·HOUSING·
LEGAL DIGEST

Number 84 July-August 1941

"Inflationary price rises and increases in the cost of living are today threatening to undermine our defense effort. I am, therefore, recommending to the Congress the adoption of measures to deal with this threat . . . . Legislation should include authority to establish ceilings for prices and rents . . . . . Housing is a commodity of universal use, the supply of which cannot speedily be increased. Despite the steps taken to assure adequate housing for defense, we are already confronted with rent increases ominously reminscent of those which prevailed during the World War. This is a development that must be arrested before rent profiteering can develop to increase the cost of living and to damage the civilian morale."

The PRESIDENT'S MESSAGE of July 30, 1941,
Transmitting Request for Legislation to Stabilize
Rentals and the Price of Various Commodities.

DECISIONS : OPINIONS : LEGISLATION
RELATING TO HOUSING CONSTRUCTION AND FINANCE

ISSUED MONTHLY BY THE
CENTRAL HOUSING COMMITTEE WASHINGTON, D. C.

HOUSING LEGAL DIGEST

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the Central Housing Committee on
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The Board of Editors announces the following changes in membership: Department of Justice, Mr. Connolly succeeding Mr. B. B. Jones, who has been transferred out of Washington; and Federal Housing Administration, Mr. Pierce succeeding Mr. R. Winton Elliott, who is no longer connected with its legal division.

CONTENTS

Orders, Regulations and Opinions — Page

Legislation

DECISIONS

ARBITRATION AND AWARD

(Housing Authority of New Orleans v. Henry Ericsson Co., ---La. ---, 2 So. (2d) 195.)

Under arbitration statute courts are not given authority to reverse awards of arbitrators, but may modify award or vacate it and direct rehearing.

It appears that the Housing Authority of New Orleans on June 14, 1937, entered into a contract with Henry Ericsson Company for the construction of the Saint Thomas Street Housing Project. The contract provided that any dispute arising between the contracting parties was to be submitted to arbitrators. A dispute arose as to whether the contract included the site improvements under Division 26 of the Specification. The question was submitted to the arbitrators who entered a finding and award in favor of the Housing Authority.

The Supreme Court of Louisiana on appeal from judgment confirming arbitrators' award held (1) that under arbitration statute, courts are not given authority to reverse awards of arbitrators, but only authority conferred on court by statute is authority to modify award or to vacate it and direct rehearing by arbitrators, (2) that the Supreme Court has authority to modify and correct award made by arbitrators, if modification or correction is justified by the evidence, (3) that the presence of improper punctuation is no more allowable than bad grammar to change meaning of contract which is obvious from construction of whole instrument and (4) that in absence of fraud, misconduct or other objections as set forth in arbitration act, nothing in award relative to merits of controversy as submitted could justify Supreme Court in setting aside award.

BANKS AND BANKING

(National Newark & Essex Banking Co. v. Unemployment Compensation Commission --- N. J. ---, 19 A 2d 803.)

National banks are instrumentalities of the United States, and a managing agent employed by a national bank to operate property purchased by the bank at foreclosure sale was not eligible for unemployment compensation benefits.

This was a certiorari proceeding by the National Newark and Essex Banking Company of Newark, a national bank, against the Unemployment Compensation Commission of New Jersey to review a determination of the Board of Review that one Arthur N. Selvey was eligible for unemployment compensation benefits.

It appears that the national bank had foreclosed upon some property and bought the property at a foreclosure sale. The bank employed one Arthur N. Selvey to manage the property until such time as it could be disposed of. The question is whether the employment was within the application of the unemployment law. The court held that it was not and said:

> "* * * Service in the employ of an instrumentality of the United States is not within the (unemployment) statute. We have no occasion to inquire whether the status of one employed by an instrumentality of the United States is such that his employment could be brought within the statute if the state legislature undertook so to do. We are simply to ascertain whether the respondent was in the employ of an instrumentality of the United States acting within its powers as such instrumentality. If that question is resolved in the affirmative, the case is decided. National banks are instrumentalities of the United States. That legal fact is established beyond question. * * *
>
> "We conclude that prosecutor is an instrumentality of the United States; that its ownership and operation of the real estate was within its statutory powers; that in this ownership and operation it was within the exception of section 19(i) (7) (F) (N. J. statute), supra; and that therefore the claimant can take nothing under our unemployment compensation statute because of the designated employment by prosecutor."

BUILDING RESTRICTIONS - MUTUALITY OF COVENANT

(Ludlum vs. Haskins, HOLC et al, Supreme Court, Kings County, New York. Decided in June 1941.)

Where restrictions are for sole benefit of land retained by grantor, the grantees cannot enforce them against one another, the grantor alone having the power of enforcement.

"In this action it appears that in 1901 the T. B. Ackerson Construction Company acquired some ten acres of land in Brooklyn. It developed the property by filing a map and by subdividing the property into lots, all of which were sold between 1901 and 1907. All the parties to this action derived their title to their property directly or through mesne conveyances from the Ackerson Company. This action was brought to remove covenants and restrictions imposed by that company in its sale of the property. The owners of eight parcels oppose the relief sought by plaintiff and thirty-two other owners consent to and join with plaintiff for similar relief.

"All of the deeds from the Ackerson Company which contain restrictions also provide as follows: 'Third: That the party of the First Part shall have the right to modify or omit any of the above covenants in conveyances of any gore lots or any lots lying west of the westerly side of East 13th Street or the land fronting on Avenue C to a depth of 125 feet or less.' That provision reserved to the grantor within the area specified control over the restrictions, which prevented mutuality of covenant and consideration between the grantees, and marked the covenant as being for the benefit of the grantor (Brighton-by-the-Sea, Inc. v. Rivkin, 201 App. Div., 726, 727).

"In Rose v. Jasima Realty Corporation (218 App. Div. 646) the Court said (p. 651): 'Where restrictions are for the sole benefit of the land retained by the grantor, the grantees cannot enforce them against one another. The grantor alone has the power of enforcement, and by him they may be enforced against the original covenantor and also against the covenantor's successors in title who are chargeable with notice (Korn v. Campbell, supra; Hodge v. Sloan, 107 N. Y. 244). And the exclusive power to enforce carries with it the power to modify, so long as the grantor retains part of the tract in his possession.'

"The reservation was solely for the benefit of the grantor (Rose v. Jasima Realty Corp., supra). All lot purchasers were on notice that the right to modify the restrictions was reserved and might be exercised.

"The Ackerson Company conveyed its last parcel of property in 1907. A number of years later the company was dissolved. Since the original grantor is now out of existence, there is no one who may insist upon the enforcement of the restrictive covenants in those cases where the grantor reserved unto himself the right to modify or omit the same. There is no mutuality of covenant between the other property owners."

CONDEMNATION - SUBROGATION

(Matter of Application of Julius Martins, Supreme Court, Kings County, New York. Decided in June 1941.)

Person having interest in property and paying assessment against it is entitled to receive payment of condemnation award rendered in favor of unknown owner of property but subject to lien of assessment.

On May 18, 1934, the owner, Julius Martins, mortgaged to HOLC a house and lot at No. 1402 East 56th Street, Brooklyn, New York. Martins did not keep up his monthly payments and in 1937, HOLC foreclosed its mortgage, bid in the property and thus acquired title and possession. Later it sold the property at a substantial loss.

In July, 1930, while Martins owned the property, the City changed the grade of East 56th Street in frontof the property, and an assessment of $285.71 was levied against the property. Martins did not pay this assessment, but HOLC did, with interest, at the time of its foreclosure. In December, 1934, in the condemnation proceeding in the Supreme Court of Kings County, New York, in which the awards were rendered in favor of the owners of the properties abutting on East 56th Street and affected by the change of grade, an award of $171.28 was rendered in favor of the unknown owners of the house and lot at No. 1402 but was made subject to the lien of the $285.71 assessment in order to assure to the City the payment of the assessment. This award was paid into the registry of the Court and there held.

After HOLC had acquired the property as the result of the foreclosure of its mortgage and its bidding in of the property, Martins filed a petition in the condemnation proceeding seeking an order directing the Clerk to pay the $171.28 award to him. HOLC resisted the petition, and claimed the award itself, contending that, having paid the $285.71 assessment against the property, it was entitled to be subrogated to the right the City had had to have the award applied to the payment of the assessment. At the trial, the court held in favor of HOLC, its decision being as follows:

"In re Martins (East 56th Street, between Avenues M and N). Motion for payment of change of grade award of $171.28 to the owner of the parcel affected denied, and the award shall be paid to the HOLC, which, when the owner defaulted, paid the benefit assessment of $285.71 to which the award was subject. In re Meta Realty Co., Inc., Lot 102, Block 7499, East 26th Street, N. Y. L. J., May 6, 1939, aff'd 19 N. Y. S., 2d, 315."

CONSTITUTIONAL LAW - HOUSING AUTHORITY

(Lloyd v. Twin Falls Housing Authority, ---Idaho---, 113 Pac. 2d 1102)

Liability on bonds issued by a housing authority is strictly limited to the housing authority itself and not to any other political subdivision.

On appeal from judgment for defendant by the District Court of the Eleventh Judicial District for Twin Falls County in an action to enjoin defendant from issuing, selling or otherwise disposing of bonds proposed to be issued by defendant the Supreme Court of Idaho held:

"Idaho Session Laws, 1939, Chapter 234, being the legislative act, pursuant to which housing authorities may be organized, does not provide for electors or elections; it does not authorize or permit the levy or collection of a tax by a housing authority, and such authority is not a county, city, town, township, board of education, or school district, or other subdivision of the state, within the meaning of Article VIII, Section 3, of the Constitution of Idaho, and the prohibition expressed in that section does not apply to it.

"Liability on bonds issued by a housing authority is strictly limited. The principal and interest of such bonds are payable exclusively from the income and revenue of the housing project financed with the proceeds thereof, or exclusively from such income and revenue, together with grants and contributions from the Federal Government, or other source, in aid of such project. Neither the city, the county, the state, nor any political subdivision thereof is liable because of said bonds and they are not payable from any funds other than those of the housing authority."

EMINENT DOMAIN

(Application of Young, Supreme Court, Appellate Division First Department, 28 N. Y. S. 2d, 1.)
An owner of realty has no constitutional right to recover damages for change of grade and is only entitled to such damages as have been expressly authorized by the legislature.

"The question presented by this appeal is whether the City of New York is liable in damages to an abutting property owner where a State Authority, under an act of the Legislature, enters upon a City street and, pursuant to an agreement between the City and the Authority, changes the grade of such street at the Authority's own cost and expense.

* * *

"An owner of real property has no constitutional right to recover damages for change of grade and is only entitled to such damages as have been expressly authorized by the Legislature. People ex rel. Architects' Offices, Inc. v. Ormond, 201 App. Div. 787, 194 N.Y.S. 881, affirmed 234 N.Y. 549, 138 N.E. 442; Sauer v. City of New York, 180 N.Y. 27, 72 N.E. 579, 70 L.R.A. 717, affirmed 206 U.S. 536, 27 S. Ct. 686, 51 L.Ed. 1176; Licht v. State of New York, 277 N.Y. 216, 220, 14 N.E. 2d 44; West 158th Street Garage Corp. v. Fullen, 139 Misc. 245, 249, 248 N.Y.S. 291. * * *"

HOLC - TAXATION

(HOLC vs. R. L. Wright, County Treasurer, etc., Supreme Court of North Dakota. Decided in July 1941.)
Lien of personal property taxes extended against real estate is inferior to mortgage recorded against real estate prior to entry of the personal property tax lien. - Mortgagee of realty may pay such personal property taxes under protest and recover them by suit if proper steps taken.

On December 26, 1935, HOLC took a mortgage on a house and lot in Williams County, North Dakota, and caused its mortgage to be duly recorded. The mortgage contained a provision that if the mortgagor failed to pay taxes on the property, the mortgagee could pay them and add the same to the principal due under the mortgage.

Certain personal property taxes of the mortgagor for the year 1938 were in 1940 certified by the proper officials as a lien upon the premises covered by the mortgage. This action was taken pursuant to Chapter 242, Session Laws, North Dakota, 1929. On February 15, 1940, HOLC offered to pay real estate taxes then due upon the premises in the sum of $63.81. At that time, personal property taxes of the mortgagor had been extended and entered as a lien against the real estate amounting to $21.56. The County Treasurer of Williams County refused to accept payment of the real estate taxes without payment at the same time of the personal property taxes. In order to protect its interest under its mortgage, HOLC paid the personal property taxes on February 20, 1940, under protest. HOLC then made application for an abatement pursuant to the provisions of Chapter 286, Session Laws of North Dakota, 1931, and upon refusal of the Board of County Commissioners of Williams County to grant the abatement, instituted suit against the County Treasurer of Williams County to recover the $21.56 of personal property taxes paid under protest.

The County Treasurer filed a demurrer challenging the sufficiency of the Complaint of HOLC. The court overruled the demurrer and the County Treasurer appealed to the Supreme Court of North Dakota. After stating the facts and quoting the statutes above mentioned and Section 2186, Comp. Laws, N.D. 1913, as amended by Chapter 279, Session Laws, N. D. 1931, the Supreme Court of North Dakota, in affirming the action of the trial court, said:

> "The defendant (County Treasurer) concedes that the lien for personal property taxes is subsequent and inferior to that of the plaintiff's mortgage. The foregoing statutes could not be construed otherwise. The question of superiority between personal property tax liens created by statute on real estate and mortgages prior in point of time have been before many courts. Union Cent. Life Ins. Co. v. Black, 67 Utah 268, 247 Pac. 486; 47 A.L.R. 372 and note; Scottish Amer. Mortgage Co., Ltd. v. Minidoka County, 47 Idaho 33, 272 Pac. 498, 65 A.L.R. 663 and note; Maricopa County v. Equitable Life Assur. Soc., 42 Ariz. 569, 28 Pac. (2d) 821; Home Owners' Loan Corp. v. City of Phoenix, 51 Ariz. 455, 77 Pac. (2) 818; Home Owners' Loan Corp. v. Mitchell, 195 Wash. 302, 81 Pac. (2d) 268. The foregoing authority discloses considerable lack of uniformity. This fact need not disturb us, however, since in this state our statutes only give priority to the lien of personal property taxes charged against the real estate over other liens or claims placed of record subsequent to the entry of the personal property taxes against the real estate.

"The plaintiff argues that since its lien is superior to that of the personal property taxes, the legislature could not have intended that the county treasurer be required to refuse payment from the plaintiff of the real estate taxes without the extended personal property taxes. This assertion is a non sequitur with respect to the receipt of tax moneys by the county treasurer. He is a ministerial officer. Assessments are made, taxes computed, and liens extended by other officers of the county and its subdivisions. The legislature intended that he should collect the amount that his tax books show is charged against the various descriptions of real estate. It did not choose to place upon the county treasurer the duty to differentiate between a party seeking to pay taxes as a prior lienor and a party seeking to pay them as a subsequent lienor or owner; or to place upon him the burden of determining the validity or priority of a lien by virtue of which someone other than the property owner might seek to pay but a part of the tax due as shown by the treasurer's books. Records of titles and liens are kept in the office of the register of deeds and frequently present difficult and complex questions of validity and priority not within the field of knowledge of the county treasurer. He is not required to be a title expert.

"The legislature has spoken with clarity. The statute requires the county treasurer to collect the sum that the county commissioners have ordered extended against the real property and the county auditor pursuant to their direction has written on the tax books. The treasurer may not distinguish between those persons who offer or claim the right to pay, be they owners, holders of superior liens or strangers to the title.

"The priority of plaintiff's lien is not affected by the statutory requirement as to acceptance of payment by the county treasurer. If in fact, its lien is prior to the lien of the county for extended personal property taxes, the county is not entitled to keep the personal property tax money if it has been paid under proper protest.

"When taxes have been paid under protest pursuant to the provisions of chapter 286, Session Laws N.D. 1931, recovery may be had if the statute has been followed and facts warrant. The complaint in this action sets forth facts showing that the plaintiff was compelled to pay an inferior personal property tax lien in order to protect its mortgage against the superior

lien of real estate taxes. It alleges that payment was made under protest and that plaintiff has taken the various steps prescribed by chapter 286. The complaint sets forth facts constituting a cause of action for the recovery of the money so paid. The demurrer to the complaint was properly overruled."

HOLC - TORTS - NEGLIGENCE - PLEADING

(Samuel Roberto vs. HOLC, New Jersey Supreme Court, Passaic County. Decided July 1941.)
Where complaint in a tort case does not allege violation of a municipal ordinance it is not error for a trial court to refuse to permit the introduction of such ordinance in evidence.

In a suit against HOLC for damages for personal injuries the opinion of the court on motion for new trial was as follows:

"The plaintiff was allowed a rule to show cause why a new trial in the above entitled cause should not be had on the sole ground of an alleged error of law committed by the trial court in its refusal to admit into evidence a properly certified copy of a certain ordinance of the City of Paterson entitled, "An Ordinance Concerning Sidewalks in the City of Paterson, Approved June 24, 1910, as amended on June 11, 1925." The jury returned a verdict of no cause of action.

"The action was brought by the plaintiff against the defendant to recover damages for injuries alleged to have been sustained by reason of the plaintiff being "caused and/or permitted to trip, slip, stumble and fall prostrate with great force and violence," by reason of the "nuisance created and/or maintained by the said defendant heretofore described." The plaintiff in his complaint says that the defendant disregarded his duty, "in that it willfully and wantonly, deliberately and designedly caused and/or permitted the aforesaid public sidewalk to be constructed and/or maintained with an uneven and jaggy surface containing an open area, cavity, pit, crevice, groove, gap, depression elevation or projection out of alignment with the true pavement level creating a dangerous menace, without proper protective devices and appliances, without sign, signal or warning, in heedless and reckless disregard of the rights and safety of pedestrians, all in such manner so as to endanger or be likely to endanger the person of lawful users thereof.

"4. The construction and/or maintenance of the aforesaid sidewalk premises, in accordance with the manner hereinnext before described, constituted a public nuisance per se."

"Plaintiff concedes that the complaint does not state that the alleged negligence of defendant also consisted of the violation of the municipal ordinance which he sought to introduce into evidence. The section of the municipal ordinance sought to be applied by the plaintiff to the instant case provided: "No walk shall be partly paved with blue stone flagging and partly with concrete. Repairs to concrete walks shall be made with concrete, and blue stone walks shall be repaired with blue stone flagging at least four feet in width." The proofs showed that the sidewalk was constructed partly with blue stone and partly with concrete.

"The action here was based upon the maintenance of a nuisance by the defendant property owner, founded in negligence, and not the ordinary case of negligence arising from a legal duty. It was not, however, an absolute nuisance. Nuisance as a legal concept has more than one meaning. McFarlane v. Niagara Falls, 247 N. Y. 340, 160 N. E. 391 (Court of Appeals, Cardozo, C. J.); Hammond v. County of Monmouth, 117 L. 11 (Sup. Ct. 1936, Perakie, J.). It is well settled rule of practice in the trial of civil cases that the question submitted to the jury should be within the issues raised and framed by the pleadings. Excelsior Electric Co. v. Sweet, 59 L. 443 (1896, Dixon, J.).

Plaintiff contends that it is the rule of law that a municipal ordinance tending to show negligence must be pleaded only where it is relied upon as giving a right to recover and forms the very basis of the cause of action. That is the accepted rule in this state. Rupp v. Burgess, 70 L. 7 (Sup. Ct. 1903, Gummere, C. J.). But that case also holds at page 9:

"And even when the duty of repairing sidewalks is imposed upon the abutting owner by statute or ordinance, the failure to perform that duty does not render the owner responsible to individuals for injuries received by them, resulting from defects in the sidewalk due to want of repair. The only liability which rests upon the property owner for non-performance of such a duty is the penalty provided by the statute or ordinance. Fielders, vs. N. J. St. Rwy. Co., 68 L. 343, 352 (1902, Pitney, J.) and cases cited."

"The provision in the municipal ordinance as to the stone composition of the sidewalk is irrelevant under the issue of nuisance framed by plaintiff's pleading and on that ground alone was properly excluded from introduction into evidence.

"Plaintiff refers to the case of Kolankiewiz v. Burke, 91 L. 567 (1917, Swayze, J.), but that case involved the violation of the provisions of a city ordinance regulating the conduct of the driver of a motor vehicle when passing a street car, and very properly held that the failure to obey the city ordinance was evidence from which a jury might infer negligence, as settled by Evers v. Davis, 86 L. 196 (1914, Garrison, J.). It is true that the case of Meyers v. Fortunato, 116 Atl. 623 (Del. 1922) supports plaintiff's contention, but since the Fielders case, followed by Rupp v. Burgess, supra, and Sewell v. Fox, 98 L. 819 (1923, Kalisch, J.), municipal ordinances in the State of New Jersey which concern the construction and maintenance of the roadway and sidewalks of public highways have been distinguished from such ordinances regulating the use of the highway. The ordinance concerning the sidewalks of the City of Paterson must therefore be classified, not as an ordinance enacted as an exercise of the police power of the municipality.

"The particular provision of the ordinance could not and was not offered by the plaintiff to show any standard of construction material to the issues in the case, which was violated by the predecessor in title of the defendant owner. I must therefore conclude that the ordinance in question was properly excluded from evidence, and that my ruling at the trial after reflection with the aid of counsels' thought and research, was not erroneous."

HOLC - TORTS - UNITED STATES EMPLOYEES' COMPENSATION ACT

(Mrs. Bessie Mathuss vs. HOLC, District Court of the United States for the Northern District of Georgia, Atlanta Division. Decided in July 1941.)

A salaried employee of HOLC is a civil employee of the United States and the remedy given him for personal injuries sustained in the course of his employment by the United States Employees' Compensation Act is exclusive.

In a suit by Mrs. Bessie Mathuss, an employee of HOLC in its Atlanta regional office, against HOLC to recover $10,000 as damages for personal injuries the decision of the court was as follows:

"This case came on for final hearing before the Court without a jury. The decision on Motion for Summary Judgment was postponed until trial on the merits.

"Petitioner, who was employed by defendant as a file clerk, sues for damages for personal injuries alleged to have been sustained because of defendant's negligence in failing to furnish her with safe and suitable filing cabinets and because the filing cabinets furnished her were not kept in condition for the use they were put to and were not of the kind in general use and reasonably safe to operate with ordinary care, and because of latent defects therein. Defendant interposed the following three defenses: First, that the petition does not state a cause of action; and Second, that the plaintiff can not maintain this suit because, as an employee of defendant, she comes under the provisions of the Federal Employees' Compensation Act and her exclusive remedy is under said Act; and Third, a denial of liability on the merits.

"FINDINGS OF FACT.

"Defendant is a corporation created by Act of Congress approved June 13, 1933, the entire capital stock of which is owned by the United States. Plaintiff was, on May 3, 1938, and for some time prior thereto and thereafter, employed as a file clerk by defendant in its Regional Office in Atlanta, Georgia. The filing cabinets in question were old and difficult to operate, though the evidence does not

disclose any specific defects of construction or unrepair. Plaintiff had been using new cabinets, but several weeks before May 3, 1938, the new cabinets were removed and thirteen old cabinets given plaintiff instead of the ones she had been operating. When the old cabinets were given to her they were entirely empty and she placed the files in them herself. Plaintiff operated these filing cabinets every day and knew their condition. The cabinets were kept so full by plaintiff that she had difficulty in placing new files therein, and in pulling the drawers out and pushing them in, as they had no rollers on them. On May 3, 1938, while undertaking to pull out a drawer of one of these filing cases, the drawer fell out, there being no device to keep them from falling, and as it fell, hit petitioner in the stomach, injuring her and causing pain.

"CONCLUSIONS OF LAW.

"The Federal Compensation Act, approved September 7, 1916, (5 U.S.C.A. #751 (39 Stat. 742), provides that, "The United States shall pay compensation as hereinafter specified for the disability or death of an employee resulting from a personal injury sustained while in the performance of his duty." In Section 40 of the Act, the term "employee" is defined as follows: "The term 'employee' includes all civil employees of the United States and of the Panama Railroad Company." Under this definition, all civil employees of the United States come within the protection of the Act, and the fact that the employees of the Panama Railroad Company, which was a privately organized corporation purchased by the Government, was expressly included, probably to avoid any doubt on the question, does not restrict the coverage of employees of other corporations created, organized and owned by the United States. Neither does the fact that special acts, creating other Government corporations or agencies, may expressly extend to their employees the benefits of the Act change an inclusive into an exclusive provision. In other words, such acts merely make certain the extension of the Compensation Act to certain corporations, but do not limit the all inclusive term of "all civil employees of the United States."

Furthermore, there appears to be no valid reason why employees of defendant should not come within the provisions of the Compensation Act. Since its organization,

defendant has considered itself subject to the Compensation Act and its employees have received benefits thereof in the same manner and to the same degree as other civilian employees of the United States Government, and such has been the construction placed upon the Act by defendant and by the United States Employees' Compensation Commission. Furthermore, they seem to come clearly within the reasoning of the opinion of the Attorney General in the case of Employees of the Shipping Board, 34 Opinions 363. The employees of the Home Owners' Loan Corporation are employees of the United States, and the remedy extended to them under the United States Employees' Compensation Act are exclusive. (Posey vs. Tennessee Valley Authority (CCA 5) 93 Fed.(2d)726).

"I am of the opinion, therefore, that plaintiff, as an employee of Home Owners' Loan Corporation, came within the scope of the United States Compensation Act, and that the remedy created thereby is exclusive and therefore this suit can not be maintained. WHEREUPON, IT IS ORDERED, ADJUDGED AND DECREED that said suit be, and hereby is, dismissed."

MANDAMUS - HOUSING - TAXATION

(State ex rel. Bartlett, v. Thatcher, et al., ---Ohio---, 34 N. E. (2d) 440).

Where the County Auditor placed property of Columbus Metropolitan Housing Authority on exempt list without consent of Board of Tax Appeals, the Supreme Court of Ohio held that a writ of mandamus would be granted to restore such property to taxable list until such time as the Board of Tax Appeals shall have consented to the exemption of the property in question from taxation (Gen. Code Sec. 1464-1, 5570-1, Const. Art. 12, Sec. 2.).

MORTGAGES - CONSTITUTIONAL LAW

(California Federal Savings & Loan Ass'n. v. Allen, District Court of Appeal, Second District, Division 2, Cal., 112 P. 2d 959).
A statute which alters substantive rights of a party to a contract will not be applied retroactively, since to do so would violate constitutional provisions.

Plaintiff foreclosed upon some property and bought it in at the foreclosure sale on January 30, 1940. At the time the note and deed of trust to the property were executed to the plaintiff section 725a of the California Code of Civil Procedure allowed the trustor a period of one year subsequent to the date of the sale under a foreclosure proceeding within which to redeem the property mentioned in the trust. On September 19, 1939, an amendment to section 725a became effective which provided that the trustor's period of redemption was shortened from one year to three months.

The only question presented in this case is:

> "Does the amendment to section 725a of the Code of Civil Procedure, which became effective September 19, 1939, shortening the trustor's period of redemption after a foreclosure sale of property covered by a trust deed from one year to three months apply to deeds of trust executed prior to the effective date of such amendment?"

In answering in the negative the court said:

> "This question must be answered in the negative. It is the established law that a statute which alters substantive rights of a party to a contract will not be applied retroactively, since to do so would violate section 10 of Article I of the Constitution of the United Stated and section 16, Article I of the Constitution of the State of California (Brown v. Ferdon, 5 Cal. 2d 226, 231, 54 P.2d 712; 16 Cor. Jur. Sec. (1939), Constitutional Law, p. 861, Sec. 417)."

PARTITION - HOMESTEAD

(Manchaca v. Martinez, ---Texas---, 148 S. W. 2d 391)
In the absence of a statute to the contrary, a party, in order to be entitled to compel partition, must not only own an interest in the land, but he must also be entitled to possession of a portion thereof.

The only question presented in this case is the right of the owners of the fee to compel a partition of the homestead during the rightful occupancy thereof by the surviving husband. It appears that the grantee of some of the heirs of Mary Martinez brought suit against the husband and other heirs for partition of the property. They contended that although they are not entitled to disturb the right of possession of the homesteader, they are nevertheless entitled to have the property partitioned, subject to the right of possession by the surviving husband. The right to partition was denied by the lower court and upheld by the Supreme Court of Texas which said:

"But there is another fundamental obstacle to partition under such circumstances. It is the well-established rule that, in the absence of a statute to the contrary, a party, in order to be entitled to compel partition, must not only own an interest in the land, but he must be entitled to possession of a portion thereof. 47 C. J. 311; 30 R.C.L. 727, section 11; 32 Tex. Jur. 160; Henderson v. Chesley, Tex. Civ. App., 273 S. W. 299; Tieman v. Baker, 63 Tex. 641, 643; Brito v. Slack, Tex. Civ. App., 25 S. W. 2d 881; Luckel v. Barnsdall Oil Co., Tex. Civ. App., 74 S. W. 2d 127.

"The rule here under consideration was expressed by Associate Justice Stayton in Tieman v. Baker, supra, as follows:

> 'The very purpose of partition is to enable one holding or entitled to hold with others an undivided possession, to sever that possession and right, and thenceforth to hold an exclusive possession of a specific part of the property, which before partition all the co-owners had the equal right to possess.

> 'When the right to possess the entire property exists in one holding a life estate, if such person has no other estate, no right to partition exists; for it could confer no benefit, as no higher estate can be acquired by partition.'

"Under the above rule, since the plaintiffs were not entitled to possession of any of the land sought to be partitioned, they were not entitled to partition thereof."

PUBLIC POLICY

(Gust Bealkowski vs. John Powers et ux, Appellate Court of Illinois. Decided in July 1941.)
Note executed at loan closing by borrower from HOLC for difference between amount paid by HOLC and amount of the debt refunded is void where executed without knowledge and consent of HOLC.

At the time HOLC closed its loan to Powers, the mortgagee whose lien HOLC refunded, Bealkowski, took from Powers a note for the difference between the amount Bealkowski received from HOLC and the full amount of his lien indebtedness against Powers. This was without the knowledge of HOLC. Later, he sued Powers on this note and the trial court gave him judgment. On appeal the Appellate Court of Illinois, after stating the facts and discussing Johnson vs. Matthews, 301 Ill. App. 295, Jessewich vs. Abbene, 154 Misc. 768, 277 N. Y. S. 599, Chicago Title & Trust Co. vs. Szymanski, 289 Ill. App. 600, 7 N. E. (2d) 608, Meek vs. Wilson, 283 Mich. 679, 278 N. W. 731, McAllister vs. Drapeau, 95 Cal. App. 604, Partridge vs. Moynihan, 110 N. Y. S. 539, and Croker vs. Kotchkiss, 177 N. Y. S. 189, said:

> "It would appear from the cases involving the Home Owners' Loan Corporation that the Mortgagee's Consent to Take Bonds operates as a release in full of the debtor's liability and that, therefore, any additional consideration taken by the creditor representing an alleged loss in the refinancing is void. In Chaves County Building and Loan Assoc. v. Hodges, 40 N. Mex. 326, decided by the Supreme Court of New Mexico, it was held that the Mortgagee's Consent to Take Bonds executed by the Association was an agreement binding upon the Association and which Hodges, the debtor, could enforce. The following cases are applicable to the question here involved; Wilcox v. Cobb, 58 Ga. App. 39; First Citizens Bank

& Trust Co. of Utica v. Speaker, 294 N.Y.S. 737; Jessewich v. v. Abbene, 154 Misc. 768, 277 N.Y.S. 599, Lyon v. Adams, 294 N.Y.S. 732; Westchester Trust Co. v. Bricker, 247 App. Div. Rep. 778.

"It would appear, as we have already indicated, that the Home Owners' Loan Act of 1933 was an emergency measure enacted for the relief of home owners who were unable to carry or refund their mortgage indebtedness. It provided for the exchange of HOLC bonds and cash for the mortgage and bond, or other obligation held by the mortgagee, and for the execution of a new mortgage by the home owner to the Home Owners' Loan Corporation. It is apparent that the purpose and intent of the Act was to free the owner's home property from an oppressive mortgage or other liens, and to reduce and settle his obligations so as to give him a chance to become rehabilitated.

"It is to be observed from the statement offered to this court by amicus curiae that the test of secrecy with reference to HOLC refinancings is not necessarily the creditors' intent to fraudulently cover up collateral agreements between the debtor and himself, but the fact that such collateral agreement exists unknown to the HOLC. In view of the plaintiff's signed representation to the HOLC that he would no longer require of defendants any more money or other consideration, it can hardly be urged, and indeed has not been urged in the instant case, that the HOLC was aware of the existence of the cognovit note upon which was predicated the judgment at issue.

"For the reasons stated in the opinion we are of the opinion that the court erred in confirming and sustaining the judgment by confession and the judgment so entered is reversed, and judgment will be entered here for defendants."

SECOND MORTGAGE - AGENCY - NOTICE

(Tom P. Neavitt et al vs. Frank M. Upp, Supreme Court of Arizona. Decided in July 1941.)
Second mortgage taken without knowledge of HOLC is void. Knowledge of loan closing attorney of intention to take second mortgage is not notice to HOLC where the parties knew the closing attorney was exceeding his authority.

At the time HOLC closed its loan, its borrower, Frank M. Upp, executed a note secured by a second mortgage to Neavitt who had held the first lien which HOLC scaled down and refunded. Later, Upp brought suit against Neavitt and others to have the note and second mortgage cancelled and adjudged void. Neavitt filed a cross complaint seeking judgment on the note and foreclosure of the second mortgage. The trial court held the note and second mortgage void, and Neavitt appealed to the Supreme Court of Arizona. In affirming the judgment of the trial court, the Supreme Court of Arizona, among other things, said:

"* * * These second mortgages and notes have come before the courts in many different jurisdictions, and there is general agreement in the decisions on the law applicable thereto. It is held that if the HOLC has notice of the contemplated second mortgage and note, and, knowing this fact, makes its loan, the second note and mortgage are valid. On the other hand, if it has no notice, actual or implied, that there is to be such a transaction, and the parties have agreed to cancel the balance of the original debt, the second mortgage and note are void as against public policy. Anderson v. Horst, 132 Pa. S. 140, 200 Atl. 721; Johnson v. Matthews, 301 Ill. App. 295, 22 N.E. (2d) 772; Chaves County B.& L. Assn. v. Hodges, 40 N. W. 326, 59 Pac. (2d) 671; Meek v. Wilson, 283 Mich. 679, 278 N. W. 731; Ganchoff v. Bullock, 234 Wis. 613, 291 N. W. 837; Lavery v. Rizza, (Conn.) 9 Atl. (2d) 819; Jessevich v. Abbene, 277 N. Y. S. 599; First Citizens B. & T. Co. v. Speaker, 294 N. Y. S. 737. The only jurisdiction so far as we are aware where this rule has been questioned is Arkansas. Sirman v. Sloss Realty Co., 198 Ark. 534, 129 S. W. (2d) 602, and McMillan v. Palmer, 198 Ark. 805, 131 S. W. (2d) 943.

"The question then arises as to whether the HOLC did have notice of the proposed second mortgage at the time it completed its loan. Defendants base their contention that it

did on the admitted fact that O'Dowd not only had full knowledge of the intended second mortgage and note and all of the facts in regard thereto, but actively participated in their execution. The case then turns upon the question as to whether notice to O'Dowd was notice to the HOLC. Just what relation did O'Dowd have to it? He is referred to variously as the local representative or the closing attorney, but there is no evidence in the record as to how far his general authority went. Apparently he was the same class of agent as those mentioned in the case of Ganchoff v. Bullock, supra; Lavery v. Rizza, supra; Markowitz v. Berg, 125 N. J. Eq. 56, 4 Atl. (2d) 410, 127 N. J. Eq. 90, 11 Atl. (2d) 107. In the first two cases it was held that notice to the agent was notice to the HOLC. In the third it was not. The general rule of law is that notice to an agent acting within the scope of his authority is notice to the principal, but if he acts outside of that scope it is not, unless the circumstances are such that the party relying on the notice had reasonable ground to believe that the agent was acting within it. Southern Casualty Co. v. Hughes, 33 Ariz. 206, 263 Pac. 584; Restatement of Agency, par. 280.

"In the present case the facts show that the agent, plaintiff and defendants all knew that the agent was acting without authority, for they were all well aware of the contents of the letter from Wayland, the state manager, to plaintiff. Knowing that the HOLC had insisted on having the indebtedness scaled down, they made an attempt to violate the only conditions upon which it was willing to make the loan. The trial court, therefore, correctly held that the second mortgage and note were against public policy and void. It is suggested that there was no accord and satisfaction of the debt. We think the circumstances clearly establish that there was. Restatement of Contracts, par. 421.

"The judgment of the lower court is affirmed."

TAXATION - HOUSING

(State ex rel. Grubstein v. Cambell, Tax Assessor, et al., ---Fla.---, 1 So. (2d) 483.)
A city housing authority's property, used exclusively for purposes designated, as provided for in act, is exempt from taxation.

This was a proceeding for a writ of mandamus to W. H. Cambell as assessor of taxes for the City of Tampa and the Housing Authority of such City, commanding that lands belonging to such Authority be entered on the tax rolls and assessed for taxes.

The Supreme Court of Florida affirmed judgment for respondents. A similar question was presented and answered fully in State ex rel. Harper v. McDavis (200 So. 100) which held:

"A city housing authority's property, used exclusively for low rent housing and slum clearance purposes, as provided in act creating such authority, is exempt from taxation as held exclusively for 'municipal purposes' within constitutional tax exemption provisions. Acts 1937, cc. 17981, 17983; Const. art. 9, Sec. 1, and Art. 16, Sec. 16.

"A city housing authority's property is not subject to taxation for payment of principal of, and interest on, city's bonds and other obligations incurred before effective date of act exempting such authorities' properties from taxation as held exclusively for municipal purposes within constitutional tax exemption provisions, of which all purchasers of city's securities were put on notice. Acts 1937, c. 17983; Const. art. 9, Sec. 1, and art. 16, Sec. 16.

"The only standard for tax officials' governance in determining whether to allow exemption of city housing authority's property from taxation is that provided by statute requiring exemption of such authorities' properties used exclusively for purposes of housing projects in slum or low income areas. Acts 1937, c. 17981, Sections 2(a-c), 3(h, i), 4, par. 2; Section 17983; Const. art. 9, Section 1, and art. 16, Section 16."

TORTS - LANDLORD AND TENANT

(Edward J. Kapple vs. HOLC et al, Supreme Court, Kings County, New York. Decided in July 1941.)
Liability of owner of realty for negligence in maintenance ceases when premises pass out of owner's control by sale prior to happening of accident to tenant resulting in personal injuries.

In a suit in which the plaintiff sought to recover $5,000 as damages for personal injuries the opinion of the Supreme Court of Kings County, New York was as follows:

"Plaintiff occupied the upper story of a two-family house under a lease made by the defendant Home Owners' Loan Corporation, as owner, pursuant to the terms of which he was credited with the sum of $10 on account of his rent for the performance of janitorial service in connection with the entire building. In February, 1939, said defendant engaged the defendant Berdeles, a painting contractor, to paint the plaintiff's apartment and the outside of the entire building. One of the dining room windows in plaintiff's apartment was located over a piece of furniture and was rarely opened; indeed it had not been opened during the entire winter of 1938-1939. There were no handles on said window and it could only be opened by pushing upwards against the frame thereof. On May 9, 1939, plaintiff tried to open the said window and finding that it would not move, pushed harder, and as the window still did not open, his hand slipped against the glass, which broke, causing the injuries upon which this action is predicated.

"In the first two causes of action alleged in the complaint, the plaintiff seeks to recover against the defendants Home Owners' Loan Corporation and Berdeles, upon the ground that the injuries were caused by the carelessness and negligence of said defendants 'in causing and creating the said window to be and become defective in its operation * * * in failing to take steps to remedy the defect * * * in failing to warn the plaintiff of the dangers attendant upon attempting to open the said window * * * and in general failing to exercise reasonable care, diligence and prudence.' In the second cause of action there are additional allegations by the plaintiff wherein he denies that he was the janitor of the premises and affirmatively sets forth that the $10 allowance received by him was payment for the use of electricity in portions of the building other than his apartment which electricity was charged to him and for which the Home Owners' Loan Corporation should have been responsible, and for his services in setting the switch in his apartment which

controlled the oil burner in the building. The third cause of action is against the defendant Blanford, who, had become the owner of the premises only four days before the occurrence of the accident, and against him similar charges of negligence and carelessness are made as were alleged in the first two causes of action. I am of the opinion that the defendant Blanford cannot in any event be held liable. He did not create the condition complained of and had no reasonable opportunity to discover it on prompt inspection and to remedy it, having acquired the property only four days prior to the accident (see Pharm v. Lituchy, 283 N. Y., 130, 132). Nor can the defendant Home Owners' Loan Corporation be held liable for the accident. Its liability in negligence ceased when the premises passed out of its control before the accident (see Kilmer v. White, 254 N.Y., 64, 69). As for the remaining defendant, Berdeles, I am of the opinion that plaintiff has failed to establish by a fair preponderance of evidence that this defendant was negligent in the manner in which he performed the work of painting the apartment of the plaintiff.

"Under all of these circumstances judgment is granted in favor of all defendants."

TAXATION - STATE SALES TAX - HOLC
(HOLC v. McGoldrick & Co., N. Y. Sup. Ct., Trial Term, N. Y. City, June 26, 1941, 10 U. S. Law Week 2063.)
Electric current purchased by Home Owners' Loan Corporation in operation of property acquired by foreclosure of mortgage is subject to local sales tax imposed upon purchase of electricity.

The action is brought to recover taxes paid under protest pursuant to the New York City Sales Tax Law (Local Law No. 101, 1939, as amended).

It is not disputed that the Corporation is an instrumentality of the Federal Government, but "it is well settled that a Government Corporation does not enjoy immunity from taxation merely because it is such." The federal statute creating the Home Owners' Loan Corporation (12 USC 1463) does not confer such immunity. Nor does the imposition of the tax hinder and embarrass the Corporation in the performance of governmental functions since in its management of properties acquired by foreclosure it ceases "to perform any of its governmental functions."

"I have been unable to find any case directly in point, nor has any been called to my attention. (The case of Federal Land Bank v. Bismarck Lumber Co., N. D., 9 LW 2598, cert. granted, 9 LW 3321), however, while not on all fours, is persuasive authority in support of the validity of the local law in so far as it applies to a governmental agency under similar conditions.

That case holds that the tax laid on sales to a Federal Land Bank of lumber and other building material to be used in the conservation and repair of buildings and fences on farm lands acquired by the bank through foreclosure of mortgages, securing farm lands made pursuant to the Federal Farm (Loan) Act is a valid and constitutional tax.

"It is true that the stock of the Federal Land Bank, is, in the main, privately owned; while that of the Home Owners' Loan Corporation is entirely government-owned. But that circumstance does not, in my opinion, distinguish the Federal Land Bank case from the case at bar. The test is not whether the stock of a governmental agency is privately or publicly owned, but whether the making of the purchase for which the sales tax is imposed is for an enterprise which is essential to the performance of the governmental function for which the agency was created. If it is essential, the agency is not subject to the sales tax. If it is not essential, it is amenable to taxation."

ORDERS, REGULATIONS AND OPINIONS

NATIONAL DEFENSE - Office of Emergency Management

(Housing - 10 U. S. Law Week 2021)
Program providing priority aid for defense housing projects is announced.

The program is designed to assure a steady flow of necessary building materials to projects deemed essential to the national defense program.

No priority aid will be granted for defense housing, whether publicly or privately financed, until requests therefor have been cleared through the Coordinator of Defense Housing or his field representatives in accordance with procedures now being developed.

A Defense Housing Critical List is being prepared. Preference ratings may be used only for orders for items on this list. The list will contain only those items on which, in the opinion of the Priorities Division, preference ratings are necessary to obtain the quantities and delivery dates required. When needed items are not on the list, applications must be made on Form PD-1.

INTERNAL REVENUE BUREAU - Federal Taxes
(I.T. 3490, July 14, 1941, 10 U. S. Law Week 2052.)
Dividends and bonus payments of profits from share accounts in federal savings and loan associations are exempt from federal normal income tax, federal declared value excess profits tax, and federal excess profits tax, but not from federal surtaxes. Gain from sale or other disposition of share accounts is not exempt from federal taxes on income or profits.

Section 5(h) of the Home Owners' Loan Act of 1933 (48 Stat. 132) as amended by Section 909 of the Social Security Act Amendments of 1939 (53 Stat. 1402) provides that all shares of federal savings and

loan associations "shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance and gift taxes) now or hereafter imposed by the United States." Section 4 of the Public Debt Act of 1941 (LW Stat. Sec. Mar 11, 1941, p.7) provides that "interest upon, and gain from the sale or other disposition of, obligations issued on or after the effective date of this Act (Mar. 1, 1941) by the United States or any agency or insturmentality thereof shall not have any exemption, as such, * * * under federal tax Acts now or hereafter enacted."

It has been held in previous rulings that federal savings and loan associations are "instrumentalities of the United States." (S.S.T. 62, 4 LW 553: I.T. 3360, 8 LW 497).

Dividends and bonus payments by federal savings and loan associations on the share accounts are distributions of association profits, and the shares or share accounts constitute an ownership interest in the association in the nature of shares of capital stock.

"It is the opinion of this office that the dividends and bonus payments (of profits) by these associations on such share accounts are not, within the meaning of Section 4(a) of the Public Debt Act of 1941, "interest upon * * * obligations' of the associations; and, accordingly, that such Act has no applicability to, or effect upon, the federal tax status of the income (dividends and bonus payments of association profits) from such share accounts. Since the share accounts are not, within the meaning of Section 4(a), 'obligations' of these associations, it follows that the Public Debt Act of 1941 also has no applicability to, or effect upon the federal tax treatment of, gains or losses from the sale or other disposition of the share accounts by their holder."

It is immaterial whether the share accounts were issued, or payments in purchase thereof were made by their holders, before or on or after the effective date of the Public Debt Act of 1941, since such Act is inapplicable thereto.

UNITED STATES - AUTHORITY TO PURCHASE LAND

(Opinion Attorney General of the United States, June 3, 1941.)
Authority to purchase land need not be conferred by express statutory provision but may be implied.

In an opinion to the Secretary of Agriculture the Attorney General of the United States held that "under R. S. 3736 authority to purchase land on account of the United States need not be conferred by express provision of statute but may be implied."

The request for the above opinion arose as to the availability of funds appropriated to the Department of Agriculture for the acquisition of land to be used as sites for migratory labor camps. 14 U.S.C. 41, R.S. 3736, provides that "no land shall be purchased on account of the United States, except under a law authorizing such purchase."

FARM CREDIT ADMINISTRATION: The Federal Land Bank of Spokane, by regulation filed June 11, amended its regulation regarding loan segregation fees. See 6 Fed. Reg. 2846.

The Federal Land Bank of New Orleans, by regulation filed June 19, amended its regulation regarding division of loan fees. See 6 Fed. Reg. 3005.

The Federal Land Bank of St. Paul, by regulation filed June 19, amended its regulations regarding fees for subordination of mortgages, partial release of mortgage security, partial conveyance of contract security, release of condemnation award funds, substitution of security and division of loans, Federal Land Bank and/or Land Bank Commissioner mortgages. See 6 Fed. Reg. 3005-3006.

The Federal Land Bank of St. Louis, by regulation filed June 24, amended its regulation regarding release of part security fees in connection with Federal Land Bank and Commissioner loans. See 6 Fed. Reg. 3081.

The Federal Land Bank of Omaha, by regulation filed July 15, stipulated division of loan fees. See 6 Fed. Reg. 3465.

FARM SECURITY ADMINISTRATION: The Administrator, by notice filed June 12, amended the designation of localities in the Parish of Grant, Louisiana, in which loans may be made. See 6 Fed. Reg. 2888.

The Administrator, by notice filed June 16, designated localities in Santa Rosa County, Florida, in which loans may be made. See 6 Fed. Reg. 3013.

The Acting Administrator, by regulations filed July 3, established rules for the determination of the value of the average farm unit of 30 acres and more in counties, parishes, and localities in which loans for the purchase of farms may be made. See 6 Fed. Reg. 3254.

The Acting Secretary of Agriculture, by notice filed July 3, designated those counties in which tenant purchase loans may be made. See 6 Fed Reg. 3259.

The Acting Secretary of Agriculture, by notice filed July 14, designated additional counties in Wisconsin in which loans may be made. See 6 Fed. Reg. 3455.

The Under Secretary of Agriculture, by notice filed July 24, designated an additional county in Georgia in which loans may be made. See 6 Fed. Reg. 3701.

FEDERAL HOME LOAN BANK BOARD:

Home Owners' Loan Corporation: The General Manager and General Counsel promulgated a procedure, filed June 6, amending the regulations regarding suspension and withdrawal from foreclosure. See 6 Fed. Reg. 2763-2764.

The General Manager and General Counsel promulgated a procedure, filed June 6, amending the regulations regarding the placing of insurance by the Corporation. See 6 Fed. Reg. 2764.

The General Manager and General Counsel promulgated procedures, filed June 14, regarding surety bonds for brokers. See 6 Fed. Reg. 2903-2904.

The General Manager and General Counsel promulgated a procedure, filed June 14, amending the regulations regarding the furnishing of utilities. See 6 Fed. Reg. 2904.

The General Manager and General Counsel promulgated a procedure, filed June 24, amending the regulation regarding the suspension and reestablishment of insurance accruals. See 6 Fed. Reg. 3100.

The General Manager, with the approval of the General Counsel, prescribed a procedure for advances for reconditioning. See 6 Fed. Reg. 3531-3532.

Federal Savings and Loan Insurance Corporation: The Federal Savings and Loan Insurance Corporation, by resolution filed June 11, amended its regulations relating to the sale of mortgages made in the financing of permanent-use housing in defense areas. See 6 Fed. Reg. 2872-2873.

The Federal Savings and Loan Insurance Corporation, by resolution filed July 16, amended its regulations relating to advertisement of insurance of accounts. See 6 Fed. Reg. 3521.

FEDERAL HOUSING ADMINISTRATION: The Administrator filed regulations July 7, governing the insurance of qualified lending institutions against loss resulting from class 1, class 2, and class 3 loans made under the provisions of Title I, Section 2, of the National Housing Act. See 6 Fed. Reg. 3321-3320.

The Administrator filed regulations July 7 regarding mutual mortgage insurance. See 6 Fed. Reg. 3330-3336.

The Administrator, by regulations filed July 21, amended the regulations concerning farm mortgage insurance. See 6 Fed. Reg. 3633-3634.

RURAL ELECTRIFICATION ADMINISTRATION: The Administrator, by order filed June 11, reduced the allocation of funds for loans in Madison, Virginia. See 6 Fed. Reg. 2858.

The Administrator, by order filed June 13, allocated funds for a loan for a project in Mississippi. See 6 Fed. Reg. 2888.

The Administrator, by order filed June 18, allocated funds for a loan for a project in South Dakota. See 6 Fed. Reg. 2998.

The Administrator, by order filed June 24, rescinded the allocation of funds for specified loans in Mississippi, New Mexico, and Tennessee. See 6 Fed. Reg. 3091.

The Administrator, by order filed July 1, allocated funds for loans in Louisiana and West Virginia. See 6 Fed. Reg. 3220.

The Administrator, by order filed July 2, rescinded allocation for loans for certain projects in Maine and Ohio. See 6 Fed. Reg. 3245.

The Administrator, by order filed July 18, allocated funds for a loan for a project in North Carolina. See 6 Fed Reg. 3574.

The Administrator, by order filed July 25, changed the designation and loan allocation in specified projects in Oregon. See 6 Fed. Reg. 3712.

LEGISLATION

F e d e r a l

National Housing Act Further Amended.

The National Housing Act, as amended to June 3, 1939, was further amended by Public Law 138, enacted on June 28, 1941, originally introduced into Congress as H. R. 4693. The following are the important changes made to the Act.

TITLE I - HOUSING RENOVATION AND MODERNIZATION.

Subsection (a) of Section 2 of the Act authorized the Administrator to insure qualified financial institutions against losses sustained as the result of loans and advances of credit made by them after July 1, 1939, and prior to July 1, 1941. The amendment extends the time to July 1, 1943. The limit of liability of insurance outstanding at any time under this Title was increased from $100,000,000 to $165,000,000.

Subsection (b)(1) of Section 2 of the Act has been amended by the addition of the subject matter underlined below:

> "No insurance shall be granted under this Section to any such financial institution with respect to any obligation representing any such loan, advance of credit or purchase by it; (1) if the amount of such loan, advance of credit or purchase made for the purpose of financing the alteration, repair or improvement of existing structures exceeds $2500 (or in the case of the alteration, repair or improvement of an existing dwelling designed or to be designed for more than one family exceeds $5000) or for the purpose of financing the construction of new structures exceeds $3000;

Subsection (b)(2) of Section 2 of the Act has been amended by the addition of the subject matter underlined:

> "(2) if such obligation has a maturity in excess of three years and thirty-two days where the loan, advance of credit or purchase does not exceed $2500 or has a maturity in excess of five years and

thirty-two days where the loan advance of credit or purchase exceeds $2500 but does not exceed $5000, except that such maturity limitations shall not apply if such loan, advance of credit or purchase is for the purpose of financing the construction of a new structure for the use in whole or in part for residential or agricultural purposes;

Subsection (b)(3) of Section 2 of the Act has been amended by the addition of the subject matter underlined:

"(3) unless the obligation bears such interest, has such maturity and contains such other terms conditions and restrictions as the Administrator shall prescribe in order to make credit available for the purposes of this Title; Provided that any obligation with respect to which insurance is granted under this Section on or after July 1, 1939, may be refinanced and extended in accordance with such terms and conditions as the Administrator may prescribe, but in no event for an additional amount or term in excess of the maximum provided for in this subsection."

The effect of the foregoing amendments to Subsection (b) of Section 2 is to remove the $2500 limitation, formerly the maximum loan which could be insured regardless of the age, condition or type of dwelling. Separate maximum figures are set forth for (1) existing one-family dwellings, (2) existing multi-family dwellings and (3) new construction. Provision is also made to extend the term of the loans insurable under this Title to five years and thrity-two days from three years and thirty-two days, in the case of loans between $2500 and $5000. Further provision is made for refinancing any Title I loan made after July 1, 1939, so as to conform with the above amendments as to amount and term.

Subsection (c)(1) of Section 2 gives the Administrator power to assign, sell or otherwise dispose of any evidence of debt, contract, claim, property or security assigned to or held by him in connection with the payment of insurance. The amendment limits the word "property" in the foregoing to "personal property."

The following new paragraph has been added to Subsection (c) of Section 2 to be called "Subsection (c)(2)":

Subsection (c)(2).

"The Administrator is authorized and empowered (a) to deal with, complete, rent, renovate, modernize, insure, or sell for cash or credit, in his discretion, and upon such terms

and conditions and for such consideration as the Administrator shall determine to be reasonable, any real property conveyed to or otherwise acquired by him in connection with the payment of insurance heretofore or hereafter granted under this title and (b) to pursue to final collection, by way of compromise or otherwise, all claims against mortgagors assigned by mortgagees to the Administrator in connection with such real property by way of deficiency or otherwise; Provided, That section 3709 of the Revised Statutes shall not be construed to apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of such property if the amount thereof does not exceed $1000. The power to convey and to execute in the name of the Administrator deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real property or any interest therein heretofore or hereafter acquired by the Administrator pursuant to the provisions of this Title may be exercised by the Administrator or by any Assistant Administrator appointed by him without the execution of any express delegation of power or power of attorney: Provided, That nothing in this paragraph shall be construed to prevent the Administrator from delegating such power by order or by power of attorney, in his discretion, to any officer or agent he may appoint."

Subsection (f) of Section 2 states that all income derived from premium charges shall be deposited in the Treasury and used to pay operating expenses of the FHA; any amounts not needed for such purpose shall be used for the payment of claims in connection with the insurance granted. The amendment further defines income as all moneys collected as fees, or as the result of liquidating assets assigned to the Administrator as security in connection with the payment of insurance.

Section 7 has been added under Title I whereby the exemption from taxation of real property acquired by the Administrator has been removed. Such real estate is subject to state taxation according to its value as other real property is taxed.

TITLE II - MORTGAGE INSURANCE

The total amount of all mortgages insured by the Administrator under Section 203 (a) of the Act, has been increased to four billion (instead of three billion) except that with the approval of the President the aggregate amount may be increased to five billion (instead of four billion).

Subsection (a) of Section 203 has been further amended by the addition of the subject matter underlined.

> "Provided further that the aggregate amount of principal obligations of all mortgages that cover property, the construction of which was completed more than one year prior to the date of application for insurance, and that are insured under this Title after June 3, 1939, and outstanding at any one time shall not exceed thirty-five per centum of the total amount of principal obligations of mortgages with respect to which insurance may be granted under this Title after such date. Provided further, that on and after July 1, 1944, no mortgages shall be insured under this title except mortgages that cover property which is approved for mortgage insurance prior to the completion of construction of such property or which has been previously covered by a mortgage insured by the Administrator."

TITLE V - MISCELLANEOUS

The first sentence of subsection (d) of Section 512 of the Act has been amended and clarified by the changes as underlined, to read as follows:

> "No individual, association, partnership, or corporation shall hereafter, while the Federal Housing Administration exists, use the combination of letters 'FHA'; the words 'Federal Housing' or 'National Housing', or any combination or variation of such letters or words alone or with other letters or words as the name under which he or it shall do business, for the purpose of trade, or by way of advertisement to induce the sale of any article or product whatsoever, which use shall have the effect of leading the public to believe that any such individual, association, partnership, or corporation, or any article or

product so offered for sale, has any connection with, approval of, or authorization from, the Federal Housing Administration, the Government of the United States, or any instrumentality thereof where such connection, approval, or authorization does not, in fact, exist."

H. R. 5211 — Introduced on June 28, 1941, by Mr. Lanham (D., Texas). Authorization for appropriation of an additional $300,000,000 for Defense Housing. Referred to the Committee on Public Buildings and Grounds.

H. R. 5260 and 5306 — Introduced on July 9 and July 14 by Mr. Randolph (D., W. Va.). Amends the Alley Dwelling Act for the District of Columbia. Referred to the Committee on the District of Columbia.

H. R. 5395 — Introduced on July 23, 1941, by Mr. Steagall (D., Ala.). To Amend Title VI of the National Housing Act so as to increase to $300,000,000 from the present $100,000,000, the maximum amount of insurance under Title VI (Defense Housing Insurance). Referred to the Banking and Currency Committee. Reported out of committee without amendment on July 24, 1941. Passed House on July 29, 1941.

H. R. 5474 — Introduced on August 1, 1941, by Mr. Barry (D., N. Y.). A bill to reduce the rate of interest on obligations of home owners to the Home Owners Loan Corporation. Referred to the Committee on Banking and Currency.

H. R. 5479 and S. 1810 — Introduced on August 1, 1941, by Mr. Steagall (D., Ala.) in the House and by Mr. Glass (D., Va.) in the Senate. These companion bills are for the purpose of furthering the national defense and security by checking speculative and excessive price rises, price dislocations, and inflationary tendencies. Provides for control of increases in rents. Referred to House and Senate Banking and Currency Committees.

Public Laws (Cumulative)

No.

9 (H. R. 3204) (Approved March 1, 1941)
Defense Housing: Appropriates $5,000,000 for defense housing.

24 (H. R. 3575) (Approved March 28, 1941)
Amends National Housing Act. Adds new Title VI (Defense Housing Insurance). (See 81 HLD for analysis of Act.)

42 (H. R. 3486) (Approved April 29, 1941)
Authorizes an additional appropriation of $150,000,000 for defense housing.

73 (H. R. 4669) (Approved May 24, 1941.)
Defense Housing: Appropriates $150,000,000 for permanent type defense housing and $15,000,000 for temporary type defense housing, such as trailers and portable units.

138 (H.R. 4693) (Approved June 28, 1941) Amends National Housing Act by extending the provisions of Title I and II.

186 (H. R. 93) (Approved July 21, 1941) Authorizes the Legislature of the Territory of Alaska to create a public corporate authority to undertake slum clearance and projects to provide dwelling accommodations for families of low income.

S t a t e

Building and Loan Associations

Maryland - Ch. 600. To add Sec. 187A to Art. 81 of Annotated Code requiring Building and Loan Associations to submit re-reports to the State Tax Commission.

Eminent Domain

Florida - Ch. 20930. To codify the existing laws relating to eminent domain procedure.

Housing

Arizona - Ch. 92. This law makes obligations issued pursuant to the provisions of the Federal Home Loan Bank Act, as amended, and obligations issued pursuant to Title IV of the National Housing Act, legal investments for the funds of fiduciaries.

Florida - Ch. 20249. Amends the municipal housing authorities law to extend the powers of the authorities to establish or administer housing projects for persons engaged in national defense activities, to 10 miles outside city boundaries.

Ch. 20221. Authorizes Housing authorities to undertake the development and administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities.

Ch. 20220. To provide for the establishment of rural housing authorities in municipalities of less than 2500 population.

Ch. 20219. Amends the municipal housing authorities law defining cities to include cities having a population of 2500 or more.

Maryland - Ch. 562. To add Secs. 24-30 to Art. 44A of Annotated Code to authorize housing authorities to cooperate in providing housing facilities for persons engaged in national defense activities. Emergency.

Ch. 561. To amend Sec. 10 of Art. 44A of Annotated Code revising procedures relating to rentals and tenant selection for housing projects.

Ch. 692. To amend Sec. 61A to Art. 99 of Annotated Code granting additional powers to cities, counties, to aid housing projects of Housing Authorities.

North Carolina - Ch. 78. Adds to the existing Housing Authorities Act a number of sections designed to enable North Carolina counties to come under it so that low cost housing may be extended to rural areas. Section 3 (Definitions) is amended by adding a new subsection 18, as follows:

> "(18) 'Farmers of low income' shall mean persons or families who at the time of their admission to occupancy in a dwelling of the authority: (1) live under unsafe or unsanitary housing conditions; (2) derive their principal income from operating or working upon a farm; and (3) had an aggregate average annual net income for the three years preceding their admission that was less than the amount that shall be determined by the authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe and sanitary housing, without overcrowding."

Seven new sections are added to make the provisions of the original act adaptable to rural areas. County housing authorities can be established by the county commissioners upon a petition signed by twenty-five residents of the county. Such an authority consists of five members and provisions as to term of office and duties are similar to those in the original act for municipal authorities. There is also a provision permitting two or more contiguous counties to establish a regional housing authority. The new act, however, imposes a population requirement of 60,000 before a single county or group of counties may establish a housing authority.

CHAPTER 62 is a general validating act as to any housing authorities established in North Carolina and as to all of their acts, including all contracts, bonds, notes, obligations and undertakings "notwithstanding any want of statutory authority or any defect or irregularity therein." Since such validating acts are not designed to impair but rather to strengthen the obligation of existing contracts, they would appear to be constitutional.

CHAPTER 63 recognizes the acute shortage of safe and sanitary dwellings available to workers in national defense activities and attempts to utilize the existing Housing Authorities Law to meet this emergency. Section 2 provides: "Any housing authority may undertake the development and administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in National Defense activities whom the housing authority determines would not otherwise be able to secure safe and sanitary dwellings within the vicinity thereof, but no housing authority shall initiate the development of any such project pursuant to this Act after December 31, 1943."

CHAPTER 140 is an amendment of the 1939 statute which authorized municipalities having more than 25,000 population to repair, close or demolish dwellings which are unfit for human habitation. This is the authorization for slum clearance which goes hand in hand with the Housing Authorities Law. The present amendment reduced the population requirement to 5,000, thus conforming it to that in the present Housing Authorities Law.

Zoning and Planning

Marryland - Ch. 523. To amend Sec. 35 of Art. 66B of Annotated Code, eliminating Talbot County from the list of counties exempt from the Zoning and Planning Law.

Florida - Ch. 2089. To authorize municipalities, upon petition of a majority of the property owners in a certain area, to enter into an agreement with the FHA for the purpose of restricting the use of land the building upon property within the area in order to make such properties eligible for FHA loans.

Mortgage Moratorium and Anti-Deficiency Judgment Law Enacted by State Legislatures As of June 1941.

California

H. B. 1459 Ch. 135 — Adds Sec. 2924d to Civil Code, relating to reinstatement of a deed of trust, mortgage, chattel mortgage or contract of purchase upon which payments have been extended, sale postponed, right of redemption extended, or a forfeiture or termination postponed under moratorium Acts. Signed by Governor April 17, 1941.

Minnesota

H. F. 631 Ch. 38 — Act granting relief from inequitable mortgage foreclosures and limiting the right to maintain actions for deficiency judgments. Signed by Governor February 28, 1941 (Effective until July 1, 1942. Does not apply to mortgages made after April 18, 1933.)

Montana

H. B. 33 — New Act providing for relief from mortgage foreclosure and limiting the right to maintain action for deficiency judgment. Signed by Governor February 18, 1941.

New York

S. B. 2109 Ch. 625 — Extending to July 1, 1943, the emergency moratorium limiting deficiency judgments in mortgage foreclosures and actions for judgments on bonds secured thereby. Signed by Governor April 23, 1941.

S. B. 2067 Ch. 782 — Extends mortgage moratorium to July 1, 1943. Signed by Governor May 3, 1941.

North Dakota

H. B. 213 — Provides relief from mortgage foreclosures by regulating period of redemption; prohibits deficiency judgment until expiration of redemption period. Signed by Governor March 17, 1941.

Ohio

S. B. 330	Extends mortgage moratorium to April 2, 1943. Passed both houses; signed by Governor. Effective May 23, 1941.

Oklahoma

H. B. 40	Relating to deficiency judgments. Amending Sec. 424, 1931 Statutes. Signed by Governor May 6, 1941.

South Dakota

S. B. 13 Ch. 163	Extends mortgage moratorium to March 1, 1943. Enacted.

Wisconsin

H. B. 27 H. B. 31 Ch. 41	Similar bills extending mortgage moratorium to March 1, 1943. Signed by Governor April 7, 1941.