

AMENDED IN SENATE JANUARY 6, 2014

AMENDED IN SENATE APRIL 2, 2013

SENATE BILL

No. 803

Introduced by Senator DeSaulnier

February 22, 2013

An act to ~~add Section 1202.9 to the Penal Code~~ *amend Section 24011 of the Government Code*, relating to ~~false documents~~ *local government*.

LEGISLATIVE COUNSEL'S DIGEST

SB 803, as amended, DeSaulnier. ~~False documents: real property: voiding and restitution. Local government: counties: consolidation of offices.~~

Existing law authorizes the boards of supervisors of specified counties to provide, by ordinance, that the public administrator be appointed by the board. Existing law also authorizes the boards of supervisors of specified counties, by ordinance, to appoint the same person to the offices of public administrator and public guardian, and to, at any time, separate the consolidated offices of district attorney and public administrator, as specified.

This bill would authorize Contra Costa County to, by ordinance, appoint the public administrator to the board, appoint the same person to the offices of public administrator and public guardian, and separate the consolidated offices of district attorney and public administrator.

This bill would make legislative findings and declarations as to the necessity of a special statute for Contra Costa County.

~~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-no*. State-mandated local program: no.

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

1 SECTION 1. Section 24011 of the Government Code is
2 amended to read:

3 24011. Notwithstanding the provisions of Section 24009:

4 (a) The Boards of Supervisors of Amador County, *Contra Costa*
5 *County*, Glenn County, Lake County, Lassen County, Madera
6 County, Mendocino County, Monterey County, Napa County,
7 Solano County, Sonoma County, Trinity County, Tuolumne
8 County, and Ventura County may, by ordinance, provide that the
9 public administrator shall be appointed by the board.

10 (b) The Boards of Supervisors of Lake County, Madera County,
11 Mendocino County, Napa County, Trinity County, and Tuolumne
12 County may appoint the same person to the offices of public
13 administrator, veteran service officer, and public guardian. The
14 Boards of Supervisors of Amador County, *Contra Costa County*,
15 Glenn County, Kings County, Lassen County, Monterey County,
16 Solano County, Sonoma County, and Ventura County, may, by
17 ordinance, appoint the same person to the offices of public
18 administrator and public guardian.

19 (c) The Boards of Supervisors of Amador County, *Contra Costa*
20 *County*, Glenn County, Lake County, Lassen County, Madera
21 County, Mendocino County, Napa County, Trinity County, and

1 Tuolumne County may separate the consolidated offices of district
2 attorney and public administrator at any time in order to make the
3 appointments permitted by this section. Upon approval by the
4 board of supervisors, the officer elected to these offices at any time
5 may resign, or decline to qualify for, the office of public
6 administrator without resigning from, or declining to qualify for,
7 the office of district attorney.

8 (d) The Board of Supervisors of Ventura County may separate
9 the consolidated office of public administrator from the office of
10 treasurer, in order to make the appointment authorized by this
11 section. Upon approval by the board of supervisors, the officer
12 elected to these offices at any time may resign, or decline to qualify
13 for, the office of public administrator without resigning from, or
14 declining to qualify for, the office of treasurer.

15 *SEC. 2. The Legislature finds and declares that a special law*
16 *is necessary and that a general law cannot be made applicable*
17 *within the meaning of Section 16 of Article IV of the California*
18 *Constitution because of the unique circumstances faced by Contra*
19 *Costa County with respect to the reorganization of their county*
20 *offices.*

21 ~~SECTION 1. Section 1202.9 is added to the Penal Code, to~~
22 ~~read:~~

23 ~~1202.9. (a) In any case where the defendant is convicted of~~
24 ~~any offense enumerated in Section 115, 368, 470, 487, 530.5, or~~
25 ~~532f, or any other crime, in which an instrument affecting any~~
26 ~~right, title, or interest in real property is found to be forged or false,~~
27 ~~and where in furtherance of the crime an instrument that conveys~~
28 ~~title or encumbers real property has been filed, registered, or~~
29 ~~recorded against real property, the court may, upon its own motion~~
30 ~~or upon motion by the prosecuting attorney, pursuant to the~~
31 ~~procedures in subdivision (c), enter a judgment declaring the~~
32 ~~instrument void.~~

33 ~~(b) The instrument shall be deemed to be adjudged void as of~~
34 ~~the date on which the crime occurred, or the date that the~~
35 ~~instrument was created, forged, or falsified, or the date that the~~
36 ~~instrument was filed, registered, or recorded, whichever date is~~
37 ~~earlier.~~

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

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

4 ~~(3) The notice shall be published at least once a week for three~~
5 ~~successive weeks in a newspaper of general circulation in the~~
6 ~~county in which the affected property is located. The notice shall~~
7 ~~state that any interested party may file a verified claim with the~~
8 ~~superior court stating the nature and amount of their claimed~~
9 ~~interest. The notice shall set forth the time within which a claim~~
10 ~~of interest in the property is required to be filed.~~

11 ~~(4) Any person claiming an interest in the affected property~~
12 ~~may, at any time within 30 calendar days from the date of the first~~
13 ~~publication of the notice of the motion, or within 30 days after~~
14 ~~receipt of the actual notice, whichever is later, file with the superior~~
15 ~~court of the county in which the motion is pending a verified claim~~
16 ~~stating the nature and amount of his or her interest in the property.~~
17 ~~A verified copy of the claim shall be served by the claimant on~~
18 ~~the prosecuting attorney and the defendant. In the alternative, a~~
19 ~~person claiming an interest in the affected property may file an~~
20 ~~action to quiet title to the property. Upon notice of the quiet title~~
21 ~~action, the court may stay any decision on the motion until~~
22 ~~resolution of the quiet title action. In determining whether to stay~~
23 ~~any decision on the motion until resolution of the quiet title action,~~
24 ~~the court shall seek to protect the interest of any party who presents~~
25 ~~evidence showing that their claim to the property was based on a~~
26 ~~good faith belief in the legitimacy of their claim. Evidence for this~~
27 ~~determination may be presented by declaration or affidavit.~~

28 ~~(5) At the hearing, any person claiming an interest in the affected~~
29 ~~property may present evidence showing that their claim to the~~
30 ~~property was based on a good faith belief in the legitimacy of their~~
31 ~~claim. Where the court makes a finding that any person claiming~~
32 ~~an interest in the affected party acted in good faith in securing an~~
33 ~~interest in the property, the court may order restitution to be paid~~
34 ~~by the defendant to the affected person. The amount of restitution~~
35 ~~shall be determined in a manner consistent with subdivision (f) of~~
36 ~~Section 1202.4. A person who files a claim with the California~~
37 ~~Victim Compensation and Government Claims Board may not~~
38 ~~obtain restitution pursuant to this section.~~

1 ~~(d) Upon issuance of a judgment pursuant to this section, the~~
2 ~~prosecuting attorney or any affected person may record the~~
3 ~~judgment with the appropriate county recorder.~~

4 ~~(e) As used in this section, “instrument” means, but is not limited~~
5 ~~to, a grant deed, quitclaim deed, deed of trust, notice of default,~~
6 ~~notice of trustee’s sale, trustee’s deed, assignments of any kind,~~
7 ~~homestead declaration, mechanic’s lien, Uniform Commercial~~
8 ~~Code filings, deed of reconveyance, rental agreement, lease~~
9 ~~agreement, easement, tax lien, or lis pendens.~~

10 ~~(f) Nothing in this section shall be construed as limiting a person~~
11 ~~claiming an interest in the affected property from pursuing any~~
12 ~~civil remedies that may be available regardless of whether the~~
13 ~~party exercised the party’s rights under paragraphs (4) and (5) of~~
14 ~~subdivision (e).~~