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Governor

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Commissioner/CEO

**OFFICE OF INTEGRATED HOUSING MANAGEMENT MEMORANDUM #2021 – B – 6**

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

**From:** Cathy Sparks, Co-Director  
Office of Integrated Housing Management

**Date:** June 25, 2021

**Subject:** Succession, Equity and Use and Occupancy

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**Introduction**

This Office of Integrated Housing Management Memorandum sets forth DHCR’s policy regarding family members who succeed to a PHFL Article 2 or Article 4 cooperative apartment (“New Cooperators”) and the equity required to purchase the cooperative shares.

This memorandum also seeks to provide additional guidance on OIHM Memorandum #2019-B-02 regarding succession applicants and: (i) use and occupancy; (ii) arrearages; and (iii) equity increases.<sup>1</sup>

**Succeeding Shareholders and Equity**

Subject to the clarifications to OIHM Memorandum #2019-B-02 below, cooperative housing companies must transfer the shares and the proprietary lease to a New Cooperator for the equity paid by the vacating cooperator when the New Cooperator successfully gained succession rights to the PHFL Article 2 or Article 4 Cooperative unit (the “Subject Unit”) through the manner set forth in 9 NYCRR § 1727-8 *et seq.*

This means a housing company can no longer request the New Cooperator pay the difference between the current equity for a new shareholder and the amount paid (or required to have been paid) by the vacating or deceased shareholder.

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<sup>1</sup> OIHM Memorandum #2019-B-02 is available at <https://hcr.ny.gov/system/files/documents/2019/04/2019-b-02-mitchell-lamapayment-use-and-occupancy-succession-applicants.pdf>

## **OIHM Memorandum #2019-B-02 Additional Guidance**

The below will provide additional guidance on DHCR's previously issued OIHM Memorandum #2019-B-02.

### **1. Use and Occupancy**

An applicant seeking succession rights pursuant to 9 NYCRR § 1727-8 *et seq.* must pay monthly use and occupancy/maintenance during the review of the subject succession application by DHCR and/or any court of competent jurisdiction.

During this period, the subject housing company can accept such payments without prejudice to the eviction of the claimant applicant if succession is ultimately denied. During the pendency of such eviction proceeding, the subject housing company may commence proceedings to recoup such monies and possession of the apartment as it could for any other tenant or cooperator.

### **2. Arrearages**

If succession is granted, the subject housing company may deduct any arrearages (including any based on the failure to pay the above-referenced use and occupancy) from the existing equity that the housing company holds from the vacating cooperator.

The succeeding cooperator (the New Cooperator) must remit payment to the housing company to reinstate such equity to the levels required by this memorandum in order to obtain and continue in the unit.

### **3. Increases in Required Equity**

The New Cooperator may be required to contribute additional equity for its cooperative shares after being granted succession and receiving the relevant shares.

Specifically, if the Housing Company imposes a general increase in equity required of all shareholders, the New Cooperator will be required to pay the additional amount. The New Cooperator's total equity, however, would still remain below what an incoming shareholder would be required to remit in equity for the unit if the housing company requires a higher equity payment from incoming new shareholders.

When the New Cooperator vacates the apartment, the housing company will return the original equity plus any increases paid after succession, less any unreimbursed arrearages previously deducted from equity.

### **Prospective Application**

This policy may only be applied prospectively to pending (as of the date of this memo's issuance) and subsequently approved succession applications.

Current shareholders cannot seek any refunds based on this memorandum from the housing company for any equity paid as a result of succession applications granted prior to this memorandum's issuance.

Very truly yours,

  
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Cathy Sparks, Co-Director

cc: R. Koepnick, D. Murphy, M. Stratos, R. Landy, V. Ramos