

Date of Hearing: May 6, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Brian Maienschein, Chair
AB 661 (Mathis) – As Introduced February 24, 2015

SUBJECT: Counties: recording: real estate instruments.

SUMMARY: Clarifies an exemption in current law from fees that counties can place on certain recorded real estate documents to fund real estate fraud prevention and enforcement. Specifically, **this bill:**

- 1) Deletes language stating that, for the purposes of fees that counties can place on certain recorded real estate instruments to fund real estate fraud prevention and enforcement, “real estate instrument” does not include any deed, instrument, or writing recorded *in connection with* a transfer subject to the imposition of a documentary transfer tax, as specified.
- 2) Provides, instead, that the fee shall not apply to any real estate instrument, paper, or notice *related to, and recorded concurrently with*, a transfer subject to a documentary transfer tax, as specified.

EXISTING LAW:

- 1) Authorizes any county 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, to be placed in a Real Estate Fraud Prosecution Trust Fund (Fund).
- 2) Requires money in the Fund to be expended to support programs that enhance the capacity of local police and prosecutors to deter, investigate, and prosecute real estate fraud crimes.
- 3) Defines the term “real estate instrument” to mean 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.
- 4) Provides that “real estate instrument” does not include any deed, instrument, or writing recorded in connection with a transfer subject to the imposition of a documentary transfer tax, as defined in Section 11911 of the Revenue and Taxation Code.

FISCAL EFFECT: None

COMMENTS:

1) **Bill Summary.** This bill clarifies an exemption in current law from fees that counties can place on certain recorded real estate documents to fund real estate fraud prevention and enforcement. The bill revises the definition of what is exempt by stating that the fee shall not apply to any real estate instrument, paper, or notice *related to, and recorded concurrently with*, a transfer subject to a documentary transfer tax. This bill is sponsored by the County Recorders Association of California.

2) **Author's Statement.** According to the author, "Clean-up language relating to SB 1342 (2012) is necessary to clarify the legislative intent of the phrase 'in connection with' pursuant to Government Code section 27388, when determining if a fee for the Real Estate Fraud Prosecution Trust Fund is due on a recorded document.

"The indistinct phrase used in the code, 'in connection with' does not clearly define which documents should or should not have the Real Estate Fraud Prosecution Trust Fund fee, resulting in inconsistent application throughout California counties. Clearly defining which documents are exempt from payment of (the fee) will promote uniformity in the application of this (law) throughout the state."

3) **Background.** Under existing law, counties can impose a \$10 recording fee on certain real estate documents for the purposes of deterring, investigating, and prosecuting real estate fraud crimes, with an emphasis on fraud against individuals whose residences are in danger of, or are in, foreclosure. Administrative costs are capped at 10% of revenues.

State law assigns 60% of the Fund proceeds to the county district attorney's office and 40% to eligible law enforcement agencies. In order to be eligible, a law enforcement agency must either have a unit or division devoted to real estate investigation or prosecution, or have been actively involved in such cases for the prior three years.

The law specifies which documents are subject to this fee, and provides an exemption to the fee for "any deed, instrument, or writing recorded *in connection with* a transfer subject to the imposition of a documentary transfer tax" (the sale of real property). This language was added by SB 1342 (Emmerson), Chapter 104, Statutes of 2012.

The sponsor contends that the phrase "in connection with" is unclear, such that county counsels are directing county recorders to impose the fee in different ways. The sponsor is proposing the language in this bill, "related to, and recorded concurrently with," as a more specific alternative.

4) **Previous Legislation.** SB 1342 (Emmerson), Chapter 104, Statutes of 2012, among other provisions, clarified an exemption to the fee for "any deed, instrument, or writing recorded *in connection with* a transfer subject to the imposition of a documentary transfer tax."

5) **Arguments in Support.** Contra Costa County Clerk-Recorder and Registrar of Voters Joseph E. Canciamilla, in support, writes, "As it presently stands, some citizens may pay the fee when not legally required to do so while others may erroneously claim exemption simply because the current legal language is not clear. Clarification of the existing language will facilitate accurate advance calculation of recording fees, which is essential when purchasing

or refinancing a home since all fees must be paid at the time a document is submitted for recording. Incorrect fees can result not only in delays but possibly financial implications to potential homeowners.

"Assembly Bill 661 will clarify the current language and enable uniform application of the fee throughout 58 counties. Moreover, accurately calculated fees will reduce delays in recording documents related to homeownership."

6) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

County Recordors' Association of California [SPONSOR]
Alameda County District Attorney, Nancy E. O'Malley
Alpine County Assessor/Recorder, Donald O'Connor
Calaveras County Clerk-Recorder, Rebecca Turner
California District Attorneys Association
California Escrow Association
California Land Title Association
California State Association of Counties
Contra Costa County Clerk-Recorder and Registrar of Voters, Joseph E. Canciamilla
Inyo County Clerk and Recorder, Kammi Foote
Riverside County Assessor-County Clerk-Recorder, Peter Aldana
Rural County Representatives of California
San Bernardino County Assessor-Recorder-County Clerk, Bob Dutton
San Francisco Office of the Assessor-Recorder, Carmen Chu
Sonoma County Clerk-Recorder-Assessor, William F. Rousseau

Opposition

None on file

Analysis Prepared by: Angela Mapp / L. GOV. / (916) 319-3958