

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption of Amendments to Rules Governing City-Aided Limited-Profit Housing Companies

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE

Commissioner of the Department of Housing Preservation and Development by §1802 of the New York City Charter and Sections 32(3) and 32-a of the Private Housing Finance Law, and in accordance with the requirements of § 1043 of the New York City Charter that the Department of Housing Preservation and Development is adopting amendments to rules for City-Aided Limited-Profit Housing Companies.

A public hearing was held on May 6, 2009 and June 3, 2009 at 100 Gold Street, First Floor, Room 1R, New York, New York 10038.

Section one. Subparagraph (ii) of paragraph (8) of subdivision (p) of Section 3-02 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(ii) A family member whose application to succeed to a lease or an occupancy agreement has been denied by a housing company may, within thirty (30) calendar days of receipt of the written denial, appeal to the [Assistant Commissioner of HPD having jurisdiction of the applicant's housing company] Commissioner of HPD (hereinafter "Commissioner") or his or her designee. Such appeal shall include proof of service of a copy of such appeal upon the housing company. The appeal shall briefly set forth the reasons why the family member believes he or she is entitled to occupy the apartment and any errors or erroneous findings he or she believes are contained in the housing company's determination. The [Assistant] Commissioner or his or her designee shall review the housing company's determination and any additional information submitted by the applicant and shall issue the final agency decision with regard to the applicant's application. The only review of this determination is pursuant to Article 78 of the Civil Practice Law and Rules.

§ 2. Paragraph (3) of subdivision (b) of Section 3-07 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(3) The housing company or its managing agent shall require that all firms performing work on the housing company's behalf, supply evidence in the form of a certificate of insurance for workers' compensation and commercial general liability, naming the housing company and ["HPD, City of New York"] HPD as additional insured parties. For contracts subject to HPD approval, such certificates must be submitted to HPD for its written approval before any such contract is executed by the housing company.

The liability limits for workers' compensation shall be statutory, and the commercial general liability insurance shall be in standard comprehensive general liability form, naming the housing company and ["HPD, City of New York"] HPD as additional insureds, against all claims for bodily injury, death or property damage in an amount not less than \$1,000,000 per occurrence, \$2,000,000 annual aggregate for bodily injury and property damages.

§ 3. Subdivision (b) of Section 3-08 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(b) *Bank resolutions*. The resolution filed with the bank shall contain, in addition to the clauses required by the bank, the following clauses: Further resolved, that withdrawals from such account be accompanied by "Authorization for Expenditure of Funds" signed by a

designated HPD official [of the Department of Housing Preservation and Development of the City of New York], and that duplicate copies of monthly bank statements shall be forwarded to [the] HPD's Division of Housing Supervision, [Department of Housing Preservation and Development,] upon HPD's request; that when an investment in securities is contemplated, withdrawal shall be made upon presentation of "Authorization for Expenditure of Funds;" that the bank shall make the investment, shall hold the securities in safekeeping and shall deposit to such account the proceeds realized on either liquidation or redemption.

Further resolved, that this resolution shall remain in full force and effect unless and until revoked with [the] HPD's written consent [of the Department of Housing Preservation and Development of the City of New York]. A certified copy of the housing company's resolution opening the bank account and a photocopy of the housing company's signature card filed with the bank shall be submitted to [the] HPD's Division of Housing Supervision [of HPD].

§ 4. Subparagraph (ii) of paragraph (3) of subdivision (c) of Section 3-08 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(ii) If Federal obligations are purchased, a custodial agreement for the bank in which the "Reserve Fund Account" is maintained. This agreement shall require that all interest and proceeds from liquidation or redemption of securities be re-deposited to the "Reserve Fund Account." A photocopy of the custodial agreement shall be submitted to [the] HPD's Division of Housing Supervision [, Department of Housing Preservation and Development].

§ 5. Paragraph (2) of subdivision (e) of Section 3-09 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(2) The housing company shall provide or make provision for a managing agent's bond naming the New York State Housing Finance Agency as obligee with an amount and an insurance company acceptable to the housing company, the New York State Housing Finance Agency, the New York State Division of Housing and Community Renewal and [the Department of Housing Preservation and Development] HPD.

§ 6. Paragraph (7) of subdivision (d) of Section 3-10 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(7) Prior to the issuance of the Commissioner's order, HPD shall make available the results of a preliminary financial analysis of the application. In the case of a rental development, such analysis shall be provided to both the owner and the Tenants Association or their respective representatives or designees. If either party in the case of a rental development requests a meeting to review the preliminary financial analysis, [the] HPD's Assistant Commissioner of Housing Supervision shall call a meeting with both parties present prior to making a recommendation to the Commissioner. In the case of a mutual housing company, such analysis shall be provided to the President of the Board of Directors or his or her designee. If the Board of Directors requests a meeting to review such analysis, the Assistant Commissioner of Housing Supervision shall call a meeting prior to making a recommendation to the Commissioner.

§ 7. Subdivision (e) of Section 3-13 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(e) *Debarment.* Any person or entity may be debarred for a period not to exceed ten years from contracting with or managing any housing companies supervised by HPD upon a finding by a hearing officer designated by the Commissioner that there has been a material violation of these rules or the provisions of Article II of the Private Housing Finance Law by such person or

entity or their agent or agents or upon a finding by a hearing officer designated by the Commissioner that they have engaged in activity which would constitute a violation of the Penal Law. Any person or entity so debarred may appeal in writing to the Commissioner [of HPD] within ninety days of written notification of the debarment.

§ 8. Subdivision (a) of Section 3-14 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(a) Certificates of incorporation, [B]by-laws, rules and regulations. Each housing company shall file with HPD, for its approval, a certified and acknowledged copy of its proposed by-laws [and]. Each housing company shall also file with HPD, for its approval, a certified and acknowledged copy of all proposed amendments [thereto] to its certificate of incorporation or by-laws. The housing company shall forward to HPD for its files two copies of the by-laws or amendments to the certificate of incorporation or by-laws subsequent to HPD approval. Failure to seek HPD approval or rejection by HPD of the by-laws or amendments to the certificate of incorporation or by-laws will render the by-laws or such amendments null and void. Certificates of incorporation, [B]by-laws, rules and regulations established by a housing company shall be in conformity with state laws and HPD rules. Housing company certificates of incorporation, by-laws, rules and regulations to the contrary shall be deemed null and void.

§ 9. Subparagraph (ii) of paragraph (2) of subdivision (h) of Section 3-14 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(ii) A mutual housing company may request a waiver from the requirements of subparagraph (i) of paragraph two of this subdivision by making a written submission at least sixty days prior to the election of directors to[:] the Assistant Commissioner [for] of Housing Supervision[, Department of Housing Preservation and Development, 100 Gold Street, New York, NY 10038].

§ 10. Paragraph (2) of subdivision (i) of Section 3-14 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(2) Notice of Intent for Rental Companies. A rental housing company intending to dissolve and/or reconstitute pursuant to §35, shall submit to HPD no later than 365 days prior to the anticipated date of dissolution and/or reconstitution, a notice of such intention ("Notice of Intent") which shall contain the following information and supporting documents:

(i) Name and address of the housing development;

(ii) Name and business address of the beneficial and legal owner(s) other than limited partners and stockholders;

(iii) Name and address of proposed transferee, if property is being sold or transferred and the proposed date of any such transfer[.];

(iv) A current rent roll reflecting rents last ordered by HPD and/or by HUD including surcharges, subsidy and other special charge data[.];

(v) A list of tenants who are presently receiving rent subsidies which may be discontinued as a result of dissolution and the proposed rents to be charged such subsidy recipients after dissolution[.];

(vi) A copy of any applicable documents relating to the rental development, including, but not

limited to, the urban renewal plan, the plan and project, the deed or lease, the land disposition agreement, any applicable Board of Estimate or City Council resolution and the temporary certificate of occupancy and permanent certificate of occupancy, or any other documents requested by HPD]. Such documents shall also be given to the Tenants Association as well as to a management office on site (or, if there is no management office on site, to a management office located within the city of New York). At such management office, such documents shall be made available to any tenant of such rental housing company and/or his or her representative upon request.

The owner shall notify all tenants by ordinary mail or distribution at or under each apartment door and by posting a copy in a conspicuous place on the lobby floor of each building affected of its intent to dissolve or reconstitute at or about the same time as the delivery of the notice of intent to HPD.]; and

(vii) A list of all State, municipal and/or federal financial assistance or subsidies received by the housing development (such as low income housing tax credits, tax exempt bond financing, interest reduction subsidy under Section 236 of the National Housing Act, as amended, project-based Section 8 under the United States Housing Act of 1937, as amended, housing choice vouchers, rent supplement, J-51 or other tax exemption and/or abatement benefits, and flexible subsidy grants) and the amount thereof.

All such documents shall also be given to the Tenants Association as well as to a management office on site (or, if there is no management office on site, to a management office located within the city of New York). At such management office, such documents shall be made available to any tenant of such rental housing company and/or his or her representative upon request.

The owner shall notify all tenants by ordinary mail or distribution at or under each apartment door and by posting a copy in a conspicuous place on the lobby floor of each building affected of its intent to dissolve or reconstitute at or about the same time as the delivery of the notice of intent to HPD.

§ 11. Subparagraph (i) of paragraph (3) of subdivision (i) of Section 3-14 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(vii) Commissioner [of the Department of Housing Preservation and Development] and the Assistant Commissioner of Housing Supervision, [Division of Housing Supervision,] and

§ 12. Paragraph (6) of subdivision (i) of Section 3-14 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(6) *Mutual housing companies-special meeting.* A board of directors of a mutual housing company intending to dissolve and/or reconstitute pursuant to §35 shall call a special meeting in conformance with the mutual housing company by-law requirements for the purpose of ascertaining shareholder interest in dissolution. The secretary of the board of directors shall submit to HPD a certified resolution stating that not less than a majority of the [shareholders present] dwelling units represented at such special meeting approved an expenditure of funds in a specified amount for the purpose of preliminary exploration of dissolution and/or reconstitution, unless the by-laws of the company mandate a greater affirmative vote. Each dwelling unit shall be entitled to one vote regardless of the number of shares allocated to such dwelling unit, the number of shareholders holding such shares, or the provisions regarding

voting in such mutual housing company's certificate of incorporation or by-laws. Said resolution shall include language as follows:

“This resolution authorizes the board of directors to take steps necessary to ascertain the desirability of dissolution and/or reconstitution. This resolution authorizes the expenditure of \$ _____ for such investigation, and notifies the shareholders that there are Private Housing Finance Law requirements for dissolution. This resolution also advises the shareholders that the New York State Department of Law requirements must be met prior to actual dissolution and/or reconstitution.”

A certified copy of the resolution shall be submitted to HPD within seven (7) business days after such vote. Expenditure of funds authorized above shall require prior written approval of HPD, if the dollar amount for any one retainer, agreement, or contract exceeds \$15,000 for mutual housing companies with fewer than five hundred (500) dwelling units and \$30,000 for those with five hundred (500) or greater.

§ 13. Subparagraph (i) of paragraph (6-a) of subdivision (i) of Section 3-14 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(i) Pursuant to the applicable notice period in the mutual housing company's by-laws, a special meeting shall be convened by the board of directors of the mutual housing company to authorize the (A) preparation and submission to the office of the Attorney General of the State of New York of a private cooperative or condominium offering plan for the housing project, and (B) submission to HPD of the mutual housing company's notice of its intention to dissolve and/or reconstitute ("Notice of Intent"). Eligible voters for purposes of a quorum and for a vote on preparation and submission of such plan and such Notice of Intent shall be persons named on the stock certificate. Preparation and submission of such plan and such Notice of Intent requires approval of two-thirds (2/3) of the [outstanding shares of the corporation as mandated by the Business Corporation Law] dwelling units in such mutual housing company. Each such dwelling unit shall be entitled to one vote regardless of the number of shares allocated to such dwelling unit, the number of shareholders holding such shares, or the provisions regarding voting in such mutual housing company's certificate of incorporation or by-laws.

§ 14. Subparagraph (ii) of paragraph (6-a) of subdivision (i) of Section 3-14 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(ii) The Notice of Intent shall be submitted to HPD no later than 365 days prior to the anticipated date of dissolution and/or reconstitution. It shall be accompanied by evidence of the appropriate shareholder vote and resolution authorizing the preparation and submission of the offering plan and such Notice of Intent in accordance with subparagraph (i) of this paragraph and shall contain the following information and supporting documents:

(A) Name and address of the housing development;

(B) Name and address of proposed transferee, if property is being sold or transferred and the proposed date of any such transfer[.];

(C) A current rent roll reflecting carrying charges last ordered by HPD and/or by HUD including surcharges, subsidy and other special charge data[.];

(D) A list of cooperators who are presently receiving subsidies which may be discontinued as a result of dissolution and the proposed carrying charges to be charged such subsidy recipients after dissolution[.];

(E) A copy of any applicable documents relating to the mutual development, including, but

not limited to, the urban renewal plan, the plan and project, the deed or lease, the land disposition agreement, any applicable Board of Estimate or City Council resolution and the temporary certificate of occupancy and permanent certificate of occupancy, or any other documents requested by HPD. [Such documents shall also be given to a management office on site (or, if there is no management office on site, to a management office located within the city of New York). At such management office, such documents shall be made available to any cooperator of such mutual housing company and/or his or her representative upon request]. Such mutual housing company shall notify all cooperators by ordinary mail or distribution at or under each apartment door and by posting a copy in a conspicuous place on the lobby floor of each building affected of its intent to dissolve or reconstitute at or about the same time as the delivery of the Notice of Intent to HPD.]; and

(F) A list of all State, municipal and/or federal financial assistance or subsidies received by the housing development (such as low income housing tax credits, tax exempt bond financing, interest reduction subsidy under Section 236 of the National Housing Act, as amended, project-based Section 8 under the United States Housing Act of 1937, as amended, housing choice vouchers, rent supplement, J-51 or other tax exemption and/or abatement benefits, , and flexible subsidy grants) and the amount thereof;

All such documents shall also be given to a management office on site (or, if there is no management office on site, to a management office located within the city of New York). At such management office, such documents shall be made available to any cooperator of such mutual housing company and/or his or her representative upon request.

Such mutual housing company shall notify all cooperators by ordinary mail or distribution at or under each apartment door and by posting a copy in a conspicuous place on the lobby floor of each building affected of its intent to dissolve or reconstitute at or about the same time as the delivery of the Notice of Intent to HPD.

§ 15. Paragraph (7) of subdivision (i) of Section 3-14 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(7) Special meeting to authorize dissolution and/or reconstitution of mutual housing companies. Pursuant to the applicable notice period in the mutual housing company's by-laws, a special meeting to authorize dissolution and/or reconstitution shall be convened by the board of directors of the mutual housing company after the acceptance by the office of the Attorney General of the State of New York of the filing of the offering plan pertaining to the proposed transfer from the mutual company to a private cooperative or condominium corporation. Eligible voters for purposes of a quorum and for the vote on dissolution and/or reconstitution shall be persons named on the stock certificate. Dissolution and/or reconstitution of the mutual housing company requires approval of two-thirds (2/3) of the [outstanding shares of the corporation as mandated by the Business Corporation Law] dwelling units in such mutual housing company. Each such dwelling unit shall be entitled to one vote regardless of the number of shares allocated to such dwelling unit, the number of shareholders holding such shares, or the provisions regarding voting in such mutual housing company's certificate of incorporation or by-laws.

§ 16. Paragraph (7-a) of subdivision (i) of Section 3-14 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(7-a) *Conduct of special meetings.*

(i) Special meetings required pursuant to paragraphs six, six-a and seven of this subdivision

shall be conducted no more frequently than once every twelve months.

(ii) Special meetings required pursuant to paragraphs six-a and seven of this subdivision shall be conducted by an independent election company. At least sixty days [P] prior to conducting such special meetings, the mutual housing company must notify HPD in writing of the name of the independent election company, and of the intended special meeting procedures, and HPD must issue its approval in writing of such independent election company and of the intended special meeting procedures before such special meeting can take place.

(iii) If the cost of any [such] special meeting required pursuant to paragraphs six, six-a and seven of this subdivision exceeds \$15,000 in housing companies with fewer than five hundred (500) dwelling units or \$30,000 in housing companies with at least five hundred (500) dwelling units, the contracts will require HPD's prior written approval. [Such] With respect to special meetings required pursuant to paragraphs six-a and seven, the independent election company must submit proof to HPD that the requirements of this subparagraph have been met.

§ 17. Paragraph (8) of subdivision (i) of Section 3-14 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(8) [Reserved.] Operating Documents of Mutual Housing Companies. Each mutual housing company shall provide in any voting provisions in its certificate of incorporation and by-laws that in the shareholder votes required pursuant to paragraphs six, six-a and seven of this subdivision, each dwelling unit shall be entitled to one vote regardless of the number of shares allocated to such dwelling unit, the number of shareholders holding such shares, or any other provisions regarding voting in such mutual housing company's certificate of incorporation or by-laws.

§ 18. Section 3-14 of Chapter 3 of Title 28 of the Rules of the City of New York is amended by adding a new paragraph (14) to subdivision (i) to read as follows:

(14) Terminology Used by Mutual Housing Company. Whenever a mutual housing company uses the term "dissolution," it shall include reconstitution where such housing company elects to reconstitute upon dissolution of such housing company. Furthermore, where the mutual housing company's board or the sponsor of a cooperative conversion of a mutual housing company represents in its cooperative offering plan or other documents that such mutual housing company is amending and/or restating its certificate of incorporation and/or that the shareholders will be voting on a voluntary reconstitution and conversion from a limited-profit mutual housing company to a private cooperative, section 35 of the Private Housing Finance Law designates these actions as a dissolution and reconstitution of the former limited-profit housing company cooperative.

§ 19. Subdivision (j) of Section 3-14 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(j) Proxies, Direct Mail Ballots and Absentee Ballots.

(1) With HPD's approval, a mutual housing company may require a standard form and procedure for the casting of proxies or absentee ballots in any matter requiring a shareholder vote.

(2) Notwithstanding anything to the contrary contained herein, in any vote conducted pursuant to paragraphs six-a or seven of subdivision (i) of this section, voting by proxy shall not be permitted. However, HPD may approve, in writing, a standard form direct mail ballot for transmission to the independent election company engaged to conduct any votes pursuant to

paragraphs six-a and seven of subdivision (i) of this section. Such standard form of direct mail ballot shall be invalidated by the shareholder executing such ballot if such shareholder appears to vote in person in any vote conducted pursuant to paragraphs six-a or seven of subdivision (i) of this section.

Statement of Basis and Purpose. The first seven amendments and the ninth amendment correct technical matters in the current rules as well as conform the appeals process for succession cases to current practices. The eighth amendment provides that a mutual housing company's certificate of incorporation must be in conformity with State law and HPD rules and that any provision thereof that doesn't meet this requirement will be deemed null and void. The HPD rules already contain a similar provision regarding a mutual housing company's by-laws, rules and regulations and it logically follows that the certificates of incorporation should be subject to the same limitations. The eighth amendment also reiterates the statutory requirement that HPD must approve amendments to a mutual housing company's certificate of incorporation. The tenth and fourteenth amendments require both rental and mutual housing development companies to provide information regarding tax exemptions and other governmental subsidies along with a notice of intent to leave the Mitchell-Lama program. The rest of the rule amendments address voting procedures for buyouts from the Mitchell-Lama Program. First, they would limit the simple majority feasibility study vote, the 2/3 majority vote for preparation and submission of the offering plan and notice of intent, and the final 2/3 majority vote for dissolution and/or reconstitution, to one vote per dwelling unit regardless of the number of shares allocated to such dwelling unit, the number of shareholders holding such shares or the provisions regarding voting in such mutual housing company's certificate of incorporation or by-laws. This is similar to what the New York State Division of Housing and Community Renewal already requires for State-aided Mitchell-Lama mutual housing company developments. It also would eliminate any ambiguity created by the wording of the current rule since the Business Corporation Law otherwise allows a cooperative to specify in its operating documents the proportion of shares or votes of shares that can authorize dissolution. The amendments also would limit the frequency of any one of these votes to once every twelve months and clarify the fact that HPD must approve the intended special meeting procedures and the proposed independent election company before the special meeting can be held. They also require mutual housing companies to submit these procedures and their proposed independent election company at least sixty days prior to the special meeting date so that HPD has time to conduct the requisite review. The next amendment mandates that a mutual housing company's operating documents be amended to reflect that these dissolution votes must be conducted on a per dwelling unit basis. The final amendment prohibits the use of proxies in the votes for preparation and submission of the offering plan and notice of intent, and the final 2/3 majority vote for dissolution and/or reconstitution, unless HPD has approved, in writing, a standard form direct mail ballot for transmission to the independent election company engaged to conduct any votes pursuant to paragraphs six-a and seven of subdivision (i) of this section.

Since the dissolution or reconstitution of a Mitchell-Lama mutual housing company has an enormous impact on the future of each of its residents, it is important that each dwelling unit get an equal say in the matter, particularly because the allocation of shares in a Mitchell-Lama mutual housing company does not have the same financial implication as it does for unregulated cooperatives. Furthermore, these votes should be limited in frequency so that they do not create a continuously stressful environment for shareholders who reside in such developments or excessively burden the finances of the housing companies. Finally, the prohibition against the use of proxies in certain votes, except as such standard form direct mail

ballots might be authorized by the supervising agency, ensures that such votes will be fair and equitable and that shareholders are not unduly pressured to vote in a certain manner.

Commissioner Rafael E. Cestero
August 10, 2009