STATE OF NEW YORK

7830

IN SENATE

January 12, 2022

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the private housing finance law, in relation to certain duties of a board of directors of a mutual housing company and prohibiting certain mutual housing companies from voluntarily dissolving during the state disaster emergency declared in response to the outbreak of COVID-19; and to amend a chapter of the laws of 2021 amending the private housing finance law relating 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, as proposed in legislative bills numbers S. 6412 and A. 7272, in relation to mutual housing companies and the effectiveness thereof

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

Section 1. Section 13-c of the private housing finance law, as added by a chapter of the laws of 2021 amending the private housing finance law relating 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, as proposed in legislative bills numbers S. 6412 and A. 7272, is amended to read as follows:

§ 13-c. Voting, election and referendum procedures. 1. Any shareholder vote **involving the election of board members, by-law amendments, or on dissolution or reconstitution or conversion of a mutual housing company including any votes for a special assessment pursuant to subdivisions one, two or three of section thirty-five-a of this article** shall be conducted using secret ballots. Such ballots shall be cast in-person by

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

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tenants entitled to [~~occupancy~~] vote in the project; unless such tenant casts such ballot using an absentee ballot issued pursuant to subdivision two of this section.

2. [~~A~~] Any shareholder entitled to [~~occupancy in the project shall be entitled to~~] vote may request an absentee ballot to cast a ballot in any shareholder vote. Such an absentee ballot [~~shall~~] may be delivered or mailed only to the primary residence address of [~~a~~] the shareholder entitled to [~~occupancy~~] vote in the project. An absentee ballot cast pursuant to this subdivision shall be sealed within two envelopes[~~, shall contain the signature of the shareholder casting the vote,~~] and shall be mailed or delivered to a neutral third party not running for a position on the board of directors. The outer envelope containing the ballot shall instruct the shareholder to affix their signature to the outer envelope only, and further instruct the shareholder not to sign the ballot itself.

3. Proxy voting shall not be permitted in [~~an election~~] a vote for a position on a board of directors, for dissolution or reconstitution of the mutual housing company, for the authorization of a feasibility study, [~~for an offering plan including a red herring or black book, or any document offered in place of an offering plan as permitted by~~] for the authorization to develop and submit to the attorney general an offering plan for dissolution and reconstitution of the mutual housing company, for the authorization to develop and submit to the attorney general a proxy statement or any other documents permitted by the attorney general instead of such offering plan, or any other vote relating to dissolution or reconstitution required by the regulations of the commissioner or supervising agency, or for an assessment approved pursuant to section thirty-five-a of this article to fund the development, submission, completion, or distribution of any of the aforementioned documents.

4. [~~In-person~~] All ballots shall produce a paper or electronic record which may be audited in the case of a contested election result.

5. No otherwise-eligible person shall be prevented from being a candidate for, being elected to, or serving on a board of directors based solely on that person owing or having owed any amount of any form of arrears to the mutual housing company, unless, at the time of nomination, that person currently owes an amount of [~~bona fide~~] arrears greater than the equivalent of two months of that person's monthly maintenance. Nothing in this subdivision shall be construed to require or mandate any mutual housing company to adopt bylaws, rules, policies, or procedures restricting any person's eligibility to be nominated, elected, or serve on a board of directors. [~~Nothing contained in this subdivision~~] No grounds other than the above arrearages in excess of two months maintenance shall be a basis in itself to deny such eligibility to any person unless specifically incorporated in regulations promulgated by or procedures approved by the commissioner or supervising agency. Neither a mutual housing company nor the commissioner or the supervising agency may modify in any way the above limitation so as to restrict eligibility on the basis of fewer than two months of arrears.

[~~6. For any shareholder vote requiring a specific percentage of dwelling units, the term "dwelling units" shall mean all dwelling units for which shares have been issued, regardless of whether such dwelling units are occupied or vacant.~~]

§ 2. Section 35-a of the private housing finance law, as added by a chapter of the laws of 2021 amending the private housing finance law relating 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, as proposed in legislative bills numbers S. 6412 and A. 7272, is amended to read as follows:

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

1. Any **preliminary** vote [~~**for dissolution of the company, or**~~] to authorize a feasibility study, [~~**a preliminary offering plan which may be referred to as a red herring, a final offering plan which may be referred to as a black book, or a proxy statement, or to send a notice of intent to dissolve to the commissioner or supervising agency shall require the approval of eighty percent**~~] **or to approve a special assessment to fund such feasibility study shall require the approval of a minimum of two-thirds** of all dwelling units [~~**owned**~~] **for which shares have been issued** by the mutual housing company**, regardless of whether such dwelling units are occupied or vacant, provided however, that where the shareholder of record is deceased, any vote attributable to the dwelling unit shall be discounted, both in the number of votes cast and in the total number of dwelling units upon which the vote is calculated, until such time as a new shareholder of record is determined for that dwelling unit**.

2. **Except as provided for in subdivision seven of this section, any vote to authorize the funding, development, and submission to the attorney general of an offering plan for dissolution and reconstitution of the mutual housing company, or to authorize the funding, development, and submission to the attorney general of a proxy statement, or any other documents permitted by the attorney general instead of such offering plan, or any other preliminary vote for review by the commissioner or supervising agency relating to the dissolution or reconstitution required by the regulations of the commissioner or supervising agency, shall require the approval of eighty percent of all dwelling units for which shares have been issued, regardless of whether such dwelling units are occupied or vacant, provided however, that where the shareholder of record is deceased, any vote attributable to the dwelling unit shall be discounted, both in the number of votes cast and in the total number of dwelling units upon which the vote is calculated, until such time as a new shareholder of record is determined for that dwelling unit.**

3. No funds from the operating budget of the mutual housing company shall be used for the preparation or distribution of a feasibility study, a preliminary **or filed** offering plan [~~**or red herring, a final offering plan or black book**~~] **for dissolution and reconstitution of the mutual housing company**, a proxy statement **or any other documents permitted by the attorney general instead of such offering plan**, or a notice of intent to dissolve, or to pay for any services related to evaluation of, preparation for, or execution of dissolution and/or reconstitution pursuant to section thirty-five of this article, including but not limited to legal services**, but such funds may only be raised by special assessment voted on and applicable to all shareholders using such procedures as required by regulations of the commissioner or the supervising agency which shall not allow proxies**.

[~~**3.**~~] **4. Except as provided for in subdivision seven of this section, any vote authorized by the regulations promulgated by the commissioner**

or the supervising agency that constitutes the vote for submission of a certificate of no objection, consent to dissolution or reconstitution, for submission to the attorney general of an offering plan for dissolution and reconstitution of the mutual housing company, or for submission to the attorney general of a proxy statement or any other documents permitted by the attorney general instead of such offering plan shall require the approval of eighty percent of all dwelling units for which shares have been issued by the mutual housing company, regardless of whether such dwelling units are occupied or vacant, provided however, that where the shareholder of record is deceased, any vote attributable to the dwelling unit shall be discounted, both in the number of votes cast and in the total number of dwelling units upon which the vote is calculated, until such time as a new shareholder of record is determined for that dwelling unit.

5. No vote [~~under subdivision~~] as set forth pursuant to subdivision one, two, three or four of this section, shall occur within five years following a vote [~~under subdivision one of this section~~] undertaken pursuant to such subdivisions that failed to pass. No vote as set forth pursuant to subdivision seven of this section shall occur within three years following a vote undertaken pursuant to such subdivision that failed to pass.

6. For any vote pursuant to subdivision one, two, three or seven of this section, the proposal to be voted on shall state that the cost of the action to be approved will be paid by a special assessment on shareholders, that approval of the proposal authorizes the mutual housing company to impose the assessment, and shall include the total dollar amount of the proposed assessment and the dollar amount per dwelling unit that will be imposed to fund the action if it is approved. Once an assessment has been so approved by shareholder vote, the mutual housing company shall not increase the amount of the approved assessment except by further vote subject to the same procedures and threshold for approval as were required for the vote initially approving the assessment.

7. Notwithstanding any other provision to the contrary, any final or preliminary vote regarding dissolution and reconstitution that involves a conversion to a housing company organized under article eleven of this chapter including, but not limited to, votes on the authorization to fund, develop, and submit any required filing to the attorney general, which pursuant to the conversion shall remain under the supervision of the commissioner or the supervising agency, shall only require a vote of a minimum of two thirds of the dwelling units for which shares have been issued by the mutual housing company regardless of whether such dwelling units are occupied or vacant, provided however, that where the shareholder of record is deceased, any vote attributable to the dwelling unit shall be discounted, both in the number of votes cast and in the total number of dwelling units upon which the vote is calculated, until such time as a new shareholder of record is determined for that dwelling unit. Provided further however, that any dissolution and reconstitution to a housing company organized under article eleven of this chapter as provided by this subdivision shall not utilize funds from the operating budget of such housing company to fund the preparation, creation or distribution of any materials required for a vote to authorize any dissolution and reconstitution to a housing company organized under article eleven of this chapter as provided by this subdivision, and the preparation, creation or distribution of such materials shall be financed by special assessment voted on and applicable to all sharehold-

ers as provided by subdivision three of this section, unless such housing company took any actions toward dissolution or reconstitution prior to the date this section took effect.

§ 3. Subdivisions 4 and 5 of section 17 of the private housing finance law, as added by a chapter of the laws of 2021 amending the private housing finance law relating 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, as proposed in legislative bills numbers S. 6412 and A. 7272, are amended to read as follows:

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

(a) Hold at least [~~six~~] four meetings of [~~its members~~] the board of directors annually. Such meetings shall be open to [~~the~~] all shareholders and residents, except that they may include executive sessions open only to directors for the sole purpose of discussing confidential personnel issues, legal advice and counsel from an attorney to whom the mutual housing company is a client, or confidential issues affecting individual shareholders or residents, or contract negotiation. Any such board of directors meetings held in addition to the minimum number of four as required by this section shall be open to shareholders and residents, and subject to the aforementioned exception regarding executive sessions.

(b) [~~File with the commissioner or the supervising agency, as the case may be,~~] Maintain a record of any vote on a resolution of such board, including specification of how each director voted. Such record shall be a matter of public record which will be made available as a paper copy at the request of a shareholder and will also be posted on a website that is accessible by all shareholders maintained by the board of directors, provided however, that there may be redactions to the extent minutes would reflect the discussions held in executive session.

(c) Promptly [~~give notice of and make~~] post on a website available to all shareholders and maintained by the board of directors to communicate with shareholders, (i) any [~~communication to~~] request by the mutual housing company [~~from~~] to the commissioner or the supervising agency, as the case may be, [~~or the office of the attorney general, regarding~~] and any final resolution regarding such request, when the request relates to a change in regulations, [~~changes in regulations,~~] a change in its real estate taxation, [~~finances,~~] in a refinancing, financing being offered by the commissioner, supervising agency, or any other agency or, [~~in the event of~~] a proposed dissolution and [~~reincorporation, the review of any version of an offering plan~~] reconstitution, (ii) any deficiency letters issued by the office of the attorney general to the mutual housing company regarding an offering plan for dissolution and reconstitution of the mutual housing company, any deficiency letters issued by the office of the attorney general to the mutual housing company regarding a proxy statement or any other documents permitted by the attorney general instead of such offering plan, and any of the mutual housing company's resubmissions of such offering plan or proxy statement or any other documents permitted by the attorney general instead of such offering plan in response to such deficiency letters issued by the office of the

attorney general, or (iii) any offer of financing from the commissioner, supervising agency, or any other agency to the mutual housing company.

[~~(d) Investigate any substantive allegation that a tenant is not occupying his or her dwelling unit as his or her primary residence.~~]

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

(b) Shareholder and/or tenants' groups, committees or other shareholder and/or tenants' organizations shall have the right to meet without being required to pay a fee in any location on the premises including a community or social room where use is normally subject to a fee which is devoted to the common use of all shareholders and/or tenants in a peaceful manner, at reasonable hours and without obstructing access to the premises or facilities. [~~No housing company shall deny such right~~] Nothing in this subdivision shall be construed to limit or impede the authority of the board of directors to act on behalf of the mutual housing company or regulation by the commissioner or supervising agency with respect to the recognition of a tenant group representing all tenants, or to require the continued recognition of a cooperators' advisory council formed pursuant to subdivision one of section thirty-two-a of this article when superseded by the election of a board of directors.

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

§ 4. Section 32-a of the private housing finance law is amended by adding a new subdivision 9 to read as follows:

9. Promulgate regulations to require each tenant use their dwelling unit as their primary residence to maintain their right of continued occupancy or be subject to eviction in a court of competent jurisdiction by a mutual housing company.

§ 5. Sections 4 and 5 of a chapter of the laws of 2021 amending the private housing finance law relating 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, as proposed in legislative bills numbers S. 6412 and A. 7272, are amended to read as follows:

§ 4. 1. Notwithstanding any provision of law to the contrary, no mutual housing company or urban rental company, as such terms are defined in section 12 of the private housing finance law, shall be dissolved pursuant to the provisions of section 35 of such law or shall undergo semi-privatization pursuant to 28 RCNY 3-14(i)(15), or shall initiate any actions or proceedings related to dissolution or semi-privatization, including but not limited to, conducting a vote to authorize a feasibility study; submitting a preliminary offering plan to the attorney general for approval; distributing a preliminary offering plan to shareholders; distributing a final offering plan or proxy statement to shareholders; submitting a notice of intent to dissolve to the commissioner of housing or supervising agency; committing, promising, or expending funds in any way for the purposes of dissolution or semi-pri-

vatization; or holding any of the required notice meetings during the state disaster emergency declared pursuant to executive order 202 of 2020 in response to the outbreak of novel coronavirus, COVID-19.

2. As used in this [~~act~~] **section**, the term "semi-privatization" means dissolving as a mutual housing company and transferring the property to a housing development fund company organized pursuant to article XI of the private housing finance law.

§ 5. This act shall take effect immediately; provided, however, sections one, two and three of this act shall take effect on the nineti-eth day after it shall have become a law **and shall apply to any pending or future dissolution or reconstitution proceedings on and after such date; provided, however, that where a mutual housing company taking certain intermediate votes were appropriately performed prior to the effective date of the act, the provision in effect at the time those votes were taken shall apply to those acts**.

§ 6. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, any other application of any provision of this act, or any other provision of any law or code amended by this act.

§ 7. This act shall take effect immediately, provided however that sections one, two, three and four of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the private housing finance law relating 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, as proposed in legislative bills numbers S. 6412 and A. 7272, takes effect.