WEST VIRGINIA CODE CHAPTER 16 ARTICLE 15

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§16-15-1. Definitions.

The following terms, wherever used or referred to in this article, shall have the following respective meanings, unless in any case a different meaning clearly appears from the context:

(1) "Affiliate" means any corporation, entity, partnership, venture, syndicate or arrangement in which a housing authority participates by holding an ownership interest or participating in its governance, including both controlled and noncontrolled affiliates as herein defined.

(2) "Affordable housing" means dwelling units that may be rented or purchased, as the case may be, by persons of eligible income, as defined herein.

(3) "Annual sinking fund payment" means the amount of money specified in the resolution or resolutions authorizing term bonds as payable into a sinking fund during a particular calendar year for the retirement of term bonds at maturity after such calendar year, but shall not include any amount payable by reason only of the maturity of a bond.

(4) "Area of operation" means the geographical area within which a housing authority owns or operates housing developments or administers other housing programs including any city, county or combination thereof in which it was operating on the effective date of this article.

(5) "Arrangement" means a legal relationship with another party that may include, but not be limited to, a general or limited partnership; joint venture; syndicate or syndication; corporation; limited liability cooperative, corporation or partnership; an unincorporated association; a cooperative; a consortium; and all other structures, organizations, and forms of legal relationships with third parties.

(6) "Authority" or "housing authority" means a corporate body organized in accordance with the provisions of this article for the purposes, with the powers, and subject to the restrictions hereinafter set forth. Where the context requires or permits, this term shall be deemed to include regional housing authorities and/or controlled affiliates of a housing authority.

(7) "Bond" or "bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this article.

(8) "City" means and includes any political subdivision of this state, whether incorporated or unincorporated, known as a city, municipality, town or village. With respect to the provisions of other sections of this article and their application to housing authorities of counties, the term "city" shall be construed as referring to a county unless a different meaning clearly appears from the context.

(9) "Clerk" means the clerk or recorder of the city or the clerk of the county, as the case may be, or the officer charged with the duties customarily imposed on the clerk or recorder.

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(10) "Commissioner" means one of the members of the governing board of a housing authority appointed in accordance with the provisions of this article.

(11) "Community facilities" means lands, buildings and equipment, real and personal property suitable for recreational, or social assembly, for educational, health, or welfare purposes and other necessary activities for the use and benefit of the occupants of housing developments and the public.

(12) "Controlled affiliate" means any affiliate of a housing authority: (i) In which commissioners, officers, employees and agents of the authority constitute a majority of the governing body; or (ii) in which the authority holds a majority of the ownership interests.

(13) "Council" means the chief legislative body of the city.

(14) "County" means and includes any political subdivision of this state known as a county.

(15) "Development" or "housing development" means and includes all dwellings and associated appurtenances, including real and personal property, and all other facilities and improvements of every kind and description, which a housing authority may own or operate or in which it may hold an interest under the provisions of this article, all land upon which such dwellings, appurtenances, and facilities are situate; all work and activities undertaken by a housing authority or others relating to the creation of such property; all tangible and intangible personal property relating thereto, including all leases, licenses, agreements, and other instruments and all rights and obligations arising thereunder, establishing or confirming ownership, title, or right of use or possession in or to any such property by a housing authority, all as more particularly described and authorized in this article.

(16) "Farmers of low or moderate income" means persons or families who at the time of their admission to occupancy in a dwelling of the authority: (A) Live under unsafe and unsanitary housing conditions; (B) derive their principal income from operating or working upon a farm; and (C) had an aggregate average annual net income for the three years preceding their admission that was less than the amount 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.

(17) "Governing body" means, in the case of a city, the council of the city, and in the case of a county, the county commission.

(18) "Government" means the state and federal governments and any subdivisions, authority or instrumentality, corporate or otherwise, of either of them.

(19) "Guest" means any person, not a resident of the development, who is present within the development, or within a dwelling in a development, as an invitee of or otherwise with the express or implied consent of a resident of the development or dwelling.

(20) "Hold an interest" means ownership or control of, or participation in an arrangement

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with respect to, a development by a housing authority or any affiliate thereof.

(21) "Low-cost housing" shall include any housing accommodations which are or are to be rented at not in excess of a maximum rate per room, or maximum average rate per room, which shall be specified or provided by the housing authority of the city in which such housing accommodations are or are to be located, or the Legislature, or a duly constituted agency of the state, or of the United States of America.

(22) "Mayor" means the chief executive of the city, whether the official designation of his office be mayor, city manager or otherwise: Provided, That the term "mayor" may also be the chief elected officer of the municipality regardless of whether or not the corporate charter provides for a city manager appointed by the city council who is the chief executive officer.

(23) "Noncontrolled affiliate" means affiliate in which a housing authority participates, but does not constitute a majority of the governing body nor have a majority ownership interest.

(24) "Obligee of the authority" or "obligee" means any bondholder, trustee or trustees for any bondholders, or lessor demising to an authority property used in connection with a housing development, or any assignee or assignees of the lessor's interest or any part thereof, and the federal government when it is a party to any contract with the authority.

(25) "Person" means a family and, where the context so requires, a household.

(26) "Persons of eligible income" means individuals or families as defined by a public housing authority within the applicable local, state and federal funding guidelines.

(27) "Public agency" means and includes: (i) Any county; city; village; township; any school, drainage, tax, improvement or other district; any department, division, or political subdivision of this state or another state; any housing authority, housing finance authority, or housing trust of this state or another state; and any other agency, bureau, office, authority, or instrumentality of this state or another state; (ii) any board, agency, commission, division or other instrumentality of a city or county; and (iii) any board, commission, agency, department, or other instrumentality of the United States, or any political subdivision or governmental unit of any of them.

(28) "Regional housing authority" means a housing authority formed by two or more cities, counties or housing authorities pursuant to the authority provided in sections three-a and three-b of this article.

(29) "Resident" means a person residing in a development of a housing authority, with the consent of such authority, according to its policies, rules and procedures.

(30) "Slum clearance" means the removal of housing conditions which shall be considered by the housing authority of the city in which such conditions exist to be unsanitary or substandard or a menace to public health.

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(31) "State" means the State of West Virginia and its duly constituted government.

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§16-15-1a.

Repealed.

Acts, 1998 Reg. Sess., Ch. 176.

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§16-15-2. Legislative declaration of necessity for creation of housing authority corporations.

It is hereby declared as a matter of legislative determination that in order to promote and protect the health, safety, morals and welfare of the public, it is necessary in the public interest to provide for the creation of public corporate bodies to be known as housing authorities, and to confer upon and vest in said housing authorities all powers necessary or appropriate in order that they may engage in low and moderate cost housing development and slum clearance projects; and that the powers herein conferred upon the housing authorities, including the power to acquire and dispose of property, to remove unsanitary or substandard conditions, to construct and operate housing developments and to borrow, expend and repay moneys for the purpose herein set forth, are public objects essential to the public interest.

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§16-15-3. City and county housing authorities created; when to transact business or exercise powers; determination of need for housing authority; resolution of governing body proof of establishment; appointment, term, expenses and removal of commissioners.

(a) In each city and in each county there is hereby created a housing authority which shall be a public body corporate and politic. No authority hereby created shall transact any business or exercise its powers hereunder until or unless the governing body of the city or the county, by proper resolution, determines that there is need for an authority: Provided, That nothing contained herein shall be construed as creating an additional housing authority in a city where a housing authority has been created pursuant to prior law, but each housing authority shall continue as a public body corporate and politic and shall have the area of operation defined in section one of this article for a city or county housing authority. Each housing authority created pursuant to this section shall adopt a name for all legal and operating purposes.

(b) The determination as to whether or not there is a need for an authority: (1) May be made by the governing body on its own motion; or (2) shall be made by the governing body upon the filing of a petition signed by twenty-five residents of the city or county asserting that there is need for an authority to function in the city or county and requesting that the governing body so declare. The governing body shall adopt a resolution declaring that there is need for a housing authority in the city or county if it finds: (1) That unsanitary or unsafe inhabited dwellings exist in the city or county; or (2) that there is a shortage of safe or sanitary dwellings in the city or county available to persons of low or moderate income at rental rates or purchase prices they can afford. In determining whether dwellings are unsafe or unsanitary the governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of the dwellings, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions exist in the dwellings which endanger life or property by fire or other cause.

(c) In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the governing body declaring the need for the authority. An adopted resolution shall be deemed sufficient if it declares that there is need for an authority and finds in substantially the foregoing terms (no further detail being necessary) that either or both of the above-enumerated conditions exist. A copy of a resolution duly certified by the clerk shall be admissible in evidence in any suit, action or proceeding.

(d) When the governing body of a city adopts a resolution as aforesaid, it shall promptly notify the mayor of the adoption. Upon receiving the notice, the mayor shall appoint five persons as commissioners of the authority created for the city. When the governing body of a county adopts a resolution as aforesaid, it shall appoint five persons as commissioners of the

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authority created for the county. The commissioners who are first appointed shall be designated to serve for terms of one, two, three, four and five years, respectively, from the date of their appointment. Thereafter commissioners shall be appointed for a term of office of five years, except that all vacancies shall be filled for the unexpired term. No commissioner of an authority may be an officer or employee of the city or county for which the authority is created. A commissioner shall hold office until his or her successor has been appointed and has qualified, unless sooner removed according to this article. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and shall be conclusive evidence of the due and proper appointment of a commissioner. A commissioner shall receive no compensation for his or her services, but he or she shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his or her duties.

(e) For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority may be removed by the mayor or by the county commission. A commissioner shall be removed only after being given a copy of the charges and notice of a hearing. The charges shall be sent to the commissioner at least ten days prior to the hearing and shall notify the commissioner that he or she has an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk. The powers of each authority shall be vested in its commissioners.

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§16-15-3a. Regional housing authorities.

(a) Any two or more cities or counties, or any combination thereof, may, by resolution of their separate governing bodies, establish a regional housing authority, by adopting a joint resolution declaring that there is a need for a regional housing authority to provide decent, safe and sanitary housing that is affordable to persons of low and moderate income residing in a multijurisdictional area and that this need would be more efficiently served by the establishment of a regional housing authority: Provided, That any authority in existence prior to the effective date of this article that is providing services outside of the city or county boundaries will continue to have jurisdiction in the areas where the authority is providing services on the effective date of this article.

(b) Upon adoption of a resolution by two or more cities or counties, or a combination thereof, a regional housing authority shall be established and, except as otherwise provided in this article, the regional housing authority shall have perpetual existence, unless dissolved in accordance with law. Each regional housing authority established pursuant to this section, shall adopt a name for all legal and operating purposes.

(c) A certified copy of the resolutions establishing a regional housing authority shall serve as conclusive evidence that the authority has been properly established, is authorized to transact business, and exercise its powers under this article.

(d) After a regional housing authority has been established, any additional city, county or housing authority may elect to participate as a member of the regional housing authority, upon adoption of a resolution to that effect: Provided, That a majority of the existing commissioners of the regional housing authority and all participating political subdivisions, by action of their respective governing bodies, shall consent to the additional member or members.

(e) Any city or county may withdraw from participation in the regional housing authority by resolution of its governing body. Any withdrawal from participation shall be subject to the following conditions:

(1) The regional housing authority has no bonds, notes, or other obligations outstanding, or adequate provision for payment of bonds, notes, or other obligations, by escrow or otherwise, has been made. Past performance without breach or default of an obligation secured only by one or more developments or the income thereof shall be deemed to be "adequate provision";

(2) The withdrawing city or county shall make adequate provision for the performance of all of its outstanding obligations and responsibilities as a participant in the regional housing authority;

(3) The withdrawing city or county shall give six months written notice to the regional housing authority and all other cities and counties participating therein; or

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(4) The commissioner or commissioners appointed by the withdrawing city or county shall be deemed to have resigned as of the date upon which the withdrawal is effective. Vacancies on the board of commissioners created by withdrawal of a city or county shall be filled in such manner as the cities and counties remaining as participants shall agree.

Notwithstanding the withdrawal of any participating city or county, the legal title to and operating responsibility for any development located outside the area of operation of the regional housing authority remaining after such withdrawal has occurred shall continue to be vested in the regional housing authority, unless a different arrangement is made.

(f) If only one city or county remains as a participant in any regional housing authority, the regional housing authority shall become the housing authority of the remaining city or county at the discretion of its governing body, or the regional housing authority shall be dissolved and its assets and liabilities transferred to another existing housing authority or to a city or county or other public agency.

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§16-15-3b. Consolidated housing authorities.

(a) Two or more cities or counties may, by joint resolution of their governing bodies, merge their housing authorities to establish a regional housing authority: Provided, That each city or county considering the merger shall hold a public hearing in its area of operation prior to adopting the joint resolution.

(b) The joint resolution must provide for:

(1) The transfer of assets and liabilities and the performance of all outstanding obligations and responsibilities;

(2) The membership, terms and manner of appointment of commissioners of the regional housing authority; and

(3) The preparation, adoption and implementation of a plan of merger.

(c) Consolidations by merger pursuant to this section are subject to all of the provisions of article eleven, chapter thirty-one-e of this code except where inconsistent with the provisions of this article and except as to those provisions of article eleven, chapter thirty-one-e which have no practical application.

(d) A regional housing authority established pursuant to this section acquires and succeeds to all rights, obligations, duties and privileges of the housing authorities of which it is a successor, and will be considered for all purposes a regional housing authority established pursuant to section three-a of this article and subject to all applicable provisions of this article.

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§16-15-4. Persons prohibited from acquiring interest in property or contracts; disclosure of prior interest.

No commissioner or employee of an authority shall acquire any interest direct or indirect in any development or in any property included or planned to be included in any development, nor shall he or she have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any development. If any member or employee of any authority owns or controls an interest direct or indirect in any property included in any development, which was acquired prior to his or her appointment or employment, he or she shall disclose the same in writing to the authority. The disclosure shall be entered upon the minutes of the authority.

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§16-15-5. Organization, officers and employees of housing authority.

As soon as possible after the establishment of an authority the commissioners shall organize for the transaction of business by choosing from among their number a chairman and a vice-chairman and by adopting bylaws and rules and regulations suitable to the purposes of this article. Three commissioners shall constitute a quorum for the purpose of organizing the authority and conducting the business thereof. The commissioners shall, from time to time, select and appoint such officers and employees, including engineering, architectural and legal assistants, as they may require for the performance of their duties, and shall prescribe the duties and compensation of each officer and employee.

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§16-15-6. Commissioner to receive no compensation; reimbursement for necessary expenditures.

No commissioner shall receive any compensation whether in form of salary, per diem allowances or otherwise, for or in connection with his or her services as commissioner. Each commissioner shall, however, be entitled to reimbursement, to the extent of appropriations or other funds available therefor, for any necessary expenditures in connection with the performance of his or her general duties or in connection with the construction or operation of any development. The authority may allocate such expenses among its developments in such manner as it may consider proper.

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§16-15-7. Authority a body corporate and politic; powers; investigations or examinations.

(a) An authority is a body both corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others granted:

(1) To investigate living and housing conditions in the authority's area of operation and the means and methods of improving the conditions;

(2) To determine whether unsanitary or substandard housing conditions exist;

(3) To study and make recommendations concerning the city or county plan in relation to the problems of clearing, replanning, redevelopment and reconstruction of areas in which unsanitary or substandard conditions exist, and the providing of housing accommodations for persons of low and moderate income, and to cooperate with any city, county or regional planning agency, to prepare, carry out and operate developments;

(4) To provide for the construction, reconstruction, redevelopment, improvement, alteration or repair of any development or any part of a development;

(5) To take over by purchase, lease or otherwise any development undertaken by any government;

(6) To act as agent for the federal government in connection with the acquisition, construction, operation or management of a development or any part of a development;

(7) To arrange with the city or with a government for the furnishing, planning, replanning, opening or closing of streets, roads, roadways, alleys or other places or facilities, or for the acquisition by the city, county, state or federal government or any agency, instrumentality or subdivision thereof, of property, options or property rights or for the furnishing of property or services in connection with a development;

(8) To sell, lease or rent any of the housing or other accommodations of any of the lands, buildings, structures or facilities embraced in any development, and to establish and revise the rents or charges therefor;

(9) To enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by eminent domain or otherwise, sell, exchange, transfer, assign or mortgage any property real or personal or any interest therein;

(10) To acquire any property real or personal or any interest therein from any person, firm, corporation, or the city, county, state or federal government or any agency, instrumentality or subdivision thereof, by gift, grant, bequest or devise; to own, hold, clear and improve property; in its discretion, to insure or provide for the insurance of the property or

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operations of the authority against risks as the authority considers advisable;

(11) To borrow money upon its bonds, notes, debentures or other evidences of indebtedness, and to secure them by mortgages upon property held or to be held by it or by pledge of its revenues, or in any other manner;

(12) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control;

(13) To sue and be sued;

(14) To have a seal, and to alter it;

(15) To have perpetual succession;

(16) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;

(17) To form and operate nonprofit corporations and other affiliates of every kind and description, which may be wholly or partially owned or controlled, for carrying out the purposes of this article and in connection with the exercise of any of the powers of a housing authority;

(18) To participate in cooperative arrangements with persons and for-profit entities whose purpose is solely that of pecuniary gain, as well as with nonprofit entities and persons who seek no pecuniary gain. The participation of a housing authority in any arrangement with other persons or entities, including for-profit persons and entities, may not cause any activity engaged in by the authority to be characterized as proprietary nor deprive the authority of any privilege or immunity otherwise existing under law;

(19) To participate as a general or limited partner, coventurer, shareholder, or otherwise as a principal, an investor, a lender, a guarantor, a contracting party, or in any other manner, all upon terms and conditions, and with rights and obligations, as the governing board of the housing authority shall, from time to time, in its discretion determine to be appropriate;

(20) To make and, from time to time, amend and repeal bylaws and rules not inconsistent with this article to carry into effect the powers and purposes of the authority;

(21) To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information;

(22) To issue subpoenas requiring the attendance of witnesses or the production of documents and things, for the examination of witnesses who are out of the state or unable to attend before the authority, or excused from attendance;

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(23) To pay, in whole or in part, for any person of eligible income the costs of preparation of any title instrument, deed of trust, note or security instrument, the costs of recording any title instrument, deed of trust, note or security instrument, and any impact fee levied pursuant to article twenty, chapter seven of this code, with the condition that in the event the person receiving a payment under this subdivision sells the property attributable to the payment within five years from receiving the payment, the person will repay the full amount of the payment to the authority; and

(24) To do all things necessary or convenient to carry out the powers given in this article.

(b) Any of the investigations or examinations provided for in this article may be conducted by the authority or by a committee appointed by it, consisting of one or more members thereof, or by counsel, or by an officer or employee specifically authorized by the authority to conduct it. Any member of the authority, its counsel, or any person designated by it to conduct an investigation or examination, shall have power to administer oaths, take affidavits and issue subpoenas.

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§16-15-7a. Power of authority to include certain stipulations in contracts.

A housing authority, in addition to its other powers, shall have the power, notwithstanding any provisions of this code to the contrary, to include in any contract let in connection with a development, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the development.

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§16-15-7b. Joint undertakings by authorities; areas of operation.

(a) Any two or more authorities may join or cooperate with one another in the exercise of any or all of their powers for the purpose of financing, planning, undertaking, constructing or operating a housing development or developments located within the area of operation of any one or more such authorities or for the administration of other housing programs.

(b) The area of operation of a housing authority shall be one of the following:

(1) In the case of a housing authority established by a city, the authority's area of operation shall be the city and the area within ten miles from the territorial boundaries thereof. Depending upon the geographical location of the city, the area of operation may include portions of one or more counties. It may also include areas lying within the territorial boundaries of cities outside the city establishing the housing authority. In order to resolve territorial conflicts, the following rules shall apply:

(A) In the case of the housing authority's home county, it may operate outside of the area described in this subsection in the unincorporated areas of the home county without the need for the county's consent unless the home county has established its own housing authority. If the home county has established a housing authority, then the city's housing authority may operate outside the area described above only with the consent of the county housing authority;

(B) In the case of incorporated areas of a home county, the housing authority may only operate within the territorial boundaries thereof by consent of the other city and its housing authority, if any;

(C) In the case of unincorporated portions of counties other than the housing authority's home county, it may operate only with the consent of the governing body of the other county, regardless of whether the other county has established a housing authority;

(D) In the case of incorporated areas within other counties, it may operate only with the consent of the governing body of any city incorporating such areas, and, if the other city has also established its own housing authority, with the consent of the other housing authority;

(E) Notwithstanding any other provision of this section, a housing authority may, subject to the limitations stated in this article, provide rental assistance to persons residing outside the authority's area of operation as defined in this section.

For purposes of this section, the term "home county" means the county in which the city establishing the housing authority is situated.

(2) In the case of a housing authority established by a county, the authority's area of operation shall be all of the county except that portion which lies within the territorial boundaries of any city in which a housing authority has been established.

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(3) In the case of a regional housing authority, the authority's area of operation shall be an area equivalent to the total areas of operation which the housing authorities, if created separately by political subdivisions establishing the regional housing authority, would have, when aggregated. The area of operation of a regional housing authority shall not include any area which lies within the territorial boundaries of any city or county in which a housing authority has been established and which city or county is not a participant in the regional authority: Provided, That the housing authority of the city or county and its governing body may consent to the operation of one or more developments by the regional housing authority within the city's or county's territorial boundaries.

(4) Whether due to changes in the boundaries of cities or counties which have established housing authorities, or the establishment of new housing authorities, or for any other reason, territories may exist that include the area of operation of two or more housing authorities. Such areas shall be areas of concurrent jurisdiction. No housing authority whose area of operation includes an area of concurrent jurisdiction shall construct, acquire or develop any new housing development within the area of concurrent jurisdiction without the written agreement of the other authority.

(5) Any housing development established by a housing authority pursuant to law shall continue to be maintained and operated by the housing authority establishing the development or its designee, unless the development is conveyed to another housing authority or to a city, county or other public agency or is otherwise disposed of in accordance with law.

(6) Notwithstanding the area of operation as defined herein, all housing authorities shall have the jurisdiction and authority to cooperate and contract with any other housing authorities and other public agencies within this state and any public agencies of any other state, with the federal government, and with any person, or entity, public or private, and wherever located, in order to carry out the purposes of this article. Such cooperation may include, but shall not be limited to, activities and operations conducted with the agreement of any public agency.

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§16-15-8. Power to acquire lands, etc., by purchase or by right of eminent domain.

Whenever it shall be deemed necessary by an authority in connection with the exercise of its powers herein conferred to take or acquire any lands, structures or buildings or other rights, either in fee or as easements for any housing development or slum clearance, the authority may purchase the same directly or through its agent from the owner or owners thereof, or failing to agree with the owner or owners thereof, such authority may exercise the power of eminent domain in the manner provided for condemnation proceedings, in section eight, article one and sections nine and twelve, article two, chapter fifty-four of this code.

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§16-15-9. Developments subject to ordinances, etc., of locality in which situated; restrictions on acquisition, etc., of property; securities need not be offered to sinking fund commission.

All developments of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the development is situated. No provisions with respect to the acquisition, operation or disposition of property by public bodies shall be applicable to an authority unless the Legislature shall specifically so state. No authority shall be required to offer its securities to the state sinking fund commission at any time, nor shall any authority be required to turn over any surplus or sinking funds to the state sinking fund commission.

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§16-15-10. Amount and nature of indebtedness; rights of creditors.

Subject to the restrictions set forth in this article, the authority may incur any indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with any development undertaken by it. No statutory limitation with respect to the nature or amount of indebtedness which may be incurred by municipalities or other public bodies shall apply to indebtedness of an authority, unless the Legislature shall specifically so provide. No indebtedness of any nature of an authority shall constitute a debt or obligation of a municipality or the state or any other subdivision or authority or instrumentality thereof, or a charge against any property of such municipality, the state, or other subdivision, agency or instrumentality thereof. No obligation incurred by the authority shall give any right against any commissioner of such authority, but a commissioner shall be liable only for his own malfeasance. The rights of creditors of an authority shall be solely against such authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity, and the enforcement of such rights shall be subject to all the provisions of this article.

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§16-15-11. Agreement with federal government providing for supervision and control of authority or development.

An authority may, in connection with the borrowing of funds, or otherwise, enter into any agreement with the federal government or any agency or subdivision thereof, providing for supervision and control of the authority or of any development, and containing such other covenants, terms and conditions as the authority may deem advisable.

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§16-15-12. Report to mayor or county governing body.

At least once a year, an authority shall file with the mayor, or the county commission, as appropriate, a report of its activities for the preceding year, and shall make recommendations with reference to any legislation or other action as it deems necessary in order to carry out the purposes of this article.

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§16-15-13. Community and economic development fund.

(a) The governing body of a housing authority may, by resolution, create a fund which may be available through gifts, contributions, grants, bequests, loans, loan proceeds or other sources. The fund shall be governed by and administered by the authority as a general purpose account separate and distinct from any other moneys, funds or accounts owned or managed by the housing authority in conjunction or cooperation with any local, state or federal governmental agency.

(b) The fund may be utilized to provide a source from which the authority may issue grants or loans to enhance community and economic development in the authority's area of operation. The grants and/or loans may include, but are not limited to, housing rehabilitation, redevelopment reconstruction, community improvement, home ownership, training and counseling for persons of eligible income, elimination of public health or safety hazards, repayment of the authority's bonds or loans and other like things which fulfill the purposes of this article.

(c) The authority shall have an audit of the fund preformed at the end of each fiscal year conducted in accordance with generally accepted accounting principles as part of the authority's annual audit established by the governing board.

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§16-15-14. Tax and licensing exemptions.

(a) The authority shall be exempt from the payment of any taxes or fees to the state or any subdivision thereof, or to any officer or employee of the state or any subdivision thereof. The property of an authority shall be exempt from all local and municipal taxes. Bonds, notes, debentures and other evidences of indebtedness of an authority are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes.

(b) All representatives of a housing authority, acting within the scope of carrying out the business and conducting the affairs of a housing authority, shall be exempt from all licensing requirements imposed by any law with respect to the sale, rental or management of real property or the improvement or development thereof, including requirements imposing any fee or charge.

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§16-15-15. Security for funds of authority deposited in bank.

In order to protect funds deposited by an authority, all banks, bankers, trust companies or other persons carrying on a banking business, organized under the laws of the state, are authorized to give to the authority an undertaking with such sureties as shall be approved by the authority, faithfully to keep and pay over upon the order of the authority any such deposits and agreed interest thereon, or in lieu of the said sureties, to deposit with the authority as collateral such securities and in such amounts as may be agreed upon with the authority pursuant to a collateral deposit agreement in form and terms satisfactory to the authority. The collateral to be deposited shall consist of securities in which savings banks may legally invest funds within their control.

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§16-15-16.

Repealed.

Acts, 1941 Reg. Sess., Ch. 49.

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§16-15-17. Policy of state as to rentals.

(a) It is hereby declared to be the policy of this state that each housing authority shall manage and operate its housing developments in an efficient manner so as to enable it to fix the rentals, leases or purchase prices for dwellings at the lowest possible rates consistent with its providing decent, safe and sanitary dwellings, and that no housing authority shall construct or operate any development for profit, or as a source of revenue to the city or county.

(b) It is the goal of this state to provide access to decent, safe, sanitary and affordable housing to its residents. The benefits of this article are not a matter of right, but of privilege. Persons accepting assistance under this article shall, by such acceptance thereof, recognize their responsibilities to the housing authorities providing such assistance and to other persons living in their vicinity. Persons accepting benefits are responsible for their own conduct and for the actions of other members of their households and of their guests. Housing authorities may impose and enforce occupancy standards and requirements to prohibit any criminal or other activity which threatens the health, safety or right to peaceful enjoyment of the premises or development by other residents. If eviction or lease termination are possible outcomes of the housing authority's enforcement of its occupancy standards, unless federal law or regulation provides otherwise, in any eviction or lease termination proceeding, there must be a finding of either: (1) The tenant's participation in; or (2) the tenant's knowledge of the participation of a member of the tenant's household or a tenant's guest in, criminal activities or other activities which threaten the health, safety or right to peaceful enjoyment of the premises or development by other residents. Unless, otherwise provided by federal law or regulation, any act done by a guest or member of a tenant's household is presumed to be known to the tenant. This presumption may be rebutted by clear and convincing evidence that the tenant could not reasonably have known that the act would occur or that the tenant took reasonable measures to prevent the act from occurring. In all cases of eviction or lease termination, the housing authority shall consider all circumstances surrounding the individual eviction, including the seriousness of the offense, extent of participation by household members, and effect of eviction on household members not involved. In appropriate cases, housing authorities may allow the tenant and the members of his or her household to remain. Even if there is no finding of knowledge, the tenant may be required to: (1) Prohibit any guest from visiting; and (2) remove any member of the household from the unit, if that individual participated in criminal activities or other activities which threaten the health, safety or right to peaceful enjoyment of the premises or development by other residents.

(c) An authority shall provide housing, rental, and other assistance to persons of low and moderate income, and assistance to properties and entities, in accordance with the provisions of this article, and, subject to standards and procedures adopted by the housing authority, to authorize the provision by housing authorities of supportive services and programs of every kind and description to advance the social, educational, and economic well-being and the economic and social self-sufficiency of persons receiving housing assistance under this article, so as to create wholesome living environments, eliminate long-

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term poverty, encourage gainful employment, develop social and economic self-sufficiency (including living independently of housing assistance), and enhance personal responsibility on the part of such persons;

(d) Housing authorities shall encourage the use of entrepreneurial methods and approaches and to stimulate and increase private sector initiatives and joint public-private sector initiatives by housing authorities in carrying out the purposes and provisions of this article.

(e) Housing authorities shall endeavor to increase the availability, from both public and private sector sources, of financing for the purchase of dwellings, and the financing for home improvements, and repairs for persons of low or moderate income; and to further endeavor to increase the availability of sources of equity and other financing for the development and operation by housing authorities and private sector entities of decent, safe, and sanitary rental housing that is affordable to persons of low and moderate income.

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§16-15-18. Duties of authority and limitation of powers.

(a) In the operation or management of housing developments an authority shall at all times observe the following duties with respect to rentals, tenant selection and home ownership:

(1) It may rent or lease dwellings in the developments only to persons of eligible income and at rentals within the financial reach of the persons;

(2) It may rent or lease to a tenant housing consisting of the number of rooms, but no greater number, which it considers necessary to provide safe and sanitary accommodations to the proposed occupants, without overcrowding;

(3) Subject only to the limitations contained in this article or imposed by the federal government, an authority may lease or rent any dwellings, facilities or other real or personal property owned, controlled, or possessed by the authority, or with respect to which the authority has contractual rights permitting the lease or rental, for terms, upon conditions and lease terms and in exchange for rentals as the authority may from time to time in its discretion determine; further, and without limiting the foregoing, to establish rents in a manner and in amounts as the authority considers appropriate, including, but not limited to, rents based upon family income, (determined with adjustments and exclusions as the authority considers appropriate,) minimum rents, flat rents, graduated rents, rent ranges, and maximum rents, (any of which may vary among the authority's developments,) and to establish any other standards and conditions relating to rentals that the authority considers appropriate to carry out the purposes of this article;

(4) At and subsequent to an acquisition of occupied property, a housing authority may permit existing tenants in the property to remain in occupancy upon terms and conditions and for periods as the authority considers appropriate, notwithstanding that the tenants do not qualify as persons of eligible income;

(5) A housing authority may operate programs to increase home ownership by residents of its developments and by other persons of eligible income; and may acquire, rehabilitate, construct, reconstruct, sell, convey, lease, option, and take all other actions considered appropriate to achieve home ownership of dwellings and associated property by persons of eligible income. In connection with any program to encourage ownership, a housing authority may dispose of dwellings and other associated property in exchange or for fair market purchase prices, and upon terms and conditions, as the authority considers appropriate;

(6) To develop, acquire, own, lease and operate properties and facilities that are nonresidential in character, which are used for office, administrative, management, maintenance, commercial, or educational purposes, or providing services, or carrying out any other purpose authorized under this article; to acquire, own, lease, and operate properties and facilities that are both residential and nonresidential in character;

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(7) To develop, acquire, own, or lease community facilities, and to provide such facilities to any public agency or to any person, agency, institution, or organization, public or private, for recreational, educational, health or welfare purposes for the benefit and use of the housing authority or occupants of its developments, or persons of eligible income, elderly or handicapped persons, or any combination of the foregoing; to operate or manage community facilities, itself, or as agent or any public agency, or any person, institution, or organization, public or private; and to receive compensation therefor, if any, as the parties may agree; community facilities may be utilized by private persons or organizations with or without charge, upon a determination by the authority that the utilization would be advisable to promote the public purposes of this article;

(8) To carry out plans, programs, contracts and agreements of every kind and description and to provide grants, loans, guarantees and other financial assistance to public or private persons or entities, whether nonprofit or for-profit, in order to rehabilitate, maintain, procure, and preserve existing affordable housing stocks in safe, decent and sanitary condition and to ensure that they remain affordable to persons of eligible income; and

(9) To pay, in whole or in part, for any person of eligible income the costs of preparation of any title instrument, deed of trust, note or security instrument, the costs of recording any title instrument, deed of trust, note or security instrument, and any impact fee levied pursuant to article twenty, chapter seven of this code, with the condition that in the event the person receiving a payment under this subdivision sells the property attributable to the payment within five years from receiving the payment, the person will repay the full amount of the payment to the housing authority.

(b) A housing authority shall conduct its affairs in accordance with sound financial and business practices, taking into account the nature of its activities and intended purpose. Therefore, a housing authority shall establish and charge rents no higher than it determines to be necessary to produce revenue which, together with all other available money, revenue, income and receipts of the authority from whatever source derived, will be sufficient:

(1) To pay when due all indebtedness of the authority;

(2) To pay all administrative and other costs of operating the authority's developments and programs of assistance;

(3) To pay the administrative and other costs of the maintenance, rehabilitation, renovation, repair, and replacement of the authority's developments and other property;

(4) To otherwise carry out its purposes under this article, including acquiring or creating additional housing developments and acquiring or improving property for other purposes authorized under this article, including community facilities, commercial facilities, and all other facilities and developments authorized under this article;

(5) To pay the costs of insurance, including the costs of claims, liabilities, losses and other

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expenses incurred in connection with any self-insurance program;

(6) To provide funds for all required payments in lieu of taxes;

(7) To make all payments required under and otherwise fully perform the authority's obligations under any contract, agreement, or arrangement entered into by the authority, including without limitation, those required in connection with any partnership or joint venture entered into by the authority;

(8) To perform the terms of any commitment or guarantee issued or given by the authority;

(9) To provide a reasonable return on the value of the property so as to enable the housing authority to continue to fulfill its duties, including, but not limited to, the acquisition of additional housing developments, land acquisition, acquisition or construction of buildings, equipment, facilities or other real or personal property for public purposes, including parks or other recreational, educational, welfare or community facilities within its area of operation;

(10) To accommodate economic factors which affect the financial stability and solvency of the authority's developments and programs;

(11) To pay the cost of actions occasioned by natural disasters and other emergencies; and

(12) To create and maintain operating and capital reserves that are reasonable and adequate to ensure the authority's ability to make all payments referred to herein and any other matter with respect to which the authority, in its discretion reasonably exercised, determines that the creation and maintenance of a reserve is appropriate.

Nothing in this section limits the amount which a housing authority may charge for nondwelling facilities or for dwelling facilities that are not rented to persons of eligible income: Provided, That the authority's actions do not conflict with the purposes of this article: Provided, however, That a housing authority may allow police officers and maintenance and management employees, not otherwise eligible for residence, to reside in its developments.

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§16-15-19. Power to issue bonds; how bonds secured.

An authority shall have power to issue bonds from time to time, in its discretion, for any of its corporate purposes. An authority shall also have power to issue or exchange refunding bonds for the purpose of paying, retiring, extending or renewing bonds previously issued by it. An authority may issue such types of bonds as it may determine, including without limiting the generality of the foregoing, bonds on which the principal and interest are payable from income and revenues of the authority and from grants or contributions from the federal government or other source. Such income and revenues securing the bonds may be: Exclusively the income and revenues of the housing developments financed, in whole or in part, with the proceeds of such bonds; exclusively the income and revenues of certain designated housing developments, whether or not they are financed, in whole or in part, with the proceeds of such bonds; or the income and revenues of the authority generally. Any such bonds may be additionally secured by a pledge of any income or revenues of the authority, or a mortgage of any housing development, developments or other property of the authority.

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§16-15-20. Bonds authorized by resolution; interest rate and life; forms; denominations; redemption; how payable; sale; signatures of commissioners or officers ceasing to be such before delivery; presumptions in suit, etc., involving validity.

(a) Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide. Bonds of a housing authority may be issued in zero coupon form or subject to federal taxation of interest thereon if the resolution authorizing issuance so provides.

(b) The bonds may be sold at public sale held after notice prior to such sale promulgated in the manner as the authority deems appropriate or, if the resolution authorizing issuance of the bonds so provides, they may be sold on a negotiated basis or at private sale without any public advertisement. At the discretion of the housing authority, the bonds may be sold at par, or at any discount or premium, as the resolution authorizing them provides. A housing authority issuing bonds may enter into agreements and arrangements with third parties for the marketing of its bonds as it shall deem appropriate.

(c) In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this article shall be negotiable.

(d) In any suit, action or proceedings involving the validity or enforceability of any bond of an authority or the security therefor, any such bond reciting in substance that it has been issued by the authority to aid in financing a housing development to provide housing for persons of eligible income shall be conclusively deemed to have been issued for a housing development of such character, and the development shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of this article.

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§16-15-21. Powers of authority in connection with the issuance of bonds, incurring obligations under leases and securing payment of bonds.

In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of bonds or obligations, any authority, in addition to its other powers shall have power:

(1) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence;

(2) To mortgage all or any part of its real or personal property, then owned or thereafter acquired;

(3) To covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing development or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it;

(4) To covenant as to the bonds to be issued and as to the issuance of bonds or otherwise, and as to the issuance of bonds in escrow or otherwise and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof;

(5) To covenant, subject to the limitations contained in this article, as to the rents, purchase prices, and fees to be charged in the operation of a housing development or developments, the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;

(6) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(7) To covenant as to use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys;

(8) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation; and to covenant and prescribe as to events of default

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and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which the declaration and its consequences may be waived;

(9) To vest in a trustee or trustees or the holders of bonds or any proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by said authority, to take possession and, as long as the authority is in default, to retain possession and to use, operate and manage any housing development or part thereof, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement of the authority with said trustees; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds; and

(10) To exercise all or any part or combination of the powers herein granted; to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; to make covenants and to do any and all acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of said authority, as will tend to make the bonds more marketable notwithstanding that the covenants, acts or things may not be enumerated herein.

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§16-15-22. Actions by obligee of authority to enforce performance of contracts and to enjoin unlawful acts.

An obligee of an authority shall have the right in addition to all other rights which may be conferred on the obligee, subject only to any contractual restrictions binding upon the obligee:

(1) By mandamus, suit, action or proceeding at law or in equity to compel said authority and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said authority with or for the benefit of the obligee, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon said authority by this article; and

(2) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of an obligee of the authority.

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§16-15-23. Surrender of possession of development to obligee upon default by authority; appointment of receiver; accounting.

An authority shall have power by its resolution, trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(1) To cause possession of any housing development or any part thereof to be surrendered to the obligee; possession may be retained by the bondholder or trustee so long as the authority shall continue in default;

(2) To obtain the appointment of a receiver of any housing development of the authority or any part thereof and of the rents and profits therefrom. If a receiver is appointed, he or she may enter and take possession of the housing development or any part thereof and, so long as the authority shall continue in default, operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct; and

(3) To require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

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§16-15-24. Housing authorities empowered to provide housing for farmers of low and moderate income.

Housing authorities created for counties and other authorities whose jurisdiction includes rural areas are specifically empowered and authorized to borrow money, accept grants and exercise their other powers to provide housing for farmers of low and moderate income. In connection with such developments, housing authorities may enter into leases or purchase agreements, accept such conveyances and rent or sell dwellings forming part of developments to or for farmers of low and moderate income, as the housing authority deems necessary in order to assure the achievement of the objectives of this article. Leases, agreements or conveyances may include such covenants as the housing authority deems appropriate regarding dwellings and the tracts of land described in any such instrument, which covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate. Nothing contained in this section shall be construed as limiting any other powers of any housing authority.

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§16-15-25. Application for low-cost housing for farmers.

The owner of any farm operated, or worked upon, by farmers of low and moderate income in need of safe and sanitary housing may file an application with a housing authority requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by farmers of low and moderate income. The applications shall be received and examined by housing authorities in connection with the formulation of developments or programs to provide housing for farmers of low and moderate income.

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