THIS IS WHY WE RALLY AT CITY HALL
ON JUNE 21, 2017 at 9:30 am SHARP !

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'17 HPD #1

SHERIF SOLIMAN
Director
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THE CITY OF NEW YORK
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MEMORANDUM IN SUPPORT

LEGISLATIVE REFERENCE

TITLE **AN ACT** to amend the private housing finance law, in relation to the assets and supervision of housing development fund corporations

SUMMARY OF PROVISIONS

Section 1 of the bill would add a new section 573-a to Article XI of the Private Housing Finance Law ("PHFL"). This new section would impose restrictions on Housing Development Fund Corporations ("HDFCs") to ensure that the original intent of Article XI is carried out. For example, subdivision 1 would prohibit an HDFC from leasing, or allowing the occupancy of, a dwelling unit to a family that is not low-income. Subdivision 2 would require an HDFC to obtain supervisory agency approval prior to any transfer of all or substantially all of its assets. Subdivisions 3 and 4 would also require an HDFC to obtain supervisory agency approval before an HDFC leases its real property or seeks to amend its certificate of incorporation. Subdivision 5 would authorize the supervising agency to appoint a number of new directors to the board of any HDFC that had violated Article XI or its certificate of incorporation so that the new directors constitute a majority of the board. It would also authorize the supervising agency to revoke or suspend all or part of any tax exemption of such an HDFC. Subdivision 5 would require that, prior to exercising these powers, the supervising agency provide notice and an opportunity to cure to the HDFC. Subdivision 6 would require supervisory agency approval for an HDFC to acquire real property not specifically identified in its certificate of incorporation. Subdivision 7 would provide that an HDFC incorporated pursuant to Article XI and the Not-for-Profit Corporation Law ("NPCL") are deemed to be charitable corporations. Subdivision 8 would apply certain sections of the NPCL to HDFCs incorporated pursuant to Article XI and the Business Corporation Law ("BCL"). Subdivision 10 would allow an HDFC to vary charges or requirements to account for instances in which, for example, units have different income requirements or flip taxes are reduced based on duration of ownership.

Section 2 would amend the definition of "supervising agency" in section 572 of the Private Housing Finance Law to mean the agency in a municipality that has jurisdiction over the development of affordable housing.

Section 3 would amend section 573 of the Private Housing Finance Law to require that an HDFC's certificate of incorporation specify that the HDFC has been organized both to develop and to operate a housing project for persons of low income.

Section 4 would add a new subdivision 4 to section 577 of the Private Housing Finance Law that would authorize an HDFC to terminate its existing real property tax exemption or abatement upon the commencement of an exemption pursuant to Article XI of the PHFL.

Section 5 would provide a severability clause.

Section 6 would provide that the bill take effect immediately.

REASONS FOR SUPPORT

Article XI was enacted in 1966 to facilitate the rehabilitation and construction of low income housing through two types of non-profit corporations: 1) HDFCs formed pursuant to Article XI and the NPCL for the purpose of operating rental housing ("Rental HDFCs"); and 2) HDFCs formed pursuant to Article XI and Section 402 of the BCL for the purpose of operating cooperative housing ("Cooperative HDFCs").

Both Rental HDFCs and Cooperative HDFCs have the sole corporate purpose of providing housing on a non-profit basis to persons and families of low income and both are eligible to receive tax exemptions, below market financing, below market property dispositions, as well as other forms of government assistance.

This bill adds a new section 573-a to Article XI of the PHFL to clarify and implement the original intention of the statute to require that all HDFCs operate as non-profit corporations. In keeping with that intent, the bill subjects all HDFCs to the provisions of the NPCL regarding dissolutions, mergers, and the sale of substantially all corporate assets. In order to ensure that HDFCs provide rental or cooperative housing for persons and families of low income as required by Article XI, the bill codifies requirements related to the sale of shares of stock in cooperative HDFCS, clarifies when approval of an HDFC's supervising agency is required for certain acts (including acquiring property and entering into long-term leases), and enhances the supervising agency's enforcement powers (including the right to appoint board members or revoke tax exemptions when an HDFC violates the statute).

This amendment seeks to clarify and implement the original intent of Article XI that all HDFCs, both rental and cooperative, must operate on a non-profit basis to provide affordable housing to persons or families of low income, and that their corporate assets are safeguarded, by explicitly requiring that certain provisions of the NPCL regarding dissolution, mergers, and the sale of all or substantially all of the assets apply to Cooperative and Rental HDFCs. The amendment also ensures that the supervising agency and the New York State Office of the Attorney General are required to approve certain transactions involving dissolution, mergers and the sale of all or substantially all of the assets of Cooperative and Rental HDFCs.

Article XI was drafted in contemplation that HDFCs receiving tax exemptions or below-market financing would operate pursuant to the terms of agreements with their supervising agencies. Such agreements provide the supervising agencies with the enforcement tools necessary to care for the public investment in these properties, clear guidelines for HDFCs to follow in governing themselves, and restrictions on the subsequent sale or rental of units. Even in the absence of such agreements, every HDFC is subject to substantial statutory restrictions requiring it to provide housing for persons and families of low income and to ensure that none of its assets inure to the benefit of private individuals. Currently, many HDFCs do not have agreements with their supervising agencies. Certain real estate speculators are misrepresenting to HDFCs and to potential purchasers of shares in Cooperative HDFCs that the lack of such an agreement changes the sole corporate purpose of an HDFC –a representation that is contrary to the legislative intent of Article XI and not supported by the plain reading of the statute.

Many HDFCs currently operate with little oversight due to the lack of agreements with their supervising agencies. Some HDFCs have attempted to sell their real property for use as market rate housing, or have allowed their shareholders to sell shares of stock for prices that are not affordable to persons and families of low income. Such actions are in direct contravention of the intent of Article XI.

To date, there are more than 1,000 Cooperative HDFCs that provide over 25,000 units of low income housing to shareholders, the majority in Bronx, Kings and New York Counties. Because of often self-serving misinterpretation of Article XI, such housing may be at risk of loss.

Although legislative history is clear that both Rental and Cooperative HDFCs must operate on a non-profit basis and must maintain the sole corporate purpose of providing low income housing, there is a great need for an amendment to clarify that the corporate purpose of an HDFC – to provide affordable housing to persons and families of low income – is perpetual in duration. Absent the checks and balances provided by the NPCL, there may be a great loss of affordable housing. New section 573-a serves to plainly state the intent of the original drafters of Article XI by making clear that all HDFCs must be operated exclusively on a non-profit basis, and that controlling provisions of the NPCL govern the dissolution, merger, or sale of all or substantially all of the assets of an HDFC.

Accordingly, the Mayor urges the earliest possible favorable consideration of this proposal by the Legislature.

Respectfully submitted,

SHERIF SOLIMAN
Director

AC: 3/2/17

Submitted to Albany by NYC Mayor's Office on March 2, 2017

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NEW YORK CITY PROGRAM BILL

'17 HPD #1

S. ----------

SENATE

IN SENATE---Introduced by Sen.

--read twice and ordered printed, and when printed to be committed to the Committee on

A. ----------

ASSEMBLY

IN ASSEMBLY---Introduced by M. of A.

---read once and referred to the Committee on

AN ACT

to amend the private housing finance law, in relation to the assets and supervision of housing development fund corporations

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IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal

s15 Addabbo	s50 DeFrancisco	s27 Hoylman	s25 Montgomery	s10 Sanders
s52 Akshar	s32 Diaz	s60 Jacobs	s40 Murphy	s23 Savino
s31 Alcantara	s18 Dilan	s09 Kaminsky	s58 O'Mara	s41 Serino
s46 Amedore	s17 Felder	s63 Kennedy	s62 Ortt	s29 Serrano
s11 Avella	s02 Flanagan	s34 Klein	s21 Parker	s51 Seward
s36 Bailey	s55 Funke	s28 Krueger	s13 Peralta	s26 Squadron
s42 Bonacic	s59 Gallivan	s24 Lanza	s30 Perkins	s16 Stavisky
s04 Boyle	s12 Gianaris	s39 Larkin	s19 Persaud	s35 Stewart-Cousins
s44 Breslin	s22 Golden	s37 Latimer	s07 Phillips	
s08 Brooks	s47 Griffo	s01 LaValle	s61 Ranzenhofer	s49 Tedisco
s38 Carlucci	s20 Hamilton	s45 Little	s48 Ritchie	s53 Valesky
s14 Comrie	s06 Hannon	s05 Marcellino	s33 Rivera	s57 Young
s03 Croci	s54 Helming	s43 Marchione	s56 Robach	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

a049 Abbate	a034 DenDekker	a097 Jaffee	a145 Morinello	a009 Saladino
a092 Abinanti	a070 Dickens	a011 Jean-Pierre	a057 Mosley	a111 Santabarbar
a084 Arroyo	a054 Dilan	a116 Jenne	a039 Moya	a140 Schimminger
a035 Aubry	a081 Dinowitz	a135 Johns	a003 Murray	a076 Seawright
a120 Barclay	a147 DiPietro	a115 Jones	a065 Niou	a087 Sepulveda
a030 Barnwell	a016 D'Urso	a077 Joyner	a037 Nolan	a027 Simanowitz
a106 Barrett	a004 Englebright	a074 Kavanagh	a144 Norris	a052 Simon
a060 Barron	a133 Errigo	a142 Kearns	s130 Oaks	a036 Simotas
a082 Benedetto	a109 Fahy	a040 Kim	a069 O'Donnell	a104 Skartados
a042 Bichotte	a071 Farrell	a131 Kolb	a051 Ortiz	a099 Skoufis
a117 Blankenbush	a126 Finch	a105 Lalor	a091 Otis	a022 Solages
a079 Blake	a008 Fitzpatrick	a013 Lavine	a132 Palmesano	a114 Stec
a098 Brabenec	a124 Friend	a134 Lawrence	a002 Palumbo	a110 Steck
a026 Braunstein	a095 Galef	a050 Lentol	a088 Paulin	a127 Stirpe
a119 Brindisi	a137 Gantt	a125 Lifton	a141 Peoples-Stokes	a001 Thiele
a138 Bronson	a007 Garbarino	a102 Lopez		a061 Titone
a093 Buchwald	a148 Giglio	a123 Lupardo	a058 Perry	a031 Titus
a118 Butler	a080 Gjonaj	a010 Lupinacci	a023 Pheffer Amato	a033 Vanel
a094 Byrne	a066 Glick	a121 Magee		a055 Walker
a103 Cahill	a150 Goodell	a129 Magnarelli	a086 Pichardo	a143 Wallace
a044 Carroll	a075 Gottfried	a064 Malliotakis	a089 Pretlow	a112 Walsh
a062 Castorina	a005 Graf	a090 Mayer	a073 Quart	a146 Walter
a047 Colton	a100 Gunther	a108 McDonald	a019 Ra	a041 Weinstein
a032 Cook	a046 Harris	a014 McDonough	a012 Raia	a024 Weprin
a085 Crespo	a139 Hawley	a017 McKevitt	a006 Ramos	a059 Williams
a122 Crouch	a083 Heastie	a107 McLaughlin	a043 Richardson	a113 Woerner
a021 Curran	a028 Hevesi	a101 Miller, B.	a078 Rivera	a056 Wright
a063 Cusick	a048 Hikind	a038 Miller, M.G.	a068 Rodriguez	a096 Zebrowski
a045 Cymbrowitz	a018 Hooper	a020 Miller, M.L.	a067 Rosenthal	
a053 Davila	a128 Hunter	a015 Montesano	a025 Rozic	
a072 De La Rosa	a029 Hyndman	a136 Morelle	a149 Ryan	

1) Single House Bill (introduced and printed separately in either or both houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and 4 copies of memorandum in support (single house); or 4 signed copies of bill and 8 copies of memorandum in support (uni-bill).

LBDC 01/04/17

AN ACT to amend the private housing finance law, in relation to the assets and supervision of housing development fund corporations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The private housing finance law is amended by adding a new section 573-a to read as follows:

§ 573-a. Assets and supervision of housing development fund corporations.

1. Except as may be specifically authorized in writing by the commissioner or the supervising agency, as the case may be, (a) a housing development fund corporation shall not cause or permit any vacant dwelling unit to be leased to, or occupied by, anyone other than families and persons of low income, (b) a housing development fund corporation organized pursuant to the not-for-profit corporation law shall not cause or permit any dwelling unit to be leased or occupied at a rent that is not affordable to families and persons of low income, as determined in accordance with standards established by the commissioner or the supervising agency, as the case may be, and (c) a housing development fund corporation organized pursuant to the business corporation law shall not cause or permit the sale, transfer, assignment or issuance of any shares allocated to any dwelling unit to anyone other than families and persons of low income, or cause or permit the sale, transfer, assignment or issuance of any shares allocated to any dwelling unit for a price that is not affordable to families and persons of low income, as determined in accordance with standards established by the commissioner or the supervising agency, as the case may be. Where the ownership of shares allocated to any dwelling unit is transferred by operation of law, without the consent of the housing development fund

corporation, to parties who are not families and persons of low income, the corporation shall not cause or permit the occupancy of the dwelling unit to which such shares are allocated until the shares have been sold or otherwise transferred to a family or person of low income that will occupy such dwelling unit; provided, however, that the corporation shall not be required to remove any member of the prior shareholder's household who has continuously occupied the dwelling unit to which such shares are allocated as his or her sole residence for a period commencing not less than two years prior to the event which resulted in such transfer, even if the actual transfer occurred at a later date.

2. A housing development fund corporation shall not sell, transfer or assign all or substantially all of its assets, or any of its real property, without the prior written approval of the commissioner or the supervising agency, as the case may be. A housing development fund corporation shall either deposit the proceeds of any such sale, transfer or assignment with the commissioner or the supervising agency, as the case may be, or devote such proceeds to a housing project for families and persons of low income, or for related affordable housing activities, in a manner approved in writing by the commissioner or the supervising agency, as the case may be.

3. A housing development fund corporation shall not lease any of its real property, other than a lease of a single dwelling unit or a commercial unit for a term not exceeding two years, without the prior written approval of the commissioner or the supervising agency, as the case may be.

4. The certificate of incorporation of a housing development fund corporation shall not be altered or amended, and the corporation shall not be dissolved, without (a) the prior written approval of the commissioner or the supervising agency, as the case may be, and (b) the

prior written approval of any governmental entity which holds a mortgage or other lien on any assets of the corporation or to which any indebtedness of the corporation is outstanding.

5. Violations by a housing development fund corporation.

(a) If the commissioner or the supervising agency, as the case may be, determines that the housing development fund corporation has violated any of the provisions of this article or its certificate of incorporation or has violated or failed to fulfill any agreement with or obligation to a governmental entity, the commissioner or the supervising agency, as the case may be, may (i) appoint to the board of directors of the corporation a number of new directors sufficient to constitute a majority of such board, notwithstanding any other provision of the certificate, the by-laws of the corporation or any agreement entered into by the corporation, (ii) revoke or suspend all or part of any exemption from local real property taxation pursuant to section five hundred seventy-seven of this article, or (iii) exercise any other remedies available under applicable law or pursuant to any agreement with the corporation.

(b) Unless the commissioner or the supervising agency, as the case may be, determines that a cure of any such violation or failure is impossible, prior to exercising any of the powers provided in subdivision (a) of this section, the commissioner or the supervising agency, as the case may be, shall either (i) provide the corporation with thirty days' notice and opportunity to cure such violation, (ii) provide the corporation with such notice and opportunity to cure such violation as may be provided in any agreement between a governmental entity and the corporation or (iii) only with respect to the revocation of a tax exemption pursuant to section five hundred seventy-seven of this article, provide the corporation with such notice and opportunity to cure such violation as may be provided in a resolution of the local legislative body.

6. A housing development fund corporation shall not acquire any real property not specifically identified by address or tax parcel in its certificate of incorporation without the prior written approval of the commissioner or the supervising agency, as the case may be.

7. Any housing development fund corporation incorporated pursuant to the provisions of this article and the not-for-profit corporation law shall be deemed to be a charitable corporation, as defined in paragraph (a) of section one hundred two of the not-for-profit corporation law.

8. The following provisions of the not-for-profit corporation law shall apply to any housing development fund corporation incorporated pursuant to the provisions of this article and the business corporation law: section one hundred twelve, section five hundred eight, section five hundred ten, section five hundred eleven, section five hundred eleven-a, section five hundred fifteen, subdivision (d) of section seven hundred six, subdivision (c) of section seven hundred fourteen, section seven hundred fifteen, section seven hundred sixteen, section seven hundred twenty, section nine hundred seven, section nine hundred seven-a, section nine hundred seven-b, subdivision (d) of section one thousand two, subdivision (a) of section one thousand two-a, subdivision (c) of section one thousand two-a, subdivision (b) of section one thousand three, subdivision (c) of section one thousand three, section eleven hundred one, and section eleven hundred two. For the purposes of such provisions, each such housing development fund corporation shall be deemed to be a charitable corporation, as defined in paragraph (a) of section one hundred two of the not-for-profit corporation law, for all purposes of that law. Where any conflict exists between the provisions of the not-for-profit corporation law listed in this subdivision and the business corporation law, the provisions of the not-for-profit corporation law shall control.

9. A housing development fund corporation incorporated pursuant to this article and the business corporation law shall not:

a. cause or permit any shareholder to own shares allocated to more than one dwelling unit without the prior written approval of the supervising agency or the commissioner, as the case may be; or

b. cause or permit any dwelling unit to be combined, eliminated, or devoted to any use other than occupancy by families or persons of low income without the prior written approval of the supervising agency or the commissioner, as the case may be.

10. Notwithstanding any provision of subdivision (c) of section five hundred one of the business corporation law to the contrary, a housing development fund corporation incorporated pursuant to this article and the business corporation law may, with the approval of the supervising agency or the commissioner, as the case may be, impose different charges, fees, assessments and requirements with respect to different dwelling units and the shares allocated to such dwelling units. The reasons for such different charges, fees, assessments and requirements may include, but shall not be limited to, differences in (a) the income requirements for occupancy of, or actual incomes of the households occupying, specific dwelling units, (b) the duration of ownership of shares or the date or circumstances of the purchase of such shares, and (c) the degree of compliance with the proprietary lease or with any agreement between the corporation and a governmental entity.

§ 2. Subdivision 14 of section 572 of the private housing finance law, as amended by chapter 655 of the laws of 1978, is amended to read as follows:

14. "Supervising Agency." [The comptroller in a municipality having a comptroller; in a municipality having no comptroller, the chief fiscal officer of such

municipality; except that] The agency in a municipality having jurisdiction over the development and operation of affordable housing, regardless of any agency specified in the certificate of incorporation of a housing development fund corporation, or, in the city of New York[it shall be], the department of housing preservation and development.

§ 3. Paragraph (a) of subdivision 3 of section 573 of the private housing finance law, as amended by chapter 758 of the laws of 1967, is amended to read as follows:

a. that the company has been organized exclusively to develop and operate a housing project for persons of low income;

§ 4. Section 577 of the private housing finance law is amended by adding a new subdivision 4 to read as follows:

4. Notwithstanding the provisions of any general, special or local law, upon the commencement of an exemption pursuant to this section with respect to any real property in a project of a housing development fund corporation, such corporation may, with the consent of the commissioner or the supervising agency, as the case may be, terminate any other tax exemption or abatement applicable to such property.

§ 5. Severability. If any clause, sentence, paragraph, subdivision or section of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or section thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 6. This act shall take effect immediately.

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