

FEDERAL RESERVE BOARD

WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE TO
THE FEDERAL RESERVE BOARD


X-9396

December 18, 1935.

Dear Sir:

There is inclosed herewith for your information a copy of a letter and inclosure which the Board has addressed to the Federal Reserve Agent at the Federal Reserve Bank of St. Louis with reference to the investment of trust funds in mortgages insured under the provisions of Title II of the National Housing Act.

Very truly yours,



Chester Morrill,
Secretary.

Inclosures.

TO ALL FEDERAL RESERVE AGENTS EXCEPT ST. LOUIS

X-9396-a

December 18, 1935.

Mr. John S. Wood,
Federal Reserve Agent,
Federal Reserve Bank of St. Louis,
St. Louis, Missouri.

Dear Mr. Wood:

This refers to Mr. Stewart's letters of May 25, 1935, and August 22, 1935, relating to inquiries from the (State member bank), _____, Arkansas, and the _____ National Bank of _____ with regard to the possible investment of trust funds held by a member bank in mortgages insured under Title II of the National Housing Act. Among other papers, Mr. Stewart has forwarded a copy of a circular addressed to financial institutions by the Federal Housing Administration and it has been observed that such circular specifically states that it is not to be construed as permitting the pooling of insured mortgages in the hands of a trustee for the purpose of issuing participation certificates or other such evidences of interest.

The authority of a member bank to invest trust funds in mortgages or other securities depends upon the terms of the particular trust instruments, court orders, and State laws. A bank, however, should, of course, exercise proper discretion within the limits thus prescribed and act at all times in accordance with the principles of sound trust practices governing the investment of trust funds with careful consideration of the needs of each particular trust. Within the above

considerations, first mortgages, including mortgages insured under Title II of the National Housing Act, would constitute a proper investment for trust funds.

It is understood that the Federal Housing Administration contemplates that institutions exercising fiduciary powers will conform to the fundamental principles of trust administration in connection with insured mortgages. In this connection, there is inclosed a copy of a letter and inclosure which the Federal Housing Administration has forwarded to institutions to which had been forwarded tentative drafts of proposed trust agreements by the Federal Housing Administration, and you will note that it is stated in this letter, among other things:

"It is essential that all trust agreements be prepared *** in accordance with recognized trust practices, and this basic principle, obviously, can in no way be affected simply by reason of the inclusion of insured mortgages in the corpus of any trust". It is believed that the inclosed letter of the Federal Housing Administration disposes of the questions raised by your trust examiner relating to the applicability of fundamental principles of trust administration to the investment of trust funds in insured mortgages, and it is requested that you advise the (State member bank) accordingly.

Since one of the inquiries to which you referred was received from a national bank, that inquiry has been referred to the Comptroller of the Currency for attention, and the Comptroller, who has already

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been furnished with a copy of the inclosed letter of the Federal Housing Administration, is being furnished with a copy of this letter.

Very truly yours,

(Signed) Chester Morrill

Chester Morrill,
Secretary.

Inclosure.

X-9396-b

FEDERAL HOUSING ADMINISTRATION

Washington, D. C.

Dear Sirs:

On March 15, 1935 the Regulations of the Federal Housing Administrator for Mutual Mortgage Insurance were amended to permit banks, trust companies, and other fiduciary institutions, approved as mortgagees under Title II of the National Housing Act and subject to the inspection and supervision of some governmental agency, to include insured mortgages among the assets of trusts administered by them.

Following the adoption of this amendment, a number of institutions requested that we furnish them with an outline form of trust instrument, indicating the manner in which insured mortgages might be held in trust for individuals, or other beneficiaries not approved as mortgagees, upon a basis conforming to the requirements of the National Housing Act and our Regulations.

In response to these requests, the Legal Division of this Administration prepared skeleton drafts of two proposed trust agreements and the institutions in question were advised that these forms were available for their assistance and information upon request. Each of the forms sent out was accompanied by a memorandum and a letter of transmittal pointing out that all the provisions of the proposed trust, other than those peculiarly applicable to insured mortgages, should be submitted to counsel for advice as to their validity under the laws governing the operations of the particular institution.

Notwithstanding this fact, it has apparently been assumed by some institutions that these forms represented a standardized trust instrument approved by this Administration for use in all cases in which insured mortgages were to be held under trusts. As a result of this assumption considerable confusion has arisen which I wish to dispell.

Because of the wide differences in the laws of the various states dealing with the administration of trusts and of the fact that every trust is necessarily shaped by the particular needs of the trustor and other unique circumstances surrounding the transaction,

it is, of course, neither possible nor desirable to develop a uniform instrument which can be generally used, and nothing of this character was contemplated by this Administration in preparing these tentative forms. It is essential that all trust agreements be prepared by counsel for the creator of the trust, together with counsel for the trustee, in accordance with recognized trust practices, and this basic principal, obviously, can in no way be affected simply by reason of the inclusion of insured mortgages in the corpus of any trust.

However, in view of the fact that insured mortgages have certain characteristics that are not common to other forms of security, it is necessary that fiduciary institutions be thoroughly informed as to the special provisions which it is necessary to insert in the trust instrument in connection with the handling of any such mortgages held under it. To clarify this situation, we have prepared four clauses which we are enclosing.

With these clauses available it seems there is no need for the tentative forms which have heretofore been sent you and you should, therefore, disregard them.

But we wish to emphasize that in order to protect the interests of all parties, clauses, substantially similar to those enclosed, should be inserted in each trust agreement which includes insured mortgages.

Very truly yours,

(Signed) R. M. Catharine

Robert M. Catharine,
Deputy Administrator.

FEDERAL HOUSING ADMINISTRATION
WASHINGTON, D. C.

SUGGESTED PROVISIONS FOR TRUST AGREEMENTS AUTHORIZING INVESTMENT IN MORTGAGES INSURED UNDER THE NATIONAL HOUSING ACT

The trustee is directed and empowered:

- (a) to invest the whole (or any part) of the trust fund in (a) note(s) or bond(s) insured under the provisions of the National Housing Act and secured by a first mortgage (or mortgages) on real estate;
- (b) to collect all monthly payments provided for in such mortgage(s) as they become due and apply them in accordance with the provisions thereof, to discharge all other obligations of an approved mortgagee under the Contract of Insurance, and to satisfy and discharge such mortgage(s) on receiving payment thereof in the amount and in the manner specified in such mortgage(s) and the note(s) or bond(s) secured thereby;
- (c) in case of default, to institute foreclosure proceedings, or proceed to acquire the property by other means approved by the Federal Housing Administrator, at any time within the limit set forth in the Regulations of the Federal Housing Administrator under which such mortgage was insured, and, upon such foreclosure or otherwise acquiring title, to transfer to the Federal Housing Administrator the property so acquired and all claims against the mortgagor, arising out of the mortgage transaction or foreclosure proceedings, in exchange for the debentures and certificate of claim provided for in the National Housing Act and to hold such debentures and certificate of claim under the terms of this trust; and
- (d) upon the termination of this trust to sell such insured mortgage(s) to a mortgagee approved by the Federal Housing Administrator.

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