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## RULES OF THE CITY OF NEW YORK

### TITLE 28: HOUSING PRESERVATION AND DEVELOPMENT

#### CHAPTER 3: CITY-AIDED LIMITED PROFIT HOUSING COMPANIES

##### § 3-01 Sponsors and Publicity.

(a) *Sponsorship of development.* Applicants for sponsorship of a limited-profit housing company development shall furnish to the Department of Housing Preservation and Development, hereinafter referred to as "HPD",

(1) an application for approval of the site and sponsors,

(2) evidence of financial ability and other qualifications, and

(3) such other data or information as HPD shall require. Applications, financial data and information with respect to qualifications shall be in such form and substance as HPD shall, from time to time, require. All references herein to "housing company" shall be deemed to mean limited-profit housing company.

(b) *Eligibility--letter of intent.* In addition to other requirements, a person or organization shall be ineligible for final approval as a sponsor of a housing company development unless such person or organization complies with all of the policies of the HPD Office of Community Partnerships.

(c) *Publicity by sponsor.* No public announcements of any kind with respect to the housing company development shall be made by the sponsor without prior written formal approval of HPD.

##### § 3-02 Rental or Sale of Space and Solicitation of Deposits.

(a) *Priority of applicants for dwelling units--initial rent up period.* All inquiries and applications for the purchase of shares or rental of dwelling units received within 10 days of the public announcement about the development by HPD shall be treated on a par with each other regardless of the actual date of receipt of inquiry, application or deposit. In order to receive consideration, all inquiries shall be in writing and directed to the housing company, which shall note the date of receipt thereon. All correspondence addressed to the housing company or sponsor relating to the proposed development shall be acknowledged within ten (10) days of its receipt.

(b) *Offer to rent or sell during initial rent up period.* No housing company shall advertise or offer to rent any space or sell any cooperative shares without prior written approval of HPD. Advertisements shall include language as follows: "Equal Housing Opportunity" and "supervised by N.Y.C. Department of Housing Preservation and Development." Advertisements shall also include language as follows: "Only one request for an application per person shall be permitted."

(c) *Rental schedule and charges.* No housing company shall rent or lease any dwelling units or other rental space or equipment until the schedule of rentals or of carrying charges and equity payments for the entire housing development company has been approved in writing by HPD. No change in the schedule or in the accommodations in the development shall be made without prior written approval of HPD.

(d) *Prerequisites to rental or sales.* The rental or leasing of space shall not be commenced by a housing company until:

(1) In the case of a cooperative housing company (hereinafter referred to as a "mutual housing company"), the Information Bulletin shall be accepted for filing by the Department of Law of the State of New York pursuant to § 352-e of the General Business Law.

(2) The sponsoring agreement, restricted bank account, and required insurance coverage have been provided by the housing company and approved, in writing, by HPD.

(3) The sales or rental agreement, blanket position bond, and resolution of the Board of Directors of the housing company authorizing the agreement have been approved by HPD.

(4) All application forms, subscription agreements, occupancy agreements, receipts, and all other forms proposed to be used by the housing company must be approved in writing by HPD before they are used.

(e) *Solicitation of deposits.* Deposits from applicants for dwelling units shall not be solicited or accepted by the housing company until after the development has been approved by the State Division of Housing and Community Renewal, the housing company has been duly organized, and the development has been approved by the Board of Estimate or its successor.

(f) *Procedure for deposits.* Deposits shall not exceed \$100 per dwelling unit, nor shall deposits be solicited or accepted until HPD has approved in writing:

(1) The form of receipt, and

(2) The opening of a trust account in which all deposits are required to be promptly deposited in the name of the housing company (or such other person or organization designated by HPD), and

(3) The proposed selling agent. Deposits shall be accepted by the housing company by check or money order only, payable to the housing company. In the case of a mutual housing company all funds so received shall be deposited in said account and shall bear the title "Capital Trust Account" after the name of the housing company. Funds on deposit in said trust account shall be restricted and subject to withdrawal only upon the filing of a written authorization signed by a designee of HPD.

(4) All other criteria set forth in this section governing rental of dwelling units or sale of shares.

(g) *Form of receipt.* The receipt for the deposit shall clearly state that no monies in addition to the deposit may be collected as a further or final payment until HPD has (1) authorized the receipt by the housing company of further payments, and (2) approved the provisions of the subscription and occupancy agreement in the case of a mutual housing company development or of the lease agreement in the case of a rental development.

(h) *Filing of applications, eligibility, investigation of applicants, waiting lists.*

(1) Every housing company shall have adequate supplies of applications on hand at all times at its business and sales office.

(2) Any bona fide resident of the State of New York who has reached his/her majority under the laws of the State of New York may file an application for the lease of a dwelling unit in a rental housing company or the purchase of shares in a mutual housing company, provided, however, that in developments assisted by a project-based Section 8 contract under the United States Housing Act of 1937, as amended, or assisted by a contract under Section 236 of the National Housing Act, as amended, any legal resident of the United States who has reached his/her majority under the laws of New York may file an application for such lease or such purchase of shares. No condition or limitation shall be imposed upon an applicant in connection with the filing or execution of an application other than:

(i) an application fee;

(ii) non-returnable fees to cover the cost of credit investigation, home visit or administrative costs; and

(iii) conditions set forth in applicable governmental authorizations, Land Disposition Agreements or other documents of such public nature. The application and non-returnable fees shall be in amounts approved by HPD. No applicant can be refused a place on an external waiting list for reason of financial ineligibility. Financial eligibility shall be determined at the time an apartment is offered. No applicant may be placed on more than one waiting list by bedroom size in a particular housing company development. However, applicants shall be advised of the financial eligibility requirements at the time of applying.

(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 (i) such spouse's, sibling's, or children's names appeared on the applicant's initial application, and (ii) the applicant appears in person in the housing company's management office and provides a signed and notarized statement declaring surrender of his or her application to such eligible spouse, sibling or child. 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.

(4) Each application, together with income and occupancy information and other data as hereinafter specified, shall be investigated by the housing company at the time an apartment is offered to determine the eligibility of the applicant. The data received by any housing company relative to tenant income shall be regarded as confidential in nature and protected accordingly to the extent permitted by law. In the case of a mutual housing company development, applicants approved by the mutual housing company shall upon notification of such approval be required to pay the balance of the purchase price of the shares allocated to the apartment. Thereafter, such application, together with supporting data, including a satisfactory credit history, and, in the case of a mutual housing company development, one copy of the contract for sale of shares approved by the housing company, shall be forwarded to HPD for its approval. Home visits conducted in connection with a credit check are permitted.

(5) Except for developments governed by §3-21 of these rules, no applicant shall be given possession of an apartment until his or her application has been approved by HPD and he or she has executed an occupancy agreement or lease.

(6) Applications which are rejected by a housing company without being submitted to HPD shall have clearly marked thereon the reason for disapproval and shall be kept for a period of time as HPD may direct, and shall be available for examination by HPD. The applicant shall be advised in writing of the reason for his or her rejection and advised that he or she can appeal the rejection to HPD within thirty (30) days from the date of such written notification. Such appeal shall be in writing.

(7) The housing company may adopt a policy permitting or prohibiting guarantors that must be applied uniformly to all applicants. Where an applicant requires a guarantor to guarantee payment of rent/carrying charges to a housing company that has adopted a policy permitting guarantors, the managing agent shall conduct a credit check and income review of the guarantor to assure that guarantor is financially responsible.

(8) (i) All housing companies, whether mutual or rental, shall maintain all waiting lists on forms approved by HPD for all tenant/cooperator applications for apartments, listed in chronological order, by apartment size, by date of receipt or by order of selection by lottery, as applicable. All eligibility requirements for age, residency and family composition must be met by the cut-off date for the lottery. As used in this chapter, the term "tenant/cooperator" shall mean a tenant residing in an apartment in a rental development and/or a shareholder/proprietary lessee residing in an apartment in a mutual housing company development, as the case may be. These master waiting lists shall be kept in the management office. A conformed copy of the master waiting lists by apartment size shall be sent to HPD. Thereafter, on a semi-annual basis, or more frequently if requested by HPD, updated waiting lists shall be submitted to HPD. The waiting lists must reflect the status of each application, i.e. who received an apartment, who declined an apartment, who withdrew, or any other circumstances, including dates the actions were taken.

(ii) The opening and closing of all waiting lists shall be subject to prior written approval of HPD. The lottery for the units that become available through the opening of a waiting list must be advertised through

the New York City Housing Connect/Mitchell-Lama Connect lottery system or any successor program administered by HPD to market vacant Mitchell-Lama units. Such lottery also must be advertised through advertisements that have been approved by HPD and published in at least two daily newspapers of general circulation and two publications known to have a high readership amongst minorities. Housing companies must thereafter select applicants from the New York City Housing Connect/Mitchell Lama Connect or successor program lottery. When a list has sufficient names on it to last for three years, the list may be closed by HPD. Waiting lists for various size apartments may be closed at different times as the particular apartment-size list attains sufficient names.

(iii) No application shall be taken or deposit accepted for a position on the waiting list subsequent to the official closing of such waiting list. Any application added to the waiting list after the official closing date shall be rejected by HPD.

(9) Each applicant and members of his or her household shall furnish an affidavit attesting to the gross household income for the preceding year and the anticipated gross household income for the current year. Each applicant and members of his or her household shall also be required to furnish to the housing company or HPD certified copies of tax returns filed by them with the Internal Revenue Service ("IRS"), and the New York State Department of Taxation and Finance for the preceding or subsequent years for admission purposes as well as during their occupancy of a dwelling unit of the development. Applicant and members of his or her household shall assume the cost of obtaining certified copies for these purposes. Failure to provide certified tax returns when requested for admission purposes shall result in rejection of the application; failure to provide certified copies during occupancy shall result in imposition of maximum surcharges upon the tenant/cooperator.

(10) The waiting list shall be printed in a legible manner and shall be available for inspection by members of the Board of Directors, members of the Tenants Association, residents of the development, city officials and applicants. Both internal and external waiting lists must be posted in a format prescribed by HPD in the management office, or, if there is no management office, in the lobby of each building of the housing company development. Posted waiting lists shall exclude all personal information except for the first and last names of all active applicants. Names of applicants on such waiting lists shall appear in chronological order, by apartment size, by date of application receipt or by order of selection by lottery, as applicable.

(11) If, at any time, an applicant's name has been omitted from a waiting list in error, and said applicant can present adequate documentation satisfactory to the housing company or its managing agent to substantiate an earlier date of application for an apartment, applicant's name shall be inserted into the waiting list in the corrected date order. Requests to be reinserted into the waiting list cannot be made more than seven years after the date of the initial application and must be submitted to HPD for prior written approval.

(12) Except for the priorities mentioned below, the waiting list by apartment size in chronological order by date of receipt of application or order of selection by lottery, as applicable, shall be maintained in the following manner:

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TYPE APARTMENT DESIRED

(Example: 1 Bedroom)

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Date of Request	Name	Address	Business Telephone	Residence Telephone	Veteran Yes or No
1/1/69	J. Doe	XXX Ave. Y	123-4567	765-5432	yes

Selections of tenants or cooperators must be made from this list in chronological order or order of selection by lottery, as applicable.

(13) Notwithstanding anything to the contrary contained in this subdivision, an applicant on a waiting list for the lease of a dwelling unit in a rental housing company development or the purchase of shares in a mutual housing company development who, while he or she is on such waiting list, either (i) occupies a dwelling unit in such development in violation of this chapter, including, but not limited to, through failing to be included on the income affidavit for such dwelling unit or through submitting IRS or New York State income tax returns in conjunction with such applicant's application that reflect a different income than the income reported on such dwelling unit's income affidavit, or (ii) submits any material false, fraudulent or misleading statement, representation, documentation or other information in connection with an application, certification of eligibility or recertification of eligibility for any governmentally-provided affordable housing assistance or subsidy, shall be removed from such waiting list.

(14) Any applicant on an external waiting list may file a written request with the managing agent of a housing company, with a copy provided to HPD, that his or her application be put on hold for one year provided that (i) such written request is filed by the later of (A) at least thirty days in advance of the proposed commencement of such one year hold period or (B) no more than five business days after receiving an offer from such housing company, (ii) if such applicant does not notify the managing agent of such housing company in writing, with a copy provided to HPD, at least thirty days prior to the expiration of such one year hold period that he or she would like to remain on such external waiting list, such applicant shall not be reinstated to such external waiting list at the expiration of such one year hold period, and (iii) no applicant shall be entitled to request more than one such hold during the time period in which such applicant remains on the external waiting list.

(15) The stock certificate and occupancy agreement for an apartment in a mutual housing company development or the lease for an apartment in a rental housing company development, as applicable, shall, at initial occupancy, name only one person who is offered and accepts such apartment, regardless of whether the application for such apartment named more than one applicant. Notwithstanding the forgoing, (i) such lease or stock certificate and occupancy agreement may include the names of two persons at initial occupancy, provided that such persons are spouses, (ii) after initial occupancy, spouses may be added to a stock certificate and occupancy agreement in accordance with the provisions of subdivision (c) of section 3-06 of this chapter, and (iii) after initial occupancy, spouses may be added to a lease, provided that they meet the same criteria as apply to the addition of spouses to stock certificates and occupancy agreements as set forth in subdivision (c) of section 3-06 of this chapter.

(i) *Occupancy priorities.* The following occupancy priorities shall apply to all housing companies:

(1) *First priority.* Tenant/cooperators currently residing in a development whose household composition renders them eligible for a smaller apartment shall be given first priority for an internal transfer. Tenant/cooperators currently residing in a development whose household composition renders them eligible for a larger apartment shall be given first priority for the first three out of every four apartments that become available and the fourth such apartment that becomes available shall be set aside and offered to an applicant on the external waiting list in accordance with the provisions contained in paragraph (3) of this subdivision. No priority shall be given to residents seeking additional apartments for members of their household, or for non-resident family members or any other parties. Furthermore, no members of the household, non-resident family members or any other parties shall have occupancy rights to the vacated apartment once the transfer is effectuated. The housing company shall maintain an internal transfer list by apartment size, listed in chronological order by date of receipt of transfer request. If, at any time, a tenant/cooperator's name has been omitted from the internal transfer list in error, and said tenant/cooperator can present adequate documentation satisfactory to the housing company or its managing agent to substantiate an earlier request for a transfer, said tenant/cooperator's name shall be inserted into the internal list in the corrected date order. Insertions to the internal transfer list shall be submitted to HPD for prior written approval.

A tenant/cooperator on an internal transfer list, whose household composition so changes as to render him or her ineligible for the apartment size requested, shall be placed on the appropriate size apartment list as of the date when the change occurred or the date the original request is made, whichever is later; provided, however, that, except for enlargement of a household due to birth or adoption, the change to a larger household composition must have occurred at least one year prior to placement on the internal

transfer list. If a tenant/cooperator is offered an apartment as an internal transfer and he or she is no longer eligible for that size apartment due to a change in household composition, his or her name shall then be placed on the appropriate size apartment list as of the date when the change occurred which made him or her ineligible.

The tenant/cooperator must meet the occupancy standards for the size apartment requested at the time that he or she places his or her name on the internal transfer list and must have been in residence for a period of no less than one year before he or she may request a transfer to a larger apartment. The income affidavit submitted by the tenant/cooperator on file with the housing company or its managing agent must reflect a sufficient number of occupants to warrant a transfer at the time of his or her request, as well as when an apartment is offered. The housing company or its managing agent shall deny a transfer to the tenant/cooperator if he or she fails to satisfy these requirements. No transfer request will be accepted based on pregnancy. No transfer of apartments shall be effected if the tenant/cooperator seeking the transfer is in arrears in rent/carrying charges, surcharges, capital assessments, sub-metering charges or any other fees or charges. The housing company shall advise the tenant/cooperator in writing of its denial of a request for transfer.

The tenant/cooperator shall be required to pay a surcharge effective the first day of the month following his or her residency in the new apartment if his or her income exceeds the maximum allowable for that apartment.

(2) *Second priority.* Pursuant to § 31(7) of the Private Housing Finance Law, preference in admission to a project with an open waiting list, as determined by HPD, shall be given to persons who are veterans as such term is defined pursuant to § 85 of the Civil Service Law or their surviving spouses, and for projects with a closed list, as determined by HPD, preference shall be given upon the opening of the waiting list to such veterans or surviving spouses that are selected in the lottery for such opened waiting list. This preference in admission shall only be provided to veterans or surviving spouses whose names appear on the waiting list as the applicants of record and who have identified themselves as the heads of household on their applications. No veteran or surviving spouse shall be entitled to benefit from a preference for admission pursuant to this paragraph more than one time and, furthermore, the inclusion of a veteran or surviving spouse as a member of the household shall not entitle any other applicant of record to this preference in admission.

(3) *Third priority.* Persons listed on the external waiting lists by apartment size in strict chronological order by date of receipt of application or order of selection by lottery, as applicable. Family members of a tenant/cooperator, whether or not members of the tenant/cooperator's household, shall not receive preferential treatment on the waiting lists.

(4) The above priorities shall not be applicable to staff or student housing or to housing for the elderly or disabled except as such priorities apply within each special category. Preference in admission to any development or to such portion of any development which has been specifically designed for occupancy by elderly or disabled persons, as the case may be, shall be given to such persons.

(j) *Application fee for rentals and mutual housing companies.* A rental or mutual housing company development shall require a nonrefundable application fee of \$75 at the time of submission of an application for an apartment, unless such a fee is not permitted by an applicable federal or state law. If an apartment is offered to an applicant and the applicant does not accept the apartment, the housing company may remove the applicant from the waiting list. A housing company shall not offer an applicant an apartment more than two times.

(k) *Security deposit for purchase of cooperative shares.* A mutual housing company may, at its option, require an applicant for a mutual housing company apartment to submit, along with his/her written acceptance of said apartment, a security deposit of up to one month's carrying charges which may be retained by the housing company and apportioned between the housing company and the outgoing cooperator to reimburse them respectively for their losses in the event the applicant withdraws his or her acceptance of the apartment.

(l) *Verification of income at time of admission and during occupancy.*

(1) *Admission income verification.* The housing company or its managing agent shall verify the aggregate income of each applicant and members of his or her household prior to admission to the development in the following manner:

(i) Each applicant shall furnish an affidavit attesting to the gross household income of his or her household for the preceding year and the anticipated gross household income for the current year. All members of the household must be listed on the income affidavit whether or not income was earned.

(ii) Each applicant and each member of the household having any income shall furnish proof of income by supplying copies of W-2 forms filed by them for the preceding year, or a statement from their employer setting forth their current rate of income and their total earned income for the immediately preceding year and a copy of their IRS or New York State income tax returns for the immediately preceding year. HPD or the housing company may require submission of certified income tax returns for admission purposes. Each self-employed applicant and self-employed member of the household who will reside with the applicant shall furnish a certified copy of his or her IRS and New York State income tax returns for the immediately preceding year. Applicants and members of the applicant's household shall pay the cost of obtaining certified copies of their income tax returns.

(iii) A copy of amendments to any tax returns, or of tax assessments shall be furnished to the housing company within 30 days after filing the amendment or receipt of notice of the assessment.

(iv) Additional proof of eligibility may be requested by the housing company or HPD.

(2) *Income verification during occupancy.* During occupancy, a tenant/cooperator and members of his or her household shall submit when requested by the housing company, its managing agent or HPD certified copies of their IRS and/or New York State income tax returns for audit or verification purposes with regard to continued eligibility, surcharges or any other valid purpose. The tenant/cooperator and members of his or her household shall assume the cost of obtaining such certified copies.

(3) *Failure to provide certified income tax returns or other documentation.* Failure to provide certified copies of income tax returns or other required documentation shall result in denial of admission to new applicants and imposition of the maximum surcharge to those already in occupancy.

(m) *Occupancy standards.*

(1) Apartments shall be offered for occupancy as they become vacant in accordance with the standards set forth below (occupancy standards shall be applied without regard to the pending birth or pending adoption of a child):

(i) Efficiency (no bedrooms) and one bedroom apartments. One to three people.

(ii) Two bedroom apartments. Two to four people.

(iii) Three bedroom apartments. Four to six people.

(iv) Four bedroom apartments. Five to eight people.

(v) Five bedroom apartments. Seven to ten people.

(vi) All apartments. In all cases the tenant/cooperator named on the lease must be at least eighteen years of age and must actually occupy the apartment as his or her primary residence.

(vii) HPD may grant waivers of occupancy standards for medical reasons and for internal transfers of tenant/cooperators currently residing in a development whose household composition renders them eligible for a smaller apartment.

(2) Except as otherwise provided by paragraph (1) of subdivision (i) of this section, priority shall be given to internal transfers in the offering of all vacant apartments.

(n) *Lease and occupancy agreements.*



(1) No tenant/cooperator shall be permitted to occupy an apartment until an executed lease or occupancy agreement has been approved by HPD. The minimum term of such lease or occupancy agreement shall be one year.

(2) No tenant/cooperator shall have the right to sublet without prior written approval of HPD and the housing company, which only shall be given in exceptional circumstances, including, but not limited to, military service. No tenant/cooperator shall have the right to assign his or her lease/occupancy agreement.

(3) No tenant/cooperator may accept any consideration or thing of value from a guest, invitee or other occupant in exchange for occupancy, whether temporary or permanent, unless such person is listed on the application, income affidavit or re-certification of the tenant/cooperator and the tenant/cooperator continues to maintain the apartment as his or her primary residence.

(4) It is required that the apartment of the tenant/ cooperator be at initial occupancy and continue to be his or her primary place of residence. The facts and circumstances to be considered in determining whether a tenant/cooperator occupies a dwelling unit as his or her primary residence include, but are not limited to, whether such tenant/cooperator

(i) specifies an address other than such dwelling unit as his or her place of residence or domicile in any tax return, motor vehicle registration, driver's license or other document filed with a public agency,

(ii) gives an address other than such dwelling unit as his or her voting address,

(iii) sublets or permits unauthorized persons to occupy the dwelling unit without written approval by HPD and the housing company or attempts to assign such dwelling unit, or

(iv) spent less than an aggregate of one hundred eighty-three days in the preceding calendar year in the City at such dwelling unit (unless such individual is in active service in the armed forces of the United States or took occupancy at such dwelling unit during the preceding calendar year). However, no dwelling unit may be considered the primary residence of the tenant/cooperator's name is listed on income documentation that must be sent by the tenant/cooperator to the Department or to any other governmental agencies (for example: income affidavits, re-certifications or Section 8 forms) for the most recent preceding year for which such documentation was required. No dwelling unit may be considered the primary residence of the tenant/cooperator unless the tenant/cooperator provides proof that he or she either filed a New York City Resident Income Tax return at the claimed primary residence for each year of residency for which such return should have been filed or that the tenant/cooperator was not legally obligated to file such tax return pursuant to § 1705(b)(1)(A) and §1751(a) of the Administrative Code due to residency in a foreign country or pursuant to § 11-1751(a) of the Administrative Code and § 6-01 of the Tax Law because the tenant/cooperator's income for such year was below that required for the filing of a return or pursuant to § 893 or 894 of the Internal Revenue Code due to employment by a foreign government or international organization or due to any treaty obligation of the United States which applies to such taxpayer. The tenant/cooperator whose residency is being questioned will be obligated to provide proof that his or her apartment is his or her primary place of residence, including, but not limited to certified New York State income tax returns, utility bills, and voter registration data.

(5) The terms and conditions of all licensing agreements and all tenancies, including tenancies of commercial and professional space, shall be subject to HPD written approval.

(o) *Applicability of Section 235-f of the Real Property Law.*

(1) *Definition of terms.* Section 235-f of the Real Property Law of the State of New York shall apply to all housing companies, subject to the restrictions set forth in this section. As used in this subdivision (o), the term "occupant" shall mean a person, other than a tenant/cooperator, residing together with the tenant/cooperator in an apartment in a rental or mutual housing company development subject to these rules, who is not a party to the lease or occupancy agreement, including, but not limited to, a member of a tenant/cooperator's immediate family, whose occupancy has been approved by the housing company and HPD.

(2) *Admission and eligibility requirements for occupants.*

(i) No tenant/cooperator shall permit a person to "co-occupy" the tenant/cooperator's apartment without first obtaining the written approval of the housing company and/or HPD, except as specified in subdivision (p) of this section. Such approval shall be sought by the tenant/cooperator and the proposed occupant, submitting to the housing company through its managing agent the same financial information as is required to be submitted by any tenant/cooperator.

(ii) The housing company and/or HPD may reject any proposed occupant:

(A) For the same reasons that the housing company and/or HPD would reject the application of a person who applies to become a tenant/cooperator of a vacant apartment, provided that no rejection shall be based on the financial ability of a proposed occupant to pay the rent/carrying charge for the apartment if the tenant/cooperator has adequate financial ability to pay such rent/carrying charge; or

(B) when the acceptance of a proposed occupant would result in the apartment being occupied contrary to the occupancy standards for apartments set forth in subdivision (m) of this section; or

(C) when the acceptance of a proposed occupant would result in the apartment being occupied in violation of the income eligibility requirements of the Private Housing Finance Law or these rules, or

(D) when the acceptance of a proposed occupant would violate the income eligibility or other occupancy standards or requirements of any other federal, state or city program applicable to such apartment

(3) *Status of occupant.*

(i) No occupant, except as otherwise set forth in subdivision (p) of this section, shall have any rights under the lease/occupancy agreement for the apartment or to succeed to the rights of the tenant/cooperator, if the tenancy of the tenant/cooperator terminates. Acceptance by the housing company of full or partial payment of rent/carrying charges from an occupant, by check or otherwise, shall not give the occupant any rights of tenancy under the lease/occupancy agreement or otherwise.

(ii) Each occupant shall be required to furnish to the housing company such financial and other information, on an annual or more frequent basis, that the tenant/cooperator is required to furnish to the housing company, in the form that the tenant/cooperator is required to furnish such information, including by affidavit. Where the rental or carrying charge for an apartment, or a rental surcharge, is based on the income of persons residing in the apartment, the income of the occupant shall be included in such computation.

(iii) The tenant/cooperator and the occupant shall occupy the apartment as their primary residence, and the occupant shall represent his or her intention to do so prior to commencing occupancy.

(p) *Occupancy rights of family members.*

(1) The rights of family members of a tenant/cooperator who have requested to remain as the lawful tenant/cooperator are governed by policies and procedures set forth in this subdivision, except in those instances where this subdivision is preempted by the rules or regulations of other federal, state or city programs.

(2) As used in this subdivision the following definitions shall apply:

(i) "Tenant/Cooperator" shall mean any person named on a lease as a lessee or who is a party to a rental agreement or proprietary lease and obligated to pay rent or carrying charges for the use or occupancy of an apartment.

(ii) "Family member" shall mean:

(A) a husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, nephew, niece, uncle, aunt, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of the tenant/cooperator.

(B) Any other person residing with the tenant/cooperator in the apartment as a primary residence who can prove emotional and financial commitment and interdependence between such person and the tenant/cooperator. Although no single factor shall be determinative, evidence which is to be considered in

determining whether such emotional and financial commitment and interdependence existed shall be the income affidavit filed by the tenant/cooperator for the apartment and other evidence which may include, without limitation, the following factors:

(a) longevity of the relationship;

(b) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;

(c) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;

(d) engaging in family activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;

(e) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the other, entering into a personal relationship contract, registering a domestic partnership pursuant to Executive Order No. 48, dated January 7, 1993 or Local Law No. 27 of 1998, serving as a representative payee for purposes of public benefits, or other such formalizations;

(f) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;

(g) regularly performing family functions, such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services;

(h) engaging in other patterns of behavior, or other action which evidences the intention of creating a long-term, emotionally committed relationship. In no event shall evidence of a sexual relationship between such persons be required or considered.

(iii) "Disabled person" shall mean a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which is demonstrable by medically acceptable clinical and laboratory diagnostic techniques and which is expected to be permanent and to substantially limit one or more of such person's major life activities.

(iv) "Senior citizen" shall mean a person who is sixty-two (62) years of age or older.

(3) Unless otherwise prohibited by occupancy restrictions based upon income limitations pursuant to federal, state or local law, regulations or other requirements of governmental agencies, if the tenant/cooperator has permanently vacated the apartment, any member of such tenant/cooperator's family, who has resided with the tenant/cooperator in the apartment as a primary residence, as determined by § 3-02 (n)(4) of these rules, for a period of not less than two years immediately prior to the tenant/cooperator's permanent vacating of the apartment, and whose name is listed on any income documentation submitted by such tenant/cooperator to the Department or to any other governmental agencies (for example: income affidavits, recertifications or Section 8 forms), for at least the two consecutive annual reporting periods immediately prior to the tenant/cooperator's permanent vacating of the apartment or where such person seeking succession rights is a senior citizen or disabled person, for a period of not less than one year immediately prior to the tenant/cooperator's permanent vacating of the apartment, and has appeared on the such income documentation for at least the reporting period immediately prior to the permanent vacating of the apartment by the tenant/cooperator, or from the inception of the tenancy or commencement of the relationship if for less than such periods, and the apartment was and continues to be the primary residence of the member of the tenant/cooperator's family that resided with such tenant/cooperator, may request to be named as a tenant/cooperator on the lease and where applicable on the stock certificate. The failure of the family member who is seeking to succeed to possession of the apartment to appear on the appropriate income affidavits creates a presumption that he or she did not reside in the apartment as a primary residence. In the event that HPD has authorized

the housing company not to collect surcharges based on income documentation, the family member shall be asked to provide other evidence of occupancy for the required period of time. The burden of proof is on said family member to show use of the apartment as his or her primary residence during the required period to be eligible to succeed to possession.

(4) Family members do not have the right to succeed the tenant/cooperator in occupancy if the housing company terminates the tenancy of a tenant/cooperator for cause.

(5) The minimum periods of required residency set forth in this section shall not be deemed to be interrupted by any period during which the family member who is seeking succession rights temporarily relocates because he or she:

(i) is engaged in military duty;

(ii) is enrolled as a full-time student, and the family member resided in the subject apartment as a primary residence (as determined pursuant to paragraph 4 of subdivision (n) of this section) for at least two years immediately prior to the family member's enrollment as a full-time student;

(iii) is not in residence at the apartment pursuant to a court order not involving any terms or provisions of the lease/occupancy agreement, and not involving any grounds specified in the Real Property Actions and Proceedings Law;

(iv) is engaged in employment requiring temporary relocation from the apartment;

(v) is hospitalized temporarily for medical treatment; or

(vi) has other reasonable grounds that shall be determined by HPD upon application by such person.

(6) The housing company shall secure credible evidence of the tenant/cooperator's permanent removal from the apartment and the surrender of the apartment or the tenant/cooperator's written declaration to vacate the apartment prior to the consideration of re-letting or succession to the apartment by a family member.

(i) Where a tenant/cooperator has died, the lease and shares of stock for such decedent's apartment shall be surrendered by the decedent's estate or survivors to the housing company.

(ii) When a member of a tenant/cooperator's family residing in the apartment as a primary residence as set forth in paragraph (3) of this subdivision is granted succession rights, the housing company shall transfer the shares, other value assigned to the apartment and/or the lease to said family member.

(iii) When there is no succession claim or a claimant is denied succession rights, and a legally recognized estate of the deceased tenant/cooperator requests the value of the shares and other value assigned to such decedent's apartment, the housing company shall remit such value, less any charges against such shares and other value that are permitted by this chapter, to such estate.

(iv) When there is no succession claim or a claimant is denied succession rights, and no legally recognized estate of the deceased tenant/cooperator makes a claim for the value of the shares and other value assigned to such decedent's apartment within one hundred twenty days of the death of said tenant/cooperator, such shares shall be transferred to the housing company and shall be offered for sale in accordance with this section. The housing company shall hold the value of such shares and other value assigned to such decedent's apartment, less any charges against such shares and other value that are permitted by this chapter, for a legally recognized estate until such time that a lawful claim for such is recognized in a court of law.

(v) If there is a legal dispute or claim involving who is rightfully entitled to the value of the shares, mortgage amortization and capital assessment contributions assigned to an apartment in a mutual housing company, such legal dispute or claim shall not affect the rights of such family members as set forth in paragraph (3) of this subdivision.

(vi) If a court of law determines that someone other than such family members as set forth in paragraph (3) of this subdivision is entitled to the value of the shares, mortgage amortization and capital

assessment contributions assigned to the apartment, such matter shall be resolved between such party and such successor family members without recourse to the housing company.

(7) The housing company and/or HPD shall have the option of requiring any proposed successor to move to a smaller apartment in the development, in the event the apartment in question is or would become under occupied according to occupancy standards set forth in subdivision (m) of this section.

(8) Where a family member applies to the housing company for permission to remain in occupancy as a tenant/cooperator, the housing company shall act on the application within thirty (30) days of receipt by either requesting that HPD approve the application or by denying the application and notifying the applicant family members in writing of its determination.

(i) In the event the housing company denies such application, the notice to the applicant shall set forth in writing the reasons why the evidence submitted was deemed inadequate and resulted in such denial and inform the applicant of the right to appeal and the method of appeal.

(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 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.

(iii) Pending the agency's determination, the applicant may continue in occupancy and shall be required to pay for the use and occupancy of the apartment in an amount equal to the monthly rental/carrying charge paid by the vacating tenant/cooperator.

(iv) In the event the agency determines that the applicant is ineligible to remain in occupancy then such applicant shall vacate the apartment or the housing company may seek to terminate the occupancy without any further approval by HPD.

(9) This subdivision shall not apply to staff housing where employment at the institution is a primary requirement for residency. It shall also not apply to housing designated for senior citizens or the disabled, unless such succeeding family member would have qualified for an apartment as an original tenant.

(q) *Payment of rent and deposit of security.*

(1) A rental housing company may require all new tenants to deposit as security an amount equal to a maximum of two months' rent, or such amount as may be approved by HPD at the time of signing the lease except where federal law or regulations prohibit. Commercial or professional tenants may be required to deposit as much rent as security as the housing company requires.

(2) Each rental housing company is required to open an interest bearing bank account in accordance with § 7-103 of the General Obligations Law.

(r) Unauthorized payments. No company, associate, director, officer, employee, agent or other person shall solicit or receive, directly or indirectly, any commission, bonus, gratuity, fee or any other payment not expressly authorized by HPD from any person interested directly or indirectly, in the filing of an application or in obtaining a lease or occupancy agreement.

Violation, in whole or in part, of Penal Law § 180.55 by any agent, sub-agent, or employee of the agent is a crime and may be grounds for the cancellation of a sales or rental agreement or managing agent's agreement by HPD.

### **§ 3-03 Tenant Income Limitations, Surcharges and Applicability of Federal § 8 Subsidy to Tenant/Cooperators in Residence.**

(a) *Income limitations.*

(1) The dwellings in a rental development shall be available for persons or families whose probable aggregate annual income at the time of admission and during the period of occupancy does not exceed the greater of (i) the median income for such persons or families for the New York City metropolitan statistical area or (ii) seven times the annual rental, including the value or cost of heat, light, water and cooking fuel, except that in the case of families with three or more dependents, such ratio shall not exceed eight times the annual rental.

(2) "Probable aggregate annual income" shall mean the total income of the chief wage earner as verified in accordance with §3-02(l) of this chapter, plus the total income of each other member of the household, 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) Subject to the conditions contained in paragraphs (1) and (2) supra, in determining the eligibility of tenant/cooperators in a mutual housing company development, there may be added to the total annual carrying charges an amount equal to six per cent of the original investment of a person or family in the equity obligations of such mutual housing company and where same is not included in the carrying charges payable to the mutual housing company, the value or cost to the tenant/cooperator of:

- (i) heat, light, water and cooking fuel
- (ii) the cost of repainting, upon the basis of \$45 per room per year and
- (iii) the cost of replacement of fixtures and appliances upon the basis of \$10 per room per year.

(4) Notwithstanding other applicable provisions, families with two or more dependents whose probable aggregate annual income does not exceed one hundred twenty-five percent of the limitations as to income as determined pursuant to paragraphs (1) and (2) of this subdivision (a), shall also be eligible for admission to the dwelling of a project provided that any family becoming eligible for admission by reason hereof shall pay, from the time of admission, a rental surcharge as provided for in subdivision (b) of this section, computed on the basis of the income limitations applicable to such family in the absence of this provision.

(b) *Surcharges.* In the event that the aggregate annual income of all occupants of a dwelling unit shall exceed the maximum above set forth, the tenant or cooperator shall be required to pay a surcharge based upon the following schedule:

**SCHEDULE OF SURCHARGES**

Income	Percent of Basic Rent Constituting Surcharge
Up to 100 percent of maximum income limit	None
From 100 percent and up to 105 percent of maximum income limit	None
From 105 percent and up to 110 percent of maximum income limit	5
From 110 percent and up to 115 percent of maximum income limit	10

From 115 percent and up to 120 percent of maximum income limit	15
From 120 percent and up to 125 percent of maximum income limit	20
From 125 percent and up to 130 percent of maximum income limit	25
From 130 percent and up to 135 percent of maximum income limit	30
From 135 percent and up to 140 percent of maximum income limit	35
From 140 percent and up to 145 percent of maximum income limit	40
From 145 percent and up to 150 percent of maximum income limit	45
From 150 percent and over	50

(c) *Surcharge procedures.*

(1) Surcharges shall be payable monthly on a current basis by tenant/cooperators in occupancy based upon income realized during the prior calendar year and such income shall be reported on income affidavits to be furnished by tenant/cooperators.

(2) On February 15th of each year during occupancy, or at such other date as determined by HPD, the housing company shall distribute to each tenant/cooperator an affidavit to be executed by all occupants residing in the apartment as to the income realized by each of such occupants during the preceding calendar year. The information requested shall be set forth in a form of affidavit prescribed by HPD.

(3) The tenant/cooperator shall return to the housing company or its managing agent the income affidavit supplied by the housing company duly executed and notarized by April 30th of each year.

(4) The surcharges shall be computed by the housing company or its managing agent in sufficient time so that surcharge billings shall commence no later than July 1st of each year. The income affidavits will be subject to verification at any time, pursuant to such method as may be determined by HPD including but not limited to spot check audits of certified income tax forms and verification by the New York State Department of Taxation and Finance as set forth in §60(9) of the Private Housing Finance Law. Tenant/cooperators and other occupants selected for audit shall be required to provide a certified copy of the IRS or New York State income tax return for the audited year(s). The tenant/cooperators shall assume the cost of obtaining said certified copies. If HPD establishes a verification system with the New York State Department of Taxation and Finance, those tenant/cooperators found to have reporting discrepancies shall be obligated to furnish certified copies of IRS or New York State income tax returns. The housing company may, upon HPD's approval, implement a policy imposing a penalty fee when additional income is found that would have resulted in an additional surcharge.

(5) A housing company or its designee is required to collect all surcharges computed on the basis of income received by all individuals in occupancy.

(d) *General requirements.*

(1) In the event that a tenant/cooperator fails to return a fully completed affidavit by April 30th of each year, the income of such tenant/cooperator will be presumed to have exceeded the maximum allowable income by 150 percent or more. Written notice will be given informing such tenant/cooperator that the

maximum surcharge will be imposed effective July 1st. In the event completed income affidavits are submitted after April 30th but prior to June 30th, the maximum surcharge will not be imposed. However a non-refundable administrative charge, payable to the housing company, will be applied. This charge cannot exceed \$50.00. The housing company may remit half of any such charge collected to the managing agent to compensate for the additional administrative work.

In the event fully completed income affidavits are submitted after June 30th, a correction to the maximum surcharge billing will be made effective the first day of the month following the submission of such income affidavit. However, a non-refundable administrative charge, payable to the housing company, will be applied. This charge cannot exceed \$150.00 for each month after June 30th in which the tenant/cooperator has not submitted a fully completed income affidavit. This charge must be made payable to the housing company. The housing company may remit half of any such charge collected to the managing agent, in accordance with the terms of the applicable contract, to compensate for the additional administrative work. In extenuating circumstances, HPD may permit reimbursement of excess surcharge to the tenant/cooperator.

For purposes of this paragraph, an income affidavit in which the tenant/cooperator's household income is not disclosed is not a fully completed income affidavit.

(2) Reserved

(3) Whenever changes occur in rentals or carrying charges or any component thereof used in the computation of surcharges, surcharges shall be recalculated by the housing company or its managing agent.

(4) A housing company cannot bring an eviction proceeding against any tenant/cooperator who fails or refuses to pay surcharges without the issuance of a certificate of eviction by HPD following an administrative hearing by an HPD designated hearing officer in accordance with section 3-18 of this chapter.

(5) Housing companies or their managing agents shall submit a copy of the surcharge information tabulation sheets, and all changes thereto, together with copies of the income affidavits for HPD review and evaluation. Surcharge records shall be kept available by the housing company or its managing agent for inspection by HPD.

(6) Tenant/cooperators and other occupants shall be required by HPD to furnish certified copies of their IRS and New York State income tax returns. The cost for the certified report is to be borne by the tenant/cooperator.

(e) Reserved

(f) *Interim changes in income.*

(1) Where a tenant/cooperator anticipates a long-term reduction in income, resulting from death of a wage earner, retirement, or other such circumstances, said tenant/cooperator must submit documentation of such interim change in income to the managing agent. The managing agent shall verify the documentation submitted, and if a change in income is so determined, shall remove the surcharge and inform HPD of such action. HPD reserves the right to disapprove the action of the housing company.

(2) Where a tenant/cooperator anticipates a temporary reduction in income, such as job loss, temporary illness, or other such circumstances, said tenant/cooperator must submit documentation of such temporary reduction in income to the managing agent. The managing agent shall verify the documentation submitted, and if the interim change in income is so determined, shall reduce, eliminate or defer collection of surcharges for a reasonable period of time or shall arrange for an extended payment plan.

(3) The managing agent must maintain supporting documentation for all agreements which shall be available for review by HPD. Any tenant/cooperator shall have the right to appeal any determination under this subdivision (f) to HPD.



(g) *Applicability of Federal § 8 subsidy to tenant/cooperators in residence.* Pursuant to § 31, subdivision 10 of the Private Housing Finance Law, a housing company shall accept federal reimbursement under § 8 of the Housing and Community Development Act of 1974, as amended, in lieu of such amount of rent/carrying charge payment for a person qualifying under such act. A housing company shall not reject an applicant for an apartment solely on the basis that all or part of the rent/carrying charges shall be paid under §8 of the Housing and Community Development Act of 1974, as amended.

### **§ 3-04 Housing Company Funds and Bonds.**

(a) *Bank accounts.* All funds of the housing company shall be deposited in banks or savings and loan associations maintaining an office in the State of New York in accounts which are insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation. All bank accounts shall be maintained in the name of the housing company and in a manner and form prescribed by HPD.

(b) *Trust funds.* All funds received by housing companies shall be held by such companies as trust funds to be applied and used for the purpose of carrying out their obligations under the law.

(c) *Fidelity bonds general.* Each housing company shall obtain and keep in full force and effect a fidelity bond or bonds covering its signatory officers and such other persons as are authorized to receive or disburse monies on behalf of the company. These bonds shall be in such amounts as HPD may require, shall be drawn in form and substance satisfactory to it and shall have as surety there under such company or companies authorized to do business within the State of New York as are approved by HPD.

(d) *Fidelity bonds for rental, sales and managing agent.* All rentals, sales and managing agents shall be required to deliver to the housing company and to HPD before their employment shall become effective, a fidelity bond covering all officers and employees handling funds of the housing company. The amount, form and substance of such bond shall be subject to approval by both the housing company and HPD.

### **§ 3-05 Rent Collection.**

(a) *Rent collection.*

(1) Rent/carrying charges of tenant/cooperators is payable on the first day of each month.

(2) It is the responsibility of the managing agent to collect rent/carrying charges and take the necessary actions to collect past due rent/carrying charges.

(3) A charge for late payment of rent/carrying charges may be implemented by each housing company. In order to implement a late charge, a written request must be submitted to HPD setting forth the dollar amount of the proposed charge and the date of the month it is to be billed. In the case of a mutual housing company, a Board of Directors Resolution certified and acknowledged by the Secretary of the Corporation setting forth the adoption of the late charge by the Corporation shall be submitted to HPD. HPD shall respond in writing. Late charges shall be considered additional rent.

(b) *Write-offs of uncollectible accounts.*

(1) Where collection efforts on the part of the housing company, managing agent and counsel have not been successful, the housing company may turn over uncollected accounts to a collection agency licensed by the New York City Department of Consumer Affairs.

(2) Where all efforts as outlined above prove to be unsuccessful and an account appears to be uncollectible, write-offs should be handled as follows:

(i) Accounts receivable not in excess of three months' rent may be written off at discretion of the housing company.

(ii) Accounts receivable equal to or in excess of three months' rent may be written off only after approval by HPD. Requests for such approval must be supported by a detailed description of collection efforts and such other materials as may be required by HPD

(iii) Except for cases of fraud and misrepresentation, counsel to the housing company may be permitted to compromise and settle all accounts of vacated tenants turned over to him or her regardless of the amount involved when such compromise and settlement are of an urgent nature and are approved by the housing company. HPD must be advised of such settlements in cases where indebtedness equaled or exceeded three months' rent.

### **§ 3-06 Resale of Cooperative Shares.**

(a) *Procedures.*

(1) A shareholder desiring to sell his or her shares in a mutual housing company shall notify the housing company in writing no later than 90 days in advance of his or her intention to sell his or her shares to the housing company or its designee, pursuant to the provisions of the housing company by-laws and occupancy agreement.

(2) The shareholder shall transfer his or her shares to the housing company and shall thereafter surrender possession of the apartment at the agreed upon time pursuant to arrangements made with the housing company. After the shareholder has surrendered possession of the apartment, the housing company will inspect the apartment to determine necessary repairs. Any surcharge or any other fees and charges owing to the housing company shall be deducted from the equity due the cooperator.

(3) The housing company shall enter the transfer of shares on its books.

(4) The shareholder shall be responsible for carrying charges and submetered electrical charges for up to 90 days after surrendering possession of the apartment or until the housing company transfers the shares to the new owner, whichever occurs earlier.

(5) (i) If a tenant/cooperator seeks to withdraw his or her offer of sale of shares, and no commitment has been made to a purchaser, the housing company at its option, may permit the tenant/cooperator to withdraw his or her offer, and may charge the tenant/cooperator a reasonable fee for this service.

(ii) If, within an 18 month period, shares for the same apartment are re-offered for sale after a previous withdrawal pursuant to subparagraph (i) of this paragraph, the tenant/cooperator must post security for administrative costs in the amount of two months' carrying charges. If the shares for the apartment are sold, the security shall be refunded. If the shares for the apartment are withdrawn again, the security shall be forfeited.

(6) The occupancy agreement for each mutual housing company shall set forth the obligations of each shareholder with respect to the condition of the unit at the time that such shareholder vacates the unit.

(7) In the case of National Housing Act of 1937, as amended, § 223(f) refinanced mutual housing companies, where the appliances were included as security for the insured mortgage, the outgoing shareholder shall be required to leave behind the appliances which were in place at the time of refinancing or to replace them with appliances of equal size and amenities. In the case of non-refinanced mutual housing companies, a Board of Directors may adopt a uniform policy whereby either the incoming or outgoing cooperator shall be responsible for providing a stove and refrigerator for his or her apartment.

A board may adopt a policy which apportions the cost of appliances between the incoming and outgoing shareholders as follows: As appliances require replacement, the cooperator in residence would be required to purchase the new appliance(s). A life-expectancy schedule would be established for each type of appliance and the appliance would be depreciated over that pre-determined time period. If the cooperator in residence vacated the apartment any time during the depreciation period, he or she would be reimbursed for the remainder of the period by the incoming cooperator. If the depreciation period were over when the cooperator vacated, the incoming cooperator would be obligated to purchase new

appliances and the process would commence again. The depreciated appliances would become the property of the housing company. Any policy adopted must be applied uniformly to all apartments.

(8) The mutual housing company shall follow the chronological order of its waiting list in the sale of shares. In the event a mutual housing company has substantially depleted its waiting list, the mutual housing company shall seek potential applicants. A mutual housing company and its managing agent shall only open a closed waiting list in accordance with the requirements of §3-02 of these rules.

(b) *Resale price of shares.*

(1) The resale price of shares in a mutual housing company shall be fixed by the mutual housing company, subject to the approval of HPD and shall be equal to

(i) the consideration the selling tenant/cooperator paid for such shares and

(ii) any capital assessments and voluntary capital contributions approved by HPD and paid by the selling tenant/cooperator to the mutual housing company, to the extent not already included in the consideration paid for such shares, and,

(iii) if established by the mutual housing company, a proportionate share of the actual aggregate amortization paid on all existing and prior mortgages on the project in reduction of total outstanding principal indebtedness during such period as shall be fixed by the board of directors of the mutual housing company, to the extent not already included in the consideration paid for such shares, and

(iv) reasonable non-refundable administrative charges, not to exceed \$150. Said administrative charge is to be retained by the mutual housing company.

(2) The aggregate amount to be paid to the selling tenant/cooperator with respect to the sale of the selling tenant/cooperator's shares shall be fixed by the board of directors of the mutual housing company, subject to the approval of HPD, and shall be equal to

(i) the consideration the selling tenant/cooperator paid for such shares.

(ii) any capital assessments and voluntary capital contributions approved by HPD and paid by the selling tenant/cooperator to the mutual housing company, to the extent not already included in the consideration paid for such shares, and

(iii) a proportionate share of the actual aggregate amortization paid by the selling tenant/cooperator on all existing and prior mortgages on the project in reduction of total outstanding principal indebtedness during such period as shall be fixed by the board of directors pursuant to subparagraph (iii) of paragraph (1) of this subdivision (b), to the extent not already included in the consideration paid for such shares. To the extent that a selling tenant/cooperator may be entitled to an amount less than the resale price of his or her shares, the difference shall be retained by the mutual housing company.

(3) The Board of Directors may, subject to the approval of HPD, establish a general policy pursuant to which a selling tenant/cooperator who had occupied more than one dwelling unit is paid an amount measured by his or her proportionate share of the actual aggregate amortization paid during his or her period of occupancy on all existing or prior mortgages on the project.

To the extent that a selling tenant/cooperator may be entitled to an amount greater than the resale price of shares, the difference may be paid to the selling tenant/cooperator by the mutual housing company.

(4) The "proportionate share of the actual aggregate amortization paid on all existing and prior mortgages on the project" referred to in paragraph (1) of subdivision (b) of this section shall be in the same ratio to such actual aggregate amortization as the number of shares held by the selling tenant/cooperator at the time of sale bears to the total number of shares of issued and outstanding capital stock of the mutual housing company during such period.

(5) Nothing contained in this section shall prohibit the continued use of any method of calculating resale price adopted by a mutual housing company and approved by HPD prior to July 26, 1983.

(6) Participation in the full amortization provisions of this section is voluntary and not mandatory.

(7) A mutual housing company electing to amend its by-laws pursuant to this subdivision (b) shall submit to HPD for its approval, a Board of Directors Resolution certified and acknowledged by the Secretary of the Corporation setting forth the adoption of this provision and a fully executed copy of a by-law amendment certified by the Secretary of the Corporation.

(c) *Joint ownership of cooperative shares.* 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 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.

(d) *Bequeathing of apartments.* In no event may the right of occupancy in a Mitchell-Lama mutual housing company development be bequeathed to another. Upon the death of the tenant/cooperator, the shares must be returned to the mutual housing company which will arrange for a sale pursuant to subdivision (a) of this section. Notwithstanding the foregoing, eligible members of the tenant/cooperator's immediate family in occupancy may acquire such shares if they meet the requirements of § 3-02(p) of these rules.

e. *Prohibition Against Ownership of More than One Dwelling Unit.* Notwithstanding anything to the contrary contained herein, spouses and domestic partners shall be prohibited from purchasing and/or owning cooperative shares in more than one dwelling unit in any Mitchell-Lama mutual housing company development.

### **§ 3-07 Management and Operations.**

(a) *Special services.* A housing company may furnish tenant/cooperators with special services not provided for in the lease or occupancy agreement such as bus, laundry, television antenna or other services upon such terms as HPD shall approve in writing. These services and all facilities used in connection therewith, shall be made available to all tenant/cooperators on equal terms. Discontinuance of special services at the request of a tenant/cooperator shall not entitle the tenant/cooperator to a reduction in rent or carrying charges unless HPD shall otherwise direct.

(b) *Services, repairs, replacements and improvements.*

(1) Each housing company shall maintain its structures, grounds, elevators, boilers and other equipment, either by contract or by qualified employees in such a manner as to preserve the property, to protect the health and safety of the residents and employees, and to provide economical operation of the development.

(1-a) Periodically, HPD will require each housing company to submit a physical condition report prepared by an independent qualified consultant acceptable to HPD. The report will determine the physical condition of the property and all appurtenant equipment. The report must specify all items and equipment that are in need of repair or replacement or which have exceeded their useful lives or are projected to need repair or replacement within five years. The report must also include a plan to address its findings, including an explanation of how any necessary work will be financed.

(2) Contracts for building services, repairs, replacements, redecorating or improvements and supplies shall be let on the basis of lowest cost compatible with quality of performance, material and workmanship. In addition, any contract for over \$100,000 also must be let on the basis of no less than three competitive bids and shall be submitted for HPD written approval. The housing company's submission shall include the three bids plus a contract executed by the successful bidder as well as the other documents as set forth below.

Notwithstanding the foregoing, HPD reserves the right to require any individual housing company to submit for approval any or all contracts over \$5,000.

In the case of a mutual housing company, the submission shall be accompanied by

(i) a certified copy of Resolution of the housing company's Board of Directors acknowledged by the Secretary of the Corporation, approving the contract, bearing the housing company's corporate seal and

(ii) the housing company's attorney's certification that the proposed contract is in compliance with the rules of HPD.

In the case of a rental development, the president or managing general partner of the housing company or his or her duly authorized designee must sign the contract.

The following language shall be included in all contracts for building services, repairs, replacements, redecorating and improvements: "Material, equipment and workmanship shall be subject to the inspection and approval of HPD or its duly authorized agent at the discretion of HPD during the progress of the work and before final payment is made on the contract."

Every contract subject to HPD approval shall contain the following language: "This agreement is subject to written approval by HPD. No work shall commence until this agreement is approved by HPD."

(2-a) Notwithstanding anything to the contrary in this subdivision (b):

(i) the managing agent must promptly notify HPD if the housing company makes payments to and/or incurs charges from any vendor or service provider that in the aggregate equal or exceed \$100,000 in any fiscal year. Such notification shall be in writing and must be made no more than seven days after such payments and/or incurred charges reach the \$100,000 limit; and

(ii) upon a housing company making payments to and/or incurring charges from any vendor or service provider that in the aggregate equal or exceed \$100,000 in any fiscal year, no further charges may be incurred without the prior written approval of HPD.

(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 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 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.

(4) On all contracts over \$100,000, the successful bidder shall, not later than the time of its delivery of the executed contract, deliver to the housing company and HPD an executed Performance Bond for 100 percent of the accepted bid as surety for the faithful performance of the contract and an executed Payment Bond for 100 percent of the accepted bid as surety for the payment of all persons performing labor or furnishing materials in connection therewith. Alternatively, the contractor may submit an unconditional, irrevocable letter of credit from a New York Clearing House bank equal to at least 10 percent (10%) of the dollar amount of the contract which shall provide that the full amount may be drawn down by the housing company upon delivery of a letter certifying default of the contractor. Request for waiver of a bond or letter of credit shall be submitted in writing to HPD by the housing company.

(5) The following language shall be included in all contracts that are subject to HPD approval for building services, repairs, replacements, redecorating and improvements: "Contractor shall not assign any monies due or to become due hereunder without the written consent of the Owner and HPD, nor shall Contractor subcontract or assign any of the work without prior written approval by the Owner and HPD of such sub-contractor or assignee." In addition, such contracts shall contain the following language: "This agreement is subject to written approval by HPD."

(6) In the case of emergencies, where immediate employment of a contractor is deemed necessary by the housing company to prevent damage to property or prevent injury to persons, submission to HPD of the data required by paragraph (2) above may be made after execution of a contract or performance of the work, provided that such submission is made promptly following the date on which such emergency arose. However, if the emergency occurs during working hours, notification of emergency should be made by telephone to HPD and verbal approval obtained prior to commencement of repairs.

(7) All contracts for building services or maintenance of buildings equipment on an annual or time basis that require HPD approval pursuant to paragraph two of this subdivision shall be submitted to HPD for written approval before execution by the housing company, and prior to expiration of the previous contract, if any. Where a contract that was not previously approved for automatic renewal is to be renewed for an increased amount, the renewal contract must be submitted for approval to HPD at least thirty (30) days prior to expiration of the existing contract. All such renewal contracts for building services or maintenance of buildings equipment shall provide that they are subject to termination without cause upon thirty (30) days written notice by the housing company or upon ten (10) days written notice by HPD, and immediately upon notification by the housing company or HPD that the contractor has materially breached his or her contract. After termination, no amounts shall be owed except for work actually completed.

(8) In the event that any director, officer, shareholder, employee or agent of any housing company shall be directly or indirectly connected with any person, firm or corporation which may submit any bid, or to whom any contract is proposed or awarded, pursuant to the provisions of paragraph (2) or (6) hereof, a statement setting forth the nature of such connection shall be included in the submission to HPD and shall be made a part of the minutes of the meeting wherein the contract was approved.

*(c) Contracts and retainers.*

(1) All contracts and retainer agreements with attorneys and accountants shall be subject to the prior written approval of HPD and to termination without cause by HPD or the housing company upon thirty (30) days written notice and immediately by written notice by the housing company or HPD if there has been a material breach of contract. After termination, no amounts shall be owed except for work actually completed. Managing agent contracts are subject to §3-16 of these rules.

(2) An accountant retained by a housing company shall be an independent C.P.A. licensed to practice under the laws of the State of New York.

(3) No company, association, director, officer, employee, agent or other person shall solicit or receive, directly or indirectly any commission, bonus, gratuity, fee or any other payment not expressly authorized

by HPD from any individual, firm or corporation which may submit any bid, or to whom any contract is proposed to be awarded.

(4) Violation of this subdivision (c) by any company, association, director, officer, employee, agent or other person shall be cause for discharge and any other appropriate action; and a provision to such effect shall be incorporated in all employment agreements entered into by the company.

(d) *Cancellation by HPD.* Any contract, agreement or retainer, entered into by the housing company or its managing agent in violation of the provisions of this section shall be subject to immediate cancellation by HPD.

(e) *Employees, wages and living quarters.*

(1) The number, types, qualifications and rate of pay of the employees required for the proper maintenance and operation of the housing company's properties shall be subject to review by HPD and the housing company must submit staffing plans to HPD for its review and approval, if required by HPD. The housing company shall remove any housing company employee who violates the Private Housing Finance Law and/or applicable rules and directives, consistent with any internal grievance procedures.

(2) The rental of an apartment in a development by an employee of the housing company shall be subject to the same rules and procedures as are applicable to all other tenants, except that income limitations, occupancy standards, and surcharges shall not apply when the employee is living at the development for the furtherance of the housing company's interests. However, the number of apartments, if any, which may be set aside for such employees shall be subject to the approval of HPD. The agreement shall provide for the termination of occupancy by the employee when his or her services are discontinued. Such resident employees shall not be shareholders, if such company is a mutual housing company.

(f) *Certification of superintendents and boiler technicians.* The housing company or managing agent shall require the building superintendent and one boiler room technician from each housing company to obtain a certificate of completion of a course offered by an accredited institution on the maintenance of a vacuum steam system, where applicable. Such accreditation must be furnished to the Division of Housing Supervision of HPD if requested by HPD.

(g) *Examination of operations.* The administration and operation of a development shall be subject to examination at the discretion of HPD. The housing company shall make all data, records, information and areas of the physical property available for such examination.

(1) Physical inspection. All developments are subject to physical inspection. HPD may retain a third party to make inspections or may rely on inspections made by others. The inspector shall carry out his or her inspection together with a representative of the housing company. In the case of a rental development, a representative of the duly constituted Tenants Association may join in the inspection.

The Tenants Association may make a list of complaints available to HPD in advance of the inspection date; the inspector shall notify the representative in advance of the date and time of the inspection. All inspections shall be made in the course of normal business hours.

HPD or its designee shall issue a written inspection report which shall be sent to the owner or President of the Board of Directors, the managing agent and, in the case of a rental development, the Tenants Association. The managing agent, with the knowledge and approval of the housing company, shall cause all emergency repairs to be made immediately and will comply expeditiously with the requirements of the inspection report. The managing agent will advise HPD in writing of actions taken to comply with recommendations in the inspection report. To facilitate the physical inspection of a development, the following records shall be maintained:

(i) Apartment painting, maintenance and repair files.

(ii) A log of repairs or improvements to plant, structures and grounds.

(iii) A log of service interruptions, such as heat, hot water, elevator and utilities.

(iv) A log of contracts, including, but not limited to, name of contractor, fee and expiration date.

(v) A log of general supplies, tools and equipment.

(vi) An oil consumption log setting forth delivery date, gallonage and price per gallon; or a steam or gas consumption log, where applicable.

(vii) Electricity usage log (monthly kwh consumed).

(2) Fiscal examination of operations. HPD shall at its discretion conduct audits and reviews of housing company financial operations. The housing company shall cooperate in making all books and records available for such audit and review. To facilitate the examination of data, the following records shall be maintained and (where indicated) sent to HPD:

(i) Permanent individual tenant/cooperator files which shall include the initial application forms, credit checks, home visit reports where applicable, and other supporting documentation. In addition, the file should contain all income affidavits, tenant/cooperator leases and occupancy agreements and any special forms, riders, documents and information which may pertain to the eligibility of said tenant/cooperator for his or her apartment and any and all subsidies which may be applicable.

(ii) A quarterly vacancy report to be sent to HPD within thirty days of its preparation.

(iii) Current tenant/cooperator rent roll to be sent to HPD every twelve months.

(iv) A monthly operating statement showing rent/carrying charges and other receipts, disbursements, aged accounts payable and aged rent/carrying charge arrears, including the name of occupant in arrears, his or her apartment number and dollar amount of arrears to be sent to HPD no later than thirty days after the end of the month for which such monthly operating statement was prepared.

(v) An annual audited financial statement which shall be prepared for and submitted to HPD no later than one hundred twenty (120) days from the end of the audited fiscal period.

(3) In the event the income and reserves of the housing company shall be insufficient, as determined by HPD, to complete all required repairs, HPD, in conjunction with the housing company, shall establish priorities.

(h) The Board of Directors and/or managing agent of each municipally-aided mutual company shall post on a website created for each mutual company the following documents: (1) redacted retainer agreements, (2) redacted contracts for building services, construction and repairs, (3) all board resolutions (including how each board member voted) and all minutes from board of directors' meetings that have been redacted for confidential information, (4) any request by the mutual company to the supervising agency and any final resolution regarding such request, when the request relates to a change in rules, a change in its real estate taxation, a refinancing or financing being offered by the supervising agency, or any other agency or a proposed dissolution and reconstitution, (5) any deficiency letters issued by the Office of the Attorney General to the mutual company regarding an offering plan for dissolution and reconstitution of the mutual company, any deficiency letters issued by the Office of the Attorney General to the mutual company regarding a proxy statement or any other documents permitted by the Attorney General instead of such offering plan, and any of the mutual company's resubmissions of such offering plan or proxy statement or any other documents permitted by the Attorney General instead of such offering plan in response to such deficiency letters issued by the Office of the Attorney General, and (6) any offer of financing from the supervising agency or any other agency to the mutual company.

### **§ 3-08 Reserves.**

(a) *Reserves.* Each housing company shall be required to maintain a capital repair and replacement reserve account.

(1) Deposits.



(i) Annually, each housing company must deposit into the capital repair and replacement reserve account three hundred dollars (\$300) per dwelling unit in equal monthly installments.

(ii) If the capital repair and replacement reserve account balance does not equal or exceed the greater of one thousand dollars (\$1000) per dwelling unit or twenty-five percent (25%) of the housing company's rent roll, such housing company must deposit three percent (3%) of its rent roll on a monthly basis to the capital repair and replacement reserve account until its balance is raised to equal or exceed the greater of one thousand dollars (\$1000) per dwelling unit or twenty-five percent (25%) of the housing company's rent roll.

(2) Disbursements. No disbursements from the capital repair and replacement reserve account can be made without prior written authorization by HPD.

(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 reserve account be accompanied by "Authorization for Expenditure of Funds" signed by a designated HPD official of, and that duplicate copies of monthly bank statements shall be forwarded to HPD's Division of Housing Supervision, 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 HPD's written consent. 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 HPD's Division of Housing Supervision.

(c) *Investments.* The capital repair and replacement reserve account shall be held in Federally insured interest-bearing bank accounts and/or interest bearing Federal obligations in a form approved in writing by HPD.

(1) If interest-bearing bank accounts are utilized, passbooks and bank records shall be annotated as follows: Withdrawals from this account are limited to checks payable to (Housing Company), Capital Repair and Replacement Reserve Account, (Name of bank in which reserve account is maintained).

(2) If Federal obligations are purchased, a custodial agreement for the bank in which the "Capital Repair And Replacement Reserve Account " must be maintained. This agreement shall require that all interest and proceeds from liquidation or redemption of securities be re-deposited to the "Capital Repair and Replacement Reserve Account." A photocopy of the custodial agreement shall be submitted to HPD.

### **§ 3-09 Insurance.**

(a) *General.* The following is intended to serve as minimum requirements for housing companies in arranging an insurance program to provide protection against the usual hazards experienced during the course of operation. Since the same conditions may not prevail in all developments, separate studies should be made as to the actual exposures and hazards and the insurance coverage necessary to meet them.

It is incumbent upon all housing companies to see that proper insurance coverage is maintained at all times and that coverages are modified or changed to meet changing conditions. Copies of all insurance policies and renewals shall be transmitted promptly to HPD. Furthermore, all insurance coverage that is maintained by housing companies must be issued by an insurance company in good standing licensed to issue insurance in New York State.

(b) *Minimum Required coverage.*

(1) Upon opening a corporate or sales office.

(i) Public liability (Comprehensive General Liability Form) Minimum limits of \$1,000,000 per occurrence, \$2,000,000 annual aggregate for bodily injury and property damage.

(ii) Workers' compensation. As required by statute.

(iii) Disability benefits. As required by statute.

(iv) Blanket fidelity bond. Appropriate limits as determined by HPD.

(v) Hold up. Inside and outside. Money and securities. (Broad Form if possible where safe is located on premises.)

(2) Upon acquisition of site.

(i) Liability coverage. To be endorsed to include site and any buildings thereon.

(ii) Fire insurance. Housing company should obtain this coverage on its buildings and/or personal property.

(3) Upon commencement of construction of the limited-profit housing company development. The following coverages are generally supplied by the General Contractor pursuant to the terms of the construction contract. Contractors shall be required to submit the required policies delineated in this section to HPD before the commencement of any construction work and operations shall not be allowed to commence until coverage required has been approved by HPD.

(i) Contractor's public and protective liability and property damage. Contractor shall provide such coverage to protect him and his subcontractors against claims for property damage and personal injury, including accidental death, in the sum of \$1,000,000 per occurrence, \$2,000,000 annual aggregate bodily injury and property damage.

(ii) Owner's protective liability and property damage. Contractor shall provide such coverage to protect the housing company against claims for property damage and personal injury including accidental death caused by the operation of the contractor or his subcontractors during the performance of the work in the sum of \$1,000,000 per occurrence, \$2,000,000 annual aggregate bodily injury and property damage.

(iii) Workers' compensation. As required by statute.

(iv) Disability benefits. As required by statute.

(v) Fire and extended coverage insurance. Pursuant to the terms of the Construction Contract. It is recommended that a builder's risk "Completed Value" form of policy be used. Adequate coverage shall be maintained for any materials which are stored away for the development site. It is recommended that the housing company rather than the contractor obtain this coverage.

(vi) Boiler. Minimum of \$1,000,000 pursuant to the terms of the Construction Contract. It is recommended that the housing company rather than the contractor obtain this coverage.

(vii) Payment and performance bond. Pursuant to the terms of the Construction Contract.

(4) Upon occupancy of buildings. Policies carried during the initial or construction periods of a housing development for which there is a continuing exposure thereafter may remain in force and the policies adjusted in accordance with requirements during later conditions.

(i) Comprehensive general liability. Minimum limits of \$1,000,000 per occurrence, \$2,000,000 annual aggregate for bodily injury including accidental death and property damage. This policy should include coverage for the maintenance or use of the premises as well as for all elevators which are located in the development.

(ii) All Risk Property Policy. Policy should be written in an amount equal to at least 90 percent of the insurable value of the development. The prior approval of HPD shall be obtained for a deductible clause in excess of \$5,000. Fire policies shall contain a provision that the settlement of all fire losses shall be subject to the approval of HPD. Policies shall be endorsed to cover the interest of The City of New York, as first mortgage.

(iii) Rents. The rental income of the development should be written on a 100 percent co-insurance basis.

(iv) Workers' compensation. As required by statute.

(v) Disability benefits. As required by statute.

(vi) Fidelity Bond. 3D Comprehensive form of policy is recommended for this coverage. The amount of the coverage shall be two and one-half times the value of the monthly rent roll plus any other fluid assets. However, in certain cases using the two and one-half times factor may make the amount of coverage unrealistic and the cost prohibitive for the risk involved. Therefore, HPD reserves the right to determine, on a case by case basis, what amount is sufficient. A rider should include coverage for a managing agent. Furthermore, for mutual housing companies, a rider can also be added to include the interest of all non-compensated officers, directors and committee members.

(vii) Boiler and machinery. HPD recommends a "Comprehensive" form of coverage be used or a rider be added to the "Broad" form to cover "Miscellaneous Electrical Equipment". The amount of insurance to be carried shall be sufficient to cover the maximum probable damage to the property of the development and property of others that may arise out of any accident occurring through the operation of such equipment, but in any event not less than \$1,000,000. Policies shall be endorsed to cover the interest of the City of New York, as first mortgage.

(viii) Directors and officers. For mutual housing companies. Minimum limit of \$1,000,000.

(ix) Umbrella liability. The minimum requirement for under 150 units \$1,000,000; 151 to 500 units \$5,000,000; 501 to 1,000 units \$10,000,000; over 1,001 units \$15,000,000.

(x) Miscellaneous risks.

(A) Automobiles. Any vehicle owned by the housing company shall be covered by automobile liability insurance with minimum limits of \$250,000/500,000 for bodily injury, including accidental death, and at least \$100,000 for property damage. For damage to the vehicle itself, comprehensive fire and theft shall be obtained. For automobiles owned by employees and officers of the housing company, used on behalf of the company, proper liability coverage shall be obtained with limits of \$250,000/500,000 for bodily injury including accidental death and \$100,000 for property damage.

(B) Sales and management companies. Where the housing company employs independent sales or managing agents, these agents or their employees who are responsible for the handling of housing company monies shall, without expense to the company, be bonded by a Blanket Position Bond, in favor of the housing company and a copy of such Blanket Position Bond shall be submitted to HPD.

(C) Contractors, concessionaires, and similar professionals. In the event that repair, alterations, exterminating or any other work or services shall be performed by the housing company, the housing company shall require that all firms performing such operations, supply evidence that workers' compensation and public liability insurance are in force. The limits for liability shall be at least \$500,000 for bodily injury and property damage, combined single limit. It may be that certain contractors and concessionaires, by the nature of the liability factor for the work being done, and the cost of the contract, would have a higher risk factor. In that event we reserve the right to require, on a case by case basis, a higher amount for bodily injury. The housing company and HPD shall be named as an Additional Insured.

(D) Commercial tenants and licensees. Must carry a minimum of \$1,000,000 for bodily injury and property damage, combined single limit. It may be that certain commercial tenants and licensees, by the nature of their business, would have a higher bodily injury risk factor. In that event we reserve the right to require, on a case by case basis, a higher amount for bodily injury. The housing company and HPD shall be named as an Additional Insured.

(E) Architects and engineers. Must furnish evidence of their liability coverage.

(F) For subparagraphs (x)(C) and (x)(D) above, the housing company and HPD shall be named as an Additional Insured.

(G) Insurance coverage shall be reviewed prior to the anniversary date of each policy with respect to the adequacy of coverage. HPD may direct a housing company to increase the amount of its coverage to reflect current replacement value where appropriate.

*(c) Notice of loss.*

(1) The housing company shall give immediate notice to HPD of the occurrence of any damage to its property caused by fire or any other hazards, whether or not covered under any of the above insurance coverages.

(2) If damage to housing company property is sustained at other than normal business hours, the loss must be reported to HPD on the first regular business day following the occurrence.

(3) Personal injury or fatality as a result of a fire or other than natural causes must be reported to HPD immediately.

(4) In the event that a housing company decides to employ a Public Adjuster for the purpose of negotiating a settlement with its insurance company, the housing company must request approval from HPD in writing. Approval by HPD must be confirmed in writing to the housing company.

(5) Unless HPD exercises its rights under the mortgage to apply insurance proceeds to the mortgage, all checks in payment of losses shall clear through HPD Insurance Unit. HPD representatives will inspect to see that the damaged property has been restored to satisfactory condition, after which time the checks shall be released to the housing company.

*(d) Cancellation.*

All policies shall provide for a minimum of thirty (30) days notification to HPD in the event of cancellation, amendment or alterations of a policy.

*(e) Capital grant insurance requirements.*

(1) The housing company shall cause to be placed and kept in force all forms of insurance needed to protect the company adequately or required by law, including but not limited to workers' compensation insurance, disability insurance, public liability, boiler insurance, and all risk property insurance. All of the various types of insurance coverage required for the benefit of the housing company shall be placed with such companies, in such amounts, and with such beneficial interest appearing therein as shall be acceptable to the housing company and the New York State Division of Housing and Community Renewal, and otherwise be in conformity with the requirements of the mortgage.

(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 HPD.

**§ 3-10 Rent and Carrying Charge Increases.**

*(a) Procedure for request of increase.*

(1) The housing company shall prepare the requisite petition, application, or motion for an increase in the maximum rental or carrying charges per room and submit same to HPD for approval as to form and authorization for hearing procedures.

(2) In the event the housing company fails to submit said petition, application or motion as set forth in paragraph (1) above, HPD may, upon its determination of the need for an increase in rents or carrying charges, promulgate a petition preparatory to effectuating the hearing, which petition need not be in the same form as delineated in § 3-10(b).

*(b) Public hearing requirement.*

(1) HPD shall hold a public hearing before acting upon any application or motion for an increase in the maximum rental/carrying charges per room to be charged tenant/cooperators of dwellings where HPD is the supervising agency under the provisions of the Private Housing Finance Law. Said hearing shall be

held upon not less than thirty (30) days notice to the tenant/cooperators, provided, however, that with respect to a mutual housing company, the board of directors thereof must hold an informational meeting with the tenant/cooperators prior to any such hearing to discuss the reasons for the rental/carrying charges increase request. Such notice shall have annexed to it a copy of the application or motion for increase in rental/carrying charges and shall set forth the facts upon which the application or motion is based. A development assisted by a Federal Section 236 contract must also comply with Federal rent/carrying charge increase requirements.

(2) No applications or motion for an increase in the maximum rental/carrying charges per room shall be entertained or acted upon hereunder for a period of two years from the date of any previous order of the supervising agency for the increase of maximum rental/carrying charges affecting the same dwelling.

(3) In the event that a hearing having been scheduled is adjourned for any reason whatsoever, then notice of such adjourned date shall be posted near the elevators, on bulletin boards or in any other conspicuous places on the lobby floor; such notice shall constitute compliance with these regulations.

(c) *Contents of application.*

(1) An application for rental/carrying charge increases shall be submitted to HPD, together with a copy of the notice proposed to be delivered to the tenant/cooperators. (For the purpose of this subdivision (c) the term "rental" shall mean and be interchangeable with the term "carrying charges" as used for a mutual company and the term "tenant" shall mean and be interchangeable with the term "cooperator").

(2) The notice to be delivered to the tenants shall first be submitted to HPD for its approval and shall contain:

(i) In bold print, at the top,

**TO ALL TENANTS OF (Name of Development)  
NOTICE OF APPLICATION (Housing Company)  
FOR RENTAL INCREASE**

(ii) In the body of the notice:

PLEASE TAKE NOTICE, that upon the annexed application of (Housing Company) the Department of Housing Preservation and Development of the City of New York will be requested to approve an increase in the maximum average monthly room rental in the housing development of (Housing Company) from (present maximum) to (requested maximum); and

PLEASE TAKE NOTICE FURTHER that a public hearing will be held at the time and place designated by HPD in the attached cover letter from HPD, and at that time evidence will be introduced in support of said application by the undersigned. Interested parties may appear in person to comment or may provide written comments to HPD.

**YOU MAY APPEAR IN PERSON OR BY ATTORNEY**

(Place) -----  
Date (Date of Notice) -----  
< Housing Company >  
----- (Attorneys)

(3) Applications for rent increases shall be verified and submitted in quadruplicate. They shall contain:

(i) Name of housing company, location of development, date of organization and number of rental rooms.

(ii) Dates of completion and of occupancy.

(iii) Status with respect to tax exemption.

- (iv) Present average room rent.
- (v) Present income from non-dwelling spaces.
- (vi) Capitalization, authorized and actual.
- (vii) Status of dividend and debenture interest payments accruing from date of initial occupancy.
- (viii) Assessed valuation. Land and land improvements.
- (ix) Such other information and data as may be pertinent.
- (x) Request for a specific rent increase.

(4) The application shall have annexed the following exhibits and schedules:

Exhibit I. A three year projection of operations on a cash flow basis as per a format available from HPD, complete with applicable schedules. In addition to the three years an actual base year should be used as a starting point reflecting the information in the latest certified statement of financial condition as prepared by a certified public accountant.

Exhibit II. A calculation of the increase required on an average per room per month rate in a format available from HPD. This calculation will commence with beginning working capital or deficit working capital as of the beginning of the projection. Include total deficits projected for the length of the projection and one month's working capital to be left at the end of the period. This deficit then divided by the number of months between expected day of increase and the end of projections and that amount divided by the number of rental rooms in the development will produce the required per room per month dollar increase.

Exhibit III. A three year projection of operations on a cash flow basis after reflecting the increase calculated in Exhibit II above. All applicable schedules will be provided as required in Exhibit I.

Exhibit IV. The most recent annual audited financial statement for the housing company. It should be noted that working capital or negative working capital resulting from prior years' operations, as well as required reserves not funded, must be considered in the calculation of required increase in the petition. The format for these exhibits and schedules is available from HPD. HPD may require further information on any of the matters listed above or on any other matters and may request an amended or superseding application. Such additional information shall be verified and filed in quadruplicate within the time stated by HPD.

(d) *The hearing.*

(1) If the papers submitted to HPD are in form sufficient to warrant consideration by such agency, the applicant shall be notified in writing. Such notification shall include the date and place established by HPD for the public hearing on the application. The hearing shall be held within sixty (60) days of the date of such notification.

(2) Thereafter, the applicant shall notify each tenant in writing by notice approved by HPD of the pending application and the date and place set for the hearing. Such notification shall be sent to the tenants by ordinary mail or distributed under each apartment door and a copy shall be posted in a conspicuous public place on the lobby floor of each building affected. Additional copies of the notice to tenants shall be kept by the applicant for inspection by tenants requesting same. Satisfactory proof of notification to tenants must be supplied to HPD not less than ten (10) days prior to the date set for hearing.

Additional copies of the notice to tenants shall be kept by the applicant for inspection by tenants requesting same. Satisfactory proof of notification to tenants must be supplied to HPD not less than ten (10) days prior to the date set for hearing.

(3) All books, records and financial data pertinent to the requested increase shall be made available to representatives of the Tenants Association in a rental development.

(4) The hearing shall be presided over by such hearing officer as may be designated by HPD for such purpose. The applicants and those opposing the application, in person or by duly authorized representatives, shall each be given a reasonable opportunity to be heard.

(5) A record of the proceedings shall be kept, which shall include, among other things, the application, the notice to tenants, the written and documentary material received, including comments received by HPD. A verbatim transcript of the hearing shall be made, kept as a record of the public hearing and made available for review by tenant/cooperators as well as posted to a website created and maintained by the housing company. The cost of such transcript shall be borne by the housing company.

(6) HPD shall make its decision with respect to the application, and if it is determined that an increase shall be granted, the Commissioner shall issue an Order specifying the amount of the increase and the date(s) of implementation. Said Commissioner's Order may be structured to provide for a single or multiple-stage increase.

(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, 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.

*(e) Implementation of rent or carrying charge increase.* A rent increase shall become effective on the first day of the month specified in the Commissioner's Order. The housing company or managing agent shall notify the tenants of such increase by ordinary mail or distribution under each apartment door at least fifteen (15) days in advance thereof or thirty (30) days in advance in the case of a development assisted by a Federal 236 contract, and by posting a copy of the order granting said increase in a conspicuous public place on the lobby floor of each building affected; if such notice is not given in sufficient time then the rent increase shall become effective on the first day of the following month. Proof of such notification shall also be furnished prior to the institution of any rent increase.

*(f) Failure to maintain essential services.* No increase will be granted where in the discretion of HPD the owner of a rental development is not substantially maintaining essential services. Any tenant or his or her representative who wishes to raise this objection must do so by filing a verified statement with HPD a minimum of ten (10) days prior to the date set for the hearing, setting forth in separate allegations each claimed instance of failure to substantially maintain essential services.

*(g) Service fees and charges.* A housing company may, with the prior written approval of HPD, impose or increase fees for services including, but not limited to parking, air-conditioning, master antenna, appliances and storage.

*(h) Reimbursement of Professional Fees to Tenants Associations.*

(1) A Tenants Association that is constituted pursuant to §3-17 of this chapter shall be eligible for reimbursement of professional fees incurred when such Tenants Association retains an accountant, architect or engineer to review a rent increase application which has been submitted by a housing company to HPD and approved as to form by HPD. Only one accountant and/or one architect or engineer may be retained by a Tenants Association pursuant to this subdivision to review a particular rent increase application submitted by a housing company pursuant to this section.

(2) On the date upon which a housing company submits a rent increase application to HPD pursuant to paragraph one of subdivision (a) of this section, such housing company shall notify the Tenants Association in writing that it has submitted such application and that the Tenants Association may retain an accountant and/or engineer or architect to review the rent increase application upon approval as to form of such application by HPD.

(3) A Tenants Association may retain a professional or professionals to review a rent increase application that has been approved as to form by HPD provided, however, that such professional or professionals shall be retained within ten days after receipt of the notice required pursuant to paragraph

two of this subdivision. Said notice shall be deemed to have been received on the business day immediately following the day of mailing. Such Tenants Association shall provide a copy of the retainer agreement or agreements to the housing company and to HPD prior to submission of the professional report or reports pursuant to paragraph four of this subdivision.

(4) A Tenants Association which has retained a professional or professionals to review a rent increase application that has been approved as to form by HPD shall submit a copy of the report and the bill for services of such professional or professionals to the housing company and to HPD at least seven days prior to the scheduled date of the hearing on such application.

(5) The total fees charged by a professional or professionals retained by a Tenants Association pursuant to this subdivision shall be the fair and reasonable cost of the services rendered by such professional or professionals, but shall not exceed in total the amounts specified in the following schedule:

Size of Housing Development	Maximum Total Fee(s)
Under 500 units	\$7,500
500 or more units	\$8,500

(6) The housing company shall remit payment for services to a professional or professionals who is retained by a Tenants Association pursuant to this subdivision within a reasonable time after receipt of the bill for services, and not later than thirty days after the hearing on the rent increase application.

(7) This subdivision shall not apply in the case of a rent increase application exclusively subject to the approval of HUD.

### **§ 3-11 Utility Pass-Through, Submetering, Direct Metering.**

(a) *Utility pass-through.*

(1) Procedure for request of increase.

(i) A housing company which desires to implement an increase in that portion of the rent/carrying charges attributable to utilities must make a request in writing to HPD for permission to do so. Accompanying said request must be photocopies of utility bills for the period of two years prior to the date of request in order to compare current costs with prior costs.

(ii) The housing company must indicate the total annual amount of the increase requested and, in addition, indicate the amount of the increase on a per room per month basis.

(iii) In the case of a mutual housing company, the utility increase request must be accompanied by a board of director's resolution approving same.

(iv) The housing company's accountant shall verify in writing that the supporting figures submitted are correct.

(v) The housing company, upon submission of a request to HPD, shall post the request in a conspicuous public place on the lobby floor of each building. In the case of a rental development, a copy of the request with the back-up data shall be mailed to the President of the Tenants Association for review and comment. Additional copies of the request with back-up data shall be kept by the housing company for inspection by tenant/cooperators requesting same.

(2) *Procedure for processing increase.* The above data will be analyzed by the Division of Housing Supervision of HPD to determine the validity of the request for a utility pass-through. Tenant/cooperators shall be allowed thirty (30) days from the date of notification to the shareholders or Tenants Association to comment on the request. Upon determination by HPD that a pass-through of increased utility costs is warranted, based on an increase in utility rates, an increase in utility consumption or any combination thereof, HPD shall approve implementation of said utility pass-through and shall notify the housing



company in writing of such approval and of the duration of said utility pass-through. In a rental development, a copy of the approval letter shall be sent to the President of the Tenant Association. HPD may deny the request if the housing company has sufficient resources to absorb the increases.

*(3) Implementation by housing company.*

(i) A utility pass-through shall become effective on the first day of the month following the approval of same. The housing company shall notify the tenant/cooperators of such utility pass-through at least fifteen (15) days in advance thereof by either ordinary mail or distribution under each apartment door, and by posting a copy of the approval letter in a conspicuous public place on the lobby floor of each building affected; if such notice is not given in sufficient time, then the pass-through shall become effective on the first day of the next following month after such notice is given.

(ii) A utility pass-through may be requested at any time that an increase in rates or usage occurs; however, no more than one (1) pass-through for the housing company will be approved by HPD for implementation within any six (6) month period.

*(b) Submetering of electricity.* Wherever allowable as determined by the Public Service Commission, a housing company which is master metered for electricity may, pursuant to HPD approval, install equipment for the submetering of electrical charges within dwelling units and bill tenant/cooperators for their individual consumption, plus administrative costs and amortization of equipment. A housing company seeking to convert to submetering must comply with all requirements of the Public Service Commission with respect to such conversion. Rent/carrying charges shall continue to reflect the cost of electricity for public areas and usages.

(1) Submission of plans. The housing company shall submit to HPD for review and approval plans and specifications for the installation of submetering equipment.

(2) Bidding requirements.

(i) All contracts for the sub-metering of electricity shall be bid in accordance with §3-07 of these rules.

(ii) In the event that any director, officer, stockholder, employee or agent of any housing company shall be directly or indirectly connected with any person, firm, or corporation which may submit any bid, or to whom any contract is proposed or awarded, a statement setting forth the nature of such connection shall be included in the submission to HPD. In the case of a mutual housing company, it shall be made a part of the minutes.

(3) Testing of submetering equipment.

(i) The housing company shall be responsible for maintaining accurate meters. Periodic inspections shall be conducted for this purpose.

(ii) If a tenant/cooperator requests an inspection of a meter at a time other than the periodic inspection, the cost of said inspection will be borne by the housing company if the meter is found to be defective, or by the tenant/cooperator if the accuracy of the meter is found to be within prescribed parameters.

(4) Grievance procedures. Grievance procedures prepared by the housing company relating to the submetering of electrical charges shall be submitted to HPD for review and approval before such procedures are implemented by the housing company.

*(c) Direct metering of electricity.*

(1) A housing company whose project obtains electricity through a master meter may, pursuant to HPD approval, install equipment for the purpose of having electricity directly metered to each tenant/cooperator.

(2) The housing company shall submit to HPD for review, plans and specifications for installation of direct metering equipment. The bidding requirement set forth in §3-07 of these rules shall be complied with.

(3) At the time of request by the housing company for permission to direct meter a development, a copy of the request shall be sent by ordinary mail to all tenant/cooperators.

(4) Prior to any determination being made by HPD regarding the conversion to direct metering, HPD will solicit tenant/cooperator comments regarding said conversion.

(5) A determination will be made by HPD after analysis of existing utility charges as to whether rents or carrying charges at the development require adjustment as a result of the conversion.

**§ 3-12 Reserved.**

**§ 3-13 Sanctions.**

(a) *Written notice and opportunity to appear.* In the event of a violation by a housing company which could result in removal of any or all of a Board of Directors pursuant to §32(6) of the Private Housing Finance Law, the Board of Directors shall be provided with written notice and affected directors shall be given an opportunity to appear and be heard before HPD with respect to any alleged violations.

(b) *Representation by counsel.* The respective parties may be represented by counsel before HPD.

(c) *Appointment of replacement board of directors.* Pursuant to § 32(6) of the Private Housing Finance Law, HPD may replace any or all members of a Board of Directors by appointing persons who HPD in its sole discretion deems advisable, including officers or employees of HPD, as new directors to serve in the places of those removed. Directors so appointed need not be shareholders or meet other qualifications which may be prescribed by the housing company's Certificate of Incorporation or by-laws.

(d) *Term of appointment.* Directors appointed under this section shall serve only for a period coexistent with the duration of the violation, or until HPD is assured against commitment of violations of a similar nature, and shall serve in such capacity without compensation.

(d-1). Any member of a Board of Directors that has been removed in accordance with subdivision 6 of section 32 of the Private Housing Finance Law and the provisions of this section shall be prohibited from running as a candidate for the Board of Directors for any mutual housing company development for three years from the date of such removal.

(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 within ninety days of written notification of the debarment.

(f) *Control of Admissions and Transfers.* Upon a finding that any housing company is in violation of these rules with respect to admissions and transfers, HPD may take over control of all internal and external waiting lists and have sole responsibility for the selection and approval of admissions and transfers.

(g) *Compulsory Training.* HPD may at its discretion require managing agent employees and members of the board of directors to attend housing education courses at the respective expense of the managing agent and the housing company.

**§ 3-14 Corporate Action.**

(a) *Certificates of incorporation, 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. Each housing company

shall also file with HPD, for its approval, a certified and acknowledged copy of all proposed amendments 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, 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.

(b) *Disposition of housing company property.* No personal property, books, financial or other records of a housing company shall be destroyed or disposed of without the written consent of HPD.

(c) *Salaries, fees or other compensation to officers or Directors.* No housing company shall pay any salaries, fees or any other form of compensation to any officer or director for services rendered in his or her capacity as corporate officer.

(d) *Responsibilities of Board of Directors.*

(1) Members of the Board of Directors of a housing company, whether rental or mutual housing company, bear a high public responsibility, since they have elected to operate under a City-aided program to effectuate public policy by encouraging the building and operating of housing developments for families of moderate income.

(2) Board members have a fiduciary responsibility to the shareholders of the corporation. Each board member must ensure that buildings, grounds and other assets are kept up to high standards so that their value is not impaired and that the annual operating revenue is spent effectively and economically.

(3) Board members must exercise judicious control of the premises entrusted in their care including community rooms and public spaces.

(4) Members of the Board of Directors have an obligation to provide to tenant/cooperators the most economical operation of the development without endangering the long term interest of the project.

(5) Board members should be aware of and responsive to tenant/cooperator grievances.

(6) Upon HPD's request, the housing company shall submit to HPD a copy of the minutes from the relevant meeting, certified as to correctness by the housing company's secretary.

(7) No board member shall receive any preferential treatment or thing of value as a result of his or her board membership.

(8) Members or officers of the Board of Directors must occupy a dwelling unit at the mutual housing company development represented by such Board of Directors as his or her primary place of residence.

(9) Members and officers of the Board of Directors are obligated to ensure that the actions of the Board of Directors and the operations of the housing company comply with the Private Housing Finance Law and/or applicable rules and directives.

(10) All members of the Board of Directors must complete two hours of training courses for which the content has been approved by HPD within twelve months of being elected; provided, however, that members of the Board of Directors who were elected before the effective date of the rule that added this amendment must complete such training courses within twelve months of such effective date. All members of the Board of Directors must then complete such training courses every three years after their original training courses.

(e) *Duties and powers.* The Board of Directors has the responsibility for establishing policy covering administration of property, interests, business and transactions of the corporation and may delegate to officers such authority as it deems necessary. Sound organizational policy dictates that individual members of the Board should not interfere with day-to-day management and operation of the project or with its employees or intrude upon management functions. Failure to adhere to this policy reduces the efficiency of the operating staff by creating conflicts in control and in the chain of command. However, the Board as a whole is obligated to ensure that the day-to-day operations of the housing company are

handled in the most efficient and expeditious manner and nothing herein paragraph should be construed to reduce that responsibility.

*(f) Capital assessments by a mutual housing company.*

(1) Capital assessments. A mutual housing company may, by vote of its directors followed by a vote of the shareholders, assess all shareholders on an equitable basis in order to undertake a program of major capital improvements or major repairs approved by HPD. A mutual housing company must obtain a majority of votes at a meeting of shareholders for this purpose and obtain HPD's approval for the assessment.

(2) Proceeds of capital assessments. The proceeds of capital assessments shall be deposited in a blocked bank account and all withdrawals from such account shall be subject to the written approval of HPD. Any surplus remaining in the account upon completion of HPD approved repairs or improvements shall be added to the reserve fund.

(3) Approval process. A request for approval of a capital assessment shall be submitted in writing to HPD, and shall specifically indicate the type of capital improvements or repairs required, along with an estimate of probable cost and the timetable for completion of the proposed program. Contracts for completion of the program shall be subject to the appropriate provisions of HPD rules and regulations, and shall include a provision that the acceptance of all work is subject to the approval of HPD.

*(g) Conflicts of interest prohibited in mutual housing companies.* No officer or member of the board of directors or their immediate family:

(1) shall be or become interested directly or indirectly in any manner whatsoever in any business dealing with the mutual housing company except for resale of shares of their own apartments.

(2) shall act as attorney, accountant, managing agent, broker or employee for any person, firm or corporation interested directly or indirectly in any manner whatsoever in business dealings with the mutual housing company;

(3) shall accept any valuable gift, whether in the form of service, employment, loan, thing or promise, or any other form from any person, firm or corporation which to his or her knowledge, is interested directly or indirectly, in any manner whatsoever, in business dealings with the mutual housing company, its managing agent or any affiliates thereof.

(4) Any deviation from the above requires prior written approval of HPD.

*(h) Annual meetings and elections.*

(1) The Board of Directors of a mutual housing company shall hold regular meetings for the conduct of business. In addition, an annual meeting for the election of directors shall be held at a time and place, and in the manner prescribed by the mutual housing company's by-laws.

(2) (i) All elections of directors for a mutual housing company that has not been refinanced under Section 223(f) of the National Housing Act must be supervised by an independent election company. No fewer than forty-five (45) days prior to conducting the election, the mutual housing company must submit to HPD in writing (A) the name of the independent election company and the proposed independent election company agreement, (B) for HPD's approval, all proposed election documents on the forms provided by HPD, including, but not limited to, candidate selection forms, ballots and notices, and (C) drafts of all other documents related to the election.

(ii) No election may be conducted without the prior written approval of HPD of the submission made pursuant to subparagraph (i) of this paragraph.

*(i) Voluntary dissolution.*

(1) Subdivisions two and three of section 35 of the Private Housing Finance Law, with respect to City-aided limited-profit housing companies, provides as follows:

"A company aided by a loan made after [May 1, 1959] may voluntarily be dissolved, without the

consent of [HPD], not less than twenty [(20)] years after the occupancy date upon payment in full of the remaining balance of principal and interest due and unpaid upon the mortgage or mortgages and of any and all expenses incurred in effecting such voluntary dissolution. Upon such dissolution, title to the project may be conveyed in fee to the owner or owners of its capital stock or to any corporation designated by it or them for the purpose, or the company may be reconstituted pursuant to appropriate laws relating to the formation and conduct of corporations, provided, however, that prior to any such dissolution and conveyance or reconstitution, payment shall be made of all current operating expenses, taxes, indebtedness and all accrued interest thereon and the par value of and accrued dividends on the outstanding stock of such company. If after making such payments, and after conveyance of the project, a surplus remains in the treasury of the company, such surplus ... shall upon dissolution, be paid into the general fund of the [City of New York]. After such dissolution and conveyance, or such reconstitution, the provisions of [Article II of the Private Housing Finance Law] shall become and be inapplicable to any such project and its owner or owners and any tax exemption granted with respect to such project pursuant to [§33 of the Private Housing Finance Law] shall cease and terminate.”

(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;

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; 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.

(3) Public Information Notice for Rental Companies. At least sixty (60) days prior to the proposed date of dissolution and/or reconstitution, a rental housing company intending to dissolve and/or reconstitute shall serve a Notice of a Public Meeting by distribution under each apartment door; shall post such notice

in three (3) conspicuous locations within the lobby and elevator areas of each building; and shall send such notice by certified or registered mail to each of the following:

- (i) Commissioner and the Assistant Commissioner of Housing Supervision, and
- (ii) The president or chairperson of the Tenants Association.

Such notice shall specify the day, date, time and location of a public information meeting which shall be held to inform tenants of the proposed dissolution and/or reconstitution of the housing company. If the public information meeting is outside the community district in which the housing company is located, the owner must provide transportation for tenants. Such public information meeting shall be held not less than 10 nor more than 20 days after service of the Notice upon the parties set for the above.

(4) Public information meeting for Rental Companies. Pursuant to the Notice as specified above, the rental housing company shall conduct at least one public information meeting with the tenants. At such meeting representatives of the rental housing company shall inform the tenants of the rental housing company's intention to dissolve and/or reconstitute; the rental housing company's removal from HPD's jurisdiction and, if applicable, its subsequent registration with the New York State Division of Housing and Community Renewal (DHCR) for the purpose of rent stabilization pursuant to the applicable DHCR rules and regulations; whether rent stabilization will be applicable; prospective changes in ownership and any other relevant information regarding future plans for the rental housing company affecting the tenants. A question and answer period shall be conducted. The tenants Association may invite local elected officials or other representatives to participate.

(5) Where applicable, the rental housing company shall provide evidence that it has appropriately preregistered all apartments with DHCR, indication current rents for each apartment and services provided to the tenants as of the date of dissolution and/or reconstitution.

(6) Mutual Housing companies - special meeting. A board of directors of a mutual housing company considering dissolution and/or reconstitution pursuant to §35 must call a special meeting in conformance with the mutual housing company by-law requirements for the purpose of ascertaining shareholder interest in dissolution and/or reconstitution. The secretary of the board of directors must submit to HPD a certified resolution stating that not less than two-thirds (2/3) of the dwelling units in such mutual housing company approved an expenditure of funds in a specified amount not to exceed \$100,000 for the purpose of the preparation and distribution of a written feasibility study that compares remaining a mutual housing company with dissolving and reconstituting as a private cooperative corporation organized pursuant to the Business Corporation Law or as an Article XI housing development fund company, organized pursuant to Article XI of the Private Housing Finance Law. Such written feasibility study must include the different financing options presented to the housing company and must be completed within one hundred eighty days of the certified resolution and thereafter distributed to each shareholder no later than sixty days after its preparation is completed. 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 prepare a written feasibility study that shall compare (i) remaining a mutual housing company (ii) dissolving and reconstituting as a private cooperative corporation organized pursuant to the Business Corporation Law, or (iii) dissolving and reconstituting as an Article XI housing development fund company organized pursuant to Article XI of the Private Housing Finance Law. Such written feasibility study will be distributed to each shareholder no later than sixty days after its preparation is completed. This resolution authorizes the expenditure of \$ \_\_\_\_\_ for such study, and notifies the shareholders that there are Private Housing Finance Law requirements for dissolution and/or reconstitution. This resolution also advises the shareholders that any additional expenditure of funds for such study will require a separate shareholder approval in accordance with the same voting procedures and cannot exceed \$100,000 at any one time, and 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.

The feasibility study prepared in accordance with such resolution shall compare (i) remaining a mutual housing company with (ii) dissolving and reconstituting as a private cooperative corporation organized pursuant to the Business Corporation Law or (iii) dissolving and reconstituting as an Article XI housing development fund company organized pursuant to Article XI of the Private Housing Finance Law. Such study shall include, but not be limited to:

(i) a physical condition survey of the mutual housing company development prepared by a licensed engineer or architect projecting such development's capital needs and the costs thereof for the next ten years from the date of such survey;

(ii) projected increases in real property taxes for the next five years due to the loss of any abatements of and/or exemptions from real property taxation that would result from dissolution and/or reconstitution;

(iii) advisory estimates from State and City taxing authorities of the real estate and real property transfer taxes that would result from dissolution and/or reconstitution;

(iv) a market study prepared by an independent real estate professional containing projected sales prices for dwelling units if such mutual housing company were to dissolve and/or reconstitute; and

(v) financial estimates that compare remaining a mutual housing company, dissolving and reconstituting as a housing development fund company organized pursuant to Article XI of the Private Housing Finance Law in accordance with the provisions of paragraph (15) of this subdivision, and dissolving and reconstituting as a private cooperative corporation organized pursuant to the Business Corporation Law.

(6-a) Special meeting to authorize preparation of an offering plan and filing of Notice of Intent.

(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 no later than ninety days after the written feasibility study has been distributed to each shareholder to authorize the (A) expenditure of \$\_\_\_\_\_ for the 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 for the distribution of such offering plan and the shareholder vote thereon, 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 eighty percent (80%) of the 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. On or after the effective date of Chapter 749 of the Laws of 2021, as amended by Chapter 167 of the Laws of 2022, any other expenditures in furtherance of dissolution and/or reconstitution that have not already either been authorized pursuant to an agreement entered into by the board of directors or received the express prior approval of the shareholders shall, before the board of directors is authorized to allocate such funds in furtherance of dissolution and/or reconstitution, require the express prior approval of eighty percent (80%) of the dwelling units in such mutual housing company. For purposes of this subparagraph (i), "express prior approval" shall mean that both the purpose of the expenditure and the exact dollar amount of such expenditure are or have been approved.

(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; 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.

(iii) The offering plan must be submitted to the office of the Attorney General no later than three hundred sixty-five days after the shareholders have authorized the expenditure of funds for its preparation.

- (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 eighty percent (80%) of the 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.

(7-a) Conduct of Special Meetings.

(i) Special meetings required pursuant to paragraphs six, six-a, seven and fifteen of this subdivision shall be conducted no more frequently than once every twelve months.

(ii) Special meetings required pursuant to paragraphs six, six-a, seven and fifteen of this subdivision shall be conducted by an independent election company. At least sixty days 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 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.

(iv) With respect to special meetings required pursuant to paragraphs six-a, seven and fifteen, the independent election company must submit proof to HPD that the requirements of this paragraph have been met.

(8) *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, seven and fifteen 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.

(9) *Waiting List Notifications.* Both rental and mutual housing companies shall submit an affidavit certifying that each applicant on such housing company's apartment waiting list has been advised in writing of the proposed dissolution and/or reconstitution and that fees have been returned to said applicants prior to dissolution and/or reconstitution. Further, the affidavit shall state that any funds unreturned for lack of proper address or other technicality shall be escrowed and returned upon applicant's request.

(10) *Payment of mortgage(s) and other indebtedness by Rental and Mutual Housing Companies.* On the date set for dissolution and/or reconstitution and mortgage prepayment, the housing company shall submit to HPD payment in a form approved by HPD for all principal, interest, supervisory fees, surcharges, amounts payable pursuant to residual receipt notes and any other amounts which may be owing to the City of New York, including any surplus due to be paid into the general fund of the City pursuant to Private Housing Finance Law Article II, §35(3).

(i) At least sixty (60) days prior to the date set for dissolution and/or reconstitution and mortgage prepayment, a schedule of all accounts payable, taxes due and any other indebtedness, including the par value and accrued dividends on outstanding stock (or, in the case of a partnership, accrued distributions) shall be submitted to HPD for its review and written approval; said schedule to be prepared and certified to HPD by an independent certified public accountant acceptable to HPD. Such schedule shall contain a listing of all items of indebtedness, the amount thereof, the source of payment thereof and the anticipated date of payment, plus the amount of money anticipated to be paid to the City from the remaining surplus. At the time of dissolution and/or reconstitution, such certified schedule shall be amended to reflect the current status of all accounts, and the exact amount, if any, owed to the City. Housing company funds may not be used for the purpose of prepayment of the mortgage debt.

(ii) Accounts payable may include monies owed on executed contracts for repairs or capital improvements, subject to HPD approval. Any contract for capital improvement or repair work in an amount in excess of \$15,000 executed within ninety (90) days prior to submission of a Notice of Intent to dissolve and/or reconstitute other than contracts for projects subject to HUD supervision must have a statement attached to the contract submission, sent to HPD for approval, advising HPD that the housing company is contemplating dissolution and/or reconstitution at the time of said submission of the contract. Failure to submit such contracts may result in exclusion of their cost in calculating surplus.

(iii) No legal and accounting fees or other costs in a rental development associated with dissolution and/or reconstitution shall be charged to the housing company.

(iv) Where applicable, the housing company shall submit evidence of payment of any relevant mortgages.

(11) *Issuance of Letter of No Objection to Rental and Mutual Housing Companies.* Upon payment by certified check or checks from a New York clearing house bank of all amounts owing to the City and/or other mortgagee and certification of compliance with all applicable rules and provisions of law relating to dissolution and/or reconstitution, HPD shall issue a Letter of No Objection to the housing company's

dissolution and/or reconstitution.

(12) Notification to New York City Department of Finance. On the date of dissolution and/or reconstitution, both rental and mutual housing companies shall send written notification to the Department of Finance that the property owned by the housing company is to be restored to a full taxpaying position effective the date of dissolution and/or reconstitution. A copy of such notice shall be sent to the HPD Division of Housing Supervision.

(13) Notification of Senior Citizen Rent Increase Exemption (SCRIE) Program. No later than ten days after the date of dissolution and/or reconstitution, both rental and mutual housing companies shall send written notification to the HPD Division of Housing Supervision's SCRIE unit of said dissolution and/or reconstitution and to all SCRIE recipients advising them of their status after dissolution and/or reconstitution.

(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 or to a housing development fund company in accordance with paragraph fifteen of this subdivision, section 35 of the Private Housing Finance Law designates these actions as a dissolution and reconstitution of the former limited-profit housing company cooperative.

(15) Notwithstanding anything to the contrary contained in this subdivision for the purposes of dissolving and reconstituting a mutual housing company as a housing development fund company (organized pursuant to Article XI of the Private Housing Finance Law) that will enter into a thirty-year regulatory agreement with HPD, the following shall apply:

(i) such mutual housing company must follow the procedures contained in subdivisions two and three of Section 35 of the Private Housing Finance Law;

(ii) such mutual housing company shall (A) call a special meeting in conformance with its by-law requirements to conduct a vote in which not less than two-thirds (2/3) of the dwelling units approve the preparation of a draft proxy statement and the submission to HPD of such mutual housing company's notice of its intention to dissolve and reconstitute as a housing development fund company, and (B) after such draft proxy statement has been prepared, submit the draft proxy statement in support of the plan of dissolution and reconstitution to the office of the Attorney General of the State of New York and, simultaneously with such submission, deliver copies of such draft proxy statement to HPD and to each of such mutual housing company's cooperators by ordinary mail or distribution under each apartment door;

(iii) the cooperators shall have ninety (90) days from the submission date to provide comments to the office of the Attorney General of the State of New York, at the expiration of which such Attorney General shall provide any deficiency comments to the mutual housing company;

(iv) within thirty days of the Attorney General's issuance of an exemption letter, such mutual housing company must distribute the proxy statement and no other materials to each cooperator by ordinary mail or distribution under each apartment door;

(v) between thirty and one hundred-twenty days after the proxy statement is distributed to the cooperators, such mutual housing company shall conduct a special meeting in accordance with the applicable notice period in such mutual housing company's by-laws and in accordance with the requirements of subparagraphs (i), (ii) and (iv) of paragraph (7-a) of this subdivision in which the cooperators shall vote on the proxy statement. Eligible voters for purposes of a quorum and for the vote shall be persons named on the stock certificate. No fewer than two-thirds of the dwelling units in such mutual housing company must approve such proxy statement in order for such dissolution and

reconstitution to proceed and every 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;

(vi) the independent election company that conducts the special meeting pursuant to subparagraph (v) herein must certify the results of the shareholder vote to HPD as well as prove that the requirements of such subparagraph (v) for such special meeting have been met. If at least two-thirds of the dwelling units have approved the proxy statement and such voting procedures have been followed, HPD shall issue a letter of authorization to the mutual housing company to proceed with dissolution and reconstitution as a housing development fund company in lieu of a Letter of No Objection otherwise required pursuant to paragraph (11) of this subdivision;

(vii) within seven days of receipt of HPD's letter of authorization or within such reasonable time period as HPD has otherwise provided in writing, the mutual housing company shall send a written notice to each cooperator by ordinary mail or by distribution under each apartment door ("Effective Date Notice"), which provides the following:

(A) the proxy statement has been approved by at least two-thirds of the dwelling units and the requisite voting procedures were followed;

(B) the procedures by which cooperators who wish to dissent can exercise the option of becoming rental tenants of the housing development fund company by providing such mutual housing company with an affidavit of intent to forego participating in the plan of dissolution and reconstitution within thirty days of receipt of the Effective Date Notice, and

(C) the mutual housing company shall submit an effectiveness amendment to the Attorney General, which shall include as exhibits HPD's letter of authorization and the Effective Date Notice, within thirty days of such Effective Date Notice. After the Attorney General's acceptance of the effectiveness amendment, HPD shall request that the City Council approve a real property tax exemption for such reconstituted housing development fund company in accordance with Section 577 of the Private Housing Finance Law on substantially the same terms as the prior real property tax exemption that had been issued pursuant to Section 33 of the Private Housing Finance Law;

(viii) within six months after the City Council has approved such real property tax exemption or within such reasonable time period as HPD has otherwise approved in writing, the mutual housing company shall set the date upon which it shall be reconstituted as a housing development fund company ("Reconstitution Date"). On such Reconstitution Date, the following actions must occur:

(A) the filing with the New York State Department of State of the amended and restated certificate of incorporation for such housing development fund company;

(B) the loan closing for any new financing for such housing development fund company;

(C) execution of the thirty-year regulatory agreement by all parties, and

(D) payment of any and all costs associated with carrying out the plan to reconstitute as a housing development fund company; and

(ix) within thirty days after the Reconstitution Date or within such reasonable time period as HPD has otherwise approved in writing, the board of such housing development fund company shall:

(A) provide participating shareholders with their propriety leases and such housing development fund company's corporate documents, including, but not limited to, its by-laws; and

(B) provide dissenting shareholders the return on their initial equity investment in the former mutual housing company and market-rate rental leases for their dwelling units.

(x) Notwithstanding anything to the contrary contained in this paragraph, the Reconstitution Date shall be within twelve months from the first day of the proposed first year of operation of the housing development fund company, provided, however, that if HPD, in consultation with the Attorney General, has approved in writing a Reconstitution Date in accordance with subparagraph (viii) of this paragraph that is more than twelve months from the first day of the proposed first year of operation of the housing development fund company, such mutual housing company shall file an amendment to the proxy statement that was circulated to the cooperators in accordance with subparagraph (iv) of this paragraph.

(j) *Proxies, Absentee Ballots, Funding and Failed Votes.*

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

(2) In any vote conducted pursuant to subdivision (h) of this section, paragraphs six, six-a, seven or fifteen of subdivision (i) of this section, and paragraph three of this subdivision, voting by proxy shall not be permitted. However, HPD may approve, in writing, a standard form absentee ballot for transmission to the independent election company engaged to conduct any votes pursuant to subdivision (h) of this section, paragraphs six, six-a, seven or fifteen of subdivision (i) of this section, and paragraph three of this subdivision. Such standard form of absentee ballot shall be invalidated by the shareholder executing such ballot if such shareholder appears to vote in person in any vote conducted pursuant to subdivision (h) of this section, paragraphs six, six-a, seven or fifteen of subdivision (i) of this section, and paragraph three of this subdivision.

(3) Notwithstanding anything to the contrary contained herein, no funds from the operating budget of a mutual housing company shall be used to pay for any of the expenses associated with the requirements of subdivision (i) of this section, including, but not limited to, legal services, related to the evaluation of, preparation for, or execution of dissolution and/or reconstitution pursuant to section 35 of the Private Housing Finance Law, and shall instead be raised by a special assessment approved by eighty percent (80%) of the dwelling units in such mutual housing company, or, in the case of a feasibility study or reconstitution as a housing development fund company pursuant to paragraph fifteen of subdivision (i), two-thirds (2/3) of such dwelling units. The total dollar amount of the proposed assessment and the dollar amount per dwelling unit that will be imposed to fund any such action if it is approved shall be specified in all votes by shareholders required by subdivision (i) of this section and no mutual housing company shall increase the amount of the approved assessment without conducting a further vote subject to the same approval requirement of eighty percent (80%) or two-thirds (2/3), as applicable.

(4) A vote conducted pursuant to paragraphs six, six-a or seven of subdivision (i) of this section or a vote conducted pursuant to paragraph three of this subdivision may not occur within five years of a vote undertaken pursuant to such subdivisions that fails to pass, provided that a vote conducted pursuant to paragraph fifteen of subdivision (i) of this section and any related assessment vote conducted pursuant to paragraph three of this subdivision may not occur within three years of a vote that fails to obtain the required approval of two-thirds (2/3) of the dwelling units in a mutual housing company.

### **§ 3-15 Partnerships.**

(a) *Partnership agreements.* Certain housing companies are permitted to become partners of partnerships formed pursuant to Section 16 of the Private Housing Finance Law. Partnership Agreements and amendments thereto are subject to prior approval in writing by HPD. Admission, withdrawal or retirement of general partners is subject to the prior written approval of HPD.

(b) *Partnership distributions.* All distributions of any partnership organized pursuant to §16 of the Private Housing Finance Law are subject to the written approval of HPD. All such distributions must be in

accordance with the rules of HPD and with the requirements of the Private Housing Finance Law.

(c) *Related party transactions.* In the event that a housing company employs or contracts with any person or entity in which any partner of such a partnership is directly or indirectly an interested party, the partnership shall disclose such fact to HPD.

(d) *Financial records.* A partnership formed pursuant to § 16 of the Private Housing Finance Law shall furnish to HPD all financial and other reports required by HPD.

(e) *Removal of directors.* In the event that HPD exercises its right to remove the directors of a housing company, the housing company as a general partner shall have the right to terminate the exercise of all rights and powers by any other general partner and to exclusively exercise all rights and powers in connection with the project so long as HPD-appointed directors continue to serve.

(f) *Transfers of interests.* All transfers of general partnership interests are subject to the prior written approval of HPD. HPD may require, as a condition of admission or substitution of general partners all such information regarding any proposed new general partner as it deems necessary.

### **§ 3-16 Managing Agents Agreements.**

(a) *Managing agents agreement required.* All housing companies are required to enter into written agreements for management services which must be approved in writing by HPD. This subdivision (a) applies to all agents, corporate or individual. Managing agent agreements are subject to the provisions of subdivision (e) of section 3-13 of this chapter regarding debarment.

(b) *Criteria for selection of managing agent.*

(1) The prospective agent, corporate or individual, must be a real estate broker in good standing duly licensed by the State of New York. Site managers employed by the prospective agent must be certified, by an organization acceptable to HPD, within twelve (12) months after assignment to an HPD-supervised housing development. The certification requirement cannot be waived by transferring the site manager to an alternate HPD-supervised site prior to the end of the twelve month period. If a housing company elects to undertake self-management of its housing development, it must seek written approval from HPD. The person being employed to perform the role of manager must be approved in writing by HPD. If the manager is an employee of the housing company, he or she is not obligated to have a real estate broker's license. However, the employee-manager must be certified, by an organization acceptable to HPD, within twelve (12) months after his or her initial employment date.

(2) The agent must provide a fidelity bond in an amount and form and with a surety approved by HPD.

(3) The agent shall provide evidence of experience and capability commensurate with the responsibility it seeks to undertake.

(4) The agent may be required to submit a management plan proposing a program conducive to proper maintenance and economic viability of the project, and to harmonious relations among tenant/cooperators, management and the community. The plan shall include but shall not be limited to policy regarding deployment of personnel, tenant/cooperator-management relations, tenant/cooperator selection, rent/carrying charge collection procedures, agency reporting procedures, fiscal accountability, physical plant maintenance, equal opportunity measures and security measures. The plan shall take into account the characteristics of the development, its neighborhood and type of tenancy (e.g., senior citizen or handicapped). The plan and its implementation will be considered in determining the agent's employment, renewal and compensation, and will be subject to HPD review and written approval.

(5) The agent must maintain an office or place of business in the metropolitan area at no cost to the housing company where it will keep all books, records, bills and other documents pertaining to the housing company. These records will be available for inspection and review by the owner, HPD or other interested parties as permitted by statute or rules of HPD.

(c) *Term of managing agent's agreement.*

(1) Any managing agent's agreement shall be in a form approved by HPD and shall be of no force or

effect until the contract has been approved in writing by HPD.

(2) All new managing agent's agreements shall have a term of one (1) year commencing July 1st and terminating on June 30th of the following year. All renewals shall have a similar one (1) year term; provided, however that if a new managing agent agreement commences after July 1<sup>st</sup>, it still shall terminate on the June 30<sup>th</sup> following the commencement of such agreement.

(3) Managing agent agreement renewals must be submitted to HPD for written approval.

(4) Any managing agent's agreement shall provide that it is subject to termination without cause upon thirty (30) days written notice by the housing company or HPD. HPD or the housing company shall have the right to immediately terminate any managing agent for cause.

(5) Promptly upon any termination, the managing agent shall turn over to the housing company, all project records, rent rolls, bills, cancelled checks, bank statements, bank books, waiting lists, correspondence, ledgers and all other documents related to or owned by the housing company.

(6) HPD may review the performance of a managing agent at any time and may solicit comments from owners, tenants, and others relating to the performance of the managing agent.

(7) Notwithstanding anything to the contrary contained in this section, HPD is authorized to require the replacement of any employee of the managing agent whose job duties are performed on the premises of the rental or mutual housing company development and who has violated the Private Housing Finance Law and/or applicable rules and directives governing such housing developments.

(d) *Managing agent's fee.*

(1) The managing agent's fee will be negotiated by the housing company and will be subject to approval by HPD.

(2) The fee may be further adjusted on a compound basis by a percentage to be established annually by HPD, said percentage may be subject to negotiation by the housing company, but may not exceed the maximum percentage authorized by HPD.

(3) If a new managing agent enters into an agreement with a housing company to replace an existing agent at a development, the maximum fee which can be paid to the new agent will be the fee established for the prior agent, plus any cumulative percentages adjustments which have been approved by HPD, regardless of whether the prior agent was given said increases. The new agreement is subject to negotiation by the housing company within the maximum established above.

(4) If, upon evaluation by HPD, it is determined that an agent's performance has not been satisfactory during the prior year, the agent shall not be entitled to the annual increase in its fee. In its evaluation, HPD will consider comments from the housing company and the Tenants Association but will make the final determination regarding the increase. HPD will advise the housing company in writing at least 30 days prior to the agreement renewal date each year if approval of the annual increase is being withheld and the reasons therefor.

(5) An approved annual increase in the managing agent's fee will become effective on July 1st of each year.

(6) In the event a newly constructed development goes into occupancy, the managing agent's fee shall be negotiated by the housing company, but in no event shall it exceed the highest fee plus cumulative increases for a development of comparable size and nature already in existence within the program. Comparability will be determined solely by HPD.

(7) If HPD disapproves an annual increase for a managing agent, HPD may within a reasonable period of time meet with the representatives of the housing company and the managing agent to discuss the reasons for HPD's dissatisfaction. The managing agent shall take such steps as deemed necessary by HPD to satisfy HPD requirements. If the agent's performance remains unsatisfactory, HPD may, upon notice to the housing company, terminate the managing agent's agreement.

(e) *Duties and responsibilities of managing agent.* The principals of the managing agent shall devote a reasonable percentage of their time in supervising management duties of their subordinate staff. Said

management duties shall include, but shall not be limited to, the following:

(1) investigate, hire, pay, supervise and discharge all personnel necessary to be employed in order to properly maintain and operate the development in accordance with an operating schedule, job standards and reasonable and necessary wage rates approved by the housing company. Such personnel shall be considered employees of the housing company, and compensation for the services of such employees shall be considered an operating expense of the company, provided, however, that in each development the managing agent shall employ and shall compensate out of its fee one or more responsible individuals as approved by HPD and the housing company whose job it shall be to carry out the responsibilities of the managing agent at the premises;

(2) prepare tax records, including withholding and social security records for the employees of the development, and shall administer required programs of workers' compensation and other employee liability insurance programs;

(3) collect all monthly rents, carrying charges and all other charges due from tenant/cooperators both residential and commercial, and from other users or concessionaires, including, but not limited to licensees; and take such action with respect thereto as the owner may authorize;

(4) cause the buildings and grounds of the development, and all equipment appurtenant thereto to be maintained according to standards acceptable to the housing company and to HPD;

(5) subject to the approval of the owner and in accordance with HPD rules, contract for water, electricity, gas, fuel oil, extermination and other necessary services;

(6) in accordance with HPD's directives for managing agents, submit tenant/cooperator applications to HPD for approval; maintain waiting lists in accordance with HPD rules and utilize such lists in the re-rental of vacated apartments or resale of shares in a mutual housing company; perform all services in connection with the processing of applications resulting from such reletting or resale;

(7) diligently undertake the renting of any parking spaces, commercial and non-dwelling space in the project, arranging for the execution of such leases or permits as may be required;

(8) undertake recertification of tenant/cooperator income as required by HPD or by federal regulations;

(9) prepare and submit annual operating budgets, monthly operating reports, rent rolls, vacancy reports, rent arrears reports, surcharge tabulation sheets, equal opportunity reports, HUD excess income reports, where applicable, and any other documents required by the housing company or HPD;

(10) maintain books and records relating to the development;

(11) establish operating bank accounts and make deposits and withdrawals in such account as directed by the housing company; maintain a blocked reserve account as required by HPD and invest the funds of such account in accordance with HPD rules to attain the maximum return on investment;

(12) advise the housing company and HPD of projected needs for repairs and replacements at least once each year; review physical inspection reports and effect compliance;

(13) submit contracts and retainers for HPD approval in accordance with HPD rules;

(14) process tax matters in a timely manner;

(15) conduct an annual inspection of all apartments for the purpose of identifying unreported electrical or other equipment (air conditioners, freezers, washing machines and dryers), observing the physical condition of the apartments, and ascertaining compliance with the rules and regulations of the project, HPD and HUD, where applicable, and report its findings in writing to the Owner and HPD;

(16) receive, record and respond to all service requests made by tenants in a timely manner;

(17) carry out such other duties and responsibilities as may be stipulated by the housing company or HPD and as may be included in the management agreement; and

(18) advise HPD of violations of these rules attempted or carried out on behalf of the housing company, its employees, any person or entity or employee of an entity doing or seeking to do business

with the housing company or by members of the Board of Directors of the housing company.

(f) Allocation of management expenses. In order to establish a uniform allocation of management expenses between the managing agent and the housing company, the below listed charges are allocated as follows:

(1) Item of expense		Charge to	
		Managing Agent	Housing Company
(i) Wages for managing agent's staff			
(A) On site		X	
(B) Central office		X	
(ii) Site staff, where applicable	Case by Case Basis		
(iii) Messenger service and out of pocket expenses for deliveries		X	
(iv) Travel expense from central office to site and back		X	
(v) Travel expense to and from HPD for such things as meetings		X	
(vi) Overtime for emergencies or deadlines		X	
(vii) Legal and accounting fees of managing agent		X	
(viii) Rent hearing participation		X	
(ix) Cost of preparing all reports required by HPD, HUD, where applicable, or any other city, state, or federal agency		X	
(2) On site furnishings	Managing Agent	Housing Company	
(i) Office furniture (desk, chair, carpet)			X
(ii) Office equipment, purchased or rented (computers, facsimile machines, mimeo, xerox, typewriters, adding machines)			X
(iii) Maintenance and repair of equipment			X
(3) On site supplies and services	Managing Agent	Housing Company	
(i) Housing company stationery, plain and copy paper			X



(ii) Pens, pencils, clips, carbon paper and other office supplies		X
(iii) Postage		X
(iv) Telephone		X
(A) On site		X
(B) Central office	X	
(v) Printing of leases, notices and advisories to tenant/cooperators; and forms for Board elections		X
(vi) Photocopying and other reproduction costs		X
(vii) Fidelity Bond and other insurance covering management operation	X	
(viii) Penalties or fines levied by Finance Department or other agencies	Case by Case Basis depending on fault	
(ix) Lock box service	X	

(g) *Leasing of commercial space, commissions.* In the leasing of commercial space, payment of real estate brokerage commission shall be solely in accordance with the following rules:

(1) No brokerage commissions shall be permitted for that part of a lease term in excess of 20 years.

(2) No brokerage commissions shall be permitted for:

(i) tax payments deemed to be additional rent and paid by the tenant,

(ii) options to renew for an additional term of years, unless such option shall have been duly exercised in accordance with the terms of the lease or

(iii) payments for items not included in basic rent, including, but not limited to, utilities and costs of improvements made by the owner.

(3) Maximum brokerage commissions shall be permitted in accordance with the following schedule, based on the rentals charged the tenant:

First year or any fraction thereof	5%
Second year or any fraction thereof	2½%
Third year up to and including the tenth year	2%
Eleventh year up to and including the twentieth year	1½%

(4) Brokerage commissions earned and due the broker, shall be paid by the housing company in an amount not to exceed the dollar amount of the non-refundable security held by the housing company at the time the lease is approved by HPD. The balance due, if any, shall be paid when the tenant takes possession of the premises in accordance with the terms of the lease.

(5) Brokerage commissions earned and due the broker, where the tenant is a bank, supermarket chain or where the tenant's latest published credit rating is "A" or better and no security deposit is required under the lease, shall be paid by the housing company when the lease is approved by HPD.

(6) When requested by HPD, the broker shall submit trade references, financial statements and any other credit information which shall be properly authenticated in order to determine the credit-worthiness of the tenant.

(7) The brokerage agreement shall constitute the complete understanding between the housing company and the broker. There shall be no payments to the broker beyond those authorized by such agreement.

### **§ 3-17 Housing Company Responsibilities to Tenant/Cooperators**

#### *(a) Tenants Association.*

(1) All rental housing companies shall recognize a duly constituted Tenants Association that will be representative of the tenant body as a whole.

(2) A Tenants Association shall be duly constituted when a petition is signed by tenants representing no less than forty (40%) percent of the dwelling units. A group seeking recognition on the basis of such petition must submit the original petition to HPD and a copy to the housing company, and must arrange for the posting of a notice in each building of the development advising the other tenants of their intention to seek recognition.

If HPD determines that the proposed group has been duly constituted, it will advise the housing company in writing of its decision to recognize the group. In the event other tenants representing no less than forty (40%) percent of the dwelling units in the development seek recognition of an alternative group, the housing company shall provide for an election to determine which shall be the duly constituted Tenants Association. In such an election each dwelling unit in the development shall be accorded one vote.

(3) Upon recognition of a Tenants Association, an election of officers must be held and the names of the officers of said association shall be furnished to HPD.

(4) HPD reserves the right to review and approve the by-laws and constitution of a Tenants Association.

(5) Members or officers of the Tenants Association must occupy a dwelling unit at the rental housing company development represented by such Tenants Association as his or her primary place of residence.

#### *(b) Availability of housing company records.*

(1) The rental housing company shall provide the Tenants Association with copies of operating budgets and financial statements of the housing company within 30 days after said documents are filed with HPD.

(2) In a rental development which does not have a duly constituted and recognized Tenants Association, the rental housing company shall maintain copies of the operating budget and financial reports in the management office on site. If there is no office on site, the documents shall be made available upon request.

(3) Any tenant/cooperator or any Tenants Association's duly authorized representative may audit the books of the housing company during normal business hours and shall have access to the financial records upon which such financial statement is based.

(4) In a mutual housing company, the operating budget and financial statements shall be supplied to all shareholders.

*(c) Consultation.* The housing company or its duly authorized representative shall meet on a regular basis with representatives of a Tenants Association to discuss matters relating to the development. Such meeting shall take place at the development at a time mutually convenient to the Tenants Association and

the housing company, and shall be held on a monthly basis unless the Tenants Association chooses to meet on a less frequent basis.

*(d) Availability of community space.*

(1) The housing company or its managing agent shall not unreasonably withhold permission for use of the development's community space from its residents. A reasonable charge may be made for janitorial or related services. A deposit may be required for the use of the space which is refundable if the premises is free of acts of vandalism.

(2) The housing company shall, in consultation with the Tenants Association, establish priorities for the use of the community space.

(3) If other organizations of tenants exist within a housing development, such as, for example, a senior citizen's club or garden club, the housing company through its managing agent, should make every effort to accommodate the needs of these organizations by providing an opportunity for use of the community space available. While the Tenants Association has first priority with regard to meeting space, it should not be to the exclusion of all other tenant organizations in the development.

(4) There is no obligation for the housing company to make community space available for fund-raising events or for organizations whose membership consists primarily of non-tenants. The use of the community room for these purposes should be at the discretion of the housing company in consultation with the Tenants Association.

(5) Notwithstanding anything to the contrary contained herein, shareholder and/or tenants' groups, committees or other shareholder and/or tenants' organizations shall have the right to meet for organizational events without being required to pay a fee, in any location on the premises of a limited-profit housing company development that is devoted to the common use of all shareholders and/or tenants, including a community or social room where use is normally subject to a fee, provided that any such meeting shall be conducted in a peaceful manner, at reasonable hours and without obstructing access to the premises or facilities.

*(e) Bedbug Disclosure Notification.* In accordance with Administrative Code § 27-2018.1, all rental and mutual housing companies must provide notice to each tenant/cooperator signing a vacancy lease or occupancy agreement of the project's previous year's bedbug infestation history. Such notice must be in a form approved by the Department.

### **§ 3-18 Lease Termination and Renewals.**

*(a) Preliminary notice of grounds of eviction, Administrative Hearing and Certificate of Eviction.* Except as otherwise provided in this subdivision, no eviction proceeding based upon a holdover or a breach of the terms of the lease or occupancy agreement shall be initiated by a housing company against a residential tenant/cooperator without the issuance of a certificate of eviction by HPD following an administrative hearing by an HPD designated hearing officer. The hearing officer's decision shall be final without recourse to an administrative appeal. Notwithstanding the foregoing, such hearing and certificate of eviction shall not be required for any eviction proceeding based upon non-payment of rent/carrying charges, or any sum which constitutes rent or additional rent pursuant to the applicable lease or occupancy agreement. Furthermore, at HPD's sole discretion, such hearing and certificate of eviction may be waived in accordance with subdivision (e) of this section.

To set an eviction hearing the housing company shall notify HPD in writing of the facts which it contends justify eviction, together with an affidavit stating that a preliminary notice of grounds for eviction has been served upon the tenant/cooperator as follows:

(1) The notice shall be sent to the tenant/cooperator by regular first class mail, and by certified or registered mail, return receipt requested; and

(2) A copy of the notice shall also be served by personal delivery to the tenant/cooperator; or by

delivery to a person of suitable age and discretion occupying the apartment in question; or if admittance cannot be obtained and such person cannot be found, by affixing a copy upon the door or placing a copy under the door of the apartment.

(3) The notice may be served simultaneously with any notice to cure which may be required by the tenant/cooperator's lease/occupancy agreement, and shall advise the tenant/cooperator of the following:

(i) The specific charges against him or her;

(ii) that he or she has the opportunity to appear before an HPD hearing officer to deny or explain the charges against him or her;

(iii) that he or she may retain counsel to represent him or her at a hearing;

(iv) that the findings of the HPD hearing officer, should a hearing take place, may be determinative as to the factual issues.

(b) *Administrative hearing.* If, after ten days from the date of service of the preliminary notice of grounds for eviction, the tenant/cooperator has not cured the breach of his or her lease/occupancy agreement, the housing company may request HPD to proceed to schedule a hearing at which the housing company shall present to the hearing officer its charges against the tenant/cooperator. The housing company shall advise the tenant/cooperator of the date and place of the hearing in the same manner prescribed for the service of the preliminary notice of grounds for eviction as specified in paragraphs one and two of subdivision (a) of this section.

If the tenant/cooperator fails to appear at the designated hearing, he/she shall be advised by the hearing officer, by regular first class mail, that unless a request to reopen the matter is received by the hearing officer within a designated period of time, a decision shall be rendered by the hearing officer based upon the information provided by the housing company and that such decision shall be final.

All witnesses at the hearing shall be sworn to tell the truth. Witnesses may be examined and cross-examined by either party and by the hearing officer. The hearing officer may accept any evidence which he or she deems to be relevant and material. A tape recording of the hearing shall be made by the hearing officer, and the hearing officer shall arrange for a transcript of the tape upon the written request of either party, at the expense of the party requesting said transcript.

In the event the hearing officer finds grounds for the eviction, he or she shall issue a certificate authorizing the housing company to commence summary proceedings for such eviction of the tenant/cooperator, stating the reasons for his or her decision. At the sole discretion of the hearing officer, such decision may also contain a probationary period or opportunity to cure. A copy of said certificate shall be sent to the tenant/cooperator and to his or her attorney, if any, by regular first class mail. Service of process for summary proceedings may be made simultaneously with or subsequent to the service of such certificate.

Acceptance of rent/carrying charges after the commencement of eviction proceedings, pursuant to the administrative hearing process, shall be without prejudice.

Notwithstanding anything to the contrary contained in this subdivision (b), a breach of lease or occupancy agreement involving hazardous conditions, violent or disruptive behavior, fraud or illegality shall not be subject to any opportunity to cure by the tenant/cooperator.

(c) *Appeals.* There is no administrative appeal from the determination of the hearing officer. The decision of the hearing officer is subject only to review by commencing an action pursuant to Article 78 of the Civil Practice Law and Rules.

(d) *Summary proceedings.* The above procedures do not apply to summary proceedings for non-payment of rent, carrying charges and any other monetary obligations of the tenant/cooperator to the housing company pursuant to his or her lease or occupancy agreement or any other agreement between the tenant/cooperator and the housing company with respect to ancillary services, except as specified in subdivision (a) of this section.

(e) *Emergency evictions.* The above procedures may be waived at the sole discretion of HPD in any

case in which HPD determines that the health or safety of the tenant/cooperators of a development is jeopardized by another tenant/cooperator or his or her family, members of his or her household or visitors to his or her premises.

(f) *Applicability*. The above procedures shall be the sole requirements to commencement of eviction proceedings and it is the express intention of HPD that no other section of these rules and regulations is applicable.

(g) *Lease/occupancy agreement renewals*. The housing company shall offer a renewal of a tenant/cooperator's lease/occupancy agreement between ninety (90) and one hundred twenty (120) days prior to the expiration of his or her existing lease/occupancy agreement, unless the tenant/cooperator shall have materially breached the lease/occupancy agreement, shall be ineligible for continued occupancy of his or her apartment, or shall otherwise be found to be a nuisance. Such renewal lease/occupancy agreement shall be for a minimum of a one-year term.

If a housing company wishes to refuse to renew a tenant/cooperator's lease/occupancy agreement, it shall notify the tenant/cooperator with respect to its reason for refusing to renew in a notice to be served upon the tenant/cooperator in the same manner prescribed with respect to the preliminary notice of grounds for eviction between ninety (90) days and one hundred twenty (120) days prior to the expiration of his or her existing lease/occupancy agreement. A copy of said notice shall be sent to HPD. If the tenant/cooperator holds over subsequent to the expiration date of his or her lease/occupancy agreement, the housing company shall commence eviction proceedings against the tenant/cooperator in accordance with the administrative hearing process set forth in, this section, unless the material breach of lease/occupancy agreement relates to non-payment of rent/carry charges or additional rent/carry charges as set forth in subdivision (a) of this section.

(h) *Illegal occupancy*. A housing company having knowledge of occupancy of an apartment in conflict with the requirements of the Private Housing Finance Law, HPD rules or the requirements applicable to the apartment by reason of any federal, state or city benefit or subsidy, lease or occupancy agreement, or by reason of any other applicable law or regulation, shall notify HPD in writing of said illegal occupancy. The housing company shall, as soon as practicable, commence eviction proceedings against the last-authorized tenant/cooperator of the apartment in accordance with the administrative hearing process set forth in this section.

An illegal occupant of an apartment shall not be entitled to any protections pursuant to this section. A housing company shall not knowingly accept rent from an illegal occupant, and shall seek to recover from such occupant the full market value of the apartment.

The acceptance of rent/carrying charges from or on behalf of an illegal occupant shall not be deemed to create any right of tenancy or any obligation on the part of the housing company to afford such person the protection which these rules afford to authorized tenant/cooperators.

### **§ 3-19 Senior Citizen Rent Increase Exemption Program (“SCRIE”).**

(a) *Background and Applicability*. Local Law No. 40 of 1976 (§§ 26-601 et seq.) amended the Administrative Code of the City of New York in order to establish an exemption from rent increases for senior citizens who meet the eligibility requirements specified therein, and who reside in a dwelling unit whose rent is regulated or established pursuant to the provisions of Articles II, IV, V or XI of the Private Housing Finance Law. Amendments to the law in 1977 and 1978 made dwelling units in a dwelling subject to or initially subject to a mortgage insured by the federal government pursuant to § 213 of the National Housing Act (12 USCA § 1715e) eligible for the exemption. The Administrative Code was subsequently further amended to include increases in charges due to capital assessments and voluntary capital contributions within the definition of "increase in maximum rent," and to require that rent increase exemptions and tax abatements granted for such assessments and contributions be paid back by the tenant/shareholder to the housing company, and by the housing company to the City, upon transfer of shares. The amendment regarding capital assessments specifically excluded any dwelling unit subject to a mortgage insured or initially insured by the federal government pursuant to § 213 of the National

Housing Act, as amended (12 USCA § 1715e). Subdivision (g) of § 3-19 implements the amendment to the Administrative Code. The rules set forth in this section implement Administrative Code §§ 26-601 et seq., and are applicable as provided therein. In addition, an amendment was passed on September 6, 1977 to allow portability for senior citizens receiving a subsidy under the rent and rehabilitation law, the rent stabilization law and Local Law 40 of 1976. Portability means that a senior citizen with a valid SCRIE subsidy may move within a development, and in addition, certificates issued by the Department for the Aging and HPD are interchangeable under conditions set forth in the law.

*(b) Eligibility requirements.*

(1) The head of household or spouse is 62 years of age or older.

(2) The total disposable income of all members of the household when combined does not exceed the amount provided for in RPTL § 467-c(1)(d).

(3) The increase in maximum rent or carrying charges resulted in the maximum rent or carrying charge equaling or exceeding one-third of the combined disposable income of all members of the household. That portion of a rent or carrying charge increase attributable to gas or electrical utility charges or an increase in dwelling space, services or equipment is excluded from exemption.

(4) The head of household is not receiving any other rent subsidies other than public assistance.

*(c) Procedures.*

(1) A head of household may apply to HPD for a SCRIE subsidy on a form prescribed and made available by HPD. In addition to the application, he or she must submit any other documentation necessary to assist HPD in its review.

(2) HPD shall review the application and shall notify the applicant of its determination

(3) when HPD determines that an applicant is eligible, HPD shall advise both the eligible senior citizen and the housing company of the established base rent which the housing company is to charge the senior citizen. The established base rent shall remain the same until a change in circumstance occurs.

(4) Seniors citizens receiving benefits under this program must complete an annual recertification form prescribed and made available by HPD.

(5) The effective date of the SCRIE subsidy for applications received by HPD not more than 120 days from the date of the increase shall be the effective date of the increase. The effective date of the SCRIE subsidy for all other applications shall be the first day of the month following the receipt of the application and shall be based only upon the most recent increase in maximum rent.

(6) It shall be illegal for a housing company to collect any amount for which a SCRIE subsidy provides credit or to withhold benefits from a tenant/cooperator entitled to a SCRIE subsidy and collection or retention of any such amount for a dwelling unit occupied by such eligible head of household shall be deemed a rent overcharge. Upon conviction therefor, the housing company and its directors and any employee responsible therefor shall be guilty of a misdemeanor, punishable by a fine not to exceed one thousand dollars or imprisonment not to exceed six months, or both.

*(d) Reimbursement to housing companies.*

(1) On a quarterly basis, HPD will issue Tax Abatement Certificates to all housing companies which have extended benefits to senior citizens deemed eligible by HPD. The certificates will be in an amount equal to the difference between the approved rent/carrying charges for the dwelling units and the amount of the established base rents charged to the eligible senior citizens.

(2) The housing company, upon receipt of the Tax Abatement Certificate, shall submit the certificate with the next quarterly real estate tax bill to the Department of Finance, paying the amount of the bill less the credit for the amount on the Tax Abatement Certificate. In those instances, where the taxes to be paid are less than the amount to be abated, HPD shall issue a voucher to the housing company for the balance.

(3) The housing company shall provide HPD with a revised rent roll upon implementation of each

new rent/carrying charge increase.

- (4) HPD, at its discretion, may electronically notify the Department of Finance of the abatement amount in lieu of the issuance of a Tax Abatement Certificate. If HPD electronically notifies the Department of Finance of the abatement amount, such electronic notification shall be deemed to be the equivalent of a Tax Abatement Certificate.

*(e) Termination of or change of benefits.*

- (1) Any change in the status of the head of household or members of household which renders such persons ineligible shall result in the cancellation of benefits.
- (2) Any change in income may result in a change in base rent/carrying charges.
- (3) It is the obligation of both the recipient of benefits under this program and the housing company to notify HPD of any change in status or income which may affect eligibility.
- (4) Failure of a senior citizen receiving benefits to recertify on an annual basis will result in termination of benefits.
- (5) If an audit or other means of verification discloses that an exemption is excessive, the amount of tax payable by reason of such disclosure and the statutory penalty thereon, shall be a lien upon the property as of the due date of the tax for which the excessive exemption was claimed. In the event the excessive exemption was not due to any willful fault of the housing company, the amount of tax payable by reason of the disclosure shall be a lien upon the property as of the date for payment of taxes next following certification of such corrected order by HPD.

*(f) Portability of benefits.*

- (1) When a head of household receiving a SCRIE subsidy moves his or her principal residence to another dwelling unit eligible under this program, the head of household may apply to HPD for a SCRIE subsidy relating to the subsequent dwelling unit which shall provide that the head of household shall be exempt from paying that portion of the maximum rent for the subsequent dwelling unit which is the least of the following:
  - (i) The amount by which the rent for the subsequent dwelling unit exceeds the established base rent actually required to be paid in the original dwelling unit;
  - (ii) the amount of rent abated in the most recent month in the original dwelling unit; or
  - (iii) the amount by which the maximum rent of the subsequent dwelling unit exceeds one-third of the continued income of all members of the household.
- (2) A senior citizen seeking to transfer his or her rent exemption must complete and submit a SCRIE application and portability request prescribed and made available by HPD. In addition to submission of the application form and portability request, proof of income and proof of previous rent and subsidy are required.

*(g) Procedures for applications for SCRIE Subsidies for charges attributable to capital assessments and voluntary capital contributions.*

- (1) This subdivision implements the provisions of §§ 26-605 and 26-615 of the Administrative Code regarding SCRIE subsidies for charges attributable to capital assessments and project-wide voluntary capital contributions, which are approved by HPD, where applicable.
- (2) (i) A head of household who receives an increase in carrying charges based upon a charge attributable to capital assessments or voluntary capital contributions shall make an application for such certificate to HPD on a form prescribed and made available by HPD.
  - (ii) In addition to the application, a head of household must submit any other documentation necessary to assist HPD in its review.
- (3) HPD shall review the application and any supporting documentation to determine the eligibility of the head of household. HPD shall approve or disapprove applications, and, if it approves, shall issue a

written notification to such head of household and to the affected housing company indicating the total amount of SCRIE subsidy available pursuant to this subdivision. If the application is disapproved, HPD shall issue a written notification of disapproval to such head of household, indicating the reasons for the disapproval.

(4) Upon receipt of notification of eligibility, the housing company shall provide the decrease in charges applicable to the capital assessment or voluntary capital contribution, and HPD shall reimburse the affected housing company in accordance with the procedures provided in subdivision (d) of this section in an amount equal to the total capital assessment or capital contribution.

(5) (i) Documentation of imposition of a capital assessment or voluntary capital contribution shall be provided by the affected housing company to HPD, in addition to any further information required by HPD to make a determination of eligibility under this subdivision.

(ii) A housing company which imposes a capital assessment or voluntary capital contribution shall provide notice to all persons affected by such capital assessment or voluntary capital contribution of the potential availability of a SCRIE subsidy pursuant to this subdivision. Such notice shall be included in the notice to such person of the imposition of such capital assessment or voluntary capital contribution.

(6) (i) Notification and documentation of any transfer of shares by an eligible head of household who has received a SCRIE subsidy under this subdivision shall be provided in writing to HPD by the affected housing company immediately upon the closing date of such transfer except in cases involving a succession of rights claim, in which case notification shall be made in writing within five days of approval of the succession claim.

(ii) The affected housing company shall be entitled to deduct from the amount to be paid to such eligible head of household for the sale of such shares all amounts previously covered by a SCRIE subsidy which are attributable to a capital assessment or voluntary capital contribution. Where there is a transfer of shares through succession rights and where the successor is not entitled to a SCRIE subsidy under this subdivision, the affected housing company shall be entitled to receive a payment from the successor in an amount equal to all SCRIE subsidies attributable to a capital assessment or voluntary capital contribution.

(iii) Such housing company shall not approve the transfer of shares unless it has received the payment required by subparagraph (ii) of this paragraph, or made the deduction therein authorized.

(iv) Payment by such housing company of the amount attributable to the capital assessment or voluntary capital contribution set forth in subparagraph (ii) of this subdivision shall be made to the Department of Finance through an adjustment in tax abatement status issued to the Department of Finance by HPD, or by remittance by such housing company of such amount directly to the Department of Finance and written notification to HPD of such payment by the housing company within 90 days of the collection thereof. Payments due to the City in accordance with this subparagraph shall be deemed a tax lien and may be enforced in any manner authorized for the collection of delinquent taxes on real property.

(7) The provisions of this section shall be applicable to an application pursuant to this subdivision except where in conflict with this subdivision, in which case, the provisions of this subdivision shall control.

### **§ 3-20 Reserved**

### **§ 3-21 Limited Profit Housing Companies Having Federally Insured Mortgages Pursuant to § 223(f) of the National Housing Act.**

(a) *General.* Certain limited profit housing companies have been refinanced under § 223(f) of the National Housing Act through the New York City Housing Development Corporation (HDC). Such housing companies remain subject to the provisions of the Private Housing Finance Law and the rules and regulations governing city-aided limited profit housing companies, except as provided otherwise by agreement with, or regulations of, the U.S. Department of Housing and Urban Development (HUD). In general, all matters involving management, maintenance, and operation shall be supervised by HUD



except as otherwise set forth by statute or in this section. Compliance with the requirements of the Private Housing Finance Law shall continue to be supervised by HPD. To the extent that HUD should relinquish authority over matters such as rent setting and management supervision, those responsibilities shall revert back to HPD.

(b) *Tenant/cooperator income and eligibility requirements.* Tenant/cooperator income and eligibility standards, as set forth in the Private Housing Finance Law and § 3-02 of these rules apply to housing companies refinanced under § 223(f). This includes, but is not limited to, rules regarding filing of applications, tenant/cooperator eligibility, maintenance of waiting lists, occupancy priorities, income verification at admission and during occupancy, occupancy standards and primary residence requirements.

Refinanced housing companies shall not be required, however, to submit applications to HPD for its prior approval. Instead, a post-audit of applications shall be conducted by HPD. Notwithstanding the foregoing, HPD reserves the right, where violations of law or of HPD rules are found, to reinstitute temporarily or permanently, a requirement of prior review and approval of all applications for admission to or transfer within a development. In addition, HPD and/or the housing company shall conduct income verification audits periodically either as a result of spot check or other procedures. Tenant/cooperators and members of their household selected for audit shall be required to provide certified copies of IRS or New York State income tax returns, as requested and shall assume the cost of such copies.

In refinanced housing companies which have "236" mortgage interest subsidy contracts, the housing companies are required to meet HUD income limits, where they differ from HPD, and any other federal law or regulation which may apply unless they are violation of New York State laws. HPD rules must be met regarding such things as waiting lists and submission of rent rolls. HUD does not prescribe the form of waiting list for "236" developments. If a "236" housing company maintains a single bound waiting list in chronological order, it shall also be required to maintain lists by bedroom size in chronological order for HPD.

(c) *Surcharge billing, collection and remittance.* Refinanced housing companies are obligated to bill and collect surcharges. HPD will continue to supervise the billing and collection of surcharges as required by the Private Housing Finance Law and § 3-03 of this chapter. All agreements with managing agents must include a provision that it is the responsibility of the managing agent to bill and collect surcharges. Refinanced housing companies are obligated to recognize hardship cases as set forth in § 3-03 of these rules.

(d) *Housing company funds and bonds.* The provisions of § 3-04 apply to § 223(f) housing companies.

(e) *Resale of cooperative shares.* The provisions of the Private Housing Finance Law and § 3-06 of this chapter apply to mutual housing companies refinanced under § 223(f). These include, but are not limited to, the provision that a mutual company electing to amend its by-laws regarding sale of shares, shall submit to HPD for its approval, a Board of Directors Resolution certified and acknowledged by the Secretary of the Corporation setting forth the adoption of the amendment and a fully executed copy of a by-law amendment certified by the Secretary of the Corporation.

In the case of § 223(f) refinanced mutual housing companies, where the appliances were included as security for the insured mortgage, the outgoing shareholder shall be required to leave behind the appliances which were in place at the time of refinancing or to replace them with appliances of equal size and amenities.

(f) *Occupancy rights of family members and applicability of § 235-f of the Real Property Law.* The provisions of § 3-02(o) and (p) apply to housing companies refinanced under § 223(f).

(g) *Joint ownership of shares.* The provisions of § 3-06(c) of these rules apply to housing companies refinanced under § 223(f).

(h) *Bequeathing of apartments.* In no event may the right of occupancy in a unit in a refinanced housing company be bequeathed to another. Upon the death of the tenant/cooperator, the shares must be returned to the mutual housing company which will arrange for a sale pursuant to § 3-06(a) of this chapter. Notwithstanding the foregoing, eligible members of the tenant/cooperator's immediate family in

occupancy may acquire such shares if they meet the requirements of § 3-02(p) of this chapter.

(i) *Billing and collection of amounts due on subordinate mortgages.* HPD shall bill and collect amounts due pursuant to the terms and conditions of the Subordinate Mortgage executed by each housing company in connection with its § 223(f) refinancing. Each housing company is required to submit on a timely basis an annual audited financial statement. Such statement shall indicate whether or not surplus cash, as defined in the Regulatory Agreement, is available. If surplus cash is available, and is required to be paid to the City of New York pursuant to the Disbursement Agreement, a payment equal to the amount of surplus cash shall accompany the submission of the audited financial statement.

(j) *Submissions.* The following documents are required to be submitted to HPD and HDC on a timely basis:

- (1) Audited Financial Statement
- (2) Annual Budget (HDC only)
- (3) Surcharge Tabulation Sheets (HPD only)
- (4) Income Affidavits (HPD only)
- (5) Waiting Lists and Internal Transfer Lists (HPD only)
- (6) Original Insurance Policies to HDC
- (7) Copies of excess rent reports as required in the Federal 236 interest reduction subsidy program
- (8) Data relating to Senior Citizen Rent Increase Exemption Program (HPD only)
- (9) Rent Roll (at request of HPD)
- (10) Data relating to compliance by the housing company with any applicable law, rules, regulation or administrative order of the city, state or federal government (at request of HPD)
- (11) Amendments to Certificates of Incorporation, by-laws, and partnership agreements
- (12) Any and all books and records of the housing company which HPD directs to be made available

(k) *Rent or carrying charge increases.* HUD will be responsible for the approval of all rent/carrying charge increases with respect to all refinanced developments. HPD and HDC shall be notified by the housing company of its request for a rent/carrying charge increase. HUD shall notify HPD and HDC of its approval of any rent/carrying charge increase. A revised rent/carrying charge roll shall be submitted to HPD and HDC subsequent to implementation of an increase.

(l) *Distributions of surplus cash.* All distributions of surplus cash by any housing company require the prior written approval by HPD.

(m) *Reserve requirements.* Reserve requirements and releases from reserve accounts are subject to HUD supervision and approval.

(n) *Annual physical inspection.* HPD reserves the right to conduct a physical inspection of each development at any time. A copy of any inspection report prepared by HDC will be provided to HPD.

(o) *Shelter rent certification.* HPD shall continue to certify Shelter Rent pursuant to § 33(1)(d) of the Private Housing Finance Law. All housing companies must make timely submission of all data required to enable HPD to make such certification.

(p) *Notifications.* Notification of changes in Board of Directors, officers, managing agents, attorneys and accountants shall be provided promptly to HPD and HDC.

(q) *Transfer of ownership interests in rental developments.* All transfers of ownership interests in rental developments including changes in general partners are subject to prior written approval of HPD and HDC.

(r) *Terms of subordinate mortgage and disbursement agreement.* Nothing contained in these rules shall limit obligations of housing companies pursuant to the Private Housing Finance Law or pursuant to

the mortgage closing documents applicable to each development, including, without limitations, the terms and conditions of the Subordinate Mortgage and of the Disbursement Agreement.

(s) *Managing agents agreements.* All managing agents' contracts must be sent to HDC for written approval.

HDC will review and approve the selection of and agreements with managing agents of refinanced developments, including self-management, and renewals or extensions of prior managing agents' agreements. If HDC approves a managing agent's agreement, HDC will evidence its consent by letter or by executing the managing agent's agreement. HDC will submit the executed agreement to HUD for approval. HPD reserves the right, in conjunction with HDC, to review and approve agreements with managing agents of refinanced developments.

If HDC disapproves a managing agent's agreement, HDC will advise the owner of the refinanced project and HUD of the reasons for the disapproval.

(t) *Structural changes and major capital improvements.* In order to remodel, add to, alter, remove or demolish the project or any portion thereof, the owner of a refinanced project must

(1) notify HUD, HDC and HPD in writing, and

(2) obtain the prior written consent of HDC and HUD (and, where necessary, HPD) except that such notification and consent is not required to perform such minor repairs as do not require a permit from the City of New York Department of Buildings or to perform emergency repairs.

(u) *Lease terminations and renewals.* HPD will apply the procedures set forth in § 3-18 of this chapter to all refinanced projects so that no eviction proceeding may be instituted against any tenant/cooperator continuing to pay his or her rent/carrying charges without the issuance by HPD of a certificate of eviction.

(v) *Notification of legal proceedings.* The housing company or managing agent shall notify HPD, HDC and the Tenants Association of any litigation by or against the housing company which would have a material effect upon the financial condition of the housing company. Failure to notify HPD or the Tenants Association shall in no event be deemed to afford a defense to litigation.

(w) *Removal of Board of Directors.* The provisions of the Private Housing Finance Law and § 3-13 of this chapter apply to housing companies refinanced under § 223(f).

(x) *Tenants Association.* The provisions of the Private Housing Finance Law and § 3-17 of this chapter apply to rental housing companies refinanced under § 223(f).

(y) *Senior citizen rent increase exemption program.* The provisions of the Private Housing Finance Law and § 3-19 of this chapter apply to housing companies refinanced under § 223(f).

(z) *Insurance.* Refinanced housing companies must meet insurance requirements of HUD, HDC and HPD. HPD shall be named as an Additional Insured

### **§ 3-22 Form of Residential Lease.**

The form of residential lease including occupancy agreements utilized by housing companies is subject to the approval of HPD and shall be submitted to HPD, if requested. All leases shall be for a minimum term of one year. Failure to comply with the foregoing requirement shall in no event be deemed to afford a defense to the enforcement of a lease by a housing company.

### **§ 3-23 Equal Opportunity Policy.**

All housing companies shall comply with all applicable Federal, state and local laws, rules and regulations concerning equal opportunity in housing.

**§ 3-24 Special Powers.** Notwithstanding any other provisions of this chapter, HPD may authorize special emergency measures in any instance in which it is determined by HPD that a development is in serious financial difficulty.

### **§ 3-25 Miscellaneous Provisions.**

(a) *HPD Discretion.* All determinations to be made by HPD in accordance with this chapter shall be in the sole discretion of HPD.

(a-1) *Waiver.* Rules may be waived in exceptional circumstances upon the initiative of the commissioner if, in the opinion of the commissioner, their application to a specific case, or under an emergency condition, may be shown to effect undue hardship.

(b) *Statutory Authority Not Limited.* Nothing in this chapter shall be deemed to limit HPD's authority pursuant to applicable laws.

(c) *Technical Violations.* Provided that there has been a good faith effort to comply with this chapter, technical violations of this chapter by HPD shall not invalidate any action taken pursuant to this chapter, nor shall such technical violations give rise to any rights, claims or causes of action against HPD or the City of New York. The Commissioner, upon good cause shown, may alter the timing or sequence of the actions described in this chapter, provided all affected parties are given reasonable notice.

(d) *Severability.* If any clause, sentence, paragraph, section or part of this chapter *should* be adjudged by any court of competent jurisdiction, to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof correctly involved in the controversy in which such judgment shall have been rendered.