

December 7, 1960

Curtis
Wagner-Melans
ai 1151

MEMORANDUM

TO: COUNSEL TO THE GOVERNOR
FROM: Division of Housing
SUBJECT: Legislative Proposal #5

1. Purpose of bill:

The purpose of this bill is to permit the consolidation or merger of limited-profit housing companies, their dissolution under circumstances and conditions not covered at present by the provisions of the Limited-Profit Housing Companies Law, and to provide for rearrangement of their mortgages and the use of excess funds, if any, of one project to pay off the mortgage of any other project which has been merged or consolidated.

2. Summary of provisions of bill:

Section 319 of the Public Housing Law, which details the extent of the supervision and regulation of State-aided and municipally-aided limited-profit housing companies by either the Commissioner of Housing or the municipal comptroller, as the case may be, would be amended by adding a new subdivision 5 so as to empower the aforementioned officials to permit the consolidation or merger of two or more approved projects, the extension or amendment thereof or the consolidation or merger of any approved project with a proposed project, followed thereafter by the immediate dissolution of any limited-profit housing company upon such terms and conditions as may be approved by the supervising authorities. Sections 309 and 315 would be amended to permit the financial structure of the merged or consolidated companies to be arranged so that all of the income from all of the projects which have been merged or consolidated can be used to pay off all of the mortgages, bonds, notes or debentures issued by all of the companies which have been merged.

3. Justification:

This bill is necessary to correct a statutory omission relating to the merger or consolidation of limited-profit housing companies. Section 186 of the Public Housing Law presently provides for the merger and consolidation of limited dividend housing companies, but Article 12 of the Public Housing Law is silent as to the consolidation or merger of limited-profit housing companies.

Although the provisions of the General Corporation Law and Stock Corporation Law can be invoked to sanction the merger or consolidation of limited-profit housing companies, the corporate shells of the subsidiary merged corporations must be retained for twenty or thirty-five years before they can be dissolved pursuant to Section 322 of the Public Housing Law.

It is therefore deemed advisable to amend Section 319 of the Public Housing Law so as to empower the Commissioner of Housing to permit the merger and consolidation of such projects and immediate dissolution of the companies whose corporate existence is no longer necessary, upon the terms and conditions naturally inherent in the merger and consolidation of the projects.

It is also deemed advisable to permit the rearrangement of the financial structures of merged and consolidated housing companies and the consolidation of their mortgages.

DEPARTMENTAL
BILL ///

AN ACT to amend the public housing law, in relation to consolidation or merger of limited-profit housing company projects and dissolution of limited-profit housing companies.

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

Section 1. Subdivision two of section three hundred nine of the public housing law, as amended by chapter eight hundred seventy-seven of the laws of nineteen hundred fifty-six, is hereby amended to read as follows:

2. Each mortgage or issue of bonds or notes of a company shall relate only to a single specified project and shall be secured by mortgage upon all of the real property of which such project consists and upon all fixtures and articles of personal property attached to or used in connection with the operation of the project. However, in the event of the consolidation or merger of two or more approved projects, the extension or amendment thereof, or the consolidation or merger of any approved project with a proposed project, the commissioner, in the case of state-aided projects, or the municipal comptroller, in the case of municipally-aided projects, may authorize the company to modify its mortgage or mortgages or issue of bonds or notes so that they will relate to one or more specified projects which shall be secured by a mortgage or mortgages, which mortgages in the aggregate shall be upon all of the real property of which such project or projects consist and upon all of the fixtures and articles of personal property attached to or used in connection with the operation of the project or projects. Such bonds or notes and mortgages may contain such other clauses and provisions as shall be approved by the commissioner in the case of [a] one or more state-aided [project] projects, or the municipal comptroller, in the case of [a] one or more municipally-aided [project] projects, including the right to assignment of rents and entry into possession in case of default; but the operation of the housing project or projects in the event

of such entry by mortgagee or receiver shall be subject to regulations promulgated by the commissioner in the case of [a] one or more state-aided [project] projects, or the municipal comptroller, in the case of [a] one or more municipally-aided [project] projects. Provisions for the amortization of the bonded indebtedness of companies formed under this article shall be subject to the approval of the commission in the case of [a] one or more state-aided [project] projects or the municipal comptroller, in the case of [a] one or more municipally-aided [project] projects.

§2. Section three hundred fifteen of such law, such section having been amended by chapter eight hundred seventy-seven of the laws of nineteen hundred fifty-six and subdivision one thereof having been last amended by chapter six hundred fifty-six of the laws of nineteen hundred fifty-eight, is hereby amended to read as follows:

§315 Payments from earnings. 1. There shall be paid annually out of the earnings of the company, after providing for all taxes, assessments and expenses, a sum for interest on and amortization of the mortgage indebtedness, depreciation charges and reserves if, when and to the extent deemed necessary by the commissioner, in the case of [a] one or more state-aided [project] projects, or the municipal comptroller, in the case of [a] one or more municipally-aided [project] projects, plus a dividend of six per centum on outstanding stock and interest not exceeding six per centum on the outstanding income debentures of the company; the obligation in respect of such payments shall be cumulative, and any deficiency in interest, amortization, depreciation, reserves, if any, and dividends in any year shall be paid either from any cash surplus derived from earnings remaining in the treasury of the company in excess of the amount necessary to provide such cumulative annual sums or from the first available earnings in subsequent years. If, at the end of any three year period, the gross receipts should exceed the payments or charges

necessary for the purposes of the project or projects and are not needed for a sinking fund, reserves or other purposes, the balance may be paid in further reduction of any indebtedness to the extent and upon terms and conditions approved by the commissioner, and the state comptroller in the case of [a] one or more state-aided [project] projects, or by the municipal comptroller, in the case of [a] one or more municipally-aided [project] projects. A sinking fund may be authorized by the commissioner, in the case of [a] one or more state-aided [project] projects or the municipal comptroller, in the case of [a] one or more municipally-aided [project] projects, to purchase and retire bonds, income debentures or stock of the company at a price approved by the commissioner, in the case of [a] one or more state-aided [project] projects, or the municipal comptroller in the case of [a] one or more municipally-aided [project] projects, not exceeding par value thereof with accrued or unpaid dividends or interest or if it be not practical to purchase such stock or income debentures at a price so approved, the money in such sinking fund may be added to the surplus of such company. Any stock or income debentures purchased out of such sinking fund shall be cancelled and shall not be reissued.

2. No director or officer of a company shall receive, directly or indirectly, any salary, compensation or emolument from such company, as such director or officer or in any other capacity, unless authorized by the commissioner in the case of [a] one or more state-aided [project] projects, or the municipal comptroller, in the case of [a] one or more municipally-aided [project] projects.

§3. Section three hundred nineteen of such law, is hereby amended by adding thereto a new subdivision, to be subdivision five, to read as follows:

5. Permit the consolidation or merger of two or more approved projects, the extension or amendment thereof, or the consolidation or merger of any approved project with a proposed project. The commissioner or the municipal comptroller, as the case may be, may thereupon permit the immediate dissolution of

any company involved in any such consolidation or merger, under such terms and conditions as may be specified by the commissioner or the municipal comptroller.

§4. This act shall take effect immediately.

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