

FACT SHEET FOR COOPERATIVE HDFC SHAREHOLDERS

As indicated in the attached letter, HPD has invited representatives from your building to an HPD forum to inform housing development fund corporation (HDFC) cooperatives about a proposed extension of your tax exemption and a new regulatory agreement.

By virtue of being an HDFC, the following requirements will always apply to your cooperative regardless of whether or not it has a regulatory agreement. Even if your cooperative opts not to sign a new regulatory agreement, it will remain an HDFC subject to the requirements described in this Fact Sheet.

All HDFC cooperatives are incorporated under Article XI of the Private Housing Finance Law (“Article XI”) and must comply with its requirements. Every HDFC cooperative is also bound by its governing corporate documents (particularly its certificate of incorporation and by-laws) and any agreements binding the HDFC and/or the property that it owns (including, among other things, the deed by which the HDFC acquired the property and any applicable regulatory agreement or mortgage).

1. Maximum Income

Article XI requires HDFC cooperatives to provide housing for persons and families of low income. Under the Private Housing Finance Law, this means persons and families whose household income does not exceed 165% of area median income (“AMI”). Anyone purchasing shares in an HDFC cooperative must meet this requirement. AMI is calculated by the federal government on an annual basis, based on household size. HPD posts the current area median incomes for the New York Metro area on its website, available at <http://www1.nyc.gov/site/hpd/about/what-is-affordable-housing.page>.

This is a statutory requirement, so it applies even if your cooperative’s agreements expire and even if its corporate documents or agreements are silent on the subject.

Your cooperative’s governing corporate documents or agreements may set a maximum income *lower* than that required by Article XI:

- Some HDFCs have corporate documents or agreements that require all shareholders to have a lower income, such as 120% of AMI or below.
- Other HDFCs have corporate documents or agreements that refer to a formula for determining the maximum income for new shareholders. This formula provides that shareholders may not earn more than 6 or 7 times (depending on family size) the monthly maintenance, plus utilities, plus six percent of the original \$250 purchase price of the apartment, all multiplied by 12 to represent every month of the year.
 - HPD expects utilities (gas and electric) to run about \$125/month for a 1 bedroom apartment, \$150/month for a 2 bedroom apartment and \$175/month for a 3 bedroom apartment.
 - Again, while such a formula in your HDFC’s corporate documents or agreements may *lower* the maximum income, it cannot raise it above the maximum allowable under the statute.

Shareholders must comply with the *lowest* applicable income requirement. The HDFC Board must ensure compliance with this requirement.

2. Maximum Sales Price

Sales prices should be affordable for a family that fits the income restrictions of your building. Prices should be low enough such that a purchasing household would not spend more than 30% of its income on housing costs, which include mortgage payments, maintenance payments, and other potential costs.

3. Renting and Subletting

Almost all HDFC cooperatives have certificates of incorporation that require owner-occupancy, and Article XI states that such corporations must be operated for the benefit of resident shareholders. While original non-purchasing tenants may have been allowed to stay on as renters when the cooperative was first created, and some HDFC cooperatives have rented vacant apartments to tenants, all apartments which are or become vacant must be sold to income-eligible purchasers who have stated their intention to owner-occupy. An HDFC should never rent a vacant apartment unless it is the superintendent's unit.

Almost all HDFC cooperatives limit subletting. Although short-term subletting with Board permission is acceptable where the shareholder intends to return to the apartment, long-term sublets are not permissible. Generally, subletting should be limited to no more than 18 months in any 5-year period. In addition, any proposed subtenant should be screened by the Board to ensure that the subtenant's household meets the applicable Maximum Income.

A shareholder should check the HDFC's governing documents and any agreements binding the HDFC and/or the property that it owns to determine these restrictions.

4. Flip Taxes

The sales of apartments in almost all HDFC cooperatives are subject to a "flip tax." This means that, when a shareholder sells his or her apartment, the sale profits must be divided between the selling shareholder and the Board (and, in some cases, the City). A shareholder should check the corporate governing documents, any agreements binding the HDFC and/or the property that it owns, the proprietary lease from the cooperative, and the share certificate to determine whether such a "flip tax" applies and the applicable allocation of profits.

5. Fiduciary Responsibility of Board Members

Board Members (Directors) are legally obligated to act in the best interests of the HDFC and its shareholders. Directors are volunteer positions; property managers are paid. If a Director is being paid, it should be for management work that the Director is performing for the corporation, such as collecting rents, paying bills, supervising the janitor, or going to court on behalf of the HDFC. Directors should not be receiving payment for any other reason. In all cases there should be volunteer Directors who supervise the work of the manager.

Most HDFCs have a partial tax exemption placing a cap on the taxable value of the units. In most cases, this partial tax exemption significantly lowers real estate taxes on the property. The resolutions that grant these exemptions stipulate that this exemption is effective only as long as the project is owned and operated by an HDFC that complies with the requirements of Article XI. HPD may revoke the exemption if the property is not owned and operated in accordance with the applicable requirements.

6. Restrictions on Selling a Building Owned by an HDFC

Article XI restricts the ability of an HDFC to convert its building to a market rate cooperative, condominium or rental project. In 2015, the New York State Attorney General published a guidance document outlining the legal restrictions on converting an HDFC to a market rate project. The guidance document is available online here: https://www.ag.ny.gov/sites/default/files/pdfs/bureaus/real_estate_finance/Effective-memos/7.16.2015_Guidance_on_HDFC_Seeking_to_Transfer_or_Sell_Property.pdf

If you have questions about any of the issues covered by this Fact Sheet, please send an email to hdfccoop@hpd.nyc.gov. For other questions about best practices, HPD has enlisted the help of Neighborhood Housing Services (NHS) to provide training and technical assistance to HDFC cooperatives. NHS can be reached via email at coopinfo@nhsnyc.org or by phone at (212) 519-2581.