

## NOTICE OF PUBLIC HEARING

**Subject:** Notice of Opportunity to Comment on Proposed Amendments to Rules Governing City-Aided Limited-Profit Housing Companies

**Date / Time:** Wednesday November 6, 2013 1 PM – 4 PM

**Location:** Department of Housing Preservation and Development  
100 Gold Street  
First Floor, Room 1-R  
New York, NY 10038

**Contact:** Julie Walpert  
Assistant Commissioner  
Department of Housing Preservation and Development  
100 Gold Street, Room 7-L2  
New York, NY 10038

### Proposed Rule Amendment

Pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development by §1802 of the New York City Charter and Sections 32(3) and 32-a of the Private Housing Finance Law, and in accordance with the requirements of § 1043 of the New York City Charter, the Department of Housing Preservation and Development intends to promulgate amended rules for City-Aided Limited-Profit Housing Companies. The proposed rule amendments were included in HPD's 2013-14 Regulatory Agenda.

### Instructions

- Prior to the hearing, you may submit written comments about the proposed rule to Ms. Walpert by mail or electronically through NYC RULES at [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules) by November 6, 2013.
- If you wish to testify at the hearing, please notify Ms. Walpert by November 6, 2013.
- To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact Ms. Walpert by October 24, 2013.
- Written comments and an audiotape of oral comments received at the hearing will be available after *[insert date]* at the office of Ms. Walpert.

### **Statement of Basis and Purpose**

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

### **Summary of Proposed Rule and Bases for Proposed Changes**

#### **Application Requirements and Procedures**

- In addition to the requirement that applicants meet occupancy requirements at the time of application, requires applicants to meet the occupancy requirements at the time an apartment becomes available.
- Limits transferability of applications to spouses and/or children at least eighteen years of age who were on the original application, and limits applicants to one entry per lottery while prohibiting their inclusion in the family composition of another applicant selected in the lottery for a particular development. Multiple entries will result in disqualification from the lottery.
- Advises applicants of the thirty-day time frame within which to appeal a rejection from the housing company to HPD.
- Invalidates advertisements to open waiting lists that do not meet HPD requirements, and requires the housing company to publish a notice in at least two daily newspapers of general circulation that HPD has invalidated an advertisement. Also clarifies the content and posting requirements for waiting lists and prohibits putting someone who claims he or she was erroneously omitted from the waiting list onto such waiting list more than five years after the date of original application.
- Clarifies that veterans who are the applicants of record and are the heads of households, along with their surviving spouses, are entitled to preference in admission.
- Clarifies who is entitled to any refund of any portion of the application fee.
- Authorizes HPD to waive occupancy standards in order to fill vacancies in Mitchell-Lama apartments where there are no available candidates on the applicable waiting list and other requirements for admission, such as income, have been met. Currently, HPD can only waive occupancy standards for medical reasons.

#### **Other Proposed Changes**

- Eliminates succession rights for nephews, nieces, aunts and uncles, and will only authorize succession where the tenant/cooperator of record has either died or been relocated to a long term care facility. Applications for succession will not be considered unless the family member files an application within ninety days of the tenant/cooperator’s death or relocation to a long term care facility. Any proposed successor other than a surviving spouse is required to move to the next

available appropriately sized apartment. Under the proposed rule, only family members approved for succession would be allowed to become owners of shares in a mutual housing company development and signatories on the occupancy agreement.

- Increases the secondary wage earner deduction from \$15,000 to \$20,000 to align HPD's rules with what the State did in 2009 for the State Mitchell-Lama portfolio at 9 NYCRR 1727-2.3(d)(2). Both agencies are authorized to approve a larger secondary wage earner deduction pursuant to PHFL Section 31(2)(a).
- To reflect rate increases for professional services, increases the maximum total fees payable to professionals hired by tenants associations to review rent increase applications.
- Establishes the procedures for the reconstitution of a Mitchell Lama development as a housing development fund company, including the requirements from the New York State Attorney General's Office and voting procedures.
- Updates the maximum brokerage commission schedules.

RuthAnne Visnauskas, Commissioner  
October 4, 2013

### **The Proposed Rule**

Section one. Paragraphs (3), (6), (8), (10) and (11) of subdivision (h) of Section 3-02 of Chapter 3 of Title 28 of the Rules of the City of New York are amended to read as follows:

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

(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.

(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. A housing company wishing to open a waiting list shall present HPD with a written proposal of its contemplated publicity efforts. The proposal shall require plans for the outreach to members of minority groups who would otherwise be unlikely to learn of these available housing opportunities. The plan shall include advertisement in at least two daily newspapers of general circulation and two publications known to have high readership amongst minorities, and shall contain language as set forth in subdivision (b) of this section. The plan shall be presented to HPD thirty days in advance of the projected date for commencement of advertising. Advertisements that do not meet the requirements of this chapter, including, but not limited to, receipt of HPD's prior approval, are deemed void. In such instances, the housing company shall be responsible for publishing a notice in at least two daily newspapers of general circulation that HPD has invalidated the prior advertisement. A housing company opening a closed waiting list shall select applicants by a lottery to be approved by HPD. 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.

(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 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. [Insertions to the waiting list shall] Requests to be reinserted into the waiting list cannot be made more than five years after the date of the initial application and must be submitted to HPD for prior written approval.

§ 2. Paragraphs (2) and (3) of subdivision (i) of Section 3-02 of Chapter 3 of Title 28 of the Rules of the City of New York are amended to read as follows:

(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. This preference in admission shall only be provided to veterans 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. The inclusion of a veteran as a member of the household shall not entitle any other applicant of record to this preference in admission.

(3) *[Fourth] 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.

§ 3. Subdivision (j) of Section 3-02 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(j) *Application fee for rentals and mutual housing companies.* A rental or mutual housing company development may require an application fee of up to \$200 at the time of submission of an application for an apartment. Any deviation from this subdivision (j) requires prior written approval from HPD. Said application fee is to be returned in full without interest if the housing company rejects the application. The housing company may retain a reasonable portion of the application fee, not to exceed fifty dollars, for administrative costs if an applicant withdraws his or her application. 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 and retain [part or all] fifty dollars of the application fee [for a processing fee]. A housing company may elect to offer an applicant an apartment for a second or third time, but such additional offers are not mandatory. If the applicant accepts the apartment, all of the application fee shall be retained by the housing company.

§ 4. Subparagraph (vii) of paragraph (1) of subdivision (m) of Section 3-02 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(vii) HPD may grant waivers of occupancy standards for medical reasons or where there are no available applicants on the applicable waiting list and HPD has determined that it is in the housing company's best interests to fill a specific vacancy by offering the vacant apartment to an applicant from a waiting list for an apartment of a different size.

§ 5. Subdivision (p) of Section 3-02 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(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, [including any adopted children,] 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] died or relocated to a long term care facility, any member of such tenant/cooperator's family [,who has] may make an application to be named as a tenant/cooperator for the apartment on the lease and, where applicable, the stock certificate. Such application must be made within ninety days of such tenant/cooperator's death or relocation. Such family member must have 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] death or relocation to a long term care facility. Such family member's name [is] also must be 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] death or relocation to a long term care facility, 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] death or relocation to a long term care facility, and [has] must have appeared on such income documentation for at least the reporting period immediately prior to [the permanent vacating of the apartment by the] such tenant/[cooperator] cooperator's death or relocation to a long term care facility, or from the inception of the tenancy or commencement of the relationship if for less than such periods[, and]. Such family member also must prove that 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] such family member. 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] death or relocation to a long term care facility prior to the consideration of [re-letting or] succession to the apartment by a family member.

(i) Where a tenant/cooperator has died or vacated an apartment, 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 for redemption. The housing company, upon written request received from any member of such [deceased] tenant/cooperator's family who [has resided with the deceased tenant/cooperator in the apartment as a primary residence as] meets the requirements for succession set forth in paragraph (3) of this subdivision, shall sell or transfer the shares and/or the lease to said family member.

(ii) In the event that there is a legal dispute or claim involving the rightful ownership of the stock assigned to an apartment in a mutual housing company, pending a determination thereof by an appropriate tribunal or court of law, such family members as set forth in paragraph (3) of this subdivision shall continue to be permitted to reside in the apartment.

(iii) If the appropriate tribunal or court of law shall determine that someone other than such family members as set forth in paragraph (3) of this subdivision is entitled to the ownership of the stock then, upon presentation of a court order or other valid evidence, such new owner shall be permitted solely to surrender the stock to the housing company for redemption pursuant to the applicable provisions of the Private Housing Finance Law. In such event, such family members [in occupancy as] who meet the requirements for succession set forth in paragraph (3) of this subdivision shall be afforded a reasonable opportunity to purchase the stock from the housing company for the price authorized pursuant to the Private Housing Finance Law and § 3-06 of this chapter.

(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] In the event that a proposed succession would result in the apartment in question [would become] becoming underoccupied according to occupancy standards set forth in subdivision (m) of this section, the housing company must require any proposed successor other than a surviving spouse to move to a smaller apartment in the development. If a smaller apartment is not available in such development when such proposed successor is initially approved for succession, such proposed successor may remain in the apartment in question, provided, however, that he or she is placed at the top of the internal waiting list for such smaller apartments.

(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.

(10) No housing company shall process a proposed successor's application for permission to remain in occupancy as a tenant/cooperator if such application is submitted more than ninety (90) days after the tenant/cooperator of record has died or relocated to a long term care facility.

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

(2) "Probable aggregate annual income" shall mean the total income of the chief wage earner as reported in the New York State income tax return, plus the total income, in excess of [\$15,000] \$20,000 or such amount as determined by State law, of each other member of the household, less 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.

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

(c) *Joint ownership of cooperative shares.* [A mutual housing company shall, upon request of the shareholder, permit members of his or her immediate family in occupancy to become co-owners of shares and co-signatories on the occupancy agreement provided that the mutual housing company receives evidence satisfactory to it that: Such individual has been included on the two most recent income affidavits filed by the shareholder; has been a bona fide resident of the apartment for at least two years during which time the apartment has been his or her primary residence; and that such individual and the shareholder intend to continue in good faith to remain in joint occupancy. A mutual housing company Board of Directors and its managing agent shall not unreasonably withhold permission to add a co-owner

or co-signatory as set forth above. The financial status of the proposed party shall not be a factor as long as the prime tenant/cooperator meets the minimum eligibility requirements at the time of request. A mutual housing company may limit the number of persons permitted to be added to the stock certificate. The same criteria shall be utilized for all residents. For purposes of this section, the definition of family member contained in § 3-02(p) of these rules shall apply. Co-ownership of shares does not guarantee the right to succession to an apartment in a mutual housing company development. Successor cooperators must qualify under §3-02(p) of these rules.] 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.

§ 8. Paragraph (5) of subdivision (h) of Section 3-10 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

- (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	\$[5,000] <u>7,500</u>
500 or more units	\$[6,000] <u>8,500</u>

§ 9. Paragraphs (2), (7-a), (8), (11), (14) and (15) of subdivision (i) and paragraph (2) of subdivision (j) of Section 3-14 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

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

- (i) Name and address of the housing development;
- (ii) Name and business address of the beneficial and legal owner(s) other than limited partners and stockholders;
- (iii) Name and address of proposed transferee, if property is being sold or transferred and the proposed date of any such transfer;
- (iv) A current rent roll reflecting rents last ordered by HPD and/or by HUD including surcharges, subsidy and other special charge data;
- (v) A list of tenants who are presently receiving rent subsidies which may be discontinued as a result of dissolution and the proposed rents to be charged such subsidy recipients after dissolution;
- (vi) A copy of any applicable documents relating to the rental development, including, but not limited to, the urban renewal plan, the plan and project, the deed or lease, the land disposition agreement, any applicable Board of Estimate or City Council resolution and the temporary certificate of occupancy and permanent certificate of occupancy, or any other documents requested by HPD; 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.

(viii) Notwithstanding anything to the contrary contained in this paragraph, a rental housing company intending to dissolve and reconstitute as a housing development fund company (organized in accordance with Article XI of the Private Housing Finance Law) that will enter into a thirty-year regulatory agreement with HPD, may submit its Notice of Intent to HPD no later than thirty (30) days prior to the anticipated date of such dissolution and reconstitution.

(7-a) Conduct of Special Meetings.

(i) Special meetings required pursuant to paragraphs six, six-a, [and] 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-a, [and] 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, [and] seven and fifteen, the independent election company must submit proof to HPD that the requirements of this [subparagraph] 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, [and] 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.

(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. Notwithstanding anything to the contrary contained in this subdivision, HPD may issue a Letter of No Objection to a rental housing company that is reconstituting as a housing development fund company (organized pursuant to Article XI of the Private Housing Finance Law) no fewer than 30 days after such rental housing company has submitted its Notice of Intent.

(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, [if a mutual housing company intends to transfer the property to] 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 [ a vote of the shareholders of such mutual housing company to authorize such transfer shall take place only after such mutual housing company has submitted an exemption application to the office of the Attorney General of the State of New York. Such transfer shall be approved by a majority 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.] 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 submit a 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;
- (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) (2) Notwithstanding anything to the contrary contained herein, in any vote conducted pursuant to paragraphs six-a, [or] seven or fifteen of subdivision (i) of this section, voting by proxy shall not be permitted. However, HPD may approve, in writing, a standard form direct mail ballot for transmission to the independent election company engaged to conduct any votes pursuant to paragraphs six-a [and] , seven or fifteen of subdivision (i) of this section. Such standard form of direct mail ballot shall be invalidated by the shareholder executing such ballot if such shareholder appears to vote in person in any vote conducted pursuant to paragraphs six-a, [or] seven or fifteen of subdivision (i) of this section.

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

(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	2 <sup>1</sup> / <sub>2</sub> %
Third year up to and including the tenth year	2%
Eleventh year up to and including the twentieth year	1 <sup>1</sup> / <sub>2</sub> %]

First Year .....	6%
Second Year .....	5%
Third Year through and including the Fifth Year .....	4%
Sixth Year through and including the Tenth Year .....	3%
Eleventh Year through and including the Twentieth Year .....	2%
Twenty-First Year and Beyond .....	1%

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
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212-788-1400

CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)

**RULE TITLE: Amendment of Rules Governing City Aided Limited Profit Housing Companies**

**REFERENCE NUMBER: HPD-12**

**RULEMAKING AGENCY: Department of Housing Preservation and Development**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Hunter Gradie

Mayor's Office of Operations

July 25, 2013

Date

NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028

CERTIFICATION PURSUANT TO  
CHARTER §1043(d)

**RULE TITLE:** Amendment of Rules Governing City Aided Limited Profit Housing Companies

**REFERENCE NUMBER:** 2013 RG 054

**RULEMAKING AGENCY:** Department of Housing Preservation and Development

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: July 24, 2013