David A. Paterson
Governor

Deborah VanAmerongen
Commissioner

New York State Division of Housing and Community Renewal
25 Beaver Street
New York, NY 10004

MANAGEMENT BUREAU MEMORANDUM #2008-B-15

To: All Housing Companies
Owners, Managing Agents and Site Managers

From: Robert Damico, Downstate Director
Housing Management Bureau

Date: November 20, 2008

Subject: Notice of Adoption - New York Codes, Rules and Regulations, Part 1733, Relating to Ownership Interests Partnership

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Attached is a copy of the adopted rule, effective August 6, 2008, which adds a new part 1733 to Chapter IV of the New York Codes, Rules and Regulations concerning the participation of partnerships in the ownership structure of developments supervised by DHCR under Article II and IV of the Private Housing Finance Law and DHCR approval of transfers of legal and equitable interests in such developments.

Robert Damico

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INTRODUCTION

The Management Manual for Housing Companies, as amended and adopted pursuant to the powers granted to the Division of Housing and Community Renewal by the Private Housing Finance law, Section 32 (as derived from section 319 of the Public Housing Law, as amended; repealed by chapter 803, Laws of 1961) as amended and Section 84 (as derived from section 181 of the Public Housing Law, as amended; repealed by chapter 803, Laws of 1961) as amended, is further amended to add a new part 1733 as provided below:

PART 1733

PARTNERSHIP RELATIONS AND TRANSFERS OF INTERESTS IN RENTAL HOUSING COMPANIES.

Section 1733: Rights and Duties of Partnerships and Housing Companies.

(a) Partnership Agreements. Partnership agreements and amendments thereto must be in compliance with the Private Housing Finance Law and regulations, and are subject to the prior, written approval of the commissioner.

(b) Financial Records and Partnership Distributions. A partnership shall furnish to the commissioner such financial and other reports as the commissioner deems necessary. All distributions by a partnership are subject to the prior, written approval of the commissioner.

(c) Partnership/Housing Company Transactions. A housing company which is in a partnership, or a partnership acting on behalf of a housing company, may not enter into contracts with persons or entities in which the general partner or any person or entity who is actively involved in the ownership or management of the property has a direct or indirect interest, or which are controlled by such general partner or other person or entity, without the prior, written approval of the commissioner.

(d) Transfers of Interests in Partnerships. Transfers of general partner or controlling interests in the partnership, including but not limited to the substitution or admission of a new general partner, are subject to the prior, written approval of the commissioner.

(e) Transfers of Interests in Housing Companies. An interest in a housing company may not be sold or otherwise transferred without the prior, written approval of the commissioner.

(f) Standard of Review. In reviewing requests for approval of changes in ownership interests under this section, in addition to determining compliance with all other requirements for such sales or transfers, the commissioner shall determine that the proposed purchaser or transferee is a qualified and responsible owner, which shall mean that the proposed purchaser or transferee has the capacity to maintain such property in good physical and financial condition, and in compliance with program requirements. In making such determination, the commissioner may consider the purchaser or transferee's past performance with regard to the following factors:

(1) successful experience in owning or managing comparable residential properties;

(2) mortgage defaults;

(3) suspensions, debarments, terminations or substandard performance under a government program;

(4) loss of any licenses or permits;

(5) criminal convictions;

(6) civil injunctions or other court sanctions, including any judgments;

(7) defaults on loans or surety or performance bonds;

(8) building maintenance and code violations on other buildings;

(9) bankruptcies; and

(10) other factors which bear on the capacity of the purchaser or transferee to maintain the project in good physical and financial condition and otherwise comply with program requirements.

(g) Conditions on Approval. In the event that the dissolution or reconstitution of a housing company is limited or precluded by statute, local law, ordinance, land disposition agreement, deed restriction, or by any other terms of creation, conveyance or through its organizational documents, the Commissioner may condition

approval of a request to sell or transfer a housing development owned by such housing company, or any other interest set forth in this Part, upon the continuation of such limitation or preclusion against the buyer or transferee.

(h) Failure to Provide Information or Documentation. Failure to provide information or documentation which the commissioner deems necessary to determine a request for approval under this section may be the basis for rejecting any application filed hereunder.