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OPINION	:	No. 80-207
	:	
of	:	<u>April 4, 1980</u>
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SUBJECT: REASSIGNMENT OF BORROWER NOTES—Provisions of Business and Professions Code sections 17350–17351 preclude the reassignment of borrower notes secured by deeds of trust from a bank to the Community Development Commission of the County of Los Angeles, where the notes were originally given to the Commission for home improvement loans to low and moderate income families.

The Honorable John H. Larson, County Counsel, Los Angeles County, has requested an opinion on the following question:

Do the provisions of Business and Professions Code sections 17350–17351 preclude the reassignment of borrower notes secured by deeds of trust from a bank to the Community Development Commission of the County of Los Angeles, where the notes and deeds were originally given to the Commission in return for home improvement loans to low and moderate income families?

CONCLUSION

The provisions of Business and Professions Code sections 17350–17351 preclude the reassignment of borrower notes secured by deeds of trust from a bank to the Community Development Commission of the County of Los Angeles, where the notes were originally given to the Commission for home improvement loans to low and moderate income families.

ANALYSIS

We are informed that the Community Development Commission of the County of Los Angeles (hereinafter “Commission”) has entered into an agreement with a local bank to fund the construction of home improvements made by low and moderate income families within the county. The bank will loan the money to the Commission which will then loan the money to the homeowners in exchange for notes secured by deeds of trust on their properties. The Commission will endorse and assign the notes and deeds to the bank as security for its loan.

The bank wishes to have a reassignment clause in its agreement with the Commission, specifying that the bank may reassign to the Commission the note and trust deed of any homeowner who has defaulted on his loan. The bank will be protected against any default by a reserve fund maintained by the Commission, and all costs associated with collecting delinquent accounts will be reimbursed regardless of whether undertaken by the bank or Commission. Hence, a reassignment clause will not affect the financial obligations of the parties. Only their responsibilities regarding the collection of delinquent accounts are affected.

The question to be resolved is whether a reassignment clause may be incorporated into the agreement between the bank and the Commission. We conclude that it may not.

The Legislature has recently added sections 17350 and 17351 to the Business and Professions Code.¹ They provide:

“With respect to contracts entered into on or after the effective date of this chapter, no financial institution shall enter into a contract which provides for reassignment.” (§ 17350.)

“For the purposes of this chapter:

¹ All unidentified section references hereinafter are to the Business and Professions Code.

“(a) ‘Financial institution’ means a bank, savings and loan association, or credit union chartered under the laws of this state or the United States or any other person or organization making loans upon the security of real property.

“(b) ‘Reassignment’ means the right of a financial institution which is the assignee of a contract secured by real property to return the contract to the party assigning it to the financial institution, or to assign it to any other person, upon the default of one or more of the parties to the contract.” (§ 17351.)

Under subdivision (a) of section 17351, the bank in question will be a “financial institution” making a loan to the Commission secured by the homeowners’ trust deeds on their properties. Under subdivision (b) of section 17351, the bank will be an assignee of the notes and trust deeds given to the Commission by the homeowners.

Taken together, these statutes expressly preclude the bank from incorporating a reassignment clause into its agreement with the Commission. Upon the default of a homeowner under his contract with the Commission, the bank may not return the homeowner’s note and trust deed to the Commission (or to any other person) for any purpose.

It may be argued, however, that these statutes should not apply to the activities of the Commission and the bank in question, given the purpose for which the legislation was enacted.

When sections 17350 and 17351 were added to the Business and Professions Code, the Legislature expressed the intent of the legislation as follows:

“It is the intent of the Legislature to preserve inviolate the rights of consumers and homeowners to remain free from unconscionable fraudulent and deceptive sales practices.” (Stats. 1979, ch. 814, § 1.)

The evident focus of these two statutes was the practice of home improvement contractors (1) taking a note secured by a trust deed on a homeowner’s property, (2) assigning the note and trust deed to a bank or savings and loan association for cash, (3) reacquiring the note and deed upon default of the homeowner, and (4) foreclosing on the property. If the financial institution could protect itself from loss by requiring a reserve account to be maintained by the contractor, it would be unconcerned with whether a homeowner could afford to repay his loan to the contractor. As a result, many homeowners could lose their homes due to the unconscionable sales practices of contractors in providing

loans for construction which the homeowners could not reasonably afford to repay. By enacting sections 17350 and 17351, the Legislature apparently intended to reduce home foreclosures by forcing the banks and savings and loan associations to remain responsible for possible foreclosures and thus more careful in approving loans to the homeowners. (See Sen. Com. on Judiciary, AB 510, Contracts and Nonjudicial Foreclosure Sales Rep. (1979–80 Reg. Sess.); Assem. Com. on Judiciary, AB 510 Bill Digest (1979–80 Reg. Sess.).)

Against this statutory background, we note from the agreement between the Commission and the bank that the bank is extremely concerned about whether the homeowners may be able to repay their loans to the Commission and in fact the bank may be considered “too careful” in approving the loans. One provision of the agreement states for example:

“In the event Bank does not approve any loan application, it shall inform Commission thereof. At Commission’s request, Commission and Bank will jointly reevaluate said loan application if the Commission determines that special circumstances are present which merit such reevaluation. Provided Commission and Bank determine that the processing of such application would not constitute a substantially unsound credit decision, Bank, at Commission’s written request, shall process said application regardless of Bank’s prior disapproval of it, subject to the following terms and conditions . . .”

Consequently, it may be argued that section 17350 and 17351 should not apply to the agreement between the Commission and the bank, since the legislative purpose of the statutes would not be further advanced thereby. We cannot agree with this argument.

Where the language of a statute is clear, its plain meaning should be followed. (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 155; *Leroy T. v. Workmen’s Comp. Appeals Bd.* (1974) 12 Cal. 3d 434, 438.) As was stated by the Supreme Court in *People v. Belleci* (1979) 24 Cal. 3d 879, 884:

“It is settled that “‘We are required to give effect to statutes ‘according to the usual, ordinary import of the language employed in framing them.’ (Citations.)” (*Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal. 3d 650, 658 [147 Cal. Rptr. 359, 580 P.2d 1155].) Stated otherwise, ‘When statutory language is thus clear and unambiguous there is no need for construction, and court should not indulge in it.’ (*Solberg v. Superior Court* (1977) 19 Cal. 3d 182, 198 [137 Cal. Rptr. 460, 561 P.2d 11482; accord, *People v. Boyd* (1979) 24 Cal. 3d 285, 294 [155 Cal. Rptr. 367, 594 P.2d 484]; *Great Lakes Properties Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 155 [137 Cal. Rptr. 154, 561 P.2d 244].)

“We have declined to follow the plain meaning of a statute only when it would inevitably have frustrated the manifest purposes of the legislation as a whole or led to absurd results. (See, e.g., *Younger v. Superior Court (Mack)* (1978) 21 Cal. 3d 102, 113–114 [145 Cal. Rptr. 674, 577 P.2d 1014]; *Silver v. Brown* (1966) 63 Cal. 2d 841, 845 [48 Cal. Rptr. 609, 409 P.2d 689].)”

Here, we do not have the manifest purposes of the legislation being frustrated. Rather, the goals of sections 17350 and 17351 are in accordance with the prospective practices of the parties in question to closely monitor and control the loan approval process. We know of no rule of law that precludes the application of a statute merely because the purpose of the legislation may be furthered in some other fashion or for some other reason. We cannot add to the plain language of sections 17350 and 17351 an exclusion for such a situation. (See *Keeler v. Superior Court* (1970) 2 Cal. 3d 619, 632; *People v. Vasquez* (1979) 94 Cal. App. 3d 42, 48; *Cemetery Board v. Telophase Society of America* (1978) 87 Cal. App. 3d 847, 858; *Estate of Tkachuk* (1977) 73 Cal. App. 3d 14, 18.)

The conclusion to the question presented, therefore, is that the provisions of sections 17350–17351 preclude the reassignment of borrower notes secured by deeds of trust by a bank to the Commission, where the notes and deeds were originally given to the Commission in return for home improvement loans to low and moderate income families.
