

FISCAL PROCEDURES APPROVED
 PAUL ANGULO, CPA, AUDITOR-CONTROLLER
 BY Paula Harris
 TANYA S. HARRIS, CPA

465



**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FROM: District Attorney and Assessor-County Clerk-Recorder

SUBMITTAL DATE:
 January 24, 2013

SUBJECT: Resolution No. 2013-038 Authorization to Increase to \$10.00 the fee for the Real Estate Fraud Prosecution Trust Fund.

Approve Resolution No. 2013-038 authorizing an increase in the Real Estate Fraud Prosecution Trust Fund fee from \$3.00 to \$10.00 effective March 5, 2013 and expand the existing definition of "real estate instrument" to include additional instruments subject to this fee.

BACKGROUND:
 Commences on Page 2.

FORM APPROVED COUNTY COUNSEL
 BY Paula Harris 11/31/13
 PAMELA J. WALLS DATE Departmental Concurrence

Larry Ward
 LARRY WARD,
 Assessor-County Clerk-Recorder

Paul E. Zellerbach
 PAUL E. ZELLERBACH,
 District Attorney

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012-2013

SOURCE OF FUNDS: Real Estate Fraud Prosecution Trust Fund Fee	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY: Elizabeth J. Olson
 Elizabeth J. Olson

County Executive Office Signature

Department Recommendation. Consent Policy
 Per Executive Office. Consent Policy

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Riverside County is California's second largest county in size and fourth largest in population with almost 2.3 million people. Over the last few decades, Riverside County has been one of the fastest growing counties in the state and nation. For example, Riverside County population increased more than 40% between 2000 and 2010, while the US population increased only 9.7% during that time and California as a whole increased just slightly faster at 10%.

Historically, the population increase was largely attributable to workers in adjacent Los Angeles, Orange and, to a lesser extent, San Diego counties searching for affordable housing. Reflecting this fact, by the year 2000 Riverside County had a significantly higher percentage of homeownership than California as a whole, even though it had somewhat lower median family income.

Real estate fraud is a difficult area of criminal prosecution to evaluate. Real estate fraud can encompass everything from a forged deed transferring ownership of one residential house with no monetary loss to a county-wide land-investor fraud scheme affecting thousands of victims and resulting in millions of dollars in monetary loss.

The most significant challenge facing Riverside County involves the foreclosure crisis. For a variety of reasons, the foreclosure crisis hit Riverside earliest and hardest. The foreclosure crisis continues to significantly affect Riverside County residents. Last year Riverside led the state (along with much smaller Stanislaus County) in percent of foreclosed or bank owned properties. And this was after a significant decline in Riverside County foreclosure rates from a year earlier.

The crash in the housing market has led to record numbers of vacant or abandoned homes. The allure of sub-prime mortgages and 100% financing led to an over-inflated housing market that resulted in a record-breaking collapse. Many new homeowners found themselves unable to afford their mortgages, and the foreclosure rate in California and particularly Riverside County skyrocketed. Today there are over 6,800 foreclosed properties - 1 in every 114 homes, resulting in Riverside County having the second largest foreclosure rate in the state. In the first quarter of 2011, a total 16,688 mortgage default notices, auction sale notices and bank repossessions were recorded countywide between January and March, translating to 1 in 46 households in some stage of foreclosure, according to Irvine-based RealtyTrac. And that does not count the hundreds of properties where the homeowner has vacated the property but the bank has yet to foreclose.

Unfortunately, the banks are not always diligent about upkeep and protection of their properties. They are most often the "absentee landlord." As a result, thousands of properties in Riverside County are vacant and unkempt. Formerly safe, family-friendly neighborhoods have become a magnet for squatters and criminals.

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Of course, with crisis come more fraudsters. Riverside County residents have been victimized by ever-increasing and a wider variety of real estate fraud, to include mortgage and foreclosure fraud schemes. Common schemes include rent skimming (scammers with no legal title who fraudulently collect rent on foreclosed homes), refinancing and advance fee scams (scammers who get fees, and sometimes even deeds, in return for promised refinancing that does not exist), predatory lending scams and other schemes.

Local law enforcement is often ill-equipped and ill-trained to investigate these crimes, which they frequently dismiss as "purely civil matters." As a result, in 1998 the Board of Supervisors, pursuant to Government Code section 27388, authorized a \$2.00 fee for certain real estate transfer documents and established the Real Estate Prosecution Trust Fund. The Riverside County District Attorney's Office was designated as the lead agency responsible for the investigation and prosecution of real estate fraud in Riverside County. The fee remained unchanged until increased to \$3.00 by Board resolution in 2009.

The District Attorney's Real Estate Fraud Unit is currently staffed with three investigators, one investigative technician, three prosecutors and one paralegal. These staff members review all real estate fraud related complaints filed directly with the District Attorney's Office. They investigate and file criminal cases when warranted. Their work is complex and time consuming. Fraudulent real estate transactions and schemes often require significantly longer time to investigate and prosecute than other types of crimes. Such cases require staff to review and analyze hundreds, if not thousands, of pages of documents. It is not unusual that investigating a single citizen complaint uncovers a fraud perpetrated on numerous other victims, making the case exponentially larger and more complicated. For example, in one recent case, our assigned prosecutor and investigator, along with a forensic accountant and volunteer paralegal, together reviewed more than 10,000 pages of material. This included records of over ten bank accounts spanning three years, a company prospectus, business plans, emails, escrow files, title files, loan documents, grant deeds and trust deeds from four different counties and five states. The Real Estate Fraud Unit's work in this matter has led to the generation of over 400 pages of police reports and the uncovering of a multistate Ponzi scheme.

The increased fraud and a shortage of resources have combined to seriously impede keeping up with the fraudsters. For instance, real estate complaints filed directly with the District Attorney's Real Estate Fraud Unit increased from approximately 204 in fiscal year 2007-2008, to 926 in fiscal year 2010-2011, an increase of over 200%. At the same time, the number of investigations initiated and prosecutions conducted remained essentially consistent, due to inadequate staffing levels to address the complaints.

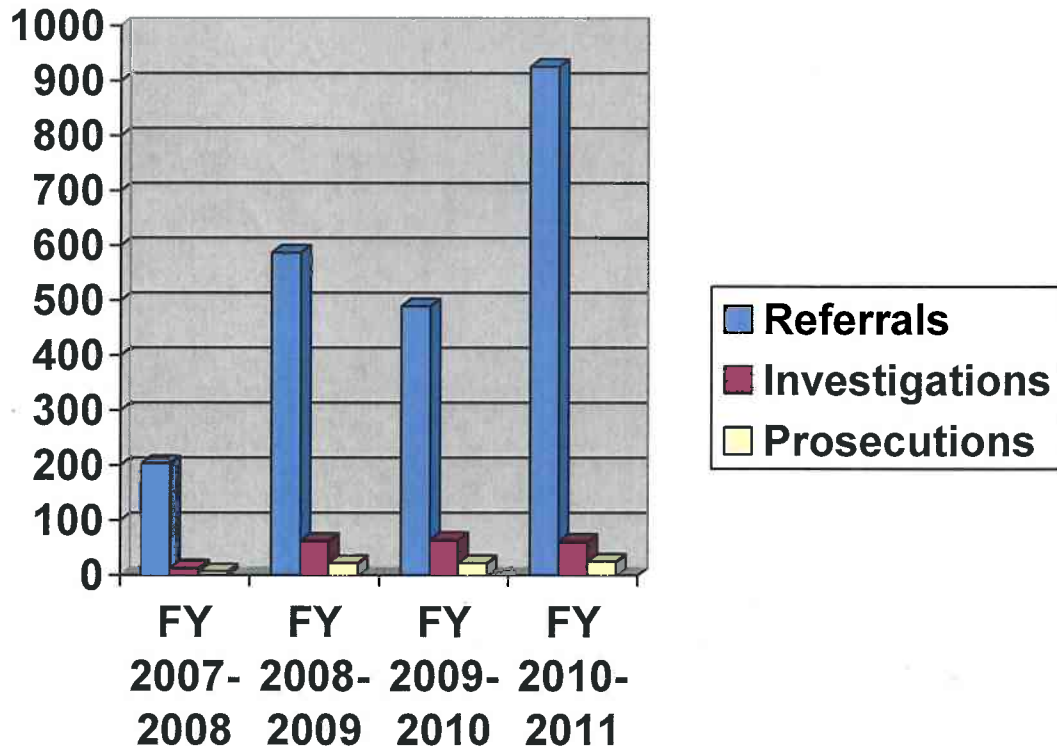
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The following chart reflects the number of real estate fraud complaints referred to the District Attorney's Office, the number that were investigated, and the number that were ultimately prosecuted. As the chart demonstrates, the volume of real estate fraud in Riverside County cannot be adequately addressed with current staffing levels.



Obviously, the long-term solution to combating the increasing problem of real estate fraud in Riverside County is to invest more financial resources into its investigation and prosecution. In addition to increased staffing levels within the District Attorney's Real Estate Fraud Unit, other professionals are necessary to combat real estate fraud. These include accountants, forensic auditors and other experts and ancillary personnel to supplement prosecutor, investigator and paralegal efforts.

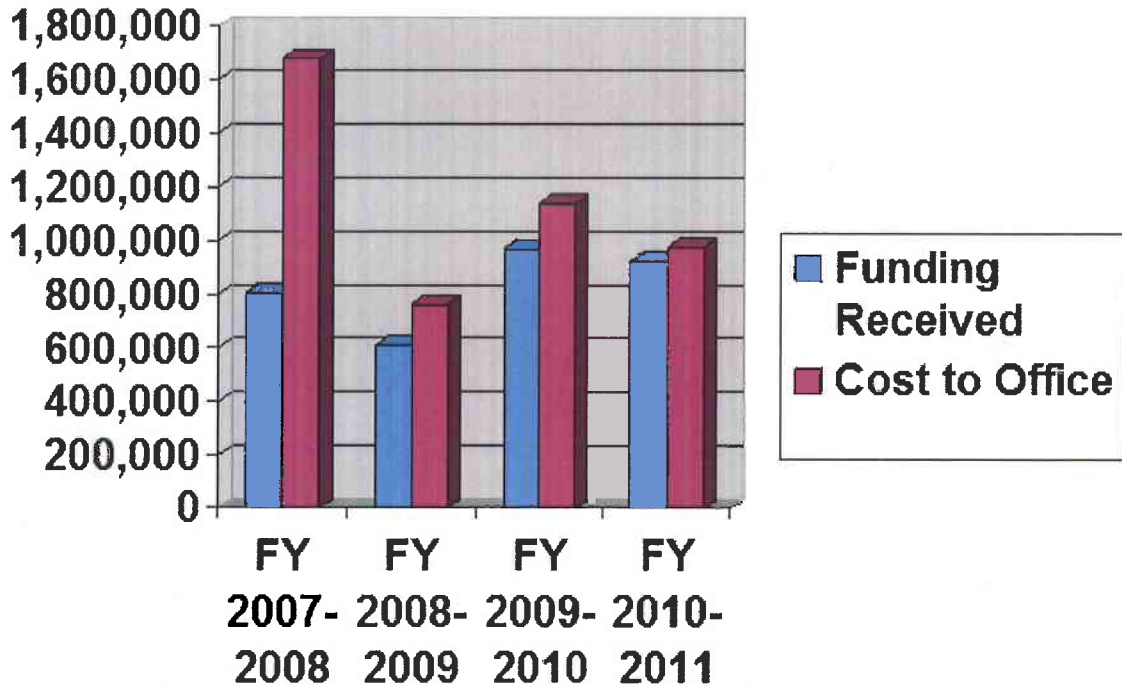
Over the last few years, as real estate, mortgage and foreclosure fraud has dramatically increased, the revenue from the filing fees sent to the District Attorney to combat fraud has dropped because of the decline in real estate activity. Criminal real estate activity has increased at precisely the time when District Attorney resources for fighting that crime have decreased. Unfortunately, because of budget issues, the County has been unable to augment real estate prosecution resources. As the following chart demonstrates, the cost associated with the District Attorney's Real Estate Fraud Unit has exceeded the funds received since fiscal year 2007.

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SB 1342 (Emmerson), which received widespread support from the legislature, as well as from the California Association of Realtors and the County Recorder’s Association, provides a positive solution for issues of underfunding and understaffing. This bill authorizes the Board of Supervisors to increase filing fees up to \$10 per recorded document to fund real estate fraud deterrence, investigations and prosecutions. The bill also expands the list of documents to which the fraud fee applies. Furthermore, SB1342 provides that a portion of funds collected may be used to support fraud prevention programs.

It is well recognized that awareness and prevention is a critical component in combatting crime. To this end, the District Attorney’s Office and the Riverside County Recorder’s Office have worked over the past two years to forge a strong partnership to address the ever increasing problem of real estate fraud within the county. This partnership led to the establishment of a “courtesy notice” program implemented in 2011.

The “courtesy notice” program is a way to combat real estate fraud at its inception. When a document is filed that affects the chain of title—specifically grant deeds, quitclaim deeds, reconveyances, and substitutions of trustees – the Recorder’s Office immediately sends a letter to the affected party. The notice informs the victim about the filing and to contact the District Attorney’s Office if he or she believes the document is

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fraudulent. Victims are given our website and our email address, and a hotline number to call if they have additional questions. The “courtesy notice” program gives the District Attorney’s Office a means to investigate fraud as soon as it happens, as opposed to months or years later after title companies and homeowners have been scammed out of thousands of dollars. In this way, the program gives law enforcement a head start and saves taxpayers potentially millions of dollars.

Currently, the “courtesy notice” program is funded by the County Recorder’s Office. SB1342 authorizes a portion of funds collected to be allocated to the county recorder to support county recorder fraud prevention programs such as the “courtesy notice” program already in place in Riverside County. An increase in filing fees would allow the existing program to continue and to be expanded to include courtesy notices for additional types of document filings, such as default notices. The District Attorney’s Office would allocate a portion of the funds collected as a result of increased filing fees to pay for the actual costs of the “courtesy notice” program.

In sum, an increase in filing fees would greatly assist in combatting the real estate fraud epidemic within the county on multiple fronts. The additional funds provided by an increase in filing fees would permit the hiring of additional investigators, attorneys, clerical personnel, and at least one forensic accountant to help meet the needs of Riverside County residents faced with real estate fraud. The additional funds could also be used to create a real estate fraud database to track the referrals to the District Attorney’s office more efficiently and accurately. Finally, the funds could be used for additional community outreach, through awareness and prevention programs, to both educate our citizenry about real estate fraud and to more quickly identify fraud when it occurs.

The resolution has been reviewed and approved by County Counsel as to form.

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3 RESOLUTION NO. 2013-038

4 RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE
5 AUTHORIZING AN INCREASE IN RECORDING FEES AND THE EXPANSION OF THE
6 EXISTING DEFINITION OF "REAL ESTATE INSTRUMENT" PERTAINING TO THE REAL
7 ESTATE FRAUD PROSECUTION TRUST FUND

8
9 WHEREAS, real estate fraud continues to represent a significant problem in Riverside County,
10 causing irreparable harm, such as the loss of life savings or retirement funds, to hundreds of Riverside
11 County residents resulting in an aggregate loss of millions of dollars;

12 WHEREAS, the intent of this fee increase to be placed on the Board agenda is to have an impact
13 on real estate fraud involving the largest number of victims and to the extent possible place emphasis on
14 fraud against individuals whose residences are in danger of, or are in, foreclosure as defined under
15 subdivision (b) of Section 1695.1 of the Civil Code;

16 WHEREAS, the State Legislature's amendment of Government Code Section 27388 allows local
17 governments to continue providing services to safeguard citizens vulnerable to real estate fraud schemes;

18 WHEREAS, Government Code Section 27388 authorizes a fee of up to \$10.00 to be imposed on
19 the recording of specified real estate instruments, papers, and notices, provided the Board of Supervisors
20 adopts a resolution authorizing the fee;

21 WHEREAS, the current fee does not provide sufficient resources to adequately address the
22 growing real estate fraud problem affecting Riverside County residents;

23 WHEREAS, establishment of the fee in accordance with Government Code Section 27388 at no
24 less than \$10.00 is necessary to provide adequate funds to cover the reasonable costs of real estate fraud
25 prevention and prosecution within Riverside County;

26 WHEREAS, the manner in which those costs and the fee increase are allocated to a payor bear a
27 fair and reasonable relationship to the payor's burdens on, and benefits received from, the District
28 Attorney's Office's activities;

1 WHEREAS, Government Code Section 27388 provides that a portion of the funds may be directly
2 allocated to the County Recorder to support County Recorder fraud prevention programs, including, but
3 not limited to, the fraud prevention program provided for in Government Code Section 27297.7;

4 WHEREAS, Government Code Section 27388 provides that the fees, after deduction of actual and
5 necessary administrative costs incurred by the County Recorder in carrying out this section, shall be paid
6 quarterly to the County Auditor or Director of Finance, to be placed in the Real Estate Prosecution Trust
7 Fund. Now, therefore,

8 BE IT RESOLVED by the Board of Supervisors of the County of Riverside assembled in regular
9 session on February 5, 2013 that:

10 1. Effective March 5, 2013, the recording fee collected by the County Recorder's office on
11 behalf of the Real Estate Fraud Prosecution Trust Fund shall be increased from \$3.00 to \$10.00 on the
12 following documents: a deed of trust, an assignment of deed of trust, a reconveyance, a request for notice,
13 a notice of default, a substitution of trustee, a notice of trustee sale, a notice of rescission of declaration of
14 default, and any of the above titles being re-recorded. In addition, the \$10.00 fee shall be collected on the
15 following document titles: an amended deed of trust, an abstract of judgment, an affidavit, an assignment
16 of rents, an assignment of a lease, a construction trust deed, CC&Rs (covenants, conditions and
17 restrictions), a declaration of homestead, an easement, a lease, a lien, a lot line adjustment, a mechanics
18 lien, a modification of deed of trust, a notice of completion, a quitclaim deed, a subordination agreement,
19 a trustee's deed upon sale, any Uniform Commercial Code amendment, assignment, continuation,
20 statement or termination, a notice of rescission of declaration of default, a notice of trustee sale, and a
21 substitution of trustee, and any of the above titles being re-recorded.

22 2. The County Recorder shall pay the fees collected quarterly to the Auditor and Controller
23 for placement in the Real Estate Fraud Prosecution Trust Fund. Prior to such payments to the Auditor and
24 Controller, the County Recorder may deduct the following: (1) the actual and necessary administrative
25 costs incurred by the County Recorder in carrying out Government Code Section 27388; and (2) the
26 actual and necessary costs of fraud prevention programs, including, but not limited to, the fraud
27 prevention program provided for in Section 27297.7, in an amount not to exceed ten percent (10%) of
28 total fees collected during the quarter.

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3. Because investigation of real estate fraud is done exclusively by the District Attorney in Riverside County, in accordance with Government Code Section 27388 (b), 100% of the funds in the Real Estate Prosecution Trust Fund shall be distributed to the Riverside County District Attorney's Office, subject to review as provided in subdivision (d) and (e) of Government Code Section 27388.

BE IT FURTHER RESOLVED AND ORDERED that this Resolution shall supersede Resolution No. 98-310 and Resolution No. 2009-025.

BE IT FURTHER RESOLVED AND ORDERED that a copy of this Resolution shall be transmitted to the District Attorney, the Assessor-County Clerk-Recorder, and the Auditor-Controller.

FORM APPROVED COUNTY COUNSEL
BY: Pamela J. Walls 11/31/13
PAMELA J WALLS DATE

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