STATE OF NEW YORK

7079

2021-2022 Regular Sessions

IN SENATE

May 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 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:

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

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

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

2. Require every company to file with him**, her** or it an annual operating budget for each individual project in the manner prescribed by the commissioner or supervising agency.

3. Require every company to file with him**, her** or it semi-annual or quarterly financial statements and an annual financial statement. Each 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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company's independent certified public accountant. Such financial statements shall be filed at the times and in the manner prescribed by the commissioner or supervising agency.

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

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

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

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

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

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

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

10. Require every voting member of a board of directors of a company subject to the provisions of this article, elected or appointed for a term beginning on or after the effective date of this subdivision, to complete, within the first year of his or her term and at least once every three years thereafter, a minimum of two hours of training, in person or virtually, as the commissioner or supervising agency, as the case may be, may deem appropriate on the financial oversight, accountability and fiduciary responsibilities of a board member; and to require every voting member of a board of directors of a company subject to the provisions of this article, elected or appointed for a term beginning before the effective date of this subdivision, to complete such training within one year of the effective date of this subdivision and at least once every three years thereafter.

11. Require every voting member of a board of directors of a company subject to the provisions of this article, elected or appointed for a term beginning on or after the effective date of this subdivision, to complete, within the first year of his or her term and at least once every three years thereafter, in addition to the training required by subdivision ten of this section, a training course, in person or virtually, as the commissioner or supervising agency, as the case be, may deem appropriate, to acquaint him or her with the powers, functions and duties of a board of directors of a company subject to the provisions of this article, as well as the powers and duties of other governing and administrative authorities affecting such companies; and to require every voting member of a board of directors of a company subject to the provisions of this article, elected or appointed for a term beginning before the effective date of this subdivision, to complete such training within one year of the effective date of this subdivision and at least once every three years thereafter.

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

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

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

14. Hold such meeting or meetings, in person or virtually as the commissioner or supervisory agency shall deem appropriate, with the board of a company on the financial oversight, accountability and fiduciary responsibilities of such board; the powers, functions and duties of such board; and the powers and duties of other governing and administrative authorities affecting such company.

§ 2. This act shall take effect immediately.