



Legislation Details (With Board Report)

File #: 19-0662 **Name:**

Type: General Agenda Item **Status:** Criminal Justice - Consent

File created: 8/20/2019 **In control:** Board of Supervisors

On agenda: 9/10/2019 **Final action:**

Title: Receive and accept the Annual Real Estate Fraud Report for Fiscal Year (“FY”) 2018-19 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. Completed Board Order Item No. 23

Date	Ver.	Action By	Action	Result
9/10/2019	2	Board of Supervisors	received on consent agenda	Pass

Receive and accept the Annual Real Estate Fraud Report for Fiscal Year (“FY”) 2018-19 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”) 2018-19 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 2018-19 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 22 real estate fraud referrals during FY 2018-19. These referrals came from multiple sources, including local police agencies, 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. 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, unlawful security deposit withholding, foreclosed home theft, and elder abuse pertaining to the transfer of real estate.

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 2018-19, 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 22 new referrals, 19 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.

Prosecutions Filed in FY 2018-19

During FY 2018-19, the District Attorney charged the following four criminal cases, all of which arose out of real estate fraud complaints affecting Monterey County residents:

- ***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 the defendant advertised herself as a mortgage loan originator and requested an upfront payment for her services. The defendant ultimately failed to complete the loan modification and the victim lost her home. Subsequent investigation by the People revealed that the defendant had engaged in this scheme over the period of multiple years to numerous victims. The investigation also revealed that the defendant was receiving disability payments from the Social Security Administration while receiving payments for loan modifications. The People charged Amy Agtarap with 16 felonies, including filing false/forged documents, grand theft by false pretense, and embezzlement. The case is still pending. No trial date has been set.
- ***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 had failed to remit property rental income to homeowners, and who had failed to remit security deposits to tenants. Subsequent investigation by the People revealed that the total loss to victims was in excess of \$100,000. The People charged Warner with 13 felony counts of grand theft. The case is still pending. No trial date has been set.
- ***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 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. The People charged Walker with three felony counts of perjury, forgery, and presenting a false or forged instrument. The case is still pending. No trial date has been set.

- ***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 case is awaiting a preliminary hearing date.

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:*** Filed in 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 multiple homeowners’ complaints 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 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 Nationwide 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 prater 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. The Court granted review and the matter is currently awaiting a decision. The underlying case will remain stayed until the Supreme Court issues its ruling.
- ****People v. Richard Sanchez:*** The People charged Richard Sanchez on April 4, 2018 with two

felony counts of grand theft and amended the complaint on May 23, 2019 to add three additional counts of felony grand theft, along with felony charges 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. The preliminary hearing in this matter is currently set for August 15, 2019.

- ****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 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 in Salinas, California. 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, and 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.

Real Estate Fraud Convictions

In FY 2018-19, the District Attorney's Office obtained convictions in two actions involving real estate fraud affecting Monterey County residents:

- ***People v. Jonathan Sapp & People v. Gregory Malley:*** On March 2, 2018, the People charged Jonathan Sapp and Gregory Malley each with one misdemeanor count of Business and Professions Code ("BPC") section 10139 (unlicensed real estate activity) and one misdemeanor

count of Penal Code (“PC”) section 182 (conspiracy). In July 2017, the District Attorney’s Office had received a real estate fraud complaint regarding unlicensed salespersons engaged in a real estate transaction involving the Carmel Resort Inn in Carmel, California (“the Inn”). In the purchase agreement for the Inn, Sapp and Malley identified themselves as the buyer’s agents and listed their formerly valid California Department of Real Estate (“DRE”) license numbers. Sapp and Malley negotiated for a commission of \$175,000 each upon closing. Neither Sapp nor Malley had valid real estate licenses at the time due to past disciplinary action by the DRE. Emails between Sapp and Malley obtained via search warrant revealed that the parties understood their actions to be illegal prior to engaging in negotiations. On March 28, 2019, Gregory Malley entered a plea of “no contest” to BPC 10139. He received a sentence of three years informal probation and was ordered to pay a fine of \$15,000, \$10,000 of which was suspended pending successful completion of probation. On April 3, 2019, Jonathan Sapp also entered a plea of “no contest” to BPC 10139. He received a sentence of three years informal probation and was ordered to pay a fine of \$15,000.00, \$7,500 of which was suspended pending successful completion of probation.

Public Outreach

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 fourth year, the Tri-county Real Estate Advisory Team (“REFAT”) met 4 times during FY 2018-19: August 9, 2018; November 8, 2018; February 14, 2019; and May 15, 2019. 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 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 Jeff Oboyski, California Department of Real Estate, Assistant Commissioner, and Travis Beye, Monterey County Department of Adult Protective Services, Supervisor.

In addition to the quarterly REFAT meetings, Assistant District Attorney Anne M. Michaels designed, organized and chaired two separate outreach programs specifically marketed to the senior community during FY 2018-19. The first outreach took place on July 20, 2018 in Seaside, California and focused on selecting ethical real estate agents, understanding property tax basics, and spotting red flags and potential scams. The second outreach took place on October 16, 2018 in Hollister, California, and focused on protecting oneself from phone scams and identity theft, avoiding property management scams, identifying pitfalls of PACE loans, utilizing Adult Protective Services, and maximizing property tax benefits.

Prosecutors assigned to the District Attorney’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 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 2018-19

New Referrals: 22

Investigations Opened: 19

Joint MCFCTF Investigations: 4

Arrests: 4

Criminal Complaints: 4

Convictions: 2

Civil Judgments: 0

Appeals: 1

OTHER AGENCY INVOLVEMENT:

In FY 2018-19, the District Attorney 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, the California Department of Real Estate, the California Franchise Tax Board, and the real estate fraud units of other California District Attorney Offices.

FINANCING:

Total cost of the program was \$489,256 for FY 2018-19. Those costs involved investigation and prosecution activities. Total funds available were \$844,469, resulting in a net county cost of \$0.00.

Revenues

Beginning Balance:	\$ 459,800
<u>FY 2018-19 Income:</u>	<u>\$ 384,669</u>
Total Funds Available:	\$ 844,469

Expenditures

Salaries & Benefits:	\$ 415,800
<u>Supplies & Services:</u>	<u>\$ 73,317</u>
Total Expenditures:	\$ 489,256

Ending Balance: \$356,213

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