



Legislation Details (With Board Report)

File #: 22-784 **Name:** Real Estate Fraud BOS Report FY 2021-2022
Type: General Agenda Item **Status:** Received
File created: 8/17/2022 **In control:** Board of Supervisors
On agenda: 9/13/2022 **Final action:**
Title: Receive and accept the Annual Real Estate Fraud Report for Fiscal Year (“FY”) 2021-22 submitted by the District Attorney’s Office in accordance with California Government Code section 27388, subdivision (d).

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Completed Board Order Item No. 32

| Date | Ver. | Action By | Action | Result |
|-----------|------|----------------------|----------|--------|
| 9/13/2022 | 1 | Board of Supervisors | received | Pass |

Receive and accept the Annual Real Estate Fraud Report for Fiscal Year (“FY”) 2021-22 submitted by the District Attorney’s Office in accordance with California Government Code section 27388, subdivision (d).

RECOMMENDATION:

It is recommended that the Board of Supervisors:

Receive and accept the Annual Real Estate Fraud Report for FY 2021-22 submitted by the District Attorney’s Office in accordance with Government Code section 27388, subdivision (d).

SUMMARY:

The District Attorney’s Office hereby submits its Annual Real Estate Fraud Report for FY 2021-22 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 30 real estate fraud referrals during FY 2021-22. These 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 referrals involved a variety of alleged fraud schemes, including “rental scams” (which typically promise residential rents at below-market rates), the recording of fraudulent deeds, the fraudulent transfer of real estate, timeshare-related fraud, usurious “hard money” loans, mortgage loan fraud, unlicensed real estate activity, 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 2021-22, 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 30 new referrals, all 30 required investigations 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 2021-22

During FY 2021-22, the District Attorney's Office charged the following criminal cases that have not yet been resolved (see below for resolved cases):

- ***People v. Kirsten Johnson***: The People filed a complaint alleging 10 felonies ranging from forging real estate deeds and filing false documents to grand theft and perjury. Specifically, Ms. Johnson forged two deeds transferring a house and condo from a victim to Ms. Johnson. Ms. Johnson filed those fake deeds with the Monterey County Clerk-Recorder. Later, she used her fraudulently obtained title to market the properties, stealing hundreds of thousands of dollars from an unsuspecting victim who believed he was buying a house. Ms. Johnson used those stolen funds to purchase a variety of assets, including another house. The People filed a "seize and freeze" motion pursuant to the "Aggravated White Collar Crime" provisions under Penal Code section 186.11, which allowed the People on behalf of the victims to preserve assets. This preservation included the placement of a *lis pendens* upon property Ms. Johnson purchased following the false sale. The Court granted a temporary restraining order, and the people are pursuing a preliminary injunction to preserve these assets until the end of the case, when they will be liquidated to fund restitution on behalf of the victims. A resolution of this case would also allow the victim's title to be properly restored pursuant to Penal Code section 115(e). Ms. Johnson has a prior conviction for forgery.
- ***People v. Josie Buchanan; People v. Julian Martinez; People v. Louis Howard; People v. Harmony Donaldson; People v. Stefanie Sockwell; People v. Keith Wongus; People v. Aaron Haley; People v. Princeton Massey; People v. Matthew Humphreys; People v. Joshua Story***: On November 30, 2021, the People filed two misdemeanor charges against each of the ten Defendants affiliated with International Escapes. The People allege that Defendants advertised themselves as working for RCI Travel when in fact they were not affiliated with the popular travel provider. Further, Defendants claimed they could help get timeshare owners out of their timeshare deeds, an act that requires a license in California. All but three Defendants failed to appear. Warrants have been issued for the arrest of those that failed to appear should they come back to California.
- ***People v. Susan Banks-Peterson***: On January 26, 2022 the People filed two felony charges

against Ms. Banks-Peterson for embezzlement and financial elder abuse pursuant to Penal Code section 368(e). The People allege Ms. Bank-Peterson stole over \$50,000 as the trustee for an elderly victim's trust. Ms. Banks-Peterson is a real estate agent, and was involved in the sale of the victim's home (which the victim did not consent to). Following the sale of the victim's home, Ms. Banks-Peterson was appointed as the trustee, and made regular withdrawals for personal expenses from the victim's trust account.

Ongoing Real Estate Fraud Cases

All real estate cases filed in a prior fiscal year have been resolved by the District Attorney's Office. All of the above filed cases are still ongoing.

Real Estate Fraud Civil Settlements and Criminal Convictions

In FY 2021-22, the District Attorney's Office obtained a misdemeanor criminal conviction in one matter, and felony criminal convictions in three actions, all involving real estate fraud, and all affecting Monterey County residents:

- ***People v. Michael Dennis Barwick***: On May 24, 2021, the People filed a felony complaint against Barwick for grand theft and practicing real estate without an appropriate license. The People allege that Barwick advertised himself as someone who could conduct home loan modifications, when in fact he could not, and that he unlawfully collected an upfront fee from the victim, did nothing, and failed to return the payment. Mr. Barwick paid full restitution to the victim, and was sentenced to a misdemeanor for real estate activities without a license.
- ***People v. John Osborne***: On November 16, 2020, the People filed a 22-count felony complaint against Osborne. The People allege that Osborne used his knowledge of finance and real estate to defraud two elderly Monterey County homeowners out of money and real property with a combined value of approximately one million dollars. On December 15, 2020, the People filed a Penal Code section 186.12 Application, which included two Penal Code section 186.12-related *lis pendens*, to, in part, prevent any transactions, including a foreclosure, from being filed against one of the victim's real property. In February 2021, the Court held a Preliminary Examination, and Osborne was held to answer. On March 3, 2021, the Court granted the Penal Code section 186.12 Application. On April 14, 2021, the People withdrew one of their Penal Code section 186.12-related *lis pendens* because the victim was successfully able to negotiate a mutually agreeable resolution with the relevant lending institution and avoid a foreclosure proceeding. On June 21, 2022 Mr. Osborne entered into a plea agreement and was sentenced to 9 years in prison on August 4, 2022.
- ***People v. Amy Alberto Agtarap***: The District Attorney's Office received a real estate fraud complaint from a Monterey County resident regarding 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. Following a jury trial, Ms. Agtarap was guilty on all counts and sentenced to Monterey County Jail for 3 years and 4 months in addition to fines and fees.

- ***People v. Victor Undiano Quiroz***: The District Attorney's Office received a police report indicating that Mr. Quiroz was impersonating the landlord leasing apartments in and around Salinas. Prospective tenants would be misled into providing Mr. Quiroz with deposits for apartments he could not rent. Mr. Quiroz pled to one felony of grand theft and agreed to pay back all of the victims. His sentence will be consecutive for jail sentences he is currently serving for similar crimes in other counties.

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 eighth year, the Tri-county Real Estate Advisory Team ("REFAT") met quarterly during FY 2021-22: August 12, 2021, November 18, 2021, February 10, 2021, and May 12, 2021. All of these meetings were over Zoom to encourage participation during the COVID era. 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 the Assistant Commissioner of Enforcement from the California Department of Real Estate, and the Monterey County District Attorney's Real Estate Fraud Investigator.

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 2021-22

New Referrals: 30

Investigations Opened: 30

Joint MCFCTF Investigations: 2

Arrests: 12

Criminal Complaints: 13

Convictions: 4

Civil Judgments and Compromises: 0

Appeals: 0

OTHER AGENCY INVOLVEMENT:

In FY 2021-22, 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 California Department of Real Estate, and the real estate fraud units of other California District Attorney's Offices.

FINANCING:

Total cost of the program was \$582,210 for FY 2021-22. Those costs involved investigation and prosecution activities. Total funds available were \$1,150,539, resulting in a net county cost of \$0.00.

Revenues

| | |
|---------------------------|-------------------|
| Beginning Balance: | \$ 662,117 |
| <u>FY 2021-22 Income:</u> | <u>\$ 488,422</u> |
| Total Funds Available: | \$ 1,150,539 |

Expenditures

| | |
|---------------------------------|-------------------|
| Salaries & Benefits: | \$ 414,934 |
| <u>Supplies & Services:</u> | <u>\$ 167,276</u> |
| Total Expenditures: | \$ 582,210 |

Ending Balance \$ 568,329

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:
Board Report

