

Association "For the Meretorious Purpose Of... Mutual Benefit": a Chronicle of The Building and Loan Industry in Maryland from 1852-1961 (Part 2)

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ASSOCIATION "FOR THE MERETORIOUS PURPOSE OF . . . MUTUAL BENEFIT": A CHRONICLE OF THE BUILDING AND LOAN INDUSTRY IN MARYLAND FROM 1852-1961 (Part 2)†

By JOHN W. SAUSE, JR.*

III. PERMANENCE BREEDS CHANGE

The Permanent associations achieved perpetual existence; but it was found that this was not a complete solution to the problems of the Terminating plan. The removal of the necessity for collecting a "bonus" undoubtedly attracted persons who would not otherwise have been able to join an association after its formation, and thus brought about a potentially constant flow of new money into the

† This is the second of two parts. The first part appeared in 22 Maryland Law Review 1.

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association. But, the number of such persons would have to be great in order to have an appreciable effect upon the slow accumulation of money for "advance" transactions through the weekly collections. The matter was as important then, as now:

"As we understand the operations of a building association [said the Court of Appeals in 1956] it must have some funds on hand to meet the borrowing needs of its members. Some of the money comes from the weekly payments made under existing loans; but without some free share capital, a building association would be severely handicapped and its business would tend to dry up. If it wishes to grow and prosper, it must ordinarily be able to attract some new capital."¹⁴⁰

The Permanent plan allowed an inducement of sorts to prospective savers, since it was necessary to ascertain the profits at fairly regular intervals in order that they might be divided among those who had been members during the period and that it might be determined which shares had matured.¹⁴¹ As a lure to those who might wish to join the association for saving purposes, some, perhaps all, of the Permanent associations adopted the practice of allowing a free shareholder to withdraw from the association prior to the time that his stock subscription was fulfilled and to receive, in addition to his accumulated dues, the dividends which had been credited to his account from time to time.¹⁴² Such a device had an obviously limited effect; and in some quarters it was seen adding as much instability as the Terminating plan.¹⁴³ Even as the Permanent plan took shape in Maryland, a more drastic remedy was developing in Ohio, which had the second largest number of associations (718) and the largest proportion of Permanent associations (90.2%) in the nation.¹⁴⁴

¹⁴⁰ *Poole v. Miller*, 211 Md. 448, 461, 128 A. 2d 607 (1957).

¹⁴¹ THOMPSON, *BUILDING ASSOCIATIONS* (2d ed. 1899) § 9, (1st ed. 1892) § 4; THORNTON & BLACKLEDGE, *BUILDING AND LOAN ASSOCIATIONS* (1898) § 9. Compare *Magness v. Loyola Sav. & L. Ass'n*, 186 Md. 569, 572, 47 A. 2d 769 (1946); *Stewart v. Building Association*, 106 Md. 675, 680, 68 A. 887 (1907).

¹⁴² *E.g. Balto. Bldg. As'n v. Powhatan Co.*, 87 Md. 59, 39 A. 274 (1898). Under the Terminating plan, some but not all of the associations allowed a non-borrowing member to withdraw the *dues* which he had paid in. *Cf. Hampstead Build. Asso. v. King*, 58 Md. 279 (1882); *Peter's Build. Ass'n v. Jaacksch*, 51 Md. 198 (1879).

¹⁴³ THOMPSON, (2d ed.) *op. cit. supra*, n. 141, § 9; THORNTON & BLACKLEDGE, *op. cit. supra*, n. 141, § 9.

¹⁴⁴ Ninth Annual Report of the Commissioner of Labor, "Building and Loan Associations," H.R. EXEC. Doc. No. 209, 53d Cong. Sess. 14-15 (1894).

The Dayton Plan

The "Dayton plan," as the operation of the new association was called, was not generally understood. Indeed, the contemporary textwriters abandoned any attempt to describe the system and merely quoted a description (the same in each case) furnished by the Ohio inspector of building and loan associations;¹⁴⁵ and there was similar abdication in the Report of the U.S. Commissioner of Labor in 1894.¹⁴⁶ And the writer to whom these authorities deferred confused the attributes of his prodigy with those of its parent, the Permanent plan.¹⁴⁷ In fact, the "Dayton plan" contained only one innovation: paid-up stock.¹⁴⁸

The necessity for such capitalization was clear. As explained by the manager of the then-largest association operating under the system:

"[Paid-up stock] . . . is not issued at all times, but only when the society can profitably loan the money. It may be called in also if a glut of money occurs. It is entitled to share in the earnings like other stock, but dividends when declared instead of being credited on the book as in the case of running [i.e., subscription] stock, are paid in cash. It may also be withdrawn the same as running stock. In fact, barring the fact

¹⁴⁵ ENDLICH, BUILDING ASSOCIATIONS (2d ed. 1895) § 23, fn. 1; THOMPSON (2d ed. 1899) § 10; THORNTON & BLACKLEDGE, *op. cit. supra*, n. 141, § 12A. See also, SUNDHEIM, BUILDING AND LOAN ASSOCIATIONS (3rd ed. 1933) § 4.

¹⁴⁶ Report of the Commissioner of Labor, *supra*, n. 144, 333-337.

¹⁴⁷ The latter authority lists four characteristics of the Dayton plan: (a) New members may join at any time without paying any back dues; (b) paid-up stock issued; (c) premium abolished; (d) earnings credited semi-annually and withdrawable in the same manner as money payments. Although the abolition of the premium was seen as "the most pronounced difference," the premium had been abandoned in Maryland prior to the adoption of the Dayton plan. *Cf. supra*, n. 139. And elimination of "back dues" and withdrawal of dividends had been accomplished under the Permanent plan.

The American textwriters compounded the confusion by describing Permanent associations as having paid up stock. ENDLICH, (2d ed.) *op. cit. supra*, n. 145, § 23, (1st ed.) § 46; THOMPSON (2d ed.) *op. cit. supra*, n. 141, § 6. *Cf. THORNTON & BLACKLEDGE, op. cit. supra*, n. 141, §§ 9-10; Coltrane v. Baltimore Building & Loan Ass'n, 110 F. 281, 284 (C.C.D. 1901), *aff'd sub nom. Coltrane v. Blake*, 113 F. 785 (4th Cir. 1902). The early British Permanent societies did not seem to have paid-up stock. Compare, STONE, BENEFIT BUILDING SOCIETIES (1851) pp. 20-21, with SCRATCHLEY, BENEFIT BUILDING SOCIETIES (4th ed. 1868) § 58, pp. 35-36. In Maryland, at least, paid-up stock did not exist prior to 1894, although the Permanent plan had already become the most common form of association. See, Report of the Commissioner of Labor, *op. cit. supra*, n. 144, 30.

¹⁴⁸ The Dayton plan also involved some system whereby the borrower would pay interest only on the principal balances actually due from time to time. This was not, however, a practice unknown to the Permanent associations in Maryland. See Report of the Commissioner of Labor, *op. cit. supra*, n. 144, 393.

that it pays no dues and receives dividends in cash, it has substantially the same rights and liabilities of running stock.

"Paid-up stock, however, is an exceedingly useful adjunct to a building association. It gives the association command of a large amount of money to loan and thus reduces the rates to borrowers. This class of stockholders is also a little steadier than the bookholders [*i.e.*, installment shareholders]. They are not so easily panicked, nor are they so needy as to require their money at once in case of a stringency in finance of a business depression.

"Paid-up stock is also a sort of financial regulator to an association. When money is too plenty, not being obliged to issue it, the doors are closed and a large source of supply is shut off. If this does not suffice even outstanding stock may be called in. When, however, the demand for money becomes greater than the supply, paid-up stock being a favorite investment, the association has but to open the gates and money pours in until the equilibrium is restored. By these means the idle cash balance of the association is kept continually small, and yet all really desirable loans can be made, and all other demands promptly met."¹⁴⁹

The Act of 1894

In 1894, the Legislature took cognizance of the changes which had taken place in the building and loan industry. By Chapter 321 of the Acts of that year, direct amendment was, for the first time, made to the original Act of 1852:

1. Recognition was given to the practice of issuing serial stock. There seems to be no reason why, after the 1,000 share limitation was removed by the General Incorporation Act, such special legislation was needed.¹⁵⁰

2. A building and loan association was given "power to issue full-paid up shares of stock to its members upon

¹⁴⁹ Report of the Commissioner of Labor, *op. cit. supra*, n. 144, 334. The so-called "Dayton plan" is so similar to the British Permanent association (and thus to the non-participating association established by the Maryland Act of 1872) that it is surprising that it acquired a name suggesting domestic origin. It appears, however, that after the Court of Appeals discredited the Act of 1872, the idea of the British plan was dropped; and it was re-introduced by way of the interest generated by the operation of that system in Ohio. For that reason, discussion of paid-up stock has been postponed to this point in our commentary. Until then only 7 Maryland associations had such shares. Report of the Commissioner of Labor, *op. cit. supra*, n. 144, 30.

¹⁵⁰ But, as already noted at page 21, n. 89, *supra*, the lack of such specific authorization may serve to explain why the Serial associations were never popular in Maryland.

such terms as may be set forth in its by-laws." Since building and loan associations were incorporated under the General Incorporation Act, the only apparent reason for such a conferral of authority is to overcome any doubt as to the limitations which might be inherent in the operations of a "building and loan association."¹⁵¹

3. There is also apparently broader authority with respect to the exaction of premiums:

"[I]nstead of receiving the whole amount of said premium (in advance or deducting the whole amount of said premium) from the amount of such advance, the borrower may pay the same in weekly, monthly or such other instalments as may be agreed upon. . . ."¹⁵²

The provision is similar to that relating to premiums of non-participating associations under the Act of 1872. It is peculiar to find this extension of the premium concept together with provision for paid-up stock, one of the effects of the latter being to obviate the necessity for a premium.

As a direct result of these changes, some of the six characteristics which distinguished early building and loan associations were no longer applicable, or applicable in only very modified form. In either event, the Court of Appeals required "strict conformity with the very terms of the law."¹⁵³ *Entrance fees* were still permitted; and the Court recognized that they "are in no way connected . . . with the subject of advances, and they enure to the benefit of all the members by swelling the funds of the Association and thereby increasing the profits for distribution."¹⁵⁴ But "this does not authorize the charging of entrance fees to borrowing members only . . . [and] does not contemplate a variety of entrance fees, nor does it permit any entrance fee to be charged in the absence of a provision in the charter fixing the amount of such fee."¹⁵⁵

¹⁵¹ Cf. *Coltrane v. Baltimore Building & Loan Ass'n*, 110 F. 281, 284 (C.C.D. 1901). The Master seems to overlook the effect of the Act of 1894. Probably the 7 associations having paid-up stock prior to the passage of the statute were incorporated under special act or operated under the Act of 1872.

¹⁵² MD. LAWS 1894, Ch. 321.

¹⁵³ *Ehrhart v. Bldg. & Loan Assn.*, 157 Md. 40, 44, 145 A. 202 (1929); *Washington Bldg. Assn. v. Andrews*, 95 Md. 696, 700, 53 A. 573 (1902); *White v. Williams*, 90 Md. 719, 727, 45 A. 1001 (1900).

¹⁵⁴ *Stewart v. Building Association*, 106 Md. 675, 683, 68 A. 887 (1907).

¹⁵⁵ *Ehrhart v. Bldg. & Loan Assn.*, *supra*, n. 153, 43. Cf. *Cromwell v. Sharon Bldg. Assoc.*, 220 Md. 317, 324, 152 A. 2d 548 (1959); *Poole v. Miller*, 211 Md. 448, 461, 128 A. 2d 607 (1957); *Glass v. Bldg. & Loan Assn.*, 156 Md. 26, 143 A. 587 (1928). Compare *Lakeview Building and Loan Assn. v. Beyer*, 4 Balto. City Reports 177 (1923).

Since under the Permanent and Dayton plans the members bore no common relationship with regard to termination, the *bonus* became obsolete. An inartificial use of the word has persisted in the cases as being synonymous with "premium."¹⁵⁶

On its face, the Act of 1894 would seem to preserve and extend the power of building and loan associations with regard to *premiums*, even though they might adopt the Dayton plan form of issuing paid-up stock. The Court of Appeals held, however, that no such change was intended:

"The only change . . . made by the Act of 1894, so far as it relates to the premium, is the addition of a provision that the borrower, instead of paying the whole amount of the premium in advance or having it deducted from the sum advanced to him by the association, may pay it in such weekly, monthly or other instalments as may be agreed upon and its payment may be secured by the mortgage given to the association for the repayment of advances.

"The change thus effected in the law relates solely to the *time and method of payment* of the premium and affords no warrant for substituting an indefinite or variable amount for the *fixed and definite sum* that we [have] held . . . to be the meaning of the words 'such premium as may be agreed upon' which still remain in their original place in the amended statute."¹⁵⁷

Since the statute conferred no broader right to exact a premium than had existed before,¹⁵⁸ or, stated otherwise, since no change was made in the basis for exacting a premium, a premium had no place in the Permanent association having paid-up stock.¹⁵⁹

Fines were still permitted by the statute; and the Court recognized that they could be levied and their payment

¹⁵⁶ Cf. *Poole v. Miller, ibid.*; *Glass v. Bldg. & Loan Assn., ibid.* Compare *Lakeview Building and Loan Assn. v. Beyer, ibid.* See also, 2 Md. CODE (1957) Art. 23, § 147. Distinguish, *Musgrave v. Morrison, 54 Md. 161, 166 (1880)* where the Court saw the imposition of a bonus as a convenient manner of apportioning "profits earned or supposed to have been earned by the Company." See also, pages 113-114, *infra*.

¹⁵⁷ *Washington Bldg. Assn. v. Andrews, 95 Md. 696, 701, 53 A. 573 (1902).*

¹⁵⁸ See pages 11-12, *supra*.

¹⁵⁹ *Coltrane v. Baltimore Building & Loan Ass'n, 110 F. 293, 296-308 (C.C.D. Md. 1901)* aff'd as to this point sub. nom. *Coltrane v. Blake, 113 F. 785 (4th Cir. 1902)*. The Master there points out the distinction between a "competitive" and a "non-competitive" premium. Despite some grumblings from the Bench, the British recognized the latter form. The Maryland cases make it clear that the premium authorized by the Acts of 1852 and 1894 is of the "competitive" variety. See the discussion at pages 11-12, *supra*.

secured by mortgage, subject to the rules laid down in the earlier cases.¹⁶⁰ However, the existence of paid-up stock substantially reduced the necessity for the non-borrowing free shareholder to make his weekly payments of dues:

“[T]he number of shares a man holds cuts very little figure. The money paid in on them is the basis of the calculation for dividends. This has a most important side effect. The money actually paid in by a member, not what he ought to have paid, as in the older plans, is the basis of dividends. It is, therefore, no longer necessary to insist that a member, not a borrower, should make the payments his shares call for. No attention is, therefore, paid as to whether a non-borrower pays up or not. If he does not it is his own affair; nobody but himself is the loser. Neither are fines ever assessed on the non-borrower, no attention is paid to him except to adjust his dividend in accordance with his payment.”¹⁶¹

The *form of security* given by a borrowing member was altered to the extent that the interest of the borrowing member terminated when the sum advanced to him had been repaid rather than at the time when all shares of the association had reached their par value.¹⁶² The legal rate of interest remained at 6% of the sum advanced until total repayment.¹⁶³

Most important, and even in an association operating under the Dayton plan, *mutuality* was retained. The Court of Appeals provides this description of such a corporation:

“According to the general scheme of the association . . . subscribers to its stock had the option of pay-

¹⁶⁰ Stewart v. Building Association, 106 Md. 675, 683, 68 A. 887 (1907). Cf. Watson v. Loan & Savings Assn., 158 Md. 339, 343, 148 A. 420 (1930).

¹⁶¹ Report of the Commissioner of Labor, *op. cit. supra*, n. 144, 336. As there suggested, in addition to being unnecessary, it was probably unwise for an association to assess fines against a non-borrowing member, since this might deter some from joining the association. Some authorities viewed failure to charge fines to free shareholders as an independent feature of the Dayton plan. SUNDHEIM, BUILDING AND LOAN ASSOCIATIONS (3d ed. 1933) § 14. However, it is properly viewed as merely another aspect of the effect of paid-up stock.

¹⁶² Stewart v. Building Association, *supra*, n. 160, 680; Border State Perp. Build. Assoc. v. McCarthy, 57 Md. 555 (1882). Compare Murphy v. Preston, 107 Md. 444, 447-448, 69 A. 114 (1908).

¹⁶³ Magness v. Loyola Sav. & L. Ass'n, 186 Md. 569, 577-578, 48 A. 2d 769 (1946); Commercial Ass'n v. Mackenize, 85 Md. 132, 143, 36 A. 754 (1897); Border State Perpetual Build. Ass'n v. Hilleary, 68 Md. 52, 11 A. 505 (1887); Border State Perpetual Build. Ass'n v. Hayes, 61 Md. 597 (1884); Border State Perp. Build. Ass'n v. McCarthy, 57 Md. 555, 561-562 (1884).

ing for it in cash at its face value, or by the payment of specified monthly installments, called 'dues' until its maturity i.e. until the assets of the association made the stock worth one hundred dollars per share. The holders of full paid shares were subject to no further assessments and received dividends at the fixed rate of eight per cent per annum. The holders of installment shares received no dividends but their stock was to be credited with a proper share of the earnings of the association.

"On [advances] . . . the borrowing stock holder was required to pay, in . . . installments, interest at the rate of six per cent per annum and a premium at the same rate. If the borrowers [sic] stock was installment stock he was required in addition to pay the monthly dues on it. Every member was entitled to one vote at meetings of the association for each share of stock held by him, except that no member who was indebted to the association could vote upon any question affecting its claim against him."¹⁶⁴

One feature of this corporate structure is important to note. Although paid-up stock received a fixed dividend, which made it similar in nature to "preferred stock,"¹⁶⁵ to view this preference as implying two distinct classes of shares would be erroneous.¹⁶⁶ All stock — including that of the installment free shareholder and the borrowing member — had the same rights when fully paid. In the case of the borrower, however, his stock when so paid was surrendered to the association. In the case of non-borrower who was purchasing his shares by the payment of installments, he could not claim the incidents of full ownership until such time as he had paid the full par value of his shares.¹⁶⁷ In fact, that he was to receive any dividends on

¹⁶⁴ Preston v. Woodland, 104 Md. 642, 644, 65 A. 336 (1906). See also Murphy v. Preston, *supra* n. 162, 447; Coltrane v. Blake, *supra*, n. 159; Coltrane v. Baltimore Building & Loan Ass'n, *supra*, n. 159, 272-319.

¹⁶⁵ Cf. Coltrane v. Blake, *supra*, n. 159, 789; Coltrane v. Baltimore Building and Loan Ass'n, *supra* n. 159; BRUNE, MARYLAND CORPORATION LAW AND PRACTICE (Rev. ed 1953) § 74, p. 80.

¹⁶⁶ Coltrane v. Baltimore Building & Loan Ass'n, *supra*, n. 159. Cf. Stewart v. Building Association, *supra*, n. 160, 682. But see Tucker v. Osbourn, 101 Md. 613, 614, 61 A. 321 (1905). Whether an association was permitted to issue more than one class of stock seemed, prior to 1961, to be in doubt. Cf. Tucker v. Osbourn, *supra*, 617-618; SUNDHEIM, *op. cit. supra*, n. 161, § 17; Letter of C. Ferdinand Sybert, Attorney General, and Lawrence F. Rodowsky, Assistant Attorney General, to Albert W. Ward, Director of the Department of Assessments and Taxation, dated June 23, 1960, as yet unpublished.

¹⁶⁷ Cf. BRUNE, MARYLAND CORPORATION LAW AND PRACTICE (Rev. ed. 1953) § 194.

shares which were not fully paid had always been somewhat of an anomaly.¹⁶⁸

The Twilight of the Participating Association

An English jurist, noting the operation of an early association stated flatly that "in truth, the whole scheme is but an elaborate contrivance for enabling persons having sums for which they have no immediate want to lend them to others at a very high rate of interest."¹⁶⁹ In 1907, there was a frontal attack upon the system as it then operated in Maryland. It was there argued that "few borrowers upon building association mortgages are aware or are informed as to the rules or covenants in regard to its repayment" and

"[T]he rigid enforcement of the shareholders doctrine . . . is generally held by the members of the bar here (in Baltimore) and including many of those representing Building Associations and working thereunder, as most burdensome and unjust, and that the appellant voices their general sentiment in urging the Court to so modify or relax said rule as to place the borrowers and non-borrowers on a more equal footing."¹⁷⁰

The Court of Appeals, noting that the argument contained inherent recognition of a distinction between "participating" and "non-participating" associations, refused to effect a judicial amalgamation of the two operations. But there were a number of external circumstances which brought about just such a result.

Although the Court of Appeals has recently noted that "Undoubtedly, the general purposes of building associations are to promote thrift and to facilitate the building or purchase of homes, or both,"¹⁷¹ the latter feature, as a *corporate* end, had begun to erode with the introduction of the Permanent association; and the process was all but complete under the Dayton plan. While the borrowing member still obtained some benefits from his membership, the continuity of the Permanent plan association and the capital of the Dayton plan association lay in the free share-

¹⁶⁸ Cf. *Baltimore City Pass. Railway Co. v. Hambleton*, 77 Md. 341, 347, 26 A. 279 (1893).

¹⁶⁹ Lord Cranworth, in *Fleming v. Self*, 3 DE G. M. & G. 997, 1015, 43 Eng. Rep. 390, 394 (1854).

¹⁷⁰ *O'Sullivan v. Traders' Assn.*, 107 Md. 55, 61, 68 A. 349 (1907). The Appellant had apparently been emboldened by the decision of the Fourth Circuit in *Coltrane v. Blake*, *supra*, n. 159.

¹⁷¹ *Poole v. Miller*, 211 Md. 448, 457, 128 A. 2d 607 (1957).

holder; and the purpose of the corporation was to serve him. Somewhat unconsciously, this shift in emphasis was noted by the Court of Appeals in analyzing the charter and by-laws of an early Permanent association:

"Its primary object is the investment of money for profit and gain, whilst its secondary effort should be its division and distribution in such manner as to secure to each shareholder his just and fair proportion of its profits."¹⁷²

This shift in emphasis was of course reflected in objective circumstances. The purposes of a borrowing member in joining the association and that of the paid-up, or even the installment, free shareholder were entirely different — if not antithetical. The only thread which bound this rather amorphous group together was the fact that all shared, to one degree or another, in the profits of the association.¹⁷³

As the free shareholder came to dominate the association, the payment of dividends to one who was in all other respects nothing more than a borrower, must have been somewhat irksome. Under the Dayton plan, the factor had a second thrust. Persons who would wish to pay interest at the rate of six per cent on the principal amount during the entire period of the debt in return for the dubious right to share in the profits of the association after a fixed return had been given to paid-up shareholders undoubtedly became increasingly difficult to find.¹⁷⁴

Another important blow to the existing system was its effect, in the Federal courts, upon the liability of the borrowing member in an involuntary liquidation of the asso-

¹⁷² *Balto. Bldg. As'n v. Powhatan Co.*, 87 Md. 59, 64, 39 A. 274 (1898). See also, *Hennighausen and Wolff, Receivers v. Tischer*, 50 Md. 533, 588 (1878).

¹⁷³ There had always been a latent distinction between borrowing and non-borrowing members. As stated by STONE, *BENEFIT BUILDING SOCIETIES* (1851) p. 11:

". . . [S]ocieties were composed of two classes of members. Those who entered the society for the mere purpose of saving a certain sum of money at interest by the payment of monthly or quarterly contributions, and from whom no security would be required; and those who wished to borrow money to invest in the purchase of real property, and in building thereon, or not, and who could give a security on it for the value of their shares or the money advanced to them by the society"

See also, THORNTON & BLACKLEDGE, *BUILDING AND LOAN ASSOCIATIONS*, (1898) p. 8, fn. 1. *Cf. Murphy v. Preston*, *supra*, n. 162.

¹⁷⁴ As already noted, because of the fact that it would be impossible to predict the extent of the dividends to which a borrower would be entitled, the borrower never knew the duration of his indebtedness. *Cf. page 19, supra*.

ciation. In 1902, the Circuit Court of Appeals for the Fourth Circuit overruled the Circuit Court for the District of Maryland and reinstated the report of Special Master John C. Rose, in holding that:

"In our opinion, the debt due to the association by the borrowing stockholder [on involuntary dissolution] should be adjusted by charging him with the sum really advanced, with interest thereon at 6 per cent., and by crediting him with all sums paid by way of premiums and interest, upon the principle of partial payments, the remainder thus ascertained to be part of the assets of the association; that on the debt account *he receive no credit for dues paid by him*; and that in the final distribution of the assets he share in them in proportion to the amount paid in by him as dues upon his stock, with interest thereon. . . ."¹⁷⁵

Although the Maryland Court of Appeals refused to follow this rule,¹⁷⁶ the possibility of liquidation of the association in the Federal courts could only make a prudent borrower wary.

It would also seem to be a fair conclusion that improved financial conditions, and the increase in the number of building associations,¹⁷⁷ were effective inducements to the individual association for providing a rate of interest more favorable to the borrowing member. Elementary dictates of competition necessitated basic changes. The "Divers persons, chiefly amongst the industrial classes" referred to in the preamble of the Act of 1852 were, at very least, in a more favorable position in the Twentieth Century. To these considerations can be added the now-proven fact

¹⁷⁵ (Emphasis supplied). *Coltrane v. Blake*, 113 F. 785, 792-793 (4th Cir. 1902) reversing *Coltrane v. Baltimore Building & Loan Ass'n*, 110 F. 293 (C.C.D. Md. 1901). The holding rested upon the view that the borrowing member's subscription contract and his mortgage debt were distinct contracts. *Cf. Murphy v. Preston*, *supra*, n. 162. Since he shared in the profits of the association under the subscription contract until he had repaid the sum advanced, the Fourth Circuit concluded that he must share in the losses.

¹⁷⁶ *Preston v. Woodland*, 104 Md. 642, 65 A. 336 (1906). See also the cases cited in n. 63, *supra*. Neither the Maryland Court of Appeals nor the Fourth Circuit made specific reference to the opinions of the other.

¹⁷⁷ In 1893, there were 239 associations in Maryland which styled themselves building and loan associations, having assets of approximately \$12,500,000. See n. 127, *supra*. In 1921, it was indicated that a report showed 850 associations with total assets of \$72,000,000. *Lakeview Building and Loan Assn. v. Beyer*, 4 Balto. City Reports, 177, 179 (1923). In 1940 it was estimated that there were 652 active associations in the State with assets of \$160,000,000. C. Keating Bowie, Jr., "Building and Loan Associations", Research Division, Maryland Legislative Council, Research Report No. 9 (1940) pp. 14-15.

that building associations can exist — and grow and prosper — without the benefits which the participating associations derived from their high rate of interest.

The Drop Interest Plan

Most Permanent and early Dayton plan associations in Maryland seem to have operated on the share accumulation plan,¹⁷⁸ charging interest on the full principal amount during the entire period of the loan and allowing the borrower to share in the profits. There was respectable legal support for the view that any other system, whereby the borrower would pay interest only on unpaid balances would be contrary to the principles of building and loan associations:

“[T]he borrowing member had no right to claim credit on his loan for the payments of stock dues made by him when and as he made them. He could not claim to do this because he was a partner or quasi partner with the free shareholders. Each of them had contracted to pay in their stock dues until the shares mature. The free shareholders were not entitled to draw interest on their stock payments, and consequently the borrowing shareholders had no right to receive interest on their payments upon the same account. It is clear that, if the borrowing members were allowed a reduction of interest on their loans on account of the payments made by them on their shares, they would in effect receive interest on those stock payments. To that they were clearly not entitled, and could not be so long as the association was a mutual association.”¹⁷⁹

There had been several other factors which operated against charging interest only on unpaid balances. For one thing, where borrowing members shared equally in the profits of the corporation with free shareholders, it was questionable how far a reduction in the return from interest was feasible. Also, in Permanent or Terminating associations, any change in the amount derived from interest could only adversely affect the already unsatisfactory rate of accumulating the fund from which loans were made. Finally, there was nothing which would prompt the

¹⁷⁸ The term “share accumulation plan” is that used by C. Keating Bowie, Jr., *op. cit. supra*, n. 177, p. 3.

¹⁷⁹ *Coltrane v. Baltimore Building & Loan Association*, 110 F. 293, 304 (C.C.D. Md. 1901). But, see the references in the following footnote.

adoption of such practices, since there had been little competition for the business of the person with whom building associations dealt.

But, even as early as 1893, before the provision for paid-up stock was added to the statute, 62 Maryland associations operated under this plan of repayment:

"Under this plan there is no premium. The borrower pays interest on his loan in regular instalments, but the principal is reduced periodically by the amount of the dues paid in by the borrower, and interest is charged on the balance only."¹⁸⁰

Reduction of interest took three separate forms: (a) the "direct reduction plan," whereby the amount paid in each week as dues was deducted from the principal and the remainder formed a new principal upon which interest was computed for the next payment;¹⁸¹ (b) the "reducing payment plan," which involved recomputation of the principal amount upon which interest was based at quarterly, semi-annual, or annual periods rather than after each payment;¹⁸² and (c) the "drop interest plan,"¹⁸³ the method most widely used in Maryland, under which the rate of interest is redetermined each time that payments of dues equal the par value of one share of stock.

The mechanics of the drop interest plan are a modification of the procedure necessary under the share accumulation plan. In order that payments of interest might be equally distributed throughout the year, the weekly payment is determined by dividing the amount of yearly interest on the par value of each share of stock by 52, being a practical approximation of the number of weekly payments in a year.¹⁸⁴ When the quotient contains a fractional part

¹⁸⁰ Report of the Commissioner of Labor, *supra*, n. 144, 393. See also, *Waverly Mut. Build. Asso. v. Buck*, 64 Md. 338 (1885), which involved a Permanent association using the "drop interest plan."

¹⁸¹ So far as has been found, this method of computation received only recent acceptance in the industry. *Cf. SUNDHEIM, op. cit. supra*, n. 161, § 18. C. Keating Bowie, Jr., *op. cit. supra*, n. 177, suggests, page 3, that "the direct reduction plan has received much popularity." It is thought that he refers to the "drop interest plan." The practical difficulties of the direct reduction plan under a system where payments are made weekly are all but insurmountable.

¹⁸² SUNDHEIM, *op. cit. supra*, n. 161, § 18.

¹⁸³ *Cf. Mtge. Bond Ass'n v. Baker*, 157 Md. 309, 312, 145 A. 876 (1929). Although the association involved in that case was a non-participating association, operating under a most unique system, the description of the operation of the drop interest plan is apposite here.

¹⁸⁴ *Magness v. Loyola Sav. & L. Ass'n*, 186 Md. 569, 579, 47 A. 2d 769 (1946). *Cf. Stewart v. Building Association*, 106 Md. 675, 682, 68 A. 887 (1907).

of a cent, it is of course resolved by rounding off the figure to the next penny. Thus, for shares with a par value of \$125, equal weekly installments of interest would be \$14.42+¢; and the prescribed weekly installment on each share would be 15¢.¹⁸⁵ This results in a yearly payment of 30¢ in excess of 6% of the \$125 par value of the shares, which is both usurious in a typical loan transaction,¹⁸⁶ and also in excess of the legal interest permitted in a building association transaction.¹⁸⁷

Some associations sought to obviate this difficulty by styling the weekly payment "interest and premium."¹⁸⁸ Others found solution in having shares with a par value of \$104, the weekly interest on which would be exactly 12¢; or \$130 when weekly interest would be 15¢. This practice was not widely adopted, probably because of the difficulty of making advances in multiples of 104, or 130.¹⁸⁹ Surprisingly, the matter has not been raised successfully in recent years. In the only case where objection was made,¹⁹⁰ it was held that the question was barred by voluntary payment.¹⁹¹

Under the drop interest plan, this method of computing interest is retained; but the weekly payment of interest ceases as to one share each time the accumulation of dues paid in equals a multiple of the par value of the stock.¹⁹²

¹⁸⁵ *Magness v. Loyola Sav. & Loan Ass'n, ibid.*, 15 cents would also be weekly interest on \$130 par value shares. *Stewart v. Building Association, ibid.* See also, *Watson v. Loan & Savings Assn.*, 158 Md. 339, 342-343, 148 A. 420 (1930) for a description of the system for \$100 par value stock.

¹⁸⁶ *Cf. Md. CONST.*, Art. III, § 57; 5 MD. CODE (1957) Art. 49, §§ 1, 3.

¹⁸⁷ *Magness v. Loyola Sav. & L. Ass'n, supra*, n. 184, 597

¹⁸⁸ *E.g. Watson v. Loan & Savings Assn., supra*, n. 185, 343. This practice has been condemned by the Court of Appeals as "evasive, and tending to elude the restriction which the statute imposes . . ." *Washington Bldg. Assn. v. Andrews*, 95 Md. 696, 702, 53 A. 573 (1902). See also *Waverly Mut. Build. Assn. v. Buck*, 64 Md. 338, 343, 1 A. 561 (1885); *Shannon v. Howard Mut. Build. Ass.*, 36 Md. 383 (1872). Consider also the effect of a non-competitive premium. See n. 159, *supra*.

¹⁸⁹ But where adopted the borrower "would have paid precisely the same amount to the association . . . that she would have paid at the legal rate of interest . . ." *Stewart v. Building Association, supra*, n. 184, 682.

¹⁹⁰ *Magness v. Loyola Sav. & L. Ass'n, supra*, n. 184.

¹⁹¹ *Ibid.*, *Cf.* 5 MD. CODE (1957) Art. 49, § 6.

¹⁹² *Cf. Watson v. Loan & Savings Assn., supra*, n. 185, 343. Form #47 of The Daily Record Company of Baltimore, which is in extensive use, provides for "drop interest" in this manner:

" . . . [T]he said Mortgagor . . . covenant[s] . . . to pay and perform, as follows, that is to say: To pay the Mortgagee its successors and assigns weekly, the sum of . . . cents on each of said . . . shares of stock as dues, until the combined payment of dues shall amount to . . . Dollars for each of said . . . shares, and also to pay weekly, the sum of . . . cents for each of said shares, as interest and premium, until the par value of said shares shall be fully paid in, provided that whenever, by payment of said dues the

In return for this privilege, the borrowing member usually (at present, always) surrenders his rights to vote and participate in the profits of the association. At first, the drop interest plan probably existed as an "option" to the borrower — undoubtedly the result of a feeling that he should not (and because of the Court of Appeals, insistence upon mutuality, *could* not) be deprived of these membership rights except upon his own election:

"The by-laws allow for loans 'on the drop interest plan,' upon which the borrower is not to share in the profits of the association, 'or on any other plan agreed upon,' and the form of the [association] . . . for loans speaks of an option in the borrower in the choice of plan; but, actually, all borrowers have contracted on the drop-interest plan, and, so, have been without interest in the profits of the association's business."¹⁹³

In 1940, a report to the Legislative Council noted the decline of the share accumulation plan.¹⁹⁴ The dearth of cases in this century involving such transactions would, however, seem to indicate that the process of decline was more rapid and more complete than there implied. In any event, by 1946, Judge Markell, for the Court of Appeals, observed that:

"Building association 'advances' and mortgages [on the share accumulation plan] are anomalous artificial legal transactions, but are not novel or unprecedented in Maryland. Rather, in practice, they already seem to be obsolescent."¹⁹⁵

IV. PERMUTATION

The importance of the drop interest plan in shaping the modern building and loan association cannot be over-emphasized. Since the borrowing member, as a concomitant to his "election" to make repayment under the drop interest plan, relinquished all right to participate in the

sum of dollars shall be paid in upon said loan and all interest and fines then due shall have been paid . . . all interest and premium shall cease as to one share of said loan, and so on until said loan has been fully paid" [See also, *infra*, n. 225.]

Provision is also made for the payment of a weekly amount for taxes, water rent other public dues, ground rent, and insurance. There is also a covenant to pay fines. Note the reference to "interest and premium" in that form. See *supra*, n. 188.

¹⁹³ Mtge. Bond Ass'n v. Baker, 157 Md. 309, 312, 145 A. 876 (1929). See also, *supra*, n. 183.

¹⁹⁴ C. Keating Bowie, Jr., *op. cit. supra*, n. 177, 3-4.

¹⁹⁵ Magness v. Loyola Sav. & L. Ass'n, *supra*, n. 184, 576.

profits of the association, the transaction was divested of any semblance of the sort of "mutuality" which had been seen as necessary in a building and loan transaction. But any real problems in this regard were immediately made moot by the fact that the drop interest plan involved only a relatively inconsequential attempt to exact interest in excess of 6%; and the lack of cases seems to indicate that even borrowers wink at the practice, if indeed it would be economically feasible to engage in protracted litigation on the point.

With these developments, the nuances¹⁹⁶ of the "advance" transaction became largely problems of the past; but the rise of the free shareholder had opened a whole Pandora's box of new problems. Some of these are very nearly like those of other types of stock corporations.¹⁹⁷ Others have a particularly unique flavor and are worthy of note: the status of the free shareholder and the borrower and the matter of surplus.

The Free Shareholder

Surprisingly, it was contemplated by the original Act of 1852 that the subscriber to the stock of building and loan associations would receive "certificates" although of course he had not yet paid for them.¹⁹⁸ He was also

¹⁹⁶ Even the Court of Appeals complained about the "misapprehension which has prevailed to a considerable extent on the subject of the liability of a building association for usurious interest." *Commercial Ass'n v. MacKenzie*, 85 Md. 132, 142-143, 36 A. 754 (1897); *Building Association v. McCarthy*, 57 Md. 555, 559 (1882).

¹⁹⁷ Recent cases have involved questions of: (a) voluntary dissolution [*Building & Loan Assn. v. Gimbel*, 171 Md. 1, 187 A. 856 (1936)]; (b) involuntary dissolution [*Mendelis v. Broening*, 168 Md. 488, 178 A. 238 (1935); *Polly v. Camden Bldg. & Sav. Assn.*, 167 Md. 577, 175 A. 599 (1934); *Monroe v. Broening*, 167 Md. 239, 173 A. 203 (1934); *Kraft v. Building Assn.*, 165 Md. 570, 169 A. 71 (1933)]; (c) ultra vires transactions [*Poole v. Miller*, 211 Md. 448, 128 A. 2d 607 (1957); *National Bank v. Crockett*, 145 Md. 435, 125 A. 712 (1924); *Montrose Bldg. Assn. v. Page*, 143 Md. 631, 123 A. 68 (1923)]; (d) dividends [*Polly v. Camden Bldg. & Sav. Assn.*, *ibid.*; *cf. Kraft v. Building Assn.*, *ibid.*]; (e) merger [*Ash v. Citizens B. & L. Ass'n*, 225 Md. 395, 170 A. 2d 750 (1961)]; (f) duties of corporate promoters, officers and directors [*Poole v. Miller*, *supra*; *Etgen v. Wash. Co. B. & L. Ass'n*, 184 Md. 412, 41 A. 2d 290 (1945); *Building Assn. v. Crimi*, 172 Md. 238, 190 A. 830 (1937); *Bldg. & Loan Assn. v. Boden*, 169 Md. 493, 182 A. 665 (1936); *Polly v. Camden Bldg. & Sav. Assn.*, *supra*; *Balto. Amer. Ins. Co. v. Ulman*, 165 Md. 630, 170 A. 202 (1934); *Ehrhart v. Bldg. & Loan Assn.*, 157 Md. 40, 145 A. 202 (1929); *Building Union v. Juengst*, 153 Md. 36, 137 A. 498 (1927); *Montrose Bldg. Assn. v. Page*, *ibid.*; *Tucker v. Osbourn*, 101 Md. 613, 61 A. 321 (1905); *Reus Loan Co. v. Conrad*, 101 Md. 224, 60 A. 737 (1905)].

¹⁹⁸ MD. LAWS 1852, Ch. 148, §4. The portion of that section which related to the power "to issue to each member . . . a certificate of the shares of stock held by him" was rendered unnecessary by the General Incorporation Act of 1868. *Of. Md. LAWS 1868, Ch. 471, § 85.* See also *Stewart v. Building Association*, 106 Md. 675, 68 A. 887 (1907).

given a "pass book"¹⁹⁹ in which a running account was kept of the dues which he had paid and, in the case of Permanent associations, the profits which had been credited to his account from time to time as dividends. With the advent of the Dayton plan, it was the practice for some associations to issue conventional certificates to those purchasing paid-up shares and also to installment free shareholders, at least when their payment of dues ripened their subscription into paid-up shares.²⁰⁰

Early practice was also to pay dividends on paid-up stock in cash.²⁰¹ Many, perhaps a majority, of those holding paid-up stock would have no desire to receive the cash dividend,²⁰² but would rather use this income either to purchase additional paid-up shares or to apply toward the purchase of paid-up shares under some theory of "pre-payment,"²⁰³ although the theory of allowing either paid-up or installment members to invest beyond their original subscription was never carefully articulated.²⁰⁴

As this process continued, the number of paid-up shares ultimately surpassed the number of installment shares; but even before then it became impossible, if only from an economic standpoint, to treat the former as being entitled to a high, preferential dividend. Such preference as was needed to meet the situation was adequately met by de-

¹⁹⁹ Of course, borrowing members were also given pass books. *Cf.* *Watson v. Loan & Savings Assn.*, 158 Md. 339, 345, 148 A. 420 (1930).

²⁰⁰ *Cf.* *Frederick v. Lyons*, 173 Md. 95, 97, 194 A. 815 (1937); *Coltrane v. Baltimore Building & Loan Ass'n*, 110 F. 281, 284 (C.C.D. Md. 1901); *Tucker v. Osbourn*, 101 Md. 613, 617-618, 61 A. 321 (1905).

²⁰¹ *E.g.* *Stewart v. Building Association*, 106 Md. 675, 680, 68 A. 887 (1907); *Preston v. Woodland*, 104 Md. 642, 644, 65 A. 336 (1906); *Coltrane v. Blake*, 113 F. 785 (4th Cir. 1902) *aff'g* 110 F. 272 and 110 F. 281 (C.C.D. Md. 1901).

²⁰² Although they were of course free to withdraw them. *Cf.* *Frederick v. Lyons*, 173 Md. 95, 102, 194 A. 815 (1937).

²⁰³ *Cf.* *Building Union v. Juengst*, 153 Md. 36, 37, 137 A. 498 (1927); *Frederick v. Lyons*, 173 Md. 95, 102, 194 A. 815 (1937). There was a distinct difference between "paid-up" stock and "prepaid" stock. Paid-up stock was subject to no further assessments and received a fixed dividend. Prepaid stock represented the payment of a certain portion of the purchase price with dividends building up this down payment to the full par value. THORNTON & BLACKLEDGE, *BUILDING AND LOAN ASSOCIATIONS* (1899) § 10; Ninth Annual Report of the Commissioner of Labor, "Building and Loan Associations," H.R. EXEC. DOC. NO. 209, 43d Cong. Sess. 427 (1894).

²⁰⁴ *Cf.* *Coltrane v. Baltimore Building & Loan Ass'n*, 110 F. 281, 284 (C.C.D. Md. 1901). Nor, it seems, was any formal requirement made if a person contributed beyond his original subscription. *Cf.* *Building Union v. Juengst*, 153 Md. 36, 137 A. 498 (1927). The usual manner of ascertaining the shares owned was to divide the amount of money in the free shareholder's account by the par value of the association's shares. *Cf.* *Poole v. Miller*, 211 Md. 448, 452, 128 A. 2d 607 (1957).

claring a fixed dividend on each paid-up share and allowing the installment members a proportional part thereof.

The associations, ever eager for more capital, naturally favored these trends; and the most convenient manner of keeping a record of such transactions was through the pass book rather than a more conventional form of share certificate. There was no legal reason why a building and loan association might not designate a "pass book" for this purpose (although few deliberately did so) so long as the formal requirements of the general incorporation laws were met.²⁰⁵ In any event, the pass book of a free share member came to represent simultaneous evidence of (a) the ownership of paid-up stock; (b) amounts paid toward the purchase of additional paid-up stock; (c) dividends paid from time to time; and (d) withdrawals.

In form and appearance, these pass books were similar to the account books of a depositor in a savings bank.²⁰⁶ In fact, little distinction could be made between the factors which motivated the savings depositor of a bank and the subscriber to free shares of a building and loan association. The result is illustrated in a case decided in 1934 in which the Court of Appeals held that a woman who had placed money in a building association had been misled into believing that she was making a savings deposit:

"Taking into consideration the appearance of the building ['similar to bank buildings'], the large sign as you enter the door '6% On Savings,' the fact that they did take [but paid interest on] Christmas savings accounts, the form of the deposit as evidenced by the passbooks [i.e. the usual trust form and the designation 'Savings Account'], and the way in which those accounts were kept in the pass books [showing principal balance and dividends], together with the testimony of the complainant [who was not able to read, write or speak English] as to the conversation which she had with the officers of the defendant at the time of making the initial deposits, we can reach no other conclusion than that she is a savings depositor. . . ." ²⁰⁷

²⁰⁵ Cf. 2 MD. CODE (1957) Art. 23, § 27; BALLANTINE, CORPORATIONS (Rev. ed. 1946) § 198.

²⁰⁶ Even the preamble of the Act of 1852 referred to weekly dues as "deposits." And often the payment of dividends was referred to as "interest."

²⁰⁷ Building & Loan Assn. v. Dembowczyk, 167 Md. 259, 269, 173 A. 254, (1934). Cf. Polly v. Camden Bldg. & Sav. Assn., 167 Md. 577, 175 A. 599 (1934).

As there indicated, the form of ownership of these accounts was also indistinguishable from that of the savings bank deposit. The similarity has been noted in several recent cases:

“Maryland decisions have concluded that there is no rational basis for drawing a distinction between accounts in savings banks and accounts in savings and loan associations *as far as the rights of depositors as between themselves are concerned.*”²⁰⁸

The reservation is important, since a building and loan association has never been able to conduct a banking business.²⁰⁹ Thus, whereas there is a debtor-creditor relationship between the bank and the savings depositor,²¹⁰ the relationship between a building and loan association and a *shareholder* is, from a legal point of view, markedly different. With regard to a Permanent association, the Court of Appeals had held that “a withdrawal [by a free shareholder] is a direct reduction of capital to the amount of the shares held by the member withdrawing, and a conversion of the stock into a debt due by the corporation to him, after deducting all his liabilities, as in the case of a partner retiring from a firm.”²¹¹ In a later case, the rule was stated in somewhat expanded form:

“[The] . . . relations [of free shareholders] to the association were essentially one of partnership for a definite time, entitled upon its expiration to the profits of their investments, and with the right to withdraw upon notice in writing to the directors. . . . Their membership does not terminate until the notice has been given and accepted, and *until then*, they could not assume the position of *creditors*. . . . Their claim begins only after every *creditor* has been satisfied.”²¹²

²⁰⁸ (Emphasis supplied.) *Jones, Adm. v. Hamilton, Adm.*, 211 Md. 371, 380, 127 A. 2d 519 (1956). See also *Bireau v. Bohemian Bldg. etc. Assn.*, 205 Md. 456, 459, 109 A. 2d 120 (1954); 21 Ops. Att’y Gen., 754 (1936).

²⁰⁹ *Cf.* 1 Md. CODE (1957) Art. 11, §§ 63ff. See also *Frederick v. Lyons*, 173 Md. 95, 97, 194 A. 815 (1937). Some associations were authorized to accept deposits by special act of the Legislature. *Cf.* *National Bank v. Crockett*, 145 Md. 435, 442, 125 A. 712 (1924).

²¹⁰ *E.g.* *Keller v. Frederickst’n Sav. Inst.*, 193 Md. 292, 296, 66 A. 2d 924 (1949); *Pritchard v. Meyers*, 174 Md. 66, 76, 197 A. 620 (1938); *Terminals Co. v. Hospelhorn*, 172 Md. 291, 298, 191 A. 707 (1937); *Sand & Gravel Corp. v. Hospelhorn*, 172 Md. 279, 289, 191 A. 701 (1937).

²¹¹ *Hennighausen and Wolff, Receivers v. Tischer*, 50 Md. 583, 589 (1879).

²¹² *Steinberger v. Savings Asso.*, 84 Md. 625, 634, 36 A. 439 (1897). But, when requisite notice had been given, the free shareholder became a creditor. *Hennighausen and Wolff, Receivers v. Tischer, ibid.* See also *Bldg. & Sav. Assn. v. Gorsuch*, 180 Md. 185, 191, 23 A. 2d 672 (1942);

It can readily be seen that there are important differences between the debtor-creditor relationship arising from the deposit situation and the *right* of withdrawal from a corporation. The withdrawal of a person holding a large number of free shares, or a large number of withdrawals in times of general economic adversity, could deal a mortal blow to a building association, which would have most or all of its capital at work and would not have the other operations available to a bank to cushion the blow.²¹³ Unless there was a relationship which permitted some regulation of withdrawals, a building association would be in a peculiarly vulnerable position.²¹⁴

The Borrowing Member

To characterize the transaction between the association and the borrower as an "advance," it seems that the borrower must have retained some interest in the profits and losses.²¹⁵ The result had been that the transaction was "regarded in the same light as if it were a mortgage be-

Building & Loan Assn. v. Gimbel, 171 Md. 1, 6, 187 A. 856 (1936); Building Union v. Juengst, 153 Md. 36, 41, 137 A. 498 (1927); Southern Bldg. Ass'n v. Price, 88 Md. 155, 164, 41 A. 53 (1898); Hampstead Building No. 11 Asso. v. King, 58 Md. 279, 280 (1882). *Cf.* Cook v. Emmet Bldg. Assn., 90 Md. 284, 288, 44 A. 1022 (1899).

The situation posed a potential problem within the association itself. It was early demonstrated that one member could obtain a preferred status if he were given a promissory note or other negotiable instrument as evidence of his interest in the corporation. *Davis v. West Saratoga Bldg. Union*, 32 Md. 285 (1870). See also, *Monroe v. Broening*, 167 Md. 239, 173 A. 203 (1934). In 1878, in an obvious move to reverse the decision in the *Davis* case, the General Assembly provided that all building and loan associations, including the non-participating associations formed under the Act of 1872, could not "issue any promissory note, bill or obligation of any kind to any member thereof . . ." MD. LAWS 1878, Ch. 154; 2 MD. CODE (1957) Art. 23, § 155. This provision is equally applicable to the present form of association. *Monroe v. Broening*, 167 Md. 239, 173 A. 203 (1934). *Cf.* *National Bank v. Crockett*, 145 Md. 435, 125 A. 712 (1924).

²¹³ *Cf.* *Hampstead Build. Asso. v. King*, 58 Md. 279 (1882); *Windsor v. Bandel*, 40 Md. 172 (1874). Fortunately, due to the shareholder theory, a building and loan association did not have to maintain a large reserve of cash. *Kraft v. Building Assn.*, 165 Md. 570, 573, 169 A. 71 (1933).

²¹⁴ See the solution reached during the Depression. MD. LAWS 1935, Ch. 474, extending the life of MD. LAWS 1933, Ch. 47. Both expired on June 1, 1937.

²¹⁵ *Cf.* *Magness v. Loyola Sav. & L. Ass'n*, 186 Md. 569, 578, 47 A. 2d 769 (1946); *Watson v. Loan & Savings Assn.*, 158 Md. 339, 341, 148 A. 420 (1930); *Goldman v. Building Assn.*, 150 Md. 677, 680-681, 133 A. 843 (1926); *O'Sullivan v. Traders' Assn.*, 107 Md. 55, 58 A. 349 (1907); *Citizens Security & L. Co. v. Uhler*, 48 Md. 455 (1878); *Williar v. Loan Ass'n*, 45 Md. 546 (1877); *Balt. Perm. B. & L. Soc. v. Taylor*, 41 Md. 409, (1875); *Montl. Perm. B. & L. Soc. v. Lewin*, 38 Md. 445 (1873).

tween individuals, and apart from any law relating to Building Associations.²¹⁶

In *Watson v. Loan & Savings Assn.*,²¹⁷ involving a mortgage on the drop interest plan under which the borrower surrendered all rights in the profits of the association, the Court of Appeals stated that the Act of 1872²¹⁸ would operate to cancel the shares of the borrowing member. Reference to the by-laws of the association, as found in the record on appeal and as stated in the opinion of the Court, indicates that although the member released his interest in the profits, he did not surrender such other elements of membership as might exist until he had satisfied the mortgage debt.²¹⁹

While it might be argued that there were some such incidents of membership which the borrower did not surrender at the time that he received a loan from the association, the technical correctness of the view taken by the Court was without practical significance. The modern association, not claiming the special privileges incident to the "advance" transaction,²²⁰ would have little reason to quarrel over whether or not it was a "non-participating" association. Even the result reached in the *Watson* case — that the by-laws of the association and the mortgage constituted "contemporaneous, complementary, and connected documents of a single transaction between the parties to which they had all assented"²²¹ — was similar in effect to the result reached in earlier cases.²²²

Moreover, it would be difficult to find more in the relationship of the modern association and its borrowers than that of mortgagor and mortgagee. The "mutual" interest of free shareholders and borrowers had become somewhat strained when provision was made for paid-up stock;²²³ and the drop interest plan, with the attendant surrender of interest in profits, at least precluded any view of the corporation as a partnership.²²⁴ While the transactions between

²¹⁶ *Magness v. Loyola Sav. & L. Ass'n*, 186 Md. 569, 578, 47 A. 2d 769 (1946); *Balt. Perm. B. & L. Soc. v. Taylor*, 41 Md. 409, 418 (1875).

²¹⁷ 158 Md. 339, 148 A. 420 (1930).

²¹⁸ Then 2 MD. CODE (1924) Art. 23, § 169.

²¹⁹ *Cf. Magness v. Loyola Sav. & L. Ass'n*, 186 Md. 569, 579, 47 A. 2d 769 (1946).

²²⁰ This is subject to a slight qualification with regard to the charging of excess interest under the drop interest plan. See pp. 104-105, *supra*.

²²¹ *Watson v. Loan & Savings Assn.*, 158 Md. 339, 346, 148 A. 420 (1930).

²²² Compare, *Morrison v. Dorsey*, 48 Md. 461, 472 (1878); *McCahan v. Columbian Build. Assn.*, 40 Md. 226 (1874).

²²³ See pp. 99-100, *supra*.

²²⁴ *Cf. Magness v. Loyola Sav. & L. Ass'n*, 186 Md. 569, 578-579, 47 A. 2d 769 (1946). Although the point does not seem to have been raised, with regard to the Maryland corporations, it is not clear what effect

the association and its borrowers continued to be conducted in the manner prescribed by the Act of 1852, i.e. an "advance" to a "member,"²²⁵ such formalities can be regarded as little more than "technical compliance with the statutory law on the subject of building or homestead associations."²²⁶

Surplus

The Permanent associations probably contemplated a complete division of profits among the shareholders, with no retention of surplus. However, the practice of allowing a free shareholder to withdraw his dues and accrued dividends appeared to some to be unfair to the members who did not withdraw until the maturity of their shares, and to the association itself.²²⁷ Solution was found in establishing a "contingent fund," or surplus, to which all contributed but which would not be withdrawable by an individual member leaving the association.²²⁸ After the full impact of the Dayton plan had been felt, the status of a paid-up free shareholder re-enforced the reasons for establishing a surplus to protect the continuing members from the vicissitudes of corporate operation.²²⁹ A logical corollary was that such a reserve represent some diversification of assets, to which can be added the fact that it was

this relationship had upon the exemption from Federal income taxation which was granted to associations "substantially all the business of which is confined to making loans." *Cf.* *United States v. Loan & Bldg. Co.*, 278 U.S. 55 (1928).

²²⁵ Md. LAWS 1852, Ch. 148, § 6; 2 MD. CODE (1957) Art. 23, § 149. Form #47 of The Daily Record Company, referred to *supra*, n. 192, contains the following language, in compliance with 5 MD. CODE (1957) Art. 66, § 2.

"WHEREAS, the said [Mortgagor] being [a] member of the said body corporate ha[s] received therefrom an advance of Dollars on share[s] of stock, the due execution of this Mortgage having been a condition precedent to the granting of said advance."

²²⁶ *Watson v. Loan & Savings Assn.*, 158 Md. 339, 340-341, 148 A. 420 (1930). The Act of 1872, dealing with non-participating associations, contemplated similar empty formalities. See also THORNTON & BLACKLEDGE, *BUILDING AND LOAN ASSOCIATIONS* (1898) p. 8, fn. 1.

²²⁷ THOMPSON, *BUILDING AND LOAN ASSOCIATIONS* (2d ed. 1899) § 9, (1st ed. 1892) pp. 7-8. The problem was two-fold. First, if the association met reverses, those who had withdrawn their dues and a proportional part of *all* the profits would obviously have received a better return on their money than those who remained with the association. Also, to allow a member the privilege of withdrawing any part of the profits involved some inconvenience to the association itself: "The association is endeavoring to mature its stock, yet it permits withdrawing stockholders to take away a part of its ability to do so." THOMPSON, *op. cit. supra*.

²²⁸ THOMPSON, *id.* As there indicated, in some States the creation of a surplus was required by statute.

²²⁹ While these shareholders would be less likely to feel any small losses, since their dividend was usually fixed, their preferred status would tend to intensify the effect of such losses upon the other members.

often not possible to put all available capital to use in mortgages.²³⁰

But, in the use and management of surplus, the early rule that "a mutual association based on the mutual plan . . . is bound to treat its members equally, and any by-law or contract made by it in contravention of such mutuality would be *ultra vires* and void"²³¹ provided little assistance. In 1917, the Legislature permitted building associations to invest in State and Federal bonds;²³² but this authorization did not in terms restrict associations to this type of investment only.²³³ Aside from such as might be found in the individual charters or by-laws, there were only general guides.²³⁴

Another difficulty surrounding the surplus involved the obvious fact that, as new free shareholders were admitted, the interest of the persons who were then members was proportionately diluted. Solution lay either in applying some form of pre-emptive rights or reviving and extending the "bonus" feature of the Terminating associations, i.e., requiring the entering member to pay such amount as "to place [him] . . . on a footing with . . . others, holding stock at the time of such application."²³⁵ Although various solutions were attempted,²³⁶ the problem became more and more difficult:

"New funds cannot be brought in without having an effect upon the amount of the surplus applicable to each share unless there are frequent — perhaps daily — calculations reflecting the financial condition of the association and the value (book or actual) of its shares, and a premium [i.e. bonus] based thereon is charged for new shares. If book value were always

²³⁰ Cf. *Poole v. Miller*, 211 Md. 448, 458, 128 A. 2d 607 (1957).

²³¹ *Balto. Bldg. As'n v. Powhatan Co.*, 87 Md. 59, 64-65, 39 A. 274 (1898).

²³² Md. LAWS 1917, Ch. 28. The provision was made obsolete by Md. LAWS 1929, Ch. 226, § 165, p. 720, and was removed from the Code by Md. LAWS 1943, Ch. 2.

²³³ Possibly a patriotic measure to encourage the purchase of war bonds, the measure made it lawful for building associations and non-participating associations to "buy, hold or lend upon United States bonds and bonds of the State of Maryland." It was probably necessary both in order to allow building associations to "lend upon" bonds as well as to remove any question about the right of such corporations to deal in stocks and bonds for investment. See BRUNE, MARYLAND CORPORATION LAW AND PRACTICE (Rev. ed. 1953) § 48; *Montrose Bldg. Assn. v. Page*, 143 Md. 631, 635, 123 A. 68 (1923).

²³⁴ See, BRUNE, *op. cit. supra*, n. 233, § 55.

²³⁵ Md. LAWS 1852, Ch. 148, § 5; now 2 MD. CODE (1957) Art. 23, § 147.

²³⁶ *E.g. Balto. Bldg. As'n v. Powhatan Co.*, 87 Md. 59, 65, 39 A. 274 (1898). Cf. *Musgrave v. Morrison*, 54 Md. 161, 166 (1880). See also, *Building Union v. Juengst*, 153 Md. 36, 39, 137 A. 498 (1927).

true value, this might not be a difficult calculation; but such calculations seem better adapted to the operations of mutual investment trusts than to those of a small building and loan association. . . . From this point of view, even the maintenance of exact pro rata asset value seems difficult, and the almost constant issuance of 'rights', as a means of according pre-emptive rights seems impracticable."²³⁷

Prelude To Chaos

Unfortunately, the charters and by-laws of the building and loan associations, never models of clarity,²³⁸ did not keep pace with these changes in practice. In one recent case, significant variation was found between an association's by-laws and practice with respect to the handling of mortgage applications, the number of directors elected, the duration of loans, the investment of surplus, and the collection of entrance fees.²³⁹

No one reason, or set of reasons, can adequately cover all of the factors which contributed to the existence of this situation. Those which at least contributed were the variety of transactions which the term "building and loan association" had come to suggest during its long period of evolution;²⁴⁰ the confusion which existed among the text-writers as to the significance of the rapid changes which had taken place;²⁴¹ the physical presence of the Act of 1872, relating to the discredited "non-participating" associations, under the sub-title "Building or Homestead Associations";²⁴² and the failure of the courts, through lack of necessity, to apply the distinction between participating

²³⁷ *Poole v. Miller*, 211 Md. 448, 461, 462, 128 A. 2d 607 (1957). Note the treatment of the problem by the association there involved. *Id.*, 464.

²³⁸ See the cases cited in n. 14. *supra*.

²³⁹ *Poole v. Miller*, *supra*, n. 237. The Court of Appeals held that the by-laws in question were repealed by "desuetude." *Cf. Building Union v. Juengst*, 153 Md. 36 43, 137 A. 498 (1927); *National Bank v. Crockett*, 145 Md. 435, 441, 125 A. 712 (1924).

²⁴⁰ Under the Act of 1852, Terminating and Permanent associations were permitted. After the Act of 1894, a building and loan association could issue paid-up stock, *i.e.* operate on the Dayton plan. Both the share accumulation and drop interest plans were permitted by the Act of 1852. See also n. 206, *supra*.

²⁴¹ See n. 147, *supra*.

²⁴² In recent years, the Court of Appeals has referred to the subtitle "Building or Homestead Associations" as if no distinction existed between the types of corporation described thereunder. *Cf., e.g. Ash v. Citizens B. & L. Ass'n*, 225 Md. 305, 309, 170 A. 2d 750 (1961); *Poole v. Miller*, 211 Md. 448, 452, 128 A. 2d 607 (1957); *Watson v. Loan & Savings Assn.*, 158 Md. 339, 148 A. 420 (1930).

and non-participating associations.²⁴³ It must also be remembered that the process was an evolutionary one, dictated at times by competitive reasons. Building and loan associations, always in a preferred position with regard to taxation,²⁴⁴ chose not to look too closely at changes which might suggest a basis for altering this treatment. And, as new officers and directors²⁴⁵ came upon the scene, it was natural, and no doubt easier, to accept the practices which they found and not delve too carefully into the complexities of the system.

1929 And After

The position in which Maryland building and loan associations found themselves after the economic upheaval of 1929 certainly did not result from any defects which

²⁴³ Cf. *Watson v. Loan & Savings Assn.*, *ibid.*, where the Court applied the Act of 1872 to a transaction where it clearly appeared that the association did not contemplate that the shares would be canceled at the time the money was advanced. See pp. 111-112, *supra*.

²⁴⁴ The original Act of 1852 provided in § 7 that "any such mortgage or mortgages, and the mortgage debt or debts intended to be secured thereby . . . is, and are hereby declared exempt from taxation; the property so mortgaged . . . to the corporation, being taxed in the hands of the individual member or mortgager [sic]." Following a hiatus during the periods 1866-1868 and 1876-1880 [*Appeal Tax Court v. Rice*, 50 Md. 302 (1879)], the Legislature provided by Md. Laws 1880, Ch. 351 that "any such mortgage, and the mortgage debt created thereby, and the shares of stock of any such corporation, and of all corporations for the loan of money on mortgage of real or leasehold property, are hereby declared to be exempt from taxation to the extent of such corporations, investments in such mortgages, the property so mortgaged to the corporation being taxed in the hands of the individual member or mortgagor." Subsequent amendments to the taxing statutes raised some doubts as to the applicability of such exemptions to transactions which were strictly loans [*Faust v. Building Association*, 84 Md. 186, 35 A. 890 (1896)]; cf. *Salisbury As'n v. Wicomico County*, 86 Md. 615, 39 A. 425 (1898)]; and Md. Laws 1904, Ch. 240 amended the provision to read: "any such mortgage and the mortgage debt created thereby, and the shares of stock of any corporation, and of all building associations, are declared to be exempt from taxation to the extent of the investments of such corporation in mortgages, whether such mortgages be building association mortgages or ordinary mortgages, the property so mortgaged to the corporation being taxed in the hands of the mortgagor." Judgments or decrees were added to the list of exempt holdings by Md. Laws 1916, Ch. 312; and the entire section was transferred to Article 81 of the Code by MD. LAWS 1929, Ch. 226. See 2 MD. CODE (1957) Art. 23, § 9. Cf. *Poole v. Miller*, 211 Md. 448, 457, 128 A. 2d 607 (1957). Exemption was also granted from the State Income Tax [Art. 81, § 288 (g) (3)]; Franchise Tax [Art. 81, § 197 (d)]; and to a limited extent, Bonus Tax [Art. 81, § 194 (c)]. The Federal exemption made no such attempt to shape the character of the organization. *United States v. Loan & Bldg. Co.*, 278 U.S. 55 (1928). See also n. 276, *infra*.

²⁴⁵ There is a conscious, but unsupportable, failure to include attorneys.

were peculiar to their operation.²⁴⁶ But, the large number of cases which reached the courts served to focus upon the changes which had been taking place within the industry.

The Maryland Legislature regarded the situation as an "emergency in relation to the affairs of building and home-stead associations."²⁴⁷ Whether it was prompted by this crisis is not clear,²⁴⁸ but in 1929 the General Assembly provided regulation of the nature and character of investments which might be made by such corporations. Thereafter, building and loan associations were allowed to *invest*²⁴⁹ only in cash, fixtures, loans on hypothecated stock, judgments, mortgages on real property within the state, and public bonds.²⁵⁰

In 1932, the Federal government entered the building and loan field with the passage of the Federal Home Loan Bank Act,²⁵¹ which provided that certain building and loan associations might become members of the Bank and receive loans therefrom. By way of the Home Owners Loan Act of 1933,²⁵² provision was made for the issuance of Federal charters by the Home Loan Bank Board; and additional legislation with respect to building associations was enacted by the National Housing Act of 1934.²⁵³ Maryland promptly provided enabling legislation.²⁵⁴

²⁴⁶ The difficulties were nationwide. RUSSELL, SAVINGS AND LOAN ASSOCIATIONS (1956) pp. 31-35; C. Keating Bowle, Jr., "Building and Loan Associations," Research Division, Maryland Legislative Council, Research Report No. 9 (1940) pp. 4-5; BODFISH & THEOBALD, BUILDING ASSOCIATIONS (1940) pp. 59-61; SUNDHEIM, LAW OF BUILDING AND LOAN ASSOCIATIONS, (3d ed. 1933) p. 4.

²⁴⁷ MD. LAWS 1935, Ch. 474, § 2. It has been estimated that in 1931 there were 1100 building and loan associations in Maryland with assets of \$210,000,000 and total membership of 320,000 persons. SUNDHEIM, *op. cit. supra*, n. 246, § 3. See also, n. 177.

²⁴⁸ BODFISH & THEOBALD, *op. cit. supra*, n. 246, where it is suggested that there was a delayed reaction so far as building and loan associations were concerned.

²⁴⁹ It appears that this refers to the matter of dealing with surplus rather than the type of security which might be accepted for mortgages. *Cf. Poole v. Miller*, 211 Md. 448, 457-458, 128 A. 2d 607 (1957).

²⁵⁰ MD. LAWS 1929, Ch. 226, § 165, p. 720. The provision raises several questions, not least of which is the fact that the provision is found in a lengthy tax revision statute in which, *inter alia*, the tax exemption afforded building associations was transferred to Art. 81 of the Md. Code. This seems to be a violation of Art. III, § 29, of the Maryland Constitution which provides that no statute may embrace more than one subject. See, Everstine, *Titles of Legislative Acts*, 9 Md. L. Rev., 197, 212-218 (1948). In any event, the provision would seem to be now superseded by MD. LAWS 1961, Ch. 205 and MD. LAWS 1961 (Spec. Sess.) Ch. 1 now MD. CODE (1961 Cum. Supp.) Art. 23, §§ 161Z, 160Z.

²⁵¹ Now, 12 U.S.C.A. (1952) Ch. 11.

²⁵² Now *id.*, Ch. 12.

²⁵³ Now *supra*, n. 251, Ch. 13.

²⁵⁴ MD. LAWS 1933, Chs. 26, 27; MD. LAWS 1933 (Spec. Sess.) Ch. 62; MD. LAWS 1935, Chs. 232, 233, 567. See 2 MD. CODE (1957) Art. 23, §§ 150,

After 1929, the Maryland legislature took a more benevolent attitude toward the building and loan industry. Temporary relief from the drain caused by the withdrawals of free shareholders was made by providing that no association was required to pay such member "a greater amount than his pro rata share of the total amount of dues received by such association or corporation from borrowing members . . . in the ratio which the total paid in value of the shares demanded for redemption bears to the total paid in value of unredeemed shares then outstanding."²⁵⁵ In addition to prohibiting members who had given early notice of withdrawal from obtaining a preferential position with regard to the assets of the association, associations were kept in somewhat liquid condition through the retention of the portion of its weekly dues ascribed to members who chose to remain with the association.²⁵⁶ Undoubtedly, the statute did much to preserve stability during this period, since a member who might otherwise not desire to withdraw would, in the absence of the statute or a by-law provision within the association, have become fearful if he saw others receiving a full return of their assets.²⁵⁷ Although the statute expired by its own terms in 1937, it has been incorporated in the by-laws of many associations.

Provision was also made during this period for the operation of foreign building and loan associations,²⁵⁸ although it is clear that they had operated in Maryland prior to this time.²⁵⁹ The latest of the statutes on this subject, passed in 1955, prohibits the opening of new associations, whether incorporated in Maryland or elsewhere, which have their principal offices in other States.²⁶⁰

154, 159. *Cf.* *Hardy v. Gibson*, 213 Md. 493, 502-503, 133 A. 2d 401 (1957); *Magness v. Loyola Sav. & L. Ass'n*, 186 Md. 569, 572, 47 A. 2d 769 (1946).

²⁵⁵ Md. LAWS 1933, Ch. 47; MD. LAWS 1935, Ch. 474. The provision expired by its own terms on June 1, 1937, and was removed from the Code by MD. LAWS 1945, Ch. 875.

²⁵⁶ *Cf.* *Building & Loan Assn. v. Gimbel*, 171 Md. 1, 187 A. 856 (1936); *Mendelis v. Broening*, 168 Md. 488, 178 A. 238 (1935); *Kraft v. Building Assn.*, 165 Md. 570, 169 A. 71 (1933).

²⁵⁷ See also, the argument of THOMPSON, BUILDING AND LOAN ASSOCIATIONS (2d ed. 1899) § 9. See n. 227, *supra*.

²⁵⁸ MD. LAWS 1929, Ch. 453; MD. LAWS 1937, Ch. 309; MD. LAWS 1939, Ch. 272; MD. LAWS 1955, Ch. 234. 2 MD. CODE (1957) Art. 23, § 156.

²⁵⁹ *E.g.* *Washington Bldg. Assn. v. Andrews*, 95 Md. 696, 53 A. 573 (1902); *Southern Bldg. Ass'n v. Price*, 88 Md. 155, 41 A. 53 (1898); *Commercial Ass'n v. Mackenzie*, 85 Md. 132, 36 A. 754 (1897).

²⁶⁰ MD. LAWS 1955, Ch. 234. 2 MD. CODE (1957) Art. 23, § 156.

The Industry Plays Power Politics

After this spate of legislation, none of which, except the restrictions placed upon investments, had any limiting effect upon the Maryland associations which did not choose to become affiliated in some way with the Federal government, the industry settled back into its state of procedural indifference, prodded into activity only occasionally by threats to impose supervisory regulation or to destroy the tax exemption, both of which were, until 1961, successfully resisted.

The details of the political in-fighting surrounding these abortive attempts to impose regulation need be alluded to only briefly. In 1940, the Legislative Council, noting that "bills have been presented to the General Assembly from time to time to regulate or supervise building and loan associations"; that "Maryland was the only State which did not have some form of regulatory legislation"; and that "the assets of building and loan associations in the State approximate \$200,000,000" presented a supervisory bill to the Legislature.²⁶¹ This followed the recommendations of a special report prepared by the Council's Research Division.²⁶² The bill was introduced in the Senate on the first day of the 1941 session²⁶³ but nothing further was done to effect its passage.

In 1942, following the publication of an additional research report,²⁶⁴ and two public hearings by the Legislative Council, "the Council . . . again reached the conclusion that the business of building and loan associations in Maryland is of such importance and affects so many people in the State that legislation should be adopted for their regulation and supervision."²⁶⁵ Accordingly, the bill was introduced in the House of Delegates by the Speaker; but when it reached the floor with a favorable committee report,²⁶⁶ it was given two death-dealing blows from which it never recovered. Upon hearing the committee's report, the bill was immediately recommitted; and then, by a

²⁶¹ Legislative Council of Maryland, Report to the General Assembly of 1941, p. 5. Maryland Legislative Council, Proposed Bills Submitted to the General Assembly of 1941, pp. 84-89.

²⁶² C. Keating Bowie, Jr., "Building and Loan Associations," Research Division, Maryland Legislative Council, Research Report No. 9 (1940).

²⁶³ Journal of the Senate (1941) p. 18.

²⁶⁴ Bowie, "Supplemental Report on Building and Loan Associations," Research Division, Maryland Legislative Council, Research Report No. 18 (1942).

²⁶⁵ Legislative Council of Maryland, Report to the General Assembly of 1943, p. 3; Additional Proposed Bills Submitted to the General Assembly of 1943, pp. 149A-157A.

²⁶⁶ Journal of the House of Delegates (1943) pp. 77, 1842-1843.

64 to 50 vote, the whole matter was tabled.²⁶⁷ Again in 1945 the Legislative Council introduced a somewhat-modified bill in the Senate.²⁶⁸ Nothing more was done until a new bill was introduced in early March.²⁶⁹ After a good deal of maneuvering,²⁷⁰ it was passed by a vote of 16 to 12.²⁷¹ However, when the measure reached the House of Delegates in the closing days of the session, it was never reported out of the Ways and Means Committee.²⁷² The subject of regulation and supervision was not seriously proposed again until 1960.²⁷³

At the same time, the power of the building and loan lobby was so great that it experienced no difficulty in effecting the unanimous passage of bills which it favored. In 1943, both branches of the Legislature unanimously voted to add ground rents as permissible investments for building and loan associations.²⁷⁴ And, in 1945, the present provisions with regard to shares held by minors was added,²⁷⁵ along with a provision conferring certain membership rights on all persons connected with the associations.²⁷⁶

Such legislation as was enacted after the threats of supervision had subsided was of a particularly *ad hoc* nature. In 1951, there was final solution to the long-standing problem of capitalization.²⁷⁷ A statute passed in 1953 with regard to joint or trust accounts with "savings and loan associations"²⁷⁸ merely codified existing practice²⁷⁹ and

²⁶⁷ *Id.*, 1842-1843.

²⁶⁸ Legislative Council of Maryland, Report to the General Assembly of 1945, p. 4; Additional Proposed Bills Submitted To The General Assembly of 1945, pp. 1-A to 11-A.

²⁶⁹ Journal of the Senate (1945) p. 720.

²⁷⁰ *Id.*, 937-941.

²⁷¹ *Supra*, n. 269, 1255.

²⁷² Journal of the House of Delegates (1945) p. 2005.

²⁷³ A bill passed in that year (House Bill 93) was vetoed by the Governor. Md. LAWS 1960, pp. 310-313.

²⁷⁴ Md. LAWS 1943, Ch. 132. Journal of the Senate (1943) p. 500; Journal of the House of Delegates (1943) pp. 325, 1810.

²⁷⁵ Md. LAWS 1945, Ch. 73, 2 MD. CODE (1957) Art. 23, § 148.

²⁷⁶ Md. LAWS 1945, Ch. 875, 2 MD. CODE (1957) Art. 23, § 157. This was apparently an attempt to comply with the provision under which exemption was granted from the Federal Income Tax. 42 Stat. 227, 253, § 231 (4). *United States v. Loan & Bldg. Co.*, 278 U.S. 55 (1928). Since 1951, the Internal Revenue Code provides a deduction rather than an exemption. See 26 U.S.C.A. (1952) §§ 591-593. The definition of a building association remains unchanged, 26 U.S.C.A. (1952) § 7701 (19).

²⁷⁷ Md. LAWS 1951, Ch. 361. 2 MD. CODE (1957) Art. 23, § 144 (a). *Cf.* page 25, *supra*.

²⁷⁸ Md. LAWS 1953, Ch. 157. 2 MD. CODE (1957) Art. 23, § 145. *Cf.* 1 Md. CODE (1957) Art. 11, § 102.

²⁷⁹ *E.g.* *Jones, Adm. v. Hamilton, Adm.*, 211 Md. 371, 380, 127 A. 2d 519 (1956); *Bireau v. Bohemian Bldg. etc. Assn.*, 205 Md. 456, 459, 109 A. 2d 120 (1954), and cases there cited.

came suspiciously close after the issue was raised in litigation;²⁸⁰ and it is generally conceded that the provisions of the present section relating to shareholders' meetings,²⁸¹ and probably that relating to Christmas fund accounts,²⁸² were directly or indirectly the result of a then-pending suit.²⁸³ Nor should these laws be viewed as curing only the irregularities in the cases involved, since a majority of associations were operated in the same manner.

Regulation and Supervision Achieved — ?

Apart from deliberate legislative action, during the latter part of the 1950's, there emerged a new form of organization which, despite striking differences in form and purpose, styled itself a "building (or savings) and loan association." There were variations in the details of the corporate structure, but the basic plan of all was to vest effective voting control in a small group of promoters, with provision for the preference of the stock held by them upon liquidation.²⁸⁴ In June, 1960, the Attorney General ruled that "the creation of various classes of stock with direct and indirect priorities . . . is not prohibited by present Maryland law" and that "voting restriction features . . . are permissible."²⁸⁵

Shortly before that pronouncement, the Legislature, with only slight difficulty,²⁸⁶ passed a bill which was aimed at the regulation and supervision of building and loan associations. The measure was vetoed by the Governor.²⁸⁷ At the same session, a bill concerning the advertising of the insurability of free share accounts was introduced, but not passed.²⁸⁸

By this time, the forces which had theretofore advocated the supervision and regulation of the building and loan industry had enlisted the aid of their former opponents. Whether, as has been often suggested, this resulted

²⁸⁰ *Bireau v. Bohemian Bldg. etc. Assn.*, *ibid.*

²⁸¹ MD. LAWS 1955, Ch. 31, 2 MD. CODE (1957) Art. 23, § 158. A similar provision in 2 MD. CODE (1939), Art. 23, § 20, had been inadvertently removed by MD. LAWS 1951, Ch. 135.

²⁸² MD. LAWS 1955, Ch. 771, 2 MD. CODE (1957) Art. 23, § 160.

²⁸³ *Poole v. Miller*, 211 Md. 448, 128 A. 2d 607 (1957).

²⁸⁴ *Cf.* Letter of C. Ferdinand Sybert, Attorney General, and Lawrence F. Rodowsky, Assistant Attorney General, to Albert W. Ward, Director of the Department of Assessments and Taxation, dated June 23, 1960, as yet unpublished.

²⁸⁵ *Ibid.*

²⁸⁶ Journal of the Senate (1960) p. 380; Journal of the House of Delegates (1960) pp. 407-408, 503-504.

²⁸⁷ MD. LAWS 1960, pp. 310-313. The veto was sustained by a vote of 115-3, even its original sponsor voting against over-riding the Governor's objections. Journal of the House of Delegates (1961) p. 16.

²⁸⁸ Journal of the House of Delegates (1960) p. 503.

from a dislike for the new form of corporation is now somewhat academic, for in 1961 the Legislature passed a sweeping regulatory bill²⁸⁹ in part as originally proposed by a commission headed by Richard W. Case, Baltimore attorney, with J. Calvin Carney, another Baltimore attorney and a long-time foe of regulation and supervision as Vice Chairman. For reasons involving the sufficiency of petitions seeking to have the bill submitted to a referendum, it was re-passed the same year, in slightly modified form, at a special session of the Legislature.²⁹⁰ And, at its recent session, the Legislature created the "Maryland Savings-Share Insurance Corporation,"²⁹¹ which is purportedly designed "to promote the elasticity and flexibility of the resources of member associations, to provide for the liquidity of such associations through a central reserve fund, and to insure the free share accounts of such associations."²⁹²

V. THE PLACE AND CHARACTER OF THE MODERN ASSOCIATION

It must be remembered that there has never been any magic in the words "building and loan," for even the earliest associations neither engaged in building nor made "loans."²⁹³ In England, the same form of organization was styled a "Benefit Building Society"; and Maryland incorporators had at least a choice between the names "building and loan" and "homestead" to describe their associations. Moreover, the Maryland Act of 1852 did not undertake to describe the theory or, except in a general way, the purpose of the organization which it contemplated. From the very beginning, the term "building and loan" was little more than an arbitrary phrase which ill-conceptualized a system existing entirely apart from statute.

That some confusion should result was inevitable. Failure to recognize that the benefits accorded these associations were grounded in wholly extra-legislative considerations foredoomed the non-participating associations envisioned by the Acts of 1868 and 1872.²⁹⁴ In 1942, a report to the Legislative Council urged that "some clear definition should be adopted stating exactly what type of organization may operate under the name of a savings or build-

²⁸⁹ MD. LAWS 1961, Ch. 205. MD. CODE (1961 Cum. Supp.) Art. 23, §§ 161A-161KK.

²⁹⁰ MD. LAWS 1961 (Spec. Sess.) Ch. 1, 2 MD. CODE (1961 Cum. Supp.) Art. 23, §§ 160A-160KK. See also, n. 6, *supra*.

²⁹¹ MD. LAWS 1962, Ch. 131.

²⁹² *Ibid.*, § 161NN (a).

²⁹³ See n. 13, *supra*.

²⁹⁴ See pages 26-29, *supra*.

ing and loan association."²⁹⁵ More recently, the Attorney General opined that "it is not altogether clear what a building and loan association is intended to be in Maryland."²⁹⁶

So eminent an authority as the Supreme Court of the United States has in effect suggested that the problem of definition is ultimately to be solved by reference to the reasons for which the building and loan association is allowed to exist as a companion entity to other institutions performing similar functions.²⁹⁷ But this provides only partial solution, since the professed confusion in Maryland seems to stem from a feeling that the growth of the industry has been so Topsy-like as to defy identification of any present purpose. Before examining the place of the modern association, it is therefore necessary to examine the validity of that premise.

Evolution of Corporate Purpose

In 1852, the legislature envisioned building and loan associations as existing "for the meretorious purpose of accumulating, by small periodical deposits, a Savings' Fund, by which they may be enabled to procure for themselves respectively, a Homestead, and for their mutual benefit. . . ."²⁹⁸ As thus stated, the Act of 1852 reflected three developments which had already taken place in the industry as it had developed elsewhere: (a) the reference to "building" was only of historical significance;²⁹⁹ (b) all members were not necessarily home buyers, but were divided into two distinct groups, investors and borrowers,³⁰⁰ and (c) the opportunities offered

²⁹⁵ C. Keating Bowie, Jr., "Supplemental Report on Building and Loan Associations", Research Division, Maryland Legislative Council, Research Report No. 18 (1942) p. 30.

²⁹⁶ Letter of Attorney General, *supra*, n. 284.

²⁹⁷ *United States v. Loan & Bldg. Co.*, 278 U.S. 55 (1928). *Cf.* SUNDHEIM, *LAW OF BUILDING & LOAN ASSOCIATIONS* (3d ed. 1933) p. 16, fn. 41.

²⁹⁸ MD. LAWS 1852, Ch. 148, Preamble.

²⁹⁹ STONE, *BENEFIT BUILDING SOCIETIES* (1851) pp. 8-11. *Cf.* THORNTON & BLACKLEDGE, *BUILDING & LOAN ASSOCIATIONS* (1898), § 5.

³⁰⁰ STONE, *op. cit. supra*, n. 299, pp. 10-11. The original plan of building and loan associations undoubtedly contemplated that all members would be prospective home buyers. STONE, *op. cit. supra*, pp. 11, 18-19; ENDLICH, *BUILDING AND LOAN ASSOCIATIONS* (1882) § 40. At the time of the adoption of the Maryland Act of 1852, Great Britain had already discarded this restrictive view. STONE, *op. cit. supra*. Undoubtedly the language of the Maryland preamble ("accumulating . . . a Savings' Fund, by which they may be enabled to procure for themselves respectively, a Homestead, and for their mutual benefit") represents a transitional view.

In a recent case this traditional factor was raised by a party who claimed that a building and loan association could make loans only on dwelling property. *Poole v. Miller*, 211 Md. 448, 128 A. 2d 607 (1957). It was there decided that other transactions were authorized at least insofar

to the middle classes for obtaining money and investing represented aims which the state desired to foster.³⁰¹

The first embodiment of these concepts, in Maryland as elsewhere, was the Terminating association. The modern association reflects three other distinct stages of development.

1. *The Permanent Association.*

The Permanent plan involved little, if anything, more than the substitution of termination dates for individual members in place of a common termination at the extinction of the society. It represented no departure from early purpose and, indeed, was designed to fulfill that purpose more efficiently. So slight was the change that no new legislation was required; and the legal principles theretofore applicable to Terminating associations were almost wholly unaffected.³⁰²

2. *The Dayton Plan.*

In considering the effect of the issuance of paid-up shares, it must not be overlooked that such change took place as the result of specific statutory enlargement of the original powers comprehended within the term "building and loan association": "such corporation [reads the 1894 amendment to the Act of 1852] shall have power to issue full paid-up shares of stock to its members. . . ."³⁰³ In legal effect, it did no more than broaden the words of the 1852 preamble to include the issuance of paid-up stock as a method of accumulating the "Savings' Fund"; it did not destroy the mutual features of a building and loan association.³⁰⁴

as the funds involved represented surplus, the Court being careful to add that "We do not mean to imply that a different rule would be applicable if there were no surplus" It would seem that such a parochial view had long since been discarded. SUNDHEIM, *op. cit. supra*, n. 297, § 8. Cf. SCRATCHLEY, *BENEFIT BUILDING SOCIETIES* (4th ed. 1868) § 12; STONE, *op. cit. supra*, p. 11. See also the Preamble to the British statute quoted *supra*, n. 8.

³⁰¹ The writers were ecstatic about a variety of benefits which are to flow to society and the middle classes from the operation of building associations. *E.g.* RUSSELL, *SAVINGS AND LOAN ASSOCIATIONS* (1956) pp. 1 *et seq.*; STONE, *BENEFIT BUILDING SOCIETIES* (1851) pp. 36 *et seq.*; SUNDHEIM, *BUILDING AND LOAN ASSOCIATIONS* (3d ed. 1933) §§ 8, 9; THOMPSON, *BUILDING AND LOAN ASSOCIATIONS* (2d ed. 1899) § 12; THORNTON & BLACKLEDGE, *BUILDING AND LOAN ASSOCIATIONS* (1898) §§ 4, 6.

The Preamble of the Maryland Act speaks of "presenting to persons so associated, a strong motive or inducement to economy and frugality, the exercise of which cannot but promote their individual welfare, and contribute largely to the taxable property of this State"

³⁰² See *supra*, n. 100.

³⁰³ MD. LAWS 1894, Ch. 321.

³⁰⁴ The mere existence of paid-up stock did not destroy mutuality. *Cf.* Coltrane v. Baltimore Building & Loan Ass'n, 110 F. 281, 286 (C.C.D.

As was intended, the Dayton plan made obsolete some of the older devices employed by Terminating and Permanent associations.³⁰⁵ But, as recently noted by the Court of Appeals with reference to entrance fees, such practices were at most permissive;³⁰⁶ and they had always been somewhat antithetical to the beneficent aims of building associations.

It cannot be denied that the issuance of paid-up shares had significant effect upon the outward appearance of the association. The relation of the free shareholder and the association became markedly similar to that of a depositor and the savings bank.³⁰⁷ The existence of "surplus" provided new problems.³⁰⁸ Most important, the paid-up free shareholder, if only by virtue of his position as a permanent member of the association, emerged as the dominant consideration in corporate policy.³⁰⁹ All of these results are, however, *effects* of what was considered to be a solution to the somewhat unstable character of the prior arrangement.³¹⁰

3. *The Drop Interest Plan.*

Unquestionably, the most oppressive feature of the early associations was the exaction of interest at 6% during the full term of the loan. No doubt the abandonment of the practice was dictated more by competitive than charitable reasons. Certainly the association's agreement to the terms of this plan was more than a *quid pro quo* for the borrower's surrender of his right to participate in the profits of the association;³¹¹ and the economic necessity of requiring such a surrender is obvious. In fact, the borrowing member gained advantages far beyond the mere reduced amount of interest.³¹²

Md. 1901), *aff'd sub nom. Coltrane v. Blake*, 113 F. 785 (4th Cir. 1902); *Balto. Bldg. Ass'n. v. Powhatan Co.*, 87 Md. 59, 39 A. 274 (1898). *Cf. Stewart v. Building Association*, 106 Md. 675, 682, 68 A. 887 (1907).

³⁰⁵ See pages 95-97, *supra*. Others seem to have been abandoned for competitive reasons. *E.g. Poole v. Miller*, 211 Md. 448, 461, 128 A. 2d 607 (1957). But see, *Cromwell v. Sharon Bldg. Assoc.*, 220 Md. 317, 152 A. 2d 548 (1959).

³⁰⁶ *Poole v. Miller*, 211 Md. 460, 462, 128 A. 2d 607 (1957).

³⁰⁷ See pages 108-110, *supra*.

³⁰⁸ See pages 113-114, *supra*.

³⁰⁹ See pages 99-102, 111-112, *supra*.

³¹⁰ See pages 18-20, 91-92, *supra*.

³¹¹ *Coltrane v. Baltimore Building & Loan Ass'n*, 110 F. 293, 304 (C.C.D. Md. 1901).

³¹² (a) The duration of his obligation was now fixed with absolute certainty; (b) because of the first factor, associations could offer to borrowers a choice of the period over which they wished to repay; (c) the borrower did not have to share in the losses in case of the default of the association.

This surrender of interest in the association undoubtedly destroyed the qualification for treatment as a mortgage securing an "advance"³¹³ — an academic result at best, since the associations did not attempt to claim the benefits of that form of mortgage. But, to treat associations operating under the drop interest plan as non-participating associations under the Act of 1872, as was done somewhat unconsciously in one case,³¹⁴ is to ascribe to them a lineage which is improper and thus to provide basis for unnecessary confusion in the meaning of the term "building and loan association."³¹⁵

Moreover, the surrender of rights in the profits of the association, not without concomitant advantage to the borrower, represented no departure from early purpose insofar as the borrower was concerned, for it is by no means clear that the fact that the borrowing member shared in the profits was of primary concern to him. In 1878, Judge Alvey noted with regard to a Terminating association that "The supposed benefit of the [mortgage] contract to the mortgagor consists mainly of the length of time and gradual manner in which payments are required to be made."³¹⁶ This feature remains unaffected by the developments in the practices of building associations:

"While the mortgagors [under the drop interest plan] were not members of the association, yet their position as borrowers was affected by the special form of the business of the association, and the uniformity of its methods in making, pursuant to its by-laws, loans upon the security of real or leasehold estate, and in being paid the principal and interest of the loan in small weekly installments. It is because of the peculiar terms upon which the mortgage debt in building and loan associations is discharged that [a] . . . privilege of redemption is so prevalent a condition of the loan. . . ."³¹⁷

In the final analysis, the original purpose of providing for the financial needs of a certain segment of the population, although somewhat modified in form, remains the important characteristic of the building and loan association. As ably stated by the late Judge Charles F. Stein:

³¹³ See pages 110-112. *supra*.

³¹⁴ *Watson v. Loan & Savings Assn.*, 158 Md. 339, 148 A. 420 (1930).

³¹⁵ Although there would have been no impropriety in such confusion under the British statutes. See pages 24, 26-27, *supra*.

³¹⁶ *Low Street Build. Asso. v. Zucker*, 48 Md. 448 (1878).

³¹⁷ *Watson v. Loan & Savings Assn.*, *supra*, n. 314, 345-6.

"The distinguishing mark of a building association is neither the terminating feature nor the sharing of profits and losses among its members; but is the loan of money to its members to be used in the purchase of real or leasehold properties, usually for homes of the borrowing members, the loan and interest thereon to be repaid in small weekly installments. . . ." ³¹⁸

The End of Laissez-Faire

In the preceding discussion, the consistency of purpose reflected in the evolution of the modern building association has been treated as a somewhat inevitable product of internal self-discipline; but it would be naive to suppose that this result was entirely, or even largely, the result of conscious effort on the part of the associations. There were, first of all, a variety of statutory stimuli which produced, or induced, this result, one being the restrictive nature of the tax exemption granted to them.

At first, the exemption extended only to the "advance" transaction under the share accumulation plan.³¹⁹ With the widespread use of the drop interest plan, and the necessity for treating the relationship between the parties as that of borrower and lender, the exemption was broadened to include "building association mortgages or ordinary mortgages. . . ." ³²⁰ Similar enlargement was made with the allowance of judgments as permissible security³²¹ and the designation of legal subjects of "investment."³²² Only recently the Court of Appeals has noted that the form of the exemption from taxation granted to building associations "is doubtless intended to promote thrift and home ownership."³²³

There was also certain restriction as to form, which was not, however, to be found by more than implication. Although there were statutes which purported to be of special application to corporations of that description, most had no operation in prevailing practice,³²⁴ and the others

³¹⁸ *Lakeview Building & Loan Association v. Beyer*, 4 Balto. City Reports 177, 178 (1923).

³¹⁹ Md. LAWS 1852, Ch. 148, § 7; Md. LAWS 1880, Ch. 351. *Faust v. Building Association*, 84 Md. 186, 35 A. 890 (1896); *Appeal Tax Court v. Rice*, 50 Md. 302 (1879).

³²⁰ Md. LAWS 1904, Ch. 240.

³²¹ Md. LAWS 1916, Ch. 312.

³²² Md. LAWS 1929, Ch. 226, p. 720.

³²³ *Poole v. Miller*, 211 Md. 448, 128 A. 2d 607 (1957). It is interesting to note that, until 1929, such exemption was granted for the expressed reason that "such mortgages . . . [were] taxed in the hands of the mortgagors." See also, n. 244, *supra*.

³²⁴ See pages 95-97, *supra*.

supplemented, rather than restricted, the powers granted to ordinary corporations.³²⁵ Both in their organization and operation, the modern building association drew more heavily upon other areas of the law. But, while the portion of the law headed "Building or Homestead Associations" might play no active role in present practice, yet it suggested a certain form of organization which, in a superficial sense, provided a formal (if artificial) manner of conducting a business which was otherwise subject to regulation.³²⁶

The survival of these vestigial remnants of the share system were not without importance. Building associations, although exempt from the banking laws, were never allowed to conduct a banking business,³²⁷ and there was certain utilitarian value in delimiting the permissible scope of operation by stating, as the Court of Appeals did in discussing the status of a person who "hypothecated" money with an association to insure payment of a mortgage by a third party, "The association never received deposits of money! it did no banking business; its transactions were all with shares."³²⁸ The share fiction operated in other areas to keep the transactions within proper bounds.³²⁹

Most important, however, is the fact that as the statutes purporting to be of special application to "building associations" suggested a certain form, they also in a very real sense suggested purpose — if only by tradition. As stated by one recent legal writer "The name has no legal or practical significance, except that, by usage, it has become descriptive of a peculiar class of corporations with especial rights and powers."³³⁰ Even more, it suggested a purpose that was incapable or difficult of combination with other purposes. The situation is well-illustrated by *Fraternal Alliance v. State*.³³¹

There, a corporation had been formed for the purposes of (a) a "Fraternal Beneficial Society"; (b) issuing life in-

³²⁵ *E.g.*, 2 MD. CODE (1957), Art. 23, §§ 144, 145, 148, 158, 160.

³²⁶ Compare 1 MD. CODE (1957), Art. 11, §§ 31, 63.

³²⁷ *Cf.* 2 MD. CODE (1957), Art. 23, § 3; *Davis v. West Saratoga Bldg. Union No. 3*, 32 Md. 285 (1870).

³²⁸ *Frederick v. Lyons*, 173 Md. 95, 97, 194 A. 815 (1937). *Cf.* 1 MD. CODE (1957), Art. 11, § 80.

³²⁹ *E.g.*, (a) Providing a distinction upon which money could be withdrawn only upon certain conditions. See pages 109-110, 117, *supra*. (b) Providing a graphically distinct method of conducting what would otherwise be banking functions. *Cf.* 1 MD. CODE (1957), Art. 11 § 31. (c) Giving notice of sorts to members of the public who joined such associations of the peculiar character of the institution — and the different nature of its hazards. *Cf.* *Building Association v. Dembowczyk*, 167 Md. 259, 173 A. 254 (1934).

³³⁰ SUNDHEIM, *op. cit. supra*, n. 297, § 6. *Watson v. Loan and Savings Assn.* *supra*, n. 314, 345-6.

³³¹ 86 Md. 550, 39 A. 512 (1898).

insurance policies; and (c) investing its surplus in "loans . . . upon the building association plan. . . ." ³³² A fraternal beneficial society defined by statute as operating "for the sole benefit of its members and not for profit," was authorized to issue "certificates" (but not policies) to its members in unlimited amount, while the type of corporation contemplated by the second purpose of the charter involved was authorized to issue insurance *policies* not in excess of \$1,000 on any one life. The Fraternal Alliance sought to amalgamate the unlimited authority of its "Fraternal Beneficial Society" feature with the right to issue insurance policies under its second charter purpose. It was contended that such "double incorporation" was authorized by the general incorporation law. In affirming a decree ordering the forfeiture of the charter of the Fraternal Alliance, the Court of Appeals noted that:

"[A]lthough it may be that one corporation can, as a fraternal beneficiary association, carry on certain parts of its business, 'for the sole benefit of its members and their beneficiaries and not for profit,' and can, as an insurance company, conduct another part of its business for the benefit of its stockholders, yet it is impossible that the business of two such classes can be so blended as not to be separable, for if that be done it can no longer be for the sole benefit of its members. * * * If there be profits in the insurance business, are the stockholders exclusively, or all the members to share in them? Undoubtedly the former would be the case. . . . The 'members,' as they are called, are at the mercy of the stockholders, and the business is conducted for the pecuniary benefit of the latter, so far as we can see from the by-laws, and the conduct of the business, and notwithstanding the space given in the charter and the by-laws to the regulations and provisions of the social or fraternal features of the Alliance, the conclusion is irresistible that it is in reality a life insurance company, and is seeking to relieve itself of some burdens imposed on corporations of that character, for the protection of the public, by assuming the guise of a fraternal beneficial society." ³³³

As the general law relating to corporations developed, the concept of purpose as delimiting power became in

³³² *Id.*, 553-554.

³³³ *Supra*, n. 331, 559-560.

large part an historical curiosity.³³⁴ And, as "purpose" declined as a limiting factor in general practice, the singleness of purpose of a building association became more and more an anomaly. In addition, building associations being otherwise incorporated and operated as general business corporations, the significance of that purpose became still more obscure. Existence under the general incorporation laws had in large part permitted the development which has here been called "permutation" — transposition within a group or combination of things without change in the constituent elements or parts of that group or combination — and the multi-stock associations suggested that more radical alteration might be possible.³³⁵

The place and character of the institution known as the building and loan association had been shaped largely by default — by defining the other participants in the same sphere and using the phrase "building and loan association" as a sort of catch-all term to describe the financial institution which was left over. Thus far, such indirect factors as tax exemptions, fictional stock transactions, and the exclusive nature of the purpose of building associations had been sufficient to preserve their internal integrity. But, in the increasing complex of modern affairs, loosely styled progress, there is less room for such generalized measures.

The 1961 legislation is thus at once the beginning of a new era and the logical, perhaps inevitable, culmination of the old:

"It is the declared policy of this State that: (a) The savings and loan business, otherwise known as the building savings and loan or homestead business . . . has so expanded in recent years and has become so integrated with the financial institutions of this State and is so important as a method of promoting home ownership and thrift, that such business is affected with a public interest and shall be supervised as a business affecting the economic security and general welfare of the people of this State. . . ."³³⁶

It is in this context that the next chapter of the industry's history will be written.

³³⁴ BRUNE, MARYLAND CORPORATION LAW & PRACTICE (Rev. ed. 1953) §§ 41, 55-56; BALLANTINE, CORPORATIONS (Rev. ed. 1946) § 15.

³³⁵ Letter of Attorney General, *supra*, n. 234.

³³⁶ MD. LAWS 1961, Ch. 205, § 161A (a); MD. LAWS 1961 (Spec. Sess.), Ch. 1, § 160A (a).