

**Real Estate Fraud Prosecution  
Trust Fund Program  
Chapter 942, Statutes of 1995  
(SB 535, Hughes)**

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LEGISLATIVE ANALYST'S OFFICE



## **REAL ESTATE FRAUD PROSECUTION TRUST FUND PROGRAM**

Current law requires the Legislative Analyst's Office (LAO) to report annually to the Legislature certain information related to real estate fraud cases in counties that participate in the Real Estate Fraud Prosecution Trust Fund Program. The report must also include information on the types of expenditures made by the law enforcement agencies of those counties. Our review found that, by 2009-10, 21 counties had reported data indicating their participation in the program at an annual statewide cost of about \$10 million, with significant variation in expenditures from county to county. In this report, we further analyze this data and offer recommendations to clarify a 10 percent cap on administrative costs incurred in the program as well as to modify the current program reporting requirements.

**Background.** In 1995, the Legislature enacted Chapter 942, Statutes of 1995 (SB 535, Hughes), which created the Real Estate Fraud Prosecution Trust Fund Program. Initially, the program allowed counties to establish a fee of up to \$2 for the filing of certain real estate documents with the county. These new revenues were dedicated to support local law enforcement activities to fight real estate fraud. Beginning in 2009, counties are allowed to charge a fee of up to \$3 for these purposes when these documents are filed.

Counties that opt into the program are required to deposit any fee revenues into a Real Estate Fraud Prosecution Trust Fund for use by local police, sheriffs, and district attorneys to "deter, investigate, and prosecute real estate fraud crimes." Local law enforcement agencies get 40 percent and district attorneys get 60 percent of program allocations from the fund. In counties where the district attorney exclusively does the investigation, 100 percent of the funding would go to that office.

Under the state law, district attorneys are required to provide an annual report to the county board of supervisors and the LAO on (1) the number of complaints of real estate fraud that have been filed and other measures of program performance and outcomes; (2) information related to the condition of their Real Estate Fraud Prosecution Trust Fund; and (3) information on the administrative costs of operating the programs, including the payment of salaries and other expenses. Chapter 531, Statutes of 2005 (AB 901, Ridley-Thomas) further amended state law to require the county board of supervisors to submit those annual reports to the LAO. It further required the LAO to annually compile this information and report this data to the Legislature.

### **Program Data for 2008-09 and 2009-10**

The information compiled is based on data for 2008-09 and 2009-10 reported by district attorneys in the counties that have opted into the program. At the time this report was prepared, our office received 18 reports from district attorneys for 2008-09 and 21 reports for 2009-10. Based on anecdotal information, it is our understanding that as many as 27 counties may be participating in the Real Estate Fraud Prosecution Trust Fund Program. This suggests that some counties may not be aware of their obligation to report on the program or have decided not to comply with the reporting requirement.

Not all of the reports that were submitted in 2008-09 included all of the reporting components required under Chapter 942. Of the 18 reports received for 2008-09, 17 district attorneys provided information on program performance statistics and all 18 provided information related to the condition of their Real Estate Fraud Prosecution Trust Fund. However, only five provided information on their administrative costs. For 2009-10, 21 district attorneys complied with all three reporting requirements.

**Summary of Program Statistics.** Figures 1 and 2 show the program statistics for each of the reporting counties for fiscal years 2008-09 and 2009-10. These figures show data on the number of real estate cases investigated and filed, the number of convictions, the number of victims, and the total aggregated monetary loss to victims of real estate fraud.

<b>Figure 1</b>					
<b>Real Estate Fraud Prosecution Program Statistics</b>					
<i>(2008-09, Dollars in Millions)</i>					
	<b>Cases Investigated</b>	<b>Cases Filed</b>	<b>Convictions</b>	<b>Number of Victims in Filed Cases</b>	<b>Total Aggregated Monetary Loss</b>
Alameda	53	34	31	192	\$23
Butte	7	3	—	21	32
El Dorado	19	4	3	21	17
Fresno	150	28	14	73	25
Merced	24	8	3	70	5
Orange	154	11	1	72	100
Riverside	63	23	11	108	77
Sacramento	26	22	8	48	2
San Bernardino	213	55	36	204	3
San Diego	124	39	28	539	63
San Francisco	34	26	1	26	14
Santa Clara	85	22	16	175	121
Santa Cruz	50	30	15	45	53
Solano	90	16	6	68	28
Stanislaus	64	19	4	102	42
Tulare	27	9	6	44	7
Ventura	90	12	10	11	2
<b>Totals</b>	<b>1,273</b>	<b>361</b>	<b>193</b>	<b>1,819</b>	<b>\$614</b>

**Figure 2****Real Estate Fraud Prosecution Program Statistics***(2009-10, Dollars in Millions)*

	Cases Investigated	Cases Filed	Convictions	Number of Victims in Filed Cases	Total Aggregated Monetary Loss
Alameda	81	42	18	214	\$15
Butte	4	1	—	1	—
Contra Costa	22	14	5	31	1
El Dorado	32	4	2	24	2
Fresno	39	24	6	64	11
Marin	10	6	1	11	3
Merced	39	3	3	46	5
Orange	309	36	15	621	90
Riverside	65	23	8	103	73
Sacramento	17	13	3	37	1
San Bernardino	114	31	59	120	2
San Diego	175	44	52	570	73
San Francisco	17	32	—	32	23
Santa Barbara	19	4	2	80	17
Santa Clara	79	25	13	597	45
Santa Cruz	75	45	8	60	55
Shasta	49	5	1	8	4
Solano	120	22	2	126	63
Stanislaus	69	13	6	61	19
Tulare	27	22	9	39	2
Ventura	141	16	6	39	19
<b>Totals<sup>a</sup></b>	<b>1,503</b>	<b>425</b>	<b>219</b>	<b>2,884</b>	<b>\$523</b>

<sup>a</sup> Numbers may not total due to rounding.

*Summary of Local Revenues and Expenditures.* As shown in Figures 3 and 4 (see next page), revenues and expenditures for each of the reporting counties vary. Revenues vary because the volume of real estate documents filed with the county and the revenue received for these transactions are different in each county. Expenditure variation could be due, in part, to the volume of cases investigated and filed. Expenditures may also vary because of case workload. For example, according to some district attorneys, a complex case involving a single defendant who may have defrauded several victims using different real estate fraud schemes is likely to require the use of more investigative resources.

**Figure 3****Real Estate Fraud Prosecution Program Trust Fund Revenues and Expenditures***(2008-09, in Thousands)*

	<b>Trust Fund Carry-In Balance</b>	<b>Trust Fund Revenues</b>	<b>Trust Fund Expenditures</b>
Alameda	\$726	\$439	\$1,500
Butte	—	80	19
El Dorado	250	64	209
Fresno	642	349	821
Merced	344	58	4
Orange	—	306	15
Riverside	157	608	1,600
Sacramento	622	369	141
San Bernardino	770	739	1,600
San Diego	2,019	621	1,000
San Francisco	94	80	150
Santa Barbara	—	89	60
Santa Clara	—	546	1,260
Santa Cruz	1	53	46
Solano	52	127	280
Stanislaus	5	347	330
Tulare	—	156	268
Ventura	—	174	378
<b>Totals</b>	<b>\$5,682</b>	<b>\$5,205</b>	<b>\$9,681</b>

Some counties reported that their expenditures exceeded the revenues generated by the fees paid for recording real estate documents. In these instances, funds from other sources were used to make up the difference. In other counties, where expenditures exceeded revenues and other monies were not used to make up the difference, counties reported that program costs were supplemented by fund balances that were rolled over from previous years.

**Figure 4****Real Estate Fraud Prosecution Program Trust Fund Revenues and Expenditures***(2009-10, in Thousands)*

	<b>Trust Fund Carry-In Balance</b>	<b>Trust Fund Revenue</b>	<b>Trust Fund Expenditures</b>
Alameda	\$314	\$657	\$232
Butte	62	65	10
Contra Costa	837	489	466
El Dorado	—	103	190
Fresno	169	421	421
Marin	94	119	72
Merced	398	70	169
Orange	291	1,252	1,187
Riverside	22	948	1,140
Sacramento	324	389	491
San Bernardino	73	740	1,533
San Diego	591	1,220	1,258
San Francisco	25	89	110
Santa Barbara	33	80	85
Santa Clara	—	741	1,519
Santa Cruz	8	86	94
Shasta	—	80	106
Solano	43	181	228
Stanislaus	27	191	337
Tulare	—	—	284
Ventura	—	252	421
<b>Totals</b>	<b>\$3,311</b>	<b>\$8,173</b>	<b>\$10,353</b>

Expenditures made by each of the reporting counties for salaries and benefits and operating and support costs for 2008-09 and 2009-10 are shown in Figures 5 and 6 (see next page). Total expenditures to investigate real estate fraud for the five counties that reported in 2008-09 ranged from \$60,000 in Santa Barbara County to \$1.5 million in Alameda County as shown in Figure 5. Total costs to investigate real estate fraud for the 21 counties that reported in 2009-10 ranged from \$10,000 in Butte County to \$1.5 million in San Bernardino County as shown in Figure 6.

<b>Figure 5</b>			
<b>Real Estate Fraud Prosecution Program Expenditure Details</b>			
<i>(2008-09, in Thousands)</i>			
	<b>Salaries and Benefits</b>	<b>Operation and Support Costs</b>	<b>Total Expenditures</b>
Alameda	\$1,300	\$195	\$1,495
Sacramento	132	9	141
Santa Barbara	53	7	60
Santa Clara	1,240	20	1,260
Ventura	366	12	378

<b>Figure 6</b>			
<b>Real Estate Fraud Prosecution Program Expenditure Details</b>			
<i>(2009-10, in Thousands)</i>			
	<b>Salaries and Benefits</b>	<b>Operation and Support Costs</b>	<b>Total Expenditures</b>
Alameda	\$232	—	\$232
Butte	10	—	10
Contra Costa	431	\$25	456
El Dorado	164	26	190
Fresno	356	65	421
Marin	38	34	72
Merced	165	4	169
Orange	1,123	64	1,187
Riverside	779	361	1,140
Sacramento	429	62	491
San Bernardino	1,371	162	1,533
San Diego	1,158	100	1,258
San Francisco	110	—	110
Santa Barbara	77	8	85
Santa Clara	1,403	116	1,519
Santa Cruz	94	—	94
Shasta	88	18	106
Solano	215	14	229
Stanislaus	335	2	337
Tulare	256	28	284
Ventura	379	42	421

*Unclear if Counties are Exceeding 10 Percent Administrative Cap.* Current law places a 10 percent cap on the amount of fee revenue that can be used for administrative costs. Based on anecdotal information and data that we have received, it is uncertain if counties are complying uniformly with the legislative requirement that the amount a county deducts for administrative costs not exceed 10 percent of the total fees paid for filing real estate documents with the county.

Current law does not define “administrative costs.” As a result, it is unclear what administrative costs the legislation is seeking to cap. Also, the legislation does not require counties to report to the LAO information about administrative costs that would allow us to assess if counties are exceeding the administrative cap.

## Conclusion

Given the findings above, we recommend that the Legislature take the following actions:

**Clarify Administrative Costs.** If the intent of the Legislature is to limit counties’ administrative costs for operating the Real Estate Fraud Prosecution Trust Fund Program, it may wish to adopt legislation that would better ensure compliance with this requirement. Specifically, the Legislature may wish to define administrative costs and require counties to report on the amount spent for administrative costs.

**Modify Current Reporting Requirements.** The Legislature should consider eliminating any further reporting by local authorities to the LAO and the requirement that the LAO report this information to the Legislature. Based on our assessment, we believe that compiling and reporting this information every year would do little to enhance legislative oversight of these local government activities in the future. Oversight of the program would continue at the local level. County board of supervisors would continue to collect the same data locally to determine the effectiveness of the program as required by state law.

If the Legislature chooses, however, to have the local district attorneys continue to report to the LAO, we would recommend the following two actions: (1) that the Legislature provide our office with the flexibility to report only when our analysis of the data indicates that there are significant issues for legislative consideration, and (2) that the Legislature direct the Department of Real Estate to conduct outreach to the counties regarding this program and its reporting requirements. Based on anecdotal information, it is our understanding that as many as 27 counties may be participating in the program. Yet, as we noted earlier, we only received reports from 18 counties for the 2008-09 reporting period and 21 reports for the 2009-10 reporting period. This suggests that some counties may be unaware of the statutory reporting requirement.



This report was prepared by Russia Chavis under the supervision of Farra Bracht. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the Legislature.

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