

# Real Estate Fraud Prosecution Trust Fund Committee

## MINUTES

August 22, 2012

This is the eighth annual meeting of the Real Estate Fraud Prosecution Trust Fund Committee since the Board of Supervisors first approved the program on June 8, 2004. This meeting utilizes the Real Estate Fraud Prosecution Trust Fund Committee as directed by the June 8, 2004 agenda item in accordance with Government Code § 27388.

### **Attendance:**

#### **Voting Members:**

Vern Pierson- District Attorney (voting member)  
Terri Daly- Chief Administrative Officer (voting member)  
Jan Walker-Conroy- Chief Assistant Director Human Services (voting member)

#### **Non-Voting Members:**

Jodi Albin- Fiscal Administrative Manager, District Attorney's Office  
Kimberly Beal- El Dorado County Association of Realtors  
Robert Cosley- Chief Investigator, District Attorney's Office  
Don Ashton- Principal Administrative Analyst, Chief Administrative Office  
Moke Auwae- Detective Sergeant, El Dorado County Sheriff's Office

### **Time: 1:30 p.m.**

Distribution of Report- Annual Report, FY 2011/2012

Discussion of program by District Attorney including the following topics:

- FY 08/09, 09/10, 10/11 Case Update
- FY 11/12 Statistics required under Government Code § 27388
- FY 11/12 Annual expenditure report
- FY 11/12 Case review

The following cases are updates of those cases discussed in the prior meeting that were still reported as ongoing. Cases that had been discussed and had been concluded in the prior report are not added.

### **Fiscal Year 08/09 Case Review (still pending)**

#### **DIVERSION OF CONSTRUCTION FUNDS**

DAI: Bob Cosley / Case 2008-121

This case, which was brought to the attention of the District Attorney's Office in April of 2008, involves a builder who has allegedly diverted millions of dollars from several individuals. As a result some victims have been financially decimated, having to spend and then lose their entire retirement and/or years of hard earned savings only to eventually have their properties foreclosed on.

The investigation revealed that there is at least (7) identified victims however only (5) victims have been cooperative and are pursuing this matter for prosecution. In August of 2008 the IRS (Mortgage Fraud Task Force) initially requested to assist in our case and it became part of a Federal Grand Jury investigation. As a result of the Federal Grand Jury numerous pertinent financial and corporate documents were obtained through their subpoena powers.

#### **Update:**

The case was recently assigned to a discovery referee and is set for an evidentiary discovery hearing the week of August 25<sup>th</sup>, 2012.

#### **SUBDIVISION LLC EMBEZZLEMENT**

DAI: Bob Cosley / Case 2009-155

#### **\$500,000 loss**

Partners purchase acreage to develop into (22) 1-2 acre lots. Suspect partner ends up embezzling close to ½ million for his own personal use through fake invoices. Property may go into foreclosure. Investigation received and opened on March 30, 2009. This case will require various interviews including the victim, witnesses (sub-contractors) and potential defendant(s) as well as search warrants for financial and corporate records

#### **Update:**

Case was reviewed and all charges were dismissed.

## **DIVERSION OF CONSTRUCTION FUNDS**

DAI: Mike Franzen / Case 2008-416

This case was reported to the District Attorney's Office by six victims who alleged they had been defrauded out of \$900,000 in a real estate investment scam. In 2006 the victims agreed to invest in the purchase of a residential property in Serrano. The builder wanted to buy the land and build a house that would not obstruct the views from his current residence. The victims were told they could expect a 12% return on their investment and one of them wanted his investment to be secured by a first deed of trust to the land. Completely unknown to the victims, the builder then obtained a separate loan from a bank and used part of their investment to make a down payment on the loan. There were architects, engineers and builders hired to design and build the house but there was never any work done to the property and the vendors were not paid for their services in full. Two and one-half years later one of the victims received a notice of default for the property listing the bank as the holder of the first deed of trust when he should have been in that position. The bank foreclosed on the property and all of the victims lost the money they invested. The builder subsequently filed for bankruptcy. This case involves almost \$2,000,000 in alleged losses to almost 20 listed victims. During fiscal year 10/11 most of the time spent on the case involved three things: (1) PC 995 motions relating to a defense attack on the filed charges and the preliminary hearing, (2) ongoing discovery issues, and (3) preparation for jury trial currently set for November 1, 2011. The defense recently brought in a new attorney and has indicated they will likely seek a continuance of the jury trial to schedule it early in 2012.

### **Update:**

This case resolved with a guilty plea in December 2011 to several felony counts and the defendant was sentenced to 365 days in jail followed by 36 months of felony probation. The defendant paid \$200,000 upfront in restitution to all the victims and agreed to pay the Franchise Tax Board \$50,000 for their investigative expenses.

## **Fiscal Year 09/10 Case Review Updates**

### **REAL ESTATE FRAUD ALLEGED AGAINST FINANCIAL INSTITUTION**

DAI: Franzen/ 2010-0444

#### **Case Summary with Potential Loss**

Complainant alleges that a representative of a large well known financial institution perjured recorded documents regarding their property stating that the homeowner had agreed to give up their property.

**Update:**

Attorney General's Office requested we forward the case to them for inclusion in their investigation of banks not following laws regarding the foreclosure process. Victim reported that he received his permanent loan modification but wants the falsely recorded document removed from the record. He was provided with contact number for the Recorder-Clerk's office to call them and make that request.

**EDCO Stats related to Foreclosure Scams:**

2010/2011 - Total of 2,759 Notices of Default  
Total of 2,382 Notices of Trustee Sales

2011/2012 - Total of 2,140 Notices of Default  
Total of 1,826 Notices of Trustee Sales

**FY 11/12 Statistics required under GC 27388**

1. Number of cases filed	3
2. Number of cases investigated	23
3. Number of victims involved in the cases filed	9
4. Total aggregated monetary loss suffered by victims	Undetermined
5. Total funds received in Trust	\$115,116.59
6. Total funds expended from Trust	\$115,116.59
7. Number of arrests	3
8. Number of convictions	1

**FY 11/12 Cumulative Statistics including open cases from prior years**

1. Number of pending filed cases	6
2. Number of cases investigated	23
3. Number of victims involved in the pending filed cases	36
4. Approximate alleged monetary loss suffered by victims of pending filed cases	\$2,859,880.73
5. Total funds received in Trust	\$115,116.59
6. Total funds expended for operation of program	\$118,686.22
7. Number of arrests	3
8. Number of convictions	1
9. Restitution ordered regarding pending filed cases	\$250,000

## **FY 11/12 Annual Expenditure Report**

See Attachment A

### **Fiscal Year 10/11 Case Review**

#### **REALTOR COLLECTED ADVANCED FOR LOAN MODIFICATION**

DAI: Franzen 2010-0578

Complainant claimed that a licensed realtor convinced her she needed representation with the bank to obtain a loan modification. Realtor collected \$1500 up-front fee and then did not complete the work. Cross complaint done with the Department of Real Estate who found the realtor to have committed the offense. A felony criminal complaint was filed against the realtor and the Department of Real Estate was taking action against the real estate license.

#### **Update:**

The Department of Real Estate completed their investigation and was preparing to revoke the defendant's license when the defendant was found deceased in his home from a drug overdose. Subsequently, the felony charges were dismissed and the case was closed.

#### **POSSIBLE IMPROPERLY RECORDED DEED OF TRUST**

DAI: Franzen 2011-0311

Complainants claimed to have entered into an agreement with a Nevada County company to be placed on the deed for a property in the county as part of a promissory note for \$16,000. Complainants are worried now that one of the members of the company who set up the deal has been implicated in fraud activity occurring in Nevada County.

#### **Update:**

Case closed after determining the complainants were still listed on the deed of trust and there was no fraud involved.

## **POSSIBLE FRAUDULENT RECONVEYANCE OF PROPERTY**

DAI: Dillard 2011-344

Complainant is attorney for title company and claims a property in the county was fraudulently re-conveyed to a company that was able to do a rescission of a prior deed of trust that was in default and then sell the property again to a couple who then received an NOD from the prior bank.

### **Update:**

Case is pending further investigation with time permitting.

## **FORGED QUIT CLAIM DEED**

DAI: Dillard 2011-356

Complainant claimed to be the victim of a forgery in which a quit claim deed was recorded with the county deeding home to an unknown person. Complainant then admitted to contracting with a law firm in southern California who agreed to help stall the foreclosure of his home but did not explain how they would do it.

### **Update:**

Case is currently under investigation. Our office is cooperating with the State Attorney General's Office on this as it is occurring state wide.

## **Fiscal Year 11/12 Case Review**

## **REAL ESTATE INSURANCE FRAUD**

DAI: Dillard 2011-0005

Recently divorced home owner who had finished building his extremely large dream home three years prior was extremely upside down on his mortgage. Home is mysteriously emptied of all furniture and vehicles, and burns down in the middle of the night. Numerous circumstances indicated arson such as a tractor notably parked across the sidewalk upon fire departments arrival. Insurance paid off mortgage; home owner goes underground and does not complete insurance claim process.

### **Update:**

Case is currently under investigation.

## **REAL ESTATE INSURANCE FRAUD**

DAI: Dillard 2011-0257

Suspect sold land in El Dorado County to an unsuspecting female victim. Victim paid \$20,000 for this land and met the seller at the Recorder's office to file the grant deed. Turns out the seller had no ownership in this land to begin with and the grant deed was fraudulent.

Update:

Suspect arrested by the El Dorado County District Attorney's Office and is currently requesting to plea out.

## **UNPAID SUB-CONTRACTORS**

DAI: Dillard 2008-516

Suspect built a home in South Lake Tahoe for a client and was paid in full. Suspect then filed bankruptcy and left the state without paying his sub-contractors.

Update:

Suspect arrested and brought back to stand trial.

## **FRAUDULENT LIENS**

DAI: Dillard 2012-155

Suspect was stopped and cited by the California Highway Patrol in El Dorado County. He later traveled to the recorder's office and attempted to record fraudulent liens against several California Highway Patrol Officers properties within the county.

Update:

Liens were not recorded and suspect was found guilty in traffic court.

## **MORTGAGE FRAUD**

DAI: Dillard 2012-375

Mortgage company allowed a refinance and was possibly defrauded by way of a forged release.

Update:

Case is pending further investigation.

## **DISTRESSED HOME OWNER**

DAI: Dillard 2012-098

Distressed home owner paid suspect company upfront and on a monthly basis to save her home.

Update:

Case is pending further investigation.

## **DISTRESSED HOME OWNER**

DAI: Dillard 2011-590

Distressed home owner paid suspect company upfront and on a monthly basis to save his home.

Update:

Case is pending further investigation.

### **NEXT STEP:**

District Attorney to present report to Board of Supervisors at August 28, 2012 meeting.

Committee to convene annually per Government Code.

Vote approving transfer of \$115,116.59 from Trust Fund:

Motion by: Jan Walker-Conroy- Chief Assistant Director Human Services

Second by: Terri Daly- Chief Administrative Officer

Approved by all voting members: Yes

Meeting Adjourned: 2:30pm



<b>EL DORADO COUNTY</b> <b>REAL ESTATE FRAUD PROSECUTION</b> <b>ANNUAL EXPENDITURE REPORT, 7/1/11-6/30/12</b>
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	YTD	Budget	Variance
I. Salary	77,421.30	90,851.00	13,429.70
II. Benefits	28,243.32	20,409.00	(7,834.32)
Total Salary and benefits	105,664.62	111,260.00	5,595.38
III. Direct Operating Expenses			
Prof & Spec Services	4,008.20	6,174.00	2,165.80
Memberships	23.75	59.00	35.25
Staff Development	393.75	-	(393.75)
Criminal Investigation	6.00	-	(6.00)
Transcription	48.72	-	(48.72)
Transportation/Travel	1,140.67	1,000.00	(140.67)
Office Expense	168.16	-	(168.16)
Equipment: Computer	34.73	-	(34.73)
Total Direct Operating Expense	5,823.98	7,233.00	1,409.02
Total Direct Expense	111,488.60	118,493.00	7,004.40
IV. Indirect Costs			
.10 of salaries	7,197.62		(7,197.62)
Total Costs	118,686.22	118,493.00	-193.22

Total Expenditures FY 11/12	118,686
Trust Fund Beginning Balance	9,318
Revenue Received from Recorded Documents	105,613
Interest Earned	185
Ending Trust Balance	115,117
General Fund Contribution to Program	(3,569.63)

Operating Cost Detail

Category	Description	Logged Cost	FAMIS Cost	Total Cost
Office Expense	4260 Dell Marketing	145.16		
Postage	4261 US Postmaster P V Betchley	23.00		
		168.16	-	168.16
Memberships	4220 CDAIA Meinxer	5.00		
	IAFCI Meixner	18.75		
		23.75	-	23.75
Prof & Specialized	4300 Corelogic	4,008.20		
	Sub Total	4,008.20	-	4,008.20
Criminal Investigation	4317 Business Records P V Roediger	6.00		
	Sub Total	6.00	-	6.00
Transcription	4320 Copy Javahari	31.92		
	Copy Betchley	16.80		
	Sub Total	48.72	-	48.72
Equipment: Computer	4462 Dell 19 inch Monitor- Meixner	34.73		
	Sub Total	34.73	-	34.73

Staff Development	4503	ACFS Meixner	125.00		
		ACFS Meixner reimb.	(31.25)		
		Fraud Symposium Dillard	300.00		
		Sub Total	<u>393.75</u>	-	<u>393.75</u>
Travel	4600	Airfare ACFS Meixner	90.85		
		Meals H. Uthe 10/31-11/4	37.00		
		Meals W. Dillard 11/1-11/4	160.00		
		Meals W. Dillard 3/29-3/31	72.00		
Mileage	4602	H. Uthe 10/31-11/4	49.32		
Fuel	4606	W. Dillard	73.80		
Hotel	4608	Fraud Symposium H. Uthe	100.86		
		ACFS Training Meixner	93.98		
		Fraud Symposium W. Dillard	369.57		
		REF Investigation Orange Co. W. Dillard	93.29		
		Sub Total	<u>1,140.67</u>	-	<u>1,140.67</u>
Total Direct Operating Expense			<u>5,823.98</u>	-	<u>5,823.98</u>
FAMIS Balance	220800				63,923.00
		Indirect Cost			7,197.62
		Q4 JE not yet posted			47,062.81
		R/C W. Dillard Fraud Symposium journal not yet processed			300.00
		LTD journal from L. Schwartz and adj entry for Q4 on LTD calculation not yet posted			203.00
		Total			<u>118,686.43</u>
		oob			0.21