In Brief: The HDFC Coalition Policy Committee's Proposal to Amend the New York State Private Housing Finance Law (PHFL) that Governs HDFC Cooperatives

Q: What is the New York State Private Housing Finance Law (PHFL)?

A: The PHFL is a part of NY State law that regulates HDFC co-op corporations. Most HDFC co-ops are incorporated under Article 11 of the PHFL, and also under the NY State Business Corporation Law (BCL). Changes to the PHFL could greatly impact you and your HDFC co-op.

Q: Would it be a good idea to amend (change) the PFHL?

A: It depends. If the PHFL is to be changed, we believe that all changes must help, not hurt, the HDFC shareholders who saved their buildings and neighborhoods by investing their own time, money and "sweat equity." We believe that any changes must protect affordability for current and future generations of HDFC shareholders, and must also protect shareholder equity, autonomy and right of self-determination. We don't want our private homes that the City just wanted to get rid of years ago to now be over-regulated or effectively converted into public housing.

Q: Why are changes to the PHFL being considered now?

A: For two main reasons: (1) The current "DAMP" tax break for HDFCs expires in 2029 and must be renewed at some point before 2029, and (2) some elected officials believe that HDFC co-ops should be more restricted, or even controlled by government and non-profit housing groups that are seeking receive fees and long-term contracts to oversee your building.

The Department of Housing Preservation and Development (HPD) under Mayor de Blasio tried and failed in 2016-2017 to impose new restrictions on HDFCs through a new "regulatory agreement" from the City. The Mayor's regulatory agreement plan failed because of HDFC shareholder opposition, but some NY State elected officials from districts here in NYC now want to impose many of the same restrictions for HDFCs through a change to the PHFL.

Q: What does the HDFC Coalition Policy Committee propose for the PHFL?

A: **We created our own proposal to change the PHFL** with the help of attorneys that would:

1. Provide a permanent tax break for HDFC co-ops that is better and helps more HDFCs than the current "DAMP" tax exemption which expires in 2029.
2. Renew the current PHFL tax forgiveness section for distressed HDFCs needing relief from tax arrears (very similar to the already-introduced bill A06992).
3. Clear up grey areas in the PHFL so that HDFC co-ops with expired restrictions have the undisputed right to decide for themselves to either continue as income-restricted HDFCs to get low tax rates, or to decline PHFL tax breaks to be exempt from restrictions, and also to reform as a typical co-op if, and only if, the HDFC co-op's shareholders vote to do so.

Q: OK, so what's next for HDFC co-ops and shareholders?

A: We want to hear from you, and we want to help your voice be heard by elected officials. Please see our website for our PHFL proposal and let us know what you think, and THANK YOU!

See the HDFC Coalition Policy Committee's PHFL Proposal on our website at www.hdfccoalition.org.

12.03.2019

December 2, 2019

Introduction to the "HDFC Self-Determination and Affordability Act of 2020"

Dear fellow HDFC shareholder:

The HDFC Coalition Policy Committee worked with attorney Steven Siegel in 2018-2019 to develop a legislative proposal to change the New York State Private Housing Finance Law (PHFL) entitled the "HDFC Self-Determination and Affordability Act of 2020." The PHFL regulates how corporations such as Housing Development Fund Corporations (HDFCs) can operate, and changes to the PHFL can be powerful.

We undertook this effort to draft legislation ourselves because we feel that HDFC shareholders are the most important stakeholders in the shaping of our collective future. And we don't believe that recent efforts by government to overregulate HDFC co-ops have been designed to properly assist or respect the HDFC shareholders who saved their buildings and the neighborhoods that they live in, and by doing so helped restore the real estate tax base of NYC following the City's fiscal crisis.

The tax break for HDFCs, known as DAMP, that allows our co-ops to be affordable expires in 2029. And HDFC co-ops have for decades have to some degree been left in a legal limbo as to their rights and status. Although these issues need addressing, we feel that recent attempts by government to restrict and reform HDFC co-ops have been, overall, an attempt to convert our privately-owned homes into public housing.

The HDFC Policy Committee's original plan was to first complete the draft of our "HDFC Self-Determination and Affordability Act of 2020" and then to share it citywide with HDFC shareholders. After getting comments, ideas and input on the draft from the HDFC shareholder community, we were to then revise the draft as needed and present it to elected officials for consideration.

We recently learned, however, that Assembly Member Harvey Epstein, who represents District 74 of Manhattan's Lower East Side, plans to soon introduce his own draft of a bill to amend the PHFL. We understand that Assembly Member Harvey Epstein has consulted on his draft with the New York City Department of Housing Preservation and Development (HPD), UHAB, the New York State Attorney General's office, Legal Aid, the NYS Department of Housing and Community Renewal (DHCR), attorneys in private practice and other elected officials. (Epstein's

anticipated new bill would be in addition to the already introduced bill A06992-2019, which would renew tax forgiveness for HDFCs with tax arrears.)

Because it has become clear that an effort to change the PHFL is already underway, the HDFC Coalition Policy Committee felt it best to publicly share our draft now and to seek comment from the HDFC shareholder community and others. The HDFC Coalition Policy Committee welcomes your comments, ideas and suggestions.

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This is an introduction to a new legislative proposal that is intended to resolve important issues facing over 1,100 housing cooperatives formed as housing development fund corporations (HDFCs) under Article 11 of the New York Private Housing Finance Law (PHFL). The proposed legislation and memorandum in support are enclosed.

The statute governing HDFCs was enacted over fifty years ago. The statute does not reflect the current realities affecting this vital sector of affordable housing. Tens of thousands of HDFC shareholders and their families need timely legislative intervention to ensure the continued affordability and preservation of their homes -- and in a manner that does not infringe upon the right of self-determination of each HDFC cooperative.

Most HDFC cooperatives were sponsored by the New York City Department of Housing Preservation and Development (HPD). These co-ops are bound by time-limited restrictions, as is also the case with every other type of government sponsored private housing authorized by the PHFL. For a substantial portion of these HDFCs, the time limited restrictions have expired.

The proposed legislation has three overriding goals: (1) to protect and promote the self-determination of HDFC co-ops; (2) to provide strong incentives for HDFC co-ops with expired controls to agree to remain as affordable housing; and (3) to ensure that the HDFC co-ops that agree to remain as affordable housing are in sound condition and are economically self-sufficient. These three overriding objectives are complementary.

To achieve these objectives, the bill would make clear that HDFC co-ops may exercise control over their own destinies when restrictions expire. At the same time, the bill would provide substantial tax incentives so that HDFCs will affirmatively choose to remain as affordable housing subject to income restrictions, consistent with democratic principles of self-governance. This approach is a matter of basic fairness and justice; is consistent with the promises given to HDFCs over the past thirty years; and is in full accord with how all other government-sponsored private housing under the PHFL is treated (such as Mitchell-Lama housing and Article V redevelopment companies). Most importantly, this approach will ensure the long-term economic viability of affordable HDFC co-ops.

The particular financial and legal challenges facing HDFCs today cannot be fully understood without an appreciation of the extraordinary role that HDFCs played in New York's housing crisis of a generation ago. Beginning in the early 1980s, New York City adopted the HDFC form of housing cooperative as a means to divest itself of -- and revitalize -- its tax-foreclosed multifamily housing stock. At the time the City was experiencing large-scale abandonment of its private low- and middle-income multifamily housing stock. In response to this housing crisis, the City determined to turn over the ownership and management of many City-owned tax-foreclosed multifamily buildings to the existing tenants in the form of HDFC co-ops. Over the past few decades the City's HDFC initiative proved to be one of New York's most enduring housing success stories. Tens of thousands of resident-shareholders of HDFCs played an important role in the stabilization and preservation of New York City's multifamily housing stock in the period following the City's fiscal crisis of the 1970s and 80s. The City's large-scale creation of HDFC co-ops was a major policy innovation and was an important part of the City's response to the housing crisis of that era.

All government and community stakeholders benefitted from the large-scale creation of HDFCs. The City benefitted by reducing its enormous portfolio of tax-foreclosed apartment buildings at a time when the buildings were a substantial burden to the City and when there was virtually no private market for these properties. The residents benefitted by the preservation and upgrading of their own buildings and by becoming homeowners for the first time. And the surrounding communities benefitted by the stabilization of the neighborhood, the upgrading of housing and by the transformation of a rental community into a homeowning community.

As previously noted, the regulatory controls placed on HDFCs were time-limited. Consequently, the HDFCs that were created in the 1980s and 1990s have regulatory controls that already have expired or will soon expire. For this class of HDFCs, there is a great deal of uncertainty as to their legal status and their financial future. This proposed legislation clarifies the legal status of HDFCs with expired regulatory controls in a way that protects and promotes their autonomy and self-governance while strengthening the inducements for these HDFCs to voluntarily agree to continue to operate as affordable housing.

Specifically, our legislative proposal would:

1. **Ensure that HDFCs can remain as affordable housing through a new real estate tax benefit.** The proposed legislation codifies into the statutory law the inducements for HDFCs with expired regulatory agreements or resale restrictions to voluntarily agree to remain as affordable housing with the continued availability (and strengthening) of tax incentives and/or subsidized financing. The bill removes the 40-year fixed term of the existing tax exemption and makes the tax exemption permanent. The bill also codifies a new tax benefit for HDFCs: a real estate tax abatement equivalent to 150 percent of the

tax abatement for most conventional housing cooperatives authorized by Real Property Tax Law 467-a. The rationale for this new tax benefit is based on a quirk in current law. By way of background, the Legislature (subsequent to the enactment of PHFL 477) enacted RPTL 467-a, which granted a real estate tax abatement to virtually all housing cooperatives in New York City *other than* HDFCs. The conventional tax abatement contains no income restrictions or similar eligibility requirements. A luxury co-op on Park Avenue is eligible for a conventional co-op tax abatement.

Although HDFCs do receive the DAMP tax exemption in lieu of the conventional co-op tax abatement, the application of the DAMP tax exemption to many HDFC co-ops is not nearly as valuable as would be the application of the conventional co-op tax abatement. This is so because the conventional co-op tax abatement provides a dollar-for-dollar reduction in real estate tax liability. By contrast, the DAMP tax exemption merely provides a cap on assessed valuation (and thereby a cap on the resulting real estate tax liability). If an HDFC's assessment is already below the DAMP "cap," then the HDFC receives no tax benefit at all.

The bill remedies this anomaly by providing that HDFC co-ops are entitled to either the benefits of a conventional co-op tax abatement or the DAMP tax exemption. The point is that – as a matter of fairness and equity -- an HDFC income-restricted co-op should receive at least the tax benefit that a market-rate co-op receives. The bill goes further – and provides that HDFC co-ops are entitled to the greater of 150 percent of the conventional co-op tax abatement or the DAMP tax exemption. This increased benefit is a recognition that HDFC co-ops are entitled to greater benefits than market-rate co-ops – as a vital means to promote and protect housing affordability in New York City and as a means to provide financial stability to HDFCs. The benefit is also intended as an inducement for HDFC co-ops with expired regulatory agreements or expired income restrictions to make a long-term commitment to remain as income-restricted HDFCs, rather than exercising their right to reincorporate as another form of housing cooperative not subject to income restrictions.

2. **Renew the existing authority under the PHFL for financially distressed HDFCs to apply for real estate tax forgiveness.** Current legislation was enacted in 2002 and authorized tax forgiveness only for HDFCs that "[as of] January 1, 2002 had outstanding municipal real estate taxes relating to any period prior to January 1, 2001." This baseline year for tax forgiveness (i.e., tax arrears as of 2001) has never been updated to a more current tax year. The proposed legislation updates the baseline year so that the City has the flexibility to offer tax forgiveness (in appropriate cases and subject to strict controls set forth in

current law) for HDFC co-ops that are at risk of tax foreclosure. In this way an HDFC co-op is saved from tax foreclosure and may thereby provide sustainable and affordable housing for years to come. This is critically important -- not just for the HDFC shareholders themselves – but also for neighborhood stability.

3. **Clarify that HPD supervision extends to all HDFCs under current deed restriction or regulatory agreement and while the HDFC elects to receive the proposed new tax abatement.** The legislation would clarify that HDFCs with expired regulatory agreements or other City-imposed income restrictions may determine their own future. The legal status of HDFCs with expired regulatory agreements or expired City-imposed income restrictions has long been undertain. This section removes that cloud of uncertainty.

The strengthening of HDFC self-determination and autonomy is an important objective of this legislation. But so too is the promotion and protection of HDFC affordability. These objectives are not inconsistent. As previously noted, the proposed legislation advances each of these objectives by providing inducements for HDFCs with expired regulatory agreements or resale restrictions to voluntarily agree to remain as affordable housing This approach is consistent with the legislative approach formally adopted in all other forms of government-sponsored or -assisted housing authorized by the PHFL. Indeed, this approach is wholly consistent with the existing Article 11 of the PHFL. We believe that these proposed legislative changes provide proper balance between the existing property rights of HDFC shareholders and the decades of historically-consistent degree of HPD oversight and income guidelines for HDFCs, with the goals of preserving affordable housing for resident-owners.

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Again, we welcome your comments, ideas and suggestions.

Sincerely,

The HDFC Coalition Policy Committee

HDFC Coalition Proposal for a Revised HDFC Cooperative Property Tax Calculation via Amendment to the New York State Private Housing and Finance Law Comparison of Existing and Proposed Taxation for HDFC Cooperatives in Tax Years 2016 and 2019																	
Borough	Block	Lot	Zip Code	Building Address	Dwelling Units	Commer-cial Units	Tax Year	Assessed Value of Building	Assessed Value per Dwelling Unit (AVU)	Full Tax per Dwelling Unit: AVU x Tax Rate (No Tax Relief)	With Existing DAMP Tax Exemption: Tax paid per Apartment	% of Taxes Paid with Existing DAMP Tax Exemption	Tax per Dwelling Unit if 1.5 x Co-op/Condo Tax Abatement	% of Taxes Paid with 1.5 x Existing Co-op/Condo Abatement	Greater of: DAMP Tax Exemption or 1.5x Co-op Condo Tax Abatement	% of Taxes Paid with New HDFC Coalition PHFL Proposal
Manhattan	387	44	10009	283 East 4th St	36	0	2016	$ 721,710	$ 20,048	$ 2,583	$ 1,261	49%	$ 1,494	58%	$ 1,261	49%
					36	0	2019	$ 835,470	$ 23,208	$ 2,927	$ 1,318	45%	$ 1,693	58%	$ 1,318	45%
Manhattan	1941	23	10030	211 West 135th St	8	0	2016	$ 221,352	$ 27,669	$ 3,565	$ 1,261	35%	$ 2,062	58%	$ 1,261	35%
					8	0	2019	$ 262,461	$ 32,808	$ 4,138	$ 1,318	32%	$ 2,394	58%	$ 1,318	32%
Manhattan	1879	41	10025	212 West 108th St	30	0	2016	$ 635,939	$ 21,198	$ 2,731	$ 1,261	46%	$ 1,580	58%	$ 1,261	46%
					30	0	2019	$ 746,459	$ 24,882	$ 3,138	$ 1,318	42%	$ 1,815	58%	$ 1,318	42%
Manhattan	1056	18	10036	433 West 46th St	16	0	2016	$ 380,790	$ 23,799	$ 3,066	$ 1,261	41%	$ 1,774	58%	$ 1,261	41%
					16	0	2019	$ 654,840	$ 40,928	$ 5,162	$ 1,318	26%	$ 2,986	58%	$ 1,318	26%
Manhattan	2082	42	10031	510 West 151st St	14	0	2016	$ 202,950	$ 14,496	$ 1,868	$ 1,261	68%	$ 1,080	58%	$ 1,080	58%
					14	0	2019	$ 267,390	$ 19,099	$ 2,409	$ 1,318	55%	$ 1,393	58%	$ 1,318	55%
Bronx	2609	43		1185 Fulton Ave	42	0	2016	$ 388,350	$ 9,246	$ 1,191	$ 1,191	100%	$ 689	58%	$ 689	58%
					42	0	2019	$ 468,900	$ 11,164	$ 1,408	$ 1,318	94%	$ 815	58%	$ 815	58%
Bronx	3081	42		2114 Belmont Ave	16	0	2016	$ 157,050	$ 9,816	$ 1,265	$ 1,261	100%	$ 732	58%	$ 732	58%
					16	0	2019	$ 198,720	$ 12,420	$ 1,566	$ 1,318	84%	$ 906	58%	$ 906	58%
Bronx	3112	3		803 East 182nd St	44	0	2016	$ 421,560	$ 9,581	$ 1,234	$ 1,234	100%	$ 714	58%	$ 714	58%
					44	0	2019	$ 526,590	$ 11,968	$ 1,509	$ 1,318	87%	$ 873	58%	$ 873	58%

HDFC Coalition PHFL Proposal 8.21.2019

DAMP Tax Exemption - Tax Paid per Apartment		
Year	Existing Increase 6% per year	Proposed Increase 2.5% per year
2019	$ 1,318	$ 1,318
2020	$ 1,397	$ 1,351
2021	$ 1,481	$ 1,385
2022	$ 1,570	$ 1,419
2023	$ 1,664	$ 1,455
2024	$ 1,764	$ 1,491
2025	$ 1,870	$ 1,528
2026	$ 1,982	$ 1,567
2027	$ 2,101	$ 1,606
2028	$ 2,227	$ 1,646
2029	$ 2,360	$ 1,687
2030	$ 2,502	$ 1,729
2031	$ 2,652	$ 1,773
2032	$ 2,811	$ 1,817
2033	$ 2,980	$ 1,862
2034	$ 3,159	$ 1,909
2035	$ 3,348	$ 1,957
2036	$ 3,549	$ 2,005
2037	$ 3,762	$ 2,056
2038	$ 3,988	$ 2,107
2039	$ 4,227	$ 2,160
2040	$ 4,481	$ 2,214
2041	$ 4,749	$ 2,269
2042	$ 5,034	$ 2,326
2043	$ 5,336	$ 2,384
2044	$ 5,657	$ 2,443
2045	$ 5,996	$ 2,505
2046	$ 6,356	$ 2,567
2047	$ 6,737	$ 2,631
2048	$ 7,141	$ 2,697
2049	$ 7,570	$ 2,765

Existing Co-op Condo Tax Abatement for Market Rate Buildings	
Average Assessed Value	**Benefit Amount Per Year**
$50,000 or less	28.10%
$50,001 - $55,000	25.20%
$55,001 - $60,000	22.50%
$60,001 and above	17.50%

Proposed Abatement for HDFCs at 1.5 x Market Rate Abatement	
Average Assessed Value	**Benefit Amount Per Year**
$50,000 or less	42.15%
$50,001 - $55,000	37.80%
$55,001 - $60,000	33.75%
$60,001 and above	26.25%

HDFC Coalition PHFL Proposal 8.21.2019