

CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
Title 9. Executive Department
Subtitle S. Division of Housing and Community Renewal
Chapter IV. State-Assisted Housing Constructed by Private Enterprise
Subchapter E. Dissolution of Limited-Profit and Limited-Dividend Housing Companies
Part 1750. Voluntary Dissolution

Permanent regulations effective April 4, 1990; text current through November 30, 2000.

Section 1750.1 Purpose.

The purpose of these regulations is to assure full disclosure to all residents and the public of plans proposed by the housing company to leave the jurisdiction of the Division of Housing and Community Renewal ("Division") pursuant to either article 2 or article 4 of the Private Housing Finance Law, to effect a smooth transition of the management of a housing development and to assure that all actions required to be taken by the housing company have been performed prior to the dissolution thereof and to ensure that projects are in sound physical condition to protect the occupants thereof and their long term viability.

Section 1750.2 Applicability.

These regulations shall apply to State-assisted limited profit rental or mutual housing companies formed pursuant to article 2 of the Private Housing Finance Law, and to limited-dividend rental or mutual housing companies formed pursuant to article 4 of the Private Housing Finance Law, which elect under section 35(2) or 96(1), respectively, of such law, to voluntarily dissolve.

Section 1750.3 Notice of intent.

(a) A company or housing company intending to dissolve pursuant to either > section 35(2) or > 96(1) of the Private Housing Finance Law, shall no earlier than 365 days prior to the anticipated date of dissolution, submit a notice of such intention ("Notice of Intent") in triplicate to the Division, to the attention of the Deputy Commissioner for Housing Operations, One Fordham Plaza, Bronx, NY 10458, which shall contain the following information:

- (1) name, address(es) and project number of the housing development, including section(s), block(s) and lot(s);
- (2) name and business address of the beneficial and the legal owner(s) of record;
- (3) name and business address of the housing company, if different from the legal owner of record;
- (4) the following rental data information for each apartment in the housing development, by apartment:

(i) name of tenant or shareholder;

(ii) base monthly rent or maintenance charge, with indication of what utilities and services are included, if any;

(iii) complete rental history for existing tenants including the expiration date of lease or occupancy agreement; if none exists then the anniversary date of tenancy or occupancy; if current tenant does not have a three-year lease or occupancy agreement, an affidavit shall be submitted explaining in detail the reasons therefor;

(iv) name(s) of occupant(s) if different from principal tenant or shareholder;

(v) special charges or assessments including surcharges, garage or parking charges and appliance charges, separately listed;

(vi) rental subsidy payments or credits, and sources thereof;

(vii) amount and depository for security deposits;

(5) mortgagees, name(s) and address(es);

(6) mortgage balance(s) and payment schedule(s);

(7) certificate of occupancy or other proof of date of initial occupancy of the development;

(8) certified or conformed copy of the deed;

(9) municipal inspection report which contains a list of any current outstanding municipal violations and citations; and proof of satisfaction thereof;

(10) copy of enabling local ordinances, if any;

(11) current certified annual and quarterly financial statements, as required under sections 1728-2.2 and 1728-2.21 of this Title;

(12) names and business addresses of the following, if applicable:

(i) managing general partner and each general partner;

(ii) managing agent;

(iii) principal stockholders or shareholders; and

(iv) president of the Board of Directors;

(13) list of all State, municipal and/or Federal financial assistance or subsidies received by the housing development (such as the Tenant Health and Safety Funds, Home Energy Assistance Program ("HEAP"), Flexible Subsidy), and the amount thereof;

(14) for housing projects located in jurisdictions subject to rent stabilization, the housing company shall submit a pre-registration information form for each tenant;

(15) physical condition survey. As required by section 1750.10 of this Part, the housing company shall submit a physical condition survey prepared by an independent qualified consultant to determine the physical condition of the building and the property and all equipment appurtenant thereto. The housing company shall specify its plans to remedy any defects and to replace any and all items and equipment that are obsolete or which have exceeded their useful lives or are projected to exceed their useful lives within five years, and the amounts to be expended therefor, which plan shall be approved by the division;

(16) a conformed copy of the certificate of incorporation of the housing company; and

(17) certification to the division by an officer or principal of the housing company that the housing company is in full compliance with all applicable division regulations and orders. In the event that the housing company has not complied with any division order or regulation then the officer or principal shall submit a detailed affidavit explaining the reasons therefor.

(b) Within 180 days of receipt of the notice of intent and the required material, the commissioner shall notify the housing company if any additional information is required.

(c) Upon a finding by the commissioner that all of the information required to have been submitted by the housing company has been submitted and that there is no reason to believe it contains any inaccuracies the commissioner shall issue an order authorizing the housing company to proceed with the public information requirements hereunder.

Section 1750.4 Public information notice.

(a) Upon receipt of the commissioner's order as provided in section 1750.3(c) of this Part, but in no event earlier than 90 days prior to the anticipated date of dissolution, the housing company shall serve a notice of a public meeting by door delivery to each tenant, and by certified or registered mail to each of the following:

(1) the New York State Commissioner of Housing and Community Renewal and the Deputy Commissioner for Housing Operations, together with proof of service upon all parties listed herein;

(2) the State Senator and Member of the Assembly for the district in which the project is located;

(3) the mayor and local legislative member for the project, if any; and

(4) the president or chairperson of the tenants' association or council, if any.

(b) Such notice shall specify the day, date, time and place of a public meeting to be conducted by the housing company.

(c) Such public meeting shall be held not less than 10 nor more than 20 days after service of the notice upon the parties set forth in subdivision (a) of this section. Furthermore, such public meeting shall be scheduled to commence at least 60 days prior to the anticipated date of dissolution.

(d) Such notice shall also contain a brief summary of the following:

(1) plan for transition and future management of the development;

(2) initial rents upon dissolution, including those persons receiving subsidies;

(3) items of capital improvements, including timetable for completion, analysis of the physical condition survey and the repairs and rehabilitation required as a result thereof, source of funds therefor and escrow arrangements for such funds;

(4) items of maintenance pending in the project; the timetable for completion of such work; the source of funds therefor; and escrow arrangements for such funds; and

(5) proposed level of reserves subsequent to dissolution.

Section 1750.5 Public information meeting.

(a) Pursuant to the Notice as specified in section 1750.4 of this Part, the housing company shall conduct at least one public informational meeting with the residents and their representatives.

(b) Such public meeting shall be scheduled to commence not earlier than 6 p.m. nor later than 8 p.m., Monday through Friday, exclusive of legal holidays, unless the residents by written petition representing not less than 50 percent of the apartments, agree to another day or time. The site of the public meeting shall be on the premises of the housing development unless, for good cause shown, the owner shall designate another location near or adjacent to the premises, subject to the approval of the commissioner.

(c) The public informational meeting shall be conducted by the housing company and shall be attended by the commissioner or the commissioner's designee. After presentation of the information specified in section 1750.4(d) of this Part, the housing company shall permit comments and questions to be heard from any persons in attendance.

(d) Upon conclusion of the public informational meeting, the housing company shall submit an affidavit certifying to the commissioner to the effect that the meeting has been held pursuant to the requirements set forth in this section.

(e) Such public meeting shall be continued by the housing company or upon the direction of the commissioner until reasonable responses to valid questions of the tenants have been provided by the housing company.

Section 1750.6 Mortgage payments; requirements.

Upon satisfactory completion of the requirements in sections 1750.3 through 1750.5 of this Part, the housing company shall submit to the commissioner a list of the requirements of the mortgagee(s) to prepay the mortgage(s), to be obtained by the housing company from the mortgagee(s). Such list shall contain the anticipated date of compliance with each of the mortgagee's requirements for the prepayment of the mortgage(s), including any fees, charges or special assessments required to be made.

Section 1750.7 Mutual companies; special requirements.

In addition to the other requirements set forth in this Part, each mutual company shall also submit to the commissioner, upon completion of the public informational meeting required under section 1750.5 of this Part, satisfactory evidence of (a) acceptance by the office of the Attorney General of the State of New York of the filing of the offering plan pertaining to the proposed transfer from the mutual company to a private cooperative or condominium corporation; and (b) approval by two thirds of the shareholders of record of the dissolution.

Section 1750.8 Rent stabilization requirements.

Upon submission of the material as specified in section 1750.3(a)(14) of this Part, the division shall compare the housing company's information with the information on file with the division. Upon approval of the information by the division and return of the preregistration information forms, the housing company shall comply with the initial rent registration requirements as set forth in the rent stabilization regulations, Part 2520 et seq. or the tenant protection regulations, Part 2500 of this Title.

Section 1750.9 Payment of outstanding operating expenses, taxes and indebtedness.

The housing company must submit its detailed payment schedule and arrangement for the payment of any and all outstanding operating expenses, taxes and indebtedness. Such schedule shall list each item of indebtedness, the amount thereof, the source of payment thereof, and the anticipated date of payment. For each item of indebtedness, the housing company must also submit an invoice or other evidence of the current amount due.

Section 1750.10 Physical condition survey.

Upon review of the physical condition survey submitted by the housing company pursuant to section 1750.3(a)(15) of this Part, the commissioner shall determine if the survey is sufficient and properly addresses the needs of the property which must be resolved prior to the dissolution, and if the plans submitted by the housing company are sufficient to meet the needs of the housing project. The housing company shall specify its plans to correct any defective conditions and to replace any and all items and equipment which are obsolete or have reached the end of their useful life or are projected to end their useful life within the next five years, and the amounts to be expended therefor. Upon the approval by the commissioner of the corrective work plan and costs thereof, appropriate funds shall be released upon dissolution from the operating and replacement reserve escrow accounts and deposited into a special escrow account under the exclusive jurisdiction of a fiduciary agent, to be used exclusively to effectuate the corrective work plan. Additionally, the commissioner may order that work be performed and that monies be escrowed therefor. None of the corrective work performed pursuant hereto shall qualify for an increase in rent pursuant to Section 2502.4 of the Emergency Tenant Protection Regulations or Section 2522.4 of the Rent Stabilization Code.

Section 1750.11 Waiting lists.

(a) At least 60 days prior to the effective date of dissolution, the housing company shall submit an affidavit to the commissioner certifying that each person on the waiting list for apartments in the housing development has been advised in writing of the proposed dissolution and whether or not the waiting list will continue to be utilized.

(b) The housing company shall simultaneously certify to the commissioner whether a processing charge had been levied against each applicant for such waiting list and, if so:

- (1) how much had been expended of such charge and for what purpose; and
- (2) when the balance thereof was returned to the waiting list applicant.

Section 1750.12 Additional requirements within the City of New York.

The housing company must submit evidence of specific arrangements that have been made with the appropriate municipal agencies and compliance with all filing procedures with respect to senior citizens' rent increase exemptions or similar programs.

Section 1750.13 Fees and application requirements.

(a) A company organized under article 2 of the Private Housing Finance Law shall:

- (1) submit a nonrefundable processing fee, payable to the State of New York, in the amount of \$1,000 with the notice of intent required under section 1750.3 of this Part; and

(2) upon submission of the affidavit required under section 1750.5(d) of this Part, an additional fee of \$1,500 plus a fee of \$100 per unit in the project. In no event, however, shall the fee required under this paragraph exceed the sum of \$5,000.

(b) No housing company seeking to dissolve a rental housing company may charge or assess any cost of complying with these requirements, including but not limited to the payment of fees provided herein and the cost of preparation of the documents required herein, to the operational or capital expenses of such housing company, nor shall such costs or charges in any way be reflected in any charge or rental increase for any of the occupants of the housing development. An affidavit from the owner certifying compliance with this subsection must be filed with the notice of intent.

(c) A housing company seeking to dissolve a mutually owned housing company must submit with its notice of intent a certification that no less than a majority of the shareholders thereof in attendance, excluding any proxies, have approved, at a special meeting called therefor any expenditures for compliance with these regulations, unless the by-laws of the company mandate a greater affirmative vote to approve such expenditures. In addition, there must be approval, by affirmative vote of at least a majority of the shareholders, for preparation of a preliminary plan, the cost thereof not to exceed \$50,000, to explore and explain to all shareholders the ramifications of dissolution of the mutual housing company; and approval by such vote of preparation and submission to the Office of the Attorney General of a private cooperative or condominium offering plan for the housing project. An affidavit from the president of the board of directors certifying compliance with this subdivision must be filed with the notice of intent.

Section 1750.14 Commissioner's certification.

Upon receipt of the documentation required hereunder and the payment of the fees as set forth in section 1750.13 of this Part, and upon receipt of a conformed copy of the proposed certificate of dissolution, the commissioner shall issue a certification to the Secretary of State stating that the requirements of the Private Housing Finance Law have been complied with and that the division has no objection to the filing by the housing company of the certificate of dissolution.

Section 1750.15 Tax exemption.

Upon receipt of the commissioner's certification as provided in section 1750.14 of this Part, the housing company shall thereupon notify the municipality in which the housing development is located, by written document, of the impending dissolution of the housing company and the attendant ineligibility for tax exemption under the Private Housing Finance Law. A copy of such notification shall thereupon be sent to the commissioner.

Section 1750.16 Final notification.

At least 7 but not more than 10 days before the effective date of the dissolution of the housing company, or closing date, the housing company shall send a notice, to the parties specified in section 1750.4(a) of this Part, of the anticipated date of such dissolution and the name and address of the transferee, if any.

Section 1750.17 Waiver.

For good cause shown, the commissioner may waive or modify any of the requirements of this Part.

Section 1750.18 Separability.

If any clause, sentence, paragraph, section or part of this Part shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 1750.19 Pending proceedings.

Except as otherwise provided herein, these regulations shall apply to any proceeding pending before the division, which proceeding commenced prior to the amendment to these regulations and the determination thereon shall be made in accordance with the regulations in effect at the time of the commissioner's determination.