



**GOLDSTEIN HALL**<sup>PLLC</sup>  
ATTORNEYS AT LAW

# **Legal Interpretation of Letter From HPD Commissioner Dated October 4, 2010**

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**Questions? Call David Goldstein  
or Matthew Hall at (212) 461-2338**



## **I. Sales**

### **A. Purchaser's Income**

- **If your HDFC governing restrictions have expired, the default requirement is that the new purchasers' income shall not exceed 165% of AMI (See Attachment B).**

### **B. Maximum Sales Price**

- **The HPD Commissioner's letter does not impose maximum unit sales price restrictions. The formula in Attachment A is a guideline, not a requirement.**



## **II. Renting**

### **A. HDFC Owned Apartments**

- **Vacant HDFC-owned apartments must be sold, not rented. Best efforts must be made to sell vacant HDFC-owned apartments as soon as possible to eligible purchasers.**

### **B. Sublets**

- **Long term subletting is prohibited. Short term subletting is allowed by HPD but generally limited to no more than 18 months in any 5 year period. Shareholders are not allowed to charge subtenants more than 10% above monthly maintenance.**



### **III. Other Highlights**

- **A Director shall not be paid for serving on the Board of Directors**
- **A Director may be paid for any managerial services performed, as approved by the Board**
- **Directors must abstain from voting on matters where there is a conflict of interest**
- **If HPD determines that an HDFC is non-compliant, HPD is authorized to revoke the HDFC's partial real estate tax exemption**

**If you have any questions about the HPD Commissioners letter or other HDFC matters, please call our HDFC Practice Group at (212) 461-2338 or email Matthew Hall at [mhall@goldsteinhall.com](mailto:mhall@goldsteinhall.com).**

October 4, 2010

**Re: Housing Development Fund Corporation  
(HDFC) Cooperatives**

Dear HDFC Shareholders:

HDFC cooperatives are an essential part of the fabric of New York City's affordable housing stock. HPD has created tens of thousands of affordable homes as shareholder-owned HDFCs and, with your help, these cooperatives thrive as democracies in action.

Inclusive, transparent leadership and the full participation of all shareholders make democratic governing possible. I am taking the opportunity to ask you to be an active participant in your HDFC and to remind you of the important legal requirements that come with enjoying the benefits of living and owning shares in a cooperative. HPD has prepared the enclosed *Fact Sheet for NYC Cooperative HDFC Shareholders* to assist you in understanding the rules and responsibilities that come with being a shareholder in an HDFC.

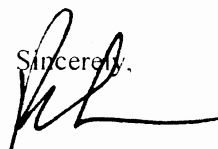
Because your cooperative is incorporated under Article XI of the Private Housing Finance Law, your governing corporate documents require certain standards in the selling and renting of apartments and careful ethical behavior for board members in carrying out their responsibilities. As a shareholder, you should pay attention to the actions of your board.

One significant benefit of living in an HDFC is an upper limit on the amount of real estate taxes that your cooperative is required to pay. This tax benefit is dependent on: 1) the building being incorporated as an HDFC and 2) the building's board members and shareholders acting in conformity with its rules. We remind you that HPD is authorized to remove this benefit if the agency determines that the HDFC's requirements are being violated.

HPD wants to ensure that your corporation is operating properly as an HDFC and that its physical, financial and organizational conditions are sound. Educate yourselves; check for upcoming Urban Homesteading Assistance Board (UHAB) classes at <http://www.uhab.org/>, and for upcoming HPD classes at <http://www.nyc.gov/html/hpd/html/developers/til.shtml>.

Because affordable housing is so important to the City, HPD recently created the Division of Asset Management. This new division is responsible for monitoring the health of affordable housing financed by HPD, including HDFC Cooperatives. Help us protect these limited and valuable resources. If you are concerned that your HDFC is not operating properly, contact UHAB at 212-828-2670 (Manhattan and Bronx), 212-479-3300 (Brooklyn and Queens) or the Division of Asset Management at 212-863-7327.

Sincerely,



Rafael E. Cestero

Attachment A

**Maximum Income for Section 576 Projects**

Section 576 of the Private Housing Finance Law (PHFL) provides the formula for determining the maximum income for new shareholders. Note that the multiplication factor for maintenance is different for families of two or fewer dependants (6 times maintenance) than for families of three or more dependants (7 times maintenance). Additionally, the factor for financing is based on the cost of purchasing the unit at the time of conversion (\$250.)

**EXAMPLE**

1. Add together the current monthly maintenance for the apartment plus a factor for utilities plus a factor for the financing of the original \$250 purchase price for the apartment.  
\$500 maintenance plus \$125 for utilities plus \$6 for original financing equals \$631.
2. Multiply that sum by 6 for families with two or fewer dependants.  
\$631 times 6 equals \$3,786.
3. Multiply that sum by 12 to account for a year.  
\$3787 times 12 equals \$45,444.

In this example, the maximum income for the incoming shareholder is \$45,444.

**Maximum Sales Price**

Sales prices should be set at levels that do not exceed 30% of the family's gross income. For the purpose of this example, we will presume that the new shareholder will pay 15% as a down payment and will mortgage the rest. We will also presume that the shareholder will carry homeowner's insurance. For the purpose of determining a sales price, the board of directors should add together the costs of home ownership (maintenance, utilities, mortgage and insurance). The board should then set a sales price at a level where the housing expenses of the new shareholder would not exceed 30% of the family income.

**EXAMPLE**

1. Add together home owner's expenses before financing charges. Yearly expenses: maintenance of \$6,000 plus \$1,500 in utilities plus \$225 in home owner's insurance equals \$7,725.
2. Calculate 30% of maximum family income. 30% of \$45,444 is \$13,633.
3. To ascertain the amount available for a mortgage, subtract all other homeowner expenses from 30% of homeowner income. \$13,633 minus \$7,725 equals \$5,908.
4. Using a mortgage table and the current mortgage rate, calculate the maximum mortgage that the homeowner can carry with amount available. At a 5% mortgage rate, the homeowner can carry a loan of \$90,000.
5. Add the maximum loan amount to the down payment for a maximum sales price.  
\$90,000 loan plus a 15% down payment equals \$104,000.

In this example, for an apartment with maintenance of \$500 and a family of two or fewer dependants, the board should set a sales price of not more than \$104,000.

Attachment B

**Area Median Income Standards - 2010**

<b>Family Size</b>	<b>120% Area Median Income</b>	<b>165% Area Median Income</b>
1 Person	\$66,600	\$91,600
2 Person	\$76,100	\$104,600
3 Person	\$85,550	\$117,650
4 Person	\$95,050	\$130,700
5 Person	\$102,700	\$141,250
6 Person	\$110,300	\$151,650
7 Person	\$117,950	\$162,200
8 Person	\$125,500	\$172,600

## FACT SHEET FOR NYC COOPERATIVE HDFC SHAREHOLDERS

October 4, 2010

All HDFC cooperatives are incorporated under Article XI of the Private Housing Finance Law (PHFL). Both this law and the cooperative's governing corporate documents require certain behavior. The areas addressed in this fact sheet include the selling of shares (apartments), the renting of apartments, and the fiduciary responsibility of board members.

1. **Sales:** Article 2 of the certificate of incorporation of every HDFC provides that shares (apartments) must be sold only to families of low income. The definition of low income is contained in the cooperative's deed or its certificate of incorporation. In some cases, the specific definition of low income in those documents may have expired. When this occurs, the cooperative should adopt a new standard. The new standard may not exceed 165% of area median income.

Shares may be sold only at prices affordable to families within the applicable income standard. The most common income standards are Section 576 of the PHFL, 120% of area median income, and 165% of area median income. You should check your documents to determine the income standard applicable to your cooperative. If you have questions, you may contact the Urban Homesteading Assistance Board (UHAB) at 212-828-2670 or the Department of Housing Preservation and Development (HPD) at 212-863-7327.

- A. **Section 576** - This income standard is based on a formula which includes the maintenance of the apartment being purchased plus a factor for utilities plus a factor for the cost of the financing for the \$250 purchase price of the apartment at the time of its sale from NYC. Examples of the formula can be found in **Attachment A**.
- B. **120% and 165% area median income** - The United States government calculates area median incomes by family size on an annual basis. HPD posts the current 120% and 165% median incomes for the New York Metro area on its website. The income standards for 2010 can be found in **Attachment B**.

The costs of owning shares in a cooperative include the apartment maintenance, the monthly payments on any loan used to purchase the shares, utilities, and homeowner's insurance. Generally, buyers should not pay more than 30% of their gross income in housing costs. HPD expects boards will set and enforce sales prices that are affordable to people within your HDFC's target income range.

2. **Renting:** The PHFL requires that all apartments in HDFC cooperatives be owner occupied. Although many cooperatives house original non-purchasing tenants and others have benefited from the additional income of renters, all vacant HDFC owned apartments must be sold to new shareholders who have stated their intention to owner-occupy.

Almost all HDFC cooperatives require owner occupancy and 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 in any circumstance. Generally, subletting should be limited to no more than 18 months in any 5-year period. In addition, it is not acceptable for shareholders to charge subtenants more than 10% above the monthly maintenance. Any subtenant should meet the applicable income standard of the cooperative.

3. **Fiduciary Responsibility:** Directors are legally required to act in the best interests of the HDFC and its shareholders. We urge shareholders to be aware of some important facts about their HDFCs. Directors are volunteer positions; managers are paid. If your HDFC's directors are being paid, it should be for the management work that they are doing 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.

Guidelines for the Board of Directors:

- A director should abstain from voting when the board is considering selling or contracting with that Director's friends or relatives, as it constitutes a conflict of interest.
- Directors should ensure that real estate taxes and water and sewer charges are being paid. This information is publicly available at [NYCServ.nyc.gov](http://NYCServ.nyc.gov). Any open charges can be viewed by entering the building address at this website. Inquiries on open charges can also be made by calling the Department of Finance (DOF) at 212-504-4080 and the Department of Environmental Protection at 718-595-7000.
- Boards should ensure that shareholders receive annual financial reports.
- Corporations should hold annual elections.

HDFCs have a cap on the taxable value of the units that, in most cases, significantly lowers real estate taxes on the property. The Board of Estimate and City Council resolutions that grant these caps stipulate that this exemption is effective only as long as the project is owned and operated by an HDFC that is in conformity with the requirements of Article XI of the PHFL. HPD is authorized to revoke this partial real estate tax exemption if it determines that the HDFC is not properly owned or operated.