

6543

2017-2018 Regular Sessions

I N S E N A T E

June 1, 2017

Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the private housing finance law, in relation to the assets and supervision of housing development fund corporations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The private housing finance law is amended by adding a new
2 section 573-a to read as follows:
3 S 573-A. ASSETS AND SUPERVISION OF HOUSING DEVELOPMENT FUND CORPO-
4 RATIONS. 1. EXCEPT AS MAY BE SPECIFICALLY AUTHORIZED IN WRITING BY THE
5 COMMISSIONER OR THE SUPERVISING AGENCY, AS THE CASE MAY BE, (A) A HOUS-
6 ING DEVELOPMENT FUND CORPORATION SHALL NOT CAUSE OR PERMIT ANY VACANT
7 DWELLING UNIT TO BE LEASED TO, OR OCCUPIED BY, ANYONE OTHER THAN FAMI-
8 LIES AND PERSONS OF LOW INCOME, (B) A HOUSING DEVELOPMENT FUND CORPO-
9 RATION ORGANIZED PURSUANT TO THE NOT-FOR-PROFIT CORPORATION LAW SHALL
10 NOT CAUSE OR PERMIT ANY DWELLING UNIT TO BE LEASED OR OCCUPIED AT A RENT
11 THAT IS NOT AFFORDABLE TO FAMILIES AND PERSONS OF LOW INCOME, AS DETER-
12 MINED IN ACCORDANCE WITH STANDARDS ESTABLISHED BY THE COMMISSIONER OR
13 THE SUPERVISING AGENCY, AS THE CASE MAY BE AND (C) A HOUSING DEVELOPMENT
14 FUND CORPORATION ORGANIZED PURSUANT TO THE BUSINESS CORPORATION LAW
15 SHALL NOT CAUSE OR PERMIT THE SALE, TRANSFER, ASSIGNMENT OR ISSUANCE OF
16 ANY SHARES ALLOCATED TO ANY DWELLING UNIT TO ANYONE OTHER THAN FAMILIES
17 AND PERSONS OF LOW INCOME, OR CAUSE OR PERMIT THE SALE, TRANSFER,
18 ASSIGNMENT OR ISSUANCE OF ANY SHARES ALLOCATED TO ANY DWELLING UNIT FOR
19 A PRICE THAT IS NOT AFFORDABLE TO FAMILIES AND PERSONS OF LOW INCOME, AS
20 DETERMINED IN ACCORDANCE WITH STANDARDS ESTABLISHED BY THE COMMISSIONER
21 OR THE SUPERVISING AGENCY. WHERE THE OWNERSHIP OF SHARES ALLOCATED TO
22 ANY DWELLING UNIT IS TRANSFERRED BY OPERATION OF LAW, WITHOUT THE
23 CONSENT OF THE HOUSING DEVELOPMENT FUND CORPORATION, TO PARTIES WHO ARE
24 NOT FAMILIES AND PERSONS OF LOW INCOME, THE CORPORATION SHALL NOT CAUSE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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1 OR PERMIT THE OCCUPANCY OF THE DWELLING UNIT TO WHICH SUCH SHARES ARE
2 ALLOCATED UNTIL THE SHARES HAVE BEEN SOLD OR OTHERWISE TRANSFERRED TO A
3 FAMILY OR PERSON OF LOW INCOME THAT WILL OCCUPY SUCH DWELLING UNIT;
4 PROVIDED, HOWEVER, THAT THE CORPORATION SHALL NOT BE REQUIRED TO REMOVE
5 ANY MEMBER OF THE PRIOR SHAREHOLDER'S HOUSEHOLD WHO HAS CONTINUOUSLY
6 OCCUPIED THE DWELLING UNIT TO WHICH SUCH SHARES ARE ALLOCATED AS HIS OR
7 HER SOLE RESIDENCE FOR A PERIOD COMMENCING NOT LESS THAN TWO YEARS PRIOR
8 TO THE EVENT WHICH RESULTED IN SUCH TRANSFER, EVEN IF THE ACTUAL TRANS-
9 FER OCCURRED AT A LATER DATE.

10 2. A HOUSING DEVELOPMENT FUND CORPORATION SHALL NOT SELL, TRANSFER OR
11 ASSIGN ALL OR SUBSTANTIALLY ALL OF ITS ASSETS, OR ANY OF ITS REAL PROP-
12 erty, WITHOUT THE PRIOR WRITTEN APPROVAL OF THE COMMISSIONER OR THE
13 SUPERVISING AGENCY. A HOUSING DEVELOPMENT FUND CORPORATION SHALL EITHER
14 DEPOSIT THE PROCEEDS IF ANY SUCH SALE, TRANSFER OR ASSIGNMENT WITH THE
15 COMMISSIONER OR THE SUPERVISING AGENCY, OR DEVOTE SUCH PROCEEDS TO A
16 HOUSING PROJECT FOR FAMILIES AND PERSONS OF LOW INCOME, OR FOR RELATED
17 AFFORDABLE HOUSING ACTIVITIES, IN A MANNER APPROVED IN WRITING BY THE
18 COMMISSIONER OR THE SUPERVISING AGENCY.

19 3. A HOUSING DEVELOPMENT FUND CORPORATION SHALL NOT LEASE ANY OF ITS
20 REAL PROPERTY, OTHER THAN A LEASE OF A SINGLE DWELLING UNIT OR A COMMER-
21 cial unit for a term not exceeding two years, WITHOUT THE PRIOR WRITTEN
22 APPROVAL OF THE COMMISSIONER OR THE SUPERVISING AGENCY.

23 4. THE CERTIFICATE OF INCORPORATION OF A HOUSING DEVELOPMENT FUND
24 CORPORATION SHALL NOT BE ALTERED OR AMENDED, AND THE CORPORATION SHALL
25 NOT BE DISSOLVED, WITHOUT (A) THE PRIOR WRITTEN APPROVAL OF THE COMMIS-
26 sioner OR THE SUPERVISING AGENCY AND (B) THE PRIOR WRITTEN APPROVAL OF
27 ANY GOVERNMENTAL ENTITY WHICH HOLDS A MORTGAGE OR OTHER LIEN ON ANY
28 ASSETS OF THE CORPORATION OR TO WHICH ANY INDEBTEDNESS OF THE CORPO-
29 ration IS OUTSTANDING.

30 5. VIOLATIONS BY A HOUSING DEVELOPMENT FUND CORPORATION. (A) IF THE
31 COMMISSIONER OR THE SUPERVISING AGENCY DETERMINES THAT THE HOUSING
32 DEVELOPMENT FUND CORPORATION HAS VIOLATED ANY OF THE PROVISIONS OF THIS
33 ARTICLE OR ITS CERTIFICATE OF INCORPORATION OR HAS VIOLATED OR FAILED TO
34 FULFILL ANY AGREEMENT WITH OR OBLIGATION TO A GOVERNMENTAL ENTITY, THE
35 COMMISSIONER OR THE SUPERVISING AGENCY MAY (I) APPOINT TO THE BOARD OF
36 DIRECTORS OF THE CORPORATION A NUMBER OF NEW DIRECTORS SUFFICIENT TO
37 CONSTITUTE A MAJORITY OF SUCH BOARD, NOTWITHSTANDING ANY OTHER PROVISION
38 OF THE CERTIFICATE, THE BY-LAWS OF THE CORPORATION OR ANY AGREEMENT
39 ENTERED INTO BY THE CORPORATION, (II) REVOKE OR SUSPEND ALL OR PART OF
40 ANY EXEMPTION FROM LOCAL REAL PROPERTY TAXATION PURSUANT TO SECTION FIVE
41 HUNDRED SEVENTY-SEVEN OF THIS ARTICLE OR (III) EXERCISE ANY OTHER REME-
42 dies AVAILABLE UNDER APPLICABLE LAW OR PURSUANT TO ANY AGREEMENT WITH
43 THE CORPORATION.

44 (B) UNLESS THE COMMISSIONER OR THE SUPERVISING AGENCY DETERMINES THAT
45 A CURE OF ANY SUCH VIOLATION OR FAILURE IS IMPOSSIBLE, PRIOR TO EXERCIS-
46 ing ANY OF THE POWERS PROVIDED IN SUBDIVISION (A) OF THIS SECTION, THE
47 COMMISSIONER OR THE SUPERVISING AGENCY SHALL EITHER (I) PROVIDE THE
48 CORPORATION WITH THIRTY DAYS NOTICE AND OPPORTUNITY TO CURE SUCH
49 VIOLATION, (II) PROVIDE THE CORPORATION WITH SUCH NOTICE AND OPPORTUNITY
50 TO CURE SUCH VIOLATION AS MAY BE PROVIDED IN ANY AGREEMENT BETWEEN A
51 GOVERNMENTAL ENTITY AND THE CORPORATION OR (III) ONLY WITH RESPECT TO
52 THE REVOCATION OF A TAX EXEMPTION PURSUANT TO SECTION FIVE HUNDRED
53 SEVENTY-SEVEN OF THIS ARTICLE, PROVIDE THE CORPORATION WITH SUCH NOTICE
54 AND OPPORTUNITY TO CURE SUCH VIOLATION AS MAY BE PROVIDED IN A RESOL-
55 UTION OF THE LOCAL LEGISLATIVE BODY.

1 6. A HOUSING DEVELOPMENT FUND CORPORATION SHALL NOT ACQUIRE ANY REAL
2 PROPERTY NOT SPECIFICALLY IDENTIFIED BY ADDRESS OR TAX PARCEL IN ITS
3 CERTIFICATE OF INCORPORATION WITHOUT THE PRIOR WRITTEN APPROVAL OF THE
4 COMMISSIONER OR THE SUPERVISING AGENCY.

5 7. ANY HOUSING DEVELOPMENT FUND CORPORATION INCORPORATED PURSUANT TO
6 THE PROVISIONS OF THIS ARTICLE AND THE NOT-FOR-PROFIT CORPORATION LAW
7 SHALL BE DEEMED TO BE A CHARITABLE CORPORATION, AS DEFINED IN SUBPARA-
8 GRAPH THREE-A OF PARAGRAPH (A) OF SECTION ONE HUNDRED TWO OF THE
9 NOT-FOR-PROFIT CORPORATION LAW.

10 8. THE FOLLOWING PROVISIONS OF THE NOT-FOR-PROFIT CORPORATION LAW
11 SHALL APPLY TO ANY HOUSING DEVELOPMENT FUND CORPORATION INCORPORATED
12 PURSUANT TO THE PROVISIONS OF THIS ARTICLE AND THE BUSINESS CORPORATION
13 LAW: SECTION ONE HUNDRED TWELVE, SECTION FIVE HUNDRED EIGHT, SECTION
14 FIVE HUNDRED TEN, SECTION FIVE HUNDRED ELEVEN, SECTION FIVE HUNDRED
15 ELEVEN-A, SECTION FIVE HUNDRED FIFTEEN, PARAGRAPH (D) OF SECTION SEVEN
16 HUNDRED SIX, PARAGRAPH (C) OF SECTION SEVEN HUNDRED FOURTEEN, SECTION
17 SEVEN HUNDRED FIFTEEN, SECTION SEVEN HUNDRED SIXTEEN, SECTION SEVEN
18 HUNDRED TWENTY, SECTION NINE HUNDRED SEVEN, SECTION NINE HUNDRED
19 SEVEN-A, SECTION NINE HUNDRED SEVEN-B, PARAGRAPH (D) OF SECTION ONE
20 THOUSAND TWO, PARAGRAPH (A) OF SECTION ONE THOUSAND TWO-A, PARAGRAPH (C)
21 OF SECTION ONE THOUSAND TWO-A, PARAGRAPH (B) OF SECTION ONE THOUSAND
22 THREE, PARAGRAPH (C) OF SECTION ONE THOUSAND THREE, SECTION ELEVEN
23 HUNDRED ONE AND SECTION ELEVEN HUNDRED TWO. WHERE ANY CONFLICT EXISTS
24 BETWEEN THE PROVISIONS OF THE NOT-FOR-PROFIT CORPORATION LAW LISTED IN
25 THIS SUBDIVISION AND THE BUSINESS CORPORATION LAW, THE PROVISIONS OF THE
26 NOT-FOR-PROFIT CORPORATION LAW SHALL CONTROL.

27 9. A HOUSING DEVELOPMENT FUND CORPORATION INCORPORATED PURSUANT TO
28 THIS ARTICLE AND THE BUSINESS CORPORATION LAW SHALL NOT:

29 (A) CAUSE OR PERMIT ANY SHAREHOLDER TO OWN SHARES ALLOCATED TO MORE
30 THAN ONE DWELLING UNIT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE COMMIS-
31 SIONER OR THE SUPERVISING AGENCY; OR

32 (B) CAUSE OR PERMIT ANY DWELLING UNIT TO BE COMBINED, ELIMINATED, OR
33 DEVOTED TO ANY USE OTHER THAN OCCUPANCY BY FAMILIES OR PERSONS OF LOW
34 INCOME WITHOUT THE PRIOR WRITTEN APPROVAL OF THE COMMISSIONER OR THE
35 SUPERVISING AGENCY.

36 10. NOTWITHSTANDING ANY PROVISION OF PARAGRAPH (C) OF SECTION FIVE
37 HUNDRED ONE OF THE BUSINESS CORPORATION LAW TO THE CONTRARY, A HOUSING
38 DEVELOPMENT FUND CORPORATION INCORPORATED PURSUANT TO THIS ARTICLE AND
39 THE BUSINESS CORPORATION LAW MAY, WITH THE APPROVAL OF THE COMMISSIONER
40 OR THE SUPERVISING AGENCY IMPOSE DIFFERENT CHARGES, FEES, ASSESSMENTS
41 AND REQUIREMENTS WITH RESPECT TO DIFFERENT DWELLING UNITS AND THE SHARES
42 ALLOCATED TO SUCH DWELLING UNITS. THE REASONS FOR SUCH DIFFERENT CHARG-
43 ES, FEES, ASSESSMENTS AND REQUIREMENTS MAY INCLUDE, BUT SHALL NOT BE
44 LIMITED TO, DIFFERENCES IN (A) THE INCOME REQUIREMENTS FOR OCCUPANCY OF,
45 OR ACTUAL INCOMES OF THE HOUSEHOLDS OCCUPYING, SPECIFIC DWELLING UNITS,
46 (B) THE DURATION OF OWNERSHIP OF SHARES OR THE DATE OR CIRCUMSTANCES OF
47 THE PURCHASE OF SUCH SHARES AND (C) THE DEGREE OF COMPLIANCE WITH THE
48 PROPRIETARY LEASE OR WITH ANY AGREEMENT BETWEEN THE CORPORATION AND A
49 GOVERNMENTAL ENTITY.

50 S 2. Subdivision 14 of section 572 of the private housing finance law,
51 as amended by chapter 655 of the laws of 1978, is amended to read as
52 follows:

53 14. "Supervising Agency." [The comptroller in a municipality having a
54 comptroller; in a municipality having no comptroller, the chief fiscal
55 officer of such municipality; except that] THE AGENCY IN A MUNICIPALITY
56 HAVING JURISDICTION OVER THE DEVELOPMENT AND OPERATION OF AFFORDABLE

1 HOUSING, REGARDLESS OF ANY AGENCY SPECIFIED IN THE CERTIFICATE OF INCOR-
2 PORATION OF A HOUSING DEVELOPMENT FUND CORPORATION, OR, in the city of
3 New York [it shall be], the department of housing preservation and
4 development.

5 S 3. Paragraph a of subdivision 3 of section 573 of the private hous-
6 ing finance law, as amended by chapter 758 of the laws of 1967, is
7 amended to read as follows:

8 a. that the company has been organized exclusively to develop AND
9 OPERATE a housing project for persons of low income;

10 S 4. Section 577 of the private housing finance law is amended by
11 adding a new subdivision 4 to read as follows:

12 4. NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL, SPECIAL OR LOCAL
13 LAW, UPON THE COMMENCEMENT OF AN EXEMPTION PURSUANT TO THIS SECTION WITH
14 RESPECT TO ANY REAL PROPERTY IN A PROJECT OF A HOUSING DEVELOPMENT FUND
15 CORPORATION, SUCH CORPORATION MAY, WITH THE CONSENT OF THE COMMISSIONER
16 OR THE SUPERVISING AGENCY, TERMINATE ANY OTHER TAX EXEMPTION OR ABATE-
17 MENT APPLICABLE TO SUCH PROPERTY.

18 S 5. Severability. If any clause, sentence, paragraph, subdivision or
19 section of this act shall be adjudged by any court of competent juris-
20 diction to be invalid, such judgment shall not affect, impair, or inval-
21 idate the remainder thereof, but shall be confined in its operation to
22 the clause, sentence, paragraph, subdivision or section thereof directly
23 involved in the controversy in which such judgment shall have been
24 rendered.

25 S 6. This act shall take effect immediately.