

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Housing Preservation and Development proposes amendments to the rules governing tax lien sales and in rem foreclosures affecting distressed properties and certain other properties. Specifically, the Department seeks to amend Sections 8-06 and 8-07 of 28 Rules of the City of New York (RCNY) Chapter 8, which relate to transfers of ownership from a third party to tenants of a property that is subject to an in rem foreclosure judgment.

When and where is the hearing? The Department of Housing Preservation and Development will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM-11:00 AM on August 12, 2014. The hearing will be in room 5R1 at 100 Gold Street, New York, N.Y. 10038.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department of Housing Preservation and Development through the NYC rules website: <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to rules@hpd.nyc.gov.
- **Mail.** You can mail written comments to Leora Jontef, Director of Multifamily Disposition and Finance Programs at Department of Housing Preservation and Development, 100 Gold Street, Room 9Z4, New York, N.Y. 10038.
- **Fax.** You can fax written comments to the Department of Housing Preservation and Development, Att: Leora Jontef, at 212 863-8375.
- **Speaking at the hearing.** You can speak at the public hearing. Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212 863-6141, or you can sign up in the hearing room before the hearing begins on August 12, 2014. You can speak for up to three minutes.

Is there a deadline to submit written comments? Comments must be submitted before the close of business on August 12, 2014.

What if I need assistance to participate in the hearing? You must tell the Department if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212 863-6141. You must tell us by August 1, 2014.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at 100 Gold Street, Office of Legal Affairs, Department of Housing Preservation and Development, New York, N.Y. 10038.

What authorizes the Department of Housing Preservation and Development to make this rule? Sections 1043 and 1802(6)(l) of the New York City Charter and section 11-412.1(b)(2) of the New York City Administrative Code authorize the Department of Housing Preservation and Development to make this proposed rule. This proposed rule was not anticipated and so was not included in the Department of Housing Preservation and Development's regulatory agenda for this fiscal year.

Where can I find the Department of Housing Preservation and Development's rules? The rules of the Department of Housing Preservation and Development are located in Title 28 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department of Housing Preservation and Development must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The proposed rule amends certain provisions of the Third Party Transfer program rules, in order to provide more specific guidance regarding evaluation of progress for the eventual ownership by tenants of a residential building that is subject to an in rem foreclosure judgment.

The City can convey residential property that is the subject of an in rem foreclosure judgment to a qualified third party. Under § 11-412.1(b)(2) of the New York City Administrative Code, the Department of Housing Preservation and Development (HPD) is responsible for promulgating rules about how third parties are deemed qualified and selected to acquire such property.

The rules governing how third parties may acquire such property as well as the third party transfer process are in Chapter 8 of Title 28 of the Rules of the City of New York (RCNY). Section 8-03(e) sets forth factors that HPD may consider in selecting a third party. Among those factors is "whether an application has been submitted under sponsorship of a Third Party on behalf of Tenants for eventual ownership by the Tenants of a property that is subject to an in rem judgment of foreclosure." 28 RCNY 8-03(e)(9). Section 8-06 describes how HPD evaluates the tenants' progress toward ownership of the property when a third party sponsor has submitted an application on their behalf. Section 8-07 describes how HPD determines whether or not to approve a transfer of property from a third party to tenants.

The proposed amendments modify or clarify portions of Sections 8-06 and 8-07. The amendments clarify that tenants must have continuously resided in the building after the conveyance of the property to the Third Party in order to be eligible for a transfer of ownership. The amendments also provide that at least 80% of such tenants must have expressed interest in ownership through subscriptions to buy units. The amendments clarify that among the factors that HPD may consider in making its determination for tenant ownership is whether the building can be financially viable as a cooperative. Finally, the amendments provide more flexibility in the timing of training for tenants and for determining the end of the interim evaluation period.

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

New material in the following rule is underlined, deleted material is in [brackets].

Section one. Section 8-06 of chapter 8 of title 28 of the rules of the city of New York is amended to read as follows:

§8-06 Interim Evaluation Period.

(a) A property that has been transferred to a Third Party for which a Third Party has sponsored a Tenant application pursuant to §8-03(e)(9) of these rules shall be subject to an interim evaluation period during which progress toward eventual ownership by Tenants will be monitored by HPD. In addition to the definition provided in section 8-01 of these rules, for purposes of this section, the term, "Tenant" shall mean a Tenant who has continuously resided in the property since it was conveyed from the former owner to a Third Party.

(b) No later than [thirty] ninety days after transfer to a Third Party of a property for which a Third Party has sponsored a Tenant application pursuant to §8-03(e)(9) of these rules, such Third Party, or his or her designee, shall inform the Tenants that the property has entered into an interim evaluation period, and shall provide information to the Tenants about the process toward eventual ownership by the Tenants. Such Third Party shall make training available to such Tenants[, no later than ninety days] after such transfer. The training may include courses in building management, maintenance, and managing building finances. HPD may also provide notice to the Tenants regarding commencement of the interim evaluation period.

(c) The interim evaluation period shall include certain milestones for achievement which shall form the basis for HPD to either permit the property to move forward toward eventual ownership by Tenants, or to remove the property from the process toward such ownership. HPD shall evaluate progress toward eventual ownership by Tenants using the following milestones:

(i) whether Tenants have cooperated with the Third Party in renewing leases or establishing new leases where none exists;

(ii) whether at least 80% of the Tenants are actively paying rent;

(iii) whether Tenants have cooperated with relocation plans, where applicable;

(iv) whether Tenants have attended training programs offered by the Third Party; and

(v) any additional factors that HPD considers appropriate in evaluating the [tenants'] Tenants' progress toward ownership, provided that HPD notifies the Tenants of any such additional factors.

(d) Such interim evaluation period shall commence upon transfer of the property to the Third Party and shall continue upon the transfer of the property to any subsequent Third Party. Such interim evaluation period shall end when any required rehabilitation of the property has been completed and permanent loan conversion has taken place, or at the conclusion of such [longer] shorter period as HPD shall determine with notice to the Tenants.

(e) HPD shall evaluate compliance with the milestones listed in subdivision (c) of this section at regular intervals, and shall inform Tenants and the Third Party of its findings. HPD may also evaluate any other factors, including assessing the financial viability of the property for Tenant ownership, and may at any time remove a property from the process toward eventual ownership by Tenants based upon its evaluation. If HPD has not removed the property from such process, at the completion of the interim evaluation period it shall make a determination for such property pursuant to §8-07 of these rules.

§2. Section 8-07 of chapter 8 of title 28 of the rules of the city of New York is amended to read as follows:

§8-07 Transfer from Third Party to Tenant Ownership.

(a) Unless a determination has otherwise already been made, HPD shall make a determination whether or not to approve the transfer from a Third Party to Tenant ownership upon completion of the interim evaluation period. In addition to the definition provided in section 8-01 of these rules, for purposes of this section, the term, "Tenant" shall mean a Tenant who has continuously resided in the property since it was conveyed from the former owner to a Third Party. HPD will consider the following criteria when making such determination:

(1) That an application was submitted to HPD pursuant to and in accordance with §8-03(e)(9) of these rules;

(2) The time period that has elapsed since transfer of the property to the Third Party;

(3) Whether the property has been rehabilitated and permanent loan conversion has taken place;

(4) The number of Tenants who have signed a petition affirming that there is a functioning [tenant] Tenant organization, that they wish to own the property, and that they understand the extent of the responsibilities of ownership of the property;

(5) The amount of time that a Tenant organization has been in existence at the property;

(6) The number of members of the Tenant organization who have participated in any training offered by HPD, including, but not limited to, courses in building management, maintenance, and managing building finances;

(7) The number of Tenants who have attended a presentation by HPD regarding ownership of the property;

(8) The level of Tenant interest in ownership as indicated through subscriptions to buy units, which shall be not less than 80% of those actively paying rent;

(9) The record of payment of all existing loans, status of rent payments, and adequacy of management of the property;

(10) HPD's evaluation of the progress made toward [tenant] Tenant ownership during the interim evaluation period as set forth in §8-06 of these rules; and

(11) Any other criteria that HPD deems relevant to the request, including, but not limited to, assessing the financial viability of the property for Tenant ownership, and any information provided to it by the Third Party.

NEW YORK CITY LAW DEPARTMENT

**DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Third Party Sponsored Applications for Tenant Ownership

REFERENCE NUMBER: 2014 RG 029

RULEMAKING AGENCY: Department of Housing Preservation and Development

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: June 3, 2014

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS

**253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Third Party Sponsored Applications for Tenant Ownership

REFERENCE NUMBER: HPD 16

RULEMAKING AGENCY: Department of Housing Preservation and Development (HPD)

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Sabrina Fong
Mayor's Office of Operations

6/10/2014
Date