

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption of Rules Governing City-aided Limited Profit Housing Companies

Notice is hereby given that 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 Section 32(3) of the Private Housing Finance Law, and in accordance with the requirements of §1043 of the New York City Charter, the Department of Housing Preservation and Development is amending its rules governing the City-aided limited profit housing companies.

A public hearing was held on February 25, 2016.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Statement of Basis and Purpose of Rule

The Mitchell-Lama Law (Article II of the Private Housing Finance Law) was enacted to address the “seriously inadequate” supply of “safe and sanitary” housing for families of low and moderate income. 41 N.Y. Priv. Hous. Fin. Law § 11 (McKinney’s 2002). Realizing that the necessary housing could not “readily be provided by the ordinary unaided operation of private enterprise,” the law provides incentives to encourage development of such income housing. Id. Specifically, housing companies are provided with low-interest mortgage funding for construction and real estate tax exemptions. 41 N.Y. Priv. Hous. Fin. Law §§ 22-23. In exchange for these benefits, housing companies are subject to numerous statutory restrictions, as well as to extensive regulatory and supervisory oversight and control, including regulations concerning rent, profits, disposition, and tenant selection. See, e.g., 41 N.Y. Priv. Hous. Fin. Law §§ 27, 31, 32, 32-a. HPD is the supervising agency for New York City’s municipally-aided Mitchell-Lama program.

Summary of Rule and Bases for Changes

- The Mitchell-Lama rule amendments that became effective on December 25, 2014, prohibit application transfers except between spouses and children of at least 18 years of age who were on the applicant’s original application. The ability to transfer an application to a sibling was inadvertently omitted. Siblings often enter lotteries for Mitchell-Lama apartments together, but only one can be entered as the potential head of household. Since waiting times for these apartments are extensive, the housing needs of such siblings are bound to change over time. The rule amendment will allow siblings to transfer applications as long as they both were included on the original application and are at least 18 years of age at the time of such original application, thereby correcting this omission.
- The amendment to the definition of “probable aggregate annual income” clarifies and better reflects HPD’s current policy of excluding up to \$20,000 of each secondary wage

earner's income.

- The Mitchell-Lama rule amendments that became effective on December 25, 2014, also prohibit a housing company from adding a family member to the stock certificate for a mutual redevelopment company unless such family member was approved for succession. Previously, family members could be added to stock certificates even if they had not been approved for succession, but co-ownership of shares indicated a financial interest only and did not guarantee succession. Thus, family members that had been added to the stock certificates prior to the rule change were required to independently meet succession requirements if and when the shareholder of record permanently vacated the apartment.

The December 25, 2014, rule amendment inadvertently failed to address family members who had previously been added to stock certificates before the establishment of succession rights was a prerequisite to such additions. The rule change in this amendment addresses that omission and reiterates the requirement that such family members would need to meet the succession requirements in order to establish occupancy rights. The rule change also recognizes that, upon request and with HPD's prior approval, spouses that meet certain requirements can be added as co-owners of shares and co-signatories of occupancy agreements without such succession determinations.

HPD's authority for these rules is found in section 1802 of the New York City Charter and sections 32(3) and 32-a of the Private Housing Finance Law.

Commissioner Vicki Been
July 13, 2016

Section 1. Paragraph (3) of subdivision (h) 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:

(3) Applications shall be consecutively numbered and dated upon receipt by the housing company or shall be numbered pursuant to order of selection by lottery, as applicable. The housing company or its managing agent shall provide an applicant with a dated receipt or other form of documentation setting forth the date and/or waiting list number of the application. Applicants must meet the occupancy standards at the time of application and at the time the apartment is offered. No applicant may be placed on more than one waiting list by bedroom size in a particular housing company development. Applications are only transferable to spouses, siblings, or children who are at least eighteen years of age as of the date of the applicant's initial application, provided that such spouse's, sibling's, or children's names appeared on the applicant's initial application. Each applicant shall only be entitled to one entry per lottery for a housing company development. Multiple entries shall result in disqualification from such lottery. Furthermore, an applicant whose name is selected in a lottery cannot be included in the family composition of any other applicant who is selected in the same lottery for that particular housing company development. Such inclusion in multiple selected family compositions also shall result in disqualification of all involved parties from such lottery.

§ 2. Paragraph (2) of subdivision (a) of Section 3-03 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(2) "Probable aggregate annual income" shall mean the total income of the chief wage earner as reported in the New York State income tax return, plus the total income[, in excess of \$20,000 or such amount as determined by State law,] of each other member of the household, [less] excluding therefrom (i) the income of each additional wage earner up to \$20,000 or such amount as determined by State law, and (ii) such personal exemptions and deductions for medical expenses as are actually taken by each tax paying occupant on the New York State tax return. However, the income of a household member, under 21 years of age, who is a full time student shall not be included in the computation of such annual income.

§ 3. Subdivision (c) of Section 3-06 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

With respect to any person who became a co-owner of shares before December 25, 2014, such co-ownership of shares does not guarantee the right to succession to an apartment in a mutual housing company development, and any such co-owner must qualify for succession under §3-02(p) of these rules. On or after December 25, 2014, [No] no housing company shall permit any person other than a family member who has been approved for succession in accordance with §3-02(p) of these rules to become an owner of the shares and a signatory on the occupancy agreement. Notwithstanding the foregoing, upon the request of a shareholder, and with HPD's prior approval, a housing company may permit spouses to become co-owners of shares and co-signatories of the applicable occupancy agreements if they meet the following requirements, as established pursuant to satisfactory evidence:

- (a) such spouse either was an initial occupant of the applicable dwelling unit with such shareholder or was included in at least two of the income affidavits filed by such shareholder during the time period immediately preceding such shareholder's request to add the spouse as co-owner of shares and a co-signatory of such occupancy agreement;
- (b) such spouse has occupied the applicable dwelling unit as his or her primary residence for at least two consecutive years and continues to occupy such dwelling unit as his or her primary residence at the time of such request; and
- (c) such spouse and the shareholder intend in good faith to remain joint occupants of the applicable dwelling unit. Any spouse that becomes a co-owner of shares and a co-signer of the applicable occupancy agreement pursuant to these requirements also shall be considered a shareholder of record for such dwelling unit.