



**COUNTY OF SAN MATEO**  
Inter-Departmental Correspondence  
District Attorney



**Date:** March 30, 2017  
**Board Meeting Date:** April 25, 2017  
**Special Notice / Hearing:** None  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** Stephen M. Wagstaffe, District Attorney

**Subject:** Resolution to Impose a Fee of \$3 on certain Real Estate Instrument Recordings and the establishment of the Real Estate Fraud Prosecution Trust Fund.

**RECOMMENDATION:**

Adopt a resolution adjusting the Assessor-County Clerk-Recorder Schedule of Fees set forth by County Ordinance Code 2.90.030 to impose a fee of \$3 on certain real estate instrument recordings and establish a Real Estate Fraud Prosecution Trust Fund.

**BACKGROUND:**

State law has long recognized the significant public concern surrounding real estate fraud and the need for real estate fraud investigation and prosecution. To cover the costs associated with regulating real estate fraud, Government Code Section 27388 allows a county board of supervisors to impose a fee for the recording of designated real estate instruments. The fees collected may be placed in a Real Estate Fraud Prosecution Trust Fund and used to pay for the costs associated with real estate fraud investigation and prosecution. Recently, in recognition of the rising costs associated with regulation of real estate fraud, section 27388 was amended to increase the maximum fee per instrument from \$3 to \$10.

Currently, there are 31 counties in California that are collecting these types of fees.

Section 27388 specifies that a county may impose such fees upon the adoption of a resolution by the county board of supervisors. In addition, the San Mateo County Assessor-Clerk-Recorder's Schedule of Fees, which is set forth in San Mateo County Ordinance 2.90.030, also provides that the fee schedule may be adjusted by resolution of the Board of Supervisors.

**DISCUSSION:**

Financial abuse involving real estate related fraud has been on the rise in San Mateo County. Since 2014, the District Attorney's Office has compiled a database of 300 real estate fraud related complaints. The District Attorney's Office is creating a Real Estate Fraud unit in order to: perform investigations necessary in the regulation of real estate

instrument recordings and protect the integrity of the recording system; prosecute instances of fraud in the recording of those instruments; and protect all property owners and filers of real estate instruments, including the financially vulnerable residents of San Mateo County.

The \$3 fee will apply to all eligible “real estate instruments” as defined in section 27388. At this time, those instruments are as follows: deed of trust, an assignment of deed of trust, 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, a release, a reconveyance, a request for notice, a notice of default, a substitution of trustee, a notice of trustee sale, a trustee’s deed upon sale, or a notice of rescission of declaration of default or any Uniform Commercial Code amendment, assignment, continuation, statement, or termination. The imposed fee of \$3 for each of the above-referenced instruments is anticipated to generate an estimated annual amount of funds of \$325,000.

The fees collected will be utilized to fund one FTE District Attorney Inspector as well as 0.3 FTE Deputy District Attorney. Due to the complicated and specialized nature of real estate fraud investigation, it is clear that one full time investigator will be necessary. This investigator will be solely dedicated to investigating allegations of real estate fraud. Although it is likely that a significant amount of time from a Deputy District Attorney may be needed in connection with the prosecution of real estate fraud cases, the District Attorney’s office has utilized a conservative estimate of 0.3 FTE Deputy District Attorney due to the uncertain volume of such prosecutions. Together, the salary and benefits of such positions total \$350,498.

Pursuant to Section 27388, the County Controller will create a Real Estate Fraud Prosecution Trust Fund. The Recorder will transfer the fees quarterly to the County Controller to be placed in the Real Estate Fraud Prosecution Trust Fund and the Controller will distribute the fees to the District Attorney’s Office for the purposes stated herein. Each year, the District Attorney’s Office will submit a report to the County Board of Supervisors and the Board shall annually review the effectiveness of the Real Estate Fraud Unit.

The District Attorney’s Office has met with the San Mateo County Association of Realtors and they are in full support of the creation of a Real Estate Fraud Unit.

County Counsel has reviewed and approved the resolution as to form.

Approval for this agreement contributes to the Shared Vision 2025 outcome of Safe Neighborhoods by providing the funding for the resources necessary to regulate real estate instrument recordings and prevent real estate fraud through investigation and prosecution.

**FISCAL IMPACT:**

There is no net County cost impact.