

#36.20(1)

3/25/70

Memorandum 70-37

Subject: Study 36.20(1) - Condemnation (The Declared Public Uses--Disposition of Section 1238(21)--Slum Clearance and Low-Rent Housing)

Subdivision 21 of Section 1238 declares that slum clearance and construction of housing for low-income groups are public uses for which the right to condemn exists in cities, counties, housing authorities and commissions, or other political subdivision or public body of the state. See the attached research study for a discussion of this subdivision.

All but one of the agencies engaged in this activity have adequate condemnation authority under other statutes. To complete the scheme, community land chest corporations (nonprofit corporations formed under the Health and Safety Code to provide "housing in rural and suburban areas for families of low income") should be granted express condemnation authority. These corporations are under strict regulation by the Commissioner of Corporations and cannot start any housing project without his approval. All significant activities of the corporation are subject to regulations of the Commissioner or, if there are no regulations, to his approval. Any profit, after return of members contributions, goes to the state. Exhibit II sets out the statutory provisions applicable to community land chest corporations.

The research study points out that housing authorities do not have any express power of eminent domain to carry out the Temporary Housing Projects Law. The staff does not believe that such authority is needed since the act "does not authorize a city, county, or housing authority

to construct additional dwelling units." See Health & Saf. Code § 35482.

Attached as Exhibit I is a Comment to subdivision 21 and a new section to be added to the Health and Safety Code to retain the substance of this subdivision insofar as it may apply to community land chest corporations. These provisions should be tentatively approved and should be sent to the Commissioner of Corporations for review and comment on the necessity for the new section.

Respectfully submitted,

John H. DeMouly
Executive Secretary

EXHIBIT I

CODE OF CIVIL PROCEDURE § 1238

Staff recommendation

Subdivision 21

~~21.---Any-work-er-undertaking-of-a-city,-county,-or-city-and
county,-housing-authority-er-commission,-or-other-political-sub-
division-er-public-body-of-the-State:--(a)-to-demolish,-clear-er
remove-buidings-from-any-area-which-is-detrimental-to-the-safety,
health-and-morals-of-the-people-by-reason-of-the-dilapidation,-over-
crowding,-faulty-arrangement-er-design,-lack-of-ventilation-er-sani-
tary-facillities-of-the-dwellings-predominating-in-such-areas;-er
(b)-to-provide-dwellings,-apartments-er-other-living-aeecomodatiens
for-persons-er-families-who-lack-the-amount-of-income-which-is
necessary-(as-determined-by-the-body-engaging-in-said-work-er
undertaking)-to-enable-them-to-live-in-decent,-safe-and-sanitary
dwellings-without-overerewding.~~

Comment. Subdivision 21 is unnecessary because it merely duplicates express grants of the power of eminent domain given the agencies engaged in slum clearance and low rent housing by other statutes. Thus, housing authorities, which may be activated within any city or county, may condemn property for slum clearance, construction of low-cost housing, or construction of farm labor camps. Health & Saf. Code §§ 34240, 34325, 36059(i). See also Health & Saf. Code §§ 34874, 34875, 34879 (limited dividend housing corporations). The addition of Section 35167 to the Health and Safety Code to grant condemnation authority to community land chest corporations (nonprofit corporations formed under Health and Safety Code Sections 35100-35237 to provide "housing in rural and suburban areas for families of low income") provides all of the agencies covered by subdivision 21 with adequate condemnation authority.

HEALTH AND SAFETY CODE § 35167

Staff recommendation

§ 35167. Authority of land chest corporation to acquire property

Sec. . Section 35167 is added to the Health and Safety Code, to read:

35167. (a) When the commissioner has approved a housing project, the corporation may acquire the property necessary for the project by gift, bequest, purchase, or eminent domain.

(b) The power of eminent domain shall not be exercised by a corporation except with the specific authorization of the commissioner.

Comment. Section 35167 retains the substance of subdivision 21 of former Code of Civil Procedure Section 1238 insofar as that subdivision may have applied to land chest corporations (nonprofit corporations formed for the purpose of providing "housing in rural and suburban areas for families of low income"). Section 35167 uses the same language used in Sections 34874 and 34875 relating to limited dividend housing corporations (corporations formed for the purpose of providing housing for families of low income or reconstructing slum areas).

Chapter 2

COMMUNITY LAND CHEST LAW

Article	Section
1. General Provisions	35100
2. Formation of Land Chest Corporations	35130
3. Powers and Duties of Land Chest Corporations	35160
4. Powers and Duties of the Commissioner of Corporations	35190
5. Financial Provisions	35230

Article 1

GENERAL PROVISIONS

- Sec.
- 35100. Title of chapter.
 - 35101. Definitions.
 - 35102. Commissioner.
 - 35103. Actual cost.
 - 35104. Fixed charges.
 - 35105. Security.
 - 35106. Corporation.
 - 35107. Corporate name.
 - 35108. Violation; misdemeanor.

Administrative Code References

Community land chests, sec 10 Cal.Adm.Code 250 et seq.

Pl. 3 COMMUNITY LAND CHEST LAW § 35104

§ 35100. Title of chapter. This chapter may be cited as the Community Land Chest Law. (Added Stats.1951, c. 710, p. 1970, § 1.)

Derivation: Stats.1933, c. 500, p. 1465, § 1.

Administrative Code References

Rules and regulations, see 10 Cal. Adm. Code 250-208.

Library References

Health ☞ 32.

C.J.S. Health § 22 et seq.

§ 35101. Definitions. Unless the context otherwise requires, the definitions contained in this article govern the construction of this chapter. (Added Stats.1951, c. 710, p. 1970, § 1.)

Derivation: Stats.1933, c. 500, p. 1465, § 2.

Library References

Statutes ☞ 179.

C.J.S. Statutes § 315.

§ 35102. Commissioner. "Commissioner" means the Commissioner of Corporations of the Division of Corporations, Department of Investment. (Added Stats.1951, c. 710, p. 1970, § 1.)

Derivation: Stats.1933, c. 500, p. 1465, § 2.

Library References

Words and Phrases (Perm. Ed.)

§ 35103. Actual cost. "Actual cost" means the cost of the land and buildings, charges for financing and supervision, and carrying charges during construction, including interest on borrowed money and invested capital. (Added Stats.1951, c. 710, p. 1970, § 1.)

Derivation: Stats.1933, c. 500, p. 1465, § 2.

Library References

Words and Phrases (Perm. Ed.)

§ 35104. Fixed charges. "Fixed charges" includes all operating and maintenance charges, taxes, assessments, insurance and depreciation, amortization, interest, sinking fund, and other expenses and charges. (Added Stats.1951, c. 710, p. 1970, § 1.)

Derivation: Stats.1933, c. 500, p. 1465, § 2.

Library References

Words and Phrases (Perm. Ed.)

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§ 35105. Security. "Security" includes any stock, bond, note, treasury note, debenture, evidence of indebtedness, certificate of interest or participation, profit sharing agreement or certificate of interest in it, collateral trust certificate, transferable share, investment contract, or other instrument commonly known as a security. It does not include mortgages, trust deeds, bills of exchange, trade acceptances, promissory notes, or other commercial paper, issued or given in the ordinary course of business, and not offered for sale to the public or not sold to an underwriter for the purpose of resale. (Added Stats.1951, c. 710, p. 1970, § 1.)

Derivation: Stats.1933, c. 500, p. 1463, § 2.

Library References

Corporations § 60 et seq.
C.J.S. Corporations § 192 et seq.

Words and Phrases (Perm. Ed.)

§ 35106. Corporation. "Corporation" means land chest corporation formed pursuant to this chapter. (Added Stats.1951, c. 710, p. 1971, § 1.)

Library References

Words and Phrases (Perm. Ed.)

§ 35107. Corporate name. A corporation having shares of capital stock, or any of its agents or officers, shall not use or permit to be used as part of the corporate name of the corporation the words "land chest" or "community land chest." Every nonprofit corporation organized before or after May 25, 1933, having as any part of its corporate name the words "land chest" or "community land chest" is subject to this chapter and shall not transact any business in the State unless it has complied with this chapter. (Added Stats.1951, c. 710, p. 1971, § 1.)

Derivation: Stats.1933, c. 500, p. 1471, § 17.

Library References

Corporations § 43 et seq.

C.J.S. Corporations § 164 et seq.

§ 35108. Violation; misdemeanor. Every person violating any of the provisions of this chapter is guilty of a misdemeanor. (Added Stats.1951, c. 710, p. 1971, § 1.)

Derivation: Stats.1933, c. 500, p. 1471, § 18.

Cross References

Misdemeanor defined, see Penal Code § 17.

Library References

Corporations § 628.

C.J.S. Corporations § 1364.

Article 2

FORMATION OF LAND CHEST CORPORATIONS

Sec.

35130. Purpose.
 35131. Applicability of nonprofit corporation laws.
 35132. Commission certificate approving articles.
 35133. Required provisions of articles.

§ 35130. Purpose. Pursuant to this chapter corporations may be formed for the purpose of providing housing in rural and suburban areas for families of low income. (Added Stats.1951, c. 710, p. 1971, § 1.)

Derivation: Stats.1933, c. 500, p. 1400, § 3.

Library References

Health ⇨20, 32.

C.J.S. Health §§ 2, 9 et seq., 22 et seq.

§ 35131. Applicability of nonprofit corporation laws. The laws relating to nonprofit corporations generally apply to corporations formed under this chapter, except where inconsistent with the provisions of this chapter. (Added Stats.1951, c. 710, p. 1971, § 1.)

Derivation: Stats.1933, c. 500, p. 1400, § 3.

Cross References

Nonprofit corporations, generally, see Corporations Code § 8000 et seq.

Library References

Health ⇨1 et seq.

C.J.S. Health § 3 et seq.

§ 35132. Commission certificate approving articles. Before the articles of incorporation of any corporation may be filed in the office of the Secretary of State, there shall be attached to them a certificate of the commissioner approving them. (Added Stats.1951, c. 710, p. 1971, § 1.)

Derivation: Stats.1933, c. 500, p. 1400, § 4.

Administrative Code References

Contents of proposed articles, see 10 Cal. Adm. Code 251.
 Effect of approval by commissioner, see 10 Cal. Adm. Code 252.
 Filing fee, see 10 Cal. Adm. Code 251, 263.
 Statement of powers, see 10 Cal. Adm. Code 251.

Library References

Corporations ⇨22.

C.J.S. Corporations §§ 50, 62.

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§ 35133. Required provisions of articles. In addition to other requirements of law, the articles of incorporation shall set forth:

(a) That the corporation is formed wholly for the purpose of providing housing in rural and suburban areas for families of low income.

(b) That the corporation will be subject to the supervision and control of the Commissioner of Corporations or other appropriate state authority and subject to this chapter.

(c) That upon liquidation or dissolution of the corporation any surplus remaining after the payment of debts and obligations and the repayment to the corporation members of the respective amounts of their subscriptions, contributions, fees, dues, and assessments, will revert to the State. (Added Stats.1951, c. 710, p. 1971, § 1.)

Derivation: Stats.1933, c. 590, p. 1468, § 4.

Cross References

Requirements of articles of incorporation for nonprofit corporations, generally, see Corporations Code § 9300 et seq.

Administrative Code References

Contents of proposed articles, see 10 Cal. Adm. Code 251.

Provision that directors must be members of corporation, see 10 Cal. Adm. Code 253.

Library References

Corporations §=18.

C.J.S. Corporations § 52 et seq.

Article 3

POWERS AND DUTIES OF LAND CHEST CORPORATIONS

Sec.

35160. Federal agencies; loans, memberships, and compliance with regulations.

35161. Approval of housing project by commissioner.

35162. Conditions of approval of housing project.

35163. Plans of project.

35164. Acts subject to control of commissioner.

35165. Effect of violation.

35166. Disposition of assets upon liquidation or dissolution.

§ 35160. Federal agencies; loans, memberships, and compliance with regulations. A corporation may:

(a) Borrow money from, or sell, pledge, or discount its securities, or mortgage, pledge, or otherwise hypothecate its property to, the Reconstruction Finance Corporation, Federal Home Loan Bank, or any other corporation or agency established by the United States or the State.

Pt. 3 COMMUNITY LAND CHEST LAW § 35162

(b) Comply with the provisions for membership and become a member of the Federal Home Loan Bank or of any other corporation or agency established by the United States or the State.

(c) Comply with any regulations of the Reconstruction Finance Corporation. (Added Stats.1951, c. 710, p. 1971, § 1.)

Derivation: Stats.1933, c. 500, p. 1400, § 5.

Cross References

Federal Home Loan Bank Act, generally, see 12 U.S.C.A. § 1421 et seq.
Reconstruction Finance Loan provisions, see 15 U.S.C.A. § 604(3).

Administrative Code References

Statement of powers in articles of incorporation, see 10 Cal.Adm.Code 251.

Library References

Corporations § 370(1) et seq.

C.J.S. Corporations § 941 et seq.

§ 35161. Approval of housing project by commissioner. A corporation shall not start or undertake a housing project without the approval of the commissioner. (Added Stats.1951, c. 710, p. 1972, § 1.)

Derivation: Stats.1933, c. 500, p. 1407, § 6.

Administrative Code References

Applications for approval of housing project, see 10 Cal.Adm.Code 254, 255.

Library References

Health § 32.

C.J.S. Health § 22 et seq.

§ 35162. Conditions of approval of housing project. The commissioner shall not approve a housing project unless:

(a) It appears practicable to rent or sell the proposed housing accommodations at rentals or sales prices not exceeding those prescribed by the commissioner.

(b) The project conforms to any zoning or building ordinance of the locality where it is located.

(c) There is submitted to and approved by the commissioner a financial plan in the form prescribed by him setting forth the method of making money available for the actual cost of the land and improvements, and the cost of organization, administration, maintenance, and operation. (Added Stats.1951, c. 710, p. 1972, § 1.)

Derivation: Stats.1933, c. 500, p. 1407, § 6.

Administrative Code References

Contents of application for approval of housing project, see 10 Cal.Adm.Code 250, 257.
Form and filing of application for approval, see 10 Cal.Adm.Code 254.
Title of application for approval, see 10 Cal.Adm.Code 255.

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§ 35163. Plans of project. The commissioner shall not approve a housing project unless there is submitted to and approved by him plans setting forth:

- (a) The area and location of the project.
- (b) Plans of development.
- (c) Estimates of cost of the project.
- (d) Estimated rentals and selling prices of properties to be rented or sold, terms of payment, and interest rates upon deferred payments. (Added Stats.1951, c. 710, p. 1972, § 1.)

Derivation: Stats.1933, c. 500, p. 1467, § 6.

Administrative Code References

Contents of application for approval, see 10 Cal. Adm. Code 256, 257.

Library References

Health \S 22

C.J.S. Health § 22 et seq.

§ 35164. Acts subject to control of commissioner. Except pursuant to the regulations of the commissioner or, if there is none, with his approval, a corporation shall not:

- (a) Acquire any real property or interest in it.
- (b) Sell, transfer, assign, or lease any real property to any person.
- (c) Charge or accept any rental, fee, or other charge for housing accommodations in any building constructed, acquired, operated, sold, or managed by it.
- (d) Mortgage or otherwise encumber any real property.
- (e) Use any building erected or acquired by it for other than housing and incidental purposes.
- (f) Enter into contracts for the construction of housing projects or for the payment of salaries to officers or employees.
- (g) Effect any reorganization.
- (h) Voluntarily dissolve or transfer all or substantially all of its assets.
- (i) Make any guaranty. (Added Stats.1951, c. 710, p. 1972, § 1.)

Derivation: Stats.1933, c. 500, p. 1468, § 8.

Library References

Corporations \S 434, 442, 447, 470(1), 484(2), 574, 610(1).

C.J.S. Corporations §§ 1088, 1100, 1118, 1119, 1171, 1214, 1230 et seq., 1533, 1534, 1634, 1692.

§ 35165. Effect of violation. Any purchase, conveyance, contract, encumbrance, lease, or sublease made in violation of this chapter and any transfer or assignment of them is void. (Added Stats.1951, c. 710, p. 1972, § 1.)

Derivation: Stats.1933, c. 560, p. 1468, § 8.

Library References

Corporations § 370(1).

C.J.S. Corporations § 941.

§ 35166. Disposition of assets upon liquidation or dissolution. If a corporation is liquidated or dissolved, its assets remaining after paying or adequately providing for its debts and obligations shall be distributed to its members to the extent of the payments of contributions, subscriptions, fees, dues, and assessments paid to it by each member, without interest or profit. The remainder of the assets revert to the State. (Added Stats.1951, c. 710, p. 1973, § 1.)

Derivation: Stats.1933, c. 560, p. 1471, § 19.

Cross References

Disposition of assets on dissolution of nonprofit corporation, see Corporations Code, § 9601.

Library References

Corporations § 629.

C.J.S. Corporations §§ 230, 1707.

Article 4

POWERS AND DUTIES OF THE COMMISSIONER OF CORPORATIONS

Sec.

- 35190. Regulations.
- 35191. Fixing rentals.
- 35192. Fixing price, terms of payment, and charges.
- 35193. Examination of corporation.
- 35194. Investigation of corporate affairs.
- 35195. Authority to enter and inspect.
- 35196. Uniform accounting methods and forms.
- 35197. Corporation reports.
- 35198. Repairs and improvements.
- 35199. Compliance with laws, commissioner's regulations, and terms of project.
- 35200. Authority to take possession of corporate property and business; grounds.
- 35201. Powers and duties of commissioner in possession.
- 35202. Enforcement proceedings against corporation.
- 35203. Judicial review of commissioner's actions.

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Sec.

35204. Fees for examination of plans, supervision of project, and investigation.
35205. Foreclosure proceedings; service upon commissioner.
35206. Judgment sale.

§ 35190. Regulations. The commissioner may make, amend, and repeal regulations for carrying this chapter into effect. (Added Stats.1951, c. 710, p. 1973, § 1.)

Derivation: Stats.1933, c. 500, p. 1467, § 7.

Cross References

Commissioner of corporations, see Corporations Code, § 25300 et seq.

Administrative Code References

Community land chests, see 10 Cal.Adm.Code 250 et seq.

Library References

Health ☞20.

C.J.S. Health §§ 2, 9 et seq.

§ 35191. Fixing rentals. The commissioner may fix and revise the maximum rental charged tenants of the housing accommodations rented by a corporation, determined upon the basis of the actual cost of the project so that the rentals, with all other income of the corporation, will be sufficient to meet all fixed charges, interest requirements, and other charges of the corporation approved by the commissioner. (Added Stats.1951, c. 710, p. 1973, § 1.)

Derivation: Stats.1933, c. 500, p. 1467, § 7.

Cross References

Administrative rules and regulations, generally, see Government Code, § 11370 et seq.

Library References

Landlord and Tenant ☞200.13.

C.J.S. Landlord and Tenant § 507.

§ 35192. Fixing price, terms of payment, and charges. The commissioner may determine and fix the price, terms of payment, rate of interest on deferred payments, and all other charges of properties offered for sale or sold. (Added Stats.1951, c. 710, p. 1973, § 1.)

Derivation: Stats.1933, c. 500, p. 1467, § 7.

Library References

Health ☞32.

C.J.S. Health § 22 et seq.

§ 35193. Examination of corporation. The commissioner may examine all corporations and keep informed as to their general condition and the manner in which their property is acquired, constructed, leased, sold, operated, or managed. (Added Stats.1951, c. 710, p. 1973, § 1.)

Derivation: Stats.1933, c. 560, p. 1467, § 7.

§ 35194. Investigation of corporate affairs. The commissioner may investigate into the affairs of a corporation and its dealings, transactions, or relationships with other persons. (Added Stats.1951, c. 710, p. 1973, § 1.)

Derivation: Stats.1933, c. 560, p. 1467, § 7.

Library References

Administrative Law and Procedure ☞340.	C.J.S. Corporations § 982 et seq. C.J.S. Public Administrative Bodies and Procedure § 79.
Corporations ☞394.2.	

§ 35195. Authority to enter and inspect. Either through his deputies or representatives, the commissioner may enter upon and inspect the property, equipment, buildings, plants, offices, apparatus, and devices of any corporation, and examine its books, contracts, records, documents, and papers. (Added Stats.1951, c. 710, p. 1973, § 1.)

Derivation: Stats.1933, c. 560, p. 1467, § 7.

Cross References

Refusal to submit books to inspection, authority to take possession of corporate property, see § 35200.

Library References

Corporations ☞394.2.	C.J.S. Corporations § 982 et seq.
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§ 35196. Uniform accounting methods and forms. The commissioner may prescribe uniform methods and forms of keeping accounts, records, and books to be observed by a corporation and prescribe by order accounts in which particular outlays and receipts shall be entered, charged, or credited. (Added Stats.1951, c. 710, p. 1973, § 1.)

Derivation: Stats.1933, c. 560, p. 1467, § 7.

Library References

Corporations ☞394.2.	C.J.S. Corporations § 982 et seq.
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§ 35197. Corporation reports. The commissioner may require every corporation to file with him periodic reports setting forth the information he requires, verified by the oath of the president, general manager, receiver, or person required to file it. The report shall be in

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the form, cover the period, and be filed at the time prescribed by the commissioner. The commissioner may further require specific answers to questions upon which he desires information. (Added Stats. 1951, c. 710, p. 1973, § 1.)

Derivation: Stats.1933, c. 500, p. 1467, § 7.

Library References

Corporations \Leftrightarrow 394.2.

C.J.S. Corporations § 982 et seq.

§ 35198. **Repairs and improvements.** The commissioner may order a corporation to make at its expense repairs and improvements which will preserve or promote the health and safety of the occupants of buildings owned or operated by it. (Added Stats.1951, c. 710, p. 1973, § 1.)

Derivation: Stats.1933, c. 500, p. 1467, § 7.

Library References

Health \Leftrightarrow 32.

C.J.S. Health § 22 et seq.

§ 35199. **Compliance with laws, commissioner's regulations, and terms of project.** The commissioner may order a corporation to do acts necessary to comply with, or to refrain from doing acts in violation of, law, regulations adopted by the commissioner, or the terms of any project approved by the commissioner. (Added Stats.1951, c. 710, p. 1973, § 1.)

Derivation: Stats.1933, c. 500, p. 1467, § 7.

Cross References

Power of commissioner to make regulations, see § 35190.

Administrative Code References

Rules and regulations, see 10 Cal. Adm. Code 250-268.

Library References

Corporations \Leftrightarrow 394.
C.J.S. Corporations § 986.

C.J.S. Public Utilities § 69 et seq.

§ 35200. **Authority to take possession of corporate property and business; grounds.** The commissioner may immediately take possession of the property and business of a corporation and retain possession until it resumes business or its affairs are finally liquidated if any of the following events occur:

(a) When it appears to the commissioner that the corporation has violated its articles of incorporation or any state law or is conducting its business in an unsafe or unsound manner.

(b) The corporation refuses to submit its books and papers to the inspection of the commissioner or his authorized representative.

(c) If it appears to the commissioner that the corporation is unsound or in an unsafe condition to transact the business for which it was organized, or that it is unsafe and inexpedient for it to continue to conduct its business. (Added Stats.1951, c. 710, p. 1974, § 1.)

Derivation: Stats.1933, c. 590, p. 1471, § 16.

Library References

Corporations ⇨304.2.

C.J.S. Corporations § 982 et seq.

§ 35201. Powers and duties of commissioner in possession. If the commissioner takes possession of the property and business of any corporation he has the same powers and duties with respect to it as are conferred upon the Superintendent of Banks with respect to banking institutions by the Financial Code¹ and the commissioner may liquidate the corporation pursuant to the Financial Code² so far as it is applicable. (Added Stats.1951, c. 710, p. 1974, § 1, as amended Stats.1953, c. 495, p. 1737, § 1.)

¹ Financial Code § 215.

² Financial Code § 3100 et seq.

Historical Note

The 1953 amendment substituted "Financial Code" for "Banking Code".

Derivation: Stats.1933, c. 590, p. 1471, § 16.

Library References

Corporations ⇨304.2, 013(1).

C.J.S. Corporations §§ 982 et seq., 1680.

§ 35202. Enforcement proceedings against corporation. The commissioner may bring a proceeding against the corporation to enforce the provisions of this chapter or of any order, permit, license, demand, or requirement of the commissioner, to restrain their violation or threatened violation, or to compel the performance of any act required by them. The proceeding shall be brought in the name of the people of the State of California, in the superior court of the county in which the corporation has its principal place of business. (Added Stats.1951, c. 710, p. 1794, § 1.)

Derivation: Stats.1933, c. 590, p. 1460, § 10.

Library References

Mandamus ⇨122.

C.J.S. Mandamus § 211.

§ 35203. Judicial review of commissioner's actions. Every order, decision, permit, or other official act of the commissioner is subject to review pursuant to law within 20 days after its rendering.

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The burden of proof lies upon the appellant, and the court shall receive and consider any pertinent oral or documentary evidence concerning the action of the commissioner under review. The court shall consider and determine only the question of whether there has been an abuse of discretion by the commissioner. (Added Stats.1951, c. 710, p. 1974, § 1.)

Derivation: Stats.1933, c. 560, p. 1469, § 11.

Library References

Administrative Law and Procedure C.J.S. Public Administrative Bodies and
 §§ 701, 722, 750, 754. Procedure §§ 186, 193, 206, 207.

§ 35204. Fees for examination of plans, supervision of project, and investigation. The commissioner may charge and collect from a corporation reasonable fees in accordance with rates established by the regulations of the commissioner:

(a) For the examination of plans and specifications and the supervision of any project, in an amount not to exceed one-half of 1 percent of the estimated cost of the project.

(b) For any investigation made upon application of a corporation for any act done by the commissioner or his employees, in performance of their duties under this chapter, an amount reasonably calculated to meet the expenses of the commissioner incurred in the investigation. The commissioner may authorize a corporation to include such fees as part of the actual cost of a project. (Added Stats.1951, c. 710, p. 1974, § 1.)

Derivation: Stats.1933, c. 560, p. 1469, § 12.

Administrative Code References

Fees to be charged and collected by commissioner, see 10 Cal. Adm. Code 268.

Library References

Corporations §§ 304. C.J.S. Public Utilities § 60 et seq.
 C.J.S. Corporations § 196.

§ 35205. Foreclosure proceedings; service upon commissioner. If a mortgagee, trustee, or beneficiary commences foreclosure proceedings under a mortgage or deed of trust which is a lien upon corporation property, a copy of the complaint or notice of breach and intention to sell shall be served upon the commissioner within five days of the filing of the complaint or the recording of the notice. Upon receipt of the copy, the commissioner shall immediately take such steps as he deems necessary to protect the rights of all parties. (Added Stats.1951, c. 710, p. 1974, § 1.)

Derivation: Stats.1933, c. 500, p. 1470, § 14.

Cross References

Foreclosure actions, generally, see Code of Civil Procedure, § 725a et seq.

Library References

Corporations ⇨482(3).

C.J.S. Corporations §§ 1202, 1223.

§ 35206. Judgment sale. In the event of a judgment against a corporation in any action not pertaining to the collection of an indebtedness secured by mortgage or deed of trust, sale of any of the real property of such corporation shall not be made except upon 60 days' written notice to the commissioner. Upon receipt of the notice the commissioner shall take such steps as in his judgment are necessary to protect the rights of all parties. (Added Stats.1951, c. 710, p. 1975, § 1.)

Derivation: Stats.1933, c. 500, p. 1470, § 15.

Library References

Corporations ⇨523.

C.J.S. Corporations § 1342 et seq.

Article 5

FINANCIAL PROVISIONS

Sec.

- 35230. Applicability of corporate securities law.
- 35231. Limitations on issuance of securities.
- 35232. Issue of securities; relation to project; security.
- 35233. Provisions of bonds, mortgages, and deeds of trust.
- 35234. Lien.
- 35235. Operations not to be conducted for profit.
- 35236. Net earnings transferable to surplus; maximum surplus; application of balance of yearly net earnings.
- 35237. Repayment to member; limit.

§ 35230. Applicability of corporate securities law. The provisions of the Corporate Securities Law¹ not inconsistent with this chapter apply to corporations formed under this chapter. (Added Stats.1951, c. 710, p. 1975, § 1.)

¹ Corporations Code § 25000 et seq.

Derivation: Stats.1933, c. 500, p. 1409, § 9.

Library References

Licenses ⇨18½(1) et seq.

C.J.S. Licenses § 72 et seq.

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§ 35231. Limitations on issuance of securities. A corporation shall not:

(a) Issue securities covering any project undertaken in an aggregate amount greater than the actual cost of the project, plus an allowance for working capital, not exceeding 5 percent of the estimated cost of the project or of the actual cost, if greater than the estimated cost.

(b) Issue securities except in exchange for money or property actually received for the use and lawful purpose of the corporation. No securities shall be issued for property except upon a valuation approved by the commissioner, and such valuation shall be used in computing actual or estimated costs. (Added Stats.1951, c. 710, p. 1975, § 1.)

Derivation: Stats.1933, c. 500, p. 1400, § 9.

Library References

Corporations ⇨07-00, 400.

C.J.S. Corporations §§ 230 et seq., 262, 289, 1147.

§ 35232. Issue of securities; relation to project; security. Each authorized issue of securities shall relate to one specific project and may be secured by mortgages or deeds of trust upon the real property of which the project consists, except where units of the project are to be offered for sale the securities may be issued in an amount to cover each individual unit of sale or to cover the entire project intended to be sold. (Added Stats.1951, c. 710, p. 1975, § 1.)

Derivation: Stats.1933, c. 500, p. 1400, § 9.

Library References

Corporations ⇨460.

C.J.S. Corporations § 1147.

§ 35233. Provisions of bonds, mortgages, and deeds of trust. Bonds, mortgages or deeds of trust may contain provisions approved by the commissioner, including the right to assignment of rentals and entry into possession in case of default. (Added Stats.1951, c. 710, p. 1975, § 1.)

Derivation: Stats.1933, c. 500, p. 1400, § 9.

Library References

Corporations ⇨471, 477(1).

C.J.S. Corporations §§ 1150, 1177, 1214.

§ 35234. Lien. Mortgages or trust deeds may create a first lien and a second lien upon real property. (Added Stats.1951, c. 710, p. 1975, § 1.)

Derivation: Stats.1933, c. 500, p. 1400, § 9.

Library References

Corporations ⇨480.

C.J.S. Corporations §§ 1100, 1221.

§ 35235. Operations not to be conducted for profit. A corporation shall not conduct its operations for the profit of the corporation or its members, nor shall any corporation enter into any selling agency agreement intended to divert, or which diverts to its members or to third persons any portion of the profits accruing to the corporation. (Added Stats.1951, c. 710, p. 1975, § 1.)

Derivation: Stats.1933, c. 560, p. 1470, § 13.

Library References

Corporations ⇨370(1).

C.J.S. Corporations § 041.

§ 35236. Net earnings transferable to surplus; maximum surplus; application of balance of yearly net earnings. The amount of net earnings transferable to surplus in any year, after making or providing for the payment of all fixed charges, interest requirements, and other charges is subject to the approval of the commissioner. The aggregate amount of such surplus shall not exceed 15 percent of the total sum of all contributions by the public, subscriptions, dues, fees, and assessments paid by members, plus the outstanding obligations of the corporation. Unless the commissioner deems it too small, the balance of yearly net earnings in excess of the amount transferred to surplus shall be applied to the reduction of rentals on rental properties, the improvement of properties for sale, or the reduction of the sale price of such property, as the commissioner prescribes. (Added Stats. 1951, c. 710, p. 1975, § 1.)

Derivation: Stats.1933, c. 560, p. 1470, § 13.

Library References

Corporations ⇨151.

C.J.S. Corporations § 458 et seq.

§ 35237. Repayment to member; limit. A member of a corporation shall not accept or receive from the corporation, either during its existence as a corporation or upon its liquidation or dissolution, any repayment of any sum in excess of his subscription, contribution, fees, dues, or assessments. (Added Stats.1951, c. 710, p. 1976, § 1.)

Derivation: Stats.1933, c. 560, p. 1470, § 13.

Library References

Corporations ⇨174.

C.J.S. Corporations § 477.

THE DECLARED PUBLIC USES

Slum Clearance and Low-Rent Housing

Section 1238(21) of the Code of Civil Procedure declares that slum clearance and construction of housing for low-income groups are public uses for which the right to condemn exists in cities, counties, housing authorities and commissions, or other political subdivision or public body of the State.¹ Subdivision (21) of Section 1238 of the Code of Civil Procedure and the Housing Authorities Law² were enacted in 1938 as companion legislation to the United States Housing Act of 1937.³ The federal program, which provided financial assistance for slum clearance and low-rent housing,⁴ relied upon community development and administration. This made necessary state legislation creating the legal framework through which local communities could obtain federal funds and the necessary powers to carry out slum clearance and reconstruction. Section 1238(21) is part of that legal framework. The difficulty with this grant of the right of eminent domain is that it fails to specify the donees of the power. Consequently, one must ascertain which agencies are engaged in the described activity before the donee agencies under this subdivision can be identified. Such a search reveals most, but not all, agencies described by this subdivision are given an express grant of the right of eminent domain.

Independently of Code of Civil Procedure Section 1238(21), Housing Authorities, which may be activated within any city or county,⁵ can condemn any property for slum clearance,⁶ construction of low-cost housing,⁷ or construction of farm labor camps.⁸ The

express powers of housing authorities to condemn for the above purposes is not limited to condemnation of slum areas. Soon after the passage of the Housing Authorities Law in 1938,⁹ it was held that slum clearance and public housing projects for low income persons are public uses for which the power of eminent domain may be exercised.¹⁰ Housing authorities also have the responsibility of carrying out the Temporary Housing Projects Law, but they have no express power of eminent domain in this respect.¹¹

Limited Dividend Housing Corporations formed solely for the purpose of clearing or reconstructing slum areas have an express grant of the power of eminent domain for purposes of slum clearance and reconstruction. However, their right to condemn is conditioned upon specific approval by the State Commission of Housing and Community Development.¹² The power of eminent domain exercised by these corporations by express grant is more restrictive than the power granted by Code of Civil Procedure Section 1238(21) because the power is limited to blighted areas and then only if specific authorization from the Housing Commission is obtained.¹³ Section 1238(21) does not impose these restrictions upon the right to condemn.

Community Land Chest Corporations formed pursuant to the Community Land Chest Law¹⁴ to provide "housing in rural and suburban areas for families of low income"¹⁵ do not have an express power of eminent domain. However, this power is possibly conferred upon them by Code of Civil Procedure Section 1238(21) because they come within the general class of donees specified by this subsection.

The power of any state public body to condemn for the purpose of providing low-cost housing was considerably limited by the passage of Article XXXIV of the California State Constitution. This article requires approval by a majority of the electors in a political subdivision before any low-rent housing project may be implemented in the community.

Most agencies engaged in slum clearance or low-rent housing are expressly granted the power of eminent domain in their enabling acts. Thus, Section 1238(21) could be removed without changing existing patterns if express grants of the power of eminent domain were given to the few housing agencies lacking them. This would make clear the identity of the donees of this power and would facilitate legislative control.

THE DECLARED PUBLIC USES
SLUM CLEARANCE AND LOW-RENT HOUSING
FOOTNOTES

1. Section 1238(21) of the California Code of Civil Procedure provides:

Any work or undertaking of a city, county, or city and county, housing authority or commission, or other political subdivision or public body of the State: (a) to demolish, clear or remove buildings from any area which is detrimental to the safety, health and morals of the people by reason of the dilapidation, overcrowding, faulty arrangement or design, lack of ventilation or sanitary facilities of the dwellings predominating in such areas; or (b) to provide dwellings, apartments or other living accommodations for persons or families who lack the amount of income which is necessary (as determined by the body engaging in said work or undertaking) to enable them to live in decent, safe and sanitary dwellings without overcrowding.

2. Health & Saf. Code § 34200-34402.
3. 42 U.S.C. §§ 1401-1430 (1964).
4. Hill, A Review of California Housing Authority Statutory and Case Law 1938-1969, 2 Lincoln L. Rev. 30 (1966).
5. Health & Saf. Code § 34240.
6. Health & Saf. Code § 34325.
7. Health & Saf. Code § 34325.
8. Health & Saf. Code § 36059(i).
9. Cal. Stats. 1938, Ex. Sess., Ch. 3, p. 6.
10. Housing Authority v. Dockweiler, 14 Cal.2d 437, 94 P.2d 794 (1939). Even before 1937, the creation and funding of a municipal housing commission pursuant to a city charter for the purpose of eliminating overcrowded tenements or slums was held a public purpose. Willmon v. Powell, 91 Cal. App. 1, 266 Pac. 1029 (1928).

11. Health & Saf. Code §§ 35480, 35484(c), 35493.
12. Health & Saf. Code §§ 34874, 34875, 34879.
13. Health & Saf. Code §§ 34874, 34875.
14. Health & Saf. Code §§ 35100-35237.
15. Health & Saf. Code § 35130.