

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 (“HPD”) is proposing amendments to Chapter 3 of Title 28 of the Rules of the City of New York, which governs City-aided limited profit housing company developments (also known as Mitchell-Lama developments). The proposed amendments both correct certain inadvertent omissions and clarify certain provisions of the rule amendments that took effect on December 25, 2014.

When and where is the Hearing? HPD will hold a public hearing on the proposed rule. The public hearing will take place from 2:00PM to 4:00PM on Thursday, February 25, 2016. The hearing will be in HPD’s offices at 100 Gold Street, First Floor, Room 1R New York, NY 10038.

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

- **Website.** You can submit comments to HPD through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to rules@hpd.nyc.gov.
- **Mail.** You can mail comments to Julie C. Walpert, Assistant Commissioner for Housing Supervision, 100 Gold Street, Room 7L2, New York, NY 10038.
- **Fax.** You can fax comments to HPD, 212-863-5048.
- **By Speaking at the 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 212-863-6500. You can also sign up in the hearing room before the hearing begins on February 25, 2016. You can speak for up to three minutes.

Is there a deadline to submit comments? All written comments must be submitted on or before February 25, 2016.

Do you need assistance to participate in the Hearing? You must tell the Office of Legal Affairs 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 212-863-6500. You must tell us by February 15, 2016.

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 an audiotape of oral comments concerning the proposed rule will be available to the public at the office of Ms. Walpert.

What authorizes HPD to make this rule? Sections 1043 and 1802 of the City Charter and subdivision (3) of section 32 of the Private Housing Finance Law authorize HPD to make this proposed rule.

Where can I find the HPD rules? The HPD rules are in title 28 of the Rules of the City of New York.

What rules govern the rulemaking process? HPD 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 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Mitchell-Lama Law (Article II of the Private Housing Finance Law) was enacted to address the “seriously inadequate” supply of “safe and sanitary” housing for families of low and moderate income. 41 N.Y. Priv. Hous. Fin. Law § 11 (McKinney’s 2002). Realizing that the necessary housing could not “readily be provided by the ordinary unaided operation of private enterprise,” the law provides incentives to encourage development of such income housing. *Id.* Specifically, housing companies are provided with low-interest mortgage funding for construction and real estate tax exemptions. 41 N.Y. Priv. Hous. Fin. Law §§ 22-23. In exchange for these benefits, housing companies are subject to numerous statutory restrictions, as well as to extensive regulatory and supervisory oversight and control, including regulations concerning rent, profits, disposition, and tenant selection. See, e.g., 41 N.Y. Priv. Hous. Fin. Law §§ 27, 31, 32, 32-a. HPD is the supervising agency for New York City’s municipally-aided Mitchell-Lama program.

Summary of Proposed Rule and Bases for Proposed Changes

- The Mitchell-Lama rule amendments that became effective on December 25, 2014, prohibit application transfers except between spouses and children of at least 18 years of age who were on the applicant’s original application. The ability to transfer an application to a sibling was inadvertently omitted. Siblings often enter lotteries for Mitchell-Lama apartments together, but only one can be entered as the potential head of household. Since waiting times for these apartments are extensive, the housing needs of such siblings are bound to change over time. The proposed rule amendment would allow siblings to transfer applications as long as they both were included on the original application and at least 18 years of age at the time of such original application, thereby correcting this omission.
- The proposed amendment to the definition of “probable aggregate annual income” is for clarification purposes to better reflect HPD’s current policy of excluding up to \$20,000 of each secondary wage earner’s income.
- The Mitchell-Lama rule amendments that became effective on December 25, 2014, also prohibited a housing company from adding a family member to the stock certificate for a mutual redevelopment company unless such family member was approved for succession. Previously, family members could be added to stock certificates even if they had not been approved for succession, but co-ownership of shares indicated a financial interest only and did not guarantee succession. Thus, family members that had been added to the stock certificates prior to the rule change were required to independently meet succession requirements if and when the shareholder of record permanently vacated the apartment.

The December 25, 2014, rule amendment inadvertently failed to address family members who had previously been added to stock certificates before the establishment of succession rights was a prerequisite to such additions. The proposed rule change addresses that omission and reiterates the requirement that such family members would need to meet the succession requirements in order to establish occupancy rights.

HPD's authority for these rules is found in section 1802 of the New York City Charter and sections 32(3) and 32-a of the Private Housing Finance Law.

New material is underlined.

[Deleted material is in brackets.]

"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.

Section 1. Paragraph (3) of subdivision (h) of Section 3-02 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(3) Applications shall be consecutively numbered and dated upon receipt by the housing company or shall be numbered pursuant to order of selection by lottery, as applicable. The housing company or its managing agent shall provide an applicant with a dated receipt or other form of documentation setting forth the date and/or waiting list number of the application. Applicants must meet the occupancy standards at the time of application and at the time the apartment is offered. No applicant may be placed on more than one waiting list by bedroom size in a particular housing company development. Applications are only transferable to spouses, siblings, or children who are at least eighteen years of age as of the date of the applicant's initial application, provided that such spouse's, sibling's, or children's names appeared on the applicant's initial application. Each applicant shall only be entitled to one entry per lottery for a housing company development. Multiple entries shall result in disqualification from such lottery. Furthermore, an applicant whose name is selected in a lottery cannot be included in the family composition of any other applicant who is selected in the same lottery for that particular housing company development. Such inclusion in multiple selected family compositions also shall result in disqualification of all involved parties from such lottery.

§ 2. Paragraph (2) of subdivision (a) of Section 3-03 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(2) "Probable aggregate annual income" shall mean the total income of the chief wage earner as reported in the New York State income tax return, plus the total income [in excess of \$20,000 or such amount as determined by State law,] of each other member of the household, [less] excluding therefrom (i) the income of each additional wage earner up to \$20,000 or such amount as determined by State law, and (ii) such personal exemptions and deductions for medical expenses as are actually taken by each tax paying occupant on the New York State tax return. However, the income of a household member, under 21 years of age, who is a full time student shall not be included in the computation of such annual income.

§ 3. Subdivision (c) of Section 3-06 of Chapter 3 of Title 28 of the Rules of the City of New York is amended to read as follows:

(c) *Joint ownership of cooperative shares.* With respect to any person who became a co-owner of shares before December 25, 2014, such co-ownership of shares does not guarantee the right to succession to an apartment in a mutual housing company development, and any such co-owner must qualify for succession under §3-02(p) of these rules. On or after December 25, 2014, [N]no housing company shall permit any person other than a family member who has been approved for succession in accordance with §3-02(p) of these rules to become an owner of the shares and a signatory on the occupancy agreement.

Commissioner Vicki Been
January 12, 2016

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: Amendment of Rules Governing Limited Profit Housing Company Developments (Mitchell-Lama)

REFERENCE NUMBER: 2015 RG 098

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: September 28, 2015

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: Amendment of Rules Governing Limited Profit Housing Company Developments (Mitchell-Lama)

REFERENCE NUMBER: HPD - 23

RULEMAKING AGENCY: Department of Housing Preservation and Development

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/ Brady Hamed
Mayor's Office of Operations

9/28/2015
Date