



# Monterey County

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## Board Report

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Receive and accept the Annual Real Estate Fraud Report for Fiscal Year ("FY") 2017-18 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") 2017-18 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 2017-18 in order for the Board of Supervisors to evaluate the District Attorney's effectiveness in investigating, prosecuting and deterring real estate fraud activity.

### DISCUSSION:

The District Attorney received 23 real estate fraud referrals during FY 2017-18. These referrals came from multiple sources, including federal law enforcement agencies, local police agencies, the Office of the Monterey County Assessor/Recorder, private sector professionals and Monterey County residents. The referrals demonstrate that real estate fraud continues to pose a risk to Monterey County homeowners and residents, even as the foreclosure crisis of 2007-2010 recedes. The new referrals involved a variety of fraud schemes, including "rental scams" (which typically promise residential rents at below-market rates), mortgage loan fraud, unlicensed real estate activity, advance fee schemes, notary public misconduct, foreclosed home theft, and elder abuse pertaining to the transfer of real estate.

### Creation of New Financial Crime Task Force

On March 29, 2018, The Monterey County District Attorney's Office and the San Francisco Division of the Federal Bureau of Investigation (FBI) announced the creation of a new task force, the Monterey County Financial Crime Task Force (MCFCTF), whose mission is to identify, investigate, and prosecute individuals engaged in financial crimes, including crimes sounding in real estate fraud. The creation of this task force enables the FBI and the District Attorney's Office to work together to identify and investigate new cases of real estate fraud on a greater scale. The District Attorney's Office expects to see an increase in complex real estate fraud investigations because of this partnership. All cases identified in this report that were jointly investigated by the MCFCTF are marked with an asterisk (\*).

### New Referrals & Ongoing Investigations

Of the 23 new referrals, 21 required investigation beyond customary file review, background checks

and legal research to analyze whether a local or statewide action may be brought that can be proven beyond a reasonable doubt, if criminal, or by a preponderance of the evidence, if civil. This year, the District Attorney's Office and the FBI, through the Monterey County Financial Crimes Task Force, conducted or are currently conducting joint investigations on 7 complex real estate fraud cases, 4 of which are ongoing from previous years. These cases require the investment of considerable investigative resources, including the preparation and execution of search warrants on financial institutions, homes, and places of business before the District Attorney can make charging decisions. Financial documents obtained in real estate fraud matters typically require expert analysis of the flow of funds by the District Attorney's Accountant III to determine the nature and extent of the fraud.

#### Prosecutions Filed in FY 2017-18

During FY 2017-18, the District Attorney charged or was integrally involved with charging the following five criminal cases, all of which arose out of real estate fraud complaints affecting Monterey County residents:

- *\*People v. Jennifer Magana and People v. Kimberly Morales*: In May 2015, the District Attorney's Office received a real estate fraud complaint from several citizens in Monterey County about an organization known as LifeSavers Concepts Association, Inc. ("LSCA") and its representatives, including two notaries public affiliated with the organization, Jennifer Magana and Kimberly Morales ("the notaries public"). The complaint alleged that LSCA solicited victims who had lost their homes to foreclosure to join LSCA as members. LSCA allegedly told victims that if they paid a \$1,250 membership fee, they could participate in LSCA's lawsuit against various mortgagor banks. LSCA allegedly promised a +90% probability of winning one to three times the value of their foreclosed home. To sign up for the LSCA program, the notaries public notarized multiple documents for each victim and received payment for those services. However, the notaries public did not fulfill their duties as notaries to keep one active sequential journal at a time of all official acts (as to Magana and Morales), and to keep their respective notary journals and notary seals in a locked and secured area under the direct and exclusive control of each notary public (as to Morales only). On October 10, 2017, the District Attorney charged Jennifer Magana and Kimberly Morales with violating their duties as notaries public under the Government Code. On December 15, 2017, Kimberly Morales pled no contest to three misdemeanor charges for failure to properly maintain her notary journals, failure to keep her journals in a locked and secured area, and failure to keep her seal in a locked and secured area. On January 19, 2018, Jennifer Magana pled no contest to one misdemeanor charge for failure to properly maintain her notary journals. As part of these plea deals, both defendants surrendered their notary seals and were sentenced to three years of informal probation with terms not to engage in false advertising or unfair business practices. The investigation into LSCA's alleged fraudulent activities is continuing.
- *People v. Jonathan Sapp and People v. Gregory Malley*: In July 2017, the District Attorney's Office received a real estate fraud complaint from an attorney representing the

owner of the Carmel Resort Inn in Carmel, California (“the Inn”). The owner reported that the defendants, Jonathan Sapp and Gregory Malley, had represented themselves as the buyer’s agents in a real estate transaction for the sale of the Inn in March of 2017. The purchase agreement identified the defendants as the buyer’s agents and listed the defendants’ invalid California Department of Real Estate (“DRE”) license numbers next to their names. The purchase agreement provided for each defendant to receive a commission of \$175,000.00 from the deal. Unbeknownst to the owner/seller or his agent at the time of the contract though, the DRE had suspended the real estate license of defendant Jonathan Sapp on June 3, 2016, and Sapp subsequently surrendered his license in connection with a disciplinary action on November 4, 2016. Similarly, the DRE had revoked the real estate license of defendant Gregory Malley on November 19, 2015, also in connection with a disciplinary action. The defendants never notified the owner/seller or his agent that the defendants had no valid real estate licenses due to disciplinary actions. The owner/seller only learned of the unlawful transaction when the parties attempted to open escrow and were denied due to the defendants’ unlicensed statuses. The People filed charges against the defendants on March 2, 2018 and the defendants were arraigned shortly thereafter. The People are currently awaiting a trial date.

- *\*People v. Richard Sanchez*: Several Monterey County residents filed real estate fraud complaints with the Monterey County District Attorney’s Office regarding Richard Sanchez, a Salinas resident who had his real estate salesperson license restricted in a disciplinary proceeding in 2012. Richard Sanchez represented himself as a licensed real estate agent to victims despite his unlicensed status and defrauded each of the victims under the guise of helping them purchase homes. One Salinas couple gave Richard Sanchez over \$23,000 in money orders made payable to a title company towards the purchase of a home, only to discover that Richard Sanchez altered the money orders to be made payable to himself, and then cashed them for personal gain. Richard Sanchez defrauded another victim, a family member, by falsely representing that he could help her purchase a home if she gave him \$5,000 in blank money orders to be applied to the purchase of the home. The victim purchased the money orders, but hesitated to give them to Richard Sanchez. She stored the money orders in a filing cabinet in her home, and later discovered that they had gone missing. Richard Sanchez admitted he took the money orders and said he needed them to hold the property for her. The property was never held for her and the victim’s bank records indicate that Richard Sanchez made the money orders payable to himself and cashed them for personal gain. Similarly, a third victim also gave Richard Sanchez blank money orders totaling \$5,000 to be applied towards the purchase of a home. Richard Sanchez cashed the money orders himself and the victim did not hear from him again. The People filed charges against Richard Sanchez on April 4, 2018 and a warrant for his arrest was issued at that time. His whereabouts are currently unknown.

### Ongoing Real Estate Fraud Cases

Although filed in prior fiscal years, the District Attorney's Office continued to prosecute and assist in the investigation of three actions involving real estate fraud affecting Monterey County residents:

- *People v. Nationwide Biweekly Administration*: Filed in the Alameda County Superior Court, the District Attorney filed this action in May 2015 in conjunction with the District Attorneys for the Counties of Alameda, Kern and Marin and the California Department of Business Oversight. Commenced in FY 2013-14, the underlying investigation began with voluminous homeowners' complaints about deceptive marketing of a mortgage payment product. At least 100 Monterey County homeowners purchased the company's services. The District Attorney is seeking substantial restitution, all appropriate penalties and permanent injunctive relief. After the People filed the action, the defendant immediately filed a federal lawsuit seeking an injunction against the People from enforcing consumer fraud provisions of the California Business and Professions Code against the defendant on constitutional grounds. The District Court denied the defendant's motion and the defendant appealed. In October of 2017, the Ninth Circuit held that although Nationwide was unlikely to succeed on its claim that this false advertising action violates its First Amendment right to free speech, Nationwide was likely to succeed on the causes of actions pertaining to prorater licensure requirements, which defendant argued were unconstitutional under the Dormant Commerce Clause. Around this same time, the defendant also petitioned for a writ on the state level demanding that there is a right to a jury trial in law enforcement unfair competition actions. In June 2018, the Court of Appeal for the First Appellate District held that such a right to a jury trial exists, a holding that is in conflict with other Courts of Appeal in California. Since the time of filing, this "complex-designated" case has been under the regular supervision of a Court-appointed Discovery Referee and the Trial Judge. A trial date is now set for June 2019. Settlement remains unlikely.
- *People v. Susana Silva*: The District Attorney filed this civil enforcement action in December 2010 against a local Monterey County real estate brokerage for false advertising and illegal business practices. The matter was litigated and tried in December 2013, resulting in judgment in favor of the People, specifically, the Superior Court imposed injunctive relief and ordered the defendants to pay consumer restitution and civil penalties. The defendants appealed the decision. On November 28, 2017, the Court of Appeal for the Sixth Appellate District held that there was no error in holding the defendants liable for false advertising and unfair competition, but remanded the matter for a recalculation of civil penalties and tailoring of the injunctive terms. On August 3, 2018, the parties appeared before the Trial Court on the remanded issues,

resulting in some reductions to the civil penalty and restitution figures. The case is now closed.

- *\*United States v. Mark Gallegos and United States v. Jose Tomas-Silva:* In addition to complaints about Richard Sanchez (discussed above), the Monterey County District Attorney's Office also received complaints about two associates of Richard Sanchez, Mark Gallegos and Jose Tomas-Silva, who were also acting as unlicensed real estate agents and using clients' earnest money deposits for personal profit. Monterey County District Attorney investigators, working in conjunction with the Federal Bureau of Investigation, conducted an investigation into these allegations. On February 14, 2017, FBI agents arrested Mark Gallegos and Jose Tomas-Silva. Both defendants were indicted by a Federal Grand Jury on March 14, 2017 on charges of conspiracy to commit wire and mail fraud. In July 2017, Mark Gallegos pled guilty to one charge of conspiracy to commit wire and mail fraud. Jose Tomas-Silva is awaiting trial.

#### Grand Jury Report

In 2015, the Civil Grand Jury expressed concern about the integrity and accuracy of certain documents filed with the Monterey County Recorder's Office during the foreclosure crisis (essentially, 2007-2010). In FY 2016-17, the District Attorney's Office, namely, one full-time District Attorney Investigator and the Real Estate Fraud Unit's Accountant III (with oversight by the unit's two designated prosecutors), conducted a forensic audit to determine whether certain randomly selected documents recorded during the relevant time period were in violation of California Homeowner's Bill of Rights Law, which law protects homeowners from illicit lending and borrowing practices. As a result of the audit, the District Attorney identified a representative sample of homeowners to interview to determine whether various lending practices affected homeowners and real property values. A confidential questionnaire was prepared and disseminated to 30 randomly selected homeowners in August 2017. The District Attorney's Office received only 5 responses to the questionnaires. Those who responded did not report any issues with their loans.

#### **PUBLIC OUTREACH**

##### Press Conference

On October 6, 2017, local news station KION aired on its 5:00 p.m. news an interview of District Attorney Dean Flippo and Assistant District Attorney Anne M. Michaels, as conducted by reporter Mariana Hick. The 45-minute interview, which took place in the District Attorney's Salinas office, focused on the real estate fraud trends seen in the marketplace over this fiscal year. Mr. Flippo and Ms. Michaels spoke about the continued prevalence of unlawful advance fee schemes, unlicensed activity and fraudulent rental scams and also discussed the filing statistics and dispositions of certain cases referenced in the District Attorney's Annual Report to the Board of Supervisors, which report is filed by September 1st of each calendar year. Mr. Flippo specifically lauded the continued good work of the Tri-County (Monterey - San Benito - Santa Cruz) Real Estate Fraud Advisory Team and the consistent attendance and spirited participation of the dedicated brokers, agents, notaries, bankers,

title officials, fraud examiners, recorders, assessors, prosecutors and investigators who meet quarterly to discuss fraud schemes and trends in our community.

#### Real Estate Fraud Advisory Team

The District Attorney continues to engage actively in public outreach for purposes of detecting and identifying real estate fraud activity in Monterey County. Now in its third year, the Tri-county Real Estate Advisory Team (“REFAT”) met 4 times during FY 2017-18: August 10, 2017, November 9, 2017, February 8, 2018 and May 10, 2018. REFAT meetings are organized and chaired by Monterey County Assistant District Attorney Anne M. Michaels and are attended by prosecutors and investigators from Monterey, Santa Cruz and San Benito counties. Additional REFAT participants include the employees of the California Bureau of Real Estate, representatives from elected offices, local law enforcement officials and private sector professionals.

Each REFAT meeting features a key note speaker who presents on fraud trends impacting local real estate markets. A roundtable discussion follows. To illustrate, Monterey County Deputy District Attorney Amy Anderson and Monterey County District Attorney Investigator Alicia Cox were the featured speakers at the May 10, 2018 meeting. At this meeting, DDA Anderson and DAI Cox presented on the legal duties and responsibilities of notaries public through a case study of *People v. Jennifer Magana* and *People v. Kimberly Morales*. The presentation highlighted the important role notaries public play in upholding the integrity of the real estate recording system and the potential criminal, administrative, and civil repercussions for notary public misconduct. Other speaker topics this year have ranged from the pitfalls of PACE and HERO loans to the use of civil remedies in real estate fraud cases.

In addition to the REFAT, the District Attorney continues to be an active member of the California District Attorney Associations’ Real Estate Fraud committee, which meets several times per year. 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 ongoing efforts to deter, investigate and 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 are actually in, foreclosure.

#### Real Estate Fraud Statistics for Fiscal Year 2017-18

New Referrals: 23

Investigations Opened: 21

Joint MCFCTF Investigations: 7

Arrests: 3 defendants cited to appear; 1 defendant in custody during this reporting period; 1 defendant under warrant for arrest.

Criminal Complaints: 5

Convictions: 3

Civil Judgments: 1

Appeals: 3

#### OTHER AGENCY INVOLVEMENT:

As noted in “Discussion” section, above.

FINANCING:

Total cost of the program was \$274,447.92 for FY 2017-18. Those costs involved investigation and prosecution. Total funds available for transfer were \$621,141.18, 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:	\$ 105,235.98
<u>FY 2017-18 Income:</u>	<u>\$ 515,905.20</u>
Total Available:	\$ 621,141.18

Expenditures

<u>Salaries &amp; Benefits:</u>	<u>\$ 271,203.05</u>
Total Costs:	\$ 274,447.92

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Improving public safety by providing more efficient investigation and prosecution of real estate fraud throughout our county.

Mark a check to the related Board of Supervisors Strategic Initiatives

☐ Economic Development  
☐ Administration  
☐ Health & Human Services  
☐ Infrastructure  
☒ Public Safety

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Attachments:

None

