1983

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Recommended Citation

John P. Fernsler , Donald Tuttle, Joel B. Eisen, Barbara Sarshik, Michael B. Montgomery & Sheldon L. Schreiberg, *Recent Developments in Housing and Community Development*, 15 Urb. Law. 857 (1983).

Recent Developments in Housing and Community Development

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I. Introduction

THIS HAS BEEN AN ACTIVE YEAR in the area of housing and community development, with many of the recent changes oriented toward coping with a fluctuating housing finance market or assessing the effect of increased governmental activity in many sectors upon private rights and causes of action. The first section by the members of the Committee on Housing and Community Development focuses upon recent changes in federal regulations dealing with the private sector, more specifically the fundamental change in enforcement of "due-on-sale" clauses. The second section in this article examines new policies relating to transfers of the ownership of housing projects encumbered by mortgage loans insured or held by the Department of Housing and Urban Development (HUD). The third section analyzes a new trend in the eminent domain powers of community redevelopment agencies: the ability to choose between competing proposals of owner participants notwithstanding one owner's right to participation. The final section briefly reports on the progress of the Governmental Leasing Act of 1983 in the House and Senate.

II. Federal Preemption of State Due-on-Sale Clause Prohibitions

Prior to the enactment of the Garn–St. Germain Depository Institutions Act of 1982,[1] no uniform federal policy governed the use of due-on-sale clauses[2] by federally chartered or nonfederally chartered lenders. The courts in several states had declared that the due-on-sale clauses were invalid as restraints on the free alienation of real property, unless the creditor could demonstrate a need to protect its security interest from impairment.[3] Existing regulations of the Federal Home Loan Bank Board (FHLBB) provided that federally chartered associations and savings banks could exercise due-on-sale clauses notwithstanding restrictive state laws,[4] but no uniform judicial policy construed such authority with respect to other federal financial institutions or nonfederal lenders.

1. Pub. L. No. 97–320, 96 Stat. 1469 (1982) (codified as amended in 12 U.S.C. §§ 1701j-3(a)–1701j-3(g) (1982) [hereinafter cited as Act].

2. A due-on-sale clause, as defined in the final codification of the Act, is:

> [A] contract provision which authorizes a lender, at its option, to declare due and payable sums secured by the lender's security instrument if all or any part of the property, or an interest therein, securing the real property loan is sold or transferred without the lender's prior written consent.

Act §341 (a) (1), 12 U.S.C. § 1701j-3(a) (1) (1982).

While the purpose of a due-on-sale clause appears to be to prevent a borrower from disposing of the equitable or legal interest in the property without the lender's written consent, the due-on-sale clause has been used most recently to protect the economic security of lenders adversely affected by their commitment to fixed-rate, long-term loans in a period of rising interest rates. *See Enforcement of Due-on-Transfer Clauses*, 13 REAL PROP. PROB. & TR. J. 891, 893, 895–96 (1978).

3. *See, e.g.*, Wellenkamp v. Bank of America, 21 Cal. 3d 943, 582 P.2d 970, 148 Cal. Rptr. 379 (1978).

4. 12 C.F.R. § 545.8-3(f) (1983) expressly affirmed this right, and 12 C.F.R. § 545.8-3(g) (1983) set out four situations in which a federal association could not exercise a due-on-sale clause.

The Act established a statutory preemption of state laws regarding due-on-sale clauses for all lenders. The Act defined a "lender" as a person, a government agency or any assignee making a "real property loan," which it in turn defined as a loan, mortgage, advance, or credit sale secured by a lien on real property, the stock allocated to a dwelling unit in a cooperative housing corporation, or a residential manufactured home, whether real or personal property.[5] Subject to specific limitations, the act authorizes lenders in any state, territory or the District of Columbia, at their option, to fully enforce a due-on-sale clause.[6]

One such limitation, applying to real property loans originated in a state by lenders other than federal savings and loan associations and federal savings banks, created a "window period" exception. The Act defined a window period as extending from the date of a restrictive state due-on-sale law or state Supreme Court decision to October 15, 1982. Federal preemption would apply to qualifying loans made during the window period only upon a transfer of the security occurring after October 15, 1985.[7]

However, if a state legislature (for loans originated by state-chartered lenders), the Comptroller of the Currency (for loans originated by national banks) or the National Credit Union Administration Board (for loans originated by federal credit unions) took action to regulate window-period loans and/or extend the window period with respect to such loans, the regulation would control.[8]

Other limitations on the exercise of due-on-sale clauses included prohibitions on the exercise of due-on-sale clauses pursuant to specified transfers or dispositions, including:

(1) creation of a lien or other secondary encumbrance (e.g., secondary financing) not relating to a transfer of occupancy in the property;
(2) other non-occupancy transfer actions, including transfers into inter vivos trusts in which the borrower remains a beneficiary, transfers resulting from a

5. Act §§ 341(a) (2), (a) (3), 12 U.S.C. §§ 1701j-3(a) (2), (a) (3) (1982).

6. Act §§ 341(b) (1), (b) (2), 12 U.S.C. §§ 1701j-3(b) (1), (b) (2) (1982). Lenders are encouraged, however, to permit assumption of real property loans at the existing rate or at a "blended rate" (a rate at or below the average of the contract and market interest rates). Act § 341(b) (3), 12 U.S.C. § 1701j-3(b) (3) (1982).

7. Act § 341(c) (1), 12 U.S.C. § 1701j-3(c) (1) (1982). Following the passage of the Act, the National Credit Union Administration Board issued regulations regarding loans originated by federal credit unions and preempted state law applicable to such loans in cases of transfers made after November 18, 1982. 12 C.F.R. § 701.21-2(b) (1983).

8. Act § 341(c) (1), 12 U.S.C. § 1701j-3(c) (1) (1982).

separation or dissolution of marriage by which the borrower's spouse assumes ownership of the property, and transfers where the borrower's spouse or children assume ownership of the property;
(3) involuntary transfers upon the death of the borrower; and
(4) leases of the property for up to three years without options to purchase.[9]

Section 341 (e) (1) of the Act authorized the FHLBB to issue rules and regulations governing the implementation of federal preemption. On April 26, 1983, the FHLBB issued new regulations pursuant to this authority. Adopting its proposed regulations substantially as proposed, the FHLBB attempted to clarify several of the Act's provisions. One major clarification involved the issue of enforcement of due-on-sale clauses contained in various real estate devices. The FHLBB expanded the category of transfers subject to federal preemption, defining a "sale or transfer" for the purposes of a due-on-sale clause as "the conveyance of real property of any right, title or interest therein, whether legal or equitable, whether voluntary or involuntary. . ." and defining assumptions subject to the Act as transfers of real property subject to a real property loan by assumptions, installment land sales contracts, wraparound loans, contracts for deed, transfers subject to the mortgage or similar lien, and other like transfers.[10]

The FHLBB also clarified the definition of a window-period loan and adopted a revised list of restrictions under state law that would create a window period. It defined a "window-period loan" as a "real property loan, not originated by a Federal association, which was made or assumed during a window period created by state law . . ." and recorded before December 14, 1982. The window period would begin and terminate substantially as provided in the Act.[11]

A further provision stated that state laws or judicial decisions starting the window period would include laws or decisions permitting the exercise of due-on-sale clauses only where the "lender's security interest or the likelihood of repayment is impaired" or where the lender is required to accept an assumption of the existing loan at existing or below-market interest rates.[12] Judicial decisions such as *Wellenkamp v. Bank of America*[13] would therefore have the effect of creating a window period. Lenders may exercise due-on-

9. Act § 341(d), 12 U.S.C. § 1701j-3(d) (1982).
10. 48 Fed. Reg. 21,561 (1983) (to be codified at 12 C.F.R. § 591.2(a)).
11. 48 Fed. Reg. 21,561 (1983) (to be codified at 12 C.F.R. § 591.2(p) (1)).
12. 48 Fed. Reg. 21,562 (1983) (to be codified at 12 C.F.R. §§ 591.2(p) (1)-(3)).
13. 21 Cal. 3d 943, 582 P.2d 970, 148 Cal. Rptr. 339 (1978).

sale clauses in window-period loans, under the new regulations, if the borrower's successor or transferee fails to meet the lender's credit standards or fails to provide information within fifteen days of a written request by the lender for credit information.[14]

The FHLBB also provided that its regulations would preempt all state limitations on the exercise of due-on-sale clauses, including prohibitions on restraints on alienation, forfeitures and penalties, and other equitable restrictions. It retained, with one revision,[15] the Act's specific limitations on the exercise of due-on-sale clauses, limiting their application, however, to "any loan on the security of a home occupied or to be occupied by the borrower." It also stated that a lender may waive its option to exercise a due-on-sale clause if it agrees in writing with the borrower's successor before the transfer to obligate such successor under the terms of the loan and to accept interest payments from the successor at a rate requested by the lender.[16]

On July 14, 1983, the FHLBB modified one provision of its final regulations, in response to substantial comment. The FHLBB changed its temporary ban on the imposition of prepayment fees or penalties in connection with the exercise of a due-on-sale clause to a permanent ban on such fees or penalties.[17] The FHLBB authorized a grace period for lenders who relied upon the initial regulation and included and imposed prepayment penalties between May 13, 1983 and July 13, 1983.

The Garn-St. Germain Act and the regulations promulgated by the FHLBB have completely preempted the inconsistent state and federal law with respect to due-on-sale clauses. The Act and regulations recognize the uniform enforceability of due-on-sale clauses for loans made by both state and federal financial institu-

14. 48 Fed. Reg. 21,562 (1983) (to be codified at C.F.R. § 591.4(d)). For the purpose of this requirement, the lender's credit standards are (1) the "customary credit standards applied by such lender," for lenders in the business of making real property loans, or (2) the "credit standards customarily applied by other similarly situated lenders or sellers in the geographic market within which the transaction occurs," for other lenders.

15. The regulations retained the exemption from federal preemption for transfers into inter vivos trusts in which the borrower is the beneficiary but provided that if, as a condition precedent to such transfer, "the borrower refuses to provide reasonable means acceptable to the lender by which the lender will be assured of timely notice of any subsequent transfer," the lender could exercise the due-on-sale clause. 48 Fed. Reg. 21,554 (1983) (to be codified at 12 C.F.R. § 591.5(b) (1)(vi)).

16. 48 Fed. Reg. 21,554 (1983) (to be codified at 12 C.F.R. §§ 591.5(b) (1), (b) (3)).

17. 48 Fed. Reg. 32,160 (1983) (to be codified at 12 C.F.R. § 591.5(b) (2)).

tions, subject only to limitations contained therein. In this respect, the statutory provisions are more permissive than the case law which they replaced, and represent a greater adherence to a clear and uniform policy for all lenders.

III. HUD Policies Regarding Transfers of Physical Assets

One of the major developments affecting federal housing programs in the past year is HUD's establishment of new policies governing changes in the ownership of projects encumbered by mortgage loans insured or held by HUD. These ownership changes, which are known by HUD as transfers of physical assets (TPAs), are prohibited under HUD's regulatory agreement unless HUD has given its prior written approval. By three memoranda to HUD field offices dated May 4, 1983, HUD has both clarified and established the standards and procedures which it will use in approving TPAs and the sanctions which it will employ against participants in unauthorized TPAs.[18]

Generally, HUD has delegated a great deal of authority to HUD field offices to review and approve applications from the parties to a TPA. An extensive review procedure, known as "Full Review," is required for transfers involving a complete change of ownership of a project. Illustrative of such transfers are the following: (1) transfers of title to the buyer from the mortgagor-seller; (2) conveyances by land contract; and (3) transfers of 100 percent of the partnership interest, corporate stock or beneficial interest (if a trustee of a passive trust is the mortgagor) of a mortgagor within a one-year period.

The "Full Review" is a two-phase process, at each phase of which the applicant must provide HUD with specifically prescribed documentation relating to such matters as the terms of the sale, the qualifications of the purchaser and the impact of the sale upon the project's financial condition. In the first phase of the review, this documentation is reviewed by the HUD field office, who will either preliminarily approve the TPA, reject it or seek a

18. Copies of the memoranda may be found in [2 Ref. File] HOUS. & DEV. REP. (BNA) 20:5001–5061 (July 11, 1983).

final decision from HUD headquarters in Washington, D.C. Where appropriate, HUD's review can be expedited by seeking the approval of HUD headquarters on isolated issues simultaneously with the review of a HUD field office.

If an application is preliminarily approved, the second phase of the "Full Review" procedure begins. At this phase, the applicant is required to provide HUD with additional documentation including documents such as executed, but unrecorded, sales contracts, secondary financing documents and deeds. The procedure provides for HUD to review these documents and then authorize their recordation. This is an unusual requirement which is inconsistent with the customary business practice of recording these kinds of documents immediately after they are executed. As of the date this article is being written, HUD has been made aware of this practical difficulty and is considering the problem.

The "Full Review" procedure is required to be performed by HUD according to a detailed timetable. A specific number of working days has been prescribed for the completion of each step of the review. No such schedule has been prescribed for transactions involving partial changes in ownership, which are subject to a less extensive review procedure known as a "Modified Review." These transactions include, but are not limited to, the following: (1) the substitution of at least one of the general partners of the mortgagor; (2) transfers of less than 50 percent of a corporate mortgagor that result in changed control of the mortgagor; and (3) transfers of amounts in excess of 50 percent and less than 100 percent of the partnership interests or corporate stock of a mortgagor within a one-year period.

"Modified Review" is a procedure essentially identical to that set forth in a HUD memorandum of March 26, 1983, concerning TPAs. Under "Modified Review," a mortgagor must advise HUD in advance of the transaction and provide HUD with relevant documentation, which documentation is not nearly as detailed as in cases involving "Full Review." Another difference is that an application fee, which is required in connection with a "Full Review," is not required in connection with a "Modified Review."

All transactions, regardless of whether they are subject to "Full Review" or "Modified Review," are required to be evaluated substantively by HUD in accordance with several criteria known as Determinative Criteria. These criteria consist of the following:

1. The proposed Owner/Managing General Partner is deter-

mined to be qualified by the HUD field office from the standpoint of his financial net worth and experience.

2. The proposed management agent is acceptable to the local HUD office.
3. The project's physical needs are met by the proposed cash contribution. In order to recommend the proposed transfer, the HUD field office must determine that the project will be restored to sound physical condition within two years after the transfer, and that funds will be available to take care of the project's physical needs. Of course, this requirement applies only to projects having physical needs.
4. The project's financial needs are met by the proposed cash contribution. If a project has financial needs, the HUD field office must determine that the mortgage will be brought current or that an acceptable work-out plan will be arranged, and that a project's replacement reserves will be adequately funded.
5. HUD's outstanding regulations and administrative instructions are satisfied. This is a catch-all criterion designed to assure compliance with an assortment of requirements which have been promulgated by HUD in the form of handbooks, regulations and legal opinions.
6. Where secondary financing is an element of the transfer, HUD's legal and administrative guidelines pertaining to secondary financing are satisfied. This criterion will be discussed in greater detail below.
7. When conversion to condominium or cooperative ownership is an element of the transfer, the current HUD policy as regards condominium or cooperative conversion must be followed.

With regard to the sixth Determinative Criterion involving secondary financing, HUD defines secondary financing broadly as any portion of a project's price not paid in cash at the time of purchase. Accordingly, in HUD parlance, secondary financing includes such financing devices as land contract and deferred payment transactions, wraparound mortgages, second mortgages, unsecured junior liens, loans secured by real property other than that being transferred, and loans secured by personalty or an escrowed deed of reconveyance.

HUD has authorized HUD field officers to approve secondary financing in connection with TPAs that satisfy a standard known as the 75 percent/90 percent test. Under that test, the outstanding mortgage balance of the HUD-insured or HUD-held note, plus the face amount of the secondary indebtedness, plus the accrued but unpaid interest on the secondary indebtedness cannot exceed either (a) 75 percent of the replacement cost in the case of projects less than five years of age or older, or (b) 90 percent of the replacement cost in the case of projects less than five years of age. Where an otherwise acceptable TPA proposal fails to meet this test, the proposal will not be rejected automatically by HUD, but is to be forwarded to HUD headquarters for closer scrutiny. In short, the 75 percent/90 percent test is intended to serve as a device for screening out proposals which will be given a more extensive review by HUD.

HUD's review procedure also requires HUD field offices to monitor every TPA for a period of at least three years in order to assure compliance with the terms and conditions of the transfer. Upon discovery of a deficient performance in connection with any TPA at any time during the monitoring of the project, the local HUD office is directed to take any appropriate action to restore the project to a sound condition.

In addition to the foregoing review procedures and standards, HUD has also articulated the range of remedies which it will employ in connection with unauthorized TPAs. The remedies available to HUD may be divided broadly into two categories: (1) contractual remedies; and (2) administrative sanctions. In the first category, the contractual remedies available to HUD are based on paragraph 11 of the standard HUD Regulatory Agreement. This provision allows HUD, in the event of a breach of the regulatory agreement, to seek the appointment of a receiver to operate the property pending adjudication of HUD's claim against the original owner or purchaser, or to sue for civil damages or specific performance of the regulatory agreement, including reconveyance of the property to the original owner from the purchaser.

Administrative sanctions, the second category, are authorized by 24 C.F.R. Part 24. Such sanctions include the issuance by a HUD field office of a temporary or conditional denial of local participation in HUD programs by the original owner or mortgagor and the purchaser, and the issuance by HUD headquarters of suspension or debarment of any of these parties from participation nationwide in HUD programs.

IV. Owner Participation in a Community Redevelopment Project: Agency Resolution of Conflicts between Neighbors

This year, a California appellate court handed down a landmark decision, *Huntington Park Redevelopment Agency v. Duncan*,[19] which interpreted the important "owner participation" section of the California Community Redevelopment Law.[20] It will affect other states which have either patterned their redevelopment laws after California's or adopted similar owner participation sections in their redevelopment laws.

When California adopted its redevelopment law in 1951, pursuant to a voter-approved amendment to the State Constitution, the right of "owner participation" in community redevelopment projects was included in the new law. The current provision for owner participation states:

> Every redevelopment plan shall provide for participation in the redevelopment of property in the *project area* by the *owners of all or part of such property* if the owners agree to participate in the redevelopment in conformity with the redevelopment plan adopted by the legislative body for the area. (Emphasis added.)[21]

This protective provision was an attempt to silence the protests of those who felt that private property would be taken under the new law by community redevelopment agencies using the power of eminent domain to arbitrarily confer property upon favored private developers.[22]

In 1964, the California Supreme Court, construing the owner participation provision, held that the provision does not grant a property owner an absolute right to participate in a redevelopment project.[23] The court stated that since section 33701 of the Commu-

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19. 142 Cal. App. 3d 17, 190 Cal. Rptr. 744 (1983).

20. CAL. HEALTH & SAFETY CODE §§ 33000–33985 (Deering 1982).

21. *Id.* § 33339.

22. A qualified community redevelopment agency is authorized to file an eminent domain action, under California law, if a valid Resolution of Necessity is passed which finds that

> (a) The public interest and necessity require the project.
> (b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
> (c) The property sought to be acquired is necessary for the project.

CAL. CIV. PROC. CODE §§ 1240.030, .040 (Deering 1982).

23. *In re* Development Plan for Bunker Hill, 61 Cal. 2d 21, 389 P.2d 538, 37 Cal. Rptr. 74, *cert. denied*, Babcock v. Community Redevelopment Agency, 379 U.S. 899, *cert. denied, appeal dismissed*, Trautwein v. Community Redevelopment Agency, 379 U.S. 28 (1964).

nity Redevelopment Law (now section 33339)[24] provides that, as a condition to owner participation, the owner "must agree to participate in the redevelopment in conformity with the redevelopment plan adopted by the legislative body for the area,"[25] the owner's participation right is not absolute.

The *Bunker Hill* holding ratified the distinction between two classes of "developers" in a redevelopment project. Established developers who agree to rehabilitate an entire block in conformance with the redevelopment plan if the agency involved will turn over the land to them without interference have, under *Bunker Hill*, a tactical advantage over the individual parcel owner who wants to rebuild his property but may be unwilling to conform with the plan. If the individual parcel owner is willing and able to rebuild the entire block, he may legally do so and may even have a "leg up" on the deal because of his ownership of the one parcel; however, as a practical matter, the individual owner is typically foreclosed from development of an entire block.

A third class of potential developer is the property owner who wants to expand the use of his present site or even relocate his operations within the project boundaries. This person may own more than one individual parcel, but, through lack of inclination or resources, may not wish to rehabilitate an entire block. His desire for expansion will necessarily conflict with his neighbor's desire to remain in place or even expand on his own. Therefore, two owners acting in good faith with the same vested statutory rights may come into direct conflict.

The California Second District Court of Appeal held in *Huntington Park*[26] that a redevelopment agency may resolve such conflicts by taking the property of one landowner, notwithstanding the owner's right to participate in the project. In *Huntington Park*, defendant Duncans owned a piece of industrial property located with the Huntington Park Industrial Redevelopment Project (HPIRA), where they operated a business on a portion thereof and rented out the rest as a parking lot. The Duncans' neighbors, the Spitzers, desired to expand their business onto the portion of the Duncan property used as a parking lot, and submitted a proposal to the city's Redevelopment Agency for this purpose in

24. CAL. HEALTH & SAFETY CODE § 33339 (Deering 1982).
25. *Bunker Hill*, 61 Cal. 2d at 59–60, 389 P.2d at 563, 37 Cal. Rptr. at 99.
26. 142 Cal. App. 3d 17, 190 Cal. Rptr. 744 (1983).

August, 1979. The agency notified the Duncans of the Spitzers' intentions.

In September, the Duncans countered with a proposal to improve the parking lot with a machine shop. The Duncans, the Spitzers, their attorneys, the agency board and staff, and all the attendant experts, reporters, and interested citizens came together at a public meeting in October, at which the Spitzers proposed to erect an industrial building with a market value of $108,000, to be operating within one year. The Duncans valued their proposed improvements at $87,628, but would not commit themselves to a completion date. The agency board designated an expert consultant to study both proposals and report to the next board meeting.

At that time, the consultant reported that the Spitzer proposal would provide more new jobs (thirty-four vs. eight), more tax revenue (an added $1,080/year vs. $880/year), and more sales ($2 million vs. an undetermined figure) than the Duncan proposal. The consultant also determined that the Duncans' proposed shop could be accommodated on remaining Duncan property not sought by the Spitzers.

The Duncans refused the agency's purchase offer and resisted the subsequent condemnation action, contending that the agency abused its discretion in granting the Spitzer proposal and denying theirs. The trial court held for the Duncans, stating that the property in question was not necessary for the HPIRA except as to the improvements proposed by the Duncans pursuant to their owner participation rights, and therefore that the agency had abused its discretion.

On appeal, the Second District Court of Appeal reversed, holding:

> Defendants' [Duncans'] status as owners desiring participation in the project did not preclude the Agency from exercising its discretion to take defendants' property, [since] an owner of a particular parcel does not have an absolute right to develop that parcel.[27]

The court, after citing *Fellom v. Redevelopment Agency*[28] for the proposition that the agency has a duty of reasonableness and good faith in exercising its eminent domain powers, and is required to act fairly and without discrimination, concluded that:

> No special status is accorded owners of particular parcels. The Spitzers and the Duncans have equal preference status under this provision.

27. *Huntington Park*, 142 Cal. App. 3d at 24, 190 Cal. Rptr. at 749.
28. 157 Cal. App. 2d 243, 320 P.2d 884 (1958).

> The Agency did not violate its duty of reasonableness and good faith by selecting the proposal of a competing owner participant, over the Duncans, especially in view of the significant advantages of the Spitzers' proposal.[29]

The California Supreme Court denied the Duncans' petition for hearing, thereby sanctioning the holding of the Second District Court of Appeal.

Huntington Park reaffirms the *Bunker Hill* holding that the owner participation right is not absolute, but is subject to the owner's agreement to conform with the redevelopment plan. The case goes beyond this reaffirmance, however, to hold that a redevelopment agency may preempt an owner's participation right, e.g., in selecting the development proposal of a competing owner participant, in cases of conflict. This represents a major expansion of the eminent domain powers of redevelopment agencies, and a parallel contraction of the "protective" nature of the owner participation provision.

V. The Status of the Governmental Leasing Act of 1983

Legislation was recently introduced by Congressman Jake Pickle, the so-called Pickle II Bill,[30] which provides, in effect, that developers would have to choose between tax-exempt financing and investment tax credits. The legislation is aimed principally at sale-leasebacks to governmental or tax-exempt entities.[31] However, as introduced, section 1(c), which restricts the availability of the rehabilitation credit when tax-exempt financing is used to acquire or rehabilitate property, applies to all rehabilitation projects. A fair interpretation of the legislation could require that the rehabilitation credit be made unavailable only when tax-exempt financing was utilized to acquire or rehabilitate property which would be used by a tax-exempt or governmental entity.

In response to a concentrated effort by members of the National Housing Rehabilitation Association and others[32] to eliminate this ambiguity in the Pickle II Bill, Chairman Rostenkowski of the

29. *Huntington Park*, 142 Cal. App. 3d at 26, 190 Cal. Rptr. at 750.
30. Government Leasing Act of 1983, H.R. 3110, 98th Cong., 1st Sess., 129 CONG. REC. E2513–14 (extension of remarks May 24, 1983).
31. 129 CONG. REC. E2512–13 (extension of remarks May 24, 1983) (statement of Rep. Pickle).
32. *See* M. Ainslee, *Impact of the Proposed Government Leasing Act on Historic Properties*, 15 URB. LAW. vi (Summer 1983).

House Ways and Means Committee has agreed to offer, at an appropriate time, an amendment clarifying the scope of section 1(c).[33]

Similar legislation has been introduced in the Senate by Senators Dole, Metzenbaum and Durenberger. Although this legislation is in some respects harsher than the House bill, it does not contain the restrictive language that concerned the NHRA in the House bill.[34]

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33. Letter from John J. Salmon, Chief Counsel, Committee on Ways and Means, to Sheldon L. Schreiberg (June 10, 1983) (discussing the scope of section 1(c) of H.R. 3110).

34. The Governmental Lease Financing Reform Act of 1983, S. 1564, 98th Cong. 1st Sess. (1983). Very briefly, the Senate language provides that:

> In the case of fifteen-year real property occupied by a tax-exempt user, the depreciation period would be extended to at least forty years and the rehabilitation tax credit would not be available for expenditures allocable to tax-exempt use property. 'Tax-exempt use property' is defined as any fifteen-year real property where one of the following four conditions exists:
>
> (1) tax-exempt industrial development bond financing under I.R.C. § 103(b) is utilized and the tax-exempt entity to occupy the premises participated in the financing; or,
>
> (2) the lease with the tax-exempt user provides a fixed price purchase or sale option; or
>
> (3) use by the tax-exempt entity occurs after a sale or lease of the property by that entity and a subsequent leaseback; or
>
> (4) more than 50 percent of the property is occupied by a 'tax-exempt user' under a lease with a term greater than ten years including renewals.