STATE OF NEW YORK

6543

2017-2018 Regular Sessions

IN SENATE

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:

Section 1. The private housing finance law is amended by adding a new section 573-a to read as follows:

§ 573-a. Assets and supervision of housing development fund corporations. 1. Except as may be specifically authorized in writing by the commissioner or the supervising agency, as the case may be, (a) a housing development fund corporation shall not cause or permit any vacant dwelling unit to be leased to, or occupied by, anyone other than families and persons of low income, (b) a housing development fund corporation organized pursuant to the not-for-profit corporation law shall not cause or permit any dwelling unit to be leased or occupied at a rent that is not affordable to families and persons of low income, as determined in accordance with standards established by the commissioner or the supervising agency, as the case may be and (c) a housing development fund corporation organized pursuant to the business corporation law shall not cause or permit the sale, transfer, assignment or issuance of any shares allocated to any dwelling unit to anyone other than families and persons of low income, or cause or permit the sale, transfer, assignment or issuance of any shares allocated to any dwelling unit for a price that is not affordable to families and persons of low income, as determined in accordance with standards established by the commissioner or the supervising agency. Where the ownership of shares allocated to any dwelling unit is transferred by operation of law, without the consent of the housing development fund corporation, to parties who are 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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or permit the occupancy of the dwelling unit to which such shares are allocated until the shares have been sold or otherwise transferred to a family or person of low income that will occupy such dwelling unit; provided, however, that the corporation shall not be required to remove any member of the prior shareholder's household who has continuously occupied the dwelling unit to which such shares are allocated as his or her sole residence for a period commencing not less than two years prior to the event which resulted in such transfer, even if the actual transfer occurred at a later date.

2. A housing development fund corporation shall not sell, transfer or assign all or substantially all of its assets, or any of its real property, without the prior written approval of the commissioner or the supervising agency. A housing development fund corporation shall either deposit the proceeds if any such sale, transfer or assignment with the commissioner or the supervising agency, or devote such proceeds to a housing project for families and persons of low income, or for related affordable housing activities, in a manner approved in writing by the commissioner or the supervising agency.

3. A housing development fund corporation shall not lease any of its real property, other than a lease of a single dwelling unit or a commercial unit for a term not exceeding two years, without the prior written approval of the commissioner or the supervising agency.

4. The certificate of incorporation of a housing development fund corporation shall not be altered or amended, and the corporation shall not be dissolved, without (a) the prior written approval of the commissioner or the supervising agency and (b) the prior written approval of any governmental entity which holds a mortgage or other lien on any assets of the corporation or to which any indebtedness of the corporation is outstanding.

5. Violations by a housing development fund corporation. (a) If the commissioner or the supervising agency determines that the housing development fund corporation has violated any of the provisions of this article or its certificate of incorporation or has violated or failed to fulfill any agreement with or obligation to a governmental entity, the commissioner or the supervising agency may (i) appoint to the board of directors of the corporation a number of new directors sufficient to constitute a majority of such board, notwithstanding any other provision of the certificate, the by-laws of the corporation or any agreement entered into by the corporation, (ii) revoke or suspend all or part of any exemption from local real property taxation pursuant to section five hundred seventy-seven of this article or (iii) exercise any other remedies available under applicable law or pursuant to any agreement with the corporation.

(b) Unless the commissioner or the supervising agency determines that a cure of any such violation or failure is impossible, prior to exercising any of the powers provided in subdivision (a) of this section, the commissioner or the supervising agency shall either (i) provide the corporation with thirty days notice and opportunity to cure such violation, (ii) provide the corporation with such notice and opportunity to cure such violation as may be provided in any agreement between a governmental entity and the corporation or (iii) only with respect to the revocation of a tax exemption pursuant to section five hundred seventy-seven of this article, provide the corporation with such notice and opportunity to cure such violation as may be provided in a resolution of the local legislative body.

6. A housing development fund corporation shall not acquire any real property not specifically identified by address or tax parcel in its certificate of incorporation without the prior written approval of the commissioner or the supervising agency.

7. Any housing development fund corporation incorporated pursuant to the provisions of this article and the not-for-profit corporation law shall be deemed to be a charitable corporation, as defined in subparagraph three-a of paragraph (a) of section one hundred two of the not-for-profit corporation law.

8. The following provisions of the not-for-profit corporation law shall apply to any housing development fund corporation incorporated pursuant to the provisions of this article and the business corporation law: section one hundred twelve, section five hundred eight, section five hundred ten, section five hundred eleven, section five hundred eleven-a, section five hundred fifteen, paragraph (d) of section seven hundred six, paragraph (c) of section seven hundred fourteen, section seven hundred fifteen, section seven hundred sixteen, section seven hundred twenty, section nine hundred seven, section nine hundred seven-a, section nine hundred seven-b, paragraph (d) of section one thousand two, paragraph (a) of section one thousand two-a, paragraph (c) of section one thousand two-a, paragraph (b) of section one thousand three, paragraph (c) of section one thousand three, section eleven hundred one and section eleven hundred two. Where any conflict exists between the provisions of the not-for-profit corporation law listed in this subdivision and the business corporation law, the provisions of the not-for-profit corporation law shall control.

9. A housing development fund corporation incorporated pursuant to this article and the business corporation law shall not:

(a) cause or permit any shareholder to own shares allocated to more than one dwelling unit without the prior written approval of the commissioner or the supervising agency; or

(b) cause or permit any dwelling unit to be combined, eliminated, or devoted to any use other than occupancy by families or persons of low income without the prior written approval of the commissioner or the supervising agency.

10. Notwithstanding any provision of paragraph (c) of section five hundred one of the business corporation law to the contrary, a housing development fund corporation incorporated pursuant to this article and the business corporation law may, with the approval of the commissioner or the supervising agency impose different charges, fees, assessments and requirements with respect to different dwelling units and the shares allocated to such dwelling units. The reasons for such different charges, fees, assessments and requirements may include, but shall not be limited to, differences in (a) the income requirements for occupancy of, or actual incomes of the households occupying, specific dwelling units, (b) the duration of ownership of shares or the date or circumstances of the purchase of such shares and (c) the degree of compliance with the proprietary lease or with any agreement between the corporation and a governmental entity.

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

14. "Supervising Agency." [~~The comptroller in a municipality having a comptroller; in a municipality having no comptroller, the chief fiscal officer of such municipality; except that~~] The agency in a municipality having jurisdiction over the development and operation of affordable

housing, regardless of any agency specified in the certificate of incorporation of a housing development fund corporation, or, in the city of New York [~~**it shall be**~~]**,** the department of housing preservation and development.

§ 3. Paragraph a of subdivision 3 of section 573 of the private housing finance law, as amended by chapter 758 of the laws of 1967, is amended to read as follows:

a. that the company has been organized exclusively to develop **and operate** a housing project for persons of low income;

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

4. Notwithstanding the provisions of any general, special or local law, upon the commencement of an exemption pursuant to this section with respect to any real property in a project of a housing development fund corporation, such corporation may, with the consent of the commissioner or the supervising agency, terminate any other tax exemption or abatement applicable to such property.

§ 5. Severability. If any clause, sentence, paragraph, subdivision or section of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or section thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 6. This act shall take effect immediately.