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SYLLABUS:

1. A loan created under an installment contract for the sale of real estate by the Veterans Administration is not a loan secured by a lien on real estate as required under Section 1151.31, Revised Code;

2. An installment contract for sale of real estate which is converted into a purchase money mortgage loan by the Veterans Administration under the terms of the contract or upon request of the building and loan association prior to purchase is a loan secured by a lien on real estate as required under Section 1151.31, Revised Code, and

3. A loan must be secured by a lien on the real estate at the time it is purchased by a building and loan association and a loan will not qualify under Section 1151.31, Revised Code, if it is subject to being secured by a lien on real estate after the time of purchase.

Columbus, Ohio, April 30, 1963

Hon. John L. Maxwell
Superintendent of Building
and Loan Associations
407 State Office Building
Columbus 15, Ohio

Dear Sir:

The request of your predecessor for an opinion reads as follows:

“In order to properly administer the affairs of building and loan associations chartered by the State of Ohio, it is my desire to submit to you for opinion the following question:

“Under the provisions of Section 1151.31 of the Revised Code, is a building and loan association authorized to purchase from the Veterans Administration an installment contract for sale of real estate with a repurchase guaranty by the Veterans Administration?

“Enclosed are photo copies of the Veterans Administration offering letter, the contract form and the repurchase guaranty agreement.”

The letter of request referred to Section 1151.31, Revised Code, which provides the following:

“Notwithstanding sections 1151.29 to 1151.296 [1151.29.6], inclusive, and 1151.42 of the Revised Code and the constitution and bylaws of the building and loan association, the association may make, buy, sell, or hypothecate any loan secured by lien on real estate, if the loan is approved, insured, or guaranteed, in part or in full, or if a conditional guarantee of the loan has been issued, by the federal administrator of veterans' affairs, or by the United States or any instrumentality thereof.

“A farm loan made under this section shall be deemed secured by lien on real estate, even though the security includes livestock or farm equipment, or both, if such livestock or farm equipment, or both, are used in connection with the operation of the real estate pledged as security for said loan.”

From the information submitted, I determine that the Veterans Administration has originated sales of residential properties to veterans which it has acquired from private lenders by foreclosure of loans which it has guaranteed or secured. At the time of the original sale, the Veterans Administration, as seller, and the purchaser execute an installment contract for sale of the real estate and the purchaser enters into rightful possession of the property.

In every instance the Veterans Administration refers to this transaction as a real estate loan. The sale is not financed by a third party but rather the Veterans Administration, as seller, extends credit to the purchaser for the purchase price which by the terms of the installment contract is to be repaid in stated payments. Although this does not represent a loan in the ordinary sense of the

word because there is no transfer of cash, the creation of an indebtedness to be repaid is sufficient to bring the sales transaction within the broad interpretation of a loan. There is no definition or limitation of the term loan in Chapter 1151, Revised Code. Therefore it is my opinion that the contract executed pursuant to the sale of real estate by the Veterans Administration is a loan within the meaning of Section 1151.31, *supra*.

The next question is whether an installment contract for the sale of real estate is a "loan secured by a lien on real estate." The terms of the contract provide that the title to the real estate remains in the Veterans Administration and is not conveyed to the purchaser until payment of the purchase price, or until stated conditions of the contract are fulfilled, or until such time as the seller may so determine if the foregoing has not occurred. At the time of the conveyance, the Veterans Administration executes a special warranty deed. If there remains an unpaid balance, the purchaser executes a promissory note for the balance together with a purchase money mortgage creating a first lien on the real estate.

Until the installment contract is converted to a purchase money mortgage loan, the Veterans Administration holds title to the real estate and is thereby protected. Upon default under the contract, the Veterans Administration can pursue its rights and remedies under contract law. If a building and loan association would buy such a loan, it only would accede to the contract status of the seller with regards to the purchaser. The title to the real estate would be retained by the Veterans Administration. Upon default under the loan there would be no collateral security for the protection of the building and loan association except for the guaranty of repurchase by the Veterans Administration and this clearly is not sufficient under Section 1151.31, *supra*.

However, your attention is directed to paragraph 4 of the offer of sale contained in the letter from the Veterans Administration dated October 3, 1962. The paragraph reads as follows:

"4. The loans offered for sale by this Regional office are secured by real estate installment sale contracts in most if not all instances. Those in which the borrower has an equity of ten (10) percent or more are for sale with an option on the part of the purchaser to require the loans

to be converted by the VA to mortgage loans prior to settlement. The cost of conversion will be paid by this agency. Installment contract loans in which the borrower presently has less than a ten (10) percent equity also are available for sale. These can be converted to mortgage loans by the investor after purchase if the investor so desires.”

The Veterans Administration undoubtedly included this provision in order to meet the security requirements of prospective investors. Paragraph 4 provides that where the original purchaser has ten percent or more equity in the real estate, the Veterans Administration, at the request of the investor and at its own expense, will convert the contract agreement into a purchase money mortgage loan by executing a warranty deed and receiving in lieu therefore a promissory note and first lien mortgage. The conversion is to be completed prior to the settlement of the sale to the investor. If a building and loan association would request the conversion as a condition to its purchase of the loan, it would then accede to the status of an assignee on the note executed by the purchaser to the seller and secured by a first lien mortgage. In addition to the repurchase guaranty of the Veterans Administration, the building and loan association would hold a loan secured by a lien on real estate which would be in full compliance with Section 1151.31, *supra*.

Where the purchaser has less than ten percent equity, the investor in the loan may convert the contract to a purchase money mortgage loan at its expense after the completion of the purchase. At the time of purchase, the loan is subject only to the contract and as I have discussed this is not a loan secured by a lien on the real estate. The fact that the loan can be converted after purchase does not bring it within the requirements of Section 1151.31, *supra*. This section is written in the present tense and therefore provides the loan must meet the stated requirements at the time of purchase.

Therefore it is my opinion and you are advised that:

1. A loan created under an installment contract for the sale of real estate by the Veterans Administration is not a loan secured by a lien on real estate as required under Section 1151.31, Revised Code;
2. An installment contract for sale of real estate which is con-

verted into a purchase money mortgage loan by the Veterans Administration under the terms of the contract or upon request of the building and loan association prior to purchase is a loan secured by a lien on real estate as required under Section 1151.31, Revised Code, and

3. A loan must be secured by a lien on the real estate at the time it is purchased by a building and loan association and a loan will not qualify under Section 1151.31, Revised Code, if it is subject to being secured by a lien on real estate after the time of purchase.

Respectfully,

WILLIAM B. SAXBE

Attorney General