



## Board Report

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**File #:** 15-0957, **Version:** 1

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Receive and accept the Annual Real Estate Fraud Report for Fiscal Year (“FY”) 2014/2015 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”) 2014/2015 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 2014/2015 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 2014/2015, the District Attorney’s Office received 37 new referrals which included allegations of real estate fraud, compared to 28 such referrals received during FY 2013/2014. Of those 37 new referrals, the District Attorney determined that 24 merited investigation beyond customary file review and background checks.

While investigation of any allegation of real estate fraud requires significant time and resources from prosecutors, investigators and paralegals, of the 24 investigations commenced during FY 2014/2015, two involve hundreds of victims, a corresponding number of transactions, and thousands of pages of records (e.g., agreements, loan applications, appraisals, complaints, contracts, checks, deeds, escrow materials, liens and notes). Four other referrals involve ten or more alleged victims, also with a corresponding number of transactions and similar volume of records requiring review.

Case filing decisions continue to be at the discretion of the District Attorney pursuant to Government Code section 27388(f). Accordingly, the District Attorney will sometimes conclude, after analysis of a new complaint or referral, that neither a criminal prosecution nor a civil lawsuit for illegal business practices is warranted. The reasons for a declination by the District Attorney differ and are made on a complaint by complaint basis. By way of example, an investigation of a referral may lead to determinations like (a) there is insufficient evidence to prosecute; (b) charges are barred by the statute of limitations; (c) there is a lack of personal or subject matter jurisdiction; (d) the matter should be referred to a federal or other state prosecutor or agency; and (e) the referral is a private, contractual dispute best resolved between the parties through private litigation. Even where referrals are declined by the District Attorney, such a declination is typically the product of significant analysis and review of complaints and documents. For example, one new referral resulted in a declination only after prosecutors and investigators expended hundreds of hours contacting and interviewing

witnesses and obtaining and reviewing documents.

During FY 2014/2015, as with prior years, the District Attorney's Office communicated coordinated and worked with other prosecutors and public agencies in connection with real estate fraud matters, including the California Bureau of Real Estate, the Contractors State License Board, the California Department of Business Oversight (the "DBO"), the California Department of Consumer Affairs, other District Attorney's Offices, and the U.S. Attorney's Office for the Northern District of California.

This collaboration can result in the joint investigation and prosecution of individuals and companies. For instance, during FY 2014/2015, the District Attorney's Office, in conjunction with the DBO and other prosecutor offices, filed a civil enforcement action in the Alameda County Superior Court against an Ohio corporation, Nationwide Biweekly Administration, Inc. and affiliates thereof ("Nationwide"). Nationwide obtains Monterey County homeowner information from public documents maintained at the Monterey County Recorder's office and uses that information to market and sell its mortgage payment services to homeowners. The District Attorney's lawsuit alleges that Nationwide deceptively markets its products and its affiliation with lenders. Thousands of Monterey County homeowners have received this company's unsolicited mailers and no fewer than 100 have purchased the services. Before this lawsuit was filed, the District Attorney expended significant time obtaining and reviewing records and contacting and interviewing victims. That time included working with Monterey County Counsel to respond to, and ultimately defeat, a federal court lawsuit filed by Nationwide against the District Attorney in an effort to thwart the District Attorney's investigation.

During FY 2014/2015, the District Attorney's Office devoted time to appeals filed in three separate cases. Defendants Daniel Kenneth Furness and Coleen Ann Gsell are appealing their sentences in two separate criminal cases following convictions for a variety of criminal offenses, including filing false or forged documents with the Monterey County Recorder. The other appeal arises out of a verdict rendered in a civil lawsuit against real estate brokers Susana Silva, Deanna Gobert and Estates on the Bay, Inc. In that appeal, the defendants are contesting the trial court's findings and the imposition of penalties and victim restitution in excess of \$120,000.

In FY 2014/2015 the District Attorney received a complaint from the Monterey County Assessor-Clerk/Recorder and County Counsel relating to testimony at a reassessment hearing and related documents filed by the witness with the Assessor-Clerk/Recorder. The District Attorney's Office obtained and reviewed the recording of the hearing and all relevant documents filed with the Recorder and provided the Recorder and County Counsel with a detailed analysis and chart of the applicable facts and law. After communicating with the Recorder and County Counsel, it was determined that no public action would be filed.

During FY 2014/2015, the District Attorney continued with public outreach efforts meant to help detect and identify real estate fraud activity associated with the California foreclosure crisis and the slow recovery. For example, the District Attorney has expended considerable time in efforts to form a tri-county (Monterey, San Benito and Santa Cruz) real estate fraud advisory team ("REFAT"). The REFAT will be composed of real estate industry professionals, prosecutors, law enforcement, and personnel from elected offices and public agencies. It is anticipated that the REFAT will meet quarterly for the purpose of discussing subjects such as real estate fraud patterns, schemes and trends. The REFAT program is modeled after similar District Attorney programs in

San Bernardino, Riverside and Ventura Counties, all of which have been successful not only with public fraud advisories, but with detecting new fraud patterns and schemes.

The District Attorney continues to be an active member of the several prosecution task forces which confer several times per year to discuss real estate fraud schemes and investigations. The District Attorney is a member of the California District Attorneys Association's Real Estate Fraud Committee, the members of which confer approximately four times per year. The California District Attorneys Association has asked the District Attorney to begin the process of composing a Real Estate Fraud Manual intended for dissemination to prosecutors and investigators. During FY 2014/2015, Deputy District Attorneys Robert Lauchlan and John Hubanks spent hours assembling an outline of the proposed Real Estate Fraud Manual. Both expect to contribute to that publication over the next two years.

Other outreach efforts during FY 2014/2015 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 effort 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 2014/2015**

New Referrals: 37

Investigations Opened: 24

Arrests: 0

Filed Complaints (Civil or Criminal): 1

Convictions: 0

Civil Judgments: 0

Appeals: 3

#### **OTHER AGENCY INVOLVEMENT:**

As noted in "Discussion" section, above.

#### **FINANCING:**

Total cost of the program was \$491,738 for fiscal year 2014-15. Those costs involved investigation and prosecution. Total funds available for transfer were \$533,920, 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:	\$61,674
<u>FY 2013-2014 Income:</u>	<u>\$472,246</u>
Total Available:	\$533,920

Expenditures

<u>Salaries &amp; Benefits:</u>	<u>\$491,738</u>
Total Costs:	\$491,738

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

Attachments: None