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Governor

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Commissioner/CEO

OFFICE OF INTEGRATED HOUSING MANAGEMENT MEMORANDUM #2022 – B – 1

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

From: Cathy Sparks, Director
Office of Integrated Housing Management

Date: July 7, 2022

Subject: Allocation of Existing Equity Applicable to Internal Transfers

Immediate allocation of existing equity in the prior apartment to the sales price of the new unit before the sale of the prior apartment.

NEW LAW

In 2021, Private Housing Finance Law (PHFL) §31-c was enacted. It allows with respect to internal transfers a transferring tenant cooperators to apply the value and equity of his or her shares toward any consideration required to be paid for the new apartment.

**WHAT DOES IT MEAN:
CREDIT TOWARD PURCHASE**

This new statute means that with respect to internal transfers, a housing company must give the transferring tenant cooperators a credit toward the sales price of the new apartment even if the prior apartment has not been sold at the time of the closing on the new apartment.

AMOUNT OF CREDIT

The credit is set using the sales price formula set forth in PHFL §31-a which will always consist of the consideration paid for the prior apartment and any capital assessments or contributions paid in connection with the prior apartment and may also consist of the paydown of a proportionate share of mortgage amortization on debt for the entire project when and where approved as housing company policy by DHCR.

Additionally, any accumulation of unapplied prepaid amounts shall at the discretion of the shareholder also be applied to the purchase price of the new unit.

DEDUCTIONS FROM CREDIT

The housing company can deduct from the credit:

- (1) any back maintenance/surcharges owed with respect to the prior apartment at the time of closing; and
- (2) the costs to repair the prior apartment.

Such repair costs cannot be related to ordinary wear and tear or customary expenses required to restore an apartment for resale. The housing company must also first look to any security deposit that it is holding in connection with the prior unit. If the housing company intends to claim a deduction for repair costs, it must, at least fourteen days prior to closing on the new apartment, perform an inspection of the prior unit on notice to the transferring tenant cooperators and then provide the transferring tenant cooperators with an itemized statement of the damages and a professional's certification of the costs related to repairing the damages.

Any amount disputed by the transferring tenant cooperators in excess of two months' maintenance will still be credited toward the purchase price for the new unit, but may be added as administrative expenses due and owing as additional maintenance on the new unit.

ADDITIONAL MAINTENANCE AFTER CLOSING

DHCR regulations allow a housing company to collect up to three months' maintenance on a surrendered but unsold apartment. If a housing company does charge this additional maintenance, it cannot be deducted from the purchase price at the time of closing on the new unit, but may be added as additional administrative expenses due and owing as additional maintenance on the new unit.

NO WAIVER

It is the transferring tenant cooperators' option to apply the value of their equity to the new unit. Every transferee must be advised of their right to do so by, among other methods, presentation of this memorandum with the notice of a vacancy for which he or she is eligible for transfer. A housing company cannot compel a waiver of the right to apply such value as a condition to obtaining the new apartment. Any such waiver is void as contrary to public policy.

DISPUTES

PHFL §31-c expressly gives cooperators the right to sue in court for a violation of, or a dispute under, this new law.

Very truly yours,



Cathy Sparks

cc: B. Koepnick, S. Melnitsky, M. Stratos, M. Siddiqui, J. Romanowski,
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