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## The Housing and Urban Development Act of 1968: Private Enterprise and Low-Income Housing

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# THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968: PRIVATE ENTERPRISE AND LOW-INCOME HOUSING

## INTRODUCTION

The Congress finds that [the goal of a decent home and a suitable living environment for every American family] has not been fully realized for many of the Nation's lower income families; that this is a matter of grave national concern; and that there exist in the public and private sectors of the economy the resources and capabilities necessary to the full realization of this goal.<sup>1</sup>

As the United States moves toward the fourth quarter of the twentieth century, every stratum of American leadership is aware that the lack of adequate housing for a large majority of the nation's lower income population is one of the great problems affecting our society.<sup>2</sup> Civil disorders in the larger urban centers of this country in the last five years are not only related directly to sub-standard housing but also are related indirectly to a "ghetto morality" which is so easily nurtured in an overcrowded, unhealthy, and degrading environment.<sup>3</sup> None of this is new for as early as 1647 attempts were being made to establish and maintain community housing standards in deteriorating urban areas.<sup>4</sup> This concern has today evolved into a declared national housing policy<sup>5</sup> which is planned, implemented, and controlled in large measure by the federal government.

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1. Act of August 1, 1968, Pub. L. No. 90-448, 82 Stat. 476 [hereinafter cited as Housing and Urban Development Act of 1968].

2. See REPORT OF THE PRESIDENT'S COMMITTEE ON URBAN HOUSING (1968) and REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968).

3. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, ch. XVIII, IV *Housing* (1968).

4. Karlin, *New York Slum Clearance and the Law*, 52 POL. SCIENCE QTRLY. 241, 242 (1937).

5. It is declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe and sanitary dwellings for families of low income, in urban and rural nonfarm areas, that are injurious to the health, safety and morals of the citizens of the Nation. 42 U. S. C. § 1401 (1964).

It is not the purpose of this discussion to assess the success or failure of the federal government's efforts in the area of low-income housing, nor is it the purpose to provide a detailed analysis of the many low-income housing programs presently sponsored by the government;<sup>6</sup> the discussion here will focus on the potential effect of action by the private sector of the economy on the attainment of the national housing goals now embodied in the Housing and Urban Development Act of 1968.

As the private sector of the nation's economy increasingly becomes involved in the challenge of supplying low-income housing, the legal profession will be thrust into every stage of the housing process from the initial pre-construction negotiations through the continued management of the completed projects. No longer will the planning and initiation of low-income housing be the exclusive domain of the local housing agency<sup>7</sup> and the concern of the attorney who represents the public sponsor. In the future, the attorney who represents large and small business enterprises, non-profit and fraternal associations, as well as the private practitioner, will be faced with the challenge of providing legal guidance for sponsors whose responsibilities will continue far into the future. The new programs found in the Act<sup>8</sup> are designed to attract private capital and skills by making participation financially worthwhile.<sup>9</sup> To properly serve the client who seeks the advantages of these programs, the attorney must be prepared to respond not only with imagination and ingenuity, but also with a basic understanding of the

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6. See generally Burstein, *New Techniques in Public Housing*, 32 LAW & CONTEMP. PROB. 528 (1967); Loshbough, *Rehabilitation of Housing: Federal Programs and Private Enterprise*, 32 LAW & CONTEMP. PROB. 416 (1967); Note, *Government Programs to Encourage Private Investment in Low-Income Housing*, 81 HARV. L. REV. 1295 (1968); Note, *Government Housing Assistance*, 76 YALE L. J. 508 (1967).

7. The role of the local housing agency in the implementation of federally assisted low-income housing programs will be discussed later.

8. Housing and Urban Development Act of 1968, 82 Stat. 476.

9. To help attract these elements of the business community, we are proposing . . . that the Congress authorize the formation of privately funded partnerships that could operate on a national scale. These would join capital with the business and organizational skills needed for participation in the construction and operation of housing for low- and moderate-income families. They would have access to the capital available to our large business concerns. They would benefit from their managerial experience and ability to invest wisely, and they would be attracted by the opportunity to earn a fair return while solving a national problem.

Statement of Robert C. Weaver, Secretary, Department of Housing and Urban Development. *Hearings on S. 3029 before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking and Currency*, 90th Cong., 2d Sess., Pt. 1, at 12 (1968) [hereinafter cited as *Hearings on S. 3029*].

statutory requirements and financial opportunities of the various programs.

### THE NEED FOR LOW-INCOME HOUSING

To say that the United States is an industrial nation is an understatement. American industry has been in the vanguard of the industrial age since the middle of the nineteenth century, and in the twentieth century private industry has mastered the challenges of mass production through inventiveness, daring, and an appreciation of economic realities and potentials. Unfortunately for the low- or moderate-income family, the ability of private enterprise to develop successful markets in other areas has relegated the housing of this income group to a low priority position. To the man in the street the responsibility for the creation of low- and moderate-income housing, like the responsibility for national defense, has come to rest with the federal government to the exclusion of other elements of the economy.

While apparent federal domination of the creation of low- and moderate-income housing can easily be justified by considering the economic risk involved in constructing and maintaining such housing projects, the indirect burden on the private individual or corporation which results from inadequate housing in a community must also be considered as a reason *for* creating decent housing. It is worth considering the arguments for and against private sponsorship of adequate housing for such families if for no other reason than to assess the legislative intent of the 1968 Housing Act.

The obvious argument *against* private sponsorship of a housing project aimed exclusively at the low- or moderate-income tenant is the financial risk involved. The high cost of land, construction materials, labor, and financing requires a high initial investment by the sponsor. These costs will be incurred at the same rate regardless of whether the project will house the affluent or the low-income tenant. These circumstances, combined with the general inability of the low-income tenant to pay the market rental value of the finished unit, make the entire operation highly speculative. Unlike the project designed for initial occupancy by the higher-income tenant, building depreciation of the low- and moderate-income project will occur at a more rapid rate due to the tenants' failure to realize that higher standards of maintenance will be required. Local hostility to the presence of low-income housing projects may result in disproportionately higher tax burdens. The combination of the above

factors greatly decreases the liquidability of the project when the personal financial requirements of the sponsor change. Even though the sponsor may desire to take advantage of federal assistance programs, eligibility in such programs is conditioned on the sponsor's meeting statutory<sup>10</sup> and executive guidelines. These requirements are met only after the agency conducts intensive and protracted studies, the expense of which must be borne by the sponsor—generally in the pre-construction phase of the project.<sup>11</sup>

Yet the fact remains that the need for adequate housing for this income group is an acute problem and the cost of providing such housing, or the even greater cost of ignoring the problem, will be borne by the private individual or corporation through federal, state, and municipal taxes. The funding requirements necessary to support presently existing low-income housing projects are apparent, but the less obvious cost of ignoring the plight of the slum dweller may be many times greater. Since the local community generally must meet the expense occasioned by local conditions, which expense is transferred through taxation to the private individual or corporation, an analysis of the sources of this cost is necessary.

Slums and deteriorating housing are not in themselves responsible for unemployment, but they are a major factor in perpetuating the causes of unemployment, and unemployment results in a greater welfare responsibility for the community. In addition, areas of inadequate housing increase the health and public safety expenditures of the community.<sup>12</sup> Fire prevention in such neighborhoods is a greater expense than in more affluent sections of the community, and when prevention fails the resulting property loss is usually greater than in other areas. Police protection must be increased greatly in lower-income neighborhoods and, as the integrity of the area breaks down, the presence of a criminal element is likely to increase. As the crime rate increases, the community must absorb the burden of additional costs incurred in the administration of justice and the incarceration and rehabilitation of the offender. Conditions dangerous to the health of the community are more acute in neighborhoods in which deteriorating homes are over-crowded. In all

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10. 42 U. S. C. § 1415 (1964).

11. A discussion of this problem is found at 1968 U. S. CODE CONG. & AD. NEWS 2877.

12. For a comparative analysis of governmental expenditures on the municipal level for the year 1966, the latest year for which figures are available, see Charts 601 & 602 *United States Bureau of the Census*, STATISTICAL ABSTRACT OF THE UNITED STATES 1968.

of these circumstances the local government must provide the services to meet the existing conditions; to meet its resulting fiscal obligations the local government then looks to the sector of the community which is most able to bear the additional tax burden.

Not to be ignored by any citizen is the increasingly prevalent specter of civil disorder and the losses to all sectors of the community, public and private, which follow. The cost to the municipality in the form of lost business revenue, the actual expense incident to quelling the disorder, and the resulting need for rehabilitation of both economic and human resources, may well be cataclysmic. The proportionate loss to the private sector may be even greater as a result of the destruction of places of business, the payment of higher insurance premiums if insurance is still available, and the greater tax burden of funding the local government's increased obligation.

It is important to recognize that while the *labor skills* employed in the housing industry do not lend themselves readily to mass production, the *techniques* of the housing industry are adaptable to volume production.<sup>13</sup> By making use of mass production techniques, combined with building materials developed as a result of advanced technology, the housing industry will create its own cost reduction which can be passed on to the private sponsor as an inducement to participate.

#### BACKGROUND OF HOUSING LEGISLATION

As any successful venture into the field of providing low- and moderate- income housing will necessarily involve federal programs, it is important that the attorney understand the history of the government's efforts, both state and federal, in the area of housing production. Such an analysis will serve also to put the Housing and Urban Development Act of 1968 in proper perspective.

Until 1937, upgrading of low-income housing in the United States took the form of rehabilitation and control of existing housing units.<sup>14</sup> Earlier recognition of the need to establish housing standards was primarily directed towards preserving the property values of the com-

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13. For a discussion of the problems and potentials of technical advances from the industry's point of view, see Stet, *Instant Housing*, 25 J. OF HOUSING 467 (1968); *Pre-Fab: What's in it for U. S. Development Programs?*, 23 J. OF HOUSING 435 (1966); *Industrialized Housing: Have We Overlooked True Value?*, 24 J. OF HOUSING 427 (1967).

14. See T. McDONNELL, *THE WAGNER HOUSING ACT* (1957); N. STRAUS, *SEVEN MYTHS OF HOUSING* (1944).

munity rather than the effect of the "sub-standard" housing on the occupant.<sup>15</sup> As the metropolitan centers of the east coast experienced the mass influx of immigrants in the mid-nineteenth century, state legislation was enacted which resulted in the establishment of standards for urban dwellings.<sup>16</sup> While the courts were able to justify such governmental concern as within the police power of the state,<sup>17</sup> attempts by local governments to finance the actual construction of replacement housing with public funds were struck down<sup>18</sup> as not being within the valid interest of the "public good and welfare."<sup>19</sup>

During this early period, which continued until World War I, the federal government's role in national housing was limited to sponsoring various commissions which sought to determine the true condition of the slum dweller. The resulting reports usually consisted of paternalistic comments which expressed pleasant surprise at the actual status of the inhabitants regardless of how their living conditions appeared to the general public.<sup>20</sup>

With the imminent threat of American involvement in the First World War came the realization that the labor centers of the nation would have

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15. Karlin, *supra* note 4.

16. T. McDONNELL, *supra* note 14, at 3.

17. *Health Dep't v. Rector, Trinity Church*, 145 N. Y. 32 (1895).

18. The expenditure authorized by the statute [authorizing the city of Boston to issue bonds and to lend the proceeds on mortgage] being for private and not for public objects, in a legal sense, it exceeds the constitutional power of the Legislature; and the city cannot lawfully issue the bonds for the purpose of the act. *Lowell v. City of Boston*, 111 Mass. 454, 473 (1873).

19. MASS. CONST. ch. 1, § 1, art. IV (1779).

20. The statistics show no greater sickness prevailing in the districts canvassed than in other parts of the cities involved, and while the most wretched conditions were found here and there, the small number of sick people discovered was a surprise to the canvassers. . . .

It was thought that when the windows and doors of the tenements were closed the air would be found to be contaminated to a much greater extent than in the summer. It was found, however, that while the percent-of carbon dioxide in many instances was greater, owing to smoke from open fires, the low temperature operated to reduce the bacteria in the air to almost nothing.

The absence of carpets, upholstered furniture, and curtains, which hold bacteria in the homes of the well-to-do, accounts for the small percentage of bacteria in the air of the slums. The people in the tenements visited were compelled to get along with the least amount of heat, only enough to cook with, hence the temperature was very low. THE SLUMS OF BALTIMORE, CHICAGO, NEW YORK AND PHILADELPHIA; Special Report of the Commissioner of Labor (1894) reprinted in R. FISHER, 20 YEARS OF PUBLIC HOUSING 26 (1954).

to be reconstructed completely to meet the logistical demands which war would bring. The precipitous expansion of war industries required a similar expansion in housing units to accommodate the enlarged labor force. In March of 1918, Congress authorized<sup>21</sup> the United States Shipping Board Emergency Fleet Corporation to acquire land, build homes for workers in the shipbuilding industry, and lend money to persons who would provide additional housing and related facilities for the employees of such shipyards. The wording of the statute clearly indicated that this was a war emergency measure.<sup>22</sup> In May of the same year, Congress authorized the President to purchase, lease, and construct housing for war needs.<sup>23</sup> Although the statute authorized the building of additional housing, it specifically required that only temporary houses be constructed.<sup>24</sup> The wording of the statute closed with the strange proviso that all housing built in the District of Columbia under the provisions of the Act would be used for the "alley population" at the end of the war.<sup>25</sup> The statute had been structured primarily to provide housing for war workers, but the possibility that housing for low-income families could be provided by federal legislation had been recognized for the first time by Congress.

With the termination of hostilities, governmental activity in the area of public housing came to an abrupt halt and the governmental housing units were disposed of.<sup>26</sup> The potential of governmental influence and authority in the construction of public housing was not lost, however, on many interested groups whose membership was unable to meet the

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21. Act of March 1, 1918, ch. 19, 40 Stat. 438.

22. The power to acquire property by purchase, lease, requisition, or condemnation, or to construct houses, or other buildings, and to make loans, or otherwise extend aid as herein granted shall cease with the termination of the present war with Germany. Act of March 1, 1918, ch. 19, 40 Stat. 439.

23. Act of May 16, 1918, ch. 74, 40 Stat. 550.

24. ". . . *Provided*, That houses erected by the Government under the authority of the Act shall be of only a temporary character except where the interests of the Government will be best subserved by the erection of buildings of a permanent character. . . ." Act of May 16, 1918, ch. 74, 40 Stat. 551.

25. ". . . *Provided further*, That the expenditure in the District of Columbia shall be made with a view to caring for the alley population of the District when the war is over, so far as it can be done without interfering with war housing purposes." Act of May 16, 1918, ch. 74, 40 Stat. 552-53.

26. "Such property shall be sold as soon after the war as it can be advantageously done . . . ." Act of May 16, 1918, ch. 74, 40 Stat. 552. A retrospective observation by Nathan Straus, first administrator of the United States Housing Authority, was that "The war housing program of World War I . . . was very small in volume and was a conspicuous failure." N. STRAUS, SEVEN MYTHS OF HOUSING 17 n.6 (1944).



financial demands which adequate housing required.<sup>27</sup> As the supply of housing continued to remain at pre-war levels, these groups sought national support for state and federal legislation aimed at increasing the supply of housing available to persons of their income levels. Results of this campaign became apparent in New York state in the early 1920's. In 1920 and the following years, Governor Alfred E. Smith proposed numerous programs dealing with state-assisted low-income housing production. In 1926, Governor Smith proposed that the state charter limited-dividend corporations which, with state funds and limited powers of condemnation, would construct housing units in accordance with approved specifications to meet this demand for housing. Although defeated by the legislature, the bill indicated the need for imagination and daring in meeting the low-income housing shortage and, in retrospect, it served as a model for the federal housing acts of the future.<sup>28</sup>

While New York state was attempting to solve its housing shortage through government intervention, the housing industry barely admitted that a low-income housing shortage existed. The gulf between the advocates of minimal government intervention and those who believed that it was the duty of government to create housing is typified by their two concepts of housing unit longevity. To the advocates of private enterprise as the sole producer of dwellings, a house should be built with the idea that its initial occupant will be able to afford the best home the industry can then produce. As the house becomes older, its succeeding tenants would each be successively lower on the income scale until the utility of the original house completely disappeared with an occupant whose income level was barely sufficient to enable him to purchase a dwelling. On the basis of this theory, a house would not only serve the housing needs of all income levels, but also would last for several decades. It is obvious that this theory also presupposes the belief that a person of low income should be content with a product that was the best available twenty years ago.<sup>29</sup>

Advocates of public housing held the position that after a dwelling unit deteriorated beyond a certain level it ceased to be adequate for

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27. The activities of the American Federation of Labor, the Amalgamated Clothing Workers of America, and the American Federation of Hosiery Workers are outlined in T. McDONNELL, *supra* note 14, at 51-88.

28. Discussions of the bills proposed by Governor Smith are found in T. McDONNELL, *supra* note 14, at 1-29; R. FISHER, *supra* note 20.

29. See C. STEWART, *HOMES FOR AMERICA* (1948).

human habitation. To this group, the quality of a person's living quarters should not be dependent on his income level when the quality scale ran below the accepted standards of the community.<sup>30</sup>

It was on this note, and at this impasse, that the nation was plunged into the depression of 1929. The housing industry no longer had the capital to meet the existing shortage, regardless of the income level of the prospective occupant.<sup>31</sup> The federal government was forced to act not only to provide housing units for the nation but also to stimulate industrial recovery. The day after the Emergency Relief and Construction Act of 1932<sup>32</sup> was passed, Congress created the Federal Home Loan Bank<sup>33</sup> which served to preserve existing mortgages. It was not until 1937, however, that a comprehensive housing act was enacted which dealt specifically with increasing the supply of housing available to low-income families.

The National Housing Act of 1937<sup>34</sup> provided for capital grants and contributions<sup>35</sup> to public housing agencies<sup>36</sup> for construction and operation of low-rent housing<sup>37</sup> similar to present interest reduction payments, and provided<sup>38</sup> an orderly transfer of federal projects to the local public agencies.<sup>39</sup> Although the Act has been amended,<sup>40</sup> the original characteristics have remained relatively unchanged as far as participating agencies are concerned. So long as local housing agencies continue to meet federally established guidelines, they are eligible for federal funds which are to be used either for creating low-income housing through rehabilitation of existing dwellings or construction of new units, or used for subsidizing the payment of mortgage obligations of the agency.

At the very heart of the program are the local housing agencies<sup>41</sup> through which the federal government implements the program. Created by state enabling legislation,<sup>42</sup> the agencies deal directly with

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30. See N. STRAUS, *TWO-THIRDS OF A NATION* 7 (1952).

31. See 40 MONTHLY LAB. REV. 1084 (1935) for comparative statistics on housing production from 1921 to 1934.

32. Act of July 21, 1932, ch. 520, 47 Stat. 709.

33. Act of July 22, 1932, ch. 522, 47 Stat. 725.

34. Act of Sept. 1, 1937, ch. 896, 50 Stat. 188.

35. *Id.* §§ 9 to 11, 50 Stat. 891-93.

36. *Id.* § 2 (11), 50 Stat. 889.

37. *Id.* §§ 10 & 11, 50 Stat. 889.

38. Housing Act of 1961, 75 Stat. 149.

39. Act of Sept. 1, 1937, ch. 896, § 12, 50 Stat. 894.

40. Act of July 15, 1949, 63 Stat. 429; Act of Sept. 23, 1959, 73 Stat. 679.

41. Act of Sept. 1, 1937, ch. 896 § 2 (11), 50 Stat. 889.

42. Creation of local redevelopment and housing authorities in Virginia is authorized

the Department of Housing and Urban Development<sup>43</sup> in borrowing funds for low-rent or slum-clearance projects,<sup>44</sup> receiving annual contributions or capital grants for the purpose of maintaining the low-rent character of a housing project,<sup>45</sup> and acquiring through sale or lease housing projects originally sponsored by the federal government.<sup>46</sup> In return, the agency is expected to determine that local private enterprise is unable or unwilling to meet the housing requirements of the community,<sup>47</sup> to assure continued local government cooperation with the agency,<sup>48</sup> to maintain the intended character of the project,<sup>49</sup> and to ensure that such project remains exempt from state and local taxation.<sup>50</sup> Through the local housing agency and the relationship between it and the Department of Housing and Urban Development, the federal government is able to exert a profound influence on enforcement of fair labor standards,<sup>51</sup> civil rights legislation,<sup>52</sup> and the future development of participating communities.

Due to the extensive preparation required to organize an effective housing agency on the local level and the voluminous studies which must precede the submission of a proposed housing plan which is acceptable to the Department in all respects,<sup>53</sup> the housing legislation has a built-in feature which may be self-destructive of the intended results.<sup>54</sup> Even after the project is approved and construction is begun, continual reports are required by the Department to ensure that federally established standards are being met.<sup>55</sup> It was exactly this enervating, though unintended, result,<sup>56</sup> combined with the recognition that the present housing program was falling far short of providing adequate numbers of low-income housing units,<sup>57</sup> which prompted Congress to take the

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by VA. CODE ANN. § 36-4 (Additional Supp. 1968). General powers of such authorities are found in VA. CODE ANN. § 36-19 (Additional Supp. 1968).

43. Housing and Urban Development Act of 1968, 82 Stat. 503.

44. 42 U. S. C. § 1409 (1964).

45. *Id.* at §§ 1410 & 1411 (1964).

46. *Id.* at § 1412 (1964).

47. *Id.* at § 1415 (7) (a) (1964).

48. *Id.* at § 1415 (7) (b) (1964).

49. *Id.* at § 1415 (1) (1964).

50. *Id.* at § 1410 (h) (1964).

51. *Id.* at § 1416 (1964).

52. Exec. Order No. 11,063, 3 C. F. R. 652 (1959-1963 Comp.).

53. 42 U. S. C. §§ 1415 (7) (a) & (b) (1964).

54. H. R. 1585, 1968 U. S. CODE CONG. & AD. NEWS 2876.

55. 42 U. S. C. § 1415 (1964).

56. H. R. 1585, 1968 U. S. CODE CONG. & AD. NEWS 2876.

57. This bill provides an unequaled opportunity for this Nation, its Govern-

necessary steps to make the large-scale production of such housing attractive to private enterprise. The requirements, as well as the opportunities, remain with the local housing agencies, but now a third element, the private sector, will enter the field of housing on a large scale.

### THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

"Today we are putting on the books of American law what I genuinely believe is the most farsighted, the most comprehensive, the most massive housing program in American history."<sup>58</sup> With this statement President Lyndon B. Johnson signed into law the Housing and Urban Development Act of 1968. While the size of the law alone is impressive, its significance as a step toward increasing the supply of housing units for low-income families will become a major factor in the private economy for years to come. Much of the law is concerned with programs already in existence, and either expands them to include greater portions of the population, or opens them to privately sponsored projects; but the programs which hold the greatest promise for realizing the projected goal of the national housing program are those sections of the Act concerned with the involvement of private enterprise. The remainder of this discussion will consist of an in-depth analysis of these sections of the law and their potential for expanding the lower-income housing program.

#### *National Housing Partnerships*

One of the most imaginative yet least controversial titles of the Housing Act is that which creates "national housing partnerships."<sup>59</sup> Introduced as part of the Administration's housing legislation as a result of the Kaiser Commission's Report on Urban Housing,<sup>60</sup> it is designed to en-

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ment and its people to fulfill the proposition that all its citizens are entitled to the opportunity for a decent home. The program I am about to describe will enable us to start eradicating, once and for all, the shameful blight of the wretched housing in which over 20 million Americans now live. Statement of Robert C. Weaver, Secretary, Department of Housing and Urban Development. *Hearings on S. 3029*, at 6-7.

58. Statement of Lyndon B. Johnson, President of the United States, Aug. 1, 1968 reprinted in 25 J. OF HOUSING 351 (1968).

59. Housing and Urban Development Act of 1968, 82 Stat. 549.

60. After considerable discussion we proposed the National Housing Corporation as a new vehicle for bringing new firms into the housing field on a sound and business like basis and for acquainting them with the needs and opportunities in this market, so that new research and development

able the housing industry to realize substantial cost reductions in planning, purchasing, and construction techniques inherent in volume production. The housing partnerships will function in the following manner. Congress has authorized the President to charter a profit-making corporation<sup>61</sup> under the District of Columbia Business Corporation Act.<sup>62</sup> This corporation is authorized to form limited partnerships<sup>63</sup> under the District of Columbia Uniform Limited Partnership Act,<sup>64</sup> pursuant to state statutes of the participating business enterprise,<sup>65</sup> with persons or corporations interested in providing housing for low- or moderate-income families. Under the proposed organizational scheme of such a partnership, the corporation will be the general partner<sup>66</sup> and the individual will be the limited partner.<sup>67</sup> The capitalization of the resulting limited partnership shall be as set forth in the partnership agreement with the understanding that the partnership's subscription in any future housing project shall not exceed twenty-five percent of the project's initial equity investment.<sup>68</sup> As a limited partner, the individual or corporation would not be required to assume the liability of a general partner<sup>69</sup> yet would be able to preserve the "flow through" benefits of tax losses accruing to the partnership during construction and operation.<sup>70</sup>

Essentially, the national housing partnerships created pursuant to the Act would serve as vehicles of consolidation for investors, builders, or similar sponsors—public or private—who lack the capital, technical skills, or operational expertise to initiate a housing construction program on their own regardless of how badly such a program may be needed in a particular area.<sup>71</sup> The corporation, acting as general partner, is authorized to involve itself in all phases of a housing project, regardless of whether the project is publicly or privately sponsored, as far as property

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might be stimulated. Statement of Edgar F. Kaiser, Chairman, President's Committee on Urban Housing reprinted in 25 J. OF HOUSING 339 (1968).

61. Housing and Urban Development Act of 1968, § 902, 82 Stat. 547.

62. D. C. CODE § 29-901 (1968).

63. Housing and Urban Development Act of 1968, § 907 (a), 82 Stat. 549.

64. D. C. CODE § 41-401 (1968).

65. Housing and Urban Development Act of 1968, § 907 (c), 82 Stat. 549.

66. *Id.* § 907 (d), 82 Stat. 549.

67. *Id.* § 907 (g), 82 Stat. 549.

68. *Id.* § 907 (e), 82 Stat. 549.

69. *Id.* § 907 (g), 82 Stat. 549.

70. 1968 U. S. CODE CONG. & AD. NEWS 2949.

71. *Id.* at 2948.

acquisition and disposal<sup>72</sup> and initial financing are concerned.<sup>73</sup> In addition, the corporation is authorized to conduct studies relevant to low-income housing,<sup>74</sup> provide technical assistance to sponsors of such housing,<sup>75</sup> make loans or grants to such sponsors,<sup>76</sup> and retain consultants and advisors to further the national housing program.<sup>77</sup> By amendment to Title 12, United States Code, section 24, national banking associations are empowered to purchase for their own account shares in the parent corporation, and may invest their funds in the resulting housing partnerships.<sup>78</sup>

Before and after passage of the bill and its enactment into law, there was all but general agreement<sup>79</sup> that creation of national housing partnerships was conceptually sound, financially feasible, and an important step forward in attracting private interest to this field.<sup>80</sup> The wide ranging authority of the parent corporation was immediately recognized by associations active in past housing production.<sup>81</sup> Though not a complete answer, the housing partnership<sup>82</sup> is expected to attract and maintain the incentive of private sponsors which previously, because of their size, capitalization, or lack of technical skills, were unable to contribute to the housing requirement in their community.

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72. Housing and Urban Development Act of 1968, § 906 (a) (2), 82 Stat. 548.

73. *Id.* § 906 (a) (3), 82 Stat. 548.

74. *Id.* § 906 (b) (3), 82 Stat. 548.

75. *Id.* § 906 (b) (4), 82 Stat. 548.

76. *Id.* § 906 (b) (5), 82 Stat. 548.

77. *Id.* § 906 (b) (6), 82 Stat. 548.

78. *Id.* § 911, 82 Stat. 550.

79. Among the dissenting comment was the following:

There is another organization, a new corporation, which is part of the housing act of 1968. Its called the national housing corporation. Watch out for it! Its got another one of those distinguished boards of directors composed of people who don't really know very much about cities or politics, who have made their reputation somewhere else. It doesn't have much cash but it has rhetoric by the bushel

Statement of Edward J. Logue *reprinted in* 25 J. OF HOUSING 460 (1968)

80. See generally Statement of Robert C. Weaver, Secretary, Department of Housing and Urban Development, *Hearings on S. 3029* at 103; Statement of Andrew J. Biemiller, Director, Department of Legislation, American Federation of Labor-Congress of Industrial Organizations, *Id.* at 174; Statement of Walter P. Reuther, President, Industrial Union Department, A. F. L.-C. I. O., *id.* at 391.

81. See 25 J. OF HOUSING 351 (1968).

82. The original board of directors of the National Housing Corporation is made up of: Edgar F. Kaiser, Chairman; David Rockefeller; George Meany; Everett Matson; James Ling; John Wheeler; Edward Daley; Stuart Saunders; Edward Etherton; Ernest Arbuckle; Gilbert W. Fitzhugh; John Loeb; Donald C. Burnham; William A. Hewitt; Andrew Meyer; Leon A. Weiner. 25 J. OF HOUSING 403-04 (1968).

*Assistance to Non-Profit Sponsors*

A second program closely akin to the national housing partnership concept is Section 106 of Title I of the Act<sup>83</sup> which authorizes the Secretary of Housing and Urban Development to give necessary assistance to non-profit sponsors of low- and moderate-income housing. As mentioned earlier, the private sector is composed not only of private industry and private individuals but also includes fraternal organizations, unions, churches, and charitable organizations. In the past all of this latter group have had, in varying degrees, a role in providing low-income housing either for their members or for the beneficiaries of their organizational purpose.<sup>84</sup>

The law provides assistance to the non-profit sponsor in two areas: technical assistance in the assembly, correlation, and dissemination of information and advice for subsequent construction of low- and moderate-income housing;<sup>85</sup> and preliminary loans to carry the sponsor through the planning period of a project before private financial assistance is fully available.<sup>86</sup> It is important to recognize that this assistance program contemplates only the pre-construction phase of the building project.

The intended effect of this section is to give assistance during that phase of the construction project when costs are proportionately higher than in later phases.<sup>87</sup> Due to this enervating drain on funds before the project is even begun, the non-profit sponsor of a housing project, to whom federal housing programs should be most attractive, formerly would become discouraged with the lack of tangible results and abandon a plan which may not only have been worthwhile but essential. Under the present law, such a sponsor can look to the Government for loans to carry him over this initial period and for assistance in formulating the necessary plans, surveys, and studies essential to successful later operation. Although certain building industry interests would like to see provisions of the Act amended to require that the non-profit sponsor seek technical assistance from the Government only when such assistance can not be provided by private concerns in the local area,<sup>88</sup>

83. Housing and Urban Development Act of 1968, § 106, 82 Stat. 490.

84. T. McDONNELL, *supra* note 14; see also Eugene L. Stewart, President, *Sursum Corda*, *Hearings on S. 3209* at 412 and material at 419-23.

85. Housing and Urban Development Act of 1968, § 106, 82 Stat. 490.

86. *Id.* § 106 (b) (1), 82 Stat. 490.

87. 1968 U. S. CODE CONG. & AD. NEWS 2888.

88. Statement of George Kassabaum, President-Elect, Institute of Architects, *Hearings on S. 3029* at 249.

it is apparent that the Act offers a start in encouraging increased participation by a socially active element of the population.

### *National Homeownership Foundation*

The 1968 Housing Act also provides for the creation of a National Homeownership Foundation<sup>89</sup> which will function as a continuing study commission for developing programs which encourage homeownership among low-income families. The Foundation will be a federally chartered corporation established under the District of Columbia Nonprofit Corporation Act.<sup>90</sup> The funding of the corporation will be dependent on federal appropriations<sup>91</sup> and public and private grants.<sup>92</sup>

The conceptual goal of the Foundation is to provide a source of informational assistance to private sponsors of low-income housing.<sup>93</sup> In addition it will seek to stimulate participation by developing cost reduction techniques applicable in the non-productive stages of the project.<sup>94</sup> Specifically covered by the Act are assistance in the formation of viable sponsoring organizations, technical and managerial assistance for the operation of such organizations, administrative training of the personnel who will staff the completed housing project, creation and dissemination of advances made in housing research and technology, and establishment of counseling services for low-income families seeking homeownership.<sup>95</sup> If the purpose of the Foundation is realized, the effect will be to establish homeownership as a goal for low-income families, and will condition such families for the duties and responsibilities which a homeowner must assume.

### *Federal Mortgage Associations*

Title VIII<sup>96</sup> of the Housing and Urban Development Act of 1968, which deals with the secondary mortgage market, divides the mortgage security functions formerly provided under the Federal National Mortgage Associations Charter Act.<sup>97</sup> One of these, Government National

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89. Housing and Urban Development Act of 1968, § 107, 82 Stat. 491.

90. D. C. CODE § 29-1001 (1968).

91. Housing and Urban Development Act of 1968, § 107 (i), 82 Stat. 495.

92. *Id.* § 107 (a) (6), 82 Stat. 492.

93. 1968 U. S. CODE CONG. & AD. NEWS 2890.

94. Housing and Urban Development Act of 1968, § 107 (c) (1), 82 Stat. 493.

95. *Id.* § 107 (c) (1), 82 Stat. 493.

96. *Id.* tit. VIII, 82 Stat. 536.

97. 12 U. S. C. § 1716 (1964).



Mortgage Association (GNMA), will assume the special management and liquidating, and assistance functions of the former FNMA.<sup>98</sup> The other association, still referred to as Federal National Mortgage Association, will take over the servicing of the secondary mortgage market.<sup>99</sup> The purpose of this plan is to accomplish the intent of the original FNMA to create a "... secondary market facility for home mortgages, to provide that the operations of such facility shall be financed by private capital to the maximum extent feasible. . . ." <sup>100</sup>

FNMA will be federally chartered as a private corporation<sup>101</sup> and, after a transition period of from two to five years, control eventually will pass to holders of common stock.<sup>102</sup> As a private corporation, FNMA will be able to issue securities backed by specified groups of mortgages<sup>103</sup> of varying terms, as well as subordinated obligations which will be convertible into common stock.<sup>104</sup> Dividends and interest payable on securities issued by FNMA are to be guaranteed by GNMA through the operation of its mortgage trust accounts.<sup>105</sup> By establishing a secured long-term investment market, the sponsors of the bill believe that such a private corporation will attract additional investors into the home building field. FNMA will continue the present practice of requiring servicers of secured mortgages to retain common stock in the corporation up to a pre-determined percentage of the value of the mortgages outstanding.<sup>106</sup> Issuance of such stock would not be limited, however, to those servicing the mortgages, and the required percentage would not set a ceiling on the stock owned by such servicers.<sup>107</sup>

As FNMA continues its activities in the secondary money market, GNMA will increase its support of mortgages which require special assistance.<sup>108</sup> It is believed by the sponsors of this Title that this "special assistance" will take the form of continued support of the section 221 (d)(3)<sup>109</sup> Below Market Interest Rate program and the section

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98. Housing and Urban Development Act of 1968, § 801, 82 Stat. 536.

99. *Id.* § 801, 82 Stat. 536.

100. 12 U. S. C. § 1716 (1964).

101. Housing and Urban Development Act of 1968, § 801, 82 Stat. 536.

102. *Id.* § 801, 82 Stat. 545.

103. *Id.* § 804, 82 Stat. 542.

104. *Id.* § 805, 82 Stat. 543; *see also*, 1968 U. S. CODE CONG. & AD. NEWS 2945.

105. Housing and Urban Development Act of 1968, § 804 (b), 82 Stat. 542.

106. *Id.* § 802 (k) (2), 82 Stat. 543 *amending* 12 U. S. C. § 1718 (b) (1964).

107. 1968 U.S. CODE CONG. & AD. NEWS 2945.

108. *Id.* at 2947.

109. 12 U. S. C. § 1715 (1) (d) (3) (1964)

201<sup>110</sup> Rental and Cooperative Housing for Lower Income Families, of the 1968 Act. The sponsors of Title VIII anticipate that a strong showing of fiscal muscle, eventually amounting to 500 million dollars,<sup>111</sup> will encourage home builders in all sectors of the economy to accept the inherent risks of housing projects for families who do not qualify under the rent supplement program, yet are not financially able to acquire home financing in the secondary market.<sup>112</sup> Whether such hopes will be realized will depend upon whether and when funds are made available by the Congress.

In conjunction with the strengthened backing of the special assistance fund through GNMA and the increased investment potential of the security and common stock of FNMA, the provisions of the newly enacted section 201 will furnish the means for non-profit sponsors to purchase completed low- and moderate-income housing projects.<sup>113</sup> The strong backing of mortgages also would assure a market for the investor who does not plan to participate in a project beyond the building stage.<sup>114</sup> In addition, "section 236" programs would be designed to attract capital from the private mortgage market by assuring that the financing will be a secure long-term investment.<sup>115</sup> The ultimate impact on the housing program will be to provide greater rental and cooperative housing to families whose level of income is too high to permit them to qualify for the rent supplement program yet too low to enable them to pay the going rental rate on the open market.<sup>116</sup>

Under the section 236 program the government would consider a housing project on the basis of whether its operation is geared to rental to low- and moderate-income families and whether it maintains acceptable standards of tenant eligibility and meets other prerequisites established by the Secretary of Housing and Urban Development.<sup>117</sup>

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110. Housing and Urban Development Act of 1968, § 201, 82 Stat. 498.

111. *Id.* § 806, 82 Stat. 544.

112. *Id.* § 201, 82 Stat. 498 *add'g*, § 236 to 12 U. S. C. § 1715 (1964).

113. 1968 U. S. CODE CONG. & AD. NEWS 2896.

114. *Id.* at 2947.

115. *Id.* at 2894.

116. Housing and Urban Development Act of 1968, § 201, 82 Stat. 498.

117. Sec. 236 (f) For each dwelling unit there shall be established with the approval of the Secretary (1) a basic rental charge determined on the basis of operating the project with payments of principal and interest due under a mortgage bearing interest at the rate of 1 per centum per annum; and (2) a fair market rental charge determined on the basis of operating the project with payments of principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage covering the project. *Id.* § 201, 82 Stat. 499.

The mortgagor would determine the monthly amount of principal payable on the outstanding mortgage and add one percent of interest on that amount, which total would be paid to the mortgagee.<sup>118</sup> So long as the character of the housing project continues as one for lower-income families,<sup>119</sup> the government would provide "interest reduction payments"<sup>120</sup> to the mortgagee which would make up the difference between the monthly principal and interest amount and pay the mortgage insurance premium and the monthly interest rate plus one percent.<sup>121</sup> The savings resulting from such interest reduction payments would be passed on to the tenant of the housing project at a rate commensurate with his income.

The financial potential of this program is directly related to the involvement of the private sector to a greater degree in the national housing program, and will have its greatest effect on the proposed national housing partnerships and on non-profit sponsors. Since many investors, especially those who would participate in the national housing partnerships, would not consider continuing their participation past the construction stage, and other groups, most notably non-profit sponsors, are particularly well suited for managing such projects, the easy transferability of a project should increase the effectiveness of the federal dollar in stimulating this type of housing. The sponsors of the Bill point out, however, that community hostility based on traditional concepts of low income housing "projects" may negate the gains made by the Act.<sup>122</sup>

### *Improved Architectural Design*

Concurrent with the legislative effort to increase the housing units available for low- and moderate-income families through direct appeal

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118. Sec. 236 (c) Interest reduction payments with respect to a project shall only be made during such time as the project is operated as a rental housing project and is subject to a mortgage which meets the requirements of, and is insured under, subsection (j) [essentially low-income projects under § 221 (d) (3) BMIR] of this section. *Id.* § 201, 82 Stat. 498-99.

119. Sec. 236 (b) For the purpose of reducing rentals for lower income families, the Secretary is authorized to make, and to contract to make, periodic interest reduction payments on behalf of the owner of a rental housing project designed for occupancy by lower income families, which shall be accomplished through payments to mortgagees holding mortgages meeting the special requirements specified in this section. *Id.* § 201, 82 Stat. 499.

120. *Id.* § 201 (f), 82 Stat. 499.

121. 1968 U. S. CODE CONG. & AD. NEWS 2897.

122. *Id.* at 2901.

to the private sector is the stated objective in section 4<sup>123</sup> of the Act that consideration shall be given to programs whose relatively higher costs are attributable to improved design of the physical structure, provided that such costs improve the architectural standards of the surrounding community. If these standards are adhered to, the Pruitt-Igoe Projects<sup>124</sup> of the last decade will truly become the structural dinosaurs of the low-income housing picture. With their lack of style, and a concept of construction that was degrading to the very families they were designed to house, these projects were destroyed from within through tenant neglect, apathy, and open vandalism. The effect of upgrading aesthetic considerations will draw in a greater portion of the private sector in whose ranks will be found architects, engineers, construction material specialists, and new managerial talent.

### *New Technologies*

In addition to insisting that the Secretary of Housing and Urban Development give priority to projects which embody sound environmental engineering, the Act further authorizes the Secretary to solicit plans which make use of advanced technology<sup>125</sup> in providing housing for lower income families. After approving not more than five such projects, the Secretary will cause the plans to be executed on federal land<sup>126</sup> using private financing,<sup>127</sup> but insured under section 233 of the National Housing Act.<sup>128</sup> Such projects would serve as working experiments in the development of new, and the improvement of existing, housing techniques as to construction and design as well as operation and management.

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123. The Congress declares that in the administration of housing programs which assist in the provision of housing of low and moderate income families, emphasis should be given to encouraging good design as an essential component of such housing and to developing housing which will be of such quality as to reflect its important relationship to the architectural standards of the neighborhood and community in which it is situated, consistent with prudent budgeting. Housing and Urban Development Act of 1968, § 4, 82 Stat. 477.

124. This St. Louis low-income housing project is discussed in "Pruitt-Igoe Closing called 10 Years Off," St. Louis Post-Dispatch, Feb. 29, 1968.

125. Housing and Urban Development Act of 1968, § 108, 82 Stat. 495.

126. *Id.* § 108 (b) 82 Stat. 495.

127. 1968 U. S. CODE CONG. & AD. NEWS 2891.

128. Housing and Urban Development Act of 1968, § 108 (c), 82 Stat. 496.

*Administrative Delays*

Perhaps one of the most noteworthy intentions behind the Act, and one which will be most welcome to all entities dealing with the Government in the creation of low-income housing, is the exhortation by Congress<sup>129</sup> that the amount of time now required by the Department of Housing and Urban Development to process applications for federal assistance be reduced. The unwieldy procedural requirements and processing delays which have accompanied applications has come to be accepted as a necessary evil inherent in federal assistance programs. This problem has now been recognized by both the Department of Housing and Urban Development<sup>130</sup> and the Congress, and efforts have been initiated to correct it. If the Department can put into effect corrective procedures by which delays in processing applications are reduced, and successful applications are no longer dependent on the costly advice of special consultants, the opportunities of the new programs will be given a fair test in attracting private industry.

## CONCLUSION

The Housing and Urban Development Act of 1968 should not be considered a panacea, but as a comprehensive program offering valid reasons for attracting private enterprise to the construction of dwellings for low-income families. If the President's goal of six million such homes is to be realized,<sup>131</sup> the program must not depend solely on public efforts and federal funds. If the efforts of the private sponsor are to be successful, either as part of a private investment program or as a contribution to the national housing goal, he must be well advised, and the source of this advice will be his lawyer.

GILBERT A. BARTLETT

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129. 1968 U. S. CODE CONG. & AD. NEWS 2876.

130. "There is another important, yet indispensable, thing we must do. We must eliminate the negativism, and the tortuous slowness of our processing of multi-family applications. This is our real Achilles's heel, and it has got to go." Remarks of P. N. Brownstein, Assistant Secretary-Commissioner, Department of Housing and Urban Development, October 23, 1967 reprinted in *Hearings on S. 3029*, at 310.

131. With this act, the nation will set a far-reaching goal to meet a massive national need: the construction of 26 million new homes and apartments over the next 10 years. Six million of these will finally replace the shameful substandard units of misery where more than 20 million Americans still live. 25 J. OF HOUSING 63 (1968).