

MAINE STATE LEGISLATURE

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Maine Housing Authority, (Lien)
30 M.R.S.A. 4756

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AUGUSTA, MAINE 04333

August 15, 1978

To: Charles M. Sexton, General Counsel, Maine State
Housing Authority

From: Donald G. Alexander, Deputy Attorney General

Re: First Lien Status of Mortgages to be Purchased by the
Maine State Housing Authority

This responds to your request for an opinion as to whether the provisions of 30 M.R.S.A. § 4756 which limit the Maine State Housing Authority's capacity to purchase mortgages to those mortgages which are first liens applies to bar the purchase of mortgages in a certain situation.

FACTS:

The facts as you describe them are as follows:


The Authority is now considering the purchase of a mortgage on a low income housing development in Falmouth, Maine, to be located on property encumbered by two mortgages of record given to one Andrew Iverson in 1939 in the amounts of \$1260 and \$1593 with no stated term or interest. Andrew Iverson died intestate in 1940. There is a discharge of record dated 1950 for both mortgages which is executed by Andrew Iverson's widow and son, and which recites that the mortgages were paid during Andrew Iverson's lifetime. Andrew Iverson's two daughters did not execute the discharge, and their whereabouts is presently unknown. Pioneer National Title Insurance Company will insure the payment of both these mortgages should any legitimate claim for payment ever be made.

You have also indicated that the developer is trying to obtain further documentation from the daughters or their heirs to confirm the discharge of the mortgage.

Based on the facts you have described, I do not believe that the existence of some technical uncertainty in regard to the circumstances of the discharge of the 1939 mortgages bars the Maine State Housing Authority from purchasing the mortgages in question in accordance with 30 M.R.S.A. § 4756.

In this case there is evidence that the mortgages were discharged, but that the discharge is subject to certain technical problems. There is evidence that a discharge of the mortgages did in fact occur and that there was an effort to memorialize that discharge by the heirs of Andrew Iverson. Further, the technical problems are sufficiently insignificant that a title insurance company is willing to insure the property. Therefore, I do not believe that the 1939 mortgages described above would stand in front of mortgages to be purchased by the Maine State Housing Authority in such a way as to deprive those mortgages of the "first lien" status which is necessary for the purchase pursuant to 30 M.R.S.A. § 4756.

I hope this information is helpful.


DONALD G. ALEXANDER
Deputy Attorney General

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