

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

DEPT: DISTRICT ATTORNEY

BOARD AGENDA # B-11

Urgent

Routine

AGENDA DATE August 28, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of the Real Estate Fraud Prosecution Trust Fund Annual Report Covering Fiscal Year 2011-12.

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 2012-2013 Fiscal Year.

FISCAL IMPACT:

The 2012-2013 Proposed Budget includes funding for the Real Estate Fraud Prosecution program in the amount of \$328,115 in appropriations and estimated revenue. Revenue of \$175,000 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 the same from last fiscal year. Revenue from fees charged 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. 2012-444

On motion of Supervisor De Martini, Seconded by Supervisor Monteith, and approved by the following vote,

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

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 TALLMAN, Clerk

File No.

DISCUSSION:

Real estate fraud continues to be a problem across California and Stanislaus County is no exception. As was the case last year, our current problem consists mostly of illegal attempts at loan modifications, loan eliminations and short sale fraud.

This past year, the Real Estate Fraud Unit saw an ever increasing use of bankruptcy fraud to try and stop foreclosures. In the past, defendants typically filed their own bankruptcies to stop foreclosure, knowing that while the bankruptcy proceedings took place all foreclosure proceedings were barred from going forward. In many cases suspects would make an initial filing, never proceed with the rest of the required paperwork, get their bankruptcy tossed out, and simply refile the bankruptcy again and again to keep stopping the foreclosure. Sadly, this tactic was pretty effective for a long while.

When that method ceased to work, a scheme evolved in which one or more false grant deeds of, for example, a 1% interest in the property to be foreclosed were recorded with the "buyer" being someone who had an active bankruptcy case elsewhere. (In one case, three such deeds were filed, two belonging to persons in California and a third to a person out of state.) Notice of the "1% buyer's" bankruptcy was then sent to the foreclosure service, which as in the situation described above, was barred by the bankruptcy action from proceeding until the bankruptcy was resolved or the trustee hired an attorney to file an "In Rem" action freeing the property from the Bankruptcy Court's jurisdiction. This scheme, of course, increases the costs for the lenders substantially. So far in the Unit's experience, the "buyers" know nothing about the alleged 1% sale of the property to them and did not authorize the recording of the grant deed or the use of their bankruptcy. Each recording of a false deed is a violation of Penal Code section 115, to wit a false recording or offer to record of a fraudulent document.

A variation of the above schemes has been to file a false document changing the named trustee thereby purportedly denying the true trustee the ability to foreclose. This too is a violation of Penal Code section 115.

As the civil attorneys and Bankruptcy court became aware of the evolved tactics to deal with this type of fraud, more recently, the scam artists have begun using false Uniform Commercial Code (UCC) filings, which are recorded in another attempt to stop foreclosure. In a very recent investigation involving a scheme active in a number of counties, a search turned up evidence of the suspects modifying their scheme several times, just weeks apart, using both the bankruptcy and UCC methods.

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 other federal agencies 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 commonly require the review of thousands of pages of bank statements and real estate documents. Many cases include victims from outside the county 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 both vigorously prosecute those who commit real estate fraud and to educate the public in order to help prevent these crimes. In addition to the investigations and prosecutions described below, in the past year the Unit has made nine (9) separate presentations to varying local groups concerned with Real Estate Fraud including: realtors, title companies, mortgage companies, estate planners, etc. In addition, the Unit has also given a one hour television interview on local channel 26 and made a presentation to the Stanislaus County Board of Supervisors for last year's agenda item.

General Statistics

The Real Estate Fraud Unit entered the 2011 / 2012 fiscal year with 28 ongoing investigations. During this fiscal year, the unit received an additional 27 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.

A complete list of Unit statistics for local investigations and prosecutions 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. Note, that report does not include federal cases, their victims, their

monetary losses, or their convictions. Many unit cases that have been investigated by the Real Estate Fraud Unit are submitted for federal prosecution because the potential penalties are greater in federal court.

Aggregate Monetary Loss in State and Federal Cases:

Aggregate monetary loss suffered by victims for cases entering the fiscal year: \$154,332,100.

Aggregate monetary loss suffered by victims for cases initiated during the fiscal year: \$7,634,988.

Aggregate monetary loss suffered by victims in cases in which there has been an investigation, filing, or conviction: \$161,967,088.

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

12 filed cases continued from last year into this fiscal year involving 44 victims.

3 new cases were filed in Stanislaus County Superior Court for 6 victims.

6 convictions were obtained in Stanislaus County for 27 victims.

2011/2012 Case Highlights

Sample Resolved Stanislaus County Cases

In case 1400359, in 2007 a broker set up a fraud known as a flop. He convinced a straw buyer (a false buyer not really qualified to purchase the house) to buy a house, then immediately arranged for a second straw buyer to buy it at an increased price, even as the real estate market and prices were collapsing. (There was appraisal fraud in this case as well.) The escrow paperwork showed approximately \$121,000 in profits which was split between the various defendants, including both straw buyers. The broker pled to two counts of Grand Theft and was sentenced to one year in jail and thirty-six months probation.

In case 1410335, the Real Estate Fraud Unit prosecuted a defendant who had convinced her elderly parents to refinance their home, take out \$100,000 to give to her and told them she would make the payments for the \$100,000. She never made the payments. When her parents were facing foreclosure she convinced them to sign false documents to stop the foreclosure which she then had recorded. After she was arrested and released, she fled the country and was put on a watch list by the Unit. The Unit was notified when she and her family bought airline tickets to return to the United States. She was arrested at the Atlanta Airport in Georgia and brought back to

Stanislaus County. She pled to two counts of PC 115, Recording False Documents for a year in jail and thirty-six months of probation.

In case 1441211, the Real Estate Fraud Unit prosecuted a defendant who moved into the victim's vacant rental home, changed the locks, forged receipts and a lease for the property from the owner, and tried to argue with Modesto Police Department that he was the legitimate tenant after the owner's realtor attempted to enter the property and found him in the house. The defendant was sentenced to three years and four months in local prison on that case for Burglary and Forgery, and additional time on other cases.

Sample Federal Cases

Two defendants pled guilty in Federal Court to mail fraud and wire fraud charges resulting from a 2006 investigation originating in Modesto. Three defendants were indicted on federal charges of mail fraud, bank fraud and wire fraud. The case was a multi-million dollar case in which several banks were defrauded by use of inflated sales prices for homes. Out of state buyers received money back from the banks. The banks were given fraudulent documents and believed the inflated price of the homes was the true value of the homes. The case was investigated in Modesto, CA, and two other states. The third defendant is scheduled for a federal trial in early 2013. Actual losses in this case were estimated at approximately \$9,000,000.

Five defendants were federally indicted resulting from another investigation discovered in Modesto. The defendants ran a nation-wide foreclosure rescue scheme originating in the Los Angeles area. The defendants attempted to eliminate legitimate bank loans and told the homeowners they had a new loan of about 25% of the previous loan. The homeowners were told to begin paying the main defendant in the case for the new loans and that their previous loans had been eliminated. The U.S. Attorney reports that there were 1300 victims and \$5,000,000 in losses for the victims in charged counts.

Another defendant was federally indicted for attempting to defraud the City of Modesto and a local family of over \$10,000,000. The defendant filed and recorded false and fictitious documents to eliminate a loan, then sought municipal bonds on the property from a local city. The case was investigated by the Federal Housing Finance Agency Office of Inspector General, the Federal Bureau of Investigations and the Stanislaus County DA's Office.

Trial preparation continues for two Modesto men charged federally with bank fraud, wire fraud and mail fraud. The men defrauded elderly homeowners as well as banks which led to the elderly victims losing their homes to foreclosure. The United States Attorney's Office charged the men with stealing in excess of \$10,000,000. One defendant was the owner and broker for a large real estate sales company in Modesto.

Sample Joint Investigations

An out of county law firm reported several persons defrauded different banks of several million dollars by deceiving the banks into making two loans at the same time on the same property. The homes all went to foreclosure. The case is being investigated by the Federal Housing Finance Agency Office of the Inspector General, the Federal Bureau of Investigation and the Stanislaus County District Attorney's Office.

A federal investigation continues involving numerous homes with short sale fraud and bank fraud. The case is being investigated by the Federal Bureau of Investigation, Federal Housing Finance Agency Office of the Inspector General and the Stanislaus County District Attorney's Office.

Another federal investigation continues involving and an industry professional involved with short sale fraud. The case is being investigated by the Federal Housing Finance Agency Office of the Inspector General and the Stanislaus County DA's Office.

An investigation just began that was discovered in Modesto but originated in a Southern California county. The scheme is a bankruptcy fraud, foreclosure rescue scheme. The case is being investigated by the Federal Housing Finance Agency Office of the Inspector General, California Department of Justice and the Stanislaus County DA's Office. The case will be prosecuted in Southern California by the California Attorney General's Office.

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.

CONTACT PERSON:

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

LAO

65 YEARS OF SERVICE

Fiscal Year 2011-12 Real Estate Fraud Prosecution Trust Fund Report (Government Code Section 27388)

Page One

I. Case Statistics

1. Name of reporting county *

Stanislaus

2. Reporting Period (Fiscal Year) *

6/30/2012

3. Number of referrals entering in the fiscal year *

7

4. Number of referrals initiated during the fiscal year *

5

5. Total number of referrals entered and initiated in the fiscal year.

12

6. Number of investigations entering in the fiscal year *

28

7. Number of investigations initiated in the fiscal year *

22

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

8. Total number of investigations *

50

9. Number of filed cases entering in the fiscal year *

12

10. Number of filed cases initiated in the fiscal year *

3

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

11. Total number of filed cases *

15

12. Number of victims in filed cases entering in the fiscal year *

44

13. Number of victims in filed cases initiated in the fiscal year *

6

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

14. Total number of victims in filed cases *

50

15. Number of convictions obtained in the fiscal year *

6

16. Aggregate monetary loss suffered by victims for cases entering in the fiscal year *

\$102,332,400.00

17. Aggregate monetary loss suffered by victims for cases initiated during the fiscal year *

\$37,000.00

18. Aggregate monetary loss suffered by victims in cases in which there has been an investigation, filing, or conviction *

\$152,346,288.00

II. Accounting Information

Program revenue for the fiscal year

19. Beginning fund balance in Real Estate Fraud Prosecution Trust Fund *

\$27,479.00

20. Real estate document fees collected *

\$188,288.00

This should equal the fund balance and document fees collected in the fiscal year.

21. Total program revenue *

\$341,403.00

Program expenditures for the fiscal year

22. Salaries and benefits *

\$278,863.00

23. Operation and support costs

\$2,917.00

24. Administrative fees

\$0.00

This should equal the salaries, operation and administrative costs in the fiscal year.

25. Total program expenditures *

\$281,780.00

26. Was Real Estate Prosecution Trust Fund money distributed to a law enforcement agency other than the district attorney's office in the fiscal year? *

Yes

No

27. Additional information you would like to provide

YE accounts payable accrual creates a variance of \$1,120 in ending fund balance.

28. Non Real Estate Fraud Prosecution Trust Fund monies used to fund activities in the fiscal year

\$153,115.00

29. Ending balance in Real Estate Prosecution Trust Fund *

\$85,982.00

Contact Information

First Name *

Lori

Last Name *

Denego

Title *

Confidential Assitant/Accountant

Company Name

Stanislaus County Distirct Attorney's Office

Street Address

832 12th Street

Apt/Suite/Office

Suite 300

City

Modesto

State

CA

Zip

95354

Email Address *

lori.denego@att.net

Phone Number *

209-525-5550

Fax Number

209-558-4051

Submit

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OFFICE OF THE
DISTRICT ATTORNEY

Stanislaus County
832 12th Street, Suite 300
Modesto, CA 95354
Mailing address: POB 442, Modesto, CA 95353
Telephone: (209) 525-5550 Fax: (209) 558-4027

Birgit Fladager
District Attorney
Carol Shipley
Assistant District Attorney
Chief Deputy District Attorneys
Jerry Begen
Alan Cassidy
Dave Harris

PRESS RELEASE

For Immediate Release

For More Information Contact:

Date:
Re:

Carol Shipley, Assistant District Attorney
Phone: (209) 525-5550

Modesto, California - Stanislaus County District Attorney Birgit Fladager announced today that on June 22, 2012, in Department 6 of Stanislaus County Superior Court, Department 6 defendant Marco Villa plead no contest to six felony counts in four cases. The defendant also admitted violations of probation in two other felony cases.

In Stanislaus Court Case number 1441211, the defendant admitted one count of burglary, one count of forgery of a receipt for money, and admitted an enhancement for committing a crime while out on bail in another case. In this case, the defendant entered a vacant house the owner was attempting to rehabilitate after thieves vandalized the house. The defendant changed the locks, moved in with his girlfriend, forged a lease and rent receipts falsely claiming that the victim had leased the premises to him. The crimes were discovered when the owner's realty agent came to the front door to check on the property and found the locks changed and the defendant living at the house.

In Stanislaus Court Case 1437575, the defendant admitted one count of possession of methamphetamine. In this case, the defendant was found in a motel room during a probation search. Methamphetamine was found in his wallet.

In Stanislaus Court Case 1443024, the defendant admitted one count of burglary. In this case, the defendant was caught on video burglarizing storage units. Thereafter the stolen property was located at his own unit at that business and being used in his apartment.

In Stanislaus Court Case 1444270, the defendant admitted two counts of Auto Theft. On September 27, 2011, he was found to be driving a car owned by another person and having written his name on top of the owner's on the pink slip and claimed to be the owner. A thorough investigation by a CHP and a CPD Officer revealed the defendant's crime. On December 2, 2011, he borrowed a truck from a very reluctant victim for use overnight, and then refused to return the truck, despite multiple texts from the victim and a week of calls by a CHP Officer to him asking him to. The truck was ultimately recovered from yet another person who was also prosecuted for Auto Theft.

Judge Ashley sentenced the defendant to a total of nine years and eight months for the above offenses. Six years and four months to be served in local prison and three years and four months to be served on mandatory supervision. Due the real estate nature of the first case, all of Mr. Villa's cases were handled by the District Attorney's Office, Real Estate Fraud Unit. If you believe you have learned of a potential Real Estate Fraud scheme, please contact the District Attorney's Office and ask for a complaint form.



OFFICE OF THE
DISTRICT ATTORNEY

Stanislaus County
832 12th Street, Suite 300
Modesto, CA 95354
Mailing address: POB 442, Modesto, CA 95353
Telephone: (209) 525-5550 Fax: (209) 558-4027

Birgit Fladager
District Attorney
Carol Shipley
Assistant District Attorney
Chief Deputy District Attorneys
Jerry Begen
Alan Cassidy
Dave Harris

PRESS RELEASE

For Immediate Release

For More Information Contact:

Date: August 1, 2012
Re: Conviction for Foreclosure Scam

Carol Shipley, Assistant District Attorney
Phone: (209) 525-5550

Modesto, California - Stanislaus County District Attorney Birgit Fladager announced today that on June 5, 2012, Monica Whitten was convicted of two felony counts of Offering to Record or Recording False Documents. Deputy District Attorney Brad Nix prosecuted the case for the People.

In 2009, Whitten recorded false documents relating to her parents' mortgage. These documents were intended to delay a pending foreclosure. Whitten's case was delayed due to her fleeing the country. She was arrested when she flew into Atlanta on her return to the United States.

The documents that Ms. Whitten recorded are an example of a common real estate fraud scheme in which defendants pay money for forms that they believe will slow down or stop a foreclosure sale and then they record them at the Clerk/Recorder's Office. The Real Estate industry is now familiar with these types of fraudulent documents and is on the look-out for them. The public is encouraged to avoid becoming involved in these schemes.

Judge Nancy Ashley sentenced Whitten to one year in the county jail, placed her on three years of probation, and ordered her to pay restitution.

If you believe you have learned of a potential Real Estate Fraud scheme, please contact the District Attorney's Office and ask for a complaint form. The form can also be found on the District Attorney's website.

Stanislaus County District Attorney

Seek Justice

Serve Justice

Do Justice

Real Estate Fraud Prosecution



A LITTLE ABOUT US

- **June 2005...SB 537 passed (Govt. Code 27388)
FBI Task Force in 2009.**
- **\$3.00 fee for every Recorded Real Estate
document goes to Trust Fund for Fraud.**
- **Stanislaus County began January 2006.**
- **Full Time Deputy District Attorney**
- **Two Criminal Investigators**



BRAD NIX
Deputy District Attorney
Brad.Nix@standa.org

GLENN GULLEY
Criminal Investigator
Glenn.Gulley@standa.org

GERARD HILGART
Criminal Investigator
Gerard.Hilgart@standa.org



REAL ESTATE FRAUD MISSIONS

- Investigate and prosecute REF cases in state court.
 - Investigate cases for federal prosecution.
 - Numerous presentations to educate the public and seek out crimes.
 - Work with the specialized regulatory agencies to go after licenses as needed.
 - Litigate complicated restitution issues.
 - Confer with other units & agencies in CA regularly to keep everyone informed and alert.
- (Examples Sovereign Citizens, UCC filings, etc)



SOME OF OUR MANY PARTNERS

- **Stanislaus County Clerk –Recorder Lee Lundrigan and her staff**
- **Local Title Companies and Realtors**
- **Department of Real Estate Enforcement**
- **Federal Task Force based in Fresno**
- **Local police agencies**
- **Other REF Units both state & Federal**

Our thanks to each one and many more!



STATE VS. FEDERAL PROSECUTION

- DA's Office joined F.B.I Task Force in 2009
- Some cases need federal resources to prosecute.
- **JURISDICTION:** Sometimes the victims, witnesses and defendants are throughout CA and beyond. We still want to get the bad guys!
- **SIZE:** Some cases have hundreds even thousands of victims. Too much for us , but not the feds!
- **NEEDED RESOURCES:** Do we need asset seizure, accounting , or computer analysis help?
- **POTENTIAL SENTENCE:** Feds get more time!



WHY STATE PROSECUTIONS

- **Feds only take a few cases.**
- **Feds need high dollar losses and lots of victims.**
- **Federal cases can take much longer.**
- **Feds don't file on all victims.**
- **Local cases can be filed much quicker.**
- **We can step in for local victims.**



ONGOING ISSUES

- **The Public's demand for accountability for REF needs to be recognized by all.**
- **Our unit needs to continue education of local law enforcement to keep them up to speed with the ever evolving REF crimes.**
- **Fraud cannot be ignored and written off as a cost of doing business. Fraud must be reported.**
- **The Courts need to understand the seriousness of economic crimes and increase sentences.**



REPORTING REAL ESTATE FRAUD

- Contact us at Stanislaus County DA web site
www.stanislaus-da.org
- or call us at **209-525-5550**
- Complete the REF complaint form

Thank you for your time. Questions?

