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Introduction

The purpose of this volume is to describe the ways in which government influences the financing of real estate activity and to evaluate the significance of these influences on the flow of funds into real estate investment. It is well to recognize, however, that the ways in which governmental influence is exerted are so numerous, and of so widely varying a degree of directness, that comprehensive treatment, if possible at all, cannot be encompassed in a single study. Government influences real estate financing directly by the regulation and supervision of institutions that make mortgage loans, by the procedure it prescribes for transfer and foreclosure, by the protections it offers to the parties to real estate transactions, and by its own lending and subsidizing activities. At the same time it exerts a less direct influence through those of its policies and actions that affect investment generally and particularly the greater or lesser attractiveness of real estate as against other types of investment. Moreover, the financing of real estate is affected by all those influences bearing upon the rights of property in land and its appurtenances, upon the uses to which land may be put, upon the manner in which these uses may be exercised and the improvements to land accomplished, upon the amount and continuity of income that may be derived from land, and even upon the security of income of those who use real estate as consumers.

Thus, the whole law of real property exerts a profound influence on real estate investment. Building, sanitary and occupancy codes, zoning and planning laws, conservation measures—all have a direct impact upon the value of land and its improvements and hence upon investment in them. The same is true of any legislation affecting the construction industry, from the licensing of contractors and workmen to the policing of monopolistic combinations or the defining of "fair" trade practices.

In a field so vast some limitation of scope must be imposed. It is impossible, for instance, to examine the whole range of fiscal and monetary policies of government, to trace fully the influence exerted by the law of property, or to go deeply into the anti-trust laws or security legislation. On the contrary, an attempt will be made to deal only with the direct and immediate impact of government upon the financing process, making only passing mention of other influences.

The choices that the study makes as to influences to be considered may appear arbitrary in many cases, since there are no unchallengeable criteria for selection. Still, the problem goes beyond a mere question of selection: the association between government and real estate finance is so intimate and of such long standing that the distinction between the governmental and the strictly nongovernmental influence is by no means always clear. For example, where can a line be drawn between the influence of the supervisory agency and that of management in respect to the investment policies of lending institutions? Or, what part of mortgage lending risk can be attributed to the characteristics of land and structures as physical objects and what part to legal rights, prohibitions, and procedures? Further, an influence may be so imbedded in custom that it may be recognized only with difficulty and, even then, its significance may not be easily determined.

The problem becomes even more troublesome as we approach the present. Since World War I, and more particularly since the depression that followed it, the influence of government on real estate finance has been vastly intensified and expanded and its source has shifted in the main from state to federal government. This has been accomplished with great speed and amid great controversy and its implications are, for the most part, as yet unrealized. Judgments about these implications call for some forecasting and, consequently, offer a special invitation to the intrusion of personal bias. An effort has been made, however, to describe developments objectively.

The subject matter of this study involves terms that are loosely used, even in legal parlance: real estate, real property, realty, real estate finance, ownership, and so forth.[1] Nevertheless, it is essential to distinguish the physical entity of land, structures and other improvements to land and the various rights and interests of property in land and its appurtenances. Both aspects are of concern to government—the former by way of building codes, zoning ordinances,

[1] See C. Reinold Noyes, *The Institution of Property* (New York, 1936) Chapter 5.

flood control, reclamation, and the like, and the latter through the whole body of the law of real property and the credit and tax systems. For our purposes we may take a suggestion tentatively offered by C. Reinold Noyes in *The Institution of Property* which assigns "to the land itself, as object, the term 'realty' and to the interests therein the term 'real property.' " [2] The term "land" will be used synonymously with "realty" and the term "real estate" synonymously with "real property."

The term "real estate finance" is applied to all methods of acquiring real property by purchase or lease, whether by the investment of the funds of the purchaser or lessee, or by the borrowing of funds secured by a mortgage on the property, or by other forms of security. "Owner" is taken to mean a holder of real property in fee simple or a holder of a life interest in real property, and "ownership" applies to a holding in fee simple or for life. The holders of other than life or fee interests will for convenience be referred to as lessees and their holdings as leaseholds. The loose term "equity" will indicate the investment of the owner's or lessee's funds in the property he holds or the value of his holding after satisfying all liens and obligations to which he is subject as owner or lessee. Although these definitions may not satisfy in all respects the niceties of legal disputation, they conform in general to common usage.

The emphasis of the study is on the manner and extent to which investment in real estate is influenced by law and by the administrative policies of government, though the study does not presume to offer a complete history of the impact of government on real estate finance. Nevertheless, the present pattern of influence is so interwoven with legal and political developments of the past that historical excursions are to some extent essential. It is, for instance, impossible to explain today's farm credit arrangements without recalling the course of public land policy; to comprehend the complexities and risks of a mortgage transaction without tracing it, at least briefly, from its medieval source; or to understand the present

[2] *Ibid.*, p. 392. The term "land" in the definition includes, of course, all appurtenances and improvements. The definition quoted is later dropped (*ibid.*, p. 396) for one of greater precision, in which the term "realty" is replaced by the term "land" and the term "real property" by the phrase "property with regard to land." It is felt, however, that what may be gained in precision is, for our purpose, lost in simplicity.

concern of government with individual welfare, except in the light of earlier interventions in times of distress. The primary concern of the study, however, is in the conditions and influences that prevailed in the 1930's and 1940's, and the account deals mainly, therefore, with developments during these decades, concluding with the measures passed by the first session of the Eighty-first Congress and by the state legislatures through 1949. The concluding date of the study, however, by no means indicates the concluding date of the processes that are described.