

# STATE OF NEW YORK

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7079

2021-2022 Regular Sessions

## IN SENATE

May 27, 2021

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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 authorizing additional supervision and regulation of limited-profit housing companies

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

1 Section 1. Section 32-a of the private housing finance law, as added  
2 by chapter 449 of the laws of 1975, subdivision 6 as added by chapter  
3 744 of the laws of 1977, subdivision 7 as added by chapter 409 of the  
4 laws of 1982, subdivision 8 as added by chapter 594 of the laws of 2019  
5 and the closing paragraph as added by chapter 74 of the laws of 1988, is  
6 amended to read as follows:

7 § 32-a. Additional supervision and regulation. The commissioner or the  
8 supervising agency, as the case may be, shall:

9 1. Promulgate regulations providing for recognition of duly consti-  
10 tuted tenants' associations and cooperators' advisory councils by the  
11 commissioner or supervising agency, as the case may be, and providing  
12 that a housing company shall meet on a regular basis with represen-  
13 tatives of such an association or council at the specific project  
14 involved to discuss matters relating to the project. A duly constituted  
15 cooperators' advisory council shall only be such a council in a mutual  
16 company project prior to the election of a board of directors by the  
17 tenant-cooperators.

18 2. Require every company to file with him, her or it an annual operat-  
19 ing budget for each individual project in the manner prescribed by the  
20 commissioner or supervising agency.

21 3. Require every company to file with him, her or it semi-annual or  
22 quarterly financial statements and an annual financial statement. Each  
23 annual financial statement shall be accompanied by a certificate of the

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

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1 company's independent certified public accountant. Such financial state-  
2 ments shall be filed at the times and in the manner prescribed by the  
3 commissioner or supervising agency.

4 4. Afford tenants access to and an opportunity to acquire copies of  
5 all operating budgets or financial statements respecting the project in  
6 which such tenants reside, to the extent that such budgets and state-  
7 ments are required by law to be kept by the commissioner or supervising  
8 agency.

9 5. Permit any tenant, duly constituted tenants' association, duly  
10 constituted cooperators' advisory council or his, hers or its duly  
11 authorized representative to audit the books of the company and to have  
12 access during normal business hours to the financial records upon which  
13 the company's financial statements are based.

14 6. Promulgate regulations relating to managing agents, including  
15 criteria for the eligibility for selection and the compensation of  
16 managing agents by companies organized pursuant to this article. Such  
17 regulations shall provide, among other things, that any contract with a  
18 managing agent entered into after September first, nineteen hundred  
19 seventy-seven shall be terminable for cause and shall be terminable,  
20 with or without cause, at least every twelve months after commencement  
21 of the term thereof, and that promptly upon termination the managing  
22 agent shall turn over to the company all project records, rent rolls,  
23 bills, cancelled checks, bank statements and other papers owned by such  
24 company.

25 7. Require that every company file with him, her or it, within six  
26 months of the effective date of regulations implementing this subdivi-  
27 sion and in such format as shall be prescribed by the commissioner or  
28 the supervising agency after consultation with the state energy office,  
29 an energy audit report which identifies potential energy-saving building  
30 improvements, including alterations, modifications and adjustments to  
31 the building structure, heating, cooling, lighting and ventilation  
32 systems; their relative costs; potential energy and cost savings; and  
33 simple payback periods, which for the purpose of this subdivision shall  
34 mean that period of time within which the estimated cost of such  
35 improvements, exclusive of the cost of capital, would be recovered from  
36 the savings generated by reduced energy consumption resulting from the  
37 improvements. The energy audit shall be conducted by a public utility,  
38 an engineer or architect licensed by the state, or the managing agent or  
39 other representative of the company if such individual has attended an  
40 energy audit training workshop sponsored by the commissioner or the  
41 state energy office. A copy of the energy audit report, required herein,  
42 shall be given to any duly constituted tenant's association or  
43 cooperator's advisory council and a copy shall be available for  
44 inspection and copying by any individual tenant who requests it. The  
45 commissioner or supervising agency shall also require that every company  
46 certify by March thirty-first, nineteen hundred eighty-four that all  
47 compatible conservation measures identified in the energy audit report  
48 which have simple payback periods of one year or less have been imple-  
49 mented; provided, however, if the commissioner or supervising agency  
50 determines within sixty days of the date the energy audit report is  
51 filed that one or more of such identified conservation measures cannot  
52 be implemented by March thirty-first, nineteen hundred eighty-four,  
53 given the projected rent revenues and other monies available to the  
54 company from reserve funds, loans or grants from the state or federal  
55 government or any other source, the implementation of such conservation

1 measures shall be provided for according to a schedule prescribed by the  
2 commissioner or supervising agency.

3 8. Every tenant or resident, or a person acting on behalf of a tenant  
4 or resident, shall be permitted to copy, by photographic means, any  
5 document within the scope of this section pertaining to the project in  
6 which such tenant or resident resides. A reasonable fee, subject to a  
7 maximum therefor prescribed in regulations, may be charged for such  
8 copies.

9 9. Require that within ten days of the filing of any reports or finan-  
10 cial statements with the commissioner or supervising agency, the housing  
11 company shall transmit a copy of said report or financial statement to a  
12 duly constituted resident board of directors, and if there be none, to a  
13 cooperator's advisory council or a duly constituted tenants association  
14 representing the project concerned. Where no such council or association  
15 exists in a project, a notice shall be posted informing the residents of  
16 the location on the premises of the project where a copy of said report  
17 or financial statement is available for inspection. The notice shall be  
18 posted within ten days of filing, in a prominent place on the premises  
19 of the project concerned.

20 10. Require every voting member of a board of directors of a company  
21 subject to the provisions of this article, elected or appointed for a  
22 term beginning on or after the effective date of this subdivision, to  
23 complete, within the first year of his or her term and at least once  
24 every three years thereafter, a minimum of two hours of training, in  
25 person or virtually, as the commissioner or supervising agency, as the  
26 case may be, may deem appropriate on the financial oversight, account-  
27 ability and fiduciary responsibilities of a board member; and to require  
28 every voting member of a board of directors of a company subject to the  
29 provisions of this article, elected or appointed for a term beginning  
30 before the effective date of this subdivision, to complete such training  
31 within one year of the effective date of this subdivision and at least  
32 once every three years thereafter.

33 11. Require every voting member of a board of directors of a company  
34 subject to the provisions of this article, elected or appointed for a  
35 term beginning on or after the effective date of this subdivision, to  
36 complete, within the first year of his or her term and at least once  
37 every three years thereafter, in addition to the training required by  
38 subdivision ten of this section, a training course, in person or virtu-  
39 ally, as the commissioner or supervising agency, as the case be, may  
40 deem appropriate, to acquaint him or her with the powers, functions and  
41 duties of a board of directors of a company subject to the provisions of  
42 this article, as well as the powers and duties of other governing and  
43 administrative authorities affecting such companies; and to require  
44 every voting member of a board of directors of a company subject to the  
45 provisions of this article, elected or appointed for a term beginning  
46 before the effective date of this subdivision, to complete such training  
47 within one year of the effective date of this subdivision and at least  
48 once every three years thereafter.

49 12. Require each member of a board of directors of a company subject  
50 to the provisions of this article to demonstrate compliance with the  
51 requirements set forth in subdivisions ten and eleven of this section by  
52 filing a certificate of completion of such course or courses on a form  
53 to be promulgated by the commissioner. Such form shall be filed with the  
54 secretary of the housing corporation and maintained by the secretary as  
55 a corporate record and distributed annually to the shareholders and upon  
56 the filing of any director with the company of the intention to seek

1 re-election to the position. Sixty days prior to any scheduled election  
2 of members of the board of directors, the secretary of the housing  
3 company shall furnish the commissioner or the supervising authority, as  
4 the case may be, with a list of all incumbent directors indicating which  
5 individuals have submitted certificates required in this subdivision.  
6 Such course or courses shall be provided by the commissioner or super-  
7 vising agency, as the case may be, at no cost to the trainee or the  
8 board to which the trainee has been elected.

9 13. Develop the curricula used for training required by subdivisions  
10 ten and eleven of this section for which the supervising agency or the  
11 commissioner may request and shall receive the cooperation and assist-  
12 ance from any departments, divisions, boards, bureaus, commissions or  
13 agencies of the state and political subdivisions thereof in developing  
14 such curricula. These curricula may be offered together as a single  
15 course or separately. The training required by this section may be  
16 offered by providers approved by the commissioner or supervising agency,  
17 as the case may be. In approving other providers for these trainings,  
18 the commissioner or supervising agency shall consider a potential  
19 provider's understanding of cooperative homeownership; laws, rules and  
20 regulations affecting companies subject to the provisions of this arti-  
21 cle; and the fiduciary responsibilities of the board of a residential  
22 cooperative, as well as the experience of the provider in delivering  
23 such training.

24 14. Hold such meeting or meetings, in person or virtually as the  
25 commissioner or supervisory agency shall deem appropriate, with the  
26 board of a company on the financial oversight, accountability and fidu-  
27 ciary responsibilities of such board; the powers, functions and duties  
28 of such board; and the powers and duties of other governing and adminis-  
29 trative authorities affecting such company.

30 § 2. This act shall take effect immediately.