach and thereby help prevent our citizens from being victimized.

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POLICY ISSUES:

The Board of Supervisors has the authority to increase the real estate transaction fee collected under Government Code Section 27388 from its current amount of two dollars (\$2.00) to the statutorily authorized amount of three dollars (\$3.00). This recommendation will enhance the Board's goals of a safe community and a strong local economy.

STAFFING IMPACT:

Existing allocated staff within the District Attorney Real Estate Fraud Unit will provide the necessary resources.

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
STATE OF CALIFORNIA

Date:

No. 2009-40

On motion of Supervisor Grover Seconded by Supervisor O'Brien

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

THE FOLLOWING RESOLUTION WAS ADOPTED:

Item # B-11

RESOLUTION
STANISLAUS COUNTY BOARD OF SUPERVISORS
REAL ESTATE FRAUD RATE INCREASE

WHEREAS, the District Attorney of the County of Stanislaus investigates and prosecutes various real estate fraud matters for the community in Stanislaus County; and,

WHEREAS, it is the policy of the County of Stanislaus to require that the recipients of services provided by the County pay at least a portion of the cost of providing these services; and,

WHEREAS, the District Attorney of the County of Stanislaus has recommended to this Board that it adopt a three dollar (\$3.00) fee as allowed in Government Code §27388 to fund real estate fraud deterrence, investigation and prosecution; and,

WHEREAS, this three dollar (\$3.00) real estate fraud fee will be collected by the Clerk Recorder on behalf of the District Attorney at the time real estate documents are recorded in the County.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Stanislaus that the Clerk-Recorder's Office of the County of Stanislaus hereby is authorized and directed to charge and collect a three dollar (\$3.00) real estate fraud fee as allowed in Government Code §27388 to fund real estate fraud deterrence, investigation, and prosecution provided by the District Attorney.

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk
Stanislaus County Board of Supervisors,
State of California

Christine Ferraro

File No.