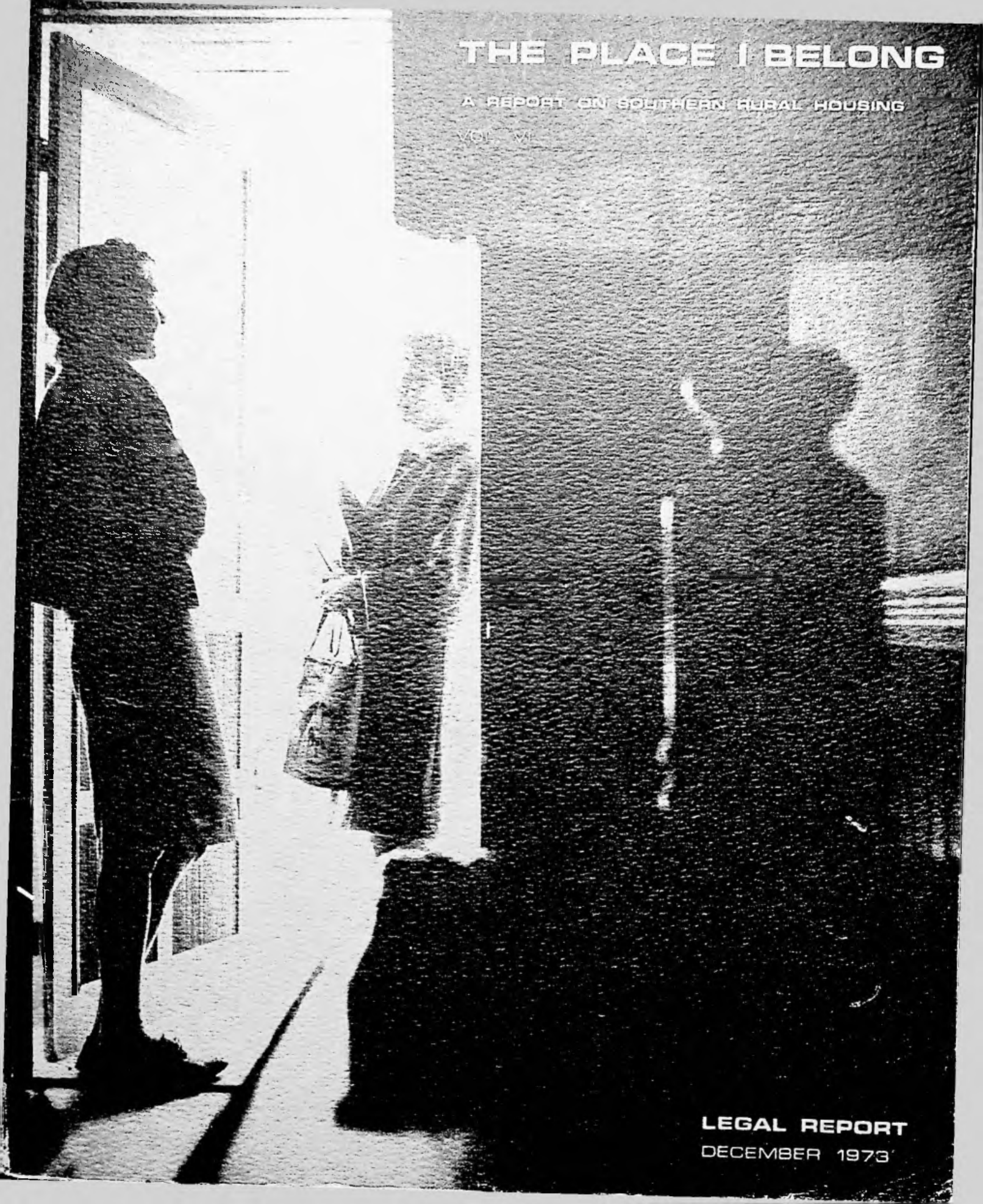


# THE PLACE I BELONG

A REPORT ON SOUTHERN RURAL HOUSING

VOL. VI



LEGAL REPORT

DECEMBER 1973

**DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT**

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THE PLACE I BELONG

A REPORT ON SOUTHERN RURAL HOUSING

VOLUME VI

YOU MEAN THAT'S LEGAL?

(A LEGAL REPORT)

BY

ROBINSON O. EVERETT, A.B., J.D.

PROFESSOR OF LAW, DUKE UNIVERSITY, AND

ATTORNEY AT LAW

AND

GLORIA JIMENEZ, LL.B.

ATTORNEY AT LAW

Assisted by the following Duke Law School Research Assistants:

Ira Sandron  
John Bailly  
Laurence Colbert  
Mary Cousar  
Anthony C. Eitreim  
Stephen A. Hildebrandt  
John Moffat  
Stephen Riddell  
James Schriemer

DECEMBER 1973

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AND

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The development and demonstration activities reported herein were performed pursuant to a contract with the Office of Economic Opportunity, Executive Office of the President, Washington, D. C. 20506, which was transferred during the course of the study to the Department of Housing and Urban Development, Washington, D. C. 20410. The opinions expressed herein are those of the authors and should not be construed as representing the opinions or policies of any agency of the United States Government.



CHAPTER 45. Trust.

Mortgages -

ccds of Trust  
Validation of appointments and  
to corporations and  
Valuances  
45 21

## CORPORATIONS--DWELLINGS

ARTICLE 15.

## ARTICLE 15.

### Remediation of Unfit Dwellings.

*Repair, Closing and Demolition.*—It is hereby found and declared that the existence and occupation of dwellings in human habitations in numerous instances in this State which are unfit for human habitation and morals on the health, safety and morals of the people are dangerous and injurious to the health, safety and morals of the people of this State, and that a public necessity exists for the repair, closing or demolition of such dwellings. Whenever any which are unfit for human habitation and morals exist in such municipality dwellings of fire, accidents or other conditions, disposition, defects increasing the hazards, or due to other conditions resulting in lack of ventilation, light or sanitary facilities, or dangerous or detrimental to the health, safety or morals, or otherwise unfit to the welfare of the residents or such municipality, power is hereby conferred upon such municipality to exercise in such municipality powers to repair, close or demolish the aforesaid dwellings in the manner herein provided. (1939, c. 287, s. 1.) 160-131.

160-151.

**Cross References.** — See § 160-200, sub-section 24. As to condemnation of buildings in case of fire, see § 160-200, sub-section 24. For comments on this enactment, see 17 N. C. Law Rev. 362.

**§ 160-183. Definitions.**—The following terms whenever used or referred to in this article shall have the following respective meanings for the purposes of this article: (a) "Municipality" shall mean any city or town having a population of five thousand or more, according to the federal census of the year one thousand nine hundred and forty.

b) "Governing body" shall mean the council, board of commissioners, board of directors, or other legislative body, charged with governing a municipality.

c) "Public officer" shall mean the officer or officers who are authorized to exercise the powers prescribed by such ordinance.

the article, "Public authority" shall mean any housing authority or any officer who is an officer of any department or branch of the government of the United States, or any State relating to health, fire, building regulations, or to other matters of the dwellers in the municipality.

... shall mean the holder of the title in fee simple and every  
...  
... shall mean all individual  
... interests in interest  
... interests of record.

ive interests of the

5-125

That at least five residents of the town petitioned a local court whenever a petition is filed with the public health commission.

(b) If the court is satisfied that the plaintiff has established a prima facie case of a conspiracy to defraud, it shall have jurisdiction to grant an injunction restraining the defendants from continuing or repeating the alleged fraudulent conduct, and to award costs. The court may also award damages in respect of the loss suffered by the plaintiff as a result of the alleged fraudulent conduct.

[illegible]

percentage of such cost is being paid, to replace the average within the time specified, to replace the average within the time specified, or to replace the average within the time specified, or to replace the average within the time specified.

(d) That, if the court finds that the defendant has failed to establish that the defendant is entitled to be removed, altered or closed, the court may order the defendant to pay the costs of the proceedings.

officer may carry the following words on a placard with the following meanings: "the use of"

List of Districts  
Page 2

| <u>STATE</u>           | <u>DISTRICT</u> | <u>COUNTIES</u>  | <u>TOWNS OVER 10,000</u>  |
|------------------------|-----------------|--|---|
| Mississippi            | 3120            | *Coahoma<br>DeSota<br>Panola<br>*Quitman<br>*Tallahatchie<br>*Tate<br>Tunica   | Clarksdale<br>none<br>none<br>none<br>none<br>none<br>none  |
| Tennessee<br>(Eastern) | 1033            | *Carter<br>Greene<br>*Hancock<br>*Hawkins<br>Johnson<br>*Sullivan<br>Unicoi<br>Washington  | Elizabethtown<br>Greenville<br>none<br>none<br>none<br>Bristol and Kingsport, <sup>1</sup><br>none Kingsport North<br>Johnson City                |
| Tennessee<br>(Middle)  | 1034            | Anderson<br>Blount<br>Campbell<br>*Claiborne<br>Cocke<br>Grainger<br>Hamblen<br>Jefferson<br>*Knox<br>*Loudon<br>Monroe<br>Morgan<br>*Roane<br>Scott<br>Sevier<br>*Union | Oak Ridge<br>Maryville<br>none<br>none<br>none<br>none<br>Morristown<br>none<br>Knoxville<br>none<br>none<br>none<br>none<br>none<br>none<br>none |
| Tennessee<br>(Western) | 1035            | *Cannon<br>*Clay<br>Cumberland<br>*DeKalb<br>Fentress<br>Jackson<br>Macon<br>*Overton<br>Pickett<br>Putnam<br>*Smith<br>Van Buren<br>Warren<br>White                     | none<br>none<br>none<br>none<br>none<br>none<br>none<br>none<br>none<br>Cookeville<br>none<br>none<br>McMinnville<br>none                         |

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<sup>1</sup>Unincorporated

\*Primary Sampling Unit Counties (PSUs)

List of Districts  
Page 3

| <u>STATE</u>           | <u>DISTRICT</u> | <u>COUNTIES</u>  | <u>TOWNS OVER 10,000</u>  |
|------------------------|-----------------|--|---|
| Virginia<br>(Northern) | 1021            | Augusta<br>*Bath<br>Highland<br>*Rockbridge<br>*Rockingham | Staunton, <sup>2</sup> Waynesboro<br>none<br>none<br>none<br>Harrisonburg |
| Virginia<br>(Southern) | 1025            | *Buchanan<br>*Dickenson<br>*Russell<br>*Tazewell           | none<br>none<br>none<br>none  |
| West Virginia          | 1011            | *Fayette<br>*Mercer<br>*Monroe<br>*Raleigh<br>*Summers     | none<br>Bluefield<br>none<br>Beckley<br>none                              |

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<sup>2</sup>Independent City, not part of county.

\*Primary Sampling Unit Counties in which interviews were conducted.

## VOLUME VI

### YOU MEAN THAT'S LEGAL?

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NOTE: Each Appendix covers the following subjects:

Statewide Housing Agencies  
Housing Authorities  
Building Codes and Minimum Housing Codes  
Land Use Controls  
Mobile Homes and Modular Housing  
Tax Assessment  
Welfare Lien Laws  
Repair or Demolition of Substandard or Dilapidated Housing  
Landlord and Tenant Law  
Fire Insurance  
Usury Laws  
Lending Institutions  
Health and Safety Regulations

## FOREWORD

In the Spring of 1972, the Office of Economic Opportunity decided to undertake an evaluation project on rural housing, entitled "Evaluation of Housing Policies and Programs in Southern Rural Areas." The Low Income Housing Development Corporation (LIHDC) of Durham, North Carolina, put together a consortium consisting of itself and its subsidiary, Housing and Community Development Corporation (HCD); Westat Research, Inc., of Rockville, Maryland; the Center for Urban Affairs at the North Carolina State University, and Dr. Michael A. Stegman of the University of North Carolina at Chapel Hill. OEO awarded the contract to the consortium, which on July 5, 1972, began the task outlined by OEO: ". . . to provide information to answer the following question: How should the Federal Government spend scarce resources to improve housing of low income families in southern rural areas?"

Questionnaires were administered to 14 different types of actors on the rural housing scene, including consumers (i.e., households living in housing units), bankers, county and Federal Farmers Home officials, builders, mobile home dealers and public housing directors and managers. In addition, a great deal of background information was amassed, including Census data. The conclusions found in Volume I grew out of both primary and secondary information.

One important matter must be mentioned -- Phase I of this study covered only the areas described below, that is, twelve selected Planning and Development Districts which represent three subregions of the Census South delineated by the Office of Economic Opportunity: Appalachia, the Mississippi Delta, and the Ozarks. Our findings and conclusions can be generalized only to those three subregions. We claim no more than that.

Barbara N. Smith  
Project Director



## I. Findings

Current national policy favors greater responsibility at the state and local level in the solving of urgent social problems. Programs such as revenue-sharing contemplate the exercise of greater initiative on the part of the states. However, some expectations of achievement may not be fulfilled unless important statutory and administrative changes are made by state and local governments. Accordingly, in considering the provision of adequate housing in rural areas, it is important to examine the existing legal structure and determine possible needs for new legislation at the state level.

Like the Research Project of which it is a component, this Report centers on seven southeastern states -- Alabama, Arkansas, Kentucky, Mississippi, Tennessee, Virginia, and West Virginia. Occasionally, however the report also discusses Federal programs and laws which bear on rural housing.

The appendices to this report consist of studies of the relevant laws of the seven states. These studies, prepared by Duke University law students, were the first major step in the research upon which this report is based. Next came comparative studies of the seven States in relation to various relevant topics. Finally, on the basis of the research, the report itself was prepared.

Obviously certain topics have more importance for rural housing than for urban residential development. For example, mobile homes, which in some urban areas have been almost completely excluded by zoning ordinances,<sup>1</sup> may have special importance in rural areas, where such restrictive land use

controls often do not exist. Conversely, housing and occupancy codes which loom large in many cities and towns,<sup>2</sup> are not often found in rural areas -- at least in the seven States with which this report is concerned. Requirements present in typical housing codes might prove unworkable in many rural areas. Water supply and waste disposal in a heavily-populated urban area present different issues than in some rural areas, where wells and septic tanks must be relied on. On the other hand, rural areas may be especially concerned with any legal restraints on banks and savings and loan associations which tend to reduce the number of financial institutions from which a rural homebuilder may hope to obtain needed funds.<sup>3</sup>

#### A. Statewide Housing Agencies

In the past five years, Kentucky, Tennessee, West Virginia and Virginia have all passed legislation creating statewide housing corporations.<sup>4</sup> In many ways the statutes are similar: in their declaration of purpose, appointment of a board of directors or commissioners, corporate powers, supervision of sponsors, terms and conditions of loans, exemption from state and local taxation, issuance of notes and bonds, remedies of bondholders and the creation of reserve funds. However, each state has sections in its statute which distinguish it from the others. In most cases the distinguishing features seem desirable and could be included in one statute without excluding other important sections. The distinguishing sections in the West Virginia statute recognize the particular needs a state housing fund must provide in the mountainous terrain of that state.

The most interesting section of the Kentucky statute (passed in 1972) is §198A.050. This section provides that, to the greatest possible extent feasible, opportunities for training and employment in connection with the

planning, construction and rehabilitation of housing assisted under such programs shall be given to persons of lower-income residing in the area of such housing. The statute further requires maximum feasible tenant participation and responsibility in tenant programs and services. The section thus serves the dual purposes of helping to create job opportunities and provide adequate housing for the persons involved.

§198A-050(3) provides that the executive director of the Kentucky Housing Corporation shall establish standards of performance for materials, methods and design which meet the minimum requirements of the Federal Housing Administration or the Farmers Home Administration, and all construction assisted under the Kentucky Housing Corporation Act shall meet these performance standards. The establishment of performance standards seems to be a very desirable step for a housing development corporation, as it allows needed flexibility where new and improved materials appear in the construction industry.

Kentucky also applies various restrictions to any assisted sponsor, builder or developer, among them being that such shall not receive from the corporation or association in repayment of his investment any sums in excess of the face value of the investment attributable to his respective interest plus cumulative dividend payments at such rate as the Kentucky Housing Corporation deems reasonable (§198.060(2)).

Finally, although the Kentucky Housing Corporation is exempt from paying taxes and assessments to the Commonwealth, or to any county, municipality or other governmental subdivision, the corporation may agree to pay, in lieu of such taxes, such amounts as the corporation

finds consistent with the cost to the state or political subdivision of supplying municipal services to the housing development and maintaining the economic feasibility of the housing development (§198A.200).

This section seems to create only a moral obligation on the part of the corporation to give at least some financial assistance to the state and local governments for allowing it to use their services.

Virginia also passed its Housing Development Authority Act in 1972. One power expressly conferred on the Housing Development Authority -- and not specifically granted in West Virginia or Kentucky -- is the power to "insure mortgage payments of any mortgage loan made for the purpose of constructing, rehabilitation, purchasing, leasing or refinancing housing developments for persons and families of low and moderate income upon such terms and conditions as HDA may prescribe" (§36-55.36(3)).

Virginia is the only state in which there apparently is no dollar limit on the amount which the housing agency may borrow. Kentucky's corporation is limited to \$200,000,000, Tennessee is limited to \$150,000,000 and West Virginia to \$130,000,000 in the amount of revenue bonds they may issue.

The most striking feature about West Virginia's statute is that it allows the Housing Development Authority to provide housing for middle income families as well as for low income ones (§31-18-3(3)(b) 1973 Amendment). This clause was inserted in the 1973 Amendments to the Act and is in response to the Federal moratorium on funding low income housing projects. With rent subsidies at least temporarily curtailed, it is extremely difficult to construct economical housing for families of low income. However, if housing is constructed which people of moderate or

higher income can move into and pay full rent, other housing will thereby theoretically be released for the use of lower income families.

West Virginia made two other amendments in 1973 to its 1968 bill creating the Housing Development Fund. One created a land development fund (§31-18-20a) apart from the sinking fund, which has received \$2,000,000 from the Governor's new budget. The land development fund is to finance development costs and land development in West Virginia by making loans with or without interest as the fund sees fit. This fund will help defray preliminary costs such as those for soil testing, land investigation and other expenses not recovered on projects lost as a result of the moratorium.

The other unique feature in West Virginia's 1973 amendments is the creation of a Mortgage Finance Bond Insurance Fund (§31-18-20b). This fund is also a reaction to the moratorium and allows the Housing Development Fund to issue mortgage finance bonds to acquire funds for the construction and development of projects. The Insurance Fund creates in the West Virginia legislature a "moral obligation" to appropriate sufficient funds into the Insurance fund to fulfill the minimum bond insurance requirement (defined in §31-18-3(10)). As federal funding under the FHA programs is indefinitely curtailed, this insurance fund allows West Virginia to finance its own projects which gives it greater flexibility.

This flexibility is particularly important in a rural, mountainous state like West Virginia in which the FHA 236 and 235 programs are not the ideal solution to the housing problems of the poor. Projects with upwards of one hundred units are just not economically feasible as they



are too large for many small towns and rural areas. Moreover, due to the terrain, construction costs are exceptionally high in West Virginia. By providing for an insurance fund to cover the amount of bonds issued, the Fund can carry out smaller programs on its own to satisfy the unique geographical needs of the state, and it is no longer tied to the federal programs which in many instances are designed for urban and suburban areas.

In West Virginia, a case testing the constitutionality of the housing agency statute is currently pending. The case involves the possible tying up of future funds appropriated by the legislature by the present actions of the Development Fund in spite of the clear wording of the statute that future legislatures are not obligated to appropriate the funds.

The 1973 Amendments to the West Virginia statute made the HDF a Statewide Public Housing Authority, giving it the power to undertake public housing projects, as local authorities now do, where permission is obtained from the local agencies in question. However, such public housing projects would not be backed by the federal government as public housing projects are now. The West Virginia Housing Development Fund feels it will have to make this program a separate part of its functions and as yet has not done so. It is unclear what the future will be for the statewide public housing authority but if it can be implemented it can help increase further the flexibility and options open to the Fund in its undertaking of housing projects.

The Tennessee Housing Development Agency (THDA) was created by the 1973 legislature. It has a one hundred fifty million dollar (\$150,000,000) bonding capacity and the bonds are all obligations of only the THDA. The

statute provides a formula for establishing a housing cost index for the state: "the median gross monthly household income divided into the sum of the monthly mortgage payment for the average Tennessee household based on a thirty (30) year mortgage at the prevailing mortgage interest rate on a mortgage amount sufficient to purchase a standard housing structure that will meet minimum property standards as established by the Federal Housing Administration including all amounts representative of the average yield in discount points and servicing fees to the lender on such mortgage based on the average discount paid at the latest Federal National Mortgage Association mortgage auction sale."<sup>5</sup> When "primary housing costs" as defined by the housing cost index reach or exceed 25 percent of an average Tennessee household's gross monthly income, the statute requires a finding that a majority of Tennessee's citizens are excluded from the normal housing market and eligible for the agency's programs. The Tennessee Housing Development Agency is closely tied to and dependent on the federal housing programs. Like the others, the Tennessee statute provides for the creation of a revolving loan fund.<sup>6</sup> Unlike the others, the THDA is authorized to issue "Fund notes" not to exceed a total outstanding of ten million dollars (\$10,000,000) to finance the fund. It is also authorized to accept grants and contributions. The fund is to be used for real estate options, contract earnest money, legal and organizational expenses, feasibility studies, market analysis, and application and other fees. The board of directors has been appointed and an Acting Executive Director has been selected. By the summer of 1973, he was working on the bond resolution and prospectus and estimated that start-up time, bringing on staff, location of office space and development of its technical assistance programs would take several months.

The existence of a state-established housing development fund is very important as a source of interim financing to furnish funds for homebuilding in rural areas. To obtain best utilization of the fund the administrators of the fund should have explicit legislative permission to use not only direct loans but also loan guarantees and mortgage insurance. Also, the creation of performance standards in rural areas is very important as these areas sometimes do not have building codes to assure adequate standards for housing.

#### B. Housing Authorities

All of the seven states long ago enacted legislation permitting the establishment of local housing authorities -- generally on the basis of a determination that unsafe and unsanitary housing conditions exist. All seven states authorize two or more counties with similar housing problems to combine in creating a regional housing authority with the same powers as the predecessor county authorities, which then cease to exist. Except for West Virginia, none of the states expressly authorizes a statewide housing authority. However, the Kentucky Housing Corporation authorized in 1972 is empowered to operate public housing in cities and counties where a need exists therefore and where no local housing authorities exist.<sup>7</sup>

In all seven states the powers granted to the county and regional authorities are broad. All may build, operate, maintain and lease housing projects, acquire real estate, issue bonds, borrow money, contract with the federal government, insure their property, and perform other functions necessary to construct and operate housing

projects. The projects must comply with local building codes, zoning, sanitary and safety ordinances, and are run on a nonprofit basis. The states studied require special procedures for tenant selection and for determining rental rates, although they do not prescribe absolute schedules for rent. Some of the states do limit net aggregate income of a renter to five times the rental rate.

All seven of the states have similar provisions -- five in identical language -- under which an owner of a farm which lacks safe and sanitary housing may file an application for the appropriate housing authority to provide dwellings for such persons. There is little to indicate that this provision has been used to any extent in any of the states. Such an application is considered by the authority in formulating projects to provide housing for farmers of low income. Under the various statutes the housing authorities have broad power to provide rural public housing for low income farmers -- if they choose to exercise that power.

#### C. Building Codes and Minimum Housing Codes

Of the seven states, only Virginia has provided for a Uniform Statewide Building Code,<sup>8</sup> which is to be promulgated by the recently created State Board of Housing.<sup>9</sup> In prescribing standards to be complied with in constructing buildings, the Board is to consult the standards of the Southern Building Code Congress, the Building Officials Conference of America, and the National Fire Protection Association. "Where practical, the Code provisions shall be stated in terms of required level of performance, so as to facilitate the prompt acceptance of new building materials and methods.

When generally recognized standards of performance are not available, such provisions shall provide for acceptance of materials and methods whose performance has been found by the State Board, on the basis of reliable test and evaluation data, presented by the proponent, to be substantially equal in safety to those specified."<sup>10</sup>

Enforcement of the Statewide Building Code is the responsibility of the local building department; but if a county or municipality has no building department, then the local governing body is to enter into an agreement with some other agency for enforcement. A Board of State Building Code Review is also provided, which is to hear all appeals from decisions and convictions arising under application of the Building Code.

Virginia also has a statewide building code for mobile homes and modular housing. Its statute, the Virginia Industrialized Building Unit and Mobile Home Safety Law, was enacted in 1972.<sup>11</sup> Just as with the Statewide Building Code, the legislature has directed that the administering agency--in this instance, the State Corporation Commission--have due regard for generally-accepted standards promulgated by nationally recognized organizations and that, where practical, the rules and regulations "be stated in terms of required levels of performance, so as to facilitate the prompt acceptance of new building materials and methods."<sup>12</sup>

In 1945 Alabama authorized the promulgation of a statewide building code applicable to state building and construction, schoolhouses, hotels, and moving picture theaters.<sup>13</sup> In addition, municipalities and counties were authorized to adopt this code and apply it to other private buildings.<sup>14</sup>

Mississippi has provided:<sup>15</sup>



The construction codes published by a nationally recognized code group which sets minimum standards and having the proper provisions to maintain up-to-date amendments are hereby adopted as minimum standard guides for building, plumbing, electrical, gas, sanitary and other related codes in Mississippi. Any county within the State of Mississippi, in the discretion of the board of supervisors, may adopt building codes, plumbing codes, electrical codes, sanitary codes or other related codes dealing with general public health, safety or welfare, or a combination of the same within, but not to exceed, the provisions of the construction codes published by nationally recognized code groups, by order or resolution in the manner herein prescribed. Said codes so adopted shall apply only to the unincorporated areas of the county; provided, however, such codes shall not apply to erection, maintenance, repair or extension of farm buildings or farm structures; . . . " (Emphasis supplied)

Apparently the Mississippi legislature, while not requiring that counties adopt a building code, wished to prevent the adoption of building codes which imposed arbitrary requirements not found in nationally recognized construction codes. Otherwise the local codes might become a means of precluding the use of new components and materials which could reduce housing cost.

Somewhat in the same vein is a West Virginia statute which prohibits a local building code from excluding materials and components which have been certified as acceptable by the Federal Department of Housing and Urban Development.<sup>16</sup>

West Virginia also has specified by statute requirements for sliding glass doors and safety glazing materials.<sup>17</sup>

In establishing a Statewide Building Code, utilizing performance standards for this Code to the greatest extent possible, and providing statewide safety standards for mobile homes and industrialized housing, Virginia stands out as a model for the other six states that were studied.

Though none of the seven states has adopted a statewide minimum housing code, all either specifically or by inference have granted to local governments the power to adopt a minimum housing code. This power was necessary for those communities applying for aid pursuant to a large number of the Department of Housing and Urban Development community development programs. A minimum housing code is an essential part of the HUD Workable Program requirement.

D. Land Use Controls

Although the seven states are not identical in their methods of land use control, their laws generally provide for some type of planning commission and for zoning ordinances, the final responsibility for which usually lies with local governments. Thus, the state has primarily an advisory and coordinating role. In some instances, provision is made for extra-territorial zoning and subdivision control.

For present purposes, perhaps the most important point to note is that in three of the states -- Kentucky, Mississippi, and Tennessee -- land use for agricultural purposes is to some extent exempt from zoning restrictions,<sup>18</sup> and in Alabama only municipal corporations have the power to zone, so that rural areas are largely unaffected by zoning ordinances.

Since zoning ordinances have sometimes been used to exclude certain types of housing -- such as mobile homes and industrialized housing<sup>19</sup> -- the fact that in four of the states zoning does not extend with full force to the rural areas may permit utilization of housing resources that zoning may exclude from some urban areas.

A review of state planning legislation in the seven states reveals the following:

Alabama's State Planning Board is entrusted with the duty of developing a master plan for the development of the state. It may also propose legislation including zoning and land use regulations to carry out the master plan. Since 1963 Alabama has provided for the creation of regional planning commissions; however, in 1969, legislation restructuring regional planning was enacted. The new legislation called for the formation of regional planning and development commissions throughout the state by 1971. The new regional planning districts were required to cover at least three contiguous counties and contain a population of at least 100,000. The commissions are empowered to prepare a regional plan consistent with state plans setting forth policies for development, prepare an annual regional development program to implement policies, provide assistance to governmental units, borrow money, review local government applications for state and federal laws, et al.<sup>20</sup>

In addition, municipalities have long had the authority to zone, through zoning commissions, and plan and zone through municipal planning commissions.

Arkansas has a state planning commission whose prime functions are the development of a state plan and the provision of advice and assistance to state and local officials. There is also provision for regional multicounty planning and development organizations.<sup>21</sup> However, the legislature has not laid down concrete standards, nor has any board or commission been given power to promulgate and enforce regulations. Both municipal and county planning are permitted by Arkansas statutes.

The state planning function in Kentucky is vested in the Kentucky Progress Commission and the Governor's cabinet. The enabling legislation for statewide regional planning districts provides the districts with the

power to tax as well as the usual planning powers. It also provides that the master plan for the region may include the zoning plans adopted and enforced in the cities affected, but shall include a map of the entire area of its jurisdiction showing the land use districts into which it is divided. The affected governmental unit, however, may adopt more stringent regulations or impose higher standards of land use than the master plan. Municipal and county zoning and planning are permitted by statute.

Mississippi permits zoning by counties and municipalities and provides statutory authority for regional planning.

Tennessee's State Planning Commission, serving in an advisory capacity, develops statewide plans.<sup>22</sup> One of its functions is the creation of multicounty planning regions and planning commissions. Municipalities are authorized to create municipal planning commissions, adopt subdivision ordinances, etc. Counties may adopt zoning ordinances, though there is no provision for individual county planning commissions.

Virginia, in addition to the State Planning Office, provides for multicounty regional planning and the creation of county and municipal planning commissions.

West Virginia has no statewide planning unit, but regional planning districts are established by state legislation. County and municipal planning and zoning are authorized.



## E. Mobile Homes and Modular Units

### 1. Uniform Standards and Inspection

As has been noted above, mobile homes and modular housing in rural areas sometimes are not subject to the same restraints that zoning imposes in the cities. Also, in those rural areas where building codes either do not apply or are not enforced, compliance with and inspection under those codes will not present a problem. Yet, at the same time, the purchaser of a mobile home for use in a rural area should not be left defenseless--or, at least, with no remedy except that available for any breach of warranty by the vendor of the mobile home.

Three of the states studied have attempted to deal with this problem by adopting statewide legislation concerning standards applicable to mobile home. In 1972 Virginia adopted its Industrialized Building Unit and Mobile Home Safety Law,<sup>23</sup> which provides for inspection by an "approved testing facility" and for affixing a label of compliance. The statute defines "industrialized building unit" as "a building assembly or system of building subassemblies, including the necessary electrical, plumbing, heating, ventilating and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, as a finished building or as a part of a finished building comprising two or more industrialized building units, and not designed for ready removal to or installation or erection on another site." A "mobile home" is "an industrialized building unit constructed on a chassis for towing to the point of use and designed to be used, without a permanent foundation for continuous year-round occupancy as a dwelling; or two or more such units separately towable, but designed to be joined together at the point of use to form a single dwelling, and which is designated for removal to, and

installation or erection on other sites." The "approved testing facility" may be either an architect or professional engineer registered in Virginia or a testing organization determined by the Virginia Corporation Commission to be especially qualified to evaluate these units and provide adequate follow-up service at the point of compliance to assure that production units are in full compliance with the standards set by the Commission.

The Commission--as has been noted earlier in this Report--is directed by the legislature to give due regard to the standards for mobile homes and industrialized building units which have been promulgated by certain nationally recognized organizations. Moreover, performance standards are to be used. Any industrialized building unit or mobile home which bears a label, seal, or other evidence of listing by an approved testing facility showing it is in compliance with the standards of the Commission "shall be acceptable in all localities as meeting the requirements of this law, and shall be acceptable as meeting the requirements of safety to life, health, and property imposed by any ordinance of any local governing body of this State without further investigation or inspection, provided such units are erected or installed in accordance with all conditions of the listing."<sup>24</sup> However, local requirements, "including zoning, utility connections and preparations of the site and maintenance of the unit shall remain in full force and effect." Violation of the law or the rules and regulations made pursuant to it is a misdemeanor punishable by a fine of not more than \$500.

Alabama has adopted The Uniform Standards Code for Mobile Homes Act,<sup>25</sup> which applies to "a movable or portable dwelling over 32 feet in length and/or 8 feet or more in width, constructed to be towed on its own chassis, connected to utilities, and designed without a permanent foundation for year-round living." The standards adopted by the Alabama legislature are those of the

American National Standards Institute, "which shall include standards for the installation of plumbing, heating, and electrical systems in mobile homes in ANSI A-119.1-1971 and NFPA No. 501-B-1971 entitled Standards for Mobile Homes." However, the State fire marshal may adopt and promulgate any changes in and additions to these standards. No new mobile home may be sold in Alabama unless it has been inspected and/or approved by the State fire marshal or his representative, his seal or approval has been permanently affixed to the new mobile home, and the manufacturer of the mobile home has certified that it meets or exceeds the uniform standards code. Similar restrictions apply to the manufacture of mobile homes in Alabama. The Code also makes provision for reciprocity with any other state which "has codes, to include construction and plumbing, heating, and electrical codes, at least equal to those established" in Alabama.<sup>26</sup> Violation of the Code or the rules and regulations of the Alabama fire marshal made pursuant thereto is a misdemeanor punishable by up to \$500 fine and/or six months in jail.

On almost the same date in 1971 that it approved the Code for mobile homes,<sup>27</sup> Alabama enacted legislation concerning factory-built housing. In this connection the legislature found "that by minimizing the problems of standards and inspection procedures it is demonstrating its intention to encourage the reduction of housing construction costs and to make housing and home ownership more feasible for all residents of the state." For purposes of its act, factory-built housing "means any structure, or component thereof, designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed, or assembled in manufacturing facilities for installation, or assembly and installation, on the building site. Mobile homes, as defined by southern standard building codes, are

specifically excluded from the provision of this chapter."

As to factory-built housing the rule-making and enforcement is vested primarily in the hands of the Alabama development office, which is to impose "requirements reasonably consistent with recognized and accepted standards adopted by the Southern Building Codes Congress, the National Fire Protection Association, and the United States Department of Housing and Urban Development." An advisory committee on factory-built housing is to advise in the drafting of the rules. Six of the committee's members are to be appointed by the Governor from specified technical and professional disciplines; the remaining five, from the governing bodies of local governments. Factory-built housing is not to be offered for sale in Alabama unless it bears the department's seal of approval, although under some circumstances inspection and approval by a local government agency may be a substitute for such approval. Also, the statute makes provision for acceptance of factory-built housing approved by another state whose standards are at least equal to those developed by Alabama. Not only is violation of this law or the rules promulgated thereunder a misdemeanor but also the department can obtain injunctive relief against violations, and persons injured have a cause of action.

In 1970 Mississippi enacted the Uniform Standards Code for Factory Manufactured Movable Homes Act,<sup>28</sup> which applies to mobile and relocatable homes. The Mississippi Commissioner of Insurance is authorized to promulgate rules and regulations "embodying the fundamental principles adopted, recommended, or issued as USA Standard A119.1 and amended from time to time by the United States of America Standards Institute (USASI), successor to the American Standards Association (ASA) applicable to factory manufactured movable homes as defined herein." Compliance with the Commissioner's rules is required for

the manufacture or sale of a factory manufactured movable home in Mississippi, and every manufacturer and dealer in Mississippi must obtain a license. In applying for this license, he must certify that he will comply with the construction standards. Basically, the licensing and the possibility of revocation or suspension of a license seem to be the chief means of enforcement of the Act, and no provision is made for testing and inspection of the mobile homes or the issuance of certificates of compliance. Reciprocity with other states is authorized, since the Commissioner of Insurance may exempt movable homes "produced in other states, upon his determining that the applicable rules and codes of such state of manufacture provide safeguards equally effective to those otherwise applicable under this act and rules made pursuant thereto."<sup>29</sup>

A 1971 West Virginia law, previously referred to, provides:<sup>30</sup>

Notwithstanding any existing provisions of law, municipal or county ordinance, or local building code, but excluding any such provisions relating to zoning or land use control, the standards for factory-built housing, housing prototypes, subsystems, materials and components certified as acceptable by the federal department of housing and urban development are hereby deemed acceptable and approved for use in housing construction in this State. A certificate from the state director of the Federal Housing Administration of the Department of Housing and Urban Development shall constitute prima facie evidence that the products or materials listed therein are acceptable and such certificates shall be furnished by the building contractor to any local building inspector or other local housing authority upon request.

Although it was not one of the seven states studied, North Carolina offers an interesting comparison in connection with standards for mobile homes. For one thing, North Carolina has long had a form of statewide building codes promulgated by a state Building Code Council.<sup>31</sup> Also, that state undertook to prescribe uniform standards for mobile homes in 1969,<sup>32</sup> before Virginia, Alabama, or Mississippi did so.

North Carolina provides that its Commissioner of Insurance shall promulgate "rules and regulations embodying the fundamental principles adopted, recommended, or issued as ANSI A-119.1 and amended from time to time by the American National Standards Institute (ANSI), successor to the American Standards Association (ASA) applicable to mobile homes as defined herein." A "label of compliance" with these rules may be issued for a mobile home by a qualified person who has been licensed by the State Building Code Council. Also, a "certificate of compliance" with these rules may be issued for a mobile home by a city or county building inspector who has been licensed for this purpose by the Council. However, the "certificate" is valid only within the jurisdiction of the city or county within which it was issued. No new mobile home is to be offered for sale in North Carolina unless it bears a label of compliance or certificate of compliance. Non-compliance with the Act constitutes a misdemeanor. As an additional means of enforcement, the North Carolina statute provides that, "[i]t shall be unlawful for any individual natural person, partnership, firm or corporation to allow any electric current for use in any mobile home to be turned on or to continue to furnish electricity for use in such mobile home without having first ascertained that either a label of compliance is permanently attached to said mobile home or a certificate of compliance has been issued for such mobile home." <sup>33</sup>

Apparently North Carolina has no specific statutory provision for uniform standards as to factory-built housing, although it may be able to deal with that problem adequately through its statewide building code. Nor has North Carolina a specific reciprocity provision with other states. Like Alabama and Mississippi, it adopts a specific set of national standards promulgated by the American National Standards Institute.

Since mobile homes and factory-built housing are an important housing resource in rural areas, legislation like that of Virginia, Alabama, and Mississippi, and North Carolina would seem highly desirable for adoption in almost any jurisdiction. Indeed, some group like the National Conference of Commissioners on Uniform Laws might profitably consider the feasibility of uniform legislation in this field. Regardless of uniformity, reciprocity among those states which have mobile home standards--as is provided for by Alabama and Mississippi--would seem desirable. Since factory-built housing presents some of the same problems involved in mobile home regulation, there is good reason to follow the example of Alabama and Virginia and provide for testing and labelling of factory-built units or components. As between the two States, the Virginia decision to have the same State agency regulate both mobile homes and industrialized building units seems more advantageous than Alabama's choice to have the State fire marshal prescribe rules for mobile homes and another department regulate factory-built housing. Interestingly, Virginia, which now provides for a statewide building code, has entrusted the promulgation of this code to a different agency than that which is responsible for the mobile home and industrialized building standards. However, it would seem simpler administratively to entrust the promulgation of all of these regulations to the same agency.

Alabama, Mississippi, and North Carolina all have moved further towards the adoption of a specific nationally recognized code for mobile homes than has Virginia--which has, however, embraced the concept of performance standards for mobile home construction and for building codes generally. Should a State choose to adopt a specific national code, it should, at least, seek to choose one that is oriented towards performance standards. Moreover, in

order to obtain full benefit of research and development by the Department of Housing and Urban Development, a state might wish to follow the West Virginia precedent and authorize an exemption from state or local building codes for materials or components which have been approved by HUD.

Alabama's factory-built housing legislation which authorizes both injunctive relief and a civil cause of action for violations, as well as criminal sanctions, seems to provide an effective remedy. North Carolina's prohibition of an electrical connection for a noncomplying mobile home may be a very practical enforcement tool, but some public utilities might consider this an unreasonable burden on their operations.<sup>34</sup>

## 2. Transportation Regulations

Every state studied has limitations on the size of mobile homes which can be transported upon the state's highways--the maximum dimensions permitted generally being eight feet in width, thirteen feet in height, and fifty-five feet in length. However, larger units may be transported with special permission from specified state officials. None of the state statutes appeared to be unreasonably restrictive of the movement of mobile homes; and probably limitations on transportation are not a major barrier to the use of mobile homes in rural areas.

## 3. Taxes

Most of the states studied have a sales tax that is applicable to the sale of mobile homes--either expressly--or impliedly because the mobile homes are considered personal property. While Virginia excludes mobile homes from application of the regular sales and use tax, they are subject to the Virginia Motor Vehicles Sales and Use Tax. At least four of the States have use taxes that appear applicable to mobile homes. Although generally a mobile home is treated as personal property, West Virginia and Mississippi use a different approach.



In the former state, when the mobile home is owner-occupied and the owner also owns the land on which it rests, the mobile home is classified as real estate, whether or not the wheels have been removed. However, if the mobile home is owner-occupied and its owner does not own the land on which it rests, the home is considered personal property. Mississippi follows a similar approach, except that the mobile home owner who owns the land has a choice of treating his mobile home as either personal or real property.

#### F. Tax Assessment

In some jurisdictions there is authority for low tax assessments or tax valuation formulas for certain favored uses. For example, California allows agricultural land to be valued for tax purposes in terms of its farm use, even though it might have a higher market value if subdivided or otherwise developed. North Carolina has just adopted similar legislation. However, none of the seven states studied seem to vary from the "fair market value" approach to tax valuation. Thus, the tax valuation of rural housing cannot be maintained at an artificially low level.

#### G. Welfare Lien Laws

Welfare lien laws are not in vogue in the seven states studied. Only Kentucky has a general welfare lien statute, whereunder first class cities which have paid general assistance to any person through that city's department of public welfare have a claim against his estate. This claim has priority over all unsecured claims against his estate, except for burial expenses, administration costs, expenses of his last illness, and claims by the Commonwealth for assistance rendered by it to the decedent. The lien is enforceable

against all real estate and rights to real estate belonging to or thereafter acquired by a recipient of general assistance through the city's department of public welfare. In short, the supply of rural housing in the states studied is not impaired by welfare lien laws.

#### H. Repair or Demolition of Substandard or Dilapidated Housing

All seven of the states have statutes which under some circumstances give power to local authorities to repair or demolish substandard housing in slum areas. In some instances, this power is granted in connection with urban renewal or public housing legislation and thus is rather limited in scope. Arkansas provides that first class cities have the power to order the removal or razing of buildings which have become dilapidated, unsightly, unsafe, unsanitary, or detrimental to the public welfare;<sup>35</sup> and Alabama specifically authorizes its incorporated municipalities to adopt and enforce ordinances regulating repair and maintenance of all buildings used for human occupancy, the number of occupants, and the mode and manner of occupancy and to prohibit use and occupancy of buildings which do not comply with the requirements of such ordinances.<sup>36</sup> Such grants of power to certain municipal corporations may, by implication, raise a question as to the existence of like power to regulate substandard housing in rural areas outside the limits of any municipality.

Virginia grants local governments the authority to make improvements in slum areas and claim a lien on the property for the cost of the improvements.<sup>37</sup> Also, in that state local authorities may close and demolish substandard buildings which an owner refuses to repair.<sup>38</sup>

Kentucky and Tennessee have the most extensive legislation in this field.<sup>39</sup> In almost identical terms the two states authorize city and county governments to adopt ordinances relating to structures which are unfit for human habitation. Under these ordinances an appropriate public official gives notice to an owner and conducts a hearing on charges that his structure is unfit for human habitation. Then the official makes his findings of fact and issues an order requiring the owner to repair, improve or alter the structure to make it fit for human habitation. If, however, the repair, improvement, or alteration will cost more than fifty per cent of the value of the structure in Kentucky--or more than a "reasonable cost" in Tennessee--then the owner is ordered to remove or demolish the structure. If the owner refuses to comply, then the public official can take the appropriate action with respect to the structure, and the costs incurred in doing so are secured by a lien on the property.

None of the states studied make express provision for the appointment of a receiver to take possession of substandard housing, collect the rents, and apply them to the cost of making repairs. Nor do any of these states provide for any special housing courts or tribunals to consider matters involving substandard housing.

#### I. Landlord and Tenant Law

None of the seven states have enacted legislation which changes the common law landlord/tenant relationship. None permit an aggrieved tenant to withhold rent when the landlord has failed to make repairs, none provide for special housing courts to deal with landlord/tenant and other housing related programs, and none have enacted legislation permitting the appointment of a receiver to collect rents and make improvements, though the

Attorney General of Tennessee is of the opinion that a Tennessee court may be able to do so under its general equity power:

The common law placed the risk on the tenant as to whether the condition of the leased property made it unsuitable for the use contemplated by the parties. In recent years, the definite judicial trend has been in the direction of increasing the responsibility of the landlord, in the absence of a valid contrary agreement, to provide the tenant with property in a condition suitable for the use contemplated by the parties. This judicial trend has been supported by the statutes that deal with this problem. This judicial and statutory trend is sound because it is more likely that safer and healthier rental property will be available under the view evidenced by the trend than under the old view.

Three of the states, Kentucky,<sup>40</sup> Virginia,<sup>41</sup> and West Virginia<sup>42</sup> have legislation prohibiting discrimination in the leasing of publicly owned, operated, or assisted housing on grounds of race or color, and they also forbid such discrimination in the leasing of private property with certain exceptions.<sup>43</sup>

#### J. Fire Insurance

Only one of the seven states studied -- Virginia -- has a program which assures the availability of fire insurance to property owners in substandard areas. Although it is limited to urban areas and specifically excludes property used for farming, Virginia's program merits discussion because it could serve as a model for legislation covering rural areas.

The Virginia plan requires all authorized insurers in Virginia to formulate and administer a program for the equitable distribution and placement of applications for fire and extended coverage insurance for qualified property. To qualify the subject property must meet certain requirements, i.e., that it be in an urban area and that it be in compliance with state and local codes and ordinances. If the State Corporation Commission finds

that the program devised by the insurers under §38.1-748 and §38.1-748.1 is failing to adequately provide insurance for qualified property, the Commission may order the creation of a joint underwriting association. The association will have the powers to require its members to issue policies to applicants and to assure reinsurance from members.<sup>44</sup> The degree of required participation in the association will be the proportion of each member's total yearly premiums to the total insurance written in the state.

The Virginia plan provides incentive to the insurers to develop their own plan, the incentive being the threat of state control if they fail to act or if having acted, they fail to provide an effective program.

The difficulty in obtaining fire insurance in rural areas can be attributed to the large distance between houses, the lack of a central water system and the lack of sufficient cooperative fire protection associations. Financial assistance which would help in the organization and maintenance of cooperative fire protection associations would probably reduce fire insurance rates and would make insurance companies more willing to provide coverage in rural areas.

#### K. Usury Laws

The usury laws of the seven states ranged from Arkansas and Tennessee, which have a maximum interest rate prescribed in their state constitutions, to Virginia, which sets no ceiling on the interest rates in first mortgages or deeds of trust on real estate.<sup>45</sup> In five of the states, loans insured through the Federal Housing Administration and the Veterans Administration are exempted from the state usury restrictions. Tennessee and Arkansas grant no such exemption. Thus, if interest rates on FHA or VA loans rise

above the maximum rates permitted by the usury laws of those two states, such loans would be impossible to make. Virginia not only exempts VA and FHA loans but also those which are insured by any other federal agency or organization and loans made pursuant to the requirements of the Federal Home Loan Mortgage Corporation. This last exemption could be important in connection with loans by savings and loan associations. Of course, in Virginia this exemption would not be as important as it might be elsewhere, since usually a federally insured loan will be secured by a first mortgage or deed of trust on real estate -- in which event it would not fall under the Virginia usury laws in the first place.

Both Kentucky and Alabama relax the usury limitations for loans that exceed a certain threshold--perhaps on the reasoning that a borrower of large amounts does not need the protection of usury statutes. Thus, Kentucky permits any specified rate of interest when the obligation exceeds \$25,000. In Alabama, when corporate borrowers are involved, the maximum permissible interest rate is 15% on any loan greater than \$10,000 but less than \$100,000; where other borrowers are involved, the loan must exceed \$100,000 before the lender may charge as much as 15%. The special treatment of corporate borrowers also probably reflects a view that a corporation is not as needful of protection as is an individual.

If the policy of the usury laws is accepted at all, the time-price doctrine provides an enormous loophole that probably cannot be justified solely in terms of the view that a seller may set his own price. Where a seller-- like so many-- is regularly engaged in discounting the commercial paper resulting from his sales transactions and has adjusted his time-price accordingly, there is a good basis for adopting the Arkansas view that usury laws apply. At the very least, legislatures might well express their own intent concerning the applicability of the time-price exception to such transactions.

Whether a corporation--especially a small corporation--is so different from a natural person that it should automatically fall outside the usury laws in whole or in part might also be questioned. Certainly where a loan to an individual is disguised by having him form a corporation and apply for the loan in the corporate name, there is considerable reason to apply the usury laws--unless, of course, the basic philosophy of those laws is rejected from the outset.

#### L. Lending Institutions

Often the terms of usury laws are less significant to a borrower than the availability of financial institutions to make loans. One factor that affects this availability is the presence or absence of branch banking in the state. The seven states studied fall into three categories: (1) branch banking not allowed; (2) branch banking allowed if certain requirements are met and there is approval by appropriate state officials; and (3) branch banking allowed automatically if certain conditions are met. Only West Virginia fits in the first category; it prohibits all types of branch banks

and engagement in business at any other place besides the principal office. In the second and largest category are Kentucky, Mississippi, Tennessee, and Virginia. Virginia provides that the State Corporation Commission, when satisfied that the public convenience and necessity will be served, may authorize banks having unimpaired capital of a certain amount to establish branches within the limits of the city or county in which the parent bank is located, or to establish branches elsewhere by merger with banks located in another city or county. (This merger provision appears to be unique to Virginia among the states studied). Kentucky's law is similar, except that: (a) the Commissioner of Banking must find that there is a reasonable probability of successful operation of the branch, as well as that it would be in the public interest to establish it; (b) there must not be another existing bank in the area; and (c) there is no provision allowing branches outside the city or county of the principal office. Mississippi's approach is different. It uses a non-county radial measurement; and a branch may be authorized within one hundred miles of the principal office. However, the parent bank must first obtain from the state Comptroller, Attorney General, and Governor, or a majority thereof, a certificate that public convenience and necessity will be promoted by establishment of such a bank. Tennessee law authorizes the Superintendent of Banking to approve branch offices; but no branch may be set up outside the county where the principal office is located.

In the last category are Arkansas and Alabama. A bank in Arkansas may establish a branch if several requirements are met--namely, the branch is within the county where the main office is located, there is no other chartered bank within a certain distance from the branch, and the bank has



specified capital. In Alabama the prohibition against branch banking does not apply if branch banking has been authorized in the county or if that county had a population of 200,000 persons or more in the last national census.<sup>48</sup>

In short, five of the seven states do not allow branch banking beyond the limits of the county where the bank's principal office is located. Virginia permits it in connection with certain mergers, while only Mississippi seems to allow it rather generally. Thus, in the area studied, branch banking does not play a major role in the availability of funds for rural housing.

There is a wide range of state positions concerning jurisdictional limits on lending by state-chartered savings and loan associations. On the one hand, Kentucky, Tennessee, and West Virginia do not limit the lending area, on the other, Virginia provides that the borrower must be within the state. On middle ground are Alabama, which provides for a geographical limitation--within fifty miles of the home office of the association but not limited by the state boundaries--and Mississippi, which generally limits loans to an in-state borrower but provides that exceptions may be made. As to Arkansas, the question does not seem to be clearly covered by the state statutes.

For federally-chartered savings and loan associations the loan radius is one hundred miles and may include other states.<sup>49</sup> While the one hundred-mile loan radius also applies to branch offices, the loan must then be within the state. A federal savings and loan association which has been converted from a state-chartered association may also continue to make loans in the area which it previously served.<sup>50</sup>

In two of the states, Arkansas and Alabama, a bank may make loans secured by a mortgage on real estate without statutory limitations or directions

other than those relating to loans in general. However, the other states have more specific limitations on real estate loans, the most common concerning the maximum period during which property may be held. Four states have a time limitation of five or ten years on the retention of real estate which is conveyed to a bank in satisfaction of a borrower's debts or is purchased at a judgment sale; but the period may be extended by an appropriate official. Kentucky has an absolute maximum of ten years.

All seven states limit the percentage of its capital assets which a bank can lend to any one person or entity, and all provide for exceptions to that limitation. Kentucky provides that its normal 20% limitation is not binding if a borrower pledges good collateral with the bank or executes a mortgage upon real estate as security for the loan; in that event the limitation is 30%. Tennessee allows a borrower to obtain more than the normal maximum of 15% of the bank's capital assets--up to 25%--if each specific loan in a higher amount is approved in advance by the board of directors or by the finance committee of the bank. In all of the states, the loan limitation does not apply to loans to certain governmental units; and three of the states include both municipalities and counties among the government units exempted from the loan limitation. Also, Arkansas specifically includes housing authorities among the entities to which a bank's loan limitation does not apply.

Since the restrictions on branch banking in the seven states would tend to prevent the growth of very large banks, the loan limitations would probably be of more significance than in jurisdictions where branch banking flourishes. However, regardless of loan limitations, it is not likely that a bank would lend a very substantial portion of its assets to a single borrower to develop and construct rural housing. Of course, where the loan limits do present a problem in financing a particular transaction, a bank may seek to obtain participation in the loan by other banks.

All but one of the states require that every real estate loan of a savings and loan (or building and loan) association be secured by a mortgage or other instrument constituting a first lien upon the real estate securing the loan. If the association itself already holds a prior lien, then additional or supplementary advances secured by a second mortgage would be considered equivalent to a first lien for purposes of these loan requirements. Probably a "wraparound mortgage" would not qualify as a first lien for purposes of these statutes, although the statutes do not deal specifically with the question.<sup>51</sup> West Virginia apparently does not require by statute that a savings and loan obtain a first lien to secure its loan.

Several states provide that a real estate loan by a savings and loan association is not to exceed a certain proportion of the value of the real estate. In Tennessee the loan is not to exceed two-thirds of the value of the real estate, as determined by the board of directors of the savings and loan association; however, this limitation does not apply to mortgage loans insured by the Federal Housing Administration. In West Virginia the percentage requirement on a real estate loan by a savings and loan association is 95%, with an exception for loans insured or guaranteed by the federal government. Virginia's ceiling is based not only on percentage but also on actual monetary value. Except as otherwise provided in the statutes, no real estate loan can exceed \$45,000 on each home or 90% of the value of the real estate up to \$50,000. As in the case of Tennessee and West Virginia, there is an exception to these limitations for loans insured or guaranteed by a federal agency.

None of the seven states have express statutory provisions either permitting or prohibiting "flexible" or "open-end" mortgages or deeds of trust

on real estate. However, Alabama does permit open-end credit plans and, by analogy, might therefore be receptive to open-end mortgages.

#### M. Health and Safety Regulations

All seven states attempt in some way to regulate the building industry for the general purpose of public health and safety. The applicable regulations may be found in the health and safety statutes of some states and in the professional and occupational statutes of others. For the most part, the states have delegated to municipal and often to county governments the authority to establish building and housing codes and to regulate contractors, plumbers, and electricians. None of the states has enacted a statewide minimum housing code, although the authority to enact such codes is frequently vested in municipalities.

Five states have promulgated some type of statewide fire code or have authorized a state fire marshal to do so. Arkansas and Mississippi have no statewide guidelines but clearly authorize municipalities to enact and enforce their own codes. Arkansas has a uniform plumbing code administered by the state health department.

All seven states have legislation concerning installation of water and waste systems, but except for Tennessee, these statutes have little relation to lot size. As with health laws generally, regulatory responsibilities are primarily entrusted to local health boards and sanitation districts, subject only to general regulations of state health departments and performance standards imposed by state environmental and natural resources commissions.

In Tennessee, lot size requirements and their relationship to public water supplies are expressly dealt with by statute. When public water is available, the minimum lot size is 7,500 square feet; otherwise, it is 15,000 square feet. Additional lot sizes may be required when percolation

tests indicate that the soil will not absorb the sewage.<sup>52</sup>

In Alabama, where regulation of water and waste systems is left largely in the hands of county health boards, these boards may require installation of plumbing facilities conforming to the rules of the state board of health and also may require connections to sanitary sewers where deemed necessary.<sup>53</sup> Issuance of permits for installation of plumbing in structures outside the jurisdiction of a municipality depends on meeting statewide requirements, and inspection is done by the county health boards.

In Alabama, water authorities may be created on a countywide basis and so are often water suppliers for rural dwellings.

In Kentucky, the Department of Environmental Protection is chiefly responsible for water and waste system control; but responsibility is shared locally with sanitation districts. Once a sanitation district is established in Kentucky, no person or public corporation may install within the district any laterals, trunk lines, interceptors for the collection or discharge of sewage or other liquid waste, treatment or disposal works, until such plans have been submitted and approved by the board of directors of the sanitation district and by the Department of Environmental Protection.<sup>54</sup> Similarly, in Tennessee no person may install, permit to be installed, or maintain any cross-connection, auxiliary intake, bypass, or interconnection, unless the source and quality of water from the auxiliary supply, method of connection, auxiliary intake, bypass, or interconnection has been approved by the state department of public health.<sup>55</sup> In Virginia, any person constructing a sewage system or water supply system having three or more connections must first obtain the approval of the county's governing body.

In their subdivision control legislation, both Virginia and Tennessee specifically deal with water supply and waste disposal. In Virginia, the

county board of supervisors may require a subdivider or land developer to pay a pro rata share of the cost of providing reasonable and necessary sewage and drainage located outside the property limits of the developer but necessitated at least in part by the construction or improvement of his property.<sup>56</sup> This sort of regulation is not unusual, and similar regulations probably exist frequently at the local level in the other states in the form of subdivision controls and zoning ordinances.

On May 22, 1973, Tennessee adopted new legislation regulating subsurface sewage disposal systems and subdivisions using such systems.<sup>57</sup> For these purposes a subdivision need consist only of two building lots. The Tennessee Commissioner of Public Health is to supervise the systems and establish standards for them. No county register shall file a subdivision map which has not been approved by the Commissioner or local health authorities; and construction of a house without approval of the subsurface sewage disposal systems is forbidden.

All seven states have enacted some environmental protection laws--usually establishing a single umbrella agency, but in some cases creating separate commissions to deal independently with air and water pollution. The primary thrust of both the water and air pollution control statutes is to establish minimum standards for purity of the state's water and air resources. Most of these acts are concerned with discharges, directly or indirectly, into the state's water and air. Their effect on rural housing would seem relatively minor, except that compliance will involve additional development costs that ultimately will be passed along to the homebuyer or tenant.

Perhaps the most important comment to be made about the environmental

protection laws of the seven states is that none of them have any requirement for environmental impact statements remotely comparable to that imposed by the new California Environmental Quality Act, which is drastically affecting the construction industry in that state.

Of course, direct governmental regulation is not the only way in which environmental requirements are given effect. Lenders can impose requirements--for example, concerning waste and water systems--as a condition for making loans. Undoubtedly government agencies like FHA, VA, and the Farmers Home Administration, which are involved in providing credit for home construction, will be increasingly concerned with the environmental features of the housing for which they furnish assistance. In the seven states studied, the requirements of these agencies may well have more effect on rural housing than the environmental regulations of state and local agencies.

#### N. Legislation Affecting the Home Building Construction Industry

Five of the seven states (Alabama, Arkansas, Mississippi, Tennessee and Virginia) have a licensing requirement for general contractors. Two of them, Arkansas and Alabama, exempt builders of one family residences from the licensing requirements. Two, Mississippi and Tennessee, require that all contractors involved in projects costing \$10,000 or more be licensed. Virginia requires licensing of contractors involved in projects costing \$30,000 or more or whose yearly volume exceeds \$200,000, thus effectively excluding from the licensing requirement most small builders in rural areas. Kentucky and West Virginia have no licensing requirement.

In summary, only two of the seven states (Mississippi and Tennessee) require that builders of one family homes be licensed.

1. Vickers v. Gloucester Township, 37 N.J. 232, 181 A.2d 129 (1962), cert. denied, 371 U.S. 233 (1962); People v. Clute, 18 N.Y.2d 999, 224 N.E.2d 734 (1966). However, the legality of such exclusionary zoning has become increasingly suspect. See, e.g., Town of Conover v. Jolly, 277 N.C. 439, 177 S.E.2d 879 (1970); State of Washington v. Work, 75 Wash. 2d 208, 449 P.2d 806 (1969).
2. In many instances, a chief inducement for adoption of substandard housing ordinances was meeting "workable program" requirements for certain federal funds.
3. Thus limitations on branch banking or the radius within which a financial institution may make loans may be very important in determining the availability of credit for the rural homebuilder.
4. Kentucky Revised Statutes, §198-A (1972).  
Virginia Code §36-55.27 (1972).  
West Virginia Code §31-18-1ff (1968 and 1973 Amendment).  
Tennessee Code Annotated, Housing Development Agency Act.
5. Tennessee Code Annotated, Housing Development Agency Act. §3-12.
6. Tennessee Code Annotated, Housing Development Agency Act §9.
7. Ky. Rev. Stat. § 198A.040(10).
8. Va. Code §§ 36-97 et seq. (Suppl. 1973).
9. Id. at §§ 36-55.7 et seq. (Suppl.1973).
10. Id. at §36-99 (Suppl. 1973).
11. Id. at §§ 36-70 et seq. (Suppl. 1973).



12. Id. at § 36-73 (Supp. 1973)
13. Ala. Code, Title 55, § 367(1), (7), (9) (1960).
14. Id. at § 367(11) (1960)
15. Miss. Code Ann. § 2890.7 (Supp. 1972).
16. W. Va. Code § 8-24-50a (1972).
17. Id. at § 47-5-1 (Supp. 1972). Tennessee has a similar provision.  
Tenn. Code Ann. § 53-2549 (Supp. 1972)
18. Id. at § 13-414 (1955) (regulation not authorized for buildings on lands devoted to agricultural uses); Ky. Rev. Stat. §100.203(4) (1969) (no regulation of agricultural buildings); Miss. Code Ann. § 17-1-3 (1972) (no permits required for farm buildings or farm structures outside municipal limits.)
19. See note 1, supra.
20. See note 11, supra.
21. Id. at § 31-18-2.
22. See note 10, supra.
23. Va. Code §§ 36-70 et. seq. (Supp. 1972).
24. Id. at § 36-81 (Supp. 1972).
25. Id. at Title 25, §§ 124 et seq. (Supp. 1971).

26. Id. at Title 25, § 130.
27. Id. at Title 25, § 114 et seq. (Supp. 1971).
28. Miss. Code Ann. §§ 5131-101 et seq. (Supp. 1972).
29. Id. at § 5131-108 (Supp. 1972).
30. W. Va. Code § 8-24-50a (1972).
31. N.C. Gen. Stat. §§ 143-136 et seq. (1964).
32. Id. at §§ 143-144 (Supp. 1971). The 1969 Act was substantially amended in 1971.
33. Id. at § 143-150 (Supp. 1971).
34. Even in North Carolina there may be some question about the legality of such a provision. See Dale v. Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).
35. Ark. Stat. Ann. § 19-2803 (1968).
36. Ala. Code, Title 37, § 785(1) & (2) (Supp. 1971).
37. Va. Code § 15.1-11.2 (1970).

38. W. Va. Code Ann. §§ 16-18-4, 16-18-5, & 16-18-8 (1972).
39. Kv. Rev. Stat. §§ 80.620-80.720; Tenn. Code Ann. § 13-1203 (1955).
40. Ky Rev. Stat. § 344.360 (Supp. 1972).
41. Virginia Fair Housing Law, Va. Code §§ 36-86 et seq. (Supp. 1973).
42. W. Va. Code Ann. § 5-11-9 (1971).
43. Va. Code §§ 38.1-746 et seq. (1970). The Basic Property Insurance Inspection and Placement Plan and Joint Underwriting Association is the title given to the association to be formed.
44. See note 21, supra.
45. Va. Code § 61-3191 (1973), which exempts first mortgages and deeds of trust on real estate from usury restrictions, does not apply if the interest rate "varies in accordance with any exterior standard," or "cannot be ascertained from the contract without reference to any exterior circumstances or documents." Virginia does not apply its usury laws to corporations and certain other organizations. Id. at §36.1-327 (1973).
46. Hare v. General Contract Purchase Corp., 220 Ark. 601, 249 S.W.2d 973 (1952).
47. Virginia has a clear exemption from usury statutes for any loan "made pursuant to the requirements of the Federal Home Loan Mortgage Corporation." Va. Code § 6.1-328 (1973). No other state studied provided a corresponding exemption.

48. See Security Trust & Savings Bank v. Marion County Bank Co., 253 So. 2d 17 (1971), where the Alabama Supreme Court reaffirmed that travel banking could only be conducted county-wide.
49. 12 C.F.R. 545.6-6 (1973).
50. Id.
51. The "wrap-around mortgage" is discussed in Gunning, The Wrap-Around Mortgage. . . Friend or U.F.O.?, 2 Real Estate Review 5 (No.2 1972). Note, Wrap-Around Financing: A Technique for Skirting the Usury Laws?, 1972 Duke L.J. 785.
52. See Tenn. Code Ann. § 53-2012 (1966), repealed as of July 1, 1973 by
53. Ala. Code, Title 22, § 140(14) (Supp. 1971).
54. Ky. Rev. Stat. § 220.260 (1969).
55. Tenn. Code Ann. § 53-2004 (1966).
56. Va. Code Ann. §§ 15.1-326, 15.1-341.
57. Chapter No. 188, Public Acts of 1973, enacted May 22, 1973 and effective July 1, 1973, which repeals and replaces Tenn. Code Ann. §§ 53-2009-53-2016.

## II. Summary of Findings

Among the seven states studied several have recently taken important steps to meet housing needs. Statewide housing development corporations have been created as government instrumentalities and, with funds raised from revenue bonds and otherwise, will provide technical assistance, loan funds, and mortgage insurance in some instances. Statewide building codes are beginning to emerge--especially with respect to mobile homes and factory-built housing. Fortunately there seems to be a willingness to utilize performance standards to preclude local governments from barring the use of new materials and components which have gained national acceptance.

None of the states has a statewide housing code, but local government have been delegated considerable power to deal with substandard housing. In some states a substandard structure may be repaired or demolished and the cost thereof becomes a lien against the land. None of the states has authorized tenants to withhold or suspend rent payments because of defects in the premises leased, and generally the law of landlord and tenant has been left untouched in all of the states studied. However, in three states, civil rights legislation impinges on the landlord's traditional discretion to select his tenant.

The states vary in their policy towards usury, although five of them contain an express exception for FHA and VA loan. Virginia has enacted several major exemptions from the usury laws, such as those for first mortgage loans on real estate and for corporate loans. Arkansas, on the other hand, has by judicial decision restricted the time-price doctrine which has long constituted an implied exception to usury statutes.

All of the states have prohibitions or severe limitations on branch banking. They have a variety of limitations on loans that can be made by banks.

Similarly, the treatment of savings and loan associations differs markedly from one state to another.

In the promulgation of health and safety regulations, considerable authority has been delegated to local governments. Some states have, however, legislated at the state level to deal with health problems, as Tennessee did on May 22, 1973, when it enacted a new law concerning subdivisions and their underground sewage disposal systems. Up to the present, however, the environmental protection efforts in the states studies have not been sweeping in their coverage or effects.

Only two of the states require that builders of one family homes be licensed.

### III. Conclusions

Among the states studied, several have recently made some significant advances toward improving the housing supply -- both rural and urban. The formation of statewide housing development corporations, which can provide loans, mortgage insurance, and technical assistance, is one such step forward. Another is the provision for a statewide building code in Virginia and the enactment of legislation leading to the formulation of uniform standards for mobile homes and factory-built housing. Civil rights legislation in three of the states will help assure that the existing housing supply will be made available on a non-discriminatory basis. The usury laws in the states reflect a wide diversity of goals, but at least five of the states contain a specific exemption for FHA and VA approved loans.

Perhaps these suggestions can be safely made on the basis of the study that has been conducted:

(1) State housing corporation legislation modeled on that of Virginia, West Virginia, Kentucky, and Tennessee should be adopted by other states to provide assistance in meeting housing needs. The Corporation must be well staffed with knowledgeable people and must be immune from the political process.

(2) A statewide building code should be adopted similar to Virginia's recent law. However, attention should be given to the possible necessity for reduced standards in rural areas with respect to certain types of housing.

(3) Such a building code should be based on performance standards and/or relation to one of the nationally recognized codes. The building code should have administrative flexibility as incorporated in the Virginia approach and should not permit more stringent local deviations.

(4) State legislation should also be adopted to provide uniform standards for mobile homes and factory-built housing; the standards should be of a performance nature and should be enforced by an independent third party testing organization authorized to issue certificates of compliance.

(5) A system of reciprocity among states should be provided in the administration of the uniform standards for mobile homes and factory-built housing. Federal legislation should be enacted under the interstate commerce clause which would require a state which has not adopted an industrialized housing law or mobile home law to accept a shipment from a state that has such a law that meets minimum requirements.

(6) In the absence of a statewide code, legislation like that of West Virginia should be adopted to assure that building codes do not exclude materials and methods that have been approved by the Federal Department of Housing and Urban Development.

(7) Specific exceptions to Constitutional provisions and usury statutes should be made for loans which are insured, guaranteed or purchased by HUD, VA, Federal Home Loan Corporation, FNMA or any similar Federal or state instrumentality.

(8) Legislatures should re-examine the policy in the usury laws and make a specific determination as to whether time-price transactions should be included.



(9) State governments, directly or through regional planning agencies, should take an active role in supporting housing authorities in the provision of low rent housing in rural areas. The assistance should be in development, grantsmanship, management and finance. The states should be the public houser of last resort, should encourage merger, consolidation and/or unified management of small local housing authorities and should encourage the use of the Section 23 Leased Housing Program.

(10) Legislation should be adopted in those states where it does not exist to provide explicit authority for governmental authorities in rural areas to repair or demolish substandard buildings and impose a lien on the real estate for the expense of the repairs or demolition.

(11) A program, modeled on Virginia's plan for substandard urban areas, should be authorized to provide fire and extended coverage insurance at reasonable cost in any rural areas where such insurance otherwise is unavailable.

(12) We recommend that the remaining states enact fair housing legislation.

(13) Federal, state and local areas standards for subdivisions in rural areas should not be set unreasonably high.

(14) The use of new technology should be encouraged in rural areas. Such proven systems as solar heating units, the Swedish waste system, etc., initially may be more appropriate for rural areas.

(15) Discriminatory zoning against mobile homes, particularly by municipalities in predominately rural areas should be prohibited.

(16) New land use environmental legislation should be carefully drafted to assure that it will not have a detrimental effect on the construction of low income housing in rural areas. The need for environmental protection should be carefully balanced with the need for low income housing.

Obviously there are other fundamental changes that might deserve consideration. For instance, the hostility to branch banking which seems to pervade the states studied should perhaps be re-examined in light of possible needs for larger banking institutions with access to greater loanable funds and with more diversified financial services. And Virginia's experience with an exemption from usury laws for first mortgage loans on real estate should be studied. In any event, by its comparison of the existing laws pertinent to rural housing in the seven states, this Report may suggest some new legislative solutions for several old problems of rural housing.

Probable Impact and Cost of Implementing Conclusions

1. State Housing Corporation. The approaches that have been taken to involve states in the production of low and moderate income housing are beginning to fall into a pattern. The Treasury Department objects to the issuance of tax exempt bonds for this purpose. However, unless federal subsidies are made available to cover some part of the cost, the states will find themselves in the position of being able to produce only housing which competes directly with that produced by the private sector. A system which is not expensive and is productive can readily be developed by a state government willing to accept the limitations on housing production for the lowest income groups and to satisfy itself with the production of housing for an income group not currently being served by the private market but not within the group served by public housing or the rent supplement program on a federal level.

The issuance of tax exempt bonds on a continuing basis would make it possible for a state to mount an effective housing program without incurring any great public expense. For instance, if a state were to authorize its housing corporation to issue \$100 million in tax exempt bonds, at the rate of \$10 million in bonds each year, a housing program could be mounted which would result in the production of 500 units per year in that state with no government outlay after the second year.

The state housing agency, working through a very small staff, could agree with local builders and production mechanisms to finance the houses in very much the same way as does a private mortgage insurer. For example, if, in a given area, lenders are willing to lend 75 percent

of value on a first mortgage without any insurance, the State Housing Finance Agency could insure a loan of up to 20 percent more on the house in order to give the buyer a 95 percent loan. The Housing Finance Agency would establish an insurance reserve in exactly the same way as does a private mortgage insurer.

A staff of nine could probably operate such a program in any of the states we have studied at a total cost of about \$250,000 a year. By the beginning of the third year, such an agency would be self-supporting. The insurance fund could be established by a loan from the state government; the loan could be repaid in less than five years and the state government's total investment for the system would be in the neighborhood of \$250,000. By providing for the continued issuance of bonds, it would be possible for the state to mount a program which would result, for each \$100 million of bonds issued, in a steady annual production of 500 units of housing aimed at an income group subsidized only in the sense that the building industry would be asked to produce housing at a lower price under a guaranteed market. After a short testing period, if the state wished to expand the program it could. In North Carolina, bonding authority exists for \$200 million which, at a one percent interest spread between the cost of the bond interest and the cost of the mortgage interest, would result in a profit for the state organization which could be used either to help retire the bonds or to increase the program.

It is probable that a state housing organization set up as a branch of the state government and therefore subject to the political processes

within the state would sooner or later founder as a result of political demands made upon it. It is in our judgment essential that such corporations be immunized from such a political process.

2 & 3. A statewide building code, based on performance standards, and with some flexibility to make possible reduced standards in rural areas for certain types of housing, would have an impact only if implemented by the local jurisdictions. As an example, North Carolina has a statewide building code (the Southern States Building Code) but in some rural areas there are no building inspectors. The net result is that the only inspection made of a house as it goes up is done by the health officials, who generally confine themselves to sewer, water, and plumbing.

The adoption of a statewide building code should be accompanied by the establishment of some form of inspection, which would cover not only construction but also repair and rehabilitation efforts.

The direct public cost for the adoption of a building and housing code would be virtually nothing. The cost to the local jurisdiction of an inspector or inspectors might be covered by building license fees. In areas where only small amounts of new construction and rehabilitation are being performed, it might be wise to add an inspector to the staff of the planning and development district and have the cost of the inspections borne by the various jurisdictions within its area in proportion to the number of inspections made within each jurisdiction.

4. The adoption of legislation setting uniform standards for mobile homes and factory-built housing can be done at no cost to the public or to local or state governments. A third party testing organization such as Pittsburgh Testing Laboratory or the Underwriters Laboratories would inspect units under construction on a contract basis for the manufacturers. The cost would then, of course, be borne by the buyer, who is after all the concerned party most likely to profit from such standards.

5. In connection with the adoption of a set of performance standards for mobile homes and factory-built housing, it would be a very good idea for a system of reciprocity to be set up. In that way a mobile home manufactured, say, in Tennessee could be shipped to any state within a reasonable distance so long as it contained the seal of the independent testing organization. It may well be that such a system of reciprocity can better be set up by the adoption of a federal standard than by a system of interstate agreements. The public cost of such a system would be zero.

6. A great deal of controversy has developed over the adoption of national codes to the exclusion of local codes. It may be wiser to include in any state statute that the building code will accept methods and materials approved by HUD as a replacement for the standards set out in the state code.

7. Many states already exempt from the usury limits loans insured, guaranteed or purchased by a federal agency. In the states studied so far, only Arkansas (in which the usury limit is specifically set forth in the state constitution) would cause any major problem in this respect. The public cost to accomplish this would be zero.

8. In their study of usury laws, the state legislatures should determine whether or not in their judgment time-price transactions should be permitted at an interest rate different from that specified in the usury statute.

9. The role of the state government in supporting low rent public housing should be more positive than it has been in the past. This might be done in somewhat the same fashion for each state as it was done in the Washington, D. C., area through the "fair share" allotments between the suburban counties and the central city.

There is no way of assessing the possible cost of such a program.

10. In areas where there is no specific authority for governments in rural areas to repair or demolish substandard building, such authority certainly should be granted. In many cases, it is likely that the vacant land which would result from a demolition program would revert to the local jurisdiction. This, however should not be a major item of expense since the cost of demolition and the resultant lien would probably not exceed the value of the land. The cost to repair the structure would be something else again. Such a program should therefore be undertaken only where funds are available to do the repair, and a time limit for payment of the lien against the property should be enforced.

11. Virginia's plan for extending fire insurance to rural areas on an assigned risk basis would probably require a very small outlay of public funds. In all probability, lenders could be counted upon to make certain that the insurance provisions were enforced and the public cost would be limited to the establishment of a position within the state insurance department to coordinate the assignment of risk to the various corporations doing business in that state.

12. The enactment of fair housing legislation need not result in any public cost. Enforcement of the legislation might force the establishment of a few extra positions within the public sector but should remain very low as against the impact of the legal sanction against discrimination.

13. Rural subdivisions should not have to abide by subdivision regulations based on urban assumptions about the presence of water and sewer, of 60-foot wide paved streets and so forth. A flexible set of standards based on the public cost of serving a subdivision, weighed against the utility of a subdivision established without such public services should be carefully considered before subdivision regulations are adopted on a statewide basis. There would be no public cost in the establishment of flexible standards.

14. New technology may meet greater resistance in rural areas than it would in more highly urbanized areas, but certainly where such applications are cheaper and equally efficient, they should be permitted in such areas. The public cost of doing this would be zero.

15. The removal of discriminatory zoning restrictions would result in no public cost and, once definite standards are set for mobile homes and modular homes, should not have a deleterious effect on property values in the areas in which they are likely to be used.

16. Environmental impact legislation has so far had slight effect on production of rural housing. It may, however, have a very deep effect if the requirements are set in order to protect suburban environments rather than rural environments. There is no public cost involved in measuring the benefits as against the social costs of forbidding, let us say, low income housing on the basis that it would degrade a natural environment. While such a program might be subject to great abuse, its social value may outweigh the environmental objections to the production of such housing.



# LEGISLATION AFFECTING HOUSING IN SEVEN SOUTHERN STATES

|   | ALABAMA   | ARKANSAS                               | KENTUCKY  | MISSISSIPPI   | TENNESSEE                                  | VIRGINIA   | WEST VIRGINIA   |
|---|---|--|---|---|--|--|---|
| 1. State Assistance for Housing                   | No legislative program  | No legislative program                 | State HDC (1972) with power to act as housing authority. Bonding capacity \$200 million | No legislative program                                    | HDC (1973) Bonding Capacity: \$150 million | Housing Development Authority (1972) Bonding Capacity: Unlimited | Housing Development Fund (1968) Bonding Capacity: \$130 million |
| 2. Housing Authority                              | All provide substantially the same legislation permitting the creation of local housing authorities in cities, counties and/or regions. |  |   |   |  |  |   |
|   |   |  | State Housing Authority enabling legislation  |   |  |  | State Housing Authority enabling legislation                    |
| 3. Building Codes                                 | No statewide mandatory code   | No statewide mandatory code            | No statewide mandatory code   | No statewide mandatory code                               | No statewide mandatory code                | Statewide Code based on performance standards                    | No statewide mandatory code 58                                  |
| 4. Land Use Controls                              | All have established multi-county planning regions. All have delegated planning and zoning power to cities.                             |  |   |   |  |  |   |
|   | County zoning but few presently zoned   | County zoning but none presently zoned |   |   |  |  |   |
| 5. Inspection of Mobile Homes and Modular Housing | Uniform Standards Code for Mobile Homes Seal of Approval  | No state legislation                   | No state legislation  | Uniform Standards Code for factory manufactured Homes Act | No state legislation                       | State Code Inspection by "approved testing facility"             | Approved by HUD   |

|                             | ALABAMA   | ARKANSAS  | KENTUCKY  | MISSISSIPPI   | TENNESSEE   | VIRGINIA  | WEST VIRGINIA   |
|-----------------------------|---|---|---|---|---|---|---|
| 6. Mobile Home Taxation     | Taxed as personality  | Taxed as personality                                  | Taxed as personality  | Taxed as personality  | Taxed as personality  | Exempt from sales tax. Taxed as real property if owner occupied and owner owns land | Taxed as either personalty or realty at option of owner if owner occupied and owner owns land |
| 7. Modular Housing Taxation | Exempt from state sales tax. Taxed as realty.                                     | Probably subject to sales tax.* Then taxed as realty. | Subject to sales tax. Then taxed as realty.                     | Probably subject to sales tax.* Then taxed as realty.                           | Probably subject to sales tax. Then taxed as realty.                | Exempt from sales tax. Probably taxed as realty.                                    | State sales tax; but then taxed as realty after attached to land.                             |
| 8. Welfare Lien Laws        | None  | None  | Only in first-class cities.                                     | None  | None  | None  | None  |
| 9. Landlord-Tenant Laws     | Common-law Landlord-Tenant relationship unchanged.                                | Common-law Landlord-Tenant relationship unchanged.    | Common-law Landlord-Tenant relationship unchanged.              | Common-law Landlord-Tenant relationship unchanged.                              | Equity court may have power to appoint a receiver to collect rents. | Common-law Landlord-Tenant relationship unchanged.                                  | Common-law Landlord-Tenant relationship unchanged.  |
| 10. Usury Laws              | Maximum 8% Includes points. Exempts VA and loans made under National Housing Act. | Maximum 10%   | Maximum 8 1/2% on less than \$25,000. Exempts FHA and VA loans. | Maximum 8% Exempts first mortgages and deeds of trust. FHA and VA loans exempt. | Maximum 10%   | Maximum 8% Includes points. Exempts FHA, VA and other government insured loans.     | Maximum 8%. Exempts FHA and VA loans.   |

\*No statute expressly deals with the taxation of modular housing.

Legislation Affecting Housing in Seven Southern States  
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|   | ALABAMA  | ARKANSAS   | KENTUCKY   | MISSISSIPPI  | TENNESSEE  | VIRGINIA  | WEST VIRGINIA  |
|---|--|--|--|--|--|---|--|
| 11. Lending Institutions  |  |  |  |  |  |   |  |
| A. Branch Banks   | Allowed under certain circuit.                                 | Only within county.  |  | Allowed within 100 miles of parent bank.                     | Allowed if conditions met.   | Allowed in county & outside if merged with bank in that county. | Not permitted.   |
| B. Flexible Mortgages   | (May be legal by inference)                                    | No statute.  | No statute.  | No statute.  | No statute.  | No statute.   | Apparently legal.  |
| 12. Repair and/or Demolish Sub-standard Buildings Cost a Lien on Land | Power granted to housing authorities & redevelopment agencies. | Power granted to housing authorities & redevelopment agencies. | Power granted to cities, counties, housing authorities and redevelopment agencies. | Power granted to municipalities and all housing authorities. | Power granted to housing authorities & redevelopment agencies.                                   | Power granted to municipalities and redevelopment counties.     | Power granted to housing authorities and redevelopment agencies. |
| 13. Health and Safety Regulations                                     | Delegated to County Health Department.                         | Delegated to County Health Department.                         | Delegated to County Health Department.   | Delegated to County Health Department.                       | Delegated to County Health Department. Except: Minimum lot size; public water 7500' Well 15,000' | Delegated to County Health Department.                          | Delegated to County Health Department.                           |

## APPENDIX A: ALABAMA REPORT ON LEGISLATION

### I. Land Use Controls

The Alabama State Planning Board was created in 1943 to design a master plan for the development of the State.<sup>1</sup> The Board was charged with cooperating with the planning authorities of counties, municipalities and neighboring states in coordinating developments and studying planning problems.<sup>2</sup> Subjects the Board must consider are the location of open areas for conservation purposes, food and water supply, sanitary and drainage facilities, and the protection of rural and urban development.<sup>3</sup> While the Board has no power to effectuate changes, it may submit to the governor and the legislature drafts of legislation including zoning and land use regulations.<sup>4</sup> The Board is also allowed to contract with individuals, corporations, private associations, chambers of commerce, etc., so far as its funds permit to promote its plans or to make more thorough studies and recommendations.<sup>5</sup>

In 1969 Alabama reorganized its regional planning structure. It allowed for the formation of regional planning and development commissions covering areas of at least three contiguous counties and a population of at least 100,000, upon the petition of local governmental units.<sup>6</sup> All previously established regional planning commissions were allowed to remain certified as meeting the new requirements for no more than two years.<sup>7</sup> Apparently in 1971 all regional planning commissions for areas less than three counties or 100,000 people ceased to exist, and new commissions covering larger areas were to replace them.

The new commissions are to carry on planning activities, prepare a regional plan consistent with state plans setting forth policies for development, prepare an annual regional development program to implement policies, provide assistance to governmental units, borrow money, review local applications for state and federal loans, acquire and dispose of real property, et al.<sup>8</sup>

The newly organized agencies seem to have broader powers and may be better equipped to deal with rural areas and to include them in comprehensive planning than were their predecessors.

The legislature also allowed the creation of city planning commissions. A municipality may adopt a plan and create a commission to effectuate it.<sup>9</sup> Everything relating to the general development of the area is entrusted to the commission.<sup>10</sup> The commission has all power previously granted to zoning commissions,<sup>11</sup> as well as power over subdivision control.<sup>12</sup> A map for a proposed subdivision must be submitted to the commission to assure that it meets the commission's standards on streets, open spaces, minimum width and area of lots, and water and sewage facilities.<sup>13</sup> The commission also has power to regulate all public buildings and structures,<sup>14</sup> presumably including public housing projects.

Although the municipal planning commission can include in its plan the outlying areas that affect it,<sup>15</sup> there is no local body especially established to plan for the entire county. Both the municipal planners and the county commissioners can apply to the governor for the creation of a regional planning commission.<sup>16</sup> This commission was empowered to adopt a master regional plan for the physical development of the area, the location of public buildings and the protection of future urban developments.<sup>17</sup> The commission is apparently intended to control counties where urban growth has spread beyond the limits of the municipality rather than the counties where there are no plans for outlying rural areas.

In one special area, the state does allow county governments the same regulatory powers normally granted to municipalities. A flood-prone area is one where the frequency of inundation by streams, rivers, tidal waters or rising coastal waters is at least once in every one hundred years.<sup>18</sup> In these areas the county may adopt zoning ordinances and building codes for

lands outside municipal limits.<sup>19</sup> The county may also establish comprehensive land use and control measures, control the development of subdivisions and establish building codes and health regulations to minimize potential flood damage.<sup>20</sup>

In 1969 the Alabama Development Office was created; it operates under the direct supervision of the governor.<sup>21</sup> The Office is to provide over-all state planning guidance for long-term comprehensive plans. The Office seems primarily concerned with economic and industrial development.<sup>22</sup> These plans will obviously have some effect on housing supply and development in rural areas, but this does not appear to be the main function of the Office.

## II. Laws Enabling the Establishment of State Housing Corporations

There are no Alabama statutes enabling the establishment of a state housing corporation.

## III. Housing Authorities

There is no state-wide housing authority in Alabama, although the state allows the establishment of county, municipal and regional authorities.<sup>23</sup> No authority is required by state law. The existence of an authority is determined by the initiative of the citizens or local commissioners.

A county authority may be established if twenty-five citizens petition the commissioners, setting out a need. A public hearing is held. If the commission finds unsanitary housing conditions, it may establish the authority.<sup>24</sup> A regional authority may be established in two or more contiguous counties if their governing bodies determine that there is such a need. When the regional authority is established, it assumes all the powers of the county authorities which cease to exist.<sup>25</sup>

Wide powers are vested in the county and regional authorities.<sup>26</sup> They may prepare and operate housing projects, provide for the construction and

repair of projects, acquire property, insure, borrow money. They are also given all powers necessary and convenient to carry out and effectuate these provisions.<sup>27</sup> All projects are subject to local zoning laws and building codes.<sup>28</sup>

The authorities are also empowered to mortgage property,<sup>29</sup> and to contract with the federal government in any way necessary to secure their financial aid.

Alabama also has an interesting provision for housing in rural areas.<sup>31</sup> The authority may enter into long term leases or purchase agreements to rent or sell housing to persons of low income in rural areas. The owner of land on which there is an unsafe or unsanitary dwelling may file an application requesting the authority to build a safe and sanitary dwelling.

A provision added later clarified the details of authority-built rural housing. Until the purchaser makes full payment, it remains the tax-exempt property of the authority, although the landowner may continue to claim homestead exemption.<sup>32</sup>

The rental rate to be charged by the authorities is carefully regulated.<sup>33</sup> Rentals are never to be a source of income for the town or city. The authorities are to procure revenue only to:

- a) pay the principal and interest on bonds and obligations;
- b) meet the cost of maintenance, operation and administrative expenses;
- c) create a reserve sufficient to meet the largest principal and interest payments due the following year.<sup>34</sup>

The management must observe several rules with regard to tenant selection.

- a) It must lease only to persons lacking income necessary to enable them, without assistance, to live in decent uncrowded dwellings.
- b) It must lease only at a rental within the financial reach of such persons.
- c) It must lease only the number of rooms necessary.
- d) It must not accept anyone as tenants if the persons occupying the rooms have an aggregate net income (less exemptions) greater than five times the annual rental. (All utilities are considered part of the rental.)<sup>35</sup>

#### IV. Codes and Inspection Procedure

There is no statewide building code for private buildings such as homes. There is legislation requiring a state building code for public buildings such as theaters and hotels<sup>36</sup> and enabling municipalities and counties to adopt and expand the code through local ordinances.<sup>37</sup> There is enabling legislation for the state building commission to provide adequate inspection to insure compliance.<sup>38</sup> Apparently no statewide housing code has been adopted, so that municipalities and counties may adopt any building code.

Since mobile homes are inspected under the standards of the American National Institute,<sup>39</sup> they are presumably exempted from the requirements of whatever local building code there may be.

There is apparently no statewide minimum housing code. However, cities are authorized to enact ordinances setting minimum standards for dwellings.<sup>40</sup> They may regulate "use, control, repair and maintenance of buildings, dwellings and structures of all types, the numbers or occupants, mode and manner of occupancy to insure a healthful, safe environment." Cities may also compel owners or managers to reconstruct or modify an unsafe building, and may prohibit the use and occupancy of a building until the rules are complied with.<sup>41</sup>

There is no state legislation to permit tenant suits for damages when the landlord fails to meet the codes. However, cities should be able to enact ordinances to that effect since Title 37 §785(2) declares that it vests additional authority in municipalities to adopt ordinances for the establishment and enforcement of codes.



## V. Regulations Affecting Home Building Construction Industry

Alabama requires that any structure or component designed for residential occupancy fabricated or assembled for installation on a building site meet certain standards. All such homes must bear an insignia of approval. These may be procured in several ways. The Alabama Development Office may inspect and issue them.<sup>42</sup> Or, if the local government inspects at the place of manufacture and finds the housing meets local building requirements in conformity with the Southern Building Codes Congress, National Fire Protection Association and HUD, then the housing will be approved.<sup>43</sup> Also, if housing has been approved by another state with reasonably consistent standards, approval will be given.<sup>44</sup>

Alabama has a licensing requirement for general contractors for all projects, public or private, costing \$20,000 or more. The statute exempts builders of one family residences.

## VI. Legislation Governing the Use of Mobile Homes

Alabama passed the Uniform Standards Code for Mobile Homes Act in September 1971. It adopted the American National Standards Institute code for minimum standards of plumbing, heat producing, and electrical systems and equipment.<sup>45</sup> Compliance with the code is now a condition precedent to the sale of any new mobile home in the state.<sup>46</sup> The state fire marshal inspects the homes either where manufactured or sold<sup>47</sup> and affixes a seal of approval and issues certification if the standards are met.<sup>48</sup> Alabama will honor a seal of approval from any other state with standards as high as or higher than its own.<sup>49</sup>

There is no problem with the transportation of mobile homes on Alabama highways. House trailers, not exceeding a total width of 12' and overall length, including the towing vehicle and trailer, not exceeding 75', may be moved on any highway excepting highways which are part of the interstate system, during the hours of daylight any day of the week. No permit is required.<sup>50</sup>

## VII. Taxation

Alabama requires that all persons or corporations selling house trailers at retail prices pay a license tax equal to 1 1/2 percent of all gross proceeds of the sale.<sup>51</sup> The licensed sellers are then required to add to the sales price a 4 percent state sales tax.<sup>52</sup> These requirements also apply to anyone "in business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character."<sup>53</sup>

The state also imposes an excise tax on a number of goods. An excise tax of 1 1/2 percent of sale price is levied on the storage, use, or other consumption of house trailers.<sup>54</sup> However, any trailers for which the usual 4 percent sales tax is paid are exempted from the excise tax.<sup>55</sup> Furthermore, credit will be given for a sales or use tax paid in another state so long as the tax equals 4 percent and the state reciprocates.<sup>56</sup>

Building materials sold to contractors and building materials sold to the manufacturers of modular homes to become part of real estate in Alabama are considered retail sales and exempted from the excise tax.<sup>57</sup>

This excise or use tax is intended to cover articles purchased out of state for which Alabama received no sales tax, or inventories of dealers or merchants for which no sales tax is collected. It does not affect the in-state consumer who pays the usual sales tax.

## VIII. Taxation of Mobile and Modular Units

Mobile homes and modular units are treated differently for tax purposes. Modular homes are apparently treated as real property.<sup>58</sup> while mobile homes are taxed as personal property like motor vehicles.<sup>59</sup>

The property tax provision governing modular homes is: "Every parcel of land, including all things pertaining to such land, and all structures and other things so annexed or attached thereto as to pass to a vendee by conveyance of such land" are taxed as real property.<sup>60</sup> There is a \$2000

homestead exemption.<sup>61</sup> The property is taxed at a rate of 65 percent<sup>62</sup> of the assessed value which is either 15 percent or 20 percent of fair market value.<sup>63</sup> Mobile homes are assessed every year for ad valorem taxation and taxes are paid in the same manner in which motor vehicles are taxed.<sup>64</sup> The valuation is 60 percent of fair market value.<sup>65</sup> Or a mobile home owner may have to pay an annual registration fee of \$3.00 unless the house trailer has been "assessed for ad valorem taxes as a part of the realty."<sup>66</sup>

IX. Laws Affecting the Operation of Banks and Savings and Loan Associations in the Home Mortgage Field

The operation of savings and loan associations in the home mortgage field is regulated by Code of Alabama Title 5 §§231-232. Once a real estate loan is approved by the board of directors, a note for the amount is issued, stating all the terms. Every real estate loan must be secured by a mortgage constituting a first lien on the real estate securing the loan. This provides for full protection of the association with respect to the usual insurance risks, taxes, assessments, other government levies and maintenance and repairs. The mortgages must be recorded, and no subsequent loan can establish an intervening lien. Payments by the debtor are applied first to the interest on the unpaid balance, then to the reduction of the loan. The association may pay taxes, assessments, insurance premiums, etc., for the protection of the loan and add the amounts to the unpaid balance. In addition, the association may require life insurance to be assigned as additional collateral on any real estate loan, and may require the borrower to pay the monthly equivalent of 1/12 of annual charges to enable the association to pay its expenses.

Real estate loans may be prepaid at any time, and the association may not charge more than 1 1/2 percent of the amount of the anticipatory payment.

The exact rate for charges is not set in the statute. It provides that the association may require borrowing members to pay all reasonable expenses incurred in connection with the loan, and also for all necessary and incidental services rendered by it.

Section 232 provides that the association shall have a lien on all accounts owned by the borrower in order to secure the loan. On default on the loan, it may, without notice, cancel on its books all accounts and apply the amount to the payment of the loan.

#### Mortgages

There is no authority permitting or prohibiting flexible mortgage financing, and there is no specific mention of open-end mortgages in Alabama legislation.

#### X. Usury Laws

Alabama's general usury statute provides that a borrower, pursuant to a written contract, may agree to pay an interest rate of up to 8 percent a year.<sup>67</sup>

However, when the lender "regularly extend[s], or arrange[s] for the extension of credit for which the payment of a finance charge is required," the Alabama Consumer Credit Transaction Law of 1971 [the Consumer Finance Law] becomes effective.<sup>68</sup> But the Consumer Finance Law does not repeal or modify certain other relevant statutes, including Code of Alabama Tit. § 9 67(1), which provides that corporations may agree to pay an unregulated interest rate on loans having an original principal balance in excess of \$100,000, and up to 15 percent a year on loans with an original balance of from \$10,000 to \$100,000. The provisions of Code of Alabama Tit. 9 § 67(2) and 67(4), taken together, mean that debtors other than corporations may, depending on their classification, agree to pay interest at a rate up to 15 percent a year, or at an unregulated rate for loans over \$100,000.

Code of Alabama Tit. 9 §67(3) exempts all debts incurred under the National Housing Act or any act of Congress relating to veteran's benefits from any Alabama usury law.

The Consumer Finance Law establishes maximum finance charges for loan transactions except under open end credit plans.<sup>69</sup> The charge may equal but not exceed

- a) i. 15 percent a year for the first \$500 of original principal amount,
- ii. 10 percent a year for the amount over \$500, but not exceeding \$1,000,
- iii. 8 percent for portion over \$1,000 but less than \$2,000 or,
- b) if the original amount of the loan exceeds \$2,000, 8 percent of amount financed.

"Finance charge" shall include all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the creditor as an incident to the extension of credit including interest, time-price differential, points or discount paid directly by the debtor, service, carrying or other charge, however denominated, loan fee, credit or investigation fee but not including permissible attorney's fees, court costs and official fees and taxes, points or discounts paid by someone other than the debtor, or premiums for permissible insurance as provided by this chapter.<sup>70</sup>

Thus, points and discounts paid by the debtor are expressly included in the definition of a finance charge. But Code of Alabama Tit. 5 §316(a) expressly excludes "points or discounts paid by someone other than the debtor." It further provides that, "For the purpose of determining the permissible finance charge, any discount or point paid by the debtor in connection with a mortgage loan or real estate, even though paid at the time, shall be spread over the stated term of the loan. . ." There is no apparent authority regarding the period over which the other "one time" charges may be amortized.

The Alabama Small Loans Act regulates loans of up to \$300; the Act is meant to reach small loan and finance companies only, for it exempts "any person doing business under the authority of . . . any law of this state or of the United States relating to banks, savings banks, trust companies, savings or building and loan associations, credit units,. . . [and] bona fide pawnbroking business(es)." Licensees under the Act may loan at a rate of 3 percent per month for the first \$200 and 2 percent per month on the amount over \$200 but not exceeding \$300. A charge of \$1 for every \$5 may be made on loans of up to \$75, although 15 days must be allowed for the repayment of each \$5.<sup>71</sup> The Act provides that no further charges may be made directly or indirectly.<sup>72</sup>

#### XI. Welfare Laws

There is no welfare lien law in Alabama. Welfare is paid in four categories--blind assistance, old age assistance, aid to dependent children and aid to the permanently and totally disabled.<sup>73</sup> To qualify, one must show that he does not have sufficient income and resources from all sources to provide reasonable subsistence and that he has not directly or indirectly disposed or deprived himself of property for the purpose of qualifying for the benefits.<sup>74</sup> The state department of welfare establishes uniform standards of need and rules and regulations for distribution of funds.<sup>75</sup>

All amounts paid or payable as public assistance are tax exempt and are exempt from levy, garnishment, attachment and any other process.<sup>76</sup>

#### XII. Health Laws and Regulations, Waste and Water System Requirements and Environmental Protection Law

The Alabama Water Quality Criteria Act, adopted in 1967, set out basic statewide waste treatment requirements. It required that all sewage discharged into state waters used as sources of public water supply or used

for swimming or whole body water-contact activities receive a minimum of secondary treatment, and disinfection if necessary.<sup>77</sup> "Secondary treatment" is interpreted to mean "a process or group of processes capable of removing virtually all floating and settleable solids, from 75 to 95 percent of the five day biochemical oxygen demand and in excess of 75 percent of suspended solids contained in untreated sewage."<sup>78</sup>

Additionally, the state board of health and county boards of health are to oversee local sewage collection facilities and plumbing systems.<sup>79</sup> It is a misdemeanor to build or use unsanitary facilities or those likely to become a menace to public health.<sup>80</sup> The county board of health is responsible for enforcing state requirements in regard to installation of plumbing in structures outside of municipalities.<sup>81</sup>

Much power is delegated to the municipalities to establish their own standards for sewer systems, and to construct and operate them. These systems may be constructed and maintained within and without incorporated towns. Also, whenever it is necessary or expedient, any city or town may extend its sewer mains to any point in the county,<sup>82</sup> so that city facilities can be extended to serve rural areas.

Other powers are delegated to cities with respect to areas within corporate limits. Cities may prescribe the manner of construction of plumbing facilities as well as prescribe the manner of drainage from private premises.<sup>83</sup> They may regulate the construction of privies, and water closets and compel connection with septic tanks.<sup>84</sup> If the owner fails to make the connection, the city may make it and assess the expense against the property. Cities also have the power to forbid altogether the use of sinks, pits, cesspools and dry wells.<sup>85</sup>

Water authorities may be organized as public corporations under the governing body of the county or counties it proposes to service.<sup>86</sup> The authority is empowered to plan and operate water systems, sewer systems and fire protection facilities at fixed rates.<sup>87</sup> Since the water authority is operated on a county-wide basis, it may often be the source of water supply for rural dwellings.

The Solid Wastes Disposal Act authorizes the county governing body to make available to the general public collection and disposal facilities for solid wastes with either house-to-house services or placement or receptacles within a reasonable (less than 8 miles) distance from the farthest affected house.<sup>88</sup> An individual homeowner may file a certificate of exception setting out his own proposed method which must comply with sanitation requirements and not create a public nuisance or hazard to health.<sup>89</sup> If the application is granted, the owner may store, haul or dispose of his own solid wastes on his own land.

#### Environmental Protection Laws

The Environmental Improvement Authorities Act, passed in 1969, contained no provisions which directly affect housing supply. The Act enabled established public corporations to undertake studies of water, air and general environmental pollution, to construct, operate or lease equipment to control or prevent such pollution, and to lend financial assistance to municipalities, counties and other groups.<sup>90</sup> While such corporations might at some time sponsor legislation to restrict land use for housing purposes, the Act itself does nothing like this. The Act itself declares that it is supplemental to the powers conferred on boards of water and sewer commissions created by municipalities. These may not operate to restrict the corporation's power for it



is independent of them. However, the corporation is intended to work in conjunction with the local authorities who have the legislative power concerning water and sewer systems, and to zone the land for the safest uses environmentally.

There are apparently no other health laws and regulations in Alabama which directly affect the supply of housing.

### XIII. Landlord and Tenant Law

There is no statute giving the tenant the right to withhold rent if the unit does not comply with the minimum housing code. Presumably, municipalities could adopt such a policy through ordinances pursuant to a program of code enforcement.<sup>91</sup>

The case law in the area of housing repairs gives no authority for rent withholding in this situation. In the absence of a special agreement at the time of the rental contract, the landlord need not keep the premises in a state of good repair, but the tenant may be able to repair and deduct the cost.<sup>93</sup>

Local governments are able to adopt repair and deduct ordinances empowering local housing authorities to improve substandard housing, as a part of their general power to enforce codes.<sup>94</sup> However, there is no statute specifically permitting them to do this.

The state fire marshal has wider powers than any agency in the area of requiring repairs or demolishing substandard housing. If an owner fails to comply with the marshal's order to repair or dismantle dilapidated and dangerous property, the marshal may order the building repaired at the owner's expense.<sup>95</sup> He is also empowered to have the building demolished at the owner's expense.<sup>96</sup> If the owner refuses to reimburse the marshal for the expenses of such work, the cost becomes a lien on the repaired property and/or real estate on which it is located.<sup>97</sup>

There is no housing court, nor is there any authority for court appointment of a receiver to collect rents and make improvements.

Alabama state taxes are due October 1. After January 1, the collector makes a demand for payment from delinquent taxpayers. If the taxes are not paid, the collector levies upon the delinquent's personal property and sells it, after ten days notice, to the highest bidder.<sup>98</sup> Enough property must be sold to cover taxes, fees and expenses of the sale. A second method authorized is garnishment of any money, property or choses in action belonging to the taxpayer and under the control of another person.<sup>99</sup> A third possibility is the levy and sale of shares of stock of private corporations belonging to delinquents.<sup>100</sup> When there is no personal property available for sale, or when the sale price is insufficient to pay the taxes, the collector may sell the real property on which the taxes are a lien.<sup>101</sup> This procedure is strictly a last resort, the other methods are far easier, and less harsh on the delinquent taxpayer. The statute says that "the failure of the tax collector to so exhaust such personal property shall not invalidate the sale of any real estate."<sup>102</sup> But the tax sales have been held void for lack of showing that the collector reported to the probate court that he was unable to collect without such tax sale.<sup>103</sup>

There is no legal authority concerning assessment rates for improved substandard housing. Since the assessment rate is generally 15-20 percent of fair market value,<sup>104</sup> taxes presumably rise when the market value rises through improvements.

XV. Insurance

There is no statute requiring that insurance companies doing business in the state write fire insurance for substandard areas.

Among the criteria to be considered in rate-setting are construction, protective facilities and other conditions that materially affect the hazard or peril.<sup>105</sup> If an area is dangerously susceptible to fire through faulty construction and inadequate protective facilities, the rates will undoubtedly be set so high that no one living there will be able to afford them.

## FOOTNOTES

1. Code of Ala. Tit. 55 §373(4) (1960).
2. Ibid., §373(5) (1960).
3. Ibid., §373(4) (1960).
4. Ibid., §373(5) (1960).
5. Id.
6. Ibid., §814(8) (1971 Supp.).
7. Ibid., §814(14) (1971 Supp.).
8. Ibid., §814(10)(1971 Supp.).
9. Code of Ala. Tit. 37 §787 (1960).
10. Ibid., §791 (1960).
11. Ibid., §796 (1960).
12. Ibid., §798 (1960).
13. Ibid., §§798-799 (1960).
14. Ibid., §794 (1960).
15. Ibid., §791 (1960).
16. Ibid., §809 (1960).
17. Ibid., §811 (1960).
18. Code of Ala. Tit. 12 §341 (1960).
19. Ibid., §343 (1960).
20. Id.
21. Code of Ala. Tit. 55 §373(6e2) (1971 Supp.).
22. Ibid., §§373 (6e1) 373(6e5) (1971 Supp.).
23. Code of Ala. Tit. 25 § §7, 33, 59 (1960).

24. Ibid., §33 (1960).
25. Ibid., §59 (1960).
26. Ibid., §§38, 47, 53, 65 (1960).
27. Ibid., §38 (1960).
28. Ibid., §43 (1960).
29. Ibid., §47 (1960).
30. Ibid., §53 (1960).
31. Ibid., §55 (1960).
32. Ibid., §93 (1971 Supp.).
33. Ibid., §87 (1960).
34. Id.
35. Id.
36. Code of Ala. Tit. 55. §367 (1960).
37. Ibid., §367(11) (1960).
38. Ibid., §367(12) (1960).
39. Code of Ala. Tit. 25 §126(1971 Supp.).
40. Code of Ala. Tit. 37 &785(2) (1971 Supp.).
41. Id.
42. Code of Ala. Tit. 25 §116(a)(2) (1971 Supp.).
43. Ibid., §116(a)(3) (1971 Supp.).
44. Ibid., §118 (1971 Supp.).
45. Code of Ala. Tit. 25 §126 (1971 Supp.).
46. Ibid., §127 (1971 Supp.).
47. Ibid., §131 (1971 Supp.).
48. Ibid., §128 (1971 Supp.).
49. Ibid., §130 (1971 Supp.).
50. Code of Ala. Tit. 36 §91(1) (1971 Supp.).

51. Code of Ala. Tit. 51. §786(3)(1971 Supp.).
52. Ibid., §786(25)(1971 Supp.).
53. Ibid., §786(3)(1971 Supp.).
54. Ibid., §788(c)(1971 Supp.).
55. Ibid., §789 (1971 Supp.).
56. Ibid., §789(3)(1971 Supp.).
57. Ibid., §787(e)(1971 Supp.).
58. Ibid., §21 (1971 Supp.).
59. Ibid., §704(2) (1971 Supp.).
60. Ibid., §21(1971 Supp.).
61. Ibid., §15 (1971 Supp.).
62. Ibid., §18 (1960).
63. Ibid., §17(1971 Supp.).
64. Ibid., §704(2)(1971 Supp.).
65. Ibid., §704(1971 Supp.).
66. Ibid., §704(1)(1971 Supp.).
67. Code of Ala. Tit. 9 §60 (1960).
68. Code of Ala. Tit. 5 §§316-341 (1971 Supp.).
69. Ibid., §317 (1971 Supp.).
70. Ibid., §316 (1971 Supp.).
71. Ibid., §290(2) (1971 Supp.).
72. Ibid., §290(8) (1971 Supp.).
73. Code of Ala. Tit. 49. §17(14) (1971 Supp.).
74. Id.
75. Ibid., §17(6) (1971 Supp.).
76. Ibid., §17(22) (1971 Supp.).

77. Act No. 574, Acts of Alabama 1965.
78. Id.
79. Code of Ala. Tit. 22 §140(14) (1971 Supp.).
80. Ibid., §140(13) (1971 Supp.).
81. Ibid., §140(18) (1971 Supp.).
82. Ibid., §603 (1960).
83. Ibid., §§604, 605 (1960).
84. Ibid., §606 (1960).
85. Ibid., §605 (1960).
86. Code of Ala. Tit. 50 §101 (1971 Supp.).
87. Ibid., §105 (1971 Supp.).
88. Code of Ala. Tit. 22 §347(a) (1971 Supp.).
89. Ibid., §347(e) (1971 Supp.).
90. Code of Ala. Tit. 8 §§272, 277 (1971 Supp.).
91. Code of Ala. Tit. 37 §785(2) (1971 Supp.).
92. Lusco v. Jackson 27 Ala. App. 531, 175 So.566 (1937).
93. McKenna v. Rowlett 68 Ala. 186 (1880); Stripling v. Odum 267 Ala. 201, 101 So.2d 328 (1958).
94. Code of Ala. Tit. 37 §785(2) (1971 Supp.).
95. Code of Ala. Tit. 55 §42 (1960).
96. Id.
97. Ibid., §43 (1960).
98. Code of Ala. Tit. 51 §201 (1960).
99. Ibid., §204 (1960).
100. Ibid., §207 (1960).
101. Ibid., §208 (1960).
102. Id.

103. Henderson v. Simmons 235 Ala. 329, 174 So. 491 (1937).
104. Code of Ala. Tit. 51 §17 (1971 Supp.).
105. Code of Ala. Tit. 28A §262 (1971 Supp.).



## APPENDIX B: ARKANSAS REPORT ON LEGISLATION

I. Land Use ControlsA. Governments

Arkansas classifies its incorporated municipalities into three categories, as follows:

1. cities of the first class--those over 2,500 in population;
2. cities of the second class--those over 500 but less than 2,500 in population;
3. towns--less than 500 population.<sup>1</sup>

However, towns of less than 500 can vote to become classified as second class cities,<sup>2</sup> and cities of 1,500 to 2,500 can vote to have themselves classified as first class cities.<sup>3</sup> In addition, there is the general category of counties, which are made up of all remaining unincorporated land and are dealt with separately in Title 17 of the Arkansas Statutes.

B. State Planning

Arkansas has had a state planning commission of one sort or another since 1935.<sup>4</sup> The present commission,<sup>5</sup> like those before it, is designed to be an advisory board. Its primary function is the ongoing development of a State Plan, and the furnishing of advice and expertise to state and local officials.<sup>6</sup> One of the most important functions of the commission is to serve as Arkansas' ambassador to the Federal Government for the purpose of obtaining federal funds and benefits.<sup>7</sup>

The Arkansas General Assembly has recently added a second arm to its planning and conservation program by enabling the creation of regional multicounty planning and development organizations.<sup>8</sup> By this act, the State Planning Commission is instructed to aid and advise these regional and locally controlled planning districts, but no standards or guidelines are set out and no real power over them is conferred upon the state commission.<sup>9</sup>

In no legislation has the General Assembly laid down concrete standards, nor has any board or commission been given power to promulgate and enforce regulations.

C. Municipal Planning and Zoning

The heart of zoning and land use control legislation in Arkansas today is in the 1957 Municipal Planning Commission Act.<sup>10</sup> This act provides extensive authority for the creation of planning commissions in all incorporated municipalities regardless of class. For the purposes of this study on housing law, the two most important functions of these planning commissions are the recommendation of zoning ordinances to the city council and the control and administration of the development and subdivision of land.<sup>11</sup> A glance at this statute indicates that it is only an enabling provision with little or no substantive information regarding what one could expect to find in any particular municipality. Moreover, the land use plan which the planning commission is required to prepare does not in and of itself constitute a zoning ordinance.<sup>12</sup> It may all be somewhat academic for the purposes of rural housing anyway, because it seems probable that the smaller the town and the more rural the community, the less likely that such commissions have even been formed.<sup>13</sup>

A further segment of state legislation regarding land use planning and zoning is an act enabling and encouraging contiguous cities, towns, and counties to jointly exercise planning powers, duties and functions.<sup>14</sup> The act provides for creation of a joint or "metropolitan" planning commission to lend coordination and uniformity to the overall planning efforts of a region. This commission, however, is without any real power because the act specifically reserves to the cooperating cities and counties all of their power and authority to zone and plan within their own jurisdictional limits--the joint commission is purely supplemental.<sup>15</sup>

#### D. County Planning and Zoning

The final piece in the fragmented puzzle which constitutes public authority for land use planning in Arkansas is a 1937 Act which gave basic planning, zoning, and subdividing authority over unincorporated territory to the respective counties.<sup>16</sup> The County Judge is given authority to appoint a five to twelve man County Planning Board whose members serve voluntarily without compensation.<sup>17</sup> This Board's primary function is to develop an official County Plan,<sup>18</sup> which plan shall divide, plat and zone the unincorporated territory within the county.<sup>19</sup> Significant for purposes of low income housing, however, is the fact that the Board is expressly denied authority to regulate the cost of buildings and structures.<sup>20</sup> The stated purposes and goals of the county plan are not inconsistent with development of low income housing.<sup>21</sup> The county planning board has the same control and authority over the subdivision of unincorporated land as the municipalities have over land within their corporate limits.<sup>22</sup>

Of possible significance to low income housing proposals brought within the framework of a Public Housing Authority is a provision of the act which states that once a county plan is adopted and put into effect, no improvements shall be made or authorized and no property shall be acquired by any county or public agency, which has, or is likely to have, definite part in, or relation to, the official county plan unless the proposal shall have been submitted by the agency concerned to the County Planning Board, and a report and recommendation of the said Board thereon shall have been received.<sup>23</sup> If after thirty days the Board takes no action, the concerned agency may proceed without its approval.<sup>24</sup>

#### II. Laws Enabling the Establishment of State Housing Corporations

The state has not enacted legislation creating a statewide housing development or statewide housing authority.

### III. Public Housing Authorities

Arkansas has very extensive legislation regarding the creation and operation of public housing authorities.<sup>25</sup> The legislation can be divided in terms of housing authorities, redevelopment agencies and urban renewal projects, but for the purposes of this study there is little to be gained by doing so--the rights and powers bestowed do not vary significantly.

Each governmental agency in the state is entitled to create a housing authority.<sup>26</sup> The powers of these housing authorities are quite comprehensive.<sup>27</sup> The housing authorities are nonprofit<sup>28</sup> public corporations whose only masters are the various city councils and county governments who create them by resolution. All housing authority projects are subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated.<sup>29</sup> Also, in the planning and location of any housing project, an authority is required to take into consideration the long range city, county or regional plan as promulgated by a planning commission.<sup>30</sup> Cooperation between housing authorities and various planning boards and commissions is expressly encouraged.<sup>31</sup>

Housing authorities are given power to sell projects to the federal government,<sup>32</sup> and to otherwise seek and accept aid from the federal government.<sup>33</sup> The property of a housing authority is declared to be public property and therefore, is exempt from all taxes and special assessments of the state or any public body thereof.<sup>34</sup>

County and regional housing authorities are authorized to create rural housing projects, however, it appears that these projects are solely for the benefit of low income farmers.<sup>35</sup> Housing authorities have the power to undertake redevelopment projects of blighted areas,<sup>36</sup> and where housing authorities have not been created or have been inactive in redevelopment, the governing body is empowered to create urban renewal agencies for that

purpose.<sup>37</sup> Although there is no authority for statewide housing authorities, there are several provisions enabling regional or interjurisdictional housing authorities.<sup>38</sup> Both housing authorities<sup>39</sup> and urban renewal agencies<sup>40</sup> have the power of eminent domain to aid them in the effectuation of their projects.

#### IV. Codes and Inspection Procedures

There is no state-wide building code nor is there a state minimum housing code. While there is no express authority for the adoption of minimum housing codes by cities, there is authority to enact building and plumbing codes,<sup>41</sup> and a minimum housing code almost certainly seems authorized for cities of the first class.<sup>42</sup> Arkansas has no legislation permitting tenant suits for damages in cases of landlord's failure to meet codes.

## V. Legislation Affecting the Home Building Construction Industry

Arkansas does not have a statewide building code. As described below, the state has chosen to regulate the construction industry in piecemeal fashion by imposing registration and licensing requirements upon certain tradesmen. However, the various municipalities and governmental units do have the authority to impose building regulations, and presumably could draft or adopt their own building code.<sup>43</sup>

Arkansas has created a State Licensing Board for Contractors<sup>44</sup> which administers an act designed to license and regulate general contractors in the building industry.<sup>45</sup> However, by a 1967 amendment, the entire act was made not applicable to contractors of single family residences.<sup>46</sup> The act does apply to virtually all other types of construction and repair contracting when the aggregate cost of such work is \$200,000 or more.<sup>47</sup> Criteria considered in granting a license are (1) ability, (2) experience, (3) character, (4) the manner of performance of previous contractors, (5) financial condition, (6) equipment, (7) any other fact tending to show ability and willingness to conserve the public health and safety, and (8) default in complying with the provisions of the act, or any other law of the state.<sup>48</sup> The Board does have power to act upon complaints, hold hearings and revoke licenses.<sup>49</sup> The act does not apply to contractors engaged in construction for the United States government, as it would interfere with the federal governments right to select contractors.<sup>50</sup>

Architects<sup>51</sup> and engineers<sup>52</sup> are also required to be licensed by state boards and regulated thereby. This is standard regulation of professional occupations and needs no description.

The most extensive and comprehensive piece of Arkansas legislation which affects the home building industry is an act regulating plumbers and the plumbing trade in general.<sup>53</sup> The basic mechanism of plumber regulation is a mandatory registration and permit or licensing system which is administered by the State Board of Health.<sup>54</sup> The act sets out detailed requirements for the registration, training, examination, and licensing of master plumbers, journeyman plumbers, and apprentices.<sup>55</sup> The Board of Health is given significant powers to promulgate a state plumbing code, and to actively inspect, investigate and regulate the plumbing industry in Arkansas.<sup>56</sup>

SCOPE OF CODE. The provisions of the state plumbing code and amendments thereto as adopted by the Board defining plumbing work, prescribing minimum requirements for design, materials, appliances, workmanship and methods of installation shall after publication in any legal publication in the state once each week for three (3) weeks have the effect and force of law in the form of minimum standards state-wide in application and shall apply to all types of buildings, private or public, rural or urban, including buildings owned by the state or any political subdivision thereof. All plumbing installations shall be made to conform with such code. Cities and towns may make additional regulations not in conflict with such code.<sup>57</sup>

In addition to this statewide code, the act directs that cities of the first or second class having a system of waterworks or sewerage shall, and an incorporated town or any metropolitan sewerage commission may, by ordinance, prescribe rules and regulations concerning plumbing to safeguard the public health, not in conflict with the minimum standards prescribed by the Board.<sup>58</sup> Moreover, nothing in the act "shall prohibit cities and towns from having full authority to provide full supervision and inspection of plumbing and plumbers by the enactment of codes, rules and regulations in such form as the council may determine appropriate."<sup>59</sup> The only exceptions to the

coverage of the act are: (1) plumbing work done by a property owner in a building owned and occupied by him as his home, except where such license is required by local ordinance, and (2) plumbing work to farm buildings located outside the corporate limits of any city or town unless such buildings are connected to a public water or sewer system.<sup>60</sup>

#### VI. Mobile Homes

There are no statutes regarding the uses to which mobile homes may be put. There are, however, statutes regulating the sale of mobile homes and the transportation of them upon the roads and highways of the state.

All persons selling house trailers or mobile homes shall obtain and hold a permit from the Commissioner of Revenues, and shall make a monthly report to the Commissioner.<sup>61</sup> These reports shall include a copy or copies of invoices, sales ticket, or bills of sale reflecting the date of all sales of such house trailers or mobile homes, the purchaser's name and address, the make, year, model, serial number and gross sales price of each house trailer or mobile home and the amount of tax collected from the purchaser.<sup>62</sup> The sales tax or compensating tax, if once paid in Arkansas for the sale or possession of a house trailer or mobile home, shall not be required to be paid a second time upon resale or possession by a second owner.<sup>63</sup>

In 1971, the Arkansas General Assembly enacted a relatively comprehensive act to regulate the transportation of oversized trailers and mobile homes.<sup>64</sup> Mobile homes greater than eight feet in width and/or sixty feet in length are defined as oversized, and a special permit from the State Highway Department must be obtained before they can be moved on



state highways.<sup>65</sup> No home in excess of fourteen feet in width (exclusive of clearance lights) may receive a permit.<sup>66</sup> The cost of the permit is \$5.00.<sup>67</sup> The most significant regulations in the act concern who may obtain such a permit.<sup>68</sup> The statute is written so as to make it impossible for a private individual to secure a permit for a home wider than twelve feet, and almost impossible if the home is greater than eight feet in width.<sup>69</sup> A licensed carrier, dealer, or manufacturer may obtain a permit upon proof of minimum insurance coverage (i.e., \$100,000 for first bodily injury or death, \$300,000 for bodily injury or death for each accident, and \$100,000 for property damage).<sup>70</sup> An individual, on the other hand, may obtain a permit himself only if: (1) the home is not over 12 feet wide; (2) it is registered to him; (3) not for the purpose of sale; (4) he has a truck of at least one ton and it is in compliance with appropriate I.C.C. safety regulations; (5) driver is experienced at pulling wide loads; (6) minimum insurance coverage, supra, is proven; and (7) individual has title.<sup>71</sup> Obviously, the act is designed to keep the amateur-trailer puller off of the state highways.

In addition, the act gives to the State Highway Department the duty to promulgate rules and regulations in accordance with the act.<sup>72</sup> Finally, the act sets out broad guidelines for the size of trailers allowed on roads of various widths (subject to Highway Department discretion to grant exceptions), and generally prohibits the transportation of oversized trailers on weekends or holidays.<sup>73</sup>

#### VII. Taxation of Mobile Homes and Modular Units

The state of Arkansas has a three percent sales tax, and it is applicable to the sale of mobile homes.<sup>74</sup> In addition, Arkansas has a

Compensating Tax Act<sup>75</sup> which is also a three percent tax, and it applies to all personal property. The compensating tax is an excise tax for the privilege of storing, using or consuming personal property within the state.<sup>76</sup> For purposes of taxation, mobile homes are considered personal property in Arkansas.<sup>77</sup> This conclusion is not expressly codified, but the general framework of mobile homes on resale implies that the Arkansas General Assembly considers them to be personal property. There are apparently no conditions or circumstances under which mobile homes will be taxed as real property.<sup>78</sup>

There are no statutes whatever concerning modular housing. With respect to taxation of modular housing, it is likely that the personal property status of mobile homes would be analogized and followed.<sup>79</sup>

#### VIII. Taxation

There is no authority for maintaining the level of assessment on substandard housing which is improved and brought up to standard.

#### IX. Laws Affecting Banks and Savings and Loan Associations in the Home Mortgage Field

There is no special legislation regulating banks in the home mortgage field in Arkansas. Savings and loan and building and loan associations, however, are regulated by the following statutory limitations:

67-831. Restrictions as to loans.--No Building and Loan Association shall make a mortgage loan to an officer, director or employee of such association, either directly or indirectly, unless such loan be first approved unanimously by the members of the board of directors present at the next regular board meeting, such approval to be recorded by aye and nay vote in the minutes of the meeting of the board.

No Building and Loan Association shall make loans exceeding in the aggregate \$5,000 to one (1) borrower upon real estate security if the assets of the association do not exceed \$50,000; nor shall any such association make loans exceeding in the aggregate \$10,000 to one (1) borrower upon real estate security if the assets of such association do not exceed \$200,000; nor shall any association make any loans exceeding in the aggregate \$15,000 to one (1) borrower upon real estate security if the assets of such association do not exceed \$500,000; nor shall any such association make any loan exceeding in the aggregate \$25,000 to one (1) borrower upon real estate security if the assets of such association do not exceed \$2,500,000; provided that, any Building and Loan Association whose assets are in excess of \$2,500,000 may make loans not to exceed the aggregate sum of one per cent (1%) of the assets of said association to one (1) borrower on real estate security.<sup>80</sup>

There does not appear to be any geographic limitation upon either banks or savings and loans in terms of their power to make home mortgage loans. Presumably a bank or savings and loan can make such mortgages anywhere in the state.

#### Mortgages

State legislation does not expressly permit "flexible" mortgage financing, e.g., interest abatement during the early years of mortgage payments on low and middle income housing. There is very, very little regulation of mortgage financing in Arkansas, and none which appears even indirectly related to flexible financing procedures. On the other hand, there is no prohibition of it either.

With regard to open-end mortgages (that can be increased periodically to permit financing for rehabilitation), there is no special legislation concerning this particular practice -- either enabling or prohibiting it. There does not appear to be any reason why it could not be done so long as a proper memorandum of the agreement is placed with the official mortgage deed in the recorder's office and is attested to and dated by the clerk.<sup>81</sup>

## X. Usury Laws

In Arkansas, interest rates are restricted by the state constitution which provides that "[a]ll contracts for a greater rate of interest than ten percent per annum shall be void as to principal and interest. . ."<sup>82</sup> This constitutional provision has been codified<sup>83</sup> so as to authorize parties to a contract to agree in writing for the payment of a rate of interest not in excess of ten percent per annum.

The Arkansas Supreme Court held at an early date that it is not usurious to provide for the calculation of interest on interest which has actually accrued, but that it is usurious to provide for the calculation of interest on interest which will only subsequently accrue.<sup>84</sup> In a later case the court stated:

The true test is: Has the debtor the absolute right to discharge and satisfy the contract at maturity by paying the principal debt and lawful interest. If he has, the contract is not vitiated by providing for the payment of an additional sum.<sup>85</sup>

The Arkansas Constitution makes no distinction between FHA or VA and conventional loans, and, since the usury statutes in Arkansas are of constitutional origin, the legislature has been and is precluded from unilaterally making such a distinction.<sup>86</sup>

The criteria which has governed the determination of usury has been stated as being:

Whether the total amount to be paid under (a loan agreement's) terms by the borrower in the event of performance is in excess of the principal received plus 10 percent interest per annum for the term whereof.<sup>87</sup>

The language used by the court in expressing these criteria indicates that any lump sum payment made by the borrower to the lender which is considered interest will be spread over the entire term of the loan for the purpose of determining the presence of usury; however, the computational procedure

to be used in amortizing such sums has not been made clear by the Arkansas courts. The wording of these criteria also suggests that charges paid by someone other than the borrower would not be included as interest. The validity of this suggestion has again not been made clear by the courts, but it must be noted that the underlying constitutional provision makes no such distinction and, indeed, the Arkansas Supreme Court has stated that a "contract to pay directly or indirectly a greater rate of interest than 10%" would constitute usury under the Arkansas Constitution.<sup>88</sup>

Broker fees have been held not to constitute interest unless the broker is an agent of the lender, and the lender is aware of or may by law be presumed to be aware of his agent's actions.<sup>89</sup> Broker fees paid to the broker as an agent of the borrower and which are then shared with the lender are included as interest; however, such payments are not so included if the broker acts "on his own account" and not as an agent for the borrower.<sup>90</sup>

A borrower may contract with a lender to pay "certain valid and reasonable charges, paid to a third party, and incurred for the borrower's benefit in procuring the loan."<sup>91</sup> Such "valid and reasonable" charges have been held to include costs of abstracts paid to a third party, costs of title opinions paid to an attorney, recording fees paid to an official and insurance premiums paid to a third party, but charges for a credit report have been held to be included as interest since such a report is for the sole benefit of the lender.<sup>92</sup> A charge which consists merely of a percentage of the lender's overhead expenses is also included as interest.<sup>93</sup>

Discounts which are chargeable to the borrower have been held to constitute interest.<sup>94</sup> Whether this decision would be applicable to "points" paid by a seller would be a determination to be based on the factors discussed above.

The time-price differential or "credit price rule" has been recognized in Arkansas as applying to all credit sales in which a credit and cash price were quoted to the buyer.<sup>95</sup> In 1952, however, the Arkansas Supreme Court in Hare v. General Contract Purchase Corp.,<sup>96</sup> issued a caveat as to future recognition. The Court, after noting that prior cases could not be overruled retroactively, stated that thereafter, while the doctrine of time-price differential would still be applicable to bona fide transactions, a question of fact may arise "as to whether the so-called credit price was bona fide as such, or only a cloak for usury."<sup>97</sup> The determining inquiry was said to be "whether the seller increased his cash price with a reasonable assurance that he could. . . discount the paper to (an) individual or finance company," and "[i]f that reasonable assurance existed, then the transaction is in substance a loan and may be attacked for usury."<sup>98</sup> An indication of such assurance is the fact that a finance company or other "purchasers of title paper" have supplied the seller with forms and credit schedules.<sup>99</sup> Thus, under present Arkansas law, a conditional sale is prima facie exempt from the usury laws, but if the transaction is shown not to be bona fide according to the criteria set forth in Hare, supra, it may nevertheless be attacked as usurious.

Arkansas does not have a comprehensive retail installment sales law; therefore, if a transaction is a bona fide conditional sale, there is no limitation on the amount of time price differential or finance charge which may be charged.

#### XI. Welfare Laws

There is no welfare lien law in Arkansas, nor do any other welfare laws appear to have any effect upon the supply of housing.

XII. Health Laws and Regulations, Waste and Water System Requirements and Environmental Protection Laws

A. Health Laws and Regulations as they affect Safe and Sanitary Housing

There is no health legislation other than that already discussed with regard to plumbing, directly concerning or affecting housing on the state level. As discussed previously, all regulation and control over housing conditions and quality is in the hands of the various local governments.<sup>100</sup>

B. Environmental Protection Laws

Arkansas has laws for the protection of both its air<sup>101</sup> and water<sup>102</sup> resources, but these laws are directed at industry and community governments in general, and not directly at the individual homeowner. The water pollution control act creates a commission which is to administer and enforce it. The state commission also has authority to issue orders and regulations,<sup>103</sup> but to date, no regulations directly affecting housing have been issued.<sup>104</sup> That is to say that the commission does not prescribe what sort of plumbing or septic tank must be used. The commission does prescribe what the allowable level of various pollutants in the state's waters shall be, and effectuates these orders by regulating the operation of sewage and disposal systems. Thus, it is the local municipalities and county governments which actually implement guidelines and minimum standards through local building codes and ordinances in order to comply with state pollution regulations.

Significantly, there is no requirement for an environmental impact statement prior to any construction or land development. Presumably, such prior restraint upon building is exercised by the local or regional planning and zoning commissions.

### C. Requirements Regarding Water and Waste Systems; Effect on Lot Size

It follows from what has just been said that there are no uniform laws or regulations concerning water and waste systems which affect lot size. No doubt such regulations do exist in local building and plumbing codes as discussed previously.

### XIII. Landlord and Tenant Law

The tenant does not have the right to withhold payment of rent if the unit does not comply with the minimum housing code. Local agencies are not authorized to make repairs on substandard dwellings and to make the cost a lien on the dwelling, and there is no legal authority for the closing, vacating and demolition of substandard housing.<sup>105</sup> Similarly, no housing court or a similar court exists, nor is there legal authority for court appointment of a receiver to collect rents and make improvements.

As to foreclosing on tax delinquent dwellings, the provisions concerning the collection of delinquent taxes from real property are anything but quick and simple.<sup>106</sup> Delinquent tax liens are published in appropriate newspapers once each year and a public sale is held. If they are not sold to the public, the State of Arkansas buys them, and in either event there is a two year period during which the property may be redeemed by the payment of all taxes, penalties and cost, plus a 10 percent interest charge. Therefore, at the very least, no foreclosure can become final in less than two years.

No legal authority authorizes tax officials to maintain existing levels of assessment following improvement of substandard housing.

### XIV. Insurance

State legislation does not require companies doing business in the state to write fire insurance in substandard areas.



XV. The Horizontal Property Act

Arkansas has enacted a so-called "Horizontal Property Act" for the purpose of accommodating the condominium concept in the state's property law.<sup>107</sup> The act, by permitting the sale and financing of condominiums, allows builders and building owners to take advantage of Section 104 of the Federal Housing Act of 1961,<sup>108</sup> which makes available mortgage insurance on separate units in such properties.<sup>109</sup> Basically, the act provides for the ownership and conveyance of apartment units as though each were a traditional tract of real estate. The details of the procedure for qualification, registration and operation of condominiums are fairly simple and do not need to be analyzed for this study. If a condominium concept were used in low income housing, the act would have to be followed, but it would be no burden as it presents no impediments to such housing. Indeed, the Horizontal Property Act encourages the development of condominium living arrangements.

## FOOTNOTES

1. Ark. Stat. Ann., § 19-202 (1971 Supp.).
2. Id., § 19-215 (1968).
3. Id., § 19-202 (1971 Supp.).
4. Id., §§ 9-301 - § 9-306 (1971 Supp.).
5. Id., § 9-306 (1971 Supp.).
6. Id., §§ 9-316 -- 9-318 (1971 Supp.). See Appended Statute A.
7. Id., §§ 9-320 - 9-323.
8. Id., §§ 9-324 - 9-328.
9. Id., § 9-324. See Appended Statute B.
10. Id., §§ 19-2825 - 19-2831 (1968). See appended statute D.
11. Id., § 19-2829. See Appended Statute E.
12. Economy Wholesale Co. v. Rodgers, 232 Ark. 835, 340 S.W.2d 583 (1960).
13. I have no authority for this conclusion, it is merely my personal opinion.
14. Ark. Stat. Ann. §§ 19-2820 - 19-2824 (1968).
15. Id., § 19-2824.
16. Id., §§ 17-1101 - 17-1106.
17. Id., § 17-1101.
18. Id., § 17-1103A.
19. Id., § 17-1103D.
20. Id.
21. Id., § 17-1104. See Appended Statute F.
22. Id., § 17-1106.
23. Id., § 17-1105.
24. Id.

25. Id., §§ 19-3001 - 19-3076 (1968).
26. Id., § 19-3004. See Appended Statute G.
27. Id., § 19-3011 (1971 Supp.). See Appended Statute H.
28. Id., § 19-3012 (1968); This statute also sets out guidelines for fixing maximum rental rates.
29. Id., § 19-3016.
30. Id.
31. Id., § 19-3029.
32. Id., § 19-3024.
33. Id., § 19-3023. Redevelopment Projects and Urban Renewal Agencies have similar powers. See § 19-3061 (1968).
34. Id., § 19-3027.
35. Id., §§ 19-3053 -19-3055.
36. Id., §§ 19-3056 - 19-3063.
37. Id., § 19-3063.2.
38. Id., §§ 19-3014 and 19-3038.
39. Id., § 19-3015.
40. Id., § 19-3075 (1971 Supp.).
41. See generally notes 11-50 and accompanying text, supra.
42. Ark. Stat. Ann. § 19-2802 (1968). The statute does not expressly mention minimum housing codes, but such a code would seem to be implicit within the authority conferred to cities of the first class.
43. See discussion of municipal planning and zoning, supra p. 2, and accompanying footnotes.
44. Ark. Stat. Ann., § 71-702 (1971 Supp.).
45. Id., §§ 71-701 - 71-724.
46. Id., § 71-702.
47. Id.

48. Id., § 71-709.
49. Id., § 71-711.
50. Leslie Miller, Inc. v. Arkansas, 352 U.S. 187 (1956).
51. Ark. Stat. Ann., §§ 71-301 - 71-314 (1971 Supp.).
52. Id., §§ 71-1001 - 71-1024 (1957).
53. Id., §§ 71-1205 - 71-1217.
54. Id., §§ 71-1206, 71-1207, 71-1210.
55. Id., § 71-1207. Note that this statute requires the Board to recognize the National Plumbing Apprenticeship Standards for the training of plumbers' apprentices.
56. Ark. Stat. Ann., §§ 71-1206, 61-1216(2) (1957).
57. Id., § 71-1216(2).
58. Id., § 71-1208.
59. Id., § 71-1209.
60. Id., § 71-1216(1).
61. Ark. Stat. Ann., § 84-1933 (1971 Supp.)
62. Id.
63. Id., § 84-1934.
64. Id., §§ 75-828 - 75-835.
65. Id., § 75-829.
66. Id.
67. Id., § 75-830.
68. Id., § 75-831.
69. Id.
70. Id., § 75-828(c).
71. Id., § 75-831.
72. Id., § 75-835.
73. Id., § 75-832.

74. Id., §§ 84-1901 - 84-1929 (1960).
75. Id., §§ 84-3101 - 84-3128.
76. Id., § 84-3125.
77. Barick & Sage, Mobile Homes: Zoning and Taxation, 55 Corn. L.Rev. 491, 521 (1970); Ark. Stat. Ann. § 51-1010--Property Tax on House Trailers--Real or Personal Property, 3 Ark. L.Rev. 188 (1954).
78. See supra, note 55.
79. See E. F. Roberts, Land Use Planning, p. 4-270 (1971). It should be pointed out that these zoning statutes and the regulatory statutes, infra notes 60-62 are written in terms of "house trailers or mobile homes." It is certainly not unreasonable to predict that modular housing will be interpreted to come within the meaning of "mobile home" despite the illogical result of taxing them as personal property.
80. Id., § 51-1011 (1966). This statute is applicable to savings and loan associations as well as to building and loan associations.
81. By analogy, Ark Stat. Ann. § 51-1010 (1971), which prescribes this procedure for the extension of maturity for mortgages, would seem to allow open-end mortgages if the recording procedure were followed.
82. Ark. Const. art. 19, § 13.
83. Ark. Stat. Ann., § 68-602 (1957).
84. Grider v. Driver, 46 Ark. 50 (1895).
85. Carney v. Matthewson, 86 Ark. 25, 109 S.W. 1024 (1908).
86. Winston v. Personal Finance Co. of Pine Bluff, 220 Ark. 580, 249 S.W.2d 311 (1951).

87. McDougall v. Hachmeister, 184 Ark. 28, 41 S.W.2d 1088, 1090 (1931).
88. Smith v. Eason, 223 Ark. 747, 749, 268 S.W.2d 389, 390 (1954).
89. Valhberg v. Keaton, 51 Ark. 534, 11 S.W. 878 (1889).
90. Jones v. Phillippee, 135 Ark. 578, 206 S.W. 40 (1918).
91. Smith v. Eason, 223 Ark. 747, 268 S.W.2d 389, 390 (1954).
92. Id., Winston v. Personal Finance Co. of Pine Bluff, 220 Ark. 580, 249 S.W.2d 315 (1952).
93. Strickler v. State Auto Finance Co., 220 Ark. 565, 249 S.W.2d 307 (1952).
94. Public Loan Corp. v. Weaver, 223 Ark. 902, 270 S.W.2d 888 (1954).
95. Smith v. Kaufman, 145 Ark. 548, 224 S.W. 978 (1920).
96. 220 Ark. 601, 249 S.W.2d 973 (1952).
97. Id. at 609, 249 S.W.2d at 978.
98. Id.
99. Id.
100. See supra, discussion of Municipal Planning and Zoning. Recall also that plumbing is regulated by the state board of health and local governments. This is the primary means of regulating sanitation conditions in housing. See supra, notes 45-52 and accompanying text.
101. Ark. Stat. Ann., §§ 82-1901 - 82-1914.17 (1971 Supp.).
102. Id., §§ 82-1931 -82-1943.
103. Id., § 82-1904.
104. I have reached this conclusion after examining the Arkansas water pollution control regulations as set out in the B.N.A. Environmental Law Reporter.
105. Id. at § 19-2803. Moreover, the city need not pay compensation if the demolition is necessary to abate a sanitation nuisance and protect the public health and welfare. Springfield v. Little Rock, 226 Ark. 462, 290 S.W.2d 620 (1956).
106. See generally Ark. Stat. Ann., Title 84, Chapters 10, 11, 12 & 14 (1960).
107. Id., §§ 50-1001 - 50 1023 (1971).
108. Public Law 87-70, 75 Stat. 149 (30 June 1961).
109. Legislation--Horizontal Property Act--The Concept of Condominiums, 15 Ark. L. Rev., 430 (1961).

A

9-316. Powers and duties.—Within the concept of said Act 9, approved February 4, 1935, but without limiting the authority thereunder by reason of the following enumeration, the Commission, effective April 1, 1963, shall have the function and power and, to the extent to which operating funds shall be available for its use, be subject to the duty of:

(a) Assisting local communities in the Arkansas river basin, and in other river basins in the State, in the development of their plans for harbors, ports, recreational, industrial and other facilities, and with respect thereto, cooperate with local chambers of commerce, river basin associations, the Corps of Engineers of the Department of the Army, the Bureau of Reclamation of the Department of the Interior and appropriate other federal agencies or instrumentalities, and with others directly interested in the subject.

(b) Counseling and cooperating with counties and municipalities and the respective instrumentalities thereof, and with other political subdivisions of the State, and with private or public nonprofit organizations and associations, in the planning and formulation of economic or other development programs, including but not limited to programs in communities having substantial and persistent unemployment or underemployment; and, when required for the accomplishment of the purposes of such of the programs, or parts thereof, as relate to the development of industry, assisting such communities in arranging financial assistance in the purchase or development of land and facilities for industrial or commercial usage, including, but not necessarily limited to, the construction of new buildings, the rehabilitation of abandoned or unoccupied buildings, and the alteration, conversion, or enlargement of buildings, and, whether or not as an aid in the development of industry, for land acquisition and the construction of new water and sewer systems, roads, streets, hospitals, public buildings, or other

facilities for public usage, or for the reconstruction, rehabilitation, alteration, expansion or improvement of any existing facilities for public usage; and, for the purposes hereof, the Commission shall continuously keep itself informed as to the sources of financial assistance, both private and public, and, with respect to any proposed request for financial assistance in the form of loans or grants from the Federal Government, it shall obtain, and keep current, copies of the rules, regulations and requirements of the several federal agencies through whom such loans or grants may be obtained, and the Commission, or the Executive Director thereof, shall have the authority to approve any such local development plan or program, or part thereof, whenever such approval at the state level shall be required by the Area Redevelopment Act, the Public Works Acceleration Act, or other federal law of similar import, or by the rules or regulations of the respective administrators designated by, or appointed pursuant to authority contained in, any such act or law, or by the administrators, respectively, of the Community Facilities Administration, the Public Housing Administration or the Urban Renewal Administration of the Housing and Home Finance Agency, and the Small Business Administration. Provided, that nothing contained in this paragraph shall be so construed as to give the Commission any authority, other than as aforesaid, in the field of industrial or other development heretofore or hereafter delegated by law to other agencies of the State, and the Governor shall be the final arbiter should any jurisdictional questions of administration arise in relation thereto.

(c) Cooperating with the several federal agencies in the development of their plans for federal public works. [Acts 1963, No. 15, § 11, p. 37.]

9-317. Additional authority of commission.—The Commission shall also have the authority to:

(a) Receive and expend any moneys arising from federal means, grants, contributions, gratuities or reimbursements, or contributions, grants or gratuities donated by private persons, associations or corporations, for or on account of any of the functions performable by the Commission. The Chief Fiscal Officer of the State shall prescribe rules for the handling of said moneys.

(b) Contract and be contracted with.

(c) Take such other action, not inconsistent with law, as it shall deem necessary and proper to carry out the purposes and intent of this act [§§ 9-306—9-313]. [Acts 1963, No. 15, § 12, p. 37.]

9-318. Cooperation with state officials and agencies.—It shall be the duty of the Commission, its officers and employees, on the one hand, and of each other state official, department, commission, board, agency and institution, and the officers and employees respectively thereof, on the other hand, to cooperate with each other, whenever called upon so to do, in all such reasonable ways as will assist or further the proper functioning of either of them, including, but without thereby limiting the generality of the foregoing, the duty to afford access to records and statistical and other data and information, to provide legal advice and engineering and other technical data, plans and surveys, and to make available for occasional work the services of officers and employees who can be spared therefor without substantial interference with their regular duties. [Acts 1963, No. 15, § 13, p. 37.]

**B**  
 9-324. Multi-county planning and development organizations—Purpose.—(a) The purpose of this Act [§§ 9-324—9-328] is to encourage multi-county planning and development organizations which have been formed, or which may be formed in the future, as voluntary nonprofit associations to promote economic development, to assist local governments and private organizations in obtaining federal grants and loans, to prepare comprehensive regional plans for economic development and improve government services, to enlist private support for these activities, and to coordinate private and public programs in the multi-county districts. Recognizing the beneficial services to be provided the people of this State through the activities of such multi-county planning and development organizations established for the aforementioned purposes, and in order to encourage such organizations in their efforts to provide such beneficial services, the General Assembly hereby establishes a program of providing financial assistance to such associations to enable them to continue and expand their activities in furtherance of the purposes of this Act.

(b) Nothing in this Act [§§ 9-324—9-325] is intended to be inconsistent with or contrary to a policy of relying on the private enterprise system. [Acts 1969, No. 118, § 1, p. 347.]

**C**  
 19-2801. Power to regulate construction, alteration and repair of buildings.—They [municipal corporations] shall have the power to regulate the erection, construction, reconstruction, alteration and repair of buildings; to make regulations for the purpose of guarding against accidents by fire; to require the use of fireproof or fire-resistant materials in the erection, construction, reconstruction, alteration or repairs of buildings; and to provide for the removal of any buildings or additions thereto erected contrary to such prohibition. [Act Mar. 9, 1875, No. 1, § 13, p. 1; Mar. 2, 1887, No. 32, § 1, p. 41; C. & M. Dig., § 7544; Pope's Dig., § 9619; Acts 1939, No. 102, § 1, p. 213.]



D

The plan or plans of the municipality shall be prepared in order to promote, in accordance with present and future needs, the safety, morals, order, convenience, prosperity and general welfare of the citizens and may provide, among other things, for efficiency and economy in the process of development, for the appropriate and best use of land, for convenience of traffic and circulation of people and goods, for safety from fire and other dangers, for adequate light and air in the use and occupancy of buildings, for healthful and convenient distribution of population, for good civic design and arrangement, for adequate public utilities and facilities, and for wise and efficient expenditure of funds. ~~\_\_\_\_\_~~

E

19-2829. Implementation of plans.—a. PREPARATION OF RECOMMENDED ORDINANCES. Following the adoption and filing of any plan or plans, the planning commission may transmit to the legislative body, for enactment, recommended ordinances and regulations which will carry out or protect the various elements of the plan or plans.

b. ZONING ORDINANCE. Following adoption and filing of the land use plan, the planning commission may prepare for submission to the legislative body a recommended zoning ordinance for the entire area of the municipality.

The zoning ordinance shall consist of both a map and a text.

The zoning ordinance may regulate the location, height, bulk, number of stories, and size of buildings; open space; lot coverage; density and distribution of population; the uses of land, buildings and structures. It may require off-street parking and loading. It may provide for districts, of compatible uses, for large scale unified development, for elimination of uses not in conformance with provisions of the ordinance, and for such other matters as are necessary to the health, safety, and general welfare of the municipality. The zoning ordinance shall include provisions for administration and enforcement. The zoning ordinance shall designate districts or zones of such shape, size, or characteristics as deemed advisable. The regulations imposed within each district or zone shall be uniform throughout said district or zone.

The zoning ordinance shall provide for a board of zoning adjustment, which may either be composed of at least three (3) members or the planning commission as a whole may sit as the board of zoning adjustment. The board of zoning adjustment shall have the following functions:

(1) Hear appeals from the decision of the administrative officers in respect to the enforcement and application of said ordinance; and may affirm or reverse, in whole or part, said decision of the administrative officer.

(2) Hear requests for variances from the literal provisions of the zoning ordinance in instances where strict enforcement of the zoning ordinance would cause undue hardship due to circumstances unique to the individual property under consideration, and grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the zoning ordinance. The

board of zoning adjustment shall not permit, as a variance, any use in a zone that is not permitted under the ordinance. The board of zoning adjustment may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

Decisions of the board of zoning adjustment in respect to the above shall be subject to appeal only to a court of record having jurisdiction.

The board of zoning adjustment shall establish regular meeting dates, adopt rules for the conduct of its business, establish a quorum and procedure, and keep a public record of all findings and decisions. Each session of the board of zoning adjustment shall be a public meeting with public notice of said meeting and business to be carried on published in a newspaper of general circulation in the city, at least one [1] time seven (7) days prior to the meeting.

The zoning ordinance shall be observed through denial of the issuance of building permits and use permits.

c. CONTROL OF DEVELOPMENT AND SUBDIVISION OF LAND. Following adoption and filing of a master street plan, the planning commission may prepare and shall administer, after approval of the legislative body, regulations controlling the development of land. The development of land includes, but is not limited to the provision of access to lots and parcels, the extension or provision of utilities, the subdividing of land into lots and blocks, and the parceling of land resulting in the need for access and utilities.

The regulations controlling the development of land may establish or provide for the minimum requirements as to: information to be included on the plat filed for record; the design and layout of the subdivision, including standards for lots and blocks, street rights-of-way, street and utility grades, and other similar items; the standards for improvements to be installed by the developer at his own expense, such as street grading and paving, curbs, gutters, and sidewalks, water, storm and sewer mains, street lighting and other amenities.

The regulations may permit the developer to post a performance bond in lieu of actual installation of required improvements before plat approval. They may provide for the dedication of all rights-of-way to the public.

The regulations may govern lot or parcel splits (the dividing of an existing lot or parcel into two [2] or more lots or parcels). No deed or other instrument of transfer shall be accepted by the county recorder for record unless said deed or other instrument of transfer is to a lot or parcel platted and on file or accompanied with a plat approved by the planning commission.

The regulations shall establish the procedure to be followed to secure plat approval by the planning commission.

The regulations shall require the developer to conform to the plan or plans currently in effect. The regulations may require the reservation, for future public acquisition of land for community or public facilities indicated in the plan or plans. Such reservation may extend over a period of not more than one [1] year from the time the public body responsible for the acquisition of reserved land is notified of the developer's intent.

When a proposed subdivision does not provide an area or areas for a community or public facility based on the plan or plans in effect, the regulations may provide for reasonable dedication of land for such public or community facilities, or for a reasonable equivalent contribution in lieu of dedication of land, such contribution to be used for the acquisition of facilities that serve the subdivision.

Within the area within which the municipality intends to exercise its territorial jurisdiction as indicated on the Planning Area Map, the county recorder shall not accept any plat for record without the approval of the planning commission.

d. **SET-BACK ORDINANCE.** When a master street plan has been adopted and filed as hereinafter provided, the legislative body of the city, upon recommendation of the planning commission, may enact ordinances establishing set-back lines on such major streets and highways as are designated by the plan, and may prohibit the establishment of any new structure or other improvements within such set-back lines.

e. **CONTROL OF LAND ALONG NAVIGABLE STREAMS.** Planning commissions in cities of the first and second class situated on navigable streams shall have planning and zoning jurisdiction over the territory lying along the stream for a distance of five (5) miles of the corporate limits, in either direction, and for a distance of two (2) miles laterally from the thread of the stream.

f. **CONTROL OF ENTRY.** Following the adoption and filing of a master street plan, as hereinafter provided, the legislative body upon recommendation of the planning commission may enact ordinances providing for the control of entry into any of the major streets and highways shown in the plan.

g. **ADOPTION AND AMENDMENT PROCEDURES.** Any of the recommended ordinances and regulations that may be prepared by the planning commission shall be adopted or amended only in conformance with procedures specified in Section 6 [§ 19-2830] of this Act.

h. **PENALTY FOR VIOLATION OF PLANNING ORDINANCES.** Violations of any provision of ordinances and regulations adopted to carry out the intent of the plan or plans shall be considered a misdemeanor, each day's violation shall be considered a separate offense.

The legislative body may enjoin any individual or property owner who is in violation of a planning ordinance to prevent or correct such violation. Any individual aggrieved by a violation of a planning ordinance may request an injunction against any individual or property owner in violation of a planning ordinance, or may mandamus any official to enforce the provisions of a planning ordinance. [Acts 1957, No. 186, § 5, p. 567; 1965, No. 134, § 1, p. 335.]

## F

17-1101. **Purposes of county plan.**—The County Plan shall be made with the general purpose of guiding and accomplishing a coordinated, efficient and economic development of the county which will, in accordance with present and future needs and resources, best promote the health, safety, comfort, convenience, prosperity and welfare of the people of the county. Such plan should make recommendations, among other things, as to the conservation of natural resources including land, water, and mineral; economic distribution of population; efficient transportation facilities, adequate educational and institutional facilities; and such other matters within the county as will tend to create conditions more favorable to economic security, with greater opportunities for recreational, educational and cultural advancement. Further, the official plan for the county or any part thereof, should be coordinated and integrated with the official state plan and other related regional, county and city plans in order to avoid inconvenience and economic waste and assure a coordinated and harmonious development of the county, region and state. [Acts 1937, No. 246, § 4, p. 850; Pope's Dig., § 2443.]

19-3004. Creation of housing authorities.—In each city (as herein defined) and in each county of the State there is hereby created a public body corporate and politic to be known as the "Housing Authority" of the city or county; provided, however, that such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the city or the county, as the case may be, by proper resolution shall declare at any time hereafter that there is need for an authority to function in such city or county. The determination as to whether there is such need for an authority to function (a) may be made by the governing body on its own motion or (b) shall be made by the governing body upon the filing of a petition signed by twenty-five [25] residents of the city or the county, as the case may be, asserting that there is need for an authority to function in such city or county and requesting that the governing body so declare.

The governing body shall adopt a resolution declaring that there is need for a housing authority in the city or county, as the case may be, if it shall find (a) that insanitary or unsafe inhabited dwelling accommodations exist in such city or county or (b) that there is a shortage of safe or sanitary dwelling accommodations in such city or county available to persons of low income at rentals they can afford. In determining whether dwelling accommodations are unsafe or insanitary said governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which con-

ditions exist in such buildings which endanger life or property by fire or other causes.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the governing body declaring the need for the authority. Such resolution or resolutions shall be deemed sufficient if it declares that there is such need for an authority and finds in substantially the foregoing terms (no further detail being necessary) that either or both of the above enumerated conditions exist in the city or county, as the case may be. A copy of such resolution duly certified by the governing body shall be admissible in evidence in any suit, action or proceeding.

## H

19-3011. Powers of authority.—An authority shall constitute a public body corporate and politic, exercising exclusively public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act [§ 19-3001—19-3005, 19-3009—19-3023, 19-3025—19-3029, 19-3031—19-3031] including the following powers in addition to others herein granted:

(a) To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal by-laws, rules and regulations, not inconsistent with this act, to carry into effect the powers and purposes of the authority.

(b) Within its area of operation: to prepare, carry out, acquire, lease and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof.

(c) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof; and

(notwithstanding anything to the contrary contained in this act or in any other provision of law) to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the Federal Government may have attached to its financial aid of the project.

(d) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and (subject to the limitations contained in this act) to establish and revise the rents or charges therefor; to own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure insurance or guarantees from the Federal Government of the payment of any debts or parts thereof (whether or not incurred by said authority) secured by mortgages on any property included in any of its housing projects.

(e) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be cancelled.

(f) Within its area of operation: to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstructing of slum areas, and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the State or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(g) Acting through one or more commissioners or other person or persons designated by the authority: to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are outside of the State or unable to attend before the authority, or excused from attendance; to make available to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its area of operation) its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

19-3011. Powers of authority.—\* \* \*

(a) \* \* \*

(h) To purchase promissory notes, and the mortgages or trust deeds securing the same, issued by any builder or developer engaged in constructing dwelling units to be sold or leased to the authority as part of any housing project; to make loans to any such builder or developer in order to aid in financing any housing project; and to issue its bonds for any such purpose.

(i) To exercise all or any part or combination of powers herein granted.

No provisions of law with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state. [Acts 1937. No. 293, § 8, p. 1074; Pope's Dig., § 10066.]

## APPENDIX C: KENTUCKY REPORT ON LEGISLATION

I. STATE LEGISLATION PRESCRIBING LAND USE CONTROLS AND AFFECTING LOCAL ZONING ORDINANCES

On the state level, Chapter 147 of the Kentucky Revised Statutes sets up the Kentucky Progress Commission. It also provides guidelines for the state planning functions of the Governor's Cabinet. Among the functions is the making of surveys of rural land utilization with a view to the determination of the areas suitable for field crops, reforestation, watershed protection, recreation and urban expansion. The Governor's Cabinet may also make maps, planning studies, and surveys relating to zoning, soil conditions, land use and classification, population distribution, schools, park and playground development, water supply, drainage and sewerage, long-range financial programs, real property inventories, tax maps, building and housing conditions, subdivision control and subjects affecting the general health and welfare.<sup>1</sup>

§147.610 enables any two or more adjacent counties, one of which has a city having a population of more than 50,000 and less than 200,000 inhabitants, to establish an area planning commission (as provided by §100). Procedure for establishing a commission can be found in §147.620.

The master plans of all participating units of government, including all zoning ordinances, and all action taken under authority of such ordinances shall continue to be in effect unless they are in conflict with planning actions taken by the Area Planning Commission.<sup>2</sup>

Besides having the power to tax,<sup>3</sup> the area planning commission also has the power and duty to establish a master plan of the entire area within its jurisdiction, including a land use plan with zoning areas.<sup>4</sup> The area land use plan may include the zoning plans made by the various cities affected,

but shall include a map of the entire area of its jurisdiction showing the land use districts into which it is divided. The governmental unit under the jurisdiction of the area planning commission may adopt more strict regulations or impose higher standards of land use than adopted by the land use plan.

Land use planning controls are generally left to the county and city authorities. However, there is state legislation governing this topic.

Before any planning operations may begin, a "planning unit" must be formed and designated. Planning units may consist of a city or county acting independently in accordance with KRS §100, cities and their county, or of regional groups of counties and their cities.<sup>5</sup> Any city or county may establish a planning program as an independent operation if a certain required procedure outlined in §100.117 is unsuccessful in establishing a joint planning unit encompassing the county and cities therein. Legislative bodies of cities and the fiscal court of the county containing the cities may enter into an agreement to form a joint planning unit by combining planning operations in order that they may carry out a joint city-county planning program.<sup>6</sup> Finally, legislative bodies of cities and counties comprising two or more adjacent planning units whose combined territory form a logical functional area, or portion thereof, may enter into an agreement to form a regional planning unit.<sup>7</sup>

An independent city planning unit may exercise extraterritorial jurisdiction over the administration of subdivision regulations and, with the consent of the fiscal court, other regulations up to five miles from all points upon the city's boundary, but not beyond the county boundary, nor within the boundary of any city not in such planning unit. The jurisdiction of joint and regional planning units is coterminous with their political



boundaries. However, any planning unit may make planning studies of areas located outside its jurisdiction.<sup>8</sup>

Before a planning unit may engage in planning operations, a planning commission shall be appointed for the unit in conformance with an adopted regulation or agreement.<sup>9</sup>

The planning commission of each unit shall prepare a comprehensive plan, which shall serve as a guide for public and private actions and decisions to assure the development of public and private property in the most appropriate manner.<sup>10</sup> The comprehensive plan shall contain, as a minimum, a statement of goals and objectives to serve as a guide for the physical development and economic and social well-being of the planning unit; a land use plan element, showing proposals for the most desirable patterns for the general location of the manner in which the community should use its public and private land, covering public and private, residential, commercial, industrial, agricultural and recreational land uses; a transportation plan element; and a community facilities plan element showing proposals for the appropriate pattern for the location of public and semi-public buildings and land.<sup>11</sup>

Cities and counties which are members of a planning unit having adopted a land use plan element may divide the territory within their area of jurisdiction into zones to promote public health, safety, morals and general welfare of the planning unit and to regulate population density and intensity of land use to provide for adequate light and air. Zoning may also be employed to provide for vehicle parking and loading space, to facilitate fire and police protection, and to prevent the overcrowding of land, blight, danger and congestion in the circulation of people and

commodities. Finally, zoning may be employed to protect airports, highways and other transportation facilities, public schools and grounds, historical and business districts and natural resources.<sup>12</sup>

§100.203 provides that cities and counties may exercise the power to zone through zoning regulations, and indicates that cities and counties may regulate:

- (a) activities on the land;
- (b) the size and location of structures, buildings and signs;
- (c) minimum or maximum areas of open spaces left to be unoccupied and minimum distances between buildings;
- (d) the intensity of use and the density of population floor area;
- (e) special districts like planned neighborhood and group housing districts and historical districts;
- (f) fringe areas of each district;
- (g) activities and structures of land near major thoroughfares.<sup>13</sup>

Before any zoning regulation may have legal effect within the planning unit, a board or boards of adjustments shall be appointed for the planning unit to serve as the administrative body<sup>14</sup> (§100.217). The board has the power to hear and decide applications and conditional use permits<sup>15</sup> and applications for dimensional variances.<sup>16</sup>

Another problem in the area of zoning is that of determining who is immune from local zoning ordinances. Generally governments are immune only when the activities undertaken are of a governmental and not of a proprietary or corporate character.<sup>17</sup> However, government projects can be made subject to zoning regulations or exempted from them by the wording of the statute creating the project.<sup>18</sup> This question has not yet been litigated in Kentucky, however.

The primary Kentucky statute in this field is §80.110 which declares that all low cost housing projects are subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the project is situated. This seems consistent with the general rule enunciated above as a government housing project is more of a proprietary undertaking than a government function.

## II. STATE HOUSING CORPORATION

In 1972, the Kentucky legislature passed a bill creating the Kentucky Housing Corporation, currently codified in §198-A of the Kentucky Revised Statutes (see Exhibit 1). The purpose of the bill is to create safe and sanitary housing in rural and urban areas which have deteriorated in recent years through the spread of slum conditions. Private enterprise and investment have not produced the needed amount of low cost housing, and state action is thought to be necessary to achieve this objective.

The corporation is governed by a board of directors and has the necessary powers to effectuate the legislation. Included are these powers: to make insured construction and/or mortgage loans to sponsors of land development or residential housing; to purchase insured mortgage loans made to such sponsors; to acquire real property by purchase, foreclosure or otherwise; to sell all or any part of a mortgage or any document securing a construction, land development or loan; to insure against loss; to consent to a modification of the usury rates; and, most important, to acquire, establish and operate residential housing for persons and families of lower income.

Moreover, the housing corporation act does not stop merely at the construction of low cost housing. §198.A-050 authorizes the director of the corporation to provide that training and employment arising in

connection with the planning, construction, rehabilitation, and operation of housing assisted under such programs be given to persons of lower income residing in the area of such housing, wherever feasible. It provides further that contracts for work be awarded to individuals and business firms doing business in the fields of design, architecture, building construction, rehabilitation, maintenance or repair, located in or owned in substantial part by persons residing in the area of such housing. Thus, the act encourages active participation by those it is created to help, by providing employment opportunities and stimulating business in the areas involved.

The Commonwealth of Kentucky is not responsible in any way for any debts, liabilities or obligations issued under the Act.<sup>19</sup> These shall be payable solely from the revenues or assets of the corporation. The taxing power of the state will not be used to assist in the payment of obligations of the corporation.

The Act also created a housing loan fund known as the Housing Development Fund to be administered by the corporation as a trust fund separate and distinct from any other monies or funds administered by the corporation. It is comprised of funds and contributions and of fund notes issued by the corporation.<sup>20</sup> The purpose of the fund is to provide a source from which the corporation may make temporary loans at such interest rates as may be determined by the corporation to be for its best interests for the purposes of: defraying development costs of sponsors, developers and builders of residential housing, or providing to families of lower income applying for mortgage funds to make downpayments and pay closing costs, or participating in construction loans which are not federally insured to sponsors, builders, and evelopers. However, construction loans will only be made from the fund when such loans are not otherwise available from private lenders upon reasonably equivalent terms.

The corporation is authorized to issue \$200,000 bonds of the corporation to carry out its purposes, and may issue bond anticipation notes, interim receipts or temporary bonds.<sup>21</sup>

In the discretion of the corporation, any obligations it undertakes may be secured by a trust agreement by and between the corporation and a corporate trustee, which may be any trust company or bank and trust company within or without the state.<sup>22</sup>

On October 1, 1973, John W. Polk, Jr. assumed the duties of executive director of the Kentucky Housing Corporation. The staff presently consists of the director and his secretary. By January 1, additional staff should be available to provide technical assistance to nonprofit groups, builders and local housing authorities.

The first bond issue went on sale November 7, 1973. There were two simultaneous issues -- housing revenue bonds in the sum of \$52,100,000 at 5.96 percent and one year bond anticipation notes in the sum of \$20,000,000 at 4.725 percent. The bond issue was scheduled to close on December 6. At that time the Kentucky Housing Corporation is to buy a package of loans from FNMA consisting of \$28,000,000 in Section 236 and Section 221(d)(3) loans and \$15,000,000 in Section 235 loans. The proceeds of the note sale will be used to buy subsidized loans presently in the pipe line and \$3,000,000 will be set aside for development and seed money loans.

It will be necessary to amend the enabling legislation to permit the Kentucky Housing Corporation to participate in the Section 23 leased housing program.

III. HOUSING AUTHORITIES

Kentucky does allow both county and regional housing commissions under the provisions of §80.310 and the following materials (See Exhibit 6). County commissions are created for only one county, but the regional commissions can be created by the governing bodies of two or more <sup>23</sup> contiguous counties. The area of operation of such a Regional Housing Commission will be the counties for which it is established, and this area may be increased to allow the addition of one or more contiguous counties not already within a Regional Housing Commission. <sup>24</sup> The area of operation of a Regional Housing Commission may also be decreased from time to time to exclude one or more counties from the area. <sup>25</sup> No housing commission may be established without a finding by the governing body within the city or county involved that: first, there are unsanitary or unsafe inhabited dwellings in the city or county or that there is a shortage of safe or sanitary dwellings for people of low income; and second, that these conditions can be best remedied through the exercise of the powers of a Housing Commission. <sup>26</sup>

There is no authority for the creation of state-wide housing authorities except insofar as the areas of Regional Housing Commissions can be increased through the procedure of §80.340. There does exist in Kentucky a State Property and Buildings Commission, but that commission <sup>27</sup> only undertakes building projects for state agencies.

#### IV. CODES AND INSPECTION PROCEDURES

The fiscal court of any county has the authority to adopt and enforce regulations governing the construction, reconstruction, repair and maintenance of buildings other than buildings for agricultural purposes.<sup>28</sup> The fiscal court of any County containing a first class city may, after a public hearing, adopt and enforce similar regulations concerning buildings located within unincorporated areas of such count, and also within the corporate limits of any city in such county not having such regulations except for buildings used solely for agricultural purposes located on premises used solely for agricultural purposes.<sup>29</sup> If a first class city has in effect a building ordinance, the fiscal court of the county in which the city is located may adopt the provision of such ordinance, or any part thereof, for the area of the county outside the corporate limits of such city.<sup>30</sup> The fiscal court of any county containing a first or second class city may appoint a Building Inspector. No person is allowed to build, remodel or repair any building without first obtaining a building permit from the Building Inspector.<sup>31</sup>

Thus, Kentucky has no uniform state building code, but rather leaves such regulation to the individual counties and cities. Buildings must also meet the health regulations discussed in Section XII.

In case any building or structure is or is proposed to be erected, reconstructed, repaired or maintained in violation of any reasonable regulations adopted by the fiscal courts of the counties, the county attorney or any property owner or occupant who would be damaged by such violation may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or other appropriate action to prevent, enjoin or remove such unlawful activity.<sup>32</sup> Tenant suits for damages are thus permitted if a landlord fails to meet the building codes.

There is no statutory law in Kentucky justifying a tenant in withholding payment of rent if the unit he lives in does not comply with the minimum housing code. Generally, whether a tenant can withhold rent under these conditions depends on whether there is a warrant of habitability in the lease.<sup>33</sup> One Kentucky case<sup>34</sup> held that a clause in a lease permitting surrender of the premises in case of accident by fire and the elements and other unavoidable accidents so as to make the premises unlivable does not justify surrender upon the premises becoming infested with vermin. Another case<sup>35</sup> held that the lessee of property damaged by flood who exercises an option to cancel the lease but refuses to surrender the property to the lessor is liable for rent.

The exact question at issue, however, has not been litigated in Kentucky. Courts in other states containing statutes exempting the tenant from paying rent under these circumstances have been inconsistent in construing the statutes.<sup>36</sup> The only Kentucky statute in the field provides that a tenant, unless he otherwise contracts, is not liable for the rent for the remainder of his term of any building leased by him and destroyed during the term by fire or other casualty without his fault or neglect.<sup>37</sup>

#### V. REGULATIONS AFFECTING THE HOME BUILDING CONSTRUCTION INDUSTRY

Kentucky has no laws affecting the "home building construction industry" as such. However, it does have general regulations concerning the acquisition of land and the erection of buildings by state and local government.

Licensing of builders is not required.



# VI. REGULATIONS GOVERNING MOBILE HOMES

Kentucky's laws governing mobile homes are found in §219 of the statutes. This Act, the Kentucky Mobile Home and Recreational Vehicle Park Act, was passed in 1972.

Mobile home parks are under the control of the State Department of Health. Anyone wishing to operate a mobile home park must apply to the Department for a permit with a fee of \$25 which is good for one year. Anyone wishing to construct a new park or to alter an existing one must apply for a permit and pay \$25 also. No change in sanitary facilities, including the water supply, sanitary sewer, waste disposal system, sanitary station, watering station or service building, no change in the plan of any existing park or in any proposed park for which a permit to construct has been issued shall be made without first having obtained a construction permit, except that a change from a private water supply or sewer system to a public water supply or sewage system shall not require a construction permit.

A permit to construct, alter or operate a park does not relieve the applicant from securing a local building permit if required or from complying with any local zoning or other legal requirements.

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The Board of Health is authorized to adopt rules and regulations to effect and administer §219.310 to §219.410, which may include standards for park construction and layout, service buildings, watering stations, sanitary stations, sanitation site planning, lot size, water supply, sewage disposal, lighting, refuse handling, insect and rodent control, inspections, hearings, issuance, suspension and revocation of permits, and such other matters as may be necessary to insure a safe and sanitary park operation. Officials and employees of the Department and of local health departments are empowered to enter upon the premises of any park at any reasonable time to inspect the premises. The local health department concerned

after notice to the applicant or holder of a permit, is authorized to deny, suspend or revoke a permit where it finds a failure to comply with §§219.310-219.410, subject to hearings held in accordance with the regulations of the Board of Health. The county attorney, city attorney, attorney general, etc., within their respective jurisdictions, are to enforce these provisions.

Nothing in §§219.310-219.410 shall be construed to include mobile homes or recreational vehicles maintained by any person on their premises and used exclusively to house their own farm labor.

Kentucky does have size limitation on house trailers which can travel on state highways: width not more than 8 feet and length not more than 55 feet. A permit for a larger vehicle can be acquired from the Department of Highways under a display of special circumstances.

## VII. TAXATION OF MOBILE AND MODULAR UNITS

The statutory law in Kentucky is that if the wheels or mobile parts have been removed from a housetrailer or mobile home and the unit rests on a fixed, permanent foundation, it shall be classified as real estate.<sup>40</sup> Generally, however, housetrailerers are termed as personal property and the presumption is that they are subject to local property taxes wherever they are found.<sup>41</sup> This seems consistent with §132.485(2) which dictates that housetrailerers be assessed at the same standards as those used for valuing motor vehicles.

There was no specific legislation dealing with taxation of mobile and modular units as personal or real property as they left the factory, but it would seem from the above that at least mobile homes would be classified as personal property.

There is a 5 percent tax on all retailers' gross receipts on sales made in Kentucky. The tax has been in effect since April 1, 1968.<sup>42</sup>

## VIII. TAXATION

There is no legal authority in Kentucky authorizing tax officials to maintain existing levels of assessment following improvement of substandard housing.<sup>43</sup>

IX. LAWS AFFECTING THE OPERATION OF BANKS AND SAVINGS AND LOAN ASSOCIATIONS  
IN HOME MORTGAGE FIELD

Any trust company or bank empowered to act as a fiduciary under Kentucky law and subject to examination by either state or Federal banking authorities may set up a separate real estate mortgage fund, issue against such investment fund participation certificates covering fractional interests therein, and invest trust funds in its hands for investment in such participation certificates.<sup>44</sup> To provide for losses that might occur in such an investment fund, the bank or trust company may reserve from the interest collected on the mortgages held in the fund not over one-half of one percent per annum on the principal of such mortgages. The reserved amount is to be set aside in a separate account and used primarily to cover losses sustained in connection with any of the mortgages or in foreclosing mortgages. Such reserve account or any balance thereof after the payment of any losses shall belong to the beneficial owners of the investment fund.<sup>45</sup>

Every real estate loan is to be evidenced by a note or bond for the amount of the loan, specifying the amount, rate of interest, term of repayment and other pertinent information. Every such loan shall be secured by a mortgage or other instrument constituting a first lien on the real estate securing the loan. Such mortgage is to protect the savings and loan association and is to be properly recorded. Mortgages may also be made to secure existing debts or obligations, to secure debts created simultaneously with the execution of the mortgage, to secure future advances to be made at the option of the parties, and all such debts and future advances are secured by such mortgage equally with all persons who acquire any right in the mortgaged real property subsequent to recording. Savings and loan associations may also pay taxes, assessments, insurance premiums and other similar charges for the protection of its real estate

loans. Such payments shall be added to the unpaid balance of the loan and shall be equally secured by the first lien on the property. An association may require life insurance to be assigned as an additional collateral upon any real estate loan. In such event, the association shall obtain a first lien upon the policy and may advance premiums thereon. Such premium advances are to be added to the unpaid balance of the loan and shall be equally secured by the first lien on the property.<sup>46</sup>

There is no Kentucky legislation permitting or prohibiting "flexible" mortgage financing. Nor is there state legislation dealing with open-end mortgages.

## X. USURY LAWS

Aside from the 6 percent legal rate of interest, Kentucky completely revised its basic usury statute in 1972 to create an interest structure with two levels of acceptable maximum rates.<sup>47</sup> A maximum rate of 8 1/2 percent per annum may be charged in two situations: (1) where a loan obligation in writing is secured by a "lien on one single unit family residential real estate property,"<sup>48</sup> and (2) where the original principal amount of the loan obligation in writing is \$25,000 or less.<sup>49</sup> On the other hand, where the loan obligation in writing (other than that mentioned in (1) above) is in excess of \$25,000, the parties may contract to pay any rate of interest.<sup>50</sup>

Corporations may not plead usury as a defense,<sup>51</sup> unless the corporation's principal asset is a one or two family dwelling.<sup>52</sup> See also 70 Op. Att'y Gen. 727 (1970) taking the position that §360.025 does not constitute an arbitrary and unreasonable classification and is therefore constitutional. This section also precludes individual guarantors, sureties, and endorsers on corporate obligations from injecting a usury defense.<sup>53</sup> Further, FHA and VA loans are considered to be excluded from the coverage of the foregoing statutes.<sup>54</sup>

The attorney general of Kentucky has taken the position that points are considered to be interest and must be amortized over the life of the loan for calculation of the applicable percentage rate. He stated that: "A lender may collect 'points' when prorated over the full term of the loan and added to the stated interest does not result in total interest being collected in excess of the maximum interest rate."<sup>55</sup> He further defined "points" as being synonymous with bonus, premium, discount, or any one-time consideration paid by the borrower to the lender at the inception of the loan as additional compensation therefore.

In Kentucky, a service charge may be lawfully charged the borrower in addition to the maximum interest. However, such charge must represent reasonable expenses incident to the making of the loan.<sup>56</sup> While a borrower may pay a brokerage fee or commission to his own agent for procuring a loan, such charges by a lender or his agent will be considered interest.<sup>57</sup>

While subject to disclosure and prepayment controls<sup>58</sup> a time price differential is specifically authorized by statute.<sup>59</sup> Even though there is no case law specifically exempting a time price differential from the general usury statute, the language of §371.260(1), viz.: "Notwithstanding the provisions of any other law, a retail installment contract . . . may provide for, . . . a time price differential," could be fairly read as precluding control of retail installment contracts charging time price differentials by the general usury law. This statute, however, does not itself set maximum limits on time price differentials; therefore, the only limits thereon appear to be the market and the omnipresent doctrine of unconscionability.<sup>60</sup>

One important point to highlight is that two levels of acceptable maximum rates of interest are allowed in excess of the legal 6 percent rate. A maximum rate of 8 1/2 percent per annum may be charged (1) where a loan obligation in writing is secured by a "lien on one single family residential real estate property"<sup>61</sup> or, (2) where the original principal amount of the loan obligation in writing is \$25,000 or less.<sup>62</sup> However, where a loan obligation in writing is in excess of \$25,000 (and is not secured by a "lien on one single family residential real estate property"), the parties may contract to pay any rate of interest.<sup>63</sup>

Banks, trust companies and other mortgagees approved by the Secretary of HUD, the FHA and the Veterans Administration are authorized to make certain loans which are exempt from the state usury laws.<sup>64</sup>

Finally, no corporation may plead or set up the taking of more than the legal rate of interest as a defense to any action brought against it to recover damages on or to enforce payment of any mortgage, bond, note or other obligation assumed by it.<sup>65</sup> However, this does not apply to a corporation whose principal asset is the ownership of a one-or two-family dwelling.

#### X. WELFARE LAWS

The Department of Economic Security exercises all state functions in relation to, inter alia, the administration and supervision of all forms of public assistance including general home relief.<sup>66</sup> There also exist departments of welfare in first class cities,<sup>67</sup> with essential powers relating to unstable families, delinquency, special homes for the infirm and other local problems.<sup>68</sup>

First class cities who have paid general assistance to any person through the department of public welfare of that city have a claim against the estate of any such deceased person. The claim shall have priority over all unsecured claims against such estate except the burial expenses of the decedent, the cost of administration of his estate, the cost of his last illness and claims by the Commonwealth of Kentucky for public assistance rendered by it to the decedent.<sup>69</sup>

The city also has a lien on all real estate and rights to real estate belonging or thereafter acquired by any recipient of general assistance through said city's department of public welfare. The lien includes all payments made to the recipient and continues until it is satisfied. However, the lien is not effectual as against any mortgagee, purchaser, or judgment creditor without actual notice until notice has been filed by the director of public welfare with the clerk of the county court. The lien is not enforceable while the real estate is occupied by the surviving spouse (or until she



remarries) or is occupied by a dependent child, provided no other action is brought to settle the estate. Wherever it appears to be in the best interests of the recipient to sell his real estate and reinvest the proceeds in other real estate, the department may grant permission and waive the lien to the extent necessary for the purpose of effecting the transfer, but such lien attaches to the reinvested property.<sup>70</sup>

There may also be created a county department of welfare in any county containing a first class city, whenever the fiscal court for that county so resolves.<sup>71</sup>

XII. HEALTH LAWS AND REGULATIONS, WASTE AND WATER SYSTEM REQUIREMENTS AND ENVIRONMENTAL PROTECTION LAW

Provisions dealing with safe and sanitary housing conditions are found in numerous parts of the Kentucky Revised Statutes.

Chapter 80 of the statutes deals with the powers of city and county governments. One of the powers granted is that to establish a local Housing Commission. However one cannot be established unless the local governing body finds that unsanitary or unsafe inhabited dwelling accommodations exist in such city or county or that there is a shortage of safe or sanitary dwelling accommodations in such city or county available to persons of low income at rentals they can afford, and that these conditions can be best remedied through the exercise of the powers of a Housing Commission.<sup>72</sup> In determining whether dwellings are unsafe or unsanitary, a governing body takes into consideration the safety and sanitation of the dwellings, the light and air space available to the inhabitants thereof, the degree of over crowding, the size and arrangement of rooms and the extent to which conditions exist in such dwellings which endanger life or property by fire or other causes.<sup>73</sup>

In addition to the city and county governments, the State Board of Health and local boards of health may also examine all nuisances, sources of filth and causes of sickness that may be injurious to inhabitants of any county whenever such is found to exist on any private property. The State Board of Health or local board of health may order, in writing, the owner or occupant of the dwelling to remove the nuisance at his own expense within twenty-four hours, or within such reasonable time thereafter as the board may order.<sup>74</sup> A local board shall require the owner of any building containing two or more apartment units to provide waste receptacles for the purpose of eradicating rats and other unsanitary nuisances.<sup>75</sup>

The county, city-county and district health departments may also issue written orders to the owner or occupant of any property commanding compliance with applicable public health laws and regulations of the State and County boards of health. Any health officer may also institute and maintain mandatory or prohibitory injunction proceedings in the state circuit courts to abate nuisances and compel compliance with public health laws and regulations. The departments may also inspect any premises and view evidence and interrogate persons to the extent required. They may also issue subpoenas, subpoena duces tecum and all necessary process in proceedings brought before or initiated by the department or board.<sup>76</sup>

The city-county board of health is authorized to make and enforce all reasonable regulations controlling or affecting the health of its citizens. Such regulations should generally be uniform throughout the county; however, the board is not precluded from making specific health regulations applying only to such sections of the county as may be deemed to require special treatment (§212.600). The board has the power to order the owner or occupant of property containing a nuisance in violation of any laws or regulations to correct and remove it.<sup>77</sup>

If an owner fails to comply with an order to repair, alter, improve or vacate the structure, the public officer authorized by county law may cause the structure to be repaired, altered, improved, vacated and closed, or demolished. The amount of the cost of repairs, alterations or improvements, vacating and closing or demolition will be deemed a lien upon the real property upon which cost was incurred. If the structure is removed or demolished by the public officer, he shall sell the materials of the structure and shall credit the proceeds of such sale against the cost of the removal and any balance remaining is to be deposited in the circuit court by the public officer, and shall be disbursed by that court to the persons found to be entitled thereto.<sup>78</sup>

(The full procedure to be followed can be found in Exhibit 4).

Another area involving safe housing is that of fire prevention. The commissioner of the State Department of Public Safety<sup>79</sup> is authorized to supervise and make periodic inspections of all property within the state, and assist cities having fire departments in making like periodic inspections of all property in such cities except occupied private dwellings.<sup>80</sup> The commission is also required to promulgate Standards of Safety for fire prevention and protection.<sup>81</sup>

This exception for private dwellings seems hard to explain except that local fire officials are more concerned with multi-family dwellings which are probably owned by someone who doesn't live there and would have less desire to adhere diligently to the required fire regulations. In any case it appears to serve no purpose to exclude occupied private dwellings entirely from the statute.

Finally, the Commissioner of Environmental Protection is empowered to establish sanitation districts within any county in the Commonwealth.<sup>82</sup> The purposes of such sanitation districts are to prevent pollution of streams, regulate the flow of streams for sanitary purposes, clean and improve stream channels for sanitary purposes and to provide for the collection and disposal of sewage and other liquid wastes in the district.<sup>83</sup>

## Waste and Water

A metropolitan area is authorized to create a joint metropolitan sewer district.<sup>84</sup> Briefly, the district has control and possession of the existing sewer and drainage system of cities and is empowered to maintain, operate and improve it. It is also empowered to acquire by purchase, gift, condemnation or otherwise any real property needed to construct additions to the sewage system.<sup>85</sup> The district is also empowered to change rates and rentals for the use of the facilities.<sup>86</sup> The district may also approve the construction of private sewage systems subject to its examination and investigation.<sup>87</sup>

Counties are enabled to establish, by resolution of the fiscal court, a County Public Improvements Finance Commission which shall be concerned with the construction and improvement of public facilities of the county, roads, expressways, drainage and sewerage. The fiscal court may make appropriations for these facilities and improvements.<sup>88</sup>

Finally, where sanitation districts have been established in a county pursuant to §220.020, no person or public corporation is permitted to install within the district any laterals, trunk lines, interceptors for the collection or discharge of sewerage or other liquid waste, treatment or disposal works, until such plans have been submitted to and approved by the board of directors of the district and the department of environmental protection.<sup>89</sup> Nothing in the chapter on sanitation districts<sup>90</sup> will limit or interfere with the right of public corporations to install, maintain and operate sewerage systems as otherwise permitted by law.<sup>91</sup>

Kentucky Revised Statute §224.031 creates the department of environmental protection headed by the commissioner. The duties and powers of the commissioner are many (See Exhibit 3). One of the most important duties is to encourage industrial, commercial, residential and community development which provides the best usage of land areas, maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.<sup>92</sup> There also exists an Environmental Quality Commission which serves basically in an advisory capacity to the commissioner.

The substantive provisions control throwing waste into waters in the state,<sup>93</sup>  
<sup>94</sup> disposing waste on land, <sup>95</sup> noise pollution, <sup>96</sup> and air pollution. Whenever the commissioner finds a violation of the statute he will order such person, in writing and without prior hearing, to discontinue the activity. He is also empowered to adopt any rules and regulations prescribing the procedure to be followed in the issuing of such orders.<sup>97</sup>

Any corporation authorized to do business in the state and organized for the purpose of constructing, maintaining and operating sewer lines and sewage treatment facilities may condemn rights-of-way necessary for operating and constructing its pipelines under certain conditions; however, before it does this, the corporation must have presented plans and specifications to the department of environmental protection and received a permit from it to operate and maintain sewage treatment facilities.<sup>98</sup> (§ 224.130). Also, any person having primary responsibility for the operation of any sewage system whether publicly or privately owned must pass an examination prescribed by the department testing his skill before he will be allowed to operate the system.<sup>99</sup>

There also exists the Kentucky Pollution Abatement Authority, a public corporation and government agency of Kentucky.<sup>100</sup> The Authority is authorized to make state grants, as funds are available, to any governmental agency to assist such agency to carry out the construction of waste water treatment works which will constitute an eligible project.<sup>101</sup> The Authority also may levy a tax on every purchase of water service in the Commonwealth, subject to restrictions.<sup>102</sup>

#### XIII. LANDLORD AND TENANT

There is no statutory authority for appointment of a receiver to collect rents and apply them to the cost of bringing the subject building up to standard.

There are no housing courts as such in Kentucky. Matters dealing with privately owned real property are dealt with by the circuit courts.

The circuit courts are courts of record. They have original jurisdiction of all matters, in law and equity, of which jurisdiction is not exclusively delegated to some other tribunal. They also have jurisdiction in all cases where title to land is in question, or in which it is sought to enforce a lien upon, or to subject, land by provisional remedy to the payment of debt.<sup>103</sup>

#### XIV. INSURANCE

There is no Kentucky legislation requiring insurance companies doing business in the state to write fire insurance in substandard areas. Insurers are permitted to invest in stock or obligations of every housing company or redevelopment company, or of any corporation, organized for the purpose of owning and operating any housing project under the laws expressly designed to promote housing for persons of low or moderate income.<sup>104</sup>

#### XV. FORECLOSING ON TAX DELINQUENT DWELLINGS

The Kentucky statutes do provide for a method of foreclosing on tax delinquent dwellings in first class cities, but it can be used only where the taxpayer has no personal property out of which the tax bill can be collected. If this is the case, the local tax receiver will sell for cash a sufficient amount of the real property belonging to the taxpayer to pay taxes, interest and costs. The sale will be at public auction, in the same manner that property is sold under execution, except that the sale is to be had at the door of the city hall in the city where the land lies, and the land need not be appraised or levied on. The sale is to be advertised by posting for fifteen days before the sale a written or printed notice at the city hall door, and by publication pursuant to Kentucky Revised Statute §424.<sup>105</sup>

Not less than fifteen days before the sale, the tax receiver will mail to the taxpayer a postcard notifying him of the time and place of sale. To cover the cost of advertisement and notification, the tax receiver will collect a fee of two dollars from each person whose property is advertised, and shall pay the fee into the city treasury.<sup>106</sup>



The failure of the tax receiver to send or of the taxpayer to receive notice of the sale will not invalidate the sale or any subsequent proceedings thereunder, and no levy or attempted levy upon personal property shall be necessary to validate any sale of real property, whether for taxes on real property, personal property or both.<sup>107</sup>

1. Kentucky Revised Statutes § 147.100 (1969) [hereinafter cited as KRS].
2. Id., § 147.650.
3. Id., § 147.650.
4. Id., § 147.660.
5. KRS, § 100.113 (1969)
6. Id., § 100.121.
7. Id., §100.123.
8. Id., § 100.131.
9. Id., § 100.133ff.
10. Id., § 100.183.
11. Id., § 100.187.
12. Id., § 100.187.
13. Id.
14. Id., § 100.217.
15. Id., § 100.237.
16. Id., § 100.241.
17. § 1 ALR.2d 970, 973.
18. Id. at 987.
19. Id., § 198A.070.
20. Id., § 198A.080 (1972 Supp.).
21. Id., § 198A.090.
22. Id., §198A.100.
23. Id., § 80.320.
24. Id., § 80.340.
25. Id., & 80.350.
26. Id., § 80.380.
27. Id., § 56.450.
28. KRS, § 67.380 (1969).
29. Id., § 67.390.

30. Id., § 67.400.
31. Id., § 67.410.
32. Id., § 67.420.
33. 61 ALR.2d 1445.
34. Owens v. Ramsey, 213 Ky. 279, 280 S.W. 1112; 52 ALR 149 (1926).
35. Brunswick Corp. v. Goodie Investments, 451 S.W.2d 421 (1970).
36. Tompkins Square Holding Co. v. Gilson, 167 Misc. 77, 2 NYS.2d 714 (1938); compare Burlington and S. Apartments v. Manolato, 233 Iowa 15; 7 N.W.2d 26; 144 ALR 251 (1942).
37. KRS, § 383.170 (1969).
38. KRS, § 219.360(5) (1969).
39. Id., § 189.275.
40. Id., § 132.750.
41. Op. Atty. Gen. 70-768.
42. Id., § 139.200.
43. See 90 ALR 1137 for a good study of "public property" subject to special assessment for improvement, but the section specifically excludes cases dealing with assessment for local improvements to property of quasi-public corporations as beyond its scope.
44. Id., § 287.240 (1969).
45. Id., § 287.250.
46. Id., § 289.441.
47. Ky. Rev. Stat. Ann. §360.010 (1), 2 CCH Cons. Cr. Guide, Ky. ¶6401 (1972).
48. Id., §360.010 (1)(a).
49. Id., §360.010 (1)(b).
50. Id., §360.010 (1)(c).
51. Id., §360.025(1).
52. Id., §360.025(2).
53. E'Town Shopping Center, Inc. v. Lexington Finance Co., 436 S.W. 2d 267 (Ky. Ct. App. 1969).
54. 70 Op. Att. Gen. 782 (1970); 69 Op. Att'y Gen. 35 (1969).

55. 70 Op. Att'y Gen. 284 (1970).
56. Harding v. Kentucky Title Trust Co., 269 Ky. 622, 108 S.W.2d 539, 548 (1937); accord, Ashland National Bank vs. Conley, 231 Ky. 844, 22 S.W.2d 270 (1929); 70 Op. Att'y Gen. 276 (1970).
57. Union Central Life Insurance Co. v. Edwards, 219 Ky. 748, 294 S.W. 50 (1927).
58. Ky. Rev. Stat. Ann. §§371.220(g), 371,260(2)
59. Id., §371.260(1).
60. cf. Williams v. Walker-Thomas Furniture Co., 121 U.S. App. D. C. 315, 350 P.2d 445, 18 A.L.R. 3d 1297 (1965).
61. §360.010 (1)(a) and (2).
62. §360.010(1)(b).
63. §360.010(1)(c).
64. §386.030, 69 Op. Atty. Gen. 35 (1969).
65. §360.025(1).
66. §§195.010 to .020 (1969).
67. §83.160.
68. §98.010.
69. §98.012.
70. §98.013.
71. §98.300.
72. Id., §80.380.
73. Id., §80.390.
74. Id., §212.210(1) (1973 Replacement Unit).
75. Id., at (4).
76. Id., §212.245(b)(7).
77. Id., §212.620.
78. Id., §80.670.
79. Id., §17.010 (1969).
80. Id., §227.220 (1973 Replacement Unit).

81. Id., §227.300.
82. Id., §220.020.
83. Id., §220.030
84. Id., §76.010 and Exhibit 3 (1969).
85. Id., §76.080.
86. Id., §76.090.
87. Id., §76.085.
88. Id., §66.550.
89. Id., §220.260 (1973 Replacement Unit).
90. Id., §220.
91. Id., §220.280 (3).
92. Id., §224.033 (3).
93. Id., §224.060.
94. Id., §224.255, 260.
95. Id., §224.065.
96. Id., §224.330.
97. Id., §224.071.
98. Id., §224.130.
99. Id., §224.135.
100. Id., §224A.030.
101. Id., §224A.040.
102. Id., §224A.060.
103. Id., §23.010.
104. KRS. §304.7-220 (1969).
105. KRS. §91.480(1) (1969)
106. Id., at (2).
107. Id., at (3).

## ARTICLE X

## Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in

full force and effect as to the state affected as to severable matters.

(1970 S 382, § 3, eff. 6-18-70)

## 196.620 Commissioner's powers as to compact.

(1) The Commissioner of Corrections is hereby authorized and directed to do all things necessary or incidental to the carrying out of the compact in every particular and he may in his discretion delegate this authority.

(1970 S 382, § 4, eff. 6-18-70)

(2) KRS 196.610 may be cited as the Interstate Corrections Compact.

(1970 S 382, § 2, eff. 6-18-70)

## Chapter 197

## PENITENTIARIES

## 197.035 Computation of consecutive or concurrent sentence.

Where one is serving a sentence and is sentenced on another charge to run consecutively, the latter sentence shall be added to the former. *Merritt v Com*, 447 SW(2d) 625 (1969).

## 197.041 Credit for period confined on reversal and second conviction.

Credit for the time served is allowable if the original conviction is vacated in the trial court. *Brooks v Com*, 447 SW(2d) 614 (1969).

## 197.045 Credit on sentence; forfeiture of good time.

(1) Any person convicted and sentenced to a state

penal institution may receive a credit on his sentence not exceeding ten days for each month served, to be terminated by the Department of Corrections from conduct of the prisoner. The department shall have authority to forfeit any good time previously earned the prisoner, or to deny the prisoner the right to earn good time in any amount, if during the term of imprisonment a prisoner commits any offense or violates the rules of the institution.

(1970 S 149, eff. 6-18-70. 1962 c 109, § 1; 1956 c 102)

(2) When two or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the good time credit computation or in computing dates of expiration of sentence.

(1970 S 149, eff. 6-18-70)

Adoption and Religious Control, *Rita E. Hauser*, 54 A Bar Asso Jour 771 (1968).

## Chapter 198A

EXHIBIT 1

## LOW-COST HOUSING

- |          |  |          |   |
|----------|--|----------|---|
| 198A.010 | Definitions  | 198A.100 | Trust agreement to secure corporate obligation    |
| 198A.020 | Policy and purpose                                 |          | operation of trust                                |
| 198A.030 | Creation of Kentucky housing corporation;          | 198A.110 | Pledge of corporate assets on obligations         |
|          | membership of board of directors; officers,        | 198A.120 | All moneys received are trust funds and may be    |
|          | duties   |          | temporarily invested                              |
| 198A.040 | Corporate powers                                   | 198A.130 | Holders of corporate obligations granted legal    |
| 198A.050 | Persons and concerns of the assisted area to be    |          | rights to enforce duties of the corporation       |
|          | given preference for the resultant jobs            | 198A.140 | Declaration of negotiability of obligations       |
| 198A.060 | Requirements for articles of incorporation of as-  | 198A.150 | Obligations of Kentucky housing corporation as to |
|          | sisted entities; limit on return of investment of  |          | authorized investments                            |
|          | stockholder  | 198A.160 | Authorization for issuance of refunding obliga-   |
| 198A.070 | State not liable for obligations of Kentucky hous- |          | tions   |
|          | ing corporation                                    | 198A.170 | Annual report and annual audit                    |
| 198A.080 | Creation of housing development fund; require-     | 198A.180 | Limitation of liability for corporate members and |
|          | ments for financing and operating the fund         |          | officers  |
| 198A.090 | Corporate authorization and operation of reve-     | 198A.190 | Authority to accept funds appropriated by the     |
|          | nuce bond financing                                |          | general assembly                                  |

- 198A.200 Tax exempt status for property, obligations and money of the Kentucky housing corporation
- 198A.210 Disclosure of conflict of interest of member, officer or employee of the corporation
- 198A.220 Provisions of this chapter deemed to be supplemental to other laws
- 198A.230 Disposition of corporation assets upon termination or dissolution
- 198A.240 Title of chapter

#### 198A.010 Definitions.

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

(1) "Bonds" or "notes" means the bonds or bond anticipation notes authorized to be issued by the corporation under this chapter but shall not include any fund notes;

(2) "Corporation" means the Kentucky Housing Corporation created by this chapter;

(3) "Sponsors," "builders" or "developers" means nonprofit corporations, consumer housing cooperatives and limited dividend housing corporations organized pursuant to the Kentucky Revised Statutes for the primary purpose of providing housing to lower income persons and families;

(4) "Development costs" means the costs approved by the corporation as appropriate expenditures which may be incurred by sponsors, builders and developers of residential housing, prior to commitment and initial advance of the proceeds of a construction loan or of a mortgage, including but not limited to:

(a) Payments for options to purchase properties on the proposed residential housing site, deposits on contracts of purchase, or, with prior approval of the corporation, payments for the purchase of such properties;

(b) Legal and organizational expenses, including payments of attorney's fees, project manager, clerical and other staff salaries, office rent and other incidental expenses;

(c) Payment of fees for preliminary feasibility studies and advances for planning, engineering and architectural work;

(d) Expenses for tenant surveys and market analyses, and

(e) Necessary application and other fees;

(5) "Fund notes" means the notes authorized to be issued by the corporation under the provisions of KRS 198A.080;

(6) "Governmental agency" means any department, division, public agency, political subdivision or other public instrumentality of the Commonwealth, the federal government, any other state or public agency, or any two or more thereof;

(7) "Housing Development Fund" means the housing development fund created by KRS 198A.080;

(8) "Insured construction loan" means a construction loan for land development or residential housing which is secured by a federal mortgage or a federally insured mortgage or which is insured by the United States or an instrumentality thereof, or for which there is a commitment by the United States or an instrumentality thereof to insure such a loan;

(9) "Insured mortgage" or "insured mortgage loan" means a mortgage loan for land development for residential housing or for residential housing made insured or guaranteed by the United States or an instrumentality thereof or for which there is a commitment by the United States or an instrumentality thereof to make or insure such a mortgage;

(10) "Land development" means the process of acquiring land primarily for residential housing construc-

tion for persons and families of lower income and making, installing or constructing non-residential housing improvement, including water, sewer and other utilities, roads, streets, curbs, gutters, sidewalks, storm drainage facilities and other installations or works, whether on or off the site, which the corporation deems necessary or desirable to prepare such land primarily for residential housing construction;

(11) "Obligations" means any bonds, bond anticipation notes or fund notes authorized to be issued by the corporation under the provisions of this chapter;

(12) "Persons and families of lower income" means persons and families of insufficient personal or family income as determined by the standards established for the state of Kentucky by the United States department of housing and urban development and the farmers home administration for federally assisted residential housing programs for lower and moderate income persons and families;

(13) "Residential housing" means a specific work or improvement undertaken primarily to provide dwelling accommodations for persons and families of lower income, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, and such other non-housing facilities as may be incidental or appurtenant thereto;

(14) "Tenant programs and services" means services and activities for persons and families living in residential housing, including the following:

(a) Counseling on household management, house-keeping, budgeting, and money management;

(b) Child care and similar matters;

(c) Access to available community services related to job training and placement, education, health, welfare, and other community services;

(d) Guard and other matters related to the physical security of the housing residents;

(e) Effective management-tenant relations, including tenant participation in all aspects of housing administration, management and maintenance;

(f) Physical improvements of the housing, including buildings, recreational and community facilities, safety measures, and removal of code violations;

(g) Advisory services for tenants in the creation of tenant organizations which will assume a meaningful and responsible role in the planning and carrying out of housing affairs;

(h) Procedures whereby tenants, either individually or in a group, may be given a hearing on questions relating to management policies and practices, either in general or in relation to an individual or family; and

(15) "State" means the Commonwealth of Kentucky. (1972 H 27, § 3, eff. 6-16-72)

#### 198A.020 Policy and purpose.

(1) The general assembly hereby finds and declares that as a result of the spread of slum conditions and blight to formerly sound urban and rural neighborhoods and as a result of actions involving highways, public facilities and urban renewal activities there exists in the Commonwealth of Kentucky a serious shortage of decent, safe and sanitary residential housing available at low prices or rentals to persons and families of lower income. This shortage is severe in certain urban areas of the state, is especially critical in the rural areas, and is inimical to the health, safety, welfare and prosperity of all residents of the state and to the sound growth of Kentucky communities.

(2) The general assembly hereby finds and declares further that private enterprise and investment have not been able to produce, without assistance, the needed con-

struction of decent, safe and sanitary residential housing at low prices or rentals which persons and families of lower income can afford, or to achieve the urgently needed rehabilitation of much of the present lower income housing. It is imperative that the supply of residential housing for persons and families of lower income affected by the spread of slum conditions and blight and for persons and families of lower income displaced by public actions or natural disaster be increased; and that private enterprise and investment be encouraged to sponsor, build and rehabilitate residential housing for such persons and families, to help prevent the recurrence of slum conditions and blight and assist in their permanent elimination throughout Kentucky.

(3) The general assembly hereby finds and declares further that the purposes of this chapter are to provide financing for development costs, land development and residential housing construction, new or rehabilitated, for sale or rental to persons and families of lower income.

(4) The general assembly hereby finds and declares further that in accomplishing this purpose, the Kentucky housing corporation, a public agency and an instrumentality of the Commonwealth is acting in all respects for the benefit of the people of the state in the performance of essential public functions and serves a public purpose in improving and otherwise promoting their health, welfare and prosperity, and that the Kentucky housing corporation is empowered to act on behalf of the Commonwealth of Kentucky and its people in serving this public purpose for the benefit of the general public.

(1972 H 27, § 2, eff. 6-16-72)

#### **198A.030 Creation of Kentucky housing corporation; membership of board of directors; officers, duties.**

(1) There is hereby created and established as a governmental instrumentality of the Commonwealth, to be independent of the executive branch, a public body corporate to be known as the Kentucky Housing Corporation.

(2) The housing corporation is created and established to serve a public purpose and to act for the public benefit and as a governmental instrumentality of the Commonwealth to act on behalf of the Commonwealth and its people in improving and otherwise promoting their health, welfare and prosperity.

(3) The housing corporation shall be governed by a board of directors, consisting of thirteen members, five of whom shall be the commissioners of finance, the administrator of the Kentucky program development office, the attorney general, the commissioner of revenue, and the commissioner of commerce, as public directors, and eight of whom shall be chosen from the general public residing in the Commonwealth, as private directors.

(4) Upon organization of the housing corporation, the governor shall appoint the eight private directors to take office and to exercise all powers thereof immediately. Of the eight members of the corporation thus appointed, two shall continue in office for terms of one year, and two for terms of two, three and four years respectively as the governor shall designate; at the expiration of said terms and for all succeeding terms, the governor shall appoint a successor to the office of private director for a term of four years in each case.

(5) In case of a vacancy, the governor may appoint a person for such a vacancy to hold office during the remainder of the term.

(6) The governor may remove any private director whom he may appoint in case of incompetency, neglect

of duty, gross immorality, or malfeasance in office; and he may declare his office vacant and may appoint a person for such vacancy as provided in other cases of vacancy.

(7) The governor shall designate a member of the corporation to serve as chairman. The term of the chairman shall extend to the earlier of either the date of expiration of his then current term as a member of the corporation or a date six months after the expiration of the then current term of the governor designating such chairman.

(8) The corporation shall annually elect one of its members as vice chairman. The corporation shall also elect or appoint, and prescribe the duties of, such other officers as the corporation deems necessary or advisable, including an executive director and a secretary, and the corporation shall fix the compensation of such officers.

(9) The executive director shall administer, manage and direct the affairs and business of the corporation, subject to the policies, control and direction of the members of the corporation. The secretary of the corporation shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents and papers filed with the corporation, the minute book or journal of the corporation and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the corporation and to give certificates under the official seal of the corporation to the effect that such copies are true copies, and all persons dealing with the corporation may rely upon certificates.

(10) A majority of the board of directors of the corporation shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes, notwithstanding the existence of any vacancies.

(11) Action shall be taken by the corporation upon a vote of a majority of the members present at a meeting called upon three days' written notice to each director or upon the concurrence of at least seven directors.

(12) Directors shall receive no compensation for their services but shall be entitled to their reasonable and necessary expenses actually incurred in discharging their duties under this chapter.

(1972 H 27, § 4, eff. 6-16-72)

#### **198A.040 Corporate powers.**

The corporation shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but without limiting the generality of the foregoing, the power:

(1) To make or participate in the making of insured construction loans to sponsors of land development or residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(2) To make or participate in the making of insured mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(3) To purchase or participate in the purchase of insured mortgage loans made to sponsors of residential housing or to persons of lower income for residential housing where the corporation has given approval prior to the initial making of such loan; provided, however, that any such purchase shall be made only upon the determination by the corporation that mortgage loans



were, at the time such approval was given, not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(4) To make temporary loans from the housing development fund;

(5) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing its loans, notes, bonds, commitments and other evidences of indebtedness;

(6) To acquire real property, or any interest therein, by purchase, foreclosure or otherwise; to own, manage, operate, hold, clear, improve and rehabilitate such real property; and to sell, assign, exchange, transfer, convey, lease, mortgage or otherwise dispose of or encumber such real property where such use of real property is necessary or appropriate to the purpose of the Kentucky housing corporation;

(7) To sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction, land development, mortgage or temporary loan of any type permitted by this chapter;

(8) To procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;

(9) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms, of any mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract or agreement of any kind to which the corporation is a party;

(10) To acquire, establish and operate residential housing for persons and families of lower income and to enter into agreements or other transactions with any federal, state or local governmental agency for the purpose of providing adequate living quarters for such persons and families in cities and counties where a need has been found for such housing and where no local housing authorities or other organizations exist to fill such need;

(11) To include in any borrowing such amounts as may be deemed necessary by the corporation to pay financing charges, interest on the obligations for a period not exceeding two years from their date, consultant, advisory and legal fees and such other expenses as are necessary or incident to such borrowing;

(12) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes;

(13) To provide technical and advisory services to sponsors, builders and developers of residential housing and to residents and potential residents thereof;

(14) To promote research and development in scientific methods of constructing low cost residential housing of high durability;

(15) To encourage community organizations to participate in residential housing development;

(16) To make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the corporation under this chapter, including contracts with any person, firm, corporation, governmental agency or other entity, and each and any Kentucky governmental agency is hereby authorized to enter into contracts and otherwise cooperate with the corporation to facilitate the purposes of this chapter;

(17) To receive, administer and comply with the conditions and requirements respecting any appropriation or any gift, grant or donation of any property or money;

(18) To sue and be sued in its own name, plead and be impleaded;

(19) To maintain an office in the city of Frankfort

and at such other place or places as it may determine;

(20) To adopt an official seal and alter the same at pleasure;

(21) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties; and

(22) To employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the corporation and to fix and pay their compensation from funds available to the corporation therefor.

(1972 H 27, § 5, eff. 6-16-72)

#### **198A.050 Persons and concerns of the assisted area to be given preference for the resultant jobs.**

(1) In the administration of the programs authorized by or receiving benefits under KRS 198A.040, the executive director of the Kentucky housing corporation shall require:

(a) That to the greatest extent feasible opportunities for training and employment arising in connection with the planning, construction, rehabilitation, and operation of housing assisted under such programs shall be given to persons of lower income residing in the area of such housing; and

(b) That to the greatest extent feasible contracts for work to be performed pursuant to such programs shall be awarded to business concerns, including but not limited to individuals or firms doing business in the fields of design, architecture, building construction, rehabilitation, maintenance or repair, located in or owned in substantial part by persons residing in the area of such housing.

(2) In the administration of rental residential housing assisted under this chapter, the executive director of the Kentucky housing corporation shall require maximum feasible tenant participation and responsibility in tenant programs and services.

(3) The executive director of the Kentucky housing corporation shall establish standards of performance for materials, methods and design which meet the minimum requirements of the Federal Housing Administration or the Farmers Home Administration, and all construction assisted under this chapter shall meet said performance standards.

(1972 H 27, § 6, eff. 6-16-72)

#### **198A.060 Requirements for articles of incorporation of assisted entities; limit on return of investment of stockholder.**

(1) The articles of incorporation or association of any sponsor, builder or developer assisted under this chapter shall contain, in addition to other requirements of law:

(a) That the corporation, cooperative or association has been organized to provide housing facilities and such social, recreational, commercial and community facilities as may be incidental or appurtenant thereto for persons or families of lower income;

(b) That the operations of the corporation, cooperative or association may be supervised by the Kentucky housing corporation and that the corporation, cooperative or association shall enter into such agreements with the Kentucky housing corporation as the Kentucky housing corporation from time to time requires, providing for regulation by the Kentucky housing corporation of the planning, development and management of any residential housing undertaken by the corporation, cooperative

or association and their disposition of the property and franchises;

(c) That the Kentucky housing corporation shall have the power to appoint to the board of directors of the corporation, cooperative or association a number of new directors, which number shall be sufficient to constitute a majority of the board, if the corporation, cooperative or association has received a loan or advance under this chapter and the Kentucky housing corporation determines that the loan or advance is in jeopardy of not being repaid, or that the residential housing for which the loan or advance was made is in jeopardy of not being constructed.

(2) The articles of incorporation or association of any limited dividend corporation or association of any sponsor, builder or developer assisted under this chapter shall provide, in addition to other requirements of law, that every stockholder or member shall be deemed to have agreed that he shall not receive from the corporation or association in repayment of his investment any sums in excess of the face value of the investment attributable to his respective interest plus cumulative dividend payments at such rate as the Kentucky housing corporation deems to be reasonable and proper, computed from the initial date upon which moneys were paid or property delivered in consideration for the interest and upon dissolution of the limited dividend corporation or association any surplus in excess of such amounts shall be paid to the Kentucky housing corporation.

(1972 H 27, § 7, eff. 6-16-72)

**198A.070 State not liable for obligations of Kentucky housing corporation.**

(1) Obligations issued under the provisions of this chapter shall not be deemed to constitute a debt, liability or obligation of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any such political subdivision, but shall be payable solely from the revenues or assets of the corporation. Each obligation issued under this chapter shall contain on the face thereof a statement to the effect that the corporation shall not be obligated to pay the same nor the interest thereon except from the revenues or assets pledged therefor and that neither the faith and credit nor the taxing power of the state or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation.

(2) Expenses incurred by the corporation in carrying out the provisions of this chapter may be made payable from funds provided pursuant to this chapter and no liability shall be incurred by the corporation hereunder beyond the extent to which moneys shall have been so provided.

(1972 H 27, § 8, eff. 6-16-72)

**198A.080 Creation of housing development fund; requirements for financing and operating the fund.**

(1) There is hereby created and established a special revolving loan fund to be known as the Housing Development Fund and to be administered by the corporation as a trust fund separate and distinct from any other moneys or funds administered by the corporation.

(2) The housing development fund shall be comprised of the proceeds of grants and contributions and of fund notes issued by the corporation for the purpose of providing funds therefor. The corporation is hereby authorized to receive and accept from any source whatever any grants or contributions for the housing development fund. The corporation is further authorized to provide

for the issuance, at one time or from time to time, of housing development fund notes for the purpose of providing funds for such fund; provided, however, that not more than \$5,000,000 fund notes shall be outstanding at any one time. The principal of and the interest on any such fund notes shall be payable solely from the housing development fund. The fund notes of each issue shall be dated, shall mature at such time or times not exceeding ten years from their date or dates, and may be made redeemable before maturity, at the option of the corporation, at such price or prices and under such terms and conditions as may be determined by the corporation. The corporation shall determine the form and manner of execution of the fund notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the state or any agent, including the lender. In case any officer whose signature or a facsimile of whose signature shall appear on any fund notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The fund notes may be issued in coupon or in registered form, or both, as the corporation may determine, and provision may be made for the registration of any coupon fund notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon fund notes of any fund notes registered as to both principal and interest, and for the interchange of registered and coupon fund notes. Any such fund notes shall bear interest at such rate or rates as may be determined by the corporation and may be sold in such manner, either at public or private sale, and for such price as the corporation shall determine to be for the best interest of the corporation and best effectuate the purposes of this chapter.

(3) The proceeds of any fund notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such restrictions, if any, as the corporation may provide in the resolution authorizing the issuance of such fund notes. The corporation may provide for the replacement of any fund notes which shall become mutilated or shall be destroyed or lost.

(4) Fund notes may be issued under the provisions of this section without obtaining the consent of any department, division, commission, board, body, bureau or agency of the state, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this chapter and the provisions of the resolution authorizing the issuance of such fund notes.

(5) The purpose of the housing development fund is to provide a source from which the corporation may make temporary loans, and the corporation is authorized to make temporary loans from the housing development fund, at such interest rate or rates as may be determined by the corporation to be for the best interest of the corporation and best effectuate the purpose of this chapter, and with such security for repayment as the corporation deems reasonably necessary and practicable, to:

(a) Defray development costs of sponsors, builders and developers of residential housing, or

(b) Provide to persons and families of lower income who are applying for mortgages, the amounts required to make down payments and pay closing costs, or

(c) Make or participate in the making of construction loans which are not federally insured to sponsors, builders and developers of land development or residential housing; provided, however, that such loans shall be

made only upon the determination by the corporation that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions.

(6) No temporary loans shall be made by the corporation from the housing development fund except in accordance with a written agreement which shall include, without limitation, the following terms and conditions:

(a) The proceeds of such loan shall be used only for the purpose for which such loan shall have been made as provided in the agreement;

(b) Such loan shall be repaid in full as provided in the agreement;

(c) All repayments in connection with a loan to defray development costs shall be made concurrent with receipt by the borrower of the proceeds of a construction loan or mortgage loan, as the case may be, or at such other times as the corporation deems reasonably necessary or practicable; and

(d) Such security for repayment shall be specified and shall be upon such terms and conditions as the corporation deems reasonably necessary or practicable to insure all repayments.

(7) No funds from the housing development fund shall be used to carry on propaganda or otherwise attempt to influence legislation.

(1972 H 27, § 9, eff. 6-16-72)

#### **198A.090 Corporate authorization and operation of revenue bond financing.**

(1) The corporation is hereby authorized to provide for the issuance, at one time or from time to time, of not exceeding \$200,000,000 bonds of the corporation to carry out and effectuate its corporate purposes. In anticipation of the issuance of such bonds the corporation also is hereby authorized to provide for the issuance, at one time or from time to time, of bond anticipation notes. The principal of and the interest on such bonds or notes shall be payable solely from the funds herein provided for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues or assets of the corporation. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the corporation at such price or prices and under such terms and conditions as may be determined by the corporation. Any such bonds or notes shall bear interest at such rate or rates as may be determined by the corporation. Notes shall mature at such time or times not exceeding ten years from their date or dates and bonds shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the corporation. The corporation shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the state. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The corporation may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the corporation may determine, and provision may be made for the registration of any coupon bonds or notes as to principal

alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the approval of a resolution of the corporation, authorizing the sale of its bonds or notes, such bonds or notes may be sold in such manner, either at public or private sale, and for such price as said corporation shall determine to be for the best interest of the corporation and best effectuate the purposes of this chapter provided that such sale shall be approved by the corporation.

(2) The proceeds of any bonds or notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such restrictions if any, as the corporation may provide in the resolution authorizing the issuance of such bonds or notes or in the trust agreement hereinafter mentioned securing the same.

(3) Prior to the preparation of definitive bonds, the corporation may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The corporation may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(4) Bonds or notes may be issued under the provisions of this chapter only upon obtaining the approval of the state property and buildings commission, pursuant to the provisions of KRS Chapter 56.

(5) The department of finance shall provide to the corporation such fiscal consultant services regarding revenue bond management as may be necessary.

(1972 H 27, § 10, eff. 6-16-72)

#### **198A.100 Trust agreement to secure corporate obligations; operation of trust.**

In the discretion of the corporation any obligations issued under the provisions of this chapter may be secured by a trust agreement by and between the corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such obligations may pledge or assign all or any part of the revenues or assets of the corporation, including, without limitation, mortgage loans, mortgage loan commitments, construction loans, temporary loans, contracts, agreements and other security or investment obligations, the fees or charges made or received by the corporation, the moneys received in payment of loans and interest thereon, and any other moneys received or to be received by the corporation. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such obligations as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the corporation in relation to the purposes to which obligation proceeds may be applied, the disposition or pledging of the revenues or assets of the corporation, the terms and conditions for the issuance of additional obligations, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of obligations, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the corporation. Any such trust agreement or resolution may set forth the rights and remedies of the holders of any obligations and of the trustee, and may restrict the in-

dividual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the corporation may deem reasonable and proper for the security of the holders of any obligations. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on obligations or from any other funds available to the corporation.

(1972 H 27, § 11, eff. 6-16-72)

#### **198A.110 Pledge of corporate assets on obligations.**

The pledge of any assets or revenues of the corporation to the payment of the principal of or the interest on any obligations of the corporation shall be valid and binding from the time when the pledge is made and any such assets or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the corporation, irrespective of whether such parties have notice thereof. Nothing herein shall be construed to prohibit the corporation from selling any assets subject to any such pledge except to the extent that any such sale may be restricted by the trust agreement or resolution providing for the issuance of such obligations.

(1972 H 27, § 12, eff. 6-16-72)

#### **198A.120 All moneys received are trust funds and may be temporarily invested.**

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this chapter shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The resolution authorizing any obligations or the trust agreement securing the same may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this chapter and such resolution or trust agreement may provide. Any such moneys or any other moneys of the corporation may be invested as provided in KRS 386.020.

(1972 H 27, § 13, eff. 6-16-72)

#### **198A.130 Holders of corporate obligations granted legal rights to enforce duties of the corporation.**

Any holder of obligations issued under the provisions of this chapter or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such obligations, except the rights herein given may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the corporation pursuant to this chapter, and may enforce and compel the performance of all duties required by this chapter or by such trust agreement or resolution to be performed by the corporation or by any officer thereof.

(1972 H 27, § 14, eff. 6-16-72)

#### **198A.140 Declaration of negotiability of obligations.**

Notwithstanding any of the foregoing provisions of this chapter or any recitals in any obligations issued under the provisions of this chapter, all such obligations and interest coupons appertaining thereto shall be and are hereby made negotiable instruments under the laws of this state, subject only to any applicable provisions for registration.

(1972 H 27, § 15, eff. 6-16-72)

#### **198A.150 Obligations of Kentucky housing corporation are authorized investments.**

Obligations issued under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such obligations are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds, notes or obligations of the state is now or may hereafter be authorized by law.

(1972 H 27, § 16, eff. 6-16-72)

#### **198A.160 Authorization for issuance of refunding obligations.**

(1) The corporation is hereby authorized to provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which shall have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and, if deemed advisable by the corporation, for any corporate purpose of the corporation. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the corporation in respect of the same shall be governed by the provisions of this chapter which relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

(2) Refunding obligations may be sold or exchanged for outstanding obligations issued under this chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations. Pending the application of the proceeds of any such refunding obligations, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust agreement securing the same, to the payment of any interest on such refunding obligations and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

(1972 H 27, § 17, eff. 6-16-72)

**198A.170 Annual report and annual audit.**

The corporation shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the governor and the general assembly. Each such report shall set forth a complete operating and financial statement of the corporation during the year. The housing fund shall also cause an annual audit to be made by a resident independent certified public accountant of its books, accounts, and records, with respect to its receipts, disbursements, contracts, mortgages, leases, assignments, loans and all other matters relating to its financial operations. The persons performing such audit shall furnish copies of the audit report to the commissioner of finance, where they shall be placed on file and made available for inspection by the general public.

(1972 H 27, § 18, eff. 6-16-72)

**198A.180 Limitation of liability for corporate members or officers.**

No member or other officer of the corporation shall be subject to any personal liability or accountability by reason of his execution of any obligations or the issuance thereof.

(1972 H 27, § 19, eff. 6-16-72)

**198A.190 Authority to accept funds appropriated by the general assembly.**

The corporation is authorized to accept such moneys as may be appropriated from time to time by the general assembly for effectuating its corporate purposes including, without limitation, the payment of the initial expenses of administration and operation and the establishment of a reserve or contingency fund to be available for the payment of the principal of and the interest on any bonds or notes of the corporation.

(1972 H 27, § 20, eff. 6-16-72)

**198A.200 Tax exempt status for property, obligations and money of the Kentucky housing corporation.**

The Commonwealth of Kentucky hereby covenants, with due regard to Section 175 of the Constitution of the Commonwealth of Kentucky, with the holders of the notes and bonds issued by the housing fund to carry out and effectuate its corporate purpose pursuant to this chapter that the housing fund shall not be required to pay any taxes and assessments to the Commonwealth of Kentucky, or any county, municipality or other governmental subdivision of the Commonwealth of Kentucky, upon any of its property or upon its obligations or other evidences of indebtedness pursuant to the provisions of this chapter, or upon any monies, funds, revenues or other income held or received by the housing fund and that the notes and bonds of the housing fund and the income therefrom shall at all times be exempt from taxation, as aforesaid, except for death and gift taxes and taxes of transfers; provided, however, that real property owned by the Kentucky housing corporation shall be exempt from all property taxation and special assessments of the state or political subdivisions thereof, but the cor-

poration may agree to pay, in lieu of such taxes, such amounts as the corporation finds consistent with the cost to the state or political subdivision of supplying municipal services to the housing development and maintaining the economic feasibility of the housing development, which payments such bodies are hereby authorized to accept.

(1972 H 27, § 21, eff. 6-16-72)

**198A.210 Disclosure of conflict of interest of member, officer or employee of the corporation.**

If any member, officer or employee of the corporation shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly in any contract with the corporation, including any loan to any sponsor, builder or developer, such interest shall be disclosed to the corporation and shall be set forth in the minutes of the corporation, and the member, officer or employee having such interest therein shall not participate on behalf of the corporation in the authorization of any such contract.

(1972 H 27, § 22, eff. 6-16-72)

**198A.220 Provisions of this chapter deemed to be supplemental to other laws.**

The foregoing sections of this chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing, provided, however, that the issuance of bonds or notes under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds or notes.

(1972 H 27, § 23, eff. 6-16-72)

**198A.230 Disposition of corporation assets upon termination or dissolution.**

Upon termination or dissolution, all rights and properties of the corporation shall pass to and be vested in the Commonwealth of Kentucky, subject to the rights of lienholders and other creditors, unless the board of directors directs at such times that they be distributed among one or more corporations, trusts, community chests, funds or foundations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder, member or individual and no substantial part of whose activities consists of carrying on propaganda, or otherwise attempting to influence legislation.

(1972 H 27, § 24, eff. 6-16-72)

**198A.240 Title of chapter.**

This chapter shall be known and may be cited as the "Kentucky Housing Corporation Act."

(1972 H 27, § 1, eff. 6-16-72)

(2) The rights and powers given in this section shall apply in the whole of the district area.

(1968 S 122, § 52. Eff. 6-13-68. 1964 c 33, § 2; 1946 c 104, § 5)

(3) The board shall make and spread upon its records adequate descriptions, by map or otherwise, of the district area. (1968 S 122, § 52. Eff. 6-13-68. 1964 c 33, § 2)

The provision that all contracts of the city of the first class relating to the affairs of the existing sewers shall be transferred to the metropolitan sewer district implies that the latter will perform those contracts. *Louisville & Jefferson County Metropolitan Sewer Dist. v. Town of Strathmoor*, 307 Ky. 343, 211 S.W.(2d) 127.

### EXHIBIT 2

#### 76.080 General powers of district.

The district created under the provisions of KRS 76.010 to 76.210 is empowered:

(1) To have jurisdiction, control, possession, and supervision of the existing sewer and drainage system of such city of the first or second class; to maintain, operate, reconstruct, and improve the same as a comprehensive sewer and drainage system; to make additions, betterments, and extensions thereto within the district area; and to have all the rights, privileges, and jurisdiction necessary or proper for carrying such powers into execution. No enumeration of powers in KRS 76.010 to 76.210 shall operate to restrict the meaning of this general grant of power or to exclude other powers comprehended within this general grant.

(2) To prepare or cause to be prepared and to be thereafter revised and adopted, plans, designs, and estimates of costs, of a system of trunk, intercepting, connecting, lateral, and outlet sewers, storm water drains, pumping and ventilating stations, disposal and treatment plants and works, and all other appliances and structures which in the judgment of the board will provide an effective and advantageous means for relieving the district area from inadequate sanitary and storm water drainage and from inadequate sanitary disposal and treatment of the sewage thereof, or such sections or parts of such system of the district area as the board may from time to time deem proper or convenient to construct, consistent with the plans and purposes of KRS 76.010 to 76.210, and may take all steps the board deems proper and necessary to effect the purposes of KRS 76.010 to 76.210.

(3) To construct any additions, betterments and extensions to the facilities of the district, within or without the district area, and to construct any construction subdistrict facilities or additions, betterments and extensions thereto, within or without the district area, by contract or under, through, or by means of its own officers, agents and employees. No construction or extensions shall be started within the city of the first or second class until, firstly, the city's director of works, and secondly, its board of aldermen have approved the plans. No construction or extensions shall be started in any city of the second, third or fourth class until the governing authorities of such city or cities have approved the plans. No construction or extensions shall be started in any other part of the county until the plans have been approved, firstly, by the county engineer and, secondly, by the fiscal court.

(4) To establish, construct, operate, and maintain, as a part of the sewer and drainage system of the district, sewage treatment and disposal plants and systems and all the appurtenances and appliances thereunto belonging. The sewage treatment and disposal plants may be located in the city or beyond the limits of the

city in the county in which the city is located, as the board deems expedient.

(5) To acquire and hold the personal property the board deems necessary and proper for carrying out the corporate purposes of the district and to dispose of personal property when the district has no further need therefor.

(6) To acquire by purchase, gift, lease, or by condemnation, real property or any interest, right, easement, or privilege therein, as the board determines necessary, proper and convenient for the corporate purposes of the district, and to use the same so long as its corporate existence continues, and same is necessary or useful for the corporate purposes of the district. Condemnation proceedings may be instituted in the name of the district pursuant to a resolution of the board declaring the necessity for the taking, and the method of condemnation shall be the same as provided in KRS 416.120. When the board by resolution declares that any real property which it has acquired, or any interest therein, is no longer necessary or useful for the corporate purposes of the district, the real property and interest therein may be disposed of.

(7) To make bylaws and agreements for the management and regulation of its affairs and for the regulation of the use of property under its control and for the establishment and collection of sewer rates, rentals and charges, which sewer rates, rentals and charges, applicable within the limits of a city of the first or second class, shall be subject to the approval, supervision and control of the legislative body of the city as hereinafter provided.

(8) To make contracts and execute all instruments necessary or convenient in the premises.

(9) To borrow money and to issue negotiable bonds and to provide for the rights of the holders thereof.

(10) To fix and collect sewer rates, rentals, and other charges, for service rendered by the facilities of the district, which sewer rates, rentals, and other charges, applicable within the limits of a city of the first or second class, shall be subject to the approval, supervision and control of the legislative body of such city as hereinafter provided.

(11) To enter on any lands, waters and premises for the purpose of making surveys, and soundings and examinations.

(12) To approve or revise the plans and designs of all trunk, intercepting, connecting, lateral and outlet sewers, storm water drains, pumping and ventilating stations, disposal and treatment plants and works proposed to be constructed, altered or reconstructed by any other person or corporation, private or public, in the whole county, in order to insure that such proposed construction, alteration or reconstruction shall conform to and be a part of a comprehensive sewer and drainage system for the said county. No sewers, drains, pumping and ventilating stations, or disposal and treatment plants or works shall be constructed, altered or reconstructed without approval by the board of the district. Any such work shall be subject to inspection and supervision of the district. (1968 S 160, § 1. Eff. 6-13-68. 1968 S 122, § 53; 1964 c 33, § 3; 1962 c 283, § 20; 1952 c 70, § 2; 1948 c 180, § 2, 3; 1946 c 104, § 6)

#### CROSS REFERENCES

See Kentucky Legal Forms, Text 1911(6)

Where the city has contracted with a corporation and agreed that it should have sewerage services free of charge, it cannot be compelled to pay sewer rentals. *Bond Bros. v. Lou. & Jeff. Co. Met. Sewer Dist.*, 307 Ky. 630, 211 S.W.(2d) 887.

The 1948 amendment to subsection (7) and (10) of this section is invalid. *Rush v. Lou. & Jeff. Co. Met. Sewer Dist.*, 306 Ky. 149, 210 S.W.(2d) 1011, 1012.



The city may issue bonds to construct a sewage disposal plant. *Johnson v Louisville*, 261 SW(2d) 420.

76.085 Privately constructed sewers to be approved; investigation, charges.

(1) Any person or corporation, public or private, in the county in which such district is located submitting for approval plans and designs of sanitary sewers or storm-water drainage facilities, or both, to be constructed by such person or corporation, private or public, pursuant to KRS 76.090 shall file with the district a written application for such approval or other action upon the plans and designs submitted by such person or corporation.

(1964 c 33, § 4. Eff. 6-18-64. 1962 c 286, § 21; 1956 c 134)

(2) When the district receives an application for approval of plans or designs of sanitary sewers and/or storm-water drainage facilities to be constructed by some individual or corporation, the metropolitan sewer district is authorized and empowered to examine, inspect and investigate, as seems to be advisable, the sufficiency of the facilities which the application seeks to construct, to serve the purposes intended, and to establish and make reasonable charges for such services on the basis of a schedule adjusted according to the services required to make such investigation or on any other reasonable method.

(1964 c 33, § 4. Eff. 6-18-64. 1962 c 286, § 21; 1956 c 134)

(3) When it appears to the district that the construction of any sanitary sewer and/or storm-water drainage facility being made by any other individual or corporation, requires inspection and supervision in order to assure the protection of public health and the proper subsequent completion of such facility for the purposes intended, the metropolitan sewer district shall include such finding in its order approving, modifying or disapproving the particular plans and projects, and shall charge such person or corporation for such inspection and supervision on the basis of the actual cost of inspection plus a reasonable additional cost of supervision. (1964 c 33, § 4. Eff. 6-18-64. 1962 c 286, § 21; 1956 c 134)

76.090 Rates, rentals and charges; use of funds of district; cutting off sewer and water service to delinquents.

(1) The district may establish a schedule of rates, rentals, and charges, to be collected from all the real property within the district area served by the facilities of the district, and prescribe the manner in which and the time at which the rates, rentals, and charges are to be paid, and may change the schedule from time to time as the district deems necessary, advisable or expedient. The schedule may be based upon either, (a) the consumption of water on premises connected with the facilities, taking into consideration commercial and industrial use of water; or (b) the number and kind of plumbing fixtures connected with the facilities; or (c) the number of persons served by the facilities; or (d) may be determined by the district on any other basis or classification which the district determines to be fair and reasonable, whether similar or dissimilar to those enumerated; or (e) any combination thereof. This schedule may include additional charges for treatment of sewage, with a surcharge where the sewage contains industrial wastes or other wastes in excess of limitations established by regulations of the district.

(1968 S 169, § 2. Eff. 6-13-68. 1966 c 255, § 11; 1964 c 33, § 4; 1960 c 261, § 1. 1956 c 109; 1946 c 104, § 1)

(2) Prior to the final adoption or modification of the schedule for the district area, the district shall adopt a proposed schedule and published notice thereof pursuant to KRS Chapter 421. The notice so published shall be dated as of the date of first publication thereof and shall state that the proposed or revised schedule of rates, rentals, and charges will remain open for inspection in the office of the district for thirty days from the date of the notice, and that objections thereto in writing may be filed during that period with the district by any person aggrieved thereby. The district shall examine and hear any and all complaints, may modify the proposed schedule, and shall adopt and establish a final schedule within sixty days after the date of the notice; the schedule however shall not become final within a city of the first class, unless and until it has received the approval of the legislative body of the city of the first class by ordinance approved by the mayor; provided, however, the schedule finally adopted shall be sufficient and adequate to cover the purposes of this chapter. The schedule shall be uniform for all property falling within the same classification, which classification may be based upon the length of time the property has been in the district area, the drainage area within which the property lies or any similar or dissimilar reasonable classification. The schedule so adopted and established shall thereafter be the rates, rentals and charges for the use of the facilities of the district by users within the district area, until changed in the manner herein provided. The schedule of rates, rentals, and charges shall be established and revised from time to time so as to produce aggregate revenues to the district sufficient (a) for the payment of the interest on and principal of all revenue bonds and other obligations of the district except construction subdistrict obligations and bonds; (b) for the payment of all cost and expenses of operating and maintaining the sewer and drainage system of the district within the district area, including but not limited to that portion of the salaries, wages, and fees of all officers and employees of the district equitably allocable to operations within or for the district area; and (c) for the payment of all cost of renewals and replacement of such system within the district area; provided however, that all expenses, salaries, wages, and fees necessary or incident to improvements for the account of which bonds are issued, may be included as a part of the cost of the improvements and paid from the proceeds of the bonds. The district may collect the sewer rates, rentals, and charges, or cause them to be collected and paid to it by agencies it designates, and with whom it may make such contracts or arrangements as the district deems proper. No monies received on account of the existence or operation of construction subdistricts shall be used for the payment of district obligations, and no other monies received by the district shall be used for the payment of construction subdistrict bonds or obligations. Except as provided in the preceding sentence the use of all monies of the district received from any and all sources is hereby limited exclusively and shall be devoted solely to the payment of all obligations of the district and board created by KRS 76.610 to 76.610, and no funds from any sources authorized by KRS 76.610 to 76.610, shall be diverted to any other purposes than those in KRS 76.010 to 76.210 set forth, except that the district shall pay from district area revenues an equitably allocable share of the cost of constructing and operating any non-district area facility to which sewage from the district area is diverted in order to relieve facilities from excessive sewage and costs described in KRS 76.248 but otherwise paid for.

(1968 S 160, § 2. Eff. 6-13-68. 1966 c 255, § 91; 1961 c 33, § 5; 1959 c 109, 1946 c 104, § 7)

(3) Whenever an area located within the district is served initially by a construction subdistrict facility, the schedule of rates, rentals and charges applicable to the particular construction subdistrict shall, at the discretion of the board, be applied to the area.

(1968 S 160, § 2. Eff. 6-13-68)

(4) Whenever any such sewer rates, rentals or charges for services rendered remains unpaid for a period of thirty days after the same becomes due and payable, the district shall declare the property, the owner thereof, and the user of the service, delinquent until such time as all service rates, rentals and charges are fully paid and may cut off the sewer connection and service. It is unlawful for any delinquent to use water from any public water service or system and discharge same into a public sewer. No public water service or system shall furnish the delinquent with water to be discharged into a public sewer. The district may enter into agreements with any public water company or public water service providing for the discontinuance of water service to delinquents. (1968 S 160, § 2. Eff. 6-13-68. 1966 c 255, § 91; 1964 c 33, § 5; 1956 c 109; 1946 c 104, § 7)

#### CROSS REFERENCES

Rate schedule for construction subdistrict, notice, objections, purposes, subdistrict fund, uses, 76.262  
Cut off of water supply of users in construction subdistrict, 76.263

#### AM JUR AND ALR ANNOTATIONS

Discrimination between property within and that outside municipality or other governmental district as to rates for use of drains or sewers. 4 ALR 2d 610.

Sewer charges are not "taxes" but rents and those living outside the city limits may be charged more for service than the users located within the city limits. *Louisville & Jefferson County Metropolitan Sewer Dist. v. Joseph E. Seagram & Sons*, 307 Ky. 413, 211 S.W.(2d) 122.

Jefferson county must pay sewer service charges for the court house, armory and other county buildings. *Lou. & Jeff. Co. Met. Sewer Dist. v. Barker*, 307 Ky. 655, 212 S.W.(2d) 122.

The Louisville Water Co. under a contract with the Sewer Board may discontinue its services to a delinquent sewer user. *Rash v. Lou. & Jeff. Co. Met. Sewer Dist.*, 309 Ky. 442, 217 S.W.(2d) 232.

76.091 Repealed.—1952 c 256, § 25. Eff. 6-14-62. 1948 c 180, § 4.

#### AM JUR AND ALR ANNOTATIONS

Mandamus against municipality to compel repair or improvement of drain. 46 ALR 271.

#### Constitutionality:

This section is unconstitutional. *Rash v. Lou. & Jeff. Co. Met. Sewer Dist.*, 309 Ky. 442, 217 SW(2d) 232.

76.100 Construction, improvement or extension of sewer and drainage system; contracts; contractors' bonds.

It shall be the duty of the District as promptly as possible, to rehabilitate, construct, improve, and extend, any sewer and drainage system taken over and controlled by it, which shall include, but is not limited to, disconnection of storm water drains and constructing outlets therefor, where such work is necessary to relieve existing sanitary sewers of storm water loads, in order to permit the efficient operation of such sanitary sewers. The District may make rules and regulations

for the submission of bids and the construction of such additions, betterments, and extensions, or any part thereof. No contract shall be entered into for construction work or for the purchase of materials, unless the contractor shall give an undertaking with corporate surety in an amount approved by the Board for the faithful performance of the contract. As to contracts entered into for construction, such undertaking shall provide, among other things, that the person or corporation entering into such contract with the District will pay for all materials furnished and services rendered in the performance of the contract, and that any person or corporation furnishing such materials or rendering such services, may maintain an action thereon to recover for the same against the obligor in the undertaking and the surety, as though such person or corporation was named therein. (1946 c 104, § 8. Eff. July 1, 1946.)

#### CROSS REFERENCES

See Kentucky Legal Forms, Text 1911(6)

#### AM JUR AND ALR ANNOTATIONS

Municipal power to accept and administer trust for drainage. 10 ALR 1373.

Effect of affirmative provision in public contractor's bond excluding statutory conditions. 47 ALR 502.

Constitutionality of statutes for formation or change of drainage districts. 69 ALR 235.

Area of land which may be subjected to mechanics' lien for construction of drain. 84 ALR 137.

Statutory condition prescribed for public contractor's bond as part of bond which does not in terms include it. 89 ALR 446.

What constitutes public work within statute relating to contractor's bond. 101 ALR 565.

Tax exemption of property as affecting its inclusion in determining requisite consent of property owners to construction of drain. 146 ALR 1280.

#### Annotations from former analogous section

#### 93.130

Contract of commissioners of sewerage whereby contractor gets premium for finishing work before time fixed in contract and penalizing him for delay is valid. *Henry Bickel Co. v. Commissioners of Sewerage*, 297 Ky. 234, 268 SW 1096.

An act authorizing the City of Louisville to issue bonds for sewerage system, authorized it to issue and sell negotiable bonds and the specific provision in this statute for the disposition of the proceeds of the sale of said bonds dispensed with the necessity of such specification in the ordinance provided for same. *Hunter v. City of Louisville*, 203 Ky. 326, 270 SW 311.

Mayor and sewerage commissioner may sell bonds bearing lesser rate of interest than provided by ordinance. *Hunter v. Quin*, 203 Ky. 744, 271 SW 1060.

#### 93.150

Commissioners of sewerage of Louisville, a corporation, is not civilly liable for a death occasioned by the tort or negligence of the agent or servant of the corporation, in the performance of a duty which the corporation owed to the public and the doing of which was the exercise of power purely governmental. *Smith's Adm'r v. Comm'rs of Sewerage of Louisville*, 146 Ky. 562, 143 SW 3.

Louisville commissioners of sewerage are not answerable for an injury done to one contractor by the negligence of another contractor for the building of a sewer. *Jones & Co. v. Ferro Concrete Const. Co.*, 154 Ky. 47, 156 SW 1060.

Commissioners of sewerage of Louisville, a corporation, is not liable civilly for a death occasioned by the tort or negligence of its agent or servant in the performance of a public duty of the corporation. *City of Louisville v. Frank's Guardian*, 154 Ky. 254, 157 SW 24.

Contractor for the construction of a sewer executed a bond with surety to the city in which the sewer was located and thereby the contractor and his surety bound themselves among other things to indemnify the city against all loss or damage on account of personal injuries sustained by any third person. A person who sustained personal injuries had no cause of action against the surety in that bond. It was competent to join as defendants the city and the contractor, but not the surety. *Owens v. Georgia L. Ins. Co.*, 165 Ky. 507, 177 SW 294.

#### 93.180

Under statutes, Commissioners of Sewerage had the authority to construct through the county an open ditch to carry



lation and control of air pollution, water pollution, sewage disposal, and solid waste disposal and more particularly described in KRS Chapter 109, 211.700 through 211.992, Chapter 223, Chapter 224, and any other provision of law are hereby transferred to the Department of Environmental Protection.

#### Section 83.

(1) All reports, documents, surveys, books, records, files, papers or other writings in the possession of the Department of Natural Resources, the Board of Health, Department of Health, Air Pollution Control Commission, or Water Pollution Control Commission pertaining to the regulation and control of strip mining and reclamation, air pollution, water pollution, sewage disposal, or solid waste disposal shall be delivered to the custody of the Department of Environmental Protection.

(2) All furniture, office equipment, motor vehicles and other tangible property employed in carrying out the powers, duties, and functions transferred by this chapter shall be made available to the Department of Environmental Protection.

(3) All funds, credits or other assets held in connection with the functions herein transferred shall be assigned to the Department of Environmental Protection.

(4) Any appropriation or grant made to the Department of Natural Resources, the Department of Health, the Air Pollution Control Commission, or the Water Pollution Control Commission for the purpose of carrying out the powers, duties, and functions herein transferred, shall on January 1, 1973, be transferred and credited to the Department of Environmental Protection for the purpose of carrying out such transferred powers, duties, and functions.

#### Section 84.

For the purpose of succession to all functions, powers, duties, and obligations of the Department of Natural Resources, the Department of Health, the Air Pollution Control Commission or the Water Pollution Control Commission, transferred and assigned to the department by 1972 1st ex. ses., H 3, the department shall be deemed and held to constitute the continuation of the Department of Natural Resources, the Department of Health, the Air Pollution Control Commission, and the Water Pollution Control Commission and not a different agency or authority.

#### Section 85.

All rules, regulations, acts, determinations and decisions of the Department of Natural Resources, the Department of Health, the Air Pollution Control Commission, or the Water Pollution Control Commission pertaining to the functions assigned and transferred by 1972 1st ex. ses., H 3, to the department in force on January 1, 1973, shall remain in effect as rules, regulations, acts, determinations, and decisions of the Department of Environmental Protection until duly modified or repealed by the Department of Environmental Protection.

#### Section 86.

Whenever the Department of Natural Resources, the Board of Health, Department of Health, Air Pollution Control Commission, Water Pollution Control Commission, or the members, officers, or employees thereof, are referred to or designated in any law, contract or document pertaining to the functions, powers, obligations and duties transferred by 1972 1st ex. ses., H 3, such reference or designation shall be deemed to refer to the department or the commissioner as may be appropriate.

#### Section 87.

Any business or other matter undertaken or commenced by the Department of Natural Resources, the Department of Health, the Air Pollution Control Commission, or the Water Pollution Control Commission or members, officers, or employees thereof, pertaining to or contracted with the functions, powers, obligations and duties hereby transferred and assigned, and pending on January 1, 1973, may be conducted and completed by the Department of Environmental Protection in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the Department of Health, the Air Pollution Control Commission, or the Water Pollution Control Commission or the members, officers, or employees thereof.

#### Section 88.

No action or proceeding pertaining to any power or function transferred by 1972 1st ex. ses., H 3, and pending on January 1, 1973, brought by or against the Department of

Natural Resources, the Department of Health, the Air Pollution Control Commission, or the Water Pollution Control Commission, shall be affected by any provision of 1972 1st ex. ses., H 3, but the same may be prosecuted or defended by and in the name of the Department of Environmental Protection. In all such actions and proceedings, the Department of Environmental Protection, upon application, shall be substituted as a party.

#### Section 89.

No existing right or remedy of any character shall be lost, impaired, or affected by reason of 1972 1st ex. ses., H 3.

#### SOURCE NOTE (1972)

Former KRS 224.030, 224.420

#### AM JUR AND ALR ANNOTATIONS

Pollution control, generally. 61 Am Jur2d, Pollution Control §1 to 10.

#### Annotations from former related sections

#### KRS 224.030

#### AM JUR AND ALR ANNOTATIONS

State regulation of water pollution. 61 Am Jur2d, Pollution Control §69 to 73.

Validity and construction of anti-water pollution statutes or ordinances. 32 ALR3d 215.

#### KRS 224.420

#### AM JUR AND ALR ANNOTATIONS

State regulation of air pollution. 61 Am Jur2d, Pollution Control §37 to 42.

### EXHIBIT 3

#### 224.033 Powers and duties of department.

In addition to any other powers and duties vested in it by law, the department shall have the authority, power, and duty to:

(1) Exercise general supervision of the administration and enforcement of 1972, 1st ex. ses., H 3, and all rules, regulations and orders promulgated thereunder;

(2) Prepare and develop a comprehensive plan or plans related to the environment of the Commonwealth;

(3) Encourage industrial, commercial, residential and community development which provides the best usage of land areas, maximizes environmental benefits and minimizes the effects of less desirable environmental conditions;

(4) Develop and conduct a comprehensive program for the management of water, land, and air resources to assure their protection and balance utilization consistent with the environmental policy of the Commonwealth;

(5) Provide for the prevention, abatement, and control of all water, land, and air pollution including but not limited to that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients, heated liquid, or other contaminants;

(6) Provide for the control and regulation of strip mining and reclamation in a manner to accomplish the purposes of KRS Chapter 350.

(7) Secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(8) Collect and disseminate information and conduct educational and training programs relating to the protection of the environment;

(9) Appear and participate in proceedings before any federal regulatory agency involving or affecting the purposes of the department;

(10) Enter and inspect any property or premises for the purpose of investigating either actual or suspected sources of pollution or contamination or for the purpose

of ascertaining compliance or noncompliance with 1972 1st ex. ses., H 3, or any rule or regulation which may be promulgated thereunder;

(11) Conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books and records by the issuance of subpoenas;

(12) Accept, receive, and administer grants or other funds or gifts from public and private agencies including the federal government for the purpose of carrying out any of the functions of the department. Such funds received by the department shall be deposited in the state treasury to the account of the department;

(13) Request and receive the assistance of any state or municipal educational institution, experiment station, laboratory, or other agency when it is deemed necessary or beneficial by the department in the performance of its duties;

(14) Advise, consult, and cooperate with other agencies, of the Commonwealth, other states, the federal government, and interstate and interlocal agencies, and affected persons, groups and industries;

(15) Formulate guides for measuring presently unidentified environmental values and relationships so they can be given appropriate consideration along with social, economic, and technical considerations in decision making;

(16) Monitor the environment to afford more effective and efficient control practices, to identify changes and conditions in ecological systems and to warn of emergency conditions;

(17) Adopt, modify or repeal with the recommendation of the commission any standard, rule, regulation or plan specified in subsections (5) and (6) of KRS 224.045.

(18) Issue, after hearing, orders abating activities in violation of this chapter, or the provisions of 1972 1st ex. ses., H 3, or the regulations promulgated pursuant thereto and requiring the adoption of such remedial measures as the department may deem necessary;

(19) Issue, continue in effect, revoke, modify or deny under such conditions as the department may prescribe, permits for the discharge of any sewage, industrial wastes or other wastes, into any waters of the Commonwealth, and for the installation, alteration, expansion, or operation of any sewage system; the installation, alteration, or use of any machine, equipment, device or other article that may cause or contribute to air pollution or is intended primarily to prevent or control the emission of air pollution; or the establishment or construction and the operation or maintenance of solid waste disposal sites and facilities; and require that applications for such permits be accompanied by plans, specifications, and such other information as the department deems necessary;

(20) Require, by regulation, that any person engaged in any operation regulated pursuant to this chapter install, maintain, and use at such locations and intervals as the department may prescribe any equipment, device or method to monitor the nature and amount of any substance emitted or discharged into the ambient air or waters of the Commonwealth and to provide any information concerning such monitoring to the department in accordance with the provisions of subsection (21) of this section;

(21) Require by regulation that any person engaged in any operation regulated pursuant to this chapter file with the department reports containing information as to location, size, height, rate of emission or discharge, and composition of any substance discharged or emitted into the ambient air or into the waters of the Commonwealth, and such other information as the department may require; and

(22) Perform such other and further acts as may be necessary to carry out the duties and responsibilities herein described.

(1972 1st ex s H 3, § 3, eff. 1-1-73)

#### SOURCE NOTE (1972)

Former KRS 211.720, 224.040, 224.430

#### CROSS REFERENCES

Powers of department of environmental protection, 350.028

#### AM JUR AND ALR ANNOTATIONS

Pollution control, generally. 61 Am Jur2d, Pollution Control §1 to 10.

Validity and construction of anti-water pollution statutes or ordinances. 32 ALR3d 215.

### 224.035 Records open to public inspection; confidential nature of certain data.

Any record or other information furnished to or obtained by the department shall be open to reasonable public inspection except that any record or information, not relating to emission data, which constitutes a trade secret and is designated as such by the owner or operator in accordance with the rules and regulations of the department shall be confidential and for the use only of the department and other departments, agencies and officers of the Commonwealth in the performance of their duties. Nothing herein shall be construed to prevent the use of such records or information by any department, agency, or officer of the Commonwealth in compiling or publishing reports, analyses or summaries relating to the general condition of the natural environment, nor shall anything herein prevent the disclosure of any record or other information to any agency or representative of the United States or to any subdivision of the Commonwealth for the purposes of administration or enforcement of any federal or local pollution control law. No such report, analysis or summary shall directly or indirectly, reveal information otherwise confidential under this section.

(1972 1st ex s H 3, § 20, eff. 1-1-73)

#### SOURCE NOTE (1972)

Former KRS 224.380

### 224.037 Department as agency for securing benefits of federal acts.

The department is hereby designated as the water pollution agency for this state and for any city, county, or district, or authority within this state for all purposes of the Water Pollution Control Act (Public Law 80-845 approved June 30, 1948), as amended; as air pollution agency for this state for all purposes of the Federal Air Quality Act (Public Law 90-148, approved November 21, 1948), as amended, and as solid waste agency for this state for all purposes of the Federal Solid Waste Disposal Act (Public Law 89-272, approved October 20, 1965), as amended. The department may take all action necessary or appropriate to secure to this state and all cities, counties, districts, and authorities within this state the benefits of such federal acts.

(1972 1st ex s H 3, § 8, eff. 1-1-73)

**224.040 Repealed.** 1972 1st ex s H 3, § 93, eff. 1-1-73, 1950 c 69, § 5.

## Housing Projects

rendered against the abolished housing commissions in any such actions, suits, or proceedings, and no new process need be served in any such actions, suits or proceedings.

(f) All obligations of the abolished housing commissions, including outstanding indebtedness, shall be assumed by the city-county housing authority, and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the city-county housing authority; and

(g) All rules, regulations and policies of the abolished housing commissions shall continue in full force and effect until repealed or amended by the city-county housing authority.

(1970 H 185, § 3, eff. 6-18-70)

(2) The creation of a city-county housing authority shall be subject to the same provisions and limitations of KRS 80.310 to 80.610 as are applicable to a regional housing authority.

(1970 H 185, § 3, eff. 6-18-70)

(3) The area of operation of a city-county housing authority shall include all of the territory within the boundaries of the city and contiguous county joining in the creation of the authority.

(1970 H 185, § 3, eff. 6-18-70)

#### 80.266 Membership of authority.

(1) The city-county housing authority shall be composed of eight members. The mayor shall appoint four members, and the county judge shall appoint four members. Each person appointed to a city-county housing authority shall be at least twenty-five years of age and a bona fide resident of the city or county for which he was appointed for at least one year preceding the appointment. No officer or employee of the city or county, whether holding a paid or unpaid office, is eligible to hold an appointment on the housing authority. No more than two appointees by the mayor or no more than two appointees by the county judge shall be affiliated with the same political party. Two of the four members appointed by the mayor shall be designated to serve for terms of two years and two for terms of four years, respectively, from the date of their appointments. Two of the four members appointed by the county judge shall be designated to serve for terms of two years, and two for terms of four years, respectively, from the date of their appointments. Thereafter, all members of the city-county housing authority shall be appointed as aforesaid for a term of office of four years, except that all vacancies shall be filled for the unexpired terms.

(1972 S 273, eff. 6-16-72. 1970 H 185, § 4)

(2) Each member of a city-county housing authority may receive compensation either as a salary or as payment for meetings attended. Any compensation of the members of a city-county housing authority shall be fixed by the legislative body of the city and the county. The housing authority may fix the compensation of the secretary and treasurer, but the city and county legislative bodies may fix or limit the salary.

(1972 S 273, eff. 6-16-72)

#### 80.510 Rural housing projects.

County housing authorities, city-county housing authorities, and regional housing authorities are specifically empowered and authorized to borrow money, accept grants and exercise their powers to provide housing for farmers of low income. In connection with such projects, any such housing authority may

enter into such leases or purchase agreements, accept such conveyances and rent or sell dwellings forming part of such projects to or for farmers of low income, as such housing authority deems necessary in order to assure the achievement of the objectives of KRS 80.310 to 80.610. Such leases, agreements or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate. Nothing in this section shall limit any other powers of any housing authority.

(1970 H 185, § 5, eff. 6-18-70. 1942 c 70, § 21)

#### EXHIBIT 4

### REPAIR, CLOSING OR DEMOLITION OF UNFIT STRUCTURES BY CITIES AND COUNTIES

#### 80.620 Definitions; construction.

(1) As used in KRS 80.620 to 80.720, unless the context requires otherwise:

(a) "Structure" means any building, or part thereof, used or occupied, or intended for use or occupancy, for human habitation, or commercial or industrial purposes, and includes any out-buildings and appurtenances belonging thereto or usually enjoyed therewith.

(b) "Governing body" means the general council, board of commissioners, or other legislative body, charged with governing a city, and the fiscal court of any county.

(c) "Public officer" means the officer or officers who are authorized by ordinances and resolutions adopted hereunder to exercise the powers prescribed by such ordinances and resolutions and by KRS 80.620 to 80.720.

(d) "Public authority" means any housing commission or any officer who is in charge of any department or branch of the government of the city, county or state relating to health, fire, building regulations, or to other activities concerning structures in the city.

(e) "Owner" means the holder of the title in fee simple and every mortgagee of record.

(f) "Parties in interest" means all individuals, associations and corporations who have interests of record in a structure and any who are in possession thereof.

(1970 H 132, § 1, S 303, § 1, eff. 6-18-70. 1942 c 73, § 1)

(2) The powers conferred upon cities and counties by KRS 80.620 to 80.720 shall be in addition and supplemental to the powers conferred by any other law.

(1970 H 132, § 1, S 303, § 1, eff. 6-18-70. 1942 c 73, § 1)

**Note:** This section was amended by 1970 H 132 and S 303. The two Acts not being inconsistent were compiled together by the Legislative Research Commission.

#### 80.630 Power of cities or counties to repair, close or demolish unfit structures.

Whenever any city or county finds that there exists in such city or county structures which are unfit for human habitation, occupancy or use due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering such structures unsafe or unsanitary, or dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of the city or county, the city or county may exercise its police powers to repair, close or

demolish such structures in the manner provided in KRS 80.640 to 80.720.

(1970 H 132, § 2, S 303, § 2, eff. 6-18-70. 1942 c 73, § 2)

Note: See note following KRS 80.620.

#### **80.640 Ordinances or resolutions relating to unfit structures.**

Upon the adoption of an ordinance or resolution finding that structural conditions of the character described in KRS 80.630 exist within a city or county, the governing body of the city or county may adopt ordinances or resolutions relating to the structures within the city or county which are unfit for human habitation, occupancy or use. Such ordinances or resolutions shall provide that a public officer be designated or appointed to exercise the powers prescribed by the ordinances or resolutions, and shall include the provisions of KRS 80.650 to 80.680.

(1970 H 132, § 3, S 303, § 3, eff. 6-18-70. 1942 c 73, § 3)

Note: See note following KRS 80.620.

#### **80.650 Petition alleging that structure is unfit; complaint; notice and hearing.**

Whenever a petition is filed with the public officer by a public authority or by at least five residents of the city or county charging that any structure is unfit for human habitation, occupancy or use, or whenever it appears to the public officer (on his own motion) that any structure is unfit for human habitation, occupancy or use, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such structure a complaint stating the charges in that respect. The complaint shall state: That a hearing will be held before the public officer (or his designated agent) at a place therein fixed not less than ten days nor more than thirty days after the serving of the complaint; that the owner and parties in interest may file an answer to the complaint and appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(1970 H 132, § 4, S 303, § 4, eff. 6-18-70. 1942 c 73, § 4)

Note: See note following KRS 80.620.

#### **80.660 Hearing as to unfitness; findings of fact; order.**

If, after the notice and hearing, the public officer determines that the structure under consideration is unfit for human habitation, occupancy or use, he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order requiring the owner:

(1) To the intent and within the time specified in the order, to repair, alter or improve the said structure to render it fit for human habitation, occupancy or use, or, at the option of the owner, to vacate and close the structure if the repair, alteration, or improvement of the structure can be made at a cost that is not more than 50

percent of the value of the structure; or

(2) Within the time specified in the order, to remove or demolish the said structure if the repair, alteration, or improvement of the structure cannot be made at a cost that is not more than 50 percent of the value of the structure.

(1970 S 303, § 5, eff. 6-18-70. 1942 c 73, § 5)

#### **80.670 Repair, closing or demolition by city when order not complied with; lien for expense.**

(1) If the owner fails to comply with an order to repair, alter or improve or, at the option of the owner, to vacate and close the structure, the public officer may cause the structure to be repaired, altered or improved, or to be vacated and closed. The public officer may cause to be posted on the main entrance of any structure so closed, a placard with the following words: "This building is unfit for human habitation, occupancy or use; the use or occupation of this building for human habitation, occupancy or use, is prohibited and unlawful."

(1970 S 303, § 6, eff. 6-18-70. 1942 c 73, § 6)

(2) If the owner fails to comply with an order to remove or demolish the structure, the public officer may cause such structure to be removed or demolished.

(1970 S 303, § 6, eff. 6-18-70. 1942 c 73, § 6)

(3) The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition shall be a lien upon the real property upon which cost was incurred. If the structure is removed or demolished by the public officer, he shall sell the materials of the structure and shall credit the proceeds of such sale against the cost of the removal or demolition and any balance remaining shall be deposited in the circuit court by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the persons found to be entitled thereto by final order or decree of such court.

(1970 S 303, § 6, eff. 6-18-70. 1942 c 73, § 6)

#### **80.680 Standards.**

The public officer may determine that a structure is unfit for human habitation, occupancy or use if he finds that conditions exist in such structure which are dangerous or injurious to the health, safety or morals of the occupants of such structure, the occupants of neighboring structures or other residents of the city or county. Such conditions may include the following (without limiting the generality of the foregoing): Defects increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanness. Additional standards to guide the public officer, or his agents, in determining the fitness of a structure for human habitation, occupancy or use, may be provided by ordinance or resolution.

(1970 H 132, § 5, S 303, § 7, eff. 6-18-70. 1942 c 73, § 7)

Note: See note following KRS 80.620.

#### **80.685 Eviction of occupants of condemned structure.**

When the public officer has condemned as unfit for human habitation, occupancy or use, any structure, pursuant to the provisions of KRS 80.620 through 80.720, and has ordered same to be vacated, the public officer

may, after ten days' notice to the occupant or occupants thereof, apply to the justice of the peace for the district in which such structure is located, and obtain from such court an order of eviction against the occupant or occupants thereof, and the constable for the said district shall forthwith evict such occupant or occupants and his belongings from the said building.

(1970 S 303, § 12, eff. 6-18-70)

#### 80.690 Service of complaints and orders.

Complaints or orders issued by a public officer pursuant to an ordinance or resolution adopted under KRS 80.620 to 80.720 shall be served upon persons either personally or by certified mail, but if the whereabouts of such person is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publication pursuant to KRS Chapter 424. A copy of such complaint or order shall be posted in a conspicuous place on premises affected by the complaint or order, and shall be recorded in the office of the county clerk of the county wherein the structure is located.

(1970 H 132, § 6, S 303, § 8, eff. 6-18-70, 1966 c 171, c 239, § 35; 1942 c 73, § 8)

**Note:** See note following KRS 80.620.

#### 80.700 Remedies.

Any person affected by an order issued by the public officer may, within thirty days after the posting and service of the order, petition the circuit court for an injunction restraining the public officer from carrying out the provisions of the order, and the court may issue a temporary injunction restraining the public officer pending the final disposition of the cause. Hearings shall be had by the court on such petition within twenty days, or as soon thereafter as possible. In all such proceedings, the findings of the public officer as to facts, if supported by evidence, shall be conclusive. Costs shall be in the discretion of the court. The remedies herein provided shall be exclusive remedies and no person affected by an order of the public officer shall be entitled to recover any damages for action taken pursuant to any order of the public officer, or because of noncompliance by such person with any order of the public officer.

(1970 S 303, § 9, eff. 6-18-70, 1942 c 73, § 9)

#### 80.710 Power of city or county officers to investigate structures and obtain evidence; employees.

The governing body of the city or county may by ordinance or resolution authorize the public officer to exercise such powers as are necessary or convenient to carry out and effectuate the purposes and provisions of KRS 80.620 to 80.720, including the following powers in addition to others herein granted:

(1) To investigate the structural conditions in the city or county in order to determine which structures therein are unfit for human habitation, occupancy or use;

(2) To administer oaths, affirmations, examine witnesses and receive evidence;

(3) To enter upon premises for the purpose of making examination, but such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;

(4) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of the ordinances; and

(5) To delegate any of his functions and powers under the ordinance to such officers and agents as he designates.

(1970 H 132, § 7, S 303, § 10, eff. 6-18-70, 1942 c 73, § 10)

**Note:** See note following KRS 80.620.

#### 80.720 Administration of ordinance.

The governing body of any city or county adopting an ordinance or resolution under KRS 80.620 to 80.720 shall as soon as possible thereafter prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the structures in such city or county for the purpose of determining the fitness of the structures for human habitation, occupancy or use, and for the enforcement and administration of its ordinances or resolutions adopted under KRS 80.620 to 80.720; and any such city or county may make such appropriations from its revenues as it may deem necessary for this purpose and may accept and apply grants or donations to assist it in carrying out the provisions of such ordinances or resolutions.

(1970 H 132, § 8, S 303, § 11, eff. 6-18-70, 1942 c 73, § 11)

**Note:** See note following KRS 80.620.

## Chapter 81

# CITY CLASSIFICATION, BOUNDARIES, ANNEXATION AND ALTERNATIVE METHOD OF CONSOLIDATING GOVERNMENTAL SERVICES

#### 81.010 Classification of cities.

Cities are classified as follows:

**Note:** The following are the changes in classification of cities made by the General Assembly:

#### (1) Fourth class:

Bardonia, Nelson County  
Elkton, Todd County  
Flemingsburg, Fleming County  
Fort Mitchell, Kenton County  
Fort Wright, Kenton County

**EXHIBIT 5****COUNTY AND REGIONAL HOUSING COMMISSIONS****80.310 Definitions and construction.**

(1) As used in KRS 80.310 to 80.610, unless the context requires otherwise:

(a) "Bonds" means any bonds, notes, interim certificates, debentures, and other obligations issued by the commission pursuant to KRS 80.310 to 80.610.

(b) "Clerk" means the clerk of the city or the clerk of the county, as the case may be, or the officer charged with the duties customarily imposed on such clerk.

(c) "Commission" or "Housing commission" means any of the public corporations created pursuant to KRS 80.310 to 80.610.

(d) "Federal Government" includes the United States of America, the United States Housing Authority and its successor agencies, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(e) "Governing body" means, in the case of a city, the city council, the commission, the board of trustees or other legislative body of the city; and in the case of a county, the fiscal court.

(f) "Housing project" means any work or undertaking: To demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adaptation of such area to public purposes, including parks or other recreational or community purposes; or to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes; or to accomplish a combination of the foregoing. The term "Housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

(g) "Mayor" means the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor or executive head of the city.

(h) "Obligee of the commission" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, or lessor demising to the commission property used in connection with a housing project, or any assignee or assignees of such lessor's interest or any part thereof, and the Federal Government when it is a party to any contract with the commission.

(i) "Persons of low income" means persons or families who lack the amount of income which is necessary (as determined by the housing commission undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(j) "Real property" includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(k) "Slum" means any area where dwellings predominate which, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities, or

any combination of these factors, are detrimental to safety, health and morals.

(1964 c 146, § 5. Eff. 6-15-64. 1942 c 70, § 1)

(2) The powers contained in KRS 80.310 to 80.610 shall be in addition and supplemental to the powers contained in any other Act. (1964 c 146, § 5. Eff. 6-15-64. 1942 c 70, § 1)

**80.320 Creation of county and regional housing commissions.**

(1) If the governing body of a county by resolution declares (upon findings prescribed in KRS 80.310 to 80.610) that there is a need for a Housing Commission to be created for such county to exercise therein powers and other functions prescribed for a Housing Commission of a county, a County Housing Commission shall thereupon exist for such county.

(1942 c 70, § 2. Eff. 3-5-42)

(2) If the governing body of each of two or more contiguous counties by resolution declares (upon findings prescribed in KRS 80.310 to 80.610) that there is a need for one Housing Commission to be created for all of such counties to exercise in such counties powers and other functions prescribed for a Regional Housing Commission, a Regional Housing Commission shall thereupon exist for all of such counties and exercise its powers and other functions in such counties. If there is a County Housing Commission created for a county, the governing body of that county shall not adopt such resolution unless first, all holders of any outstanding bonds, notes, or other evidences of indebtedness of such County Housing Commission consent in writing to such action and the County Housing Commission adopts a resolution not to thereafter initiate any project within such county. (1942 c 70, § 2. Eff. Mar. 5, 1942.)

**80.330 Area of operation of county and regional commissions.**

The area of operation of Housing Commission created for a county shall include all of the county for which it is created and the area of operations of a Regional Housing Commission shall include (except as otherwise provided in KRS 80.310 to 80.610) all of the counties for which such Regional Housing Commission is created and established. But no County or Regional Housing Commission shall undertake any housing project or projects within the boundaries of a city unless a resolution has been adopted by the governing body of the city (and also by any Housing Commission which has been created for that city pursuant to KRS 80.310 to 80.610 or KRS 80.010 to 80.250) declaring that there is a need for the County or Regional Housing Commission to exercise its powers within that city. (1942 c 70, § 3. Eff. Mar. 5, 1942.)

The housing commission has authority to meet anywhere within the county and any meetings, even if they be held within a city which has not by resolution declared the need for the county housing commission to exercise its powers within the city, would be a valid meeting of the commission. 1959 OAG 43,655.

**80.340 Increasing area of operation of regional housing commission.**

The area of operation of a Regional Housing Commission shall be increased from time to time to include



one or more additional contiguous counties not already within a Regional Housing Commission is the governing body of each of the counties then included in the area of operation of the Regional Housing Commission, the commissioners of the Regional Housing Commission and the governing body of each such additional county or counties each adopt a resolution declaring that there is a need for the inclusion of such additional county or counties in the area of operation of the Regional Housing Commission. Such resolutions shall not be adopted if there is a County Housing Commission created for any such additional county, unless first, all holders of any outstanding bonds, notes or other evidences of indebtedness of that County Housing Commission consent in writing to such action and the County Housing Commission adopts a resolution not to thereafter initiate any project within that county. (1942 c 70, § 4. Eff. Mar. 5, 1942.)

#### 80.350 Decreasing area of operation of regional housing commission.

The area of operation of a Regional Housing Commission shall be decreased from time to time to exclude one or more counties from such area if the governing body of each of the counties in such area and the commissioners of the Regional Housing Commission each adopt a resolution declaring that there is a need for excluding such county or counties from such area. No action shall be taken pursuant to this section if the Regional Housing Commission has outstanding any bonds, notes or other evidences of indebtedness, unless first, all holders of such evidences of indebtedness consent in writing to such action. If such action decreases the area of operation of the Regional Housing Commission to only one county, the Commission shall thereupon constitute and become a Housing Commission for that county, in the same manner as though the Commission were created pursuant to KRS 80.320 and the Commissioners of such County Housing Commission shall be thereupon appointed as provided for the appointment of commissioners of a Housing Commission created for a county. (1942 c 70, § 5. Eff. Mar. 5, 1942.)

#### 80.360 Need of excluding counties from area of operation of regional housing commission; resolution; conditions showing need of exclusion.

The governing body of each of the counties in the area of operation of the Regional Housing Commission and the commissioners of the Regional Housing Commission shall adopt a resolution declaring that there is a need for excluding a county or counties from such area if:

(1) Each of the governing bodies of the counties to remain in the area of operation of the Regional Housing Commission and the commissioners of the Regional Housing Commission find that (because of facts arising or determined subsequent to the time when such area first included the county or counties to be excluded) the Regional Housing Commission would be a more efficient or economical administrative unit to carry out the purposes of KRS 80.310 to 80.610 if such county or counties were excluded from such area; and

(2) The governing body of each such county or counties to be excluded and the commissioners of the Regional Housing Commission each also find that (because of the aforesaid changed facts) the purposes of KRS 80.310 to 80.610 could be carried out more effi-

ciently or economically in such county or counties if the area of operation of the Regional Housing Commission did not include such county or counties. (1942 c 70, § 6. Eff. Mar. 5, 1942.)

#### 80.370 Disposition of property of regional commission in excluded areas.

Any property held by a Regional Housing Commission within a county or counties excluded from the area of operation of such Commission, as herein provided, shall (as soon as practicable after the exclusion of said county or counties respectively) be disposed of by such Commission in the public interest. (1942 c 70, § 7. Eff. Mar. 5, 1942.)

#### 80.380 Resolution declaring need for commission; adoption by city, county; findings precedent to adoption.

No governing body of a city or county shall adopt a resolution under KRS 80.310 to 80.610 declaring that there is a need for a Housing Commission to be created, or to exercise its powers within such city or county, or that there is a need to include such city or county within the area of operation of a Housing Commission, unless such governing body shall have found substantially that:

(1) Insanitary or unsafe inhabited dwelling accommodations exist in such city or county or that there is a shortage of safe or sanitary dwelling accommodations in such city or county available to persons of low income at rentals they can afford; and

(2) These conditions can be best remedied through the exercise of the Housing Commission's powers within the territorial boundaries of such city or county. (1942 c 70, § 8. Eff. Mar. 5, 1942.)

#### 80.390 Elements showing bad housing conditions.

In determining under KRS 80.310 to 80.610 whether dwelling accommodations are unsafe or insanitary a governing body shall take into consideration the safety and sanitation of dwellings, the light and air space available to the inhabitants of such dwellings, the degree of overcrowding, the size and arrangement of the rooms and the extent to which conditions exist in such dwellings which endanger life or property by fire or other causes. (1942 c 70, § 9. Eff. Mar. 5, 1942.)

#### 80.400 Public hearing with regard to creation or area of regional commission.

The governing body of a county shall not adopt any resolution authorized by KRS 80.320, 80.340, 80.350 or 80.360 with regard to a regional housing commission unless a public hearing has first been held. The clerk of that county shall give notice of the public hearing by publication pursuant to KRS Ch. 424. Upon the date fixed for such public hearing an opportunity to be heard shall be granted to all residents of that county and to all other interested persons. (1966 c 239, § 33. Eff. 6-16-66. 1942 c 70, § 10)

the interests of the development corporations,—to the end that the purposes of KRS 99.010 to 99.310 may be best accomplished; but if the planning commission and the supervising agency are unable to agree thereupon, the local legislative body shall by resolution determine the matter. (1944 c 128, § 2. Eff. June 13, 1944. 1942 c 36.)

99.090 Designation of supervising agency; grant of powers by ordinance.

The local legislative body of such cities is hereby authorized by general ordinance or local law to appoint, establish or designate the chief financial officer of the city or some other official or bureau, commission or agency as the person or body to exercise the powers and perform the duties held by or incumbent upon a supervising agency pursuant to KRS 99.010 to 99.310, except that if there is a Director of Finance in the city he shall have the power and perform the duties of such supervising agency unless otherwise provided by ordinance. In event the planning commission or the supervising agency of such city does not now have sufficient authority to carry out their respective duties under KRS 99.010 to 99.310, or to accomplish the purposes of this act, then such authority may be provided by general ordinance of the local legislative body of such city. (1942 c 36, § 4. Eff. 6-1-42)

#### EXHIBIT 6

99.100 Organization of redevelopment corporation; articles.

(1) At any time within twenty years of June 1, 1942, three or more persons may form a Redevelopment Corporation on making, subscribing, acknowledging and filing Articles of Incorporation and obtaining a certificate or charter pursuant to the general corporation law, which charter shall be entitled and endorsed "Certificate or Charter of Incorporation of . . . . . Redevelopment Corporation", the blank space being filled in with the remainder of the name of the corporation. Such Articles of Incorporation shall contain the provisions required in, and may contain any provisions consistent with the provisions of KRS 99.010 to 99.310 permitted in articles of incorporation filed pursuant to the general corporation law, except that:

(a) Included among the purposes for which the corporation is formed shall be the formulation, obtaining the approval of, and putting into effect of a development plan, the acquisition of real property in a development area, and the construction, maintenance and operation of a development pursuant to KRS 99.010 to 99.310;

(b) The duration of the corporation shall not be less than twenty years;

(c) The certificate or charter shall contain a declaration that the redevelopment corporation has been organized to serve a public purpose, and that it shall be subject to supervision and control as provided in KRS 99.010 to 99.310.

(1942 c 36. Eff. 6-1-42)

(2) A copy of such articles of incorporation shall be filed with the planning commission and the supervising agency having jurisdiction within thirty days of its being filed in the office of the Secretary of State. (1942 c 36, § 5. Eff. June 1, 1942.)

99.110 Existing corporation may become redevelopment corporation by amending articles.

At any time within twenty years of June 1, 1942, shall take effect, any domestic corporation which is not a redevelopment corporation, but which has been incorporated pursuant to the general corporation law may become a redevelopment corporation by filing an appropriate amendment to its articles of incorporation and obtaining certificate or certificates pursuant to the general corporation law changing the provisions of its articles and charter or certificate of incorporation to eliminate any provisions therein inconsistent with the provisions of KRS 99.010 to 99.310 and adding or substituting the provisions required by KRS 99.100 to 99.130, by changing its name to a name corresponding to the form " . . . . . redevelopment corporation", and making all the other changes necessary to enable it to conform with all of the provisions of KRS 99.010 to 99.310. Any such amended articles of incorporation shall be prepared and filed pursuant to the general corporation law, excepting that in addition to citing such law in the title of such certificate, the title shall also state that it is being made pursuant to this section. (1942 c 36, § 5. Eff. 6-1-42)

99.120 Forfeiture of rights of redevelopment corporation.

If a redevelopment corporation shall not have obtained the certificates of approval of its development plan required by KRS 99.040 to 99.060 within twelve months of the date upon which it became a redevelopment corporation, or shall not substantially comply with the development plan within the time limit for the completion of each stage thereof as therein stated, reasonable delays caused by unforeseen difficulties excepted, then upon the filing in the department of state of a certified copy of the order of the court establishing such failure to obtain such certificate or substantially so to comply, obtained pursuant to KRS 99.190, such redevelopment corporation shall cease to have the special rights, powers and privileges granted to, or be subject to the special duties, liabilities and restrictions imposed upon, a redevelopment corporation by KRS 99.010 to 99.310, and shall thereafter change its name to remove the word "redevelopment" therefrom. In such event, however, such corporation may thereafter continue in existence as a corporation, subject to the general corporation law. In the event that a certified copy of such order shall be so filed, all real property acquired by or for such redevelopment corporation by condemnation shall be disposed of, either alone or in conjunction with additional real property not so acquired, within a reasonable time by bona fide sale. All amounts received by the redevelopment corporation for such real property in excess of an amount equal to that portion of the development cost allocable to the real property being disposed of, shall be paid to the city. (1942 c 36, § 5. Eff. 6-1-42)

99.130 Other corporations not to use "redevelopment" in name.

No corporation now organized under the laws of the state shall change its name to a name, and no such corporation hereafter organized shall have a name, containing the word "redevelopment" as a part thereof, unless and until such corporation is or become a redevelopment corporation. No foreign corporation now



authorized to do business in the state shall change its name to a name, and no such corporation shall hereafter be authorized to do business in the state with a name, containing the word "redevelopment" as a part thereof. (1942 c 36, § 5. Eff. June 1, 1942.)

#### 99.140 Restrictions on redevelopment corporations.

No redevelopment corporation shall:

(1) Undertake any clearance, reconstruction, improvement, alteration or construction in connection with any development until the certificates of approval required by KRS 99.040 to 99.060 have been issued;

(2) Change, alter, amend, add to or depart from the development plan until the planning commission or the supervising agency, as the case may be, has issued a certificate of approval of that portion of such change, alteration, amendment, addition or departure relevant to the finding required to be made by it as set forth in KRS 99.070;

(3) After a development has been commenced, sell, transfer or assign any real property in the development area without first obtaining the consent of the planning commission and the supervising agency;

(4) Undertake more than one development;

(5) Pay dividends, if any, except out of net earnings.

(6) Pay as compensation for services to, or enter into contracts for the payment of compensation for services to, its officers or employees in an amount greater than the limit thereon contained in the development plan, or in default thereof, then in an amount greater than the reasonable value of the services performed or to be performed by such officers or employees;

(7) Lease an entire building or improvement in the development area to any person or corporation without obtaining the approval of the supervising agency, which may be withheld only if the lease is being made for the purpose of evading regulatory provisions of KRS 99.010 to 99.310;

(8) Mortgage any of its real property without obtaining the approval of the planning commission and the supervising agency;

(9) Make any guarantee without obtaining the approval of the supervising agency;

(10) Dissolve without obtaining the approval of the supervising agency, which may be given upon such conditions as the supervising agency may deem necessary or appropriate to the protection of the interest of the city in the proceeds of the sale of the real property acquired by condemnation as provided in KRS 99.120, such approval to be endorsed on the certificate of dissolution and such certificate not to be filed in the department of state in the absence of such endorsement;

(11) Reorganize without obtaining the approval of the supervising agency. (1942 c 36, § 6. Eff. 6-1-42)

#### CROSS REFERENCES

See Kentucky Legal Forms, Form 1501.01 (D) (2)

#### 99.150 General corporation laws apply.

The provisions of the general corporation law as presently in effect and as hereafter from time to time amended, shall apply to redevelopment corporations, except where such provisions are in conflict with the provisions of KRS 99.010 to 99.310. (1942 c 36, § 7. Eff. 6-1-42)

#### CROSS REFERENCES

See Kentucky Legal Forms, Form 1501.01 (D) (2)

#### 99.160 Stock not to be issued except for value received.

No redevelopment corporation shall issue stock except for money or property actually received for the use and lawful purposes of the corporation or services actually performed for the corporation. (1942 c 36, § 8. Eff. June 1, 1942.)

#### 99.170 Determination of development cost.

(1) Upon the completion of a development, a redevelopment corporation shall, or upon the completion of a principal part of a development, a redevelopment corporation may, file with the supervising agency an audited statement of the development cost thereof. Within a reasonable time after the filing of such statement, the supervising agency shall determine the development cost applicable to the development of such portion thereof and shall issue to the redevelopment corporation a certificate stating the amount thereof as so determined.

(1942 c 36. Eff. 6-1-42)

(2) A redevelopment corporation may, at any time, whether prior or subsequent to the undertaking of any contract or expense, apply to the supervising agency for a ruling as to whether any particular item of cost therein may be included in development cost when finally determined by the supervising agency, and the amount thereof. The supervising agency shall, within a reasonable time after such application, render a ruling thereon, and in the event that it shall be ruled that any item of cost may be included in development cost, the amount thereof as so determined shall be so included in development cost when finally determined. (1942 c 36, § 9. Eff. June 1, 1942.)

#### 99.180 Reports to supervising agency; reserves; accounts.

A redevelopment corporation shall:

(1) Furnish to the supervising agency from time to time, as required by it, but with respect to regular reports not more often than once every six months, such financial information, statements, audited reports or other material as such supervising agency shall require, each of which shall conform to such standards of accounting and financial procedure as the supervising agency may by general regulation prescribe.

(2) Establish and maintain such depreciation and other reserves, surplus and other accounts as the supervising agency may reasonably require. (1942 c 36, § 10. Eff. June 1, 1942.)

#### 99.190 Proceedings in circuit court to compel compliance with law by redevelopment corporations.

Whenever a redevelopment corporation shall not have obtained the certificates of approval of its development plan required by KRS 99.040 to 99.060 within twelve months of the date upon which it became a redevelopment corporation, or shall not have substantially complied with its development plan within the time limits for the completion of each stage thereof as therein stated, reasonable delays caused by unforeseen difficulties excepted, or shall do, permit to be done or fail or omit to do anything contrary to or required of it, as the

case may be, KRS 99.010 to 99.310, or shall be about so to do, permit to be done or fail or omit to have done, as the case may be, then any such fact may be certified by the planning commission or the supervising agency, whichever shall have supervision thereof, to the chief legal officer of the city, who may thereupon commence a proceeding in the circuit court of the county in which such city is located in the city's name for the purpose of having such action, failure or omission, or threatened action, failure or omission established by order of the court for the purpose stated in KRS 99.120, or stopped, prevented or otherwise rectified by mandamus, injunction or otherwise. Such proceedings shall be commenced by a petition to the circuit court alleging the violation complained of and praying for appropriate relief. It shall thereupon be the duty of the court to specify the time, not exceeding twenty days after service of a copy of the petition, within which the redevelopment corporation complained of must answer the petition. The court shall, immediately after a default in answering or after answer, as the case may be, inquire into the facts and circumstances in such manner as the court shall direct without other or formal proceedings, and without respect to any technical requirements. Such other persons or corporations as it shall seem to the court necessary or proper to join as parties, in order to make its orders or judgment effective may be joined as parties. The final judgment or order in any such action or proceeding shall dismiss the action or proceeding or establish the failure complained of or direct that a mandamus order, or an injunction, or both, issue, or grant such other relief as the court may deem appropriate. (1912 c 36, § 11. Eff. 6-1-42)

#### 99.200 Authority to transfer real property to redevelopment corporations.

Notwithstanding any requirement of law to the contrary or the absence of direct provision therefor in the instrument under which a fiduciary is acting, every executor, administrator, trustee, guardian, or any other person holding trust funds or acting in a fiduciary capacity, unless the instrument under which such fiduciary is acting expressly forbids, the state, its subdivisions, cities, all other public bodies, all public officers, corporations organized under or subject to the provisions of the banking law (including savings banks, savings and loan associations, trust companies, banking corporations), the Commissioner of Banking and Securities as conservator, liquidator or rehabilitator of any such person, partnership or corporation, persons, partnerships and corporations organized under or subject to the provisions of the insurance law, the Commissioner of Insurance as conservator, liquidator or rehabilitator of any such person, partnership or corporation, any of which owns or holds any real property within a development area, may grant, sell, lease or otherwise transfer any such real property to a redevelopment corporation, and receive and hold any cash, stocks, notes, mortgages, or other securities or obligations, which they are allowed by law to acquire, exchanged therefor by such redevelopment corporation, and may execute such instruments and do such acts as may be deemed necessary or desirable by them or it and by the redevelopment corporation in connection with the development and the development plan. (1912 c 36 § 12. Eff. 6-1-42)

#### CROSS REFERENCES

See Kentucky Legal Forms, Form 1501.01 (D) (2)

99.210 Power of corporation to acquire real property; city may condemn and convey to corporation; federal or state aid; alternate method of acquiring and conveying land.

(1) A redevelopment corporation may, whether before or after the certificates of approval of its development plan required by KRS 99.040 to 99.060 have been issued, acquire real property or secure options in its own name or in the name of nominees to acquire real property, by gift, grant, lease, purchase or otherwise.

(1966 c 239, § 99. Eff. 6-16-66. 1944 c 128, § 1; 1942 c 36, § 13)

(2) Such city may, upon request by a redevelopment corporation, and after a certificate of approval of condemnation with respect to the real property in question has been issued pursuant to KRS 99.220, acquire, or obligate itself to acquire, for such redevelopment corporation, any real property included in such certificate of approval of condemnation, by condemnation. Real property acquired by such city for a redevelopment corporation shall be conveyed by such city to the redevelopment corporation upon payment to the city of all sums expended or required to be expended by the city in the acquisition of such real property.

(1966 c 239, § 99. Eff. 6-16-66. 1944 c 128, § 1; 1942 c 36, § 13)

(3) In connection with the activities and projects of redevelopment corporations, the city may apply for, receive, and accept grants-in-aid, gifts, credits, and all other aid and in all forms, whether similar to or dissimilar from those particularly enumerated, from the Federal government, which embraces the United States of America, its agencies and instrumentalities, or from the Commonwealth of Kentucky, its agencies and instrumentalities or from both, under such lawful contracts, terms, and conditions, as may be agreed upon.

(1966 c 239, § 99. Eff. 6-16-66. 1944 c 128, § 1)

(4) In order to further the accomplishment of the purposes of KRS 99.010 to 99.310, and in addition to the powers heretofore or which may hereafter be granted to it, the city may, as an alternate method of acquiring by gift, purchase, or condemnation, and selling and transferring real property to a redevelopment corporation, by ordinance or ordinances, proceed as follows:

(a) From time to time designate an area within such city as under consideration for development under the provisions of KRS 99.010 to 99.310 and provide for consultation with and aid from any and all city departments, commissions, officers, employees, agencies, and instrumentalities, relating to the initiation of the project.

(b) Apply for and receive gifts, grants, credits, and obtain loans for the accomplishment of each development or developments generally, and obligate such city to supervise the application of such funds for such purpose or purposes, and also accept gifts, grants, conveyances and leaseholds within such area or areas, and to provide funds, where necessary, to obtain gifts, grants, credits or loans from the Federal government, its agencies and instrumentalities, or from the Commonwealth of Kentucky, its agencies and instrumentalities, or from both or any other agency under such lawful contracts, terms and conditions as may be agreed upon.

(c) Appropriate funds acquired under paragraph (b) or by taxation for the acquisition of all or any part or parts of the property in each such area for development under KRS 99.010 to 99.310 by purchase and by condemnation, and for the clearance of all or any part or parts of the property owned by or thus acquired by

such city. Such condemnation shall be under the provisions of KRS 99.010 to 99.310, but the city may waive request for condemnation or deposit or obligation to furnish the funds, as set out in KRS 99.230.

(d) Advertise for the submission of development plans for such designated area by a redevelopment corporation under the provisions of KRS 99.010 to 99.310, application therefor to be accompanied by a bid for such lands and estates therein as the city owns or may obligate itself to purchase, or otherwise acquire and lease, sublease, sell, or convey to the redevelopment corporation, provided a plan is submitted and is finally accepted and approved under the provisions of KRS 99.010 to 99.310. If more than one plan and bid is submitted for any one project thus advertised, then the plan and bid that together would prove most beneficial to the city in accomplishing the purposes of KRS 99.010 to 99.310 shall be submitted for approval under the terms of KRS 99.010 to 99.310, but the city may reject any and all applications, bids and plans. Said city shall be the sole judge as to which plan is the most beneficial. Such advertisement shall clearly describe the area under consideration for development, the part or parts thereof owned by the city or which it will acquire, and the estates in each parcel that is being offered for sale, the terms and conditions, and shall be published pursuant to KRS Ch. 424.

(e) The terms of the bid for such land or lands or leaseholds may be for all cash, or part cash and part on time, or all on time, with or without interest, and with or without lien retained. Any term of payment shall not be for a period exceeding five years from date of completion of the project.

(f) As a further inducement, the terms of the bid may provide for a discount not exceeding ten percent a year on such bid for each year, not exceeding five, in event the development during each such year is in accordance with the development plan. (1966 c 239, § 99. Eff. 6-16-66. 1944 c 12S, § 1)

#### CROSS REFERENCES

See Kentucky Legal Forms, Form 1501.01 (D) (2)

#### 99.220 Certificate of approval of condemnation.

(1) When it is desired that any real property in a development area be acquired by condemnation, there shall be presented to the supervising agency by the redevelopment corporation a verified petition requesting the issuance of a certificate of approval of condemnation of such real property which shall contain, among other things:

(a) A metes and bounds description or other legal description of the real property involved and a statement of the estate, interest, privilege, franchise or right therein or appurtenant thereto to be condemned;

(b) Proof that such real property is within the development area;

(c) Proof that certificates of approval of the development plan required by KRS 99.010 to 99.060 have been issued.

(2) The supervising agency shall determine within a reasonable time thereafter the truth or sufficiency of the statements and proof contained in such petition, and, if such determination shall be in the affirmative, the supervising agency shall issue to the petitioner, a certificate of approval of condemnation. Such certificate shall contain a description of the real property proposed to be condemned, the facts so determined with respect thereto, and a statement that the real property proposed to be condemned is required for a

public use and that its acquisition for such use is necessary. No condemnation proceeding to acquire real property in a development area, by a city for a redevelopment corporation, shall be commenced until such a certificate of approval of condemnation shall have been issued. (1942 c 36, § 14. Eff. June 1, 1942.)

#### 99.230 Method of condemnation; conveyance of property to corporation.

Before condemnation proceedings for a redevelopment corporation shall be instituted the redevelopment corporation shall make written request to the Mayor of the city to cause the city to institute proceedings to acquire for the redevelopment corporation any real property in the development area. Such request shall be granted or rejected by the city through action of its local legislative body, and the ordinance granting such request shall contain a requirement that the redevelopment corporation shall pay to the city all sums expended or required to be expended by the city in the acquisition of such real property, and the time of payment and manner of securing payment thereof, and may require that the city shall receive, before proceeding with the acquisition of such real property, such assurances as to payment or reimbursement thereof by the redevelopment corporation, or otherwise, as the city may deem advisable. Upon the passage of such ordinance by the local legislative body, granting the petition, the redevelopment corporation shall cause to be made three copies of surveys or maps of the real property described in the petition, one of which shall be filed in the office of the redevelopment corporation, one in the office of the chief law officer of the city, and one in the office in which instruments affecting real property in the county are recorded. The filing of such copies of surveys or maps shall constitute the acceptance by the redevelopment corporation of the terms and conditions contained in such ordinance. Proceedings for such condemnation shall be conducted in the circuit court of the county in which the property lies, and shall be conducted in the name of such city by the City Attorney, and the judgment of the court shall vest fee simple title to the property condemned by the city. In all other respects and except as herein specifically provided, the form and manner of the proceedings shall be the same as that provided for the condemnation of property for park purposes in such city. When title to the real property shall have vested in the city, it shall for use in such redevelopment convey the same to the redevelopment corporation upon payment by the redevelopment corporation of the sums and the giving of the security required by the ordinance granting the request. As soon as title shall have vested in the city, the redevelopment corporation may upon the authorization of the local legislative body, enter upon the real property taken, take over and dispose of existing improvements, and carry out the terms of the development plan with respect thereto. (1942 c 36, § 14. Eff. June 1, 1942.)

#### CROSS REFERENCES

See Kentucky Legal Forms, Form 1501.01 (D) (2)

99.240 Kinds of evidence admissible on question of value of condemned property; expedition of proceedings; condemnation of property devoted to public use.

The following provisions shall apply to any proceedings for the assessment of compensation and damages for

real property in a development area taken or to be taken by condemnation for a redevelopment corporation:

(1) Evidence of the price and other terms upon any bona fide sale, or the rent received or reserved, and other terms upon any bona fide sale, option, lease or tenancy relating to any of the real property taken or to be taken or to any comparable real property in the vicinity when the option, sale, or lease was given, occurred or the tenancy existed, within a reasonable time of the trial, shall be admissible on direct examination;

(2) Any time during the pendency of such action or proceeding, the redevelopment corporation, the city or any owner, the redevelopment corporation, or the city, as the case may be, to show cause why further proceedings should not be expedited, and the court may upon such application make an order requiring that the hearings proceed and that any other steps be taken with all possible expedition;

(3) For the purpose of KRS 99.010 to 99.310, the award of compensation shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance or reconstruction, or proposed assembly, clearance, or reconstruction for the purposes of KRS 99.010 to 99.310 of the real property in the development area. No allowance shall be made for the improvements begun on real property after notice to the owner of such property of the institution of the proceedings to condemn such property;

(4) Evidence shall be admissible bearing upon the insanitary, unsafe or substandard condition of the premises, or the illegal use thereof, or the enhancement of rentals from such illegal use, and such evidence may be considered in fixing the compensation to be paid, notwithstanding that no steps to remedy or abate such conditions have been taken by the department or officers having jurisdiction. If a violation order is on file against the premises in any such department, it shall constitute prima facie evidence of the existence of the condition specified in such order;

(5) If any of the real property in the development area which is to be acquired by condemnation has, prior to such acquisition, been devoted to another public use, it may nevertheless be acquired provided that no real property belonging to the city or to any other government body, or agency or instrumentality thereof, corporate or otherwise, may be acquired without its consent;

(6) Upon the trial, evidence of the price and other terms upon a sale or assignment or of a contract for the sale or assignment of a mortgage, award, proposed award, transfer of a tax lien or lien of a judgment relating to property taken, shall be relevant, material and competent, upon the issue of value or damage and shall be admissible on direct examination;

(7) Upon the trial a statement, affidavit, deposition, report, transcript of testimony in an action or proceeding, or appraisal made or given by any owner or prior owner of the premises taken, or by any person on his behalf, to any court, governmental bureau, department or agency respecting the value of the real property for tax purposes, shall be relevant, material and competent upon the issue of value of damage and shall be admissible on direct examination. (1942 c 36, § 14. Eff. June 1, 1942.)

99.250 Temporary occupation of real property after acquisition and before development.

(1) When title to real property has vested in a redevelopment corporation or city by gift, grant, devise,

purchase or otherwise, or in the city in condemnation proceedings or otherwise, the redevelopment corporation or city, as the case may be, may agree with the previous owners of such property, or any tenants continuing to occupy or use it, or any other persons who may occupy or use or seek to occupy or use such property, that such former owner, tenant or other persons may occupy or use such property upon the payment of a fixed sum of money for a definite term or upon the payment periodically of an agreed sum of money. Such occupation or use shall not be construed as a tenancy from month to month, nor require the giving of notice by the redevelopment corporation or the city, as the case may be, for the termination of such occupation or use or the right to such occupation or use, but immediately upon the expiration of the term for which payment has been made the redevelopment corporation or city, as the case may be, shall be entitled to possession of the real property and may maintain summary proceedings by forcible detainer or otherwise, and shall be entitled to such other remedy as may be provided by law for obtaining immediate possession thereof. A former owner, tenant or other person occupying or using such property shall not be required to give notice to the redevelopment corporation or city, as the case may be, at the expiration of the term for which he has made payment for such occupation or use, as a condition to his cessation of occupation or use and termination of liability therefor.

(1942 c 36. Eff. 6-1-42)

(2) In the event that a city has acquired real property for a redevelopment corporation, the city shall, in transferring title to the redevelopment corporation deduct from the consideration or other moneys which the redevelopment corporation has become obligated to pay to the city for such purpose, and credit the redevelopment corporation with the amounts received by the city as payment for temporary occupation and use of the real property by a former owner, tenant, or other person, as in this section provided, less the cost and expense incurred by the city for the maintenance and operation of such real property. (1942 c 36, § 15. Eff. June 1, 1942.)

99.260 Power of corporation to borrow money and execute mortgages.

(1) Upon first obtaining the approval of the supervising agency, any redevelopment corporation may borrow funds for use in the redevelopment, before or during such redevelopment and secure the repayment of same by mortgage or mortgages. Every such mortgage shall be a lien upon no other property except that forming the whole or a part of a single development area.

(1942 c 36. Eff. 6-1-42)

(2) Any redevelopment corporation may also borrow funds and secure the repayment thereof by mortgage or mortgages. Every such mortgage shall contain reasonable amortization provisions and be a lien upon no other real property except that forming the whole or a part of a single development area.

(1942 c 36. Eff. 6-1-42)

(3) Any redevelopment corporation may mortgage the real property in a development area, or any part thereof, and create a first lien, or a second or other junior lien, upon such real property, as the case may be. (1942 c 36, § 16. Eff. June 1, 1942.)

99.270 Obligations of redevelopment corporation are authorized investments.

Certificates, bonds and notes, or part interests therein, or any part of an issue thereof, which are secured by a first mortgage on the real property in a development area, or any part thereof, shall be securities in which all the following persons, partnerships or corporations and public bodies or public officers may legally invest the funds within their control, provided that the principal amount secured by such mortgage shall not exceed the limits, if any, imposed by law for such investments by the person, partnership, corporation, public body or public officer making the same: Every executor, administrator, trustee, guardian, committee or other person or corporation holding trust funds or acting in a fiduciary capacity; the state, its subdivisions, cities, all other public bodies, all public officers; persons, partnerships and corporations organized under or subject to the provisions of the banking law (including savings banks, savings and loan associations, trust companies, banking corporations); the Commissioner of Banking and Securities as conservator, liquidator or rehabilitator of any such person, partnership or corporation; persons, partnerships or corporations organized under or subject to the provisions of the insurance law; fraternal benefit societies; and the Commissioner of Insurance as conservator, liquidator or rehabilitator of any such person, partnership or corporation. (1942 c 36, §16. Eff. 6-1-42).

99.280 Obligations insured under Federal Housing Act not subject to investment limits.

The limits as to principal amount secured by mortgage referred to in KRS 99.270 shall not apply to certificates, bonds and notes, or part interests therein, or any part of an issue thereof, which are secured by first mortgage on real property in a development area, or any part thereof, which the federal housing administrator has insured or had made a commitment to insure under the national housing act. Any such person, partnership, corporation, public body or public officer may receive and hold any debentures, certificates or other instruments issued or delivered by the federal housing administrator, pursuant to the national housing act, in compliance with the contract of insurance of a mortgage on real property in the development area, or any part thereof. (1942 c 36, §16. Eff. June 1, 1942.)

99.290 Sale of real property by city to corporation.

(1) The local legislative body may by ordinance determine that real property specified and described in such ordinance, title to which is held by the city and which was not acquired by condemnation under the provisions KRS 99.010 to 99.130, is needed for the redevelopment project and may authorize the city to convey, sell, such real property to a redevelopment corporation. Provided, however, that the title of the city to such real property be not declared inalienable by charter of the city, or other similar law or instrument.

(1966 c 239, §100. Eff. 6-16-66. 1942 c 36, §17)

(2) Notwithstanding the provisions of any general, special or local law or ordinance, such sale may be made without appraisal, public notice or public bidding for such price and upon such terms as may be agreed upon between the city and the redevelopment corporation.

(1966 c 239, §100. Eff. 6-16-66. 1942 c 36, §17)

(3) Before such sale to a redevelopment corporation shall be authorized, a public hearing shall be held by the local legislative body to consider the proposed sale. Notice of such hearing shall be published pursuant to KRS Ch. 424.

(1966 c 239, §100. Eff. 6-16-66. 1942 c 36, §17)

(4) The deed to such real property shall be executed in the same manner as a deed by the city of other real property owned by it and may contain such appropriate conditions and provisions as is authorized by KRS 99.010 to 99.310 relating to such redevelopment corporation and any conditions or provisions of deeds to the city.

(1966 c 239, §100. Eff. 6-16-66. 1942 c 36, §17)

(5) A redevelopment corporation purchasing real property from a city shall not, without the consent of the legislative body of the city, use such real property for any purpose except in connection with the redevelopment. The deed may contain a condition that the redevelopment corporation will devote the real property granted only for the purposes of its development subject to the restrictions of KRS 99.010 to 99.310. (1966 c 239, §100. Eff. 6-16-66. 1942 c 36, §17)

#### CROSS REFERENCES

See Kentucky Legal Forms, Form 1501.01(D) (2)

99.300 Certificates of completion; sale or mortgage of completed development.

(1) It shall be the duty of the supervising agency, upon any request from a redevelopment corporation, to determine whether the redevelopment of any unit or units in the development area has been achieved, and if the supervising agency finds that such redevelopment has been finished and achieved it shall issue to the redevelopment corporation a certificate of completion showing that the redevelopment of such parcel or parcels has or have been completed, describing such unit or units.

(1942 c 36. Eff. 6-1-42)

(2) It shall be the duty of the supervising agency, upon request from a redevelopment corporation, to determine whether the redevelopment of the development area has been achieved, and if the supervising agency finds that such redevelopment has been finished and achieved it shall issue to the redevelopment corporation a certificate of completion showing that the redevelopment of such area has been completed. No such determination or finding shall affect any unit or units for which certificates of completion have been issued under subsection (1) of this section.

(1942 c 36. Eff. 6-1-42)

(3) Such redevelopment property, or unit thereof, may be sold or mortgaged; Provided, however, that such sale or mortgage shall be authorized as herein provided and shall, after such sale or mortgage, be used for the general purposes of KRS 99.010 to 99.310 and maintained in accordance with the standards provided therefor by the planning commission of such city in the original certificate of approval issued for such redevelopment under and pursuant to the provisions of KRS 99.040 to 99.060.

(1942 c 36. Eff. 6-1-42)

(4) Such certificate or certificates of completion shall be conclusive evidence, upon which any one dealing with such property may rely, that the redevelopment of the property therein described has been fully completed in conformity with KRS 99.010 to 99.310 and the development plan.

## APPENDIX D: MISSISSIPPI REPORT ON LEGISLATION

I. Land Use Controls

In the State of Mississippi, the local units of government are charged with the responsibility of controlling land use.

Since 1930, Mississippi has granted the power to zone to counties and municipalities,<sup>1</sup> and since 1942 to plan for the area in this jurisdiction.<sup>2</sup> Since 1892, local governments have had the authority to require land developers to comply with certain requirements before accepting dedication of streets in subdivisions. This statute was amended through the years, most recently in 1960. It now empowers local governments to adopt comprehensive subdivision regulations.<sup>3</sup>

Any two or more counties and municipalities are authorized and empowered to create and to establish a regional planning commission so that they can more effectively plan for comprehensive area development.<sup>4</sup> There appeared to be no legislation requiring the local governments to participate in regional planning nor is there any legislation dealing with the state planning. (The 1973 supplements were not available at this writing.)

## II. Laws Enabling the Establishment of Statewide Housing Corporations

Mississippi has not enacted enabling legislation for a statewide housing effort.

III. Public Housing Authorities

The main body of housing law in Mississippi concerns the local housing authorities, although regional authorities are authorized. Under the "Housing Authorities Law," each municipality and county is authorized to activate a local housing authority.<sup>5</sup> Each county housing authority is governed by a five-member commission appointed by the county board of supervisors.<sup>6</sup> The authorities are empowered to exercise the necessary functions to establish



low-cost housing for low income people.<sup>7</sup> Among these powers are the power to buy, sell, rent, contract and exercise the power of eminent domain.<sup>8</sup>

Each housing authority is required to fix rentals at the lowest possible rate consistent with the goal of providing safe and sanitary housing and meeting the demands for the financing of such housing.<sup>9</sup> Persons admitted to projects administered by any housing authority may not earn more than five times the annual rental of a unit in the project, subject to the proviso that \$100 may be deducted for each minor dependent of any person seeking admission.<sup>10</sup>

Local regulations including zoning and land use planning ordinances are applicable to all housing authority projects.<sup>11</sup> But, they are exempt from property taxes.<sup>12</sup>

An interesting feature of the "Housing Authority Law" is the provision that individual farmers may apply to county or regional housing authorities for housing for those farmers who operate or work on the owner's farm.<sup>13</sup>

Both cooperative<sup>14</sup> and regional<sup>15</sup> housing authorities are permitted by present legislation. A regional authority may be created when the boards of supervisors of two or more contiguous counties determine that there is need for an agency to exercise the powers of a housing authority on a broader scale.<sup>16</sup> The powers of the regional housing authority are essentially the same as those granted to county and municipal housing authorities.<sup>17</sup> Importantly, county and regional authorities are specifically authorized to engage in the establishment of rural housing projects (i.e., projects outside of the corporate boundaries of any municipality).<sup>18</sup> This is of some significance in that it is clear that authorities need not create projects near population centers.

#### IV. Codes and Inspection Procedures

The State of Mississippi has not adopted a statewide building code or minimum housing code.

Certain specified counties in the state are authorized to adopt building codes for the unincorporated portions of the county, but are restricted to adopting a code no stricter than that promulgated by a nationally recognized code group.<sup>19</sup> Municipalities are not restricted in regard to the type of building codes which they may adopt, but are authorized to promulgate codes concerning electrical work, plumbing, gas and sanitary facilities.<sup>20</sup>

Municipalities are specifically authorized to enact ordinances governing what constitutes housing unfit for human habitation.<sup>21</sup> State law prescribes the criteria for making such a determination.<sup>22</sup> Essential elements are defects which increase the chance of fire or accident, lack of adequate light, ventilation or sanitary facilities, and dilapidation, disrepair or structural defect.<sup>23</sup>

#### V. Legislation Affecting the Home Building Industry

Before bidding on or performing public or private work on jobs costing in excess of \$10,000, all contractors must obtain a statewide privilege license. The license fee is \$75.00, and there appears to be no exemption for single family construction.

Outside of local building code regulation, there appears to be no other restriction on construction of buildings in the State of Mississippi. The state fire marshal is not empowered to promulgate regulations concerning such things as electrical wiring, nor does he have any jurisdiction over residential housing, unless it should come to his attention that a hazardous condition exists in any building.<sup>24</sup> If this does arise, the fire marshal is authorized to take appropriate action through the attorney general's



office.<sup>25</sup> But it would appear that this kind of weak regulation does not present any problems in the context of implementing a federal program of rural housing.

#### VI. Mobile Homes and Modular Housing

Outside of regulations promulgated by the State Board of Health, mobile homes are regulated by two separate legislative acts, "The Uniform Standards Code for Factory Manufactured Movable Homes Act"<sup>26</sup> and "The Uniform Highway Traffic Regulation Act."<sup>27</sup>

The Uniform Standards Code Act is aimed at the problem of inspection of already constructed mobile homes and other factory-built housing. The commissioner of insurance is authorized to promulgate rules and regulations relating to the properties of the construction materials, and the standards for construction of electrical, plumbing and other systems pursuant to U.S.A. Standard A119.1, recommended by the United States of America Standards Institute.<sup>28</sup> To ensure that these standards are followed, the commissioner is granted broad power to specify the procedure necessary for inspection or other procedures of enforcement.<sup>29</sup>

All manufacturers and dealers of factory built housing are required to obtain licenses annually upon certification that the applicable construction standards will be met.<sup>30</sup> Licenses can be revoked only after the appropriate hearing and notice, in cases where there has been non-compliance with the applicabl

The other area in which state regulation affects mobile homes concerns the regulation of size and length of vehicles on state highways. The permissible width of any vehicle on state highways is eight feet.<sup>32</sup> The maximum length permitted is 35 feet whether the vehicle is a single unit or a combination of units.<sup>33</sup> These regulations might seem to present a problem for the transportation of mobile homes and modular units in the state, but

the state highway commission is authorized to issue, at its discretion, permits authorizing loads in excess of statutory standards upon application of the party seeking to move the load.<sup>34</sup>

## VII. Taxation of Mobile Homes and Modular Units

The State of Mississippi has an interesting approach to the taxation of mobile homes. Each mobile homeowner is required to register his home with the county assessor in the county where his home is located.<sup>35</sup> At that point the assessor issues a registration sticker and assesses the value of the mobile home.<sup>36</sup> If the mobile home is situated on land which does not belong to the owner of the mobile home, the owner must declare his mobile home as personal property at the time of assessment.<sup>37</sup> Mobile homes which are situated on property owned by the owner of the mobile home may be declared, at the time of assessment, either personal or real property at the owner's discretion.<sup>38</sup> Once the owner has treated his mobile home as personal property, he may later treat it as real property if he so chooses and vice versa.<sup>39</sup> Mississippi law clarifies the problem that often arises concerning taxation of mobile homes that are transported over the highways. Section 27-15-5 of the 1972 code specifically exempts mobile homes from the ad valorem taxation of motor vehicles.

There are no specific legislative enactments dealing with the question of how modular housing is taxed; from the general language of the statute on ad valorem real estate taxation<sup>40</sup> and the treatment of mobile homes for tax purposes, it appears that they may be taxed as real property rather than as personal property, but this is not totally clear.

### VIII. Taxation

There is no legal authority authorizing tax officials in Mississippi to maintain existing levels of assessment following improvement of substandard housing.

### IX. Laws Affecting the Operation of Banks and Savings and Loan Associations

Outside of the usury laws, there is little in the way of legislation which impinges on the ability of savings and loan associations and banks to use innovative mortgage arrangements. The law concerning such approaches as flexible mortgages or open-end mortgages is non-existent. It therefore must be assumed that such approaches are presently permissible in Mississippi.

Savings and loan associations have some restrictions in the mortgage arrangements they may deal in. They may loan money on secondary mortgages only if they own all the paramount liens on the mortgaged property.<sup>41</sup> Savings and loan associations cannot deal in loans secured by personal property unless it is in conjunction with real property.<sup>42</sup> But, outside of these relatively minimal restrictions, there is no other regulation of mortgage financing.

### X. Usury Laws

The maximum rate of interest on loans in Mississippi is 8 percent.<sup>43</sup> However, loans insured by the Federal Housing Administration or guaranteed by the Veterans Administration are specifically exempted from the constraints of the usury laws.<sup>44</sup>

It appears that both discounts and points are included in interest for usury purposes.<sup>45</sup> The statutes speak in terms of the amount received, directly or indirectly, by the lender as includable in interest.<sup>46</sup> The Mississippi Supreme Court has specifically recognized that discounts are interest.<sup>47</sup>

Certain other charges made to compensate for expenses in making a loan have been determined not to be interest. Such reasonable charges are not deemed consideration for the loan but rather compensation for services rendered.<sup>48</sup>

Mississippi has long recognized the time-price differential as being exempt from the usury laws, if the sale was bona fide.<sup>49</sup> The only area in which the time-price differential is regulated is in the area of motor vehicle financing, when the cost of the vehicle is less than \$7,500.<sup>50</sup>

#### XI. Welfare Lien Laws

There currently exists no welfare lien in the State of Mississippi.

#### XII. Health Laws and Regulations, Waste and Water System Requirements and Environmental Protection Laws

There exists little health or environmental legislation in the State of Mississippi which has any significant impact on rural housing. The Mississippi Department of Public Health is largely an advisory and information gathering body and wields no effective regulatory or enforcement power.<sup>51</sup> On the other hand, the Mississippi State Board of Health is empowered with extensive rulemaking authority to deal with problems impinging on public health.<sup>52</sup> One area in which the board of health is specifically charged with establishing health regulation concerns the sanitary facilities of mobile homes and trailer parks.<sup>53</sup> Within this responsibility lies a permissive grant to promulgate regulations concerning maintenance, regulation, inspection, equipment and control of house trailers as well as house camps. Also included in the board's authority is the power to register the trailers.<sup>54</sup>

Enforcement of board of health regulations is carried out by board-appointed county health officers.<sup>55</sup> Since these officers are appointed by the state board and for a two-year term, it would appear that the state board has effective control over the enforcement process. This would seem to be true even in the face of the existence of county boards of health. This is due to the limited advisory, publicity and information gathering functions which the county boards perform.<sup>56</sup> County health departments are also

authorized, but it seems, although it is unclear, that they operate essentially as arms of state health operations. They are funded by the individual counties.<sup>57</sup>

Other than the specific authorization to promulgate rules concerning mobile homes, there appears to be no other specific legislative directives to promulgate housing-related regulations.

In the environmental area, Mississippi has enacted the "Mississippi Air and Water Pollution Control Act."<sup>58</sup> The act creates the Air and Water Pollution Control Commission which has the authority to set standards for water quality.<sup>59</sup> The act makes it unlawful to discharge wastes below commission standards<sup>60</sup> and requires that a permit be procured from the commission whenever waste disposal systems are modified or constructed.<sup>61</sup> The commission may also require that plans for waste disposal system be submitted for commission approval prior to their construction.<sup>62</sup> It is unclear what impact this commission would have on the development of rural housing, but it seems reasonable to assume that regulations will be promulgated and designed to affect the "big" polluters as, for example, large industrial concerns, and not housing.

Other environmental constraints, such as the Mississippi Solid Waste Regulation,<sup>63</sup> have no substantial impact on the development of low cost rural housing.

### XIII. Landlord and Tenant Laws

Very little innovation has been added to the law of landlord and tenant since the initial codification of that body of law in 1848.<sup>64</sup> Thus there is little in the way of landlord-tenant law which is designed to induce the enforcement of local building codes or housing codes. (This assumes housing codes are a permissible function of the county board of supervisors.) Specifically, there are no provisions of statutory law nor any case law which indicates that a tenant may withhold payment of rent if the rented premises are substandard. Indeed, following the basic common law position, it is not incumbent on a lessor to repair the leased premises at all.<sup>65</sup> Any such responsibility is a

creature of contract and must be incorporated in the lease agreement to be enforceable against the lessor.<sup>65</sup>

Other innovations in landlord-tenant law fail to appear in the statutory or case law. For instance, there is no provision for a receiver to collect rent and make the necessary repairs on housing which is substandard, but there does appear a provision for a municipality to make repairs on substandard housing and retain a lien on that housing for the amount of the repair cost. (See Miss. Code Ann. §43-35-105). Similarly there appears to be no specialized adjudicatory body which hears only housing related matters.

#### XIV. Insurance

Mississippi does not have state legislation requiring insurance companies doing business in the state to write fire insurance in rural or substandard areas.

#### XV. Foreclosure of Tax Delinquent Housing

Mississippi has a relatively quick, simple method of foreclosing on tax delinquent dwellings. The tax payments are due on February 1, May 1 and August 1 in the year after assessment.<sup>67</sup> If taxes levied against real property are due and remain unpaid after February 15 and August 15, the realty is to be sold.<sup>68</sup> After adequate notice, the realty is to be sold by the collector on the first Monday of April and the third Monday of September.<sup>69</sup> After the taxes become delinquent and before the sale, the taxpayer can redeem his property by paying the tax, interest and cost accrued.<sup>70</sup> The sale is to the highest bidder for the taxes, fees, penalties and damages provided by law.<sup>71</sup> The subsequent filing of the list of realty sold with the chancery court vests in the purchaser title to the property subject to the former owner's right of redemption.<sup>72</sup> After the sale, the former owner, or any person for him with his consent, or any person with an interest in the land may redeem the property with a two-year limit on the right of redemption.<sup>73</sup> Within 90 days,

but not less than 60 days before the expiration of the right of redemption, the clerk of the chancery is required to notify the former owner and the lien holders on the realty.<sup>74</sup>

## FOOTNOTES

1. Miss. Code Ann., § 17-1-3 (1972).
2. Id., § 17-1-3.
3. Id., § 17-1-19.
4. Id., § 17-1-23(1), (2).
5. Id., § 43-33-5 (1972).
6. Id., § 43-33-7.
7. Id., § 43-33-11.
8. Id.
9. Id., § 43-33-13.
10. Id., § 43-33-15.
11. Id., § 43-33-21.
12. Id., § 43-33-37.
13. Id., §§ 43-33-121, 43-33-123.
14. Id., § 43-33-17.
15. Id., §§ 43-33-101 et seq.
16. Id., § 43-33-103.
17. Id., § 43-33-117.
18. Id., § 43-33-119.
19. Id., §19-5-9.
20. Id., §21-19-25.
21. Id., §45-35-103.
22. Id., § 45-35-107.
23. Id.



24. Id., § 45-11-3.
25. Id.
26. Miss. Code Ann., §§ 5131-101 et seq. (1972).
27. Id., §§ 63-5-1 et seq.
28. Id., § 5131-103 (1972 Supp.).
29. Id.
30. Id., § 5131-105.
31. Id., § 5131-107.
32. Id., § 63-5-13 (1972).
33. Id., §63-5-19.
34. Id., § 63-5-51.
35. Id., § 27-53-5.
36. Id., § 27-53-7.
37. Id., § 27-53-13.
38. Id., § 27-53-15.
39. Id., § 27-53-15.
40. Id., § 27-35-49.
41. Id., § 5288-15 (1972 Supp.).
42. Id.
43. Id., § 36 (1966).
44. Id., § 43-33-307 (1972).
45. Id., §§ 36, 37 (1966).
46. Id.
47. Hyde v. Finley, 26 Miss. 468 (1853); accord Hiller v. Ellis, 72 Miss. 701, 18 So.95 (1895); Polkinghorne v. Hendricks, 61 Miss. 366 (1883).
48. Johnson v. Caster 203 Miss. 38, 33 So.2d 296 (1948).
49. See Bryant v. Securities Investment Co., 233 Miss. 740, 102 So.2d 701 (1958).
50. Miss. Code Ann., §§ 8075-01 — 8075-24 (1956).

51. Id., § 45-1-7.
52. Id., § 41-3-17.
53. Id., § 41-25-13.
54. Id.,
55. Id., § 41-3-41.
56. Id., § 41-3-55.
57. Id., § 41-3-53.
58. Id., §§ 49-17-1 et. seq. (1956).
59. Id., § 49-17-19 (1972).
60. Id., § 49-17-29(b).
61. Id.
62. Id., § 49-17-19.
63. BNA-Environmental Reporter, State Solid Waste--Land Use, p. 1221-0501.
64. See, Miss. Code Ann., § 897 et. seq (1956).
65. Cousey v. Norwood, 156 So.592, 170 Miss 874 (1934).
66. Miller v. Miller 64 So.2d 1739, 217 Miss. 650, 38 A.L.R.2d 674 (1953);  
Rich v. Swalling, 137 So.325, 161 Miss. 503 (1931).
67. Id., § 27-41-1.
68. Id., § 27-41-5.
69. Id., § 27-41-55.
70. Id., § 27-41-17.
71. Id., § 27-41-59.
72. Id., §§ 27-41-79; 27-41-81.
73. Id., § 27-45-3.
74. Id., §§ 27-43-1, 27-43-5.

## APPENDIX E: TENNESSEE REPORT ON LEGISLATION

I. PLANNING AND ZONING AUTHORITY IN TENNESSEE IS DECENTRALIZED AND DISPERSED, WITH RELATIVELY LITTLE POWER VESTED IN THE STATE PLANNING OFFICE,

Because there are several tiers in the structure of Tennessee law relating to planning and zoning, this section is divided into several categories, based on the level of government involved.

A. State Role

The state's role in this area relates primarily to the state planning office's power to create planning regions and to define their boundaries.<sup>1</sup> Basically, it is the function and duty of a regional planning commission to make and adopt a general regional plan for the physical development of the territory of the region.<sup>2</sup> It is important to note that all reports and plans of the planning office and/or of any regional planning commission are merely advisory<sup>3</sup> and do not mandate compliance. (The chief legislative body of a municipality may, however, choose to designate the regional planning commission as the municipality's planning commission.<sup>4</sup>) In one respect, regional planning commission regulations must be complied with--in terms of platting authority, no plat of a subdivision of land within such a region, other than land located within the boundaries of a municipal corporation, can be filed for record or recorded until it has been approved by the commission.<sup>5</sup>

The state planning office is authorized to create planning regions for unincorporated communities and to establish regional planning commissions for them, provided that such a region does not exceed ten square miles nor contain less than 500 inhabitants.<sup>6</sup> Such a commission has more power than a regular regional planning commission because it also has the powers of a municipal planning commission,<sup>7</sup> discussed under subpoint C, following.

## B. Counties

The quarterly county court is the legislative and governing body of the county and consists of the justices of the peace of the county. The quarterly county court of any county is empowered to regulate, in the portions of the county which lie outside of municipal corporations, such typical zoning matters as building height and size, percentage of a lot which may be occupied, and land uses.

A significant exemption from county zoning regulations is buildings on and uses of agricultural lands, with certain limited exceptions.

As to amendments of zoning regulations, they must be submitted for approval or for suggestions to the appropriate planning commission, but if disapproved by that body may still be made operative by a majority vote of the entire membership of the county court.

## C. Municipal Level

Both planning and zoning functions are granted to municipalities. With respect to planning, the chief legislative body (regardless of the term used to designate it) is authorized to establish a municipal planning commission. Such a commission is charged with the function of making an official general plan for the physical development of the municipality, including any area outside of its boundaries which in the commission's judgment bears relation to the planning of the municipality. Once the commission has adopted a plan, no street or other public way, public building, or public utility may be constructed in the municipality without approval by the planning commission; however, a majority vote of the chief legislative body (or of the body author- ities or financing the project) may override the commission's disapproval.

With regard to platting authority, there is a provision similar to the  
<sup>16</sup>  
 regional planning commission's power.

Zoning authority is granted to the chief legislative body of the  
<sup>17</sup>  
 municipality, with a planning commission's zoning plan apparently being  
 a necessary prerequisite to action by the legislative body: "[w]henever the  
 planning commission of the municipality makes and certifies. . . a zoning  
 plan, . . . then the chief legislative body may exercise the powers granted. . .  
<sup>18</sup>  
 in §13-701. . . ." The planning commission must approve changes in the  
 municipal zoning plan, unless a majority of the legislative body overrides  
<sup>19</sup>  
 its disapproval.

§13-711 grants power to the chief legislative body of any municipality  
 to establish by ordinance zones or districts in territory adjoining but  
 outside such municipalities and lying within the planning region in which  
 the municipal planning commission has been designated as the regional plan-  
 ning commission by the state planning commission under §13-202 (which requires  
 that no part of the territory may be over five miles beyond the limits of the  
 municipality) and in which territory the county has no zoning already in  
 force. Generally, this outside land is treated as though it were part of the  
<sup>20</sup>  
 municipality for zoning purposes, and thus extra-territorial zoning is  
 explicitly authorized. Municipal zoning power over such territory is auto-  
 matically superseded and repealed when the county adopts county zoning  
<sup>21</sup>  
 covering that area. These provisions would have an impact on rural housing  
 when such housing is located within five miles of a municipality's borders.  
<sup>22</sup>  
 Presumably, agricultural lands would be excluded in any case by analogy.

#### D. General

Several points should be mentioned which transcend the specific cate-  
 gories above.

Preexisting private acts are not affected by the above provisions.

Whenever regulations made under authority of Chapter 4 (county zoning regulations) and Chapter 7 (municipal zoning regulations) conflict with any statute, the higher standard (e.g., lower building size or greater percentage of unoccupied land) governs.<sup>24</sup>

Historical structures and zones are authorized by §§13-416 and 13-716, which have identical language. Such structures and zones may be established by the chief legislative body of the municipality or county, which shall then create a historic zoning commission. The commission is given exclusive jurisdiction relating to historical matters.<sup>25</sup>

Finally, as a general point with respect to application of zoning laws, the Tennessee Supreme Court has repeatedly taken the position that they should be construed strictly in favor of the common law property right of unlimited uses. For example, see State ex rel Wright v. City of Oak Hill,<sup>26</sup> in which the court indicated that:

Zoning laws are in derogation of the common law, and operate to deprive an owner of a use of land which might otherwise be lawful. So, in application, such laws should be strictly construed in favor of the property owner.

## II. LEGISLATION ENABLING THE ESTABLISHMENT OF A STATE HOUSING CORPORATION

In 1973 the legislature created the Tennessee Housing Development Agency (THDA).<sup>27</sup> The THDA has a \$150 million bonding capacity. Its functions include evaluating state housing needs, providing technical assistance to developers, and providing seed money, construction loans and mortgage loans for low and moderate income housing. The agency is not authorized to act as a state housing authority, nor is it authorized to insure mortgages. Further there appears to be no authority in the statute for the THDA itself to become directly involved in the development of projects.

### III. HOUSING AUTHORITIES

The Housing Authorities Law<sup>28</sup> specifically authorizes the establishment of housing authorities and spells out their extensive powers in §13-804 (in addition to the enumerated powers, "an authority may do all things necessary and convenient to carry out the purposes and provisions of the Housing Authorities Law.") Furthermore, housing authorities have specific powers as to blighted areas.<sup>29</sup>

The Tennessee court held in Mink v. City of Memphis<sup>30</sup> that the general law on housing in the state is not mandatorily applicable to any municipality, but is merely authority for any municipality to establish a housing authority if it so desires.

All housing projects of an authority are subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality.<sup>31</sup>

#### A. City Housing Authorities.

Any 25 residents of a city and of the area within 10 miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority, the city council to determine whether such a need exists.<sup>32</sup> If so, the authority is created and is a public body corporate and politic.<sup>33</sup>

It is interesting to note that the boundaries of such an authority embrace not only the city but the area within 10 miles from the territorial boundaries of the city (provided that the peripheral area does not lie within another city or within the boundaries of another housing authority).<sup>34</sup> Therefore, a rural area on the outskirts of a small town may be included in its housing authority. See Exhibit F.

"City" until 1965 was defined as a city or town having a population of over 2,000 inhabitants, but the numerical requirement was abolished in that year.<sup>35</sup>

#### B. County and Regional Authorities

Creation of and powers of such authorities are similar to those of city housing authorities.<sup>36</sup>

For purposes of this report, §13-1009 is the most important provision, since it deals specifically with rural housing projects. See Exhibit G. Basically, it provides that housing authorities created for counties, and regional housing authorities (explained under Inter-Jurisdictional Housing Authorities below), are specifically empowered to borrow money, accept grants, and exercise their other powers to provide housing for farmers of low-income.

§13-1010 provides further that the owner of any farm operated or worked upon by "farmers of low-income"<sup>37</sup> in need of safe and sanitary housing may file an application with a housing authority of a county or regional housing authority, requesting that it provide for a safe and sanitary dwelling or dwellings for such farmers. This is a rather weak provision for several reasons. First, agricultural areas are exempted from the zoning regulations (see Point I, supra). Second, the tenants or workers may not apply for such housing, and (at least in some cases) expecting the landlord or owner to seek better housing for them is unrealistic, especially in tenant farming situations. Third, and perhaps most crucially, the application of the owner is merely "received and examined" by the housing authorities in connection with the formulation of projects of programs. Thus, any and all effects of the application result from a discretionary choice on the part of the authority members.

Finally, in relation to rural housing, a regional or county housing authority has the power to sell or rent dwellings outside of cities and to make or accept



such conveyances and leases as it deems necessary to carry out the rural housing purposes of the Housing Authorities Law.<sup>38</sup>

C. Inter-Jurisdictional Housing Authorities.

1. Cities.

With regard to city housing authorities, if land within the 10-mile limits of any city is in another county and not covered by another housing authority, nothing would prevent the city from exercising jurisdiction in the adjoining county (under §13-1905).

A housing authority of City A may also exercise any and all of its powers within the territorial boundaries of another municipality (B), for the purpose of planning, undertaking, financing, constructing, and operating a housing project(s) in B, if a resolution has been adopted by the governing body of B and by any housing authority theretofore established by B, declaring that there is a need for the housing authority of A to exercise its powers within B's territory.<sup>39</sup> See Exhibit H.

Consolidated housing authorities are also authorized if the governing bodies of two or more municipalities by resolution declare that there is a need for one housing authority for all such municipalities.<sup>40</sup> See Exhibit I. The area of operation of a consolidated housing authority includes all of the territory within the boundaries of each municipality, together with the territory within 10 miles of the boundaries of each. Upon the creation of the consolidated housing authority, any housing authority theretofore created for the municipality ceases to exist.

2. Counties and Regional.

Regional housing authorities may be created when the county court of each of two or more contiguous counties by resolution declare that there is a

need for one housing authority to be created for all such counties; upon its creation, any county housing authority created for any of the counties involved ceases to exist.<sup>41</sup> See Exhibit J.

The area of operation of a regional housing authority includes all of the counties for which it is created, excluding the area within the boundaries of any city or municipality (unless a resolution shall have been adopted by the governing body of such city and also by any housing authority which was theretofore established, declaring that there is a need for the regional housing authority to exercise its powers within such city.)<sup>42</sup> See Exhibit K. The same holds true for county authorities and municipalities.<sup>43</sup>

#### IV. CODES AND INSPECTIONS

There is no statewide building code.

In only a few places in the Health and Safety building regulations chapter are materials to be used in construction specified beyond the generic category. For example, interior stairways are to be made of "noncombustible materials throughout" except in buildings of frame construction and in buildings less than 30 feet high and occupied by less than 40 persons,<sup>44</sup> and spiral, slide, or tubular fire escapes must be made of "noncorrodible" sheet metal.<sup>45</sup>

With regard to minimum housing codes on the local level, §53-2539 provides that an appropriate local official can issue or enforce any regulation chapter, and that the provisions of the act supersede all less stringent provisions of municipal ordinances. It seems, therefore, that stricter local housing laws and/or housing codes are permissible.

#### V. THERE ARE FEW REGULATIONS AFFECTING THE HOME BUILDING CONSTRUCTION INDUSTRY, OUTSIDE OF HEALTH AND SAFETY REGULATIONS, AND ZONING

A license is required of all contractors undertaking work in excess of \$10,000, public or private. A \$25.00 application fee accompanying a written application is followed by an examination to determine qualifications by the State Board of

## VI. REGULATIONS GOVERNING THE USE OF MOBILE HOMES

### A. Motor Vehicle Registration and Licensing.

§ 59-103 declares that "'motor vehicle' shall also mean any mobile home or house trailer as . . . defined in § 59-105 . . . ," which in turn defines "mobile home or house trailer" as meaning any vehicle or conveyance not self-propelled, designed for travel upon the public highways, and designed for use, inter alia, as a residence or apartment.

Mobile homes or house trailers are subject to the registration and Certification of Title (license) provisions when they are occupied.<sup>46</sup> There are several exceptions to this requirement,<sup>47</sup> relating to all motor vehicles, and the one of greatest possible significance for housing purposes is that of vehicles owned by the government of the United States.

As for the registration fee, mobile houses or house trailers are designated Class (F) and are subject to a fee ranging from 18 dollars to 50 dollars, depending upon the width and length of the vehicle.<sup>48</sup> For purposes of the registration fee, mobile home or house trailer includes a trailer or semitrailer which is designed and equipped as a dwelling or sleeping place, either temporarily or permanently, and is equipped for use as a conveyance on streets and highways.<sup>49</sup> The Tennessee Supreme Court has held that nothing in this section prohibits a county from levying and collecting a privilege tax on motor vehicles. Adkins v. Robertson County.<sup>50</sup> See § 5-802.

Persons transporting mobile homes of over 35 feet in length must obtain a permit to be moved upon the public roads or highways, with a fee of three or five dollars being charged, if the mobile home is over 50 feet.<sup>51</sup> Manufacturers and dealers of mobile homes, or house trailers licensed to do business in Tennessee are exempt from these requirements.<sup>52</sup>

B. Operation of Vehicles--Rules of the Road.

Historically, Tennessee's rules of the road were patterned in almost verbatim conformity with the Uniform Vehicle Code, but since 1955 have received little amendment to conform to the Uniform Vehicle Code changes that have been made.<sup>53</sup>

With regard to speed limits, the applicable provision<sup>54</sup> does not mention trailers or mobile homes. While the general definition of "truck" is a motor vehicle designed, used, or maintained primarily for the transportation of property,<sup>55</sup> subsection (c) of § 59-852 defines truck as any motor vehicle of one and a half or more tons rated capacity. If this does include mobile homes with the requisite capacity, they must conform to the reduced speed limits for trucks.

In any event, determining the speed laws for mobile homes is not such a simple matter as looking at the limits in § 59-582, for § 59-583 empowers the bureau of highways to lower the speed limits wherever and whenever the bureau determines that it is in the interests of public safety to require a reduction. Furthermore, the legislative authority of a town or city has the power to prescribe such lower speed limits within certain areas or zones of its jurisdiction.<sup>56</sup> Municipalities may also make additional regulations for the operation of a vehicle, as long as such regulations do not conflict with the provisions of sections in the code.<sup>57</sup> For example, in Baumgartner v. Town of South Pittsburgh,<sup>58</sup> the Tennessee Supreme Court held a town parking meter ordinance valid. Thus, local regulations are of considerable importance in this area.

### C. Size, Weight and Load

Every vehicle must conform to the size, weight, and load requirements as are prescribed by the department of highways and the department of safety.<sup>60</sup>

No motor vehicle, as defined in § 59-103, whose length (including any part of body or load) exceeds 40 feet, and no motor vehicle with trailer or semitrailer attached, the total length of which combination (including any part of body or load) exceeds 55 feet, may be operated on any highway.<sup>61</sup>

With respect to maximum width and height, no motor vehicle as defined in §59-103, or any trailer or semitrailer, whose width (including any part of body or load) exceeds eight feet or whose height (including any part of body or load) exceeds 13 1/2 feet, may be operated on any highways, with certain exceptions not here relevant.<sup>62</sup> Special permits for movement of equipment exceeding eight feet in width may be issued by the Commissioner of Highways. See State of Tennessee Department of Highways Temporary Revision Notice Concerning Rules and Regulations for overweight and overdimensional movements on Tennessee highways, effective Oct. 1, 1971.

Except when a special permit is issued by the commissioner of highways,<sup>63</sup> no vehicle can be operated over the public highways when the gross weight exceeds 73,280 pounds.<sup>64</sup>

### D. A Note on Zoning Laws.

State v. City of Nashville<sup>65</sup> indicated that though a zoning ordinance fails to mention house trailers by name, when their use would violate the letter and the spirit of the zoning ordinance, they may be prohibited.

### E. Trailer Court Regulations.

Tennessee is considered a state having detailed regulations with respect to mobile home parks.<sup>66</sup> (It should be noted that the terms "trailer" and "mobile home" are interchangeable, the latter having replaced the former.<sup>67</sup> )

Under the definitions section, "trailer court" means any plot of ground within the state upon which two or more trailer coaches are occupied for dwelling or sleeping purposes, while "trailer coach" refers to any vehicle used or so constructed as to permit its being used as a conveyance upon the public streets or highways, and constructed in such manner as will permit occupancy thereof as a dwelling or sleeping place for one or more persons.<sup>68</sup> These broad definitions would appear to cover a park of mobile homes, each of which is a self-contained unit (i.e., having its own water and sewage facilities).

General supervision over the planning, location, and method of operation of trailer courts, and the adoption of rules and regulations pertaining thereto, is vested in the commissioner of public health.<sup>69</sup>

§53-3203 provides for a permit requirement for a trailer court, while §53-3204 gives inspection duties to the commissioner or to local health officers.

## VII. TAXATION OF MOBILE HOMES AND MODULAR UNITS

The "Retailers' Sales Tax Act"<sup>70</sup> provides basically for a sales tax at a rate of three percent of the sales price of each item or article of tangible property.<sup>71</sup>

A use tax is imposed on imports;<sup>72</sup> all tangible personal property imported from other states and used by the "dealer"<sup>73</sup> are subject to the tax imposed by the chapter.

Agricultural products are exempted,<sup>74</sup> as are all sales made to the state of Tennessee or to any county or municipality within the state.<sup>75</sup>

### MOBILE AND MODULAR UNITS

With regard to the taxing of mobile homes, the statutes do not give a definitive answer. §67-612 mentions as a class of personal property, farming implements, wheeled vehicles, automobiles, etc. Enumerating motor vehicles separately from automobiles lends itself to the conclusion that mobile homes with wheels are considered personal property; however, it is hard to determine what the taxing situation is meant to be if the wheels are removed or indeed never installed in the first place.

§67-507 does provide that the property of housing authorities is exempt from all taxes and special assessments of the state or any city, town, or political subdivision thereof, while the more general exemption from taxes for government property is §67-502: all property of the United States, the state, or any county or incorporated city, town, or taxing district, that is used exclusively for public or municipal purposes, is exempt. Neither the state nor any of its arms or agencies is liable to taxation, unless expressly so declared by statute, for they are impliedly excluded from the general tax laws. Henson v. Monday.<sup>76</sup> It appears, therefore, that if a mobile home park and the trailers therein are owned by a governmental unit, they will not be taxed.

VIII. TAXATION

According to §67-605 (1967), all property is to be assessed and taxed "according to its value, which shall be ascertained from the evidences of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without undue consideration of speculative values." See Exhibit E.

Prior to 1967, the section used the term "actual cash value," reflecting the position of the leading case of Carroll v. Alsup,<sup>77</sup> that the actual cash value is the only practicable basis upon which taxes can be made equally uniform and is clearly the constitutional requirement (see Article 2 §28 of the Tennessee Constitution) and the legislative intent.

The Alsup case still seems to maintain considerable vitality, not only because the new wording is quite similar (albeit more sophisticated and elaborated), but also because the wording "actual cash value" was not changed in other sections. §67-101 (5) provides that it is the duty of the commissioner of finance to procure the assessment of all property in the state at the actual cash value thereof, and §67-103 (privilege taxes) states that the commissioner has the power to raise or lower any assessment fixed by the county court clerk on merchants, "in order to make said assessments conform to the standard of the actual cash value of the property."

It seems, therefore, that a refined actual cash value approach is used in state assessments, and that, as a result, property must be assigned such value.



IX. LAWS AFFECTING THE OPERATION OF BANKS AND SAVINGS AND LOAN ASSOCIATIONS  
IN THE HOME MORTGAGE FIELD

A. Banks.

All banks are endowed with the powers and rights conferred upon banking corporations for profit by the Tennessee General Corporation Act, mentioned in the preceding section, subject to regulation by the superintendent of banking.<sup>78</sup> In other words, they are treated basically as regular corporations and are specifically given the power to secure any of their obligations by mortgages or to receive, sell, and otherwise deal in and with them.<sup>79</sup> Furthermore, a corporation has the power to guarantee obligations of any other entity and to secure such guarantees by mortgage, pledge, or otherwise.<sup>80</sup> No specific statutory regulations exist as to banks in general and mortgages, apart from those applicable to corporations.

B. Building and Loan Associations.

Building and loan associations are now commonly referred to as savings and loan associations.<sup>81</sup> In contrast to banks in general, there are detailed requirements as to building and loan associations. §45-1301 defines a building and loan association in a somewhat circuitous manner: any association or corporation which is chartered under any building and loan law to carry on the business of a building and loan association. The following material, dealing with Title 45, Chapter 12--Loans and Investments by Building and Loan Associations, merely hits the highlights of the provisions contained therein. See Exhibit B for a more comprehensive description.

Savings and loan associations licensed to do business in Tennessee are required to maintain a department to service the loans and property securing such loans, including investigation of applicants and enforcement of contractual and governmental obligations. Such associations are authorized to collect a service fee not exceeding 2 1/2 percent per annum of the unpaid balance to defray the expense of providing such a service department; the fee may be made payable in periodic installments running throughout the life

Building and loan associations or building associations may lend their funds to their stockholders or members according to terms prescribed by the corporations constitutions and by-laws, with the limitation that all such loans be secured by first liens upon real estate, the loan in no case to exceed in amount two-thirds the value of the real estate as determined by the board of directors.<sup>83</sup> This limitation does not apply to mortgage loans issued by the FHA.

Multiple loans upon the same property may be made by a building and loan association, provided that the total of the first and additional loans does not exceed two-thirds of the appraised value of the real estate and that such association hold no junior mortgage without holding the senior mortgage or mortgages.<sup>84</sup> Any real estate mortgaged or conveyed in trust to secure a debt to the association may be purchased by it at a judicial, execution, or trustee sale.<sup>85</sup>

§45-1412 deals with home improvement installment loans or loans for the purchase of mobile homes which federal savings and loan associations have the power to make, and lays down special provisions as to interest and necessary expenses. The following section in the code authorizes a federal savings and loan association, in making an installment loan of over 300 dollars, to require the borrower to issue insurance on tangible personal property or on the life of the borrower.

A special privilege tax is assessed on building and loan associations by §45-1501, the nature of which tax is spelled out in §45-1502; basically, it is 7 percent on the net income, with the proviso that the amount of the tax be not less than 1 1/2 percent of the association's gross income for the previous fiscal year. Definitions of "net income" and "gross income" are contained in this section.

The privilege tax is exclusive, and all other taxes except the ad valorem taxes upon real estate and tangible property owned by an association are not applicable.<sup>86</sup>

NO PROVISIONS WERE FOUND AS TO "FLEXIBLE" MORTGAGE FINANCING.

NO PROVISIONS WERE FOUND RE OPEN-END MORTGAGES.

- X. USURY LAWS: THE BASIC MAXIMUM LEGAL RATE OF INTEREST IS 10 PERCENT (THE MAXIMUM ALLOWED UNDER THE STATE CONSTITUTION), BUT THERE ARE WAYS TO CIRCUMVENT THIS MAXIMUM.

A. "Interest" and "Usury"

Interest is defined in the Tennessee code as "the compensation which may be demanded by the lender from the borrower, or the creditor from the debtor, for the use of money."<sup>87</sup> According to §47-14-104, the legal rate of such interest is 6 percent per annum, but contracts may be made in writing for the payment of a rate of interest not greater than 10 percent per annum payable on the unpaid principal: "[e]very excess over these rates is usury, except as otherwise provided." This maximum is in accord with Article 11 Section 7 of the Tennessee Constitution, which grants the legislature the power to fix the rate of interest, but with the limitation that such rate is "not to exceed ten per centum per annum."

Moreover, no discount may be charged on any loan contracted under the above provision, resulting in an effective rate of interest of greater than 10 percent per annum over the stated term of the loan.<sup>88</sup> No distinction is made whether the seller or the buyer first pays the points.

There are no special provisions for either FHA, VA, or other governmental housing loans in the code. As to compound amortization, there are no statutes or cases prohibiting it (provided that the effective rate of interest does not exceed 10 percent per year over the stated term of the loan).

## B. Exceptions

Under the terms of §47-14-104, the 10 percent contract rate does not apply to loans or credit extended under the "Industrial Loan and Thrift Companies' Act,"<sup>89</sup> in which event the maximum rate at which interest can be deducted is 7 1/2 percent per annum; nor does it apply to installment loans of banks and trust companies and building and loan associations on which interest is deducted in advance or added to the principal, as provided in §§45-433 and 45-1412, in which cases interest computed on the principal amount of the loan for the entire term is not to exceed 6 percent per annum.

## C. Rates Above the Statutory Maximum not Constituting Usury.

Silver Homes, Inc. v. Marx & Bendorf, Inc.<sup>90</sup> reiterated the Tennessee rule that the consideration which the lender may legally demand is not determined by what the borrower pays, but by what the lender receives. Thus, in that case the Tennessee court held that an FHA mortgage loan bearing 5 3/4 percent interest per annum and requiring additional premiums making the total rate go above 6 percent (the then statutory maximum) was not a violation of the usury laws, since the additional payments were not for the benefit of the mortgagee but were required to be turned over by him to the Federal Housing Administration.

Whether a "late charge" in excess of the legal rate of interest constitutes usury depends on whether the charge is made as consideration for extension of time for payment or as compensation for the damage done the creditor by the debtor's failure to pay the debt when due, the former constituting usury but not the latter. Wilson v. Dealy.<sup>91</sup> In Wilson, the Tennessee court upheld a late payment penalty fee which was reasonably related to the lender's actual damages suffered because of the borrower's tardiness. This rationale would seem to be applicable to penalties for other than tardiness.

It is well settled in Tennessee that when credit is advanced by the seller to the buyer, the parties may contract for a higher rate of interest without its constituting usury, the stipulation for the greater than usual rate of interest being consideration for a deferral of payment. See  
<sup>92</sup>  
First Nat. Bank v. Mann.

Compound interest contracted for or agreed upon when the debt is created, or subsequently in the extension of the same, is not usury and, therefore, is not illegal. Woods v. Rankin.<sup>93</sup>

For other aspects of the question of what is usurious, as expressed in state case law, see 8A T.C.A. 666-675.

D. Relief Against Usury.

A defendant sued for money may avoid the excess over legal interest by a plea setting forth the amount of the usury,<sup>94</sup> while if usurious interest has been paid, the same may be recovered by the party from whom it was taken.<sup>95</sup>

The remedy given at law against usury does not prevent the party from<sup>96</sup> having relief in equity. But where a court of law first obtains jurisdiction, its judgment will be conclusive, and chancery will not entertain a bill to disturb it, except in special cases. See Parker v. Bethel Hotel Co.<sup>97</sup>

A usury claim after two years from the date of the payment of the debt upon which such claim for usury is based is barred.<sup>98</sup> In the case of continuous usurious transactions, the statutes of limitation do not commence to run until the principal, with the legal interest thereon, is paid. Star Sav. & Loan Ass'n v. Woods.<sup>99</sup>

# XI. WELFARE LAWS

There is no welfare lien provision in the state laws. Prior to its repeal in 1953, there was a rather narrowly-drawn provision<sup>100</sup> providing that on the death of any recipient of old-age assistance, a lien was created in favor of the state for the amount of such assistance, after funeral expenses not exceeding \$100 and limited to cases where there was fraud by the recipient and where the heirs were morally responsible for the care of the recipient and able but unwilling to provide it.

Somewhat analogously, however, with request to eligibility for old-age assistance,<sup>101</sup> aid to the disabled,<sup>102</sup> and aid to the blind,<sup>103</sup> one of the conditions is that within the five years immediately preceding application or during receipt of assistance, the person has not, in order to evade any provision of the chapter, made an assignment or transfer of property, the proceeds from which, at the fair market value (irrespective of the actual consideration received), would under the state standards of need still be available to meet the needs of the individual. Any transfer of property to a husband, wife, son, daughter, son-in-law, daughter-in-law, nephew, or niece, within the period above mentioned, is considered prima facie evidence that the transfer was made with the intent to evade the provisions of the applicable chapter.

XII. HEALTH LAWS AND REGULATIONS, WASTE AND WATER SYSTEM REQUIREMENTS AND ENVIRONMENTAL PROTECTION LAW

A. Building Regulations

Chapter 25 of Title 53 (Health and Safety) is concerned with building regulations. As to the application of these regulations:

This chapter is declared to be remedial, and shall be liberally construed to secure the beneficial interests and purposes hereof which are public safety, health and welfare, through structural strength and stability, means of egress and safety to life and property from fire and hazards incident to the design, construction, alteration and repair of buildings or structures.<sup>104</sup>

No building or structure may be constructed, altered, or repaired except in conformity with the provisions of the chapter, and it is unlawful to maintain, occupy, or use a building or structure or part thereof that has been erected or altered in violation of them.<sup>105</sup> Furthermore, it is unlawful to alter a structure in such a way as to violate regulations of the fire marshal issued under the chapter. The provisions apply with equal force to municipal, county, or state buildings as they do to private buildings, except as specifically provided for by statute.

Exceptions are spelled out in §53-2502 (see Exhibit C). The relevant exception is that nothing contained in this chapter applies to buildings, whether hertofore or hereafter constructed, which are "occupied exclusively as dwellings or having not more than two (2) apartments. . . ." This would appear to exclude one-family units and duplexes from the building regulations. According to Wyatt v. State,<sup>106</sup> "dwelling" refers to a place in which a person or family resides. While there is no case law or statutory explanation of the word "dwellings" in the expression "occupied exclusively as dwellings," it is only logical to assume that it refers to single-family dwellings. Otherwise, "or having not more than two (2) apartments" would be superfluous. Indeed, exempting all residential buildings from the building regulations would defeat the whole purpose of the act.

It is provided in Title 12 of Chapter 13 (Slum Clearance) that the public officer may order an owner of a dwelling to repair, alter or improve the dwelling, or to vacate and close it;<sup>107</sup> if the owner fails to comply, the public officer may cause such dwelling to be repaired, altered or improved, to be vacated and closed, or to be removed or demolished,<sup>108</sup> and the amount of the cost of such becomes a lien against the real property upon which the cost was incurred.<sup>109</sup> See Exhibit D.

Requirements for installation of water and waste systems may have an effect on lot size.

#### B. General Water and Sewage Requirements

§53-2004 provides that no person shall install, permit to be installed, or maintain any cross connection, auxiliary intake, bypass, or interconnection, **unless** the source and quality of water from the auxiliary supply, the method of connection, and the use and operation of such cross connection, auxiliary intake, by-pass, or interconnection has been approved by the state department of public health. The arrangement of sewer, soil, or other drain lines or conduits carrying sewage or other wastes in such a manner that the sewage or other waste may find its way into any part of the public water supply is prohibited.

The department of public health exercises general supervision over the construction of public water supplies and public sewer systems, and their operation and maintenance,<sup>110</sup> and the department may enforce any standards, policies, orders, rules or regulations issued by it to control public water supplies and public sewer systems; such suits as may be necessary to effectively carry out the provisions of the chapter may be instituted by it in any court of competent jurisdiction.<sup>111</sup>

County and municipal health boards or administrative agencies may require that buildings be connected with the public sewerage facilities.<sup>112</sup>



### C. Sewerage Disposal Systems of Subdivisions

Lot size requirements dependent upon the availability of public water supplies are dealt with in §53-2012. When such supplies are available, the minimum lot size is 7,500 square feet, when not available, 15,000 square feet. Minimum distances from a water well or other source may be specified, additional lot size may be required as indicated by percolation tests, or the particular lot or lots may be disapproved when it is determined that the soil will not absorb the sewage. This section does not apply within the corporate limits of municipalities.

For purposes of §§53-2009 to 53-2016, "subdivision" is defined as any tract or parcel of land divided or proposed for division into five or more lots, sites, or other divisions, for the purpose of immediate or future building of houses or other developments, requiring a maximum lot size in any subdivision be 40,000 square feet or less to a minimum of 15,000 square feet. This "requiring a maximum. . ." provision is unclear in meaning.<sup>113</sup>

The state department of public health is authorized to exercise general supervision over the planning, construction, and operation of individual sewage disposal systems for proposed subdivisions, where public sewerage systems are not available, except within the corporate limits of municipalities, and to establish standards for individual sewage disposal systems.<sup>114</sup>

The owner of a proposed subdivision is required to submit detailed information, including a map of the surrounding area and of the area to be subdivided, showing (inter alia) proposed lot sizes and location of supply lines.<sup>115</sup> He must also furnish such additional data as required by the local health officers as a basis for determining the suitability of individual lots.<sup>116</sup>

Local health officers are given the duty to enforce the terms of §§53-2009 - 53-2016 when the commissioner of public health determines that they are not being complied with.<sup>117</sup> All rules and regulations adopted by county boards of health or other governing bodies, except municipal governing bodies, must conform to the minimum requirements established by the department (this suggests that stricter standards are permissible). The health officer makes investigations and recommendations and reviews plans as necessary to enforce the terms of §§53-2009 - 53-2016.

It should be noted that the sections are not applicable to counties or municipalities wherein a comparable system of supervision over the planning, construction, and operation of a sewerage disposal system had theretofore been enacted by any private act or effective local ordinance.<sup>118</sup>

The commissioner or local health officer may institute a civil action in chancery court for injunctive relief to prevent violation of these sections. Furthermore, no proposed subdivision, except those within the corporate limits of a municipality, can be approved by the local planning commission unless the plan for sewerage disposal has been approved by the local health officer.<sup>119</sup>

In sum, subdivision regulation with regard to water and sewerage facilities is quite involved, both in terms of administration and substantive requirements.

#### D. Environmental Laws

##### Air Pollution

The key legislation here is the Tennessee Air Quality Act<sup>120</sup> administered by an Air Pollution Control Board.

Air pollution from apartment houses or private dwellings is clearly covered by the act: §53-3409(b) provides that "air contaminant source" is any and all sources of emission of air contaminants, whether private or publicly owned, including all types of commercial, residential, and industrial buildings.

§§53-3411 and 53-3412 establish the board mentioned above and spell out its powers and duties, principally to promulgate rules and regulations to effectuate the purpose of the act (no specific technical standards are spelled out in the various sections.) In addition, the board is authorized to issue an emergency stop order for air contaminant sources, any other provision of the law to the contrary notwithstanding, if the commissioner of public health finds that emission from the operation of one or more air contaminant sources is causing imminent danger to the public health and safety, and the governor<sup>121</sup> approves the order. Furthermore, the board has a right to injunctive relief via any court of competent jurisdiction, to prevent violation of any duly promulgated rule or regulation.<sup>122</sup> But existing civil or criminal remedies for wrongful action are not impaired by the act,<sup>123</sup> nor are private rights<sup>124</sup> affected. Thus, while individual citizens have no right to bring an action for violation of the act, they do have channels of redress.

Any municipality or county may enact by ordinance or resolution air pollution control regulations consistent with the standards ordered for the<sup>125</sup> state. The municipality or county must first apply for and secure from the board an exemption (unless it had an exemption as of March 24, 1967, in which event the exemption continues until a determination is made that the state standards are not being complied with or not being enforced.)

Any city, town, or county having a population of 600,000 or more, according to the most recent census, is authorized to enact ordinances or regulations not less stringent than the provisions of §§53-3408 to 53-3422 (ordinances or regulations enacting air pollution regulations must be exempted by the board.<sup>127</sup>) Therefore, cities or counties with the requisite population can have stricter requirements than the state.

For specific requirements promulgated under the act, see the Tennessee Air Pollution Control Regulations (adopted Jan. 25, 1972), contained in BNR Environmental Reporter 2 State Air Laws 47 (1972). Open burning regulations are found in Chapter 4 of the regulations.

#### Water Pollution

The Tennessee Water Quality Control Act of 1971<sup>128</sup> is the applicable state legislation. Owners of apartment houses and other residential buildings are clearly covered by its provisions: §70-326 (10) defines "person" as meaning any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions or officers thereof, departments, agencies, or instrumentalities, or public or private corporations. Obviously, this definition was meant to be practically all-inclusive.

A Water Quality Control Board was created by the act, and it has the duties of establishing and enforcing standards of quality for all the waters in the state.<sup>129</sup> The commissioner of the board may assess the liability of any polluter or violator for damages done to the state by the persons polluting or violating,<sup>130</sup> in addition to the criminal penalties under §70-337. Injunctive relief to stop or prevent pollution or violation is available to the commissioner, in any appropriate court.<sup>131</sup> The court may grant the injunction without the necessity of showing a lack of adequate remedy at law. The commissioner may

also bring suit for injunctive enforcement of any order made by him, and all findings of fact contained in the order and complaint are deemed to be final.

Any person may file with the commissioner a standard complaint against any person allegedly violating the act (contrary to the Air Pollution Control Act, the difference in treatment not being a rational one), and nothing in the act is designed to abridge or alter equitable or common law rights of act,<sup>132</sup> such as nuisance.

All sections of the act are to be liberally construed for the accomplishment of the purpose of preventing water pollution.<sup>133</sup> For regulations promulgated under the act, see BNA Environmental Rptr. 2 State Water Laws 65 (1972).

### XIII. LANDLORD AND TENANT LAW

No statutory authority exists to allow for court appointment of a receiver to collect rents and make improvements.

Chapter 12 of Title 13 on Slum Clearance<sup>134</sup> makes no reference to this kind of power and, aside from the lack of statutory endorsement of the power, several decisions of the Tennessee court make appointment of a receiver for such purposes appear doubtful, although it has never been directly prohibited.

In Orman v. Bransford Realty Co.,<sup>135</sup> the state high court indicated that the power to appoint a receiver should be exercised with caution and only in extreme cases, under extraordinary circumstances or circumstances requiring summary relief. The case can be distinguished in that it involved a minority stockholder of a corporation seeking appointment of a receiver, but the court's broad statements urging caution appear applicable here as well.

Brashears v. Hartsook,<sup>136</sup> a much more recent case, refined Orman by holding that when a judgment creditor has an adequate remedy at law by way of garnishment, the remedy of bringing a bill in chancery court to compel transfer of the funds to a receiver is not available. By analogy, if there is a remedy at law, a receiver should not be appointed to collect rents and make improvements; as to making improvements, public officials are authorized to order their effectuation (see Point XVII, supra), and this probably bars appointment under Hartsook.

It should be noted that there may be some authority to appoint a receiver under the general equity power, but the extent of such power is uncertain.

No housing court or similar court exists in Tennessee.

It might be noted that as of 1972, the governing bodies of home rule municipalities are authorized to establish city courts to try violations of municipal ordinances.<sup>137</sup>

There is no legislation permitting tenant suits for damages in cases of landlord's failures to meet housing code.

The tenant has no right to withhold payment of rent if the landlord does not comply with the minimum housing code.

Nothing is said about the right to withhold rental payments, anywhere in the code and of course the common law recognizes no such right on the part of the tenant.

#### XIV. THE STATE DOES NOT REQUIRE INSURANCE COMPANIES DOING BUSINESS IN TENNESSEE TO WRITE FIRE INSURANCE IN SUBSTANDARD AREAS

No such requirement is contained in Chapter 5 of Title 56 (Fire Insurance), §§56-501-56-518.

#### XV. TAX FORECLOSURE

The county trustee is the collector of all state, municipal, and county taxes which are levied on property.<sup>138</sup> Accrued taxes on all real property, plus all damages and costs accruing thereon, are and remain a first lien upon

such property.<sup>139</sup> Thus, there is a lien upon the land for taxes against it in favor of the state, county, or city, Pope v. Knoxville Indus. Bank,<sup>140</sup> and it overrides all mortgages, encumbrances, and other liens of whatever kind there may be upon the property.<sup>141</sup> Dunn v. Dunn.

Chapter 20 of Title 67<sup>142</sup> deals with enforcement of tax liens. Preliminary notice is required; as a preliminary step toward enforcing the lien for uncollected land taxes charge to him, the county trustee must have a notice inserted in one or more newspapers of the county once a week for two consecutive weeks in the month of January.<sup>143</sup> As a second step, after the publication of notice and between February first and March first, the trustee is directed to appoint an attorney, who shall bring suit after February first and before March first in the circuit or chancery courts of the county for the collection of land taxes due to the state, county, or municipality.<sup>144</sup>

When the amount due is ascertained, the court shall order a sale of the land for cash, subject to the equity of redemption. The proceeds from the sale are applied first to the payment of a ten percent penalty allowed as compensation for prosecuting the suit, second to the cost, and the remainder is applied to the state, the county, or the municipality (in that order).<sup>145</sup>

All of the provisions of the chapter are to be construed liberally in favor of the validity of all official acts pursuant thereto.<sup>146</sup>

In addition to the basic foreclosure provisions above, officers charged with the duty of collecting state revenues are authorized to issue a distress warrant,<sup>147</sup> and if the officer cannot find personal property to satisfy the warrant, he may levy the same upon any real estate in his county belonging to the taxpayer.<sup>148</sup>

Municipal corporations having power under their charters to collect their own taxes may provide for the collection of their delinquent real property taxes by ordinance.<sup>149</sup>

# FOOTNOTES

1. Tenn. Code Ann. § 13-107 (1955). (Hereinafter cited as T.C.A.)
2. Id., § 13-108.
3. Id.
4. Id., § 13-204.
5. Id., § 13-302.
6. Id., § 13-210.
7. Id., §§ 13-211 and 13-212.
8. Id., § 5-528 (1971).
9. Id., § 5-501.
10. Id., § 13-401 (1955).
11. Id., § 13-414. See Exhibit A.
12. Id., § 13-405.
13. Id., § 13-501.
14. Id., § 13-503.
15. Id., § 13-507.
16. Id., § 13-602.
17. Id., §§ 13-701 & 13-702.
18. Id., § 13-702.
19. Id., §§ 13-703 & 13-704.
20. Id., § 13-714.
21. Id., § 13-715.
22. See T.C.A., § 13-414.
23. Id., §§ 13-309, 13-415, 13-609 (under this section, the private acts are supplemented by the statutory provisions), and 13-710 (but the provisions of the chapter not inconsistent with the provisions of the special or private act also apply.)
24. Id., §§ 13-412, 13-709.



25. Id., §§ 13-416(d), 13-716(d).
26. 321 S.W.2d 557,559 (Tenn. 1959).
27. Tennessee Housing Development Agency Act TCA §
28. T.C.A., §§ 13-801 -13-831 (1972 Supp.)
29. Id., §§ 13-813 & 13-814 (1955).
30. 222 Tenn. 216, 435 S.W.2d 114 (1968).
31. T.C.A., § 13-811 (1955).
32. Id., §§ 13-901 & 13-902.
33. Id., § 13-904.
34. Id., § 13-905.
35. Id., § 13-802 (1972 Supp.).
36. Id., §§ 13-1001, 13-1008 (1955).
37. Defined in § 13-802(19).
38. Id., § 13-1011.
39. Id., § 13-915.
40. Id., § 13-918.
41. Id., § 13-1002.
42. Id., § 13-1003.
43. Id.
44. T.C.A., § 53-2507(1)(a) (1966).
45. Id., § 53-3507(11).
46. T.C.A., § 59-301 (1968).
47. Id.
48. Id., § 59-421.
49. Id.
50. 201 Tenn. 596, 301 S.W.2d 337 (1957).
51. T.C.A., § 59-454 et seq.
52. Id., § 59-461.
53. Study of the State's Motor Vehicle Laws 1972, Final Report of the Legislative Council Committee, FR-1972-BZ, at 64.

54. T.C.A., § 59-852.
55. Id., § 59-801.
56. Id.
57. Id., § 59-1028.
58. 195 Tenn 53, 256 S.W.2d 705 (1953).
59. Motor Vehicle Laws Study, supra n. 34, at 49.
60. T.C.A., § 59-1101.
61. Id., § 59-1107.
62. Id., § 59-1108.
63. See § 59-1111.
64. Id., § 59-1109.
65. 207 Tenn. 672, 680, 343 S.W.2d 847, 850 (1961).
66. Bartke & Gage, Mobile Homes: Zoning and Taxation, 55 Corn. L.Q., 491, 513 n. 103 (1970).
67. Id., at 493.
68. T.C.A., § 53-3201 (1966).
69. Id., § 53-3202.

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70. Id., §§ 67-3001 - 67-3056 (1972 Supp.).
71. Id., § 67-3003.
72. Id., § 67-3005.
73. Defined in § 67-3017.
74. Id., § 67-3011.
75. Id., § 67-3012.
76. 143 Tenn. 418, 224 S.W. 1043 (1920).
77. 107 Tenn. 257, 64 S.W. 193 (1901).
78. T.C.A., § 45-501 (1972 Supp.).
79. Id., § 48-402(g) and (h).
80. Id., § 48-403.
81. Study on the State's Building and Loan Association Laws 1968, Final Report of the Legislative Council Committee, FR-1968-B7, at 8.
82. T.C.A., § 45-1401 (1964).

83. Id., § 45-1402.
84. Id., § 45-1409.
85. Id., § 45-1410.
86. Id., § 45-1504.
87. T.C.A., § 47-14-103(1972 Supp.)
88. Id.
89. Id., § 45-2007 (f).
90. 206 Tenn. 361, 333 S.W.2d 810 (1960).
91. 222 Tenn. 196, 434 S.W.2d 835 (1968).
92. 94 Tenn. 17, 27 S.W. 1015, 27 L.R.A. 565 (1894).
93. 49 Tenn. 46 (1870).
94. T.C.A. § 47-14-112 (1955).
95. Id., § 47-14-117.
96. Id. § 47-14-116.
97. 96 Tenn. 252, 34 S.W. 209 (1896).
98. T.C.A., § 47-14-118 (1955).
99. 100 Tenn. 121, 42 S.W. 872 (1897).
100. Public Acts 1937, Ch. 49, § 12.
101. T.C.A., § 14-203 (e)(1955).
102. Id., § 14-403(e).
103. Id., § 14-504(d).
104. Id., § 53-2543 (1966).
105. Id., § 53-2501.
106. 467 S.W.2d 811, 814 (Tenn. 1971).
107. Id., § 13-1203(c) (1955).
108. Id., § 13-203 (d) & (e).
109. Id., § 13-203(f).

110. Id., § 53-2003.
111. Id., § 53-2008.
112. T.C.A., §§ 5-1608 & 6-1403 (1971).
113. T.C.A., § 53-2009 (1966).
114. Id., § 53-2010.
115. Id., § 53-2011 (1)(a)(1972 Supp.).
116. Id., § 53-2011 (1)(c).
117. Id., § 53-2013 (1966).
118. Id.
119. Id., § 53-2014.
120. T.C.A. §§ 53-3408 -53-3422 (1972 Supp.).
121. Id., § 53-3416.
122. Id., § 53-3418.
123. Id., § 53-3420.
124. Id., § 53-3421.
125. Id., § 53-3422.
126. Id., § 53-3423.
127. Id.
128. Id., §§ 70-324 - 70-342.
129. Id., §§ 70-327 & 70-328.
130. Id. § 70-338.
131. Id., § 70-339.
132. Id., § 70-340.
133. Id., § 70-342(b).
134. Id., §§ 13-1201 -13-1209 (1955).
135. 168 Tenn. 70, 73 S.W.2d 713 (1934).
136. 224 Tenn. 36, 450 S.W.2d 7 (1969).
137. T.C.A., § 16-1201 (1972 Supp.). See § 6-509 (1972 Supp.) on home rule municipalities.

138. T.C.A., § 67-1104 (1955).
139. Id., § 67-1801.
140. 173 Tenn. 461, 121 S.W.2d 530 (1938).
141. 99 Tenn. 598, 42 S.W. 259 (1897).
142. T.C.A., §§67-2001 - 67-2046 (1972 Supp.).
143. Id., § 67-2001 (1955).
144. Id., §§ 67-2002 -67-2003.
145. Id., § 67-2012 (1972 Supp.).
146. Id., § 67-2043 (1955).
147. Id., § 67-2201
148. Id., § 67-2204.
149. Id., § 67-1319.

PUBLIC CHAPTER NO. 241

## HOUSE BILL NO. 220

By Sterling, King, Good, Carter, W.L., Martin, Mann,  
Jensen, Elkins, Crocker, Chivers, Atchley (Knox),  
Weldon, Williams, Ford (Cocke), Marshall, Webb,  
Spoone

Substituted for: Senate Bill No. 211

By Ochmig, Garland

AN ACT to increase available funds for the financing of residential housing for persons and families of lower and moderate income and creating the Tennessee Housing Development Agency; defining its duties, powers and responsibilities; and authorizing the issuance of bonds and notes of the agency to assist in the financing of such housing, and providing for the terms, security, payment and taxation thereof.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
THE STATE OF TENNESSEE:

SECTION 1. SHORT TITLE. This act shall be known and may be cited as the "Tennessee Housing Development Agency Act."

SECTION 2. DECLARATION OF FINDINGS AND PURPOSE. It is hereby found and declared that there continues to exist throughout the state a seriously inadequate supply of safe and sanitary dwelling accommodations, primarily accommodations for persons and families of lower and moderate income. This condition is contrary to the public interest and threatens the health, safety, welfare, comfort and security of the people of the state and is inimical to the sound growth and the development of its communities. An adequate supply of housing of a variety of housing types serving persons and families of all income levels and properly planned and related to public transportation, public facilities, public utilities and sources of employment and service is essential to the orderly growth and prosperity of the state and its communities. Present patterns and methods of providing housing unduely limit the housing options for many people in the state's urban centers, smaller communities and non-metropolitan areas.

It is further found and declared that one major cause of this condition has been recurrent, cyclical shortages of funds in private banking channels available for residential mortgages. Such shortages contribute to drastic reductions in construction starts of new

residential units. In addition, these cyclical shortages make the sale and purchase of existing residential units extremely difficult in many parts of the state, especially by those persons of lower and moderate income. The ordinary operations of private enterprise have not in the past corrected these conditions.

It is further found and declared that the drastic reduction in residential construction starts associated with such shortages cause a condition of substantial unemployment and underemployment in the construction industry which results in hardships to many individuals and families, wastes vital human resources, increases the public assistance burdens of the state and municipalities, impairs the security of family life, impedes the economic and physical development of municipalities and adversely affects the welfare and prosperity of all the people of the state. A stable supply of adequate funds for residential mortgages is required to spur new housing starts in an orderly and sustained manner and thereby to reduce the hazards of unemployment and underemployment in the construction industry. The unaided operations of private enterprise especially during periods of cyclical shortages of capital have not always been able to meet and cannot always meet the need for a stable supply of adequate funds for residential mortgage financing.

It is further found and declared that these conditions associated with such recurrent shortages of residential mortgage funds contribute to the persistence of slums and blight and to the deterioration of the quality of the environment and living conditions of a large number of persons residing in the state of Tennessee, have adversely affected the economy of the state as a whole, and are contrary to the declared policy of the state to promote a vigorous and growing economy, to prevent economic stagnation, to increase revenues to the state and to its municipalities and to achieve stable local economies.

Based upon the experience of the past, shortages of funds for residential mortgages in the private investment system can be expected to recur from time to time in varying degrees of severity with the adverse consequences described above. To bring greater stability to the residential construction industry and related industries, and thus to assure a steady flow of production of new housing units, the Tennessee Housing Development Agency shall be given the power to raise funds from private investors through issuance of its bonds and notes to (i) make funds available to sponsors, developers and builders for financing land development

and residential housing construction for lower and moderate income persons and families; (ii) to make funds available to sponsors, developers, builders and purchasers for permanent mortgage financing of housing for lower and moderate income persons and families; and (iii) to purchase existing insured mortgages from lenders within the state and direct an amount equal to the proceeds from the liquidated mortgage investments into new mortgages on residential real property; and (iv) to enter into advance commitments with lenders to purchase insured mortgage loans made to persons and families of lower and moderate income; and further, to provide technical, consultative and project assistance services to sponsors of land development or residential housing; and to assist in coordinating federal, state, regional and local public and private efforts and resources to otherwise increase the supply of such residential housing.

The General Assembly further finds that the authority and powers conferred under this act and the expenditure of public moneys pursuant thereto constitute a serving of a valid public purpose and that the enactment of the provisions hereinafter set forth is in the public interest and is hereby so declared to be such as a matter of express legislative determination.

SECTION 3. DEFINITIONS. The following words and terms, unless otherwise provided herein or the context clearly indicates a different meaning, shall have the following respective meanings:

(1) "Bonds" or "notes" means the bonds and notes respectively authorized to be issued by the agency under this act;

(2) "Agency" means the Tennessee Housing Development Agency created by this act;

(3) "Mortgage" shall include deeds of trust, mortgages, building and loan contracts or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof;

(4) "Lender" means any bank or trust company, federally approved mortgagee, savings bank, mortgage banking institution approved by the agency or federally insured savings and loan association which is located in the state;

(5) "Governmental agency" means any department, division, public agency, political subdivision or other



public instrumentality of the state, the federal government, and other state or public agency, or any two or more thereof;

(6) "Insured construction loan" means a construction loan for land development or residential housing which is secured by a federally insured mortgage or which is insured by the United States of America or an instrumentality thereof, or for which there is a commitment by the United States or an instrumentality thereof to insure such a loan or such construction loan which is secured by a policy of insurance issued by any private insurer qualified to issue such insurance in Tennessee and approved by the Agency, or for which there is a commitment to insure such loan made by any private mortgage insurer qualified to do business in Tennessee and approved by the Agency.

(7) "Insured mortgage" or "insured mortgage loan" means a mortgage loan for residential housing insured or guaranteed by the United States or an instrumentality thereof or for which there is a commitment by the United States or an instrumentality thereof to insure such a mortgage or such mortgage loan which is secured by a policy of insurance issued by any private mortgage insurer qualified to issue such insurance in Tennessee and approved by the Agency, or for which there is a commitment to insure such loan made by any private mortgage insurer qualified to do business in Tennessee and approved by the Agency.

(8) "Land development" means the process of acquiring land primarily for residential housing construction for persons and families of lower and moderate income and making, installing or constructing non-residential housing improvements, including water, sewer and other utilities, roads, streets, curbs, gutters, sidewalks, storm drainage facilities and other installations or works, whether on or off the site, which the agency deems necessary or desirable to prepare such land primarily for residential housing construction within this state;

(9) "Obligations" means any bonds or notes authorized to be issued by the agency under the provisions of this act;

(10) "Persons and families of lower and moderate income" means persons and families irrespective of race, creed, national origin, age or sex deemed by the agency to require such assistance as is made available by this act

established for each city or county by the board of directors. In establishing these income limits, the board of directors shall be required to take into consideration without limitation such factors that will insure for the citizens of each city and county the opportunity to live in equal quality housing relative to their needs including the following:

(a) the amount of the total income of such persons and families available for housing needs;

(b) the size of the family;

(c) the cost and condition of housing facilities available including consideration of the following:

(i) cost of a typical dwelling lot,

(ii) cost of materials,

(iii) cost of labor,

(iv) cost of real estate taxes,

(v) cost of home owners or renters insurance;

(d) the eligibility of such persons and families for federal housing assistance of any type predicated upon a lower income basis;

(e) the ability of such persons and families to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing decent, safe and sanitary housing, and deemed by the agency therefore to be eligible to occupy residential housing constructed and financed, wholly or in part, with insured construction loans or insured mortgages, or with other public or private assistance.

(11) "Average Tennessee household" means the Tennessee household of average size and median gross annual household income based on the most recent federal census.

(12) "Housing cost index" means an index of specific housing cost factors to the average Tennessee household calculated monthly or at such times as the agency may require, based on the following formula:

the median gross monthly household income divided into the sum of

(a) the monthly mortgage payment for the average Tennessee household based on a thirty (30) year mortgage, at the prevailing mortgage interest rate on a mortgage amount sufficient to purchase a standard housing structure that will meet minimum property standards as established by the Federal Housing Administration including an amount representative of the average yield in discount points and servicing fees to the lender on such mortgage based on the average discount paid at the latest Federal National Mortgage Association mortgage auction sale;

(b) a monthly cost factor for mortgage insurance based on the mortgage insurance premium that would be required on the mortgage at the prevailing interest rate;

(c) an average monthly cost factor for taxes and fire insurance incurred by the average Tennessee household on a standard housing structure as required by Federal Housing Administration minimum property standards based on data compiled by the Federal Housing Administration.

(13) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations for persons and families of lower and moderate income including the acquisition, construction or rehabilitation of land, buildings and improvements thereto and such other non-housing facilities as may be incidental or appurtenant thereto;

(14) "Servicing of mortgages" means the collection and payment of all principal and interest and all reasonable fees and charges by the "lender" for mortgages acquired by the agency;

(15) "Servicing fees" means that sum paid for the reasonable value of services rendered to the agency for the servicing of mortgages it acquires; and

(16) "State" means the state of Tennessee.

(17) "Qualified sponsors, developers, builders or purchasers" means any person, corporation, profit or non-profit, public or private, licensed general contractor

or any other person or entity deemed by the board of directors to be qualified in providing housing for low and moderate-income families. However, the Tennessee Housing Development Agency shall not be deemed to be included in the definition herein.

**SECTION 4. TENNESSEE HOUSING DEVELOPMENT AGENCY.** There is hereby created a body, politic and corporate, to be known as the "Tennessee housing development agency." The agency, a public agency and an instrumentality of the state, shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions and shall be deemed to be serving a public purpose in improving and otherwise promoting their health, welfare, and prosperity, and that the Tennessee housing development agency shall be empowered to act on behalf of the state of Tennessee and its people in serving this public purpose for the benefit of the general public. The agency shall have a board of directors composed of fifteen (15) members. The state treasurer, the comptroller of the treasury, the commissioner of the department of finance and administration, the commissioner of the department of economic and community development, and the executive director of the state planning office, and their successors in the office, from time to time shall, by virtue of their incumbency in such offices and without further appointment or qualification, be directors of the agency. The governor shall appoint the other members of the agency, who shall be citizens of the state and shall not hold public office. One of such appointees shall be a licensed real estate broker; one shall be a licensed general contractor primarily engaged in home building; two shall be engaged in the savings and loan association profession, in the commercial banking profession, or in the mortgage banking profession, except that no more than one of such members shall be from any one of such professions; one shall be a licensed architect skilled in urban and community planning; one shall be engaged in the retail building material supply profession; an executive director of a local public housing authority; and three shall be representative of the public at large, one from each of the three grand divisions of the state, and shall be knowledgeable about the problems of inadequate housing conditions in the state. Of the ten (10) members of the board of directors of the agency thus initially appointed, three (3) shall continue in office for terms of two years, three (3) shall continue in office for terms of three years, and four (4) shall continue in office for a term of four years, as designated by the governor at the time of appointment, and until their successors shall be duly appointed and qualified. The successor of each such member shall be

appointed for a term of four years, and until his successor shall be duly appointed and qualified, except any person appointed to fill a vacancy shall serve only for the unexpired term. All vacancies shall be filled by appointment of the governor. No member appointed by the governor shall serve more than two consecutive terms. Any member of the agency shall be eligible for reappointment, however, each member of the agency appointed by the governor may be removed for misfeasance, malfeasance, or willful neglect of duty as determined by the governor. Each member of the agency appointed by the governor before entering into his duties shall take an oath of office to administer the duties of his office faithfully and impartially, and a record of such oath shall be filed in the office of the secretary of state. The governor shall designate from those members of the agency appointed by the governor a member to serve as chairman. The term of the chairman shall extend to the earlier of either the date of expiration of his then current term as a member of the agency or a date six months after the expiration of then current term of the governor designating such chairman. The agency shall annually elect one of its members as vice chairman. The agency shall elect or appoint, and prescribe the duties of, such other officers as the agency deems necessary or advisable, including an executive director and a secretary. The executive director shall be a person of good moral character and shall be professionally qualified to administer the programs and duties of the agency. Such professional qualifications must as a minimum be evidenced by a minimum of three (3) years experience, immediately preceding his appointment or election in the theory and practice of residential housing construction, law, real estate, home mortgage finance, architecture, building materials supply, public administration or urban planning.

No part of the revenues or assets of the agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the agency shall receive no compensation for their services, but those members appointed by the governor shall be entitled to receive, from funds of the agency, for attendance at meetings of the agency or any committee thereof and for other services for the agency, reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties.

The executive director shall administer, manage and direct the affairs and business of the agency, subject to the policies, control and direction of the board of

directors. The secretary of the agency shall keep a record of the proceedings of the agency and shall be custodian of all books, documents and papers filed with the agency, the minute book or journal of the agency and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the agency to the effect that such copies are true copies, and all persons dealing with the agency may rely upon such certificates. Nine (9) members of the agency shall constitute a quorum and the affirmative vote of eight (8) members at a meeting of the members duly called and held shall be necessary for any action taken by the membership of the agency, except when expressly stated otherwise. No vacancy in the membership of the agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the agency.

The agency shall establish a housing cost index as defined in subsection 12 of section 3 of this act to be computed monthly or at such time or times as the agency in its discretion may require. The housing cost index shall serve to determine what percentage of the average Tennessee household's gross monthly income is required to pay for primary fixed housing costs under then existing housing market conditions and to establish a basis for a threshold at which the financial assistance programs of this act will become effective. Thus, it is hereby found and declared that when primary housing costs as defined by the housing cost index, reach or exceed twenty-five percent (25%) of an average Tennessee household's gross monthly income, a majority of Tennessee citizens are excluded from the normal housing market; and in light of that finding, when the housing cost index reaches or exceeds a factor of twenty-five percent (25%) and upon the approval of the board of directors, the financial assistance programs established in this act will become operative to aid in providing adequate housing for lower and moderate income persons and families as defined by subsection 10 of section 3 of this act. Provided, that, however, notwithstanding any other provision of this section, the agency may at any time approve the operation of the financial assistance programs of this act with the affirmative vote of nine (9) members of its board of directors.

**SECTION 5. GENERAL POWERS.** The agency shall have all of the powers necessary and convenient to carry out and effectuate the purposes and provisions of this act, including, but without limiting the generality of the foregoing, the power:

(1) To make or participate in the making of insured construction loans to qualified sponsors, developers, and builders for land development and/or for residential housing for lower and moderate income persons and families, all subject to the provisions of section 6 of this act;

(2) To make or participate in the making of insured mortgage loans to qualified sponsors, developers, builders and purchasers of residential housing for lower and moderate income persons and families, all subject to the provisions of section 7 of this act.

(3) To acquire, and contract to acquire, insured mortgages owned by lenders and to enter into advance commitments to lenders for the purchase of said mortgages, all subject to the provisions of section 8 of this act;

(4) To establish, and revise from time to time and charge and collect fees and charges in connection with making, purchasing and servicing any of its loans, notes, commitments and other evidences of indebtedness;

(5) To pay reasonable fees and charges in connection with making of purchasing its loans, notes, bonds and other evidences of indebtedness;

(6) To acquire real property, or any interest therein, on a temporary basis, in its own name, by purchase, transfer, foreclosure or otherwise; as may be necessary to carry out and effectuate the purposes of this act;

(7) Subject to any agreement with bondholders or noteholders, to sell any mortgages or other personal property acquired by the agency at public or private sale and at such price or prices as it shall determine;

(8) Subject to any agreement with bondholders or noteholders, to collect, enforce the collection of, and foreclose on any mortgage or other collateral securing an insured construction loan or an insured mortgage loan, and acquire or take possession of such mortgage or other collateral and sell the same at public or private sale, with or without bidding, and otherwise deal with such mortgage or collateral as may be necessary to protect the interests of the agency therein;

(9) To procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;

(10) Subject to any agreement with bondholders or noteholders, to consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms, mortgage loan, mortgage loan commitment, construction loan, contract or agreement of any kind to which the agency is a party;

(11) Subject to any agreement with bondholders or noteholders, to invest monies of the agency not required for immediate use, including proceeds from the sale of any bonds or notes; as provided in Section 45-436 Tennessee Code Annotated;

(12) To make, enter into and enforce all contracts or agreements necessary, convenient or desirable for the purposes of the agency or to the performance of its duties and execution or carrying out of its powers under this act, including contracts or agreements with any person, firm, agency, governmental agency or other entity, and all Tennessee governmental agencies are hereby authorized to enter into contracts and agreements, and otherwise cooperate with the agency to facilitate the purposes of the act.

(13) To contract for and to accept any gifts or grants or loans or appropriations of funds or property, or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from the state or any agency, instrumentality or political subdivision thereof, or from any other source and to comply, subject to the provisions of the act and to any agreements with bondholders or noteholders with the terms and conditions thereof. Provided, however, that any funds becoming available to the agency for subsidies of housing for low-income families shall be paid to the various housing authorities in the State, to meet the necessary subsidy needs of low-rent public housing as determined by the agency before any such funds are made available for any housing financed through the provisions of this Act.

(14) To borrow money and to issue negotiable bonds and notes for the purposes provided in this act and to provide for and secure the payment thereof and to provide for the rights of the holders thereof;

(15) To include in any borrowing such amounts as may be deemed necessary by the agency to pay financing charges, interest on the obligations for a



period not exceeding two (2) years from their date, consultant, advisory and legal fees, and such other expenses as are necessary or incident to such borrowing;

(16) Subject to any agreements with bondholders or noteholders, to purchase bonds or notes of the agency out of any funds or money of the agency available therefor, and to hold, cancel or resell such bonds or notes;

(17) To make and publish rules and regulations respecting its financial assistance programs and such other rules and regulations as are necessary to effectuate its corporate purposes;

(18) To make and execute contracts for the servicing of mortgages acquired by the agency pursuant to this act, and to pay the reasonable value of services rendered to the agency pursuant to those contracts;

(19) To renegotiate, refinance or foreclose, or contract for the foreclosure of, any mortgage in default; to waive any default or consent to the modification of the terms of any mortgage; to commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract or other agreement, and to bid for and purchase such property at any foreclosure or at any other sale, or acquire or take possession of any such property; to operate, manage, lease, dispose of, and otherwise deal with such property, in such manner as may be necessary to protect the interests of the agency and the holders of its bonds and notes;

(20) To employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the agency, and to fix and pay their compensation from funds available to the agency therefor;

(21) To provide technical and advisory services to sponsors, builders, and developers of residential housing and to residents thereof, including relocation assistance services to persons and families displaced because of public works projects;

(22) To promote research and development in proper land use planning for both urban and rural areas, in the use of technical codes in the home building industry, in planning and providing adequate community services and facilities, and in scientific methods of constructing low-cost residential housing of high durability;

(23) To sue and be sued in its own name, plead and be impleaded;

(24) To maintain an office in the city of Nashville and at such other place or places as it may determine;

(25) To adopt an official seal and alter the same at pleasure;

(26) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(27) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this act.

#### SECTION 6. INSURED CONSTRUCTION LOANS.

The agency shall be empowered to make or participate in the making of insured construction loans to qualified sponsors, developers, and builders for land development and/or residential housing for lower and moderate income persons or families when the financial assistance programs of this act become effective under the provisions of section 4. However, the agency will not make or participate in the making of any insured construction loans until it has notified all qualified lenders that the insured construction loan program is in effect and that the agency is prepared to enter into working agreements with qualified lenders for the making of insured construction loans to qualified sponsors, developers and builders; and it has determined that the insured construction loan is not otherwise available, totally or in part, from qualified lenders upon reasonably equivalent terms and conditions. Such determination shall be made by the agency only after the agency has notified all qualified lenders with whom working agreements have been established of a sponsor's, developer's or builder's loan application with the agency and after thirty (30) days from the date of notification no qualified lender has agreed in writing with the sponsor to make the insured construction loan upon reasonably equivalent terms and conditions. Such loans made under the provisions of this section to public housing agencies and not-for-profit corporations may be made by the agency to such borrower directly when the agency has determined that the loan is not otherwise available, totally or in part from private qualified

lenders upon reasonably equivalent terms and conditions.

**SECTION 7. INSURED MORTGAGE LOANS.** The agency shall be empowered to make or participate in the making of insured mortgage loans to qualified sponsors, developers, builders and purchasers of residential housing for lower and moderate income persons and families when the financial assistance programs of this act become effective under the provisions of section 4. Provided, however, no insured mortgage loans available under the provisions of this section shall be made for non-owner-occupied residential housing unless the sponsor, developer, builder, or purchaser is a public housing agency or a not-for-profit corporation established or certified to do business under the laws of this state and such public agency or not-for-profit corporation has on file for public record with the agency the salary schedule of its officers and employees. However, the agency will not make or participate in the making of any insured mortgage loan until it has notified all qualified lenders that the insured mortgage loan program is effective and that the agency is prepared to enter into working agreements with qualified lenders for the making of insured mortgage loans to qualified sponsors, developers, builders and purchasers; and it has determined that the insured mortgage loan is not otherwise available, totally or in part from private qualified lenders upon reasonably equivalent terms and conditions. Such determination shall be made by the agency only after the agency has notified all qualified lenders with whom the agency has working agreements of a sponsor's, developer's, builder's or purchaser's pending loan application and after thirty (30) days from the date of notification no qualified lender has agreed in writing with the sponsor to make insured mortgage loan upon reasonably equivalent terms and conditions.

Any loan made at a reduced interest rate under the provisions of this section shall not be assumed or in any way transferred to a subsequent purchaser of such residential housing unless such purchaser qualifies as a person or family of lower and moderate income under the provisions of subsection (10) of Section 3 of this act. Such loans made under the provisions of this section to public housing agencies and not-for-profit corporations may be made by the agency to such borrower directly when the agency has determined that the loan is not otherwise available, totally or in part from private qualified lenders upon reasonably equivalent terms and conditions.

Owner-occupied dwellings shall include duplex and condominiums occupied in part by the owners.

**SECTION 8. PURCHASE OF MORTGAGES.** The agency shall be empowered to purchase mortgages from lenders or enter into advance commitments to lenders

for the purchase of mortgages during periods when the financial assistance programs of this act become effective under the provisions of section 4.

The term "mortgage" as used in this section means an insured loan owed to a lender secured by a first lien on a fee simple or leasehold estate in real property located in the state and improved by a residential structure. "Real property" as used in this subdivision shall include air rights.

The agency may purchase or enter into advance commitments to purchase insured mortgages from lenders at such prices and upon such terms and conditions as it shall determine: provided, however, that the total purchase price for all mortgages which the agency commits to purchase from a lender at any one time shall in no event be more than the total of the unpaid principal balances thereof.

The agency shall require as a condition of purchase of mortgages from lenders other than mortgages purchased by the agency pursuant to advanced commitment agreements that such lenders shall, within such reasonable period of time as may be approved by the agency not in excess of one hundred and eighty (180) days of receipt of the purchase price, enter into written commitments to loan and, shall, within such period as may be approved by the agency, loan an amount equal to the entire purchase price of such mortgages on new residential mortgages for persons and families of lower and moderate income within the state having such terms as the agency may prescribe. The agency may refuse to approve any commitment to lend on a multiple dwelling mortgage if so required by the terms of any bonding resolution.

Such new mortgages shall bear interest at a rate which does not exceed the maximum interest rate, if any, set by the agency for such mortgages. The agency may set such a maximum interest rate chargeable on such new loans at the rate that the mortgages purchased by the agency were discounted to yield plus an interest differential, not in excess of one percent per annum, which the agency from time to time shall determine to be adequate consideration to induce such lenders to sell existing mortgages to the agency and to loan an amount equal to the proceeds on new mortgages in furtherance of the purposes of and subject to the conditions of this act.

The agency shall require the submission to it by each lender from which the agency has purchased mortgages, evidence satisfactory to the agency of the

making of new mortgage loans and in connection therewith may, through its employees or agents, inspect the books and records of any such lender.

Compliance by any lender with the terms of its agreement with or undertaking to the agency with respect to the making of any mortgage loans may be enforced by decree of any circuit or chancery court of the state of Tennessee. The agency may require as a condition of purchase of mortgages from any lender which is a national banking association the consent of such lender to the jurisdiction of the circuit or chancery court over any such proceeding. The agency may also require agreement by any lender, as a condition of the agency's purchase of mortgages from such lender, to the payment of penalties to the agency for violation by the lender of its undertakings to the agency, and such penalties shall be recoverable at the suit of the agency.

The agency shall require as a condition of purchase of any mortgage from a lender that the lender represent and warrant to the agency that:

(a) The unpaid principal balance of the mortgage and the interest rate thereon have been accurately stated to the agency;

(b) The amount of the unpaid principal balance is justly due and owing;

(c) The lender has no notice of the existence of any counterclaim, offset or defense asserted by the mortgagor or his successor in interest;

(d) The mortgage is evidenced by a bond or promissory note and a mortgage document which has been properly recorded with the appropriate public official;

(e) The mortgage constitutes a valid first lien on the real property described to the agency subject only to real property taxes not yet due, installments of assessments not yet due, and easements and restrictions of record which do not adversely affect, to a material degree, the use or value of the real property or improvements thereon;

(f) The mortgage loan when made was lawful under state law and/or federal law, whichever governs the affairs of the lender, and would be lawful on the date of purchase by the agency if made by the lender on that date in the amount of the then unpaid principal balance;

(g) The mortgagor is not now in default in the

payment of any installment of principal or interest, escrow funds, real property taxes or otherwise in the performance of his obligations under the mortgage documents and has not to the knowledge of the lender been in default in the performance of any such obligation for a period of longer than sixty days during the life of the mortgage;

(h) The improvements to the mortgaged real property are covered by a valid and subsisting policy of insurance issued by a company authorized to issue such policies in the state of Tennessee and providing fire and extended coverage to an amount not less than ninety percent of the insurable value of the improvements to the mortgaged real property.

Each lender shall be liable to the agency for any damages suffered by the agency by reason of the untruth of any representation or the breach of any warranty and, in the event that any representation shall prove to be untrue when made or in the event of any breach of warranty, the lender shall, at the option of the agency, repurchase the mortgage for the original purchase price adjusted for amounts subsequently paid thereon, as the agency may determine.

The agency need not require the recording of an assignment of any mortgage purchased by it from a lender pursuant to this section and shall not be required to notify the mortgagor of its purchase of the mortgage. The agency shall not be required to inspect or take possession of the mortgage documents if the lender from which the mortgage is purchased by the agency shall enter a contract to service such mortgage and account to the agency therefor.

#### SECTION 9. HOUSING DEVELOPMENT FUND.

There is hereby created and established a special revolving loan fund to be known as the "Housing Development Fund" to be administered by the agency as a trust fund separate and distinct from any other monies or funds administered by the agency.

For purposes of this section the following words and terms, unless the context clearly indicates a different meaning shall have the following respective meanings:

(1) "Housing Development Fund" means the housing development fund created by the section of the act.

(2) "Fund notes" means the notes authorized to be

issued by the agency under the provisions of this section of the act.

(3) "Development costs" means the costs approved by the agency as appropriate expenditures which may be incurred by sponsors, builders and developers of land development and residential housing within the state prior to commitment and initial advance of the proceeds of a construction loan or of a mortgage loan, including but not limited to:

(a) Payments for options to purchase properties on the proposed residential housing site, deposits on contracts of purchase, or, with approval of the agency, payments for the purchasing of such properties;

(b) legal and organizational expenses including payments of attorney's fees, project manager, clerical and other staff salaries, office rent and other incidental expenses;

(c) payment of fees for preliminary feasibility studies and advances for planning, engineering and architectural work;

(d) expenses for tenant surveys and market analysis; and

(e) necessary application and other fees.

The housing development fund shall be comprised of the proceeds of grants and contributions and of fund notes issued by the agency for the purpose of providing funds therefor. The agency is hereby authorized to receive and accept from any source whatever any grants or contributions for the housing development fund. The agency is further authorized to provide for the issuance, at one time or from time to time, of housing development fund notes for the purpose of providing funds for such fund; provided, however, that not more than ten million dollars (\$10,000,000) in fund notes shall be outstanding at any one time. The principal of and the interest on any such fund notes shall be payable solely from the housing development fund. The fund notes of each issue shall be dated, shall mature at such time or times not exceeding ten years (10) from their date or dates, and may be made redeemable before maturity, at the option of the agency, at such price or prices and under such terms and conditions as may be determined by the agency. The agency shall determine the form and manner of execution of the fund notes.





including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the state or any agent, including the lender. In case any officer whose signature or a facsimile of whose signature shall appear on any fund notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The fund notes may be issued in coupon or in registered form, or both, as the agency may determine, and provision may be made for the registration of any coupon fund notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon fund notes of any fund notes registered as to both principal and interest, and for the interchange of, registered and coupon fund notes. Any such fund notes shall bear interest at such rate or rates as may be determined by the agency and may be sold in such manner, either at public or private sale, and for such price as the agency shall determine to be for the best interest of the agency and best effectuate the purposes of this act.

The proceeds of any fund notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such restrictions, if any, as provided herein and as the agency may provide in the resolution authorizing the issuance of such fund notes. The agency may provide for the replacement of any fund notes which shall become mutilated or shall be destroyed or lost.

Fund notes may be issued under the provisions of this section without obtaining the consent of any department, division, commission, board, body, bureau, or agency of the state, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions, or things which are specifically required by this act and the provisions of the resolution authorizing the issuance of such fund notes.

The purpose of the housing development fund is to provide a source from which the agency may make or make available temporary loans at such interest rate or rates as may be determined by the agency to be for the best interest of the agency and best effectuate the purposes of this act, and with such security for repayments as the agency deems reasonably necessary and practicable, to:

(1) defray development costs of sponsors, builders, and developers of residential housing for low and moderate income persons and families, or

(2) provide to persons and families of lower and moderate income who are applying for mortgages, the amounts required to make down payments and pay closing costs, or

(3) make or participate in the making of construction loans which are not federally insured to sponsors, builders and developers of land development or residential housing for low and moderate income persons and families: provided, however, that no such loan shall be made unless

(a) the United States or an instrumentality thereof has approved the subdivision planning and has agreed to insure the mortgage loan or loans, the proceeds of which shall be applied to the payment of all or any part of such construction loans, or

(b) the agency has approved the subdivision planning and has made a commitment to buy the mortgage or mortgages made by a lender in accordance with the qualification provisions established by the agency, the proceeds of which shall be applied to the payment of all or any part of such construction loans.

The agency shall be empowered to make temporary loans as described in this section when the financial assistance programs of this act become effective under the provisions of Section 4. However, the agency will not make any temporary loans until it has notified all qualified lenders that the temporary loan program is in effect and that the agency is prepared to enter into working agreements with qualified lenders for the making of temporary loans to qualified borrowers; and it has determined that the temporary loans are not otherwise available, totally or, in part, from qualified lenders upon reasonable terms and conditions. Such determination shall be made by the agency only after the agency has notified all qualified lenders with whom working agreements have been established of a borrower's loan application with the agency and after thirty days from the date of notification no qualified lender has agreed in writing with the borrower to make the temporary loan upon reasonable equivalent terms and conditions.

No temporary loan shall be made by the agency

from the housing development fund except in accordance with a written agreement which shall include, without limitation, the following terms and conditions:

(1) the proceeds of such loan shall be used only for the purposes for which such loan shall have been made as provided in the agreement;

(2) such loan shall be repaid in full as provided in the agreement;

(3) all repayments in connection with a loan to defray development costs shall be made concurrent with receipt by the borrower of the proceeds of a construction loan or mortgage loan, as the case may be, or at such other times as the agency deems reasonably necessary or practicable; and

(4) such security for repayment shall be specified and shall be upon such terms and conditions as the agency deems reasonable necessary or practicable to insure all payments.

#### SECTION 10. BONDS AND NOTES OF THE AGENCY.

(1) Subject to the provisions of section 10 of this act, the agency shall have the power and is hereby authorized from time to time to issue its negotiable bonds and notes in conformity with applicable provisions of the Uniform Commercial Code in Tennessee in such principal amounts as, in the opinion of the agency, shall be necessary to provide sufficient funds for achieving the corporate purposes thereof, the payment of interest on bonds and notes of the agency, establishment of reserves to secure such bonds and notes, and all other expenditures of the agency incident to and necessary or convenient to carry out its corporate purposes and powers, except the operating expenses of the agency.

(2) Except as may otherwise be expressly provided by the agency, all bonds and notes issued by the agency under this act shall be general obligations of the agency, secured by the full faith and credit of the agency and payable out of any monies, assets, or revenues of the agency, subject only to any agreement with bondholders or noteholders pledging any particular monies, assets or revenues. The agency may issue such types of bonds or notes as it may determine, including bonds or notes as to which the principal and interest are payable

(a) exclusively from the revenues of the agency resulting from the purchase of mortgages from lenders from the proceeds of such bonds or notes;

(b) exclusively from the revenues of the agency resulting from the purchase of certain mortgages from lenders whether or not purchased in whole or in part from the proceeds of such bonds or notes;

(c) exclusively from the revenues of the agency resulting from the making of insured construction loans;

(d) exclusively from the revenues of the agency resulting from the making of insured mortgage loans; or

(e) from its revenues generally.

Any such bonds or notes may be additionally secured by a pledge of any grant, subsidy or contribution from the United States of America or any agency or instrumentality thereof or the state or any agency, instrumentality or political subdivision thereof or any person, firm or corporation, of a pledge or any income or revenues, funds or monies of the agency from any source whatsoever.

(3) Bonds and notes shall be authorized by a resolution or resolutions of the agency adopted as provided by this act; provided, however, that any such resolution authorizing the issuance of bonds or notes may delegate to an officer of the agency the power to issue such bonds or notes from time to time and to fix the details of any such issues of bonds or notes by an appropriate certificate of such authorized officer.

(4) Such bonds or notes shall bear such date or dates, shall mature at such time or times, shall bear interest at such rate or rates, shall be of such denominations as approved by the agency but not less than five thousand (5,000) dollars, shall be in such form, carry registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places within or without the state so long as one place is within the state, be subject to such terms of redemption prior to maturity as may be provided by such resolution or resolutions or such certificate with respect to such bonds or notes, as the case may be; provided, however, that the maximum maturity of bonds shall not exceed

forty years from the date thereof and the maximum maturity of notes or any renewals thereof shall not exceed five years from the date of the original issue of such notes.

(5) Any bonds or notes of the agency may be sold at such price or prices; at public or private sale, in such manner and from time to time as may be determined by the agency, and the agency may pay all expenses, premiums and commissions which it may deem necessary or advantageous in connection with the issuance and sale thereof. Notwithstanding any language in this act to the contrary, bonds or notes may only be issued under the provisions of this act by presenting to the State Funding Board a plan indicating that funds are required and by directing the staff of said Board to issue bonds or notes in such amounts as are approved by resolution of the agency and in such manner as determined by the agency provided, however, that it is hereby declared to be the legislative intent that said Funding Board shall not exercise any power of approval or disapproval of any decision of the agency to issue said bonds but rather shall serve as the fiscal agent for the Tennessee Housing Development Agency.

(6) The agency is authorized to provide for the issuance of its bonds or notes for the purpose of refunding any bonds or notes of the agency then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the redemption date next succeeding the date of delivery of such refunding bonds or notes. The proceeds of any such bonds or notes issued for the purpose of so refunding outstanding bonds or notes shall be forthwith applied to the purchase or retirement of such outstanding bonds or notes or the redemption of such outstanding bonds or notes on the redemption date next succeeding the date of delivery of such refunding bonds or notes and may, pending such application, be placed in escrow to be applied to such purchase or retirement or redemption on such date. Any such escrowed proceeds, pending such use, may be invested and reinvested as provided in Section 45-436 of the Tennessee Code Annotated.

(7) Whether or not the bonds and notes are of such form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the bonds and notes are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code of

Tennessee, subject only to the provisions of the bonds and notes for registration.

(8) Subject only to the provisions of sections ten and eleven of this act, any resolution or resolutions authorizing any bonds or notes of the agency may contain provisions which may be a part of the contract with the holders of such bonds or notes, as to

(a) pledging or creating a lien, to the extent provided by such resolution or resolutions, on all or any part of any monies or property of the agency or of any monies held in trust or otherwise by others for the payment of such bonds or notes;

(b) otherwise providing for the custody, collection, securing, investment and payment of any monies of the agency;

(c) the setting aside of reserves or sinking funds and the regulation or disposition thereof;

(d) limitations on the purpose to which the proceeds of sale of any issue of such bonds or notes then or thereafter to be issued may be applied;

(e) limitations on the issuance of additional bonds or notes, the terms upon which additional bonds or notes may be issued and secured, and upon the refunding of outstanding or other bonds or notes;

(f) the procedure, if any, by which the terms of any contract with the holders of bonds or notes may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto and the manner in which such consent may be given;

(g) the creation of special funds into which any monies of the agency may be deposited;

(h) vesting in a trustee or trustees such properties, rights, powers and duties in trust as the agency may determine, which may include any or all of the rights, powers and duties of the trustee appointed pursuant to section twelve of this act, and limiting or abrogating the right of the holders of bonds or notes to appoint a trustee under such section or limiting the rights, duties and powers of such trustee;

(i) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the agency and providing for the rights and remedies of the holders of bonds or notes in the event of such default, providing, however, that such rights and remedies shall not be inconsistent with the general laws of this state and other provisions of this act;

(j) any other matters of like or different character, which in any way affect the security and protection of the bonds or notes and the rights of the holders thereof.

(9) Any resolution or resolutions or trust indenture or indentures under which bonds or notes of the agency are authorized to be issued may contain provisions for vesting in a trustee or trustees such properties, rights, powers and duties in trust as the agency may determine which may include any or all of the rights, powers and duties of the trustee appointed by the holders of any issue of notes or bonds pursuant to section twelve of this act, in which event the provisions of said section twelve authorizing the appointment of a trustee by such holders of bonds or notes shall not apply.

(10) It is the intention of the legislature that any pledge of earnings, revenues or other monies made by the agency shall be valid and binding from the time when the pledge is made; that the earnings, revenues or other monies so pledged and thereafter received by the agency shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(11) Neither the members of the agency nor any person executing the bonds or other obligations shall be liable personally on the bonds or other obligations or be subject to any personal liability or accountability by reason of the issuance thereof.

#### SECTION 11. BOND AUTHORIZATION.

(1) The agency shall not issue bonds and notes under this act in an aggregate principal amount at any one time outstanding exceeding one hundred fifty million dollars, excluding bonds and notes issued to

refund outstanding bonds and notes.

(2) The fixing of the statutory maximum in this section shall not be construed as constituting a contract between the agency and the holders of its bonds and notes that additional bonds and notes may not be issued subsequently by the agency in the event that such statutory maximum shall subsequently be increased by law.

## SECTION 12. RESERVE FUNDS AND APPROPRIATIONS.

(1) The agency may create and establish one or more reserve funds to be known as debt service reserve funds and pay into any such reserve fund:

(a) any monies appropriated by the state for the purposes of such fund;

(b) any proceeds of sale of bonds and notes to the extent provided in the resolution of the agency authorizing the issuance thereof;

(c) any monies directed to be transferred by the agency to such debt service reserve fund; and

(d) any other monies made available to the agency for the purposes of such fund from any other source or sources. The monies held in or credited to any debt service reserve fund established under this subdivision, except as hereinafter provided, shall be used solely for the payment of the principal of bonds of the agency secured by such debt service reserve fund, as the same mature, required payments to any sinking fund established for the amortization of such bonds (hereinafter referred to as "sinking fund payments"), the purchase or redemption of such bonds of the agency, the payment of interest on such bonds of the agency or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity, provided, however, that monies in such fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such fund to less than the maximum amount of the principal, or sinking fund payments and interest maturing, becoming due and required to be made in any succeeding fiscal year on the bonds of the agency then outstanding and secured by such reserve fund, except for the purpose of paying the principal of, and interest



on such bonds of the agency secured by such reserve fund maturing and becoming due and sinking fund payments for the payment of which other monies of the agency are not available. Any income or interest earned by, or increment to, any such debt service reserve fund due to the investment thereof may be transferred to any other fund or account of the agency to the extent it does not reduce the amount of such debt service reserve fund below the maximum amount of principal, or sinking fund payments and interest maturing, becoming due or required to be made in any succeeding fiscal year on all bonds of the agency then outstanding and secured by such reserve fund. Subject to any agreement with bondholders or noteholders, monies in any debt service reserve fund not required for immediate use or disbursement may be invested as provided in Section 45-436, Tennessee Code Annotated. In computing the amount of any debt service reserve fund for the purposes of this section, securities in which all or a portion of such reserve fund are invested shall be valued at par or, if purchased at less than par, at their cost to the agency. If the agency shall create and establish one or more debt service reserve funds as herein provided, the agency shall not issue bonds at any time if the maximum amount of principal, or sinking fund payments, and interest, maturing or required to be made and becoming due in a succeeding fiscal year on the bonds outstanding and then to be issued and secured by a debt service reserve fund will exceed the amount of such reserve fund at the time of issuance, unless the agency, at the time of issuance of such bonds, shall deposit in such reserve fund from the proceeds of the bonds to be issued, or otherwise an amount which together with the amount then in such reserve fund, will be not less than the amount of principal, or sinking fund payments, and interest, maturing, required to be made and becoming due in the succeeding fiscal year on the bonds then to be issued and on all other bonds of the agency then outstanding and secured by such reserve fund.

(2) To assure the continued operation and solvency of the agency for the carrying out of the public purposes of this act, provision is made in subdivision one of this section for the accumulation in each debt service reserve fund of an amount equal to the

maximum amount of principal, or sinking fund payments, and interest, maturing, required to be made and becoming due in any succeeding fiscal year on all bonds of the agency then outstanding and secured by such reserve fund. In order to further assure the continued operation and solvency of the agency for the fulfillment of its corporate purposes, there shall be annually apportioned and paid to the agency for deposit in each debt service reserve fund such sum, if any, as shall be certified by the chairman of the agency to the governor and the commissioner of finance and administration, as necessary to restore any such debt service reserve fund to an amount equal to the maximum amount of principal, or sinking fund payments, and interest, maturing, required to be made and becoming due in any succeeding state fiscal year on the bonds of the agency then outstanding and secured by such reserve fund; in which case such sum so apportioned and paid shall be deposited by the agency in such debt service reserve fund.

(3) The agency may create and establish such other reserve funds as it shall deem advisable and necessary.

(4) All amounts paid over to the agency by the state pursuant to the provisions of this section shall constitute and be accounted for as advances by the state to the agency and, subject to the rights of the holders of any bonds or notes of the agency theretofore or thereafter issued, shall be repaid to the state from all available operating revenues of the agency in excess of amounts required for the debt service reserve funds and operating expenses.

(5) The chairman of the agency shall make and deliver to the governor and the commissioner of finance and administration on or before November 1, 1973, and each year thereafter, a certificate stating the amount estimated to be required for payment of or provision for expenses of the agency under this act for the next ensuing state fiscal year. The amount so stated for any such ensuing state fiscal year shall be the sum of the amounts, if any, estimated for such fiscal year, by which anticipated operating expenses will exceed available operating revenues that the agency anticipates with reasonable certainty it will receive during such fiscal year. To assure the continued operation and solvency of the agency for the fulfillment of the purposes of this act, there shall be apportioned and paid to the agency after audit by the appropriate state official on vouchers certified or approved by the officer or officers authorized by the agency, not more than the amount so stated for expenses of the agency for such fiscal year.

(6) As used in this section,

(a) the term "operating expenses" for the fiscal year shall mean ordinary expenditures for operation and administration of the agency and

(b) the term "available operating revenues" for the fiscal year shall mean all amounts received on account of mortgages acquired or loans made by the agency, fees charged by the agency, if any, and income or interest earned or added to funds of the agency due to the investment thereof, and not required under the terms or provisions of any covenant or agreement with holders of any bonds or notes of the agency to be applied to any purposed other than payment of expenses of the agency.

### SECTION 13. REMEDIES OF BONDHOLDERS AND NOTEHOLDERS.

(1) In the event that the agency shall default in the payment of principal or of interest on any bonds or notes issued under this act after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the agency shall fail or refuse to comply with the provisions of this act, or shall default in any agreement made with the holders of any issue of bonds or notes, the holders of twenty-five percentum in aggregate principal amount of the bonds or notes of such issue then outstanding, by instrument or instruments filed in the office of the secretary of state and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds or notes for the purposes herein provided.

(2) Such trustee may, and upon written request of the holders of twenty-five percentum in principal amount of such bonds or notes then outstanding shall, in his or its own name,

(a) enforce all rights of the bondholders or noteholders, including the right to require the agency to collect interest and amortization payments on the mortgages held by it adequate to carry out any agreement as to, or pledge of, such interest and amortization payments, and to require the agency to carry out any other agreements with the holders of such bonds or notes and to perform its duties under this title:

(6) As used in this section,

(a) the term "operating expenses" for the fiscal year shall mean ordinary expenditures for operation and administration of the agency and

(b) the term "available operating revenues" for the fiscal year shall mean all amounts received on account of mortgages acquired or loans made by the agency, fees charged by the agency, if any, and income or interest earned or added to funds of the agency due to the investment thereof, and not required under the terms or provisions of any covenant or agreement with holders of any bonds or notes of the agency to be applied to any purposed other than payment of expenses of the agency.

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(1) In the event that the agency shall default in the payment of principal or of interest on any bonds or notes issued under this act after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the agency shall fail or refuse to comply with the provisions of this act, or shall default in any agreement made with the holders of any issue of bonds or notes, the holders of twenty-five percentum in aggregate principal amount of the bonds or notes of such issue then outstanding, by instrument or instruments filed in the office of the secretary of state and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds or notes for the purposes herein provided.

(2) Such trustee may, and upon written request of the holders of twenty-five percentum in principal amount of such bonds or notes then outstanding shall, in his or its own name,

(a) enforce all rights of the bondholders or noteholders, including the right to require the agency to collect interest and amortization payments on the mortgages held by it adequate to carry out any agreement as to, or pledge of, such interest and amortization payments, and to require the agency to carry out any other agreements with the holders of such bonds or notes and to perform its duties under this title;

(b) enforce all rights of the bondholders or noteholders, including the right to require the agency to carry out and perform the terms of any contract with the holders of such bonds or notes or its duties under this act;

(c) bring suit upon all or any part of such bonds or notes;

(d) by action or suit, require the agency to account as if it were the trustee of an express trust for the holders of such bonds or notes;

(e) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds or notes;

(f) declare all such bonds or notes due and payable and if all defaults shall be made good then with the consent of the holders of twenty-five percentum of the principal amount of such bonds or notes then outstanding, to annul such declaration and its consequences.

(3) Such trustee shall in addition to the foregoing have and possess all the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

(4) Before declaring the principal of bonds or notes due and payable, the trustee shall first give thirty days' notice in writing to the governor, to the agency and to the attorney general of the state.

(5) The circuit or chancery court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of bondholders or noteholders. The venue of any such suit, action or proceeding shall be laid in Davidson County, Tennessee.

SECTION 14. CREDIT OF STATE NOT PLEDGED. Obligations issued under the provisions of this act shall not be deemed to constitute a debt, liability, or obligation of the state or of any political subdivision thereof, nor a pledge of the full faith and credit of the state or of any such political subdivision, but shall be payable solely from the revenues or assets of the agency. Each obligation issued under this act shall contain on the face thereof a statement to the effect that the agency shall not be obligated to pay the same

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nor the interest thereon except from the revenues or assets pledged therefor and that neither the full faith and credit nor the taxing power of the state or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation. All obligations of the agency issued under the provisions of this act shall be revenue bonds or notes and shall not be general obligations of the state of Tennessee.

Expenses incurred by the agency in carrying out the provisions of this act may be made payable from funds provided pursuant to this act, and no liability shall be incurred by the agency hereunder beyond the extent to which monies shall have been so provided. The state of Tennessee shall not be obligated in any manner for any indebtedness that could result in a loss to the state of Tennessee in excess of one hundred fifty million dollars (\$150,000,000.00), notwithstanding any other provisions to the contrary.

SECTION 15. ANNUAL REPORTS. The agency shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the governor, comptroller of the treasury, and the general assembly. Each such report shall set forth a complete operating and financial statement of the agency during such year. The agency shall cause an audit of its books and accounts to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available monies of the agency.

SECTION 16. AUTHORIZATION TO ACCEPT APPROPRIATED MONIES. The agency is authorized to accept such monies as may be appropriated from time to time by the general assembly for effectuating its corporate purposes including, without limitation, the payment of the initial expenses of administration and operation and the establishment of a reserve or contingency fund to be available for the payment of the principal of and the interest on any bonds or notes of the agency.

SECTION 17. TAX EXEMPTION. The exercise of the powers granted by this act will be in all respects for the benefit of the people of the state, for their well being and prosperity and for the improvement of their social and economic conditions, and the agency shall not be required to pay any tax or assessment on any property owned by the agency under the provisions of this act or upon the income therefrom; nor shall the

agency be required to pay any recording fee or transfer tax of any kind on account of instruments recorded by it or on its behalf.

Any obligations issued by the agency under the provisions of this act, their transfer, and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the state or any local unit or political subdivision or other instrumentality of the state, excepting inheritance and gift taxes.

**SECTION 18. CONFLICT OF INTEREST.** If any member, officer, or employee of the agency shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly in any contract with the agency, including any loan to any sponsor, builder, or developer, such interest shall be disclosed to the agency and shall be set forth in the minutes of the agency and the member, officer, or employee having such interest therein shall not participate on behalf of the agency in the authorization of any such contract. No state officer or employee shall, during his term of service or employment, or within a period of six months after ceasing to be a state officer or employee, have any financial interest, directly or indirectly, in any firm, corporation, association or other organization engaged in any way in any housing program under the terms of this act.

**SECTION 19. ADDITIONAL METHOD.** The sections of this act shall be deemed to provide an additional and alternative method for the activities authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

**SECTION 20. INCONSISTENT PROVISIONS OF OTHER LAWS SUPERSEDED.** Insofar as the provisions of this act are inconsistent with the provisions of any other law, general, special, or local, the provisions of this act shall be controlling.

**SECTION 21. CONSTRUCTION.** This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed so as to effectuate its purposes.

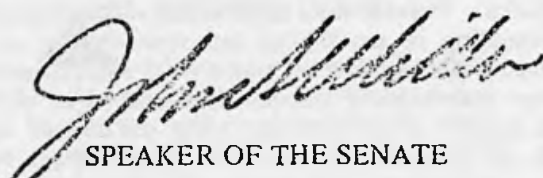
**SECTION 22. SEVERABILITY.** If any clause, sentence, paragraph, section, or part of this act shall be adjudged by any court of competent jurisdiction to be

invalid, such judgment shall not effect, impair, or invalidate the remainder thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 23. EFFECTIVE DATE. This act shall take effect on July 1, 1973.

PASSED: May 4, 1973

  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

  
SPEAKER OF THE SENATE

APPROVED: May 14, 1973

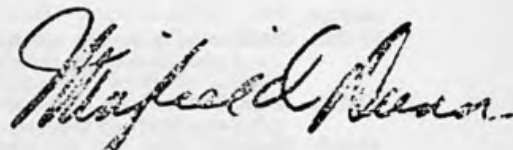
  
GOVERNOR



EXHIBIT A

491

## MUNICIPAL PLANNING COMMISSIONS

13-501

13-414. Construction—Building permits—Agricultural use of land.—This chapter shall not be construed as authorizing the requirement of building permits nor providing for any regulation of the erection, construction, or reconstruction of any building or other structure on lands now devoted to agricultural uses or which may hereafter be used for agricultural purposes, except on agricultural lands adjacent or in proximity to state federal aid highways, public airports or public parks, provided however, such building or structure is incidental to the agricultural enterprise. Nor shall this chapter be construed as limiting or affecting in any way or controlling the agricultural uses of land. [Acts 1935, ch. 33, § 11; 1941, ch. 86, § 1; C. Supp. 1950, § 10268.11.]

13-415. Private acts unaffected.—This chapter shall not be construed as repealing or modifying any provision of any private act heretofore enacted relating to the powers of any county therein, designated or of any municipality therein designated to enact zoning regulations in such county or in territory lying outside of such municipality. [Acts 1935, ch. 33, § 12; 1941, ch. 86, § 2; C. Supp. 1950, § 10268.12.]

## CHAPTER 5

## MUNICIPAL PLANNING COMMISSIONS

## SECTION.

- 13-501. Creation of planning commission  
—Appointment of members—  
Term of office—Vacancies.  
13-502. Organization of commission—  
Rules—Staff—Finances.  
13-503. General plan for physical development.  
13-504. Adoption of plan—Manner.  
13-505. General purposes of the plan—  
Surveys and studies.

## SECTION.

- 13-506. Powers of commission to promote municipal planning.  
13-507. Submission of proposed constructions to commission—  
Approval—Failure to approve, overruling.  
13-508. Municipal planning and commissions under special statutes—  
Force and effect.

13-501. Creation of planning commission—Appointment of members—Term of office—Vacancies.—The chief legislative body of any municipality (whether designated board of aldermen, board of commissioners or by other title) may create and establish a municipal planning commission. Such planning commission shall consist of not less than five (5) members and not more than ten (10) members, the number of members within said limits to be determined by the chief legislative body. One (1) of the members shall be the chief executive officer of the municipality (whether designated mayor, manager or other title), and one (1) of the members shall be a member of the chief legislative body of the municipality selected by such legislative body. All other members shall be appointed by such chief executive officer. All members of the commission shall serve as such without compensation, except membership in the zoning board of appeals. The terms of appointive members shall be of such length as may be specified by said chief legislative body, provided however, that they shall be so arranged that the term of one

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LOANS AND INVESTMENTS BY ASSOCIATIONS

45-1401

## CHAPTER 14

LOANS AND INVESTMENTS BY BUILDING AND LOAN  
ASSOCIATIONS

| SECTION.   | SECTION.  |
|--|---|
| 45-1401. Department to service loans—<br>Service charge.   | 45-1406. Stated meetings at which loans<br>are made to stockholders —<br>Most advantageous offer to<br>be selected. |
| 45-1402. Loans to stockholders — Secu-<br>rity.  | 45-1407. Repayment on loans before<br>maturity by stockholders.   |
| 45-1403. Loans to stockholders — Lien<br>upon stock.   | 45-1408. Direct reduction loans.  |
| 45-1404. Premium bid for loan.   | 45-1409. Multiple loans upon same prop-<br>erty.  |
| 45-1405. Applications for loans to be<br>written—Acted on by board<br>at stated open meetings —<br>Terms of repayment. | 45-1410. Purchasing at sale land secur-<br>ing debt to corporation.   |
|  | 45-1411. Investment in bonds.   |

45-1401. Department to service loans—Service charge.—Building and loan associations licensed to do business in this state, as an added safeguard in lending their funds and as a further protection to their members and the public, are authorized, directed and required to provide for and maintain a department to service the loans and properties securing such loans, including among other things services in reference to investigating the moral and financial standing of applicants for loans, the enforcement of all contractual requirements of borrowers, including insurance, maintenance, repairs, delinquencies, defaults and continuing security; taxes, assessments and other governmental levies; and in their contracts with borrowing members, such associations are authorized to provide for and collect a service fee, the amount of which shall in no event exceed two and one-half per cent (2½%) per annum of the unpaid balance of the loan, to be used in defraying the expense of providing and maintaining such service department, including such portion of the association's overhead expense as is fairly incurred by and in connection with the maintenance of such department; and provided further, that such service fee shall be in addition to legal interest and the actual expenses incurred in making, securing and closing the loan, and shall not be collected as interest or compensation for the use of the money loaned but shall be used in defraying the expense of maintaining said department and in servicing said loans, as contemplated herein; and provided further, that such service fee shall not be collected from members who make share account loans but only from members who make direct reduction loans in the manner authorized by § 45-1408. Such service fee may be made payable in periodic instalments running throughout the life of the loan; and provided further, that if the loan is paid within one (1) year from the date same is made, the service charge may be retained or collected for the full year, but where loans are paid after the period of one (1) year, the service charge shall be retained or collected only to the date of payment; and provided further, that it shall be the duty of the commissioner of insurance and banking, at the time of making of annual examinations of building and loan associations, as directed by the laws of Tennessee, to cause to be made

such investigation as may be necessary to determine whether building and loan associations making direct reduction loans, as herein authorized, are charging fees in excess of the amount reasonably required to defray the expense of servicing loans and in maintaining the service department contemplated herein; and, in the event he should find that the provisions hereof are being violated, it shall be the duty of said commissioner to take such action as may be necessary, under the law, to prevent such associations from continuing such illegal acts. [Acts 1935, ch. 152, § 2; C. Supp. 1950, § 3898.21 (Williams, § 3905.2).]

**45-1402. Loans to stockholders—Security.**—Building and loan associations or building associations engaged in business in the state, may lend their funds to their stockholders or members in such manner and on such terms and conditions and under such regulations as such corporation by its constitution and by-laws may prescribe; provided, that all such loans, with the exception herein named, shall be secured by first liens upon real estate, the loan in no case to exceed in amount two-thirds ( $\frac{2}{3}$ ) the value of the real estate to be determined by the board of directors, provided, however, that the foregoing limitation shall not apply to such mortgage loans as the federal housing administrator insures or makes a commitment to insure, and the building and loan associations or building associations are authorized and shall have the power to subscribe, take and pay for, as part of their investments, notes or bonds secured by a mortgage or trust deed insured by the federal housing administrator, or stock, debentures and other obligations of national mortgage associations. [Acts 1919, ch. 136, § 1; Shan. Supp., § 2179a1; mod. Code 1932, § 3901; Acts 1935, ch. 137, § 1; 1937, ch. 77, § 1; C. Supp. 1950, § 3898.13.]

**Cross-References.** Loans and investments utilizing federal housing administration, Federal National Mortgage

Association and veterans' administration authorized, §§ 35-327, 35-328.

#### DECISIONS UNDER PRIOR LAW :

##### 1. Validity of By-Laws.

By-law of association which provided that when two or more bid at the same rate of premium for a loan the preference was to be given whose application was first in time or whose property was the best security and that no money should be loaned at a greater premium than 30% nor less than 29 $\frac{1}{2}$ % established a fixed premium in excess of legal interest and without free and competitive bidding was usurious. *Post v. Mechanics Bldg. & Loan Assn.* (1896), 97 Tenn. 408, 37 S. W. 216.

By-laws imposing fines for failure to pay instalments and interest when due must be reasonable or courts will not enforce same. *Graham v. House-Building & Loan Assn.* (1898), Tenn. Ch. App., 52 S. W. 1011.

##### 2. Foreclosure of Loan by Insolvent Association.

If insolvent association foreclosed loan the borrower was entitled to credit on loan for payments on principal and interest but not for payments on dues even though transaction involved usury. *Douglass v. Kavanaugh* (1898), 90 Fed. 373; *Southern Bldg. & Loan Assn. v. Easley* (1900), Tenn. Ch. App., 59 S. W. 440.

Where loan association became insolvent dues paid on premium stock both before and after the money loaned was paid over was required to be credited to the loan. *Southern Bldg. & Loan Assn. v. Johnson* (1901), 111 Fed. 657.

**Collateral References.** 9 Am. Jar. Building and Loan Associations, § 43.

12 C. J. S., Building and Loan Associations, §§ 50-65.

45-1403. Loans to stockholders—Lien upon stock.—The board of directors of associations may make loans to stockholders upon the security of their stock not in excess of ninety per cent (90%) of the cash withdrawal value of such share or shares. Every share of stock pledged for a loan or not fully paid for shall be subject to a lien for the satisfaction of any unpaid instalments of the loan or purchase price, and the by-laws of such association may prescribe the manner of enforcing such payments and lien. [Acts 1919, ch. 136, §§ 2, 6; Shan. Supp., §§ 2179a2, 2179a6; Acts 1929, ch. 117, § 2; Code 1932, §§ 3902, 3906; Acts 1933, ch. 19, § 7; mod. C. Supp. 1950, § 3898.14 (Williams, §§ 3898.7, 3902, 3906).]

Collateral References. 9 Am. Jur., 12 C. J. S., Building and Loan Associations, § 30.      Building and Loan Associations, § 27.

45-1404. Premium bid for loan.—The premium bid for an advance or loan with a building and loan association may be secured by the same instrument and security as the advance or loan. The premium on loans may be bid in a lump sum or it may be bid payable in weekly or monthly instalments of so many cents per share, payable weekly or monthly throughout the life of the loan. The borrower may make this bid orally or in writing by his attorney-in-fact and may authorize an officer or director of the association to appear before the board of directors to make his bid for him. The premium bid by borrowing stockholders for the preference or priority of a loan shall be paid, not as a part of the loan, nor as interest, but as a means of determining which one of the shareholders shall receive the loan. [Acts 1875, ch. 142, § 14; Shan., § 2139; mod. Code 1932, § 3900; Acts 1933, ch. 19, § 8; C. Supp. 1950, § 3898.15 (Williams, §§ 3898.8, 3900).]

Collateral References. 9 Am. Jur., 12 C. J. S., Building and Loan Associations, §§ 49, 50.      Building and Loan Associations, § 73.

45-1405. Applications for loans to be written—Acted on by board at stated open meetings—Terms of repayment.—All applications to such associations for loans shall be made in writing and acted upon by the board of directors at their stated meetings and shall contain the terms for repayment, which may be made by instalments or otherwise, and the board of directors shall in open meeting act upon such applications. [Acts 1919, ch. 136, § 13; Shan. Supp., § 2179a12; Code 1932, § 3918; C. Supp. 1950, § 3898.16.]

#### DECISIONS UNDER PRIOR LAW

##### 1. Method of Making Bid.

Bid for loan did not have to be in person but could be by written application. *Hughes v. Farmers Sav. & Bldg. & Loan Assn.* (1897), Tenn. Ch. App., 46 S. W. 362.

##### 2. Method of Repayment.—Compliance with Statute.

Where Acts 1889, ch. 267 provided that premium "may be paid in regular

weekly, or monthly instalments" payment of premium in semiannual instalments was sufficient compliance with statute since purpose of statute was to enable borrower to pay off premium in convenient instalments. *Hughes v. Farmers Sav. & Bldg. & Loan Assn.* (1897), Tenn. Ch. App., 46 S. W. 362.

Collateral References. 12 C. J. S., Building and Loan Associations, § 73.

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45-1406. Stated meetings at which loans are made to stockholders.—Most advantageous offer to be selected.—The board of directors of each such association shall hold stated meetings, the time for which shall be fixed by the by-laws, at which time the money in the treasury shall be offered for loan to the stockholders or members and loaned to the member whose offer is most advantageous to the company or association to be decided by the board of directors; provided, that the board of directors shall not have the power to act arbitrarily in such matters. [Acts 1919, ch. 136, § 5; Shan. Supp., § 2179a5; Code 1932, § 3905; C. Supp. 1950, § 3898.17.]

Collateral References. 12 C. J. S.,  
Building and Loan Associations, § 23.

45-1407. Repayment on loans before maturity by stockholders.—Stockholders, who are borrowing members and who desire to have their mortgages or deeds of trust canceled or leave the association before their stock matures, may do so by paying their loans; but, in case any such loan is repaid within one (1) year, all premiums for that period shall be retained, and such member or stockholder shall pay to the association the amount which when added to the dues and earnings credited to his stock will equal the face of his loan together with interest up to the date of repayment and delinquent assessments. In cases where such loan has run for more than one (1) year, the withdrawing member or stockholder shall be required to pay premiums and interest up to the time of repayment only. [Acts 1919, ch. 136, § 10; Shan. Supp., § 2179a10; Code 1932, § 3916; C. Supp. 1950, § 3898.18.]

Collateral References. 9 Am. Jur., 12 C. J. S., Building and Loan Associations, §§ 62, 66, 67.

45-1408. Direct reduction loans.—Building and loan associations licensed to do business in the state of Tennessee are authorized to make direct reduction loans to members who have subscribed for one (1) or more shares of stock, secured by first lien on real estate payable in periodic instalments sufficient to amortize the same by the payment of interest and principal in not less than five (5) nor more than twenty (20) years, as may be agreed upon. The association may take a note, bond or other instrument legally sufficient to represent the indebtedness of the borrower, which shall require a periodic payment sufficient to amortize the debt in the period fixed. Such payments shall be applied first to the interest on the unpaid balance of the debt and the remainder to the unpaid principal until the loan is paid in full. This method of making loans shall be in addition to the other methods now authorized by law; provided, that members of such associations shall have the option of designating which of the available loan plans he desires; and provided further, that if the applicant for a loan is not a member at the time he shall become a member simultaneously with the making and closing of the loan; and provided, further, that making loans of this class shall not affect the mutuality of building and loan associations

licensed to do business in the state of Tennessee. [Acts 1935, ch. 152, § 1; C. Supp. 1950, § 3898.19 (Williams, § 3905.1).]

Section to Section Reference. This section is referred to in § 45-1401.

#### Collateral References

9 Am. Jur., Building and Loan Associations, §§ 46-48.

12 C. J. S., Building and Loan Associations, §§ 63, 64.

Director's duty to disclose existence of lien or claim against property on which association lends money. 3 A. L. R. 1058.

Director's liability for losses on bad loans. 45 A. L. R. 678; 77 A. L. R. 543.

Transfer to third person of loan made to borrowing member, power of building and loan association as to. 112 A. L. R. 459.

**45-1409. Multiple loans upon same property.**—Associations in addition to making advances or loans secured by first mortgage liens, may make additional loans upon the same property, provided that the total of the first and additional loans does not exceed two-thirds ( $\frac{2}{3}$ ) of the appraised value of the real estate, and provided further that such association shall hold no junior mortgage without holding the senior mortgage or mortgages. [Acts 1933, ch. 19, § 5; mod. C. Supp. 1950, § 3898.20 (Williams, § 3898.5).]

Collateral References. 12 C. J. S., Building and Loan Associations, §§ 67, 68.

**45-1410. Purchasing at sale land securing debt to corporation.**—Such corporation shall have the power to purchase at judicial, execution or trustee sale any real estate mortgaged or conveyed in trust to secure a debt to it, and said real estate or any other real estate the corporation may be entitled to hold, may be by it sold, conveyed, leased, or mortgaged for the benefit of said corporation. [Acts 1919, ch. 136, § 7; Shan. Supp., § 2179a7; Code 1932, § 3913; C. Supp. 1950, § 3898.22.]

Collateral References. 12 C. J. S., Building and Loan Associations, § 72.

**45-1411. Investment in bonds.**—In addition to the making of loans to its members on first mortgages on real estate, any such association may invest such portion of its funds as may not be called for by its shareholders in first mortgage real estate bonds, or notes. [Acts 1929, ch. 117, § 4; Code 1932, § 3908; C. Supp. 1950, § 3898.30.]

Cross-References. Investment in obligations of federal housing administration, Federal National Mortgage Association and veterans' administration, §§ 35-327, 35-328.

Tennessee Valley Authority, investment in bonds and obligations of, § 35-326.

Collateral References. 12 C. J. S., Building and Loan Associations, § 57.

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ration of incompetency of the principal unless and until such institution has actual notice of death or declaration of incompetency. [Acts 1969, ch. 124, § 1.]

CHAPTER 14—LOANS AND INVESTMENTS BY  
BUILDING AND LOAN ASSOCIATIONS

## SECTION.

45-1412. Home improvement instalment  
loans—Interest and charges  
—Statement of transaction.

## SECTION.

45-1413. Insurance protection for home  
improvement instalment  
loans.

45-1401. Department to service loans—Service charge.

Compiler's Note. Reference to the commissioner of insurance and banking is deemed a reference to the commissioner of insurance. See § 4-302.

45-1412. Home improvement instalment loans—Interest and charges—Statement of transaction.—As to home improvement instalment loans or loans for the purchase of mobile homes which federal savings and loan associations now or hereafter have the power to make, with repayment in equal, or substantially equal, monthly or other periodic instalments over the term thereof, the provisions hereinafter set forth shall apply:

(a) Interest computed on the principal amount of such loan for the entire term thereof at a rate not to exceed six per cent (6%) per annum may be either deducted in advance or added to the principal; provided, if the unpaid balance of such loan is either paid or renewed prior to its maturity date, the borrower or other person paying or renewing the loan shall be refunded or credited with unearned interest in an amount which shall represent at least as great a proportion of the original charge as the sum of the periodical time balances after the date of prepayment bears to the sum of all the periodical time balances under the schedule of payments in the original instalment loan; provided, however, the federal savings and loan associations shall not be required to refund or credit any unearned interest where it would result in less than the minimum charge provided in subsection (c) (5) below, nor to make a refund or credit where the amount thereof would be less than one dollar (\$1.00) for each loan.

(b) When interest is charged as provided in subsection (a) above federal savings and loan associations shall not make additional charges, either directly or indirectly, except for the following, which charges when so made and collected shall not be deemed interest for any purpose of law:

(1) Delinquency charges not to exceed five per cent (5%) of any one (1) instalment more than fifteen (15) days in arrears;

(2) Premiums for insurance required or obtained as security for or by reason of such instalment loan;

(3) Fees and taxes paid to public officials for filing, recording or releasing any instrument or lien;

(4) Reasonable expenses of investigating title or titles to real property securing such loan, if any, including the cost of title insurance and costs of closing the loan.

(5) Reimbursement of necessary expenses incurred in securing and collecting the loan not to exceed four per cent (4%) of the gross amount of the loan. The cost of legal process or proceedings and reasonable attorneys' fees may be charges in addition to the above provided that any federal savings and loan association may make a minimum charge on each loan for interest and charges made pursuant to this subsection (5) of ten dollars (\$10.00) per loan or one dollar (\$1.00) per monthly instalment, whichever is greater.

(c) When an instalment loan is made and interest is charged as provided in subsection (a) above, any federal savings and loan association shall at the time of closing the loan provide the borrower with a written statement of the transaction or a copy of the note containing the following information:

- (1) the original principal amount of the loan;
- (2) the insurance premium for each type of coverage provided;
- (3) the amount of fees and taxes paid or to be paid public officials, if any;
- (4) the total amount of interest and all charges made at or prior to closing pursuant to subsection (c) (5) and the approximate rate expressed in dollars per one hundred dollars (\$100) per year;
- (5) other charges, if any;
- (6) the amount of unpaid balance;
- (7) the number, amount and due dates of instalment payments scheduled to repay the indebtedness. [Acts 1968 (Adj. S.), ch. 590, §§ 1, 3; 1969, ch. 227, § 1.]

Section to Section Reference. This section is referred to in § 47-14-104.

Collateral References. Construction and effect of disclosure statutes requir-

ing one extending credit or making loan to give statement showing terms as to amounts involved and charges made. 14 A. L. R. (3d) 330.

**45-1413. Insurance protection for home improvement instalment loans.—**(a) A federal savings and loan association in making an instalment loan in excess of three hundred dollars (\$300) may require a borrower to insure tangible personal property offered as security for such loan against any substantial risk of loss, damage or destruction for any amount not to exceed the actual value of such property or the approximate amount of the loan, whichever is lesser, and for a term and upon conditions which are reasonable and appropriate considering the nature of the property and maturity and other circumstances of the loan; provided, such insurance is sold by a licensed agent, broker or solicitor and the borrower may furnish his own insurance policy.

(b) The federal savings and loan associations may also request as security for any loan obligation, in excess of three hundred dollars (\$300) insurance on the life of the borrower or one (1) of them, if there are two (2) or more. The initial amount of credit life insurance



shall not exceed the total amount repayable under the total amount of the indebtedness. Not more than one (1) policy of life insurance may be written in connection with any instalment loan transaction unless requested by the borrower, comaker or indorser.

(c) In accepting any insurance provided for herein as security for a loan, the federal savings and loan associations may deduct the premiums therefor from the proceeds of the loan, and remit such premiums to the insurance company writing such insurance and any gain or advantage to the federal savings and loan association or any employee, officer, director, agent, affiliate, or associate from such insurance or its sale shall not be considered as additional or further charge or interest in connection with any loan made hereunder.

(d) Every insurance policy or certificate written in connection with a loan transaction pursuant to the provisions hereof shall provide for cancellation of coverage and a refund of the premium unearned upon the discharge of the loan obligation for which such insurance is security without prejudice to any claim existing at the time of such discharge. Whenever insurance is written in connection with a loan transaction, the federal savings and loan association shall deliver or cause to be delivered to the borrower a policy, certificate or other memorandum which shall show the coverages the costs thereof, if any, to the borrower within thirty (30) days from the date of the loan. [Acts 1968 (Adj. S.), ch. 590, § 2.]

#### CHAPTER 15—TAXATION OF BUILDING AND LOAN ASSOCIATIONS

##### SECTION.

45-1502. Tax measured by gross income or profits.

45-1502. Tax measured by gross income or profits.—Each such association shall pay annually to the commissioner of insurance the tax provided hereunder, which tax is to be measured by the gross income or profits of such associations, and shall be the equivalent of three per cent (3%) of the aggregate or total gross profits or income. Gross profits or income is defined to be the gross interest income on all loans, plus dividends or interest on stocks, bonds, or other investments, plus net rentals on real estate, less the net amount of taxes paid by such associations on their tangible assets. Premiums and service fees are not interest and are not to be considered as income, neither shall earned, but uncollected interest, not more than ninety (90) days past due, be considered income, but any interest that is more than ninety (90) days past due and capitalized, shall be considered as income.

Notwithstanding the foregoing provisions of this chapter to the contrary, beginning with the annual tax to be levied as of July 1, 1971, the tax levied hereunder shall be measured by net income. Net income as used herein is defined to be income from all sources, less all operating expenses and amounts paid or credited to withdrawable accounts, but before reductions for any taxes on or measured by net earnings and before reductions for additions to loss reserves.

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## SECTION.

- 53-2510. Exterior stairways—Construction—Access—Openings.
- 53-2511. Fire escapes.
- 53-2512. Passageways — Dimensions — Construction.
- 53-2513. Width of hallways.
- 53-2514. Doorways — Dimensions — Hanging — Revolving doors — Door fastenings.
- 53-2515. Maintenance of exits and fire escapes in safe, usable condition — Exit signs — Lighting.
- 53-2516. Change of occupancy or use in building—Effect.
- 53-2517. Classification of occupancies and uses — Regulations by state fire marshal.
- 53-2518. Classification of different types of construction.
- 53-2519. Restriction on types of construction.
- 53-2520. Height restrictions on various types of construction.
- 53-2521. Floor areas permitted—Modifications.
- 53-2522. Partitions in multifamily houses.
- 53-2523. Fire walls and party walls — Openings.
- 53-2524. Fire partitions.
- 53-2525. Fire retardant ceilings.
- 53-2526. Fire stopping—Manner.
- 53-2527. Elevators and other openings — Protection.

## SECTION.

- 53-2528. Sky lights.
- 53-2529. Ramps in garages.
- 53-2530. Standpipes — Construction — Fire department connection — Hose — Water supply — Pumps — Maintenance for use.
- 53-2531. Sprinkler equipment—Installation — Water supply — Fire department connections.
- 53-2532. Alarm systems—Fire drills.
- 53-2533. Inflammable materials — Limiting amounts to be used or stored.
- 53-2534. Fire resistance ratings.
- 53-2535. Installation of equipment — Regulations governing.
- 53-2536. Regulations and standards promulgated by the state fire marshal to effectuate chapter—Force and effect.
- 53-2537. "Approved" defined — Acceptance as approved set forth in regulations — List to be filed.
- 53-2538. Filing of publications.
- 53-2539. Enforcement officials — Jurisdiction — Employment of technicians.
- 53-2540. Violations—Notice to discontinue—Procedure upon disregard of notice.
- 53-2541. Penalties for violations.
- 53-2542. Abatement of violations.
- 53-2543. Construction—Effect.

53-2501. Application as to constructions, installations, alterations and repairs.—No building or structure shall hereafter be constructed, altered or repaired, nor shall the equipment of a building, structure or premises be constructed, installed, altered or repaired except in conformity with the provisions of this chapter.

No building or structure shall be altered in any manner that would be in violation of the provisions of this chapter or of any authorized regulation of the state fire marshal made and issued hereunder.

It shall be unlawful to maintain, occupy or use a building or structure or part thereof that has been erected or altered in violation of the provisions of this chapter. The provisions of this chapter shall apply with equal force to municipal, county or state buildings as they do to private buildings, except as may be specifically provided for by statute. [Acts 1947, ch. 211, § 1; C. Supp. 1950, § 5717.1.]

## Collateral References

- 13 Am. Jur. (2d), Buildings, §§ 2-32,
- 43.
- 39 C. J. S., Health, § 22.

Validity and construction of ordinance requiring permit for alteration, addition, extension, or substitution of existing building. 64 A. L. R. 920.

EXHIBIT C

53-2502. Exceptions and modifications.—Nothing contained in this chapter shall apply to buildings, whether heretofore or hereafter con-

structed, occupied exclusively as dwellings or having not more than two (2) apartments, or buildings not exceeding two (2) stories in height occupied exclusively as boarding or rooming houses and/or dwellings serving not more than fifteen (15) persons with meals or sleeping accommodations, or both, and all usual outbuildings, including barns and other farm buildings in connection therewith; provided, that in new and existing school buildings of two (2) stories or less above the ground level, interior stairways need not be inclosed when design of such stairways is approved in writing by the Tennessee state board of education, and provided further that, when approved in writing by the state department of education, this chapter shall not apply to school buildings, or parts thereof, whether heretofore or hereafter constructed when such school building is constructed in such a manner as to qualify for federal aid as a fall-out shelter.

1. Buildings erected prior to March 14, 1947, shall be excluded from the provisions of this chapter as follows:

(a) Factories and workshops not exceeding two (2) stories in height or factories and workshops employing not more than twenty-five (25) persons on or above the second floor.

(b) Public buildings of two (2) stories or less not including those with assembly areas on the second floor, and not including those in which persons congregate and having a capacity exceeding one hundred (100) persons on the first or ground floor, except that this capacity may be increased to two hundred (200) persons where seats are fixed, but this exception shall not include school buildings having a total floor area on the second floor in excess of two thousand five hundred (2,500) square feet.

(c) Institutional buildings and residence buildings housing not more than fifteen (15) persons, or not exceeding two (2) stories in height.

(d) Business buildings of two (2) stories or less; or of three (3) stories or less where exit from the second and third stories is through a stairway cut off from the first floor; or where buildings exceed these limits and the stories above these limits are used for storage only, and the total number of story height does not exceed four (4).

(e) Storage buildings not exceeding four (4) stories provided the offices and display space are not higher than the second story.

2. Sections 53-2519—53-2522, 53-2526, 53-2531, except for purposes of definitions, shall not apply to buildings existing on March 14, 1947, except as they may apply to alterations or changes of occupancy.

3. The state fire marshal shall have power to inspect buildings or structures erected prior to March 16, 1951, and to require such repairs, alterations, and improvements as may be necessary to remove unreasonable fire hazards endangering human life; provided that, in residence buildings, where required exit ways pass through a lobby, mezzanine, or other open space to reach the outside of the building, such open space and all communicating rooms of combustible occupancy shall be protected with an automatic sprinkler system of approved type, except that automatic sprinkler protection may be omitted in

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SLUM CLEARANCE

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agent) at a place therein fixed, not less than ten (10) days nor more than thirty (30) days after the serving of said complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

- \* (c) That if, after such notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order, (1) if the repair, alteration or improvement of the said dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified in the order, to repair, alter, or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or (2) if the repair, alteration or improvement of the said dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality may fix a certain percentage of such cost as being reasonable for such purpose), requiring the owner, within the time specified in the order, to remove or demolish such dwelling.
- \* (d) That, if the owner fails to comply with an order to repair, alter, or improve or to vacate and close the dwelling, the public officer may cause such dwelling to be repaired, altered, or improved, or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful."
- \* (e) That, if the owner fails to comply with an order to remove or demolish the dwellings, the public officer may cause such dwelling to be removed or demolished.
- \* (f) That the amount of the cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred. If the dwelling is removed or demolished by the public officer, he shall sell the materials of such dwelling and shall credit the proceeds of such sale against the cost of the removal or demolition, and any balance remaining shall be deposited in the chancery court by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the person found to be entitled thereto by final order or decree of such court, provided, however, that nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or

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event shall the improvements or buildings aforesaid be considered incomplete for valuation or assessment purposes for more than one [1] calendar year immediately following the year in which such construction was commenced.

In the event that such improvements shall be considered incomplete for valuation purposes as real property on January 10th of any year, under the provisions of this section, the county assessor shall assess such improvements as personal property based on the fair market value of the materials used therein. [Acts 1907, ch. 602, § 20; Shan., § 789a2; Code 1932, § 1386; Acts 1959, ch. 279, § 2; 1970 (Adj. S.), ch. 566, § 1.]

Compiler's Note. Acts 1967, ch. 312 was held unconstitutional in Metropolitan Government of Nashville v. Hillsboro Land Co. (1968), 222 Tenn. 431, 436 S. W. (2d) 850 as violative of Tenn. Const. Art. 2, § 28 which requires all property to be taxed according to its value so that taxes shall be equal and uniform throughout the state, and therefore the portion of the section which was added by Acts 1967, ch. 312 has been deleted. Such portion read: "provided, however, no property shall be reassessed until the improvements therein have been com-

pleted or until eighteen (18) months have passed following the commencement of the construction of the improvement, whichever first shall occur; at which time the owner thereof shall notify the local county and/or city property assessor stating the date said improvements have been completed, occupied or sold. The failure by the owner to comply with the above provisions shall constitute a misdemeanor punishable as in all other cases of misdemeanor."

Effective Date. Acts 1970 (Adj. S.), ch. 566, § 2. March 2, 1970.

#### NOTES TO DECISIONS

Cross-Reference. See note 1 to § 67-601. Metropolitan Government of Nashville v. Hillsboro Land Co. (1968), 222 Tenn. 431, 436 S. W. (2d) 850.

##### 1. Constitutionality.

Acts 1967, ch. 312 which added proviso to this section to the effect that no property should be assessed to include improvements until such improvements

had been completed or eighteen months had passed following commencement of construction was unconstitutional as violating Const. Art. 2, § 28 requiring all property to be taxed according to its value so that taxes shall be equal and uniform throughout the state. Metropolitan Government of Nashville v. Hillsboro Land Co. (1968), 222 Tenn. 431, 436 S. W. (2d) 850.

67-603. Changes in ownership of real estate.—The assessor shall also each year, ascertain all changes in the ownership of real estate since the last assessment of such real estate, and in such cases, he shall report with his assessment the name of the previous owner thereof. [Acts 1907, ch. 602, § 20; Shan., §§ 789a3, 789a4; Code 1932, §§ 1387, 1388; Acts 1959, ch. 279, § 3; 1971, ch. 424, § 1.]

Amendment. The 1971 amendment omitted the last sentence of the section which read: "If the change in ownership applies to the entire real estate, no change shall be made in the assessed

value thereof, but the change of ownership shall be noted upon the assessor's books and the trustee's tax book."

Effective Date. Acts 1971, ch. 424, § 2. May 31, 1971.

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67-665. Basis of valuation.—All property shall be assessed and taxed according to its value, which shall be ascertained from the evidences of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without undue consideration of speculative values.

In appraising and assessing the value of all property of every kind, the assessor shall be guided by, and follow the instructions of, the official assessment manuals to be issued by the state division of property assessments and approved by the state board of equalization.

For determining the value of land, and improvements thereon, such manuals shall provide for consideration of the following factors:

- (1) location;
- (2) current use as well as potential use (whether residential, agricultural, industrial, commercial, or utility);
- (3) whether income bearing or nonincome bearing;
- (4) zoning classification;
- (5) legal restrictions on use;
- (6) availability of water, electricity, gas, sewers, street lighting, and other municipal service;
- (7) all other factors and evidences of values generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

It is the legislative intent hereby that no assessment hereunder shall be unduly influenced by inflated values resulting from speculative purchases in particular areas in anticipation of uncertain future real estate markets; but all property of every kind shall be assessed according to its sound, intrinsic and immediate economic value which shall be ascertained in accordance with such official assessment manuals as may be promulgated and issued by the state division of property assessments, pursuant to law.

Notwithstanding the foregoing, all farm personal property and also all household and kitchen furniture, tableware, musical instruments, wearing apparel, private passenger motor vehicles, jewelry and other personal property of similar character used in the taxpayer's own household, together with all intangible property, including bank accounts, of the taxpayer, may be assumed prima facie by the assessor of property to be of a value not in excess of one thousand dollars (\$1,000) in the absence of any tax return or schedule to the contrary.

All assessments of property for taxation shall be made and fixed at fifty per cent (50%) of value determined pursuant to law; providing, however, that until January 10, 1973 assessments made by county and city officers in all counties and cities shall be made for each year at not less than the following percentages of such value:

| Tax Year                | Percentage of<br>Value as defined by law |
|-------------------------|--|
| For 1968                | 15%                                      |
| For 1969                | 25%                                      |
| For 1970                | 30%                                      |
| For 1971                | 35%                                      |
| For 1972                | 40%                                      |
| For 1973 and thereafter | 50%                                      |

aforesaid authority could not be col- Authority, Inc. v. Knoxville (1939), 174  
laterally attacked. Knoxville Housing Tenn. 76, 123 S. W. (2d) 1085.

# EXHIBIT F

**13-905. Boundaries of authority.**—The boundaries of such authority shall include said city and the area within ten (10) miles from the territorial boundaries of said city but in no event shall it include the whole or a part of any other city nor any area included within the boundaries of another authority. In case an area lies within ten (10) miles of the boundaries of more than one (1) city, such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the secretary of state. After the creation of an authority, the subsequent existence within its territorial boundaries of more than one (1) city shall in no way affect the territorial boundaries of such authority. [Acts 1935 (E. S.), ch. 20, § 4; C. Supp. 1950, § 3647.3 (Williams, § 3647.4).]

**13-906. Resolution denying petition, when.**—If the council, after hearing as aforesaid, shall determine that neither of the conditions enumerated in § 13-902 exist, it shall adopt a resolution denying the petition. After three (3) months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon. [Acts 1935 (E. S.), ch. 20, § 4; C. Supp. 1950, § 3647.3 (Williams, § 3647.4).]

**13-907. Contracts of authority—Validity.**—If any suit, action or proceeding involving the validity or enforcement of, or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of the Housing Authorities Law upon proof of the issuance of the aforesaid certificate by the secretary of state, a copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action or proceedings, and shall be conclusive proof of the filing and the contents thereof. [Acts 1935 (E. S.), ch. 20, § 4; C. Supp. 1950, § 3647.3 (Williams, § 3647.4).]

**Compiler's Note.** For sections comprising the Housing Authorities Law see § 13-801. **Cross-References.** Contracts with federal government authorized, § 13-1110.

**13-908. Appointment, qualifications and tenure of commissioners—Organization.**—An authority shall consist of five (5) commissioners appointed by the mayor and he shall designate the first chairman. No commissioner may be a city official.

The commissioners who are first appointed shall be designated by the mayor to serve for terms of one (1), two (2), three (3), four (4) or five (5) years respectively from the date of their appointment. Thereafter, the term of office shall be five (5) years. A commissioner shall hold office until his successor has been appointed and qualified. Vacancies shall be filled for the unexpired term. Three (3) commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any com-

for the purpose of conducting its business and exercising its powers and for all other purposes. [Acts 1935 (E. S.), ch. 20, § 39, as added by Acts 1943, ch. 22, § 6; mod. C. Supp. 1950, § 3647.29C (Williams, § 3647.29o).]

Cross-References. Advisory board, Meetings of commissioners, § 13-803.  
creation, § 13-820. Residence of commissioners, § 13-803.  
Cooperation of authorities and exercise of powers, § 13-806.

**13-1008. Powers of regional housing authority.**—Except as otherwise provided herein, a regional housing authority and the commissioners thereof shall, within the area of operation of such regional housing authority, have the same functions, rights, powers, duties, privileges, immunities and limitations provided for housing authorities created for cities or counties and the commissioners of such housing authorities, and all the provisions of law applicable to housing authorities created for cities or counties and the commissioners of such authorities shall be applicable to regional housing authorities and the commissioners thereof, provided, that for such purposes the term "mayor" or "council" as used in the Housing Authorities Law and any amendments thereto shall be construed as meaning "county court," the term "city clerk" as used therein shall be construed as meaning "clerk of the county court," and the term "city" as used therein shall be construed as meaning "county" unless a different meaning clearly appears from the context; and provided, further, that a regional housing authority shall not be subject to the limitations provided in clause (d) of § 13-812 with respect to housing projects for farmers of low income. [Acts 1935 (E. S.), ch. 20, § 40, as added by Acts 1943, ch. 22, § 6; C. Supp. 1950, § 3647.29D (Williams, § 3647.29p).]

Compiler's Note. For sections comprising the Housing Authorities Law see § 13-801. Contracts with federal government authorized, § 13-1110.

Cross-References. Blighted areas, 805. Housing research and studies, § 13-813 et seq. Mortgaging, power to when project financed with aid of government, § 13-1104.  
Bonds, form and sale, § 13-1102. Powers of housing authority, § 13-804.  
Bonds, trust indentures and mortgages, power of authority, § 13-1103. Rentals and tenant selection, § 13-812.  
Bonds, types, § 13-1101.

**13-1009. Rural housing projects.**—Housing authorities created for counties and regional housing authorities are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing for farmers of low income. In connection with such projects, such housing authorities may enter into such leases or purchase agreements, accept such conveyances and rent or sell dwellings forming part of such projects to or for farmers of low income, as such housing authority deems necessary in order to assure the achievement of the objectives of the Housing Authorities Law. Such leases, agreements or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate.

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projects (including the cost of any insurance on its property or bonds) and the administrative expenses of the authority; and (c) to create (during not less than the six (6) years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one (1) year thereafter and to maintain such reserve. [Acts 1935 (E. S.), ch. 20, § 31, as added by Acts 1937, ch. 234, § 5; C. Supp. 1950, § 3647.24 (Williams, § 3647.29a).]

Cross-References. Blighted areas, § 13-813 et seq.

Housing research and studies, § 13-805.

Rentals and tenant selection, § 13-812.

Zoning and building laws, housing projects subject to, § 13-811.

Section to Section Reference. This section is referred to in § 13-814.

**13-914. Action of city or municipality by resolution.**—Except as otherwise provided in the Housing Authorities Law, all action authorized to be taken under such law by the council or other governing body of any city or of any municipality may be by resolution adopted by a majority of all the members of its council or other governing body, which resolution may be adopted at the meeting of the council or other governing body at which such resolution is introduced and shall take effect immediately upon such adoption, and no such resolution need be published or posted. [Acts 1935 (E. S.), ch. 45, § 4; C. Supp. 1950, § 3647.29W (Williams, § 3647.33).]

Compiler's Note. For sections comprising the Housing Authorities Law see § 13-801.

#### NOTES TO DECISIONS

##### 1. Purpose of Section.

The very obvious reason for having such a section is to expedite matters and to prevent their being delayed by charters or ordinances of the city wherein a great deal of time could be taken up by submitting the matter to a vote of the people. *Walldorf v. Chattanooga* (1951), 192 Tenn. 86, 237 S. W. (2d) 939.

##### 2. Section Takes Precedence over Charter.

This section, which is a general law of the state, takes precedence over what is

contained in a city charter. This section becomes a part of the charter of every city in the state. *Walldorf v. Chattanooga* (1951), 192 Tenn. 86, 237 S. W. (2d) 939.

##### 3. Resolution Presumed Passed.

It is presumed that a city commission acted legally and passed a resolution in conformity with this section. *Walldorf v. Chattanooga* (1951), 192 Tenn. 86, 237 S. W. (2d) 939.

**13-915. Operations of authority in other municipalities.**—In addition to its other powers, a housing authority created for a city may exercise any or all of its powers within the territorial boundaries of any other municipality not included in the area of operation of such housing authority, for the purpose of planning, undertaking, financing, constructing and operating a housing project or projects within such municipality, provided that a resolution shall have been adopted (a) by the governing body of such municipality in which the authority is to exercise its powers and (b) by any housing authority theretofore established by such municipality and authorized to exercise its powers

therein declaring that there is a need for the housing authority of the aforesaid city to exercise its powers within such municipality. A municipality shall have the same powers to furnish financial and other assistance to a housing authority exercising its powers within such municipality under this section as though the municipality were within the area of operation of such authority. [Acts 1935 (E. S.), ch. 20, § 42, as added by Acts 1943, ch. 22, § 6; C. Supp. 1950, § 3647.29F (Williams, § 3647.29r).]

**13-916. Findings required for authority to operate in municipality.**—No governing body of a city or other municipality shall adopt a resolution as provided in §§ 13-915 or 13-1003 declaring that there is a need for a housing authority (other than a housing authority established by such municipality) to exercise its powers within such municipality, unless a public hearing has first been held by such governing body and unless such governing body shall have found in substantially the following terms: (a) That insanitary or unsafe inhabited dwelling accommodations exist in such municipality or that there is a shortage of safe or sanitary dwelling accommodations in such municipality available to persons of low income at rentals they can afford; and (b) that these conditions can be best remedied through the exercise of the aforesaid housing authority's powers within the territorial boundaries of such municipality; provided, that such findings shall not have the effect of thereafter preventing such municipality from establishing a housing authority or joining in the creation of a consolidated housing authority or the increase of the area of operation of a consolidated housing authority. The clerk (or the officer with similar duties) of the city or other municipality shall give notice of the public hearing and such hearing shall be held in the manner provided in § 13-902 for a public hearing by a council to determine the need for a housing authority in the city.

During the time that, pursuant to these findings, a housing authority has outstanding (or is under contract to issue) any evidence of indebtedness for a project within the city or other municipality, no other housing authority may undertake a project within such municipality without the consent of said housing authority which has such outstanding indebtedness or obligation. [Acts 1935 (E. S.), ch. 20, § 43, as added by Acts 1943, ch. 22, § 6; C. Supp. 1950, § 3647.29G (Williams, § 3647.29s).]

**13-917. Advances to housing authority.**—When any housing authority which is created for any city becomes authorized to transact business and exercise its powers therein, the governing body of the city shall immediately make an estimate of the amount of money necessary for the administrative expenses and overhead of such housing authority during the first year thereafter, and shall appropriate such amount to the authority out of any moneys in such city not appropriated to some other purposes. The moneys so appropriated shall be paid to the authority as a donation. Any municipality located in whole

or in part within the area of operation of a housing authority shall have the power from time to time to lend or donate money to the authority or to agree to take such action. The housing authority, when it has money available therefor, shall make reimbursement for all such loans made to it. [Acts 1935 (E. S.), ch. 45, § 8, as added by Acts 1937, ch. 225, § 1; C. Supp. 1950, § 3647.29X (Williams, § 3647.36a).]

Collateral References. 64 C. J. S.,  
Municipal Corporations, § 1870.

13-918. Consolidated housing authority.—If the governing body of each of two (2) or more municipalities by resolution declares that there is a need for one (1) housing authority for all of such municipalities to exercise in such municipalities the powers and other functions prescribed for a housing authority, a public body corporate and politic to be known as a consolidated housing authority (with such corporate name as it selects) shall thereupon exist for all of such municipalities and exercise its powers and other functions within its area of operation (as herein defined), including the power to undertake projects therein, and thereupon any housing authority created for any of such municipalities shall cease to exist except for the purpose of winding up its affairs and executing a deed of its real property to the consolidated housing authority; provided that the creation of a consolidated housing authority and the finding of need therefor shall be subject to the same provisions and limitations of the Housing Authorities Law as are applicable to the creation of a regional housing authority and that all of the provisions of such law applicable to regional housing authorities and the commissioners thereof shall be applicable to consolidated housing authorities and the commissioners thereof; provided, further, that the area of operation or boundaries of a consolidated housing authority shall include all of the territory within the boundaries of each municipality joining in the creation of such authority together with the territory within ten (10) miles of the boundaries of each such municipality, except that such area of operation may be changed to include or exclude any municipality or municipalities (with its aforesaid surrounding territory) in the same manner and under the same provisions as provided in such law for changing the area of operation of a regional housing authority by including or excluding a contiguous county or counties; and provided further that for all such purposes the term "county court" shall be construed as meaning "governing body" except in § 13-1007 where it shall be construed as meaning "mayor" or other executive head of the municipality; the term "county" shall be construed as meaning "municipality" and terms "county housing authority" and "regional housing authority" shall be construed as meaning "housing authority of the city" and "consolidated housing authority," respectively, unless a different meaning clearly appears from the context.

The governing body of a municipality for which a housing authority has not been created may adopt the above resolution if it first determines that there is a need for a housing authority to function in

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said municipality, which determination shall be made in the same manner and subject to the same conditions as the determination required in § 13-902 for the creation of a housing authority for a city, provided that the governing body of the municipality, may, without a petition therefor, hold a hearing to determine the need for a housing authority to function therein.

Except as otherwise provided herein, a consolidated housing authority and the commissioners thereof shall, within the area of operation of such consolidated housing authority, have the same functions, rights, powers, duties, privileges, immunities and limitations as those provided for housing authorities created for cities, counties, or groups of counties and the commissioners of such housing authorities, in the same manner as though all the provisions of law applicable to housing authorities created for cities, counties, or groups of counties were applicable to consolidated housing authorities. [Acts 1935 (E. S.), ch. 20, § 41, as added by Acts 1943, ch. 22, § 6; C. Supp. 1950, § 3647.29E (Williams, § 3647.29q).]

Compiler's Note. For sections comprising the Housing Authorities Law see § 13-801.

## CHAPTER 10

### COUNTY AND REGIONAL HOUSING AUTHORITIES

| SECTION.   | SECTION.  |
|--|---|
| 13-1001. Creation and powers of authority for a county.                | 13-1006. Requirements of public hearings—Application to secretary of state for creation of authorities. |
| 13-1002. Creation of regional housing authority.                       | 13-1007. Commissioners of regional housing authority—Appointment—Term—Vacancies—Powers—Organization.    |
| 13-1003. Area of operation of county and regional housing authorities. | 13-1008. Powers of regional housing authority.  |
| 13-1004. Increasing area of operation of regional housing authority.   | 13-1009. Rural housing projects.  |
| 13-1005. Decreasing area of operation of regional housing authority.   | 13-1010. Housing applications by farmers.   |
|  | 13-1011. Housing in rural areas—Tax exemption.  |

13-1001. Creation and powers of authority for a county.—Except as otherwise provided herein, a housing authority may be created for any county, and the commissioners of such authority may be appointed, in the same manner as provided in the Housing Authorities Law for the creation of a housing authority for a city and the appointment of the commissioners of such authority; each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties, privileges, immunities and limitations provided for housing authorities created for cities and the commissioners of such housing authorities and all the provisions of law applicable to housing authorities created for cities and the commis-

sioners of such authorities shall be applicable to housing authorities created for counties and the commissioners of such authorities; provided, that for all such purposes, the term "mayor" or "council" as used in the Housing Authorities Law and any amendment thereto shall be construed as meaning "county court," the term "city clerk" as used therein shall be construed as meaning "clerk of the county court," and the term "city" (or "city and the area within ten (10) miles from the territorial boundaries thereof") as used therein shall be construed as meaning "county," unless a different meaning clearly appears from the context; and provided further that a housing authority created for a county shall not be subject to the limitations provided in clause (d) of § 13-812 of the Housing Authorities Law with respect to housing projects for farmers of low income. [Acts 1935 (E. S.), ch. 20, § 33, as added by Acts 1943, ch. 22, § 6; C. Supp. 1950, § 3647.26 (Williams, § 3647.29i).]

**Compiler's Note.** For sections comprising the Housing Authorities Law see § 13-801.

**Cross-References.** Advisory board, creation, § 13-820.

Blighted areas, § 13-813 et seq.

Bonds, form and sale, § 13-1102.

Bonds, trust indentures and mortgages, power of authority, § 13-1103.

Bonds, types, § 13-1101.

Cooperation of authorities in exercise of powers, § 13-806.

Housing research and studies, § 13-805.

Meetings of commissioners, § 13-803.

Mortgaging, power to when project financed with aid of government, § 13-1104.

Powers of housing authority, § 13-804.

Rentals and tenant selection, § 13-812.

Residence of commissioners, § 13-803.

Section to Section Reference. This chapter is referred to in § 23-1507.

Comparative Legislation. County and regional housing authorities:

Ala. Code 1940, tit. 25, §§ 31-75.

Ark. Stat. 1947, §§ 19-3038—19-2045.

Ga. Code Ann., §§ 99-1141—99-1158.

Ky. Rev. Stat., §§ 80.310-80.610.

Miss. Code 1942, §§ 7323-7342.

Va. Code 1950, §§ 36-40—36-47.

Collateral References. 42 Am. Jur.. Public Housing Laws, § 4.

**13-1002. Creation of regional housing authority.**—If the county court of each of two (2) or more contiguous counties by resolution declares that there is a need for one (1) housing authority to be created for all such counties to exercise in such counties powers and other functions prescribed for a regional housing authority, a public body corporate and politic to be known as a regional housing authority shall (after the commissioners thereof file an application with the secretary of state as hereinafter provided) exist for all of such counties and exercise its powers and other functions in such counties; and thereupon any county housing authority created for any of such counties shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided; provided that the county court of a county shall not adopt a resolution as aforesaid if there is a county housing authority created for such county which has any bonds or notes outstanding unless first, all holders of such bonds and notes consent in writing to the substitution of such regional housing authority in lieu of such county housing authority on all such bonds and notes; and second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and

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personal of such county housing authority to such regional housing authority as hereinafter provided; and provided further that when the above two (2) conditions are complied with and such regional housing authority is created and authorized to exercise its powers and other functions, all rights, contracts, agreements, obligations and property, real and personal, of such county housing authority, shall be in the name of and vest in such regional housing authority, and all obligations of such county housing authority shall be the obligations of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority.

When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds, provided that nothing contained in this sentence shall affect the vesting of property in the regional housing authority as provided above.

The county court of each of two (2) or more contiguous counties shall by resolution declare that there is a need for one (1) regional housing authority to be created for all of such counties to exercise in such counties powers and other functions prescribed for a regional housing authority, only if such county court finds (a) that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford and (b) that a regional housing authority would be a more efficient or economical administrative unit than a housing authority of such county. [Acts 1935 (E. S.), ch. 20, § 34, as added by Acts 1943, ch. 22, § 6; C. Supp. 1950, § 3647.27 (Williams, § 3647.29j).]

Section to Section Reference. This section is referred to in § 13-1006.

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13-1003. Area of operation of county and regional housing authorities.—The area of operation or boundaries of a housing authority created for a county shall include all of the county for which it is created, and the area of operation or boundaries of a regional housing authority shall include (except as otherwise provided elsewhere in the Housing Authorities Law) all of the counties for which such regional housing authority is created and established; provided that a county or regional housing authority shall not undertake any housing project or projects within the boundaries of any city or other municipality of more than two thousand (2,000) inhabitants unless a resolution shall have been adopted by the governing body of such city or other municipality (and also by any housing authority which shall have been theretofore established and authorized to exercise its powers in such city or other municipality) declaring that there is a need for the county

or regional housing authority to exercise its powers within such city or other municipality. [Acts 1935 (E. S.), ch. 20, § 35, as added by Acts 1943, ch. 22, § 6; C. Supp. 1950, § 3647.28 (Williams, § 3647.29k).]

Compiler's Note. For sections comprising the Housing Authorities Law see § 13-801. Section to Section Reference. This section is referred to in § 13-916.

Cross-References. Zoning and building laws, housing projects subject to, § 13-811.

**13-1004. Increasing area of operation of regional housing authority.**—The area of operation or boundaries of a regional housing authority may be increased from time to time to include one (1) or more additional contiguous counties not already within a regional housing authority if the county court of each of the counties then included in the area of operation of such regional housing authority, the commissioners of the regional housing authority and the county court of each such additional county or counties each adopts a resolution declaring that there is a need for the inclusion of such additional county or counties in the area of operation of such regional housing authority. Upon the adoption of such resolution, any county housing authority created for any such additional county shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as hereinafter provided; provided, however, that such resolutions shall not be adopted if there is a county housing authority created for any such additional county which has any bonds or notes outstanding unless, first, all holders of such bonds and notes consent in writing to the substitution of such regional housing authority in lieu of such county housing authority as the obligor thereon; and, second, the commissioners of such county housing authority adopt a resolution consenting to the transfers of all rights, contracts, bonds and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided; and provided, further, that when the above two (2) conditions are complied with and the area of operation of such regional housing authority is increased to include such additional county, as hereinabove provided, all rights, contracts, bonds, and property, real and personal, of such county housing authority shall be in the name of and vest in such regional housing authority, all contracts and bonds of such county housing authority shall be the contracts and bonds of such regional housing authority and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority.

When any real property of a county housing authority vests in a regional housing authority as provided above, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds; provided that nothing contained in this sen-

## APPENDIX F: VIRGINIA REPORT ON LEGISLATION

I. LAND USE CONTROLS

The Virginia Area Development Act,<sup>1</sup> enacted in 1968 and amended in 1971, gave the State Division of Planning and Community Affairs the authority to divide the state into planning districts. The local governments in the planning districts are empowered to organize a planning and development commission. Each commission is given the authority to prepare plans for the development of the area, to provide technical assistance to the member local governments, and to exercise its powers jointly with other agencies or political subdivisions.

Any county or municipality is empowered to create by ordinance a local planning commission<sup>2</sup> to promote the orderly development of that political subdivision.

Among the major functions of the planning commission is to prepare and recommend a comprehensive plan for the physical development of the territory within its jurisdiction including a land-use plan, a designation of a comprehensive system of transportation facilities, the designation of a system of community service facilities and the designation of areas for urban renewal or other treatment.<sup>3</sup> After such a plan has been submitted by the Commission and adopted by the governing body, it controls the general location, character and extent of each feature shown on the plan. Thereafter every street, park, or other public area, public building or public structure, public utility or public service corporation, before it may be constructed, must be approved by the commission as being substantially in accord with the adopted plan.<sup>4</sup>

Under §15.1-486 the governing body of any county or municipality by ordinance may divide the jurisdiction or any substantial portion thereof into districts. In each district the governing body may regulate (a) the use of



land, buildings, structures, and other premises for specific uses, (b) the physical dimensions, construction, alteration, or removal of structures, (c) areas and dimensions of land, air and water space to be used, (d) the excavation of soil or other natural materials and (e) the sedimentation and soil erosion from non-agricultural lands. All zoning regulations within a district must be uniform for each class or kind of building or uses. But regulations may vary among districts. The local planning commissions are to recommend regulations and boundaries. Where no planning commission exists, in order for a governing body to exercise its zoning power it must create a zoning commission until such time as a planning commission exists.<sup>5</sup> §15.1-491 lists provisions which a zoning ordinance may include such as provisions for variations in cases of unusual circumstances, for special exceptions, for the administration and enforcement of the ordinances and for amendment and repeal of the regulations from time to time. The local planning commission at the request of the governing body is to prepare a proposed zoning ordinance. After the zoning ordinance has been adopted, it may not be amended unless the governing body submits the proposed amendment to the planning commission for recommendation. Also the governing body may not adopt any ordinance or amendment without first holding a public hearing.<sup>6</sup>

The enabling legislation also requires any governing body which has adopted zoning ordinances to create a board of zoning appeals.<sup>7</sup> This board has the power to hear appeals from decisions of the zoning administrator and to grant variances in special circumstances.<sup>8</sup> Any person aggrieved by a decision of the zoning administration has the right to appeal to the board.

Any person aggrieved by a decision of the board or any taxpayer may petition the circuit or corporation court of the county or city to review a decision of the board.

## II. LAWS ENABLING THE ESTABLISHMENT OF A STATEWIDE HOUSING CORPORATION

In 1972 the Virginia legislature passed and the Governor signed the Housing Development Authority (HDA) Act.<sup>9</sup> There is no statutory limit on its bonding capacity. HDA has the power to "insure mortgage payments of any mortgage loan made for the purpose of constructing, rehabilitating, purchasing, leasing or refinancing housing developments for persons and families of low and moderate income" upon such terms and conditions as HDA may prescribe. This is an important power because it permits the HDA to make loans independent of the federal Department of Housing and Urban Development.

## III. HOUSING AUTHORITIES

§36.4 creates Redevelopment and Housing Authorities in each city and county in the Commonwealth. Where no housing authority presently exists, it can come into existence only by a vote of the people of the city or county. The municipality may exercise certain of its powers to aid the authority in the development and operation of housing projects.<sup>10</sup> Examples of the cooperation enabled are aid in zoning or rezoning and entering into agreements with respect to the municipality's powers relating to the repair, elimination or closing of unsafe, unsanitary or unfit dwellings. §36.19 lists the powers granted the authority along with the other specified powers. A copy of the powers has been attached to this report (Exhibit C), housing projects operated by the authority are not to be operated for a profit.<sup>11</sup> Under Article X §6(1) of the Virginia Constitution the property owned by the authority is exempt from all state and local tax. §36-22 provides that the authority shall rent only to persons of low income and that the authority should create guidelines to determine low income status. A housing authority may exercise its powers in a municipality not within its territorial boundaries to operate a housing project provided that the

project is approved by resolution by the municipality.<sup>12</sup> Two or more housing authorities may cooperate in planning, constructing and managing a housing project or projects within the territory of one of the authorities. The authorities are empowered under §36-26 to cooperate with the federal government. The authority has the power of eminent domain to acquire real property necessary for the purposes of the authority.<sup>13</sup> All housing projects of an authority are subject to the planning, zoning, sanitary and building laws, ordinances and regulations of the locality. Sections 36-29 through 36-35 describe the financial powers of the authority.

#### A. Rural Housing

There is a special article concerning rural housing projects. Under §36-36 county and regional housing authorities are specifically empowered to exercise their powers to provide housing for farmers of low income. The authorities may rent or sell dwellings forming part of such projects to farmers of low income. Rural housing is exempted by §36-37 from the tenant selection limitations provided in 36-22(c). The owner of any farm operated or worked on by farmers of low income in need of safe and sanitary farming may file an application with a county or regional authority requesting the authority to provide such housing. The authorities are to receive and consider such applications in formulating programs to provide housing for farmers of low income.

#### B. Regional and Consolidated Housing Authorities

The board of supervisors of 2 or more contiguous counties may create a regional housing authority.<sup>14</sup> When such regional authorities exist, the individual authorities of the counties shall cease to operate. The regional housing authorities have within their territory the same powers as the municipal and county authorities have in theirs.<sup>15</sup> There are also provisions for uniting municipal housing authorities. Under §36-47 the governing bodies of 2 or more municipalities may create consolidated housing authorities. When such consolidated authorities are created, the individual authorities cease to function. The

consolidated authorities have the same powers and duties as the individual authorities.

The Housing Authorities Law also empowers authorities to undertake redevelopment projects<sup>16</sup> and conservation plans<sup>17</sup> in blighted areas. A copy of the powers of authorities in redevelopment projects (35-49) is enclosed in this section (Exhibit D). It is interesting to note that in the redevelopment of blighted areas, the authority may condemn property which is not blighted but which exists in the blighted area.<sup>18</sup> Also, under this power to redevelop, an authority may make lands available to private enterprises or public agencies in accordance with the redevelopment or conservation plan.<sup>19</sup>

#### IV. CODES AND INSPECTION PROCEDURES

##### A. Uniform Statewide Building Code

Virginia has recently passed legislation to create a statewide building code. By §36-98 the State Board of Housing was empowered to promulgate a Uniform Statewide Code. This code supersedes any building codes or regulations of the counties, municipalities and State agencies. Prior to this, under §27-5.1 local governments could adopt by reference building codes. The Building Code is to prescribe standards to be complied with in the construction of buildings. Where practical the provisions are to be stated in terms of required levels of performance In formulating the standards, the Board should "have due regard for generally accepted standards as recommended by nationally recognized organizations, including, but not limited to, the standards of the Southern Building Code Congress, the Building Officials Conference of American and the National Fire Protection Association."<sup>20</sup> The code was not to become effective before January 1, 1973, or later than September 1, 1973. The local building department is entrusted with the duty to enforce the Code. Any building may be inspected before completion and shall not be deemed in compliance until

approved by the inspecting authority.<sup>21</sup> The statutes also provide for the creation of a Board of State Building Code Review.<sup>22</sup> The Board is empowered to hear appeals from decisions concerning the Building Code, and even to interpret the Code and to make recommendations concerning amendments to the Code.

There is no state minimum housing code. However, §27-72 requires the State Corporation Commission to prescribe minimum standards in all public buildings for the protection of life and property from hazards incident to fire. Public buildings are those occupied by 10 or more persons including apartment buildings. This assures at least some minimum safety standards.

There is no explicit provision stating that localities may institute minimum housing codes. However, there are several provisions from which such a power may be inferred. Under the general powers of local governments, §15.1-11.2 enables the governing body of any county, city or town by ordinance to provide that owners of property remove, repair or secure any building which might endanger the public health. Under §15.1-510 (counties) §15.1-839 (municipalities), local governments may adopt such measures as it may deem expedient to secure and promote the health, safety and welfare of the inhabitants of the locality, not inconsistent with state laws. §15.1-510.2 (counties) and §15.1-839 (municipalities) enable local governing bodies to regulate the construction, maintenance and repair of buildings, providing such regulations are uniform through the district. The local governing bodies may also regulate the installation and maintenance of plumbing, electrical, heating, elevator and boiler installations in buildings.<sup>23</sup> Lastly, §27-5.1 enables the governing body of any county, city or town to adopt by reference any building, plumbing, electrical, gas, fire protection or fire prevention code promulgated by an authoritative body, provided such codes meet the minimum standards prescribed by the Virginia Fire Hazards Law.

## V. LEGISLATION AFFECTING THE HOME BUILDING CONSTRUCTION INDUSTRY

The main area of regulation affecting the home building industry is the registration and licensing of general contractors and subcontractors. The statute applies only to those falling within the definition of "general contractor" or "subcontractor." They are defined as essentially any person, firm, association or corporation who bids upon or accepts contracts for the construction, removal, repair or improvement of any building or structure permanently affixed to real property or any other improvements to real property when either (a) "the total value of all such construction, removal, repair or improvements referred to in a single contract or project is thirty thousand dollars or more" or (b) "the total value of all such construction, removal, repair or improvements undertaken by such persons within any twelve month period is two hundred thousand dollars or more."<sup>24</sup> Under § 54-128, no contractor or subcontractor (as defined above) may do business in the state unless he is licensed and obtains a certificate of registration from the State Registration Board of Contractors (authorized by 54-114.). The Board has the authority to promulgate bylaws, rules and regulations necessary to promote the ethical practices of contracting and subcontracting.<sup>25</sup>

A person wishing to obtain a license from the Board must offer proof of his ability, character and financial responsibility and a statement of his current financial position. If the information offered is satisfactory, he must then take an examination to determine his qualifications. If he passes the examination, he may be issued an unclassified registration or a limited certificate such as building contractor or specialty contractor.<sup>26</sup> No political subdivision may issue a building permit without proof that the person seeking the permit has the proper registration.<sup>27</sup>

The governing bodies of counties, cities and towns may also by ordinance provide for licenscing of builders. Under § 54-145.2 such governing bodies may require every person engaged in the business of "home improvement, electrical, plumbing or heating or air conditioning contracting or the business of constructing single or multi-family dwellings" to obtain a license except that contractors examined and registered under § 54-129 are exempt from such licensing.<sup>28</sup>

Another regulation affecting the home building industry is the provision for licensing of architects, engineers and land surveyors. Any person practicing as a professional engineer, architect or land surveyor must first register with the State Board for the Examination and Certification of Architects, Professional Engineers and Land Surveyors before practicing.<sup>29</sup> In order to obtain a registration, a person must meet qualifications determined by the Board<sup>30</sup> and must pass an examination.<sup>31</sup> The Board may issue certificates to holders of certificate of registration in other states and the District of Columbia where the Board determines that the requirements for registration in the other states are sufficient and that state offers reciprocity to holders of certificates from Virginia.<sup>32</sup>

## VI. LEGISLATION GOVERNING THE USE OF MOBILE HOMES

There are three areas of regulation concerning mobile homes. These are: a statewide building code for mobile homes, health and sanitation laws affecting trailer parks, and highway restrictions on their movement.

The first area of regulation is the Industrialized Building Unit and Mobile Home Safety Laws.<sup>33</sup> These laws apply both to mobile homes and industrialized building units (modular housing). Under § 36-73 the State Corporation Commission is to promulgate rules and regulations prescribing standards to be complied with in industrialized building units and mobile homes for protection against hazards to the safety of life, health and property. In formulating these standards, the commission is to have due regard for generally accepted safety standards by nationally recognized organizations. The statute specifically mentions as examples of such codes in regard to industrialized building units the Southern Building Codes Congress, the Building Officials Conference of America, the International Conferences of Building Officials, the National Fire Protection Association and the National Bureau of Standards. The statute specifically mentions as regulations to be considered for mobile homes the American National Standards Institute Standard A 119.1 and the National Fire Protection Association #501 B. Where practical the regulations are to be in terms of required levels of performance. Once the regulations are promulgated, any industrialized building unit or mobile home is deemed to comply with the standards of the Commission when bearing the label, seal or other evidence of listing by an approved testing facility;<sup>34</sup> an approved testing facility is defined in § 36-71(5). Industrialized building units or mobile homes bearing such evidence of listing are to be accepted as meeting any local ordinance concerning requirements of safety to life, health and property without further investigation or inspection if the units are erected or installed in accordance



with all conditions of the listing. Local requirements including zoning, utility connections and preparation of the site and maintenance of the units remain in effect. Unlabeled units are subject to full inspections for local requirements and for compliance with the regulations of the Commission. All local building officials are authorized to enforce the laws, rules and regulations.<sup>35</sup> Representatives of the State Corporation Commission have the right to enter industrialized building units and mobile homes for examination as to compliance with rules and regulations of the commission upon the complaint of any person having an interest in any such unit or upon request of local officials having jurisdiction. Limitations to this right are that it not at the time be occupied and used as a dwelling unit and that they may enter only during reasonable hours.<sup>36</sup>

The second area of regulation of mobile homes concerns trailer camps. The legislation provides for both local and state regulations. Under §35-62, the governing body of any county may regulate the location and operation of trailer camps in the county. They may require the owners or operators of such camps to obtain a license. As a condition for obtaining a license or as a condition for operating such trailer camps, the local governing bodies may prescribe by ordinance the area and size of the lots to be used, the water supply, sewage and garbage disposal facilities to be maintained (provided that such sanitary regulations are not in conflict with the regulations of the state board of health), safety measures for the heating facilities maintained in such trailers and such other measures as are reasonably necessary to protect the health, safety and welfare of the people of the county and the occupants of such trailer camps. §35-64.1 to §35-64.4 enable local governments to license not only trailer camps but also individual lots not in trailer camps. Where a license is required it is unlawful to park a trailer anywhere not in a licensed lot.

The state also regulates trailer camps. Under § 35-66 and § 35-73 the State Board of Health may issue rules and regulations governing cleanliness and general sanitation around trailer camps and provide for inspections of such camps. The State Board of Health also provides for the issuance and revocation of permits necessary to operate a trailer camp.<sup>37</sup> To carry out the provisions concerning health and sanitation, the State Health Commission or any agent of the State Board of Health are to have free access to any trailer camp during all reasonable hours.<sup>38</sup> The statutes also require that the camps provide adequate drainage<sup>39</sup> (35-68), water supply<sup>40</sup> (35-69), sewage disposal and toilet fixtures<sup>41</sup> (35-70) and garbage disposal. Also, 35-67 requires the owner of a trailer camp to provide 1,000 square feet of ground exclusive of the ground underneath the vehicles for each space rented.

The third area of regulation of mobile homes concerns restrictions on their movement on state highways. No vehicle including the load thereon traveling on state highways may exceed 96 inches in width.<sup>42</sup> No vehicle may exceed 13 feet 6 inches in height.<sup>43</sup> Under § 46.1-331 the actual length of any combination of a towing vehicle and any mobile home coupled together may not exceed 55 feet. Statute § 46.1-330 which governs the length of coupled vehicles generally permits the State Highway Commission to a special permit allowing movement of coupled vehicles exceeding 55 feet where the objects moved could not be moved otherwise. It is not clear whether the special permits authorized under § 46.1-330 would be applied to mobile homes under § 46.1-331.

## VII. TAXATION OF MOBILE HOMES AND MODULAR UNITS

Virginia has a sales tax. There is a state sales tax of 3 percent on each item of personal property sold at retail or distributed in the state.<sup>44</sup> There is also a 3 percent use tax upon the use or consumption of tangible personal property within the state or the storage of such property outside the state for use in the state.<sup>45</sup> However, mobile homes are excluded from the application of the sales and use tax by §58-441.6(e). There is no special reference to modular housing in the tax law. It would appear that it is subject to the sales tax. The cities and counties may impose a 1 percent sales or use tax in addition to the sales tax.<sup>46</sup> However, the local tax is subject to all the provisions of the state tax so the local tax does not apply to mobile homes.

Under §58-441.15(a) a person who contracts to perform construction, reconstruction, installation, repair or other services with respect to real property and in connection with this service to provide tangible personal property must pay the use tax on the personal property. Also under §58-441.15(d) "tangible personal property incorporated in real property contracts which loses its identity as tangible personal property shall be deemed to be tangible personal property used or consumed within the meaning of this section." This section might apply to the components of modular housing but again it is difficult to ascertain how modular housing is classified. There are no cases interpreting §58-441.15(d).

Although mobile homes are not subject to the sales tax, they are subject to the Virginia Motor Vehicles Sales and Use Tax. Under §58-685.12 the Commonwealth levies a tax of 2% of the sale price on every motor vehicle sold in the state and a 2% tax on every motor vehicle not sold in the state but used or

stored in the state more than six months after its acquisition. The 2 percent tax is on the current market value. This tax apparently applies to mobile homes since a mobile home fits the definition of motor vehicle given in §58-685.11(3). The tax must be paid by the purchaser or user at the time he applies for and obtains a certificate of title. No tax is required of a motor vehicle for which no certificate of title is required. However, §46.1-41 requires a certificate of title for mobile homes. Any transfer of any mobile housing, where permanently attached to the real estate and included in the sale of the real estate, is not a sale of a motor vehicle and therefore is not taxable.<sup>47</sup>

Under Article X §4, real estate and tangible personal property are segregated as subjects of local taxation. §58-829 is the statutory basis for local taxation of tangible personal property. However, §58-829.3 makes mobile homes a classification for local taxation separate from other classifications of personal property provided that the rate of assessment and the rate of tax not exceed that applicable to other classes of personal property.

There is no statute providing for taxation of mobile homes as real property under any circumstances. There is no specific reference to modular housing in the tax laws.

#### VIII. TAXATION

There is no legal authority authorizing tax officials to maintain existing levels of assessment following improvement of substandard housing. Under Article X § 2 of the Virginia Constitution, assessment of real property must be for its fair market value. This would seem to be a barrier to such a law.

IX. LAWS AFFECTING THE OPERATION OF BANKS AND SAVINGS AND LOAN ASSOCIATIONS  
IN THE HOME MORTGAGE FIELD

A. Banks

There is very little legislation concerning the operation of banks in the home mortgage field. One area of legislation is a restriction on the amount of a loan secured by real estate. Under § 6.1-63 no bank may make any loan secured by real estate when such loan together with all prior liens and encumbrances on the real estate exceeds 50% of the appraised value of the real estate securing the loan unless certain conditions are met. First either the loan is "amortized by level or substantially level payments of principal and interest due at least as regularly as annually in amounts which would pay the loan in full over a period of 30 years or less or amortized by payments of principal due at least as regularly as annually, which are not less than 3 1/2 percent per annum of the original principal of the loan. . . ." In either event the loan together with all prior liens and encumbrances may not exceed 90% of the appraised value of the real estate. This section also provides that banks shall not make loans secured by real estate in an aggregate sum in excess of the amount of its capital and its surplus or in excess of 70% of its time and savings deposits, whichever is greater. Under § 6.1-65 where the bank reasonably and prudently relies on factors other than or in addition to the real estate security and enters in its records the factors relied upon, the loan does not constitute a loan secured by real estate within the measuring of § 6.1-63 and therefore is not bound by its restrictions. Likewise, loans made to home owners for maintenance, repair, modernization, improvement and

equipment to their homes, whether or not secured, do not fall within 6.1-63 if they meet certain limitations. The limitations are that the loan be for not more than \$5,000, for a term not to exceed 7 years, and it is to be payable in approximately equal monthly installments.<sup>48</sup> Also certain construction loans do not fall within § 6.1-63 provided that they meet the conditions of § 6.1-64. Loans made to finance the construction of a building or the improvement of real estate, having a maturity not exceeding 60 months, are not loans secured by real estate (6.1-63) if accompanied by a valid and binding agreement to advance an amount equal to or greater than the construction loan upon completion of the building. Instead, such loans are classified as ordinary commercial loans.

#### B. Savings and Loans

The Commonwealth laws affecting the participation of savings and loan associations in the home mortgage field consist of statutes limiting the investments which are proper for a savings and loan.

Under § 6.1-195.34(c) a savings and loan may invest in stock or obligations of the Federal Home Loan Banks, the Federal National Mortgage Association, the Federal Savings and Loan Insurance Corporation or the Government National Mortgage Association.

A savings and loan may invest its assets in loans secured by first liens on improved real estate with certain limitations.<sup>49</sup> No loan shall exceed \$45,000 on each home securing the loan. No loan shall exceed 90% of the appraised value of the real estate. However loans guaranteed or insured by a federal agency may be made on such terms as are acceptable to the agency. Savings and loans may also fully participate in such other housing programs approved by federal associations as permitted by the Commissioner.

No loan made under 6.1-195.34(b) shall exceed 30 years, with the provision mentioned above that loans guaranteed or insured by a federal agency may be made on terms acceptable to the agency.

Up to 20% of a savings and loan's assets may be invested in secured or unsecured loans for maintenance, repair, alteration, modernization, landscaping, improvement, furnishing and equipment of improved real estate. There is a limit of \$10,000 and an 8 year limit on the term of such loans. Any loan insured or guaranteed by certain specified federal programs may be made for such amount and such terms as are acceptable to the agency.<sup>50</sup>

A savings and loan association may invest up to 5% of its assets in loans on mobile homes. The loan must be secured by a first lien on the mobile home and the mobile home must be the residence of the borrower or a relative of the borrower. The loans are to be payable monthly, and the term shall not exceed 12 years on a new or 8 years on a used mobile home. An association may collect in advance the legal rate of interest upon the entire amount of such loans.<sup>51</sup>

Under § 6.1-195.34(k) up to 20% of the assets of an association may be invested in other loans secured by a first lien on improved real estate. Under this section a loan may not exceed 75% of the value of the real estate, except that if one or more single family dwelling or dwelling unit for not more than four families in the aggregate is located upon the real estate or will be so located within a year, then a loan may be for 80 percent of the value of the real estate. A loan may be made for more than \$45,000 under §6.1-195.34(h), provided that the excess of \$45,000 be included within the 20 percent requirement of §6.1-195.34(k).

Statutes also regulate the participation of savings and loans in mortgage transactions with other savings and loans. State associations and federal associations may purchase from or participate with each other, or with instrumentalities of the state or of the United States, or with banks insured by the Federal Deposit Insurance Corporation in loans on real estate. An associate may participate in or purchase a participation in a loan or real estate made by a savings and loan association which is not authorized to do business in Virginia but the amount of its participation cannot exceed 90 percent of the amount of the loan, regardless of where the security is located. An association may sell a participation in a loan made by it on real estate to a savings and loan association that is not authorized to do business in Virginia, provided that the loan is collected and received by the Virginia association. An association may purchase any loan it may legally make. An association may not engage in the mortgage brokerage business, but an association may sell any loan made by it provided that it is sold without recourse against the association.<sup>52</sup>

#### X. USURY

Virginia's general usury statute (§ 6.1-319) provides that no contract may be made for a loan or forbearance of money at a greater rate of interest than 8% per annum. This rate includes points expressed as a percentage of the loan divided by the number of years of the loan contract. The statute defines points as "the amount of money, or other consideration, received by the lender, from whatever source, as a consideration for making the loan and not otherwise expressly permitted by statute." However, 6.1-319.1 excludes loans secured by first mortgages or first deeds of trust on real estate from the general usury



statute. Such loans are enforceable at the interest rate stated therein on the principal amount loaned. There are several conditions attached to taking advantage of § 6.1-319.1. Every loan made under this provision, for less than \$75,000, must permit prepayment of the unpaid principal at any time and no penalty in excess of 1% of the unpaid principal balance is allowed. Under this section, an "interest rate which varies in accordance with any exterior standard, or which cannot be ascertained from the contract without reference to any exterior circumstances or documents, shall not be an interest rate stated therein." An interest rate which varies with external circumstances may not be enforced beyond the legal rate of interest stated in § 6.1-319.

Certain charges are not considered in computing the allowable rate of interest. Any one engaged in the business of making real estate mortgage or deed of trust loans for resale may charge an initial service, investigation or processing fee. Such fee shall not exceed one per cent of the amount of the loan, and the loan must have a maturity date of ten years or more.<sup>53</sup> Also, on loans for the construction and improvement of real estate, the lender may charge and collect in advance inspection and supervision fees not to exceed 2 1/2% of the amount of the loan. If a lender provides both construction and permanent financing, the total fees may not exceed 2 1/2%.<sup>54</sup> The fees in § 6.1-323 and § 6.1-324 are not considered in determining the legality of the interest rate.

If a lender ~~brings~~ a suit to enforce a loan which provides for a usurious interest rate, judgment will be for the principal only. He forfeits all interest.<sup>55</sup> However, corporations, partnerships, professional associations, real estate investment trusts, and joint ventures organized for the purpose of holding, developing and managing real estate for a profit may not use the usury laws as a defense to avoid payment of interest they contracted

to pay.<sup>56</sup> Also the usury laws do not apply to: loans insured by FHA, loans guaranteed by the Veterans Administration, or insured or guaranteed by any similar federal government agency or organization including HUD or made pursuant to the requirements of the Federal Home Loan Mortgage Corporation.<sup>57</sup>

§6.1-330 regulates certain junior mortgages. No loan secured by a mortgage or deed of trust not a first mortgage or deed of trust residential real estate improved by the construction of four or less family dwelling be for an interest rate in excess of that permitted by 6.1-234 and 6.-234.1 (7 percent in advance). The borrower on such loan has the right to prepay at any time and to receive a rebate on unearned interest.

#### XI. WELFARE LAW

§63.1-133.1 specifically provides that no lien or other interest in favor of the State or any political subdivision may be claimed against the personal or real property of any welfare recipient as a condition of eligibility.

#### XII. HEALTH LAWS AND REGULATIONS, WASTE AND WATER SYSTEM REQUIREMENTS AND ENVIRONMENTAL PROTECTION LAW

##### A. Health Laws

Virginia provides for health, water and waste regulation on both the state and local level. Included within this section are several diverse regulations lumped together under the title of health.

The first area to consider is regulation by the state. The State Board of Health may regulate the disposition of sewage in the state.<sup>58</sup> Under the same statutory authority, the Board may require anyone to obtain a septic tank permit before commencing the construction of any building for which a septic tank will be installed. Such permit shall issue only after the local office is assured that safe, adequate and proper sewage treatment is or can be made available. Under § 32-9.1 the Board of Health may also regulate

solid waste disposal. The State Board of Health is also authorized to establish official standards and regulations dealing with plumbing and plumbing equipment. The standards adopted may not be above those required by the American Standard National Plumbing Codes.<sup>59</sup> These statewide standards are to be enforced by local authorities.<sup>60</sup> The last area of statewide regulation is in fire safety. The Virginia Fire Hazards Law requires the State Corporations Commission to promulgate minimum standards in public buildings for protection from fire hazards.<sup>61</sup> A public building is defined in § 27-65 as any building or structure which is used or occupied by 10 or more persons who are ". . .lodged, housed. . .therein." This specifically includes apartment houses. The state's power to regulate health in trailer courts has been discussed in the section on mobile homes.

Far more regulation is done on the local level. The three instruments of regulation are counties, municipalities and special districts and authorities. Local governments are empowered to adopt such measures as they may deem expedient to secure and promote the health, safety and welfare of the inhabitants of the locality, not inconsistent with state laws.<sup>62</sup> There is also specific enabling legislation.

The governing bodies of cities, towns and counties may adopt rules and regulations (not inconsistent with the laws of the state) to secure the sanitary construction, alteration and inspection of plumbing and sewer connections and drains. They may appoint an inspector who will report defects to the local board of health, which will cause such defects to be remedied.<sup>63</sup> The local governments may also regulate plumbing in the same manner as state regulation under 32-406, provided that the local regulations are not below those adopted by the State Board of Health (32-407).

In any city or incorporated town and for a half mile radius beyond the corporate limits and elsewhere in the state where the local board of health

deems it necessary, it is unlawful for the owner of any house or other building used for human habitation to rent, lease or occupy a building unless the building has a sanitary privy or closet of such form as to comply with the law. If any landlord fails to provide a sanitary privy or closet, the tenant shall have one installed, and he may deduct the cost from his rent.<sup>64</sup>

Another area of local health regulation concerns the health aspects of construction and maintenance of buildings and their appurtenances. Any county<sup>65</sup> or municipality<sup>66</sup> may regulate the construction, maintenance and repair of buildings and other structures. Both may regulate the "installation, maintenance, operation and repair of plumbing, electrical, heating, elevator, boiler, unfired pressure vessel and air conditioning installations in or appurtenant to buildings and structures."<sup>67</sup> Both counties and municipalities may regulate the emission of smoke, the construction, installation and maintenance of fuel burning equipment and the methods of firing and smoking furnaces and boilers.<sup>68</sup> Both may regulate the light, ventilation, sanitation and use or occupancy of buildings.<sup>69</sup> Municipalities may compel the abatement of all nuisances, including the removal of unsanitary and unsafe substances from premises and the removal or repair of all unsafe, dangerous or unsanitary housing. If the owner refuses to abate the nuisance upon notice, then the municipality may do so and collect the cost from the owner.<sup>70</sup>

Local governments are also empowered to issue fire safety regulations. Under §27-5.1, the governing body of any county, city or town may adopt by reference any building, plumbing, electrical, gas, fire protection, or fire prevention code promulgated by an authoritative body. Any code adopted must meet the minimum standards prescribed by the Virginia Fire Hazards Law.

The last areas of health regulation concern water and waste systems. Counties which have adopted land use and development ordinances pursuant to §15.1-427 et seq. may also adopt regulations fixing requirements as to the extent to which and the manner in which water, sewer and other utility mains, piping, conduits, connections, pumping stations and other facilities shall be installed as a condition precedent to approval of a subdivision plan or alteration of such a plan pursuant to §15-491.<sup>71</sup> These regulations are subject to the provisions of state control under §62.1-44.2 et seq.

The counties also have the power to establish public sewers and public water mains along the streets, alleys and public highways in any incorporated town, village or suburb of any city, whether title to such street, alleys or highways is vested in the governing body or not. The owners of adjacent lands have the right to connect their premise with such sewers and water mains on such terms as the governing body shall describe.<sup>72</sup>

The list of general powers of counties also gives them authority to regulate in this area. Under §15.1-520 counties may regulate the installation of septic tanks including requiring a septic tank permit. The Board of Supervisors of a county may adopt land use regulations requiring a subdivision or land developer to pay his pro rata share of the cost of providing reasonable and necessary sewerage and drainage facilities located outside the property limits of the developer but necessitated at least in part by the construction or improvement of his development.<sup>73</sup> Any person constructing a sewerage system<sup>74</sup> or a water supply system<sup>75</sup> having three or more connections must first get the approval of the governing body of the county.

The municipalities also have general powers in water and waste. A municipal corporation may regulate and inspect public and private supplies and the production, preparation, transmission and distribution of water.<sup>76</sup> It

may regulate and inspect public and private sewers.<sup>77</sup> A municipal corporation may require the installation, maintenance and operation of septic tanks or other means of disposing of sewage when public sewers or sewerage disposal facilities are not available.<sup>78</sup> Where the municipality provides water facilities<sup>79</sup> and sewage disposal service,<sup>80</sup> the municipality can require the connection of premises with such facilities.

Aside from health regulation by municipalities and counties, there is also regulation by special districts. Under the Virginia Water and Sewer Authorities Act, one or more political subdivisions may create water or sewage authorities.<sup>81</sup> These have several effects on home owners. The authority may, subject to local restrictions, enter upon, use, occupy or dig up private lands necessary for the acquisition, constructing or improvement of water or sewage systems<sup>82</sup> (15.1-1250(m)). Also, § 15.1-1261 provides that, where such authorities have been created, the authority with the approval of the local government may require the owner, tenant or occupant of each lot or parcel of land which abuts upon a street or public way which contains a water or sewerage system cease using any other source of water supply for domestic use or any other method for the disposal of sewage, waste or any other method for the disposal of sewage, waste or other polluting matter. Another form of district is a sanitary district created under the provisions of § 21-113. Where such sanitary districts have been created, the Board of Supervisors has the power to require the owners or tenants of any property in the district to connect up with the sanitation system<sup>83</sup> (21-118.4(d)).

Local government is empowered to make repairs on substandard dwellings and to make the cost a lien on the dwelling. Under 15.1-867, a municipal corporation may compel the abatement or removal of all nuisances. Included in the action specified was the razing or repair of all "unsafe, dangerous or unsanitary public or private building" which constitute a menace to the health and safety of the occupants or the public. If, after reasonable notice, the owners or occupants fail to remedy the condition, the municipal corporation may do so and collect the costs from the owners or occupants of the property in any manner provided by law for the collection of state or local taxes. In the general powers of local government, §15.1-11.2 provides that the governing body of any county, city or town may by ordinance require the owners of property to remove, repair or service any building which might endanger the public health or safety. The governing body through its agents or employees may make the repairs where the owner fails to do so after reasonable notice and a reasonable time to do so. If the government body makes such repairs, the costs are chargeable to the owners and may be collected as taxes and levies are collected. Every charge levied against an owner but unpaid constitutes a lien against such property.

The statute which provides authority to repair substandard buildings also gives local governing bodies the right to close, vacate and demolish substandard housing. §15.1-11.2 permits the governing bodies of counties, cities and towns by ordinance to require owners to remove any building which might endanger the public safety or health. If, after reasonable notice, the owner fails to act, the agents or employees of the governing body may remove the building. Costs are to be charged to the owner as described above concerning repairs. §15.1-867 enables municipal corporations to compel the removal of nuisances. It may require the razing of all unsafe, dangerous or unsanitary public or private buildings which constitute a menace to the health and safety of the occupants or to the public. If, after notice, the owner refuses to act, the municipality may raze the building and provide for charging the cost to the owner by a lien on the property.

In addition to the powers of counties and municipalities to repair or demolish substandard dwellings, housing authorities have some power in this field. Under §36.6, counties, cities and towns may enter into agreements with housing authorities to exercise their power to repair, eliminate or close unsafe, unsanitary or unfit dwellings. When an authority undertakes a redevelopment project, it may acquire by eminent domain dwellings within the blighted area to be redeveloped.<sup>84</sup> Also where an authority undertakes a conservation plan, it may acquire and demolish dwellings which do not meet requirements for the plan and have not been rehabilitated within one year of notice.<sup>85</sup>

#### B. Environmental Laws

The area of environmental protection is in a state of flux in Virginia. The 1973 legislature abolished many existing programs and instituted new ones which will go into effect on July 1, 1974.<sup>86</sup>

The new environmental legislation is the Environmental Coordination Act of 1973. As mentioned above, the act becomes effective July 1, 1974. The act provides for a unified program of environmental protection. Under 10-17.34, a Department of Conservation, Development and Natural Resources is created. also created within the new department are five divisions including the division of Air Pollution and Solid Waste, the Division of Water Resources and the Division of Natural Resources. In each of the divisions mentioned there is created a board.<sup>87</sup> Among the powers of the Commission of the Department is the power to issue, deny, revoke or modify all permits, licenses and certificates required by law.<sup>88</sup> He is also empowered to coordinate the application and processing requisites for state permits with those required by any provision of federal law.<sup>89</sup> §10-.7.65 provides that any rules or regulations promulgated prior to July 1, 1974 concerning matters covered by the Act remain in force until specifically revoked or until they expire.



§10-17.66 to 10-17.84 provide the Air Quality Control Section of the Environmental Coordination Act. Prior to July 1, 1974, the power to adopt rules and regulations concerning the abating, controlling and prohibiting of air pollution resides with the State Air Pollution Board.<sup>90</sup> This Board until its expiration has the power to issue orders to enforce its rules and regulations, to hear complaints of violations and to initiate court action to enforce its regulations and orders.<sup>91</sup> On July 1, 1974, the State Air Pollution Control Board shall cease to exist and its powers and duties shall vest in the Department of Conservation, Development and Natural Resources.<sup>92</sup> Certain duties are assigned to the Air Pollution and Solid Waste Board. Among the duties and powers of the Board are to establish air quality standards,<sup>93</sup> and to adopt rules and regulations to enforce the general air quality management program in the state.<sup>94</sup> The statute specifically provides that the standards, rules and regulations should not encourage any degradation of air quality in any air basin or region at present superior to that stipulated in the standards, policies, rules and regulations.<sup>95</sup> Among the powers of the Commission of the Department of Conservation, Development and Natural Resources are the powers to enforce all rules and regulations promulgated, to administer a state permit system and to issue any permits or licenses required by the Federal Clean Air Act.<sup>96</sup> The Board may create local air pollution control districts to aid in enforcement.<sup>97</sup> Local ordinances in existence prior to July 1, 1972, continue in force, but in any conflict between the ordinance and the rules and regulation of the Board, the Board's rules govern unless the local ordinance is stricter in which case it governs. Any ordinance passed after July 1, 1972, must be approved by the Board.<sup>98</sup>

The Environmental Act also provides for regulations of solid waste disposal.<sup>99</sup> Powers to regulate in this area, previously exercised by the State Board of Health under §32-9.1, are vested as of July 1, 1974, in the Department of Conservation, Development and Natural Resources.<sup>100</sup> This chapter, like the one dealing with air pollution, vests certain powers and duties of regulation in the hands of the Commissioner and the Air Pollution and Solid Waste Board. Although the regulation deals directly with cities, towns, and counties, it will indirectly involve the solid waste disposal requirements for dwellings.

The Environmental Act also provides for water resources regulation. It repeals the present State Water Control Law<sup>101</sup> and replaces it with the State Water Resources Law.<sup>102</sup> Again, power is transferred from the State Water Control Board to the Department of Conservation, Development and Natural Resources. Among the powers of the new Water Resources Board are to establish standards of water quality, to establish programs for area-wide water quality control and management, and to establish requirements for the treatment of sewerage.<sup>103</sup> Among other duties, the Commissioner is to enforce the standards and the statutes and to issue certificates for discharge of sewerage.<sup>104</sup>

The last area of regulation is the Critical Environmental Areas Law.<sup>105</sup> Under this plan the Division of State Planning and Community Affairs is to designate certain areas as critical environmental areas.<sup>106</sup> After the areas have been delineated, the Division is to develop standards for protective land use and development of the areas.<sup>107</sup>

### XIII. LANDLORD AND TENANT LAWS

There is no provision for tenant suits for damages in cases of a landlord not meeting a minimum housing code.

There is no statute giving the tenant the right to withhold payment for failure to comply with a minimum housing code.

There is no special provision for a housing court or similar court.

There is no legal authority for the court appointment of a receiver to collect rent and to make improvements.

### XIV. FIRE INSURANCE

Virginia does have a program to provide fire insurance in substandard areas. This plan is the Basic Property Insurance Inspection And Placement Plan And Joint-Underwriting Association. One important limitation is that the plan does not include property used for farm purposes. Qualified property in its definition excludes farm property and specifies that the property be in an urban area. The property (which may include real and tangible personal property) must comply with applicable state laws and local building codes and ordinances. <sup>108</sup>

Under the plan, a person meeting the qualifications above would have his property inspected by an inspection bureau created for the purpose. The authorized insurers in Virginia are to formulate and administer a program for the equitable distribution and placement of applications for fire and extended coverage insurance for qualified property which has been inspected. <sup>109</sup> If the State Corporation Commission finds that the program devised by the insurers under § 38.1-748 is failing to adequately provide insurance for qualified property, the Commission may order the creation of a joint underwriting association. All insurers authorized to write fire and extended coverage in the state shall be members of the association as a condition precedent to doing business in the state. The association is to formulate a program to carry

out the purpose of this statute. The association will have the power to cause its members to issue policies to applicants to assure reinsurance from members and to cede reinsurance.<sup>110</sup> The degree of participation in the association by each member shall be in the proportion which each member's total yearly premiums represents of the total yearly premiums of all members in the association.

#### XV. TAX FORECLOSURE PROCEEDING

Virginia in 1973 repealed its comprehensive statute on foreclosure of tax delinquent housing and replaced it with a far less comprehensive one.<sup>112</sup> The newer method provides a slower means of foreclosure.

Under §58-762, there is a lien on real estate for taxes and levies assessed on the real estate. This tax lien is prior to any other lien on the property. Prior to August first of each year, the treasurer of the county or city compiles a list of real estate which is delinquent for the nonpayment of taxes as of June 30 of that year.<sup>113</sup> The treasurer presents this list at the first meeting of the governing body occurring after the compilation of the list. The governing body publishes the list once, and if the taxes remain unpaid on the third anniversary of the due date, a lien is recorded in the clerk's office.<sup>114</sup> Under the law just repealed, the real estate could be sold in December of the year following the presentation of the delinquent list. Under the present law, the delinquent real estate may be sold on December 31 following the third anniversary of the due date, after proper notice.<sup>115</sup> The procedure for foreclosure is a suit in equity brought by an attorney appointed by the local government. All necessary parties must be defendants, and the purchaser takes title free of all claims of beneficiaries under any deed of trust or mortgage.<sup>116</sup> The title of the purchaser is governed by the

laws applying to purchases at judicial sales generally. The former owner is entitled to any surplus in excess of the tax, penalties, interests, costs and any liens chargeable thereon.<sup>117</sup> The county or city may be a purchaser at a tax sale<sup>118</sup> (58-1117.6). It is interesting to note that the statute makes no special provisions concerning equity of redemption.

## FOOTNOTES

1. Code of Virginia Ann. § 15.1-1400
2. Id. § 15.1-427.
3. Id., § 15.1-446.
4. Id., § 15.1-456.
5. Id., § 15.1-487.
6. Id., § 15.1-493.
7. Id., § 15.1-494.
8. Id., § 15.1-495.
9. Id. § 36-55.50.
10. Id., § 36-6.
11. Id., § 36-21.
12. Id., § 36-23.
13. Id., § 36-27.
14. Id., § 36-40.
15. Id., § 36-46.
16. Id., § 36-49.
17. Id., § 36-49.1
18. Hunter v. Norfolk Redevelopment + Housing Authority, 195 Va. 326.
19. Code of Virginia Ann., § 36-53 (1970).
20. Id., § 36-99 (1972 Supp.).
21. Id., § 36-105.
22. Id., §§ 36-108 - 36-119.
23. Id., §§ 15.1 -510.3, 15.1-864 (1973 Supp.).
24. Id., § 54-113(2) (1970).
25. Id., § 54-119.
26. Id., § 54-129.
27. Id., § 54-136.

28. Id., § 54-145.2
29. Id., § 54-27.
30. Id., § 54-28.
31. Id., § 54-29.
32. Id., § 54-35.
33. Id., §§ 36-70-36-85 (1972 Supp.).
34. Id., § 36-79.
35. Id., § 36-81
36. Id., § 36-82.
37. Id., § 35-74 (1970).
38. Id., § 35-76.
39. Id., § 35-68.
40. Id., § 35-69.
41. Id., § 35-70.
42. Id., § 46.1-328.
43. Id., § 46.1-329.
44. Id., § 58-441.5.
45. Id., §§ 58-441.5.
46. Id., §§ 58-441.49 + 58-441.49:1.
47. Id., § 58-685.11(5).
48. Id., § 6.1-66 (1973).
49. Id., § 6.1-195.34(h).
50. Id., § 6.1-195.34(i).
51. Id., § 6.1-195.34(j).
52. Id., § 6.1-195.39
53. Id., § 6.1-323 (1973).
54. Id., § 6.1-324.
55. Id., § 6.1-325.
56. Id., § 6.1-327.
57. Id., § 6.1-328.

58. Id., §32.9.
59. Id., § 32-406.
60. Id., § 32-408.
61. Id., § 27-72.
62. Id., §§ 15.1-510 (counties) and 15.1-683 (municipalities).
63. Id., § 32-61
64. Id., § 32-64.
65. Id., § 15.1-510.2.
66. Id., §15.1-863.
67. Id., §§ 15.1-510.3, 15.1-864.
68. Id., §§ 15.1-510.5, 15.1-868.
69. Id., §§ 15.1-510.5, 15.1-869.
70. Id., §15.1-867.
71. Id., § 15.1-299.
72. Id., § 15.1-300.
73. Id., § 15.1-510.7.
74. Id., § 15.1-326.
75. Id., § 15.1-341.
76. Id., § 15.1-854.
77. Id., § 15.1-855.
78. Id., § 15.1-856.
79. Id., § 15.1-875.
80. Id., § 15.1-876.
81. Id., §15.1-1241.
82. Id., § 15.1-1250(m).
83. Id., § 21-118.4(d).



84. Id., §§ 36-48 + 36-49 (1970).
85. Id., §36-50.1.
86. Acts 1973, Ch. 471, cl. 5.
87. Code of Virginia Ann., § 10-17.40 (1973 Supp.).
88. Id., § 10-17.36.
89. Id., § 10-17.55.
90. Id., § 10-17.18.
91. Id., § 10-17.18(d).
92. Id., § 10.17.68.
93. Id., § 10-17.69(1)(9).
94. Id., § 10-17.69(2).
95. Id., § 10-17.69(3).
96. Id., § 10-17.71
97. Id., § 10-17.82.
98. Id., § 10-17.83.
99. Id., §§ 10-17.85-10-17.99.
100. Id., § 10-17.85 (1973).
101. Id., §§ 62.1-44.2 - 62.1-44.34 (repealed in 1973 Supp.).
102. Id., §§ 62.1-44.45 - 62.1-44.82 (1973 Supp.).
103. Id., § 62.1-44.51.
104. Id., § 62.1-44.52.
105. Id., §§ 10-187 - 10-196.
106. Id., §§ 10-190 + 10-191.
107. Id., §§ 10-192 + 10-193.
108. Id., § 38.1 -747(3) (1970).
109. Id., § 38.1 - 748.
110. Id., § 38.1 - 750.
111. Id., § 38.1 - 751.

- 112. Id., §§ 58-1117.1 - 58 - 1117.11 (1973 Supp.).
- 114. Id., §§ 58-978(2) + 58-979.
- 114. Id., § 58-983.
- 115. Id., §58-1117.1
- 116. Id., § 58-1117.3.
- 117. Id.
- 118. Id., § 58-1117.6.

## EXHIBIT A

§ 15.1-466

COUNTIES, CITIES AND TOWNS

§ 15.1-467

**§ 15.1-466. Provisions of subdivision ordinance.** — A subdivision ordinance may include, among other things, reasonable regulations and provisions that apply to or provide:

- (a) For size, scale and other plat details;
- (b) For the orderly development of the general area;
- (c) For the coordination of streets within the subdivision with other existing or planned streets within the general area as to location, widths, grades and drainage;
- (d) For adequate provisions for drainage and flood control and other public purposes, and for light and air;
- (e) For the extent to which and the manner in which streets shall be graded, graveled or otherwise improved and water and storm and sanitary sewer and other utilities or other facilities installed;
- (f) For the acceptance of dedication for public use of any right-of-way located within any subdivision which has constructed therein, or proposed to be constructed therein, any street, curb, gutter, sidewalk, drainage or sewerage system or other improvement, financed or to be financed in whole or in part by private funds only if the owner or developer (1) certifies to the governing body that the construction costs have been paid to the person constructing such facilities, or (2) furnishes to the governing body a certified check in the amount of the estimated costs of construction or a bond, with surety satisfactory to the governing body, in an amount sufficient for and conditioned upon the construction of such facilities, or a contract for the construction of such facilities and the contractor's bond, with like surety, in like amount and so conditioned;
- (g) For monuments of specific types to be installed establishing street and property lines;
- (h) That unless a plat be filed for recordation within a reasonable time after final approval thereof such approval shall be withdrawn and the plat marked void and returned to the approving official; and
- (i) For the administration and enforcement of such ordinance, not inconsistent with provisions contained in this chapter, and specifically for the imposition of reasonable fees and charges for the review of plats and plans, and for the inspection of facilities required by any such ordinance to be installed; such fees and charges shall in no instance exceed an amount commensurate with the services rendered taking into consideration the time, skill and administrator's expense involved. All such charges heretofore made are hereby validated; provided, however, that such validation shall not affect any litigation pending in any court of this Commonwealth on June twenty-six, nineteen hundred seventy. (Code 1950, § 15-781; Code 1950 (Suppl.), § 15-967.1; 1950, p. 183; 1962, c. 407; 1970, c. 436.)

**Cross reference.** — As to regulation of vehicular and pedestrian traffic on systems of roadways and parking areas in residential subdivisions, see § 46.1-181.2.

**Fee for examination and approval of plats.**

Before the 1970 amendment to this section it was held that subdivision (i) did not grant to a locality the power to impose a fee in connection with administration and enforcement of a

subdivision ordinance, and that a city council was not empowered to enact an ordinance imposing a fee for the examination and approval of subdivision plats either by the provisions of this article, dealing with land subdivision, or by other more general statutes, or by its charter. *National Realty Corp. v. City of Virginia Beach*, 209 Va. 172, 163 S.E.2d 154 (1968).

**§ 15.1-467. Application of municipal subdivision regulations beyond corporate limits of municipality.** — The subdivision regulations adopted by a municipality shall apply within its corporate limits and may apply beyond, except as to counties with a population in excess of six hundred per square mile, if the ordinance so provides, within the distance therefrom set out below:

- (a) Within a distance of five miles from the corporate limits of cities having a population of one hundred thousand or more;

## EXHIBIT B

§ 15.1-469

COUNTIES, CITIES AND TOWNS

§ 15.1-473

**§ 15.1-469. Disagreement between county and municipality as to regulations.** — In either event when a disagreement arises between the county and municipality as to what regulations should be adopted for the area, and such difference cannot be amicably settled, then after ten days' prior written notice by either to the other, either or both parties may petition the circuit court of the county wherein the area or a major part thereof lies to decide what regulations are to be adopted. The court shall hear the matter and enter an appropriate order. (Code 1950, § 15-788; Code 1950 (Suppl.), § 15-967.4; 1962, c. 407.)

**§ 15.1-470. Local commission to prepare and recommend ordinance; notice and hearing on ordinance.** — In any county or municipality having a local commission, any proposed subdivision ordinance shall be prepared and recommended by such commission and be transmitted to the governing body. The governing body of any county or municipality may approve and adopt a subdivision ordinance only after a notice of intention so to do has been published, and a public hearing held, in accordance with § 15.1-431. (Code 1950, § 15-782; Code 1950 (Suppl.), § 15-967.5; 1962, c. 407.)

**§ 15.1-471. Filing and recording of ordinance and amendments thereto.** — When a subdivision ordinance has been adopted, or amended, a certified copy of the ordinance and any and all amendments thereto shall be filed in the office of the engineer or other official of the municipality or county, designated in such ordinance, and in the clerk's office of the court or courts in which deeds are admitted to record of each county or municipality in which such ordinance is applicable. (Code 1950, § 15-783; Code 1950 (Suppl.), § 15-967.6; 1962, c. 407.)

**§ 15.1-472. Preparation and adoption of amendments to ordinance.** — In any county or municipality having a local commission, such commission on its own initiative may or at the request of the governing body of the county or municipality shall prepare and recommend amendments to the subdivision ordinance. The procedure for such amendment shall be the same as for the preparation and recommendation and approval and adoption of the original ordinance; provided that no such amendment shall be adopted by the governing body of a county or municipality having a local commission without a reference of the proposed amendment to the commission for recommendation, nor until sixty days after such reference, if no recommendation is made by the commission. (Code 1950 (Suppl.), § 15-967.7; 1962, c. 407.)

**§ 15.1-473. Statutory provisions effective after ordinance adopted.** — After the adoption of a subdivision ordinance in accordance with this chapter, the following provisions shall be effective in the territory to which such ordinance applies:

(a) No person shall subdivide land without making and recording a plat of such subdivision and without fully complying with the provisions of this article and of such ordinance.

(b) No such plat of any subdivision shall be recorded unless and until it shall have been submitted to and approved by the local commission or by the governing body or its duly authorized agent, of the county or municipality wherein the land to be subdivided is located; or by the commissions, governing bodies or agents, as the case may be, of each county or municipality having a subdivision ordinance, in which any part of the land lies.

(c) No person shall sell or transfer any such land by reference to or exhibition of or by other use of a plat of a subdivision, before such plat has been duly recorded as provided herein, unless such subdivision was lawfully created prior to the adoption of a subdivision ordinance applicable thereto, provided, that nothing herein contained shall be construed as preventing the recordation of the instrument by which such land is transferred or the passage of title as between the parties to the instrument.

## EXHIBIT C

§ 36-15

CODE OF VIRGINIA

§ 36-19

§ 36-15. **Delegation of authority.**—An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1938, p. 450; Michie Code 1942, § 3145(5).)

§ 36-16: Repealed by Acts 1970, c. 463.

**Cross reference.**—For present provisions as to standards governing conduct of State and local officers and employees with respect to conflict of interest and related matters, see §§ 2.1-347 to 2.1-358.

§ 36-17. **Removal of commissioners.** — For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority of any city or county may be removed by the governing body of such city or county; but a commissioner may be removed only after he shall have been given a copy of the charges at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk. (1938, p. 450; Michie Code 1942, § 3145(7); 1958, c. 82.)

§ 36-18. **Meetings and residence of commissioners.**—Nothing contained in this chapter shall be construed to prevent meetings of the commissioners of a housing authority anywhere within the perimeter boundaries of the area of operation of the authority or within any additional area where the housing authority is authorized to undertake a housing project, nor to prevent the appointment of any person as a commissioner of the authority who resides within such boundaries or such additional area, and who is otherwise eligible for such appointment under this chapter. (1942, p. 325; Michie Code 1942, § 3145(4m).)

## ARTICLE 3.

*General Powers of Authority.*

§ 36-19. **Enumeration of powers.**—An authority shall constitute a political subdivision of the Commonwealth with public and corporate powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

(a) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with law, to carry into effect the powers and purposes of the authority.

(b) Within its area of operation, to prepare, carry out, acquire, lease and operate housing projects, and to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof.

(c) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof; and (notwithstanding anything to the contrary contained in this chapter or in any other provision of law) to include in any contract let in connection with a project, any provisions required to comply with any conditions which the federal government may have attached to its financial aid of the project.

(d) In connection with any housing project; to lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and (subject to the limitations contained in this chapter) to establish and revise the rents or charges therefor; to own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by

## EXHIBIT C

§ 36-19.1

HOUSING

§ 36-19.1

gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof issued by an authority, including the power to pay premiums on any such insurance.

(e) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or security in which savings banks may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be cancelled.

(f) Within its area of operation, to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstructing of slum areas, and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the Commonwealth or any other political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(g) Acting through one or more commissioners or other person or persons designated by the authority: to conduct examinations and investigations, and to make available to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its area of operation) its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

(h) To exercise all or any part or combination of powers herein granted.

No provisions of law with respect to the acquisition, operation or disposition of property by other political subdivisions or public bodies shall be applicable to an authority unless the legislature shall specifically so state. (1938, p. 450; Michie Code 1942, § 3145(8).)

Powers delegated to redevelopment authority and not city council.—Under the statute the primary responsibility of investigating the conditions in an area proposed for redevelopment, and determining whether it is a slum, blighted or deteriorated area, is delegated to the local redevelopment authority and not to the city council. *Bristol Redevelopment & Housing Authority v. Denton*, 198 Va. 171, 93 S.E.2d 288 (1956).

A housing authority is a political sub-

division of the Commonwealth under this section, subdivision (a) of § 36-3 and § 36-4. *Mumpower v. Housing Authority*, 176 Va. 426, 11 S.E.2d 732 (1940).

Provision for transfer of property not invalid.—Subdivision (d) of this section, conferring upon the authority the power to sell, transfer or dispose of any real property, is not invalid as empowering the authority to defeat the public use of its property. *Mumpower v. Housing Authority*, 176 Va. 426, 11 S.E.2d 732 (1940).

§ 36-19.1. Limitations on the exercise of powers by housing authorities in certain cities.—Notwithstanding the provisions of § 36-19, no authority heretofore or hereafter permitted, in any city containing more than ninety thousand but less than one hundred twenty-five thousand inhabitants, to transact business and exercise powers as provided in § 36-4 shall make any contract for the construction of any housing unit not contracted for on March six, nineteen hundred fifty-two, or acquire land for or purchase material for the construction or installation of any sewerage, streets, sidewalks, lights, power, water or any other

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§ 36-48.1

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Housing Authority, 195 Va. 326, 78 S.E.2d 893 (1953). See note to § 36-53. See also *Runnels v. Staunton Redevelopment & Housing Authority*, 207 Va. 407, 149 S.E.2d 882 (1966).

**Judicial review.** — The legislative declaration that the taking of property for stated redevelopment purposes constitutes a public use is not conclusive and is subject to judicial review. But such declaration is presumed to be right. *Hunter v. Norfolk Redevelopment & Housing Authority*, 195 Va. 326, 78 S.E.2d 893 (1953). See *Bristol*

*Redevelopment & Housing Authority v. Denton*, 198 Va. 171, 93 S.E.2d 288 (1956).

**Burden on property owners to show finding was arbitrary and unwarranted.** — It is incumbent upon property owners to show by competent evidence that a redevelopment authority's finding of blight was arbitrary and unwarranted. The property owners' burden cannot be sustained by the "ordinary preponderance of the evidence." *Runnels v. Staunton Redevelopment & Housing Authority*, 207 Va. 407, 149 S.E.2d 882 (1966).

**§ 36-48.1. Findings and declarations reaffirmed; further findings and declarations.**—The findings and declarations made in § 36-48 are hereby reaffirmed and it is hereby further found and declared that: Certain blighted, deteriorated or deteriorating areas, or portions thereof, are, through the means hereinafter provided, susceptible of conservation through appropriate public action and the elimination or prevention of the spread or increase of blight or deterioration in such areas is necessary for the public welfare and is a public purpose for which public money may be spent and private property acquired by purchase or by the power of eminent domain, and is a governmental function of grave concern to the Commonwealth. (1964, c. 378.)

**§ 36-49. Undertakings constituting redevelopment projects.** — Any authority now or hereafter established, in addition to other powers granted by this or any law, is specifically empowered to carry out any work or undertaking (hereafter called a "redevelopment project"):

(1) To acquire blighted or deteriorated areas, which are hereby defined as areas (including slum areas) with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement of design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals or welfare of the community;

(2) To acquire other real property for the purpose of removing, preventing, or reducing blight, blighting factors or the cause of blight;

(3) To acquire real property where the condition of the title, the diverse ownership of the real property to be assembled, the street or lot layouts, or other conditions prevent a proper development of the property and where the acquisition of the area by the authority is necessary to carry out a redevelopment plan;

(4) To permit the preservation, repair, or restoration of buildings of historic interest; and to clear any areas acquired and install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

(5) To make land so acquired available to private enterprise or public agencies (including sale, leasing, or retention by the authority itself) in accordance with the redevelopment plan; or

(6) To accomplish any combination of the foregoing to carry out a redevelopment plan. (1946, p. 278; Michie Suppl. 1946, § 3145(Sb); 1962, c. 336.)

This section sets forth an adequate standard for determining whether a given area is blighted or deteriorated. *Runnels v. Staunton Redevelopment & Housing Authority*, 207 Va. 407, 149 S.E.2d 882 (1966).

In order for an area to qualify as "blighted or deteriorated," not only must buildings and improvements therein meet the specified physical condition, but,

"by reason of" such condition, the area must be "detrimental to the safety, health, morals or welfare of the community." *Bristol Redevelopment & Housing Authority v. Denton*, 198 Va. 171, 93 S.E.2d 288 (1956).

**Inclusion of unblighted property in project.**—Under subdivision (2) an authority may, for the stated purpose, incident-

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vided in this chapter in order to help prevent the creation and recurrence of sub-standard living conditions and to assist in their permanent elimination throughout Virginia.

It is further declared that in order to provide a fully adequate supply of sanitary and safe dwelling accommodations at rents, prices, or other costs which such persons or families can afford the legislature finds that it is necessary to create and establish a state housing development authority for the purpose of encouraging the investment of private capital and stimulating the construction and rehabilitation of residential housing to meet the needs of such persons and families through the use of public financing, to provide construction and mortgage loans and to make provision for the purchase of mortgage loans and otherwise.

It is hereby further declared to be necessary and in the public interest that such state housing development authority provide for predevelopment costs, temporary financing, land development expenses and residential housing construction or rehabilitation by private sponsors for sale or rental to persons and families of low and moderate income; further, to provide mortgage financing, including without limitation, long-term federally insured mortgages; further, to increase the construction and rehabilitation of low and moderate income housing through the purchase from financial institutions authorized to transact business within the Commonwealth of first mortgage loans for residential housing for persons and families of low and moderate income in this Commonwealth; further, to provide technical, consultative and project assistance services to private sponsors; further, to assist in coordinating federal, state, regional and local public and private efforts and resources; to guarantee to the extent provided herein the repayment of certain loans secured by residential mortgages; and further, to promote wise usage of land and other resources in order to preserve the quality of life we value so highly in Virginia.

It is hereby further declared that all of the foregoing are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted, and that such activities serve a public purpose in improving or otherwise benefiting the people of this Commonwealth; that the necessity of enacting the provisions hereinafter set forth is in the public interest and is hereby so declared as a matter of express legislative determination. (1972, c. 830.)



## EXHIBIT F

§ 36-55.30

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commissioners may delegate to one or more of its agents or employees such administrative duties as it may deem proper.

(b) The secretary shall keep a record of the proceedings of the HDA and shall be custodian of all books, documents and papers filed with the HDA and of its minute book and seal. He shall have authority to cause to be made copies of all minutes and other records and documents of the HDA and to give certificates under the seal of the HDA to the effect that such copies are true copies and all persons dealing with the HDA may rely upon such certificates. (1972, c. 830.)

**§ 36-55.30. Powers of HDA generally.**—The HDA is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes, including, without limitation, the following:

- (1) Sue and be sued in its own name;
- (2) Have an official seal and to alter the same at pleasure;
- (3) Have perpetual succession;
- (4) Maintain an office at such place or places within this Commonwealth as it may designate;
- (5) Adopt and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with this chapter, to carry into effect the powers and purposes of HDA and the conduct of its business;
- (6) Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;
- (7) Acquire real or personal property, or any interest therein, by purchase, exchange, gift, assignment, transfer, foreclosure, lease or otherwise, including rights or easements; to hold, manage, operate, or improve real or personal property; to sell, assign, lease, encumber, mortgage or otherwise dispose of any real or personal property, or any interest therein, or deed of trust or mortgage lien interest owned by it or under its control, custody or in its possession and release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including any equity or right of redemption in property foreclosed by it and to do any of the foregoing by public or private sale, with or without public bidding, notwithstanding the provisions of any other law;
- (8) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities from private parties to effectuate the purposes of this chapter;
- (9) To enter into agreements or other transactions with and accept grants and the cooperation of the United States or any agency thereof or of the Commonwealth of Virginia or any agency thereof in furtherance of the purposes of this chapter, including but not limited to the development, maintenance, operation and financing of any housing development and to do any and all things necessary in order to avail itself of such aid and cooperation;
- (10) To receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied to carry out the purposes of this chapter subject to such conditions upon which such grants and contributions may be made, including, but not limited to, gifts or grants from any department or agency of the United States or this Commonwealth for payment of rent supplements to eligible persons or families or for the payment in whole or in part of the interest expense for a housing development or for any other purpose consistent with this chapter;
- (11) To provide, contract or arrange for consolidated processing of any aspect of a housing development in order to avoid duplication thereof by either undertaking the processing in whole or in part for any department, agency, or instrumentality of the United States or of this Commonwealth, or, in the alternative, to delegate the processing in whole or in part to any such department, agency or instrumentality;

- (12) To provide advice and technical information;
- (13) To employ architects, engineers, attorneys, accountants, housing, construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix their compensation;
- (14) To procure insurance against any loss in connection with its property and other assets, including mortgages and mortgage loans, in such amounts and from such insurers as it deems desirable;
- (15) To insure mortgage payments of any mortgage loan made for the purpose of constructing, rehabilitating, purchasing, leasing, or refinancing housing developments for persons and families of low and moderate income upon such terms and conditions as HDA may prescribe;
- (16) To invest any funds not needed for immediate use or disbursement, including any funds held in reserve, in obligations or securities which are considered lawful investments for the investment of funds held by executors, administrators, trustees, and other fiduciaries, both individual and corporate, as set forth in § 26-40 of chapter 3 of Title 26 of the Code of Virginia;
- (17) To borrow money and issue bonds and notes or other evidences of indebtedness thereof as hereinafter provided;
- (18) To the extent permitted under its contract with the holders of bonds, bond anticipation notes and other obligations of HDA, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest security or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, contract or agreement of any kind to which HDA is a party;
- (19) To the extent permitted under its contract with the holders of bonds, bond anticipation notes and other obligations, to enter into contracts with any mortgagor containing provisions enabling such mortgagor to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges where, by reason of other income or payment from any department, agency or instrumentality of the United States or this Commonwealth, such reductions can be made without jeopardizing the economic stability of housing being financed;
- (20) To procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or notes or any other evidences of indebtedness thereof issued by HDA or an authority, including the power to pay premiums on any such insurance;
- (21) To make and enter into all contracts and agreements with qualified financial institutions for the servicing and processing of mortgage loans pursuant to this chapter;
- (22) To establish, and revise from time to time and charge and collect fees and charges in connection with loans made by HDA under this chapter;
- (23) To do any act necessary or convenient to the exercise of the powers herein granted or reasonably implied. (1972, c. 830.)

**§ 36-55.31. Powers relative to making mortgage loans and temporary construction loans to housing sponsors and persons and families of low and moderate income.**—The HDA shall have all the powers necessary or convenient to carry out and effectuate the purpose and provisions of this chapter including the following powers in addition to others herein granted:

- 1. Make and undertake commitments to make mortgage loans, including with limitation federally insured mortgage loans and to make temporary loans and advances in anticipation of permanent mortgage loans to housing sponsors to finance the construction or rehabilitation of housing developments designed and intended for persons and families of low and moderate income upon the terms and conditions set forth in § 36-55.34;

(7) In the event of a judgment against any housing sponsor in any action not pertaining to the foreclosure of a mortgage, there shall be no sale of any of the real property included in any housing development hereunder of such housing sponsor except upon sixty days' written notice to HDA. Upon receipt of such notice HDA shall take such steps as in its judgment may be necessary to protect the rights of all parties;

(8) In the event of violation by a housing sponsor of any provision of a loan, the terms of any agreement between HDA and the housing sponsor, the provisions of this chapter or of any rules or regulations duly promulgated pursuant to the provisions of this chapter, HDA may remove any or all of the existing directors or officers of such housing sponsor and may appoint such person or persons who HDA in its sole discretion deems advisable as new directors or officers to serve in the places of those removed notwithstanding the provisions of any other law; provided, however, that any such directors or officers so appointed by HDA shall serve only for a period co-existent with the duration of such violation or until HDA is assured in a manner satisfactory to it against violations of a similar nature. Officers or directors so appointed need not be stockholders or meet other qualifications which may be prescribed by the certificate of incorporation or by other laws governing such qualified housing sponsor. (1972, c. 830.)

**§ 36-55.32. Powers relative to purchase and sale to financial institutions of mortgage loans; loans to mortgage lenders.**—The HDA shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

(1) To invest in, purchase or to make commitments to purchase, and take assignments from mortgage lenders, of notes and mortgages evidencing loans for the construction, rehabilitation, purchase, leasing or refinancing of residential housing for persons and families of low and moderate income in this Commonwealth upon the terms set forth in § 36-55.35;

(2) To make loans to mortgage lenders under terms and conditions requiring the proceeds thereof to be used by such mortgage lenders for the making of new residential mortgage loans to persons and families of low and moderate income, upon the terms set forth in § 36-55.35;

(3) To make commitments to purchase, and to purchase, service and sell mortgages insured by any department, agency or instrumentality of the United States, and to make loans directly upon the security of any such mortgage, provided the underlying mortgage loans shall have been made and shall be continued to be used solely to finance or refinance the construction, rehabilitation, purchase or leasing of residential housing for persons and families of low and moderate income in this Commonwealth;

(4) To sell, at public or private sale, with or without public bidding, any mortgage or other obligation held by HDA;

(5) To enter into mortgage insurance agreements with mortgage lenders in connection with the lending of money by such institutions to persons and families of low and moderate income for the purchase of residential housing;

(6) Subject to any agreement with bondholders or noteholders, to collect, enforce the collection of, and foreclose on any collateral securing its loans to mortgage lenders and acquire or take possession of such collateral and sell the same at public or private sale, with or without public bidding, and otherwise deal with such collateral as may be necessary to protect the interests of HDA therein. (1972, c. 830.)

**§ 36-55.33. Power to supervise housing sponsors.**—HDA shall have the power to supervise housing sponsors including limited profit housing sponsors and their real and personal property in the following respects:

## APPENDIX G: WEST VIRGINIA REPORT ON LEGISLATION

Although there is no statewide planning commission, regional planning is authorized and encouraged by state legislation.<sup>1</sup> Regional planning commissions are established in designated regions. The commissions are composed of a representative of every municipality and county in the designated region. The representatives are to be selected, on the county level, by the county court and, at the municipal level, by the mayor or his designate.<sup>2</sup> The regions for which regional planning commissions are established are to be approved and determined by the governor after the effective date of this legislation. The factors to be considered in determining these regions include community interest and homogeneity, geographic features, communication and transportation, as well as such things as existing governmental services and municipal boundaries.<sup>3</sup>

Each commission is empowered to prepare plans for the development of various community services, land development, etc., to prepare and recommend ordinances to implement the commission planning, provide technical assistance to the local communities, and to exercise its powers jointly with other agencies or political subdivisions of the state of West Virginia, any other state or the United States.<sup>4</sup>

The county legislative body is a three-man commission called the county court.<sup>5</sup> The county courts are authorized to appoint county planning commissions to carry the primary responsibility for planning. The county planning commissions are authorized to develop comprehensive plans concerning a wide range of subjects, including streets, waterways, playgrounds, public facilities, forests, agricultural areas and the distribution of the population.<sup>6</sup>

After the appropriate hearings and the adoption of a comprehensive plan by the planning commission, the plan is submitted to the county court which must accept the plan to give it effect. Once the plan is accepted by the county court, it is incorporated by reference in the ordinances of the county.<sup>7</sup>

The county courts are expressly authorized to cooperate with the federal government regarding the exchange of planning information as well as the integration of planning on a broader scale.<sup>8</sup> They are also authorized to participate in federal planning assistance programs.<sup>9</sup>

Once a comprehensive plan concerning the development of housing subdivisions has been promulgated by the planning commission and enacted into ordinance by the county court, no plat or subdivision may be recorded within the jurisdiction of the planning commission without the permission of the commission.<sup>10</sup> The local planning commission has exclusive jurisdiction over subdivision and plat control.<sup>11</sup>

With respect to zoning authority, each county court is empowered to act on the recommendation of the planning commission to enact local zoning ordinances.<sup>12</sup> To the extent that there arises any conflict between state enactments concerning zoning and local ordinances governing the same situation, the stricter of the two applicable laws is to be applied.<sup>13</sup> But this provision seems to be of little consequence, since at this juncture there appears to be no state law directly controlling zoning.

It is important to note that public housing projects under the administration of the local housing authorities are subject to the county or municipal zoning ordinances, as well as other locally promulgated regulations.<sup>14</sup>

A recent development in West Virginia law that has important implications for any federal effort in the rural housing field is the recently enacted §8-24-50a. (See Exhibit A) Component and factory type housing is freed from any local or state building code or other regulation if the housing is approved as meeting the standards for such housing set by the Federal

Department of Housing and Urban Development. Certification by the state director of the Federal Housing Administration is evidence that the applicable HUD standards have been complied with. It is important to note that pre-emption of state and local regulation does not extend to local zoning and land use planning laws. It is quite conceivable that modular housing may still face substantial legal barriers in some communities. The possibility of pre-emptive or highly restrictive zoning may exist as an impediment to expanded use of modular housing.

## II. STATEWIDE HOUSING PROGRAM

The West Virginia Housing Development Fund (West Virginia Code §33-18-1) was created by the legislature in 1968. Its bonding capacity is \$130 million, and as of 1973 it had \$12 million in bonds outstanding. The 1973 amendment permits the West Virginia Housing Development Fund to act as a statewide housing authority and also created a land development fund to be used for seed money. Another 1973 amendment created a Mortgage Finance Bond Insurance Fund which is under the supervision of the state sinking fund commission. The Housing Development Fund is authorized to pledge any amounts held for the payment of the principal and interest on the mortgage finance bonds. In addition to the other fees and charges which the Housing Development Fund charges on loans, it shall charge on all loans or mortgages made or purchased with the proceeds of sale of mortgage finance bonds a special bond insurance commitment fee and special bond insurance premium.

This provision was added to make it easier to float the Housing Development Fund's bonds, which did not have the full faith and credit of the state behind them. It will also permit HDCs to operate independent of the federal housing programs.

### III. HOUSING AUTHORITIES

In West Virginia the local units of government are authorized to establish five-member housing authorities.<sup>15</sup> The purpose of these county and municipal housing authorities is to establish low income housing and engage in slum clearance projects, in the interest of promoting public health and welfare.<sup>16</sup> The housing authorities are empowered to make investigations and studies of existing conditions and the present and future needs for low income housing as well as having the power to purchase, sell, lease and rent in connection with the goal of providing needed low income housing.<sup>17</sup> Included among the powers granted to the housing authority is the power of eminent domain to be exercised in conjunction with slum clearance or the construction of new low income housing.<sup>18</sup> If interjurisdictional cooperation is required to accomplish the goal of the State Housing Law, housing authorities are permitted to cooperate with other authorities for the purpose of planning, financing, constructing, or operating housing projects.<sup>19</sup> The local authorities in the furtherance of their goal are empowered to incur any indebtedness, issue any obligation or give any security to finance low cost housing. Statutory limitations on municipal financing are specifically designated as inapplicable to housing authorities.<sup>20</sup>

All authorities are charged with the responsibility of fixing rents at rates which will meet the demands of the underlying financing incurred in the construction of the housing project.<sup>21</sup> Further, authorities are restricted from accepting persons into any housing project whose aggregate income is greater than five times the annual rent unless the person has three or more minor dependents.<sup>22</sup>

Housing authorities are exempted from all other otherwise applicable state and local taxation but are subject to all other local regulation.<sup>23</sup>

An added feature of the State Housing Law is that individual owners of farms may apply for low cost housing for those of low income who operate or maintain his farm. (The owner would seem to fall within this group.) To achieve this purpose, the county authority is empowered to borrow or otherwise finance the rental or purchase of the appropriate housing.<sup>24</sup>

#### IV. CODES AND INSPECTION PROGRAM

West Virginia has not enacted a statewide building code, nor has it set any standards for the adoption of a national building code by the local units of government. Counties are authorized to adopt or promulgate building codes only if the population of the county is in excess of 200,000.<sup>25</sup> This leaves rural counties with small populations powerless to establish minimum standards. And it leaves them completely without any regulation of construction absent state action. Where counties are authorized to promulgate or adopt a code, there are no statutory guidelines for inspection procedures or enforcement of the code. Thus, it would appear that inspection and enforcement are subject to the determination of the county courts under the general grant of administrative power given by the state legislature to the county courts.<sup>26</sup> As has been noted earlier, the effect of §8-24-50a of the West Virginia Code is to pre-empt the application of county building codes where component housing is HUD approved.

The state legislature has not established a statewide minimum housing code, but, as is the case with building codes, counties of over 200,000 people are authorized to promulgate or adopt such codes to promote public health and welfare.<sup>27</sup>

Because there is no statewide building or housing code, a body of state law has not developed to enforce minimum standards of either state or local origin. For example, a tenant does not have the right to withhold rent if minimum standards created by the local government are not met, absent the appropriate local ordinance. Indeed, the landlord has no common law duty to repair property, unless there is an express contractual obligation.<sup>28</sup>



Likewise, there appears to be no statutory or case authority for the appointment of a receiver to collect rents and make improvements on substandard housing, or for local agencies, such as the county housing authority, to make repairs on substandard housing, retaining a lien on the property in the amount of the cost of repairs. And there is no specialized adjudicatory body which handles only housing matters.

There does appear to be power in local agencies, primarily slum clearance and redevelopment authorities and housing authorities, to vacate and clear away slum and substandard housing. Under the Urban Renewal Authority Act, counties are authorized to establish a slum clearance and redevelopment authority.<sup>29</sup> This agency is granted broad power to deal with the problem of slum and substandard housing, including, importantly, the power of eminent domain.<sup>30</sup>

#### V. LEGISLATION AFFECTING HOMEBUILDING CONSTRUCTION INDUSTRY

Although there is no statewide building code, state regulation does affect the construction industry in two areas -- the materials used in doors and panels around doors and the regulations promulgated by the state fire marshal. §§47-5-1 et seq. of the West Virginia code regulate the types of glazed materials which may be used in and around doors. The purpose of the regulation is to minimize injury by allowing only materials which do not cut and pierce. Only materials which meet the test requirements of the American National Standards Institute Standard Z-97.1-1966 may be used in what the commissioner of the state department of labor determines to be a hazardous location in any residential, commercial or public building. All such doors or panels which are installed must be labeled as meeting standards. A knowing violation of the statute is punishable as a misdemeanor.

There is no licensing of housing contractors other than certification by the State Roads Commission for its contractors.

The state fire marshal is charged with the responsibility of promulgating regulations necessary as a precaution against fire.<sup>31</sup> Among the areas within the fire marshal's rulemaking power are the installation of electrical wiring and the installation and maintainance of fire escapes on certain types of buildings.<sup>32</sup> Orders of the fire marshal pursuant to the rules and regulations are enforceable by injunction against violators or action brought by the appropriate prosecuting attorney.<sup>33</sup>

#### VI. LEGISLATION GOVERNING THE USE OF MOBILE HOMES

Although mobile homes are not specifically mentioned in the traffic safety statutes, it appears clear that the restrictions on the permissible dimensions of motor vehicles are applicable to mobile homes. The maximum height permitted is 12 feet 6 inches, unless specific exemption is obtained from the commissioner of highways.<sup>34</sup> The maximum length of any motor vehicle is 40 feet where the truck has three axles.<sup>35</sup> The greatest permissible width of any vehicle or load is 8 feet, unless the load is excepted by the permission of the commissioner of highways.<sup>36</sup>

A great deal of discretion is vested in the state highway commissioner. He is empowered to permit oversized vehicles not in continuous highway use use the state highways. This discretionary power is crucial to the free movement of mobile homes within the state, since a large majority of mobile homes are wider than the permissible 8 feet permitted by statute. But since special stickers are authorized to be issued to mobile homes on the highways in lieu of a motor vehicle license, it would appear that there is not a significant impediment to highway movement imposed by size regulations.<sup>37</sup>

In the 1971 amendments to the motor vehicle statutes, a new provision was added affecting mobile homes. It is now clear that a pilot car is no longer required to follow mobile homes while they are transported on the highways.

Of course mobile homes are subject to regulations through local building codes, which may exist only in counties with a population exceeding 200,000. Because the plumbing and electrical components are enclosed in the body of the mobile home, it is difficult to make adequate inspection of the mobile home after completion. On the local level as well, county courts may require all mobile homes in a county for more than 30 days to obtain permits. The purpose of this authority is basically informational, and the cost of the permit is only two dollars.<sup>38</sup>

#### VII. TAXATION OF MOBILE HOMES AND MODULAR UNITS

It appears that mobile homes would be taxed as personal property, except in those circumstances where the mobile home is owner occupied and the owner also holds title to the land. In that situation, it may be taxed as personalty or realty at the option of the owner.

The statute does not mention modular units, but it would appear that once attached to the land, modular units would be taxed as real estate.

#### VIII. TAXATION

There is no authority for the practice of maintaining existing levels of real property assessment following the improvement of substandard housing. In fact, it is expressly provided that all property is to be assessed at its true or actual value. Actual value is defined as the fair market value on the open market.<sup>39</sup>

#### IX. LAWS AFFECTING OPERATION OF BANKS AND SAVINGS AND LOAN ASSOCIATIONS IN THE HOUSING MORTGAGE FIELD

In the area of mortgage financing, there seem to be no particular restrictions on banks outside of the usury laws. The commissioner of banking has some discretionary regulatory power to order any bank to cease engaging in any unsound procedure detrimental to the bank and its depositors.<sup>40</sup>

Banks are expressly authorized to make loans secured by real property or leasehold if the loan is guaranteed or insured by the federal government or a federal agency.<sup>41</sup> Banks are also permitted to take mortgages from the state housing development fund or related fund projects.<sup>42</sup>

Saving and Loan associations may take mortgages under the conditions set forth in §31-6-21 of the West Virginia Code. These conditions include: 1) a complete application must be made following guidelines specified in the statute and the property must be appraised; 2) the loan is not to exceed 95% of the appraised valuation unless insured or guaranteed by the federal government; and 3) the transactions must be approved by the attorney retained by the association. Banks and building and loan associations may have freedom to adopt a flexible mortgage approach. §38-1-5 seems to permit such an approach. The open-end concept in mortgage financing is not mentioned in the statutory or case law, but it appears that §38-1-5 may also permit this device.

#### X. USURY

The legal rate of interest in West Virginia is 6 percent, and the permissible rate of interest for agreements in writing is 8 percent per annum.<sup>43</sup> Loans payable in installments are limited to the permissible rate of 6 percent per annum, but the interest charge may be added on or deducted from the amount of the loan. Thus the effective rate of interest is somewhat higher than 6 percent.<sup>44</sup>

"Points" are included as interest under §47-6-5, which sets forth the maximum rate of interest in written agreements. There is no specific reference to points in the section on installment loans. "Points" are defined as any charge received by the lender from any source in consideration of the loan and not otherwise permitted by statute.<sup>45</sup> The same section of the code authorizes only the simple amortization of points over the life of the loan.

Although no reference is made to points where installment loans are concerned, it should be observed that it is likely that such charges are included within the permissible 6 percent rate.<sup>46</sup>

Although points are included within the parameters of the usury statutes, both case law and statutory authorization permit charges above the permissible rate of interest which are not includable in that interest rate. A lender is permitted to charge just and reasonable expenses of making the loan to the borrower, and the expenses are not considered interest.<sup>47</sup> The boundaries of this proposition are unclear from both the case and the statutory law. Banks are allowed to charge the borrower for the expenses of reports and information concerning the loan, and these charges are outside of the usury constraints.<sup>48</sup>

Building and loan associations may charge interest rates which are higher than those permitted by the usury statutes, if the loan is made to one of its shareholders and the rate is fixed in the by-laws of the association.<sup>49</sup>

In the context of the installment loan, the applicable statute makes it mandatory that discounted or added-on interest be refunded at the contract rate of interest, and thus the lender need not refund at the effective rate of interest which, because of the discount or add-on characteristic, may be greater than 6 percent.<sup>50</sup>

Veteran's Administration and Federal Housing Administration insured loans are specifically exempted from the usury laws under section 31A-4-29 of the West Virginia Code.

There are regulations encompassing the area of secondary mortgages. These regulations are not applicable to banks, building and loan associations or where federal agencies are involved as the lender or guarantor of a loan.<sup>51</sup> The restrictions imposed on other lenders are that, after licensing, the lender may not extend a loan beyond 60 months at 6 percent interest with total charges not to exceed 10 percent. Late payment charges of up to 5 percent are not included in the 10 percent figure. Hazard insurance may also be required and is not considered within the 10 percent limitation.<sup>52</sup>

## XI. WELFARE LAWS

Welfare liens no longer exist in West Virginia, and all prior liens have been released by statute.<sup>53</sup>

## XII. HEALTH LAWS AND REGULATIONS, WATER AND WASTE SYSTEM REQUIREMENTS AND ENVIRONMENTAL PROTECTION LAWS

The state department of health is given broad powers to set standards for all drainage, water supply, excretia disposal, and refuse or garbage disposal insofar as public health is affected.<sup>54</sup> According to the state attorney general, this provision of state law is to be read expansively.<sup>55</sup> The state board of health, part of the state department of health, also regulates the chemical and bacteriological content of water systems serving more than 200 people.<sup>56</sup> Further, the state board of health is authorized to establish rules and regulations to control the design of public water systems, plumbing systems, sewage systems and excretia disposal methods whether publicly or privately owned.<sup>57</sup>

The rules and regulation of the department of health and the state board of health are enforced by local health officers.<sup>58</sup> But the department of health is given the explicit right to pre-empt local enforcement, if local officers neglect to enforce state regulation.<sup>59</sup>

To further a comprehensive health program the department of health is permitted to receive federal assistance subject to any accompanying restrictions and regulations.<sup>60</sup>

The state water resources board is responsible for the effectiveness of sewage and water disposal as they affect the quality of ground and surface waters.<sup>61</sup> The board has promulgated regulations to effectuate its policy goals. Sewage treatment processes which lead to such problems as objectionable odor, color, floating solids or foam, concentrations of materials poisonous to animals or man, and depleted oxygen content of water are prohibited.<sup>62</sup>

Violation of the regulations is a misdemeanor punishable by fine from \$100 to \$1,000 or imprisonment of up to six months, or both. Wilful violation is a misdemeanor punishable by fine of \$1,000 to \$10,000 or imprisonment not exceeding six months, or both. Each day of failure to comply creates a  
 63  
 separate offense.

#### XIII. LANDLORD AND TENANT LAW

There is no statutory authority for a tenant to withhold rent because the dwelling is in need of repairs, nor is there authority for the appointment of a receiver to collect rents and apply the proceeds to the repair of the premises.

There is no housing court.

#### XIV. INSURANCE LAWS

The State of West Virginia does not require insurance companies to write fire insurance policies on substandard housing, as part of its insurance law and regulation.

#### XV. TAX FORECLOSURE

The tax foreclosure procedure is a relatively long and complex process. Ad valorem property taxes are collectible in two installments payable September 1, or the following March 1.<sup>64</sup> Taxes due on these dates are delinquent on October 1 and the following April 1.<sup>65</sup> The compilation and recordation of the first delinquent tax list takes place on July 1 of the year of assessment.<sup>66</sup>

Among the remedies available to the sheriff, whose duty it is to enforce delinquent taxes, is the power to sell the land on which the taxes are due.<sup>67</sup> After a second publication of the list of taxes which are still delinquent as of September 1, the property involved may be sold, at the earliest, on October 14 following the year of assessment. The minimum price for which

the land may be sold is the amount of delinquent taxes plus the cost of publication. The owner of the property sold in the tax sale may redeem that property by March 31 of the second year following the tax sale at a price not less than the amount of the tax sale purchase price plus 12 percent per annum and all additional taxes and expenses incurred while the property remains unredeemed.



## FOOTNOTES

1. West Virginia Code Ann., § 8-25-1 (1969).
2. Id., § 8-25-5 (1969).
3. Id., § 8-25-4 (1969).
4. Id., § 8-25-8 (1969).
5. W. Va. Constitution, Art. 8, S 22.
6. W. Va. Code Ann., §§ 8-24-16 (1969), 8-24-17 (1969).
7. Id., § 8-24-21 (1969).
8. Id., § 8-24-27 (1969).
9. Id., § 8-24-6 (1969).
10. Id., §§ 8-24-28 (1969), 8-24-30 (1969).
11. Id., § 8-24-35 (1969).
12. Id., § 8-24-40 (1969).
13. Id., § 8-24-70 (1969).
14. Id., § 16-15-9 (1972).
15. Ibid., § 16-15-3 (1972).
16. Ibid., § 16-15-2 (1972).
17. Ibid., § 16-15-7 (1972); See Exhibit B.
18. Ibid., § 16-15-8 (1972).
19. Ibid., § 16-15-7b (1972).
20. Ibid., § 16-15-10; but see §§ 16-15-19, 16-15-20, 16-15-21 concerning bonds.
21. Ibid., § 16-15-18 (1972).
22. Ibid., § 16-15-19 (1972).
23. Ibid., §§ 16-15-14, 16-15-9 (1972).
24. Ibid., §§ 16-15-24, 16-15-25 (1972).

25. Id., § 7-1-3n (1969).
26. Id., § 7-1-3 (1969).
27. Id., § 7-1-3n (1969).
28. See Lennox v. White, 133 W. Va. 1, 54 S.E.2d 8, Clifton v. Montague, 40 W. Va. 207, 21 S.E. 858, W. Va. Code Ann., § 16-18-1, et seq. (1972).
29. W. Va. Code Ann., § 16-18-4 (1972).
30. Id., §§ 16-18-5 (1972), 16-18-8 (1972).
31. Id., § 29-3-4a (1971).
32. Id., § 29-3-4a (1971).
33. Id., §§ 29-3-4(b)(c) (1971).
34. Id., §§ 17C-17-11, 17C-17-4 (1966).
35. Id., §§ 17C-17-11, 17C-17-4 (1966).
36. Id., § 17C-17-3 (1966).
37. Id., § 17A-7-2 (1966), 17A-17-3 (1966).
38. Id., §§ 16-18-5 (1972), 16-18-8 (1972).
39. Ibid., § 11-3-1 (1966).
40. Id., § 31A-2-4(14)(B) (1972).
41. Id., § 31A-4-27 (1972).
42. Id., § 37-18-12 (1966).
43. Id., § 47-6-5 (1966).
44. Id., § 47-6-5a (1966).
45. Id., § 47-6-5 (1966).
46. James v. Felton, 99 W. Va. 407, 415, 129 S.E.482, 481 (1925).
47. Liskey v. Snyder, 56 W. Va. 610, 49 S.E. 515 (1904).
48. W. Va. Code Ann., § 31A-4-30 (1972).
49. Ibid., § 3-6-17 (1971).
50. Ibid., § 47-6-5a (1966).
51. Ibid., § 31-17-2 (1972).
52. Ibid., § 31-17-8 (1972).
53. Ibid., § 9-5-26 (1969).

- 54. Id., § 16-1-9 (1972).
- 55. 50 Op. Att'y Gen. 342 (1963).
- 56. Id., § 6-1-3 (1971).
- 57. Id., § 6-1-3 (1971).
- 58. Id., § 16-2-1 (1972).
- 59. Id., § 16-2-4 (1972).
- 60. Id., § 16-1-15 (1972).
- 61. Id., §§ 20-5A-3(b)(2) (1970), 20-5A-3a (1970).
- 62. West Va. Admin. Regs., State Water Resources Board § 3.
- 63. Id., § 20-5A-19 (1970).
- 64. Ibid., § 11A-1-3 (1966).
- 65. Ibid., § 11A-1-3 (1966).
- 66. Ibid., § 11A-2-14 (1966).
- 67. Ibid., § 11A-2-10 (1966).
- 68. Ibid., § 11A-3-17 (1966).

**§ 8-24-3****MUNICIPAL LAW****ARTICLE 24.****INTERGOVERNMENTAL RELATIONS—URBAN AND  
RURAL PLANNING AND ZONING.**

**Part XIII-A. Same—Adoption of  
Standards of Federal Department of Housing and Urban  
Development.**

ment of housing and urban  
development for factory-built  
housing, components, etc.,  
adopted.

Sec.

8-24-50a. Standards of federal depart-

**PART I. URBAN AND RURAL PLANNING—PLANNING COMMISSIONS  
AUTHORIZED; OBJECTIVE; DEFINITIONS.**

**§ 8-24-3. Definitions.**

Applied in *Fairlawns Homes, Inc. v. City of Morgantown*, W. Va., 182 S.E.2d 48 (1971).

**PART XIII-A. SAME—ADOPTION OF STANDARDS OF FEDERAL DEPARTMENT  
OF HOUSING AND URBAN DEVELOPMENT.**

**§ 8-24-50a. Standards of federal department of housing and urban  
development for factory-built housing, components,  
etc., adopted.**

Notwithstanding any existing provisions of law, municipal or county ordinance, or local building code, but excluding any such provisions relating to zoning or land use control, the standards for factory-built housing, housing prototypes, subsystems, materials and components certified as acceptable by the federal department of housing and urban development are hereby deemed acceptable and approved for use in housing construction in this State. A certificate from the state director of the federal housing administration of the department of housing and urban development shall constitute prima facie evidence that the products or materials listed therein are acceptable and such certificates shall be furnished by the building contractor to any local building inspector or other local housing authority upon request. (1971, c. 105.)

**PART XIV. SAME—BOARD OF ZONING APPEALS—ORGANIZATION  
AND FUNCTION.**

**§ 8-24-52. Same—Officers; quorum; compensation of secretary and  
employees.**

Legislative intent.—The legislature intended under this section to permit a board of zoning appeals in a municipality to act when a majority thereof indicated

a desire to do so. *Vector Co. v. Board of Zoning Appeals*, W. Va., 184 S.E.2d 301 (1971).

Exhibit B

STATE HOUSING LAW

§ 16-15-7

**§ 16-15-7. Authority a body corporate and politic; powers; investigations or examinations.**

An authority shall constitute a body both corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

To investigate into living and housing conditions in the city and into the means and methods of improving such conditions; to determine where unsanitary or substandard housing conditions exist; to study and make recommendations concerning the city plan in relation to the problems of clearing, replanning and reconstruction of areas in which unsanitary or substandard conditions exist, and the providing of housing accommodations for persons of low income, and to cooperate with any city or regional planning agency, to prepare, carry out and operate projects; to provide for the construction, reconstruction, improvement, alteration or repair of any project or any part thereof; to take over by purchase, lease or otherwise any project undertaken by any government; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a project or any part thereof; to arrange with the city or with a government for the furnishing, planning, replanning, opening or closing of streets, roads, roadways, alleys or other places or facilities, or for the acquisition by the city or by the city, state or federal government or any agency, instrumentality or subdivision thereof, including, specifically, the federal emergency administration of public works and the public works emergency housing corporation, of property, options or property rights or for the furnishing of property or services in connection with a project; to lease or rent any of the housing or other accommodations of any of the lands, buildings, structures or facilities embraced in any project, and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by eminent domain or otherwise, sell, exchange, transfer, assign or mortgage any property real or personal or any interest therein; to acquire any property real or personal or any interest therein from any person, firm, corporation, or the city, state or federal government or any agency, instrumentality or subdivision thereof, including, specifically, the federal emergency administration of public works and the public works emergency housing corporation, by gift, grant, bequest or devise; to own, hold, clear and improve property; in its discretion, to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness, and to secure the same by mortgages upon property held or to be held by it or by pledge of its revenues, or in any other manner; to invest any funds held in reserves or sinking funds, or any funds not

**§ 16-15-7a****PUBLIC HEALTH**

required for immediate disbursement in property or securities in which savings bank may legally invest funds subject to their control; to sue and be sued; to have a seal, and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this article, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to do all things necessary or convenient to carry out the powers given in this article. Any of the investigations or examinations provided for in this article may be conducted by the authority or by a committee appointed by it, consisting of one or more members thereof, or by counsel, or by an officer or employee specifically authorized by the authority to conduct it. Any member of the authority, its counsel, or any person designated by it to conduct an investigation or examination, shall have power to administer oaths, take affidavits and issue subpoenas or commissions. (1933, 2nd Ex. Sess., c. 93, § 7.)

ALR reference.—Suability and liability  
for torts of public housing authority, 61  
ALR2d 1246.

**§ 16-15-7a. Power of authority to include certain stipulations in contracts.**

A housing authority, in addition to its other powers, shall have power (notwithstanding anything to the contrary contained in this article or in any other provision of law) to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project. (1941, c. 49.)

**§ 16-15-7b. Joint undertakings by authorities.**

Any two or more authorities may join or cooperate with one another in the exercise of any or all of their powers for the purpose of financing, planning, undertaking, constructing or operating a housing project or projects located within the area of operation of any one or more such authorities. (1941, c. 49.)

DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT

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