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HOUSING MANAGEMENT BUREAU MEMORANDUM # 2009-B-15

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

From: Robert Damico, Downstate Director
Housing Management Bureau

Date: December 30, 2009

Subject: Newly Adopted Mitchell-Lama Regulations

On November 10, 2009 the regulations governing DHCR supervised housing companies organized under Articles II and IV of the Private Housing Finance Law were amended. The revised regulations, which became effective immediately, can be found in Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York (9NYCRR), Subtitle S, Chapter IV, Parts 1700 through 1760.

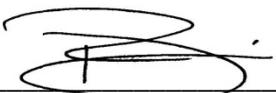
If you do not have a current subscription to DHCR's Mitchell-Lama regulations, you should order 9NYCRR, Volume 9C from West Group at 1-800-328-9352 (or visit their website at <http://west.thomson.co>) and maintain an annual subscription to get updates.

Attached is a summary of the most significant regulatory changes. You can also find an annotated final draft of the regulations on DHCR's website at:

http://nysdhcr.gov/Programs/Mitchell-Lama/ML_Adopted_Regs_Complete.pdf

Note that this annotated final draft identifies the recent amendments by *enclosing deleted text within brackets* and by *underlining new text*.

If you have questions concerning the regulations, please contact your assigned DHCR representative.


Robert Damico

New York State Division of Housing & Community Renewal
Summary of Mitchell-Lama Regulatory Amendments
Effective November 10, 2009

I. Part 1700 - Scope and Definition Provisions

Part 1700 is amended to:

1. Add more definitive standards governing "waivers" of the regulations. (1700.5)
2. Allow modifications to eliminate duplicative supervisory functions by other governmental agencies, in accordance with a recent amendment to the Mitchell-Lama Law. (1700.6)
3. Add a provision allowing DHCR to take equitable considerations into account when making its supervisory determinations. (1700.7)
4. Remove original construction and design standards and delete references to the regulations as a "manual."

II. Parts 1710 through 1713 – Subchapter B: Design and Procedures for Limited-Profit and Limited-Dividend Housing Projects.

Parts 1710, 1711, 1712, and 1713 are repealed in their entirety.

III. Part 1725 - General Administration

Part 1725 is amended to:

1. Clarify regulations governing identity of interest contracts. (1725-6.1(a) and (b))
2. Prohibit a mutual housing company (cooperative) board member from voting on a managing agent's contract, for two years after the agent has employed a family member of that board member. (1725-6.1(c))
3. Strengthen prohibitions on unauthorized payments to and from directors, including payments under any contract in which the housing company is a party. (1725-6.2)

IV. Part 1727 – Occupancy

Part 1727 is amended to:

1. Incorporate references to DHCR's centralized computerized waiting list system, known as the Automated Waiting List ("AWL"), which enables improved screening and monitoring of applicants. (1727-1.1(a))

2. Require applicants to be eligible at both time of application and admission to a development and require that at least one original, adult applicant be a member of the family at the time of admission. (1727-1.1(b))
3. Codify statutory Disabled Veterans Preference for admission applicants which is detailed in Management Bureau Memorandum #2007-B-08. (1727-1.1(i))
4. Reduce the occupancy preference given to internal transfers to 3 of every 4 available apartments (from 4 of every 5). (1727.1.3(a))
5. Allow housing companies to establish a written policy indicating whether or not lateral transfers (i.e., transfer between apartments with the same number of bedrooms) will be permitted and, if so, under what circumstances. (1727-1.3(b))
6. Increase the maximum permissible nonrefundable application processing fee (for non-federally assisted developments) to \$75 (from \$25). (1727-1.3(c)(1))
7. Codify existing policy waiving DHCR pre-approval for apartment assignments in developments where there is less than a one year waiting list and a history of housing company compliance. (1727-1.3(m))
8. Add a new prohibition against warehousing apartments. (1727-1.5)
9. Increase the maximum deduction for "secondary wage earners" to \$20,000 (from \$17,000). (1727-2.3(d))
10. Increase the tenant charge for willful misrepresentation of income to \$150 (from \$75). (1727-2.6(b))
11. Eliminate the need for DHCR pre-approval for the majority of commercial leases. (1727-6.2)
12. Revise standards for determining permissible household size by removing references to gender, age, and marital status. (1727-2.8)
13. Permit a housing company to (a) upon proper notice of termination and, if applicable, opportunity to cure, go directly to court to seek eviction of residents not entitled to occupancy, and (b) accept rent when a "succession" appeal is pending before the Division without waiving its objection to the tenant's possession. (1727-5.3)

V. Part 1728 - Budget and Fiscal

Part 1728 is amended to:

1. Reduce the time period for DHCR review of housing company budgets in connection with a rent increase application. (1728-1.2(a)(2))
2. Eliminate the need for full budget review where the rent increase requested by a housing company is less than the Consumer Price Index (CPI). (1728-1.2(a)(4))

3. Reduce the number of required bids for purchase contracts while ensuring that minority- and women-owned businesses are included in such bidding process. (1728-4.1(a))
4. Raise the minimum contract amount requiring prior DHCR approval from \$15,000 or \$30,000 to \$100,000. (1728-4.1)
5. Forestall the requirement for DHCR approval of progress payments on contracts until 75% of the contract has been paid. (1728-4.3(e))
6. Require purchases and contracts for occasional repairs and maintenance (plumbing, painting, etc.) which exceed \$100,000/annum to be competitively bid, even if broken up into smaller contracts. (1728-4.4)
7. Require prior DHCR approval of all identity of interest contracts. (1728-4.7)
8. Enable DHCR to impose more stringent supervision on any contract, or category of contract, upon a determination that such additional supervision is necessary. (1728-4.8)
9. Allow less stringent provisions for approval of contracts arising from preservation agreements or private mortgage refinancings. (1728-4.10)

VI. 1729 - Project Management

Part 1729 is amended to:

1. Remove the requirement that a managing agent be selected through competitive bidding, if the selection is part of a housing company preservation plan. (1729-1.2(c))
2. Allow managing agents to automatically renew their contracts and increments in fee, upon housing company concurrence but without DHCR approval, if certain performance standards have been met. (1729-1.2(k))
3. Consolidate existing remedies and add new remedies allowing DHCR to address recalcitrant management. (1729-1.5)

VII. 1730 – Insurance

Part 1730 is amended to:

1. Increase liability protection to reflect and adhere to current business practices.
2. Reduce DHCR regulation of required insurance, thus enabling the housing companies to use their business judgment to purchase the appropriate amount of insurance.

VIII. 1731 – Fire Prevention and Safety

Part 1731 is amended to:

1. Reduce DHCR supervision of housing company fire prevention measures.

2. Require housing companies to comply with all applicable fire safety standards.

IX. 1732 – Energy Conservation

Part 1732 is amended to increase housing company discretion regarding the proper energy conservation measures to take while operating the developments.

X. 1740 – Chart of Accounts for Regulated Housing Companies

Part 1740 is repealed in its entirety.

XI. 1750 – Dissolution

Part 1750 is amended to:

1. Address the effects of “reconstitution” by a housing company. (1750.2)
2. Require that a housing company give tenants immediate notice of any dissolution application. (1750.3)
3. Require that a housing company submit a title search with any dissolution application. (1750.3(b)(8))

XII. 1760 – Redevelopment and Refinance

Part 1760 is added to:

1. Codify procedures for housing companies to obtain DHCR approval for new financing. (1760-2 et. seq.)
2. Enable a fast-track exception to obtaining DHCR’s approval for refinancing when the new lender is a governmental source with its own loan underwriting criteria. (1760-1)