FAQ's on the new Mitchell-Lama Reform Law:

Board of Directors Elections/Voting:

- Question: The PHFL revisions require that ballots be cast "in-person" or by absentee ballot. Will electronic voting be permitted?

    - Response: "In-person voting" of course could mean that a shareholder fills out a paper ballot and delivers it to the housing company's election company representative during designated on-site voting hours. Casting a vote via an electronic voting machine located at the housing company's designated polling site where it is overseen by the election company also is allowed. However, "at-home" remote voting through an election company's on-line voting system will no longer be permitted. In the event that on-site electronic voting machines are employed, please note the law's requirement that "[a]ll ballots shall produce a paper or electronic record which may be audited in the case of a contested election result."

      The above "in-person" voting requirement applies to any shareholder vote involving the election of board members, by-law amendments, or on dissolution or reconstitution or conversion of a mutual housing company (including any vote for a special assessment relating thereto).

- Question: Will the use of secure lockboxes for the deposit of absentee ballots be allowed?

    - Response: The law permits voting through absentee ballot "mailed or delivered to a neutral third party"; the deposit of a duly-completed absentee ballot in a secure on-site drop-box accessible only by an independent election company would satisfy this requirement.

- Question: The PHFL revisions provide that any shareholder entitled to vote may request an absentee ballot. May co-ops perform a building-wide mailing of absentee ballots to all shareholders?

    - Response: The statute specifically requires that the ballots be mailed to residents upon their request. The law does not preclude a building-wide mailing of absentee ballots, and HPD would consider such action to be consistent with the law's intent. To prohibit co-ops from performing such a mailing would disadvantage shareholders who might otherwise be unaware of the absentee voting option.

- Question: How should absentee ballots be drafted to comply with the "secret ballot" requirement? Is the shareholder not supposed to sign it?

    - Response: HPD reads the requirement that specified types of votes be "conducted using secret ballots" to mean that shareholders' ballots (and how they voted) must be kept confidential by the election company and may not be accessible by other shareholders (including board members). The statute provides that absentee ballots shall be sealed within two envelopes; only the outer envelope is to include the shareholder's signature and name to allow the election company to validate the votes and certify the election results. The absentee ballot itself is not to be signed by the shareholder entitled to vote.

Candidate Eligibility:

- Question: The PHFL now provides that "[n]o otherwise-eligible person shall be prevented from being a candidate for, being elected to, or serving on a board of directors based solely on that person owing or having owed any amount of any form of arrears to the mutual housing company, unless, at the time of nomination, that person currently owes an amount of arrears greater than the equivalent of two months' of that person's monthly maintenance." Does this mean that a housing company is **required** to disqualify any potential board candidate who has arrears in excess of two months' maintenance (regardless of whether the certificate of incorporation or by-laws contain a candidacy qualification relating to arrears)?

    - Response: No. Section 701 of the NYS Business Corporation Law requires that board members be at least eighteen years of age and provides that "the certificate of incorporation or the by-laws may prescribe other qualifications for directors." HPD's interpretation of the PHFL is that housing companies **may** disqualify a potential board candidate who has arrears in excess of two months' maintenance, but only if a candidacy qualification relating to arrears is set forth in its HPD-approved certificate of incorporation or by-laws. Such a disqualification also may be adopted in the supervising agency's regulations and thereafter be applicable to all housing companies.

- Question: What if a housing company's existing HPD-approved by-laws already provide that a potential board candidate with arrears totaling **less than** two months' maintenance will be disqualified from running for the board of directors – does the stricter by-laws threshold continue to apply or does the PHFL provision supersede the by-laws? If the PHFL provision controls, is the housing company required to amend its by-laws to agree with the PHFL requirement?

- Response: The PHFL threshold would supersede the housing company's by-laws; potential candidates who have arrears totaling less than two months' maintenance **may not** be disqualified from running for the board. The housing company certainly may amend its by-laws to agree with the PHFL provision in order to avoid confusion; until then, HPD will simply require compliance with the PHFL threshold, regardless of any more stringent provision contained in the housing company's by-laws.

- Question: The law requires that any "arrears" disqualification for board candidacy adopted by a housing company or in the supervising agency's regulations be based on the proposed candidate having arrears "greater than the equivalent of two months' of that person's monthly maintenance" at the time of nomination. What if a shareholder is in arrears in an amount exceeding two months' maintenance, but is current on payments under an approved payment plan – may the housing company disqualify that shareholder from candidacy (given that its by-laws preclude shareholders on payment plans from running for the board of directors)?

  - Response: While the new law does not directly address this scenario, HPD's position is that a shareholder who is in good standing under an approved payment plan should not be considered to be in arrears for purposes of board candidacy.

- Question: The law further provides that no other qualification requirement may be imposed "unless specifically incorporated in regulations promulgated by or procedures approved by the commissioner or supervising agency." May "procedures" imposing some additional board candidacy requirement be submitted for approval in the form of a proposed amendment to by-laws?

  - Response: Yes, a requested qualification requirement for board candidacy may be submitted to HPD as a proposed by-laws amendment, which shall require HPD's prior written approval.

Votes on Dissolution and/or Reconstitution:

- Question: The law provides that a vote to authorize the submission of an offering plan for dissolution shall require the approval of 80% of "all dwelling units for which shares have been issued, regardless of whether such dwelling units are occupied or vacant" (with an exception in cases where the shareholder of record is deceased). What is the impact of this provision, given that vacating shareholders surrender their shares to the housing

company, and so no shares will “have been issued” until the housing company re-issues shares to an incoming shareholder moving into said unit?

- Response: Shares in a residential cooperative corporation are designated and issued pursuant to the offering plan filed with the NYS Attorney General; the redemption of shares in a Mitchell-Lama co-op by an outgoing shareholder does not change the fact that said shares “have been issued.” Accordingly, all vacant apartments are to be included in the total number of dwelling units in determining whether the 80% threshold has been reached (subject to the limited “deceased shareholder” exception).

Open Board Meetings:

- Question: The law requires that boards of directors of Mitchell-Lama co-ops hold at least four meetings annually and that such meetings (and any additional board meetings) be open to all shareholders and residents, except that such meetings may include “executive sessions” open only to board members for the purpose of discussing limited confidential issues. Does the “open board meetings” mandate mean only that shareholders and residents must be able to observe the non-executive session portions of board meetings or are boards also required to give other meeting attendees the opportunity to address the board and/or pose questions?

  - Response: While the law does not detail the requirements relating to “open meetings,” HPD’s interpretation is that shareholders and residents should be afforded the opportunity to address the board and/or ask questions, subject to reasonable limits imposed by the board. For example, a board of directors might reasonably limit the “shareholder participation” portion of a board meeting to 15 minutes (recognizing that shareholders and residents have other opportunities to raise issues to the board in addition to open board meetings). Likewise, a board could reasonably impose a time limit on each shareholder/resident seeking to address the board in order to ensure that others have an opportunity to speak. Finally, a board may prohibit any statement or question that may reasonably be construed as threatening or abusive.

- Question: Must open board meetings be conducted in person or may such meetings be held virtually via an online platform? May the board decide that its members will meet in person, but that observing shareholders/residents will be given the opportunity to attend online?

- Response: A board of directors may choose to conduct board meetings using an online platform for a number of reasons, including to make attendance convenient or to address potential space constraints, and allowing other shareholders and residents to access said meetings would satisfy the law's "open meetings" requirement. Online access to board meetings by other shareholders and residents would also suffice even if board members themselves are meeting in person.

- Question: Must board meetings be announced and made open to shareholders/residents if the sole business to be conducted involves a confidential matter to be discussed by the board in executive session?

    - Response: Yes, HPD's reading of the law is that all board meetings must be accessible by other shareholders and residents. In this specific example, it would be expected that the board would begin the meeting by taking time to listen to input from other shareholders and residents prior to going into executive session.

- Question: The law requires boards to maintain a record of any vote on a resolution, including specification of how each director voted, and to make such record available both as a paper copy and posted on a website accessible by shareholders. Redactions are permitted "to the extent minutes would reflect the discussions held in executive session (emphasis added)." Does this mean that board resolutions and votes on matters discussed in executive session may be redacted from the record made available to shareholders? In addition to the record of votes, are the minutes of board meetings required to be made available to shareholders?

    - Response: HPD's interpretation of the law would require both the record of votes on resolutions (including how each board member voted) and the minutes of board meetings be made available to shareholders as a paper copy and posted to a shareholder-accessible website. However, both the record of resolutions/votes and the meeting minutes may be redacted with respect to board business properly conducted in executive sessions (i.e., concerning "confidential personnel issues, legal advice and counsel from an attorney to whom the mutual housing company is a client, or confidential issues affecting individual shareholders or residents, or contract negotiation").