GOVERNMENT AND THE MORTGAGE DEBTOR 1940-1946

By Robert H. Skilton†

In times like the present, when real estate prices are spiraling upward, the market exhibits the factors and forces which threaten the future: the considerations which move purchasers of property to assume obligations beyond a reasonable capacity to pay. It is not so much the cash that is paid toward the price of real estate; it is rather the size of the mortgage assumed by the purchaser, that is important. Regardless of legal terminology, ownership of mortgaged land is not economically tenure in fee simple. The mortgagor is bound to his economic overlord, the mortgagee, by ties of debt which will tighten if his income diminishes.

Unfortunately, however, most people who are buying and mortgaging today have little choice. They would prefer to rent, at least for the present, but they must have shelter. If they cannot rent, they will buy. Their desperation will force them to accede to the seller's terms.

The basic factors that have accounted for the present situation in the real estate market probably were, and will continue to be, for the most part beyond the power of democratic Government effectively to control. Many of the causes are the inevitabilities of war—the increased concentration of peoples in urban areas; the shortage of building materials; the absence of replacement building for four years; the rise in the marriage rate; and many correlative factors, some of them psychic, of indescribable complexity.

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But Government, of course, because it is sensitive to popular demand, can never be an innocent bystander in the real estate situation. The real estate problem, and its product, the mortgage problem, are not, and cannot be, merely questions in private finance. They are most important political and social questions.

Whether its role is active or passive, whether it favors the mortgagor or the mortgagee, or sits precariously on a teetering fence, Government is a third party in every mortgage transaction. It may or may not insist on being consulted at the time a loan is placed. It may or may not extend a formal guarantee through the Federal Housing Administration, the Veterans Administration or another Federal agency. But the potential liability of Government is there, to be crystallized in the next depression, if, as and when.

Illustrative of the part of Government in the mortgage market is the record of its interventions in the decade 1929-1939. During this period the Government took steps to lighten the mortgage load that had been piling up in the so-called years of prosperity. Relief measures included moratory, deficiency judgment and refinancing measures. In addition, there was a large body of mortgage reform legislation, enacted for the purpose of effecting permanent improvements in mortgage finance practices.

The history of the interventions initiated in the prior decade continues into the years 1940 to 1946. Even today, the bailing-out process has not been completed. Government is beset with vast new problems in the mortgage market before it has had time to give the old ones a decent burial. In fact, one may wonder whether the old ones are thoroughly dead.

I. VESTIGES OF THE PRIOR DECADE

A. Moratory Legislation

In spite of their professedly temporary character, the moratoria of 1932 and 1933 exhibited a remarkable vitality. In 1938, however, these legislative moratoria had passed their peak, and by 1940 most legislatures let the legislation lapse by failure to pass the necessary periodic renewals.

The courts soon took care of most of the balance. At the end of the decade we note a growing judicial tendency to lose patience with further legislative extension of moratoria. It was not enough for legislatures to declare in their preambles that an emergency continued to exist. If such declarations were contrary to facts, they would not suffice, and the courts reserved the right of fresh inquiry. No better illustrations of the economic aspects of constitutional law could be
found than these examples of judicial review. The question before the court was, under the facts did the legislature have the right to find that the economic emergency continued into the period covered by the renewal of the moratorium?

In *Jefferson Standard Life Ins. Co. v. Noble et ux.*,\(^1\) the Supreme Court of Mississippi declared unconstitutional further application of the state moratorium, which had been passed in 1934 and extended in 1936 and 1938.\(^2\) Justice McGowen, speaking for the Court, declared:

> "Resorting to departmental reports of this State and of the Federal Government, we take judicial knowledge of conditions existing at the time of the passage of the Moratorium Laws of 1938. . . ." \(^3\)

There followed a comparative analysis of statistical data for 1933 to 1938, and the conclusion

> "The theory of the Moratorium Law, upon which it ran the Constitutional gauntlet, was that upon equitable principles, the postponement of a foreclosure in pais was permitted to be operative only while, and so long as, the public emergency existed. It cannot be gainsaid, it cannot be controverted, that in the absence of a public emergency, the restrictions imposed upon the mortgagee by the passage of a Moratorium Law every two years authorizing the chancery court to postpone the enforcement of a valid contract as to foreclosure, in effect, denied the mortgagee its remedy and so hampered it with conditions or restrictions as seriously to impair the value of the right to collect its debt by foreclosure, is the situation which confronted the mortgagee when the motion to dissolve the injunction herein was presented; extensions were so continuous as to make the remedy, in reality, a shadow. We are led to the irresistible conclusion, on the basis of our judicial knowledge, that when the Legislature passed the Moratorium Law of 1938 no public emergency existed in this State. There was no longer a crisis. There was no longer a catastrophe. There was no longer reason, truth or facts, to justify its reenactment."

The attitude of the Mississippi Court may be taken as representative of a turn in judicial thinking as conditions continued to improve. In *Pouquette v. O'Brien*,\(^4\) the Supreme Court of Arizona invalidated the state moratorium, originally passed in 1933 and periodically renewed in 1935, 1937 and 1939.\(^5\) The legislature’s failure to set forth

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1. 185 Miss. 360, 188 So. 289 (1939).
3. 185 Miss. 360, 188 So. 289, 291 (1939).
4. 55 Ariz. 248, 100 P. (2d) 779 (1940).
5. Ariz. Laws 1933, c. 29; Ariz. Laws 1935, c. 9; Ariz. Laws 1937, c. 8; Ariz. Laws 1939, c. 34.
the existence of an emergency in the 1937 and 1939 acts probably did not influence the court. In *First Trust Joint Stock Land Bank of Chicago v. Arp*, the Supreme Court of Iowa held that the emergency supporting the Iowa statute, in force since 1933, had passed. It was stated:

"Emergency in order to justify the intervention of the reserve police power must be temporary or it cannot be said to be an emergency. If a so-called emergency exists beyond a temporary period then it is no longer an emergency but a status and can furnish no basis or authority for legislative action in contravention of or inconsistent with the provision of the State and Federal constitutions.

It must be conceded, as we held in the Nordholm case that an emergency existed in 1933, sufficient to sustain the Act of the Legislature in enacting the so-called Moratorium Act, but it cannot be said that by reason of such conditions moratorium acts could be re-enacted covering a period of six years, as has been the case in this State. In the instant case the record shows, without controversy, that practically all of the depressed conditions existing in 1933, do not exist at this time. And the court can and does take judicial notice of such fact."

A similar case was *H. O. L. C. v. Oleson*, in which the South Dakota moratorium, initiated in 1933 and extended in 1935, 1937, 1939 and 1941, was terminated by judicial decree. Once again judges took judicial notice of matters indicating that the economic emergency had passed.

While the above decisions may be taken as more or less representative, there was the same diversity of opinion among these judges who extemporized their economics as may be found among economists who are not judges. In *Onsrud v. Kenyon*, for example, the Supreme Court of Wisconsin declined to invalidate the state moratorium.

Emphasis was placed upon the legislative finding of the continuance of an emergency, and the recital in the statute of facts (or alleged

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7. 225 Iowa 1331, 1334, 283 N. W. 441, 443 (1939), cited supra note 6.

8. 68 S. Dak. 435, 3 N. W. (2d) 880 (1942).


10. Earlier decisions, precursors of these cases holding acts unconstitutional on the ground of changed economic conditions, were: Kansas City Life Ins. Co. v. Anthony, 142 Kan. 670, 52 P. (2d) 1208 (1935); *First Trust Co. of Lincoln v. Smith et al.*, 134 Neb. 84, 277 N. W. 762 (1938).

11. 227 Wis. 496, 300 N. W. 359 (1941).

12. Wisconsin moratorium extended to April 1, 1941, Wis. Laws 1939, c. 38; extended to April 1, 1943, with moratorium limited to mortgages on homes, Wis. Laws 1941, c. 31.
facts) tending to support the finding. The statement, as found in the 1939 statute, went as follows:\textsuperscript{13}

"... a public economic emergency does, and continues to, exist in the state of Wisconsin. A widespread drought within the state has aggravated and made more serious the conditions already existing. This economic emergency has deprived thousands of people in this state of employment, has necessitated the expenditure of many millions of public funds within this state to prevent starvation, has thrown the burden of support of thousands on the state and nation, has destroyed property values, and has caused many of the people of this state to lose their homes, their farms and their places of business by foreclosure of mortgages or execution upon judgments, and threatens the loss of homes, lands and business which furnished those in possession the necessary shelter and means of subsistence and livelihood, and resulting in increasing burdens on the state."

The court also placed some emphasis on evidence in the record that farm lands values in 1940 were still but eighty-four per cent. of pre-World War I values, and but half of 1921 values. "We cannot say," the majority opinion observed, "that the legislature had no rational basis for its declaration that the economic emergency and the conditions stated in subsec. (1) of sec. 281.22 Stats., did continue to exist and necessitate the reenactment of the act in question.”

Justice Fowler dissented:\textsuperscript{14}

"It is implied in the Blaisdell case ... that if the emergency that forms the basis of a moratorium statute has expired when a case coming under its terms is tried the statute cannot be applied. It seems to me that the evidence in this case, received without objection, shows beyond reasonable controversy that in January, 1941, when the instant case was decided by the circuit court the emergency of 1932 that resulted in the original enactment of sec. 281.22 (4) Stats. had passed. If the legislature in 1939 and 1941 had had before it this evidence, it could not have reasonably considered that the emergency of 1932 still continued or that any emergency in the farm situation existed in 1939 or 1941. It is quite true that the situation of farmers who bought lands in the 1920's when prices were nearly double the norm of 1910 to 1914, and encumbered them for half or more of the purchase price, is now deplorable. But their condition is permanent, not temporary.”

Some vindication of Justice Fowler’s views may be seen in the fact that the Wisconsin legislature failed to renew the moratorium in 1943.

\textsuperscript{13} Wis. Laws 1939, c. 38.
\textsuperscript{14} 238 Wis. 496, 508, 300 N. W. 359, 364 (1941), cited supra note 11.
The New York moratory legislation now remains as the principal survivor. Officially a mortgage emergency still exists in New York State, for the legislature declares it to be so, and the courts are unwilling to gainsay the fact or fiction behind the allegation. It is, of course, possible to reconcile the decisions of all courts passing on the constitutional problem by stating that their decisions depended upon the economic conditions existing in their particular state at the time of the inquiry. That would be a rational explanation, and there is probably much truth in it. Certainly the depression had different degrees of intensity and duration in different parts of the country. It would also be possible to reconcile the decisions (at least superficially) by stating that the findings of fact of legislatures are regarded with more solemnity by some courts than others. But one may also assume that the personal economic predelections of men on the bench had a subtle part to play.

The original New York moratorium was enacted in 1933 and every year thereafter the legislature has extended it for another year (except in 1941 when a two year extension was granted). The New York moratorium has been on principal defaults only, and a scale-down stipulation in recent extensions has obliged mortgagors covered to reduce the principal obligation by paying one per cent. per annum in the years July 1, 1942 to July 1, 1944, two per cent. per annum for the ensuing year, and, since July 1, 1945, three per cent. per annum. The moratorium has been extended until July 1, 1947, and there is some fair indication that it may serve to bridge the gap into the next depression.

The justification of the moratorium, as set forth by the legislature in the statutes, is the continued existence of an emergency in the mortgage market. In recent years the legislature has officially recognized that the characteristics of the emergency have been undergoing some changes. The deflationary and unemployment characteristics of the 1933 version (as set forth in the original legislative declaration) have been re-portrayed to highlight some new developments, such as the presence of many citizens in the armed forces, the disproportionate rise in maintenance and repair costs, the imposition of ceilings on rents—giving an inflationary flavor to the emergency.

In *Klinke v. Samuels* the New York Court of Appeals had upheld the constitutionality of the original act, and for authority had

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16. 264 N. Y. 144, 190 N. E. 324 (1934).
relied heavily on the *Blaisdell*\(^{17}\) case. After some years of pained silence, mortgagees, encouraged by the changing attitude of other courts, renewed a frontal attack on the moratorium in 1944. In *East New York Savings Bank v. Hahn*,\(^{18}\) it was argued that the extension of the moratorium, as provided by Chapter 93 of the Laws of 1943, was unconstitutional. The plaintiff presented evidence to prove that no real mortgage crisis existed in New York in 1944. The Supreme Court of Kings County decided that the Act was constitutional. There was evidence, Justice Fennelly held, to support the legislative finding of the continued existence of an emergency:\(^{19}\)

"The mortgage market is, of course, inseparably connected with the real estate market. Testimony was submitted by plaintiff that can well be credited, that the real estate market in 1943 was active and gave indications of being more active in 1944. The testimony shows and it is a matter of common knowledge, that much foreclosed institutional real estate has been liquidated. For the purpose of collecting and distributing mortgage and real estate information to the Savings Banks supporting the service, New York State is divided into groups. Group 5 embraces Long Island and Staten Island. The chief statistician of this group prepared figures showing real estate holdings of this group that resulted from mortgage investments. The figures show that member banks in Brooklyn had an overhang of real estate as of the end of 1939 of $49,360,469; and as of January 1, 1944, of $17,105,680. In Queens the figures were (Plaintiff’s Ex. 6) at the end of 1939, $9,808,417; as of January 1, 1944, $3,857,742. In Nassau the figures were at the end of 1939 $2,487,143; and as of January 1, 1944, $495,952. There is still to be liquidated and was at the time of the commencement of this action, a considerable amount of real estate held by savings banks, insurance companies, Home Owners’ Loan Corporation and the trustees of estates. Not until the holding of these unwilling owners of real estate have been reduced, so that they are no longer a factor in competition of those, who willingly acquired real estate and are willing but not forced to sell, can it be said that there is a normal real estate market."

The court offered this solace to the plaintiff:

"Plaintiff’s counsel advances the argument that no alleged emergency of eleven years’ duration can be considered temporary. But time is relative. . . ."

Justice Fennelly’s opinion raises the question: does the constitutional provision forbidding the impairment of the obligation of con-

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19. Id. at 864, 51 N. Y. Supp. at 498.
tracts operate to prevent a legislative moratorium only in a normal real estate market? If so, what is meant by a normal market? Is a normal market one without any factor of liquidation? A seller's dream of an economic utopia? Are all times emergencies but those?

Apart from constitutional interpretation, the decision also raises a basic question in economic policy. In a period of spiraling land values, do we not need the compensating downward factor of some forced liquidation to deter inflationary forces?

A final question in fairness and justice is presented. Is it fair and just to compel particular creditors covered by the statute to wait indefinitely for their money when all other creditors may sue and levy? Is it fair to pamper a particular class of debtors covered by the statute, especially in these times when only the abysmally insolvent are unable to refinance?

If the legislature or the courts of New York are unable to terminate their moratorium soon, they will presently come to a situation where the memory of man runneth not to the contrary.

With such provocative questions before them, the Court of Appeals of New York and the Supreme Court of the United States affirmed, and without any apparent hesitation. It is easy to indulge in the presumption that a legislative finding that an emergency continues to exist is justified; but if a court is not to surrender its power of review, must it not pierce the legislative veil to determine whether gods or men are speaking?

The significance of the decision of the Supreme Court of the United States, as explained by Mr. Justice Frankfurter in his opinion, lies in the deference that must be paid to state legislatures and governors in determining whether or not there is an economic need and justification for moratory legislation:

"Appellant asks us to reject the judgment of the joint legislative committee, the Governor, and of the Legislature, that the public welfare, in the circumstances of New York conditions, requires the suspension of mortgage foreclosures for another year. On the basis of expert opinion, documentary evidence, and economic arguments of which we are to take judicial notice, it urges such a change in economic and financial affairs in New York as to deprive of all justification the determination of New York's legislature of what New York's welfare requires. We are invited to assess not only the range and incidence of what are claimed to be determining economic conditions insofar as they affect the mortgage market—bank deposits and war savings bonds; increased pay rolls and store sales; available mortgage money and rise in

real estate values—but also to resolve controversy as to the causes and continuity of such improvements, namely the effect of the war and of its termination, and similar matters. Merely to enumerate the elements that have to be considered shows that the place for determining their weight and their significance is the legislature and not the judiciary."

The legal approach is thus summarized:

"The Blaisdell case and decisions rendered since (e. g., Honeyman v. Jacobs, 306 U. S. 539; Veix v. Sixth Ward Assn., 310 U. S. 32; Gelfert v. National City Bank, 313 U. S. 221; Faitoute Co. v. Asbury Park, 316 U. S. 502), yield this governing constitutional principle: when a widely diffused public interest has become enmeshed in a network of multitudinous private arrangements, the authority of the State 'to safeguard the vital interests of its people', 290 U. S. at 434, is not to be gainsaid by abstracting one such arrangement from its public context and treating it as though it were an isolated private contract constitutionally immune from impairment."

The question involved, therefore (unlike other protective clauses of the Constitution) is essentially a political, rather than a judicial, one; and, provided it appears that the legislature has really deliberated about the problem, it would not be right to abstract "one such arrangement from its public context."

B. Deficiency Judgment Legislation

The decision of the United States Supreme Court in Gelfert v. National City Bank, upholding the constitutionality of the permanent anti-deficiency judgment legislation of New York, is a landmark in the progress of attempts to place restraints upon the mortgagee's ability to hold the mortgagor personally liable upon default.

Largely as a result of this decision, state courts subsequently passing upon the constitutional problem have tolerated the legislation. In Fidelity-Philadelphia Trust Co. v. Allen, the Pennsylvania Supreme Court upheld the constitutionality of the 1941 Pennsylvania Deficiency Judgment Act, after previous legislative efforts in 1934, 1935 and 1937 had failed to receive the necessary judicial approval. A per curiam opinion explained the decision. Another illustration of the influence of the Gelfert decision is Alliance Trust Company v. Hill, a 1945 decision of the Supreme Court of Oklahoma. The Court, by a five to three vote, upheld the constitutionality of the state Deficiency Judgment Act of 1941. The majority opinion rested heavily

22. Id. at 232.
25. 196 Okla. —, 164 P. (2d) 984 (1945).
on the *Gelfert* case, and on the propriety of construing the obligation of contracts clause in the state constitution in the same way as its Federal progenitor. The minority opinion dissented on the ground that state courts must exercise independent judgment in determining the meaning of state constitutional provisions; and that the exercise of such independent judgment would lead to a conclusion of unconstitutionality under the state clause. In this perennial legal battle between mortgagor and mortgagee, each side resorts to whatever arguments it can lay its hands on.

Now that the smoke of constitutional controversy in Pennsylvania has lifted, the operation and administration of the deficiency judgment statute seem to be fairly satisfactory. It has not imposed undue burdens upon creditors, and has no doubt effected an improvement in the debtor's position. After the decision of the Pennsylvania Supreme Court in the *Allen* case, there was a considerable processing of petitions for the assessment of fair value. In Philadelphia County the number ran into a few thousand. But the vast majority of creditors coming within the terms of the Act lost all rights against their judgment debtors by failure to take the prescribed action. These debtors are now regarded as having paid in full; and debtors are entitled to have the judgments against them satisfied of record.

Of the cases processed for determination of fair value upon motion of the judgment creditor, only a few actually went to a hearing. In the bulk of the cases the creditor, for failure of the debtor to appear, was entitled to a determination in accordance with his own estimate of the fair value of the security acquired. While in such cases it may be assumed that the typical creditor did not overestimate the fair value of the security, the debtor was at least benefited by the statute to the extent that the balance assessed against him was less than under former procedure, where normally he was credited only with the nominal price bid by the mortgagee at sheriff's sale.

Philadelphia mortgagees have displayed little interest in attempting to obtain deficiency judgments in the last three years. The reasons are obvious but deserve presentation. In the first place, there have been, comparatively speaking, only a few foreclosures, and most of these have been the hopeless cases where deficiency judgments against the debtor would be valueless. In the second place, bidding at sheriff's

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26. The peak seems to have been reached in the March, 1942 Term. Special motion lists were established for Fair Market Value Petitions, in Common Pleas Courts 1 to 5, inclusive. The number of petitions coming up on the motion lists of these courts in the March term is estimated to be approximately 2200. The number slumped rapidly after the March term.


28. Estimated number of foreclosures in Philadelphia County: 1940—4200; 1941—3000; 1942—2400; 1943—1400; 1944—1350; 1945—1100; 1946—1000. To compare
sales has picked up perceptibly (although such factors as the mortgagor’s advantageous position as a bidder are still discouraging competition, and tend to make sheriff’s sale prices, on the average, considerably under current market prices).

A study of sheriff’s sale bidding in recent years reveals the usual tendency for bidding to hover around the nominal except where a bidder appears who is willing to and does bid above the amount of the claim that precipitated the foreclosure. Such bidders have appeared fairly frequently in the last six years.

<table>
<thead>
<tr>
<th>Month</th>
<th>Per Cent Where Bid</th>
<th>Per Cent Where Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 41</td>
<td>75%</td>
<td>4%</td>
</tr>
<tr>
<td>January 42</td>
<td>78%</td>
<td>6%</td>
</tr>
<tr>
<td>January 43</td>
<td>65%</td>
<td>10%</td>
</tr>
<tr>
<td>January 44</td>
<td>60%</td>
<td>11%</td>
</tr>
<tr>
<td>January 45</td>
<td>66%</td>
<td>19%</td>
</tr>
<tr>
<td>January 46</td>
<td>39%</td>
<td>34%</td>
</tr>
</tbody>
</table>

The reappearance of the competitive bidder at sheriff’s sales, after an absence of more than a decade, is only another instance of desperate buying that is forcing real estate prices up. The fact that most properties continue to sell for less than the claim is convincing evidence that only the dregs of real estate are being foreclosed.

**ANALYSIS OF BIDDING AT SHERIFF’S SALES IN PHILADELPHIA COUNTY**

<table>
<thead>
<tr>
<th>Month</th>
<th>Less than 10%</th>
<th>10% - 20%</th>
<th>20% - 30%</th>
<th>30% - 40%</th>
<th>40% - 50%</th>
<th>50% - 60%</th>
<th>60% - 70%</th>
<th>70% - 80%</th>
<th>80% - 90%</th>
<th>90% - 100%</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan. ’41</td>
<td>197</td>
<td>22</td>
<td>10</td>
<td>6</td>
<td>5</td>
<td>1</td>
<td>6</td>
<td>3</td>
<td>3</td>
<td>11</td>
<td>263</td>
</tr>
<tr>
<td>Jan. ’42</td>
<td>227</td>
<td>21</td>
<td>7</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>5</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>18</td>
</tr>
<tr>
<td>Jan. ’43</td>
<td>85</td>
<td>12</td>
<td>6</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>7</td>
<td>4</td>
<td>3</td>
<td>0</td>
<td>13</td>
</tr>
<tr>
<td>Jan. ’44</td>
<td>62</td>
<td>8</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>3</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>Jan. ’45</td>
<td>56</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>16</td>
<td>83</td>
</tr>
<tr>
<td>Jan. ’46</td>
<td>36</td>
<td>8</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>32</td>
</tr>
<tr>
<td>Oct. ’46</td>
<td>19</td>
<td>7</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>5</td>
<td>2</td>
<td>1</td>
<td>14</td>
</tr>
</tbody>
</table>

with other years, see SKILTON, GOVERNMENT AND THE MORTGAGE DEBTOR 1929-1939 (1944) 40. Estimates were obtained by discounting the total number of writs issued, by ten per cent. for the years 1940 to 1945, inclusive, and by twenty-five per cent. for the year 1946. In the last year a check indicates that the percentage of writs actually going to sale has fallen off considerably.

28a. Data obtained by count of prices bid at sheriff’s sales in Philadelphia County, and comparison with amounts of claims on sheriff’s sale listings. Prices bid at sheriff’s sales and amount of lien claims are published monthly in the Philadelphia Legal Intelligencer.
In dealing with problems arising out of the deficiency judgment legislation, Pennsylvania courts are interpreting the provisions broadly to accomplish the object of protecting the debtor against hardship. Their dicta as well as decisions indicate wholehearted acceptance of the new procedures—exhibiting the zeal of a late convert. The legislation has been applied liberally: to judgments in personam on a mortgage debt as well as judgments in rem;\(^{29}\) to judgments in tort as well as in contract;\(^{30}\) to prevent subrogation on account of unpaid taxes;\(^{31}\) to prevent further sales of real estate tracts covered by a single mortgage where action to establish the deficiency judgment was not taken within six months after the sale of the tract levied upon.\(^{32}\)

In dealing with the perplexing problem of determining the "fair value" of property, there seems to be a disposition to let the lower court judges trying the cases have full latitude, unhampered by any real restraint by the upper judicial echelons. In the only appellate court decision dealing with the question of proper appraisement under the Act,\(^{33}\) it was held that a judge did not commit reversible error in making his own inspection of the premises involved, and in making his own interpretations, although he was bound to base his decision on the evidence as found in the record. It was said:\(^{34}\)

“In an appeal from an order fixing the fair value of mortgaged premises under the Act of 1941 . . . review of this Court is limited to a determination of whether the evidence is sufficient to sustain the findings of the court below, and whether there is reversible error of law. The proceedings are purely statutory, and as the legislature has not provided for appellate review, an appeal is in the nature of certiorari in the broadest sense.”

The latitude of the trial judge and the considerations that should influence him within that latitude are thus presented:\(^{35}\)

“It is contended that the court below substituted its own judgment, arbitrarily, for that of the real estate experts because it found a wide variance in their testimony. Despite unfortunate statements of the trial judge which are the basis for this contention, it is most apparent that he merely exercised his proper function of evaluating all of the testimony, including the opinions of the

30. Ibid.
34. Id. at 342, 37 A. (2d) at 734.
35. Id. at 343, 37 A. (2d) at 735.
experts, and determining the fair value on the whole record. He
was not bound to adopt the opinion of any one expert, or group
of experts.

Appellant objects that no consideration was given by the court
to the offer of sale, and that the decree was based entirely
upon the testimony as to gross rentals. The offer, unquestion-
ably, had evidentiary value, but it was not conclusive of the fair
value of the premises at the time of the sheriff's sale. The Act
of 1941 requires the court to determine the 'fair market value'
of the premises, without defining such value. This phrase has, how-
ever, been interpreted by this Court to mean the price which the
property would bring at a fair sale between parties dealing on
equal terms. See Appeal of Pennsylvania Company, etc., 282 Pa.
69, 127 A. 441. Many elements properly enter into the deter-
mination of 'fair market value'. Among these are recent sales of
real estate of comparable location and description: Serals v. School
District, 292 Pa. 134, 140 A. 632. No evidence of such sales was
offered in this case. Other factors of value include: (1) the uses
to which the property is adapted and might reasonably be applied:
Appeal of Pennsylvania Com., etc., supra; (2) the demand for the
property and similar properties, taking into consideration economic
conditions which depress market value in its true sense and detri-
mentally influence such demand: Metropolitan Edison Co.'s Ap-
peal, 307 Pa. 401, 161 A. 303; (3) the income produced by the
property, including rents, and (4) generally, all elements which
affect the actual value of property and therefore influence its fair
market value: Metropolitan Edison Co.'s Appeal, supra."

In dealing with this mixed question of fact and law—fair value—
where admittedly even the most expert of real estate appraisers must
feel at times that they are not very far above the "look-spit-and-guess"
technique, it would not be surprising if occasionally lower court judges
took some very original approaches. There is even evidence that in
one case a judge determined the fair value of property by averaging
the minimum estimates of all witnesses for plaintiff and defendant,
without regard to the number on each side. Such practice, if it be-
came general, would encourage quantity rather than quality.

In the last five years, no additional states have passed deficiency
judgment legislation. Such neglect is to be regretted, since whatever
the faults and failings of the legislation, it does tend to bring about
results more equitable and realistic than the possibilities of double
collection inherent in other procedures. The neglect is probably at-
tributable largely to concentration on pressing problems of war and
peace; but the fact that we are now in creditor times is also important.
Deficiency judgment legislation is debtor legislation. Proposals for

mortgage reform in times like the present tend to emphasize provisions attractive to lenders, to induce more capital to enter the mortgage field. In New Jersey, for example, which has long had legislation protecting mortgage debtors more fully than the procedure of most states, there is a movement under way to streamline the law in favor of the mortgagee.\(^3\) Here once more we have an instance of the truth that changing times make changing law.

C. The Home Owners Loan Corporation

A distinguished beneficiary of the rising real estate cycle has been the Home Owners Loan Corporation. That Corporation, a child of the chill depression, is now spending its autumnal days in sunny weather. When created, it was generally conceded that the Corporation would have to sustain real losses—at least a half billion dollars—in its salvage operations, since its mortgages were intentionally granted on high levels of property valuation. In the years 1933 to 1940, considerable losses were sustained through defaults, and the payment of sums incident to property acquisitions, delinquent taxes, foreclosure costs, reconditioning expenses. In the years 1940, 1941 and 1942, foreclosure operations steadily declined (13,091 in 1941, 3,429 in 1942) and in 1943 and 1944, in accordance with general experience, slumped close to zero.\(^3\) New acquisitions of property (and ergo new costs) ceased to be of real significance. On the other hand, properties already acquired were rapidly sold. In July, 1941, H O L C had 43,933 properties, valued on its books (mortgage value, delinquent interest, acquisition charges, etc. included) at $298,165,000. One year later, it had 34,672 at $250,126,000; two years later, 23,728 at $179,103,000; three years later, 4,232 at $28,771,000, and in July, 1945, 613 at $3,522,000.\(^3\) The real estate operations of H O L C had, temporarily at least, drawn virtually to a close. In the handling of this real estate, representing the security on the defaulted one-fifth of its mortgages, H O L C had, from its inception, sustained realized losses of well over $300,000,000. These losses were offset by cumulative net earnings of over $250,000,000.

During this period mortgage holdings of the Corporation were also rapidly reduced. Wartime income enabled many mortgagors to accept the Corporation's invitation to make substantial payments on principal. In addition, many mortgages were paid in full, probably chiefly in connection with transfers of the real estate involved. At the


\(^{38}\) Federal Home Loan Bank Administration, Tenth Annual Report (1941), p. 32.

\(^{39}\) (1945) II Federal Home Loan Bank Review 371.
end of the fiscal year 1940-1, the Corporation held mortgages amounting to approximately $1,800,000,000; a year later, $1,670,000,000; the same two years later; thereafter the amount diminished rapidly: June 30, 1943, $1,441,153,110; June 30, 1944, $1,220,105,824; June 30, 1945, $945,000,000; June 30, 1946, $735,000,000.40 In October, 1946, H O L C was well over three-fourths liquidated. The end was in sight.

H O L C authorities are now freely predicting that the operation will result in not one dollar lost to the Government; that, in fact, not only will the nation's $200,000,000 investment be repaid in full, but that there will be some small return for interest as well. These happy predictions may prove to be true. The complete stripping of its real estate portfolio, and the appreciation of the real estate market, leave H O L C with virtually no defaulted mortgages and fair assurance that there will be few in the immediate future. Realized losses (after deduction of net earning) had reached a high of $106,879,441 at the end of the fiscal year 1943-1944.41 But smoother years were ahead with only solvent investments to manage. Steady mortgage interest return of 4½%,42 and a drastic reduction in interest payments on H O L C bonds through a refinancing operation in May 1944, enabled the Corporation to clear approximately $23,000,000 in the fiscal year 1944-45.43 It is estimated that $17,000,000 was netted in 1945-46. Realized losses are now reduced to approximately $65,000,000. Projecting present experience into the next ten years offers promise that H O L C operations will eventually recoup all losses. Such projection assumes, however, that there will be no further defaults of consequence in existing mortgages and that they will eventually be repaid in full. It is also assumed that Congress will not decree precipitous liquidation before orderly recoupment of losses is possible. Whether such assumptions are too sanguine remains for the future. This is at least clear: if H O L C loses any money in final liquidation, the amount will be trifling indeed in comparison with the magnitude of its undertaking.

II. NEW LINES OF INTERVENTION

A. The Federal Housing Administration

From the standpoint of its primary objectives as they were conceived to be during its formative years, the activities of the Federal Housing Administration in the last five years have not been entirely

42. Id. at 27.
consistent. To the extent that a public body may be said to have defined objectives, the objectives of the Federal Housing Administration have been to further the financing of sound, moderately priced urban construction for owner-occupancy—properties having promise of long-run desirability and utility. Upon this established purpose was superimposed a program to expedite private construction for the specialized purpose of providing shelter for defense workers: the objective being the immediate and pressing one of national defense. Like others, F H A had been drafted to win the war, taken from its setting and put upon a new course of action. If F H A did not emerge from the conflict without some blows received as well as given, it was hardly to blame. F H A was injected into the special purpose war housing field by the Act of March 28, 1941.44 The National Housing Act was amended by addition of a new Title VI, authorizing the Administrator to insure mortgages, in a total amount not to exceed $100,000,000, and in an individual amount not to exceed $4000 for single-family dwellings, $6000 for two-family, $8000 for three-family, and $10,500 for four-family dwellings. All mortgages were to be amortized, with a maturity date not to exceed twenty years. The principal obligation was to be in an amount not to exceed ninety per cent. of the “appraised value (as of the date the mortgage is accepted for insurance) of a property urban, suburban, or rural . . . which is approved for mortgage insurance prior to the beginning of construction . . .” The property covered by the insurance was to be in an “area or locality in which the President shall find that an acute shortage of housing exists or impends which would impede national-defense activities.”

Provision of a special program for private financing, thus initiated, was merely one facet in a many-sided Federal program for the housing of the families of defense workers. As usual, the Government was forced by the dictates of expediency to run with the hare and hunt with the hounds. The housing aspects of defense and war were conducted on a share-the-program basis. Under the aegis of U S H A and later of N H A, the Federal Government undertook a huge program of public works to fill the housing needs of war workers and their families on a rental basis (low to the point of subsidy) but sufficient materials were also allocated to facilitate considerable private construction under F H A auspices. War housing was justified in that the entire program of national defense production depended on a semi-voluntary labor market. If labor was to be drawn to defense centers, inducements must be offered—higher pay for the men, provision of quarters for their families.

To what extent did Title VI represent a break with past activities of F.H.A.? First, only part of the public was eligible—those resident in defense centers, presumptively war workers. Second, financing was limited to the cheap-construction market, to conserve on materials and labor, and to provide for low-purchasing power. Third, the insurance commitment was to be made before construction, to facilitate control and channelling of building. Fourth, increased interest was allowed the mortgagee (five or six per cent, instead of four and a half). Fifth, it was not necessary that the property be purchased for owner-occupancy—it could be used for rental purposes. Sixth, the mortgagor was not required to have made a down payment of ten per cent. at the time of issuance of the insurance.

The purpose was frankly to provide for defense housing needs—to speed the entrance of credit into high-risk ventures which would not have been acceptable under Title II of the National Housing Act.

The needs of defense and war continued to expand the activities of F.H.A. Maximum authorized volume of mortgages insured under Title VI was steadily increased: $100,000,000 to $165,000,000 (1941); to $300,000,000 (1941); to $800,000,000 (1942); to $1,200,000,000 (1943); to $1,600,000,000 (1943); to $1,700,000,000 (1944); to $1,800,000,000 (1945). The term of the life of the authority was similarly extended from July 1, 1942 to July 1, 1943; to July 1, 1944; to July 1, 1946.

Developing demands of war forced changes in the fairly conservative standards of risk-financing established under the Act of March 28, 1941. By the Act of May 26, 1942, important modifications were made, a considerable number of which were in recognition of rising costs. No doubt the amendments were for the most part necessary under the circumstances, but still they signalize a growing inflationary threat to the real estate market. Maximum permissible insurance per dwelling unit was raised to five thousand for one family units, $7500 for two, $9500 for three, and $12,000 for four. Mortgages could now be placed for twenty-five instead of twenty years' duration. The original Title VI had specified that the project must be "economically sound". The amending act now provided that it must be "an acceptable risk in view of the emergency". A new proviso gave the Administrator power


"to prescribe such procedures as in his judgment are necessary to secure the war workers occupancy priority with respect to properties which have not been previously occupied and which are covered by mortgages under this section and section 608."

A new program, also somewhat foreign to the previous experiences of F H A, was introduced by Section 608. The Administrator was authorized to insure mortgages (not to exceed ninety per cent. of estimated "reasonable replacement costs") of large-scale properties designed for rent to war workers. Mortgages could be insured to a maximum of $5,000,000 per project. Interest was limited to four and one-half per cent. The mortgage was not to exceed $1350 per dwelling room. Big money as well as small money was thus invited to finance war housing developments.

The operations of F H A followed the trend of the statutes—upward and onward. The same forces and demands which harassed all war agencies harassed F H A. At a time when other Federal financial agencies were straining to curtail consumer credit, its objectives were, perforce, set in a contrary course. As war went on, rising costs had to be permitted, higher mortgages insured, appraisal standards modified. The rise in average amount of insured mortgages secured by new single family homes under section 603 of Title VI is significant of a losing battle against higher costs and prices in the real estate field:

<table>
<thead>
<tr>
<th>Year</th>
<th>Average Mortgage Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1941</td>
<td>$3491</td>
</tr>
<tr>
<td>1942</td>
<td>$4522</td>
</tr>
<tr>
<td>1943</td>
<td>$4199</td>
</tr>
<tr>
<td>1944</td>
<td>$4764</td>
</tr>
<tr>
<td>1945</td>
<td>$5053</td>
</tr>
</tbody>
</table>

The above figures are a fair index of the private mortgage financing picture in war years. The Stop-Construction order of W P B halted all private construction of housing, except such projects as came within a governmental program such as Title VI. All in all, approximately 400,000 dwelling units were provided for war workers under this Title. Over $1,500,000,000 of mortgage insurance was written. The program had expanded to become about half as much as the outstanding insurance under Title II.

It goes virtually without saying that F H A has assumed commitments under Title VI which have a much greater degree of risk than its pre-war commitments under Title II. While little unfavorable experience is recorded to date, we may expect a higher rate of mortgage mortality as war workers begin to shift from war habitats,

or if unemployment increases. Important also is the fact that the type of construction insured under Title VI, both with respect to size of unit and quality of construction, is definitely inferior to the pre-War product: hardly a real contribution toward the fulfillment of the pre-War objectives of F.H.A. The Title VI program must be justified primarily for its contribution to the war effort—not primarily for its contribution to total national wealth.

So much, then, for F.H.A.'s operations in the field of defense housing. But what should be said about its continued operations under Title II, which during the war period were limited to the insurance of mortgages on existing dwellings? No additional houses were thus created: were defense housing needs appreciably assisted by these operations? The need of the typical defense worker was to rent, not to buy. Since his job was so impermanent, he should be encouraged to buy only as a last resort. Why, then, continue to assist the sale and purchase of existing dwellings, by guaranteeing mortgages? Did such facilitation of transfers add an inflationary factor to the market?

F.H.A. insurance of mortgages on existing structures had been viewed as a more or less temporary practice, and secondary to its new construction mortgage program. The original National Housing Act had limited insurance on mortgages for projects existing at the date of the Act to $1,000,000,000 (with a similar limitation on insurance of new construction mortgages). With approval of the President, the top limit could be removed. The Act of February 3, 1938 provided that no mortgage insurance should be issued under Title II except for construction commenced after January 1, 1937, or covering property previously covered by a mortgage insured by the Administrator. The Act of June 3, 1939 amended this section by permitting insurance on existing structures until July 1, 1941, with an over-all limitation of twenty-five per cent. of the total amount of mortgages insured under Title II. By the Act of June 28, 1941, however, insurance of mortgages on existing construction was permitted up to July 1, 1944, and the top limit was increased from twenty-five to thirty-five per cent. of the whole. This proviso was extended by the Act of October 15, 1943 to permit such insurance to July 1, 1946. Finally, by the Act of July 1, 1946, all restrictions were removed. The power of F.H.A. to grant insurance on existing structures was extended in—

definitely and without any percentage limitation with respect to aggre-
gate mortgage insurance outstanding.

This chronological enumeration of legislative amendments may
serve to indicate the fact the F H A insurance of mortgages on existing
structures rests on a different (and possibly weaker) basis than insur-
ance of mortgages on new construction. In insuring mortgages on
existing construction, F H A does not directly stimulate better housing
standards, is not the sponsor of a stabilized building program. It is
rather the facilitator of transfers. The program is justified insofar
as it enables people to move up to better homes at reasonable prices.

Title II operations played a significant role in war years. At a
time when new construction (except under Title VI) was slumping,
the amount of insurance of mortgages on existing structures grew.
Approximately 41,000 existing properties were covered in each of the
years 1941 to 1943, and the number increased to approximately 45,000
in 1945.

No doubt such operations exerted a buoyant effect upon the real
estate market, although probably they were not a principal factor ac-
tounting for the rise in prices. Some indication of yielding to rising
prices may be found in the increase in average amount of insurance
per dwelling: 56

1941: $4129
1942: $4298
1943: $4566
1944: $4586
1945: $4614

As F H A reverts to a peacetime agency, we find no slackening of
its activity in insuring mortgages on existing homes. In July, 1946,
for example, insurance of mortgages on new construction amounted to
$6,374,000, while insurance of mortgages on existing structures totalled
$26,956,000. 57 The question arises, is further governmental stimulant
needed at the present time to facilitate the transfer of existing proper-
ties? Is it not time for Government to require the mortgagees to as-
sume their proper risk?

B. Veterans Legislation

The wartime financial activities of the Federal Government in the
home mortgage field, while considerable, are small in comparison with

56. TWELFTH ANNUAL REPORT OF THE FEDERAL HOUSING ADMINISTRATION (1945)
p. 18. Note that the average does not rise as much as the average of Title VI
mortgages (supra). The upward pressure was not as great, because F H A did not
have to take new construction costs into account as much, when granting insurance of
mortgages on existing dwellings under Title II, as in the case of the new construction
Title VI program.

57. (1946) 12 FEDERAL HOME LOAN BANK REVIEW 382.
the undertakings under the so-called G. I. Bill of Rights. The provisions therein for guaranteeing loans on farms and homes are the most important commitments the Government has made in the entire history of its interventions in the mortgage field. More than thirteen million veterans will be eligible for home loan guaranties. The effects of these provisions, as they will operate over the next two decades, may well determine the course of private real estate financing, government intervention in the field, and the land tenure system of the United States.

The G. I. loan provisions were introduced by the Act of June 22, 1944—the Servicemen's Readjustment Act of 1944.58 Under Title III, provision was made for guaranties of loans for the purchase or construction of homes, farms and business properties. Veterans who had served on active duty for ninety days or more during the emergency period were entitled to apply for guaranties, provided the application was made within two years after separation from service or termination of war, but in no event at a time more than five years after the end of the war. The guaranty was not to exceed fifty per cent. of the loan, nor be more than $2000 in amount. The loan must be "practicable," and not return more than four per cent. interest, and be payable in full within twenty years. In case a primary loan was insured by a Federal agency (FHA for example) provision was made for guarantee of secondary financing (with the possibility that no down payment in cash would be required). As amortization reduced the amount of the loan, the guaranteed amount would diminish pro tanto. Most important was the fact that the Veterans Administration was empowered to approve or disapprove each application, on a discretionary basis, issuance of the guaranty being dependent upon a finding "that the contemplated terms of payment required in any mortgage to be given in part payment of the purchase price or the construction cost bear a proper relation to the veteran's present and contemplated income and expenses; and that the nature and condition of the property is such as to be suitable for dwelling purposes and that the purchase price does not exceed the reasonable normal value of the property." Similar provisions limited eligibility for farm loan guaranties—the object being to save the veteran from his own incompetence, extravagance or ignorance of true values, as well as to protect the Government.

This fairly conservative approach to the problem of assisting veterans to buy homes and farms was seconded by the Regulations subsequently issued by the Veterans Administration. "Reasonable normal value," as used in the Act, was defined as:

"... that which can be justified as a fair and reasonable price to be paid for a property for the purposes for which it is being acquired, assuming a reasonable business risk, but without undue speculation or other hazard as to the future of such value.

(2) The purpose and intent are (i) to assure that the price to be paid represents a fair and reasonably permanent value in the real estate property to be acquired, (ii) to give, so far as the real estate is concerned, the basis for a fair but not unreasonable risk on the part of the United States Government when executing its guarantee, (iii) to assure that the appraisal shall be founded upon true and reasonably permanent values.

(3) Each valuation shall be justified, inter alia, (i) by the history of values and prices for this and similar properties, (ii) by the future resale possibilities as indicated by trends in the immediate locality and (iii) by the most probable and reasonably assured long term future economic and real estate conditions, national and local, as they will affect properties similar to and competitive with that under appraisal.”

What accounted for the dissatisfaction ensuing from the operation of these provisions, which admittedly brought rather meagre results? In the first place, the G. I. Bill of Rights was oversold to servicemen; hailed as a cure-all. Too much was expected of it. In the second place, Congress and the Veterans Administration had attempted to impose a restraint upon the forces of supply and demand. Unfortunately, the real estate market was already highly inflated. With prices rapidly mounting as costs of production rose, material shortages developed, and demand outstripped supply. It was far from an ideal time to talk in terms of “reasonable normal value” and apply standards accordingly. But fundamentally, if veterans were to be required to pay back one hundred cents on the dollar, the plain truth was, it was not the time to buy, it was unwise to buy if future values would not warrant purchase. The dilemma was, however, that most veterans could not find houses to rent, and so had no alternative.

In addition to conservative standards of eligibility, the Act had other limiting features. The total amount of the guarantee would have been small even in pre-War days. It was trifling in post-War days, particularly since it diminished in proportion to total repayment. Further, the limitation of four per cent. interest return made some lenders wince. All in all, the home loan guaranty features of the Act added little to opportunities for Federal assistance already available under the F H A. But what could the Federal Government be expected to do, in fairness to the veterans, unless it be a direct or indirect subsidy?

The needs of veterans competing for homes in a real estate market of extreme scarcity led to the drastic revisions of the Act of December
The important changes effected by this legislation are as follows: (1) The maximum guaranty on real estate loans was raised from $2000 to $4000. (2) The maximum permissible duration of the loan was increased from twenty to twenty-five years for home loans, and from twenty to forty years for farm loans. (3) The price of the property now should not exceed the "reasonable value thereof"—the word "normal" being deleted. (4) Provision was made for "automatic" guaranty of loans, provided the "contemplated terms of payment required in any mortgage to be given in part payment of the purchase price or the construction cost bear a proper relation to the veteran's present and anticipated income and expenses; and that the nature and condition of the property is such as to be suitable for dwelling purposes." The lender is now authorized to place the loan without prior approval of the Veterans Administration. (5) Further inflationary factors are introduced by authorizing loans guaranteed by the Act to be made by practically any lending institution under the supervision of the Federal Government, without respect to

- (1) ratio of amount of loan to the value of the property;
- (2) maturity of loan;
- (3) dignity of the lien, or
- (4) percentage of assets which may be invested in real estate loans.

(6) Section 508 (a) gave supervised lenders (as defined) a choice of either guaranty or insurance protection on such loans: guaranty of each mortgage, to the extent authorized in each case, or insurance of an entire portfolio of veterans' mortgages held by the institution. Maximum insurance was limited to fifteen per cent. of all loans credited to the insurance account of the lender. It would be possible for large lenders to accumulate insurance coverage over a period of time equal to the full balance of such loans outstanding. Here was another strong stimulant to lending without fear of loss.

The inflationary tendencies of these provisions upon the mortgage market can hardly be overemphasized. Administration of the revised Act calls for the utmost restraint on the part of lenders. The Veterans Administration as a restraining influence has been pushed to one side. Once again Government has bowed to expediency—the inevitable story of yielding to the pressure of immediate needs. The dangers inherent in this program are thus summarized by James W. Rouse:

First, it is a program of 100 per cent financing.

Second, 100 per cent financing means not only the elimination of any margin of value which might protect the security of the mortgage, but it means also the absence of the usual borrower motivation to protect his cash equity.

Third, many veterans under the pressure of the housing shortage are buying and mortgaging with little conception of the burden of debt which they are assuming. It is simply a matter of finding a place to live at so much per month. A general lowering of the so-called moral attitude can therefore, be expected.

Fourth, the program established a system of financing with almost no appraisal control. Appraisal practices have become so loose that in many areas they approach the scandalous. It is inevitable, even with improvement, that, with thousands of doubtfully qualified fee appraisers, appraisals will be non-uniform and, to say the least, unscientific.

Fifth, the largest building boom in the history of the world is being faced with a system of financing which requires no standards of construction, design, livability, or functional plan, which exercises no controls over site or neighborhood development, and which requires no inspections during construction.

Sixth, all of this is in a market in which the demand is so acute and the shortage so severe that even that old anchor to windward, the well informed, intelligent buyer, has gone into hiding. Veterans, to find shelter, willingly sign contracts to purchase that which they have never seen at whatever price may be asked.

Seventh, the mortgage lender is able to rest on a large cash guaranty which, with a minimum of prudence on his part, should cover his risk.

Upon the outcome of this experiment much will depend. Loans of approximately one and one-half billion dollars have already been placed, with Federal guaranties running beyond $600,000,000. The program is just under way.

What will happen to these loans in the next depression? Will the veterans stand idly by, and permit widespread foreclosures and dispossessions, or will they demand that Government bail them out?

As he surveys this changing scene, the interested observer must wonder, has Government done as well as could be expected in its role of translator of public will and need? Are we progressing with
only the usual percentage of error, or is Government barking vociferously up the wrong tree? Would other remedies or palliatives have been better (such as a program for rental construction, or subsidy of home ownership) to make for present enjoyment or future satisfaction? Or would it have been better to have done nothing, and let the market solve or fail to solve its problems without help or hindrance? All this is speculation on conditions contrary to fact: Government moves realistically in the direction of the immediate and the obvious, and like water seeks the easiest channels.

Meanwhile, Government continues to offer its aid: help in buying homes at high prices with little or no down payment. Surely this is not the way to a stabilized real estate market, a sound tenure policy.\footnote{61. See my previous comments and recommendations in concluding chapter of \textit{Government and the Mortgage Debtor}, op. cit. \textit{supra} note 28.}