

Int 3724 misc  
P-4705

The Association of the Bar  
of the City of New York  
42 West 44th Street

S. Int. \_\_\_\_\_ S. Pr. \_\_\_\_\_  
A. Int. \_\_\_\_\_ A. Pr. \_\_\_\_\_

January 4, 1960.

MEMORANDUM  
SUPPORTING PROPOSED AMENDMENTS TO THE  
REDEVELOPMENT COMPANIES LAW (SECTIONS  
3403, 3404, 3408 and 3412 OF THE UN-  
CONSOLIDATED LAWS).

The proposed amendments to the above captioned statutes deal with Title I and middle-income housing.

The promotion and sponsorship of middle-income housing, whether in conjunction with a Title I slum clearance program or on low-cost land, usually involves employment of the provisions of the so-called middle-income subsidy statutes. The two vehicles most commonly used for this purpose are the Redevelopment Companies Law and the Limited-Profit Housing Companies Law. The former provides for partial tax exemption, and the latter provides, in addition to partial tax exemption, for primary financing by the State on the basis of lower interest and amortization rates than are obtainable under FHA financing or conventional financing.

The employment of the techniques for creating middle-income housing through the use of the statutes is increasing at a rapid rate. In the course of handling projects under these statutes, attorneys in the field have found a number of technical deficiencies in the manner in which these statutes are written, which require correction. Some of these have led to litigation and others, if not rectified, represent a potential source of contention. Accordingly, those on the Real Property Law Committee of the Association who specialize in the field of housing assembled the technical changes required to help effectuate the concept of these statutes.

The Redevelopment Companies Law was enacted in 1941 and was originally conceived for the purpose of permitting insurance companies to build, own and operate middle-income housing. It was subsequently amended to broaden its scope to permit other than insurance companies to engage in the development of such housing. Some of the sections in the law, however, remained anachronistic and consequently unsuitable to the broadened scope of the statute. The Limited-Profit Housing Companies Law, however, was enacted in 1955, and was written specifically for the purpose which it is currently serving.

In all instances, the proposed amendments to the Redevelopment Companies Law merely conform the provisions of that law to the existing provisions of the Limited-Profit Housing Companies Law...where appropriate to the more workable provisions of the said Limited-Profit Housing Companies Law.

### SECTION 3403

The broadening of the definition of real property in this proposed amendment would make the provisions of the Redevelopment Companies Law comport with the provisions of the Limited-Profit Housing Companies Law insofar as the scope of the term "real property" is concerned.

### SECTIONS 3404 & 3408

The proposed amendment would make the provisions of the Redevelopment Companies Law under Sections 3404 and 3408 correspond with the provisions of the Limited-Profit Housing Companies Law insofar as the limited return on investment is concerned. The formula presently contained in the Redevelopment Companies Law predicated the six percent return on total actual final cost of the project in view of the interest and amortization rates currently prevailing is totally unrealistic and unworkable, since the amount of those fixed charges frequently in and of themselves exceed the 6% limit and leave no return for the investor. The formula as contained in the Limited-Profit Housing Companies Law was evolved under more recent conditions and is workable under the circumstances existing in today's market.

### SECTION 3412

1. The section as presently written provides that a redevelopment company may borrow funds and secure the repayment by bond and mortgage or by issue of bonds under a trust indenture. This language has been interpreted as prohibiting a loan by note and mortgage. No reason exists to distinguish between bonds and notes in this situation, and the proposed amendment, by adding the phrase "as used in the section the term 'bond' includes a note" at the end of the section, would clarify the authority to use notes as well as bonds. In recent years similar legislation has amended the Banking Law and virtually all other laws relating to mortgage investments to permit use of notes wherever bonds may be used.

2. The present language of the third paragraph of Section 3412 would appear to inhibit FHA financing by redevelopment companies projects since under FHA procedures the building loan frequently is assigned after completion of the project to become the permanent mortgage. The two-year limitation presently contained in the statute on the temporary financing would appear to make such arrangements illegal since the long-term mortgage when handled by assignment would have to exceed such limitation. The proposed amendment in paragraph four of the section, as to the maturity of a construction loan, would remove the two-year maturity limitation and other restrictions when the funds are made available under FHA programs.

SECTION 3412 (CONTINUED)

3. Section 3412 presently provides that only first mortgages are legal investments for banks, savings and loan associations, etc. In Title I situations, where the property is acquired from the city and the city takes back a purchase money mortgage, this Section would prevent a sponsor from obtaining secondary financing except through non-banking subordinate mortgage lenders. It is proposed by the amendment to allow such secondary financing or junior liens in redevelopment companies projects by adding the word "secondary" and making junior lien plural in place of "a second" as contained in the first sentence of the fourth paragraph of Section 3412. It would also eliminate the entire second sentence of that paragraph.

4. The present language in the act with respect to the maximum amount of the mortgage loan is confusing and creates uncertainties regarding an extremely important element in the act, that is, the maximum amount of the mortgage loan. The mortgage officers of lending institutions had assumed that the amount of the mortgage loan would be limited, during the construction period, to 80% of the estimated cost of the project. Thereupon, on completion of the project and certification of the actual cost by the supervising agent, the maximum amount of the loan would be finally determined at 80% of such certified actual cost. This would be sound practice for redevelopment companies whose costs are supervised and controlled by the supervising agent.

However, the present language of the act seems to inject the element of an appraisal during the construction period and contains language which confuses the situation of a loan for a project during construction, and a loan which may be made upon a completed project of a redevelopment company.

Appraisals during the construction period are of no real value to the lending institution. These appraisals made by an outside appraiser involve unnecessary expenses. The appraiser usually takes the estimate cost figures and then makes a finding that the project is appraised at the estimated cost. Upon completion of the project the appraiser obtains the actual cost certified by the Comptroller and then appraises the project at such certified cost. This is useless.

In fact, the lending institution in its commitment limits the maximum amount of the loan. The lending institution has satisfied itself with regard to the plans and specifications and the estimated cost. The lender requires the redevelopment company first to advance its 20% of the estimated cost of the project. Thereafter the lender makes monthly advances based upon actual development cost for the previous month less at least 10% of such actual expenditure which is retained until the actual cost is certified by the Comptroller. Thus the lender has complete control.

When a mortgage loan is made on a completed project of a redevelopment company, it then does make sense to require an appraisal.

SECTION 3142 (CONTINUED)

The proposed amendments provide that in such a case (completed project) the maximum mortgage loan may not exceed 80% of the appraised value or the previously certified actual cost, whichever is less.

The amendments take the form of adding to the second paragraph the words "and in no event....." (the underlined portion) and eliminating from that paragraph the words "or eighty percentum..." and also adding the words "or in the case of .....is less."

In the third paragraph the words "and in any event does not exceed...." are added and the words "or eighty percentum....." are eliminated.

In the fourth paragraph the words "and shall not in any event exceed...." are added, and the words "but in no event in excess..." are eliminated.

MEMORANDUM

Int 3724  
Pr 4705

S. I. 2760

S. Pr. 2903

Mr. Bush

This bill would make several changes in the law creating the Limited Profit Housing Mortgage Corporation (Chapter 675 of the Laws of 1959). These changes have been requested by the officers and directors of that Corporation and are essential to continued participation by those banks and insurance companies which have, to date, indicated an intention to become members of the Corporation.

The bill would amend Section 306-a of the Public Housing Law to:

- (a) Authorize the Corporation to issue and sell notes and other evidence of indebtedness in addition to debentures.
- (b) Limit the sale of such obligations to members of the Corporation or other like institutions and companies.
- (c) Qualify the power of the Limited Profit Housing Mortgage Corporation to invest in first lien mortgages on improved real property which may be subject to secondary liens or any other minor encumbrances.
- (d) Reduce the number of directors who need to be residents of the State of New York to seven.
- (e) Clarify the relationship of the vote of each member to the amount of its loans or advances to the Corporation or to the amount of its commitment until such loans or advances are made.
- (f) Clarify the method of filling vacancies on the Board of Directors of the Corporation.
- (g) Provide for amendment of the By-Laws.
- (h) Eliminate any suggestion of mandatory participation by the members up to one-half of one percent (or any other percentage) of their assets.
- (i) Limit the participation, liability or other obligation of the members to or through the Corporation to the amounts, terms and interest rates stated in their respective applications for membership, or any subsequent written agreements or commitments.
- (j) Provide that, after giving notice of withdrawal, but prior to the effective date thereof, the obligation of any member shall be limited to its pro-rata share of amounts specified in loan commitments approved by the Board of Directors prior to the date of such notice.
- (k) Make the capital stock of the Corporation a legal investment for the banking institutions and insurance companies who become members.

This bill results from numerous conferences had with the officers and directors of the Limited Profit Housing Mortgage Corporation and with counsel of the various banking institutions and insurance companies who are members thereof, or who have indicated an intention to become members. The various provisions of the bill follow closely the By-Laws of the Limited Profit Housing Mortgage Corporation, as adopted on Sept. 21, 1959 and most recently amended on Dec. 16, 1959.

**FRENCH, FINK, MARKLE & CONWAY**  
COUNSELLORS AT LAW

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March 3, 1960

Re: A. Int. 3724

Hon. William H. MacKenzie, Chairman  
Ways and Means Committee  
Assembly Chambers  
Albany 1, N. Y.

Dear Sir:

The Legislative Committee of the Building  
Industry Employers of New York State and the Building  
Trades Employers Association of the City of New York  
which we represent approves the above bill by Mr.  
Curto.

Very truly yours,

FRENCH, FINK, MARKLE & CONWAY

cc Mr. Curto

March 15, 1960

Hon. Robert MacCrate  
Executive Chamber  
State Capitol  
Albany 1, New York

Dear Mr. MacCrate:

I am enclosing herein a memo in support of my bill Intro. 3724, Print 4805 amending the public housing law, in relation to the rights, powers, duties and obligations of the limited-profit housing mortgage corporation.

I would appreciate your recommending to the Governor that he sign this bill.

Thanking you, I am.

Sincerely,

Ernest Curto  
Member of Assembly

EC-dl  
encl.

By Mr. Curto

To amend Assembly Bill Int. No. 3724, Print No. 3872

- Page 1, line 11 After "and" delete "unencumbered" and substitute "unencumbered"
- Page 2, line 14 After "all of" delete "which" and substitute "whom"
- Page 2, line 28 Between "state" and "thereby" insert a comma
- Page 5, line 9 After "interest" and before "paying" insert a hyphen
- Page 5, line 12 After "corporation" and before "shall" insert a comma
- Page 5, line 14 After "to" and before "but" insert a comma

Fidelity Union S. K. R.

George



AN ACT

To amend the public housing law, in relation to the rights, powers, duties and obligations of the limited-profit housing mortgage corporation.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraphs (ii) and (iii) of paragraph (b) of subdivision two of section three hundred six-a of the public housing law, as added by chapter six hundred seventy-five of the laws of nineteen hundred fifty-nine, are hereby amended to read as follows:

(ii) To issue and sell to members of the corporation or other like institutions and companies its notes, debentures or other evidences of indebtedness bearing such interest rates and having such maturities and other terms and provisions as may be determined by the board of directors of the corporation;

(iii) To invest in bonds and mortgages or notes and mortgages upon improved [and unencumbered] real property in areas in this state designated by the board of directors of the corporation, provided that: (a) The security for such bonds or notes is a first lien upon such real property, exclusive of ground rents, taxes, assessments or other similar charges not yet delinquent, and (b) there is no condition or right of re-entry or forfeiture not insured against under which such lien can be cut off or subordinated or otherwise disturbed.

§2. Paragraphs (a), (b) and (d) of subdivision three of section three hundred six-a of such law, as added by chapter six hundred seventy-five of the laws of nineteen hundred fifty-nine, are hereby amended to read as follows:

(a) All the corporate powers of such corporation shall be exercised by a board of directors consisting of thirteen persons elected as hereinafter provided, all of which shall be of full age [,] and citizens of the United States and seven of whom shall be residents of the state.

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(b) At the first annual meeting of such corporation and at each annual meeting thereafter the members shall elect ten directors whose term of office shall be one year. Each of the members shall be entitled to one vote for each twenty-five thousand dollars, or major fraction thereof, such member loans or advances to the corporation pursuant to the provisions of paragraph (a) of subdivision five of this section. Until all such loans or advances are made, each member shall be entitled to one vote for each twenty-five thousand dollars, or major fraction thereof, of its total commitment to the corporation.

(d) If any director shall lose his citizenship, or shall cease to be a resident of the state thereby creating a vacancy, or if If a vacancy occurs in the membership of the board of directors through death, resignation or otherwise, the remaining directors shall elect a person to fill such vacancy for the unexpired term, elect by the members in the case of a vacancy occurring in such class of membership, or the remaining directors elected by the stockholders, in the case of a vacancy occurring in such class of membership, shall elect a person to fill such vacancy for the unexpired term.

§3. Subdivision three of section three hundred six-a of such law is hereby amended by adding thereto a new paragraph, to be paragraph (g), to read as follows:

(g) The number of votes of the board of directors that shall be necessary to amend, alter or add to the by-laws of the corporation shall be seven cast by directors elected by the members, except that the affirmative vote of all directors elected by the members shall be necessary to amend any by-law which affects the obligation, liability or commitment of any member, or any of the terms of any such member's commitment to the corporation.

§4. Paragraph (a) of subdivision five of section three hundred six-a of such law is hereby amended to read as follows:

(a) The members of such corporation shall consist of banking institutions, insurance companies, or any combination of the foregoing, as may make application for membership in such cor-

poration, and membership shall become effective upon the acceptance of such application by the temporary or permanent board of directors, as the case may be. Each member shall loan funds to the corporation as and when called upon by it to do so, but the total amount on loan by any member at any one time shall not exceed one-half of one percent of its funds available for investment, which limit shall be determined as of the date it became a member, and such amount shall thereafter be readjusted annually in the event of any change in the base of the loan limit of such member the amount agreed to be loaned as stated in the application for membership of such institution or company or any greater amount stated in any subsequent written commitment to or agreement with the corporation. Said application and said commitment to or agreement with the corporation may set forth the maximum term and minimum interest rate at which any loan to the corporation is to be made and, without limitation, such other terms and conditions as the board of directors of the corporation shall approve, and the obligation or liability of any such institution or company to or through the corporation shall be limited to the amount agreed to be loaned, the term and interest rate and the other terms and conditions set forth in its application or other written commitment to or agreement with the corporation, as the case may be. In any event the total amount on loan by any such institution or company at any one time shall not exceed one half of one per cent of its admitted assets, in the case of an insurance company, or of its total assets, in the case of a banking institution, which limit shall be determined as of the date it became a member and as of the date of its written commitment to or agreement with the corporation to loan additional funds. Upon six months' prior written notice to the board of directors, a member of the corporation may withdraw from membership effective at the end of such six months' period, except that prior to [and after] the effective date of such withdrawal, such member shall be free of obligations hereunder except [those accrued or committed by the corporation prior to such effective date of withdrawal.] for its pro-rata share of amounts specified in loan commitments approved by the board of directors of the corporation prior to the date of such notice. Notwithstanding the provisions

of any law, general or special, the notes or other interest paying obligations of the corporation and the capital stock of the corporation issued in accordance with and by virtue of this section and the by-laws of the corporation shall be legal investments for the banking institutions and insurance companies who [became] become members of the corporation, up to but in no event exceeding, the loan limits established herein.

§5. This act shall take effect immediately.

Explanation: Matter underlined is new; matter in brackets [ ] is old law to be omitted.

(Division of Housing - Legislation Proposal No. 6)

Int. 3724

LIMITED PROFIT HOUSING CORP. NOTES

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No. 3872

*Amended 3/8*