

ASSEMBLY BILL

No. 661

Introduced by Assembly Member Mathis

February 24, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 661, as introduced, Mathis. Counties: recording: real estate instruments.

Existing law authorizes the board of supervisors to adopt, by resolution, a fee of up to \$10 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 exclude a deed, instrument, or writing recorded in connection with a transfer subject to a documentary transfer tax.

This bill would recast this latter exclusion from a “real estate instrument” as a statement that the above-described fee does not apply to any real estate instrument, paper, or notice related to and recorded concurrently with a transfer subject to a documentary transfer tax.

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

1 of supervisors, a fee of up to ten dollars (\$10) shall be paid at the
2 time of recording of every real estate instrument, paper, or notice
3 required or permitted by law to be recorded within that county,
4 except those expressly exempted from payment of recording fees.
5 *A fee imposed pursuant to this subdivision shall not apply to any*
6 *real estate instrument, paper, or notice related to, and recorded*
7 *concurrently with, a transfer subject to a documentary transfer*
8 *tax pursuant to Section 11911 of the Revenue and Taxation Code.*
9 For purposes of this section, “real estate instrument” means a deed
10 of trust, an assignment of deed of trust, an amended deed of trust,
11 an abstract of judgment, an affidavit, an assignment of rents, an
12 assignment of a lease, a construction trust deed, covenants,
13 conditions, and restrictions (CC&Rs), a declaration of homestead,
14 an easement, a lease, a lien, a lot line adjustment, a mechanics lien,
15 a modification for deed of trust, a notice of completion, a quitclaim
16 deed, a subordination agreement, a release, a reconveyance, a
17 request for notice, a notice of default, a substitution of trustee, a
18 notice of trustee sale, a trustee’s deed upon sale, or a notice of
19 rescission of declaration of default, or any Uniform Commercial
20 Code amendment, assignment, continuation, statement, or
21 termination. ~~“Real estate instrument” does not include any deed,~~
22 ~~instrument, or writing recorded in connection with a transfer subject~~
23 ~~to the imposition of a documentary transfer tax as defined in~~
24 ~~Section 11911 of the Revenue and Taxation Code.~~ The fees, after
25 deduction of any actual and necessary administrative costs incurred
26 by the county recorder in carrying out this section, shall be paid
27 quarterly to the county auditor or director of finance, to be placed
28 in the Real Estate Fraud Prosecution Trust Fund. The amount
29 deducted for administrative costs shall not exceed 10 percent of
30 the fees paid pursuant to this section.

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

1 attorney, after deduction of the actual and necessary administrative
2 costs referred to in subdivision (a), 100 percent of the funds shall
3 be distributed to the district attorney, subject to review pursuant
4 to subdivision (d). A portion of the funds may be directly allocated
5 to the county recorder to support county recorder fraud prevention
6 programs, including, but not limited to, the fraud prevention
7 program provided for in Section 27297.7. Prior to establishing or
8 increasing fees pursuant to this section, the board of supervisors
9 may consider support for county recorder fraud prevention
10 programs. The funds so distributed shall be expended for the
11 exclusive purpose of deterring, investigating, and prosecuting real
12 estate fraud crimes.

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

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

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

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

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

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

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

32 (d) The county board of supervisors shall annually review the
 33 effectiveness of the district attorney in deterring, investigating,
 34 and prosecuting real estate fraud crimes based upon information
 35 provided by the district attorney in an annual report. The district
 36 attorney shall submit the annual report to the board on or before
 37 September 1 of each year.

38 (e) A county shall not expend funds held in that county’s Real
 39 Estate Fraud Prosecution Trust Fund until the county’s
 40 auditor-controller verifies that the county’s district attorney has

1 submitted an annual report for the county's most recent full fiscal
2 year pursuant to the requirements of subdivision (d).

3 (f) The intent of the Legislature in enacting this section ~~is~~ to
4 have an impact on real estate fraud involving the largest number
5 of victims. To the extent possible, an emphasis should be placed
6 on fraud against individuals whose residences are in danger of, or
7 are in, foreclosure as defined in subdivision (b) of Section 1695.1
8 of the Civil Code. Case filing decisions continue to be at the
9 discretion of the prosecutor.

10 (g) A district attorney's office or a local enforcement agency
11 that has undertaken investigations and prosecutions that will
12 continue into a subsequent program year may receive nonexpended
13 funds from the previous fiscal year subsequent to the annual
14 submission of information detailing the accounting of funds
15 received and expended in the prior year.

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

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