

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT District Attorney	(2) MEETING DATE 2/5/2013	(3) CONTACT/PHONE Gerald T. Shea, 781-5800	
(4) SUBJECT Submittal of a resolution increasing the Real Estate Prosecution Fraud fee from \$3 to \$7. This increase would provide for an approximate increase in annual revenue of \$183,880.			
(5) RECOMMENDED ACTION It is respectfully recommended that your Board adopt the attached resolution authorizing the fee increase to \$7 per "real estate instrument" as defined by Government Code section 27388, as recently amended by Senate Bill 1342 (SB 1342), (Chapter 104, Statutes of 2012), which took effect January 1, 2013. This increase to sunset in five years, on February 4, 2018, in order to allow the Board of Supervisors to revisit and revise the amount of the fee in light of the total revenues in the Real Estate Fraud Trust at that time.			
(6) FUNDING SOURCE(S) Fee Revenue	(7) CURRENT YEAR FINANCIAL IMPACT \$61,293.00 in FY 2012-13 (March 2013-June 2013), if approved	(8) ANNUAL FINANCIAL IMPACT New Revenue: \$183,880.00 Current Revenue: \$137,910 Total if Approved: \$321,790	(9) BUDGETED? No
(10) AGENDA PLACEMENT { } Consent { } Presentation { } Hearing (Time Est. _____) {X} Board Business (Time Est. <u>30 mins.</u>)			
(11) EXECUTED DOCUMENTS {X} Resolutions { } Contracts { } Ordinances { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A { } 4/5th's Vote Required {X} N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY { } N/A Date: <u>8/19/2008</u> and <u>1/27/2009</u>	
(17) ADMINISTRATIVE OFFICE REVIEW Geoff O'Quest, Administrative Analyst			
(18) SUPERVISOR DISTRICT(S) All Districts -			

County of San Luis Obispo



TO: Board of Supervisors

FROM: District Attorney / Gerald T. Shea
781-5800

DATE: 2/5/2013

SUBJECT: Submittal of a resolution increasing the Real Estate Prosecution Fraud fee from \$3 to \$7. This increase would provide for an approximate increase in annual revenue of \$183,880.

RECOMMENDATION

It is respectfully recommended that your Board adopt the attached resolution authorizing the fee increase to \$7 per “real estate instrument” as defined by Government Code section 27388, as recently amended by Senate Bill 1342 (SB 1342), (Chapter 104, Statutes of 2012), which took effect January 1, 2013. This increase to sunset in five years, on February 4, 2018, in order to allow the Board of Supervisors to revisit and revise the amount of the fee in light of the total revenues in the Real Estate Fraud Trust at that time.

DISCUSSION

The District Attorney’s Real Estate Fraud Prosecution Program (REFPP) (formerly the Real Estate Fraud Unit), now in its fourth year of operation, continues to implement the goals of “deterring, investigating and prosecuting real estate fraud crimes.”¹ The REFPP is currently funded in part by a fee (currently \$3) collected on specified “real estate instruments” recorded with the San Luis Obispo County Clerk and Recorder’s Office.²

The Real Estate Fraud Prosecution Program’s Annual Report for Fiscal Year 2011-12, prepared pursuant to California Government Code Section 27388, subsections (d)(1) and (d)(2), was presented to the San Luis Obispo County Board of Supervisors in August 2012 and is attached for reference. As stated in the report, the current \$3 real estate document fee revenue funds only a portion of the staffing costs associated with the Unit’s Deputy District Attorney and District Attorney Investigator who investigate and prosecute the growing number of San Luis Obispo County’s real estate fraud cases.

By way of background, currently California leads the nation with almost 40,000 residences pending foreclosure. Approximately 2.2 million people or one-third of all California homeowners are “upside down” on their mortgages. These staggering foreclosure statistics render our state and county vulnerable to real estate fraud perpetrators preying on desperate homeowners facing foreclosure.

Accordingly, foreclosure rescue and related schemes are one of today’s most prevalent types of real estate fraud. Criminals perpetrating this type of fraud frequently target the elderly and monolingual Spanish-speaking individuals. As the market evolves, so do the perpetrators, who endeavor to manipulate unsuspecting victims. Investigation and prosecution of real estate fraud and related crimes is resource and time intensive. Prosecutors and investigators handling such crimes require substantial training and expertise, and real estate fraud schemes typically cross jurisdictional boundaries, complicating prosecution efforts.

Educating both real estate industry professionals and the general public about the risks inherent in real estate fraud continue to be a significant focus of the District Attorney’s Office. So, too, is the aim of a recently formed San Luis Obispo County organization of real estate professionals known as RESAFE, Real Estate Scam and Fraud Exposure. Due to the increased incidence of real estate fraud affecting county residents, RESAFE volunteers have offered their knowledge and

¹ Gov. Code section 27388(b).

² Gov. Code section 27388(a).

expertise in alerting the public about the common warning signs of the various types of fraud and referring those who have had the misfortune of succumbing to these unlawful schemes. (Please see attached letter from RESAFE about the District Attorney's Real Estate Fraud Prosecution Program.)

Specifically, in October 2012 RESAFE approached the District Attorney's Office about collaborating efforts. They have included a proposed public access link on their website, www.RESAFE.org, which will provide, among other things, the ability for fraud victims to file complaints with the San Luis Obispo County District Attorney's Office. Widespread implementation of RESAFE's services through the publication and distribution of their print material, public website access, and community information sessions, will undoubtedly increase the number of fraud referrals to the District Attorney's Office, and, correspondingly, the number of investigations and prosecutions. It is believed that this increased awareness and ease in ability to report a real estate fraud crime, particularly for the elderly and minority victims who may otherwise go unreported, will significantly impact the District Attorney's Office's handling of Real Property Crimes, Foreclosure Bailout Scams, "Straw Buyer" Scams, Forgery of Deeds, and Home Equity Thefts. (Please see the attached RESAFE draft brochure.)

The District Attorney's REFPP was established by your Board in 2008, as authorized by Government Code section 27388. And while the operational success of the REFPP has been noted in the attached report to your Board, the revenue generated by fees collected upon the recording of certain "real estate instruments" has been sufficient to only partially fund a REFPP team of one portion of a Deputy District Attorney's salary and one portion of an Investigator's salary. Meanwhile, the unit continues to operate under a shortage of resources to address pending cases and the future cases expected to be generated by public awareness campaigns such as RESAFE's.

Foreseeing this chronic shortfall of funds occurring throughout the state, the California Association of Realtors, the County Recorders' Association of California, and the Office of the Attorney General joined with the California District Attorneys Association to support a successful effort to amend Government Code section 27388 by passage of SB 1342.³ Section 1, subdivision (a) of that Bill states: "The Legislature finds and declares all of the following: (a) The current recording fee collected to fund the Real Estate Fraud Prosecution Trust Fund is insufficient to adequately fund real estate fraud prosecutions and needs to be increased." As a result, County Boards of Supervisors throughout California are authorized to increase the statutory fee charged in their respective counties to a maximum of \$10 collected upon the recording of "real estate instruments," as defined by Government Code section 27388(a), to provide a consistent funding stream for an effective law enforcement response to the real estate fraud in our state.

OTHER AGENCY INVOLVEMENT/IMPACT

Senate Bill 1342 allows a portion of the funds in the Real Estate Fraud Prosecution Trust Fund to be directly allocated to the County Clerk-Recorder's Office to defray the administrative costs of collecting the fee. The Clerk-Recorder's Office retains statutory authorization to receive 10% of the gross real estate fraud trust fund revenue collected upon the specified recorded documents. In addition to covering the administrative costs, the proposed increased revenue would fund foreclosure advisory warning notices that would be sent to property owners when a Notice of Default is recorded on their property. In addition, a courtesy notice will be sent to property owners when a Quitclaim Deed is recorded on their property to ensure that the owner is aware of the recording. This notification program can be critical in detecting and preventing potential real estate fraud in its early stages.

The District Attorney's Office has consulted with County Counsel as to the legal form and effect of the resolution to increase the fee.

FINANCIAL CONSIDERATIONS

The statutory definition of "real estate instruments" has been expanded with the passage of SB 1342's amendments to Government Code section 27388(a). Thus, effective January 1, 2013, new documents are subject to the existing \$3.00 fee authorized by your Board by operation of law. While the scope of "real estate instruments" to which the recording fee applies will be increased by SB 1342, the actual fiscal impact of this change can only be roughly approximated. However, based on the revenue reported for FY 2011-12, approximately 45,970 "real estate instruments" were subject to the current \$3 fee authorized by Government Code section 27388. Utilizing this figure as an estimate for FY 2012-13 and the proposed \$7 fee, the corresponding potential revenue could conservatively be estimated to increase from approximately \$137,910 to approximately \$321,790. After the allocation of 10 percent for the Clerk-Recorder's Office's administrative costs, the estimated revenue to the District Attorney's Office from a fee increase to \$7 would fund an additional full-time Investigator who would be specifically dedicated to the REFPP.

³ SB 1342 (Emmerson) was signed into law by Governor Brown on July 13, 2012, and became effective on January 1, 2013.

Current fee revenue, proposed fee increases, and expenses are as follows:

	\$3 Fee (Current)	\$7 Fee (Proposed)
Revenue (45,970 est documents)	\$137,910	\$321,790
Expenses		
(Administrative Costs) Currently 5% to Clerk-Recorder; Going to 10% in 2013	\$6,896	\$32,179
(Salaries & Benefits) Partially funded Investigator and Partially funded Deputy District Attorney	\$131,014	\$155,789
District Atty. Investigator II		\$133,822
Net Cost	\$137,910	\$321,790

When RESAFE's community outreach impacts the District Attorney's Office as anticipated, if the current annual fee were to be maintained the REFPP will labor under an even larger shortage of investigative resources to address the number of increasing criminal investigations. A proposed fee increase approved by the Board of Supervisors would provide the District Attorney's Office with the means by which to address the addition of an investigative resource to meet the impending need.

RESULTS

The District Attorney respectfully requests that the Board of Supervisors adopt the proposed resolution authorizing implementation of the proposed fee of \$7 to be collected on real estate instruments. Your action will provide a sound fiscal path forward so that we may expand our ongoing efforts to prevent, deter and prosecute real estate fraud in San Luis Obispo County.

This additional fee will also provide funding for the Property Owner Notification program proposed by the Clerk-Recorder. The program will notify property owners that a Notice of Default or a Quitclaim Deed has been recorded on their property in an effort to alert them of possible fraudulent activity.

If approved, a Budget Adjustment Request reflecting an increase to the Position Allocation List (PAL) through the addition of a 1.00 FTE District Attorney Investigator II position will be submitted in a subsequent Board item.

ATTACHMENTS

1. FY 2011-12 Narrative Annual Report
2. RESAFE Letter
3. RESAFE Brochure
4. Resolution