Memorandum 73-55

Subject: Study 36 - Condemnation Proceedings and Relation to Acceleration Clauses

At the May meeting, the Commission directed the staff to prepare a memorandum on the relation between acceleration clauses in deeds of trust and mortgages and Section 1248(8)(proposed Section 1265.210) which provides that the public entity may deduct the condemnee's indebtedness from the award and assume the obligation where the property taken by eminent domain is subject to a mortgage or other lien. In addition, the staff was to discuss the problem of whether loss of favorable financing should be compensable in commercial property takings.

The staff concludes, as discussed below, that the recommendation should not attempt to deal with the problem of the effect of acceleration clauses in condemnation regardless of whether a whole or partial taking is involved. The loss of favorable financing in commercial property takings should be compensable by additional payments.

I. Acceleration Clauses

Code of Civil Procedure Section 1248(8), enacted in 1913, provides as follows:

> 8. When the property sought to be taken is encumbered by a mortgage or other lien, and the indebtedness secured thereby is not due at the time of the entry of the judgment, the amount of such indebtedness may be, at the option of the plaintiff, deducted from the judgment, and the lien of the mortgage or other lien shall be continued until such indebtedness is paid; except that the amount for which, as between the plaintiff and the defendant, the plaintiff is liable under Section 1252.1 may not be deducted from the judgment;

At the May meeting, the only rationale suggested for Section 1248(8) is that it provides a means for public entities with meager resources to take property subject to a mortgage indebtedness or other lien by paying for only the owner's equity and assuming the indebtedness. It may be questioned whether this is a desirable policy in the first place. A public entity in such a poor financial position is the very sort of prospective mortgagor or trustor against whom a lender would seem justified in invoking an acceleration clause. In any event, the decisions concerning Section 1248(8) suggest a different policy reason behind the section.

In City of Los Angeles v. Superior Court, 2 Cal.2d 138, 140, 39 P.2d 401 (1934), involving liens for street improvement assessments, the court found that:

> The purpose of the statute is obviously to prevent a situation wherein the condemnor will pay the full value of the land, and thereafter will be forced to pay again to holders of liens on the land, when the liens become due.

The court in People v. Cheda, 154 Cal. App.2d 531, 533, 317 P.2d 145 (1957), quoted this language and added that:

> To permit respondents to recover the full value of the land, and still leave the condemnor obligated to pay the amount of the liens, would be to confer upon respondents the very benefit which the code section is designed to deny them.

Once the award has been paid to the condemnee without any deduction under Section 1248(8), there is no remedy against the condemnee for liens on the property. Marin Mun. Water Dist. v. North Coast Water Co., 40 Cal. App. 260, 180 P. 620 (1919); City of Los Angeles v. Superior Court, supra; People v. Cheda, supra.

Wilson v. Beville, 47 Cal.2d 852, 306 P.2d 789 (1957), indicates that Section 1248(8) is a mechanism for protecting the lienholder's interests.

The interest delineated in the Los Angeles case and in Cheda seems a desirable one. However, unlike the interest in assuming the indebtedness, it does not require any tampering with acceleration clauses. The public entity proceeding under Section 1248(8) is merely seeking to avoid giving too great an award to the condemnee where there are lienholders yet to be paid off. Of course, generally the condemnor pays the award into court, and the parties claiming interests in the property divide the award. Code Civ. Proc. §§ 1246 and 1246.1; Condemnation Practice in California § 10.14 (Cal. Cont. Ed. Bar 1973).

The undesirable interest of permitting public entities to condemn property where they are able only to buy out the owner's equity and take subject to the encumbrance is probably defeated by operation of acceleration clauses. An examination of five deeds of trust provided by Chairman Miller does not reveal any clause which states in so many words that the obligation is accelerated on condemnation. However, the general language of some acceleration clauses leads the staff to believe that they would trigger on condemnation. See sample clauses in Exhibit I. It is impossible to determine the exact reasons behind the enactment in 1913 of Section 1248(8) but, if the decisions are correct, then the existence and operation of acceleration clauses defeats no legitimate interest of a public entity electing to proceed under Section 1248(8).

The staff cannot discern any significant need for providing a way for poverty stricken condemnors to take where they can afford to pay for only the condemnee's interest. Based on the policy arguments just discussed, the staff tentatively concludes that there is no need to change Section 1248(8) or to invalidate acceleration clauses where the condemnor makes the deduction from the award and assumes the obligation.

This conclusion is buttressed by an examination of the interests of the parties and by the current state of the law regarding the treatment of acceleration clauses.

The interest of the lender is to make sure that the security for the loan is not impaired. The prudent lender makes careful investigations of applicants for loans and hence has an interest in preventing a transfer of the security to an uncreditworthy buyer. There is disagreement concerning whether the lender should have the power to accelerate even where there is no threat to the security, that is, where the buyer is creditworthy. It may be asked what interest of the lender is threatened when he is forced to accept another debtor who is creditworthy. One authority has stated that "just as a landlord is permitted to reject assignment of a lease to a worthy prospective tenant when his lease has a no-assignment clause, so too a beneficiary probably may be similarly cavalier." R. Bernhardt, The Obligation, California Real Estate Secured Transactions § 4.56 (Cal. Cont. Ed. Bar 1970). This statement seems to recognize the lack of a justifiable interest in the lender's absolute power to accelerate on sale. California courts have recognized these interests of the lender in a series of cases beginning with the 1964 decision in Coast Bank v. Minderhout, 61 Cal.2d 311, 392 P.2d 265, 38 Cal. Rptr. 505.

The court in Cherry v. Home Sav. & Loan Ass'n, 276 Cal. App.2d 574, 81 Cal. Rptr. 135 (1969), in an opinion upholding an acceleration clause, discussed the interests of the lender as follows:

> The due-on-sale provisions . . . of the trust deed are not unusual and appear frequently in this type of agreement. The business reasons

> for it are obvious. First, a substantial loan ordinarily is not obtained for the asking. Lenders run the risk that security may depreciate in value, or be totally destroyed. This risk of loss is reduced in the lender's viewpoint if the borrower is known to be conscientious, experienced and able. Often, as here, a trust deed requires the borrower to maintain the property in good repair, secure and keep adequate insurance in force, satisfy liens, taxes and other encumbrances and in other ways to protect the security. If a borrower were able to sell the security without concern for the debt, he may take the proceeds of the sale, leaving for parts unknown, and the new owner of the property might permit it to run down and depreciate. Thus, the lender places some value on his belief that the person who takes out the loan is reliable and responsible. A lender may, indeed, be willing to loan money to some persons or entities at one rate of interest but to other, less desirable risks only at an increased interest rate.
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> Secondly, loan agreements frequently permit a borrower to pay off a loan before it is due. When interest rates are high, a lender runs the risk they will drop and that the borrower will refinance his debt elsewhere at a lower rate and pay off the loan, leaving the lender with money to loan but at a less favorable interest rate. On the other hand, when money is loaned at low interest, the lender risks losing the benefit of a later increase in rates. As one protection against the foregoing contingency, a due-on-sale clause is employed permitting acceleration of the due date by the lender so that he may take advantage of rising interest rates in the event his borrower transfers the security. This is merely one example of ways taken to minimize risks by sensible lenders. [Id. at 578-579.]

The court in Cherry also found that there is no implied requirement that the lender act reasonably in exercising its option to accelerate. Id. at 580. Hence, as a condition to waiving the acceleration clause, the lender may charge a higher rate of interest.

In Hellbaum v. Lytton Sav. & Loan Ass'n, 274 Cal. App.2d 456, 79 Cal. Rptr. 9 (1969), it was held that the lender could assess a prepayment penalty for payment in full required by an acceleration clause triggered by the sale of the mortgaged property. See Note, The Case for Relief From Due-On-Sale Provisions: A Note to Hellbaum v. Lytton Savings and Loan Association, 22 Hastings L.J. 431 (1971).

The statement of the interests of lenders found persuasive by California courts is easy to criticize. Most basic, there is no indication of why the lender should be allowed to exercise the acceleration clause where there is no threat to the security of the lender's position except that it is often profitable to do so. This is particularly so where there is an additional encumbrance placed on the property or where there is a partial taking and the security is not impaired. (If it were known that all public entities are good credit risks, it would make sense to provide that, where a public entity assumes the indebtedness, the lender may not exercise the privilege of accelerating or requiring a higher interest rate.) The interest in the creditworthiness of the borrower is irrelevant where antideficiency legislation forces the lender to look to the property as its sole security. Recent decisions in three states have invalidated acceleration clauses where there is no threat to the lender's security. Tucker v. Pulaski Sav. & Loan Ass'n, 481 S.W.2d 725 (Ark. 1972); Baltimore Life Insurance Co. v. Harn, 15 Ariz. App. 78, 486 P.2d 190 (1971); Clark v. Lachenmeier, 237 So.2d 583 (Fla. App. 1970). It should be noted that these cases followed the rule holding all restraints on alienation invalid which was abandoned in Coast Bank v. Minderhout, supra.

In 1972, the California Supreme Court finally recognized the unfairness and illogic of due-on-encumbrance clauses in La Sala v. American Sav. & Loan Ass'n, 5 Cal.3d 864, 489 P.2d 1113, 97 Cal. Rptr. 849 (1972). The court invalidated due-on-encumbrance clauses where they are not reasonably necessary to protect the lender's security since "when such enforcement is not reasonably necessary to protect the security, the lender's use of the clause to exact collateral benefits must be held an unlawful restraint on alienation." Id. at 882. However, as Professor Bonanno writes, the court took one step forward and two steps back, for it concluded in dictum that

> the lender may insist upon the automatic performance of the due-on-sale clause because such a provision is necessary to the lender's security. We have decided, however, that the power lodged in the lender by the due-on-encumbrance clause can claim no such mechanical justification. We sustain it only in the case of a trial court's finding that it is reasonably necessary to the protection of the lender's security; to repose an absolute power in the creditor to enforce the clause under any and all circumstances could lead to an abusive application of it and in some cases an arbitrary exaction of a quid pro quo from debtors. [Id. at 883-884.]

In La Sala, the Supreme Court creates an indefensible double standard. The court does not adequately explain why due-on-sale clauses should be automatically valid where there is no threat to the lender's security whereas due-on-encumbrance clauses must be shown to be reasonably aimed at protecting the security. The following criticism of La Sala is convincing:

On an economic basis, there is no more justification for allowing acceleration on sale, when motivated solely by the desire to increase interest during time of high interest rates, than there is in allowing acceleration on encumbrance for the same purpose. While rising interest rates may justify across-the-board increases in interest rates on all real estate loans, there is no sound reason for imposing the increase on new owners of the encumbered land and not on existing owners. Contrary to the court's apparent reasoning, new owners are in no better position than existing owners, since few buyers can afford to pay off the entire loan upon acceleration. Unless the seller reduces his price to offset the higher interest rate, the new owner must absorb the entire increased cost of the loan.

If the seller does reduce the price he sustains a loss for the benefit of the lender and, in effect, sells the property for less than its true value. If he refuses to reduce the price and thereby loses the sale, a real estate broker will suffer severely for reasons having no legitimate connection with the normal operation of those economic forces which should govern the supply and demand and transfer of real property interests. Depressed conditions and excessive economic contractions created by high interest rates are rendered all the more severe by the artificial reduction in the transfers of real property induced by the discouragement of deals by buyer and sellers because the due-on-sale clause hangs over their heads like the sword of Damocles. It is economically irrational to have differentiations in the value of similar properties because of something having no reasonable connection with their productivity; and yet, because of the different rates of interest charged or chargeable on mortgages on otherwise identical pieces of property, one will have a higher value than the other. The due-on-sale clause does not level out these values except to the extent that sales do occur. Often the seller of income property may be a person who no longer wants the responsibilities of owning and managing it; whereas the buyer is a young and eager person with ambitions of remodeling, improving, or otherwise making the property more economically productive. When the seller is unwilling or unable to reduce the price to offset the increase in interest, the real property will remain in the hands of the seller with resultant economic stagnation as to the possible development or improvement of that property.

[Bonanno, supra, at 286-287.]

Bonanno also asks whether the right to accelerate without a prior hearing violates due process under Sniadach where there is no threat to the security. Id. at 284 n.60.

La Sala spoke of due-on-encumbrance and due-on-sale clauses without considering the application of a due-on-sale clause where the borrower sells only a part of the property subject to the mortgage. The logic of

the decision points to a conclusion that the due-on-sale clause should be exercised only where there is an impairment of security and only to the extent of that impairment, but it is impossible to be sure what the court would say in that situation. This is related to the problem of a partial taking by a public entity. In Milstein v. Security Pac. Nat'l Bank, 27 Cal. App.3d 482, 103 Cal. Rptr. 16 (1972), the court held that the lender could claim the award under an assignment of award clause only to the extent that the security was impaired where there was a partial taking. The court in Milstein based its decision on an implied covenant of good faith and fair dealing and distinguished Cherry which upheld a due-on-sale clause on the ground that, in Cherry, the court concluded that "the contract was unambiguous in permitting acceleration." This rather abstract and artificial distinction offers little guidance. However, considering La Sala and Milstein together, it is a reasonable conclusion that the courts might be persuaded to disallow the enforcement of a due-on-sale clause where there is a partial taking and the security is not impaired. La Sala spoke of due-on-sale clauses being "necessary to the lender's security" which is not necessarily the case where a part of the property is sold or taken. Against this result is the fact that Milstein leaves the way open for an unambiguous assignment of award clause which would avoid the result in that case. In addition, the dictum in La Sala concerning the validity of due-on-sale clauses does not distinguish between sales of all or only part of the property.

The Commission may want to deal with this problem anyway. The problem could be dealt with by providing that, where there is a partial taking and the condemnor assumes the obligation on that part of the property, a due-on-sale clause may not be invoked. This course is probably too complex since it involves splitting the obligation, and, in any event, it serves no significant interest to allow condemnors to assume part of the obligation. A broader solution would be to invalidate due-on-sale clauses where there is a partial taking and the security is not impaired by the taking, in which case there would be no obligation to assume. It is not known if any problem really exists in such cases. Probably, lenders use the assignment of award clauses, subject to Milstein, and do not attempt to accelerate.

In addition to the judicial ferment, there is movement in the Legislature regarding acceleration clauses. In 1972, after the La Sala decision, the Legislature enacted Civil Code Section 2949 which invalidates acceleration or default clauses where an owner of a single-family owner-occupied dwelling further encumbers his property with a junior mortgage or deed of trust. Section 3 of the act provided that it should not be deemed to limit or restrict the scope of La Sala. In addition, SB 200 and AB 2062 have been introduced in the 1973 session of the Legislature to invalidate acceleration clauses in certain cases where the original principal obligation is $100,000 or less. SB 200 has passed the Senate. A similar bill was passed out of committee without action at the end of the 1972 session.

Because of the judicial and legislative activity, the staff feels that it is best not to attempt to take any action such as invalidating acceleration clauses where the condemnor elects to assume the condemnee's obligation under Section 1248(8). To take this course would also be unfair to lenders since there would be no protection against the condemnor's assuming the obligation where it is subject to low interest rates but paying it off where the interest rate has fallen. This problem was discussed in the excerpt from the Cherry case quoted above. It should be pointed out in criticism of the Cherry statement of the lender's interests that the prepayment penalties are a sufficient protection of lenders where the debtor seeks to pay off the debt when interest rates have fallen. However, where a condemnor is involved, Section 1246.2 operates to invalidate prepayment penalties against condemnors. Therefore, the lender would be left without protection.

An alternative to the staff recommendation to leave this area alone would be to repeal Section 1246.2 (proposed Section 1265.230) and either invalidate all acceleration clauses against public entities or invalidate acceleration clauses to the extent that they operate where there is no impairment of security, particularly in partial taking cases. (Here it might be asked if the whole taking by a public entity is not in almost all cases an impairment of security.) Although enacted only recently (1967), Section 1246.2 does not make much sense. According to the Review of Selected 1967 Code Legislation (Cal. Cont. Ed. Bar 1967), the thought behind Section 1246.2 was that the

> state should not be required to pay such a claim, since these penalties are derived from the contract between the mortgagor and mortgagee. The condemnation proceeding is independent of any action of the mortgagor, and since all real property is subject to eminent domain proceedings, the mortgagee should not benefit from the state's actions. [Id. at 75.]

The staff thinks that this comment is unpersuasive. Why should the condemnor not have to pay its way and pay the lender what he could get if sale were made to a private person? On the other hand, it may be argued that, since the purpose of the prepayment penalty is to prevent payment when interest rates have fallen in order to refinance and since the condemnor does not have that motive in mind since it is not going to refinance, the prepayment penalty should not apply. This argument does not take into account the situation where the condemnor has assumed the obligation under Section 1248(8) because, in that case, the condemnor might find it profitable to refinance. Hence, a further refinement might be necessary, such as that the prepayment penalty is invalid against public entities except when the condemnor attempts to prepay an obligation of a condemnee assumed pursuant to Section 1248(8). If the Commission is interested in this approach, the staff would need to do further research into its complexities.

Another alternative is to invalidate acceleration clauses but have the public entity pay the mortgagee the market value of the mortgage or deed of trust. This was discussed in the Report on Expropriation of the Law Reform Commission of British Columbia (Exhibit IV to Memorandum 73-31) at 141-142.

It may be seen that the policies behind and the arguments for and against acceleration clauses and prepayment penalties apply fully to a public entity which has stepped into the shoes of the mortgagor or trustor but that they do not fully apply where the condemnor elects to pay the full amount of the award into court and take unencumbered property. However, the efficient substitution of the condemnor for the condemnee-mortgagor is prevented by the prepayment clause invalidation in Section 1246.2, thereby making the alternative of invalidating all or unreasonable acceleration clauses unfair to lenders.

II. Compensation for Loss of Favorable Financing

A related problem involving mortgage and deed of trust interest rates concerns whether the condemnee should be compensated for his loss of favorable financing. That is, where the taking occurs at a time when interest rates are higher than the contract rate, should the condemnee be made whole by a payment sufficient to make up the difference between the contract rate and the market rate of interest?

Much controversy has arisen over what the precise test of just compensation should be, and there is no need to repeat that here. Specifically with regard to the question of whether just compensation does or should include the cash equivalent of a credit transaction, the Commission decided at the December meeting to take a neutral position and refer to "price." (See Section 1263.320 of the draft statute.) However, the Comment to this section says that no substantive change in the meaning of the traditional test is intended. Arguably under Evidence Code Section 816, that test may include "other terms and circumstances of the sale or contract to sell and purchase comparable property" such as the mortgage rate of interest. See People v. Birnbaum, 14 Cal. App.3d 570 (1971)(certified for nonpublication by the Supreme Court)(Exhibit III to Memorandum 72-75). The problem of cash equivalence is briefly discussed in Memorandum 72-75 on pages 3-5 and in Exhibits II (Department of Public Works) and IV (letter to Supreme Court requesting hearing on Birnbaum) to that memorandum. In view of the stiff opposition to Birnbaum, its treatment by the Supreme Court, and the Commission's decision regarding the definition of fair market value, the principle of cash equivalence should not now be incorporated in fair market value. However, the Commission should consider extending the principle of Government Code Section 7263(b)(2) to all condemnees.

In 1971, the Legislature specifically provided by way of Government Code Section 7263(b)(2) for an additional payment to persons who have owned and occupied their dwelling for 180 days as follows:

> (a) In addition to the payments required by Section 7262, the public entity, as a part of the cost of acquisition, shall make a payment to the owner of real property acquired for public use which is improved with a dwelling actually owned and occupied by the owner for not less than 180 days prior to the initiation of negotiation for the acquisition of such property.
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> (b) Such payment, not to exceed fifteen thousand dollars ($15,000), shall be based on the following factors:
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> * * * *
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> (2) The amount, if any, which will compensate the displaced owner for any increased interest costs which he is required to pay for financing the acquisition of a comparable replacement dwelling. The amount shall be paid only if the acquired dwelling was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less 180 days prior to the initiation of negotiations for the acquisition of such dwelling. The amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

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> (c) Such payment shall be made only to a displaced owner who purchases and occupies a replacement dwelling that meets standards established by the public entity within one year subsequent to the date on which he moves from the dwelling acquired by the public entity or the date on which he receives from the public entity final payment of all costs of the dwelling acquired by the public entity, whichever is the later date.

(The regulations implementing this statute are attached as Exhibit II.) The question is whether this policy of compensating for increased interest costs up to $15,000 (or perhaps more) should be extended to all condemnees.

There should be no doubt that a condemnee who is left with an award of "fair market value" as currently viewed will not be made whole where the market rate of interest is higher than his contract rate on the mortgage or deed of trust secured by the property taken. This is particularly true where he intends to immediately purchase new facilities. One reason for the traditional refusal to compensate for the loss of favorable financing, whether through refusal to consider credit terms in comparable sales or by failure to provide for additional payments to cover such losses, is probably that it is thought that the contract between the condemnee and a lender should not affect the amount to be paid by the condemnor. Of course, it is also in the government's economic interest not to pay for loss of favorable financing.

The view has also been expressed that, at least in the Birnbaum type of case, to allow such compensation would "generate time-consumption and complications in the trial of eminent domain cases, impose significant new burdens on appraisers, and indeed, . . . actually require the importation into eminent domain cases of entirely new species of experts." (Letter of Roger M. Sullivan to the California Supreme Court, March 18, 1971, Exhibit IV to Memorandum 72-75.) Although these objections apply pointedly to the alternative of including cash equivalence in fair market value, they disappear where the favorable financing is directly compensated by an additional payment. Government Code Section 7263(b)(2) operates on the basis of concrete data about which there should be little dispute. (See excerpt from Public Works regulations, 21 Cal. Admin Code § 1407.12, Exhibit II.) Speculation about future or hypothetical situations is avoided since the amount of the payment is determined after the replacement dwelling is purchased and the credit terms are settled. Payments are based on the actual mortgage interest rate unless that exceeds prevailing rates. The additional payment scheme is practical in that it operates only where the condemnee actually buys replacement facilities.

From the point of view of the public entity, assuming no other problems, it would of course be best to alter the definition of fair market value since then the change in interest rates to a more favorable market rate would result in a reduction of the award whereas the additional payment method always increases, but never decreases, the amount of money paid to the condemnee. The financial disadvantage may be minimized by a purposefully low maximum allowable payment. Under Section 7263(b), there is a $15,000 limit on total payments to dwelling owners which is composed of the difference in cost of a reasonable replacement dwelling, closing costs, evidence of title and recording fees, and increased interest costs.

If the Commission decides to extend the type of payment embodied in Section 7263(b)(2) to commercial facilities, it may want to limit the payment to a percentage of basic award or property value or to some arbitrary figure. It should also be required that the mortgage be held for a period such as 180 days as in Section 7263(b)(2).

Respectfully submitted,

Stan G. Ulrich
Legal Counsel

Memorandum 73-55

EXHIBIT I

Acceleration Clauses

1. Fidelity Federal Savings and Loan Association:

Default shall occur . . . (3) should Trustor or any successor in interest to Trustor in such property sell, sell under contract of sale, lease with option to purchase, convey, transfer, encumber, or alienate said property, or any part thereof, or any interest therein, . . . or be divested of his title or any interest therein in any manner or way, whether voluntary or involuntary. Beneficiary shall have the right, at its option, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any note or written agreement evidencing the same, immediately due and payable, and no waiver of this right shall be effective unless in writing and signed by Beneficiary . . . .

2. Santa Ana First Federal Savings and Loan Association:

Should Trustor sell, convey, transfer, dispose of or further encumber said property, or any part thereof, or any interest therein, or agree so to do, without the written consent of Beneficiary being first obtained, then Beneficiary shall have the right, at its option, to declare all sums secured hereby forthwith due and payable.

3. California Federal Savings and Loan Association:

In the event that Trustor shall sell, convey, sell under contract of sale, lease with option to purchase, further encumber or alienate said property, or any part thereof, or any interest therein, or shall Trustor be divested of his title of any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, Beneficiary shall have the right, at its option, to declare and [sic] indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

4. Title Insurance and Trust Company:

[none]

5. Unidentified:

Should Trustor dispose of or sell said property without the written consent of Beneficiary, Beneficiary shall have the right at its option, to declare the entire indebtedness secured hereby due and payable forthwith upon demand.

Assignment of Condemnation Award Clauses

1. Fidelity Federal Savings and Loan Association:

All settlements, proceeds, awards and damages, direct and consequential, in connection with any condemnation for public use of or any injury to said property, or any part thereof, from same, are hereby assigned and shall be paid to Beneficiary, which may, after deducting therefrom all its expenses, including reasonable attorney's fees, apply or release the same in such manner and with the same effect as herein provided for the disposition of proceeds of insurance . . . .

2. Santa Ana First Federal Savings and Loan Association:

Any award of damages in connection with any condemnation for public use or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

3. California Federal Savings and Loan Association:

Should the property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, ... All such compensation, awards, damages, . . . are assigned to Beneficiary, who may, after deducting therefrom all his expenses, including attorney's fees, release any money so received by it or apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages . . . as Beneficiary or Trustee may require.

4. Title Insurance and Trust Company:

[Same as Fidelity Federal Savings and Loan.]

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EXHIBIT II

[21 Cal. Admin. Code § 1407.12]

1407.12. Replacement Housing Payments to Owner-Occupant for 180 Days or More Who Purchases a Replacement Dwelling. (a) **General.**

(1) A displaced owner-occupant of a dwelling may receive additional payments, the combined total of which may not exceed $15,000, for the additional cost necessary:

(A) to purchase replacement housing;

(B) to compensate the owner for the loss of favorable financing on his existing mortgage in the financing of replacement housing; and

(C) to reimburse the owner for incidental expenses incident to the purchase of replacement housing when such costs are incurred as specified herein.

(2) The owner-occupant is eligible for such payments when:

(A) he is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or in part; or

(B) he is in occupancy at the time he is given a written notice by the Department that it is their intent to acquire the property by a given date; and

(C) such occupancy has been for at least 180 consecutive days immediately prior to the date of vacation as a result of a written notice or order, or initiation of negotiations for the parcel whichever is earlier; and

(D) the property was acquired from him by the State; and

(E) he purchased and occupied a decent, safe and sanitary dwelling within the time period specified in Section 1407.11 (b).

(3) If otherwise eligible under subsection (a)(2) of this Section, the owner-occupant may receive these payments if the State issues an order to vacate even though the property is not acquired.

* * * * *

(c) **Increased Interest Payments.**

(1) **General.**

(A) Increased interest payments are provided to compensate a displaced person for the increased interest costs he is required to pay for financing a replacement dwelling and shall be allowed only when both of the following conditions are met:

1. the dwelling acquired by the Department was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the established eligibility date under subsection (a) of this Section; and

2. the mortgage on the replacement dwelling bears a higher effective rate of interest than the stated mortgage interest rate on the acquired dwelling.

(B) The increased interest payment will be based on and limited to the lesser of the following amounts:

1. the present worth of the right to receive the monthly difference in mortgage payments on the existing mortgage using the old stated and new effective interest rates; or

2. the present worth of the right to receive the monthly difference in mortgage payments on the new mortgage using the old stated and new effective interest rates.

(2) **Payment Computation.** The Department shall determine the amount of the increased interest payment by any method found necessary.

(3) **Interest Rate of Replacement Dwelling Mortgage.**

(A) The Department shall determine prevailing interest rates charged by mortgage lending institutions by any reasonable method which the Department finds will be equitable to claimants and the general public.

(B) The interest rate on the mortgage for the replacement dwelling to be used in the computation shall be the actual rate but may not exceed the prevailing interest rate currently charged by mortgage lending institutions in the vicinity, except as provided in subparagraph (c) of this paragraph.

(C) When the lending agency imposes debt service charges as an incident to the extension of credit, and such charges are normal to the market, the annual percentage rate shown in the Truth in Lending Statement required by the Truth in Lending Act, Title 1, Public Law 90-321 and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System shall be used in lieu of the mortgage interest rate in computing the monthly principal and interest payments.

(4) **Discount Rate.**

(A) The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(B) The Department shall determine prevailing interest rates paid on passbook savings account deposits by commercial banks by any reasonable method which the Department finds will be equitable to claimants and the general public.

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