

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 187

An Act to amend and reenact §§ 36-55.25, 36-55.26, 36-55.30, 36-55.30:2, 36-55.31, 36-55.33:1, 36-55.34:1, 36-55.37, 36-55.38, and 36-55.39 of the Code of Virginia, relating to the Virginia Housing Development Authority; financing of certain mixed-income and mixed-use housing developments.

[H 825]

Approved March 19, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-55.25, 36-55.26, 36-55.30, 36-55.30:2, 36-55.31, 36-55.33:1, 36-55.34:1, 36-55.37, 36-55.38, and 36-55.39 of the Code of Virginia are amended and reenacted as follows:

§ 36-55.25. Finding and declaration of necessity.

It is hereby declared: (i) that there exists within this Commonwealth a serious shortage of sanitary and safe residential housing at prices or rentals which persons and families of low and moderate income can afford; that this shortage has contributed to and will contribute to the creation and persistence of substandard living conditions and is inimical to the health, welfare and prosperity of the residents of this Commonwealth; (ii) that it is imperative that the supply of residential housing for such persons and families and for persons and families displaced by public actions or natural disaster be increased; (iii) that private enterprise and investment have been unable, without assistance, to produce the needed construction or rehabilitation of sanitary and safe residential housing at prices or rentals which persons and families of low and moderate income can afford and to provide sufficient long-term mortgage financing for residential housing for occupancy by such persons and families; (iv) that a concentration of persons and families of low and moderate income even in standard structures does not eliminate undesirable social conditions; (v) that the governing body of a city *or county* may in its discretion determine that it is necessary to the preservation of the financial viability of such city *or county* and the health, welfare and prosperity of its residents that the population of such city *or county* be maintained as economically mixed by providing housing for persons and families of other than low and moderate income in order to broaden the tax bases of such areas; (vi) that in providing sanitary and safe residential housing at prices or rentals which persons and families of low and moderate income can afford it may at times be necessary or desirable to provide housing for persons and families of other than low and moderate income; (vii) *that it is critical to the success, prosperity and viability of areas being revitalized that financing be made available for nonhousing buildings that are incidental to residential housing for low and moderate income persons and families and other persons and families in order to provide products and services to those living in residential housing or that are necessary or appropriate for the revitalization of such areas or for the industrial, commercial or other economic development of such areas;* (viii) *that the financing of residential housing for low and moderate income persons and families and other persons and families may be appropriate to promote the industrial, commercial or other economic development of certain areas in a city or the county by inducing manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area;* and (vii) (ix) that private enterprise and investment be encouraged both to sponsor land development and build and rehabilitate residential housing for such persons and families of low and moderate income and to build housing which will prevent the recurrence of slum conditions by housing persons of varied economic means in the same projects or area, and that private financing be supplemented by financing as provided in this chapter in order to help prevent the creation and recurrence of substandard living conditions and to assist in their permanent elimination throughout Virginia.

It is further declared that in order to provide a fully adequate supply of sanitary and safe dwelling accommodations at rents, prices, or other costs which such persons or families can afford and to stabilize or recover ~~a necessary~~ *an appropriate* economic mix in ~~certain urban~~ *areas of the Commonwealth* the legislature finds that it is necessary to create and establish a state housing development authority for the purpose of encouraging the investment of private capital and stimulating the construction and rehabilitation of residential housing to meet the needs of such persons and families or to stabilize such areas through the use of public financing, to provide construction and mortgage loans and to make provision for the purchase of mortgage loans and otherwise.

It is hereby further declared to be necessary and in the public interest that such state housing development authority provide for predevelopment costs, temporary financing, land development expenses and residential housing construction or rehabilitation by private sponsors for sale or rental to persons and families of low and moderate income and others; further, to provide mortgage financing for the purposes of supplying sanitary and safe dwelling accommodations at rents, prices or other costs

which such persons or families can afford or of stabilizing urban areas, including without limitation, long-term federally insured mortgages; *further, in revitalization areas designated in or pursuant to § 36-55.30:2, to provide financing for nonhousing buildings that are incidental to residential housing financed or to be financed in such areas pursuant to this chapter for low and moderate income persons and families and for other persons and families or that are necessary or appropriate for the revitalization of such areas or the industrial, commercial or other economic development of such areas;* further, to increase the construction and rehabilitation of low and moderate income housing through the purchase from mortgage lenders authorized to make loans in the Commonwealth of mortgage loans for residential housing for persons and families of low and moderate income in this Commonwealth; further, to acquire, develop and own ~~multi-family~~ *multifamily* residential housing for occupancy by persons and families of low and moderate income; further, to provide technical, consultative and project assistance services to private sponsors; further, to assist in coordinating federal, state, regional and local public and private efforts and resources; to guarantee to the extent provided herein the repayment of certain loans secured by residential mortgages; and further, to promote wise usage of land and other resources in order to preserve the quality of life we value so highly in Virginia.

It is hereby further declared that all of the foregoing are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted, and that such activities serve a public purpose in improving or otherwise benefiting the people of this Commonwealth; that the necessity of enacting the provisions hereinafter set forth is in the public interest and is hereby so declared as a matter of express legislative determination.

§ 36-55.26. Definitions.

As used in this chapter the following words and terms have the following meanings, unless a different meaning clearly appears from the context:

"Bonds," "notes," "bond anticipation notes," and "other obligations" mean any bonds, notes, debentures, interim certificates or other evidences of financial indebtedness issued by HDA pursuant to this chapter.

"City" means any city or town in the Commonwealth.

"County" means any county in the Commonwealth.

"Earned surplus" shall have the same meaning as in generally accepted accounting standards.

"Economically mixed project" means residential housing *or housing development, which may consist of one or more buildings located on contiguous or noncontiguous parcels that the HDA determines to finance as a single economically mixed project*, to be occupied by persons and families of low and moderate income and by other persons and families as the HDA shall determine.

"Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

"Federally insured mortgage" means a mortgage loan for land development for residential housing or residential housing insured or guaranteed by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to insure such a mortgage.

"Federal mortgage" means a mortgage loan for land development for residential housing or residential housing made by the United States or an instrumentality thereof or for which there is a commitment by the United States of America or an instrumentality thereof to make such a mortgage loan.

"HDA" means the Virginia Housing Development Authority created and established pursuant to § 36-55.27 of this chapter.

"Housing development costs" means the sum total of all costs incurred in the development of a housing development, which are approved by the HDA as reasonable and necessary, which costs shall include, but are not necessarily limited to: fair value of land owned by the sponsor, or cost of land acquisition and any buildings thereon, including payments for options, deposits, or contracts to purchase properties on the proposed housing site or payments for the purchase of such properties; cost of site preparation, demolition and development; architecture, engineering, legal, accounting, HDA, and other fees paid or payable in connection with the planning, execution and financing of the housing development; cost of necessary studies, surveys, plans and permits; insurance, interest; financing, tax and assessment costs and other operating and carrying costs during construction; cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery and apparatus related to the real property; cost of land improvements, including without limitation, landscaping and off-site improvements, whether or not such costs have been paid in cash or in a form other than cash; necessary expenses in connection with initial occupancy of the housing development; a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, a limited profit housing sponsor; an allowance established by HDA for working capital and contingency reserves, and reserves for any anticipated operating deficits during the first two years of occupancy; *in the case of an economically mixed project within a revitalization area designated in or pursuant to § 36-55.30:2, the costs of any nonhousing buildings that are financed in conjunction with such project and that are incidental to such project or are determined by such governing body to be necessary or appropriate for the revitalization of such area or for the industrial, commercial or other economic development of such*

area; the cost of such other items, including tenant relocation, if such tenant relocation costs are not otherwise being provided for, as HDA shall determine to be reasonable and necessary for the development of the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during construction.

"Housing development" or "housing project" means any work or undertaking, whether new construction or rehabilitation, which is designed and financed pursuant to the provisions of this chapter for the primary purpose of providing sanitary, decent and safe dwelling accommodations for persons and families of low or moderate income in need of housing *and, in the case of an economically mixed project, other persons and families*; such undertaking may include any buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and such offices, and other nonhousing facilities incidental or related to such development or project such as administrative, community, health, nursing care, medical, educational and recreational facilities as HDA determines to be necessary, convenient or desirable. For the purposes of this chapter, medical and related facilities for the residence and care of the aged shall be deemed to be dwelling accommodations.

"Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, public bodies, trusts, firms, associations, or other legal entities or any combination thereof, corporations, cooperatives and condominiums, approved by HDA as qualified either to own, construct, acquire, rehabilitate, operate, manage or maintain a housing development whether nonprofit or organized for limited profit subject to the regulatory powers of HDA and other terms and conditions set forth in this chapter.

"Land development" means the process of acquiring land for residential housing construction, and of making, installing, or constructing nonresidential housing improvements, including, without limitation, waterlines and water supply installations, sewer lines and sewage disposal and treatment installations, steam, gas and electric lines and installations, roads, streets, curbs, gutters, sidewalks, storm drainage facilities, other related pollution control facilities, and other installations or works, whether on or off the site, which HDA deems necessary or desirable to prepare such land primarily for residential housing construction within this Commonwealth.

"Mortgage" means a mortgage deed, deed of trust, or other security instrument which shall constitute a lien in the Commonwealth on improvements and real property in fee simple, on a leasehold under a lease having a remaining term, which at the time such mortgage is acquired does not expire for at least that number of years beyond the maturity date of the interest-bearing obligation secured by such mortgage as is equal to the number of years remaining until the maturity date of such obligation or on personal property, contract rights or other assets.

"Mortgage lender" means any bank or trust company, mortgage banker approved by the Federal National Mortgage Association, savings bank, national banking association, savings and loan association, or building and loan association, life insurance company, the federal government or other financial institutions or government agencies which are authorized to and customarily provide service or otherwise aid in the financing of mortgages on residential housing located in the Commonwealth for persons and families of low or moderate income.

"Mortgage loan" means an interest-bearing obligation secured by a mortgage.

~~"Multi-family~~ *Multifamily* residential housing" means residential housing other than single-family residential housing, as hereinafter defined.

"Municipality" means any city, town, county or other political subdivision of this Commonwealth.

"Nonhousing building" means a building or portion thereof and any related improvements and facilities used or to be used for manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings other than residential housing.

"Persons and families of low and moderate income" means persons and families, irrespective of race, creed, national origin or sex, determined by the HDA to require such assistance as is made available by this chapter on account of insufficient personal or family income taking into consideration, without limitation, such factors as follows: (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the family, (iii) the cost and condition of housing facilities available, (iv) the ability of such persons and families to compete successfully in the normal private housing market and to pay the amounts at which private enterprise is providing sanitary, decent and safe housing, and (v) if appropriate, standards established for various federal programs determining eligibility based on income of such persons and families.

"Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

~~"Residential housing" means a specific work or improvement within this Commonwealth, whether multi-family~~ *multifamily* residential housing or single-family residential housing undertaken primarily to provide dwelling accommodations, including the acquisition, construction, rehabilitation, preservation or

improvement of land, buildings and improvements thereto, for residential housing, and such other nonhousing facilities as may be incidental, related, or appurtenant thereto. For the purposes of this chapter, medical and related facilities for the residence and care of the aged shall be deemed to be dwelling accommodations.

"Single-family residential housing" means residential housing consisting of four or fewer dwelling units, the person or family owning or intending to acquire such dwelling units, upon completion of the construction, rehabilitation or improvement thereof, also occupying or intending to occupy one of such dwelling units.

§ 36-55.30. Powers of HDA generally.

The HDA is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes, including, without limitation, the following:

1. Sue and be sued in its own name;
2. Have an official seal and to alter the same at pleasure;
3. Have perpetual succession;
4. Maintain an office at such place or places within this Commonwealth as it may designate;
5. Adopt and from time to time amend and repeal bylaws, not inconsistent with this chapter, to carry into effect the powers and purposes of HDA and the conduct of its business;
6. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;
7. Acquire real or personal property, or any interest therein, by purchase, exchange, gift, assignment, transfer, foreclosure, lease or otherwise, including rights or easements; to hold, manage, operate, or improve real or personal property; to sell, assign, lease, encumber, mortgage or otherwise dispose of any real or personal property, or any interest therein, or deed of trust or mortgage lien interest owned by it or under its control, custody or in its possession and release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including any equity or right of redemption in property foreclosed by it and to do any of the foregoing by public or private sale, with or without public bidding, notwithstanding the provisions of any other law;
8. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities to effectuate the purposes of this chapter;
9. To enter into agreements or other transactions with the federal government, the Commonwealth of Virginia or any governmental agency thereof or any municipality in furtherance of the purposes of this chapter, including but not limited to the development, maintenance, operation and financing of any housing development or residential housing, or land improvement; to enter into agreements with the federal government or other parties for the provision by the HDA, or any entity or fund owned or sponsored by or related to the HDA, of services and assistance in the restructuring or modification of debt or subsidy, or in the improvement of the financial or physical condition, of any housing development or residential housing, including without limitation any housing development or residential housing owned, financed or assisted by the federal government or financed by a mortgage loan insured by the federal government, which agreements may provide for the indemnification by the HDA of the federal government or other parties against liabilities and costs in connection with the provision of such services and assistance if such indemnification is determined by the executive director to be in furtherance of the public purposes of this chapter, provided that (i) such indemnification shall be payable solely from the funds of the HDA, excluding any funds appropriated by the Commonwealth which shall be held by the HDA in a separate fund while such indemnification is in effect, (ii) such indemnification shall not constitute a debt or obligation of the Commonwealth and the Commonwealth shall not be liable therefor, and (iii) any such agreement limits the HDA's total liability for the indemnification thereunder to a stated dollar amount and notifies the federal government or other parties that the full faith and credit of the Commonwealth are not pledged or committed to payment of the HDA's obligation to indemnify the federal government or other parties under such agreement; to operate and administer loan programs of the federal government, the Commonwealth of Virginia, or any governmental agency thereof or any municipality involving land development, the planning, development, construction or rehabilitation of housing developments and residential housing, the acquisition, preservation, improvement or financing of existing residential housing or other forms of housing assistance for persons and families of low and moderate income, however funded; and to operate and administer any program of housing assistance for persons and families of low and moderate income, however funded;
10. To receive and accept aid, grants, contributions and cooperation of any kind from any source for the purposes of this chapter subject to such conditions, acceptable to HDA, upon which such aid, grants, contributions and cooperation may be made, including, but not limited to, rent supplement payments made on behalf of eligible persons or families or for the payment in whole or in part of the interest expense for a housing development or for any other purpose consistent with this chapter;
11. To provide, contract or arrange for consolidated processing of any aspect of a housing development in order to avoid duplication thereof by either undertaking the processing in whole or in part for any department, agency, or instrumentality of the United States or of this Commonwealth, or, in the alternative, to delegate the processing in whole or in part to any such department, agency or

instrumentality;

12. To provide advice and technical information, including technical assistance at the state and local levels in the use of both public and private resources to increase low-income housing resources for the disabled;

13. To employ architects, engineers, attorneys, accountants, housing, construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix their compensation;

14. To procure insurance against any loss in connection with its property and other assets, including mortgages and mortgage loans, in such amounts and from such insurers as it deems desirable;

15. To insure mortgage payments of any mortgage loan made for the purpose of constructing, rehabilitating, purchasing, leasing, or refinancing housing developments for persons and families of low and moderate income upon such terms and conditions as HDA may prescribe and to create insurance funds and form corporations for the purpose of providing mortgage guaranty insurance on mortgage loans made or financed by HDA pursuant to this chapter;

16. To invest its funds as provided in this chapter or permitted by applicable law;

17. To borrow money and issue bonds and notes or other evidences of indebtedness thereof as hereinafter provided;

18. Subject to the requirements of any agreements with bondholders or noteholders, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest, security or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, contract or agreement of any kind to which HDA is a party;

19. Subject to the requirements of any agreements with bondholders or noteholders, to enter into contracts with any mortgagor containing provisions enabling such mortgagor to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges where, by reason of other income or payment from any department, agency or instrumentality of the United States or this Commonwealth, such reductions can be made without jeopardizing the economic stability of housing being financed;

20. To procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or notes or any other evidences of indebtedness thereof issued by HDA or an authority, including the power to pay premiums on any such insurance;

21. To make and enter into all contracts and agreements with mortgage lenders for the servicing and processing of mortgage loans pursuant to this chapter;

22. To establish, and revise from time to time and charge and collect fees and charges in connection with any agreements made by HDA under this chapter;

23. To do any act necessary or convenient to the exercise of the powers herein granted or reasonably implied;

24. To invest in, purchase or make commitments to purchase securities or other obligations secured by or payable from mortgage loans on, or issued for the purpose of financing or otherwise assisting land development or residential housing for persons or families of low or moderate income;

25. To acquire, develop and own ~~multi-family~~ multifamily residential housing as hereinafter provided;

26. To enter into agreements with owners of housing developments eligible for federal low-income housing credits as hereinafter provided in this chapter; and

27. To exercise any of the powers granted by this chapter for the purpose of ~~developing~~ financing an economically mixed project ~~or proposed development located within a locally designated conservation, rehabilitation, redevelopment or housing rehabilitation district and, if such project is within a revitalization area designated in or pursuant to § 36-55.30:2, any nonhousing buildings that are incidental to such project or are determined by such governing body to be necessary or appropriate for the revitalization of such area or for the industrial, commercial, or other economic development of such area; provided that a capital reserve fund shall not be created for any such financing pursuant to § 36-55.41.~~

§ 36-55.30:2. Housing revitalization areas; economically mixed projects.

(a) ~~Whenever a portion of such city (i) is blighted or deteriorated, as provided in subdivision 1 of § 36-49, (ii) is deteriorating, as provided in § 36-49.1, (iii) is likely to deteriorate, as provided in § 36-52.3, or (iv) is characterized by a higher relative density of population and proportion of substandard housing than in the overall metropolitan area and inhabited predominantly by persons of a lower socio-economic status than that prevailing in the metropolitan area, and in any such case that private enterprise and investment may not be expected, without assistance, to produce the construction or rehabilitation of sanitary and safe housing to meet the needs of persons and families of low and moderate income within such area and to induce other persons to live within such area and thereby help to stabilize or recover a desirable economic mix of persons therein, the governing body of such city or county may by resolution create a housing rehabilitation district encompassing such portion of such city or county.~~

(b) If any such governing body shall determine that a proposed housing project may feasibly serve persons and families of low and moderate income by providing housing and other facilities for other

persons and families, not to exceed eighty percent of the total project, it may by resolution declare such proposed project an economically mixed project.

(c) No housing rehabilitation district shall be created, nor any proposed project declared an economically mixed project, by a governing body unless such governing body, by a majority vote of at least three members, shall have first determined, in the case of a housing rehabilitation district, that private enterprise and investment may not reasonably be expected to meet the housing needs of persons and families of low and moderate income within the district, and induce persons with higher incomes to live within the proposed district or, in the case of an economically mixed project, that private enterprise and investment have been unable, without assistance, to provide sufficient mortgage financing for the proposed project at interest rates which will result in rents or prices persons or families of low and moderate income can afford. In addition, no proposed project shall be declared an economically mixed project unless the governing body shall have previously approved a revitalization plan for the district prior to declaring a project economically mixed. *A. For the sole purpose of empowering the HDA to provide financing in accordance with this chapter, the governing body of any city or county may by resolution designate an area within such city or county as a revitalization area if such governing body shall in such resolution make the following determinations with respect to such area: (i) either (a) the area is blighted, deteriorated, deteriorating or, if not rehabilitated, likely to deteriorate by reason that the buildings, improvements or other facilities in such area are subject to one or more of the following conditions: dilapidation; obsolescence; overcrowding; inadequate ventilation, light or sanitation; excessive land coverage; deleterious land use; or faulty or inadequate design, quality or condition; or (b) the industrial, commercial or other economic development of such area will benefit the city or county but such area lacks the housing needed to induce manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area; and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area. The area within a redevelopment project, conservation project, or rehabilitation district established by the city or county pursuant to Chapter 1 (§ 36-1 et seq.) of this title, any census tract in which 70 percent or more of the families have incomes which are 80 percent or less of the statewide median income as determined by the federal government pursuant to Section 143 of the United States Internal Revenue Code or any successor code provision on the basis of the most recent decennial census for which data are available, and any census tract which is designated by the United States Department of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent shall be deemed to be designated as a revitalization area without adoption of the above described resolution of the city or county. In any revitalization area, the HDA may provide financing for one or more economically mixed projects and, in conjunction therewith, any nonhousing buildings that are incidental to such project or projects or are determined by the governing body of the city or county to be necessary or appropriate for the revitalization of such area or for the industrial, commercial or other economic development thereof.*

B. The HDA may finance an economically mixed project that is not within a revitalization area if the governing body of the city or county in which such project is or will be located shall by resolution determine (i) either (a) that the ability to provide residential housing and supporting facilities that serve persons or families of lower or moderate income will be enhanced if a portion of the units therein are occupied or held available for occupancy by persons and families who are not of low and moderate income or (b) that the surrounding area of such project is, or is expected in the future to be, inhabited predominantly by lower income persons and families and will benefit from an economic mix of residents in such project and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area.

C. In any economically mixed project financed under this section, the percentage of units occupied or held available for occupancy by persons and families who are not of low and moderate income, as determined as of the date of their initial occupancy of such units, shall not exceed 80 percent.

§ 36-55.31. Powers relative to making mortgage loans and temporary construction loans to housing sponsors and persons and families of low and moderate income.

The HDA shall have all the powers necessary or convenient to carry out and effectuate the purpose and provisions of this chapter, including the following powers in addition to others herein granted:

(1) through (3) [Repealed.]

(4) Enter into agreements and contracts with housing sponsors under the provisions of this section;

(5) Institute any action or proceeding against any housing sponsor or persons and families of low or moderate income receiving a loan under the provisions hereof, or owning any housing development hereunder in any court of competent jurisdiction in order to enforce the provisions of this chapter, the terms and provisions of any agreement or contract between HDA and such recipients of loans under the provisions hereof, including without limitation provisions as to rental or carrying charges and income limits as applied to tenants or occupants, or to foreclose its mortgage, or to protect the public interest, persons and families of low and moderate income, stockholders, or creditors of such sponsor. In connection with any such action or proceeding it may apply for the appointment of a trustee or receiver to take over, manage, operate and maintain the affairs of a housing sponsor and HDA through such agent as it shall designate is hereby authorized to accept appointment as trustee or receiver of any such sponsor when so appointed by a court of competent jurisdiction.

The reorganization of any housing sponsor shall be subject to the supervision and control of HDA, and no such reorganization shall be had without the consent of HDA. Upon any such reorganization the amount of capitalization, including therein all stocks, income debentures and bonds and other evidence of indebtedness shall be such as is authorized by HDA, but not in excess of the fair value of the property received;

(6) In any foreclosure action involving a housing sponsor other than a foreclosure action instituted by HDA, the municipality in which any housing development is situate shall, in addition to other necessary parties, be made parties defendant. HDA and the municipality shall take all steps in such action necessary to protect the interest of the public therein, and no costs shall be awarded against HDA or the municipality.

Subject to the terms of any applicable agreement, contract or other instrument entered into or obtained pursuant to this chapter, judgment of foreclosure shall not be entered unless the court to which application therefor is made shall be satisfied that the interest of the lienholders or holders of bonds or other obligations cannot be adequately secured or safeguarded except by the sale of the property; and in such proceeding the court shall be authorized to make an order increasing the rental or carrying charges to be charged for the housing accommodations in the housing development involved in such foreclosure, or appoint a member of HDA or any officer of the municipality, as a receiver or trustee of the property, or grant such other and further relief as may be reasonable and proper; and in the event of a foreclosure or other judicial sale, the property shall be sold only to a housing sponsor which will manage, operate and maintain the housing development subject to the provisions of this chapter, unless the court shall find that the interest and principal on the obligations secured by the lien which is the subject of foreclosure cannot be earned under the limitations imposed by the provisions of this chapter and that the proceeding was brought in good faith, in which event the property may be sold free of limitations imposed by this chapter or subject to such limitations as the court may deem advisable to protect the public interest;

(7) In the event of a judgment against any housing sponsor in any action not pertaining to the foreclosure of a mortgage, there shall be no sale of any of the real property included in any housing development hereunder of such housing sponsor except upon ~~sixty~~ 60 days' written notice to HDA. Upon receipt of such notice HDA shall take such steps as in its judgment may be necessary to protect the rights of all parties;

(8) In the event of violation by a housing sponsor of any provision of a loan, the terms of any agreement between HDA and the housing sponsor, the provisions of this chapter or of any rules or regulations duly promulgated pursuant to the provisions of this chapter, HDA may remove any or all of the existing directors or officers of such corporate housing sponsor and may appoint such person or persons who HDA in its sole discretion deems advisable as new directors or officers to serve in the places of those removed notwithstanding the provisions of any other law and may designate a managing agent with complete and exclusive power to act on behalf of a defaulting partnership housing sponsor; provided, however, that any such directors or officers or managing agents so appointed by HDA shall serve only for a period coexistent with the duration of such violation or until HDA is assured in a manner satisfactory to it against violations of a similar nature or both. Officers or directors so appointed need not be stockholders or meet other qualifications which may be prescribed by the certificate of incorporation or by other laws governing such qualified housing sponsor;

(9) Foreclose under deeds of trust by powers of sale pursuant to Title 55 and amendments thereto;

(10) Make, undertake commitments to make and participate in the making of mortgage loans, including without limitation federally insured mortgage loans, to housing sponsors to finance the ownership and operation of housing developments and ~~multi-family~~ multifamily residential housing intended for occupancy by persons and families of low and moderate income, upon the terms and conditions set forth in subsections A and B of § 36-55.33:1;

(11) Make, undertake commitments to make and participate in the making of mortgage loans, including without limitation federally insured mortgage loans, to persons and families of low and moderate income to finance the purchase or refinancing of single-family residential housing, upon the terms and conditions set forth in subsections A and C of § 36-55.33:1;

(12) Make, undertake commitments to make and participate in the making of mortgage loans,

including without limitation federally insured mortgage loans, to housing sponsors and persons and families of low and moderate income to finance the construction, rehabilitation, preservation or improvement of housing developments and residential housing intended, upon completion of such construction, rehabilitation, preservation or improvement, for ownership or occupancy by persons and families of low and moderate income, upon the terms and conditions set forth in subsections A and D of § 36-55.33:1;

(13) Make, undertake commitments to make and participate in the making of mortgage loans to finance the construction, rehabilitation, preservation or improvement, *or ownership and operation, of housing units within housing rehabilitation districts or of economically mixed projects within or without a housing rehabilitation district, if any and, if any such project is within a revitalization area designated in or pursuant to § 36-55.30:2, any nonhousing buildings that are incidental to such project or are determined by such governing body to be necessary or appropriate for the revitalization of such area or for the industrial, commercial or other economic development of such area, upon the terms and conditions set forth in subsections A and E of § 36-55.33:1.*

§ 36-55.33:1. Mortgage loan terms and conditions.

A. All mortgage loans made by HDA pursuant to § 36-55.31 of this chapter shall be subject to the following terms and conditions:

1. The ratio of mortgage loan principal amount to total housing development costs and the amortization period of any mortgage loans made by HDA which are federally insured mortgages, in whole or in part, or which are otherwise assisted or aided, directly or indirectly, by the federal government, shall be governed by the rules and regulations provided in or pursuant to the federal government program under which the HDA mortgage loan or part thereof is insured, guaranteed, assisted or aided; but in no event shall such amortization period exceed ~~fifty~~ 50 years.

2. A mortgage loan made by HDA may be prepaid to maturity after a period of years, and on such terms and conditions, as are determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan.

3. HDA shall have authority to establish and modify from time to time the interest rates at which it shall make mortgage loans and commitments therefor. Such interest rates shall be established by HDA in its sole discretion at the lowest level consistent with HDA's cost of operation and its responsibilities to the holders of its bonds, bond anticipation notes and other obligations. In addition to such interest charges, HDA may make and collect such fees and charges, including but not limited to reimbursement of HDA's financing costs, service charges, insurance premiums and mortgage insurance premiums, as HDA determines to be reasonable. No person shall, by way of defense or otherwise, avail himself of any of the provisions of Chapter 7.2 (§ 6.1-330.47 et seq.) of Title 6.1 to avoid or defeat the payment of any interest or fee which he shall have contracted to pay on any loan or forbearance of money made, directly or indirectly, or assisted in any manner by HDA under or pursuant to this chapter.

B. Mortgage loans made by HDA to housing sponsors to finance the ownership and operation of housing developments and ~~multi-family~~ multifamily residential housing intended for occupancy by persons and families of low and moderate income, pursuant to subdivision (10) of § 36-55.31, shall be subject to the following terms and conditions in addition to those contained in subsection A of this section:

1. The amount disbursed with respect to an HDA mortgage loan to a limited profit housing sponsor shall not exceed 95 percent of the total housing development costs and to a nonprofit housing sponsor shall not exceed 100 percent of the total housing development costs. Subsequent to the disbursement of such amount, additional amounts may be from time to time disbursed if the sum of the amount to be so disbursed and the then outstanding principal balance of the HDA mortgage loan does not exceed 95 percent of the market value of the housing development or residential housing as then determined by the Authority. The amortization period of such an HDA mortgage loan shall be as determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan; but in no event shall such amortization period exceed ~~fifty~~ 50 years.

2. The instrument evidencing any such HDA mortgage loan and the mortgage securing any such HDA mortgage loan shall be in such form and contain such terms and conditions as shall be prescribed or approved by HDA. The aforesaid mortgage and instrument evidencing an HDA mortgage loan may contain exculpatory provisions relieving the housing sponsor or its principal or principals from personal liability if deemed desirable by HDA.

3. With respect to any such HDA mortgage loan made to a limited profit housing sponsor, HDA may require that such limited profit housing sponsor not make distributions in any one year with respect to the housing development or ~~multi-family~~ multifamily residential housing financed by such HDA mortgage loan in excess of such percentage of such limited profit housing sponsor's equity in the housing development or ~~multi-family~~ multifamily residential housing as may be determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for such mortgage loan. None of the partners, principals, stockholders or holders of a beneficial interest in such limited profit housing sponsor shall earn, accept or receive a return in any one year with respect to the housing development or ~~multi-family~~ multifamily residential housing financed by such HDA mortgage loan

greater than his applicable proportion of any such percentage of such limited profit housing sponsor's equity in the housing development or ~~multi-family~~ multifamily residential housing as may be determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan. The right to any such limited distribution or return may be cumulative to the extent provided by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan. For the purpose of this section, the terms "distribution" and "return" are intended to mean payments on account of the housing development or ~~multi-family~~ multifamily residential housing financed by such HDA mortgage loan resulting from the operation thereof. Any payment to a person or entity who is a partner, principal, stockholder or holder of a beneficial interest in such limited profit housing sponsor shall not be deemed a "distribution" or "return" to such person or entity if the funds with which such payment is made are funds paid or contributed to such limited profit housing sponsor by persons or entities purchasing a beneficial interest in such limited profit housing sponsor. At or after the completion of construction, rehabilitation or improvement of the housing development or ~~multi-family~~ multifamily residential housing financed by such HDA mortgage loan, such limited profit housing sponsor's equity in the housing development or ~~multi-family~~ multifamily residential housing shall be established in the manner provided by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for such mortgage loan. Such equity shall be determined by HDA, at its option, as either (i) the difference between the total housing development costs as to the housing development or ~~multi-family~~ multifamily residential housing and the final principal amount of such HDA mortgage loan, or (ii) the difference between the fair market value of such housing development and the final principal amount of such HDA mortgage loan. HDA may thereafter from time to time adjust such equity to be equal to the difference, as of the date of adjustment, between the fair market value of such housing development and the outstanding principal balance of such HDA mortgage loan. HDA may review and regulate a proposed retirement of any capital investment in, or redemption of any stock of, such limited profit housing sponsor in the manner provided by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan.

4. With respect to any such HDA mortgage loan, HDA may require the housing sponsor and other parties related to the housing development or ~~multi-family~~ multifamily residential housing financed by such HDA mortgage loan to execute such agreements, assurances, guarantees and certifications as HDA shall determine to be necessary including, without limitation, agreements between HDA and such housing sponsor and its partners, principals or stockholders to limitations established by HDA as to rentals and other charges, profits, fees, the use and disposition of the real property constituting the site of or relating to the housing development or ~~multi-family~~ multifamily residential housing and other property of such housing sponsor, and the use and disposition of franchises of such housing sponsor to the extent more restrictive limitations are not provided by the law under which such housing sponsor is incorporated or organized.

5. As a condition of any such HDA mortgage loan, HDA shall have the power to supervise the housing sponsor in accordance with the provisions of § 36-55.34:1 at all times during which such HDA mortgage loan is outstanding and thereafter as necessary to preserve the federal tax exemption of the notes or bonds issued by HDA to finance such HDA mortgage loan.

C. Mortgage loans made by HDA to persons and families of low and moderate income to finance the purchase or refinancing of single-family residential housing, pursuant to subdivision (11) of § 36-55.31, shall be subject to the following terms and conditions in addition to those contained in subsection A of this section:

1. The amount disbursed with respect to such HDA mortgage loan shall not exceed 100 percent of the sales price or market value of the single-family residential housing, as determined or approved by or on behalf of HDA. HDA may also disburse additional amounts to finance such closing costs and fees as it may deem necessary or appropriate, and all such disbursements and financings of closing costs and fees subsequent to the enactment of this chapter are hereby validated. The amortization period of such an HDA mortgage loan shall be as determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan; but in no event shall such amortization period exceed ~~five~~ 50 years. If during the term of the HDA mortgage loan (i) the outstanding principal balance of the HDA mortgage loan is expected to increase to an amount in excess of the original principal balance or (ii) the amount of monthly payments on the HDA mortgage loan will or may be adjusted, HDA shall so notify the applicants prior to the execution of the HDA mortgage loan. Such notice shall describe the terms and conditions under which the outstanding principal balance or the amount of monthly payments, or both, may be so increased or adjusted, and such notice shall be signed by the applicants.

2. Such an HDA mortgage loan shall be made only after a determination that such a mortgage loan is not otherwise available from private lenders upon reasonably equivalent terms and conditions, and the HDA resolution authorizing, or commitment for, such mortgage loan shall contain such a determination.

3. The instrument evidencing any such HDA mortgage loan and the mortgage securing any such HDA mortgage loan shall be in such form and contain such terms and conditions as shall be prescribed or approved by HDA. With respect to any such HDA mortgage loan, HDA may require the person or

family of low or moderate income to execute such agreements, assurances, guarantees and certifications as HDA shall determine to be necessary including, without limitation, agreements between HDA and such person or family of low or moderate income relating to the use, occupancy, maintenance and sale of the single-family residential housing financed by such HDA mortgage loan and the payment, prepayment and assignment of such HDA mortgage loan.

D. Mortgage loans made by HDA to housing sponsors or persons or families of low or moderate income to finance the construction, rehabilitation, preservation or improvement of housing developments or residential housing intended, upon completion of such construction, rehabilitation, preservation or improvement, for ownership or occupancy by persons and families of low and moderate income, pursuant to subdivision (12) of § 36-55.31 of this chapter, shall be subject to the following terms and conditions in addition to those contained in subsection A of this section:

1. The amount disbursed with respect to such an HDA mortgage loan to a limited profit housing sponsor shall not exceed 95 percent of the total housing development costs and to a nonprofit housing sponsor or a person or family of low or moderate income shall not exceed 100 percent of the total housing development costs. Subsequent to the disbursement of such amount, additional amounts may be from time to time disbursed if the sum of the amount to be so disbursed and the then outstanding principal balance of the HDA mortgage loan does not exceed 95 percent of the market value of the housing development or residential housing as then determined by the Authority. Without regard as to whether HDA intends to remain the lender in respect to such mortgage loan throughout the amortization period thereof, the amortization period of such an HDA mortgage loan shall be as determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan.

2. In considering any application for such an HDA mortgage loan, HDA shall give first priority to applications relating to housing developments or residential housing which are or will be well-planned and well-designed, and also shall give consideration to:

a. The comparative need for housing for persons and families of low and moderate income in the area proposed to be served by the housing development or residential housing;

b. The ability of the applicant to construct, rehabilitate or improve and market or operate, manage and maintain the housing development or residential housing;

c. The existence of zoning or other regulations to protect adequately the housing development or residential housing against detrimental future uses which could cause undue depreciation in the value of the housing development or residential housing;

d. The availability of adequate parks, recreational areas, utilities, schools, transportation and parking; and

e. The existence of statewide housing plans.

3. With respect to any such HDA mortgage loan, HDA may require the housing sponsor, person or family of low or moderate income, contractors, architects, marketing agents, management agents and other parties related to the housing development or residential housing financed by such HDA mortgage loan to execute such agreements, assurances, guarantees and certifications as HDA shall determine to be necessary including, without limitation, agreements between HDA and such housing sponsor and its partners, principals or stockholders or such person or family of low or moderate income to limitations established by HDA as to rentals and other charges, profits, fees, the use and disposition of the real property constituting the site of or relating to the housing development or residential housing and other property of such housing sponsor, and the use and disposition of franchises of such housing sponsor to the extent more restrictive limitations are not provided by the law under which such housing sponsor is incorporated or organized. HDA shall require the housing sponsor or person or family of low or moderate income receiving such HDA mortgage loan, or the construction contractor, or both, to furnish such assurances of completion of the construction, rehabilitation or improvement as determined by HDA in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan.

4. As a condition of any such HDA mortgage loan to a housing sponsor, HDA shall have the power to supervise such housing sponsor in accordance with the provisions of § 36-55.34:1 at all times during which such HDA mortgage loan is outstanding and thereafter as necessary to preserve the federal tax exemption of the notes or bonds issued by HDA to finance such HDA mortgage loan.

5. With respect to any such HDA mortgage loan, the provisions of subdivisions 2 and 3 of subsection B of this section shall be applicable.

E. Mortgage loans made by HDA pursuant to subdivision 13 of § 36-55.31 to finance the construction, rehabilitation, preservation or improvement, or ownership and operation, of housing units within housing rehabilitation districts or of economically mixed projects pursuant to subdivision (13) of § 36-55.31 of this chapter, or portions thereof and, if any such project is within a revitalization area designated in or pursuant to § 36-55.30:2, any nonhousing buildings that are incidental to such project or are determined by such governing body of the city or county to be necessary or appropriate for the revitalization of such area or for the industrial, commercial or other economic development of such area shall be subject to the following terms and conditions in addition to those contained in subsection A of

this section:

1. The principal amount of such an HDA mortgage loan shall not exceed ~~ninety-five~~ 95 percent of the total housing development costs, and the amortization period of such an HDA mortgage loan shall be as determined by HDA in its rules and regulations or in the HDA resolution authorizing, or in the commitment for, such mortgage loan; but in no event shall such amortization period exceed ~~fifty~~ 50 years.

2. Such an HDA mortgage loan shall be made only ~~with respect to housing units which, at the time of commitment for such mortgage loan, are within a housing rehabilitation district or constitute all or a portion of an economically mixed project if the provisions of § 36-55.30:2 are satisfied.~~

3. The instrument evidencing any such HDA mortgage loan and the mortgage securing any such HDA mortgage loan shall be in such form and contain such terms and conditions as shall be prescribed or approved by HDA. The aforesaid mortgage and instrument evidencing an HDA mortgage loan may contain exculpatory provisions relieving a housing sponsor, if any, or its principal or principals from personal liability if deemed desirable by HDA.

4. ~~The provisions of subsection (4) of § 36-55.38 shall not apply to such an HDA mortgage loan nonhousing buildings shall be financed by such an HDA mortgage loan only if the HDA shall receive a certification from the housing sponsor that a mortgage loan for the financing of such nonhousing buildings is not otherwise available from private lenders upon reasonably equivalent terms and conditions.~~

§ 36-55.34:1. Power to supervise housing sponsors.

Subject to such limitations and conditions as may be agreed to by HDA, HDA shall have the power to supervise a housing sponsor and its real and personal property, at all times during which an HDA mortgage loan to such housing sponsor is outstanding and thereafter as necessary to preserve the federal tax exemption of the notes or bonds issued by HDA to finance such HDA mortgage loan, in the following respects:

1. Through its agents or employees, HDA may enter upon and inspect the housing development or residential housing *and any nonhousing buildings*, including all parts thereof, financed by such HDA mortgage loan, for the purpose of investigating the physical and financial condition thereof, and its construction, rehabilitation, operation, management and maintenance, and may examine all books and records with respect to capitalization, income, expenditures and other matters relating thereto;

2. HDA may supervise the operation and maintenance of the housing development or residential housing *and any nonhousing buildings* financed by such HDA mortgage loan and may order such alterations, changes or repairs as HDA may deem to be necessary to protect the security of its investment, the public interest, or the health, safety or welfare of the occupants of such housing development or residential housing *and any nonhousing buildings*;

3. HDA may order such housing sponsor, or the management agent or other parties related to the housing development or residential housing *and any nonhousing buildings* financed by such HDA mortgage loan, to perform such actions as may be necessary to comply with the provisions of all applicable laws or ordinances, HDA's rules and regulations or the terms of any agreement concerning such housing development or residential housing *and any nonhousing buildings*, or to refrain from doing any acts in violation thereof; and in this regard HDA shall be a proper party to file a complaint and to prosecute thereon for any violations of laws or ordinances as set forth herein;

4. HDA may prescribe uniform systems of accounts and records for housing sponsors and may require such housing sponsors to make reports, make certifications as to expenditures and give answers to specific questions on such forms and at such times as HDA may deem to be necessary for the purposes of this chapter;

5. HDA may establish and alter from time to time a schedule of rents and charges for the housing development or residential housing *and any nonhousing buildings* financed by such HDA mortgage loan, and HDA may establish standards for, and may monitor and regulate, tenant or occupant selection by such housing sponsor;

6. HDA may require such housing sponsor to pay to HDA such fees and charges as it may prescribe in connection with the examination, inspection, supervision, auditing or other regulation of the housing development or residential housing *and any nonhousing buildings* financed by such HDA mortgage loan or of such housing sponsor; ~~and~~

7. In its rules and regulations HDA shall specify the categories of cost which shall be allowable in the construction, rehabilitation, preservation or improvement of a housing development or residential housing *and any nonhousing buildings*, and HDA shall require such housing sponsor to certify the actual housing development costs upon completion of the housing development *or residential housing and any nonhousing buildings*, subject to audit and determination by HDA, or shall require such housing sponsor to provide such other assurances of such housing development costs as HDA shall deem necessary to enable HDA to determine with reasonable accuracy the actual amount of such housing development costs; *and*

8. The provisions of any agreements which provide for the regulation and supervision by HDA of any housing development or residential housing *and any nonhousing buildings* shall, when duly recorded

among the land records of the jurisdiction or jurisdictions in which the housing development or residential housing ~~is~~ *and any nonhousing buildings are* located, run with the land and be binding on the successors and assigns of the owner thereof until released of record by HDA.

§ 36-55.37. Exemption from taxation.

(1) As set forth in the declaration of finding and purpose herein, HDA will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter, and the notes and bonds of HDA issued and to be issued pursuant to this chapter, the transfer thereof, and the income therefrom including any profit made on the sale thereof and all its fees, charges, gifts, grants, revenues, receipts, and other moneys received, pledged to pay or secure the payment of such notes or bonds shall at all times be free from taxation and assessment of every kind by the Commonwealth and by the municipalities and all other political subdivisions of the Commonwealth.

(2) The property of HDA and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by HDA under the provisions of this chapter.

(3) Any housing development, *residential housing or nonhousing building* financed in whole or in part pursuant to the provisions of this chapter and owned by HDA shall be exempt from all property taxation and special assessments of the Commonwealth or political subdivisions thereof; provided, however, that in lieu of such taxes, HDA may agree to make such payments to the Commonwealth or any political subdivision thereof as HDA finds consistent with the cost of supplying municipal services to the housing development, *residential housing or nonhousing building* and maintaining the economic feasibility of the housing development ~~for persons and families of low and moderate income~~, *residential housing or nonhousing building*, which payments such bodies are hereby authorized to accept.

§ 36-55.38. Admission and income limitations relative to housing developments.

(1) Admission to housing developments financed pursuant to the provisions of this chapter shall be limited to persons or families of low or moderate income and, in the case of economically mixed projects ~~or housing units within housing rehabilitation districts~~, such other persons and families as the HDA shall determine, *subject to the limitation in subsection C of § 36-55.30:2*.

(2) HDA shall make and publish rules and regulations from time to time governing the terms of tenant selection plans and income limits for tenants eligible to occupy housing developments assisted by HDA in conformance with the provisions of this chapter and such income limits may vary with the size and circumstances of the person or family.

(3) HDA shall by rules and regulations provide income standards for continued residence in housing developments assisted by HDA, and either HDA, or with its approval the housing sponsor of any such housing development may terminate the tenancy or interest of any person or family residing in any such housing development whose gross aggregate income exceeds prescribed income standards for a period of six months or more; provided, that no tenancy or interest of any such person or family in any such housing development shall be terminated except upon reasonable notice and opportunity to obtain suitable alternate housing, in accordance with rules and regulations of HDA; provided further, that any such person or family, with the approval of HDA, shall be permitted to continue to occupy the unit, subject to payment of a rent or carrying charges or surcharge to the housing sponsor in accordance with a schedule of surcharges fixed by HDA.

(4) Any person or family residing in a housing development which shall be a cooperative and is required to be removed from the housing development because of excessive income as herein provided shall be discharged from liability on any note, bond or other evidence of indebtedness relating thereto and shall be reimbursed, in accordance with the rules of HDA, for all sums paid by such person or family to the housing sponsor on account of the purchase of stock or debentures as a condition of occupancy or on account of the acquisition of title for such purpose.

§ 36-55.39. Procedure prior to financing of housing developments undertaken by housing sponsors.

A. Notwithstanding any other provision of this chapter, HDA is not empowered to finance any housing development undertaken by a housing sponsor pursuant to §§ 36-55.31, 36-55.33:1 and 36-55.34:1 of this chapter unless, prior to the financing of any housing development hereunder, the commissioners or the executive director of HDA find:

1. That there exists a shortage of decent, safe and sanitary housing at rentals or prices which persons and families of low income or moderate income can afford within the general housing market area to be served by the proposed housing development.

2. That private enterprise and investment have been unable, without assistance, to provide the needed decent, safe and sanitary housing at rentals or prices which persons or families of low and moderate income can afford or to provide sufficient mortgage financing for residential housing for occupancy by such persons or families.

3. That the housing sponsor or sponsors undertaking the proposed housing development in the Commonwealth will supply well-planned, well-designed housing for persons or families of low and moderate income *and, in the case of an economically mixed project, other persons and families* and that such sponsors are financially responsible.

4. That the housing development, to be assisted pursuant to the provisions of this chapter, will be of public use and will provide a public benefit.

5. That the housing development will be undertaken within the authority conferred by this chapter upon HDA and the housing sponsor or sponsors.

B. The locality, upon written request from the housing sponsor, shall provide a written staff determination that the proposed development is consistent with current zoning and other land use regulations in effect at the time of such request. Failure of the locality to comply with this subsection within ~~thirty~~ 30 days of the receipt of the written request from the housing sponsor shall be deemed to be a determination that the proposed development is consistent with current zoning and other land use regulations. Prior to financing by the HDA, the housing sponsor shall provide the HDA with (i) a copy of the written staff determination received from the locality, (ii) a written certification that the locality failed to respond to the housing sponsor's request within ~~thirty~~ 30 days as provided herein, or (iii) a copy of any building permit issued by the locality.