



COUNTY OF LOS ANGELES

REGISTRAR-RECORDER/COUNTY CLERK

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DEAN C. LOGAN

Registrar-Recorder/County Clerk

January 27, 2009

TO: Supervisor Don Knabe, Chair
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

William T Fujioka, Chief Executive Officer

FROM: Dean C. Logan, Registrar-Recorder/County Clerk

REPORT ON BOARD MOTION OF JANUARY 13, 2009 REGARDING REAL ESTATE FRAUD NOTIFICATION AND PREDATORY LENDING

On January 13, 2009, by motion of Supervisor Ridley-Thomas, your Board directed the Registrar-Recorder/County Clerk (RR/CC) to:

1. ...expedite the completion of the Memorandum of Understanding with County law enforcement agencies, namely, the Sheriff's Department and the District Attorney's Office, within 30 days, so investigators may access real estate transaction records directly to shorten investigation time and utilize resources efficiently when conducting research and investigation into allegations of criminal activities and real estate fraud, and
2. to report back in two weeks, in conjunction with the Department of Consumer Affairs, on the feasibility of instituting a mechanism where notification, including foreclosure prevention options and resources, are provided to the homeowner on record when a Notice of Default is recorded with the Registrar-Recorder Office...

Memorandum of Understanding

The draft Memorandum of Understanding (MOU) for law enforcement agencies is in the final stages of review by County Counsel. Agreements with the Sheriff's Real Estate Fraud Unit and the District Attorney's Real Estate Fraud Prosecution and Investigation Unit will be completed and executed by February 12, 2009. All other pending applicants have been informed of the process and agreements will be completed timely.

Current Real Estate Fraud Notification Program and Law

The RR/CC's existing real estate fraud notification program, authorized pursuant to Government Code sections 27297.6 (D) and 27387.1, allows the RR/CC, or an agent through a competitive bid process, to notify by mail within 30 days the party or parties executing the document of the recording of a deed, a quit claim deed or a deed of trust affecting their real estate. These sections were specifically enacted to give the Los Angeles County Recorder the power to issue fraud notifications and collect a fee upon document recordation. In general, existing State law for recorders throughout the State does not allow for, or provide recorders with, the duty to, notify the public of certain transactions other than by maintaining indexes of records. The RR/CC's current notification service is contracted to a third party vendor and is funded through the document recording surcharge on the referenced instruments as authorized by Government Code section 27387.1. This section does not allow for notification or application of a surcharge when a Notice of Default is recorded. Legislation would be required in order for the RR/CC to provide notification and charge for the service. There is no legislative authority for the RR/CC to perform any follow-up with homeowners concerning foreclosure prevention options and resources, through contract or another County department.

Working with the Department of Consumer Affairs and the Chief Executive Office, the RR/CC recommends the County consider seeking legislation expanding the existing real estate fraud notification program to include application of the surcharge and notification of the filing of Notice of Default instruments, as well as the ability to delegate follow-up with homeowners relating to foreclosure prevention resources. As with the original authorizing legislation, we recommend any proposal of this nature be specific to Los Angeles County to avoid organizational opposition from jurisdictions that are not in a position to provide these services.

Process for Discovering Property Owners and Tenants Subject to a Notice of Default

Typically, the Notice of Default document does not list the physical address of the property; the nature of the document itself requires a different model of notification than that provided for in the current real estate fraud notification program. The RR/CC can provide the Department of Consumer Affairs or another appropriate agency with access to the images of all Notice of Default instruments filed; however facilitating a notice to the property owners would require manually referencing back to the recorded Deed of Trust in order to determine ownership and addressing information.

Board staff has also inquired about the ability to notify tenants, in the case of rental properties, of the filing of a Notice of Default. We are unaware of any source database of tenants or rental properties; however, any mechanism developed to identify the residence address for properties subject to Notice of Default as described above may support the development of a program that would allow the Department of Consumer Affairs or some other appropriate agency the opportunity to send an "occupant" notice to the property address once identified.

For reference, a new State Law was implemented last year (SB 1137) which requires the Lender to notify the Trustor, on loans secured between 2003 and 2007, by phone and mail prior to recording a Notice of Default in an attempt to provide options to the property owner to prevent

or halt foreclosure activity. This law requires the Lender to include a confirmation statement on the Notice of Default, indicating whether or not contact was made with the Trustor. A Notice of Default can be recorded 30 days after notification occurs or was attempted.

Following are statistics for the number of Notice of Default instruments recorded in Los Angeles County between 2003 and 2007:

2003: 21,316

2004: 16,526

2005: 16,730

2006: 26,296

2007: 53,422

In 2008, the number of Notices of Default grew to: 84,798.

Conclusion

In summary, I have identified general actions necessary to establish a notification program to inform property owners (and potentially tenants) of property subject to foreclosure that such action has been initiated. Legislative authorization will be needed for the RR/CC to provide notification and a recording surcharge to fund such a program, as well the delegation of authority for the surcharge to be applied to follow-up with homeowners concerning foreclosure prevention options and resources, through contract or another County department. In addition, a cross-referencing methodology for identifying property owners and physical addresses for the affected properties is required and will need to be developed. Upon Board direction, the RR/CC will cooperate with the Department of Consumer Affairs and the Chief Executive Office and report back on the feasibility of any program as directed by your Board.

cc: Executive Officer, Board of Supervisors
Director, Department of Consumer Affairs
County Counsel