

**Introduced by Senator Emmerson**

February 24, 2012

---

---

An act to amend Section 27388 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 1342, as introduced, Emmerson. Counties: recording: real estate instruments.

Existing law authorizes the board of supervisors to adopt, by resolution, a fee of up to \$3 for each recording of a real estate instrument, paper, or notice required or permitted by law to be recorded, except as specified. Existing law defines the term "real estate instrument" to mean a deed of trust, an assignment of trust, a reconveyance, a request for notice, a notice of default, a substitution of trustee, a notice of trustee sale, or a notice of rescission of declaration of default.

This bill would increase the highest fee that may be charged to \$10 and would also include in the definition of "real estate instrument" an amended deed of trust, an assignment of rents, an assignment of a lease, a construction trust deed, a declaration of homestead, an easement, a lease, a lot line adjustment, a mechanics lien, a modification for deed of trust, a notice of completion, a quitclaim deed, a subordination agreement, or a trustee's deed upon sale.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 27388 of the Government Code is  
2 amended to read:

3 27388. (a) In addition to any other recording fees specified in  
4 this code, upon the adoption of a resolution by the county board  
5 of supervisors, a fee of up to ~~three dollars (\$3)~~ *ten dollars (\$10)*  
6 shall be paid at the time of recording of every real estate  
7 instrument, paper, or notice required or permitted by law to be  
8 recorded within that county, except those expressly exempted from  
9 payment of recording fees. ~~“Real estate instrument” is defined for the purpose of this section as~~  
10 *“Real For purposes of this section “real*  
11 *estate instrument” means a deed of trust, an assignment of deed of trust, an amended*  
12 *deed of trust, an assignment of rents, an assignment of a lease, a*  
13 *construction trust deed, a declaration of homestead, an easement,*  
14 *a lease, a lot line adjustment, a mechanics lien, a modification for*  
15 *deed of trust, a notice of completion, a quitclaim deed, a*  
16 *subordination agreement, a reconveyance, a request for notice, a*  
17 *notice of default, a substitution of trustee, a notice of trustee sale,*  
18 *and a trustee’s deed upon sale, or a notice of rescission of*  
19 *declaration of default. “Real estate instrument” does not include*  
20 *any deed, instrument, or writing subject to the imposition of a*  
21 *documentary transfer tax as defined in Section 11911 of the*  
22 *Revenue and Taxation Code, nor any document required to*  
23 *facilitate the transfer subject to the documentary transfer tax. The*  
24 *fees, after deduction of any actual and necessary administrative*  
25 *costs incurred by the county in carrying out this section, shall be*  
26 *paid quarterly to the county auditor or director of finance, to be*  
27 *placed in the Real Estate Fraud Prosecution Trust Fund. The*  
28 *amount deducted for administrative costs shall not exceed 10*  
29 *percent of the fees paid pursuant to this section.*

30 (b) Money placed in the Real Estate Fraud Prosecution Trust  
31 Fund shall be expended to fund programs to enhance the capacity  
32 of local police and prosecutors to deter, investigate, and prosecute  
33 real estate fraud crimes. After deduction of the actual and necessary  
34 administrative costs referred to in subdivision (a), 60 percent of  
35 the funds shall be distributed to district attorneys subject to review  
36 pursuant to subdivision (d), and 40 percent of the funds shall be  
37 distributed to local law enforcement agencies within the county  
38 in accordance with subdivision (c). In those counties where the

1 investigation of real estate fraud is done exclusively by the district  
2 attorney, after deduction of the actual and necessary administrative  
3 costs referred to in subdivision (a), 100 percent of the funds shall  
4 be distributed to the district attorney, subject to review pursuant  
5 to subdivision (d). The funds so distributed shall be expended for  
6 the exclusive purpose of deterring, investigating, and prosecuting  
7 real estate fraud crimes.

8 (c) The county auditor or director of finance shall distribute  
9 funds in the Real Estate Fraud Prosecution Trust Fund to eligible  
10 law enforcement agencies within the county pursuant to subdivision  
11 (b), as determined by a Real Estate Fraud Prosecution Trust Fund  
12 Committee composed of the district attorney, the county chief  
13 administrative officer, the chief officer responsible for consumer  
14 protection within the county, and the chief law enforcement officer  
15 of one law enforcement agency receiving funding from the Real  
16 Estate Fraud Prosecution Trust Fund, the latter being selected by  
17 a majority of the other three members of the committee. The chief  
18 law enforcement officer shall be a nonvoting member of the  
19 committee and shall serve a one-year term, which may be renewed.  
20 Members may appoint representatives of their offices to serve on  
21 the committee. If a county lacks a chief officer responsible for  
22 consumer protection, the county board of supervisors may appoint  
23 an appropriate representative to serve on the committee. The  
24 committee shall establish and publish deadlines and written  
25 procedures for local law enforcement agencies within the county  
26 to apply for the use of funds and shall review applications and  
27 make determinations by majority vote as to the award of funds  
28 using the following criteria:

29 (1) Each law enforcement agency that seeks funds shall submit  
30 a written application to the committee setting forth in detail the  
31 agency's proposed use of the funds.

32 (2) In order to qualify for receipt of funds, each law enforcement  
33 agency submitting an application shall provide written evidence  
34 that the agency either:

35 (A) Has a unit, division, or section devoted to the investigation  
36 or prosecution of real estate fraud, or both, and the unit, division,  
37 or section has been in existence for at least one year prior to the  
38 application date.

39 (B) Has on a regular basis, during the three years immediately  
40 preceding the application date, accepted for investigation or

1 prosecution, or both, and assigned to specific persons employed  
2 by the agency, cases of suspected real estate fraud, and actively  
3 investigated and prosecuted those cases.

4 (3) The committee's determination to award funds to a law  
5 enforcement agency shall be based on, but not be limited to, (A)  
6 the number of real estate fraud cases filed in the prior year; (B)  
7 the number of real estate fraud cases investigated in the prior year;  
8 (C) the number of victims involved in the cases filed; and (D) the  
9 total aggregated monetary loss suffered by victims, including  
10 individuals, associations, institutions, or corporations, as a result  
11 of the real estate fraud cases filed, and those under active  
12 investigation by that law enforcement agency.

13 (4) Each law enforcement agency that, pursuant to this section,  
14 has been awarded funds in the previous year, upon reapplication  
15 for funds to the committee in each successive year, in addition to  
16 any information the committee may require in paragraph (3), shall  
17 be required to submit a detailed accounting of funds received and  
18 expended in the prior year. The accounting shall include (A) the  
19 amount of funds received and expended; (B) the uses to which  
20 those funds were put, including payment of salaries and expenses,  
21 purchase of equipment and supplies, and other expenditures by  
22 type; (C) the number of filed complaints, investigations, arrests,  
23 and convictions that resulted from the expenditure of the funds;  
24 and (D) other relevant information the committee may reasonably  
25 require.

26 (d) The county board of supervisors shall annually review the  
27 effectiveness of the district attorney in deterring, investigating,  
28 and prosecuting real estate fraud crimes based upon information  
29 provided by the district attorney in an annual report. The district  
30 attorney shall submit the annual report to the board and to the  
31 Legislative Analyst's Office on or before September 1 of each  
32 year. The Legislative Analyst's Office shall compile the results  
33 and report to the Legislature, detailing both:

34 (1) Facts, based upon, but not limited to, (A) the number of real  
35 estate fraud cases filed in the prior year; (B) the number of real  
36 estate fraud cases investigated in the prior year; (C) the number  
37 of victims involved in the cases filed; (D) the number of  
38 convictions obtained in the prior year; and (E) the total aggregated  
39 monetary loss suffered by victims, including individuals,  
40 associations, institutions, corporations, and other relevant public

1 entities, according to the number of cases filed, investigations,  
2 prosecutions, and convictions obtained.

3 (2) An accounting of funds received and expended in the prior  
4 year, which shall include (A) the amount of funds received and  
5 expended; (B) the uses to which those funds were put, including  
6 payment of salaries and expenses, purchase of equipment and  
7 supplies, and other expenditures by type; (C) the number of filed  
8 complaints, investigations, prosecutions, and convictions that  
9 resulted from the expenditure of funds; and (D) other relevant  
10 information provided at the discretion of the district attorney.

11 (e) A county in which a district attorney fails to submit an annual  
12 report to the Legislative Analyst's Office pursuant to the  
13 requirements of subdivision (d) shall not expend funds held in that  
14 county's Real Estate Fraud Prosecution Trust Fund until the district  
15 attorney has submitted an annual report for the county's most  
16 recent full fiscal year.

17 (f) Annual reports submitted to the Legislative Analyst's Office  
18 pursuant to subdivision (d) shall be made in a standard form and  
19 manner determined by the Legislative Analyst's Office, in  
20 consultation with participating law enforcement agencies.

21 (g) The intent of the Legislature in enacting this section is to  
22 have an impact on real estate fraud involving the largest number  
23 of victims. To the extent possible, an emphasis should be placed  
24 on fraud against individuals whose residences are in danger of, or  
25 are in, foreclosure as defined in subdivision (b) of Section 1695.1  
26 of the Civil Code. Case filing decisions continue to be at the  
27 discretion of the prosecutor.

28 (h) A district attorney's office or a local enforcement agency  
29 that has undertaken investigations and prosecutions that will  
30 continue into a subsequent program year may receive nonexpended  
31 funds from the previous fiscal year subsequent to the annual  
32 submission of information detailing the accounting of funds  
33 received and expended in the prior year.

34 (i) No money collected pursuant to this section shall be expended  
35 to offset a reduction in any other source of funds. Funds from the  
36 Real Estate Fraud Prosecution Trust Fund shall be used only in  
37 connection with criminal investigations or prosecutions involving  
38 recorded real estate documents.

O