

AMENDED IN SENATE APRIL 2, 2013

**SENATE BILL**

**No. 803**

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**Introduced by Senator DeSaulnier**

February 22, 2013

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An act to add Section 1202.9 to the Penal Code, relating to false documents.

LEGISLATIVE COUNSEL'S DIGEST

SB 803, as amended, DeSaulnier. False documents: real property: voiding and restitution.

Existing law establishes offenses involving falsifying documents, elder abuse, forgery, grand theft, identity theft, and mortgage fraud, among others. Existing law requires a court to order defendants convicted of any crime to pay restitution to the victim or victims as well as a restitution fine, as specified, unless the court finds compelling and extraordinary reasons for not imposing the restitution fine, as specified.

This bill would provide that where a defendant is convicted of any of those offenses, or any other offense, in which an instrument affecting the right, title, or interest in real property was forged or false, and where the instrument was filed, registered, or recorded, as specified, the prosecuting attorney or the judge may make a motion for a noticed hearing to adjudge the instrument void, and to order restitution for an affected person. *The bill would authorize a person who claims an interest in the affected property to file a claim, as specified, in connection with the motion. The bill would also authorize a person who claims an interest in the property to, in the alternative, file a quiet title action for the affected property. The bill would authorize the court, in its discretion, to stay a decision on the motion until resolution of the quiet title action.*

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

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

1 SECTION 1. Section 1202.9 is added to the Penal Code, to  
2 read:

3 1202.9. (a) In any case where the defendant is convicted of  
4 any offense enumerated in Section 115, 368, 470, 487, 530.5, or  
5 532f, ~~or 540.5~~ or any other crime, in which an instrument affecting  
6 any right, title, or interest in real property is found to be forged or  
7 false, and where in furtherance of the crime an instrument that  
8 conveys title or encumbers real property has been filed, registered,  
9 or recorded against real property, the court may, upon its own  
10 motion or upon motion by the prosecuting attorney, pursuant to  
11 the procedures in subdivision (c), enter a judgment declaring the  
12 instrument void.

13 (b) The instrument shall be deemed to be adjudged void as of  
14 the date on which the crime occurred, or the date that the  
15 instrument was created, forged, or falsified, or the date that the  
16 instrument was filed, registered, or recorded, whichever date is  
17 earlier.

18 (c) (1) Upon making the motion to void the instrument, a  
19 hearing date on the motion shall be set no earlier than 30 calendar  
20 days from the date that the motion is made.

21 (2) A notice regarding the motion shall be provided by personal  
22 service or registered mail to every person who may have an interest  
23 in the affected property within five days of making the motion.

24 (3) The notice shall be published at least once a week for three  
25 successive weeks in a newspaper of general circulation in the  
26 county in which the affected property is located. The notice shall  
27 state that any interested party may file a verified claim with the  
28 superior court stating the nature and amount of their claimed  
29 interest. The notice shall set forth the time within which a claim  
30 of interest in the property is required to be filed.

31 (4) Any person claiming an interest in the affected property  
32 may, at any time within 30 calendar days from the date of the first  
33 publication of the notice of the motion, or within 30 days after  
34 receipt of the actual notice, whichever is later, file with the superior  
35 court of the county in which the motion is pending a verified claim

1 stating the nature and amount of his or her interest in the property.  
2 A verified copy of the claim shall be served by the claimant on  
3 the prosecuting attorney and the defendant. *In the alternative, a*  
4 *person claiming an interest in the affected property may file an*  
5 *action to quiet title to the property. Upon notice of the quiet title*  
6 *action, the court may stay any decision on the motion until*  
7 *resolution of the quiet title action. In determining whether to stay*  
8 *any decision on the motion until resolution of the quiet title action,*  
9 *the court shall seek to protect the interest of any party who presents*  
10 *evidence showing that their claim to the property was based on a*  
11 *good faith belief in the legitimacy of their claim. Evidence for this*  
12 *determination may be presented by declaration or affidavit.*

13 (5) At the hearing, any person claiming an interest in the affected  
14 property may present evidence showing that their claim to the  
15 property was based on a ~~good-faith~~ *good faith* belief in the  
16 legitimacy of their claim. Where the court makes a finding that  
17 any person claiming an interest in the affected party acted in good  
18 faith in securing an interest in the property, the court may order  
19 restitution to be paid by the defendant to the affected person. The  
20 amount of restitution shall be determined in a manner consistent  
21 with subdivision (f) of Section 1202.4. A person who files a claim  
22 with the California Victim Compensation and Government Claims  
23 Board may not obtain restitution pursuant to this section.

24 (d) Upon issuance of a judgment pursuant to this section, the  
25 prosecuting attorney or any affected person may record the  
26 judgment with the appropriate county recorder.

27 (e) As used in this section, “instrument” means, but is not limited  
28 to, a grant deed, quitclaim deed, deed of trust, notice of default,  
29 notice of trustee’s sale, trustee’s deed, assignments of any kind,  
30 homestead declaration, mechanic’s lien, Uniform Commercial  
31 Code filings, deed of reconveyance, rental agreement, lease  
32 agreement, easement, tax lien, or lis pendens.

33 (f) Nothing in this section shall be construed as limiting a person  
34 claiming an interest in the affected property from pursuing any  
35 civil remedies that may be available *regardless of whether the*  
36 *party exercised the party’s rights under paragraphs (4) and (5) of*  
37 *subdivision (c).*

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