

CHAPTER 424

LIMITED DIVIDEND HOUSING COMPANIES

- 424.001 State role in housing and urban development.
- 424.01 Short title.
- 424.02 Finding and declaration of necessity.
- 424.03 Purpose, intent, and construction of chapter.
- 424.04 Supervision of housing construction.
- 424.05 Investigations by department.
- 424.06 Specific powers of department.
- 424.07 Housing projects must have department approval.
- 424.08 Department to fix maximum prices; basis of determination.
- 424.09 Actions by department for violations.
- 424.10 Incorporation; purpose; shares; articles.
- 424.11 Dividends limited.
- 424.12 No free securities to be issued.
- 424.13 Income debenture certificates; exchange for stock.
- 424.14 Limitations on powers of housing companies.
- 424.15 Bonds and mortgages of housing companies.
- 424.16 Surplus; accumulation and disposition.
- 424.17 Reduction of rentals with excess earnings.
- 424.18 Foreclosure actions; judicial sales.
- 424.19 Purchase of property of other limited dividend housing corporations.
- 424.20 Sales under judgments against housing companies.
- 424.21 Fees for services of department.
- 424.22 Duration of corporate existence.

424.001 State role in housing and urban development.—The role of state government required by part I of chapter 421 (Housing Authorities Law), chapter 422 (Housing Cooperation Law), chapter 423 (Tax Exemption of Housing Authorities), and chapter 424 (Limited Dividend Housing Companies) is the responsibility of the Department of Community Affairs; and the department is the agency of state government responsible for the state's role in housing and urban development.

History.—s. 18, ch. 69-106; s. 53, ch. 81-167; s. 56, ch. 83-55.

424.01 Short title.—This chapter shall be known as "Florida State Housing Law."

History.—s. 1, ch. 16028, 1933; CGL 1936 Supp. 4151(132).

424.02 Finding and declaration of necessity.—It is hereby found and declared by the Legislature to be necessary to provide housing for families of low income and in providing for such housing, being now otherwise impossible, that provision be made by law for the investment of private and public funds at low interest rates, acquisition at fair prices, of adequate parcels of land, and the construction of new housing facilities under public supervision in accord with proper standards of sanitation and safety, at a cost which will permit the rental or sale at prices which families of low income can afford to pay, to effectuate which there are created and established the agencies and instrumentalities hereinafter prescribed which are declared to be the agencies and instrumentalities of the state for the purpose of attaining the ends herein recited, and their necessity in

the public interest is hereby declared a matter of legislative determination.

History.—s. 2, ch. 16028, 1933; CGL 1936 Supp. 4151(133).

424.03 Purpose, intent, and construction of chapter.—The purpose and intention of the Legislature in the enactment of this chapter is to provide the necessary legislation for the creation of adequate facilities to make available to persons in Florida the benefits of the laws of the United States creating the ¹Reconstruction Finance Corporation and vesting it with power to make loans and advances for housing facilities; and it shall be liberally construed as vesting in the Department of Community Affairs all necessary authority to enable the department to make rules and regulations for the control, supervision, regulation, and promotion of the activities of housing companies in such manner as to be in accord with the requirements of the ¹Reconstruction Finance Corporation and the laws of the United States.

History.—s. 3, ch. 16028, 1933; CGL 1936 Supp. 4151(134); ss. 18, 35, ch. 69-106; s. 54, ch. 81-167; s. 57, ch. 83-55.

Note.—The Reconstruction Finance Corporation was abolished by s. 6(a) of the Reorganization Plan No. 1 of 1957.

424.04 Supervision of housing construction.—The Department of Community Affairs shall have and exercise power to:

(1) Control, regulate, and supervise, in accordance with the terms and provisions of this chapter, all housing companies authorized to be created and which may come into existence under this chapter; and

(2) Secure the construction of new housing facilities under public supervision, in accord with proper standards of sanitation and safety, at a cost which will permit the rental or sale of such housing facilities at prices which families of low income can afford to pay.

History.—s. 4, ch. 16028, 1933; CGL 1936 Supp. 4151(135); s. 161, ch. 71-377; s. 55, ch. 81-167; s. 58, ch. 83-55.

424.05 Investigations by department.—The Department of Community Affairs shall have power to investigate into the affairs of limited dividend housing companies incorporated under this chapter and into the dealings, transactions, or relationships of such companies with other persons. Any of the investigations provided for in this chapter may be conducted by the department. The department may administer oaths, take affidavits, and make personal inspections of all places to which its duties relate. The department may subpoena and require the attendance of witnesses and the production of books and papers relating to the investigations and inquiries authorized in this chapter, examine them in relation to any matter it has power to investigate, and issue commissions for the examination of witnesses who are out of the state, unable to attend before the department, or excused from attendance.

History.—s. 5, ch. 16028, 1933; CGL 1936 Supp. 4151(136); ss. 18, 35, ch. 69-106; s. 56, ch. 81-167; s. 59, ch. 83-55.

424.06 Specific powers of department.—In pursuance of its power and authority to supervise and regulate the operations of limited dividend housing compa-

nies incorporated under this chapter, the Department of Community Affairs may:

(1) Order any such corporation to make, at its expense, such repairs and improvements as will preserve or promote the health and safety of the occupants of buildings and structures owned or operated by such corporation;

(2) Order any such corporation to do such acts as may be necessary to comply with the provisions of the law, the rules and regulations adopted by the department, or the terms of any project approved by the department, or to refrain from doing any acts in violation thereof;

(3) Examine each such corporation and keep informed as to its general condition, its capitalization, and the manner in which its property is constructed, leased, operated, or managed;

(4) Through agents duly authorized by it, enter in or upon and inspect the property, equipment, buildings, plants, offices, apparatus, and devices of any such corporation and examine all books, contracts, records, documents, and papers of any such corporation and by subpoena duces tecum compel the production thereof;

(5) In its discretion, prescribe uniform methods and forms of keeping accounts, records, and books to be observed by such corporations and to prescribe by order accounts in which particular outlays and receipts shall be entered, charged, or credited;

(6) Require each such corporation to file with the department an annual report setting forth such information as the department may require verified by the oath of the president and general manager or receiver if any thereof or by the person required to file the report. Such report shall be in the form, shall cover the period, and shall be filed at the time prescribed by the department. The department may further require specific answers to questions upon which the department may desire information and may also require such corporation to file periodic reports in the form covering the period and at the time prescribed by the department;

(7) From time to time make, amend, and repeal rules and regulations for carrying into effect the provisions of this chapter.

History.—s. 6, ch. 16028, 1933; CGL 1936 Supp. 4151(137); ss. 18, 35, ch. 69-106; s. 57, ch. 81-167; s. 60, ch. 83-55.

424.07 Housing projects must have department approval.—No housing project proposed by a limited dividend housing corporation incorporated under this chapter shall be undertaken, and no building or other construction shall be placed under contract or started, without the approval of the Department of Community Affairs. No housing project shall be approved by the department unless the corporation agrees to accept a designee of the department as a member of the board of directors of the corporation.

History.—s. 6, ch. 16028, 1933; CGL 1936 Supp. 4151(138); ss. 18, 35, ch. 69-106; s. 58, ch. 81-167; s. 61, ch. 83-55.

424.08 Department to fix maximum prices; basis of determination.—The Department of Community Affairs shall fix the maximum rental or purchase price to be charged for the housing accommodations furnished by such corporation. Such maximum rental or purchase

price shall be determined upon the basis of the actual final cost of the project so as to secure, together with all other income of the corporation, a sufficient income to meet all necessary payments to be made by the corporation, as hereinafter prescribed; and such rental or purchase price shall be subject to revision by the department from time to time. The payments to be made by such corporation shall be:

(1) All fixed charges, and all operating maintenance charges and expenses which shall include taxes, assessments, insurance, amortization charges in amounts approved by the department to amortize the mortgage indebtedness in whole or in part, depreciation charges if, when and to the extent deemed necessary by the department; reserves, sinking funds and corporate expenses essential to operation and management of the project in amounts approved by the department.

(2) A dividend not exceeding the maximum fixed by this chapter upon the stock of the corporation allotted to the project by the department.

(3) Where feasible in the discretion of the board, a sinking fund in an amount to be fixed by the department for the gradual retirement of stock, and income debentures of the corporation to the extent permitted by this chapter.

History.—s. 7, ch. 16028, 1933; CGL 1936 Supp. 4151(139); ss. 18, 35, ch. 69-106; s. 59, ch. 81-167; s. 62, ch. 83-55.

424.09 Actions by department for violations.—

(1) Whenever the Department of Community Affairs is of the opinion that any such limited dividend housing company is failing or omitting, or about to fail or omit, to do anything required of it by law or by order of the department and is doing or about to do anything, or permitting or about to permit anything to be done, contrary to or in violation of law or of any order of the department, or which is improvident or prejudicial to the interests of the public, the lienholders, or the stockholders, it may commence an action or proceeding in the court of chancery of the county in which the company is located, in the name of the department, for the purpose of having such violation or threatened violation stopped and prevented by mandatory injunction. The department shall begin such action or proceeding by a petition and complaint to the court of chancery, alleging the violation complained of and praying for appropriate relief by way of mandatory injunction. It shall thereupon be the duty of the court to specify the time, not exceeding 20 days after service of a copy of the petition and complaint, within which the corporation complained of must answer the petition and complaint.

(2) In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings and without respect to any technical requirements. Such other persons or corporations as it shall seem to the court necessary or proper to join as parties in order to make its order or judgment effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that a mandatory injunction be issued as prayed for in the petition and complaint

or in such modified or other form as the court may determine will afford appropriate relief.

History.—s. 8, ch. 16028, 1933; CGL 1936 Supp. 4151(140); ss. 18, 35, ch. 69-106; s. 60, ch. 81-167; s. 63, ch. 83-55.

424.10 Incorporation; purpose; shares; articles.—

Any number of natural persons not less than three, a majority of whom are citizens of the United States, may become a corporation by subscribing, acknowledging, and filing with the Department of State articles of incorporation, hereinafter called "articles," setting forth the information required by s. 607.0202, except as herein modified or changed.

(1) The purpose for which a limited dividend housing company is to be formed shall be as follows: to acquire, construct, maintain, and operate housing projects when authorized by and subject to the supervision of the Department of Community Affairs.

(2) The shares of which the capital shall consist shall have a par value.

(3) Articles of incorporation shall contain a declaration that the corporation has been organized to serve a public purpose and that it shall remain at all times subject to the supervision and control of the Department of Community Affairs or of other appropriate state authority; that all real estate acquired by it and all structures erected by it shall be deemed to be acquired for the purpose of promoting the public health and safety and subject to the provisions of the State Housing Law; and that the stockholders of this corporation shall be deemed, when they subscribe to and receive the stock thereof, to have agreed that they shall at no time receive or accept from the company, in repayment of their investment in its stock, any sums in excess of the par value of the stock together with cumulative dividends at the rate of 6 percent per year and that any surplus in excess of such amount, if the company is dissolved, shall revert to the state.

History.—s. 9, ch. 16028, 1933; CGL 1936 Supp. 4151(141); ss. 10, 18, 35, ch. 69-106; s. 6, ch. 79-9; s. 61, ch. 81-167; s. 64, ch. 83-55; s. 132, ch. 90-179.

424.11 Dividends limited.—

No stockholder in any company formed hereunder shall receive any dividend, or other distribution based on stock ownership, in any one year in excess of 6 percent per annum except that when in any preceding year dividends in the amount prescribed in the articles of incorporation shall not have been paid on the said stock, the stockholders may be paid such deficiency without interest out of any surplus earned in any succeeding years.

History.—s. 10, ch. 16028, 1933; CGL 1936 Supp. 4151(142).

424.12 No free securities to be issued.—

No limited dividend housing company incorporated under this chapter shall issue stock, bonds, or income debentures, except for money, services, or property actually received for the use and lawful purpose of the corporation. No stock, bonds, or income debentures shall be issued for property or services except upon a valuation approved by the Department of Community Affairs; and such valuation shall be used in computing actual or estimated cost.

History.—s. 11, ch. 16028, 1933; CGL 1936 Supp. 4151(143); ss. 18, 35, ch. 69-106; s. 62, ch. 81-167; s. 65, ch. 83-55.

424.13 Income debenture certificates; exchange for stock.—

The articles of incorporation may authorize the issuance of income debenture certificates bearing no greater interest than 7.5 percent per year. After the incorporation of a limited dividend housing company, the directors thereof may, with the consent of two-thirds of the holders of any preferred stock that may be issued and outstanding, offer to the stockholders of the company the privilege of exchanging their preferred and common stock in such quantities and at such times as may be approved by the Department of Community Affairs for such income debenture certificates, the face value of which shall not exceed the par value of the stock exchanged therefor.

History.—s. 12, ch. 16028, 1933; CGL 1936 Supp. 4151(144); ss. 18, 35, ch. 69-106; s. 34, ch. 73-302; s. 63, ch. 81-167; s. 66, ch. 83-55.

424.14 Limitations on powers of housing companies.—

No limited dividend housing company incorporated under this chapter shall:

(1) Acquire any real property or interest therein unless it shall first have obtained from the Department of Community Affairs a certificate that such acquisition is necessary or convenient for the public purpose defined in this chapter.

(2) Sell, transfer, assign, or lease any real property without first having obtained the consent of the department, provided, however, that leases conforming to the regulations and rules of the department and for actual occupancy by the lessees may be made without the consent of the department. Any conveyance, encumbrance, lease, or sublease made in violation of the provisions of this section and any transfer or assignment thereof shall be void.

(3) Pay interest returns on its mortgage indebtedness and its income debenture certificates at a higher rate than 7.5 percent per annum.

(4) Issue its stock, debentures, and bonds covering any project undertaken by it in an amount greater in the aggregate than the total actual final cost of such project, including the lands, improvements, charges for financing and supervision approved by the department and interest and other carrying charges during construction.

(5) Mortgage any real property without first having obtained the consent of the department.

(6) Issue any securities or evidences of indebtedness without first having obtained the approval of the department.

(7) Use any building erected or acquired by it for other than housing purposes, except that when permitted by law the story of the building above the cellar or basement and the space below such story may be used for stores, commercial, cooperative or community purposes, and when permitted by law the roof may be used for cooperative or community purposes.

(8) Charge or accept any rental, purchase price, or other charge in excess of the amounts prescribed by the department.

(9) Enter into contracts for the construction of housing projects, or for the payments of salaries to officers or employees except subject to the inspection and revision of the department under such regulations as the department from time to time may prescribe.

(10) Voluntarily dissolve without first having obtained the consent of the department.

(11) Make any guaranty without approval of the department.

History.—s. 13, ch. 16028, 1933; CGL 1936 Supp. 4151(145); ss. 18, 35, ch. 69-106; s. 35, ch. 73-302; s. 64, ch. 81-167; s. 67, ch. 83-55.

424.15 Bonds and mortgages of housing companies.—Any company formed under this chapter may, subject to the approval of the Department of Community Affairs, borrow funds and secure the repayment thereof by bonds and mortgages or by an issue of bonds under trust indenture. The bonds so issued and secured and the mortgage or trust indentures relating thereto may create a first or senior lien and a second or junior lien upon the real property embraced in any project. Such bonds and mortgages may contain such other clauses and provisions as shall be approved by the department, including the right to assignment of rents and entry into the possession in case of default; but the operation of the housing project in the event of such entry by a mortgagee or receiver shall be subject to the regulations of the department under this chapter. Provisions for the amortization of the bonded indebtedness of companies formed under this chapter shall be subject to the approval of the department.

History.—s. 14, ch. 16028, 1933; CGL 1936 Supp. 4151(146); ss. 18, 35, ch. 69-106; s. 65, ch. 81-167; s. 66, ch. 83-55.

424.16 Surplus; accumulation and disposition.—The amount of net earnings transferable to surplus in any year after making or providing for the payments specified in s. 424.08(1), (2), and (3) shall be subject to the approval of the Department of Community Affairs. The amount of such surplus shall not exceed 15 percent of the outstanding capital stock and income debentures of the corporation, but the surplus so limited shall not be deemed to include any increase in assets due to the reduction of mortgage or amortization or similar payments. On dissolution of any limited dividend housing company, the stockholders and income debenture certificateholders shall in no event receive more than the par value of their stock and debentures plus accumulated, accrued, and unpaid dividends or interest, less any payments or distributions theretofore made other than by dividends provided in s. 424.11; and any remaining surplus or other undistributed earnings shall be paid into the general fund of the state or shall be disposed of in such other manner as the department may direct and the then Governor may approve.

History.—s. 15, ch. 16028, 1933; CGL 1936 Supp. 4151(147); ss. 18, 35, ch. 69-106; s. 66, ch. 81-167; s. 69, ch. 83-55.

424.17 Reduction of rentals with excess earnings. If in any calendar or fiscal year the gross receipts of any company formed hereunder should exceed the payments or charges specified in s. 424.08, the sums necessary to pay dividends, interest accrued or unpaid on any stock or income debentures, and the authorized transfer to surplus, the balance shall be applied to the reduction of rentals, unless the board of directors with the approval of the Department of Community Affairs deems such balance too small for the purposes.

History.—s. 16, ch. 16028, 1933; CGL 1936 Supp. 4151(148); ss. 18, 35, ch. 69-106; s. 67, ch. 81-167; s. 70, ch. 83-55.

424.18 Foreclosure actions; judicial sales.—

(1) In any foreclosure action, the Department of Community Affairs shall be made a party defendant; and such department shall take all steps in such action necessary to protect the interest of the public therein, and no costs shall be awarded against the department. Foreclosure shall not be decreed unless the court to which application therefor is made is satisfied that the interests of the lienholder or holders cannot be adequately secured or safeguarded except by the sale of the property. In any such proceeding, the court may make an order increasing the rental to be charged for the housing accommodations in the project involved in such foreclosure or appoint a receiver of the property or grant such other and further relief as may be reasonable and proper. In the event of a foreclosure sale or other judicial sale, the property shall, except as provided in subsection (2), be sold to a limited dividend housing corporation organized under this chapter, provided such corporation bids and pays a price for the property sufficient to pay court costs and all liens on the property with interest. Otherwise, the property shall be sold free of all restrictions imposed by this chapter.

(2) Notwithstanding the foregoing provision of this section, whenever it appears that a corporation which is subject to the supervision either of the Department of Insurance or the Department of Banking and Finance or the Federal Government or any agency or department of the Federal Government has loaned on a mortgage which is a lien upon any such property, such corporation shall have all the remedies available to a mortgagee under the laws of the state, free from any restrictions contained in this section, except that the Department of Community Affairs shall be made a party defendant and that such department shall take all steps necessary to protect the interest of the public and no costs shall be awarded against it.

History.—s. 17, ch. 16028, 1933; CGL 1936 Supp. 4151(149); ss. 12, 13, 18, 35, ch. 69-106; s. 68, ch. 81-167; s. 71, ch. 83-55.

424.19 Purchase of property of other limited dividend housing corporations.—Before any limited dividend housing corporation incorporated under this chapter purchases the property of any other limited dividend housing corporation, it shall file an application with the Department of Community Affairs in the manner hereinbefore provided as for a new project and shall obtain the consent of the department to the purchase and agree to be bound by the provisions of this chapter; and the department shall not give its consent unless it is shown to the satisfaction of the department that the project is one that can be successfully operated according to the provisions of this chapter.

History.—s. 18, ch. 16028, 1933; CGL 1936 Supp. 4151(150); ss. 18, 35, ch. 69-106; s. 69, ch. 81-167; s. 72, ch. 83-55.

424.20 Sales under judgments against housing companies.—In the event of a judgment against a limited dividend housing corporation in any action not pertaining to the collection of a mortgage indebtedness, there shall be no sale of any of the real property of such corporation except upon 60 days' written notice to the Department of Community Affairs. Upon receipt of such notice, the department shall take such steps as in its

judgment may be necessary to protect the rights of all parties.

History.—s. 19, ch. 16028, 1933; CGL 1936 Supp. 4151(151); ss. 18, 35, ch. 69-106; s. 70, ch. 81-167; s. 73, ch. 83-55.

424.21 Fees for services of department.—The Department of Community Affairs, in accordance with rules to be established by the rules of the department, may charge and collect from a limited dividend housing corporation incorporated under this chapter reasonable fees for:

(1) The examination of plans and specifications and the supervision of construction in an amount not to exceed 0.5 percent of the cost of the project;

(2) The holding of a public hearing upon application of a housing corporation in an amount sufficient to meet the reasonable cost of advertising the notice thereof and of the transcript of testimony taken thereat; and

(3) Any examination or investigation made upon application of a housing corporation and any act done by the department, or any of its employees, in the per-

formance of its duties under this chapter in an amount reasonably calculated to meet the expense of the department incurred in connection therewith.

In no event shall any part of the expenses of the department ever be paid out of the State Treasury. The department may authorize a housing corporation to include such fees as part of the cost of a project, or as part of the charges specified in s. 424.08 pursuant to rules to be established by the department.

History.—s. 20, ch. 16028, 1933; CGL 1936 Supp. 4151(152); ss. 18, 35, ch. 69-106; s. 71, ch. 81-167; s. 74, ch. 83-55.

424.22 Duration of corporate existence.—The corporate existence of any corporation authorized hereunder shall not extend beyond 25 years from the date of incorporation; and, promptly upon such termination, the corporation shall be liquidated and its assets distributed as provided herein, unless the incorporation board, by approval of the Department of Community Affairs, grants an extension for an additional period of time.

History.—s. 22, ch. 16028, 1933; CGL 1936 Supp. 4151(154); ss. 18, 35, ch. 69-106; s. 72, ch. 81-167; s. 75, ch. 83-55.