

April 30, 1959

SUBJECT: INSURANCE

WITHDRAWN

TO ALL INSURERS AUTHORIZED TO DO BUSINESS IN THE STATE OF NEW YORK:

The 1959 Legislature amended the Public Housing Law of the State of New York in relation to the making of loans to limited-profit housing companies and the investment of funds in limited-profit housing company obligations.

Inquiry has been made of this Department as to the authority of insurance companies authorized to do business in this State to make investments in single participating mortgage loans, or in separate bonds or notes and mortgages given by a limited-profit housing corporation pursuant to Section 306, subdivision 1, of the Public Housing Law, as affected by the aforementioned amendment.

Because of widespread interest in this matter, I am setting forth below the opinion of the Chief Counsel of the Insurance Department:

"The amendments to the Public Housing Law, standing alone, are specific in their reach, as distinguished from the general provisions of the Insurance Law relating to investments and, therefore, according to accepted rules of construction the specific provisions of the Public Housing Law will prevail over the general provisions in the Insurance Law.

"Irrespective, however, of construction of the amendments to the Public Housing Law in determining eligibility of investments of insurance companies, subsection 9 of Section 81 authorizes an insurance company to invest in evidences of indebtedness of any housing company organized under the Public Housing Law, 'to the extent and upon such conditions as may be authorized by the Superintendent of Insurance'. Subsection 9, as originally enacted in 1940, authorized investments in stocks and debentures of housing companies organized under the Public Housing Law. In 1946 the subsection was amended by Chapter 557, by striking out the word 'debenture' wherever it appeared in the subsection and substituting therefor the words 'evidences of indebtedness'.

The term 'evidences of indebtedness' is broad in its meaning and includes mortgage loans, as witness the opening sentence of subdivision 6 of Section 81, namely, 'bonds, notes or evidences of indebtedness other than those described in subdivision two ***'.

"Section 306 (1) of the Public Housing Law and Section 81 (9) of the Insurance Law are consistent in providing that insurance companies may invest in a single participating mortgage or separate bonds and notes or mortgages of a limited profit housing company only to the extent and upon such conditions as may be authorized by the Superintendent of Insurance. Moreover, subsection 9 of Section 81, in referring to evidences of indebtedness of a housing company organized under the Public Housing Law recognizes as an eligible investment a single participating mortgage or separate bonds or notes and mortgages.

"Furthermore an insurance company, by virtue of subdivision 10 of proposed Section 306-a, is

authorized to make loans to a limited profit housing mortgage corporation, even though there may not be any specific authorization for such amendment in the Insurance Law, in view of the explicit provision in subdivision 10 which supersedes 'any provision of any general *** law', which is a cross reference to the Insurance Law, among other laws. Since it is obviously within the power of the Legislature to amend the Insurance Law, it is likewise within the power of that body to supersede the provisions of that law, as it has done here."

[SIGNATURE]

Superintendent of Insurance