



OFFICE OF THE DISTRICT ATTORNEY
MARIN COUNTY, CALIFORNIA

*Prevention * Prosecution * Protection*

Edward S. Berberian
District Attorney

Barry G. Borden
CHIEF DEPUTY DISTRICT
ATTORNEY

Kathryn D. Mitchell
CHIEF DEPUTY DISTRICT
ATTORNEY

Robert R. Guidi
CHIEF INSPECTOR

Peggy M. Toth
ADMINISTRATOR

December 28, 2006

Board of Supervisors
County of Marin County District Attorney
3501 Civic center Drive
San Rafael, CA 94903

Re: 2005-2006 Real Estate Fraud Prosecution Trust Fund Annual Report

Dear Board Members:

Recommendation: It is recommended that the Board accept the District Attorney's 2005-2006 Real Estate Fraud Prosecution Trust Fund Annual Report.

Summary: In August of 2004 the Real Estate Fraud Prosecution Trust Fund was established according to Government Code Section 27388. In compliance with the specified regulations, the District Attorney's Office is submitting the 2005-2006 annual report for review by the Board of Supervisors.

Fiscal Impact: There will be no increase in county costs for this program.

Reviewed by:	<input type="checkbox"/>	Auditor Controller	<input checked="" type="checkbox"/>	N/A
	<input type="checkbox"/>	County Counsel	<input checked="" type="checkbox"/>	N/A
	<input type="checkbox"/>	Human Resources	<input checked="" type="checkbox"/>	N/A

Very truly yours,

EDWARD S. BERBERIAN
DISTRICT ATTORNEY

Attachment



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January 9, 2007

Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, Ca. 94903

Re: Real Estate Fraud Prosecution Fund 2005-2006 Annual Report

Dear Supervisors:

The 2005-2006 Real Estate Fraud Prosecution Fund Annual report is being submitted by the District Attorney's Office pursuant to California Government Code Section 27388.

Introduction

Former District Attorney Paula Kamena originally established the Real Estate Fraud Trust Fund in June of 2004. District Attorney Ed Berberian took over this responsibility in December of 2004, leading the way for multiple investigations during subsequent years.

Reviews of potential real estate fraud cases have been made by experienced Deputy District Attorneys, with investigative support provided by DA Inspectors. During 2005-2006 the majority of cases have been handled by a senior attorney who is responsible for the elder financial abuse caseload. It has been observed that the fraudulent appropriation of assets, including real property, by acquaintances or family members is a common form of elder financial abuse. An experienced DA Inspector hired for the investigation of elder abuse cases, including real estate fraud, has provided a greater focus on this type of crime.

Investigations

Between July 2005 and June 2006, the department processed more than twenty referrals/inquiries related to real estate fraud. After a preliminary review, those referrals not constituting criminal conduct were referred to appropriate agencies for follow up. When criminal conduct occurring within the County was suspected, a formal investigation followed.

Investigations have included suspected loan application fraud and grand theft. The purported thefts have been accomplished through the refinancing of an elder's residence and the acquisition of real property at a substantially less than market price in conjunction with the theft of an investment portfolio. Other investigations have continued into the current year.

In a significant filed case the defendants are charged with entering into an agreement under false pretenses to obtain title to real estate. The property was being held in trust for the benefit of one defendant's son until he came of age. In addition, the defendants took advantage of their employment with the County of Marin to record and forge documents and to make fraudulent claims in order to avoid transfer and reassessment taxes related to the property. Work on this case is on going.

It is expected that as the population of Marin County ages, more such cases of predation can be expected. A multidisciplinary approach appears to be effective in terms of prevention, as law enforcement and the District Attorney's Office work with Adult Protective Services and others. The District Attorney's Office continues to participate in the Multi-Disciplinary Task Force and in the Financial Abuse Expert Team. Work is also being done to develop protocols and material for a possible training program.

The Marin County District Attorney's Office is communicating with the California District Attorneys Association and other California District Attorneys to constantly improve the response to Real Estate Fraud. Additionally, a specialist working in the Marin County District Attorney's Consumer Fraud Unit routinely goes to senior centers, senior residences, and senior fairs to give talks to seniors regarding elder financial abuse. It has been seen that real estate fraud is, unfortunately, a common method of fraud upon the elderly and an effort is being made to instruct seniors in how not to become victims.

Financial Information

The Real Estate Fraud Prosecution Trust Fund received a total of \$96,790.40 during the 2005-2006 fiscal year. The Trust Fund had a beginning balance of \$58,537.44 from the 2004-2005 fiscal year. A total of \$78,474.60 in funds was expended. The adjusted ending balance available to the District Attorney's Real Estate Fraud Prosecution group as of June 30, 2006 totaled \$76,853.24. Due to ongoing investigations and prosecutions, the Real Estate Fraud group has carried over this remaining balance to the 2006-2007 fiscal year pursuant to Government Code 27388(f).

Accounting of funds received and expended:

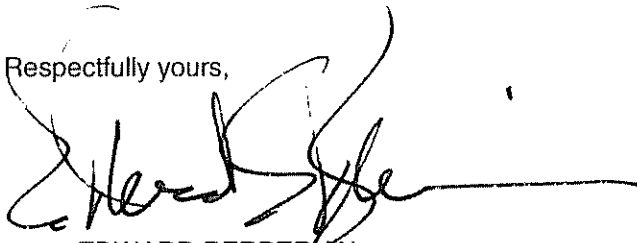
Funds received:

\$96,790.40	Total funds received
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Funds expended:

\$78,474.60	Salary and benefits
\$0	Services and supplies
\$0	Equipment purchased

Respectfully yours,



EDWARD BERBERIAN
DISTRICT ATTORNEY

Attachment: Government Code Section 27388

27388. (a) In addition to any other recording fees specified in this code, upon the adoption of a resolution by the county board of supervisors, a fee of up to two dollars (\$2) shall be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded within that county, except those expressly exempted from payment of recording fees. "Real estate instrument" is defined for the purpose of this section as a deed of trust, an assignment of deed of trust, a reconveyance, a request for notice, and a notice of default. "Real estate instrument" does not include any deed, instrument, or writing subject to the imposition of a documentary transfer tax as defined in Section 11911 of the Revenue and Taxation Code, nor any document required to facilitate the transfer subject to the documentary transfer tax. The fees, after deduction of any actual and necessary administrative costs incurred by the county in carrying out this section, shall be paid quarterly to the county auditor or director of finance, to be placed in the Real Estate Fraud Prosecution Trust Fund. The amount deducted for administrative costs shall not exceed 10 percent of the fees paid pursuant to this section.

(b) Money placed in the Real Estate Fraud Prosecution Trust Fund shall be expended to fund programs to enhance the capacity of local police and prosecutors to deter, investigate, and prosecute real estate fraud crimes. After deduction of the actual and necessary administrative costs referred to in subdivision (a), 60 percent of the funds shall be distributed to district attorneys subject to review pursuant to subdivision (d), and 40 percent of the funds shall be distributed to local law enforcement agencies within the county in accordance with subdivision (c). In those counties where the investigation of real estate fraud is done exclusively by the district attorney, after deduction of the actual and necessary administrative costs referred to in subdivision (a), 100 percent of the funds shall be distributed to the district attorney, subject to review pursuant to subdivision (d). The funds so distributed shall be expended for the exclusive purpose of deterring, investigating, and prosecuting real estate fraud crimes.

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

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

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

the agency either:

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

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

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

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

(d) The county board of supervisors shall annually review the effectiveness of the district attorney in deterring, investigating, and prosecuting real estate fraud crimes based upon information provided by the district attorney in an annual report submitted to the board and to the Legislative Analyst's Office, which shall compile the results and report to the Legislature, detailing both:

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

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

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

discretion of the prosecutor.

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

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