Proposals to Preserve HDFC Cooperative Housing:

HDFC Shareholders Can Lead the Way

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The formation of Housing Development Fund Corporation, or HDFC, cooperatives was one of a variety of methods New York City government used to divest itself of multifamily buildings it had foreclosed upon during the financial crisis of the 1970s. The HDFC coop program also enabled residents of over 30,000 apartments in typically dilapidated buildings, abandoned by their former landlords, to achieve home ownership (the "American Dream") and begin the process of not only rebuilding their homes but their communities as well. Because of the state of disrepair that many of the buildings were in when title was transferred to the new shareholders, and the often herculean "sweat equity" efforts of residents despite overwhelming odds, the contributions of HDFC shareholders to the revitalization of neighborhoods and thereby the overall increase in the real estate tax base for the City has been nothing short of astounding. The City has enjoyed rich returns on its relatively modest investment of funds and tax abatements for the HDFC coop home-ownership program. Although some HDFCs today do face real challenges that oftentimes trace back to the poor physical condition of the building when transferred, the majority of HDFCs are financially sound with resident-shareholders who are often passionate, engaged citizens who vote, serve on community boards, and even hold elected office.

The HDFC Coalition is an organization founded in 1992 by and for HDFC cooperative resident-shareholders to advocate for improvements in the policies of the City of New York towards HDFC cooperatives. The HDFC Coalition works to ensure that the voice of HDFC shareholders is heard. In early 2016, the HDFC Coalition became more active in response to recent efforts by the City's Department of Housing, Preservation and Development (HPD) and the Task Force on City-Owned Property, or TCOP, (renamed in 2016 as The Task Force on HDFCs) to push for very substantial changes to the stable, decades-old regulations pertaining to HDFC buildings. The "rush" to change HDFC regulations in 2016 seems to be a convergence of the efforts of the Task Force & HPD with Mayor de Blasio's effort to "create and preserve" affordable housing. Although the expiration in year 2029 of the City's "DAMP" discounted real estate tax rate for HDFCs will at some point become an issue, we have not yet seen pushback from lenders underwriting loans to HDFCs, so a simple extension by the City Council of the DAMP tax rate for 40 more years (and increasing the discount) would certainly help to "preserve" the affordability of HDFC coops. Such an extension would be a clear and simple win-win-win-win for HDFCs, HPD, the Task Force and the Mayor's Office.

The Task Force on HDFC's membership is primarily made up of organizations that receive funds to develop, manage and service affordable housing in New York City, along with representation from the offices of some elected officials. As of September 2016, such organizations include ANHD, Brooklyn Law School Corporate & Real Estate Clinic, Brooklyn Legal Services Corp A, Cooper Square Committee, Council Member Torres' Office, Goldstein Hall PLLC, The Housing Partnership, The Legal Aid Society (Harlem Community Law Office), Manhattan Borough President's Office, RAIN Community Land Trust, Urban Homesteading Assistance Board (UHAB), and the Urban Justice Center.

While the Task Force does seek some level of participation from HDFC shareholders, and seeks to create a "Shareholder Subcommittee," the positions of the Task Force have largely already been formed, independent of the viewpoints of very large numbers of actual HDFC resident-shareholders. HPD also has its own positions and views, some of which match those of the Task Force, while others do not. Confusing the matter further, some of the members of the Task Force are directly assisting HPD to draft a new "Regulatory Agreement" for HDFCs, which could lead to the issuance by the City of RFQs and, subsequently, contracts for which some of the organizations on the Task Force are expected to seek and obtain. It is not clear how the Task Force can advocate for its members, and HPD, and the HDFC shareholder community simultaneously, since all three groups have expressed somewhat differing as well as contradictory positions. The proposals that have been put forward seem to be authoritarian, "top-down" and "one-size-fits-all" approaches that reflect the view that certain organizations should be given control of, and paid by, HDFC cooperatives to "save us from ourselves."

Although the Task Force initiated the public effort to gain support for these ideas, in July of 2016 HPD took the lead and began to give public presentations on their proposal. Although HPD's proposal includes a higher "price cap" on apartment sales & higher real estate taxes than what the Task Force advocates, the proposals are mostly similar in that they are coercive attempts to gain control of private properties that were sold by the City to low and moderate income residents decades ago. HPD has resisted providing a "final" copy of the regulatory agreement which they are requesting be made mandatory for HDFC tax relief, and we must assume that HPD wants a "blank check" from the City Council with regard to regulatory agreements (which include price cap schedules) enabling HPD to author, modify, and expand any such regulatory agreements over time as they see fit, once an authorizing resolution has been passed by the City Council. Moreover, it is conceivable that without language requiring that a specific, standardized regulatory agreement must be offered to all HDFCs, HPD could act with discretion, and seek additional concessions from individual HDFCs in return for offering a regulatory agreement needed by the coop to obtain relief from real estate taxes that are unaffordable, given the low to moderate incomes of the resident shareholders. It is not difficult to imagine an HDFC having no choice but to agree to any terms and conditions demanded by HPD in order to obtain tax relief and remain financially solvent.

THE HDFC COALITION

Now more than ever, it is crucial that HDFC shareholders organize, advocate and assert our right to self-determination, and demand recognition for what we have achieved. The City and HPD should work directly with shareholders in an effort to improve and sustain the HDFC program, with less reliance on outsourcing to third-party organizations.

Some of the apparent objectives/actions of the HPD & the Task Force that greatly concern us:

1. Convince the City Council to phase out the existing DAMP tax discount for HDFCs, eliminating it early.
2. Convince the City Council to create an increased DAMP tax discount, but only for HDFCs signing a new 40-year Regulatory Agreement with HPD, likely sending HDFCs that don't or won't sign into financial distress as they are charged full real estate taxes while still housing lower-income residents and still subject to affordability requirements.
3. Convince the City Council to pass a vague resolution that essentially gives HPD the right to author, modify and expand HDFC regulatory agreements at will (a "blank check"), and possibly force additional concessions from HDFCs needing the tax relief that a regulatory agreement would provide.
4. HPD to institute a new Regulatory Agreement that abridges our property rights, takes away the decision-making authority of the board and hands it to mandated monitors to which the HDFC must pay an unknown fee, sets price caps without regard for loss of equity, sets asset limits, restricts withdrawals from reserve fund, etc.
5. HPD is presenting their proposal to the HDFC community, but without any meaningful input from shareholders from start to finish, the presentations are essentially a one-sided public relations effort to gain support for far-reaching documents and plans that have already been created behind closed doors.
6. An effort to downplay the history of sweat equity, self-help and urban homesteading by HDFC shareholders of dilapidated City-owned buildings that led to citizen ownership and repair of real property, and the contributions made by HDFC shareholders to our communities and the City, to attempt to justify a retaking of these properties now that property values have increased.
7. A purposeful lack of assistance to truly distressed HDFCs so that the City may dispose of these coop buildings via foreclosure/third party transfer, and a use of the example of failed HDFCs in an attempt to justify taking control of successful HDFCs through regulatory agreements.
8. An effort by the City to suddenly and comprehensively rewrite the rules of the HDFC program, disregarding the citizen shareholders who for years took great risks through personal investment of both manual labor and funds and saved their coops while abiding by the City's own rules that have been in place for decades.

9. HPD states that up to 1/3 of apartments could be exempted from price caps, such as those previously purchased at prices HPD now deems "excessive" because HPD wants to avoid lawsuits, while other residents who may have been shareholders since the creation of the coop are not allowed to be exempted from price caps, thereby devaluing their apartment shares.
10. In general, a regressive, authoritarian effort to take equity and control from HDFC shareholders, the rightful owners of these buildings, is portrayed as a beneficial, progressive effort to preserve affordable housing.

Although HPD already has the power to create Regulatory Agreements for HDFCs, over the last 40 years these were typically required only at significant milestones such as: creation of the HDFC, issuance of subsidized loan or grant, or forgiveness of tax arrears. The language of HPD's Regulatory Agreements for HDFCs have evolved over time and were often 25-30 years in duration, often giving HPD enforcement authority and limiting sales to those making no more than 120% AMI (Area Median Income). After expiration of the Regulatory Agreement, the income limit would be determined by the "supervising agency" which is typically HPD, and is set at 165% AMI.

Typically, there were no restrictions on the assets of purchasers, so a person within the income limits and having other monies could make an offer to purchase. As many banks will not lend for HDFC apartment share purchases, and HDFCs that become financially distressed become completely ineligible for loans, all-cash sales are very common, and the sales prices are almost invariably low and still affordable. The lack of a restriction on assets has allowed for a very large number HDFCs to be saved from bankruptcy and/or paid for emergency repairs, as cash sales of vacant apartments and internal flip taxes collected on sales have literally saved HDFC cooperatives. As well, just one apartment sale in a distressed building that helps to bring taxes current can relieve financial distress and restore equity to all other shareholders in the building. In other cases, such a sale creates an HDFC's first substantial reserve fund, providing a resource for emergency legal fees, boiler replacement, roof repair, etc. It is important to note that in any building that becomes distressed, residents are essentially trapped in place due to the collapse in equity unless a cash buyer appears, although by far most HDFC shareholders choose to stay for the long run, as they often cannot afford comparable market rate housing elsewhere.

The Task Force on City-Owned Property identified what it says are a number of issues facing HDFCs, as described in their position paper presented at the Legal Advocacy Partnership (Leap) conference in November 2015, entitled *Preserving Affordable Housing: The Importance of Regulating, Monitoring and Incentivizing HDFCs.* The paper states: "We are at risk of losing this affordable housing because of limited regulations, oversight and assistance" and "HDFC co-ops are affordable housing worth preserving. Having equity interest in a home can help break the cycle of poverty and is a traditional gateway to the middle class."

HDFC shareholders and boards know how to both preserve their affordable housing while protecting equity, as we have been doing it for decades. Over-regulating HDFCs would threaten our financial survival and destroy our equity. HDFCs are already regulated and restricted. We HDFC shareholders must maintain our current rights as property owners to ensure our survival. We know our buildings better than anyone else, and we are motivated to succeed more than anyone else.

The Task Force's own data on sales prices show that not only do HDFC apartment shares sell for far below market rate coop prices, but also that most sell for below the estimated maximum price permissible if assuming a buyer with no access to funds other than from a loan, based on what the buyer's allowable income would be. The Task Force's data does not support an argument that HDFCs are flouting the income restrictions on sales.

All things considered, the recent HPD/Task Force proposals would effectively punish the majority of well-run HDFCs by seeking to force us to hand over control of our buildings to monitors we are required to pay for, threaten those HDFCs that refuse to sign with full real estate taxes that could send them into financial distress, and offer no solutions to the minority of truly distressed HDFCs needing relief from tax arrears, physical disrepair or rectification of entrenched legal/governance issues. Moreover, we question the very feasibility of any effort to have over 1,000 coop buildings sign a new Regulatory Agreement, and then provide sufficient and qualified resources to meet HPD's stated requirements.

Recognizing the role that over 33,000 HDFC shareholders have played in bringing the City back from the edge of bankruptcy and stabilizing neighborhoods rightly leads us in the direction of seeking to assist, rather than seeking to punish, HDFC shareholders for their contributions and hard-fought victories. We do agree with the Task Force when they state: "Considering the obstacles HDFCs face trying to function as affordable housing in a housing market as volatile as New York City's, these co-ops have done very well with the limited resources available to them."

HDFC COALITION: WHAT'S NEEDED, WHAT WORKS, WHAT DOESN'T

There is a need to at some point address the impending expiration in 2029 of the City's lower real estate tax rate for HDFCs (DAMP tax cap), crucial to the economic survival of so many HDFCs. It is claimed that he uncertainty surrounding the future of the DAMP tax cap is already having somewhat of a chilling effect on those lenders willing to loan to HDFCs, but we have not yet seen evidence of this. Nonetheless, extension of the DAMP tax cap should not be an excuse to include an accelerated expiration of the current tax rate with an essentially compulsory requirement that each HDFC sign a new, unwieldy, "one-size-fits all" Regulatory Agreement with HPD in order to continue to be taxed affordably. One of the arguments that HPD makes for changing the real estate tax cap now, rather than in 2029 when it otherwise expires for many HDFCs, is HPD's claim that Banks, when underwriting loans for shareholders to purchase consider the effect of future increases in real estate taxes. Again, we have not seen evidence of loan underwriting issues for HDFCs, so the claim is questionable. However, what HPD has completely overlooked is the effect that additional requirements and steps in the resale process, such as requiring monitor approval for resales, will have. It will likely eliminate bank financing for purchases. Banks are concerned with how to recoup the loan in the event of default. Making the resale process more difficult could easily result in far fewer loans for purchases of HDFC apartments, which could trap residents in place and lower prices yet again.

A heavy-handed, punitive Regulatory Agreement does not address the true needs of either distressed or non-distressed HDFCs. For issues afflicting distressed HDFCs, such as board governance, needed major repairs and cash flow challenges, a more targeted and "progressive" approach is required. HPD should look to create a new, HDFC-friendly program to help HDFCs in distress, rather than attempt a "carrot-and-stick" onerous Regulatory Agreement, one that would do more to threaten the future viability of all HDFC cooperatives than maintain their continued viability.

The HDFC Coalition has no choice but to insist that our thousands of resident-shareholders be front and center in any discussions with the City regarding any such potential changes. The City should maintain the stability of the existing regulatory environment while directly engaging our resident-shareholders to work together with HPD to improve policies and programs directed at HDFCs, and to help those HDFCs that are in distress.

We should not be TOLD what we want, we should be ASKED what we need.

Accordingly, the HDFC Coalition has been working with HDFC resident-shareholders City-wide and has developed the following policy recommendations to preserve HDFC cooperatives:

1. Proposals to change or modify City or State laws, rules or regulations affecting HDFCs must first have strong grass-roots support from the HDFC shareholder community to move forward.
2. The City should create a more comprehensive program to help distressed HDFC coops, rather than enact new rules designed to punish and restrict well-run HDFCs. Create a proactive program run by HPD employees that identifies, engages and assists distressed HDFC coops.

3. It would criminal for the City to destroy billions of dollars in HDFC shareholder equity earned through decades of struggle as well as paid for with their hard-earned money.
    a. No Regulatory Agreement required for DAMP tax rates
    b. No mandatory price caps, price charts or asset restrictions
    c. No two-tier pricing within HDFCs
    d. No to “carve-out” subset of apartments
    e. No to “cond-ops”
    f. No holding of wait-lists
4. Extend the DAMP real estate tax cap far beyond 2029 and make it available to all HDFC coops, while further lowering the tax rate itself, to keep HDFCs financially viable and avoid future distress.
5. Maintain the existing, stable regulatory environment, without restricting the property rights of HDFCs. Do not sunset the existing 2029 DAMP rate while requiring HDFCs to sign any new Regulatory Agreement in order to receive a DAMP tax cap; any “optional” program must be truly optional rather than coercive.
6. Do not apply full real estate taxes to an HDFC while still requiring the HDFC to meet affordability requirements, as has been proposed for HDFCs that would choose to not sign, or fail to sign, the new proposed Regulatory Agreement.
7. Maintain existing rules to determine purchaser eligibility, typically 120%, or 165% AMI as set by HPD after an HDFC’s original Regulatory Agreement expires. Do not create a new asset test for purchasers, and as mentioned above, no mandatory price caps on apartment sales.
8. Create a program for HDFC shareholders to easily report mismanagement/malfeasance simultaneously to HPD and the office of the NYS Attorney General, provide additional resources to HPD and the Attorney General for investigation, appropriate enforcement and resolution by the City & State, and protect reporting shareholders from retribution.
9. HPD senior staff to lead quarterly forums directly with the HDFC shareholder community, rather than use 3rd party contractors for such outreach and communication. Such an effort would be extremely helpful in that it would put HPD directly in touch with the HDFC shareholders and vice versa, and move us all in the direction we need to go.

The purpose of any City policy toward HDFCs should be to firstly seek to help those in distress, and secondly, to ensure the stability and preservation of those more successful HDFCs that have greatly contributed to neighborhood revitalization and community development. We must celebrate the spirit of self-determination and sense of purpose that so many HDFC shareholders embody. The creation of a new and progressive program that proactively seeks to help distressed HDFCs on a case-by-case basis, while extending and improving the DAMP tax cap credit far beyond 2029, will help to ensure the future viability of all HDFCs for generations to come.