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AB-661 Counties: recording: real estate instruments. (2015-2016)

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Assembly Bill No. 661

CHAPTER 76

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

[Approved by Governor July 13, 2015. Filed with Secretary of State July 13, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 661, 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 accompanied by a declaration stating that the transfer is subject to a documentary transfer tax, is recorded concurrently with a transfer subject to a documentary transfer tax, or is presented for recording within the same business day as, and is related to the recording of, a transfer subject to a documentary transfer tax.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 27388 of the Government Code is amended to read:

27388. (a) (1) 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 ten dollars (\$10) 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 and except as provided in paragraph (2). For purposes of this section, "real estate instrument" means a 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 fees, after deduction of any actual and necessary administrative costs incurred by the county recorder 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.

(2) The fee imposed by paragraph (1) shall not apply to any real estate instrument, paper, or notice if any of the following apply:

(A) The real estate instrument, paper, or notice is accompanied by a declaration stating that the transfer is subject to a documentary transfer tax pursuant to Section 11911 of the Revenue and Taxation Code.

(B) The real estate instrument, paper, or notice is recorded concurrently with a document subject to a documentary transfer tax pursuant to Section 11911 of the Revenue and Taxation Code.

(C) The real estate instrument, paper, or notice is presented for recording within the same business day as, and is related to the recording of, a document subject to a documentary transfer tax pursuant to Section 11911 of the Revenue and Taxation Code. A real estate instrument, paper, or notice that is exempt under this subparagraph shall be accompanied by a statement that includes both of the following:

(i) A statement that the real estate instrument, paper, or notice is exempt from the fee imposed under paragraph (1).

(ii) A statement of the recording date and the recorder identification number or book and page of the previously recorded document.

(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). A portion of the funds may be directly allocated to the county recorder to support county recorder fraud prevention programs, including, but not limited to, the fraud prevention program provided for in Section 27297.7. Prior to establishing or increasing fees pursuant to this section, the board of supervisors may consider support for county recorder fraud prevention programs. 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. The district attorney shall submit the annual report to the board on or before September 1 of each year.

(e) A county shall not expend funds held in that county's Real Estate Fraud Prosecution Trust Fund until the county's auditor-controller verifies that the county's district attorney has submitted an annual report for the county's most recent full fiscal year pursuant to the requirements of subdivision (d).

(f) 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 in subdivision (b) of Section 1695.1 of the Civil Code. Case filing decisions continue to be at the discretion of the prosecutor.

(g) 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.

(h) 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.