

**Introduced by Senator DeSaulnier**

February 22, 2013

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An act to add Section 1202.9 to the Penal Code, relating to false documents.

LEGISLATIVE COUNSEL'S DIGEST

SB 803, as introduced, DeSaulnier. False documents: real property: voiding and restitution.

Existing law establishes offenses involving falsifying documents, elder abuse, forgery, grand theft, identity theft, and mortgage fraud, among others. Existing law requires a court to order defendants convicted of any crime to pay restitution to the victim or victims as well as a restitution fine, as specified, unless the court finds compelling and extraordinary reasons for not imposing the restitution fine, as specified.

This bill would provide that where a defendant is convicted of any of those offenses, or any other offense, in which an instrument affecting the right, title, or interest in real property was forged or false, and where the instrument was filed, registered, or recorded, as specified, the prosecuting attorney or the judge may make a motion for a noticed hearing to adjudge the instrument void, and to order restitution for an affected person.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1202.9 is added to the Penal Code, to  
2 read:

1 1202.9. (a) In any case where the defendant is convicted of  
2 any offense enumerated in Section 115, 368, 470, 487, 532f, or  
3 540.5 or any other crime, in which an instrument affecting any  
4 right, title, or interest in real property is found to be forged or false,  
5 and where in furtherance of the crime an instrument that conveys  
6 title or encumbers real property has been filed, registered, or  
7 recorded against real property, the court may, upon its own motion  
8 or upon motion by the prosecuting attorney, pursuant to the  
9 procedures in subdivision (c), enter a judgment declaring the  
10 instrument void.

11 (b) The instrument shall be deemed to be adjudged void as of  
12 the date on which the crime occurred, or the date that the  
13 instrument was created, forged, or falsified, or the date that the  
14 instrument was filed, registered, or recorded, whichever date is  
15 earlier.

16 (c) (1) Upon making the motion to void the instrument, a  
17 hearing date on the motion shall be set no earlier than 30 calendar  
18 days from the date that the motion is made.

19 (2) A notice regarding the motion shall be provided by personal  
20 service or registered mail to every person who may have an interest  
21 in the affected property within five days of making the motion.

22 (3) The notice shall be published at least once a week for three  
23 successive weeks in a newspaper of general circulation in the  
24 county in which the affected property is located. The notice shall  
25 state that any interested party may file a verified claim with the  
26 superior court stating the nature and amount of their claimed  
27 interest. The notice shall set forth the time within which a claim  
28 of interest in the property is required to be filed.

29 (4) Any person claiming an interest in the affected property  
30 may, at any time within 30 calendar days from the date of the first  
31 publication of the notice of the motion, or within 30 days after  
32 receipt of the actual notice, whichever is later, file with the superior  
33 court of the county in which the motion is pending a verified claim  
34 stating the nature and amount of his or her interest in the property.  
35 A verified copy of the claim shall be served by the claimant on  
36 the prosecuting attorney and the defendant.

37 (5) At the hearing, any person claiming an interest in the affected  
38 property may present evidence showing that their claim to the  
39 property was based on a good-faith belief in the legitimacy of their  
40 claim. Where the court makes a finding that any person claiming

1 an interest in the affected party acted in good faith in securing an  
2 interest in the property, the court may order restitution to be paid  
3 by the defendant to the affected person. The amount of restitution  
4 shall be determined in a manner consistent with subdivision (f) of  
5 Section 1202.4. A person who files a claim with the California  
6 Victim Compensation and Government Claims Board may not  
7 obtain restitution pursuant to this section.

8 (d) Upon issuance of a judgment pursuant to this section, the  
9 prosecuting attorney or any affected person may record the  
10 judgment with the appropriate county recorder.

11 (e) As used in this section, “instrument” means, but is not limited  
12 to, a grant deed, quitclaim deed, deed of trust, notice of default,  
13 notice of trustee’s sale, trustee’s deed, assignments of any kind,  
14 homestead declaration, mechanic’s lien, Uniform Commercial  
15 Code filings, deed of reconveyance, rental agreement, lease  
16 agreement, easement, tax lien, or lis pendens.

17 (f) Nothing in this section shall be construed as limiting a person  
18 claiming an interest in the affected property from pursuing any  
19 civil remedies that may be available.