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**CHAPTER 199****HOUSING**

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## CHAPTER 199

## HOUSING

**An Act to consolidate and amend the law relating to the housing department; the promotion of construction of new dwelling houses for persons of moderate means; insurance of mortgages and purposes connected therewith.**

*[Commencement 9th January, 1968]*

*5 cf 1968  
13 cf 1972  
30 cf 1975  
E L A O , 1974  
27 cf 1976  
8 cf 1983  
19 cf 1998  
9 cf 2009*

PART I  
PRELIMINARY

1. This Act may be cited as the Housing Act.
2. In this Act, unless the context otherwise requires —
  - “approved builder” means a builder who is approved for the purposes of this Act, in accordance with the provisions of section 21 of this Act;
  - “approved building plot” means a building plot which is approved by the Minister as complying with such standards as to situation, availability of services, amenity and general suitability, as the Minister may prescribe or otherwise require;
  - “approved lender” means a lender who is approved by the Minister for the purposes of this Act in accordance with the provisions of section 21 of this Act; and includes, for the purpose only of enforcing any right, title, power or claim (whether against the Minister, a borrower, mortgagor, or any other person) of an approved lender to or in respect of any insured loan, mortgage money or mortgaged premises, and subject to the provisions of paragraph (c) of section 20 of this Act, any successor in title or assignee of an approved lender;
  - “borrower” means a borrower who is approved by the Minister for the purposes of this Act in accordance with the provisions of section 10(1)(e)

Short title.

Interpretation.  
*9 cf 2009, s 2*

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of this Act, and includes any person to whom the mortgaged premises have been transferred in accordance with the provisions of section 10(3) of this Act;

“builder” means a person whose business includes the building of houses for sale;

“building plot” means an area of land on which a dwelling house may lawfully be erected;

*19 cf 1998, s 2*

“dwelling house” includes a building or part thereof which provides living, sleeping, eating, or food preparation and sanitary facilities for a family;

“functions” means duties and powers;

“insurable loan” means a loan which complies with the provisions of section 10, 13, 14 or 16 of this Act;

“insurable risk” has the meaning ascribed thereto by section 17 of this Act;

“insurance” means a contract to insure, and includes a reference to any policy or other document by which it is evidenced;

“insurance fee” means the charge made by the Minister in accordance with the provisions of this Act for insuring a loan;

“insured loan” means a loan in respect of which there is in force an insurance by the Minister under this Act;

“lending value” means the value of any premises as a reasonably adequate security for a loan which is secured by a mortgage thereon determined by the Minister or otherwise to the satisfaction of the Minister by such manner of assessment as the Minister may prescribe or otherwise require;

“loan” means a loan or an agreement to make a loan;

*13 cf 1972, s 2*

“Minister” means the Minister responsible for Housing;

“mortgage” means a first charge on land for securing money, being a conveyance by way of mortgage of the estate of the mortgagor in such land;

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“Mortgage Insurance Fund” means the fund referred to in section 24(1) of this Act;

“mortgage money” means money secured by a mortgage;

“owner” in relation to any premises means the owner of the entirety of the premises for a legal estate in fee simple absolute in possession, being an estate which is not subject to any lease or tenancy, and which is free from trusts and incumbrances;

“prescribe” in relation to the Minister, means to prescribe in accordance with the provisions of section 26 of this Act, and the word “prescribed” shall be construed accordingly;

“repealed Act” means the Housing Act repealed by section 30 of this Act;

“service charges” includes the following charges made by the lender to the borrower in respect of an insured loan —

- (a) any application fee paid by the lender under this Act;
- (b) the cost of survey and of obtaining a certificate of survey;
- (c) attorneys’ fees and disbursements —
  - (i) for searching and settling the title to the premises;
  - (ii) for preparing the mortgage and for necessary copies thereof;
  - (iii) for such other searches of title as may be necessary to ensure the priority of the mortgage taken as security for the loan; and
  - (iv) for preparing and taking any other security for the loan.

(2) References in this Act to any other enactment shall be construed as references to that enactment as amended by any other enactment including this Act.

(3) References in this Act to dollars and cents shall be construed as references to dollars and cents in Bahamian currency.

## PART II ADMINISTRATION

Minister to be a  
corporation sole.  
*13 cf 1972, s 4*

**3.** (1) The Minister shall, as respects the functions assigned to him by or under this Act, be a corporation sole, with power to acquire, hold, lease, and dispose of property, to enter into contracts, to sue and be sued and to do all things necessary for the purposes of this Act and all property transferred to the Minister by this Act or any other Act or which otherwise becomes vested in him shall be held by him in trust for Her Majesty in right of Her Government of The Bahamas for the purposes of this Act.

(2) Upon and by virtue of the appointment of any person to be the Minister charged with the responsibility for the administration of this Act, the benefit and burden of all deeds, contracts, bonds, securities and things in action vested in his predecessor at the time of his predecessor ceasing to hold office shall be transferred to and vested in and enure to the person so appointed in the same manner as if he had been contracted with instead of his predecessor and as if his name had been inserted in all such deeds, contracts, bonds, or securities instead of the name of his predecessor.

(3) The Housing Corporation which was dissolved on the seventh day of January, 1964, shall be deemed to be the predecessor of the Minister.

Housing  
Department.

**4.** There shall be a Housing Department of the Government, comprising a Chief Housing Officer and such other officers as may from time to time be authorised by Parliament, which shall be subject to the general direction and control of the Minister.

*9 cf 2009*

**5.** *Repealed.*

*9 cf 2009*

**6.** *Repealed.*

Application for  
insurable loan.  
*9 cf 2009*

**7.** Every application made under this Act for a loan to be deemed an insurable loan shall be referred by the Chief Housing Officer to the Minister who after making such enquiries as he deems fit, shall send a decision in writing to the Chief Housing Officer who shall communicate the decision to the approved lender and the prospective borrower.

Powers of the  
Minister.

**8.** (1) The Minister may —

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- (a) construct dwelling houses upon land owned by the Government or to be acquired for such purposes; *8 cf 1983, s 4*
- (b) acquire dwelling houses, land or housing projects by way of purchase, lease or otherwise;
- (c) sell, lease, exchange or otherwise dispose of real or personal property acquired by him pursuant to this Act;
- (d) carry out housing development (including the provision of utilities and roads) building, maintenance, repair and other operations;
- (e) carry on any business or undertaking in or for the purposes of any housing development;
- (f) grant loans on such terms and conditions as he deems fit, to person of low and middle incomes for the purpose of the rehabilitation and improvement of dwelling houses;
- (g) promote and encourage the construction of new dwelling houses of sound construction and affording suitable accommodation for families of low or middle incomes and senior citizens;
- (h) promote or encourage the means of financing and construction of dwelling houses for the benefit of persons wishing to own and occupy such houses to such extent as may be necessary to meet the public need in various parts of The Bahamas;
- (i) purchase a mortgage redemption policy of insurance to provide life insurance coverage to approved borrowers;
- (j) promote and encourage the establishment of such projects and facilities as would appear to him to enhance the standard of living, general welfare and well-being of persons and for those purposes to exercise the powers hereinbefore conferred upon him.

(2) In pursuance of his functions under subsection (1), the Minister may undertake such investigations and surveys, analysis and research as may appear to the Minister to be necessary or appropriate, including (without prejudice to the generality of the foregoing) the collection of data and information on any of the following matters —

- (a) the housing census of The Bahamas, and factors affecting the total supply of housing;

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- (b) the current and prospective supply of and demand for housing suitable for families of low and middle income;
  - (c) the availability of land suitable for building;
  - (d) the design and construction of dwelling houses; with particular references to method, materials, comfort and cost; or
  - (e) the business of lending money on mortgage, and market problems associated therewith.



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**PART III**  
**INSURED MORTGAGE LOANS**

*Insurance of Loans*

9. (1) The Minister is authorised, upon application by an approved lender — Insurance of loans

- (a) to insure any loan which is eligible for insurance under this Act (in this Act referred to as “an insurable loan”); and
- (b) to enter into a commitment to insure an insurable loan before it has been made or advanced.

(2) The Minister shall, upon application by the lender, issue an insurance policy to the lender in respect of a loan which is insured under this Act (in this Act referred to as an “insured loan”) and every such policy of insurance shall bear a serial number which shall be indexed by the Housing Department.

(3) The Minister shall at all times in the exercise of his functions under this Part of this Act use his best endeavours to ensure that he does not, by insuring any loan —

- (a) unduly increase the loss or risk of loss to the Government consequent upon the default of borrowers under insured loans;
- (b) assist the borrower to construct a dwelling house which, when completed, will not be required by him for occupation by himself or by himself and his family; or
- (c) assist the borrower to construct or pay for the construction of one dwelling house while he is still being assisted by means of another insured loan to construct or pay for the construction of another dwelling house.

(4) A loan made in foreign currency shall be eligible for insurance under this Act if it is made with prior approval of the Controller of Exchange appointed under the provisions of the Exchange Control Regulations Act, and is made in compliance with the provisions of sections 10, 13, 14 or 16 of this Act. Ch 360

Conditions of  
insurable loans.

**10.** (1) Subject to the provisions of subsection (4) of this section, a loan is eligible for insurance under this Act if all the following conditions are satisfied, that is to say —

- (a) the loan is made by an approved lender;
- (b) the loan is made in respect of the erection on an approved building plot by an approved builder of a dwelling house of which the plans and specifications have been approved by the Minister;
- (c) the Minister is satisfied that the lending value of the said dwelling house on the day of its completion (together with the said plot) will exceed the amount of the loan by a sum calculated in accordance with section 11 of this Act;
- (d) the loan is made before any building work, other than excavation, has been commenced in respect of the said dwelling house or where the building work has been commenced, it is certified that the building and the plans after being properly inspected conform to the requirements of the Buildings Regulation Act and the Town Planning Act and the requirements of the Minister;
- (e) the loan is made to a person (in this Act referred to as “the borrower”) who provides evidence satisfactory to the Minister that he —
  - (i) is not less than eighteen years of age;
  - (ii) is the owner of the building plot on which the dwelling house is to be erected or on which the dwelling house has been commenced or completed or has entered into an enforceable agreement to purchase such building plot;
  - (iii) is not under any liability to an approved lender under any loan previously made by an approved lender and insured by the Minister under this Act;
  - (iv) intends to occupy the said dwelling house as a residence for himself or for himself and his family;

Ch. 200.  
Ch. 255.

27 *cf* 1976, s 2

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- (v) is, having regard to any matters including his means of livelihood which may appear to the Minister to be material, likely to discharge his obligations under the loan;  
and is otherwise acceptable to the Minister as a borrower;
- (f) the approved builder has entered into a building contract with the borrower in such terms as the Minister may prescribe or otherwise require or approve, for the erection in a proper and workmanlike manner and in accordance with the plans and specifications approved as aforesaid, of a dwelling house on the building plot;
- (g) the loan is made subject to such terms as the Minister may prescribe or otherwise require, including terms as to the advancement of the loan, whether by instalments or otherwise, for securing that the obligations under the building contract of the approved builder to the borrower and of the borrower to the approved builder are discharged, and for securing that any failure on the part of the approved builder to erect the dwelling house in a proper and workmanlike manner, or in accordance with the approved plans and specifications, is remedied;
- (h) the loan bears interest at a rate not exceeding the prescribed rate;
- (i) the loan is secured by a mortgage in favour of the approved lender on the approved building plot (including the said dwelling house when erected thereon), which is in such form as may be prescribed or otherwise required or approved by the Minister and which is secured by such further security, assignments, assurances and agreements as the Minister may prescribe or otherwise require or approve;
- (j) the loan is made on terms that all the mortgage money shall be repaid within a period of thirty years following the date on which the first advance is made under the loan, and on such other terms as to the payment of principal (including the insurance fee, service charges, charges for installation or connection of utilities, building permit fees and other charges) and

*8 cf 1983, s 5*

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- interest by equal monthly instalments or otherwise as the Minister may prescribe or otherwise require or approve;
- (k) the loan is made on such terms not inconsistent with the provisions of this Act with respect to insurance, repairs, alterations, payment of taxes on property, payment of service charges and other charges; remedies of the lender in the event of the borrower's default under the loan, terms limiting or affecting the rights of the borrower to assign or convey his estate or interest in any premises or other property on which the loan is secured, as the Minister may prescribe or otherwise require or approve; and
- (l) the loan is made on such other terms, not inconsistent with the provisions of this Act, as the Minister may prescribe or otherwise require, for the purpose of ensuring that the Minister does not insure loans which are not in his opinion acceptable risks, having regard on the one hand to the amount of the insurance fee, and on the other hand to the need for providing housing for families of low and middle incomes.
- (2) The following provisions shall have effect for the purpose of facilitating the arranging of insured loans —
- (a) the Minister may, on such terms as he may direct, approve, consent to or accept evidence of any matter or thing for any purpose connected with the fulfilment by any loan of the conditions provided in subsection (1) of this section before that loan is made or before any application is made for the insurance of that loan by the Minister;
- (b) no mortgage, conveyance, contract, agreement or bond shall fail to satisfy any of the conditions provided in subsection (1) of this section for the reason only that it is made conditional upon the insurance of any loan by the Minister.
- (3) With the approval of the Minister and the approved lender the borrower may transfer the mortgaged premises to a person who would have been eligible as a borrower under the provisions of this Act to receive a loan under this Act.

(4) No loan shall be eligible for insurance under this Act if the lending value of the premises in respect of which the loan is sought exceeds two hundred and fifty thousand dollars:

*30 cf 1975, s 3*  
*9 cf 2009, s 6*  
*19 cf 1998, s 3*

Provided that the lending value of the premises shall not include the value of the building plot on which the dwelling house is constructed where its inclusion would cause the said lending value to exceed two hundred and fifty thousand dollars.

*8 cf 1998, s 5*  
*19 cf 1998, s 3*  
*9 cf 2009, s 6*

**11.** (1) A loan shall not be eligible for insurance under this Act if the amount of the loan exceeds ninety-five per centum of the lending value of the house on the date of completion.

Authorised limits of loans.  
*13 cf 1972, s 6*  
*19 cf 1998, s 4*  
*9 cf 2009, s 7*

(2) For the purposes of subsection (1) of this section

*8 cf 1983, s 6*

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- (a) where a loan is made in a foreign currency, the percentages specified in subsection (1) of this section shall be calculated upon the equivalent in Bahamian currency of the lending value or proportion thereof expressed in that foreign currency; and
  - (b) the lending value of the dwelling house shall include the value of the approved building plot on which the dwelling house is constructed and also the insurance fee, service charges, charges for installation or connection of utilities, building permit fees and other charges payable in respect of the loan:

Provided that where, in accordance with the proviso to section 10(4) of this Act, the value of the approved building plot is excluded, then, the lending value of the dwelling house shall not include the value of the approved building plot.

**12.** A loan shall not be eligible for insurance under this Act unless the borrower or the person to whom any mortgaged premises are transferred in accordance with section 10 either —

Borrower to have policy of life insurance.  
*8 cf 1983, s 7*

- (a) has a valid policy of insurance on his life with an insurance company approved by the Minister for such an amount as is sufficient to cover the full amount of the loan; or
- (b) if he has no such policy, takes out either an insurance policy on his life or a mortgage redemption policy with an insurance company approved by the Minister and,

undertakes to maintain the policy of insurance by regular payment of premiums, assigns the benefits of such policy to the lender and deposits the policy with the lender.

Insured loan for dwelling house erected by an approved builder for his own occupation.

**13.** (1) Notwithstanding the provisions of paragraphs (f) and (g) of section 10(1) of this Act and subject to the provisions of subsection (2) of this section the Minister may on the application of an approved lender insure a loan made to an approved builder to enable him to erect a dwelling house which he intends to occupy as a residence for himself or for himself and his family.

(2) In the case of an application by an approved lender under the provisions of subsection (1) of this section the conditions set out in section 10(1) of this Act shall apply save that in lieu of the conditions prescribed by paragraphs (f) and (g) thereof the Minister shall be satisfied that under the agreement for the loan the approved builder is bound to erect the dwelling house in a proper and workmanlike manner and in accordance with the plans and specifications approved by the Minister and that the approved builder will forthwith remedy any failure to comply with such conditions.

Insured loan for newly erected completed dwelling house or one that is not newly erected but is less than five years old.

**14.** In addition to the other powers vested in the Minister under this Act, the Minister shall have power to insure loans for the purchase of dwelling houses in respect of which all the following conditions are fulfilled, that is to say —

- (a) the loan is made in respect of a completed dwelling house which either —
  - (i) is newly erected on an approved building plot in accordance with plans and specifications approved by the Minister by an approved builder who is bound by any enforceable contract to remedy forthwith any failure on his part to erect the said dwelling house in a proper and workmanlike manner; or

(ii) not being newly erected has been constructed to such design and specifications as the Minister may approve and is certified by an inspector appointed by the Minister to have been constructed in a good and workmanlike manner and to be in a good state of repair. *8 cf 1983, s 8*

(b) all the conditions prescribed in paragraphs (a), (c), (d), (e) and (h) to (l) inclusive of section 10(1) of this Act are *mutatis mutandis* satisfied.

**15.** The Minister may insure loans for alteration, enlargement, repair or improvement of dwelling houses under this Act where the dwelling house is not subject to any mortgage or charge if all the following conditions are satisfied —

Insured loan for  
renovations to  
dwelling house  
*8 cf 1983, s 9*

(a) the loan is made in respect of a completed dwelling house which is certified by an inspector appointed by the Minister to have been constructed in a good and workmanlike manner and is capable of being put in a state of good repair;

(b) the plans and specifications for the alteration, enlargement, repair or improvement are approved by the Minister;

(c) the loan is made on terms that all the mortgage money shall be repaid within fifteen years following the date on which the first advance is made under the loan or the estimated life of the building, whichever is less and on such terms as to the payment of the principal (including the insurance fee, service charges, loan commitment fee, charges for installation or connection of utilities, building permit fees, and other charges) and interest by equal instalments, or otherwise as the Minister may prescribe or otherwise require or approve;

(d) the Minister is satisfied that the amount of the loan does not exceed forty-two thousand dollars;

*19 cf 1998, s 5*

(e) an approved builder has entered into a building contract with the borrower for the structural alterations, additions, repairs or improvements to the dwelling house on such terms as the Minister may prescribe or otherwise require and

- in a proper and workmanlike manner in accordance with the plans and specifications approved by the Minister;
- (f) the loan bears interest at a rate not exceeding the prescribed rate;
  - (g) the loan is made subject to such terms as the Minister may prescribe or otherwise require, including terms as to the advancement of the loan whether by instalments or otherwise for securing that the obligations under the building contract of the approved builder to the borrower and of the borrower to the approved builder are discharged and for securing that any failure on the part of the approved builder to erect the structural alterations, additions, repairs or improvements in a proper and workmanlike manner or in accordance with the approved plans and specifications is forthwith remedied;
  - (h) the loan is secured by a mortgage in favour of the approved lender on the dwelling house and lot (including the structural alterations, additions, repairs or improvements when erected) which is in such form as may be prescribed or otherwise required or approved by the Minister and which is secured by such further security, assignments, assurances and agreements as the Minister may prescribe or otherwise require or approve;
  - (i) the conditions prescribed in paragraphs (k) and (l) of section 10(1) of this Act are satisfied.

Insured loans for the enlargement of dwelling houses already mortgaged under this Act

**16.** (1) Where an approved borrower has an insured loan (hereinafter referred to as the “original loan”) that has not been fully repaid and for the purpose of making structural additions to the mortgaged premises such borrower has made an agreement with the approved lender for a further loan (hereinafter referred to as the “further loan”) to be secured upon such dwelling house, the Minister may insure such further loan in accordance with the other provisions of this Act if all the following conditions are satisfied, that is to say —

- (a) the need for the increased accommodation arises from an increase in the number or age of the members of the borrower’s family or his dependants;



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- (b) the approved borrower has not defaulted in respect of the original loan and continues in every respect to be acceptable to the Minister as a borrower;
  - (c) the dwelling house is not subject to any mortgage or charge other than that arising from the original loan;
  - (d) the plans and specifications for the structural additions are approved by the Minister;
  - (e) the Minister is satisfied that the amount outstanding on the original loan together with the amount of the further loan will not exceed the sum of ninety-five per centum of the lending value of the dwelling house when the structural additions are complete and in any case that the said lending value will not exceed two hundred and fifty thousand dollars or its equivalent in a foreign currency. *9 cf 2009, s 8*
  - (f) an approved builder has entered into a building contract with the borrower for the erection of the structural additions to the dwelling house on such terms as the Minister may prescribe or otherwise require including provisions for the erection of such additions in a proper and workmanlike manner in accordance with the plans and specifications approved by the Minister;
  - (g) the loan is made subject to such terms as the Minister may prescribe or otherwise require including terms as to the advancement of the further loan whether by instalments or otherwise for securing that the obligations under the building contract of the approved builder to the borrower and of the borrower to the approved builder are discharged and for securing that any failure on the part of the approved

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builder to erect the structural additions in a proper and workmanlike manner or in accordance with the approved plans and specifications is forthwith remedied;

- (h) the further loan bears interest at a rate not exceeding the prescribed rate;
- (i) the further loan is secured by a supplementary deed of mortgage or further charge or by an endorsement on the original mortgage in favour of the approved lender on the mortgaged premises (including the structural additions when erected) so that the whole amount (including the further loan) outstanding at the date of the further loan is subject in all respects to such terms and conditions as the Minister may prescribe or otherwise require or approve and which conform with the provisions of paragraphs (i) to (l) inclusive of section 10(1) of this Act:

Provided that if the approved borrower and approved lender so agree, the Minister may permit the period of repayment of the whole loan to be extended for such reasonable period as he may think fit not exceeding the period specified in section 10(1)(j) of this Act.

(2) The insurance fee in respect of a further loan insured under the powers conferred by this section shall be the sum equal to two per centum of the amount of the further loan and the provisions of section 19 of this Act shall apply *mutatis mutandis*.

(3) Where the Minister exercises his powers of insurance under this section, the further loan and such part of the original loan as remains outstanding at the date of the further loan shall together be deemed to be an insured loan within the meaning of this Act save in so far as the context of any provision thereof otherwise requires.

(4) For the purposes of paragraph (e) of subsection (1) of this section, the lending value of the dwelling house shall include the insurance fee, service charges, charges for installation or connection of utilities, building permit fees and other charges payable in respect of the further loan.

*13 cf 1972, s 8;*  
*8 cf 1983, s 10*

17. (1) Subject to the provisions of this section, every premises which is a security for an insured loan shall be insured and kept insured by the lender against all insurable risks (as defined in the next succeeding subsection) for the full amount of the value of the property at the date of the making of the insured loan, or for such greater or lesser amount as the Minister may, from time to time, having regard to any fluctuations in the cost of building, require by notice in writing to the lender.

Duty of approved lender to insure mortgaged premises, etc  
*13 cf 1972, s 9*

(2) The expression “insurable risk” means loss or damage by such occurrences or combination of occurrences as the Minister may prescribe to be insurable risks for the purposes of this Act:

Provided that a lender shall not be under any duty to insure or keep insured any premises against any occurrence which is not an insurable risk on the date on which the loan secured by such premises is insured by the Minister.

(3) All moneys received by the lender under an insurance effected in accordance with the provisions of this section shall be applied by the lender acting on the borrower’s behalf in employing an approved builder to make good the loss or damage in respect of which such moneys are received:

Provided that if —

- (a) it is not reasonably practicable to make good such loss or damage within a period of twelve months following the occurrence of such loss or damage; or
- (b) the Minister is satisfied, on timely application made in that behalf by the lender or by the borrower, that it is either not reasonably practicable or not desirable that such loss or damage should be made good out of such moneys,

and the Minister so directs, all such moneys shall be applied in or towards the discharge of the borrower’s liabilities to the lender, and any balance remaining thereafter shall be paid to the borrower.

(4) All premiums paid by the lender in accordance with the provisions of this section shall be a charge on the premises insured in like manner as the principal sum of the loan, and with the same priority and with interest at the same rate, and references in this Act to the principal sum

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and to interest thereon shall include references to such premiums and to such interest thereon respectively.

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(5) The provisions of section 21(1)(b) and of section 25 of the Conveyancing and Law of Property Act, and of any enactment amending or extending any of those provisions, shall not apply to any mortgage for securing any loan which is insured by the Minister under this Act; and the provisions of this section of this Act shall have effect notwithstanding any enactment, rule of law or contract to the contrary; and an approved lender shall have all the powers necessary for compliance with the provisions of this section.

Implied terms of insured loans

**18.** Without prejudice to any other rights or remedies of the Minister as an insurer, there shall be implied in every insurance of a loan by the Minister under this Act, notwithstanding the express terms of such insurance, each of the following terms, namely —

- (a) that if the lender is negligent in the administration of the loan or in the protection of the security for the loan, whether before or after the realisation of that security, then —
  - (i) the liability of the Minister to the lender under the insurance shall be reduced to such extent, if any, as it is the result of such negligence; and
  - (ii) any dispute as to the fact or extent of such negligence, or as to whether or to what extent the liability of the Minister should be reduced in consequence of such negligence, shall be referred for arbitration to a sole arbitrator acceptable to the Minister and to the lender, or if no sole arbitrator is acceptable to both parties, then to three arbitrators, one of whom shall be chosen by each party and the third of whom shall be chosen by the other two, and the cost of such arbitration shall be borne as agreed by the parties, or in default of agreement, as determined in the arbitration award;
- (b) that the Minister shall be entitled to deduct from any sum payable under the insurance a sum equal to the sum by which the cost of repairing or replacing any damage or loss by any insurable

risk (as defined in section 17 of this Act) to the premises by which the loan is secured exceeds the aggregate of all sums paid to the lender under insurance policies covering such insurable risks in force respecting the premises; unless the damage or loss has been repaired or replaced to the satisfaction of the Minister.

**19.** (1) The insurance fee in respect of an insured loan shall be paid by the lender to the Minister before the loan is insured, and may be recovered by the lender from the borrower in accordance with the terms of the insured loan. Insurance fee.

(2) The insurance fee in respect of an insured loan shall be a sum equal to one half of one per centum of the principal sum of the loan (being, in the case of a loan advanced by instalments making up the loan, including service charges, charges for installation or connection of utilities, building permit fees and other charges), or such other percentage of the principal sum of the loan as the Minister may prescribe. *9 cf 2009, s 9*

(3) The insurance fee shall be calculated on the amount of the principal sum of a loan before there is included in that sum any sum in respect of the advance of the insurance fee by the lender to the borrower.

**20.** Without prejudice to any other rights or remedies of the Minister as an insurer, the Minister shall be discharged from all liability in respect of the insurance of a loan under this Act, notwithstanding any of the terms of that insurance, in any of the following events, that is to say — Discharge of Minister's liability as an insurer.

- (a) if the lender fails to disclose any fact known to the lender which may reasonably have affected the decision of the Minister to insure that loan;
- (b) if the lender fails to disclose to the Minister any defect in the title of the borrower to premises which are mortgaged by way of security for the loan, being a defect which the lender has discovered or ought with reasonable diligence to have discovered, and if the defect is one which might reasonably have affected the decision of the Minister to insure that loan;

- (c) if the lender assigns or conveys, otherwise than with the approval of the Minister or to another approved lender, any of the rights of the lender under the loan or under any mortgage or other charge or lien by which the loan is secured;
- (d) if the lender varies or waives any of the obligations of the borrower under the loan without the approval of the Minister;
- (e) if the lender, otherwise than in accordance with the terms of the loan, releases any security or personal covenant taken as a security for the loan, without the approval of the Minister; or
- (f) if the lender has failed to comply with the provisions of section 17 of this Act.

Approval of  
lenders and  
builders, etc.

**21.** (1) The Minister may approve any lender or builder for the purposes of this Act.

(2) An applicant shall not be approved as a lender or builder unless the Minister is satisfied —

- (a) that the applicant possesses all such qualifications, including a sufficiency of funds and experience, as may be considered necessary; and
- (b) that the applicant satisfies all such conditions of approval for lenders or builders, as the case may be, as the Minister may prescribe.

(3) The Minister may at any time terminate the approval given to a lender or builder under this section by not less than six months' notice in writing:

Provided that no such notice of termination shall affect the rights or obligations of any person under any contract, or under any commitment to which section 9 of this Act refers, being a contract or commitment which is made or entered into before the date on which such termination takes effect.

(4) Every approved lender shall, within thirty days after the end of each calendar month, send to the Minister a report in such form as may be prescribed or otherwise required by the Minister, listing all insured loans administered by him and which are in arrears as at the end of that month to the extent, in respect of periodical payments due monthly, of an amount equal to, or in excess of, three monthly payments, and in respect of periodical

payments due quarterly, semi-annually or annually, in any amount, and advising the Minister of the steps taken to recover such arrears.

(5) The Minister shall be entitled, by his authorised representatives, to inspect the books, records and accounts of an approved lender with respect to any insured loan, during the business hours of the lender, and where any such books, records or accounts are kept outside The Bahamas, to require the lender to furnish to the Minister for inspection the originals or copies thereof or particulars therefrom, as the Minister may from time to time require.

(6) The Minister shall be entitled, by his authorised representatives, to inspect the books, records and accounts of an approved builder with respect to any contract entered into by the builder to erect or to make good any damage to an approved dwelling house on premises charged as a security for an insured loan, during the business hours of the builder, and where any such books, records or accounts are kept outside The Bahamas, to require the builder to furnish to the Minister for inspection the originals or copies thereof or particulars therefrom, as the Minister may from time to time require.

(7) Every approved builder shall, upon first being approved under the provisions of this section, pay to the Minister such fee as may be prescribed.

**22.** In carrying out his functions under this Act with respect to the approval of dwelling houses and building plots, the Minister shall consult with every department of the Government of The Bahamas or public authority which has statutory functions relating to the planning and control of building or of the development of land.

Duty to consult town planning authority, etc

#### *Insurance Settlement*

**23.** (1) Subject to the provisions of this section, an approved lender, who is the creditor under an insured loan which is secured by a mortgage on premises, may, where default has occurred under the mortgage, realise his security by selling those premises in accordance with the provisions of this section.

Insurance settlement  
8 cf 1983, s 12

(2) A sale of premises in accordance with the provisions of this subsection shall, whether or not in exercise of the powers of sale conferred on a mortgagee by

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any enactment, be effected by public auction in the first instance, or failing such a sale then by private treaty. In either of the foregoing events such sale shall only take place at a price which shall not be less than a sum equal to the aggregate of the following sums (hereinafter referred to as the “settlement value”) —

- (a) the balance of the principal sum of the loan owing on the date when the security is realised;
- (b) the interest owing on the said date under the loan in respect of the period of nine months immediately preceding the said date;
- (c) such reasonable costs of realising the security and of selling the premises as are incurred by the lender as the Minister may approve or as the Minister may have agreed as a term of the insurance of the loan.

(3) If a sale shall not take place in accordance with subsection (2), the approved lender shall forthwith notify the Minister and the Minister shall either —

- (a) authorise the lender to sell the property at the best price reasonably obtainable (whether by public auction or otherwise) and if upon sale such price is less than the settlement value of the property the Minister shall pay to the lender a sum equal to the settlement value after deducting therefrom the price at which the premises were sold; or
- (b) require the lender to transfer to him or his nominee all rights to and in respect of the insured loan and all collateral or other securities therefor on payment of the settlement value of the property by the Minister to the lender calculated in accordance with paragraphs (a), (b) and (c) of subsection (2) of this section; or
- (c) require the lender to sell the property to the Minister or his nominee at the settlement value and to convey title to the Minister or his nominee free and discharged from all liability to the lender or the borrower:

Provided that if the Minister shall authorise the sale of the property under paragraph (a) and such sale shall not take place in accordance with that paragraph, the Minister shall give further directions in accordance with either paragraph (b) or (c).



(4) The payment by the Minister to an approved lender in respect of an insured loan of the sum provided for in subsection (3)(a) shall discharge the Minister from all liability to the lender in respect of the insurance of the loan.

(5) In every sale of mortgaged premises in accordance with the provisions of subsection (2) of this section —

- (a) such premises shall be sold for the same estate as the mortgagor would have therein but for the mortgage, and subject only to such conditions respecting title or evidence of title, or other matters, as it is necessary or proper to impose on the sale of that estate or as the Minister may permit to be imposed; and
- (b) in the case of sale by public auction, notice of intention to sell the mortgaged premises by public auction of the time, date and place of such auction, shall be published in three issues of the *Gazette* before the date of such auction:

Provided that a period of one month shall elapse between the date of the publication of the first notice and the date of the publication of the third notice.

(6) Where, in addition to being secured by a mortgage on one premises, an insured loan is also secured by a mortgage or charge or lien on other premises or other property, subsection (1) of this section, shall have effect as if references to a security included references to all securities for the loan, and as if references to premises included references to all premises and property on which the loan is secured.

(7) In the case of a loan made in a foreign currency, it shall be lawful for the Minister to make payments to the approved lender under the provisions of subsection (3) of this section in such foreign currency notwithstanding any loss accruing to the Minister as a result of an appreciation in the value of such foreign currency in terms of the currency of The Bahamas occurring since the date when the loan was insured under the provisions of this Act.

**24.** (1) The Minister shall continue to maintain the fund known as the Mortgage Insurance Fund (in this section referred to as “the Fund”) established under the provisions of the repealed Act, out of which all payments

Mortgage  
Insurance Fund

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required to be made by the Minister under section 23 of this Act shall be made, and into which all insurance fees received by the Minister under this Act shall be paid.

(2) The fulfilment of all the obligations of the Minister under section 23 of this Act shall be guaranteed out of the Consolidated Fund of The Bahamas and accordingly there shall be paid into the Fund from time to time out of the Consolidated Fund by warrant under the hand of the Minister of Finance such sums as may be necessary to increase the Fund to an amount which will enable the Minister to discharge those obligations.

(3) Whenever any sum is paid out of the Consolidated Fund under subsection (2) of this section, the Minister shall prepare a statement to be laid before the House of Assembly.

(4) Without prejudice to the provisions of subsection (2) of this section, where the Fund at the end of any financial year exceeds ten per cent of the total amount of loan insurance in force, the Minister shall apply the surplus towards —

- (a) firstly repaying to the Consolidated Fund all sums paid therefrom into the Fund in accordance with subsection (2) of this section; and
- (b) secondly repaying to the Treasury the equivalent of the sum of fifty thousand pounds advanced to the Fund in accordance with section 19 of the repealed Act.

(5) Subject to the provisions of subsection (4) of this section the Minister may from time to time invest in securities approved by the Governor-General such part of the liquid assets of the Fund as the Governor-General may approve.

(6) No payments shall be made out of the Fund except such payments as are authorised to be made by this Act.

(7) The Minister shall maintain and operate a bank account in the name of the “Housing Department Mortgage Insurance Fund Account” with a bank approved by the Governor-General into which there shall be deposited all moneys authorised by this section to be paid into the Fund and from which there shall be withdrawn all moneys authorised by this section to be paid out of the Fund.

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## PART IV AUDIT AND REPORT

**25.** (1) The Minister shall keep proper accounts and other records and shall prepare in respect of each financial year a statement of the accounts of the Minister in a form which shall comply with the best commercial standards.

Accounts, audit  
and statistics

(2) The accounts of the Minister shall be audited by auditors to be appointed in respect of each financial year by the Governor-General, and the auditors shall make a report on the accounts examined by them and on the statement of accounts prepared under subsection (1) of this section:

Provided that no person shall be qualified to be so appointed unless he is a member of one of the professional bodies of accountants established in the United Kingdom, Canada or the United States of America.

(3) As soon as the accounts of the Minister have been audited, the Minister shall lay before each House of Parliament a copy of the statement referred to in subsection (1) of this section and a copy of the report made by the auditors on that statement, and copies thereof shall be made available by the Minister to the public at a reasonable price.

*E L A O, 1974*

(4) The Minister shall compile and publish such statistics relating to his principal activities under this Act and to the provision of and demand for dwelling houses for ownership and occupation by families of low and middle incomes, as the Minister may consider necessary for the purposes of this Act.

*E L A O, 1974*

## PART V MISCELLANEOUS

**26.** (1) Any power conferred by this Act on the Minister to prescribe any matter or thing shall be exercised by the making of regulations.

Matters to be  
prescribed by  
regulations

(2) Without prejudice to any powers of the Minister under any of the provisions of this Act, the Minister may prescribe any of the following matters or things —

- (a) the forms to be used, the procedures to be followed, the information and documents to be

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- submitted, and the application fees to be paid, in and in connection with the making and securing of an insurable loan, the insuring of the loan, the making of advances to the borrower, the realisation of the security in the event of the borrower's default and the settlement of claims under the insurance policy;
- (b) the standards to be conformed to by approved building plots and by dwelling houses to be erected thereon with the assistance of insured loans; and plans, specifications and other documents and information to be furnished to the Minister in relation thereto;
  - (c) the service charges and other charges (other than interest on the principal sum), and the maximum amount thereof, which may be charged by the lender to the borrower under an insured loan;
  - (d) the inspections to be made of an approved building plot which is security for an insured loan and the stages in the course of construction of a dwelling house thereon at which such inspections shall be made; provision for securing the remedying of departures from the prescribed standards or agreed plans or specifications, and for requiring the withholding by the lenders of advances of loans from builders who fail to remedy such departures; and the forms to be used and the procedures to be followed;
  - (e) the circumstances in which and the extent to which the terms of an insured loan may be varied or waived;
  - (f) the maximum rate of interest which may be charged by the lender to the borrower upon an insured loan;
  - (g) the occurrences or any combination of occurrences which are to be deemed insurable risks for the purposes of this Act.
- (3) The Minister shall not be prevented by any regulations made under this Act from making any requirements which he is empowered by this Act to make and which is not inconsistent with those regulations.

**27.** (1) The Treasurer is hereby authorised to pay to the Minister such sums as the Minister may require on account of administrative expenses during any financial year.

Administrative expenses.

(2) The Minister shall maintain and operate a bank account in the name of the “Housing Department Administrative Expenses Account” with a bank into which the advances made under the authority of subsection (1) of this section shall be paid and from which all administrative expenses properly authorised by the Minister shall be met.

*E L A O, 1974*

**28.** Any notice or other document required or authorised to be given, delivered or served under this Act or regulations made thereunder may be given, delivered or served either —

Service of notices, etc.

- (a) by delivering it to the person to whom it is to be given or delivered or on whom it is to be served; or
- (b) by leaving it at the usual or last known address of that person; or
- (c) by sending it by registered letter, addressed to that person at his usual or last known address; or
- (d) in the case of an incorporated company or body, by delivering it to the secretary of the company or body at the registered or principal office of the company or body, or sending it by registered letter addressed to the secretary of the company or body at that office; or
- (e) if it is not practicable after reasonable enquiry to ascertain the name and address of a person to whom it should be given or delivered, or on whom it should be served, as being a person having any interest in the premises, by addressing it to him by the description of the person having that interest in the premises (naming them) to which it relates, and delivering it to some responsible person on the premises, or affixing it, or a copy of it, to some conspicuous part of the premises.

**29.** (1) If any person, in giving any information, making any application or claim or giving any notice for the purposes of any provision of this Act or of any regulation thereunder, makes any statement which he knows to be false in a material particular, or recklessly

Offence of giving false information.

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makes any statement which is false in a material particular, that person shall be liable on summary conviction to imprisonment for a term of three months or to a fine of three hundred dollars or to both such imprisonment and such fine.

(2) Where an offence under subsection (1) of this section has been committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

**30.** The Housing Act is hereby repealed:

Provided that any insured loan made or insured under or in accordance with the provisions of the repealed Act shall be deemed to have been made or insured under or in accordance with the corresponding provisions of this Act, and the provisions of this Act shall apply thereto accordingly, with such adaptations and modifications as the circumstances may require.

Repeal and  
saving.  
*17 cf 1960*