

ITEM 10
TEST CLAIM
FINAL STAFF ANALYSIS

Civil Code Section 2941

Statutes 2000, Chapter 1013 (AB 996)

Reconveyance of Deed of Trust and Mortgage Discharge Certificate (02-TC-41)

County of San Bernardino, Claimant

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EXECUTIVE SUMMARY

Background

In 2000, the Legislature passed Assembly Bill 996, amending section 2941 of the Civil Code. The amendments to Civil Code section 2941 required county recorders to process and record deed of trust reconveyances and mortgage discharge certificates within two business days from the day of receipt. Prior law imposed no specific deadline for county recorders to process and record these documents.

Claimant alleges that the test claim statute constitutes a reimbursable state-mandated program, contending that “[p]rior to the enactment of the Chapter 1013, Statutes of 2000, the county recorder was not legally required to stamp and record the full reconveyance or certificate of discharge within 2 business days from the day of receipt. Enactment of this statute has increased the duties of the county recorder, and requires the county recorder to provide a higher level of service for an existing program.”

The Department of Finance agrees with the draft staff analysis recommendation that the test claim statute does not mandate a new program or higher level of service on county recorders within the meaning of Article XIII B, section 6 of the California Constitution, and should therefore be denied.

Staff finds that the test claim statute does not constitute a reimbursable state-mandated program, as it does not impose a new program or higher level of service on counties. Trust reconveyances and mortgage discharge certificates were required to be processed and recorded before the enactment of the test claim statute. Thus, the test claim statute merely imposes a deadline, and does not mandate any new activities or provide any tangible increase in the level of service to the public.

Conclusion

Staff concludes that Civil Code section 2941, as amended by Statutes 2000, chapter 1013, does not impose a new program or higher level of service on counties and, thus, does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

modified

Recommendation

Staff recommends that the Commission adopt this analysis and deny the test claim.

STAFF ANALYSIS

Claimant

County of San Bernardino

Chronology

06/27/03 Commission receives test claim filing
07/09/03 Commission staff determines test claim is complete and requests comments
07/17/03 Department of Finance files response to test claim
01/08/07 Commission staff issues the draft staff analysis
01/24/07 Department of Finance submits comments on draft staff analysis
02/09/07 Claimant files comments on draft staff analysis
03/26/07 Commission issues final staff analysis and proposed Statement of Decision

Background

This test claim addresses the deadline at which county recorders must process and record deed of trust reconveyances (reconveyances) and mortgage discharge certificates (discharge certificates). Pursuant to Civil Code section 2941, a mortgagee (the lender) must execute a certificate of discharge and record it or cause it to be recorded in the office of the county recorder within 30 days after the mortgage has been satisfied. When a deed of trust has been satisfied the beneficiary of the trust (the lender) shall execute and deliver to the trustee the original note and any other documents necessary to reconvey the deed of trust. The trustee must then execute the full reconveyance and record or cause it to be recorded with the county recorder within 21 days of receipt of the original note, fees, and any other documents necessary for reconveyance.

Prior law required county recorders to process and record reconveyances and discharge certificates received from trustees and mortgagees, but did not impose a specific deadline to complete these tasks. Instead, Government Code section 27320 provides that "[t]he recorder shall record it without delay..."¹

The test claim legislation, Statutes 2000, chapter 1013 (AB 996), made various amendments to Civil Code section 2941 affecting mortgagees and deed of trust beneficiaries.² However, in regard to the claimant, the test claim statute requires county recorders to process and record reconveyances and discharge certificates within two business days from the day of receipt. Specifically, Civil Code section 2941, subdivision (c), (formerly codified in subdivision (d)) states in relevant part:

¹ Prior to the enactment of the test claim statute the Civil Code did not address the specific duties of county recorders, instead the Civil Code referenced the Government Code.

² Civil Code section 2941, subdivision (d), as amended in Statutes 2000, chapter 1013 defined "cause to be recorded" and "cause it to be recorded" as pertaining to Civil Code section 2941 and provided trustees the benefit of specific evidentiary presumptions.

Within two business days from the day of receipt, if received in recordable form together with all required fees, the county recorder shall stamp and record the full reconveyance or certificate of discharge.

Claimant's Position

Claimant, County of San Bernardino, contends that the test claim statute constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The claimant asserts the test claim statute mandates a new program or higher level of service, stating:

Prior to the enactment of the Chapter 1013, Statutes of 2000, the county recorder was not legally required to stamp and record the full reconveyance or certificate of discharge within 2-business days from the day of receipt. Enactment of this statute has increased the duties of the county recorder, and requires the county recorder to provide a higher level of service for an existing program.³

Additionally, claimant argues that the test claim statute "clearly meets both tests that the [California] Supreme Court created in the [*sic*] *County of Los Angeles v. State of California* (1987) for determining what constitutes a reimbursable state mandated local program."⁴

The claimant further states that meeting the new requirement of Civil Code section 2941, as amended by the test claim statute, required increased costs associated with the following activities:

- receiving and processing incoming certified mail;
- document examination;
- outbound mail processing;
- policy and procedure development;
- training and monitoring.

On February 9, 2007, the Commission received claimant's comments in rebuttal to the draft staff analysis. Claimant's comments will be addressed, as appropriate in the analysis below.

³ Test Claim, page 2.

⁴ Test Claim, page 5. Staff notes that the test as set forth in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, does *not* determine what constitutes a *reimbursable* state-mandated program. Rather, the test is used to determine whether test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution. To determine whether a "program" is a *reimbursable* program it is necessary to determine if the "program" is a new program or higher level of service mandated on counties and whether it imposes increased costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Department of Finance's Position

The Department of Finance filed comments dated July 17, 2003 addressing claimant's test claim allegations. The Department of Finance did not dispute claimant's position, stating, "the statute may have resulted in a reimbursable State mandate."

The Department of Finance submitted subsequent comments, dated January 22, 2007, agreeing with the conclusions in the draft staff analysis, stating:

Finance agrees with the Commission staff's recommendation to deny the test claim. The test claim statute does not mandate a new program or higher level of service on county recorders within the meaning of Article XIII B, Section 6 of the California Constitution, as determined by the courts. Processing and recording trust reconveyances and mortgage discharge certificates were required activities pursuant to Government Code section 27320 prior to Chapter 1013, Statutes of 2000, which amended Civil Code section 2941.⁵

Discussion

The courts have found that article XIII B, section 6 of the California Constitution⁶ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁷ "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."⁸ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁹ In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.¹⁰

⁵ Department of Finance comments on the draft staff analysis, dated January 22, 2007, p. 1.

⁶ Article XIII B, section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

⁷ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁸ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

¹⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.¹¹ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.¹² A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹³

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹⁴

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁵ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁶

Issue 1: Does the test claim statute mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution?

The courts have held that legislation mandates a “new program or higher level of service” within the meaning of article XIII B, section 6 of the California Constitution when: (a) the requirements are new in comparison with the pre-existing scheme *and* the requirements were intended to provide an enhanced service to the public,¹⁷ or (b) the state has shifted fiscal responsibility for a program from the state to a local agency.¹⁸

¹¹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California, supra*, 43 Cal.3d 46, 56; *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

¹² *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

¹³ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

¹⁴ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁶ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁷ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

¹⁸ *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

The claimant disputes the above definition of a “new program or higher level of service,” and contends that “the required activity or task must be new, constituting a ‘new program,’ or it must create a ‘higher level of service’ over the previously required level of service.”¹⁹ Claimant further states that the test claim is being submitted based on the contention that the test claim statute is a “higher level of service” and concedes that the test claim statute does not constitute a “new program” or a shift in fiscal responsibility from the state to the county.

In support of its contentions, claimant cites to staff’s remarks regarding a “higher level of service” made during the October 4, 2006 Commission hearing of *Fifteen -Day Close of Voter Registration* (01-TC-15). Staff’s remarks, however, do not support claimant’s contentions.²⁰ Instead, staff states that a test claim statute can constitute a “higher level of service” only with a finding that the state is mandating new requirements on local agencies. As quoted by claimant, staff states:

There aren’t too many higher-level-of-service cases that have been decided by the courts. One of them, though, is Long Beach Unified School District v. The State of California. And that case was a higher level of service regarding racial desegregation, where you had existing federal law, and the state came and required additional requirements imposed. And the court said that was a higher level of service. *In the process, to find a higher level of service is requiring a finding that the State is mandating new requirements on the local agencies and school districts.*²¹ (Italics added.)

The courts have defined a “higher level of service” in conjunction with the phrase “new program” to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, “it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs.”²² A statute or executive order mandates a reimbursable “higher level of service” when the statute or executive order, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, increases the actual level of governmental service to the public provided in the existing program.²³

Thus, to determine whether a test claim statute constitutes a “new program or higher level of service” requires a finding that the requirements are new in comparison with the pre-existing

¹⁹ Claimant response, dated February 9, 2007, p. 1, original italics.

²⁰ Staff notes that the Commission came to the same conclusion in *Fifteen – Day Close of Voter Registration* (01-TC-15) as staff recommends here for *Reconveyance of Deed of Trust and Mortgage Discharge Certificate* (02-TC-41).

²¹ Claimant response, dated February 9, 2007, p. 2. Citing Reporter’s Transcript of Proceedings, for the October 4, 2006 Commission hearing regarding *Fifteen -Day Close of Voter Registration* (01-TC-15).

²² *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *San Diego Unified School District, supra*, 33 Cal.4th 859, 874.

²³ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

scheme and the requirements were intended to provide an enhanced service to the public, or the state has shifted fiscal responsibility for a program from the state to local agencies.

Are the Test Claim Requirements New in Comparison With the Pre-existing Scheme and Intended to Provide an Enhanced Service to the Public?

To make this determination, the test claim statute must initially be compared with the legal requirements in effect immediately prior to its enactment.²⁴

Prior to the enactment of the test claim statute, the Civil Code did not address the specific duties of county recorders. Rather, Civil Code section 1172 provides, "The duties of county recorders, in respect to recording instruments, are prescribed by the Government Code."

Government Code section 27320 (enacted in 1947), as pertaining to county recorders' duties regarding recording instruments such as reconveyances and discharge certificates, provides in relevant part:

When any instrument authorized by law to be recorded is deposited in the recorder's office for record, the recorder shall endorse upon it in the order in which it is deposited, the year, month, day, hour, and minute of its reception, and the amount of fees for recording. The recorder shall record it without delay...²⁵

After the enactment of the test claim statute, Civil Code section 2941 provided in relevant part:

Within two business days from the day of receipt, if received in recordable form together with all required fees, the county recorder shall stamp and record the full reconveyance or certificate of discharge.

The only change the test claim statute made pertaining to the duties of county recorders is the imposition of a two business-day deadline to record reconveyances and discharge certificates. While the imposition of a deadline for county recorders is new to Civil Code section 2941, the activities of processing and recording trust reconveyances and mortgage discharge certificates are not new activities. As shown by the language of Government Code section 27320, county recorders' offices have been required to perform these activities prior to the passage and enactment of the test claim statute.

Claimant contends that the imposition of a compressed timeline has increased the costs and duties of the county recorder, and thus enhanced service to the public. However, the mere shortening of time in which county recorders must process and record trust reconveyances and mortgage discharge certificates does not change the level of service related to those activities. In discussing its decision in the 1987 *County of Los Angeles* case, the California Supreme Court stated, "[t]he law increased the cost of employing public servants, but it did not in any tangible manner increase the level of service provided by those employees to the public."²⁶ Similarly, imposing a deadline may have increased costs of recording certain documents as argued by

²⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

²⁵ Government Code section 27320 (added by Stats. 1947, ch. 424, § 1) as amended by Statutes 1982, chapter 843, section 5.

²⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 875.

Here the
is tangible
increase
in level
of service

claimant, but it has not provided any tangible increase in the level of service to the public, as the documents would have been required to be processed and recorded with or without the test claim statute.

In claimant's response to the draft staff analysis, claimant relies upon *Long Beach Unified School Dist.*, which found state regulations requiring specific activities to alleviate the racial imbalance in schools to be a higher level of service.²⁷ In *Long Beach Unified School Dist.*, the regulations required specific activities not previously required under state law and beyond those required under the United States Constitution and relevant case law.²⁸ Unlike *Long Beach Unified School Dist.*, the test claim statute does not impose any new activity upon claimant. As stated above, prior to and after enactment of the test claim statute claimant was required to process and record reconveyances and discharge certificates. Thus, under *Long Beach Unified School Dist.*, the test claim statute does not constitute a higher level of service.

Staff notes claimant's argument that the test claim statute's legislative history suggests an intent that the test claim statute would reduce litigation against mortgagees and trustees. As a result, claimant contends that the test claim provides a higher level of service to the public. However, as of this date, courts have found reimbursable mandates only in situations in which a new activity has been imposed or a shift in fiscal responsibility from the state to the local agency has been shown. Here, no new activity has been imposed on claimant, thus it must be determined if the state has shifted fiscal responsibility from the state to counties.

Has the State Shifted Fiscal Responsibility to a Local Agency?

A test claim statute can constitute a new program or higher level of service if the state has transferred from the state to counties complete or partial financial responsibility for a required program for which the state previously had complete or partial financial responsibility.²⁹

In this case, there has not been a shift in financial responsibility for a program from the state to the counties. The costs attributed to processing and recording trust reconveyances and mortgage discharge certificates have historically been borne by counties.³⁰ Here, the test claim statute merely sets a deadline for processing and recording these documents. Thus, the test claim statute has not shifted financial responsibility for a program from the state to the counties.

For the reasons stated above, staff finds that the test claim statute does not mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution.

²⁷ *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155.

²⁸ *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155, 173.

²⁹ California Constitution, article XIII B, section 6, subdivision (c). The court in *County of Los Angeles* further states, "an increase in costs does not result in a reimbursement requirement... [r]ather the state must be attempting to divest itself of its responsibility to provide fiscal support for a program..." *County of Los Angeles 2003*, *supra*, 110 Cal.App.4th 1176, 1194.

³⁰ Government Code section 27360 (added by Stats. 1947, ch. 424, § 1) provides "For services performed by him, the county recorder shall charge and collect the fees fixed in this article."

CONCLUSION

Staff concludes that Civil Code section 2941, as amended by Statutes 2000, chapter 1013, does not mandate a new program or higher level of service on counties and, thus, does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Staff Recommendation

Staff recommends that the Commission adopt this analysis and deny the test claim.

ORIGINAL

EXHIBIT A

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 1 (2/91)

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TEST CLAIM FORM

Local Agency or School District Submitting Claim

Claim No. *02-TC-41*

COUNTY OF SAN BERNARDINO

Contact Person

Telephone No.

BONNIE TER KEURST

(909) 386-8850

Address

OFFICE OF THE AUDITOR/CONTROLLER-RECORDER
222 W. HOSPITALITY LANE, SAN BERNARDINO, CA 92415-0018

Representative Organization to be Notified

None

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

Ch. 1013, Statutes of 2000 (Sections 1 & 2): Civil Code Section 2941

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

BONNIE TER KEURST
REIMBURSABLE PROJECTS MANAGER

(909) 386-8850

Signature of Authorized Representative

Date

Bonnie Ter Keurst

June 23, 2003

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of
County of San Bernardino

RECONVEYANCE OF DEED OF TRUST AND MORTGAGE DISCHARGE CERTIFICATE

Chapter 1013, Statutes of 2000

STATEMENT OF THE CLAIM

INTRODUCTION

On January 1, 2001, Chapter 1013, Statutes of 2000 (AB 996) became operative (Exhibit A). This legislation amended Section 2941 of the Civil Code so that it requires county recorders to process, stamp, and record full mortgage reconveyances and certificates of discharge within two business days that are delivered via certified mail or by other methods, as defined. The workload increase resulting from the mandated compressed time frame made it necessary to develop new procedures, acquire additional fixed assets, and incur increased labor costs to meet the higher level of service. The County of San Bernardino ("County") reduced the time necessary to process these documents from four business days to two days. As a result, the County experienced a 150 percent increase in labor hours to process mortgage reconveyances that were delivered to the Recorder by certified mail as defined in Section 2941 of the Civil Code.

A. MANDATE SUMMARY

Article XIII B, Section 6 of the California Constitution requires reimbursement whenever the State mandates local governments to implement and deliver services that are enacted after 1975. The increased level of service for mortgage reconveyances occurred when the State required county recorders to stamp and record full reconveyances or certificates of discharge within two business days. Since the legislation mandating the higher level of service was enacted during 2000, the reimbursement requirement of Article XIII B, Section 6 of the California Constitution applies.

In order to be reimbursable, it must constitute a "new program or higher level of service", per Article XIII B, Section 6 of the California Constitution. The compressed time requirement for processing and recording mortgage reconveyances constitutes a higher level of service.

The California Civil Code, Section 2941, requires that whenever any mortgage has been satisfied, the mortgagee or the mortgagee's assignee shall execute and record a certificate of discharge in the office of the county recorder in which the mortgage is recorded. In addition, when an obligation secured by a deed of trust has been satisfied, the beneficiary or the beneficiary's assignee shall execute and deliver to the trustee the original note, deed of trust, and a request for a full reconveyance to be executed by the

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trustee. The trustee shall then execute and record the full reconveyance of the deed of trust in the office of the county recorder in which the deed of trust was initially recorded.

Chapter 1013, Statutes of 2000 (AB 996) amended Section 2941 of the Civil Code. As of January 1, 2001 Section 2941 requires the county recorder to stamp and record the full reconveyance or the certificate of discharge within 2 business days from the day of receipt, if received in recordable form with all required fees. The method of delivery used by the mortgagees and trustees to send "cause to be recorded" include, but are not limited to sending certified mail with the United States Postal Service or by an independent courier service the full reconveyance and certificate of discharge in a recordable form, together with payment for all required fees, in an envelope addressed to the county recorder's office in which the deed of trust or mortgage is recorded.

Civil Code Section 2941 reads, in pertinent part:

(c) For the purposes of this section, the phrases "cause to be recorded" and "cause it to be recorded" include, but are not limited to, sending by certified mail with the United States Postal Service or by an independent courier service using its tracking service that provides documentation of receipt and delivery, including the signature of the recipient, the full reconveyance or certificate of discharge in a recordable form, together with payment for all required fees, in an envelope addressed to the county recorder's office of the county in which the deed of trust or mortgage is recorded. Within two business days from the day of receipt, if received in recordable form together with all required fees, the county recorder shall stamp and record the full reconveyance or certificate of discharge.

Civil Code Section 2941 further states:

(h) The amendments to this section enacted at the 1999-2000 Regular Session shall apply only to a mortgage or an obligation secured by a deed of trust that is satisfied on or after January 1, 2001.

Prior to the enactment of the Chapter 1013, Statutes of 2000, the county recorder was not legally required to stamp and record the full reconveyance or certificate of discharge within 2 business days from the day of receipt. Enactment of this statute has increased the duties of the county recorder, and requires the county recorder to provide a higher-level of service for an existing program. Within the meaning of Section 6 of Article XIII B of the California Constitution, any costs incurred that are direct result of providing "higher level of service of an existing program" are reimbursable by the State to the local agencies incurring those costs.

In order to manage the increased workload imposed by this mandate, the County Recorder's Office has increased staffing and developed new systems to meet the new recording requirement of Chapter 1013, Statutes of 2000 (AB 996). Moreover, the higher level of service costs incurred by the County from the mandated compressed recording

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period are exacerbated by the County's increasing population and housing market activity.

Prior to the implementation of amended Section 2941 of the Civil Code, the entire process of handling and recording reconveyances and certificates of discharge via certified mail in the County Recorder's office required only ten (10) "person" hours per business day. Under the new recording requirement to accommodate the two-business day turnaround within strict guidelines, twenty-five (25) "person" hours are required per business day to handle reconveyances and certificates of discharge received via certified mail. This 150% workload increase has resulted in significant labor costs due to handling the increased requirements to maintain the two-business day recording cycle. In addition, this increased staffing has also increased training, supervisory, and management costs for this mandated activity.

The County Recorder charges fees to record these legal documents, but the increased costs due to the higher level of service required by the new mandated activity are greater than the revenues generated from this activity. The County of San Bernardino does not have the authority to increase recording fees to recover its increased recording costs.

The recording fees charged and collected by the County Recorder are fixed in the California Government Code Section 27360 thru 27388 (Exhibit B). These fixed recording fees in the Government Code are insufficient to cover higher recording costs that are incurred by the County Recorder's Office due to the compressed time frame mandated by the State. Therefore the additional recording costs, which are not covered by the State's fixed recording fees, are deemed to be mandated and reimbursable by the State to the local agencies incurring these costs.

The stamping and recording of full reconveyances or certificates of discharge received in recordable form within 2 business days from the day of receipt constitutes a higher level of service in that counties were not required to process these documents within a compressed time frame before the statute, which is the subject of this test claim. Since the new recording requirement for the county became effective as of January 1, 2001, the reimbursement requirement of Article XIII B, Section 6 of the California Constitution applies.

Section 2 of the Chapter 1013, Statutes of 2000 (AB 996) reads as follows:

Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Govt. Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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B. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

Chapter 1013, Statutes of 2000

An act to amend Section 2941 of the Civil Code relating to mortgages.

Civil Code, Section 2941(c) – provides that mortgage reconveyance documents and payments that are delivered to a county recorder by entities that include, but are not limited to the United States Postal Service or independent courier service using a tracking system that meets specified criteria shall be stamped and recorded within two business days.

C. COST ESTIMATES

The costs fall into two categories: a) new workload costs, and b) administration costs.

There are no cost savings to the counties attributable to Chapter 1013. The counties are unable to raise fees to pay for these costs, and they cannot reduce or lower the quality or availability of services. The costs are not subject to the funding disclaimers specified in Government Code Section 17556.

The new additional costs were incurred through one or more of, but not limited to, the following activities:

1. **Receipting and Processing Incoming Certified Mail (New Workload)**
2. **Document Examination (New Workload)**
3. **Outbound Mail Processing (New Workload)**
4. **Policy and Procedure Development (Administrative Costs)**
5. **Training and Monitoring (Administrative Costs)**

All of these mandated activities arise from Civil Code Section 2941 (Exhibit A), and will result in increased cost to local governmental entities in excess of \$1,000 per year:

The County of San Bernardino estimates that its unreimbursed Mortgage Reconveyance cost for the fiscal year ended June 30, 2001, is **\$216,100**.

D. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by the County of San Bernardino as a result of the statutes included in the test claim are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B Section 6 of the California Constitution, and Section 17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated

Test Claim of County of San Bernardino
Reconveyance of Deed of Trust & Mortgage Discharge Certificate

by the State", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."
2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."
3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution".

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

E. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by these statutes clearly meets both tests that the Supreme Court created in the *County of Los Angeles v. State of California* (1987) for determining what constitutes a reimbursable state mandated local program. The two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" test and the "carry out a state policy" test. The tests' application to this test claim is discussed below.

Mandate is Unique to Local Government

The statutory scheme set forth above imposes a unique requirement on local government. Counties, rather than public/private entities, are responsible for recording certificate of discharge for mortgage satisfaction, and full reconveyance of the deed of trust. This mandate only applies to local government.

Mandate Carries Out a State Policy

From the legislation, it is clear that the State intended that the county recorder stamp and record the full reconveyance or certificate of discharge *within 2 business days* from the day of receipt, if the documents are received in recordable form with all required fees. Prior to the enactment of the Chapter 1013, Statutes of 2000, recording of these instruments within 2 business days was not a requirement by the State.

Both of these tests are met.

F. STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code, Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code, Section 17556. **None of the seven disclaimers apply to this test claim.**

1. The claim is submitted by a local agency or school district, which requests legislative authority for that local agency or school district to implement the program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.
2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs, which exceed the mandate in that federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.
6. The statute or executive order imposed duties, which were expressly included in a ballot measure approved by the voters in a statewide election.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

None of the above disclaimers have any application to the County of San Bernardino's test claim.

G. CONCLUSION

The enactment of Chapter 1013, Statutes of 2000 imposed a new state mandated program and cost on the County of San Bernardino, by requiring it to process mortgage reconveyances or certificates of discharge within two business days. The mandated program meets all of the criteria and tests for the Commission on State Mandates to find

**Test Claim of County of San Bernardino
Reconveyance of Deed of Trust & Mortgage Discharge Certificate**

a reimbursable state mandated program. None of the disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement has any application to this claim.

Government Code Section 17514 defines "costs mandated by the state" as:

"Any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The activities required by the Civil Code as added or amended or both by the statute of this test claim, result in increased costs that local agencies were required to incur after July 1, 1980, as a result of a statute enacted on or after January 1, 1975.

Therefore, based on the foregoing, the County of San Bernardino respectfully requests that the Commission on State Mandates determine that Chapter 1013, Statutes of 2000, impose reimbursable state-mandated costs for processing and administrative costs for Mortgage Reconveyances pursuant to Section 6 of Article XIII B of the California Constitution.

H. CLAIM REQUIREMENTS

The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

Exhibit A: Chapter 1013, Statutes of 2000

Exhibit B: Government Code – Section 27360 thru 27388

ORIGINAL

Test Claim of County of San Bernardino
Reconveyance of Deed of Trust & Mortgage Discharge Certificate

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 16th day of June, 2003, at San Bernardino, California, by:

Bonnie Ter Keurst

Bonnie Ter Keurst
Reimbursable Projects Manager
Office of the Auditor/Controller-Recorder
222 W. Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018

Phone: (909) 386-8850

Fax: (909) 386-8830

EXHIBIT

A

CHAPTER 1013

(Assembly Bill No. 996)

An act to amend Section 2941 of the Civil Code, relating to mortgages.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 996, Papan. Mortgages and deeds of trust.

Existing law provides that when any mortgage has been satisfied, the mortgagee, or its assignee, shall execute and record, or cause to be recorded, a certificate of discharge, except as specified. Existing law also provides that when an obligation secured by a deed of trust has been satisfied, the beneficiary, or its assignee, shall execute a full reconveyance and record or cause it to be recorded, except as specified.

This bill would define the phrases "cause to be recorded" and "cause it to be recorded" for the purposes described above to include, but not be limited to, sending by certified mail with the United States Postal Service or by a courier service, as specified, the full reconveyance or certificate of discharge in a recordable form, together with payment for all required fees, in an envelope addressed to the county recorder's office in which the deed of trust or mortgage is recorded. The bill would require the county recorder to stamp and record the full reconveyance or certificate of discharge within 2 business days from the day of receipt, if received in recordable form with all required fees. This bill would further provide that fulfilling these provisions would entitle the trustee to the benefit of a specified evidentiary presumption. The bill would further provide that these provisions only apply to a mortgage or an obligation secured by a deed of trust satisfied on or after January 2, 2001.

Because this bill would increase the duties of local officials, it would create a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 2941 of the Civil Code is amended to read:

§ 2941. (a) Within 30 days after any mortgage has been satisfied, the mortgagee or the assignee of the mortgagee shall execute a certificate of the discharge thereof, as provided in Section 2939, and shall record or cause to be recorded, except as provided in subdivision (c), in the office of the county recorder in which the mortgage is recorded. The mortgagee shall then deliver, upon the written request of the mortgagor or the mortgagor's heirs, successors, or assignees, as the case may be, the original note and mortgage to the person making the request.

(b)(1) When the obligation secured by any deed of trust has been satisfied, the beneficiary or the assignee of the beneficiary shall execute and deliver to the trustee the

*Italics indicate changes or additions. * * * indicate omissions.*

original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(A) The trustee shall execute the full reconveyance and shall record or cause it to be recorded, except as provided in subdivision (c), in the office of the county recorder in which the deed of trust is recorded within 21 calendar days after receipt by the trustee of the original note, deed of trust, request for a full reconveyance, the fee that may be charged pursuant to subdivision (c), recorder's fees, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(B) The trustee shall deliver a copy of the reconveyance to the beneficiary, its successor in interest, or its servicing agent, if known.

(C) Following execution and recordation of the full reconveyance, upon receipt of a written request by the trustor or the trustor's heirs, successors, or assignees, the trustee shall then deliver the original note and deed of trust to the person making that request.

(2) If the trustee has failed to execute and record, or cause to be recorded, the full reconveyance within 60 calendar days of satisfaction of the obligation, the beneficiary, upon receipt of a written request by the trustor or trustor's heirs, successor in interest, agent, or assignee, shall execute and acknowledge a document pursuant to Section 2934a substituting itself or another as trustee and issue a full reconveyance.

(3) If a full reconveyance has not been executed and recorded pursuant to either paragraph (1) or paragraph (2) within 75 calendar days of satisfaction of the obligation, then a title insurance company may prepare and record a release of the obligation. However, at least 10 days prior to the issuance and recording of a full release pursuant to this paragraph, the title insurance company shall mail by first-class mail with postage prepaid, the intention to release the obligation to the trustee, trustor, and beneficiary of record, or their successor in interest of record, at the last known address.

(A) The release shall set forth:

- (i) The name of the beneficiary.
- (ii) The name of the trustor.
- (iii) The recording reference to the deed of trust.
- (iv) A recital that the obligation secured by the deed of trust has been paid in full.
- (v) The date and amount of payment.

(B) The release issued pursuant to this subdivision shall be entitled to recordation and, when recorded, shall be deemed to be the equivalent of a reconveyance of a deed of trust.

(4) Where an obligation secured by a deed of trust was paid in full prior to July 1, 1989, and no reconveyance has been issued and recorded by October 1, 1989, then a release of obligation as provided for in paragraph (3) may be issued.

(5) Paragraphs (2) and (3) do not excuse the beneficiary or the trustee from compliance with paragraph (1). Paragraph (3) does not excuse the beneficiary from compliance with paragraph (2).

(6) In addition to any other remedy provided by law, a title insurance company preparing or recording the release of the obligation shall be liable to any party for damages, including attorneys' fees, which any person may sustain by reason of the issuance and recording of the release, pursuant to paragraphs (3) and (4).

(c) The mortgagee or trustee shall not record or cause the certificate of discharge or full reconveyance to be recorded when any of the following circumstances exists:

(1) The mortgagee or trustee has received written instructions to the contrary from the mortgagor or trustor, or the owner of the land, as the case may be, or from the owner of the obligation secured by the deed of trust or his or her agent, or escrow.

(2) The certificate of discharge or full reconveyance is to be delivered to the mortgagor or trustor, or the owner of the land, as the case may be, through an escrow to which the mortgagor, trustor, or owner is a party.

(3) When the certificate of acknowledgment is acknowledged by their agent if au

(d) For the purpose of this section, it shall be deemed to be recorded if the United States Postal Service that provides the recipient, together with the recorder's office, all required fees, certificate of discharge of the property.

(e) The violation of this section shall require that the violator for purposes of this section.

(f)(1) The trustor or mortgagor, or preparator of the document, and, in addition, the opening of a new obligation set

(2) If the fee is \$65, the fee is

(g) For purposes of this section, reproduction wh

(1) The trustee, as provided in section 2934a, or subsidiary of

(2) The optical write once, read stored document

(3) The optical standards of quality of the Association

(4) Written at the time of the copy of the note image reproduction

(h) The amendments apply only to a note recorded on or after January 1, 1990.

SEC. 2. Notwithstanding any other provision of law, the State Mandate reimbursement program shall be subject to Part 7 of the Code. If the amount is less than \$1,000.00,

Italic

Italics indicate changes or additions. * * * indicate omissions.

(3) When the personal delivery is not for the purpose of causing recordation and when the certificate of discharge or full reconveyance is to be personally delivered with receipt acknowledged by the mortgagor or trustor or owner of the land, as the case may be, or their agent if authorized by mortgagor or trustor or owner of the land.

(d) *For the purposes of this section, the phrases "cause to be recorded" and "cause it to be recorded" include, but are not limited to, sending by certified mail with the United States Postal Service or by an independent courier service using its tracking service that provides documentation of receipt and delivery, including the signature of the recipient, the full reconveyance or certificate of discharge in a recordable form, together with payment for all required fees, in an envelope addressed to the county recorder's office of the county in which the deed of trust or mortgage is recorded. Within two business days from the day of receipt, if received in recordable form together with all required fees, the county recorder shall stamp and record the full reconveyance or certificate of discharge. Compliance with this subdivision shall entitle the trustee to the benefit of the presumption found in Section 641 of the Evidence Code.*

(e) The violation of this section shall make the violator liable to the person affected by the violation for all damages which that person may sustain by reason of the violation, and shall require that the violator forfeit to that person the sum of three hundred dollars (\$300). However, a trustee acting in accordance with subdivision (c) shall not be deemed a violator for purposes of this subdivision.

(f)(1) The trustee, beneficiary, or mortgagee may charge a reasonable fee to the trustor or mortgagor, or the owner of the land, as the case may be, for all services involved in the preparation, execution, and recordation of the full reconveyance, including, but not limited to, document preparation and forwarding services rendered to effect the full reconveyance, and, in addition, may collect official fees. This fee may be made payable no earlier than the opening of a bona fide escrow or no more than 60 days prior to the full satisfaction of the obligation secured by the deed of trust or mortgage.

(2) If the fee charged pursuant to this subdivision does not exceed sixty-five dollars (\$65), the fee is conclusively presumed to be reasonable.

(g) For purposes of this section, "original" may include an optically imaged reproduction when the following requirements are met:

(1) The trustee receiving the request for reconveyance and executing the reconveyance as provided in subdivision (b) is an affiliate or subsidiary of the beneficiary or an affiliate or subsidiary of the assignee of the beneficiary, respectively.

(2) The optical image storage media used to store the document shall be nonerasable write once, read many (WORM) optical image media that does not allow changes to the stored document.

(3) The optical image reproduction shall be made consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management.

(4) Written authentication identifying the optical image reproduction as an unaltered copy of the note, deed of trust, or mortgage shall be stamped or printed on the optical image reproduction.

(h) *The amendments to this section enacted at the 1999-2000 Regular Session shall apply only to a mortgage or an obligation secured by a deed of trust that is satisfied on or after January 1, 2001.*

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

*Italics indicate changes or additions. * * * indicate omissions.*

2000 No. 9 Chapters 903-1092

Legislation approved
and filed
to September 30, 2000

DISPOSITION OF NOV. 7, 2000 ELECTION

See page vii.

BALLOT MEASURES

Propositions 32, 34, 35, 36, 39, approved by the
voters at the November 7, 2000, general election

TABLES

2000 Legislation, Chapters 1-1092; March 7th, 2000
and November 7th, 2000, Propositions.

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2000 Legislation, Chapters 1-1092; March 7th, 2000
and November 7th, 2000, Propositions.

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EXHIBIT

B

GOVERNMENT CODE
SECTION 27360-27388

27360. For services performed by him, the county recorder shall charge and collect the fees fixed in this article.

27360.5. As used in this code, the word "folio" means 100 words. Each figure, character, symbol, and initial, excluding punctuation marks, shall be regarded as a word for the purpose of computing fees by a recorder.

27361. (a) The fee for recording and indexing every instrument, paper, or notice required or permitted by law to be recorded is four dollars (\$4) for recording the first page and three dollars (\$3) for each additional page, except the recorder may charge additional fees as follows:

(1) If the printing on printed forms is spaced more than nine spaces per vertical inch or more than 22 characters and spaces per line when measured horizontally for not less than 3 inches in one sentence, the recorder shall charge one dollar (\$1) extra for each page or sheet on which printing appears excepting, however, the extra charge shall not apply to printed words which are directive or explanatory in nature for completion of the form or on vital statistics forms. Fees collected under this paragraph are not subject to subdivision (b) or (c).

(2) If a page or sheet does not conform with the dimensions prescribed in subdivision (a) of Section 27361.5, the recorder shall charge three dollars (\$3) extra per page or sheet of the document. The extra charge authorized under this paragraph shall be available solely to support, maintain, improve, and provide for the full operation for modernized creation, retention, and retrieval of information in each county's system of recorded documents. Fees collected under this paragraph are not subject to subdivision (b) or (c).

(b) One dollar (\$1) of each three dollar (\$3) fee for each additional page shall be deposited in the county general fund.

(c) Notwithstanding Section 68085, one dollar (\$1) for recording the first page and one dollar (\$1) for each additional page shall be available solely to support, maintain, improve, and provide for the full operation for modernized creation, retention, and retrieval of information in each county's system of recorded documents.

27361.1. Whenever two or more instruments, papers, or notices are serially incorporated on one form or sheet, or are attached to one another, except as an exhibit marked as such, each instrument, paper, or notice shall be considered to be a separate instrument, paper, or notice for the purpose of computing the fee established by Section 27361 of this code.

27361.2. Whenever any instrument, paper, or notice is recorded which contains references to more than one previously recorded document and which requires additional indexing by the county recorder to give notice required by law, an additional fee of one

dollar (\$1) shall be charged for each reference to a previously recorded document, other than the first such reference, requiring additional indexing. References to group mining claims listed on a proof of labor shall be considered as only one reference when they are consecutively numbered or lettered alphabetically, and each break in consecutive numbers or letters shall be considered as an additional mine for fee purposes under this section and shall be so indexed in the index.

27361.3. Notwithstanding any contrary provision of the law, the fee for recording every release of lien, encumbrance, or notice executed by the state, or any municipality, county, city, district or other political subdivision shall be eight dollars (\$8) if the original lien, encumbrance, or notice was recorded without fee as provided by Section 27383 of the Government Code.

No fee shall be charged for recording a release of lien, encumbrance, or notice which was recorded in error by the state, or any municipality, county, city, district or other political subdivision if there is noted on the face of the release of lien, encumbrance, or notice a statement to that effect.

Two dollars (\$2) for recording each release of lien pursuant to this section shall be available solely to support, maintain, improve, and provide for the full operation for modernized creation, retention, and retrieval of information in each county's system of recorded documents.

27361.4. (a) The board of supervisors of any county may provide for an additional fee of one dollar (\$1) for filing every instrument, paper, or notice for record, in order to defray the cost of converting the county recorder's document storage system to micrographics. Upon completion of the conversion and payment of the costs therefor, this additional fee shall no longer be imposed.

(b) The board of supervisors of any county may provide for an additional fee, other than the fees authorized in subdivisions (a) and (c), of one dollar (\$1) for filing every instrument, paper, or notice for record provided that the resolution providing for the additional fee establishes the days of operation of the county recorder's offices as every business day except for legal holidays and those holidays designated as judicial holidays pursuant to Section 135 of the Code of Civil Procedure.

(c) The board of supervisors of any county may provide for an additional fee, other than the fees authorized in subdivisions (a) and (b), of one dollar (\$1) for filing every instrument, paper, or notice for record provided that the resolution providing for the additional fee requires that the instrument, paper, or notice be indexed within two business days after the date of recordation.

27361.5. (a) As used in Section 27361, a page shall be one printed side of a single piece of paper being 8 1/2 inches by 11 inches.

(b) A sheet shall be one printed side of a single piece of paper which is not exactly 8 1/2 inches by 11 inches but not greater than 8 1/2 inches by 14 inches.

27361.6. Except as otherwise provided by law or regulation, all

Documents submitted for recording shall have at least a 1/2-inch margin on the two vertical sides except in the space reserved for recording information. At least the top 2 1/2 inches of the first page or sheet shall be reserved for recording information. The left-hand 3 1/2 inches of the space shall be used by the public to show the name of the person requesting recording and the name and address to which the document is to be returned following recording. In the event the first page or sheet of a document does not comply with these requirements, a separate page shall be attached by the party requesting recording to the front of the document which meets these criteria and which reflects the title or titles of the document required by Section 27324. Any printed form accepted for recordation that does not comply with the foregoing shall not affect the notice otherwise imparted by recording.

All instruments, papers, or notices presented for recordation shall be on a quality of paper and contain print of a size and color which will reproduce legibly by microphotographic or imaging processes as set forth in Sections 26205.5 and 27322.2.

Any instrument, paper, or notice presented for recordation which in any way modifies, releases, or cancels the provisions of a previously recorded document shall state the recorder identification number or book and page of the document number being modified, released, or canceled.

27361.7. Whenever the text of a document presented for record may be made out but is not sufficiently legible to reproduce a readable photographic record, the recorder may require the person presenting for record to substitute a legible original document or to prepare a legible copy of the first document by handwriting or typewriting and attach the same to the original as a part of the document for making the permanent photographic record. The handwritten or typewritten legible copy shall be certified by the party creating the copy under penalty of perjury as being a true copy of the original. As used in this section, the word "text" includes the notary seal, certificates, and other appendages thereto.

27361.8. Whenever any instrument, paper, or notice is recorded which requires additional indexing by the county recorder to give notice required by law and does not refer to a previously recorded instrument by reference, as covered in Section 27361.2, an additional fee of one dollar (\$1) shall be charged for each group of 10 names or fractional portion thereof after the initial group of 10 names.

27361.9. The board of supervisors of any county may provide for an additional fee for filing every preliminary 20-day notice pursuant to paragraph (1) of subdivision (o) of Section 3097 of the Civil Code for the exclusive purpose of defraying the cost of implementing and maintaining a system to facilitate compliance with paragraph (2) of subdivision (o) of Section 3097 of the Civil Code.

27364. The fee for each certificate under seal shall be set by the board of supervisors in an amount necessary to recover the direct and indirect costs of providing the product or service or the cost of enforcing any regulation for which the fee or charge is levied.

27365. The fee for any copy of a birth, death, or marriage certificate, when the copy is made by the recorder, is the same as is payable to a state or local registrar of vital statistics.

27366. The fee for any copy of any other record or paper on file in the office of the recorder, when the copy is made by the recorder, shall be set by the board of supervisors in an amount necessary to recover the direct and indirect costs of providing the product or service or the cost of enforcing any regulation for which the fee or charge is levied.

27369. The fee for searching the records of his office for a birth, death, or marriage certificate is the same as is payable to a state or local registrar of vital statistics; in all other cases, for each year, fifty cents (\$0.50).

27371. The fee for recording each map or plat where it is copied in a book of record is ten cents (\$0.10) for each course, plus ten cents (\$0.10) a folio for letters and figures on the map or plat.

When recording is by a photographic method the fee for recording each map or plat shall be the same as provided for under Sections 27361 and 27361.5 of this code.

27372. The fee for recording or filing and indexing each map wherein land is subdivided in lots, tracts, or parcels is five dollars (\$5) for the first page and two dollars (\$2) for each additional page.

27375. The fee for taking an acknowledgment of any instrument is seventy-five cents (\$0.75).

27379. The fee for administering and certifying each oath or affirmation is fifty cents (\$0.50).

27380. The fee for filing, indexing, and keeping each paper not required by law to be recorded is three dollars (\$3).

27381. No charge or fee shall be made for recording, indexing, or issuing certified copies of any discharge, certificate of service, certificate of satisfactory service, report of separation, or notice of separation of any officer, commissioned warrant officer, warrant officer, flight officer, cadet, midshipman, noncommissioned officer, petty officer, soldier, sailor, or marine separated, released, or discharged from the Army, Navy, Marine Corps, Coast Guard of the United States, Women's Army Corps, Women's Army Auxiliary Corps, Women's Reserve of Navy, Marine Corps, or Coast Guard, or from the Army and Navy Nurse Corps.

7383. No fee shall be charged by the recorder for services rendered to the State, to any municipality, county in the State or other political subdivision thereof, except for making a copy of a paper or record.

7387. In addition to any other fee, the county recorder shall collect a fee from any lienor, other than a governmental entity, for the recordation of an abstract of judgment or other document creating an involuntary lien within the meaning of Section 27297.5 affecting title to real property. The fee shall not exceed the actual cost to the recorder of providing the notice required by Section 27297.5.

7387.1. In addition to any other recording fee, the recorder may collect a fee from the party filing a deed, quitclaim deed, or deed of trust, other than a government entity, pursuant to Section 27297.6. The fee shall not exceed the mailing cost of the notice specified in Section 27297.6, not to exceed seven dollars (\$7).

7388. (a) In addition to any other recording fees specified in this code, upon the adoption of a resolution by the county board of supervisors, a fee of up to two dollars (\$2) shall be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded within that county, except those expressly exempted from payment of recording fees. "Real estate instrument" is defined for the purpose of this section as a deed of trust, an assignment of deed of trust, a reconveyance, a request for notice, and a notice of default. "Real estate instrument" does not include any deed, instrument, or writing subject to the imposition of a documentary transfer tax as defined in Section 11911 of the Revenue and Taxation Code, nor any document required to facilitate the transfer subject to the documentary transfer tax. The fees, after deduction of any actual and necessary administrative costs incurred by the county in carrying out this provision, shall be paid quarterly to the county auditor or director of finance, to be placed in the Real Estate Fraud Prosecution Trust Fund. The amount deducted for administrative costs shall not exceed 10 percent of the fees paid pursuant to this section.

(b) Money placed in the Real Estate Fraud Prosecution Trust Fund shall be expended to fund programs to enhance the capacity of local police and prosecutors to deter, investigate, and prosecute real estate fraud crimes. After deduction of the actual and necessary administrative costs referred to in subdivision (a), 60 percent of the funds shall be distributed to district attorneys subject to review pursuant to subdivision (d), and 40 percent of the funds shall be distributed to local law enforcement agencies within the county in accordance with subdivision (c). In those counties where the investigation of real estate fraud is done exclusively by the district attorney, after deduction of the actual and necessary administrative costs referred to in subdivision (a), 100 percent of the funds shall be distributed to the district attorney, subject to review pursuant to subdivision (d). The funds so distributed shall be expended for the exclusive purpose of deterring, investigating, and prosecuting real estate fraud crimes.

(c) The county auditor or director of finance shall distribute funds in the Real Estate Fraud Prosecution Trust Fund to eligible law

enforcement agencies within the county pursuant to subdivision (b), as determined by a Real Estate Fraud Prosecution Trust Fund Committee composed of the district attorney, the county chief administrative officer, and the chief officer responsible for consumer protection within the county, each of whom may appoint representatives of their offices to serve on the committee. If a county lacks a chief officer responsible for consumer protection, the county board of supervisors may appoint an appropriate representative to serve on the committee.

The committee shall establish and publish deadlines and written procedures for local law enforcement agencies within the county to apply for the use of funds and shall review applications and make determinations by majority vote as to the award of funds using the following criteria:

(1) Each law enforcement agency that seeks funds shall submit a written application to the committee setting forth in detail the agency's proposed use of the funds.

(2) In order to qualify for receipt of funds, each law enforcement agency submitting an application shall provide written evidence that the agency either:

(A) Has a unit, division, or section devoted to the investigation or prosecution of real estate fraud, or both, and the unit, division, or section has been in existence for at least one year prior to the application date.

(B) Has on a regular basis, during the three years immediately preceding the application date, accepted for investigation or prosecution, or both, and assigned to specific persons employed by the agency, cases of suspected real estate fraud, and actively investigated and prosecuted those cases.

(3) The committee's determination to award funds to a law enforcement agency shall be based on, but not be limited to, (A) the number of real estate fraud cases filed in the prior year; (B) the number of real estate fraud cases investigated in the prior year; (C) the number of victims involved in the cases filed; and (D) the total aggregated monetary loss suffered by victims, including individuals, associations, institutions, or corporations, as a result of the real estate fraud cases filed, and those under active investigation by that law enforcement agency.

(4) Each law enforcement agency that, pursuant to this section, has been awarded funds in the previous year, upon reapplication for funds to the committee in each successive year, in addition to any information the committee may require in paragraph (3), shall be required to submit a detailed accounting of funds received and expended in the prior year. The accounting shall include (A) the amount of funds received and expended; (B) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type; (C) the number of filed complaints, investigations, arrests, and convictions that resulted from the expenditure of the funds; and (D) other relevant information the committee may reasonably require.

(d) The county board of supervisors shall annually review the effectiveness of the district attorney in deterring, investigating, and prosecuting real estate fraud crimes based upon information provided by the district attorney in an annual report submitted to the board detailing both:

(1) Facts, based upon, but not limited to, (A) the number of real estate fraud cases filed in the prior year; (B) the number of real estate fraud cases investigated in the prior year; (C) the number of victims involved in the cases filed; (D) the number of convictions obtained in the prior year; and (E) the total aggregated monetary loss suffered by victims, including individuals, associations, institutions, corporations, and other relevant public entities, according to the number of cases filed, investigations, prosecutions, and convictions obtained.

(2) An accounting of funds received and expended in the prior year, which shall include (A) the amount of funds received and expended; (B) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type; (C) the number of filed complaints, investigations, prosecutions, and convictions that resulted from the expenditure of funds; and (D) other relevant information provided at the discretion of the district attorney.

(e) The intent of the Legislature in enacting this section is to have an impact on real estate fraud involving the largest number of victims. To the extent possible, an emphasis should be placed on fraud against individuals whose residences are in danger of, or are in, foreclosure as defined under subdivision (b) of Section 1695.1 of the Civil Code. Case filing decisions continue to be in the discretion of the prosecutor.

(f) A district attorney's office or a local enforcement agency that has undertaken investigations and prosecutions that will continue into a subsequent program year may receive nonexpended funds from the previous fiscal year subsequent to the annual submission of information detailing the accounting of funds received and expended in the prior year.

(g) No money collected pursuant to this section shall be expended to offset a reduction in any other source of funds. Funds from the Estate Fraud Prosecution Trust Fund shall be used only in connection with criminal investigations or prosecutions involving recorded real estate documents.

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

PHONE: (916) 323-3562

FAX: (916) 445-0278

E-mail: csminfo@csm.ca.gov



July 9, 2003

Bonnie Ter Keurst
Office of the Auditor/Controller-Recorder
222 W. Hospitality Lane
San Bernardino, CA 92415

Mr. Keith Gmeinder
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Michael Havey
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

And: Interested Parties
(see enclosed mailing list)

Re: Notice of Complete Test Claim Filing and Schedule for Comments – *Deed of Trust
Reconveyance and Mortgage Certificate*

On June 27 2003, a test claim was filed on the above named program by the County of San Bernardino, claimant. Following initial review, the Commission staff found the test claim to be complete. The Commission is now requesting state agencies and interested parties to comment on the test claim as specified in the enclosed notice.

Please contact Nancy Patton at (916) 323-8217 if you have any questions.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosures:

Notice of Complete Test Claim Filing and Schedule for Comments
Copy of Test Claim (state agencies only)
Mailing List

MAILED:
FAXED:
DATE: 2/9/03
INITIAL: VS
FILE:
CHRON:
WORKING BINDER: 1

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Civil Code Section 2941 as amended by Statutes
2000, Chapter 1013

Filed on June 27, 2003

By the County of San Bernardino, Claimant

No. 02-TC-41

*Deed of Trust Reconveyance and
Mortgage Discharge Certificate*

NOTICE OF COMPLETE TEST CLAIM
FILING AND SCHEDULE FOR
COMMENTS (Gov. Code § 17500 et seq.;
Cal. Code Regs., Tit. 2, §§ 1183, subd.(g)
& 1183.02)

**TO: County of San Bernardino
Department of Finance
State Controller's Office
Interested Parties**

On June 27, 2003, the County of San Bernardino filed a test claim on the above-described statutes and executive orders, alleging a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. The test claim is complete. The test claim will be heard and determined by the Commission on State Mandates pursuant to article XIII B, section 6, Government Code section 17500 et seq.; and case law. The procedures for hearing and determining this claim are prescribed in the Commission's regulations, California Code of Regulations, title 2, chapter 2.5, section 1181, et seq.

COMMENT PERIOD

The key issues before the Commission are:

- Do the provisions listed above impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to section 17514 of the Government Code?
- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?
- Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

State Agency Review of Test Claim - State agencies are requested to analyze the test claim merits and to file written comments within 30 days, or no later than **August 8, 2003**. Requests for extensions of time may be filed in accordance with sections 1183.01, subdivision (c) and 1181.1, subdivision (g) of the regulations.

Claimant Rebuttal - The claimant and interested parties may file rebuttals to state agencies' comments under section 1183.03 of the regulations. The rebuttal is due 30 days from the actual service date of written comments from any state agencies.

Mailing Lists - Under section 1181.2 of the regulations, the Commission will promulgate a mailing list of parties, interested parties, and interested persons for each test claim and provide the list to those included on the list, and to anyone who requests a copy. Any written material filed with the Commission on this claim shall be simultaneously served on the other parties listed on the mailing list provided by the Commission.

Consolidating Test Claims - Pursuant to Commission regulations, the executive director may consolidate part or all of any test claim with another test claim. See sections 1183.05 and 1183.06 of the regulations.

ADDITIONAL FILINGS ON THE SAME STATUTE OR EXECUTIVE ORDER

Under section 1183, subdivision (i) of the regulations, more than one test claim on the same statute or executive order may be filed with the Commission. The test claim must be filed within 60 days of the date the first test claim was filed. Claimants may designate a single claimant within 90 days from the date the first test claim was filed. If the Commission does not receive notice from the claimants designating a lead claimant, the executive director will designate the claimant who filed the first test claim as the lead claimant.

INFORMAL/PREHEARING CONFERENCE

An informal conference or prehearing conference may be scheduled if requested by any party. See sections 1183.04 and 1187.4 of the regulations.

HEARING AND STAFF ANALYSIS

A tentative hearing date for the test claim will be set when the draft staff analysis of the claim is being prepared. At least eight weeks before a hearing is conducted, the draft staff analysis will be issued to parties, interested parties, and interested persons for comment. Comments are due at least five weeks prior to the hearing or on the date set by the Executive Director, pursuant to section 1183.07 of the regulations. Before the hearing, a final staff analysis will be issued.

Dismissal of Test Claims - Under section 1183.09 of the regulations, test claims may be dismissed when postponed or placed on inactive status by the claimant for more than one year. Before dismissing a test claim, the Commission will provide 60 days notice and opportunity for other parties to take over the claim.

Parameters and Guidelines - If the Commission determines that a reimbursable state mandate exists, the claimant is responsible for submitting proposed parameters and guidelines for reimbursing all eligible local entities. See section 1183.1 of the regulations. All interested parties and affected state agencies will be given an opportunity to comment on the claimant's proposal before consideration and adoption by the Commission.

Statewide Cost Estimate - The Commission is required to adopt a statewide cost estimate of the reimbursable state-mandated program within 12 months of receipt of a test claim. This deadline may be extended for up to six months upon the request of either the claimant or the Commission.

Dated: July 9, 2003

Paula Higashi
PAULA HIGASHI, Executive Director

Commission on State Mandates

Original List Date: 7/7/2003

Mailing Information: Completeness Determination

Last Updated:

List Print Date: 07/09/2003

Mailing List

Claim Number: 02-TC-41

Issue: Deed of Trust Reconveyance and Mortgage Discharge Certificate

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. David Wellhouse

David Wellhouse & Associates, Inc.

9175 Kiefer Blvd, Suite 121

Sacramento, CA 95826

Tel: (916) 368-9244

Fax: (916) 368-5723

Ms. Harmeet Barkschat

Mandate Resource Services

5325 Elkhorn Blvd. #307

Sacramento, CA 95842

Tel: (916) 727-1350

Fax: (916) 727-1734

Mr. Steve Smith

Mandated Cost Systems, Inc.

11130 Sun Center Drive, Suite 100

Rancho Cordova, CA 95670

Tel: (916) 669-0888

Fax: (916) 669-0889

Ms. Annette Chinn

Cost Recovery Systems

705-2 East Bidwell Street, #294

Folsom, CA 95630

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Fax: (916) 939-7801

Ms. Pam Stone

MAXMUS

4320 Auburn Blvd., Suite 2000

Sacramento, CA 95841

Tel: (916) 485-8102

Fax: (916) 485-0111

Mr. Leonard Kaye, Esq.

County of Los Angeles

Auditor-Controller's Office

500 W. Temple Street, Room 603

Los Angeles, CA 90012

Tel: (213) 974-8564

Fax: (213) 617-8106

Mr. Michael Havey

State Controller's Office (B-08)

Division of Accounting & Reporting

3301 C Street, Suite 500

Sacramento, CA 95816

Tel: (916) 445-8757

Fax: (916) 323-4807

Mr. Keith Gmeinder

Department of Finance (A-15)

915 L Street, 8th Floor

Sacramento, CA 95814

Tel: (916) 445-8913

Fax: (916) 327-0225

Ms. Bonnie Ter Keurst

County of San Bernardino

Office of the Auditor/Controller-Recorder

222 West Hospitality Lane

San Bernardino, CA 92415-0018

Claimant

Tel: (909) 386-8850

Fax: (909) 386-8830

Ms. Cindy Sconce

Centration, Inc.

12150 Tributary Point Drive, Suite 140

Gold River, CA 95670

Tel: (916) 351-1050

Fax: (916) 351-1020



DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

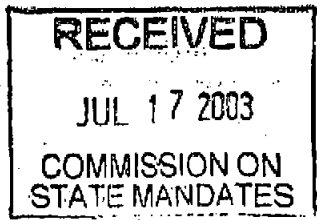
Exhibit C

GRAY DAVIS, GOVERNOR

STATE CAPITOL B ROOM 1145 B SACRAMENTO CA B 95814-4998 B WWW.DOF.CA.GOV

July 17, 2003

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



Dear Ms Higashi:

As requested in your letter of July 9, 2003, the Department of Finance has reviewed the test claim submitted by the San Bernardino County (claimant) asking the Commission to determine whether specified costs incurred under Chapter 1013, Statutes of 2000, (AB 996, Papan) are reimbursable State mandated costs (Claim No. CSM-02-TC-41 "Deed of Trust Reconveyance and Mortgage Discharge Certificate"). Commencing with page 1 of the test claim, claimant has identified the following new duties, which it asserts are reimbursable State mandates:

- County recorders must process, stamp, and record full mortgage reconveyances and certificates of discharge that are delivered via certified mail or other methods as defined, within two business days.

As the result of our review, we have concluded that the statute may have resulted in a reimbursable State mandate. If the Commission reaches the same conclusion at its next scheduled hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 16, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Matt Paulln, Principal Program Budget Analyst at (916) 322-2263 or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Connie Squires
Connie Squires
Program Budget Manager

Attachments

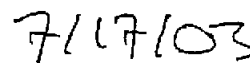
Attachment A

DECLARATION OF MATT PAULIN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-41

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that Chapter 1013, Statutes of 2000, (AB 996, Papan) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.



Matt Paulin

Sacramento, CA

PROOF OF SERVICE

Test Claim Name: Deed of Trust Reconveyance and Mortgage Discharge Certificate
Test Claim Number: CSM-02-TC-41

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On July 17, 2003, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

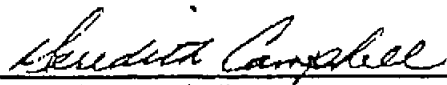
SB 90 Service
C/O David M. Griffiths & Associates
Attention: Allan Burdlok
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

County of San Bernardino
Office of Auditor / Controller / Recorder
Attention: Marcia Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415 - 0018

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 17, 2003 at Sacramento, California.


Meredith Campbell

Hearing Date: March 29, 2007
J:\MANDATES\2002\tc\02-tc-41\dsa.doc

ITEM ____
TEST CLAIM
DRAFT STAFF ANALYSIS

Civil Code Section 2941

Statutes 2000, Chapter 1013 (AB 996)

Reconveyance of Deed of Trust and Mortgage Discharge Certificate (02-TC-41)

County of San Bernardino, Claimant

EXECUTIVE SUMMARY

Background

In 2000, the Legislature passed Assembly Bill 996, amending section 2941 of the Civil Code. The amendments to Civil Code section 2941 required county recorders to process and record deed of trust reconveyances and mortgage discharge certificates within two business days from the day of receipt. Prior law imposed no specific deadline for county recorders to process and record these documents.

Claimant alleges that the test claim statute constitutes a reimbursable state-mandated program, contending that “[p]rior to the enactment of the Chapter 1013, Statutes of 2000, the county recorder was not legally required to stamp and record the full reconveyance or certificate of discharge within 2 business days from the day of receipt. Enactment of this statute has increased the duties of the county recorder, and requires the county recorder to provide a higher level of service for an existing program.”

The Department of Finance does not dispute claimant’s allegations, stating, “the statute may have resulted in a reimbursable State mandate.”

Staff finds that the test claim statute does not constitute a reimbursable state-mandated program, as it does not impose a new program or higher level of service on counties. Trust reconveyances and mortgage discharge certificates were required to be processed and recorded before the enactment of the test claim statute. Thus, the test claim statute merely imposes a deadline, and does not mandate any new activities or provide any tangible increase in the level of service to the public.

Conclusion

Staff concludes that Civil Code section 2941, as amended by Statutes 2000, chapter 1013, does not impose a new program or higher level of service on counties and, thus, does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends that the Commission adopt this analysis and deny the test claim.

STAFF ANALYSIS

Claimant

County of San Bernardino

Chronology

06/27/03 Commission receives test claim filing
07/09/03 Commission staff determines test claim is complete and requests comments
07/17/03 Department of Finance files response to test claim
01/08/07 Commission staff issues the draft staff analysis

Background

This test claim addresses the deadline at which county recorders must process and record deed of trust reconveyances (reconveyances) and mortgage discharge certificates (discharge certificates). Pursuant to Civil Code section 2941 a mortgagee (the lender) must execute a certificate of discharge and record it or cause it to be recorded in the office of the county recorder within 30 days after the mortgage has been satisfied. When a deed of trust has been satisfied the beneficiary of the trust (the lender) shall execute and deliver to the trustee the original note and any other documents necessary to reconvey the deed of trust. The trustee must then execute the full reconveyance and record or cause it to be recorded with the county recorder within 21 days of receipt of the original note, fees, and any other documents necessary for reconveyance.

Prior law required county recorders to process and record reconveyances and discharge certificates received from trustees and mortgagees, but did not impose a specific deadline to complete these tasks. Instead, Government Code section 27320 provides that "[t]he recorder shall record it without delay..."¹

The test claim legislation, Statutes 2000, chapter 1013 (AB 996), made various amendments to Civil Code section 2941 affecting mortgagees and deed of trust beneficiaries.² However, in regard to the claimant, the test claim legislation requires county recorders to process and record reconveyances and discharge certificates within two business days from the day of receipt. Specifically, Civil Code section 2941, subdivision (c), (formerly codified in subdivision (d)) states in relevant part:

Within two business days from the day of receipt, if received in recordable form together with all required fees, the county recorder shall stamp and record the full reconveyance or certificate of discharge.

¹ Prior to the enactment of the test claim statute the Civil Code did not address the specific duties of county recorders, instead the Civil Code referenced the Government Code.

² Civil Code section 2941, subdivision (d) as amended in Statutes 2000, chapter 1013 defined "cause to be recorded" and "cause it to be recorded" as pertaining to Civil Code section 2941 and provided trustees the benefit of specific evidentiary presumptions.

Claimant's Position

Claimant, County of San Bernardino, contends that the test claim legislation constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The claimant asserts the test claim statute mandates a new program or higher level of service, stating:

Prior to the enactment of the Chapter 1013, Statutes of 2000, the county recorder was not legally required to stamp and record the full reconveyance or certificate of discharge within 2 business days from the day of receipt. Enactment of this statute has increased the duties of the county recorder, and requires the county recorder to provide a higher level of service for an existing program.³

Additionally, claimant argues that the test claim statute "clearly meets both tests that the [California] Supreme Court created in the [*sic*] *County of Los Angeles v. State of California* (1987) for determining what constitutes a reimbursable state mandated local program."⁴

The claimant further states that meeting the new requirement of Civil Code section 2941, as amended by the test claim statute, required increased costs associated with the following activities:

- receiving and processing incoming certified mail;
- document examination;
- outbound mail processing;
- policy and procedure development;
- training and monitoring.

Department of Finance's Position

The Department of Finance filed comments dated July 17, 2003 addressing claimant's test claim allegations. The Department of Finance does not dispute claimant's position, stating, "the statute may have resulted in a reimbursable State mandate."

Discussion

The courts have found that article XIII B, section 6 of the California Constitution⁵ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁶ "Its

³ Test Claim, page 2.

⁴ Test Claim, page 5. Staff notes that the test as set forth in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, does *not* determine what constitutes a *reimbursable* state-mandated program. Rather, the test is used to determine whether test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution. To determine whether a "program" is a *reimbursable* program it is necessary to determine if the "program" is a new program or higher level of service mandated on counties within the meaning of article XIII B, section 6 of the California Constitution.

⁵ Article XIII B, section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a

purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."⁷ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁸ In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.⁹

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.¹⁰ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.¹¹ A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."¹²

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹³

subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

⁶ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁷ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁸ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

¹⁰ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874; (reaffirming the test set out in *County of Los Angeles v. State of California, supra*, 43 Cal.3d 46, 56; *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

¹¹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

¹² *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

¹³ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁴ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."¹⁵

Issue 1: Does the test claim statute mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution?

The courts have held that legislation mandates a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution when: (a) the requirements are new in comparison with the pre-existing scheme and the requirements were intended to provide an enhanced service to the public,¹⁶ or (b) the state has shifted fiscal responsibility for a program from the state to a local agency.¹⁷

Are the Test Claim Requirements New in Comparison With the Pre-existing Scheme and Intended to Provide an Enhanced Service to the Public?

To make this determination, the test claim statute must initially be compared with the legal requirements in effect immediately prior to its enactment.¹⁸

Prior to the enactment of the test claim statute, the Civil Code did not address the specific duties of county recorders. Rather, Civil Code section 1172 provides, "The duties of county recorders, in respect to recording instruments, are prescribed by the Government Code."

Government Code section 27320, as pertaining to county recorders' duties regarding recording instruments such as reconveyances and discharge certificates, provides in relevant part:

When any instrument authorized by law to be recorded is deposited in the recorder's office for record, the recorder shall endorse upon it in the order in which it is deposited, the year, month, day, hour, and minute of its reception, and the amount of fees for recording. The recorder shall record it without delay...¹⁹

After the enactment of the test claim statute, Civil Code section 2941 provided in relevant part:

¹⁴ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁵ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁶ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

¹⁷ *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

¹⁸ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

¹⁹ Government Code section 27320 (added by Stats. 1947, ch. 424, § 1) as amended by Statutes 1982, chapter 843, section 5.

Within two business days from the day of receipt, if received in recordable form together with all required fees, the county recorder shall stamp and record the full reconveyance or certificate of discharge.

The only change the test claim statute made pertaining to the duties of county recorders is the imposition of a two business day deadline to record reconveyances and discharge certificates. While the imposition of a deadline for county recorders is new to Civil Code section 2941, the activities of processing and recording trust reconveyances and mortgage discharge certificates are not new activities. As shown by the language of Government Code section 27320, county recorders' offices have been required to perform these activities prior to the passage and enactment of the test claim statute.

Claimant contends that the imposition of a compressed timeline has increased the costs and duties of the county recorder, and thus enhanced service to the public. However, the mere shortening of time in which county recorders must process and record trust reconveyances and mortgage discharge certificates does not change the level of service related to those activities. In discussing its decision in the 1987 *County of Los Angeles* case, the California Supreme Court stated, "[t]he law increased the cost of employing public servants, but it did not in any tangible manner increase the level of service provided by those employees to the public."²⁰ Similarly, imposing a deadline may have increased costs of recording certain documents as argued by claimant, but it has not provided any tangible increase in the level of service to the public, as the documents would have been required to be processed and recorded with or without the test claim statute.

Has the State Shifted Fiscal Responsibility to a Local Agency?

A test claim statute can constitute a new program or higher level of service if the state has transferred from the state to counties complete or partial financial responsibility for a required program for which the state previously had complete or partial financial responsibility.²¹

In this case, there has not been a shift in financial responsibility for a program from the state to the counties. The costs attributed to processing and recording trust reconveyances and mortgage discharge certificates have historically been borne by counties.²² Here, the test claim statute merely sets a deadline for processing and recording these documents. Thus, the test claim statute has not shifted financial responsibility for a program from the state to the counties.

For the reasons stated above, staff finds that the test claim statute does not mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution.

²⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 875.

²¹ California Constitution, article XIII B, section 6, subdivision (c). The court in *County of Los Angeles* further states, "an increase in costs does not result in a reimbursement requirement... [r]ather the state must be attempting to divest itself of its responsibility to provide fiscal support for a program..." *County of Los Angeles 2003*, *supra*, 110 Cal.App.4th 1176, 1194.

²² Government Code section 27360 (added by Stats. 1947, ch. 424, § 1) provides "For services performed by him, the county recorder shall charge and collect the fees fixed in this article."

CONCLUSION

Staff concludes that Civil Code section 2941, as amended by Statutes 2000, chapter 1013, does not mandate a new program or higher level of service on counties and, thus, does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Staff Recommendation

Staff recommends that the Commission adopt this analysis and deny the test claim.

Westlaw

Page 1

West's Ann.Cal.Civ.Code § 1172

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Civil Code (Refs & Annos)

Division 2. Property (Refs & Annos)

Part 4. Acquisition of Property

Title 4. Transfer

☐ Chapter 4. Recording Transfers

☐ Article 2. Mode of Recording (Refs & Annos)

- § 1172. Recorder; duties

The duties of county recorders, in respect to recording instruments, are prescribed by the Government Code.

CREDIT(S)

(Enacted 1872. Amended by Stats.1959, c. 593, p. 2564, § 1.)

HISTORICAL AND STATUTORY NOTES

1982 Main Volume

The 1959 amendment changed "Political Code" to "Government Code".

CROSS REFERENCES

Books, acquisition and custody by recorders, see Government Code §§ 27230, 27231.

Duties of recorder, see Government Code § 27201 et seq.

Microphotography of records, see Government Code § 27322.2.

RESEARCH REFERENCES

Encyclopedias

Cal. Civ. Prac. Real Property Litigation § 19:4, Defenses to Forcible Entry or Forcible Detainer.

NOTES OF DECISIONS

Electronic recordation I

1. Electronic recordation

County recorders are not permitted to implement electronic recordation of documents in their respective

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West's Ann. Cal. Civ. Code § 1172

jurisdictions other than in Orange and San Bernardino Counties. Op. Atty. Gen. No. 02-112 (September 4, 2002).

West's Ann. Cal. Civ. Code § 1172, CA CIVIL § 1172

Current with all 2006 laws and all propositions appearing on the Nov. 7, 2006 ballot.

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END OF DOCUMENT

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Westlaw.

Page 1

West's Ann.Cal.Gov.Code § 27320

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness
 Government Code (Refs & Annos)
 Title 3. Government of Counties (Refs & Annos)
 Division 2. Officers (Refs & Annos)
 Part 3. Other Officers (Refs & Annos)
 ¶ Chapter 6. Recorder (Refs & Annos)
 ¶ Article 4. Recording (Refs & Annos)

→ § 27320. Manner of recording

When any instrument authorized by law to be recorded is deposited in the recorder's office for record, the recorder shall endorse upon it in the order in which it is deposited, the year, month, day, hour, and minute of its reception, and the amount of fees for recording. The recorder shall record it without delay, together with the acknowledgments, proofs, certificates, and prior recording data written upon or annexed to it, with the plats, surveys, schedules, and other papers thereto annexed, and shall note on the record its identification number, and the name of the person at whose request it is recorded. Efforts shall be made to assign identification numbers sequentially, but an assignment of a nonsequential number may be made if not in violation of express recording instructions regarding a group of concurrently recorded instruments and if, in the discretion of the county recorder, such assignment best serves the interest of expeditious recording.

CREDIT(S)

(Added by Stats.1947, c. 424, p. 1162, § 1. Amended by Stats.1949, c. 263, § 1; Stats.1957, c. 869, p. 2082, § 2; Stats.1963, c. 23, p. 631, § 1; Stats.1982, c. 843, p. 3177, § 5.)

HISTORICAL AND STATUTORY NOTES

1988 Main Volume

The 1949 amendment deleted a provision that the instruments be recorded in the order in which they are received for record and substituted the provision for noting certain matters on the record for a provision for noting such matters at the foot of the record.

The 1957 amendment deleted the words "together with a notation by the comparer that the record has been compared" from the end of the second sentence.

The 1963 amendment, in the second sentence, inserted the words "and prior recording data."

The 1982 amendment deleted from the first sentence the words "the proper filing number" which formerly followed the words "shall endorse upon it"; substituted at the beginning of the second sentence "The recorder" for "He" and in the same sentence, changed "filing number" to "identification number" and deleted "the exact time of its reception" which formerly preceded "and the name of the person"; and added the third sentence.

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West's Ann.Cal.Gov.Code § 27320

Derivation: Pol.C. § 4137, added Stats.1907, c. 282, p. 395, § 1, amended Stats.1921, c. 203, p. 223, § 1.

CROSS REFERENCES

Acknowledgment of execution of instrument, see Government Code § 27287.

Documents to be recorded, see Government Code § 27280 et seq.

Record of survey, filing with county recorder, see Business and Professions Code § 8762.

Works of improvement, duties of county recorder, see Civil Code § 3258.

LIBRARY REFERENCES

1988 Main Volume

Records 6.

C.J.S. Records § 9 et seq.

McKinney's Cal Dig Records §§ 15, 16.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Family Law § 47, Endorsement and Return of Marriage License.

CA Jur. 3d Family Law § 1406, Recording Procedures.

CA Jur. 3d Records and Recording Laws § 55, Generally; Time.

CA Jur. 3d Records and Recording Laws § 66, Endorsements by Recorder.

CA Jur. 3d Records and Recording Laws § 67, Manner of Transcription.

Treatises and Practice Aids

Miller and Starr California Real Estate § 11:16, Identification.

Miller and Starr California Real Estate § 11:17, Reproduction.

Miller and Starr California Real Estate § 11:19, Recorder's Liability for Erroneous Recording or Indexing.

Miller and Starr California Real Estate § 11:21, When Recording is Complete -- for Constructive Notice.

2 Witkin Cal. Crim. L. 3d Crimes Against Gov't Auth. § 156, Unlawful Recording of Document.

12 Witkin, California Summary 10th Real Property § 319, General Requirements.

NOTES OF DECISIONS

Additional information 1

Endorsement of deposit time 2

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West's Ann. Cal. Gov. Code § 27320

1. Additional information

Party executing deed of trust may instruct recorder not to record conditions and reservations referred to in deed of trust, annexed thereto, and appearing on reverse side thereon, but, if instrument is otherwise entitled to be recorded, it should be accepted for recordation. 13 Op. Atty. Gen. 185.

2. Endorsement of deposit time

The indorsement on an instrument of the fact and time of deposit in the recorder's office for filing is not essential to the filing thereof, and does not affect it. *Edwards v. Grand* (1898) 121 Cal. 254, 53 P. 796. Records ↩ 7

West's Ann. Cal. Gov. Code § 27320, CA GOVT § 27320

Current with all 2006 laws and all propositions appearing on the Nov. 7, 2006 ballot.

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END OF DOCUMENT

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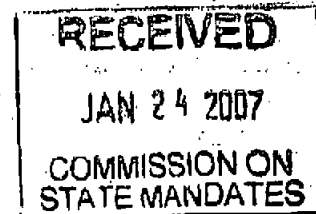
DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

January 22, 2007

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



Dear Ms. Higashi:

As requested in your letter of January 8, 2007, the Department of Finance has reviewed the draft staff analysis of Claim No. 02-TC-41 "Deed of Trust Reconveyance and Mortgage Certificate".

Finance agrees with the Commission staff's recommendation to deny the test claim. The test claim statute does not mandate a new program or higher level of service on county recorders within the meaning of Article XIII B, Section 6 of the California Constitution, as determined by the courts. Processing and recording trust reconveyances and mortgage discharge certificates were required activities pursuant to Government Code section 27320 prior to Chapter 1013, Statutes of 2000, which amended Civil Code section 2941.

The Chapter 1013 amendments only required that these activities be completed within two business days. Finance agrees with Commission staff that while this may have resulted in higher costs for the county recorders to comply with the new deadlines, the courts have consistently held that increases in the cost of an existing program are not subject to reimbursement as state-mandated programs when there is no increase in the level of service provided to the public.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your January 8, 2007 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Thomas E. Dithridge
Program Budget Manager

Attachments

Attachment A

DECLARATION OF CARLA CASTAÑEDA
DEPARTMENT OF FINANCE
CLAIM NO. 02-TC-41

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter 1013, Statutes of 2000, sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

January 22, 2007

at Sacramento, CA

Carla Castañeda

Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Deed of Trust Reconveyance and Mortgage Certificate
Test Claim Number: 02-TC-41

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On January 22, 2007, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

County of San Bernardino
Office of Auditor / Controller / Recorder
Attention: Marcia Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415 - 0018

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

B-08
Mr. Jim Spano
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

A-15
Donna Ferebee
Department of Finance
915 L Street, Suite 1280
Sacramento, CA 95814

Ms. Bonnie Ter Keurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernadino, CA 92415-0018

A-15
Carla Castaneda
Department of Finance
915 L Street, Suite 1280
Sacramento, CA 95814

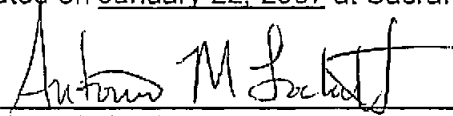
B-08
Ms. Ginny Brummels
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

A-15
Ms. Susan Geanacou
Department of Finance
915 L Street, Suite 1280
Sacramento, CA 95814

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P O Box 1768
Newport Beach, CA 92659-1768

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Blvd., Suite 106
Roseville, CA 95661

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 22, 2007 at Sacramento, California.



Antonio Lockett

ICC: DITHRIDGE, LYNN, FEREBEE, GEANACOU, CASTANEDA, MCGINN, FILE
I:\MANDATES\deed of trust reconveyance and morgage\deed of trust draft staff
analysisresponse.doc

EXHIBIT F

COUNTY OF SAN BERNARDINO
AUDITOR/CONTROLLER-RECORDER

FEB 09 2007

COMMISSION ON
STATE MANDATES

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Paula Higashi, Executive Director	Debbie Pittenger/Wendy Sulzmann (909) 386-8821 On behalf of Bonnie Ter Keurst Manager, Reimbursable Projects Section

COMPANY:	DATE:
Commission on State Mandates	2/9/07

FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
916-445-0278	18

PHONE NUMBER:	SENDER'S REFERENCE NUMBER:

RE:	YOUR REFERENCE NUMBER:
Response to Draft Staff Analysis Deed of Trust Reconveyance and Mortgage Certificate (02-TC-41)	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

222 W. HOSPITALITY LANE, SAN BERNARDINO, CA 92415-0018
FAX: (909) 386-8830

AUDITOR/CONTROLLER-RECORDER COUNTY CLERK



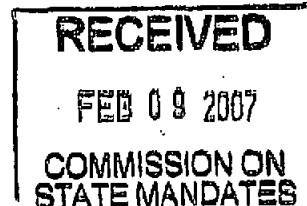
COUNTY OF SAN BERNARDINO

AUDITOR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830
RECORDER • COUNTY CLERK • 222 West Hospitality Lane, First Floor
San Bernardino, CA 92415-0022 • (909) 387-8306 • Fax (909) 386-8940

LARRY WALKER
Auditor/Controller-Recorder
County Clerk

ELIZABETH A. STARBUCK
Assistant Auditor/Controller-Recorder
Assistant County Clerk

February 9, 2007



Ms. Paula Higashi
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Response to Draft Staff Analysis
Deed of Trust Reconveyance and Mortgage Certificate (02-TC-41)
Civil Code Section 2941
Statutes 2000, Chapter 1013 (AB 996)
County of San Bernardino, Claimant

Dear Ms. Higashi:

The conclusion, as stated in the draft staff analysis for the above named claim is that Civil Code section 2941, as amended by Statutes 2000, chapter 1013, does not impose a new program or higher level of service on counties and, thus, does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

For purposes of my rebuttal, I would like to clarify points made in the analysis.

- In Issue 1, page 6, there is reference made to a "new program or higher level of service" exists when: (a) the requirements are new in comparison with the pre-existing scheme *and* the requirements were intended to provide an enhanced service to the public, or.....For this discussion, I am assuming that to be an oversight. My remarks will assume as stated on page 5 that the required activity or task must be new, constituting a "new program," *or* it must create a "higher level of service" over the previously required level of service. (Italics added).
- The staff has touched on the activities of the referenced legislation as not being a "new" program. We concur with that finding. The test claim as submitted is based on a finding of "higher level of service."
- The analysis also does not find a shift in financial responsibility from the state to the county. Again, this is not an element of the test claim. We concur with the staff comments.

We disagree with the conclusion that Statutes 2000, chapter 1013 does not mandate a higher level of service. October 4, 2006, the Commission on State Mandates heard Test Claim "Fifteen Day Close of Voter Registration." There was discussion in that hearing concerning "higher level of service." Staff counsel remarks included:

"There aren't too many higher-level-of-service cases that have been decided by the courts. One of them, though, is Long Beach Unified School District v. The State of California. And that case was a higher level of service regarding racial desegregation, where you had existing federal law, and the state came and required additional requirements imposed. And the court said that was a higher level of service. In the process, to find a higher level of service is requiring a finding that the State is mandating new requirements on the local agencies and school districts."

As referenced in the staff analysis for the Civil Code Section 2941 claim, prior to the enactment of the test claim statute, the Civil Code did not address the specific duties of County Recorders. The Government Code section 27320 provides for recordation without delay. There was no specified timeframe.

The County Recorder's responsibility was and is to process and record reconveyances and certificates of discharge. This is not a new responsibility. However, the state, in enacting this legislation did mandate new requirements on the local agencies. The County Recorders now were required to process these documents within a two-day time frame. This meant specialized document handling and implementation of new procedures to assure compliance with the time frame. Long Beach Unified School District v. State of California found that a higher level of service was mandated when general law on an existing program is changed to require specific performance. In this test claim, the specific performance is a two-day window.

The staff analysis also states (page 7) "imposing a deadline may have increased costs of recording certain documents as argued by claimant, but it has not provided any tangible increase in the level of service to the public....." Again, I would disagree. In the bill analysis I would point to comments made by the bill sponsor, proponents and opposition as cited below:

Bank of America, the sponsor of the bill, maintains that although it complies well in advance of the 21 day requirement to send reconveyance documents to county recorders, it faces lawsuits when reconveyances take longer than required by law. The bank contends that the problem is not caused by its negligence, but by counties like Los Angeles and San Francisco that have a history of not recording within the mandated time frame.

Proponents cite a brief of amici curiae filed with the Court of Appeal (4th District, Division 2) that states "many county recorders offices lack the budget and staff to process on the day of receipt all the instruments deposited for record. In several counties, including Los Angeles, weeks, even months, may transpire between the

recorder's receipt of a reconveyance in the mail and the recorder's processing the reconveyance and affixing a date-and-time stamp to it.

Opponents contend that the failure of lenders and trustees to timely record reconveyances is widespread, as is evident by the more than thirty class action lawsuits filed by property owners against lenders in the past five years.....However, they believe that this bill would be contrary *to the objective of protecting property owners by assuring the timely recording of reconveyances*, and instead would move California in the opposite direction. (Italics added)

Based on these comments it seems clear that there was a "service" problem. Decreasing instances of legal action for industry and protecting property owners are worthy goals. They are a higher level of service. This legislation was intended to alleviate the issues and provide for a smooth and timely transfer of ownership.

Thank you for your consideration of this matter.

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 9th day of February, 2007, at San Bernardino, California, by:



Bonnie Ter Keurst

Reimbursable Projects Manager

Office of the Auditor/Controller-Recorder

222 W. Hospitality Lane, 4th Floor

San Bernardino, CA 92415-0018

Phone: (909) 386-8850

Fax: (909) 386-8830

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COMMISSION ON STATE MANDATES

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STATE MANDATES

TIME: 1:30 p.m.

DATE: Wednesday, October 4, 2006

PLACE: State Capitol, Room 126
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported by: Daniel P. Feldhaus
California Certified Shorthand Reporter #6949
Registered Diplomat Reporter, Certified Realtime Reporter

Daniel P. Feldhaus, C.S.R., Inc.

Certified Shorthand Reporters

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FeldhausDepo@aol.com

Commission on State Mandates - October 4, 2006A P P E A R A N C E SCOMMISSIONERS PRESENT

VINCENT P. BROWN
(Commission Chair)
Representative for MICHAEL GENEST Director
Department of Finance

PAUL GLAAB
City Council Member
City of Laguna Niguel

FRANCISCO LUJANO
Representative for PHILIP ANGELIDES
State Treasurer

SEAN WALSH
Director
State Office of Planning and Research

AMY HAIR
Representative for STEVE WESTLY
State Controller

J. STEVEN WORTHLEY
Supervisor and Chairman of the Board
County of Tulare

--o0o--

Commission on State Mandates - October 4, 2006

1 might be.

2 From my standpoint, if there's not adequate
3 documentation that the actual registrations have
4 increased, I find it very difficult, notwithstanding the
5 shift in time periods, that the workload is the same and
6 has not increased.

7 MS. SEILER: I think it's the method of the
8 workload that we're trying to point out to you. That is,
9 that due to the method of having to put this at a
10 completely different cycle, with different staff, with
11 additional staff, that it has been an increased cost for
12 us.

13 MS. SHELTON: IF I can, just to add a couple
14 of things from case law. There aren't too many
15 higher-level-of-service cases that have been decided by
16 the courts. One of them, though, is Long Beach Unified
17 School District v. The State of California. And that
18 case was a higher level of service regarding racial
19 desegregation, where you had existing federal law, and
20 the state came and required additional requirements
21 imposed. And the court said that was a higher level of
22 service.

23 In the process, to find a higher level of
24 service is requiring a finding that the State is
25 mandating new requirements on the local agencies and

Commission on State Mandates - October 4, 2006

1 school districts.

2 Here, if you just take a look at the
3 legislation, I think there is an example on page 8, all
4 the Legislature did was change the number "29" to the
5 number "15." The Legislature did not change any of the
6 mandated activities.

7 The activities that are performed by the
8 counties, are activities they've decided to perform or
9 felt necessary to perform in order to comply with the
10 legislation.

11 And, yes, I'm sure there are increased costs.
12 But those activities have not been expressly mandated by
13 the state which is required for a reimbursement finding.

14 MEMBER WORTHLEY: Well, time is money. I mean,
15 that's a very -- that's axiomatic. We're requiring
16 additional time. It requires additional money.

17 Even if there was a representation made by the increase
18 in Orange County today. Even if you only had a few
19 people come in, it still affects the sequencing of
20 events. You still have to have people available to
21 receive and process these applications, if it was only
22 ten.

23 The point is, before, you had a point in time
24 where you could say, "This is when it ends." And as was
25 stated before -- and I've seen this happen in our own

CA Codes (gov:27320-27337)

Page 1 of 1

GOVERNMENT CODE
SECTION 27320-27337

27320. When any instrument authorized by law to be recorded is deposited in the recorder's office for record, the recorder shall endorse upon it in the order in which it is deposited; the year, month, day, hour, and minute of its reception, and the amount of fees for recording. The recorder shall record it without delay, together with the acknowledgements, proofs, certificates, and prior recording data written upon or annexed to it, with the plats, surveys, schedules, and other papers thereto annexed, and shall note on the record its identification number, and the name of the person at whose request it is recorded. Efforts shall be made to assign identification numbers sequentially, but an assignment of a nonsequential number may be made if not in violation of express recording instructions regarding a group of concurrently recorded instruments and if, in the discretion of the county recorder, such assignment best serves the interest of expeditious recording.

SENATE RULES COMMITTEE	AB 996
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614	Fax: (916)
327-4478	

THIRD READING

Bill No: AB 996
 Author: Papan (D), et al
 Amended: 8/18/00 in Senate
 Vote: 21

SENATE FINANCE, INV. & INT. TR. COMMITTEE : 8-0, 6/14/00
 AYES: Costa, Johannessen, Johnson, Karmette, Murray,
 Polanco, Solis, Leslie

SENATE JUDICIARY COMMITTEE : 9-0, 8/8/00
 AYES: Burton, Escutia, Haynes, Morrow, O'Connell, Peace,
 Sher, Wright, Schiff

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : Not relevant

SUBJECT : Mortgages and deeds of trust

SOURCE : Bank of America

DIGEST : This bill clarifies the authority for depositing in the U.S. mail information related to mortgage reconveyance. The bill provides that after a mortgage or an obligation secured by any deed of trust has been satisfied, a lender's and trustee's obligation to "cause to be recorded" a certificate of discharge within 30 days, or a full reconveyance of the deed of trust to the borrower within 21 days, shall be deemed satisfied by mailing the documents in a recordable form, together with payment of all required fees, to the county recorder's office. The

CONTINUED

AB 996

Page

AB 996 Assembly Bill - Bill Analysis

maintain a proof of service, which if properly executed and admissible, would create a presumption affecting the burden of producing evidence that the documents were received by the county recorder's office.

ANALYSIS : Existing law:

Within 30 days after a mortgage has been paid, the mortgagee (a bank, savings association, etc.) "shall execute a certificate of the discharge" (a reference that the mortgage has been paid) and "shall record or cause to be recorded? in the office of the county recorder in which the mortgage is recorded." (Civil Code Section 2941(a).)

When the mortgage has been paid, the beneficiary "shall execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey..." (Section 2941(b)(1).)

In addition, the trustee must "execute the full reconveyance and shall record or cause it to be recorded? in the office of the county recorder in which the deed of trust is recorded within 21 calendar days after receipt by the trustee of the original note, deed of trust, request for a full reconveyance? and other documents? necessary to reconvey, or cause to be reconveyed, the deed of trust." (Section 2941(b)(1)(A).)

Violating the requirements of this section "shall make the violator liable to the person affected? for all damages which that person may sustain by reason of the violation" plus \$300. (Section 2941(a).) And finally, the trustee, beneficiary, or mortgagee may charge a reasonable fee for its services involving the reconveyance. (Note: \$65 is considered reasonable.)

This bill would provide that for purposes of Section 2941 dealing with certificates of discharge and reconveyances, the phrases "cause to be recorded" and "cause it to be recorded" include, but are not limited to, depositing in the United States mail the full reconveyance or certificate of discharge in a recordable form, together with payment

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for all required fees, in an envelope addressed to the county recorder's office of the county in which the deed of trust or mortgage is recorded, with first-class postage prepaid. A mortgagee, or his or her designee, or a trustee, or his or her designee, would be required to prepare a proof of service pursuant to Section 1013a of the Code of Civil Procedure for a certificate of discharge or a reconveyance delivered to the county recorder by United States mail. The proof of service may be in written or electronic form and would be required to be maintained by

the mortgagee or the trustee, and may be stored on an optical image storage media that does not allow changes to the stored document.

This bill also would provide that compliance with the foregoing provision would entitle the mortgagee or trustee to the benefit of the presumption found in Sections 641 of the Evidence Code, which states that a letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail.

This bill also would provide that the amendments to this section enacted at the 1999-2000 Regular Session would apply only to a mortgage or an obligation secured by a deed of trust that is satisfied on and after January 1, 2001.

Comments

Bank of America, the sponsor of the bill, maintains that although it complies well in advance of the 21 day requirement to send reconveyance documents to county recorders, it faces lawsuits when reconveyances take longer than required by law. The bank contends that the problem is not caused by its negligence, but by counties like Los Angeles and San Francisco that have a history of not recording within the mandated time frame.

Proponents cite a brief of amici curiae filed with the Court of Appeal (4th District, Division 2) that states "many county recorder offices lack the budget and staff to process on the day of receipt all the instruments deposited for record. In several counties, including Los Angeles, weeks, even months, may transpire between the recorder's receipt of a reconveyance in the mail and the recorder's

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processing the reconveyance and affixing a date-and-time stamp to it."

Opposition argues that this bill would hurt California homeowners and only help large mortgage lenders and banks

The opposition argues that this bill would inappropriately alleviate a lender's obligation to assure that a certificate of discharge or a full reconveyance has been actually recorded with the county recorder's office by the 30th and 21st days, respectively. Instead, the lender would be able to satisfy these strict statutory deadlines by merely placing the documents in the mail, regardless of when the documents are actually recorded. The lender would be able to use the mail, even when it knows that mailing the reconveyance could delay the recording by weeks to months. The opposition argues that this bill would hurt California homeowners and only help large mortgage lenders and banks by unnecessarily reducing their obligations.

The opponents argue that the sponsor's stated explanation for the bill, that it is not their fault but rather the county recorder's delay, has been flatly rejected by the courts. The opponents state that the court in the class action suit against Bank of America rejected this argument, noting that when the lenders want to record a document that benefits their interest (i.e., the deed of trust securing the loan), the lenders have no problem recording those documents without delay, even if it requires using a messenger. Apparently, documents delivered by messenger to the county recorder's office are recorded the same day, while documents mailed can take weeks to months in larger counties. Thus, the opponents argue that it is disingenuous for the sponsors and supporters of this bill to contend that as to recording the reconveyances, which is no harder to record than a deed of trust, they are at the mercy of the county recorder's office. In addition, the opponents contend that the lenders' failure to timely record the reconveyances, even if it requires a messenger, is particularly offensive considering fees of sixty-five dollars (\$65), on top of all other fees, are often charged by the lenders for the reconveyance.

Opponents contend that the failure of lenders and trustees to timely record reconveyances is widespread, as is evident

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by the more than thirty class action lawsuits filed by property owners against lenders in the past five years. This widespread problem exists, despite the reforms to the system that were enacted by the Legislature in 1989 to alleviate these exact problems. Opponents argue that the existing statutory deadlines, class action litigation, and the penalties that lenders face, are slowly improving the system. However, they believe that this bill would be contrary to the objective of protecting property owners by assuring the timely recording of reconveyances, and instead would move California in the opposite direction.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: Yes

SUPPORT : (Verified 8/8/00)

Bank of America (source)
American General Finance, Inc.
The California Bankers Association
The California Mortgage Bankers Association

OPPOSITION : (Verified 8/8/00)

Foley and Berzek (law firm representing consumers in class action litigation)
Title Recon Tracking

NC:sl 8/22/00 Senate Floor Analyses

SUPPORT/OPPPOSITION: SEE ABOVE

**** END ****

Commission on State Mandates

Original List Date:	7/7/2003	Mailing Information: Draft Staff Analysis
Last Updated:	7/19/2006	
List Print Date:	01/08/2007	Mailing List
Claim Number:	02-TC-41	
Issue:	Deed of Trust Reconveyance and Mortgage Discharge Certificate	

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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COUNTY CLERK**

COUNTY OF SAN BERNARDINO

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LARRY WALKER
Auditor/Controller-Recorder
County Clerk

ELIZABETH A. STARBUCK
Assistant Auditor/Controller-Recorder
Assistant County Clerk

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed by the County of San Bernardino, State of California. My business address is 222 W. Hospitality Lane, San Bernardino, CA 92415. I am 18 years of age or older.

On February 9, 2007, I faxed and mailed the letter dated February 9, 2007 to the Commission on State Mandates, Request for Response to Draft Staff Analysis, Deed of Trust Reconveyance and Mortgage Certificate (02-TC-41), and I mailed it also to the other parties listed on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 9, 2007 at San Bernardino, California.


DEBORAH L. PITTENGER

