

STATE OF NEW YORK

9608

IN ASSEMBLY

January 27, 2020

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Housing

AN ACT to amend the executive law, in relation to establishing the office of the HDFC cooperative ombudsman; and to amend the tax law, the state finance law, and the general business law, in relation to establishment of a fund for deposit of a residential unit fee, and to direct the administration of such fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The executive law is amended by adding a new article 5-A to
2 read as follows:

ARTICLE 5-A

OFFICE OF THE HDFC COOPERATIVE OMBUDSMAN

Section 80. Short title.

6 80-a. Legislative declaration.

7 80-b. Definitions.

8 80-c. Office of the HDFC cooperative ombudsman.

9 80-d. Functions, powers, and duties of the office.

10 80-e. Principal office and satellite offices.

11 80-f. Assistance of other state agencies.

12 80-g. Reports to the governor, attorney general, and legisla-
13 ture.

14 80-h. Contract authority.

15 80-i. Separability.

16 § 80. Short title. This article shall be known and may be cited as the
17 "HDFC cooperative ombudsman act".

18 § 80-a. Legislative declaration. The legislature hereby finds and
19 declares the following:

20 1. Affordable housing cooperatives, known as housing development fund
21 companies or corporations, constitute a significant portion of New York
22 state's affordable home ownership housing stock with more than one thou-
23 sand three hundred cooperatives with approximately twenty-six thousand
24 units. It is and has been the public policy of this state to encourage
25 such forms of home ownership. A wide variety of laws have been enacted

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

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1 to provide fairness in the regulation and taxation of cooperatives and
2 condominiums. State and local laws and regulations are also designed to
3 ensure that the residents of such affordable housing cooperatives are
4 provided with safe and habitable accommodations. Moreover, with the
5 enactment of the housing stability and tenant protection act of two
6 thousand nineteen, it is anticipated that more housing development fund
7 companies may be formed as tenants become the rightful owners of their
8 homes through tenant-sponsored cooperative conversions.

9 2. While housing development fund companies provide some of the most
10 affordable housing in New York, there exists no meaningful government
11 resource available to their boards and shareholders. Tenants in build-
12 ings that are converting to a housing development fund company need
13 training, and technical and legal assistance. To date, no such resources
14 exist. Once a building is converted to a housing development fund compa-
15 ny, little to no resources are available at reasonable costs to its
16 board and its shareholders. While some housing development fund compa-
17 nies may have monitors, the scope of services is extremely limited, and
18 monitors do not assist boards and shareholders in operating a business.
19 To begin, monitors do not provide legal assistance. When legal issues or
20 disputes arise, housing development fund companies are often without a
21 place to go, which can oftentimes be devastating. Such disputes often
22 result in lengthy and costly litigation and uncertainty as to the rights
23 of the parties pending the outcome of litigation. Such litigation
24 diverts resources that could be better utilized to provide affordable
25 and well-maintained buildings and grounds for the common good of the
26 owners.

27 3. This article is necessary to provide a neutral, informative, and
28 accessible resource available to boards and shareholders of housing
29 development fund companies. The HDFC cooperative ombudsman appointed
30 pursuant to this article will conduct outreach programs to educate
31 boards and shareholders as to their legal rights and responsibilities.
32 The HDFC cooperative ombudsman will encourage alternative dispute resol-
33 ution when disputes do arise. The HDFC cooperative ombudsman will be
34 available to provide dispute resolution services on consent of the
35 parties. The ombudsman will also provide monitoring and supervision of
36 cooperative and condominium elections for HDFC co-ops without a monitor
37 that provides such services.

38 § 80-b. Definitions. For the purposes of this article, the following
39 terms shall have the following meanings:

40 1. "Housing development fund company" or "HDFC" means a corporation
41 organized and operating pursuant to the business corporation law and the
42 private housing finance law for the primary purpose of providing low
43 income housing to its member shareholders.

44 2. "Local agency" means any department, board, bureau, commission,
45 division, office, council, officer or agency of a city, town or village.

46 3. "Office" means the office of the HDFC cooperative ombudsman created
47 by this article.

48 4. "The HDFC cooperative ombudsman" or "the ombudsman" means the chief
49 administrative officer of the office of the HDFC cooperative ombudsman.

50 5. "State agency" means any department, board, bureau, commission,
51 division, office, council or agency of the state, or a public benefit
52 corporation or authority authorized by the laws of the state.

53 § 80-c. Office of the HDFC cooperative ombudsman. 1. The office of the
54 HDFC cooperative ombudsman is hereby created within the department of
55 law to have and exercise the functions, powers, and duties provided by

1 the provisions of this article and any other provision of law. The
2 attorney general shall be responsible for oversight of the office.

3 2. The head of the office shall be the HDFC cooperative ombudsman who
4 shall be appointed by the attorney general. The ombudsman shall hold
5 office until the end of the term of the attorney general by whom he or
6 she was appointed and until his or her successor is appointed and has
7 qualified. The ombudsman may be removed by the attorney general for
8 cause, after being given an opportunity to be heard. A vacancy shall be
9 filled in the same manner as the original appointment.

10 3. The ombudsman shall receive an annual salary to be fixed by the
11 attorney general within the amount made available therefor by an appro-
12 priation and shall be allowed his or her actual and necessary expenses
13 in the performance of his or her duties. The ombudsman's salary shall be
14 no less than the salaries of certain state officers holding the posi-
15 tions indicated in paragraph (a) of subdivision one of section one
16 hundred sixty-nine of this chapter.

17 4. The ombudsman shall be an attorney admitted to practice in New York
18 state, with extensive experience in real estate, affordable housing,
19 cooperative law and in conflict and alternative dispute resolution.

20 5. The ombudsman shall direct the work of the office and shall be the
21 chief executive officer of the office. The ombudsman may appoint such
22 officers, employees, or third-party consultants as he or she may deem
23 necessary, prescribe their powers and duties, fix their compensation and
24 provide for the reimbursement of their expenses, all within amounts made
25 available therefor by appropriation. Such officers and employees shall
26 include attorneys and other professionals with extensive experience in
27 real estate, affordable housing, cooperative law, and in conflict and
28 alternative dispute resolution.

29 6. The ombudsman and officers and employees of the office shall adhere
30 to a code of ethics in order to inspire public confidence as prescribed
31 by the public officers law.

32 7. The ombudsman and officers and employees of the office shall not
33 serve as officers or employees of a political party or a club or organ-
34 ization related to a political party, receive remuneration for activ-
35 ities on behalf of any candidate for public office or party position or
36 engage in soliciting votes or other activities on behalf of a candidate
37 for public office or party position.

38 8. The secretary to the governor shall ensure that all state agencies
39 provide the ombudsman with assistance in advancing the purposes of the
40 office and shall ensure that the activities of the office are fully
41 coordinated with the activities of state agencies providing related
42 services.

43 § 80-d. Functions, powers, and duties of the office. The office shall
44 have the following functions, powers, and duties:

45 1. To educate and inform boards and shareholders in housing develop-
46 ment fund companies of their legal rights and responsibilities under
47 federal, state, and local laws and regulations applicable to such compa-
48 nies;

49 2. To coordinate and assist in the preparation and publication of
50 educational and reference materials about housing development fund
51 companies and to make such resources known and available to the widest
52 possible audience;

53 3. To organize and conduct meetings, workshops, conferences, public
54 hearings, and forums, and to utilize all forms of communication media to
55 disseminate accurate and timely information of interest to persons
56 residing in, owning, or managing housing development fund companies;

1 4. To provide meetings, mediation, arbitration and other forms of
2 alternative dispute resolution services between shareholders and boards
3 of housing development fund companies and parties where disputes may
4 arise between for-profit and non-profit sponsors and developers, manag-
5 ers, prospective and existing shareholders, and other parties, so as to
6 avoid costly and lengthy litigation and reduce expenses for those
7 involved in disputes;

8 5. To subpoena and enforce the attendance of witnesses, administer
9 oaths or affirmations and examine witnesses under oath, and require the
10 production of any books and papers deemed relevant or material to the
11 resolution of any dispute pending before the office;

12 6. To engage with the housing courts, other trial courts, state and
13 local agencies, and with alternative dispute resolution programs main-
14 tained by the office of court administration in order to provide
15 specialized expertise in the resolution of disputes involving housing
16 development fund companies as an alternative to litigation;

17 7. To offer procedures, monitors, and vote counting services to
18 provide fair elections for boards and shareholders in housing develop-
19 ment fund companies, including but not limited to providing that:

20 (i) fifteen percent of the total voting interests in housing develop-
21 ment fund companies, or shareholders of six residential units, whichever
22 is greater, may petition the office to attend and conduct an election of
23 the board; and

24 (ii) all costs associated with the election monitoring process shall
25 be paid by the housing development fund companies;

26 8. To provide legal assistance related to amending governing documents
27 to comply with applicable laws, rules and regulations governing housing
28 development fund companies, and advising on corporate policies involving
29 governance such as resales, conflicts of interest, and shareholder
30 selection;

31 9. To refer any complaint received to the appropriate law enforcement
32 agency for prosecution, if deemed appropriate by the office; and

33 10. To perform any other functions that are necessary or appropriate
34 to fulfill the duties and responsibilities of the office.

35 § 80-e. Principal office and satellite offices. The office shall main-
36 tain its principal office in the city of New York and shall have satel-
37 lite offices in other locations within the state where there are signif-
38 icant concentrations of housing development fund companies.

39 § 80-f. Assistance of other state agencies. To effectuate the purposes
40 of this article, the ombudsman may request and shall be entitled to
41 receive from any state agency, and the same are authorized to provide,
42 such assistance, services, facilities, and data as will enable the
43 office to carry out its functions, powers and duties, and such temporar-
44 ily or permanently assigned personnel as the director of the budget may
45 approve.

46 § 80-g. Reports to the governor, attorney general, and legislature.
47 The office shall make an annual report, to be received on or before
48 January first each full year following the effective date of this arti-
49 cle, to the governor, the attorney general, and the legislature concern-
50 ing the activities undertaken by the office, recommendations for legis-
51 lative proposals, data concerning program activities, and other
52 pertinent information as may be required.

53 § 80-h. Contract authority. The office is hereby empowered to enter
54 into any agreement or contract with any state or local agency necessary
55 or convenient to carry out the provisions of this article. The attorney
56 general may also contract with outside third parties for the purpose of

1 establishing the office, and thereafter, the ombudsman shall be author-
2 ized to enter into contracts with third-party professionals to provide
3 direct legal services and technical assistance. Any contracts with
4 third-party professionals shall be subject to state procurement laws.

5 § 80-i. Separability. If any clause, sentence, paragraph, section or
6 part of this article shall be adjudged by any court of competent juris-
7 isdiction to be invalid, such judgment shall not affect, impair, or inval-
8 idate the remainder thereof, but shall be confined in its operation to
9 the clause, sentence, paragraph, section, or part thereof directly
10 involved in the controversy in which such judgment shall have been
11 rendered.

12 § 2. The tax law is amended by adding a new section 186-h to read as
13 follows:

14 § 186-h. Residential unit fee. A cooperative housing corporation or a
15 condominium owners association, as such terms are defined in the inter-
16 nal revenue code, shall pay an annual fee of six dollars per year for
17 each residential unit located in any building owned or operated by such
18 corporation or association. Such fee shall be payable to the department.
19 All revenue from the fee imposed pursuant to this section shall be paid
20 by the department to the state comptroller to be deposited to and cred-
21 ited to the office of the HDFC cooperative ombudsman fund, established
22 pursuant to section eighty-a of the state finance law.

23 § 3. The state finance law is amended by adding a new section 80-a to
24 read as follows:

25 § 80-a. Office of the HDFC cooperative ombudsman fund. 1. There is
26 hereby established in the custody of the state comptroller a special
27 fund to be known as the "office of the HDFC cooperative ombudsman fund".

28 2. The office of the HDFC cooperative ombudsman fund shall consist of
29 monies appropriated thereto, funds transferred from any other fund or
30 sources, and monies deposited therein pursuant to section one hundred
31 eighty-six-h of the tax law.

32 3. The moneys in the HDFC cooperative ombudsman fund shall be kept
33 separate from and shall not be commingled with any other moneys in the
34 custody of the state comptroller. All moneys in the fund shall be
35 distributed each state fiscal year and such moneys shall be allocated to
36 and expended by the department of law solely for the operation and
37 administration of the office of the HDFC cooperative ombudsman estab-
38 lished pursuant to article five-A of the executive law.

39 § 4. Subdivision 3 of section 80 of the state finance law, as added by
40 section 2 of part BBB-1 of chapter 57 of the laws of 2008, is amended
41 and a new subdivision 2-a is added to read as follows:

42 2-a. On or before the first day of February following the effective
43 date of this subdivision and annually thereafter, the attorney general
44 shall provide a written report to the temporary president of the senate,
45 the speaker of the assembly, the chair of the senate finance committee,
46 the chair of the assembly ways and means committee, the state comp-
47 troller, and the public. Such report shall outline the nature of how the
48 monies of the real estate finance bureau fund were utilized during the
49 preceding calendar year, and shall include: (a) the amount of money
50 dispersed from such fund; (b) the recipients of awards from such fund;
51 (c) the amount awarded to each such recipient; (d) the purposes for
52 which such awards were granted; and (e) a summary financial plan for
53 such monies which shall include estimates of all future receipts and
54 disbursements for the current and succeeding fiscal years.

55 3. The moneys in the real estate finance bureau fund shall be kept
56 separate from and shall not be commingled with any other moneys in the

1 custody of the state comptroller. ~~[Such]~~ All moneys in the real estate
2 finance bureau fund shall be distributed in their entirety during each
3 state fiscal year, and such moneys shall be allocated to and expended by
4 the department of law solely for increasing the staffing, efficiency and
5 administration of the real estate finance bureau of such department. The
6 first one million five hundred thousand dollars of such annual distrib-
7 ution of monies in the real estate finance bureau fund shall be allo-
8 cated to hiring additional staff beyond that which was employed by the
9 real estate finance bureau within the department of law at the time of
10 the effective date of a chapter of the laws of two thousand twenty that
11 amended this subdivision. Such allocation for additional staffing shall
12 be adjusted annually for inflation according to the consumer price
13 index.

14 § 5. Paragraphs (a) and (c) of subdivision 7 of section 352-e of the
15 general business law, paragraph (a) as amended by section 1 of part
16 BBB-1 of chapter 57 of the laws of 2008 and paragraph (c) as amended by
17 chapter 637 of the laws of 1989, are amended to read as follows:

18 (a) The department of law shall collect the following fees for the
19 filing of each offering statement or prospectus as described in subdivi-
20 sion one of this section: seven hundred fifty dollars for every offering
21 not in excess of two hundred fifty thousand dollars; for every offering
22 in excess of two hundred fifty thousand dollars, four-tenths of one
23 percent of the total amount of the offering but not in excess of ~~[thir-~~
24 ~~ty]~~ sixty thousand dollars of which one-half of said amount shall be a
25 nonrefundable deposit paid at the time of submitting the offering state-
26 ment to the department of law for review and the balance payable upon
27 the issuance of a letter of acceptance for filing said offering state-
28 ment. The department of law shall, in addition, collect a fee of two
29 hundred twenty-five dollars for each price change amendment to an offer-
30 ing statement and seven hundred fifty dollars for any other amendment to
31 an offering statement. For each application granted by the department
32 of law which permits the applicant to solicit public interest or public
33 funds preliminary to the filing of an offering statement or for the
34 issuance of a "no-filing required" letter, and any amendment thereto,
35 the department of law shall collect a fee of ~~[two hundred twenty-five]~~
36 seven hundred fifty dollars. ~~[In the event the sponsor thereafter files~~
37 ~~an offering statement, the fee paid for the preliminary application~~
38 ~~shall be credited against the balance of the fee due and payable on~~
39 ~~filing.]~~ For each application granted pursuant to section three hundred
40 fifty-two-g of this article, the department of law shall collect a fee
41 of two-tenths of one percent of the amount of the offering of securi-
42 ties; however, the minimum fee shall be seven hundred fifty dollars and
43 the maximum fee shall be ~~[thirty]~~ sixty thousand dollars. All revenue
44 from that portion of any fee imposed pursuant to this paragraph, which
45 exceeds twenty thousand dollars for offering statements, and five
46 hundred twenty-five dollars for all other filings, shall be paid by the
47 department of law to the state comptroller to be deposited in and cred-
48 ited equally to the real estate finance bureau fund, established pursu-
49 ant to section eighty of the state finance law and the HDFC cooperative
50 ombudsman fund, established pursuant to section eighty-a of the state
51 finance law.

52 (c) Notwithstanding the provisions of paragraph (a) of this subdivi-
53 sion, the department of law shall not collect any fees for the filing of
54 an offering statement or prospectus or any amended filings thereto as
55 described in subdivision one of this section whenever a conversion of a
56 mobile home park, building or group of buildings or development ~~[from~~

1 ~~residential rental status~~] to cooperative or condominium ownership is
2 being made pursuant to article eleven, eighteen, nineteen or twenty of
3 the private housing finance law.
4 § 6. This act shall take effect on the one hundred eightieth day after
5 it shall have become a law.