



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Report

Legistar File Number: 16-1021

September 20, 2016

Introduced: 8/31/2016

Current Status: Agenda Ready

Version: 1

Matter Type: General Agenda Item

Receive and accept the Annual Real Estate Fraud Report for Fiscal Year ("FY") 2015-16 submitted by the District Attorney's Office in accordance with California Government Code section 27388(d).

RECOMMENDATION:

It is recommended that the Board of Supervisors:

Receive and accept the Annual Real Estate Fraud Report for Fiscal Year ("FY") 2015-16 submitted by the District Attorney's Office in accordance with California Government Code section 27388(d).

SUMMARY:

The District Attorney's Office submits its Annual Real Estate Fraud Report for FY 2015-16 in order for the Board of Supervisors to evaluate the District Attorney's effectiveness in investigating, prosecuting and deterring real estate fraud activity.

DISCUSSION:

During FY 2015-16, the District Attorney's Office received 24 new case referrals involving allegations of real estate fraud. Of those, the District Attorney determined that 14 warrant investigation beyond customary file review, background checks and research to analyze whether a local or statewide law enforcement action may be brought and can be proven beyond a reasonable doubt, if criminal, or by a preponderance of the evidence, if civil. The 14 new matters concern: (a) loan modification schemes by unlicensed persons targeting distressed Monterey County homeowners, (b) phony vacation or residential "rental" listings posted through various media, and (c) an investigation opened in response to findings set forth in the Monterey County Civil Grand Jury's Report dated 2015 entitled, "Integrity of Land Records in Monterey County" (hereafter "Grand Jury Report").

As is quite common with real estate fraud investigations, the District Attorney has expended considerable resources with the investigation of the 14 new matters. For example, the loan modification complaints involve multiple victims, several properties and mortgages. In addition to interviewing the complaining parties, District Attorney investigators have spent and will continue to spend considerable time interviewing victims and witnesses and obtaining the necessary documentation from the State of California's Bureau of Real Estate, the County of Monterey's Recorder, Assessor and Tax Offices, numerous financial institutions, title companies, licensed professionals and notaries public. The process of obtaining this

information, some of which may be secured only via search warrant, is necessary for the District Attorney to review before final filing decisions are made. The evidence collection process in real estate fraud matters takes well over 12 months and typically necessitates review by a forensic auditor to analyze the flow of funds.

As to the 2015 Grand Jury Report, wherein the Grand Jury expressed concern about the integrity and accuracy of certain documents filed with the Monterey County Recorder's Office during the foreclosure crisis, the District Attorney commenced a forensic audit to determine whether recorded documents may have violated California law, specifically, the Homeowners' Bill of Rights law, effective January 1, 2013. This Bill of Rights protects homeowners from illicit lending and borrowing practices. Due to the volume of documents, the District Attorney's audit and investigation is expected to extend well into FY 2016-17. The investigation will be conducted by the Real Estate Fraud Unit's Accountant III and one full-time investigator, with oversight by the unit's two dedicated prosecutors. The investigation will involve the examination of recorded documents, including "Notices of Default" which were filed between January 1, 2013 and December 31, 2015. The District Attorney will select a representative sample of recorded documents and will then survey the owners of the Monterey County properties involved. Once the necessary information is compiled, the District Attorney will be in a position to evaluate whether violations of law took place and, if so, whether such violations warrant civil or criminal prosecution.

In addition to the 14 new investigations, the District Attorney's Office continues to be actively engaged in two civil prosecutions that were opened during FY 2014-15. The first of these cases involves a civil enforcement action filed against Nationwide Biweekly Administration, Inc., an Ohio corporation. This action alleges that Nationwide deceptively markets and sells a mortgage payment product which purportedly accelerates principal payment, resulting in interest savings. Between 2008 and 2015, thousands of Monterey County homeowners received unsolicited marketing mailers touting the company's mortgage payment program, a program which many lenders offer at no charge. At least 100 Monterey County homeowners purchased Nationwide's services. The District Attorney has expended substantial resources investigating and, now, prosecuting this case. The District Attorney's efforts included working with the Monterey County Counsel's Office to respond to - and ultimately defeat - Nationwide's federal court lawsuit which sought to prevent the District Attorney from filing the very enforcement action that Nationwide now faces. This case is set for trial in Alameda County in January 2017. The anticipated length of time that one full-time prosecutor and one full-time paralegal will be out of the office to conduct the trial is three weeks.

The second ongoing civil case involves an appeal from a judgment entered against real estate brokers Susana Silva and Deanna Gobert following a two-week trial before The Honorable Thomas W. Wills. The District Attorney's Real Estate Fraud Unit spent several hundred hours preparing the People's Brief in Opposition to the Defendants' Appeal. Oral argument on the

appeal is pending.

Public Outreach Efforts

The District Attorney continues to be involved with public outreach efforts designed to detect and identify real estate fraud activity associated with the foreclosure crisis and ensuing, albeit slow recovery. In FY 2015-16, the highlight of the District Attorney's outreach efforts was to collaborate with the Santa Cruz and San Benito County District Attorneys' Offices to create the first-ever tri-county Real Estate Fraud Advisory Team ("REFAT"). REFAT's team members include personnel from both the private and public sectors, specifically, lenders, brokers, agents, escrow and title personnel, notaries public, real estate attorneys, local law enforcement, the Bureau of Real Estate and elected and appointed officials from the tri-county Offices of the Recorder, Assessor and Tax Collector. In addition to sharing information concerning ongoing fraud trends, the REFAT meetings, which are held quarterly and feature keynote speakers, have already generated three of the 14 new investigations referenced above. Meeting minute notes and formal agendas are prepared for each meeting.

During FY 2015-16, REFAT meetings were held on November 9, 2015, February 11, 2016, and May 12, 2016. At the February meeting, former Bureau of Real Estate Commissioner Jeff Davi gave a keynote presentation regarding the critical role that task forces like REFAT play in combatting the type of fraud and criminal activity that precipitated the real estate market collapse in 2007. At the May meeting, Bureau of Real Estate Assistant Commissioner of Enforcement Rick Fong spoke about current trends in real estate fraud scams affecting California, including the tri-county area. In his capacity as Assistant Commissioner of Enforcement, Mr. Fong attends real estate related meetings up and down the state. During his keynote address in May, Mr. Fong credited the Monterey-San Benito-Santa Cruz tri-county REFAT with being "one of the best in the State of California!"

In addition to the REFAT, the District Attorney continues to be an active member of the California District Attorney Association's Real Estate Fraud committee. That committee, which is involved in drafting legislation and presenting ongoing trainings throughout the state, meets several times per year.

Other outreach efforts during FY 2015-16 included reviewing and updating the District Attorney's Office's website to include a new and distinct section covering real estate fraud. The updates improve the public's ability to access resources concerning real estate fraud and submit complaints online.

The investigation and successful prosecution, criminal or civil, of real estate fraud activity in Monterey County will continue to be resource-intensive. The continued availability of revenue from recording fees is critical to the District Attorney's efforts to deter, investigate and, when appropriate, prosecute real estate fraud cases. To the extent possible, in accordance with

Government Code section 27388, subdivision (f), emphasis will continue to be placed on fraud involving the largest number of victims and individuals whose residences are in danger of, or actually in, foreclosure.

Real Estate Fraud Statistics for Fiscal Year 2015-16

New Referrals: 24
Investigations Opened: 14
Arrests: 0
Filed Complaints (Civil or Criminal): 1
Convictions: 0
Civil Judgments: 0
Appeals: 1

OTHER AGENCY INVOLVEMENT:

As noted in "Discussion" section, above.

FINANCING:

Total cost of the program was \$434,036.60 for FY 2015-16. Those costs involved investigation and prosecution. Total funds available for transfer were \$539,894.52, resulting in a net county cost of \$0.00. This annual report will provide an ongoing summary of the financial viability of the real estate fraud prosecution program.

Total Estimated Revenues and Costs:

Revenues

Beginning Balance:	\$ 41,857.92
FY 2015-16 Income:	\$498,036.60
Total Available:	\$539,894.52

Expenditures

Salaries & Benefits:	\$434,658.54
Total Costs:	\$434,658.54

Prepared by: John F. Hubanks, Deputy District Attorney IV, Ext. 7705
Bruce Suckow, Finance Manager II, Ext. 5259

Approved by: Dean D. Flippo, District Attorney, Ext. 5470
Anne M. Michaels, Assistant District Attorney, Ext. 7736

Attachments: None