

Effective 5/12/2015

Part 3 Corporation Duties and Powers

63H-8-301 Corporation -- Powers.

The corporation has and may exercise all powers necessary or appropriate to carry out the purposes of this chapter, including:

- (1) to have perpetual succession as a body politic and corporate, constituting a public corporation, and to adopt, amend, and repeal rules, policies, and procedures for the regulation of its affairs and the conduct of its business;
- (2) to sue and be sued in its own name;
- (3) to have an official seal and power to alter that seal at will;
- (4) to maintain an office within the state at a place the corporation designates;
- (5) to adopt, amend, and repeal bylaws and rules that are consistent with this chapter to carry into effect the powers and purposes of the corporation and the conduct of its business;
- (6) to make and execute contracts and other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter, including contracts or agreements for the servicing and originating of mortgage loans;
- (7) to employ advisers, consultants, and agents, including financial experts, independent legal counsel, and other advisers, consultants, and agents as necessary in the corporation's judgment and to fix their compensation;
- (8) to procure insurance in amounts and from insurers as determined by the corporation against any loss:
 - (a) in connection with its property and other assets, including mortgage loans; and
 - (b) resulting from the failure of an officer, employee, or agent of the corporation in a position of public or private trust;
- (9) to borrow money and to issue bonds and notes or other evidences of indebtedness as provided in this chapter;
- (10) to receive and accept aid or contributions from any source of money, property, labor, or other things of value to be held, used, loaned, granted, and applied to carry out the purposes of this chapter subject to the conditions, if any, upon which the grants and contributions are made, including gifts or grants from a department, agency, or instrumentality of the United States or of this state for any purpose consistent with this chapter;
- (11) to enter into agreements with a local public body, a housing sponsor, a department, agency, or instrumentality of the United States, another state, or this state, or with mortgagors and mortgage lenders for the purpose of administering contracts that provide housing assistance payments, servicing mortgage loans, or planning and regulating and providing for the financing and refinancing, construction, rehabilitation, leasing, management, maintenance, operation, sale, or other disposition of residential housing undertaken with the assistance of the corporation under this chapter;
- (12) to exercise all of its remedies following the default under a mortgage loan, including:
 - (a) proceeding with a foreclosure action or private sale to obtain title to the real and personal property held as collateral and taking assignments of leases and rentals;
 - (b) to own, lease, clear, reconstruct, rehabilitate, repair, maintain, manage, and operate this property in preparation for its disposition; and
 - (c) to assign, encumber, sell, or otherwise dispose of this property;

- (13) to invest money not required for immediate disbursement, including money held in reserve, in a manner consistent with applicable provisions of Title 51, Chapter 7, State Money Management Act;
- (14) to provide technical and financial assistance to housing sponsors and advisory committees in the development or operation of housing for low and moderate income persons;
- (15) to gather and distribute data and information concerning the housing needs of low and moderate income families within the various communities of this state;
- (16) to the extent permitted under a contract with the holders of bonds, notes, and other obligations of the corporation, to consent to a modification with respect to rate of interest, time and payment of an installment of principal or interest security, or other term of a contract, mortgage, mortgage loan, mortgage loan commitment, contract, or agreement of any kind to which the corporation is a party;
- (17) to the extent permitted under a contract with the holders of bonds, notes, and other obligations of the corporation, to enter into contracts with a mortgagor or housing sponsor containing provisions enabling the mortgagor to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges where, by reason of other income or payment by a department, agency, or instrumentality of the United States or of the state, the reduction can be made without jeopardizing the economic stability of residential housing being financed;
- (18) to acquire property within the state for the purpose of holding it for subsequent disposition to a housing sponsor or other entity that can use it for residential housing for low and moderate income persons, except that if no person can be found to use it in this manner, the corporation may dispose of the property to any person;
- (19) to purchase, own and operate residential housing for the benefit, in whole or in part, of low and moderate income persons, if the corporation makes reasonable efforts to sell that residential housing to a housing sponsor;
- (20) to incorporate or form one or more subsidiaries of the corporation for the purpose of carrying out any of the powers of the corporation and accomplishing any of the purposes of the corporation, to invest in and provide financial assistance to these subsidiaries, to borrow from these subsidiaries, to guarantee the obligations of these subsidiaries, and to enter into agreements with these subsidiaries to carry out any of the corporation's powers under this chapter;
- (21) to enter into partnership and limited liability company agreements, to purchase and sell interests in housing sponsors, to serve as general partner of a partnership, and to serve as a manager of a limited liability company to carry out any of the corporation's powers under this chapter;
- (22) to require that persons receiving a mortgage loan or financial assistance from the corporation subject the property involved to restrictive covenants that shall be considered to be running with the land, regardless of whether or not the corporation enjoys privity of estate or whether or not the covenant touches and concerns the burdened property;
- (23) to enter into management agreements with a person or entity for the performance by the person or entity for the corporation of any of its functions or powers, with terms and conditions as may be mutually agreeable;
- (24) to sell, at public or private sale, with or without public bidding, a mortgage loan or other obligation held by the corporation;
- (25) to sell or convey real property owned by the corporation to low or moderate income persons and housing sponsors, without consideration if the sale or conveyance will inure primarily to the benefit of low or moderate income persons living in a housing development;

- (26) upon making a determination that the financial status of a housing development will jeopardize an economic interest of the corporation in the housing development, to assume managerial and financial control of the property or the owner and to supervise and prescribe the activities of the property or the owner in a manner and under terms and conditions as the corporation may stipulate in a contract;
- (27) to supervise housing sponsors of housing developments;
- (28) to service mortgage loans secured by property in Utah or another state;
- (29) to give consideration to activities that promote the availability of accessible housing; and
- (30) to do an act necessary or convenient to the exercise of the corporation's powers under this chapter.

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-302 Corporation -- Additional powers.

- (1) To accomplish the declared purposes of this chapter, the corporation has the following powers:
 - (a) to purchase mortgage loans originated by mortgage lenders or local public bodies made for the purpose of financing the construction, development, rehabilitation, refinancing, or purchase of residential housing for low and moderate income persons;
 - (b) to make mortgage loans and to provide financial assistance to housing sponsors for the purpose of financing the construction, development, rehabilitation, refinancing, or purchase of residential housing for low and moderate income persons;
 - (c) to make mortgage loans and provide financial assistance to housing sponsors for the purpose of financing the operations of a housing development that are necessary or desirable to enable the housing development to remain available as residential housing for low and moderate income persons, whether or not the housing development has been financed by the corporation;
 - (d) to provide financial assistance to any housing authority created under Title 35A, Chapter 8, Part 4, Housing Authorities, which housing authorities may enter into commitments for and accept loans for a housing project as defined in Section 35A-8-401; and
 - (e) to make mortgage loans and to provide financial assistance to low and moderate income persons for the construction, rehabilitation, refinancing, or purchase of residential housing.
- (2) The corporation may issue bonds to purchase loans under Subsection (1)(a) only after a determination by the corporation that the loans are not otherwise available upon reasonably equivalent terms and conditions from private lenders.
- (3) Loans for owner-occupied housing made under Subsection (1)(a) may not include a penalty for prepayment.
- (4) The corporation shall make rules or adopt policies and procedures to govern the activities authorized under this section, including:
 - (a) procedures for the submission of requests or the invitation of proposals for the purchase and sale of mortgage loans and the making of mortgage loans;
 - (b) rates, fees, charges, and other terms and conditions of originating or servicing mortgage loans in order to protect against a realization of an excessive financial return or benefit by the originator or servicer;
 - (c) the type and amount of collateral, payment bonds, performance bonds, or other security to be provided for construction loans made by the corporation;
 - (d) the nature and amounts of fees to be charged by the corporation to provide for expenses and reserves of the corporation;

- (e) procedures allowing the corporation to prohibit persons who fail to comply with the rules of the corporation with respect to the operations of a program of the corporation from participating, either directly or indirectly, in the programs of the corporation;
- (f) the terms and conditions under which the corporation may purchase and make mortgage loans under each program of the corporation;
- (g) the terms and conditions under which the corporation may provide financial assistance under each program of the corporation;
- (h) the terms and conditions under which the corporation may guarantee mortgage loans under each program of the corporation; and
- (i) any other matters related to the duties or exercise of powers under this section.

(5)

(a)

- (i) The trustees of the corporation shall elect the directors, trustees, and members, if any, of each subsidiary.
 - (ii) Service by a trustee of the corporation in any of these capacities does not constitute a conflict of interest for any purpose.
 - (iii) The corporation may delegate any of its powers and duties under this chapter to any subsidiary.
 - (iv) Subsidiaries shall constitute legal entities separate and distinct from each other, the corporation, and the state.
- (b) A note, bond, and other obligation of a subsidiary shall contain on its face a statement to the effect that:
- (i) the subsidiary is obligated to pay the note, bond, or other obligation solely from the revenues or other funds of the subsidiary;
 - (ii) neither the corporation, nor the state, nor any of its political subdivisions is obligated to pay the note, bond, or other obligation; and
 - (iii) neither the faith and credit nor the taxing power of the state or its political subdivisions is pledged to the payment of principal, the redemption price of, or the interest on, the note, bond, or other obligation.
- (c) Upon dissolution of a subsidiary of the corporation, any assets shall revert to the corporation or to a successor to the corporation or, failing this succession, to the state.

(6)

(a) The corporation may, with the approval of the state treasurer:

- (i) enter into interest rate contracts that its trustees determine are necessary, convenient, or appropriate for the control or management of debt or for the cost of servicing debt; and
 - (ii) use corporation funds to satisfy its payment obligations under those contracts.
- (b) An interest rate contract may contain payment, security, default, termination, remedy, and other terms and conditions that the trustees consider appropriate.
- (c) An interest rate contract and funds used in connection with an interest rate contract may not be considered a deposit or investment.

Amended by Chapter 164, 2015 General Session

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-303 Power to issue mortgage credit certificates -- Impact of federal legislation on tax exempt status of corporation bonds.

- (1) In order to accomplish the purposes of this chapter the corporation may issue mortgage credit certificates under 26 U.S.C. Sec. 25, as amended, and has the sole responsibility for issuing or approving the issuance of mortgage credit certificates allowable to the state.
- (2) A power granted to the corporation by this chapter may not be diminished by the enactment of federal legislation that would cause the interest on bonds, notes, or other obligations of the corporation to be subject to taxation under federal law.
- (3) An exemption from state taxation granted in this chapter is not affected by federal legislation described under Subsection (2).

Renumbered and Amended by Chapter 226, 2015 General Session

63H-8-304 Power to borrow money and make loans -- Issuance of notes and bonds -- Mortgage backed securities.

- (1) The corporation has the power to borrow money and to issue its notes, bonds, and other obligations in principal amounts as the corporation determines is necessary to provide sufficient money for:
 - (a) the purchase of mortgage loans from mortgage lenders;
 - (b) the making of construction loans;
 - (c) the making of loans to housing authorities;
 - (d) the payment of interest on bonds, notes, and other obligations of the corporation;
 - (e) the establishment of reserves to secure the bonds, notes, and other obligations;
 - (f) the making of mortgage loans;
 - (g) the making of loans to mortgage lenders or other lending institutions with respect to multifamily residential rental housing under terms and conditions requiring the proceeds of these loans to be used by these mortgage lenders or other lending institutions for the making of loans for new multifamily residential rental housing or the acquisition or rehabilitation of existing multifamily residential rental housing;
 - (h) the making of loans for the rehabilitation of residential housing; and
 - (i) all other expenditures of the corporation necessary or convenient to carry out its purposes and powers.
- (2)
 - (a) The corporation may issue notes to renew notes and bonds to pay notes, including interest, and whenever it considers refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes.
 - (b) The refunding bonds may be:
 - (i) sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded; or
 - (ii) exchanged for the bonds to be refunded.
- (3)
 - (a) Except as otherwise expressly provided by the corporation, every issue of the corporation's notes or bonds are general obligations of the corporation payable solely by money of the corporation, subject only to any agreements with the holders of particular notes or bonds pledging any particular money.
 - (b) These bonds or notes may be additionally secured by a pledge of:
 - (i) a grant or contribution from the federal government or a corporation, association, institution, or person; or
 - (ii) money, income, or revenues of the corporation from any source.

- (4)
- (a) The notes and bonds shall be authorized by resolution or resolutions of the corporation, shall bear the date or dates, and shall mature at the time or times as the resolution or resolutions may provide, except that no note, including any renewals thereof, shall mature more than five years from the date of its original issue, and no bond shall mature more than 50 years from the date of its issue, as provided by the resolution.
 - (b) The notes and bonds shall bear interest at the rate or rates, including variations in the rates, be in denominations, be in a form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in a medium of payment, at the place or places, and be subject to the terms of redemption, including redemption prior to maturity, as provided by the resolution.
 - (c) The notes and bonds of the corporation may be sold by the corporation at public or private sale, and at the price or prices determined by the corporation.
 - (d)
 - (i) The notes and bonds may bear interest at a variable interest rate as provided by the resolution.
 - (ii) The resolution may establish a method, formula, or index by which the interest rate on the notes and bonds is determined.
 - (iii) The resolution may delegate to one or more officers of the corporation the authority to:
 - (A) approve the final interest rates or prices, principal amount, maturities, redemption features, or other terms of the notes or bonds; and
 - (B) approve and execute all documents relating to the issuance of the notes or bonds.
 - (e) In connection with the notes and bonds, the corporation may authorize and enter into agreements or other arrangements with financial, banking, and other institutions for letters of credit, standby letters of credit, surety bonds, reimbursement agreements, remarketing agreements, indexing agreements, tender agent agreements, and other agreements with respect to:
 - (i) securing the notes and bonds;
 - (ii) enhancing the marketability and credit worthiness of the notes and bonds;
 - (iii) determining a variable interest rate on the notes and bonds; and
 - (iv) paying from any legally available source, which may include the proceeds of the notes and bonds, fees, charges, and other amounts coming due with respect to these agreements.
- (5) A resolution authorizing notes or bonds or their issue may contain provisions, which are a part of the contract or contracts with their holders, as to:
- (a) pledging all or part of the revenues to secure the payment of the notes or bonds or of any issue of the notes or bonds, subject to the agreements with noteholders or bondholders as may then exist;
 - (b) pledging all or part of the assets of the corporation, including mortgages and obligations securing the assets, to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to the agreements with noteholders or bondholders as may then exist;
 - (c) the use and disposition of the gross income from mortgages owned by the corporation and payment of principal of mortgages owned by the corporation;
 - (d) the setting aside of reserves or sinking funds and their regulation and disposition;
 - (e) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging the proceeds to secure the payment of the notes or bonds or of their issue;
 - (f) limitations on the issuance of additional notes or bonds, including:
 - (i) the terms upon which additional notes or bonds may be issued and secured; and
 - (ii) the refunding of outstanding or other notes or bonds;

- (g) the procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds to which the holders must consent, and the manner in which the consent may be given;
 - (h) limitations on the amount of money to be expended by the corporation for operating expenses of the corporation;
 - (i) vesting in a trustee or trustees the property, rights, powers, and duties in trust as determined by the corporation, which may include any or all of the rights, powers, and duties of the trustee appointed by the noteholders or bondholders under this chapter and limiting or abrogating the right of noteholders or bondholders to appoint a trustee under this chapter or limiting the rights, powers, and duties of the trustee;
 - (j)
 - (i) defining the acts or omissions to act that constitute a default in the obligations and duties of the corporation to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of default, including as a matter of right the appointment of a receiver;
 - (ii) but the rights and remedies may not be inconsistent with the general laws of the state and other provisions of this chapter; or
 - (k) any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.
- (6)
- (a) A pledge made by the corporation is valid, enforceable, and binding from the time when the pledge is made and has a lien priority based on the time of grant or, if more than one lien is granted at a given time, as set forth in the resolution or instrument under which the pledge is made.
 - (b)
 - (i) The revenues, money, or property pledged and then received by the corporation are immediately subject to the lien of the pledge and constitute a perfected lien without any physical delivery or further act.
 - (ii) The lien of the pledge is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the corporation, irrespective of whether the parties have notice of the lien.
 - (c) Neither the resolution nor any other instrument by which a pledge is created need be recorded.
 - (d) Notwithstanding the provisions of Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions, the corporation shall comply with the provisions of Title 11, Chapter 14, Part 5, Governmental Security Interests, for the creation, perfection, priority, and enforcement of a security interest created by the corporation.
- (7) The corporation, subject to the agreements with noteholders or bondholders as may then exist, has power to use available money to purchase notes or bonds of the corporation, which shall immediately be cancelled unless held for resale, at a price not exceeding:
- (a) if the notes or bonds are redeemable at the time of the purchase, the applicable redemption price plus accrued interest to the next interest payment on the notes or bonds; or
 - (b) if the notes or bonds are not redeemable at the time of the purchase, the redemption price applicable on the first date after the purchase that the notes or bonds are subject to redemption plus accrued interest to that date.
- (8)

- (a) The notes and bonds shall be secured by a trust indenture by and between the corporation and a corporate trustee, which may be a bank having the power of a trust company or a trust company within or without the state.
 - (b) The trust indenture may contain provisions for protecting and enforcing the rights and remedies of the noteholders or bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the corporation in relation to the exercise of its corporate powers and the custody, safeguarding, and application of all money.
 - (c) The corporation may provide by the trust indenture for the payment of the proceeds of the notes or bonds and the revenues to the trustee under the trust indenture or other depository, and for the method of their disbursement, with any safeguards and restrictions as it may determine.
 - (d) All expenses incurred in carrying out the trust indenture may be treated as a part of the operating expenses of the corporation.
 - (e) If the notes or bonds are secured by a trust indenture, the noteholders or bondholders may not have authority to appoint a separate trustee to represent them.
- (9) Whether or not the notes and bonds are of the form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the notes and bonds are negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to the provisions of the notes and bonds relating to registration.
- (10) In the event that any of the trustees or officers of the corporation cease to be trustees or officers of the corporation prior to the delivery of any notes or bonds or coupons signed by the trustees or officers, signatures or facsimiles of trustees or officers signatures are valid and sufficient for all purposes, the same as if the trustees or officers had remained in office until the delivery.
- (11) A trustee or officer of the corporation executing the notes or bonds issued under this chapter is not subject to personal liability or accountability by reason of the issuance of the notes or bonds.
- (12) The corporation may provide for the replacement of lost, destroyed, or mutilated bonds or notes.
- (13) The corporation may sell mortgage loans it has purchased or made for cash or it may exchange mortgage loans for mortgage-backed securities and sell the mortgage-backed securities for cash.

Renumbered and Amended by Chapter 226, 2015 General Session