



Legislation Details (With Board Report)

File #: 20-644 **Name:** Monterey County District Attorney’s Office Real Estate Fraud Report Fiscal Year 2019-20 Mty Co DA’s Office Real Estate Fraud Report FY 19/20

Type: General Agenda Item **Status:** Passed - District Attorney’s Office

File created: 8/7/2020 **In control:** Board of Supervisors

On agenda: 8/25/2020 **Final action:** 8/25/2020

Title: Receive and accept the Annual Real Estate Fraud Report for Fiscal Year (“FY”) 2019-20 submitted by the District Attorney’s Office in accordance with California Government Code section 27388(d).

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Annual Real Estate Fraud Report, 3. Item No. 25 Completed Board Order

Date	Ver.	Action By	Action	Result
8/25/2020	1	Board of Supervisors	approved - district attorney	Pass

Receive and accept the Annual Real Estate Fraud Report for Fiscal Year (“FY”) 2019-20 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”) 2019-20 submitted by the District Attorney’s Office in accordance with California Government Code section 27388(d).

SUMMARY:

The District Attorney’s Office hereby submits its Annual Real Estate Fraud Report for FY 2019-20 for the Board of Supervisors to evaluate the District Attorney’s Office’s effectiveness in investigating, prosecuting, and deterring real estate fraud.

DISCUSSION:

The District Attorney’s Office received 41 real estate fraud referrals during FY 2019-20. Of these, 23 were traditional real estate fraud referrals, while 18 arose out of the COVID-19 pandemic. For purposes of the FY 2019-20 Report only, “traditional” real estate fraud referrals mean referrals that are unrelated to the COVID-19 pandemic.

These traditional referrals came from multiple sources, including local police agencies, private sector professionals, and Monterey County residents. They demonstrate that real estate fraud continues to pose a risk to Monterey County homeowners and residents. The new traditional 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, unlawful security deposit withholding, foreclosed home theft, and elder abuse pertaining to the transfer of real estate.

Finally, in FY 2017-18, the San Francisco Division of the Federal Bureau of Investigation (FBI) and the Monterey County District Attorney’s Office 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 real estate fraud. Throughout FY 2019-20, the FBI and the District Attorney's Office have continued to work together in identifying and investigating new cases of real estate fraud on a greater scale. 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 traditional referrals, 23 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. 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 analysis of the flow of funds by the District Attorney's Accountant III to determine the nature and extent of the fraud.

In addition to the 23 new traditional referrals, the District Attorney also received 18 COVID-19-related real estate fraud referrals during FY 2019-20. These consumer referrals primarily alleged fraud and/or other wrongdoing in connection with the short-term rental of real estate. For example, consumers alleged that homeowners had refused to refund moneys paid for a short-term rental before the issuance of COVID-19 Shelter-in-Place Orders for a stay after the COVID Shelter-in-Place Orders took effect. In response to these referrals, the District Attorney's Office endeavored to facilitate an informal resolution between the parties.

Prosecutions Filed in FY 2019-20

During FY 2019-20, the District Attorney's Office charged the following criminal cases:

- ***People v. Christopher Barnard and People v. Michela Montecucco***: In October 2017, Monterey County Bank ("MCB") submitted a complaint regarding Dr. Christopher Barnard and his wife Michela Montecucco ("Barnards"). The complaint alleged that the Barnards had taken \$53,612.94 worth of fixtures from their foreclosed property in Monterey. The complaint also alleged that the Barnards vandalized the property and failed to maintain the property in good condition to preserve the value. On June 24, 2020, the People filed a felony complaint alleging grand theft.

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 four actions involving real estate fraud affecting Monterey County residents:

People v. Nationwide Biweekly Administration, et al.: Filed in Alameda County Superior Court, the District Attorney's Office filed this action in May 2015 in conjunction with the District Attorneys' Offices for the counties of Alameda, Kern, Marin, and the California Department of Business Oversight. Commenced in FY 2013-14, the underlying investigation began with multiple complaints by homeowners about deceptive marketing of a mortgage payment product by Nationwide Biweekly Administration ("Nationwide").

- At least 100 Monterey County homeowners purchased the company's services. The District Attorney's Office is seeking substantial restitution, all appropriate penalties, and permanent injunctive relief. After the People filed the action, Nationwide immediately filed a federal

lawsuit seeking an injunction against the People from enforcing consumer fraud provisions of the California Business and Professions Code against Nationwide on constitutional grounds. The District Court denied Nationwide's motion and Nationwide 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 Nationwide argued were unconstitutional under the Dormant Commerce Clause. Around this same time, Nationwide 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. In FY 2018-19, the People appealed the decision to the California Supreme Court. On April 30, 2020, the California Supreme Court concluded that Defendants are *not* entitled to a jury trial. (*Nationwide Biweekly Administration, Inc. v. Superior Court* (2020) 9 Cal. 5th 279.) On August 25, 2020, it is anticipated that the Court will set a bench trial date.

- ****People v. Richard Sanchez:*** On April 4, 2018, the People charged Richard Sanchez with two felony counts of grand theft, and on May 23, 2019, amended the complaint to add three additional counts of felony grand theft, along with felony of conspiracy and residential burglary. The Monterey County Financial Crimes Task Force initiated the investigation after multiple Monterey County residents reported that Sanchez had defrauded them in his capacity as a real estate salesperson. Sanchez requested thousands of dollars from each victim to secure a contract for the purchase of a home in Salinas, telling the victims that the payment was an earnest money deposit, an appraisal fee, escrow fees, or otherwise part of the purchase contract. Sanchez did not use the money as promised; instead, he kept the money for himself. In fact, the homes Sanchez presented to the victims were either not for sale or had already been sold by the time the victims gave Sanchez the money. The Department of Real Estate had revoked Sanchez's license in March of 2015. In addition, Sanchez and his co-conspirators defrauded a Salinas resident by promising to assist him in the performance of a loan modification to save his home from foreclosure. Sanchez and his co-conspirators created a bank account for a fictitious lender and told the victim that this fictitious lender had refinanced his loan. The victim made numerous mortgage payments to this fictitious bank, and Sanchez and his co-conspirators cashed the checks for personal gain. On November 21, 2019, after a Preliminary Hearing, the Hon. Mark Hood held Sanchez to answer on all charges. On August 25, 2020, it is expected that the Court will set a date for jury trial.
- ***People v. Amy Alberto Agtarap:*** The District Attorney's Office received a real estate fraud complaint from a Monterey County resident regarding Amy Agtarap, alleging that she advertised herself as a mortgage loan originator and requested an upfront payment for her services. Agtarap ultimately failed to complete the loan modification and the victim lost her home. Subsequent investigation by the People revealed that Agtarap had perpetrated this scheme over many years

against many victims. The investigation also revealed that Agtarap was receiving disability payments from the Social Security Administration while receiving payments for loan modifications. The People charged Agtarap with 14 felonies, including filing false or forged documents, grand theft by false pretense, and embezzlement. The Court has set a jury trial in the matter for August 24, 2020.

- ***People v. Gabriel Castillo:*** The District Attorney's Office received a real estate fraud complaint alleging that Gabriel Castillo, a disbarred attorney, was engaged in a rental scam in Salinas, California. At the time, Castillo's landlord was in the process of evicting Castillo from his home in Salinas. During the eviction process, Castillo placed an advertisement on Craigslist stating that the property was available for rent. In perpetuation of the scam, Castillo hosted open houses to attract potential "tenants" and created fake leases for victims to sign. At least seven victims gave Castillo a deposit to secure the home, resulting in a total take of \$22,000. Castillo never transferred possession of the property to any of these victims. The People charged Castillo in two felony complaints with multiple counts of grand theft and a host of other fraud charges, including unauthorized practice of law. The Court has set a jury trial in the matter for October 26, 2020.

Real Estate Fraud Convictions

In FY 2019-20, the District Attorney's Office obtained convictions in two actions involving real estate fraud affecting Monterey County residents:

- ***People v. Gerald Warner:*** The District Attorney's Office received a police report from the Carmel Police Department regarding a property manager, Gerald Warner, who, between approximately 2014 and 2017, had failed to remit property rental income to homeowners, and had failed to remit security deposits to tenants. Subsequent investigation by the People revealed that the total loss to victims was approximately \$57,000. On April 16, 2019, the People charged Warner with 13 felony counts of grand theft by embezzlement. On March 12, 2020, Warner pled no contest to 1 count of embezzlement, was ordered to pay approximately \$57,000 in victim restitution, and was placed on 3 years of probation. The People are currently working with the Department of Real Estate's Victim Compensation Fund to obtain restitution for the victims.
- ***People v. Dahn Walker:*** The District Attorney's Office received a report from the California Department of Real Estate regarding an applicant for a real estate license named Dahn Walker who had forged court documents included in his application to make it appear that a conviction for receiving stolen property had been set aside when, in fact, it had not. On May 21, 2019, the People charged Walker with violations of Penal Code sections 115(a) (procuring a false instrument), 118(a) (perjury), and 470(c) (forgery). On August 13, 2019, Walker pled no contest to one count of forgery, was ordered to serve 30 days in County jail, and was placed on 3 years

of probation.

- ****United States v. Mark Gallegos and United States v. Jose Tomas-Silva:*** In addition to complaints about Richard Sanchez (above), the Monterey County Financial Crimes Task Force also received complaints about two of his associates, Mark Gallegos and Jose Tomas-Silva, who were also acting as unlicensed real estate agents and using clients' earnest money deposits for personal profit in Salinas, California. Monterey County District Attorney investigators, working in conjunction with the Federal Bureau of Investigation, investigated these allegations. On February 14, 2017, FBI agents arrested Gallegos and Tomas-Silva. On March 14, 2017, a federal grand jury indicted them both on charges of conspiracy to commit wire and mail fraud. In July 2017, Gallegos pled guilty to one charge of conspiracy to commit wire and mail fraud. On June 15, 2020, Tomas-Silva also pled guilty to one count of conspiracy to commit wire fraud.

Public Outreach

The District Attorney continues to engage in public outreach for purposes of detecting and identifying real estate fraud in Monterey County. Now in its sixth year, the Tri-county Real Estate Advisory Team ("REFAT") met twice during FY 2019-20: August 8, 2019 and November 14, 2019. The number of REFAT meetings was reduced during FY 2019-20 due to the COVID-19 pandemic. REFAT meetings are organized and chaired by Monterey County District Attorney Jeannine M. Pacioni 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 keynote speaker who presents on fraud trends impacting local real estate markets. A roundtable discussion follows. The keynote speakers from this past fiscal year included federal bankruptcy trustees from the Northern District of California and the District of Nevada, and the Department of Real Estate Supervising Special Investigator Ruben Coronado.

Prosecutors assigned to the District Attorney's Office's Real Estate Fraud Unit also continue to be active members 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 Office'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 actually in, foreclosure.

Real Estate Fraud Statistics for Fiscal Year 2019-20

Total New Referrals: 41

New Traditional Referrals: 23

Investigations Opened Into New Traditional Referrals: 23

COVID-19-Related Referrals: 18

Joint MCFCTF Investigations: 3

Arrests: 2

Criminal Complaints: 2

Convictions: 3

Civil Judgments: 0

Appeals: 1

OTHER AGENCY INVOLVEMENT:

In FY 2019-20, the District Attorney's Office worked closely with various state and federal agencies to investigate and prosecute real estate fraud cases. These agencies included the Federal Bureau of Investigation, the Internal Revenue Service, the Social Security Administration, Office of the Inspector General Department of Defense, Air Force Office of Special Investigations, the California Department of Real Estate, the California Franchise Tax Board, and the real estate fraud units of other California District Attorney's Offices.

FINANCING:

Total cost of the program was \$464,495 for FY 2019-20. Those costs involved investigation and prosecution activities. Total funds available were \$948,813, resulting in a net county cost of \$0.00.

Revenues

Beginning Balance: \$ 459,800

FY 2019-20 Income: \$ 489,013

Total Funds Available: \$ 948,813

Expenditures

Salaries & Benefits: \$ 349,347

Supplies & Services: \$ 115,148

Total Expenditures: \$ 464,495

Ending Balance \$ 484,318

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

One or two sentences explaining how this recommendation supports/advances the Board of Supervisors Strategic Initiatives. Reference to any Key Objectives and/or Milestones that are related.

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