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A BUILDING AND LOAN ASSOCIATION MAY MAKE A LOAN TO BE USED FOR THE ACQUISITION OF UNDEVELOPED OR PARTIALLY DEVELOPED LAND AND MAY REQUIRE THAT THE LAND BE DEVELOPED IN ACCORDANCE WITH SECTION 1151.298, R.C. EVEN THOUGH THE FUNDS ARE NOT TO BE USED FOR THE DEVELOPMENT OF THE PROPERTY— §§1151.298, R.C., 1.02, R.C., OPINION 2996, OAG, 1962.

SYLLABUS:

Under Section 1151.298, Revised Code, a building and loan association may make a loan to be used for the acquisition of undeveloped or partially developed land, such loan being made with the requirement that the land will be developed as provided in that section; and such loan may be made even though the proceeds of the same will not be used in the development of the property.

Columbus, Ohio, June 29, 1962

Mr. Andrew C. Putka, Superintendent
Division of Building and Loan Associations
407 Ohio Departments Building, Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Under the provisions of Section 1151.298 of the Revised Code, is a building and loan association authorized to make a loan

on real estate for the acquisition of undeveloped or partially developed land which is not to be developed with the proceeds of the loan?"

Section 1151.298, Revised Code, reads, in part, as follows:

"A building and loan association may make loans to members and others upon obligations secured by real estate for the acquisition of undeveloped or partially developed land and the development thereof for primarily residential use subject to the procedures of section 115.292 (1151.29.2) of the Revised Code except division (D) thereof, and subject to the following limitations and procedures:

"* * * * * * * * * * * * * * *"

"(B) The amount loaned on any loan made under this section shall not exceed sixty-six and two-thirds per cent of the appraised value of the land prior to the commencement of the development contemplated by said loan and sixty-six and two-thirds per cent of the cost as certified by a licensed engineer of installing the development contemplated by said loan. In no event shall the amount loaned exceed sixty-six and two-thirds per cent of the appraised value of the fully developed land. The appraised value of such real estate security, both as of the completion of such development and at the time a loan is made and prior to the commencement of such development, shall be determined by the association before the making of the loan.

"* * * * * * * * * * * * * * *"

"(D) The security instrument with respect to each such loan shall provide that development of said land shall commence not later than nine months after the date of such instrument and shall provide that if such development has not been commenced on or before the expiration of such nine-month period, the loan is in default.

"* * * * * * * * * * * * * * *"

"(F) No association shall, before commencement of the development of said land, disburse from the proceeds of any loan made pursuant to the provisions of this section an amount in excess of sixty-six and two-thirds per cent of the appraised value of said land or its cost, if a portion of the proceeds of the loan is used to purchase the land, whichever is the lesser, prior to the commencement of the development thereof.

"(G) In addition to the amount authorized to be disbursed by division (F) hereof, no association shall disburse, during the period of development of said land, an amount in excess of sixty-six and two-thirds per cent of the actual cost of the developments to the date of such disbursement. * * *

“For the purposes of this section, ‘development’ includes the survey and platting of such land, the laying out and improvement of streets, the installation of water lines and mains, sewers, sidewalks, curbs, and facilities for the disposal of sewage, and the installation of such other improvement as may be necessary or advisable to prepare such land for primarily residential use.”

Section 1151.298, *supra*, states at the outset that loans are made for the acquisition of undeveloped or partially developed land *and* the development thereof. At first glance, therefore, it might appear that if the land is not to be developed with the proceeds of the loan, the loan may not be made. Reading all of the provisions of the section together, however, I am of the opinion that loans may be made either for the acquisition of the land *or* for the development of such land.

Section 1.02, Revised Code, reads, in part, as follows :

“As used in the Revised Code, unless the context otherwise requires :

* * * * *

“‘And’ may be read ‘or,’ and ‘or’ may be read ‘and’ if the sense requires it.

* * * * *

There can be no doubt that under Section 1151.298, *supra*, a loan is made strictly on the basis that the land is undeveloped and will be developed. Division (D) of that section clearly requires that the land will be developed and that the development be commenced within a certain time. There also can be no doubt that any money loaned must be used in acquiring or developing the land on which the loan is made. There is no requirement, however, that all of the costs of acquisition and development must be paid from the proceeds of the loan; and since only a certain per cent of appraised value, or costs, may be loaned, it is obvious that the developer must use funds other than those realized on the loan to complete the development.

In a particular instance, the developer may have sufficient funds to acquire the property but may request a loan to allow him to develop the property. In another case, the developer may need a loan both for the acquisition and the development of the property. In the present case, the developer desires a loan only for the acquisition of the property, it being assumed that once the property is acquired, the developer will have sufficient funds to develop same.

Since division (F) of Section 1151.298, *supra*, uses the words "if a portion of the proceeds of the loan is used to purchase the land," there is clear implication that the proceeds of the loan need not be used in the acquisition of the land. And in this regard, I stated in the second paragraph of my Opinion No. 2996, issued on May 15, 1962:

"2. A building and loan association is authorized under the provisions of Section 1151.298, Revised Code, to make a loan on real estate which is already owned by the loan applicant but which is either undeveloped or partially developed for the purpose of the development of such for primarily residential use."

In that opinion, I said:

"* * * under the language of the statute a building and loan association is authorized to make loans for the acquisition of land *and* to make loans for the development of undeveloped or partially developed land. Thus, such an association may loan money on real estate which is owned by the loan applicant for the purpose of developing undeveloped or partially developed land."

In turn, therefore, it follows that the pertinent language of the first paragraph of said Section 1151.298, *supra*, should be read to allow loans *either* for the acquisition of the land *or* for the development of the land, or for both purposes.

In summary, therefore, it is my opinion and you are advised that under Section 1151.298, Revised Code, a building and loan association may make a loan to be used for the acquisition of undeveloped or partially developed land, such land being made with the requirement that the land will be developed as provided in that section; and such loan may be made even though the proceeds of the same will not be used in the development of the property.

Respectfully,
MARK MCELROY
Attorney General