

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development (“HPD”) by Section 1802 of the New York City Charter and Section 32(3) of the Private Housing Finance Law, and in accordance with Section 1043 of the City Charter, HPD is adopting amendments to Chapter 3 of Title 28 of the Rules of the City of New York, which governs City-aided limited profit housing company developments (also known as Mitchell-Lama developments). The amendments revise and clarify many aspects of such housing companies, including admissions limitations and priorities, status of shares and other value associated with a vacated apartment, contract review and approval, board of director elections and dissolution and/or reconstitution.

A notice of proposed rulemaking was published in the City Record on February 15, 2019. A public hearing was held on March 27, 2019.

Statement of Basis and Purpose

The rule amendments to Chapter 3 of Title 28 of the Rules of the City of New York revise and clarify many aspects of Mitchell-Lama developments, including admissions limitations and priorities, status of shares and other value associated with a vacated apartment, contract review and approval, board of director elections and dissolution and/or reconstitution.

Specifically, the rule amendments:

- Update the marketing requirements for reopened waiting lists using New York City Housing Connect/Mitchell-Lama Connect lottery systems, and specify which types of violations may result in removing an applicant from such waiting lists,
- Limit how long an application may be put on hold to twelve months, and specify that no applicant can obtain more than one such hold while he or she remains on the waiting list,
- Specify that current tenant/cooperators will always be given priority to move to a smaller unit, but that current tenant/cooperators will now only get priority for the first three out of every four apartments that become available for moving to a larger unit,
- Changes the application fee from up to \$200, of which \$50 was nonrefundable, to a \$75 nonrefundable application fee.

- Prohibit occupancy requirement waivers for other than medical reasons, and clarify what happens to the shares and other value assigned to an apartment once the tenant/cooperator of record permanently vacates, both when there is and when there is not a succession claim,
- Provide that for establishing primary residency, a New York City Resident Tax return must be filed from the subject apartment for each year of residency,
- Clarify the procedures for approval of contracts entered into by Mitchell-Lama housing companies, both initial contracts and renewals, and specify which contracts require at least three competitive bids,
- Add a requirement that the board of directors of a mutual housing company discuss the rationale for a requested increase to rent and carrying charges with the tenant/cooperators prior to any hearing,
- Require the housing company to submit, at least forty-five days in advance of a board of directors election, the proposed independent election company or other election monitor, the written director nomination and election procedures, and drafts of any other election documents,
- With respect to the dissolution and/or reconstitution of Mitchell-Lama housing companies, increase the requirement from a majority to two-thirds of the dwelling units to approve the proposed expenditure of funds for the preparation of a mutual housing company's feasibility study, and also expressly require that such study compare remaining in Mitchell-Lama to privatizing or converting to an Article XI housing development fund company and include, inter alia, financial estimates comparing privatization with conversion to an Article XI housing development fund company development. Special meetings required for the expenditure of the funds to conduct a feasibility study also will now need independent election company monitors and approved procedures, and
- Clarify the obligation of managing agents to advise HPD of violations of the Mitchell-Lama rules attempted or carried out on behalf of the housing company and its employees or directors.

New material is underlined

[Deleted material is bracketed]

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

Section one. Subparagraph (ii) of paragraph (8) and paragraph (13) of subdivision (h) of section 3-02 of chapter 3 of title 28 of the Rules of the City of New York are

amended, and a new paragraph (14) is added to such subdivision (h), to read as follows:

(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 stating 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.] 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.

(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.

§ 2. The first full paragraph of paragraph (1) of subdivision (i) 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:

(1) *First priority.* Tenant/cooperators currently residing in a development whose household composition renders them eligible for a [larger or] smaller apartment shall be given first priority for an internal transfer. [First preference shall be given to tenant/cooperators who are moving to a smaller apartment.] 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. 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.

§ 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] shall require [an] a nonrefundable application fee of [up to \$200] \$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. [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 fifty dollars of the application fee]. A housing company [may elect to] shall not offer an applicant an apartment [for a second or third time, but such additional offers are

not mandatory] more than two times. [If the applicant accepts the apartment, all of the application fee shall be retained by the housing company.]

§ 4. Subparagraph (vii) of paragraph (1) and paragraph (2) of subdivision (m) 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:

(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].

(2) [Priority]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.

§ 5. Subparagraph (iv) of paragraph (4) of subdivision (n) 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:

(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 unless 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 [the most recent preceding taxable year] 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.

§ 6. Paragraph (6) of subdivision (p) of section 3-02 of chapter 3 of title 28_ of the Rules of the City of New York is amended to read as follows:

(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 [for redemption] to the housing company. [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]

(i-1) 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 [sell or] transfer the shares, other value assigned to the apartment and/or the lease to said family member.

(i-2) 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.

(i-3) 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.

(ii) [In the event that] if there is a legal dispute or claim involving [the rightful ownership of the stock] 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, [pending a determination thereof by an appropriate tribunal or court of law,] such legal dispute or claim shall not affect the rights of 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] a court of law [shall]determines 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 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] 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. Paragraphs (2) and (7) of subdivision (b) of section 3-07 of chapter 3 of title 28 of the Rules of the City of New York are amended to read as follows:

(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[, according to the following schedule:

Contracts over \$100,000] 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."

(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 [does not provide] that was not previously approved for automatic renewal [a new] 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. Paragraph (1) of subdivision (c) of section 3-07 of chapter 3 of title 28 of the Rules of the City of New York is amended to read as follows:

(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.

§ 9. Paragraph (1) of subdivision (b) 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:

(1) [Before] 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[, a public hearing shall be held]. 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 [there]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.

§ 10. Paragraph (3) of subdivision (g) of such section 3-14 is amended, to read as follows:

(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.

§ 11. Paragraph (2) of subdivision (h) of section 3-14 of chapter 3 of title 28 of the Rules of the City of New York is amended to read as follows:

(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 or the mutual housing company's attorney and/or accountant. [Prior] No fewer than forty-five (45) days prior to conducting the election, the mutual housing company must [notify] submit to HPD in writing [of] (A) the name of the independent election company and the proposed independent election company agreement, or [the alternate supervisor of] ,alternatively, with the approval of HPD, the name of the housing company's attorney and/or accountant who will be supervising the election,(B) a written description of the procedures for the nomination of directors and [of] for the intended election [procedures], and (C) drafts of all other documents related to the election.

(ii) [A mutual housing company may request a waiver from the requirements of subparagraph (i) of paragraph two of this subdivision by making a written submission at least sixty days prior to the election of directors to the Assistant Commissioner of Housing Supervision.]

[(iii) When the cost of an independent election company meets the dollar threshold, the contract between the independent election company and the mutual housing company will require HPD's approval in accordance with section 3-07 of this chapter.] No election may be conducted without the prior written approval of HPD of the submission made pursuant to subparagraph (i) of this paragraph.

§ 12. Paragraph (6) and subparagraph (ii) of paragraph (7-a) of subdivision (i) of section 3-14 of chapter 3 of title 28 of the Rules of the City of New York are amended to read as follows:

(6) Mutual Housing companies - special meeting. A board of directors of a mutual housing company considering dissolution and/or reconstitution pursuant to §35 shall call a special meeting in conformance with the mutual housing company by-law requirements for the purpose of ascertaining shareholder interest in dissolution and/or reconstitution. The secretary of the board of directors shall submit to HPD a certified resolution stating that not less than [a majority] two-thirds (2/3) of the dwelling units [represented at such special meeting] 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 of a written feasibility study that shall compare 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 [that] will be distributed to each shareholder no later than sixty days after [the] its preparation [of such written feasibility study] is completed, unless the by-laws of the company mandate a greater affirmative vote. Each dwelling unit shall be entitled to one vote regardless of the number of shares allocated to such dwelling unit, the number of shareholders holding such shares, or the provisions regarding voting in such mutual housing company's certificate of incorporation or by-laws. Said resolution shall include language as follows:

“This resolution authorizes the board of directors to take steps necessary to prepare a written feasibility study [investigating dissolution and/or reconstitution] 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 [the] its preparation [of such written feasibility study] 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 [investigate dissolution and/or reconstitution] 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 [and] 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; [and]

(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.

(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.

§ 13. Paragraphs 16 and 17 of subdivision (e) of section 3-16 of chapter 3 of title 28 of the Rules of the City of New York are amended, and a new paragraph 18 is added to such subdivision (e), to read as follows:

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

(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.

Commissioner

August 14, 2019