

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

DEPT: DISTRICT ATTORNEY

BOARD AGENDA # B-9

Urgent

Routine

AGENDA DATE August 30, 2011

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval of the Real Estate Fraud Prosecution Trust Fund Annual Report Covering Fiscal Year 2010-11.

STAFF RECOMMENDATIONS:

1. Accept the report of the District Attorney's Office regarding Real Estate Fraud Prosecution Trust Fund pursuant to California Government Code section 27388, sub-sections (d)(1) and (d)(2).
2. Approve the continuation of this program and current funding levels in the 2011-2012 Fiscal Year.

FISCAL IMPACT:

The 2011-2012 Proposed Budget includes funding for the Real Estate Fraud Prosecution program in the amount of \$383,115 in appropriations and estimated revenue. Revenue of \$230,000 is estimated from a fee charged for certain real estate documents filed within the County and \$153,115 is to be contributed from the County General Fund. The County contribution is a 15% decrease from last fiscal year. Revenue from fees charged are projected to increase due to the upturn in real estate activity and will help maintain this program's activities. These funds must be used solely for the prosecution and investigation of real estate fraud.

BOARD ACTION AS FOLLOWS:

No. 2011-508

On motion of Supervisor DeMartini, Seconded by Supervisor Withrow

and approved by the following vote,

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

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

Stanislaus County continues to be at the heart of the real estate crisis. Real estate fraud has evolved from what began as many homes obtained using fraudulent income statements, inflated appraisals, straw buyers and other methods of obtaining loans that the homeowner ultimately could not afford. Our current problem is an ever increasing number of illegal attempts at loan modifications and cancellations.

Following the collapse of the market, "foreclosure specialists" appeared who promised to save homeowners by stopping the foreclosure process and renegotiating the mortgage for the consumer. Many of these "foreclosure specialists" were scam artists who took up-front money from unsuspecting homeowners and then performed no work for them. Once the homeowners realized it was a scam, their house payments were that much further behind and they were in a much worse position than they were before. Legislation was passed that made it illegal to take "up front" fees for these services. Last year, the Real Estate Fraud Unit launched an undercover operation and later confirmed that the operation had a positive impact on stopping all known "foreclosure specialists" in Stanislaus County. However, the fraud has evolved in a number of ways.

The two most common types of currently reported real estate fraud are: (1) Loan Elimination by false filings of recorded documents that purport to cancel legitimate loans and stop foreclosures. These come from individual home owners seeking (generally off the internet) and filing their own fraudulent documents and also from organized schemes that vary from attempting to dupe homeowners into what the homeowner believes is legitimate relief but isn't, to clearly criminal attempts to stop the foreclosure process by filing false documents; and (2) Loan Modifications which illegally take homeowners' money up-front and do nothing.

The Real Estate Fraud Unit continues to work routinely with the California Department of Real Estate, other District Attorney's Offices, the Attorney General's Office, the local U.S. Attorney, local Recorder's Offices, and others to investigate these practices and determine on a case by case basis which cases involve fraudulent activity.

Most real estate fraud cases are extremely complex and require a great deal of investigative effort, prosecutorial preparation, and expertise to adequately prosecute. Many of these cases involve multiple jurisdictions, multiple victims and multiple defendants. They require the review of thousands of pages of bank statements and real estate documents. Many cases include victims from outside the area who were victimized by defendants in Stanislaus County or defendants from outside the county who victimized Stanislaus County residents.

The Real Estate Fraud Unit is currently staffed with one prosecutor, two investigators, and a part time volunteer real estate agent. One investigator works part time with the Federal Mortgage Task Force and submits cases to the U.S. Attorney as well as the District Attorney's Office. The unit is the primary investigative unit for real estate related

fraud cases in Stanislaus County. The members of the unit work closely with other state and federal investigative and prosecution authorities. The unit's staff are members of the Northern California Mortgage Fraud Task Force and the FBI's San Joaquin Valley Mortgage Fraud Task Force. These task forces include both state and federal agencies. It is the goal of the Real Estate Fraud Unit to educate the public in order to help prevent real estate fraud and to vigorously prosecute those who commit these crimes.

General Statistics

The real estate fraud unit entered the 2010 / 2011 fiscal year with forty-eight (48) ongoing investigations. During this fiscal year, the unit received an additional twenty (20) complaints some of which are now active investigations. Investigations differ from complaints in that investigations are defined as any case in which this office conducts an initial criminal investigation, or follows up on another agency's criminal investigation and is believed will lead to criminal charges being filed. Several new felony cases have been filed based on these new complaints and several extremely large cases of fraud have been uncovered and are still under joint local/federal investigation.

Sample Stanislaus County statistics for the unit for the fiscal year:

12 filed cases continued from last year into this fiscal year involving 64 victims.
5 new cases were filed in Stanislaus County Superior Court for 39 victims.
4 convictions were obtained in Stanislaus County for 5 victims.

Monetary Loss (both federal and local cases):

Aggregate monetary loss suffered by victims for cases entering the fiscal year:
\$114,063,372.

Aggregate monetary loss suffered by victims for cases initiated during the fiscal year:
\$44,300,293.

A complete list of unit statistics can be found in the two page annual Stanislaus County Real Estate Fraud report to the state made pursuant to Government Code section 27388. A copy of that report is attached at the end of this report.

2010/2011 Case Highlights

Sample of Resolved Cases

In one recent case, 1428830, the Real Estate Fraud Unit was referred and prosecuted two defendants living in Ceres, who, after obtaining an Arizona resident's social security number, obtained a series of real estate and auto loans. Each was convicted of a violation of Penal Code section 114, use of false documents to conceal citizenship, one

of them for Penal Code section 530.5, Identity Theft and the other for Penal Code section 12280, Possession of Illegal Assault Weapons. The male defendant received a five year state prison sentence and the female defendant received eight months in jail and a five year suspended sentence. Both are facing deportation following their custody time.

In another case, 1241254, a defendant pled guilty to one charge of forgery of spousal signature on a recorded document. As a result, a piece of real property in the City of Modesto that had been stolen by use of forged deed was ordered returned to the rightful owner three years after title was stolen. There had been four civil suits over this theft, two unsuccessful unlawful detainer actions and two suits for damages. This case will now proceed to a restitution hearing to attempt to recover lost rent, lost attorney's fees, and other costs associated with the taking.

Sample of Federal Cases

One defendant is now in federal custody and was indicted in mid July 2011, on real estate fraud charges related to a 2006 investigation that originated in Modesto. The defendant was involved in a "flopping" scheme where he lured investors from the Utah area to purchase numerous homes in Modesto at inflated prices with false incomes stated on the loan applications which allowed the borrower and the defendant to obtain cash back out of the loan. Most, or all, homes went to foreclosure. A second defendant is pending indictment for mail and bank fraud for this scheme.

Another defendant was referred to the U.S. Attorney this past fiscal year for a nationwide mortgage fraud elimination scheme that was discovered by the Stanislaus Recorder's Office that also involved bankruptcy fraud. The defendant and her cohorts targeted homeowners in default and told them they could avoid foreclosure by executing grant deed transfers to the defendant. The defendant claimed that she would, in turn, buy their mortgages at 22% to 40% of their value. The defendant further claimed that she would pool the victims' mortgage with thousands of other homeowners' mortgages and sell them back to the individual homeowner at 75% to 92 % of the current market value of the home. None of the claims by the defendant were true and the homeowners not only continued in foreclosure, but they also lost the fees paid to the defendant for her "services."

Sample of Investigations

The unit is in the process of investigating another nationwide mortgage elimination scheme that was uncovered by employees of the Stanislaus County Recorder's Office in October of 2010. There are hundreds of victims throughout California and thousands more across the country. The Real Estate Fraud Unit is working with several other law enforcement agencies across the state to prosecute the individuals responsible.

The unit is also investigating a local mortgage elimination scheme that covers Stanislaus and two neighboring counties. Over one hundred victims have been identified so far.

POLICY ISSUE:

Acceptance of this annual report pursuant to Government Code section 27388, subdivisions (d)(1) and (d)(2) will demonstrate that Stanislaus County is acting in compliance with the statutory provisions authorizing the formation and use of the Real Estate Trust Fund. The efforts of the personnel in this unit support the Board's priorities of promoting A Safe Community and Efficient Delivery of Public Services.

STAFFING IMPACT:

The Real Estate Fraud Program Unit currently has a full-time Attorney V and Criminal Investigator II position authorized. These positions would continue to be authorized for the duration of this program.

CONTACT PERSON:

Brad Nix, Deputy District Attorney, (209) 525-5550

**FISCAL YEAR 2010-2011 REAL ESTATE FRAUD REPORT
STANISLAUS COUNTY DISTRICT ATTORNEY'S OFFICE
(Government Code § 27388)**

I. Case Statistics

1. Name of reporting county: Stanislaus
2. Reporting Period (Fiscal Year): 2010-2011
3. Number of referrals entering in the fiscal year: 2
4. Number of referrals initiated during the fiscal year: 5

This should equal referrals entered and initiated in the fiscal year.

5. Total number of referrals: 7
6. Number of investigations entering in the fiscal year: 48
7. Number of investigations initiated in the fiscal year: 20

This should equal investigations entered and initiated in the fiscal year.

8. Total number of investigations: 68
9. Number of filed cases entering in the fiscal year: 12
10. Number of filed cases initiated in the fiscal year: 5

This should equal filed cases entered and initiated in the fiscal year.

11. Total number of filed cases: 17
12. Number of victims in filed cases entering in the fiscal year: 64
13. Number of victims in filed cases initiated in the fiscal year: 39

This should equal victims in filed cases entered and initiated in the fiscal year.

14. Total number of victims in filed cases: 103
15. Number of convictions obtained in the fiscal year: 4
16. Aggregate monetary loss suffered by victims for cases entering in the fiscal year: \$114,063,372
17. Aggregate monetary loss suffered by victims for cases initiated during the fiscal year: \$44,300,293
18. Aggregated monetary loss suffered by victims in cases in which there has been an investigation, filing, or conviction: \$158,363,615

II. Accounting Information

Program revenue for the fiscal year

19. Beginning fund balance in Real Estate Fraud Prosecution Trust Fund: \$14,233.26
20. Real estate document fees collected: \$189,810.00
This should equal the fund balance and document fees collected in the fiscal year.
21. Total program revenue: \$204,043.26

Program expenditures for fiscal year

22. Salaries and benefits: \$365,805.17
23. Operation and support costs: \$3,375.99
24. Administrative fees: \$0.00
This should equal the salaries, operation and administrative costs in the fiscal year.
25. Total program expenditures: \$369,181.16

26. Non Real Estate Fraud Prosecution Trust Fund monies used to fund activities in the fiscal year: \$193,388.64

27. Ending balance in Real Estate Prosecution Trust Fund: \$27,479.38
*see attached

28. Was Real Estate Prosecution Trust Fund money used distributed to a law enforcement agency other than the district attorney's office in the fiscal year? No

29. Additional information you would like to provide: The variance in year end fund balance is due to an accrued liability of \$771.36 in the salaries and benefits payable at year end.

III. Contact Person

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