

667



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

FROM: District Attorney and Assessor-County Clerk-Recorder

SUBMITTAL DATE:
March 12, 2013

SUBJECT: Resolution No. 2013- 054 Authorization to Increase to \$10.00 the fee for the Real Estate Fraud Prosecution Trust Fund.

Approve Resolution No. 2013-054 authorizing an increase in the Real Estate Fraud Prosecution Trust Fund fee from \$6.00 to \$10.00 effective March 26, 2013.

BACKGROUND:
Commences on Page 2.

FISCAL PROCEDURES APPROVED
BY PAUL ANGULO, CPA, AUDITOR-CONTROLLER
RUSSELL S. DOMINSKI 3-6-13

FORM APPROVED COUNTY COUNSEL
BY PAMELA J. WALLS
2/27/13
Department of Finance
DATE

LARRY WARD,
Assessor-County Clerk-Recorder

FOR
PAUL E. ZELLERBACH
District Attorney
Jeffrey Van Wagenen
Assistant 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
County Executive Office Signature

Department Recommendation. Consent
Per Executive Office: Policy

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended with a report back in 4 years.

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: March 12, 2013
xc: D.A., ACR, Auditor

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy
3-11

Prev. Agn. Ref.: 2-15-05, #3.10; 1-27-09, #3.13 | **District:** ALL | **Agenda Number:**

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

FORM 11: Approve Resolution No. 2013-054 authorizing an increase in the Real Estate Fraud Prosecution Trust Fund fee from \$6.00 to \$10.00 effective March 26, 2013.

DATE: March 12, 2013

PAGE 2 of 6

On February 5, 2013, this Board voted (3-1) to authorize a countywide increase in filing and recording fees on certain real estate related documents filed with the County Recorder's Office from \$3 per document to \$6 per document as authorized by newly amended Government Code section 27388 (SB1342). On that same day, the Board indicated it would consider increasing the filing fee to \$10 per document as authorized by Government Code section 27388, if additional information was provided explaining the necessity for the additional increase and the manner in which the funds generated by the increase would be utilized. The Riverside County District Attorney's Office and the County Recorder's Office request that the Board increase the document filing fee to \$10 because greater staffing and resources are critical in order to address the overwhelming number of real estate fraud complaints made by Riverside County residents who have been victimized in the last several years by real estate fraud scammers.

Real estate fraud has become a national epidemic and nowhere has fraud become more apparent than in Riverside County. Since 1998, the Riverside County District Attorney's Office has been tasked as being the only prosecutorial and investigative agency in the county combatting real estate fraud. Every real estate fraud prosecution is handled by the District Attorney's office and the office serves as the only agency responsible for reviewing complaints of fraud from the community. During the last fiscal year, the available resources to address real estate fraud within the county consisted of approximately \$1 million in deposits to the Real Estate Prosecution Trust Fund (as a result of the previously set \$3 filing fee) and approximately \$500,000 from the District Attorney general fund. However, keeping up with the fraudsters in a county of almost 2.3 million is not possible under these current budget constraints.

During the 2011-2012 fiscal year, the District Attorney's Office received over 2400 referrals for investigation -- an increase of over 500 referrals from the prior fiscal year. The District Attorney's Office was only able to initiate 94 investigations in the last fiscal year, which was still 34% higher than the 62 commenced in 2010-2011. As of this month, the office is now handling approximately 133 active investigations. However, based on the over 2400 total complaints received during the last fiscal year, this means that due to lack of sufficient resources only a small percentage of all claims received are investigated.

To adequately address this problem, the District Attorney's Office Real Estate Fraud Unit is in dire need of additional staffing. Due to currently available resources, the unit is only able to staff four full time investigators, one investigative technician, three prosecutors and one paralegal. The overwhelming task of reviewing and analyzing the thousands of pages of documents, computer hard drives, bank records, deeds, escrow files, and title files that are necessary to properly investigate, file, and prosecute a criminal real estate fraud case is beyond the capabilities of such a small staff. One real estate fraud case

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

FORM 11: Approve Resolution No. 2013-054 authorizing an increase in the Real Estate Fraud Prosecution Trust Fund fee from \$6.00 to \$10.00 effective March 26, 2013.

DATE: March 12, 2013

PAGE 3 of 6

alone can require the services of multiple investigators and investigative technicians, leaving no spare personnel for the Real Estate Fraud Unit to utilize on other cases.

Because the District Attorney's Real Estate Fraud Unit is under-staffed and under-funded, the assigned personnel must attempt to do tasks that would otherwise be completed by those with specialized training. The unit has no document examiner, so our attorneys and the lone paralegal spend hours away from their cases deciphering and categorizing evidence. The unit has no computer forensic examiner, so our office cannot spend sufficient time reviewing computer hard drives confiscated in search warrants. This results in potentially powerful evidence not being captured. Forensic accounting reports are often critical to the successful prosecution of a real estate fraud case however the unit has no forensic accountant on staff. As a result, forensic accounting services must be obtained on an ad hoc basis from outside consultants. Retaining forensic accountant services from the private sector is costly -- for example, on a single fraud case, retaining an accountant and the necessary support staff from the private sector costs approximately ten thousand dollars per month. The high cost of this service from an outside consultant means this incredibly important tool is infrequently used.

**A COMPREHENSIVE APPROACH TO ADDRESSING
THE REAL ESTATE FRAUD PROBLEM IN RIVERSIDE COUNTY**

To combat real estate fraud in a comprehensive and effective way, the District Attorney's Office needs a substantial increase in the personnel and resources devoted to its Real Estate Fraud Unit. The availability of resources is directly related to monies deposited into the Real Estate Fraud Prosecution Trust Fund. According to projections by the County Recorder's Office, an increase in the filing fee to \$10 would likely result in approximately \$4.965 million being deposited into the Real Estate Fraud Prosecution Trust Fund annually. As set forth in Government Code section 27388, these funds may only be expended for real estate fraud investigations, prosecutions, and outreach. Adjusting the real estate document filing fee to \$10 would provide the necessary resources to create a comprehensive, cost-effective and efficient approach to real estate fraud investigation, prosecution, and education within the county. Moreover, the additional resources will enable the County Recorder to continue and expand the courtesy notice program -- an important component of a proactive approach to the prevention of real estate fraud.

Increased staff

The proposed fee increase would allow for key staffing changes. At the center of these changes is moving from a single unit based in the Riverside office to the establishment of regionally located real estate fraud units to address the individualized real estate fraud issues in each area. The Real Estate Fraud Unit would remain headquartered in Riverside

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

FORM 11: Approve Resolution No. 2013-054 authorizing an increase in the Real Estate Fraud Prosecution Trust Fund fee from \$6.00 to \$10.00 effective March 26, 2013.

DATE: March 12, 2013

PAGE 4 of 6

but increased funding would allow the creation of sub-units assigned to offices in Indio and Southwest. Each area – Riverside, Southwest and Indio – would review, investigate and prosecute cases within their respective regions. Each “branch unit” – Southwest and Indio -- would consist of two investigators, one deputy district attorney, one investigative technician, and one legal support person. In addition to investigation and prosecution of fraud cases, each branch unit would also be responsible for presenting coordinated outreach and education to the public in their respective areas. By staffing each branch, the District Attorney’s office can more appropriately meet the needs of the entire county. The creation of these localized branch units would require positions for four investigators, two deputy district attorneys, two investigative technicians and two legal support assistants.

Concomitantly with the creation of branch units, the Riverside office would increase its staff by three investigators, including one full time commander to oversee all real estate fraud investigators countywide. The additional investigators would allow the District Attorney’s office to not only adequately address the influx of complaints from our citizens but to provide immediate, on-demand support at the County Recorder’s office when individuals file what appear to be fraudulent documents. An additional Investigative Technician position would be added in Riverside to staff the office’s newly created toll-free hotline dedicated exclusively for victims of real estate fraud.

A second major staffing component is the addition of crucial accounting personnel to analyze and prepare financial records and forensic audits. This team would consist of a Forensic Accountant and two accounting assistants. The formation of a team versus a single forensic accountant allows for the data review and entry, spreadsheet creation, and other important tasks to be handled by specially trained personnel other than by a forensic accountant. This will result in effective and efficient use of resources at significant cost savings.

Another necessary and important staffing change is the addition of two other specialized team members -- a real estate fraud document examiner and a forensic computer analyst. The real estate fraud document examiner would review the voluminous records involved in fraudulent real estate transactions. The forensic computer analyst would be available to review and extract potentially powerful evidence from seized computers and electronic devices.

Community Outreach

The District Attorney’s Office recognizes that community outreach is an essential component in addressing real estate fraud. Many of the communities hardest hit by the fraudsters are vulnerable, lower income residents in the Hispanic community, who are desperate for help but often lack access to necessary information. These same individuals rarely possess the necessary understanding of the foreclosure process adequately to

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

FORM 11: Approve Resolution No. 2013-054 authorizing an increase in the Real Estate Fraud Prosecution Trust Fund fee from \$6.00 to \$10.00 effective March 26, 2013.

DATE: March 12, 2013

PAGE 5 of 6

protect themselves from cheats looking to capitalize at their expense. Rather than helping these residents save their homes, the fraudsters prey upon and bait them into bogus transactions.

The best time to combat loan scams, rent skimming, and foreclosure fraud is at their inception, before victims hand over their hard-earned money. To fight the fraudsters, the community must be armed with information. Would-be victims should be educated on what to look for and the warning signs of real estate fraud.

With increase staff and resources, the District Attorney's Office would strive to expand its Real Estate Fraud Advisory Team, disseminate informational flyers to community members, and create bilingual radio advertising to better inform Riverside County residents about the real dangers of real estate fraud.

The office would establish a toll-free real estate fraud hotline for residents to call for information and help. This hotline would be staffed by an Investigative Technician. The hotline number would be used in conjunction with the County Recorder courtesy notices to provide assistance to those that believe they may be the victim of real estate fraud. Additionally, funds would be used for billboard displays along the major highways within the county alerting residents to the dangers of real estate fraud and providing the fraud hotline toll-free number.

By adding attorney staff as described above, more resources could be dedicated to expanding District Attorney programs such as the Real Estate Fraud Advisory Team (REFAT). The office would be able to conduct a far greater number of real estate fraud trainings countywide for title companies, escrow companies, and real estate professionals. The trainings would also cater to law enforcement agencies. Many of these departments are unfamiliar with investigating real estate fraud cases and often dismiss them as being "purely civil" in nature. The District Attorney's Office could spend additional resources educating law enforcement on the scope and criminality of such cases.

The goal of the Riverside County District Attorney's Office is to create substantial change in the way our county fights real estate fraud. A combined approach of increased staffing, technical support and community outreach would combat real estate fraud at its inception, during the investigative process, and beyond.

MODIFICATIONS WITH INCREASE TO \$6

The filing fee increase to \$6 as approved by the Board on February 5, 2013 will have some positive impact on the underfunding problem but will fall far short of providing the necessary resources for a comprehensive plan as set forth above. According to the

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

FORM 11: Approve Resolution No. 2013-054 authorizing an increase in the Real Estate Fraud Prosecution Trust Fund fee from \$6.00 to \$10.00 effective March 26, 2013.

DATE: March 12, 2013

PAGE 6 of 6

County Recorder's Office, the increase to \$6 as approved by the Board would raise deposits into the Real Estate Fraud Prosecution Trust Fund from an average \$1 million annually to an estimated \$2.829 million. This potential increase would only cover the cost of six additional staff positions -- one additional deputy district attorney, two additional investigators, one additional investigative technician, one forensic accountant and one real estate fraud examiner. Such an increase in staff is beneficial and needed but would not allow for the regionalized teams set forth above, a complete forensic team, or the necessary expenditures for a comprehensive outreach program.

The six additional staff positions would help to address the thousands of citizen complaints and hundreds of potential cases coming to the District Attorney's Office each year but will not provide adequate resources to tackle the entire problem. The Real Estate fraud unit would still have no full-time commander dedicated to overseeing investigative staff countywide. The office would have no support staff available to the forensic accountant to do the data entry and data organization necessary to properly prepare a forensic audit. The office would not have a sufficient number of real estate fraud prosecutors to file and prosecute cases prepared by the investigators. Finally, there would be insufficient resources to provide our communities with the benefits of regional prosecution and outreach.

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

RESOLUTION NO 2013-054

Resolution of the Board of Supervisors of the County of Riverside

Authorizing an Increase in Recording Fees and the Expansion of the Existing Definition of "Real Estate Instrument" Pertaining to the Real Estate Fraud Prosecution Trust Fund

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

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

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

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

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

WHEREAS, establishment of the fee in accordance with Government Code 27388 at no less than \$10 is necessary to provide adequate funds to cover the reasonable costs of real estate fraud prevention and prosecution within Riverside County;

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

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

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

NOW THEREFORE BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of Riverside, State of California, in regular session assembled on March 12, 2013:

- 1) That effective March 26, 2013, the recording fee collected by the County Recorder's office on behalf of the Real Estate Fraud Prosecution Trust Fund shall be increased from \$6.00 to \$10.00 on the following documents: a deed of trust, an assignment of deed of trust, a reconveyance, a request for notice, a notice of default, a substitution of trustee, a notice of trustee sale, a notice of rescission of declaration of default, and any of the above titles being re-recorded. In addition, the \$10.00 fee shall be collected on the following document titles: an amended deed of trust, an abstract of judgment, an affidavit, an assignment of rents, an assignment of a lease, a construction trust deed, CC&Rs (covenants, conditions and restrictions), a declaration of homestead, an easement, a lease, a lien, a lot line adjustment, a mechanics lien, a modification of deed of trust, a notice of completion, a quitclaim deed, a subordination agreement, a trustee's deed upon sale, any Uniform Commercial Code amendment, assignment, continuation, statement or termination, a notice of rescission of declaration of default, a notice of trustee sale, and a substitution of trustee, and any of the above titles being re-recorded.
- 2) That the County Recorder shall pay the fees collected quarterly to the Auditor and Controller, for placement in the Real Estate Fraud Prosecution Trust Fund. Prior to such payments to the Auditor and Controller, the County Recorder may deduct the following:
 - A) The actual and necessary administrative costs incurred by the County Recorder in carrying out Government Code 27388; and
 - B) The actual and necessary costs of fraud prevention programs, including, but not limited to, the fraud prevention program provided for in Section 27297.7, in an amount not to exceed twelve percent (12%) of total fees collected during the quarter.
- 3) That, because investigation of real estate fraud is done exclusively by the District Attorney in Riverside County, in accordance with Government Code 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 27388.
- 4) That this Resolution shall supersede Resolution No. 98-310, and Resolution No. 2009-025, and Resolution No. 2013-038.
- 5) 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:  2/27/13
PAMELA J. WALLS DATE

2 RESOLUTION NO. 2013 – 054

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

6 ADOPTED by Riverside County Board of Supervisors on March 12, 2013.

7 ROLL CALL:

8 Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley
9 Nays: None
10 Absent: None

11
12
13 The foregoing is certified to be a true copy of a resolution duly adopted by said Board of
Supervisors on the date therein set forth.

14 KECIA HARPER-IHEM, Clerk of said Board

15
16 By: _____
17 Deputy