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Gale A. Brewer, Borough President

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Testimony to NYS Assembly Standing Committee on Housing
On the Governance and Operation of Cooperative Housing
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My name is Gale A. Brewer and I am the Manhattan Borough President. Thank you to Assemblymember and Committee Chair Keith Wright and to members of the NYS Assembly Standing Committee on Housing for the opportunity to testify today.

As Manhattan Borough President and former NYC Council Member representing the Upper West Side, I have come to understand the challenges of three kinds of subsidized cooperative housing ("co-ops"): HDFCs, Mitchell-Lamas, and co-ops that receive 421-a tax exemption. For each type of co-op, I am calling for the following:

- Preserving the affordability of HDFCs must be done in conjunction with adequate financing and reduced property tax burden tied to increased agency oversight.
- State and City agencies must make financing available to Mitchell-Lamas for capital improvements before a development takes steps to exit the program.
- State and City agencies should work closely with co-ops whose 421-a tax exemptions are expiring in order to preserve the affordability and/or stability.

HDFCs

According to data tracked by the NYC Department of Housing Preservation and Development ("HPD"), as of April 2015, 3,203 buildings classify as HDFC properties in New York City. About 30% of these buildings—902 total—became HDFCs through HPD's Tenant Interim Lease, or TIL, program, which turned tax-foreclosed, *in rem* properties that the City recaptured from delinquent owners into either affordable rental housing under private management or co-ops governed by the shareholders themselves.

In October 2015, the Urban Homesteading Assistance Board ("UHAB") undertook a count of HDFCs within its portfolio by Council District (see Appendix 1). In Manhattan, there are 709 HDFC co-op buildings totaling approximately 19,000 units. Most of these HDFCs are located in Central and West Harlem, with 378 HDFC co-op buildings totaling 10,182 units in Council Districts 7 and 9, over half of Manhattan's stock of HDFC co-ops.

Challenge: Increased Cost Burdening Low-Income Shareholders

HDFCs offer one of the only opportunities for low-income New Yorkers to become homeowners. As real estate values increase, it becomes more difficult for households classified as "very low income" (50% AMI) or "extremely low income" (30% AMI) to purchase an HDFC unit or, if they are already shareholders, to continue to afford rising maintenance. Some buildings forego paying property taxes, water bills, and building repairs due to the inability to meet all expenses. I anticipate this to become a more acute problem as both the city's HDFC housing stock and long-time shareholders continue to age, pitting increased operating and capital expenses against seniors who must rely on a fixed income.

The City's DAMP ("Division of Alternative Management Program") tax exemption caps the property tax burden of an HDFC unit; currently it is $9,223 per unit. Unless the tax cap is extended beyond 2029, shareholders living in "hot" real estate markets will see a steep increase in their property taxes when the tax cap ends. Furthermore, HDFCs receiving the DAMP tax cap have had difficulty in obtaining financing to repair their buildings. With only 13 years left until 2029, lenders are hesitant to underwrite rehab loans that amortize for longer than the remaining years of DAMP. For buildings with substantial capital needs, a loan that amortizes in less than 13 years—assuming a lender approves the financing—translates into maintenance increases that are not affordable. This leaves many HDFCs in worsening disrepair.

False Solutions

Some HDFCs sell vacant units at market rate to generate cash to cover expenses. For example, an HDFC on East 124th Street had $11,913 in unpaid property taxes and $70,511 in unpaid water and sewage bills as of October 2015. The Board sold two units at market rate at the end of 2015 to pay off the debt. "Market rate" in this example was $120,000 and $130,000, which allowed the HDFC to comply with Article XI in practice by approving buyers under the bylaws' stated income limit. However, records in ACRIS show that the very same Board treasurer who signed off on these two transactions purchased his unit in 2012 for $85,000—a difference of 40%-50% in pricing over only three years' time.

Other HDFCs have sought to privatize by selling whole buildings to private buyers. Once privatized, buildings cease to be HDFCs. In response to a high number of privatization that it noticed among former HDFCs in the Lower East Side within the past 5-10 years, the NYS Attorney General's Office issued a guidance memo on July 16, 2015 to re-emphasize the restrictions that keep an Article XI entity from shedding its low-income housing obligation.

Solutions to Ease Shareholder Cost Burdens

HDFCs can cut costs by making large-scale purchases collaboratively. For example, three HDFC co-ops on Pleasant Avenue between East 117th and East 118th Streets have joined together to buy heating oil at a lower, bulk rate. These buildings also use the same management company to save costs by eliminating duplicate services. As Governor Cuomo and New York State work toward the goal of 50% renewable electricity by 2030, the Housing Committee can explore ways for HDFCs to receive renewable energy retrofits at steeply discounted group prices so that, by reducing high-cost of installation, HDFCs can benefit from lower energy costs in the future.

Another best practice for HDFCs is to build up a strong reserve. The vast majority of HDFCs created under the Business Corporation Law went through the TIL (now "ANCP") process. Unfortunately, many TILs waited for decades before their conversion into HDFCs, and during the delay have been forced to spend down their reserves for rehab projects. HPD also did not allow TILs to rent out vacant units to generate income, even if the units weren't used for relocation purposes. Assembly Member Wright and I, along with staff from Council Member Mark Levine's office, recently met with tenants from 615 West 150th Street—a building that by HPD's admission is "doing everything right" but now suffers from a depleting reserve due to delays that kept the building from converting into an HDFC. HPD should ensure that every HDFC starts off at the strongest financial position possible, including having a healthy reserve.

Since 2014, the Taskforce on City-Owned Properties ("TCOP"), which includes my office and the NYS Attorney General's Office, has been working with HPD to address HDFC preservation through offering the "carrot" of full property tax exemption coupled with the "stick" of stronger enforcement by oversight agencies through voluntary adoption of a new Regulatory Agreement. In November 2015, City Council's Taskforce on Affordable Housing called for the same strategy in a letter addressed to HPD Commissioner Vicki Been. Receiving full property tax exemption will allow HDFCs to focus their resources on paying down their debt and building up reserves. Linking this incentive to a Regulatory Agreement will strengthen HPD's ability to enforce affordability regulations.

The TCOP proposal caps HDFC units' sales prices at levels affordable to buyers at 120% AMI, with the flexibility that buyers at 80% AMI, if they have sufficient savings toward down payment and good credit, would also be able to purchase. This threshold will preserve HDFC affordability for future owners, and will allow current shareholders to sell at prices that take into account any improvements they may have invested into their units over the years.

HDFCs need two kinds of financing: 1) financing for aging buildings to make capital improvements, and 2) financing for homebuyers to purchase HDFC units. The Lower East Side People's Federal Credit Union ("LESPFCU") is one of the only lenders that has dedicated loan products and services for HDFC buildings and individual buyers.[1] For struggling buildings, however, LESPFCU's loans can be too costly, as interest rates are set at 8% or above. A further challenge for individual buyers is that their ability to obtain a mortgage is dependent on the co-op's fiscal health. For HDFCs with unpaid property taxes and other debt, lenders are unwilling to extend personal credit to prospective buyers. This has resulted in HDFCs only accepting all-cash deals, attracting buyers on the higher end of the income range or students whose parents are the *de facto* buyers. While the NYS Housing Finance Agency ("HFA") offers capital to HDFCs for qualified rehabilitation projects, it may be worth exploring whether the concept of a pooled fund can be applied in order to extend credit to low-income homebuyers.

HDFC finances may also be strengthened by partnering with local, established small businesses that are looking to purchase a commercial co-op unit. My office is exploring the possibility of mixed-use buildings selling condo or cooperative shares to commercial buyers to finance necessary capital improvements. The proprietary lease for the commercial space could exclude unwanted business types and also require that the space be owner-operated and sold only with Board approval. Like co-op shareholders in any other kind of development, the business would pay monthly maintenance into the building, supporting its bottom line. In this way, a local, small business can exit the lease cycle and continue to serve the community regardless of neighborhood real estate speculation.

Challenge: Internal HDFC Issues

On December 8, 2015, in collaboration with the NYS Attorney General's Office and federal, state, and city elected officials in West and Central Harlem, I held a special briefing for HDFC shareholders. Over 200 people attended to hear the AG's Office Real Estate Finance Bureau Chief at the time, Erica Buckley, explain the guidance memo on restrictions that limit HDFC privatization. The evening also provided a space for HDFC shareholders to voice their

[1] https://lespeoples.org/hdfc/

questions and concerns, many of which could be traced back to internal governance issues. Among the most frequently asked questions were:

- How to hold an HDFC Board accountable?
- What to do about illegal sublets?
- How to prevent the Board from prioritizing unit sales to family and friends?
- Can my Board raise maintenance/rents by [a high percentage or amount]?

These questions reflect the governance challenges that many shareholders face. Over the years, I have heard from shareholders frustrated that they could not improve the internal governance of their buildings. HPD has remained hands-off even when a building's corrupt leadership resulted in the violation of affordability guidelines or reporting requirements. I have heard from many constituents that while UHAB provides technical assistance for distressed co-ops, the services vary in quality, staff are not always responsive, and UHAB lacks the authority to intervene when a building's Board refuses to receive assistance.

Solutions to Governance Issues

Best practices for running a co-op are not secret. Successful HDFCs have a functional Board, manage their finances responsibly, usually engage an outside management company, are transparent about unit sales and keeping to the waiting list, and proactively plan for the long-term sustainability of the co-op by taking into account factors like expiring subsidies and the anticipated rise in operating costs.

To prevent HDFCs from being dominated by a corrupt Board, provisions must be set in place to authorize oversight agencies and technical assistance providers to intervene on glaring governance missteps *without* it being conditioned upon the Board's request to engage help.

Mitchell-Lama

Over the years as Council Member and now as Borough President, I have seen numerous Mitchell-Lama co-ops exit the program. The exits were in compliance with PHFL Article II provisions, which permit Mitchell-Lama developments to privatize after 20 years by pre-paying the mortgage unless other regulatory agreements and restrictions are in place. Attracted by the prospect of removing limited-equity restrictions on their units, shareholders of many Mitchell-Lama co-ops have voted themselves out of affordability.

NYS Homes and Community Renewal's ("HCR") Office of Housing Preservation and the HFA needs to address Mitchell-Lama preservation through changes in financing. Manhattan's remaining 32 Mitchell-Lama co-ops were built between 1950 and 1977, and many are in need of substantial capital improvements. While local financing for capital projects is available via NYC Housing Development Corporation ("HDC"), HCR must also play an active role in making capital funds available, especially to state-supervised Mitchell-Lamas, and not wait until a development is in the process of privatization to explore financing options.

421-a Subsidized Co-ops

The 421-a tax subsidy program expired on January 15, 2016. While no new 421-a project is in the pipeline, 16 co-ops in Manhattan will continue receiving 421-a subsidy until their tax exemptions expire.[2] These co-ops' maintenance will increase drastically when property taxes are fully phased in. For some co-ops, the timing may coincide with full amortization of construction loans on their buildings, often in the form of a final balloon payment. The spike in both operating and debt service expenses may result in complete turnover of shareholders who can no longer afford their maintenance, opening the door for high-income buyers to populate vacated units (income restriction for purchasers no longer applies when 421-a expires).

In anticipation of this, state and local agencies such as HFA and HDC should engage with the residents of these co-ops to explore refinancing and other property tax exemption or abatement programs as their 421-a expiration approaches. If a new regulatory agreement is adopted during the period before the 421-a exemption expires, it may preserve co-op units as affordable. At the least, additional financing will preserve housing stability by enabling shareholders at the time of 421-a expiration to remain in their buildings.

Summary

In summary, I urge the Assembly Housing Committee to work with state and local agencies to make financing available to preserve the affordability of co-op housing.

- For HDFCs:
    - Lower shareholders' cost burdens by offering full tax exemption with the condition of agency oversight via regulatory agreements;
    - Explore bulk purchase incentives for green retrofit as a way to reach NYS's renewable energy goal and to lower a building's operating expenses;
    - Make financing available for buyers of HDFC units and to make building-wide repairs; and
    - Enable oversight agencies and technical assistance providers to improve a building's governance issues.
- For Mitchell-Lama co-ops:
    - NYS HCR and HFA should make capital improvement financing available to state-supervised Mitchell-Lama co-ops with aging housing stock.
- For 421-a subsidized co-ops:
    - State and local financing agencies should anticipate the financing needs of buildings coming out of subsidy and provide financing to preserve units as affordable.

Thank you for the opportunity to testify today.

[2] Expirations range from the current tax year (FY2016) for a 10-year exemption that began in 2005-2006, and in 2038 for a 25-year exemption that began in 2012-2013, according to FY15 421-a data compiled for the Manhattan Borough President's Office by the Independent Budget Office.

Appendix 1: Manhattan HDFCs (data compiled by UHAB, summer 2015)

Council Member	*District*	Boro	HDFC Coops Bldg	Coop Units	HDFC Rentals Bldg	Rental Units	**TOTAL UNITS**
Mark Levine	*7*	*MN*	188	5,170	67	2,393	**7,563**
Inez E. Dickens	*9*	*MN*	190	5,012	151	5,931	**10,943**
Rosie Mendez	*2*	*MN*	120	2,244	41	1,464	**3,708**
Corey Johnson	*3*	*MN*	69	1,453	16	1,700	**3,153**
Melissa Mark-Viverito	*8*	*MN/BX*	52	3,050	61	2,823	**5,873**
Margaret Chin	*1*	*MN*	31	734	25	1,474	**2,208**
Ydanis Rodriguez	*10*	*MN*	24	705	14	233	**938**
Helen Rosenthal	*6*	*MN*	25	589	10	1,447	**2,036**
Daniel R. Garodnick	*4*	*MN*	0	0	2	36	**36**
Ben Kallos	*5*	*MN*	10	175	8	304	**479**
			709	19,132	395	17,805	**36,937**