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records should be exhausted before other sources are utilized. N.J.A.C. 10:81-3.4 (a) (1). Thus, the county welfare agencies are empowered and directed to verify all applicants' income, and the Division has provided for their obtaining that information from public records.

An administrative agency has such powers as are expressly conferred upon it by law and those implied or incidental powers necessary to achieve its essential statutory purpose. See *Board of Education of Plainfield v. Plainfield Education Association*, 144 N.J. Super. 521, 524 (App. Div. 1976). In order to further enable the Division of Public Welfare and county welfare agencies to verify or document statements or representations made to establish eligibility for financial assistance, the Commissioner may promulgate rules and regulations that require as a condition of continued public assistance an applicant to authorize and consent to the disclosure of relevant State income tax information. Such rules and regulations would clearly serve to insure that all of an applicant's income and resources are fully considered in determining eligibility under the public assistance statutes. N.J.S.A. 44:10-3(c). Accordingly, the Division of Public Welfare or the county welfare agencies may, after securing the necessary authorization and consent of an applicant for public assistance, obtain copies of the applicant's income tax return or information derived from that return from the Division of Taxation consistent with the provisions of the Uniform Tax Procedure Act.

Very truly yours,
WILLIAM F. HYLAND
Attorney General

By DOUGLAS G. SANBORN
Deputy Attorney General

* The "division of old age assistance" referred to in N.J.S.A. 44:7-6 denominates the present Division of Public Welfare. L. 1967, c. 206, §1; L. 1962, c. 197, §4; L. 1950, c. 166, §1.

HONORABLE VIRGINIA LONG
Commissioner of Banking
Department of Banking
36 West State Street
Trenton, New Jersey 08625

August 9, 1977

FORMAL OPINION 1977—No. 18.

Dear Commissioner Long:

You have requested our opinion on whether state-chartered commercial banks, savings banks, and savings and loan associations may make graduated mortgage loans on residential property. A graduated mortgage loan is a loan, the terms of

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which provide for gradually increasing payments of principal and interest over the term of the loan rather than the customary level payments. Such loans necessarily require the deferral of substantial accrued unpaid interest, particularly in the early years of the loan.

Initially, it should be noted that commercial banks and savings and loan associations may require only the payment of interest during the first five years of a mortgage loan. N.J.S.A. 17:9A-65.1. However, since interest is by far the largest part of an ordinary mortgage payment in the early years of the payment of the loan, the postponement of payments of principal for five years will not significantly lower the amount of periodic mortgage payments in the early years of the indebtedness. Hence this provision alone would not in practical effect permit commercial banks and savings and loan associations to make meaningful graduated mortgage loans.

However, commercial banks and savings and loan associations have the authority to make graduated mortgage loans under other statutory provisions. N.J.S.A. 17:9A-65A(5)¹, which regulates the amortization of mortgage loans made by commercial banks, including loans on residential property, requires either that such loans be paid off in equal (level) monthly installments applicable to principal and an amount sufficient to pay current interest, or that the principal amount of the loan be annually reduced by a minimum amount specified in the statute. This latter method of amortization does not require that interest be paid currently, in significant contrast to the level payment method. Therefore, insofar as commercial banks choose to make mortgage loans pursuant to the second method, they may, in effect, make graduated mortgage loans on residential property by requiring in the early years of such loans the annual payment of only the minimum amount of principal required and by deferring interest payments.

Article X of the Savings and Loan Act of 1963, N.J.S.A. 17:12B-1, N.J.S.A. 17:12B-147 to 169, regulates investments by savings and loan associations. N.J.S.A. 17:12B-147 and 150 deal with ordinary mortgage installment loans on residential property, called "direct reduction loans" and "special direct reduction loans"². With certain exceptions not relevant to this opinion, payment of "special direct reduction loans" is governed by the statutory provisions dealing with direct reduction loans.

N.J.S.A. 17:12B-147 provides in part:

"Each direct reduction loan as defined in section 5 of this act, made in accordance with the provisions of this section, shall require periodical payments sufficient to pay the principal and interest of the loan in full in a period of 40 years or less . . ." (footnote omitted).

The only amortization requirements of the section are that the interest and principal be paid periodically and that the loan be paid within forty years. The payments need not be level. Savings and loan associations therefore are free to make graduated mortgage loans on residential property by deferring the payment of principal and the substantial interest due in the early years of the indebtedness.

Savings banks on the other hand may not make graduated mortgage loans on residential property. N.J.S.A. 17:9A-181 F,³ which regulates the amortization of mortgage loans on residential property made by savings banks, requires that under all circumstances the interest on such loans be paid monthly.

You are therefore advised that savings and loan associations and commercial

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banks may make graduated mortgage loans on residential property, in which the payment of interest accruing in the early years of the loan is deferred to some later period in the life of the loan.⁴

Very truly yours,
WILLIAM F. HYLAND
Attorney General of New Jersey

By: HARLEY A. WILLIAMS
Deputy Attorney General

1. N.J.S.A. 17:9A-65A(5) provides in pertinent part:

“No bank shall make a mortgage loan secured by a mortgage upon real property unless:

(5) the instrument evidencing the loan shall require payment to be made during each year on account of the principal amount of the loan at a rate not less than 1% per annum of the original amount of the loan, if the original amount of the loan does not exceed 50% of the appraised value of the mortgaged property; or 2% per annum of the original amount of the loan, if the loan exceeds 50% but does not exceed 66⅔% of such appraised value; or 4% per annum of the original amount of the loan, if the loan exceeds 66⅔% of such appraised value; provided, that, in lieu of such principal payments, the instrument evidencing any mortgage loan may require equal monthly payments, each applicable to principal and interest, in an amount sufficient to pay current interest and to repay the amount of the loan in not more than 40 years from its date . . .”

2. A “direct reduction loan” is an installment mortgage loan in which the principal amount of the loan is 80% or less of the appraised value of the property. A “special direct reduction loan” is the same as a “direct reduction loan” except that the principal amount of the loan may be for as much as 90%, or in some cases 95%, of the appraised value of the property.

3. N.J.S.A. 17:9A-181 F provides:

“F. The instrument evidencing a mortgage loan made pursuant to either subsection D or subsection E of this section shall require that

(1) interest shall be paid on such loan monthly, and that equal monthly payments be made in reduction of such loan of an annual rate equal to at least 3⅓% of the original amount of such loan; or

(2) that a constant sum be paid monthly in an amount sufficient for current interest and for the payment of the loan in full in not more than 40 years and 1 month from the making of such loan.”

4. It should be noted that government mortgage loan programs, such as those administered by the VA or the FHA, may have amortization requirements different from those of the Banking Act of 1948 and the Savings and Loan Act of 1963. Of course this opinion is inapplicable to loans made pursuant to such programs.