



Section 2: Section 1700.2 is repealed and a new section 1700.2 is added to read as follows:

Section 1700.2 Definitions

(a) As used in these rules and regulations:

(1) Admission rent or basic rent shall mean the rent charged for a particular type of apartment without regard to surcharges. Such admission or basic rent shall be the rent on which maximum income limits for admission for that apartment are based.

(2) Annual income or income (as used for the computation of probable aggregate income) shall mean the federal adjusted gross income of all household members as reported in their last New York state income tax return, less such personal exemptions and deductions for medical expenses as are actually taken by the taxpayers, plus all other income of household members who did not file an income tax return. However, the term annual income shall not include federal old age, survivors, disability insurance benefits, or payments made to household members for the care of foster children by governmental agencies.

(3) Commissioner shall mean the State Commissioner of Housing and Community Renewal.

(4) Disabled person for the purposes of subpart 1727-8 of this chapter shall mean a person who has an impairment which results from anatomical, physiological, or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which is demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which substantially limit one or more of such person's major life activities. It shall otherwise be given that definition used in the federal, state or local fair housing, anti-discrimination or other law which may be applicable.

(5) Division shall mean the New York State Division of Housing and Community Renewal.

(6) Dwelling unit shall mean a room or rooms, with or without cooking facilities, arranged for occupancy as a self-contained unit. Dwelling unit may also be referred to as an apartment.

(7) Family member shall mean a husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, or sister, grandfather, grandmother, grandson, granddaughter, daughter-in-law, son-in-law, mother-in-law or father-in-law of the tenant. Family member may also mean any other person residing with the tenant or cooperator in the dwelling unit as a primary or principal residence, who can prove emotional and financial commitment and interdependence between such person and the tenant or cooperator.

Although no single factor shall be solely determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed shall be the income affidavit filed by the tenant for the dwelling unit and other evidence which may include, without limitation, the following factors:

- (i) longevity of the relationship;
- (ii) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;
- (iii) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;
- (iv) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;
- (v) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the

other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as a representative payee for purposes of public benefits, etc.;

(vi) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their works or actions;

(vii) regularly performing family functions, such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services; and

(viii) engaging in any other pattern of behavior, agreement, or other action which evidences the intention of creating a long-term, emotionally committed relationship. In no event would evidence of a sexual relationship between such persons be required or considered.

(8) Household shall mean all persons living in the apartment.

(9) Housing Company shall mean: (i) a limited profit housing company duly incorporated pursuant to the provisions of article 2 of the Private Housing Finance Law, or a company incorporated pursuant to the Not-For-Profit Corporation Law and article 2 of the Private Housing Finance Law for the purpose of providing housing and auxiliary facilities for staff members, employees or students of a college, university or hospital and their immediate families or for senior citizens and disabled persons of low income, pursuant to article 2 of the Private Housing Finance Law, or (ii) a limited dividend housing company duly incorporated pursuant to the provisions of article 4 of the Private Housing Finance Law.

(10) Mutual company (cooperative) shall mean: (i) a limited profit housing company in which at least 80 percent of the dwelling units are occupied by households who are entitled to such occupancy by reason of ownership of shares in such company or, if it was not a mutual company prior to July 1, 1995, a limited profit housing company in which at least 50 percent of the dwelling units are occupied by such households; or (ii) a limited dividend housing company which is operated exclusively for the benefit of such households.

(11) Municipality and municipal corporation shall mean a city, town or village.

(12) Municipally-aided project shall mean a limited profit housing company project aided by a municipal mortgage loan or tax exemption or both and not aided by any State mortgage loan or loan by the New York State Housing Finance Agency.

(13) Primary residence shall mean the dwelling unit in which the person actually resides, maintains a permanent and continuous physical presence and otherwise fulfills the requirements identified in section 1727-8.2(a)(2) of this Chapter.

(14) Senior citizen shall mean a person who is 62 years of age or older.

(15) State shall mean the State of New York.

(16) State-aided project shall mean any limited profit housing company project authorized pursuant to article 2 of the Private Housing Finance Law other than a municipally-aided project, and shall be deemed to include a project aided by a loan from the New York State Housing Finance Agency.

(17) State Housing Finance Agency shall mean the New York State Housing Finance Agency, a corporate governmental agency created pursuant to article 3 of the Private Housing Finance Law.

(18) Supervising agency shall mean the comptroller in a municipality having a comptroller; in a municipality having no comptroller, the chief fiscal officer of such municipality, except that in the city of New York it shall be the Department of Housing Preservation and Development.

(19) Surcharge rent shall mean the rent graduations established above admission rent based on income.

(20) Tenant or cooperator shall mean any person or persons named on a lease as lessee or lessees or who is or are a party or parties to a rental agreement and obligated to pay rent or carrying charges for the use or occupancy of a dwelling unit.

Section 3: Section 1700.4 is renumbered 1700.9 and amended to read as follows:

Section 1700.9. Prohibition against discrimination.

Pursuant to section 602 of the Private Housing Finance Law, in addition to any and all applicable federal, state and local fair housing and non-discrimination laws and regulations, no person shall, because of race, creed, color or national origin, or any protected classification under such law or regulations, be subjected to any discrimination by any limited profit or limited dividend housing company or the private sponsor of such company. The term discrimination shall be deemed to include segregation or separation.

Section 4: A new section 1700.4 is added to read as follows:

Section 1700.4. Pending proceedings

Unless the division directs otherwise, proceedings commenced prior to any revisions to this chapter may be continued under the regulations under which they were commenced.

Section 5: A new section 1700.5 is added to read as follows:

Section 1700.5. Waiver of requirements of this chapter and use of alternative procedures.

The requirements of this chapter may be waived if, in the opinion of the commissioner, their application may be shown to effect undue hardship or the waiver of such requirements or the use of alternative procedures are appropriate to the interests of the housing company, the public, the lien holders, the cooperators, or the tenants.

Section 6: A new section 1700.6 is added to read as follows:

Section 1700.6 Duplicative Supervisory Functions

The division may modify supervision of a company upon finding that duplicative supervisory functions may impose an undue regulatory burden or unnecessary expenditure of agency resources, by taking such actions as are deemed appropriate, including consolidating supervisory functions associated with different programs, and entering into memoranda of understanding with other agencies for the allocation of supervisory functions.

Section 7: A new section 1700.7 is added to read as follows:

Section 1700.7. Consideration of equities

In issuing orders under these regulations, the division may take into consideration all factors bearing upon the equities involved, with due regard for preservation of the subject housing, the rights of the tenants and the public interest.

Section 8: A new section 1700.8 is added to read as follows:

Section 1700.8 Modification or revocation of orders

The division, on application of either party, or on its own initiative, and upon notice to all parties affected, may issue a superseding determination modifying or revoking any determination issued by it under these regulations where the division finds that such determination was the result of illegality, irregularity in vital matters or fraud.

#### Subchapter B of Chapter IV of Subtitle S of Title 9 of NYCRR

Section 1: Subchapter B and all of its four parts are repealed.

#### Subchapter C of Chapter IV of Subtitle S of Title 9 of NYCRR

Section 1: The name of subchapter C is amended to read as follows:

Subchapter C. Housing Company Management [Manual for Housing Companies]

#### PART 1725 GENERAL ADMINISTRATION

Section 1: A new Subpart 1725-6 of Part 1725 is added under the heading:

“IDENTIFY OF INTEREST AND UNAUTHORIZED PAYMENTS”

Subpart 1725-1 of Part 1725

Section 1: The title of Subpart 1725-1 is amended to read as follows:

Subpart 1725-1. BASIC REFERENCES[asic References]

Section 2: Subdivision (d) of Section 1725-1.1 is amended to read as follows:

(d) Projects under both programs may be available for occupancy on either a rental or a cooperative basis.

Section 3: Paragraph (2) of subdivision (e) of Section 1725-1.1 is amended to read as follows:

(2) the [purposes of the company as set forth in] provisions of the certificate of incorporation.

Section 4: Section 1725-1.2 is amended to read as follows:

Section 1725-1.2. Loan contract.

The basic references regarding the financing of a housing company [development] are: (a) building loan agreement; (b) mortgage; and (c) mortgage note. These documents are executed by and between the housing company and the lending agency or banking institution.

Section 5: Section 1725-1.3 is amended to read as follows:

Section 1725-1.3. M[anual for m]anagement of housing companies.

This [manual (the subject of this Subchapter)] chapter provides program, policy and technical data and has as its prime objective the adoption and maintenance of proper management standards for housing [company projects] developments. [Although this manual is to be generally utilized by employees specifically

concerned, all officials of the housing company should be aware of the availability of this manual for reference purposes.]

Section 6: Section 1725-1.4 is amended to read as follows:

Section 1725-1.4. Accounting [manual] for limited-profit housing companies.

Operating personnel should [be familiar with] utilize the uniform systems of accounts as prescribed by the [commissioner] division. [and listed in the accounting manual (see Subchapter D of this Chapter).]

Section 7: Section 1725-1.5 is amended to read as follows:

Section 1725-1.5. Certificate of incorporation.

[All members of the board of directors should be thoroughly familiar with the contents of the certificate of incorporation.] Members of the board of directors cannot exceed the authority granted in the certificate of incorporation, nor can they perform acts other than those expressed or implied in such certificate.

Section 8: Section 1725-1.6 is amended to read as follows:

Section 1725-1.6. Bylaws.

[All members of the board of directors and all stockholders should be familiar with the bylaws of the housing company.] The housing company must establish bylaws subject to review and approval by the division. Any amendment or alteration to the bylaws is subject to approval by the division. Where the division does not disapprove such bylaws as submitted to it, it shall be considered approved ninety days after full submission of the bylaws and all additional and supporting documentation that might be requested by the division as part of that review.

#### Subpart 1725-2 of Part 1725

Section 1: Subdivision (a) of Section 1725-2.1 is amended to read as follows:

Section 1725-2.1. Responsibility to public.

(a) Members of the board of directors of the housing company, whether rental or cooperative, bear a significant [high] public responsibility, since they [have elected to] operate under a State-aided program and [to] effectuate public policy by encouraging the building and operating of housing projects for families of moderate income.

Section 2: Subdivision (b) of Section 1725-2.3 is amended to read as follows:

(b) [The b]Board members should also [interest] involve themselves in tenant activities as these afford opportunities for learning about tenant [grievances] concerns as well as explaining the board's position on matters of mutual interest. The [division encourages the] board should seek integration of the housing project and its activities with those of the surrounding neighborhood or community.

Section 3: Section 1725-2.4 is amended to read as follows:

Section 1725-2.4. Disclosure of information.

Members of the board of directors have access to a considerable amount of personal information concerning tenants or cooperators. Such information should be held in the strictest confidence and should not be disclosed to any person except insofar as it has a direct bearing [in] on: (a) the business of the company, or (b) the division's efforts to deter fraud in developments under its supervision and except to persons duly authorized to receive such information.

Section 4: Section 1725-2.5 is repealed.

Section 5: Section 1725-2.6 is repealed.

Section 6: Section 1725-2.7 is repealed.

Section 7: Section 1725-2.8 is repealed.

Section 8: Section 1725-2.9 is repealed.

#### Subpart 1725-3 of Part 1725

Section 1: Subdivisions (c) and (d) of Section 1725-3.1 are amended to read as follows:

(c) Proper notice of each meeting of the board should be sent to all members of the board, including the [Commissioner of Housing designee] division, at least 48 hours prior to a scheduled meeting. In order to allow adequate time for the [commissioner's] division's designee to schedule attendance at the meeting of the board and to prepare properly for such meeting, notice of meeting of the board of directors should be sent to the [management bureau of the New York State Division of Housing and Community Renewal] division at least 10 days prior to the date of the meeting where possible, together with an agenda of the meeting.

(d) Stockholders should be notified at least 10 days and not more than [40] 60 days prior to each meeting of the stockholders. However, in accordance with the bylaws, written notice is not required if all directors or stockholders, as the case may be, are present at the meeting or those not present have waived notice

in writing. A majority of all stockholders, counted on the basis of one vote per dwelling, shall constitute a quorum in any stockholders' meeting, except that the certificate of incorporation or by-laws may allow a lesser amount to constitute a quorum, but not less than one-third of such voters. Notwithstanding the above, the quorum requirements set forth in Subpart 1750 herein shall govern all votes identified in that Subpart.

Section 2:                   Section 1725-3.2 is amended to read as follows:

Section 1725-3.2.                   Organization of board of directors.

(a)                   The board shall consist of the authorized number of directors; one additional director may be appointed by the [commissioner] division, unless otherwise required under Article IV of the Private Housing Finance Law. At the first annual meeting of stockholders, directors will be elected to serve for terms of one, two or three years, designated so that the terms of approximately one third of the total directors, exclusive of the [commissioner's] division's designee, will expire in any one year. Thereafter, directors will be elected for a three-year term, except when the election is for an unexpired term.

(b)                   The board shall elect officers, as prescribed in the bylaws, at [its] the first board meeting after the annual stockholders meeting.

Section 3:                   Section 1725-3.4 is repealed and a new section 1725.3-4 is added to read as follows:

Section 1725-3.4.                   Proxies

Notwithstanding the provisions of any law, general or special, a mutual company with the approval of the division, may require a standard form and procedure for the casting of proxies or absentee ballots in any matter requiring a shareholder vote.

Section 4: Section 1725-3.5 is amended to read as follows:

Section 1725-3.5. Minutes of meetings.

A [transcript] copy of the minutes of each meeting shall be forwarded [in duplicate] to the [D]division [of Housing and Community Renewal] within 10 days after such meeting.

#### Subpart 1725-4 of Part 1725

Section 1: Subpart 1725-4 is repealed

#### Subpart 1725-5 of Part 1725

Section 1: Section 1725-5.1 is amended to read as follows:

Section 1725-5.1. General.

[Files are the storehouse of information which an organization needs to operate efficiently. They also are necessary for the division to discharge its obligations to supervise operations and to protect the rights of tenants and applicants. Therefore, all files, including applications and waiting lists, shall be maintained in a neat, orderly manner so that ready reference can be made to them.] All files, including applications and electronic automated waiting list records, shall be maintained in a neat, orderly manner and shall be made available for inspection by [representatives from DHCR] the division upon request. [Failure to maintain files in an appropriate manner will be subject to any and all actions authorized under the Private Housing Finance Law.] Files must not be removed by an officer, agent, employee or other person to [his] their office, residence or any other location. [Files of an operating project may be broadly classified as follows:]

[(a) tenant files (active and inactive);]

[(b) applications-pending files; ]

[(c) general correspondence files; and]

[(d) special purpose files.]

Section 2: Section 1725-5.2 is amended to read as follows:

Section 1725-5.2. Tenant files.

(a) Tenant files are to be maintained for each tenant and [ex-] former tenant of the project.

Files of tenants still in occupancy are generally maintained by reference to the tenants' account or apartment reference number. Files of [vacant] former tenants are maintained in alphabetical order by tenant's surname.

(b) All forms, letters, reports, etc. including applications, leases, income surveys, rent adjustments, concerning an individual tenant will be filed in [his] tenant's folder. Letters, reports and similar items which refer to more than one tenant but not to all tenants, will be duplicated, if feasible, in sufficient number to permit insertion in each file concerned; or if not feasible, a cross-reference note will be placed in each file concerned.

Section 3: Section 1725-5.3 is amended to read as follows:

Section 1725-5.3. [Applications-pending] Applicant files.

[The applications-pending] Applicant files, whether active or inactive, should be maintained as close as possible to the tenant files. The active files will consist of those applications determined to be eligible or still being investigated and should be maintained in chronological order with earliest date on top. Active files should be reviewed periodically to determine which applications should be shifted to the inactive files. A form letter inquiring into the applicant's continuing interest may be used for this purpose. Inactive applicant files containing those applications which have been determined to be ineligible or those that have since [requested the withdrawal of their applications] been withdrawn, along with supporting documentation, should be filed in alphabetical order by applicant surname and retained for five years in accordance with section 1727-1.3(p).

Section 4: Section 1725-5.4 is repealed.

Section 5: Section 1725-5.5 is repealed.

Section 6: Section 1725-5.6 is repealed.

Subpart 1725-6 of Part 1725

Section 1: Section 1725-6.1 is added and reads as follows:

Section 1725-6.1 Identity of interest by board members and other principals.

(a) Board members

(1) Board members shall make every reasonable effort to avoid contracts or other transactions for materials or services, as set forth in Subpart 1728-4, which may involve a possible conflict of interest. Housing companies and board members are subject to the provisions of the Business Corporation Law or the Not-for-Profit Corporation Law regarding voting and disclosure where a contract or a proposed contract involves a possible conflict of interest on the part of a board member. In addition to the disclosure requirements set forth therein, prior disclosure must be made to the division and to the board by any board member who has a direct or indirect interest in a business which proposes to participate at any stage of a transaction which may lead to the providing of materials or services to the housing company.

(2) Upon such disclosure by a board member, the housing company, prior to the solicitation of bids, shall submit a plan to the division for approval which:

(i) identifies the board member who has a direct or indirect interest, the name and address of the businesses involved, and the nature of the board member's interest;

(ii) provides an appropriate mechanism to assure that bids will be solicited and evaluated fairly; and

(iii) is designed to enable the housing company, in the event of an award to such a business, to adequately monitor the performance of the contract or transaction.

(3) If the housing company does not intend to solicit bids, it must establish to the division unique circumstances or emergency conditions render the use of a bidding procedure impracticable or inappropriate.

(b) Other principals

(1) Housing companies and certain other principals of the housing company are subject to the provisions of the Business Corporation Law or the Not-for-Profit Corporation Law applicable to officers of the corporation regarding voting and disclosure where a contract or proposed contract involves a possible conflict of interest on the part of such principal. In addition to the disclosure requirements set forth therein, there must be full disclosure to the division, the managing general partner and the board by any managing general partner, officer of the housing company or any shareholder, individual or entity with a 10 percent interest or more in a housing company, who has a direct or indirect interest in a business which proposes to participate at any stage of a transaction which may lead to the providing of materials or services to the housing company.

(2) Upon such disclosure by an individual or entity listed in paragraph (1) of this subdivision (b), the housing company, prior to the solicitation of bids, must submit a plan to the division which:

(i) sets forth the individual or entity involved who has a direct or indirect interest and the nature of that interest;

(ii) provides an appropriate mechanism to assure that all bids will be solicited and evaluated fairly; and

(iii) is designed to enable the housing company, in the event of an award to such a business, to adequately monitor the performance of the contract or transaction.

(3) If the housing company does not intend to solicit bids, it must establish to the division that unique circumstances or emergency conditions render the use of a bidding procedure impracticable or inappropriate.

(c) Mutual Companies

(1) No board member of a mutual company shall participate in a vote to approve, renew, or otherwise affect a contract where such board member, a family member of such board member, a person residing with such board member, or a family member of a person residing with such board member at the time of such vote is employed by or has a direct or indirect interest in or, in the two year period prior to such vote, was employed by or had a direct or indirect interest in: (i) such contractor; or (ii) a company which such contractor manages or in which such contractor had a direct or indirect interest at the time of such person's employment or interest. As used in this paragraph, family member means husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law and daughter-in-law.

(2) At a meeting of a board or committee, board members who are prohibited from participation in a vote under paragraph (1) of this subdivision (c), may nevertheless be counted in determining the presence of a quorum.

Section 2: Section 1725-6.2 is added and reads as follows:

Section 1725-6.2. Unauthorized payments.

No company, association, director, officer, employee, agent or other person shall solicit or receive, directly or indirectly, any commission, bonus, gratuity, fee, contribution, or any other payment not expressly authorized by the division:

(a) from any person interested, directly or indirectly, in the filing of an application or in the obtaining of a lease, or from any tenant, except the rent stipulated in the lease and such charges as may have been expressly approved by the division; or

(b) in connection with any contract or proposed contract for the housing company. Violation of this section by any agent, employee, board member or officer of the company shall be cause for discharge or such other penalty prescribed by contract or law and provision to such effect shall be deemed to be incorporated in all employment agreements entered into by the housing company, and in its rules and regulations.

Subpart 1727-1 of Part 1727

Section 1: Section 1727-1.1 is repealed and a new section 1727.1-1 is added to read as follows:

Section 1727-1.1. General.

The selection of tenants or cooperators by housing companies established under the Private Housing Finance Law is governed by the provisions of this section, except that federally assisted projects shall conform to any HUD rules and regulations which are at variance with those herein.

(a) Housing companies shall process applications through the division's web-based Mitchell-Lama Automated Waiting List (AWL).

(b) Except as hereinafter provided in this section, all segments of the public will have an equal opportunity to apply for apartments.

(c) No prospective applicant will be rejected because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status, except that an applicant must be at least 18 years of age and in the case of senior citizen developments meet their age requirements at the time of application. The housing company and its managing agent shall comply with all federal and State fair housing, nondiscrimination and civil rights laws. Any complaints in writing alleging violations of these laws shall immediately be referred to the division for appropriate action.

(d) All applications will be processed in an equitable manner.

(e) Applications must identify all of the applicants as well as any additional prospective residents. The prospective household composition must conform to the occupancy standards for the dwelling unit size requested at the time of application and at the time of availability. Applicants and any additional prospective residents must be living together at the time of application and at the time of availability; provided, however, that a housing company may adopt a uniform policy, but is not required to, which allows changes in

household composition to be made on condition that an original adult applicant must remain on the application at all times and move in at the time of availability.

(f) Income of prospective tenant or cooperator will not exceed the applicable income limit either at the time of application or at the time of apartment availability.

(g) Applications for admission and intraproject transfer require the division's approval prior to assignment of the dwelling unit.

(h) Vietnam Veteran's Preference - Preference in admission to a project shall be given by a limited profit housing company (including those companies participating in the low rent assistance program) to persons or surviving spouses of persons who:

(1) have served in the Armed Forces of the United States for a period of at least six months (or any shorter period which terminated due to death or injury in such service), provided some portion of the period of service was between February 28, 1961 and May 7, 1975, the official date of the termination of the conflict in Vietnam; and

(2) have been thereafter discharged or released therefrom under conditions other than dishonorable, or died in such service, not more than five years prior to the time of application for admission to the project.

(i) Disabled Veterans Preference - Preference in admission to a project with an open waiting list, as determined by the division, shall be given to disabled veterans as such term is defined pursuant to section eighty-five of the civil service law. For projects with a closed list, as determined by the division, such preference shall be given upon the opening of the waiting list. Notwithstanding the foregoing, persons who are already residing in a project shall be given first priority for an internal transfer within the housing development in which they are residing in accordance with section 1727-1.3.

(j) Priority in admission for applicants found eligible in accordance with the provisions of subdivisions (a) through (i) of this section 1727-1.1 shall, in accordance with an affirmative fair housing marketing plan approved by the division, be determined as follows:

(1) First, in the following order, applicants qualifying as project displacees (families displaced by a limited profit housing project):

- (i) Vietnam veterans or their surviving spouses;
- (ii) disabled veterans; and
- (iii) all other qualified persons.

(2) Second, in the following order, applicants not qualifying as project displacees:

- (i) Vietnam veterans or their surviving spouses
- (ii) disabled veterans;
- (iii) where housing developments have apartments which were

designed for or modified to accommodate aged or mobility-impaired persons, as the case may be, priority for such apartments is to be given to applicants whose households include aged or mobility-impaired persons. However, such priorities should not result in any such applicant being denied a standard apartment;

(iv) categories of applicants established by (a) either the state or federal government for programs in which the housing company is a participant, or (b) the division in response to emergency situations in a ratio to be determined by the division; and

- (v) all other qualified persons.

(3) These priorities shall apply to new tenants only and not to intra-project transfers, except in the case of those tenants who are aged or mobility-impaired pursuant to Section 1727-1.3(c)(2)(iii).

(k) Housing companies are required to have in effect an affirmative fair housing marketing plan. In order to qualify for approval by the division, such plan shall include, but not be limited to: identifying those racial/ethnic groups which have traditionally not applied for admission to the projects because of neighborhood characteristics or other factors; identifying those racial/ethnic groups which are least likely to apply in the future unless there is special outreach to attract them; identifying which community, religious, civil

or fraternal organizations will be utilized in conducting this outreach, with a description of how they will be utilized, and a description of any other advertising and promotion techniques to be undertaken in connection with sales or rental activity. Affirmative fair housing marketing plans will be evaluated on the basis of their appropriateness and potential effectiveness in attracting target groups to the project for future occupancy. In addition, implementation capability by existing rental/sales staff, and project profiles on current rent or carrying charges, vacancy rates and the size of waiting lists, will be taken into consideration in the evaluation process.

(l) Upon the request of the division, the housing company shall report on any and all aspects of its fair housing practices. Areas of concern shall include, but not be limited to, the provisions of this section, processing of applications, maintaining of waiting lists, and the initiation and implementation of a sales and marketing program.

Section 2: Subdivision (a) of Section 1727-1.2 is amended to read as follows:

Section 1727-1.2. [Processing of inquiries] Marketing and processing of application requests.

(a) At the initiation of a sales or rental program by the housing company or as directed by the division, [in New York City, Buffalo, Rochester, Yonkers, Syracuse or Albany,] the housing company must place an advertisement, approved by the division, [in at least three widely read newspapers, including at least one newspaper widely circulated among minority groups,] in the media most likely to be used by applicants, including publications and outlets serving minority populations as approved by the [commissioner] division, so that all segments of the public are aware of the availability of apartments. [Comparable advertising will be utilized for projects located in other municipalities.] The advertisement [must appear in the newspapers for at least two days, and] shall include the words "Equal Housing Opportunity" and "Supervised by the New York State Division of Housing and Community Renewal" in the copy.

Section 3:                   Section 1727-1.3 is repealed and a new section 1727-1.3 is added to read as follows:

Section 1727-1.3.                   Processing of applications.

(a)                   Intra-project transfers shall be given priority for available apartments over other waiting list applicants. Notwithstanding the foregoing, one of every four available apartments shall be set aside and offered to an applicant on the outside waiting list.

(b)                   Housing companies must establish a written transfer policy. This policy should state whether or not lateral transfers, i.e. intra-project transfers between apartments with the same bedroom size, are permitted, and, if so, under what circumstances, and should state that the following criteria must be met for all transfers:

(1)                   tenant must be occupying current apartment in accordance with the requirements of this chapter;

(2)                   tenant must meet the occupancy standards for the apartment size requested at the time of application and of apartment availability, or the transfer must improve a condition of overcrowding or underutilization;

(3)                   all costs related to the transfer, including but not limited to any rent loss, must be borne by the tenant;

(4)                   all transfers are subject to division prior approval;

(5)                   the resultant residual apartment may be offered to any applicant in accordance with established procedures.

(c)                   Applications, on a form approved by the division, shall be available in the housing development's rental or management office.

(1)                   Applicants shall return the completed application, together with a nonrefundable processing fee, payable to the housing company, in an amount not to exceed \$75.

(2) At the time of application, the housing company shall advise the applicant of eligibility criteria for occupancy and of the procedure followed in processing applications, and shall furnish as a minimum the following:

(i) print-out of the AWL application summary screen showing pertinent application information and the number assigned or a copy of the application time, date-stamped, and numbered ;

(ii) statement that applicant is obligated and responsible to advise the housing company in writing of any change of address or family composition within 30 days of such occurrence, and the housing company is obligated to correct its records to reflect such change; and

(iii) for housing developments which contain apartments specifically designed for the mobility-impaired, a request for any information concerning a mobility-impairment of applicant or member of applicant's family which would allow for a priority hereunder.

(3) Upon receipt, information on each admission and transfer application is to be time and date-stamped consecutively and recorded in order of receipt in the AWL or issued an application number and entered in a permanently bound book, in which will be recorded in separate columns, in ink, the application number, date received, the applicant's name and address, family composition, family income, apartment size and priority. The housing company shall annotate the application information to reflect the: credit check status, eligibility, address updates, apartment offerings, refusals, acceptance, basis for inadmission if any, and cancellation. Upon request of the division, the housing company shall furnish to the division a copy of this book or any portion thereof.

(d) Upon the availability of an apartment, prospective applicants in numbers sufficient to fill the expected vacancy shall be notified of such availability in the order of their applications. Such notification may be by telephone but must be confirmed by mail. A copy of all notification letters shall be retained by the housing company. This letter shall include:

- (1) the current numerical position of applicant for the size of apartment being offered;
- (2) the date of anticipated availability;
- (3) the family composition and income limitations applicable to the listed apartments; and
- (4) a request for submission of proof of income and credit check fee.

(e) Applicants shall be advised that failure to respond within 10 business days from the date of the notification letter will result in the presumption that they are no longer interested in the apartment and that they will be removed from the list. The notice shall also state that acceptance of the application by the housing company is contingent upon approval by the division.

(f) Eligible applicants shall be given one right of refusal of an apartment without prejudice to their standing on the waiting list. Eligible applicants shall promptly communicate in writing the nature of any circumstance special and unique that would cause undue hardship to an otherwise eligible applicant by accepting a particular apartment. The concurrence or approval of the division upon a finding of a special and unique circumstance shall have the effect of preserving the applicant's first right of refusal. A second refusal shall result in their removal from the waiting list.

(g) Upon receipt of the credit check fee the housing company will obtain a credit report from a recognized agency for each applicant determined as being eligible.

(h) Housing companies shall establish separate written criteria, policies and procedures for screening applications for both admission and transfer. Such criteria, policies and procedures shall be made available for review to all applicants for apartments and to the division upon request.

(i) A housing company may establish a minimum rent-to-income ratio as part of its credit worthiness criteria. Such criteria shall not be less than 30 percent of gross income for rent for families or less than 33 1/3 percent of gross income for rent for senior citizens. Applicants for whom the projected rent would exceed any such rent-to-income ratio shall nonetheless be given the opportunity to demonstrate their ability to

pay the rent or carrying charge. Acceptable evidence of their ability to pay shall include, but not be limited to, a history of paying an equivalent rent in a timely manner.

(j) Applicants whose eligibility has been confirmed after review will be called in for the apartment in the order as herein established and within the categories set forth in section 1727-1 of this Subpart.

(k) Applicants found ineligible after review shall be so notified by mail and given the basis for the determination of ineligibility. Such applicant shall be removed from the waiting list. Any such applicant shall be advised that he or she may challenge the determination of ineligibility by contacting the division within fourteen days of receipt of this notification. A copy of this notice and the application will be filed alphabetically by surname in the ineligible file and retained by the housing company for a period of five years. However, nothing contained herein shall apply to applicants who are ineligible because of excess income for the apartment offered but who would be eligible for an apartment of the same bedroom size having higher income limits.

(l) Upon the acceptance of an apartment and prior to occupancy, the housing company shall submit the eligible application with the prescribed form to the division for approval, noting the application number and any priority, together with income verification, credit reports, copies of the notification of availability and the response thereto, and any other supporting documentation necessary to establish eligibility. Possession of the apartment may not be given prior to division approval.

(m) Where the waiting list for apartments has routinely been of a 12-month or shorter duration, a housing company may apply to the division for exemption from prior approval of each admission, transfer, and succession applications prior to possession of the apartment. The housing company must otherwise, (1) continue to follow all other provisions of this Subpart including, but not limited to, the other provisions of this section on processing of applications; and (2) submit a Quarterly Tenant Selection Activity Report to the division, on such form as the division may require, within thirty days of the end of each quarter, providing information on all admission, transfer, and succession applications processed during that quarter along with a current copy of their transfer and admission waiting lists for all apartment sizes.

(n) Applications disapproved by the division will be returned to the housing company, which will notify the applicant by mail that applicant does not meet eligibility requirements, the specific reason for such determination, and the right of appeal as provided in subdivision (k) of this section. A copy of the notice and the application will be filed alphabetically by surname in the ineligible file and retained by the housing company for five years.

(o) Approved applicants will be called in for the signing of necessary documents and paying of down payment or security deposit.

(p) Ineligible files will be maintained so as to be readily available for review by division representatives.

Section 4: Subdivision (a) of section 1727-1.4 is amended to read as follows:

Section 1727-1.4. Additional provisions for operating projects.

(a) After initial occupancy, applications will continue to be accepted at all times unless the estimated waiting period is three years or more or the number of applications shall equal the number of dwelling units for the project, whichever basis shall result in a shorter list. During any period in which applications are being accepted, the housing company shall implement an ongoing affirmative fair housing marketing program to attract eligible applicants least likely to apply to the project. In cases where the waiting period is three years or more or reaches a number in excess of the number of dwelling units for the project, the housing company, with the written approval of the division, may discontinue acceptance of applications, except that such discontinuance shall not apply to eligible Vietnam veterans, their surviving spouses, project displacees, or to the mobility-impaired or members of their family who are mobility-impaired in projects having apartments designed for or modified to accommodate the mobility-impaired. [The housing company must obtain such approval from the division each year.] The housing company must obtain the approval of the division at least 30 days in advance before it reopens applications to the public. The division will base its approval on a review of the housing company's compliance with this Part and the housing company's submission of an affirmative fair

housing marketing plan acceptable to the division. Such reopening of applications shall be processed in the same fashion as the processing of inquiries and applications, pursuant to sections 1727-1.1, 1727-1.2 and 1727-1.3 of this Subpart.

Section 5: Subdivision (c) of section 1727-1.4 is renumbered as subdivision (b) of section 1727-1.4, and subdivision (b) of section 1727-1.4 now reads as follows:

(b) The processing of accepted applications to determine eligibility should be limited to a number sufficient to provide an adequate number of eligible applicants in numerical order, to meet turnover requirements.

Section 6: Subdivision (d) of section 1727-1.4 is renumbered as subdivision (c) of section 1727-1.4, and subdivision (c) of section 1727-1.4, as amended, now reads as follows:

(c) [Each year the housing company shall canvass in chronological order a sufficient number of applicants on the waiting list equal to three times the annual turnover rate.] From time to time, the housing company shall canvass the applicants on its waiting list, in chronological order, in such manner as the housing company may deem appropriate in order to fill vacancies or to assess the need to reopen its waiting lists. Such canvass may be either by first class mail or by certified mail, return receipt requested. The canvass shall list the current range of rents or carrying charges, by apartment size, as well as any rent or carrying charge increases approved for future implementation. It shall further request a written statement of continued interest on the part of the applicant, as well as any changes in [family composition,] address [or income which may affect eligibility,] and state that failure to provide such statement within 21 days will be deemed as noninterest on the part of the applicant. Where a housing company has elected to conduct the canvass of the waiting list by use of certified mail, return receipt requested, such action shall be deemed sufficient to meet the requirement and intent of this section. However, where first class mail is used to conduct the canvass, the housing company is required to again canvass those applicants who failed to respond to the initial canvass by use of certified mail,

return receipt requested. Failure by an applicant to respond to the certified mail canvass will be deemed as noninterest, whereupon the [applicant] application shall be [removed from the waiting list. Such failure to respond shall be noted in the bound book] terminated with an appropriate annotation made to the AWL (or to the manual log) kept pursuant to section 1727-1.3(c[b])(3) of this Subpart and evidence of the canvass efforts maintained in the housing company's [permanent] applicant files.

Section 7: Subdivision (e) of section 1727-1.4 is renumbered as subdivision (d) of section 1727-1.4, and subdivision (d) of section 1727-1.4 now reads as follows:

(d) Upon the request of an applicant, the housing company is obligated to advise said applicant of his or her position on the waiting list.

Section 8: Subdivision (f) of section 1727-1.4 is repealed.

Section 9: A new section 1727-1.5, titled "Warehousing" is added and reads as follows:

Section 1727-1.5 Warehousing

It is the obligation of a housing company to promptly fill vacant apartments for occupancy with eligible applicants from the housing company's waiting lists in accordance with this chapter. The failure to do so, unless expressly approved in writing by the division, is a violation of the requirements of this chapter, and a violation of the responsibilities and duties of the housing company, its directors, managing agent and any housing company employee assigned the duty or supervision of renting such apartments.

Subpart 1727-2 of Part 1727

Section 1: Section 1727-2.1 is repealed and a new section 1727-2.1 is added to read as follows:

Section 1727-2.1. Income Limitations

(a) Determination of income for admission and continued occupancy is governed by this subpart, except that federally assisted projects shall conform to HUD's requirements governing income determination for the admission and continued occupancy of below market rent tenants.

(b) Section 85-a of the Private Housing Finance Law concerns rentals and selection of tenants for limited dividend housing companies. Under its provisions, admission to a project is limited to those households whose probable aggregate annual income does not exceed seven times the annual rent including the value or cost of heat, light, water, and cooking fuel, except that in the case of households with three or more dependents, such ratio shall not exceed eight times the annual rent.

(c) Section 31 of the Private Housing Finance Law applies to limited profit housing companies. Under its provisions, admission to a project is limited to those households whose probable aggregate annual income does not exceed seven times the annual rent including the value or cost of heat, light, water, and cooking fuel, except that in the case of households with three or more dependents, such ratio shall not exceed eight times the annual rent.

(d) Households with two or more dependents whose probable aggregate annual income does not exceed 125 percent of the relevant income limit in subdivisions (a), (b) or (c) of this section shall also be eligible for admission to a project. Households eligible for admission under the provisions of this subdivision shall pay a rental surcharge according to the housing company's rental surcharge schedule.

(e) Applications shall be accepted where the probable aggregate income at the time of application and admission does not exceed the greater of the limits set forth in subdivisions (a), (b), or (c) of this section or the median income as adjusted for household size for such households for the metropolitan statistical area in which the project is located or, if a project is located outside a metropolitan statistical area, the median

income as adjusted for household size for such households for the county in which the project is located as most recently determined by the United States Department of Housing and Urban Development. Any household becoming eligible for admission under the alternative computation set forth in this subdivision (e) shall pay, from the time of admission, a rental surcharge, as provided for in Subpart 1727-2 of this Part, computed on the basis of the income limitations applicable to such households in the absence of this subdivision.

(f) Tenants whose incomes increase over the admission limits may continue in occupancy. Their rent, however, shall be increased in accordance with the rent schedule prepared by the housing company and approved by the division. The division may direct a particular rent increase schedule to be prepared and implemented.

(g) Where family income has been increased by the addition of a new household member, the housing company shall recompute the family income and, if warranted, assess the appropriate surcharge.

Section 2: Section 1727-2.2 is amended to read as follows:

Section 1727-2.2. Responsibilities of housing company.

It is the responsibility of the housing company to:

- (a) determine, prior to admission, the probable aggregate annual income of all members of applicants' household;
- (b) restrict admission to such [persons or families] households whose probable aggregate annual income is within applicable admission limits [prescribed by law or administrative regulation];
- (c) review once a year probable aggregate annual income of [persons or families] households in possession;
- (d) assess and collect surcharges in accordance with approved schedules from [persons and families] households whose income warrants such surcharges; and
- (e) [require persons or families to remove as required by law when incomes exceed legal limits; and]

[(f)] accept Federal reimbursement under section 8 of the Housing and Community Development Act of 1974 in lieu of rent payment for qualified tenants and tenant-shareholders who were residing in the housing company premises prior to the determination of their eligibility for government rent subsidy and [shall] not reject an applicant for an apartment solely on the basis that all or part of the rent shall be paid under section 8 of the Housing and Community Development Act of 1974.

Section 3: Section 1727-2.3 is repealed and a new section 1727-2.3 is added to read as follows:

Section 1727-2.3. Determination of income.

(a) In the discharge of the responsibilities listed above, the housing company shall take such steps as it deems necessary to ascertain and verify that the probable aggregate annual income of the applicant's household does not exceed applicable income limits. Applicants, tenants, and cooperators are required to cooperate fully in obtaining verification of income.

(b) For admission applicants, each adult household member 18 years of age or older who filed an income tax return for the prior calendar year must provide a certified copy of either the New York State income tax return obtained from the New York State Department of Taxation and Finance or the federal income tax return obtained from the Internal Revenue Service.

(c) Verification of income for adult household members who did not file an income tax return will be based upon one or more sources of information outlined below to obtain reasonably acceptable verification.

(1) Requests for statements of earnings reported to the Social Security Board are to be submitted only where earnings cannot otherwise be conclusively verified, such as tenants/cooperators who claim not to have worked, not to have filed income tax returns, or are employed by relatives. Requests for social security statement must be submitted on Social Security Administration form SSA-7004 and must show tenant's/cooperator's home address as return address. It is the responsibility of tenant/cooperator to deliver report to housing company office upon receipt. Social security records are usually not available until six months after completion of quarter.

(2) Notarized employer's statement signed by officer or responsible party of firm.

(3) Current and/or past pay stubs and pay envelopes if: (i) they identify the recipient clearly; (ii) are for a pay period within the past year; and (iii) provide a reasonably clear basis for determining rate of pay. Tenants or cooperators should be advised to retain all such stubs or envelopes.

(4) Referee's report, in the case of workers' compensation.

(5) Tenants/cooperators unemployment insurance card, notification of benefits, D.P.U.I. tables and check stubs.

(6) Military pay tables, allotment tables, allotment checks and notarized statement from commanding officer of unit to which assigned, in case of service members.

(7) Notarized affidavits from person or persons making contributions, setting forth the amounts contributed and the dates of such contributions.

(8) Employer's report or standard allotments for tips or other considerations.

(d) The calculation of probable aggregate annual income described below is identical whether determining probable income for admission or for continued occupancy. In determining probable aggregate annual household income, income from all sources, including that of minors, will be taken into account with the following exceptions:

(1) \$20,000 (or, if authorized by the division, a larger amount) of the earnings from the gainful employment of a minor under the age of 21 years.

(2) \$20,000 (or, if authorized by the division, a larger amount) of each adult secondary wage-earners' earned income.

(3) Payments made by the State or a municipality for child care of foster children in private homes.

For purposes of determination of probable aggregate annual income, a secondary wage earner is any gainfully employed adult member of the household other than the chief wage earner and the chief wage earner is the person who is primarily responsible for dependents in the household, whose income is generally from employment or self-employment and usually exceeds income of any other adult member of the

household. Any question as to determination of chief wage earner should be resolved, if possible, on the basis of affording advantage to applicant or tenant.

(4) The personal exemptions and deductions for medical expenses as are actually taken by the taxpayer and the amounts received from Federal old age, survivors and disability insurance benefits.

(5) For the purpose of determining the eligibility for both admission and continued occupancy of tenant-cooperators, housing companies may, with the approval of the division, add the following amounts to the carrying charges listed in their schedules of income limits:

- (i) The consideration the cooperator paid for such share;
- (ii) any capital assessment and voluntary capital contributions approved by the division and paid by the cooperators to the housing company and;
- (iii) a proportionate share of the actual aggregate amortization paid on all existing and prior mortgages on the housing company during such period as shall be fixed by the housing company, to the extent not already included in the consideration paid for such shares.

(e) Income, as determined by the housing company, is subject to review by the division upon submission of applications for admissions or transfers. In the case of continued occupancy, income determination is subject to review by the division.

(f) Payments made to tenants for child care by State, county or other governmental agencies for care of foster children in tenant's/cooperator's homes constitute reimbursement to the foster parents for money expended by the foster parents on behalf of the child. Such monies are therefore not to be included when determining probable aggregate annual income.

Section 4:               Section 1727-2.4 is repealed and a new section 1727-2.4 is added to read as follows:

Section 1727-2.4.               Reporting of income and family composition.

It is the responsibility of applicants, tenants, or cooperators to report to the housing company their aggregate annual family income and family composition.

(a)               Reporting by applicant. Applicants must report to the housing company their aggregate annual family income and family composition at the time of application for an apartment, and if an apartment is not available at the time of application, he or she must also report aggregate annual income and family composition at the time of apartment availability.

(b)               Annual reporting by tenants or cooperators. Tenants or cooperators must report to the housing company their aggregate annual family income and family composition on an annual basis in the manner directed by the housing company.

(c)               Reporting of changes in family composition. Tenants or cooperators must advise the housing company in writing within 90 days following the addition or removal of any family member who resides in the dwelling unit, and such changes shall be also be reflected in any subsequent required annual income certifications.

(d)               Reporting requirements incorporated into lease. The reporting requirements set forth in this section shall be included as a provision in tenant's or cooperator's lease, but the absence of such a provision does not excuse the tenant or cooperator from the responsibility of compliance.

Section 5: Section 1727-2.5 is amended to read as follows:

Section 1727-2.5. Income reexamination procedure — annual and interim changes.

(a) Annual income reexamination procedure.

(1) [Reexamination of eligibility for continued occupancy is to be conducted as soon as possible after the end of each calendar year.] Following the end of each calendar year, the division will issue a memorandum which explains the annual tenant income reexamination procedure set forth in this chapter, the affidavit forms to be used, and the deadlines involved. [Each tenant or cooperator should receive one copy of instructions for completing forms and two copies of "Occupant's Certification of Income." Forms should be returned to housing company within time specified, such requirement to be clearly stated on tenant's instruction sheet.] Follow-up by the housing company should be made of any [forms] income affidavits not returned on time.

(2) [Upon receipt of form from tenant, form] The income affidavit should be carefully reviewed. If the affidavit reflects a change in household composition from the prior year's affidavit, documentation should be requested by the housing company. The division will refer income reported by residents who provide social security numbers to the NYS Department of Taxation and Finance for verification. However, income documentation by the housing company is required in the following circumstances:

(i) if certain deductions are claimed, as indicated in the housing company and tenant instructions accompanying the memorandum, or

(ii) if a resident 18 years of age or older does not provide a social security number or claims not to have filed a New York State income tax return.

If additional information or documentation is needed, a written request to that effect should be forwarded to tenant or cooperator and a copy of such request attached to "Occupant's [Certification] Annual Affidavit of Family Income" form. The d[D]ate on which information should be returned must be shown on notice and should normally be from 7 to 10 days from the date of the notice.

(b) Interim changes in rent. Interim changes in rent to reduce or remove surcharges should be made, if required, only in the following circumstances:

(1) tenant or household member [of family] is placed upon public assistance [by department of welfare];

(2) a full-time employed household member permanently leaves the [family] apartment;

(3) death or retirement of a household member [of the family] who had income; or

(4) [long-term] unemployment of a household member [of the family] which has been continuous for at least three months

Section 6: Section 1727-2.6 is amended to read as follows:

Section 1727-2.6. Tenant's refusal to cooperate in income determination.

(a) The failure, neglect or refusal of a tenant[/] or cooperator to furnish information concerning [his] their income or that of any household member [of his household], or to cooperate in the verifying of such reported income, will be assumed to indicate excess income. In such cases, rent will be raised to the maximum in the surcharge schedule. However, upon submission of an affidavit of income and/or of proper documentation, surcharges, if any, will be assessed on basis of verified income, with the effective date of any rent change to be the first of the month following the month in which the affidavit of income and/or proper documentation had been filed with the housing company. In no event will credit be given for excess surcharges already assessed as a result of failure, neglect or refusal of tenant[/] or cooperator to cooperate in income determination as set forth in this section.

(b) Upon proper verification of income, per procedures outlined in section 1727-2.3 of this Subpart, if it is determined that tenant[/] or cooperator, or any household member [of his household], willfully

misrepresented any information, then the housing company shall calculate surcharges in accordance with surcharge schedule and assess such surcharge, as rent, each month, retroactive to the initial month in which such surcharges should have been paid. A housing company shall charge such tenant[/] or cooperator a fee of \$150[75] in payment for the expenditure of housing company time and labor incurred to determine the true income of the tenant[/] or cooperator.

(c) In the event a tenant[/] or cooperator, or any household member [of his household], has indicated that [he has not filed] either a Federal income tax return or a New York State income tax return for the year in question has not been filed, and subsequent verification procedures show that such a return was filed, the procedures set forth in subdivision (b) of this section are to be followed by the housing company.

(d) In no case shall the housing company waive the provisions of subdivisions (a) through (c) of this section. [However, where special circumstances pertain, applications may be made, on a case-by-case basis, by the housing company to the commissioner for a waiver of any of these subdivisions.]

Section 7: Section 1727-2.8 of subpart 1727-2 of this Part is repealed, and a new section 1727-2.8 is hereby adopted to read as follows:

Section 1727-2.8. Occupancy standards.

(a) Apartment assignments must conform to the following occupancy chart provided such assignment does not violate federal, state and local building, health, safety and fair housing laws:

Apartment Size	Household Size for admission (Minimum-Maximum)
Studio	1-2
1 Bedroom	1-2
2 Bedroom	2-4
3 Bedroom	4-6
4 Bedroom	5-8
5 Bedroom	7-10

It is the housing company's responsibility to verify household composition. For both new admission and transfer applications, the members of the applicant's household must be residing together and must meet the applicable household size requirements at the time of application and at the time of apartment availability. Nevertheless, when appropriately documented, a child subject to a joint custody agreement who lives with the family 50 percent or more of the time, or a child away at school, may be included in the household count.

(b) Exceptions to the minimum household size in the above schedule may be permitted in the following circumstances:

(1) To encourage downsizing from underutilized units, a transfer to a smaller apartment may be permitted even if the household size is less than the minimum. A housing company may create a plan, with the division's approval, to provide additional incentives for such downsizing.

(2) If no applicants on the waiting list meet the occupancy standard for an apartment of a particular size, despite active marketing efforts, the apartment may be offered to applicants eligible for the next smaller sized apartment in chronological order based on application date. In such cases, it will not be counted as a refusal if the applicant declines the larger apartment.

#### Subpart 1727-3 of Part 1727

Section 1: Subpart 1727-3, is renamed as follows:

Subpart 1727-3. LEASING[; RULES AND REGULATIONS OF] AND TENANCY

Section 2: The title of the first subsection of subpart 1727-3, (i.e. "LEASING PROCEDURE") is repealed.

Section 3: Section 1727-3.1 is amended to read as follows:

Section 1727-3.1. General.

(a) A lease for the apartment being assigned an eligible [family] household or person will be executed before that [family] household or person takes possession. The standard form of lease will be prepared in duplicate, one copy of which shall be given to the lessee. [The signatures] If there is more than one head of household, the signatures of [both husband and wife] each should be required, although possession may be granted on one signature. A board member or the manager shall sign for the housing company.

(b) Leases shall be executed at initial admission to project [or] upon transfer [of] to another apartment, and upon succession.

Section 4: The following amendments are made to the title and subdivisions (a) and (b) of section 1727-3.2:

Section 1727-3.2. [Initial date and duration of lease] Terms of lease.

(a) Leases shall commence on the first day of the month and shall not exceed 36 months' duration. Where a tenant or cooperator takes possession after first day of month, the lease shall show a term starting as the first day of the following month.

(b) A full month's rent should always be collected prior to admission, regardless of the day of the month a tenant or cooperator takes possession. Necessary adjustment to reflect partial month's rent should be made in following month.

Section 5: Section 1727-3.3 is amended to read as follows:

Section 1727-3.3. Rent entered on lease.

(a) Rent entered on the lease form shall be actual rent, including surcharges if any, being assessed tenant or cooperator at time lease is signed. Any later increase or decrease from this actual rent resulting from either a change in tenant's or cooperator's income or a duly authorized general rent increase, shall be [handled by a rent change authorization or by a rider attached to the lease] in accordance with the requirements of this chapter.

(b) In the event a two-stage increase in rents or carrying charges has been granted, one or both of which stages are not yet in effect, the housing company shall so notify the prospective tenant or cooperator, in writing, prior to the signing of the occupancy or lease agreement. The notice shall detail the revision of rent or carrying charges, and the effective date or dates thereof. [The lease or occupancy agreement shall also reflect such increase or increases and the effective date or dates thereof. A copy of the written notice mentioned hereinabove shall be attached, as a rider, to the lease or occupancy agreement.]

Section 6: Section 1727-3.4 is repealed, and section 1727-3.5 is renumbered as 1727-3.4, and, as amended, reads as follows:

Section 1727-3.4. Leasing interview.

At time of lease signing, tenant or cooperator should be informed of [his] their rights and obligations under the lease, and advised of the rules and regulations of tenancy. [Information should be available on activities conducted in project, location of schools and churches, necessity for notifying post office as to address change, and any other matters which might be helpful in his adjustment to his new home. Finally, he should be urged to ask any questions he might have. A prospective tenant or cooperator shall be advised in writing, prior to the execution of a lease or occupancy agreement, of any pending rent increase formally submitted to the Division of Housing and Community Renewal.]

Section 7: Section 1727-3.6 is repealed

Section 8: Section 1727-3.6 is renumbered as section 1727-3.5.

Section 9: The title of the second subsection of subpart 1727-3, (i.e. “RULES AND REGULATIONS OF TENANCY”) is repealed.

Section 10: Section 1727-3.10 is renumbered as section 1727-3.6, and amended to read as follows:

Section 1727-3.6. Tenancy General.

(a) Rules [and regulations] of tenancy should be established by the housing company to provide reasonable control over tenant or cooperator actions which might infringe on rights of other tenants or cooperators to peaceful possession of their apartments or tend to impair residential character of [project] housing development.

(b) [Suggested rules and regulations are available from the division, but they should be reviewed and modified to meet local conditions. A copy of the rules and regulations adopted by the company is to be filed with the division.]

[(c)] [Any rule or regulation so established is subject to the written approval of the commissioner.] No such rule [or regulation] may become effective until it has been approved by the [commissioner] division. All such rules shall be submitted to the division for review and approval. If the division does not approve or reject such rule either ninety days after full and proper submission of the rule or submission of any further document or information requested by the division, whichever is later, the housing company may implement such rule until it receives a division determination to the contrary. When any rule [or regulation] has been approved in writing by the [commissioner] division or ninety days has elapsed without a division determination [as provided in this subdivision, it is then to] such written notice shall be included in any subsequent lease or occupancy

agreement with the cooperator or tenant, and is not effective as to such cooperator or tenant until it actually appears in a lease or occupancy agreement with said tenant or cooperator.

Section 7: Section 1727-3.11 is repealed

Subpart 1727-4 of Part 1727

Section 1: The title of the first subsection of subpart 1727-4, (i.e. “RENT DETERMINATION”) is repealed.

Section 2: Section 1727-4.1 has been amended and incorporated as part of subsections (b) through (g) of Section 1727-2.1

Section 3: Section 1727-4.2 has been renumbered as section 1727-4.1 and has been amended to read as follows:

Section 1727-4.1. Rent schedules.

(a) Rents or carrying charges are determined by reference to rent schedules approved by the [commissioner] division, pursuant to paragraph (c) and the surcharge schedule shown in subdivision (d) below.

[These rent schedules are known as schedule A, which lists admission rents, and schedule B, which lists continued occupancy rents for families whose incomes have increased by more than five percent above admission limits].

(b) After ascertaining probable aggregate annual family income, less permissible deductions, reference to these schedules, as applicable, will show rent to be charged.

(c) Rent schedules are prepared by the housing company, subject to division approval, provided that if such approval is not issued within ninety days from submission of all required materials, such

schedules shall be deemed approved. Such schedules should provide sufficient income to meet the costs of efficient project operation, including reasonable reserves and debt service.

(d) Unless the division has ordered otherwise, t[T]he following schedule shall be used to determine surcharge rentals:

Income	Rental
(in percent of current maximum admission limit for apartment)	(in percent of current admission rental for apartment)

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Greater than	Up to and including	Limited profit and limited dividends[*]
0	105	100
105	110	105
110	115	110
115	120	115
120	125	120
125	130	125
130	135	130
135	140	135
140	145	140
145	150	145
150	—	150

[\* See sections 1728-2.11 and 1728-2.27 of this Subtitle.]

Section 4: Subsection (a) of section 1727-4.3 has been relocated into section 1700.2(a)(1).

Section 5: Subsections (b) of section 1727-4.3, has been amended and relocated into section 1700.2(a)(17).

Section 6: Subsections (c) of section 1727-4.3, has been amended and relocated into section 1727-2.3.

Section 7: The title of the second subsection of subpart 1727-4, (i.e. “RENT COLLECTION”) is repealed.

Section 8: Section 1727-4.10 is repealed and a new section 1727-4.10 is hereby adopted to read as follows:

(a) A rental housing company may require tenants to pay a security deposit in advance as a condition of occupancy to insure faithful compliance with the terms of the lease and the rules and regulations.

(b) Security deposits shall be placed in separate interest-bearing accounts. Such money, with interest accruing thereon, shall continue to be the money of the tenant making such deposit and shall be held in trust for them by the housing company and not mingled with other funds.

(c) The tenant shall be notified in writing of the name and address of the bank in which the security deposit is being held and the amount of the security deposit.

(d) The security deposit plus interest which has accrued since the date of the previous annual payment but less any deductions for rent due, loss or damage to property, or other charges, shall be returned to the tenant as soon as possible after the apartment is vacated. (See Appendix S-8, *infra*, Exhibit 34.)

(e) The housing company shall be entitled to receive, for administration expenses, the sum of one percent per annum of the security money so deposited. The balance of the interest credited by the banking organization shall be annually paid to the person making the deposit of security money.

Section 7:           Section 1727-4.11 is renumbered as section 1727-4.2 and is amended to read as follows:

Section 1727-4.2.           [Tenants in occupancy] Rent Collection.

(a)           [Payment of rent promptly by tenants can be made a matter of habit. At time of prospective tenant's interview, and thereafter as necessary, manager should stress emphatically that rent is payable on first day of month.]

[(b)] In the event that the rent payment is not received promptly, [a three-day notice should be served no later than 10th of month. At expiration of three-day period,] summary proceedings should be initiated. [Under supervision of counsel, precept and petition may be prepared by the manager or a member of his staff. Counsel for company should continue to prosecute proceeding unless full payment from tenant has been received.]

[(c)b]       The tenant or cooperator [Tenant] may be charged for service and filing fees and attorney fees in connection with such proceedings, as well as any court costs authorized under the law. Where the lease or rules and regulations do not clearly set forth this fact, they should be revised to include such provision.

[(d)c]       It is the responsibility of the [manager] housing company to see that proceedings are diligently followed, to point of eviction if necessary, and that counsel pursues collection of any judgment rendered by the court.

[(e)d]       Charges may be imposed for unusual administrative costs caused by repeated negligence or willful acts of tenants or cooperators and charged as additional rent. However, such charges may not be imposed without prior approval of the [commissioner] division.

Section 8:           Section 1727-4.12 is renumbered as subparagraph (e) of section 1727-4.2 and is amended to read as follows:

(e)           Where a tenant has vacated, whether voluntarily or involuntarily, it is still the responsibility of the [manager and counsel] housing company to locate such tenant and to collect all sums due

the company. [In achieving this end, consideration should be given to utilizing the services of a credit bureau to locate a vacated tenant, ascertain his current employment and discover available assets, if any. Judgments should be secured, and garnishees placed if feasible.]

Section 9: Section 1727-4.13 is renumbered as section 1727-4.3 and is amended to read as follows:

Section 1727-4.3. Write-offs of uncollectible accounts.

(a) [Every] Reasonable efforts should be made by [manager and counsel] the housing company to locate the tenant, discover [his] the tenant's available assets and collect the indebtedness, before recommending a vacated tenant's accounts receivable as a collection loss write-off.

(b) Where collection efforts on the part of the housing company [and counsel] have not been successful, [division approval to] the housing company may turn over uncollected accounts to a collection agency [may be obtained on request. The agreement between the company and the collection agency must be approved by the division].

(c) Where [all] efforts [as outlined above] prove to be unsuccessful and an account appears to be uncollectible, write-off should be handled as follows:

(1) An individual tenant's [A] accounts receivable up to \$[300] 5,000 may be written off at discretion of [project manager] housing company.

(2) [Accounts receivable from \$300 to \$1,000 may be written off by resolution of company acting upon recommendation of counsel.]

[(3)] An individual tenant's [A] accounts receivable in excess of [\$1,000] \$5,000 may be written off only after approval by the division. Requests for such approval must be supported by the following:

(i) detailed description of collection efforts made by the housing company [and counsel];

- (ii) summary of credit report covering each case giving pertinent facts upon which a decision as to uncollectability can be based; and
- (iii) recommendations of housing company counsel[; and]
- [(iv) resolution by board of directors requesting approval for write-off].
- (4) Except for cases of fraud and misrepresentation, housing company counsel [to company] may be permitted to [compromise and] settle [all] accounts of vacated tenants [turned over to him] regardless of the amount involved when such [compromise and] settlement [are] is of an urgent nature and [are] approved by the board of directors. The division must be advised of such settlements in cases where indebtedness exceeds [~~\$1,000~~]\$5,000. No write-offs can be made without division approval where rent was payable by a former director of the housing company or any other individual who had or has a position or relationship identified in the identity of interest provisions of this chapter.

Subpart 1727-5 of Part 1727

Section 1: Paragraph (1) of subdivision (a) of section 1727-5.2 is amended to read as follows:

Section 1727-5.2. Termination by tenant.

(a) Rental developments.

(1) Tenants intending to vacate prior to expiration of lease term should be required to give at least one month's advance notice of such intent in writing. [It is suggested that a form, "Notice of Intent to Vacate" be used; such form must be signed by tenant. If possible, management should obtain reason for vacating.]

Section 2: Paragraph (3) of subdivision (a) of section 1727-5.2 is amended to read as follows:

(3) Possession of apartments abandoned by tenants may be recovered by the housing company through applicable legal proceedings. [If tenant has left any possessions or if there is any doubt as to whether apartment has actually been abandoned, company's counsel should be contacted for advice as to appropriate action.]

Section 3: Subdivision (b) of section 1727-5.2 is amended to read as follows:

(b) Cooperatives.

[Surrendering of possession by cooperator involves a procedure somewhat different from that used in the case of a rental tenant. The cooperator is a stockholder of a corporation and as such, has certain rights, duties and responsibilities.] The procedure to be employed for termination of a cooperator's [to terminate his] tenancy is set forth below.

(1) [Stockholder] Cooperator offers, in writing, [his] the stock for sale to the corporation or its designee, pursuant to the provisions of the company bylaws and occupancy agreement.

(2) This offer, which shall remain open for 90 days, shall constitute the [corporation] mutual company becoming an agent for the sale of the stock. A nominal fee may be charged by the mutual company, subject to division approval, for acting in the capacity of the agent for the stockholder.

(3) Acceptance of the offer by the [corporation] mutual company shall be indicated in writing [before the expiration of 90 days. The stockholder shall transfer his shares to the corporation and the corporation] which will then [check out] closely inspect the apartment to determine damage beyond normal usage; any costs involved for restoration, or unpaid charges are deducted from the equity due the cooperator.

(4) [Corporation] The mutual company shall enter transfer of stock on its books and arrangements shall be made for surrender of apartment.

(5) [Stockholder] Cooperator thereafter surrenders possession of apartment at agreed time.

(6) If no waiting list exists and if the mutual company [corporation] cannot arrange for stock sale within 90 days, [tenant may then sell his shares] the mutual company must advise the cooperator that the shares may be sold on the open market, to any person acceptable to the [corporation] mutual company, subject to income provisions for admission, and approval of the [D]division [of Housing and Community Renewal].

(7) [Stockholder] The cooperator shall continue to be responsible [to the housing company] for all carrying charges and utility charges of said apartment for 90 days from the date the apartment was surrendered in accordance with this section or until the carrying charges and utility charges are assumed by a new [stockholder] cooperator, whichever is earliest. Such charges may be deducted from the sums paid by the [stockholder] cooperator for shares in the company.

Section 4: Paragraph (1) of subdivision (c) of section 1727-5.2 is amended to read as follows:

(c) Resale of cooperator's apartment.

(1) All mutual companies [limited-profit housing companies organized and existing on or after July 6, 1971, as well as those limited-profit housing companies organized prior to such date which have amended their bylaws to conform to section 31-a of the Private Housing Finance Law, all mutual limited-dividend housing companies organized and existing on or after September 27, 1975, as well as those limited-dividend housing companies organized prior to such date which have amended their bylaws to conform to section 85-b of the Private Housing Finance Law, and all other limited-dividend housing companies,] are required to permit a retiring [shareholder] cooperator to sell [his] shares at a price not to exceed the

consideration he actually paid for such shares plus, where not already included in the consideration so paid by the retiring [shareholder] cooperator:

Section 5: Subparagraph (i) of paragraph (1) of subdivision (c) of section 1727-5.2 is amended to read as follows:

(i) any capital assessments and voluntary capital contributions, as approved by the [commissioner] division, and actually paid by the retiring [shareholder] cooperator to the corporation; and

Section 6: Paragraph (2) of subdivision (c) of section 1727-5.2 is repealed:

Section 7: Paragraph (3) of subdivision (c) of section 1727-5.2 is renumbered as paragraph (2) of subdivision (c) of section 1727-5.2 and is amended to read as follows:

(2) The resale price shall not involve any funds of the [housing] mutual company, which will only act as an agent between the seller and the buyer. No payment shall be made to the retiring [shareholder] cooperator until the buyer's payment has been received and collected. Any obligation of the retiring [shareholder] cooperator to the mutual company should be resolved before payment is released [to him].

Section 8: Paragraph (4) of subdivision (c) of section 1727-5.2 is renumbered as paragraph (3) of subdivision (c) of section 1727-5.2 and is amended to read as follows:

(3) The eligible applicants on the [project] waiting list shall be canvassed in accordance with the procedures outlined in Subpart 1727-1 of this Part[, tenant selection procedure] or, if such a canvass proves unproductive, the shares may be offered to a purchaser acceptable to the [housing] company and the [commissioner] division.

Section 9: Paragraph (5) of subdivision (c) of section 1727-5.2 is renumbered as paragraph (4) of subdivision (c) of section 1727-5.2 and is amended to read as follows:

(5) A [housing] mutual company may never pay a retiring [shareholder] cooperator an amount in excess of par value for shares it may purchase in its own name.

Section 10: Paragraph (6) of subdivision (c) of section 1727-5.2 is renumbered as paragraph (5) of subdivision (c) of section 1727-5.2 and is amended to read as follows:

(6) A [housing] mutual company may assess a purchasing [shareholder-tenant] cooperator a reasonable administrative charge for the preparation and processing of [his or her] purchase documents, to be established by the board of directors of the [housing] mutual company, [and to become effective upon] subject to the written approval [thereof by] of the [commissioner] division.

Section 11: Section 1727-5.3 of subpart 1727-5 of this Part is repealed, and a new section 1727-5.3 is hereby adopted to read as follows:

Section 1727-5.3 Termination by housing company.

(a) Grounds. In addition to non-payment of rent, an action or proceeding, which must be pleaded and proven in a court of competent jurisdiction, may be commenced against a tenant, cooperator, or other individual to obtain possession of an apartment only on the following grounds:

- (1) Tenant, cooperator, or other individual commits or permits a nuisance in the apartment.
- (2) Tenant, cooperator, or other individual violates a substantial agreement, covenant or obligation of the lease, or fails to comply with any substantial provision of the by-laws, subscription agreement or other governing document.
- (3) Tenant, cooperator, or other individual harbors a dog, cat or other animal in the apartment in violation of the by-laws, subscription agreement, or other governing document.
- (4) Tenant or cooperator refuses to execute written extension agreement or renewal of lease.
- (5) Tenant, cooperator or other individual refuses reasonable access to housing company.
- (6) Income of tenant, cooperator or other individual (i) exceeds amount permitted by law or (ii) he or she refuses to divulge his or her true income or that of other persons residing in the apartment.
- (7) Tenant, cooperator, or other individual willfully misrepresented or concealed any material fact which would affect eligibility for admission or continued occupancy or rent or maintenance charges to be paid.
- (8) Tenant, cooperator, or other individual obtained occupancy or continues in occupancy of a dwelling unit in any manner not in conformity with the provisions of this Part, or with any other applicable statute or regulation.
- (9) Tenant, cooperator, or other individual obtained occupancy of a dwelling unit subject to regulation under this Part pursuant to the provisions of Section 1727-3.6 of this Part, whether or not such

individual signed a lease, and such individual fails to vacate the apartment immediately when employment by the housing company terminates.

(10) Tenant occupies a dwelling unit in a building operated by a housing company for the purposes of staff or student housing and (i) the tenant is no longer a staff member, employee, or student of a college, university, or hospital affiliated with the housing company, and (ii) the housing company requires the apartment for occupancy by a staff member, employee, or student of a college, university, or hospital affiliated with the housing company.

(11) Tenant or cooperator has vacated the dwelling unit or died, and an occupant remains in possession without having established the right to succession under Sections 1727-8.2 and 1727-8.3 of this Part.

(12) Tenant, cooperator, or other individual does not occupy the dwelling unit as his or her primary residence.

(13) Housing company is a mutual company, has permitted a tenant to occupy a dwelling unit on a rental basis, and now desires the dwelling unit for a cooperator, except where the project has been converted to cooperative ownership under Section 12(2-b) of the Private Housing Finance Law.

(14) The dwelling unit is used for illegal or immoral purposes, including but not limited to the unlawful trade, manufacture, distribution, storage, and/or sale of marijuana or any controlled substance as defined in Public Health Law Section 3306, and Penal Law Section 220.00.

(b) Procedure.

(1) Notice to cure. When eviction is sought on any ground under Sections 1727-5.3(a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6)(ii), and (a)(12) of this Part, the housing company shall serve the tenant or cooperator with a written notice to cure setting forth with specificity the violation alleged and stating that the violation must be cured within ten (10) days or eviction proceedings may be commenced. If the notice to cure is served by mail, the notice must specify that the violation must be cured within fifteen (15) days.

(2) Notice of termination. When eviction is sought on any ground under Section 1727-5.3(a) of this Part, the housing company shall serve upon the tenant, cooperator, or other individual a notice of

termination setting forth the ground for eviction, the facts supporting such ground, and the date for surrender of possession. No court proceedings shall be commenced until the time to surrender possession has expired and possession has not been surrendered. Any petition to recover possession should include an affirmative statement that the housing company is organized under Article II or IV of the Private Housing Finance Law as applicable and subject to supervision by the commissioner. If the grounds for eviction require a notice to cure under Section 1727-5.3(b)(1) of this Part, no notice of termination may be served until the time to cure has expired and the violation has not been cured.

(c) Acceptance of rent after service of notice of termination. In cases in which an appeal is filed under Section 1727-8.5(c) of this Part from the housing company's determination that the occupant is not entitled to succession under Sections 1727-8.2 and 1727-8.3 of this Part, the housing company may continue to collect rent or maintenance, without waiving its objection to possession, regardless of whether it has served a notice of termination under Section 1727-5.3 of this Part, until thirty (30) days after the commissioner has finally determined the appeal or petition.

#### Subpart 1727-6 of Part 1727

Section 1: Section 1727-6.1 is amended to read as follows:

Section 1727-6.1. Special services.

A housing company may furnish tenants or cooperators with special services not provided for in the lease, such as bus, laundry, television antenna or other services, but only upon such terms as the [commissioner] division may approve in writing. The approval of the [commissioner] division will be given only upon the express condition that such services, and all facilities used in connection therewith, will be made available to all tenants on equal terms and shall be self-sustaining.

Section 2: Section 1727-6.2 is repealed and a new section 1727-6.2 is added to read as follows:

Section 1727-6.2. Lease on commercial space.

(a) Where stores or other commercial facilities are rented by a housing company, they may be leased without approval of the division where (1) the rent is not less than projected as part of the commercial income in the last approved budget, (2) there is not an identity of interest or a contract or commitment in need of further supervision and (3) there is approval of the board of directors, housing company, and housing company counsel. The approval by the housing company counsel shall include review to assure that the division and any state mortgagee are additionally insured in amounts required by the division, and the division and such state mortgagee would be defended and indemnified.

(b) Commercial spaces may be rented to not-for-profit organizations for less than market rental if in the judgment of the board of directors such a rental will enhance the quality of life for its cooperators or tenants. A housing company must establish a uniform procedure for review of such rentals to assure their overall fairness. Any rental will require division approval where an officer or a member of such not-for-profit is a person who is identified in the identity of interest provisions of this chapter, or a former principal, member or employee of the housing company or its managing agent.

(c) Any proposed lease involving the installation of roof top antennas, communication equipment, or other building appenditures are subject to prior division approval.

Section 3: Section 1727-6.3 is amended to read as follows:

Section 1727-6.3. [Cooperators' advisory councils and t] Tenants' associations.

(a) Housing companies that [presently] have a [cooperators' advisory council, cooperators' advisory councils and] tenants' associations[, hereinafter called "council," or tenants' association, hereinafter called "association,"] shall notify all tenants in writing of the existence of this [organization] association and that the housing company [intends to] recognize this organization as the duly constituted [council or]

association of the [project] housing development [in accordance with section 32-a of the Private Housing Finance Law. The notice will state that s]. Such recognition [means] shall also mean that the housing company [management] will meet regularly with [the organization] association representatives to discuss matters relating to the [project] housing company. [It will further state that, i]In the event more than 10 percent of the tenant families of record object to this association [or council], the housing company shall conduct an election to determine representative status.

(b) Housing companies that do not have [councils or] tenant associations shall, upon receipt of requests by at least 10 percent of the tenant [-]families requesting formation of a [council or] tenant association, arrange for an election.

(c) [Under subdivisions (a) and (b) of this section, u] Upon certification by the housing company of a duly constituted [council or] tenant association, the [commissioner] division shall recognize said organization and shall direct the housing company to meet with the [council or] association on a regular basis.

(d) In the event that a housing company fails to hold an election, then the [commissioner] division, upon written request by at least 10 percent of the tenant [-]families, shall direct the housing company to hold said election.

[(e) Upon the election of a board of directors of a mutual company, the project cooperator's advisory council shall no longer be recognized.]

#### Subpart 1727-7 of Part 1727

Section 1: Subpart 1727-7 of Part 1727 is repealed.

#### Subpart 1727-8 of Part 1727

Section 1: The title of Subpart 1727-7 of Part 1727 is amended to read as follows:

Subpart 1727-8. **SUCCESSION [REGULATION] REQUIREMENTS.**

Section 2: Section 1727-8.1 is amended to read as follows:

Section 1727-8.1. General.

The rights of family members of tenants or cooperators who have requested to remain as the lawful tenant in apartments in projects developed under the Private Housing Finance Law are governed by [policies and procedures indicated in this section] this subpart, except in those instances where federal rules and regulations preempt [these regulations] the requirements of this subpart.

Section 3: Section 1727-8.2(a)(1) has been amended and renumbered as section 1700.2(2).

Section 4: Section 1727-8.2(a)(2) has been amended and renumbered as section 1700.2(7).

Section 5: Section 1727-8.2(a)(3) has been amended and renumbered as section 1700.2(4).

Section 6: Section 1727-8.2(a)(4) has been amended and renumbered as section 1700.2(14).

Section 7: Section 1727-8.2(a)(5) has been renumbered as section 1700.2(13).

Section 8: Section 1727-8.3 has been renumbered as section 1727-8.2 and has been amended to read as follows:

Section 1727-8.2. Vacating of apartment by tenant.

(a) Unless otherwise prohibited by occupancy restrictions based upon income limitations pursuant to Federal or State law, regulation[s] or other requirements of governmental agencies, [if the tenant has permanently vacated the housing accommodation, any member of such tenant's family, as defined in section 1727-8.2(a) of this Subpart, who has resided with the tenant in the housing accommodation as a primary residence for a period of not less than two (2) years, has been listed on the income affidavit and/or on the Notice of Change to Tenant's Family as required under section 1727-3.6 of this Part, or where such person is a senior citizen or a disabled person as defined in section 1727-8.2(a)(3) and (4) of this Subpart, respectively, for a period of not less than one (1) year, immediately prior to the permanent vacating of the housing accommodation

by the tenant, or from the inception of the tenancy or commencement of the relationship, if for less than such periods, may request to be named as a tenant on the lease and on the stock certificate;] if a tenant or cooperator has permanently vacated their dwelling unit, any family member, as defined in section 1700.2(7) of these regulations, who meets all of the following requirements shall be entitled to be named as a tenant on the lease and/or as a stockholder on the stock certificate of such unit. Such family members must have:

(1) \_\_\_\_\_ immediately prior to the permanent vacating of the dwelling unit by the tenant, occupied the dwelling unit with the tenant as a primary residence, either: (a) for a period of not less than two years, or, where a family member is a senior citizen or disabled person, for a period of not less than one year, or (b) if for less than such periods, then from the inception of the tenancy or commencement of the relationship; and,

(2) \_\_\_\_\_ established proof of such primary residency, which must include: (a) the listing of such person on all annual income affidavits, certifications or recertifications required to be executed and filed during the applicable period; and (b) such other evidence as establishes that such person actually occupies the dwelling unit for his or her own dwelling purposes and has an ongoing, substantial, physical nexus to the unit, which evidence may include, without limitation, certified copies of tax returns, voting records, motor vehicle registration, driver's license, school registration, bank accounts, employment records, insurance policies, and/or other pertinent documentation or facts. In the event that a tenant notifies the housing company of a change in family composition pursuant to section 1727-3.5 herein, such notice of change shall be effective as a substitute for the annual income affidavit until the next annual income affidavit must be filed. Tenants, cooperators, and persons seeking succession may only have one primary residence and must occupy the dwelling unit subject to this chapter as their primary residence.

(b) The minimum periods of required residency set forth in this subdivision shall not be deemed to be interrupted by any period during which [the] such family member[, who is listed on the tenant's income affidavit,] temporarily relocates because he or she:

- (1) is engaged in active military duty;
- (2) is enrolled as a full-time student;
- (3) is not in residence [at the housing accommodation] pursuant to a court

order not involving any term or provision of the lease, and not involving any grounds specified in the Real Property Actions and Proceedings Law;

(4) is engaged in employment requiring temporary relocation [from the housing accommodation];

(5) is hospitalized for medical treatment; or

(6) has such other reasonable grounds that shall be determined by the

[D]division upon application by such person.

(c) The housing company shall secure credible evidence of the tenant's removal from the [housing accommodation] dwelling unit and the surrender of the unit or the tenant's written declaration to vacate the unit prior to the consideration of reletting or succession to the [housing accommodation] dwelling unit.

Section 5: Section 1727-8.4 has been renumbered as section 1727-8.3 and has been amended to read as follows:

Section 1727-8.3. Special succession provisions in the event of the death of a tenant/cooperator.

(a) Where a tenant/cooperator has died, the lease and the shares of stock for such decedent's apartment shall be surrendered by the decedent's estate or survivors for redemption. The housing company upon written request received from any member of such tenant's or cooperator's family[, as defined in section 1727-8.2(a)(2) of this Subpart,] who has resided with the tenant or cooperator in the [housing accommodation] dwelling unit as a primary residence[, as defined in sections 1727-8.2(a)(5) and 1727-8.3,] and pursuant to the provisions of section 1727-8.3 and the Private Housing Finance Law, shall sell or transfer the shares and the lease to the [persons] family member as set forth in section 1727-8.3 [of this Subpart].

(b) In the event that there is a legal dispute involving the rightful ownership of the stock, pending a determination thereof by an appropriate tribunal or court of law, such [persons] family member as set forth in section 1727-8.3 [of this Subpart] shall continue to be permitted to reside in the apartment.

(c) If the appropriate tribunal shall determine that someone other than such [persons] family member as set forth in section 1727-8.3 [of this Subpart] is entitled to the ownership of the stock then, upon presentation of a court order or other valid evidence, such new owner shall be permitted solely to surrender the stock to the housing company for redemption pursuant to the applicable provisions of the Private Housing Finance Law. In such event, such [persons] family member as set forth in section 1727-8.3 [of this Subpart] in occupancy shall be afforded a reasonable opportunity to purchase the stock from the housing company for the price as authorized pursuant to the statute and regulations.

Section 6: Section 1727-8.5 has been renumbered as section 1727-8.4 and subdivisions (a), (c) and (e) have been amended to read as follows:

Section 1727-8.5. Action by housing company and by the division.

(a) Where a family member applies to the housing company for permission to remain in occupancy [as a tenant] the housing company, within 30 days of receipt of the application, shall act upon the application by either requesting the division to approve the application or by denying the application and notifying the applicant family member in writing of its determination.

(c) A family member applying to succeed to a lease, within 30 days of receipt of the written denial notice, may appeal to the Office of Legal Affairs of the division from such denial by the housing company, by sending the appeal to:

Division of Housing and Community Renewal

[One Fordham Plaza]

[Bronx, New York 10458]

25 Beaver Street

New York, New York 10004

Attention: Office of Legal Affairs

together with proof of service of a copy of such appeal upon the housing company. The appeal shall briefly set forth the reasons why the family member believes he or she is entitled to occupy the apartment and any errors or erroneous findings he or she believes are contained in the housing company's determination.

(e) In the event such family member is found by the division to be ineligible to remain in occupancy then such family member shall vacate the [housing accommodation] dwelling unit or the housing company shall proceed to terminate such occupancy pursuant to Subpart 1727-5 of this Part.

Section 7: Section 1727-8.6 has been renumbered as section 1727-8.5

Subpart 1728-1

Section 1:               The title of section 1728-1.1 and subdivisions (a) and (b) are amended to read as follows:

Section 1728-1.1.               [Statement of policy and g] General provisions.

(a)               It is hereby declared to be the purpose of this Subpart to formulate a systematic and objective budget and rent determination procedure; to assure that all parties affected by that procedure are afforded participation in the administrative process through access to information and opportunity to comment thereon; to encourage and promote openness in the administrative proceeding; to combine the housing company budget procedure with the rent determination process; to assure funding for sound maintenance of the condition and facilities of State-supervised projects; to fulfill statutory obligations involving a balancing process which protects the interests of the tenants and cooperators [(hereinafter referred to as "the residents")], the housing companies, the bondholders and the people of the State of New York; and to uphold the public policy as expressed in the New York State Constitution and the Private Housing Finance Law.

(b)               Budget preparation and rent determinations shall take place in accordance with the schedule prescribed in section 1728-1.2 of this Subpart. The housing company [("the company")] is not, however, precluded from making application for a rental adjustment at any other time, nor is the division limited in its authority, pursuant to law, to direct the making of such application [or, if application is not made, to initiate a rent proceeding, to issue an approved budget, to modify approved budgets at any time, including reallocation of any line item surpluses to any unfunded or partially funded items, including arrears], or to issue an order of the [commissioner] division adjusting rents consistent therewith. The procedures and time periods prescribed in section 1728-1.2 of this Subpart, except as otherwise prescribed by the [commissioner] division, shall, where applicable, govern such proceedings.

Section 2:                   Section 1728-1.2 is repealed and a new section 1728-1.2 is added to read as follows:

Section 1728-1.2.            Procedure and time schedules.

(a)                   Preparation and approval of biennial budget.

(1)                   The company shall submit a proposed budget for the two succeeding one-year periods, in a format prescribed by the division, at least 165 days prior to the commencement of the applicable two-year period. The division shall issue to the housing company a directive requiring such submission, together with necessary forms and instructions, at least 45 days prior to such deadline.

(2)                   If, based on an analysis of the proposed budget, the division finds that projected revenues for the two-year period will be sufficient to fund all housing company obligations, both current and arrears, without a rental adjustment, it shall grant approval to the housing company of the two one-year budgets. Such approved budget may be as submitted by the company, as modified by the division, or as prepared by the division, as the case may be.

(3)                   If the division finds that projected revenues for the applicable two-year period do not appear to be sufficient to fund all obligations without a rental adjustment, or if the company has applied for such an adjustment in connection with its budget submission, then:

(i)                   final approval of the budget shall take place upon conclusion of the rent determination procedure as set forth in subdivision (b) of this section; and

(ii)                   rental housing companies' tenants' associations, whose certification by the housing company has been approved by the division, will receive advance notification from the division of such pending procedure and be advised to implement the established procedure for retaining the services of an accountant.

(4)                   Where none of the factors listed in Section 1729-1.2(j)(1) through (8) are present, the projections by a housing company, other than a mutual housing company, do not result in an increase in rent or carrying charges that exceed the percentage increase, as indicated by the change in the

regional consumer price index for all urban consumers, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, under the sub-category of “Rent of primary residence,” as established the preceding October, (“CPI-U, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, Rent of Primary Residence, Not Seasonally Adjusted, 12 month percentage change for the 12 months ending October”), the division shall limit its independent projections of the proposed budget to utilities and insurance and those other budget items which in the experience of the division with such housing company: (1) are most susceptible to significant variations within the period covered by the proposed budget; and (2) would have a significant effect on any adjustment to rent or carrying charges.

(b) Rent determination procedure.

(1) Upon commencement of a rent determination proceeding, pursuant to paragraph (a)(4) or as otherwise specified in section 1728-1.1 of this Subpart, the division shall transmit to the housing company, for distribution to tenants or cooperators and any registered tenant association and posting in the project in such manner as it may prescribe, material relating to the proceeding. Such material shall include, among other items, the application prepared by the company, an explanation of the right of tenants or cooperators to participate therein, and an invitation for comments to be submitted to the division. Notwithstanding any provision of paragraphs (2)-(5) of this subdivision, section 87(b) of the Private Housing Finance Law shall govern with respect to limited dividend (article IV) housing companies.

(2) The division shall establish a period of at least 30 days during which tenants or cooperators, their representatives, and other interested parties, may comment upon the proposed budget and rent revision. This period shall commence upon distribution to residents and posting in the project of the material specified in paragraph (1) of this subdivision.

(3) In order to enable tenants or cooperators to more fully and effectively participate in the rent determination process, the division shall:

(i) authorize the employment of an accountant by a recognized tenants' association of a rental housing project in connection with such process, with the housing company

authorized and directed to pay for such service in accordance with a maximum fee schedule approved by the division:

(ii) assure full access on the part of tenants or cooperators or their representatives to the financial records of the company; and

(iii) schedule a conference with appropriate personnel of the division, the housing company, the tenants or cooperators, their representatives, interested public officials, and other interested parties, for discussion and analysis of the proposed rental adjustment and comments received thereon. In the event any of the parties to such conference, other than the division personnel, should make a request in writing within 15 days of the scheduled conference, the housing company shall provide and pay for a qualified interpreter for deaf persons to attend and translate for such deaf persons.

(4) Subsequent to the 30-day comment period and prior to the conference, the division will review all comments received with respect to the propriety of the proposed budget, the need for and amount of rent adjustment, the scheduling of any rent adjustment over the two-year budget period, and any other relevant issues.

(5) A rent determination shall be made unless the division otherwise orders based upon budget projections which shall take into account, among other factors, building conditions and services, economic impact on residents and marketability analysis. The determination shall be embodied in an order of the division, which shall establish rents and the effective date(s) of adjustment for each year of the two-year period.

(6) An order of the division adjusting rents shall be transmitted by the division to the housing company for distribution to the tenants or cooperators by the housing company pursuant to paragraph (7) of this subdivision. Copies of the approved budgets, reflecting the rent determination, will be issued to the housing company and posted in the project within five days of the issuance of the order.

(7) An order adjusting rents shall be transmitted by the housing company to all tenants or cooperators, in such manner as may be prescribed by the division. Such transmittal shall take

place, in the case of a rental project, at least 30 days prior to the effective date of the order, and, in the case of a mutual company, at least 5 days prior to its effective date.

Section 3:           Section 1728-1.3 is repealed and a new section 1728-1.3 is added to read as follows

Section 1728-1.3.           Computation of budget items.

(a)           General.

(1)           Housing companies are required to prepare budgets in accordance with schedules and accounting categories, and in formats, as specified by the division. In addition, to provide for the uniform calculation of certain items in companies' budgets, the division establishes standards and formulas for their computation and/or projection. .

(2)           The computation of certain major items of income and obligations is fixed by other means. Calculation of required debt service and debt service arrears is based on the debt service schedule(s) established pursuant to the terms of the mortgage(s). Other expense items, such as real estate taxes and water and sewer charges, are based on established rates and projections available from the municipality or other appropriate governmental entity.

(3)           There are three basic categories of housing company income: rental income, subsidy income, and other income.

(i)           Rental income consists of: (a) the scheduled rents for all residential apartments; (b) the scheduled rents based upon leases for commercial space and professional apartments; and (c) the scheduled rents based upon a lease of the net number of rented parking spaces.

(ii)          Subsidy income consists of subsidy payments paid to or on behalf of the housing company by the federal, state or local government.

(iii)         Other income consists of: (a) charges for tenants' or cooperators' use of air conditioners and appliances and (b) surcharge income, interest income and miscellaneous income, which are projected based upon the prior year's experience unless, upon assessment by the division of changed conditions, an adjustment to such rate or amount is found to be warranted.

(b) Maintenance and operating expenses.

Projections for each category of expense shall be made by applying adjustments for inflation to current expenditures, as revised pursuant to section 1728-1.2(a)(2) of this Subpart. The inflation adjustment factors, which shall be applied to each applicable individual category of expense, are derived from the United States Department of Labor Statistics New York-Northern New Jersey Consumer Price Index for all Urban Consumers, unless otherwise specified in this section or as determined by a supply or service contract, for the period of said contract.

(c) Fuel oil.

Projected costs of fuel oil will be calculated and revised monthly by the division based on an analysis of oil prices and/or oil price futures.

(d) Electricity, gas and steam.

Costs for these utilities shall be based on actual current expenses, adjusted by amounts to cover any rate adjustments which have been granted or are reasonably expected to be granted by the New York State Public Service Commission.

(e) Contingency reserve.

Payments into the contingency reserve shall be computed according to the following schedule:

Current balance as percentage of annual residential rent roll	Annual addition to reserve
Less than 10 percent	3 percent of annual rents
10 percent up to 15 percent	2 1/2 percent of annual rents
15 percent up to 20 percent	2 percent of annual rents
20 percent up to 25 percent	1 percent of annual rents
25 percent or more	No additional payments

If a company has no vacancies for the last two years and currently has a waiting list for all size apartments, the above requirements will be reduced by one half of one percent in each category. Funding of the contingency reserve shall not be required if there are debt service arrears.

(f) Replacement reserve.

(1) Current.

Funding of the replacement reserve shall be based upon the division's analysis of a study of the housing company which shall be conducted by a qualified technical consultant. The requirements for the study will include a detailed physical examination of the housing company and preparation of a schedule of anticipated replacement needs and their cost. Pending the division's analysis of the funding requirements for each housing company, housing companies will be required to fund replacement reserves at the greater of (i) the current required annual contribution, or (ii) 0.006 of the project's original construction cost.

(2) Arrears.

For purposes of computing the annual funding requirement for arrears in the replacement reserve:

(i) the required balance shall be the total of the amounts required by the division to be deposited in the replacement reserve fund from the inception of the project, plus all interest earnings credited to the replacement reserve fund; less the sum of the total amount authorized by the division as allowable charges against the replacement reserve fund, and the amount determined as the projected cost of essential corrective work which has been identified and which is eligible for funding in accordance with existing replacement schedules and guidelines. The division will provide an encumbrance form detailing the nature and estimated cost of the work;

(ii) the current available balance shall be the amount in the replacement reserve fund of the company, less the cost of the corrective work as identified in subparagraph (i) of this paragraph.

(iii) the arrears shall be the difference between the amount computed in subparagraph (i) of this paragraph and the amount computed in subparagraph (ii).

(3) The annual funding requirement for arrears in the replacement reserve shall be no less than the amount computed from the following schedule:

Arrears as percentage of required balance	Repayment period
25 percent up to 50 percent	6 years
50 percent up to 75 percent	5 years
75 percent or more	4 years

(4) Notwithstanding the preceding provisions of this subdivision, the annual requirement for replacement reserve arrears shall not exceed the provision for the current replacement reserve requirement used in the operating budget projection, unless the division shall otherwise determine.

(g) Working capital.

(i) Working capital is defined as the sum of: (1) operating cash (administration fund and managing agent's cash account) and (2) investments made from these funds; less the sum of current accounts payable (exclusive of debt service).

(ii) A budget provision to fund a working capital deficiency or, alternately, a provision to apply a working capital surplus to partially offset a projected budget deficit is permitted subject to the following restrictions:

(1) A working capital *deficit* greater than one half of one month's rent, computed pursuant to the above definition, is to be funded in the first year of the budget, dependent on the extent of the deficit, such that;

(a) where the deficit exceeds one month's rental income, the budget provision will be for the amount in excess of one month's rental income, but not less than one half of one month's rental income, or

(b) if the deficit exceeds one half of one month's rental income but does not exceed one month's rental income, the provision will be for the amount in excess of one half of one month's rental income.

(iii) The amount of a working capital surplus which exceeds one month's rental income may be applied in reduction of a budget deficit to the extent that such amount applied may not exceed 25 percent of the deficit, or 3 percent of the annual rent roll, whichever is greater.

(h) Debt service arrears.

Debt service arrears shall be funded in the budget projections at the lesser of: the total debt service arrears or an amount equal to the current debt service requirement, unless otherwise provided in an agreement restructuring the mortgage loan and approved by the division.

(i) Air conditioner and appliance charges.

The division shall periodically establish guidelines for charges for the use of various classes of appliances based upon rate and consumption data.

(j) Return on equity.

(1) Current.

Within reasonable limits an annual amount for return on equity shall be provided for in the budget at the rate stated in the share certificates and/or income debentures. In the case of partnerships, the rate shall be as set forth in the schedule of estimated annual expenses and income (schedule B) used at the time the initial rents for the housing development were set and included in the mortgage closing documents.

(2) Arrears.

The amount of arrears provided for in the budget shall not exceed the amount calculated for the current annual provision.

Section 4: Section 1728-1.4 is repealed.

Section 5: Section 1728-1.5 is repealed.

Section 6: Section 1728-1.6 is repealed

#### Subpart 1728-2

Section 1: The division of Subpart 1728-2 into two subsections is discontinued and the title of the first subsection of Subpart 1728-2 (i.e. "LIMITED PROFIT") is repealed.

Section 2: Section 1728-2.1 is amended to read as follows:

Section 1728-2.1. Books and records.

(a) Each housing company shall keep its books and records in accordance with [the Uniform Systems of Accounts for Limited Profit Housing Companies (see Subchapter D of this Chapter)] a chart of accounts as prescribed by the [commissioner] division, except those projects whose mortgages are federally insured by the Federal Housing Administration. Where mortgages are so insured, the books and records shall be kept in accordance with those requirements.

(b) Each housing company shall retain an independent certified public accountant [upon the signing of the construction contract]. However, no accountant shall be engaged without prior written approval

of the [commissioner] division. The request for approval shall state the audit procedure to be followed, the period of the engagement (ordinarily not more than one year) and the fee to be charged. [Payments for additional services shall also require prior written approval of the commissioner.]

Section 3:                   Section 1728-2.2 is amended to read as follows:

Section 1728-2.2.                   Reports.

(a)                   [Beginning with the quarter in which funds (equity or mortgage) are first received for the development of the project, e] Each housing company shall file with the division, in a format prescribed by the division, an annual certified statement covering its fiscal year, [and, if required,] Certified annual reports for all housing companies shall contain a review of, or statement on, internal controls. If directed by the division, quarterly unaudited financial statements shall be submitted for the other three quarters. Each such quarterly report shall be submitted over the signature of an authorized officer of the housing company, or the signature of the managing general partner if a partnership. Each annual financial statement shall be accompanied by a certificate of the housing company's independent certified public accountant[. During the development of the project, each such statement shall consist of a balance sheet, a detailed schedule of development costs, a schedule of contract awards and change orders approved by the division. (Funds which may be idle for an indefinite period shall be invested under the guidance of, and in such securities as are approved in advance by, the division.) An operating statement showing income and expenses shall be included beginning with the quarter in which tenants are first admitted to occupancy. The development cost and contract award schedules may be eliminated, upon certification of the final development cost by the commissioner] and filed within 60 days after the close of its fiscal year. [Each quarterly financial statement shall be filed within 45 days after the close of the period to which it relates. Each quarterly report shall include schedules of escrow funds and reserve funds.]

(b)                   [Beginning with the fiscal year in which tenants are first admitted to occupancy, each housing company shall also file an annual report for its fiscal year on forms approved by the division. Each such

annual report shall be acknowledged under oath by any two of the following officers of the housing company, i. e.: president, vice-president, treasurer or secretary or the signature of the managing general partner, if a partnership, and shall be submitted within 60 days after the close of the fiscal year.]

[(c)] Each housing company shall file with the [commissioner] division such other reports as the [commissioner] division may require from time to time.

Section 4:                   Section 1728-2.3 is repealed and a new section 1728-2.3 is added to read as follows:

Section 1728-2.3.                   Escrow funds and reserve funds.

(a)                   A bank account shall be opened in a local commercial bank insured by the Federal Deposit Insurance Corporation entitled as follows: "Name of company Operating Escrow Fund." A letter shall be obtained from the bank acknowledging its acceptance of the account, designating the exact name of the account and stating that deposits in the bank are insured by the Federal Deposit Insurance Corporation.

(b)                   Checks drawn on this account shall require the signature of one of several designated officers of the housing company and the counter signature of a duly authorized officer of the division. A certified copy of the housing company's resolution opening the bank account and a photocopy of the housing company's signature card filed with the bank, shall be submitted to the division.

(c)                   Into this account shall be deposited monthly "Escrow Funds" equal to one twelfth of the estimated annual charges for debt service, real estate taxes, water charges, sewer rents and insurance. The amount of the monthly deposit shall be determined by the division and shall be subject to periodic review.

(d)                   There shall be deposited monthly into the "Operating Escrow Fund Account" an amount to cover future painting and redecorating, contingencies, vacancies and collection losses and replacements. The amount of the monthly deposit shall be determined by the division and shall be subject to periodic review. The monies in this account shall be known as "Reserve Funds."

(e) All escrow, reserve funds and administrative funds not currently required, shall be invested. Such investments shall have the prior written approval of the division.

(f) Interest earned on all reserve fund investments shall be credited to the replacement reserve. Interest earned on escrow deposits representing debt service shall be credited to the escrow debt service account for such disposition as the division may decide. Interest earned on escrow fund investments excluding debt service investments shall be credited to operating income and may be employed for general corporate purposes.

(g) Reserve funds shall be applied and disbursed for such purposes and in such manner as the division may from time to time approve or direct.

Section 5: Section 1728-2.4 is repealed and a new section 1728-2.4 is added to read as follows:

Section 1728-2.4. Operating funds.

A bank account shall be opened in a local bank insured by the Federal Deposit Insurance Corporation entitled "Name of company Administration Fund." Into this account shall be deposited all rent receipts and other miscellaneous operating income. From this account shall be disbursed all expenses for current operations.

Section 6: Section 1728-2.5 is repealed and a new section 1728-2.5 is added to read as follows:

Section 1728-2.7. Payment of dividends, income debenture interest or return on equity.

No housing company shall pay any dividends on stock, interest on income debentures or return on equity without the prior written approval of the division. In no event shall approval be granted by the division

for an amount greater than the total of two years on any of the following in any one fiscal year: dividends on stock; interest on income debentures; or return on equity.

Section 7:           Section 1728-2.6 is repealed and a new section 1728-2.6 is added to read as follows:

Section 1728-2.6.                   Funds of the company.

Except as otherwise permitted by this chapter, funds of the housing company shall not be used for any purpose other than the ordinary operation of the project, without the prior written approval of the division. Corporate funds shall not be loaned or invested without the written approval of the division; no loans or advances shall be made at any time to officers, stockholders or employees.

Section 8:           Section 1728-2.7 is repealed and a new section 1728-2.7 is added to read as follows:

Section 1728-2.7.                   Salaries or fees to officers or directors.

No housing company shall pay any salaries or fees to any officer or director, without the prior written approval of the division.

Section 9:           Section 1728-2.8 is repealed and a new section 1728-2.8 is added to read as follows:

Section 1728-2.8.                   Distribution of rental surcharge income.

All surcharges imposed after June 30, 1981 shall be applied to the expenses of operation and management.

Section 10: Section 1728-2.9 is repealed and a new section 1728-2.9 is added to read as follows:

Section 1728-2.9. Reserves, sinking fund, net earnings and surplus accounts.

(a) Unless otherwise permitted by the division, each housing company shall set aside out of earnings a reserve for painting and decorating in amounts approved by the division. .

(b) Each housing company shall set aside reserves for replacement in the amount to be approved by the division

(c) All reserves established out of earnings shall be segregated from earned surplus on the balance sheet. The equivalent in cash shall also be segregated from operating funds on the balance sheet, and shall be maintained in separate bank accounts.

(d) All reserve and administrative funds, of whatever nature, not required currently, shall be invested in such securities as are approved by the division.

(e) No housing company shall enter into any agreement modifying or extending the terms of any mortgage on a project, or make any prepayments on account of any such mortgage, without first obtaining the written consent of the division.

(f) Before setting up a sinking fund for the retirement of income debentures and stock, the corporation must obtain the prior written consent of the division.

(g) Surplus shall be disposed of only in accordance with the provisions of article IV of the Private Housing Finance Law.

Section 11: Section 1728-2.10 is repealed.

Section 12: Section 1728-2.11 is repealed.

Section 13: The division of Subpart 1728-2 into two subsections is discontinued and the title of the second subsection of Subpart 1728-2 (i.e. “LIMITED DIVIDEND”) is repealed.

Section 14: Section 1728-2.20 is repealed.

Section 15: Section 1728-2.21 is repealed.

Section 16: Section 1728-2.22 is repealed.

Section 17: Section 1728-2.23 is repealed.

Section 18: Section 1728-2.24 is repealed.

Section 19: Section 1728-2.25 is repealed.

Section 20: Section 1728-2.26 is repealed.

Section 21: Section 1728-2.27 is repealed.

Subpart 1728-3

Section 1: Subpart 1728-3, previously Reserved, is repealed

Subpart 1728-4

Section 1: Subpart 1728-4 is repealed and a new Subpart 1728-4 is added to read as follows:

Subpart 1728-4.                    PURCHASES AND CONTRACTS.

Section 1728-4.1.                    General.

(a) Purchases and contracts for materials and services will be limited to those items needed for project operation.

(b) All purchases and contracts will be awarded on the basis of competitive analysis and bidding to the fullest extent possible. Unless otherwise directed by the division, no less than three bidders must be solicited by the housing company. The housing company shall include minority and woman owned businesses in the solicitation of bids for which they shall be given a full and fair opportunity to participate. The housing company shall make good faith efforts, in accordance with the regulations, to select such businesses in the award of contracts and subcontracts. Housing companies shall report annually on its utilization of minority and women owned businesses to DHCR.

(c) All purchases and contracts should be awarded to the lowest responsible bidder. Award to other than lowest responsible bidder must be supported and documented in files maintained by the housing company and shall be made available to the division on request. Where approval by the division is required for the purchase or contract, such documentation must be provided to the division at the time of submission for division approval of the purchase or contract.

Section 1728-4.2. Purchases and contracts of less than \$100,000

(a) Prior approval by the division is not required for purchases or contracts of less than \$100,000. Documentation of analysis and bidding for such purchases or contracts required by 1728-4.1 shall be made available to the division on request.

(b) Any change in the scope, price, or time of completion shall be made by a change order detailing the change, indicating whether cost is affected and, if it is, the amount of increase or decrease. Documentation of change orders for such purchases or contracts shall be made available to the division on request. Division approval is required if such change order brings the total purchase or contract cost to \$100,000 or more.

(c) Proof of progress payments with supporting documentation evidencing the propriety of such payment, including sign offs by any design professional retained by the housing company, shall be made available to the division on request.

Section 1728-4.3 Purchases and contracts of \$100,000 or more

(a) Prior approval by the division is required for purchases or contracts of \$100,000 or more in accordance with the following:

(1) Notification of intent to solicit bids, on a form supplied by the division, together with a detailed preliminary description of the items to be purchased or work to be contracted and estimated costs will be provided to the division for review and approval no less than thirty days before the projected date of such solicitation.

(2) The housing company's recommendation for award of contract will be forwarded to the division for review and approval prior to award, together with:

- (i) a listing of all bidders solicited,
- (ii) a tabulation of all bids received;
- (iii) copies of all bids received; and

(iv) a certification by each bidder on a form prescribed by the division, which discloses whether any board member, general partner, officer or employee of the housing company, and/or principal or employee of the managing agent, has or have a direct or indirect interest in the bidder or in the compensation to be received by the bidder pursuant to the proposed contract, and the nature of that interest and a questionnaire regarding prior experience and performance. Failure to accurately and fully complete this certification and the questionnaire may result in such penalties as are provided by law, result in the rejection of the bid, or termination of any contract and may be taken into consideration by the division in evaluating any future bid by such bidders.

(b) Upon approval by the division, the housing company will award the purchase or contract, with two copies of the executed contract being forwarded to the division for its files.

(c) The housing company's counsel will indicate on contracts of \$100,000 or more that counsel has reviewed the bids and contract documents. Such review shall include review for compliance with the requirements of this subpart.

(d) Any change in the scope, price, or time of completion will be made by a change order detailing the change, indicating whether cost is affected and, if it is, the amount of increase or decrease. Division approval is required for any such change order.

(e) Proof of progress payments with supporting documentation evidencing the propriety of such payment, including sign offs by any design professional retained by the housing company, shall be made available to the division on request, provided, however, that:

(1) no more than seventy-five percent of the full contract may be paid without prior division approval; and,

(2) the division must approve any final payment.

Section 1728-4.4 Occasional and continuing contracts and purchases

Any purchases, commitments, and contracts for occasional and continuing requirements which, based on the projections for the period of the most recently approved budget would result in an average annual expenditure of \$100,000 or more, must comply with section 1728-4.3 unless otherwise approved by the division.

Section 1728-4.5 Professional service contracts for architects, engineers, landscape architects, and environmental consultants

(1) Where the professional fee is anticipated to be \$25,000 or more, the consultant must be solicited through a request for proposals. Such request for proposals shall be supported by documentation which describes the scope of services to be provided, the funding source, solicitation methodology, and listing of the professional firms that will be solicited. Any resulting contract is subject to prior approval by the division. Subsequent to award, any change in the scope or price of the professional fee is subject to approval by the division.

(2) Where the professional fee is not anticipated to exceed \$25,000 a request for proposals is not required. Documentation describing the process of consultant selection shall be maintained on file by the housing company and shall be made available to the division upon request of the division. Subsequent to award, any change in price which will increase the professional fee to more than \$25,000 subject to approval by the division.

Section 1728-4.6 Contract documents

Notwithstanding the value of the purchase or contract, where any work involves the integrity of the building structure, building system, or site component, contract documents including plans or specifications for such work must be prepared by a licensed and currently registered engineer, architect, or landscape architect

specializing in the field for such work. Such contract documents must be reviewed by the division prior to the execution of any purchase or contract by the housing company.

Section 1728-4.7. Identity of interest

Notwithstanding any other provision of this chapter, any contract, purchase, or commitment which involves an identity of interest under sections 1725-6.1 or 1729-1.4 requires prior division approval of the contract and solicitation of bidders.

Section 1728-4.8. Commitments in need of further supervision.

Where the division determines that a specific contract, purchase, or commitment, or category of purchase, contract, progress payment, or commitment requires additional supervision, the division may order that a housing company follow alternative procedures for review and approval than otherwise required by this subpart.

Section 1728-4.9. Refinancing and preservation transactions.

Where a housing company refinances pursuant to part 1760 with a private lender that has its own procedures and safeguards to assure appropriate use of its funds with respect to any improvements it is funding, the division may upon written agreement with the lender modify the applicability of procedures pursuant to the subpart in light of such supervision. Where a housing company participates in a preservation transaction pursuant to part 1760 involving supervision of contracts, commitments, purchases, or other matters through another set of governmental procedures, the division may by written agreement modify the applicability of its procedures pursuant to the requirements of this chapter in light of such supervision.

Where a contract, purchase or commitment is funded in whole or in part by a grant administered by the division, notwithstanding any provision of this chapter, it must be bid, approved and reviewed by the division in accordance with any requirements set forth in the grant documents.

#### Subpart 1728-5

Section 1: Subpart 1728-5 is repealed and a new Subpart 1728-5 is added to read as follows:

#### Subpart 1728-5. INVENTORY CONTROL.

Inventory records will be maintained for appliances, office and maintenance equipment, tools and similar project property of a nonexpendable nature having a unit cost of \$500 or more.

#### Subpart 1728-6

Section 1: Subpart 1728-5 is repealed and a new Subpart 1728-5 is added to read as follows:

#### Subpart 1728-6. DISPOSAL OF EXCESS EQUIPMENT AND SUPPLIES.

Equipment and supplies which are no longer needed or useful to the housing company should be disposed of as quickly as possible.

Subpart 1729-1

Section 1: The title and subdivision (b) of section 1729-1.1 are amended to read as follows:

Section 1729-1.1. [Introduction] General.

(b) [For instances w]Where the division [identifies] determines that there is a need [to strengthen] for increased management capacity and/or to improve the efficiency of housing [development] company operations, the housing company may be required by the division to employ the services of a managing agent or additional staff with specific expertise.

Section 2: Subdivision (c) of section 1729-1.1 is repealed and a new subdivision (c) is added to read as follows:

(c) No later than January 1st of each calendar year, the housing company shall provide the division with a contact person's name, telephone number, fax number, e-mail address, and mailing address for each such housing company. Any change to this information during the course of the subsequent year must be provided to the division in writing within ten calendar days of such change.

Section 3: Section 1729-1.2 is repealed and a new section 1729-1.2 is added to read as follows:

Section 1729-1.2. Housing companies employing managing agents.

(a) All managing agents must be approved by the division and meet minimum eligibility requirements as follows:

(1) be a real estate broker in good standing duly licensed by the State of New York;

(2) furnish the housing company and the division with evidence that each person authorized to receive, handle or disburse any monies of the housing company is covered by a fidelity

bond, naming the housing company as beneficiary and equal to at least 25 percent of the annual rent roll. The bond shall be issued by an insured duly licensed by the Superintendent of Insurance of the State of New York to transact fidelity bond business in the State of New York and shall provide that any payment made thereunder shall be payable to the housing company. A copy of the bond shall be furnished to the commissioner and shall provide that the commissioner be given 15 days' written notice of any cancellation thereof. In lieu of a separate fidelity bond from the managing agent, the housing company may elect to provide the required coverage for the managing agent by the rider to its fidelity bond;

(3) provide the housing company and the division with a completed “Statement of Qualifications for Management Firm Seeking Owner/Agent Agreement”.

(4) submit to the housing company and the division a proposed management plan for the housing development which shall contain:

(i) the name, title, job description, qualification of the prospective salary of any site manager who will manage the project. The site manager must be certified, by a professional organization which certifies property managers;

(ii) an organizational plan to set forth lines of responsibility and authority among the managing agent and staff assigned to the housing development as well as housing company employees supervised by the managing agent;

(iii) the location of and telephone numbers for the managing agent site office and the hours and days of operation;

(iv) an operational plan to administer agent functions pursuant to subdivision (i) of this section which include marketing (selling or renting), physical maintenance, financial administration, resident relations and general administration;

(v) an affirmative action plan to ensure that employees are recruited, selected, and retained in such a manner as to ensure equal employment opportunities, and to require the agent to make all reasonable efforts to solicit bids from minority and women-owned business enterprises for

the services and/or purchases to be contracted for on behalf of the housing company and to make certain that such bids receive full and fair consideration;

(vi) a representation to comply with the Private Housing Finance Law and Part 1700 of this Title; and

(vii) a representation that any changes in the approved management plan must be approved by the housing company and the division.

(5) maintain an office or place of business within the State of New York at no cost to the housing company where it will keep all books, records, bills and other documents relating to the housing development. The management agent shall keep these records available for inspection and review during regular business hours by the housing company, the division or their designees; and

(6) submit a request for managing agent fees which shall not exceed the maximum fee established by the division.

(b) Selection of a qualified managing agent shall be subject to the approval of the division. Housing companies which elect to select or are required by the division to select a new managing agent, shall select the managing agent in accordance with the following competitive bidding procedure:

(1) the division shall make available bidding specifications to the housing company, which shall include the minimum eligibility requirements as set forth in subdivision (a) of this section;

(2) the housing company shall solicit bids, review bids, select a prospective agent and submit its selection to the division together with all bids;

(3) the housing company shall take affirmative steps to solicit bids from managing agents which are minority and women-owned business enterprises and make certain that such bids receive full and fair consideration; and

(4) the division shall review the bids, considering primarily the qualifications and quality of the bidders, and either approve the housing company's proposed agent or disapprove the agent and direct the housing company to select another agent from among those acceptable to the division.

(c) A housing company with the approval of the division may select a managing agent affiliated with the principals of such housing company without such competitive bidding as part of an overall plan for its preservation as affordable housing.

(d) For the purpose of setting forth the guidelines governing managing agent compensation, the following terms shall have the following meanings:

(1) Initial base rate shall mean a dollar amount per dwelling unit per month established by the division.

The initial base rate is subject to adjustment by the division either upon request or at the division's own initiative to reflect any changes in circumstances not reflected in the setting of the initial base rate.

(2) Percentage increment shall mean a percentage of the initial base rate or base rate, as the case may be, to be prescribed annually by the division, which will be the maximum percentage increase available to managing agents.

(3) Base rate shall mean the initial base rate plus earned percentage increments, if any.

(4) [Repealed]

(5) Marketing fee shall mean a fee to be established by the division, to compensate for the cost of marketing, selling and renting activities.

(6) Commercial and professional leasing fee shall mean a fee established by the division to compensate for the services of renting commercial and professional space.

(e) The monthly fee to be paid the managing agent shall be established by the housing company but shall not exceed the total of the initial base rate and the annual percentage increment. Upon the division's approval of a change in managing agent, the housing company may include such increment or increments in the base rate annual percentage which were not previously taken or earned by a managing agent.

(f) Where directed by the division, the managing agent fee shall be deposited in an escrow account to be withdrawn, for the purpose of compensating the managing agent, only upon the approval of the division.

(g) If the division determines that a full-time or part-time site manager is required to effectively carry out the prescribed managing agent functions, the site manager shall be employed by the managing agent. Unless the division directs otherwise, the agent shall be reimbursed by the housing company for up to 50 percent of either the manager's entire salary and fringe benefits or, in the event of a part-time site manager, a prorated portion of the salary and fringe benefits. The agent's reimbursement is subject to the division's determination that a site manager is needed and the division's approval of the manager's qualifications, salary and fringe benefits. Managing agents shall not be reimbursed, in whole or in part, by the housing company for salary and/or fringe benefit compensation in excess of the amounts approved by the division.

(h) If additional staff expertise is required to address the extraordinary needs of the housing development (e.g., a marketing specialist to reduce high vacancies), the staff shall be compensated by the housing company subject to the division's determination that additional staff expertise is needed and the division's approval of staff qualifications and compensation

(i) The managing agent shall enter into an annual agreement with the housing company pursuant to a contract in the form prescribed by the division and shall comply with the terms of the agreement which will include a division-approved management plan. The agent shall obtain the prior approval of the division for amendments to those components of the plan set forth in paragraph (5) of subdivision (a) of this

section. The agreement shall require managing agents to perform specified functions which shall include, but not necessarily be limited to, the following:

(1) Marketing, sales and renting:

(i) operation in accordance with a division-approved marketing and sales plan;

(ii) maintenance of waiting lists and selection of applicants in accordance with this Subchapter;

(iii) prompt restoration of vacated apartments and inspection of apartments after occupancy; and

(iv) compliance with division reporting requirements.

(2) Physical maintenance:

(i) maintenance of apartments, public areas, building components and grounds in accordance with division standards, local codes and ordinances;

(ii) maintenance of structures, elevators, heating systems, utility systems and refuse disposal systems to include adherence to preventive maintenance requirements and compliance with division reporting requirements, local codes and ordinances;

(iii) selection and supervision of contractual service providers in accordance with division guidelines and the agent's affirmative action plan.

(3) Fiscal administration:

(i) collection of rents, carrying charges and vacated arrears in accordance with division standards;

(ii) preparation of housing company budgets and rent applications in accordance with sections 1728-1.1, 1728-1.2 and 1728-1.5 of this Subchapter.

(iii) execution of the division-approved housing company budget in accordance with division policies and procedures;

(iv) compliance with federal requirements regarding subsidy programs;

(v) administration of all activities relating to resident security deposits in accordance with applicable statutes and division requirements;

(vi) prompt payment of all obligations, including accounts payable, wages and fringe benefits, operating escrows, debt service and return on equity; and

(vii) adherence to division purchasing and inventory procedures.

(4) Activities to promote effective relations with residents:

(i) periodic meetings with the leaders of duly organized resident associations;

(ii) posting a schedule of office hours to improve resident access to the site manager and other staff;

(iii) provision for emergency and off-hour services; and

(iv) make available division field reports, pertinent memoranda and other information to improve communications with residents.

(5) General administration:

(i) staffing in accordance with the approved housing company budget and management plan;

(ii) compliance with federal and division regulations governing resident income reviews; and

(iii) submission of all reports and maintenance of all files in accordance with division requirements.

(j) Unless the division determines otherwise, the managing agent shall be entitled, with the housing company's concurrence, to an annual renewal of its management agent contract and a percentage increment with the consent of the housing company without further review or approval of the division, effective

July 1 of each year. A division determination to require further review and approval prior to both renewal of the contract and receipt of the percentage increment annually shall be based on the division's analysis of various factors which indicate that there may be issues with respect to managing agent's performance. Although the existence of any of the listed factors may not necessarily be determinative, these factors may include:

- (1) High or increasing vacancy rate.
- (2) Major systems that require replacement, or major repairs.
- (3) Physical problems of a persistent nature.
- (4) A failure by the housing company to make required escrow reserve

deposits or make mortgage or loan payments.

(5) Failure to abide by regulations concerning admission or occupancy or variances between admission to or occupancy in the development and those entitled to such admission or occupancy pursuant to these regulations.

- (6) Failure to provide require or requested information to the division.

(7) The housing company or the agent have not met the contractual, statutory and/or managerial obligations and have not developed programs to address them.

(8) A failure by the managing agent to perform its functions in whole or in part in a manner in which the division ascertains is best for the housing company or its tenants or cooperators.

(k) The division may review the performance of a management agent at any time. In addition to reviewing the contract renewal and the annual percentage increment awarded, it is it is determined by the division that: (i) the agent has failed to comply with the management agreement; (ii) the agent's performance has not been satisfactory; (iii) the managing agent is failing to do that which is required by law, regulation, or division directive, then the following remedies are available:

- (1) The agent may not be awarded the annual fee increase.
- (2) The agent's fee may be reduced. Any reduction in fees may be imposed

by either the division or the housing company, subject to division approval.

(3) Pursuant to 1729-1.2(f) the housing company and managing agent may be directed to deposit a portion of the entire managing agent's fee as it is or becomes due in a restricted housing company account to be withdrawn only upon the approval of the division.

(4) The managing agent agreement may be terminated pursuant to 1729-1.

(1) The agreement between the managing agent and the housing company may be terminated by the following:

(1) by mutual consent upon 30 days written notice to the division;

(2) by the division, with cause, such termination to be effective immediately upon notice to the housing company and agent;

(3) by the division, without cause, upon 30 days written notice to the housing company and agent;

(4) by the housing company or the division effective immediately upon notice, in the event a petition in bankruptcy is filed by or against either the housing company or agent, or in the event that either should make an assignment for the benefit of creditors or take advantage of any insolvency act;

(5) by the managing agent effective immediately upon notice if the housing company shall fail or refuse to comply with or abide by any rule, order, determination, ordinance or law of any federal, state or municipal authority, upon giving 24 hours written notice mailed to the housing company at its address;

(6) by the housing company upon not less than 30 days written notice to the agent in the event of a bona fide sale or demolition of the property.

(7) by the housing company with cause upon prior approval by the division.

Upon termination, the managing agent shall promptly turn over to the housing company all project records, rent rolls, bills, cancelled checks, bank statements and all other papers in the possession of the agent which are owned by the housing company.

(m) Notwithstanding the above, the housing company may choose not to renew a managing agent contract upon its expiration on thirty days notice. However, a housing company may not exercise such notice until it has selected a new managing agent in accordance with the procedures set forth in these regulations and such agent has been approved by the division or the housing company has established to the division that exigent circumstances require a different basis for a more immediate selection. Where the managing agent contract is not renewed, it will be continued on a month-to-month basis at the existing rate of compensation until a new managing agent is selected.

(n) The division will advise the housing company and managing agent in writing in those instances where either a renewal of the agreement or the award of a percentage increment shall not be approved, or where the termination of the managing agent's contract is recommended. Upon receipt of such advice, the housing company shall either:

(1) select a new managing agent in accordance with subdivision (b) of this section;

(2) request the division to approve continuation of the present agreement on a month-to-month basis without the award of a percentage increment; or

(3) request the division, within 30 days from receipt of such advice, to reconsider and reevaluate the managing agent's performance based upon evidence submitted therewith. If the matter has not been resolved prior to the expiration date of the agreement, the division may approve a continuation of the existing agreement on a month-to-month basis without a percentage increment.

(o) Every managing agent agreement entered into by a housing company shall be deemed to incorporate the applicable provisions of this section.

Section 4: Section 1729-1.3 is repealed and a new section 1729-1.3 is added to read as follows:

Section 1729-1.3. Self-managed housing companies.

(a) The division may at any time request that a self-managed housing company submit the following for division review:

(1) the names, titles, job descriptions, qualifications of the staff who will manage the project and the prospective salaries of those staff who are paid directly in whole or in part with housing company funds:

(2) the site manager's certification by an organization which certifies property managers;

(3) an organization plan to set forth lines of responsibility and authority;

(4) an operational plan to administer functions which include marketing (selling or renting), physical maintenance, financial administration, resident relations and general administration;

(5) an affirmative action plan to ensure that employees are recruited, selected and retained in such a manner as to ensure equal employment opportunities and to require the housing company to make all reasonable efforts to solicit bids from minority- and women-owned business enterprises, for services and/or purchases to be contracted for on behalf of the housing company and to make certain such bids receive full and fair consideration;

(6) a representation to comply with the Private Housing Finance Law and Part 1700 of this Title; and

(b) If the housing company determines that it seeks to change from employment of a managing agent to self management, it must submit a management plan comprising all of the requirements in 1729-1.3(a) for division review and approval.

(c) The housing company shall carry out all required management functions specified in this Subpart.

(d) Housing companies shall be evaluated periodically by the division and shall be subject to any and/or all of the remedies authorized by the provisions of the Private Housing Finance Law and these regulations.

(e) The evaluations may examine all aspects of the housing company's performance of functions specified in this Subpart and the division standards promulgated pursuant thereto.

Section 5: Paragraph (3) of subdivision (b) of section 1729-1.4 is amended to read as follows:

(3) is designed to enable the housing company, in the event of an award to such a business, to adequately monitor the performance of the contract or transaction. [Where] If the housing company [cannot comply with the requirements set forth in paragraph (2) of this subdivision] does not intend to solicit bids, it must establish[, in addition to the requirements set forth in paragraphs (2) and (3) of this subdivision,] to the division that unique circumstances or emergency conditions render the use of a bidding procedure impracticable or inappropriate.

Section 6: Subdivisions (c) and (d) of section 1729-1.4 are repealed.

Section 7: A new section 1729-1.5 is added to read as follows:

Section 1729-1.5. Remedies

(a) If the division determines at any time that a housing company, its officers, directors, employees, agents, managing agent or project management of a self managed company have failed to comply with its agreements, these regulations, or division directives or if they are failing to or threatening not to do that which is required by law or regulation, the division may:

- (1) deny any annual percentage increment of the compensation of the managing agent;
- (2) reduce the compensation of the managing agent already in effect;
- (3) cause the discharge of the managing agent or employee of the housing company or managing agent;
- (4) cause the immediate suspension of any contract or purchase entered into by the housing company or its managing agent;
- (5) in the case of a self-managed housing company, revoke division approval of its self-management;
- (6) in the case of a managing agent, terminate the managing agent's agreement immediately or at the end of the current contract term;
- (7) take any such non-compliance into account in evaluating participation in other division-supported projects or activities;
- (8) direct the housing company or managing agent to deposit a portion of the fee, compensation or salary associated with project management as it is or becomes due in a restricted account to be withdrawn only upon approval by the division;
- (9) with respect to violation relating to tenant selection and eligibility, take over control of all internal and external waiting lists and have sole responsibility for the selection and approval of admissions and transfers
- (10) direct that a consultant chosen by the division be retained by the housing company to perform any of the functions otherwise required to be performed by a managing agent or by employees or contractors in a self-managed housing company. During the period that such function is performed by the consultant the project management fee shall be reduced accordingly;
- (11) direct that a full-time or part-time site manager be employed to effectively carry out prescribed project management functions. For a housing company employing a managing agent, such site

manager shall be reimbursed by the housing company for up to 50 percent of either the manager's entire salary and fringe benefits or, in the event of a part-time site manager, a prorated portion of the salary and fringe benefits;

(12) may assume sole responsibility for any of the functions otherwise required to be performed by a managing agent or by employees or contractors in a self-managed housing company. During such period of division control, the housing company shall compensate the division for all associated costs and any project management shall be accordingly reduced;

(13) with respect to warehousing as described in section 1727-1.5, directors, managing agents, or housing company employees may be held liable to the housing company for any rent losses incurred; and;

(14) subject the individuals or entity to such orders, directives, penalties, or remedies as are otherwise provided or allowed by law.

(15) remove any or all members of the Board of Directors and replace them.

(16) where a housing company has received an additional real property tax exemption from a municipality which is conditioned upon compliance with the applicable provisions of the PHFL and the applicable rules, regulations or other requirements of the division or U.S. Department of Housing and Urban Development or the term of any regulatory agreement or contract with which such housing company fails to comply, advise the city or municipality of such non-compliance and that such additional real property tax exemption should be terminated.

(17) Require a housing company to seek a certificate from the division that the division has no objection to the housing company commencing an eviction proceeding in a specific case or on any or all grounds specified in 9 NYCRR 1727-5.3.

(b) Prior written notice to the subject of such remedy shall be given by the division setting forth the nature of the violation and the applicable laws, rules, regulations, regulatory agreement or contract that has been alleged to be violated. Except in instances where an emergency situation affecting life, health, or

safety dictate otherwise, the subject of such remedy shall have no less than 15 days from the date of such notice to respond.

(c) At any stage of such a proceeding the division may:

(1) make investigations of the facts, conduct inspections, hold conferences, and require the filing of reports, evidence, affidavits, or other material relevant to the proceeding;

(2) forward to, or make available for inspection, by either an interested party, a witness or the subject of such remedy, any relevant evidence, and afford an opportunity to file a response thereto;

(3) for good cause shown, accept for filing any papers;

(4) require any person to appear or produce documents or both, pursuant to division directive or subpoena issued by the division;

(5) consolidate two or more such proceedings which have at least one ground in common;

(6) forward to the subject of such remedy a notice of action proposed to be taken;

(7) grant or order a hearing;

(d) The division, on such terms and conditions as it shall determine, may:

(1) Approve, grant, direct or deny such remedy in whole or in part;

(2) issue an order requiring such provisional or conditional remedy or further opportunity to cure such violation as the division deems appropriate;

(e) Where DHCR directs the implementation of 9 NYCRR Section 1729-1.5(a)(17):

(1) The housing company shall serve a copy of the petition upon the tenant affected in such manner as the division directs, prior to the filing of such petition with the Commissioner, which shall also contain proof of such directed service.

(2) The petition served upon the tenant will include a notice that tenant has no less than twenty (20) days from the date of service pursuant to (e)(1) of this Section within which to serve the Commissioner of Housing and Community Renewal and the housing company with a verified statement setting forth any objections he may have to the granting of the requested approval.

PART 1730            INSURANCE

Subpart 1730-1

Section 1:            Subpart 1730-1 is repealed and a new Subpart 1730-1 is added to read as follows:

Subpart 1730-1.            GENERAL.

(a) This Part outlines the insurance requirements of the division with respect to housing companies constructed under the limited profit and limited dividend housing programs. The housing company is responsible for having State-aided housing companies adequately covered at all times by necessary insurance and bonds, in accordance with the requirements set forth herein.

(b) The insurance coverages listed are intended to provide adequate protection against hazards. Exposures that develop, aside from those herein contemplated, shall be treated as they arise. Adequate protection must be maintained at all times.

Subpart 1730-2

Section 1: Subpart 1730-2 is repealed and a new Subpart 1730-2 is added to read as follows:

Subpart 1730-2. INSURANCE REQUIREMENTS.

(a) Automobile insurance.

(1) Any vehicle owned by housing company shall be covered by automobile liability insurance with a combined single limit (each accident) of at least \$1,000,000.

(2) For automobiles owned by employees and officers of housing company and used by them on housing company business, an automobile non-ownership liability policy shall be obtained, with combined single limit (each accident) of at least \$1,000,000.

(b) Property coverage.

The housing company shall obtain a fire and extended coverage policy in an amount equal to at least 90 percent of the insurable value of the project, and a policy to cover anticipated rental income on a 100 percent coinsurance basis.

(c) Liability.

Before taking over any portion of the project, the housing company shall obtain a liability policy, preferably the comprehensive general form, with limits of at least \$1,000,000 per occurrence/\$2,000,000 total aggregate for bodily injury or death. The policy shall include coverage for ownership, maintenance or use of premises, as well as all elevators located in project. The "caused by accident" phrase should be eliminated from the ensuring agreement and the word "occurrence" substituted.

(d) Fidelity Bond

Housing companies shall obtain a blanket fidelity bond with limits approved by the division. The housing company shall obtain a fidelity bond to cover every position in which an employee or agent has possession, custody or control of funds or property. The blanket position form of bond is preferable.

(e) Boiler.

(1) For projects where steam boilers are installed, the housing company shall carry boiler insurance. Projects using hot water boilers may obtain boiler insurance. Furnace explosion coverage need not be provided since it is available under the extended coverage endorsement attached to the fire policy.

(2) The amount of insurance to be carried, which shall be determined by the housing company and approved by the division, shall be sufficient to cover maximum probable damage to property of project and property of others that may be exposed to any accident occurring through operation of boiler equipment.

(f) Money and securities.

The housing company shall obtain coverage for loss of money and securities, both inside and outside the premises, in an amount sufficient to cover the full value of cash securities likely to be located on the premises at any one time.

(g) Self-insurance.

A housing company may, with the prior consent of the division, act as a self-insurer. No company shall transfer from or to a self-insurance program without the prior consent of the division.

(h) Insurance reserves.

Reserves shall be maintained for all insurance premiums on policies written for more than a one-year term.

(i) Insurance to be supplied by contractor, concessionaire, etc.

(1) In the event that repair, alteration, exterminating, or any other work or services shall be performed for the housing company, the company shall require all firms performing such operations to supply evidence that workmen's compensation and public liability insurance, with limits of at least \$1,000,000 per occurrence/\$2,000,000 total aggregate for bodily injury, are in force.

(2) The housing company shall require that certificates or copies of such policies be submitted as evidence that such insurance is in force. No contractor shall be allowed to commence operations until the housing company has satisfied itself that there has been compliance with this provision.

(3) Before any contractors commence construction operations and before materials are delivered to project site, a builder's risk policy must be secured. This policy shall either be obtained by housing company or supplied by contractor. Coverage for full insurable interest must be maintained at all times and shall include materials on project site. Either "completed value" or "monthly reporting" form may be used; the "completed value" form however, is preferable because it obviates the necessity for filing monthly reports covering value of completed work.

(4) Material stored on project site will be covered under builder's risk policy. If these materials have been paid for by the housing company, the company shall effect such insurance; otherwise the coverage shall be obtained from the contractor.

#### Subpart 1730-3

Section 1: Subpart 1730-3 is repealed.

#### Subpart 1730-4

Section 1: Subpart 1730-4 is repealed.

PART 1731                    FIRE PREVENTION, SAFETY AND MISCELLANEOUS MATTERS

Section 1:                    The title of Part 1731 is amended to read as follows:

PART 1731                    FIRE PREVENTION[, ] AND SAFETY [AND MISCELLANEOUS MATTERS]

Subpart 1731-1

Section 1:                    Subpart 1731-1 is repealed and a new Subpart 1731-1 is added to read as follows:

Subpart 1731.1            Scope

All building and grounds shall be maintained in full compliance with all applicable state, city and local building, fire, health and safety laws. Housing companies should work closely with their local fire departments on fire prevention matters. The services of the fire department's inspection unit should be utilized at periodic intervals.

Section 2:                    Subpart 1731-2 is repealed

PART 1732                    ENERGY CONSERVATION

Section 1:                    Part 1732 is repealed and a new Part 1732 is added to read as follows:

PART 1732.                    ENERGY CONSERVATION.

Subpart 1732-1.            Scope.

This Part governs the performance of energy audits by housing companies, and the implementation of certain energy audit recommendations.

Subpart 1732-2.            Filing of energy audit report and implementation of measures.

(a)                    Each housing company shall file an energy audit report with the division. A copy of such energy audit report, shall also be given to any duly constituted tenant's association or cooperator's advisory council and be available for inspection and copying by any individual tenant who requests it. The housing

company shall review and update this energy audit report on a tri-annual basis and assure that, at minimum, all low- and no-cost energy-efficiency measures have been implemented and maintained.

(b) The energy audit shall be conducted by an architect or engineer licensed and registered by the State of New York. Alternatively, the housing company may conduct an energy audit using the New York State Division of Housing and Community Renewal Multi-Family Energy Efficiency Workbook.

Subpart 1732-3.                      Nature of audit.

At a minimum, the energy audit shall include an analysis of the following building features and systems, to identify operational and maintenance practices and building modifications that will provide energy and cost savings:

- (a) infiltration;
- (b) ventilation;
- (c) domestic hot water;
- (d) heating plant and distribution;
- (e) lighting and electric;
- (f) insulation;
- (g) cooling; and,
- (h) laundry.

Subpart 1732-4.                      Report contents.

The energy audit report shall include the following information:

- (a) an analysis of which measures are appropriate to the audited building(s);
- (b) estimated cost of implementing those measures; energy and cost savings which would result from action; and estimates of the simple payback periods; and
- (c) an executive summary of recommendations and related estimates contained in the report.

Subchapter D of Chapter IV of Subtitle S of Title 9 of NYCRR

Section 1: Subchapter D of chapter IV of Subtitle S of Title 9 of NYCRR is repealed.

Subchapter E of Chapter IV of Subtitle S of Title 9 of NYCRR

PART 1750 VOLUNTARY DISSOLUTION

Section 1: Section 1750.1 is amended to read as follows:

Section 1750.1. Purpose.

The purpose of these regulations is to assure full disclosure to all residents and the public of plans proposed by the housing company to leave the jurisdiction of the [D]division [of Housing and Community Renewal ("Division")] pursuant to either article 2 or article 4 of the Private Housing Finance Law, to effect a smooth transition of the management of a housing development and to assure that all actions required to be taken by the housing company have been performed prior to the dissolution thereof and to ensure that projects are in sound physical condition to protect the [occupants] residents thereof and their long term viability.

Section 2: Section 1750.2 is amended to read as follows:

Section 1750.2. Applicability.

These regulations shall apply to state-assisted limited profit rental or mutual housing companies formed pursuant to article 2 of the Private Housing Finance Law, and to limited-dividend rental or mutual housing companies formed pursuant to article 4 of the Private Housing Finance Law, which elect under section 35(2) or 96(1) of the Private Housing Finance Law, respectively, of such law, to voluntarily dissolve. As used in this Part, the term dissolution shall include reconstitution where the housing company elects to reconstitute upon dissolution of the housing company.

Section 3: Section 1750.3 is repealed and a new section 1750.3 is added to read as follows:

Section 1750.3 Notice of intent.

(a) A company or housing company intending to dissolve pursuant to either section 35(2) or 96(1) of the Private Housing Finance Law, shall no later than 365 days prior to the anticipated date of dissolution, serve a notice of such intention ("Notice of Intent") (without the supporting documents) to the parties and in the manner set forth in Section 1750.4 of this Part for service of the Notice of Public Meeting, and shall submit a Notice of Intent in triplicate to the Division, to the attention of the Deputy Commissioner for Housing Operations. The Notice shall state that the Notice of Intent and all supporting documents, except for rent rolls and rent registrations which contain information protected by a right of privacy, are available for inspection by the tenants on request at a location at or near the premises.

(b) Contents of Notice of Intent The Notice of Intent shall contain the following information and supporting documents:

(1) name, address(es) and project number of the housing development, including section(s), block(s) and lot(s);

(2) name and business address of the beneficial and the legal owner(s) of record;

(3) name and business address of the housing company, if different from the legal owner of record;

(4) the following rental data information for each apartment in the housing development, by apartment:

(i) name of tenant or shareholder;

(ii) base monthly rent or maintenance charge, with indication of what utilities and services are included, if any;

(iii) complete rental history for existing tenants including the expiration date of lease or occupancy agreement; if none exists then the anniversary date of tenancy or occupancy; if current tenant does not have a three-year lease or occupancy agreement, an affidavit shall be submitted explaining in detail the reasons therefor;

(iv) name(s) of resident(s) if different from principal tenant or shareholder;

(v) special charges or assessments including surcharges, garage or parking charges and appliance charges, separately listed;

(vi) rental subsidy payments or credits, and sources thereof;

(vii) amount and depository for security deposits;

(5) mortgagees, name(s) and address(es);

(6) mortgage balance(s) and payment schedule(s);

(7) certificate of occupancy or other proof of date of initial occupancy of the development;

(8) complete report of title search and certified or conformed copy of the deed;

(9) municipal inspection report which contains a list of any current outstanding municipal violations and citations; and proof of satisfaction thereof;

(10) copy of enabling local ordinances, if any;

(11) current certified annual and quarterly financial statements, as required under sections 1728-2.2 and 1728-2.21 of this Title;

(12) names and business addresses of the following, if applicable:

(i) managing general partner and each general partner;

(ii) managing agent;

(iii) principal stockholders or shareholders; and

(iv) president of the Board of Directors;

(13) list of all state, municipal and/or federal financial assistance or subsidies received by the housing development (such as Low Income Housing Credits, tax exempt bond financing, Section 236 Interest Reduction Subsidy, Project-Based Section 8, Housing Choice Vouchers, Rent Supplement, J-51 or other tax abatements, Tenant Health and Safety ,Grants Flexible Subsidy), and the amount thereof;

(14) for housing projects located in jurisdictions subject to rent stabilization, the housing company shall submit draft Initial Registration Summary, Initial Building Services Registration, and Initial Apartment Registration for each tenant;

(15) physical condition survey. As required by section 1750.10 of this Part, the housing company shall submit a physical condition survey prepared by an independent qualified consultant to determine the physical condition of the building and the property and all equipment appurtenant thereto. The housing company shall specify its plans to remedy any defects and to replace any and all items and equipment that are obsolete or which have exceeded their useful lives or are projected to exceed their useful lives within five years, and the amounts to be expended therefor, which plan shall be approved by the division;

(16) a conformed copy of the certificate of incorporation of the housing company; and

(17) certification to the division by an officer or principal of the housing company that the housing company is in full compliance with all applicable laws, regulations, and orders of the division or other governmental agency. In the event that the housing company has not complied with such law, regulation, or order then the officer or principal shall submit a detailed affidavit explaining the reasons therefor.

(18) any document which may bear upon the continued use of the project for affordable housing or the right of the housing company to dissolve, including but not limited to:

(i) tenant participation agreements.

(ii) City Council, Board of Estimate or other governing entity Resolutions and agreements.

(iii) Urban Renewal plans.

- (iv) zoning rules or resolutions.
- (v) regulatory agreements under any city, state, or federal program.
- (vi) by-laws or articles of incorporation or other corporate or partnership governing document(s).
- (vii) participation in tax abatement programs.
- (viii) any other document that places any restriction on the use of the property or the housing company's right to dissolve.

(c) In addition to the documents required to be submitted with the Notice of Intent, the commissioner may examine any records which come to the division's attention or are in its possession due to the division's supervision of the development, including but not limited to physical condition reports, financial reports, contracts, field visit reports, and correspondence involving the owner, managing agent, contractors and tenants.

(d) Within 180 days of receipt of the notice of intent and the required material, the commissioner shall notify the housing company if any additional information is required.

(e) Upon a finding by the division that all of the information required to have been submitted by the housing company has been submitted and that there is no reason to believe it contains any inaccuracies the commissioner shall issue an order authorizing the housing company to proceed with the public information requirements hereunder.

Section 4: Subdivisions (a) and (b) of Section 1750.4 are amended to read as follows:

Section 1750.4. Public information notice.

(a) Upon receipt of the commissioner's order as provided in section 1750.3([c]e), but in no event earlier than 90 days prior to the anticipated date of dissolution, the housing company shall serve a notice of a public meeting by door delivery to each tenant and by certified or registered mail to each of the following:

(1) the New York State Commissioner of Housing and Community Renewal and the Deputy Commissioner for Housing Operations, together with proof of service upon all parties listed herein;

(2) the State Senator and Member of the Assembly for the district in which the project is located;

(3) the mayor and local legislative member for the project, if any; and

(4) the president or chairperson of the tenants' association or council, if any;

(b) Such notice, which shall be subject to the prior approval of the division, shall specify the day, date, time and place of a public meeting to be conducted by the housing company.

Section 5: Subdivisions (b), (d) and (e) of section 1750.5 are amended to read as follows:

(b) Such public meeting shall be scheduled to commence not earlier than 6 p.m. nor later than 8 p.m., Monday through Friday, exclusive of legal holidays unless the residents by written petition representing not less than 50 percent of the apartments, agree to another day or time. The site of the public meeting shall be on the premises of the housing development unless, for good cause shown, the owner shall designate another location near or adjacent to the premises, subject to the approval of the [commissioner] division.

(d) Upon conclusion of the public informational meeting, the housing company shall submit an affidavit certifying to the [commissioner] division to the effect that the meeting has been held pursuant to the requirements set forth herein.

(e) Such public meeting shall be continued by the housing company or upon the direction of the [commissioner] division until reasonable responses to valid questions of the tenants have been provided by the housing company.

Section 6: Section 1750.6 is amended to read as follows:

Section 1750.6. Mortgage payments; requirements.

Upon satisfactory completion of the requirements in sections 1750.3 through 1750.5 of this Part, the housing company shall submit to the [commissioner] division a list of the requirements of the mortgagee(s) to prepay the mortgage(s), to be obtained by the housing company from the mortgagee(s). Such list shall contain the anticipated date of compliance with each of the mortgagee's requirements for the prepayment of the mortgage(s), including any fees, charges or special assessments required to be made.

Section 7: Section 1750.7 is amended to read as follows:

Section 1750.7. Mutual companies; special requirements.

In addition to the other requirements set forth in this Part, each mutual company shall also submit to the [commissioner] division, upon completion of the public informational meeting required under section 1750.5 of this Part, satisfactory evidence of (a) acceptance by the office of the Attorney General of the State of New York of the filing of the offering plan pertaining to the proposed transfer from the mutual company to a private cooperative or condominium corporation; and (b) approval by two thirds of the shareholders of record of the [dissolution] counted on the basis of one vote per dwelling unit.

Section 8: Section 1750.8 is amended to read as follows:

Section 1750.8. Rent stabilization requirements.

Upon submission to the Deputy Commissioner of Housing Operations of the material as specified in section 1750.3(a)(14) of this Part the division shall compare the housing company's [information] draft initial registrations with the information on file with the division. Upon approval of the information by the division and return of the [preregistration information] draft registration forms, the housing company shall comply with the initial rent registration requirements as set forth in the rent stabilization [regulations] code, Part 2520 et seq. or the tenant protection regulations, Part 2500 [of this Title].

Section 9:                   Section 1750.10 is amended to read as follows:

Section 1750.10.                   Physical condition survey.

Upon review of the physical condition survey submitted by the housing company pursuant to section 1750.3(a)(15) of this Part the [commissioner] division shall determine if the survey is sufficient and properly addresses the needs of the property which must be resolved prior to the dissolution, and if the plans submitted by the housing company are sufficient to meet the needs of the housing project. The housing company shall specify its plans to correct any defective conditions and to replace any and all items and equipment which are obsolete or have reached the end of their useful life or are projected to end their useful life within the next five years, and the amounts to be expended therefor. Upon the approval by the [commissioner] division of the corrective work plan and costs thereof, appropriate funds shall be released upon dissolution from the operating and replacement reserve escrow accounts and deposited into a special escrow account under the exclusive jurisdiction of a fiduciary agent, to be used exclusively to effectuate the corrective work plan. Additionally, the [commissioner] division may order that work be performed and that monies be escrowed therefor. None of the corrective work performed pursuant hereto shall qualify for an increase in rent pursuant to section 2502.4 of the Emergency Tenant Protection Regulations or section 2522.4 of the Rent Stabilization Code.

Section 10: Section 1750.11 is amended to read as follows:

Section 1750.11.                   Waiting lists.

(a)           At least 60 days prior to the effective date of dissolution, the housing company shall submit an affidavit to the [commissioner] division certifying that each person on the waiting list for apartments in the housing development has been advised in writing of the proposed dissolution and whether or not the waiting list will continue to be utilized.

(b)           The housing company shall simultaneously certify to the [commissioner] division whether a processing charge had been levied against each applicant for such waiting list and, if so[:] .when such processing charge was returned to the waiting list applicant.

[ (1)   how much had been expended of such charge and for what purpose; and]

[ (2)   when the balance thereof was returned to the waiting list applicant.]

Section 11: Subdivision (b) of section 1750.13 is amended to read as follows:

Section 1750.13.   Fees and application requirements.

(b)           No housing company seeking to dissolve a rental housing company may charge or assess any cost of complying with these requirements, including but not limited to the payment of fees provided herein and the cost of preparation of the documents required herein, to the operational or capital expenses of such housing company, nor shall such costs or charges in any way be reflected in any charge or rental increase for any of the [occupants] residents of the housing development. An affidavit from the owner certifying compliance with this subsection must be filed with the notice of intent.

Section 12: Subdivision (c) of section 1750.13 is repealed and a new section 1750.13 is added to read as follows:

(c) A mutually owned housing company must submit with its Notice of Intent a certification that the following has been authorized by an affirmative vote of at least a majority of shareholders, counted on the basis of one vote per dwelling unit:

(1) preparation of a preliminary plan, the cost thereof not to exceed \$100,000, to explore and explain to all shareholders the ramifications of dissolution of the mutual housing company, which vote shall be without the use of proxies; and

(2) preparation and submission to the Office of the Attorney General of a private cooperative or condominium plan.

Section 13: A new subdivision (d) is added to section 1750.13 and reads as follows:

(d) No housing company contract in relation carrying out any of the requirements of this Part shall make compensation contingent, either in whole or in part, on a specific outcome regarding dissolution or reconstitution.

Section 14: Section 1750.14 is amended to read as follows:

Section 1750.14. [Commissioner's]Division's certification.

Upon receipt of the documentation required hereunder and the payment of the fees as set forth in section 1750.13 of this Part, and upon receipt of a conformed copy of the proposed certificate of dissolution, the [commissioner] division shall issue a certification to the Secretary of State stating that the requirements of the Private Housing Finance Law have been complied with and that the division has no objection to the filing by the housing company of the certificate of dissolution.

Section 15: Section 1750.15 is amended to read as follows:

Section 1750.15. Tax Exemption.

Upon receipt of the [commissioner] division certification as provided in section 1750.14 of this Part, the housing company shall thereupon notify the municipality in which the housing development is located, by written document, of the impending dissolution of the housing company and the attendant ineligibility for tax exemption under the Private Housing Finance Law. A copy of such notification shall thereupon be sent to the [commissioner] division.

Section 16: Section 1750.17 is repealed and a new section 1750.17 is added to read as follows:

Section 1750.17 Application of amended provisions.

The provisions of this Part, as amended, shall apply to any pending or future dissolution proceeding; provided, however, that where a housing company has taken certain acts prior to the effective date of the amended provisions, the provisions of this Part in effect at the time the acts were taken shall apply with respect to those acts.

Section 17: Section 1750.18 is repealed.

Section 18: Section 1750.19 is repealed.

PART 1760:                    REDEVELOPMENT AND REFINANCE

Section 1:                    A new Part 1760 is added to Subchapter E of chapter IV of Subtitle S of Title 9 of NYCRR to read as follows:

PART 1760                    REDEVELOPMENT AND REFINANCE

Subpart 1760-1            Introduction.

With the consent of the division, a housing company may satisfy its existing mortgage and enter into a new State-aided or private mortgage, and thereafter continue under the Mitchell-Lama program. Such refinance may be in connection with a redevelopment plan under which the housing company enters into multiple regulatory agreements with the division and other agencies under a variety of subsidy programs to raise capital for rehabilitation work and to help maintain the premises as safe, decent, and affordable housing. When a refinancing is part of a redevelopment plan that involves more than one governmental agency with supervisory authority, some of the requirements of this part may be eliminated pursuant to Subpart 1700.6 of this chapter.

Subpart 1760-2            Grounds for approval of refinance.

(a)                    In reviewing a request to refinance, the division may consider various factors including but not limited to the fact that the refinance will:

- (1)                    Reduce debt service in order to minimize increases in rent or maintenance;
- (2)                    Raise additional funds for current capital improvements;
- (3)                    Bolster reserve funds for future capital improvements;
- (4)                    Facilitate a redevelopment plan involving new sources of funding;
- (5)                    Permit continuation of the real property tax exemption;
- (6)                    Permit continuation of existing loans, grants, or subsidies.

(b)                    In order to facilitate an approved refinance, the division may consent to modify its supervision to avoid unnecessary duplication with other subsidy programs or supervising agencies, allow the

lender greater participation in the supervision of the housing company's use of loan proceeds and reserve and escrow funds, and avoid undue regulatory burden upon the housing company.

Subpart 1760-3 Request for approval of refinance.

No less than thirty days prior to the anticipated date of closing, the housing company must submit to the division a request for approval of the refinance with the following information and supporting documents:

(a) Reasons for refinance; if housing company is a cooperative, attach a copy of the resolution authorizing the refinance;

(b) Existing mortgagee, approximate amount of mortgage, and brief description of mortgagee's pre-payment procedures;

(c) Existing government subsidies, the responsible agency, and a statement of what effect, if any, payment of the existing mortgage will have upon the subsidy;

(d) Impact, if any, of refinance on real property tax abatement;

(e) New lender, amount of new loan, interest rate, application or commitment fee, and method by which new lender was selected; attach a copy of the term sheet or commitment letter;

(f) Credit enhancements and responsible agency;

(g) Post-transaction sources of funding and responsible agencies;

(h) Where transaction involves transfer of development, name of new owner, description of ownership structure, and request for approval of new owner with completed disclosure questionnaire;

(i) Capital work, and the estimated cost thereof, to be done with loan proceeds; attach a copy of current physical condition survey or consultant's report and sources and uses summary;

(j) Amount of reserves to be funded from proceeds of loan;

(k) Any severance of housing company property, including justification for the

severance, and description and value of the parcel to the severed; attach a copy of a certified appraisal;

(l) Analysis of current rent/maintenance structure to show sufficiency to cover new debt service and other expenses, and if not, amount of rent increase applied for and status of application;

(m) Request and justification for any modification of the division's supervisory role such as those set forth in section 1760-4 of this Part;

(n) New managing agent, if any, with request for approval of new managing agent;

(o) Where post-transaction funding is provided by the housing finance agency or empire state development corporation, documentation upon which the division may make findings required by sections 2, 26-b, and 44-c(2) of the Private Housing Finance Law; and

(p) Anticipated date of closing.

Subpart 1760-4 Request for modification of division's supervisory role.

At the lender's request, under appropriate circumstances the division may agree to modifications of its supervisory role, the terms of which may be embodied in an inter-agency memorandum of understanding, multi-party agreement, or approval letter issued by the division; including, but not limited to, the following:

(a) Remedies for default. The division may agree to promptly act within its authority to remedy a default on a loan, including proceedings to re-establish the rents/maintenance, provided that the division will not agree to act in a predetermined manner, but must retain discretion to choose the appropriate remedy under the circumstances.

(b) Administration of reserve funds. The division may permit the lender to hold, free of encumbrance by the division, certain reserve funds, such as repair and replacement reserves pending completion of capital work, and to encumber those accounts as security for the loan which can be withdrawn without the division's approval in the event of a default.

(c) Administration of escrow funds. The division may permit the lender to hold, free of encumbrance by the division, certain escrow funds for payment of debt service, taxes, and insurance, that are normally held in accounts controlled by the division.

(d) Supervision of capital work. The division may modify its procedures for supervision of capital work, which normally includes review of contracts, specifications, bids, change orders, and approval of progress payments in order to insure that the division's participation is not duplicative of another agency's functions, and does not unduly delay completion of the work.

Subpart 1760-5 Submission of loan Documents for division's review.

No later than two weeks prior to the anticipated date of closing, the housing company must submit the following proposed documents for the division's review:

- (a) Multi-party agreement, if any, to be signed by the division;
- (b) Mortgage and note;
- (c) Security agreements and those involving reserve or escrow accounts;
- (d) Assignment of leases;
- (e) New regulatory agreements to which the division is a party;
- (f) Any other document which the housing company believes requires the division's approval.

Subpart 1760-6 Standards for loan documents.

In reviewing the loan documents, the division may consider various factors, including but not limited to the fact that they:

- (a) Provide sufficient notice to the parties to the transaction and their successors and assigns that the housing company is supervised by the division and subject to the private housing finance law and regulations;

- (b) Do not conflict with any provision of the private housing finance law or regulations;
- (c) Are not unfair or unduly burdensome to the housing company;
- (d) Clearly reflect any modifications of the division's supervisory role;
- (e) Do not affect the division's authority to supervise the housing company except to the extent consented to by the division.

Subpart 1760-7 Required clause in loan documents.

Where the financing is not otherwise coordinated with another state governmental agency, the mortgage, multi-party agreement, division's letter approving the refinance, other security agreements, reserve agreements, and assignment of leases must contain a clause containing the following or substantially similar language:

“Nothing in this document, or any other document executed in connection with this refinance transaction, has the effect of diminishing or otherwise modifying the authority of the Commissioner of the Division of Housing and Community Renewal to supervise the borrower under Article II of the Private Housing Finance Law and regulations promulgated there under except to the extent expressly set forth in a multi-party agreement or approval letter issued by the division.”