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OFFICE OF INTEGRATED HOUSING MANAGEMENT MEMORANDUM # 2021 – B –3

To: All Limited Profit & Limited Dividend Housing Companies
Owners, Managing Agents and Site Managers

From: Alfred Walcott, Director

Date: March 11, 2021

Subject: Mitchell-Lama Annual Meetings

DHCR regulations provide for annual stockholder meetings which are joined with the general election of board of director members. Before the COVID-19 pandemic, voting for annual elections was generally done with in-person public gatherings or in conjunction with related voting procedures to register the votes outside the meeting itself. It is now clear that the most available process to ensure quorum, conduct annual business, and provide for the election of board directors requires a broader electronic footprint without compromising the integrity of the voting process and the ability for legitimate participation. Changes in the law and the arrival of new technology have allowed shareholders to participate in board meetings by electronic communication and deeming such electronic presence as acceptable for purposes of quorum and voting.

To the extent that existing bylaws of a Mitchell-Lama cooperative generally require a physical location for the annual meeting that requirement has been superseded by Executive Order 202.8 (<https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>) which states that such a physical location is not needed for the duration of the pandemic thus opening the way to virtual shareholder meetings without the need for a physical coming together. Further, BCL § 602(a) grants authority to call a virtual meeting through either the by-laws or by the Board of Directors and now allows the physical requirement of a meeting to be satisfied through a virtual platform or electronic communication (<https://www.nysenate.gov/legislation/laws/BSC/602>). In October 2019, BCL § 602(b) was amended to allow shareholders in votes required by the Business Corporation Law to participate in meetings by electronic communication.

Please note that the votes surrounding dissolution or reconstitution (i.e. for a feasibility study, expenditure of housing company funds, submission of a plan, and approval of a plan of reconstitution or dissolution) are special votes. They have by regulation special rules often without proxies and still require special rules commensurate with the additional regulatory protections of such meetings and votes. It is important that a housing company timely advise the

DHCR assigned management representative of the details surrounding any such meeting or vote so it can be resolved and approved in advance and in a timely basis.

With the change in the law and with the legislature's intent on continuing to hold annual shareholder meetings, each cooperative should move ahead with an annual meeting and election in accordance with the applicable Executive Orders, the Business Corporation Law and required social distancing practices.

Planning is key to success with virtual meetings.

A housing company should consider appropriate standards for use in approving virtual annual meetings. Such standards should have resolution of the following:

- 1) Whether the technology proposed can accommodate participants consistent with the number of shareholders residing at the cooperative.
- 2) Whether the technology allows for a Q & A session. The procedures should have at a minimum a process for questions that can be raised in advance by the board, and where feasible allow shareholders to ask relevant questions during the annual meeting. A well-run meeting should have an independent person who can shut down access based on inappropriate activity in the chat function.
- 3) The technology should be able to take attendance of shareholders to obtain quorum.
- 4) The technology should be able to display relevant materials during the meeting (i.e. the agenda, financial statements, etc.)
- 5) Cooperative boards should seek DHCR approval to continue to use prior year's proxy procedure and any enhanced use. As allowed in prior years, proxies will also be used to establish quorum.
- 6) The technology provider should be available to share links for the board and its professionals so that shareholders can join with their screens, tablets, phones, computers, etc. A telephone option should be included.
- 7) It is helpful for various professionals (i.e. attorney, accountant) to share their screen to go over their presentations.
- 8) As for voting, DHCR encourages a mix of voting by paper proxy, electronic voting through secure websites, and on-site voting consistent with social distancing.

DHCR understands every Mitchell-Lama cooperative has its own unique set of circumstances and resources. DHCR is therefore asking each cooperative to prepare a comprehensive annual meeting/election proposal for DHCR review:

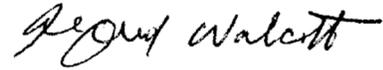
- for a meeting that enables shareholders to participate and vote through electronic devices and on-site voting consistent with social distancing.
- for an annual election that enables candidates to declare by paper or by email with alternative safe submission of votes and proxies which can be authenticated consistent with the need for election integrity.

We advise that each housing company work closely with its selected election company and counsel, as each will have different means for carrying out the election based on their experiences and size of the development.

The submission to DHCR for review must include a complete set of proposed documents related to the selection and election of candidates including all notices and postings, the ballot and the proxy.

DHCR will work with housing companies to help ensure your compliance with these standards. Please provide this information as early as possible but no later than 60 days prior to the scheduled meeting. For any questions regarding the implementation, please contact your assigned Housing Management Representative.

We look forward to working with you on your upcoming elections.



Alfred Walcott

cc: L. Manley, D. Murphy, M. Stratos, A. Abrams, J. Francois