

# STATE OF NEW YORK

6412

2021-2022 Regular Sessions

## IN SENATE

April 27, 2021

Introduced by Sen. KAVANAGH -- 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 voting, election and referendum procedures; to requirements regarding mutual housing companies considering dissolution and/or reconstitution; to certain duties of a board of directors of a limited-profit housing company; and to prohibiting certain limited-profit housing companies from voluntarily dissolving during the state disaster emergency declared in response to the outbreak of COVID-19

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 13-c to read as follows:

3 § 13-c. Voting, election and referendum procedures. 1. Any shareholder  
4 vote shall be conducted using secret ballots. Such ballots shall be  
5 cast in-person by tenants entitled to occupancy in the project; unless  
6 such tenant casts such ballot using an absentee ballot issued pursuant  
7 to subdivision two of this section.

8 2. A shareholder entitled to occupancy in the project shall be enti-  
9 tled to request an absentee ballot to cast a ballot in any shareholder  
10 vote. Such absentee ballot shall be delivered or mailed only to the  
11 primary residence address of a shareholder entitled to occupancy in the  
12 project. An absentee ballot cast pursuant to this subdivision shall be  
13 sealed within two envelopes, shall contain the signature of the share-  
14 holder casting the vote, and shall be mailed to a neutral third party  
15 not running for a position on the board of directors.

16 3. Proxy voting shall not be permitted in an election for a position  
17 on a board of directors, for dissolution of the company, for the author-  
18 ization of a feasibility study, for an offering plan including a red

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

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1 herring or black book, or any document offered in place of an offering  
2 plan as permitted by the attorney general.

3 4. In-person ballots shall produce a paper record which may be audited  
4 in the case of a contested election result.

5 5. No otherwise-eligible person shall be prevented from being a candi-  
6 date for, being elected to, or serving on a board of directors based  
7 solely on that person owing or having owed any amount of any form of  
8 arrears to the housing company, unless, at the time of nomination, that  
9 person currently owes an amount of bona fide arrears greater than the  
10 equivalent of two months of that person's monthly maintenance. Nothing  
11 in this subdivision shall be construed to require or mandate any housing  
12 company to adopt bylaws, rules, policies, or procedures restricting any  
13 person's eligibility to be nominated, elected, or serve on a board of  
14 directors. Nothing contained in this subdivision shall be a basis in  
15 itself to deny such eligibility to any person.

16 6. For any shareholder vote requiring a specific percentage of dwell-  
17 ing units, the term "dwelling units" shall mean all dwelling units for  
18 which shares have been issued, regardless of whether such dwelling units  
19 are occupied or vacant.

20 § 2. The private housing finance law is amended by adding a new  
21 section 35-a to read as follows:

22 § 35-a. Requirements regarding dissolution. Mutual housing companies  
23 considering dissolution and/or reconstitution pursuant to section thirty-  
24 five of this article shall be subject to the following requirements:

25 1. Any vote for dissolution of the company, or to authorize a feasi-  
26 bility study, a preliminary offering plan which may be referred to as a  
27 red herring, a final offering plan which may be referred to as a black  
28 book, or a proxy statement, or to send a notice of intent to dissolve to  
29 the commissioner or supervising agency shall require the approval of  
30 eighty percent of all dwelling units owned by the mutual housing compa-  
31 ny.

32 2. No funds from the operating budget of the mutual housing company  
33 shall be used for the preparation or distribution of a feasibility  
34 study, a preliminary offering plan or red herring, a final offering plan  
35 or black book, a proxy statement, or a notice of intent to dissolve, or  
36 to pay for any services related to evaluation of, preparation for, or  
37 execution of dissolution and/or reconstitution pursuant to section thirty-  
38 five of this article, including but not limited to legal services.

39 3. No vote under subdivision one of this section, shall occur within  
40 five years following a vote under subdivision one of this section that  
41 failed.

42 § 3. Section 17 of the private housing finance law is amended by  
43 adding two new subdivisions 4 and 5 to read as follows:

44 4. Notwithstanding the provisions of any law, general or special, a  
45 board of directors of a company created pursuant to the provisions of  
46 this article shall:

47 (a) Hold at least six meetings of its members annually. Such meetings  
48 shall be open to the shareholders and residents, except that they may  
49 include executive sessions open only to directors for the sole purpose  
50 of discussing confidential personnel issues, legal advice and counsel  
51 from an attorney to whom the housing company is a client, or confiden-  
52 tial issues affecting individual shareholders or residents, or contract  
53 negotiation.

54 (b) File with the commissioner or the supervising agency, as the case  
55 may be, a record of any vote on a resolution of such board, including

1 specification of how each director voted. Such record shall be a matter  
2 of public record.

3 (c) Promptly give notice of and make available to all shareholders any  
4 communication to the housing company from the commissioner or the super-  
5 vising agency, as the case may be, or the office of the attorney gener-  
6 al, regarding regulations, changes in regulations, taxation, finances,  
7 refinancing, or, in the event of a proposed dissolution and reincorpora-  
8 tion, the review of any version of an offering plan.

9 (d) Investigate any substantive allegation that a tenant is not occu-  
10 pying his or her dwelling unit as his or her primary residence.

11 5. (a) No housing company shall interfere with the right of a share-  
12 holder or tenant to form, join or participate in the lawful activities  
13 of any group, committee or other organization formed to protect the  
14 rights of shareholders and tenants; nor shall any housing company  
15 harass, punish, penalize, diminish, or withhold any right, benefit or  
16 privilege of a shareholder or tenant under their proprietary lease or  
17 tenancy for exercising such right.

18 (b) Shareholder and/or tenants' groups, committees or other sharehold-  
19 er and/or tenants' organizations shall have the right to meet without  
20 being required to pay a fee in any location on the premises including a  
21 community or social room where use is normally subject to a fee which is  
22 devoted to the common use of all shareholders and/or tenants in a peace-  
23 ful manner, at reasonable hours and without obstructing access to the  
24 premises or facilities. No housing company shall deny such right.

25 (c) The board of directors shall take all necessary and appropriate  
26 actions to ensure that a manager or agent of the housing company  
27 complies with the requirements in this subdivision.

28 § 4. 1. Notwithstanding any provision of law to the contrary, no  
29 company or urban rental company, as such terms are defined in section 12  
30 of the private housing finance law, shall be dissolved pursuant to the  
31 provisions of section 35 of such law or shall undergo semi-privatization  
32 pursuant to 28 RCNY 3-14(i)(15), or shall initiate any actions or  
33 proceedings related to dissolution or semi-privatization, including but  
34 not limited to, conducting a vote to authorize a feasibility study;  
35 submitting a preliminary offering plan to the attorney general for  
36 approval; distributing a preliminary offering plan to shareholders;  
37 distributing a final offering plan or proxy statement to shareholders;  
38 submitting a notice of intent to dissolve to the commissioner of housing  
39 or supervising agency; committing, promising, or expending funds in any  
40 way for the purposes of dissolution or semi-privatization; or holding  
41 any of the required notice meetings during the state disaster emergency  
42 declared pursuant to executive order 202 of 2020 in response to the  
43 outbreak of novel coronavirus, COVID-19.

44 2. As used in this act, the term "semi-privatization" means dissolving  
45 as a mutual housing company and transferring the property to a housing  
46 development fund company organized pursuant to article XI of the private  
47 housing finance law.

48 § 5. This act shall take effect immediately; provided, however,  
49 sections one, two and three of this act shall take effect on the nineti-  
50 eth day after it shall have become a law.