

APRIL 12, 1956

HONORABLE JOSEPH E. MCLEAN, *Commissioner*
Department of Conservation and
Economic Development
State House Annex
Trenton, New Jersey

MEMORANDUM OPINION—P-14

DEAR MR. MCLEAN:

You have referred to us letter dated March 16, 1956 from the Federal Housing Administration at Washington, D. C. to Mr. William F. Hoffman, Director of the Federal Housing Administration office at Newark, New Jersey, raising several questions with reference to the New Jersey "Limited-Dividend Housing Corporations Law" (N.J.S.A. 55:16-1 et seq.) and the effect of certain provisions of that law in a situation where a housing project is to be constructed by a limited-dividend housing corporation with mortgage financing insured by the Section 220 Housing Insurance Fund (12 U.S.C.A. Sec. 1715), through the Federal Housing Administration.

The Limited-Dividend Housing Corporation Law was originally enacted as Chapter 184 of the Laws of 1949. After a declaration of the existence of a housing shortage and of blighted areas requiring public assistance for the construction of new housing, the Act permits the organization of limited-dividend housing corporations to construct and operate housing projects when authorized by the Public Housing and Development Authority in the Department of Conservation and Economic Development, hereinafter called the Authority (N.J.S.A. 55:16-4). The Act authorizes the formation of such housing corporations after approval of the certificate of incorporation by the Authority (N.J.S.A. 55:16-6,7), contains limitations relating to dividends and distribution of surplus on dissolution of the corporation; provides authority for municipalities to exempt the housing project from taxation and to accept in lieu thereof annual payments on a formula basis (N.J.S.A. 55:16-18) and sets out in N.J.S.A. 55:16-8 the powers of such corporation. Included among such powers are those provided in Subsection 14, which was added by the amendment to the Act accomplished by Chapter 305 of the Laws of 1949.

Subsection (14) reads as follows:

" * * * (14) To obtain, or aid in obtaining, from the Federal Government any insurance or guarantee or commitment therefor, as to, or for the payment or repayment of interest or principal, or both, or any part thereof, of, any loan or other extension of credit, or any instrument evidencing or securing the same, obtained or to be obtained or entered into by it; and to enter into any agreement, contract or any other instrument whatsoever with respect to any such insurance or guarantee."

The section also provides "the Authority may make the exercise of any of the rights, powers and privileges of housing corporations set forth in this section, subject to its prior approval."

In addition to various other provisions governing the operation of limited-dividend housing corporations, the Act permits the Authority to "make, amend, modify and repeal rules and regulations to effectuate the purposes of the act and to supervise the operations of any housing corporations thereunder" * * * and "to

supervise the planning, development and management of new housing projects undertaken by such corporation" (N.J.S.A. 55:16-11). It also provides that prior approval of the Authority is necessary before any project is purchased, acquired or undertaken (N.J.S.A. 55:16-12); that the Authority shall have the power to supervise housing corporations and their real and personal property in various designated respects (N.J.S.A. 55:16-16); and that the Authority may institute proceedings to enforce the provisions of the Act or its regulations and to foreclose mortgages it may hold (N.J.S.A. 55:16-17).

Regarding foreclosure of mortgages covering such projects, N.J.S.A. 55:16-17 provides in part:

"*** In any foreclosure action, other than a foreclosure action instituted by the Authority: the Authority and the municipality in which any tax exemption or abatement is provided any housing corporation, in addition to other necessary parties, shall be made parties defendant; and the Authority and the municipality shall take all steps in such action necessary to protect the interest of the public therein, and no costs shall be awarded against the Authority or the municipality. *Subject to the terms of any applicable contract, agreement, guarantee or insurance entered into or obtained pursuant to subsection (14) of section eight hereof:* judgment of foreclosure shall not be entered unless the court to which application therefor is made shall be satisfied that the interest of the lien-holder or holders can not be adequately secured or safeguarded except by the sale of the property; and in any such proceeding, the court shall be authorized to make an order increasing the rentals to be charged for the housing accommodations in the project involved in such foreclosure, or appoint the Administrator or any officer of the municipality in which any tax exemption or abatement with respect to the project is provided, as a receiver of the property, or grant such other and further relief as may be reasonable and proper; and in the event of a foreclosure sale or other judicial sale, the property shall be sold only to a housing corporation which will maintain, operate and manage the project subject to the provisions of this act and the regulations of the Authority, approved by the Council, issued hereunder, unless the court shall find that the interest and principal on the obligations secured by the lien the subject of foreclosure cannot be earned under the limitations imposed by the provisions of this act and that the proceeding was brought in good faith, in which event the property may be sold free of limitations imposed by this act or subject to such limitations as the court may deem advisable to protect the public interest."

(Emphasis supplied)

The letter from the Federal Housing Administration, after recognizing the feasibility of financing housing projects constructed under the Limited-Dividend Housing Corporations Law through a Federal Housing Administration insured mortgage, expresses concern with reference to the restrictions placed on foreclosure of mortgages by N.J.S.A. 55:16-17. The letter sets out the four statutory requirements applicable to mortgage foreclosure proceedings with which they are concerned as follows:

"(1) In addition to the mortgagor, the Housing Authority shall be made parties defendant and the Authority and the municipality are required to

take all steps in such action necessary to protect the interest of the public therein.

"(2) Judgment of foreclosure shall not be entered unless the court to which application therefor is made shall be satisfied that the interest of the lien-holder cannot be adequately secured or safeguarded except by sale of the property.

"(3) The court is given broad discretionary powers in the matter of appointment of a receiver and the fixing of rentals to be charged during the time the foreclosure action is pending.

"(4) In the event of a foreclosure sale, the property shall be sold only to a housing corporation, which will maintain, operate and manage the project subject to the provisions of the Act, and the regulations, unless the Court shall find that the interest and principal on the obligations secured by the lien cannot be earned under the limitations imposed by the provisions of the Act and that the proceedings were brought in good faith, in which event the property may be sold free of limitations."

Our opinion is requested as to the applicability of these restrictions to mortgages which have been insured by the Federal Housing Administrator and as to the power of the housing corporation or the Authority, or both, to waive these restrictions.

Under the applicable portion of N.J.S.A. 55:16-17 quoted above, it will be necessary, in the event of foreclosure, that the Authority and the municipality in which the project is located be joined as parties defendant. This creates no problem and need not be of any concern. Its evident purpose is to insure that the Authority and the municipality have notice of the foreclosure and reasonable opportunity to take such steps as they may deem necessary to protect the public interest.

However, the restrictions referred to in items 2, 3 and 4 of the letter would not affect a mortgage insured by the Federal Housing Administrator if, at the time of the execution of such mortgage, or in the mortgage itself, the housing corporation, with the approval of the Authority, enters into an agreement providing that they should not. This is so because by the express provisions of N.J.S.A. 55:16-17 the applicability of such restrictions may be limited by the terms of "any applicable contract, agreement, guarantee or insurance entered into or obtained pursuant to subsection 14" of N.J.S.A. 55:16-8, that is, an agreement made for the purpose of obtaining or aiding in the obtaining from the Federal Government of a mortgage insurance or guarantee, pursuant to the power granted the corporation by subsection 14 of N.J.S.A. 55:16-8. The power so granted by that subsection clearly includes the power to waive the statutory restrictions referred to in items 2, 3 and 4 of the Federal Housing Administration's letter.

In our opinion, it is clear the statutory restrictions limiting the right to entry of a judgment of foreclosure, granting the court discretionary power in the matter of the appointment of a receiver and the fixing of rentals and prohibiting sale under foreclosure except to another housing corporation will not apply where the mortgage loan has been guaranteed by the Federal Government or its agency, the Federal Housing Administration, and there has been an agreement in connection with such loan that such provisions limiting the rights on foreclosure be waived.

The language of N.J.S.A. 55:16-8 and 55:16-17 makes this clear. It is buttressed

by the fact that P.L. 1949 c. 305, which amended section 8 of the Act to add subsection 14 which authorized a limited-dividend housing corporation to obtain financing through Federal guaranteed or insured mortgages, also amended N.J.S.A. 55:16-17 to add the following language which now precedes the limitations in event of foreclosure hereinbefore referred to, viz: "Subject to the terms of any applicable contract, agreement, guarantee or insurance entered into or obtained pursuant to subsection (14) of section eight hereof".

It is our opinion that except for the formal requirement of the joinder of the Housing Authority and the municipality as parties defendants to the foreclosure, the mortgagor limited-dividend housing corporation can, under our law, with the approval of the Public Housing and Development Authority of New Jersey, waive the other restrictions on the foreclosure proceedings referred to in the letter of the Federal Housing Administration.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: STANLEY COHEN
Deputy Attorney General

SC:MG

APRIL 13, 1956

HON. E. POWERS MINCHER
Assistant to the Commissioner
New Jersey State Department of Health
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-15

DEAR MR. MINCHER:

You have requested our opinion concerning the effect on the birth certificate of child born out of wedlock in New Jersey of a judgment of the Superior Court of Arizona declaring the child to be legitimate.

Your letter sets forth the following case:

"X was born out of wedlock in Newark in December, 1954, the child of Y, whose putative father is Z. Subsequently, Y brought an action against Z under Art. 27, Sect. 402 of the Arizona Civil Code in the Superior Court of the State of Arizona in and for the County of Maricopa. That honorable Court, on November 30, 1955, rendered judgment declaring Z to be the father of X and entitling X to bear the surname of Z."

Your question is: "Must the Bureau of Vital Statistics correct or amend the birth certificate on the basis of this judgment alone?"

The Registrar of Vital Statistics is authorized to alter, amend or correct birth certificates only where he is expressly given that power by statute, or pursuant to a court order.