

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:

1 Section 1. Section 13-c of the private housing finance law, as added
2 by a chapter of the laws of 2021 amending the private housing finance
3 law relating to voting, election and referendum procedures; to require-
4 ments regarding mutual housing companies considering dissolution and/or
5 reconstitution; to certain duties of a board of directors of a limited-
6 profit housing company; and to prohibiting certain limited-profit hous-
7 ing companies from voluntarily dissolving during the state disaster
8 emergency declared in response to the outbreak of COVID-19, as proposed
9 in legislative bills numbers S. 6412 and A. 7272, is amended to read as
10 follows:

11 § 13-c. Voting, election and referendum procedures. 1. Any shareholder
12 vote involving the election of board members, by-law amendments, or on
13 dissolution or reconstitution or conversion of a mutual housing company
14 including any votes for a special assessment pursuant to subdivisions
15 one, two or three of section thirty-five-a of this article shall be
16 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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1 tenants entitled to [~~occupancy~~] vote in the project; unless such tenant
2 casts such ballot using an absentee ballot issued pursuant to subdivi-
3 sion two of this section.

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

16 3. Proxy voting shall not be permitted in [~~an election~~] a vote for a
17 position on a board of directors, for dissolution or reconstitution of
18 the mutual housing company, for the authorization of a feasibility
19 study, [~~for an offering plan including a red herring or black book, or~~
20 ~~any document offered in place of an offering plan as permitted by~~] for
21 the authorization to develop and submit to the attorney general an
22 offering plan for dissolution and reconstitution of the mutual housing
23 company, for the authorization to develop and submit to the attorney
24 general a proxy statement or any other documents permitted by the attor-
25 ney general instead of such offering plan, or any other vote relating to
26 dissolution or reconstitution required by the regulations of the commis-
27 sioner or supervising agency, or for an assessment approved pursuant to
28 section thirty-five-a of this article to fund the development,
29 submission, completion, or distribution of any of the aforementioned
30 documents.

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

33 5. No otherwise-eligible person shall be prevented from being a candi-
34 date for, being elected to, or serving on a board of directors based
35 solely on that person owing or having owed any amount of any form of
36 arrears to the mutual housing company, unless, at the time of nomi-
37 nation, that person currently owes an amount of [~~bona-fide~~] arrears
38 greater than the equivalent of two months of that person's monthly main-
39 tenance. Nothing in this subdivision shall be construed to require or
40 mandate any mutual housing company to adopt bylaws, rules, policies, or
41 procedures restricting any person's eligibility to be nominated,
42 elected, or serve on a board of directors. [~~Nothing contained in this~~
43 ~~subdivision~~] No grounds other than the above arrearages in excess of two
44 months maintenance shall be a basis in itself to deny such eligibility
45 to any person unless specifically incorporated in regulations promulgat-
46 ed by or procedures approved by the commissioner or supervising agency.
47 Neither a mutual housing company nor the commissioner or the supervising
48 agency may modify in any way the above limitation so as to restrict
49 eligibility on the basis of fewer than two months of arrears.

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

54 § 2. Section 35-a of the private housing finance law, as added by a
55 chapter of the laws of 2021 amending the private housing finance law
56 relating to voting, election and referendum procedures; to requirements

1 regarding mutual housing companies considering dissolution and/or recon-
2 stitution; to certain duties of a board of directors of a limited-profit
3 housing company; and to prohibiting certain limited-profit housing
4 companies from voluntarily dissolving during the state disaster emergen-
5 cy declared in response to the outbreak of COVID-19, as proposed in
6 legislative bills numbers S. 6412 and A. 7272, is amended to read as
7 follows:

8 § 35-a. Requirements regarding dissolution. Mutual housing companies
9 considering dissolution and/or reconstitution pursuant to section thir-
10 ty-five of this article shall be subject to the following requirements:

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

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

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

55 [~~3-~~] 4. Except as provided for in subdivision seven of this section,
56 any vote authorized by the regulations promulgated by the commissioner

1 or the supervising agency that constitutes the vote for submission of a
2 certificate of no objection, consent to dissolution or reconstitution,
3 for submission to the attorney general of an offering plan for dissol-
4 ution and reconstitution of the mutual housing company, or for
5 submission to the attorney general of a proxy statement or any other
6 documents permitted by the attorney general instead of such offering
7 plan shall require the approval of eighty percent of all dwelling units
8 for which shares have been issued by the mutual housing company, regard-
9 less of whether such dwelling units are occupied or vacant, provided
10 however, that where the shareholder of record is deceased, any vote
11 attributable to the dwelling unit shall be discounted, both in the
12 number of votes cast and in the total number of dwelling units upon
13 which the vote is calculated, until such time as a new shareholder of
14 record is determined for that dwelling unit.

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

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

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

1 ers as provided by subdivision three of this section, unless such hous-
2 ing company took any actions toward dissolution or reconstitution prior
3 to the date this section took effect.

4 § 3. Subdivisions 4 and 5 of section 17 of the private housing finance
5 law, as added by a chapter of the laws of 2021 amending the private
6 housing finance law relating to voting, election and referendum proce-
7 dures; to requirements regarding mutual housing companies considering
8 dissolution and/or reconstitution; to certain duties of a board of
9 directors of a limited-profit housing company; and to prohibiting
10 certain limited-profit housing companies from voluntarily dissolving
11 during the state disaster emergency declared in response to the outbreak
12 of COVID-19, as proposed in legislative bills numbers S. 6412 and A.
13 7272, are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

35 § 5. Sections 4 and 5 of a chapter of the laws of 2021 amending the
36 private housing finance law relating to voting, election and referendum
37 procedures; to requirements regarding mutual housing companies consider-
38 ing dissolution and/or reconstitution; to certain duties of a board of
39 directors of a limited-profit housing company; and to prohibiting
40 certain limited-profit housing companies from voluntarily dissolving
41 during the state disaster emergency declared in response to the outbreak
42 of COVID-19, as proposed in legislative bills numbers S. 6412 and A.
43 7272, are amended to read as follows:

44 § 4. 1. Notwithstanding any provision of law to the contrary, no mutu-
45 al housing company or urban rental company, as such terms are defined in
46 section 12 of the private housing finance law, shall be dissolved pursu-
47 ant to the provisions of section 35 of such law or shall undergo semi-
48 privatization pursuant to 28 RCNY 3-14(i)(15), or shall initiate any
49 actions or proceedings related to dissolution or semi-privatization,
50 including but not limited to, conducting a vote to authorize a feasibil-
51 ity study; submitting a preliminary offering plan to the attorney gener-
52 al for approval; distributing a preliminary offering plan to sharehold-
53 ers; distributing a final offering plan or proxy statement to
54 shareholders; submitting a notice of intent to dissolve to the commis-
55 sioner of housing or supervising agency; committing, promising, or
56 expending funds in any way for the purposes of dissolution or semi-pri-

1 vatization; or holding any of the required notice meetings during the
2 state disaster emergency declared pursuant to executive order 202 of
3 2020 in response to the outbreak of novel coronavirus, COVID-19.

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

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

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

21 § 7. This act shall take effect immediately, provided however that
22 sections one, two, three and four of this act shall take effect on the
23 same date and in the same manner as a chapter of the laws of 2021 amend-
24 ing the private housing finance law relating to voting, election and
25 referendum procedures; to requirements regarding mutual housing compa-
26 nies considering dissolution and/or reconstitution; to certain duties of
27 a board of directors of a limited-profit housing company; and to prohib-
28 iting certain limited-profit housing companies from voluntarily dissolv-
29 ing during the state disaster emergency declared in response to the
30 outbreak of COVID-19, as proposed in legislative bills numbers S. 6412
31 and A. 7272, takes effect.