

AMENDED IN SENATE MAY 8, 2012
AMENDED IN SENATE APRIL 24, 2012

SENATE BILL

No. 1342

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 amended, 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. *Existing law requires a district attorney in a participating county to annually submit a report to the Legislative Analyst's Office on the effectiveness of deterring, investigating, and prosecuting real estate fraud crimes funded by the recording fee, and requires the Legislative Analyst's Office to report to the Legislature on these efforts, as specified.*

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 abstract of judgment, an affidavit, an assignment of rents, an assignment of a lease, a construction trust deed, covenants, conditions, and restrictions (CC&Rs), a declaration of

homestead, an easement, a lease, a lien, 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, and any Uniform Commercial Code amendment, assignment, continuation, statement, or termination. *This bill would repeal the specific reporting requirement from county district attorneys to the Legislative Analyst’s Office and from the Legislative Analyst’s Office to the Legislature.*

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. The Legislature finds and declares all of the
 2 following:
 3 (a) The current recording fee collected to fund the Real Estate
 4 Prosecutions Trust Fund is insufficient to adequately fund real
 5 estate fraud prosecutions and needs to be increased.
 6 (b) Greater specificity is needed with regard to the types of real
 7 estate instruments to which the current recording fee may be
 8 applied.
 9 (c) In order to promote housing and home ownership
 10 opportunities, the recording fee imposed by this act should not be
 11 applied to any recordings made in connection with a sale of real
 12 property. Purchasing housing is likely the largest purchase made
 13 by Californians, and it is the intent of this act to not increase
 14 transaction costs associated with those transfers.
 15 SEC. 2. Section 27388 of the Government Code is amended
 16 to read:
 17 27388. (a) In addition to any other recording fees specified in
 18 this code, upon the adoption of a resolution by the county board
 19 of supervisors, a fee of up to ten dollars (\$10) shall be paid at the
 20 time of recording of every real estate instrument, paper, or notice
 21 required or permitted by law to be recorded within that county,
 22 except those expressly exempted from payment of recording fees.
 23 For purposes of this section, “real estate instrument” means a deed
 24 of trust, an assignment of deed of trust, an amended deed of trust,
 25 an abstract of judgment, an affidavit, an assignment of rents, an
 26 assignment of a lease, a construction trust deed, covenants,
 27 conditions, and restrictions (CC&Rs), a declaration of homestead,

1 an easement, a lease, a lien, a lot line adjustment, a mechanics lien,
2 a modification for deed of trust, a notice of completion, a quitclaim
3 deed, a subordination agreement, a release, a reconveyance, a
4 request for notice, a notice of default, a substitution of trustee, a
5 notice of trustee sale, a trustee's deed upon sale, or a notice of
6 rescission of declaration of default, or any Uniform Commercial
7 Code amendment, assignment, continuation, statement, or
8 termination. "Real estate instrument" does not include any deed,
9 instrument, or writing recorded in connection with a transfer subject
10 to the imposition of a documentary transfer tax as defined in
11 Section 11911 of the Revenue and Taxation Code. The fees, after
12 deduction of any actual and necessary administrative costs incurred
13 by the county recorder in carrying out this section, shall be paid
14 quarterly to the county auditor or director of finance, to be placed
15 in the Real Estate Fraud Prosecution Trust Fund. The amount
16 deducted for administrative costs shall not exceed 10 percent of
17 the fees paid pursuant to this section.

18 (b) Money placed in the Real Estate Fraud Prosecution Trust
19 Fund shall be expended to fund programs to enhance the capacity
20 of local police and prosecutors to deter, investigate, and prosecute
21 real estate fraud crimes. After deduction of the actual and necessary
22 administrative costs referred to in subdivision (a), 60 percent of
23 the funds shall be distributed to district attorneys subject to review
24 pursuant to subdivision (d), and 40 percent of the funds shall be
25 distributed to local law enforcement agencies within the county
26 in accordance with subdivision (c). In those counties where the
27 investigation of real estate fraud is done exclusively by the district
28 attorney, after deduction of the actual and necessary administrative
29 costs referred to in subdivision (a), 100 percent of the funds shall
30 be distributed to the district attorney, subject to review pursuant
31 to subdivision (d). A portion of the funds may be directly allocated
32 to the county recorder to support county recorder fraud prevention
33 programs, including, but not limited to, the fraud prevention
34 program provided for in Section 27297.7. Prior to establishing or
35 increasing fees pursuant to this section, the board of supervisors
36 may consider support for county recorder fraud prevention
37 programs. The funds so distributed shall be expended for the
38 exclusive purpose of deterring, investigating, and prosecuting real
39 estate fraud crimes.

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

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

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

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

32 (B) Has on a regular basis, during the three years immediately
33 preceding the application date, accepted for investigation or
34 prosecution, or both, and assigned to specific persons employed
35 by the agency, cases of suspected real estate fraud, and actively
36 investigated and prosecuted those cases.

37 (3) The committee's determination to award funds to a law
38 enforcement agency shall be based on, but not be limited to, (A)
39 the number of real estate fraud cases filed in the prior year; (B)
40 the number of real estate fraud cases investigated in the prior year;

1 (C) the number of victims involved in the cases filed; and (D) the
2 total aggregated monetary loss suffered by victims, including
3 individuals, associations, institutions, or corporations, as a result
4 of the real estate fraud cases filed, and those under active
5 investigation by that law enforcement agency.

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

19 (d) The county board of supervisors shall annually review the
20 effectiveness of the district attorney in deterring, investigating,
21 and prosecuting real estate fraud crimes based upon information
22 provided by the district attorney in an annual report. The district
23 attorney shall submit the annual report to the board ~~and to the~~
24 ~~Legislative Analyst's Office~~ on or before September 1 of each
25 year. ~~The Legislative Analyst's Office shall compile the results~~
26 ~~and report to the Legislature, detailing both:~~

27 ~~(1) Facts, based upon, but not limited to, (A) the number of real~~
28 ~~estate fraud cases filed in the prior year; (B) the number of real~~
29 ~~estate fraud cases investigated in the prior year; (C) the number~~
30 ~~of victims involved in the cases filed; (D) the number of~~
31 ~~convictions obtained in the prior year; and (E) the total aggregated~~
32 ~~monetary loss suffered by victims, including individuals,~~
33 ~~associations, institutions, corporations, and other relevant public~~
34 ~~entities, according to the number of cases filed, investigations,~~
35 ~~prosecutions, and convictions obtained.~~

36 ~~(2) An accounting of funds received and expended in the prior~~
37 ~~year, which shall include (A) the amount of funds received and~~
38 ~~expended; (B) the uses to which those funds were put, including~~
39 ~~payment of salaries and expenses, purchase of equipment and~~
40 ~~supplies, and other expenditures by type; (C) the number of filed~~

1 complaints, investigations, prosecutions, and convictions that
2 resulted from the expenditure of funds; and (D) other relevant
3 information provided at the discretion of the district attorney.

4 (e) A county in which a district attorney fails to submit an annual
5 report to the Legislative Analyst's Office pursuant to the
6 requirements of subdivision (d) shall not expend funds held in that
7 county's Real Estate Fraud Prosecution Trust Fund until the
8 county's auditor-controller verifies that the county's district
9 attorney has submitted an annual report for the county's most
10 recent full fiscal year pursuant to the requirements of subdivision
11 (d).

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

16 (g)

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

24 (h)

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

31 (i)

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