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### Private Housing Finance

#### ARTICLE II

#### LIMITED-PROFIT HOUSING COMPANIES

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S 10. Short title. This article shall be known and may be cited and referred to as the "limited-profit housing companies law."

S 11. Policy and purposes of article. It is hereby declared that there exists in municipalities in this state a seriously inadequate supply of safe and sanitary dwelling or non-housekeeping accommodations for families and persons of low income, including accommodations for handicapped persons of low income and aged care accommodations for aged persons of low income; that such conditions are due, in large measure, to over-crowding and concentration of the population, improper planning, excessive land coverage, lack of proper light, air and space, improper sanitary facilities and inadequate protection from fire hazards; that such conditions constitute an emergency and a grave menace to the health, safety, morals, welfare and comfort of citizens of this state, necessitating speedy relief which cannot readily be provided by the ordinary unaided operation of private enterprise and require that provision be made by which private free enterprise may be encouraged to invest in companies regulated by law as to rents, profits, dividends and disposition of their property or franchises and engaged in providing such housing facilities and other facilities incidental or appurtenant thereto for families or persons of low income; that it is necessary that provision be made for participation by the state, its municipalities and the New York state housing finance agency in the financing of such housing, for the acquisition by such companies of real property required for such purposes and for public assistance to such companies by the

granting of tax exemptions; that the cooperation of the state, its subdivisions and the New York state housing finance agency is necessary to accomplish such purposes; that the provision of such adequate, safe and sanitary housing accommodations by such companies jointly or severally are public uses and purposes for which public money may be loaned and private property may be acquired by and for such companies and tax exemptions granted; that such conditions require the creation of the companies hereinafter prescribed for the purpose of attaining the ends herein recited; and the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

S 11-a. Additional policy and purposes of article. 1. It is hereby declared that the elimination of conditions causing a deterioration of the quality of urban life in municipalities of the State and the revitalization and improvement of the quality of urban life in such municipalities through comprehensive programs and projects constituting a total attack upon such conditions are the most critical problems facing the municipalities, the state and the federal government, and are vital to the health, well-being, safety and prosperity of the inhabitants of the municipalities and the people of the state. Neither the municipalities nor the state have adequate resources to undertake, develop and operate the comprehensive programs and projects necessary for the accomplishment of such purposes. The ordinary operations of private enterprise cannot rectify such conditions or accomplish such purposes. The elimination of such conditions and accomplishment of such purposes require the participation and cooperation of the municipalities, the State, the Federal government, private enterprise, institutions of higher learning, community and civic groups, fraternal and labor organizations, foundations, and all other responsible components of the community.

2. Among the conditions causing such deterioration are: the residence of large numbers of families, adults and children in slum ghettos; insanitary and inadequate housing or other physical environment; a severe shortage of decent healthful housing accommodations to meet the needs of large numbers of families, adults and children; economic, educational or community imbalance resulting from excessive migration of economic or other groups to or from communities; depletion of job or business opportunities because of migration of business and industry from communities; and the existence of physical, social, and economic blight and crime. Such conditions create and perpetuate slum ghettos, blight and crime, cause a progressive deterioration of the quality of

urban life for all persons in the municipalities and the State, render or tend to render the municipalities undesirable places in which to live, work and raise families, impair the sound economic, cultural and social growth of municipalities and communities thereof, break down the ability of municipalities or communities thereof to grow, expand, develop or continue as viable municipalities or communities, and threaten the life, health, well-being, safety and prosperity of all persons in municipalities and the people of the State.

2-a. It is hereby found that improvement of the physical environment and revitalization of the quality of urban life in such municipalities would be promoted by cooperative action by tenants who are persons or families of low income to acquire ownership of their dwellings and to operate them on a nonprofit basis; that such cooperative undertakings, with their consequent pride and responsibility of ownership, would help to stem the abandonment of deteriorating but structurally sound buildings, which contributes to a substantial loss of much needed housing stock, and would lead to the stabilization and renewal of deteriorating neighborhoods. It is found necessary, in order to assure the feasibility of such cooperative undertakings, to make available to such tenants long-term financing on a favorable basis and tax exemption to enable them to purchase and maintain their dwellings at a reasonable cost.

3. The rehabilitation or redevelopment of slum ghettos and other areas into sound healthy balanced viable communities, the enhancement of the physical environment, health, and social well-being of the inhabitants and the expansion of their social and economic opportunity require among other measures the attraction to the neighborhoods of varying economic classes in addition to persons of low income and the availability therein of a wide choice of housing from the standpoint of design and amenities.

4. It is hereby further found that there are certain parts of municipalities where conditions of blight are so extensive in area that, notwithstanding a continued shortage of safe and sanitary dwelling accommodations in the municipality for low and middle income families, it is not economic for private enterprise to build limited profit housing in such areas since it cannot supply proper housing at prices within the economic reach of low-income families in such blighted areas or attract tenants or buyers from other areas by offering rents and prices which are competitive with rents and prices of housing in areas of the municipality which are not blighted. It is found that there are other locations in such municipalities where housing development is desirable for sound community growth, but, similarly, where private

enterprise cannot build limited profit housing which is within the economic reach of persons in the area who require such housing.

5. It is the purpose of this article to enable municipalities to undertake projects directly or in combination with the Federal government, private enterprise and any of the other responsible components of the community, to accomplish the public purposes herein described through the most effective and economical concentration and coordination of Federal, State, local and private resources and efforts.

6. It is hereby further found and determined that the accomplishment of the purposes herein described is a matter of public concern, a governmental purpose, a city, town, and village purpose, and a public purpose and a public use for the accomplishment of which (a) the money and property of a city, town or village, may be given, loaned or expended, (b) indebtedness may be contracted by a city, town or village, and (c) eminent domain exercised by a city, town or village, as hereinafter provided.

S 12. Definitions. As used in this article, the following terms shall mean and include:

1. "Areas." A section of a municipality in which there is to be located a project approved by the municipality as provided in paragraph (a) of subdivision one and in subdivision five of section twenty-six of article two of this chapter.

2. "Company". A limited-profit housing company duly incorporated pursuant to the provisions of this article, or a company incorporated pursuant to the not-for-profit corporation law and this article for the purpose of providing housing and auxiliary facilities for staff members, employees or students of a college, university, hospital or child care institution and their immediate families or for aged or handicapped persons of low income, pursuant to this article, or a municipally-aided non-profit company as hereinafter defined, or a low income non-profit housing company as hereinafter defined.

2-a. "Home owners purchase note." A promissory note accepted by a mutual company as consideration for the issuance of stock entitling a person or family to occupancy of an apartment in a project, payable over or within a period of ten years.

2-a. "Urban Rental Company." A company whose project is located in or adjacent to a municipality and whose housing accommodations are occupied by persons or families who do not own the shares in such company.

2-b. "Mutual company." A company whose dwelling facilities, to the extent of at least eighty per centum, are occupied by persons or families who are entitled to such occupancy by reason of ownership of

shares in such company; provided however that a company that was not a mutual company prior to July first, nineteen hundred ninety-five may become a mutual company if its dwelling facilities, to the extent of at least fifty per centum, are occupied by persons or families who are entitled to such occupancy by reason of ownership of shares in such company. The commissioner or supervising agency shall provide procedures for such conversion of a company to a mutual company on or after July first, nineteen hundred ninety-five; such procedures shall require the submission of a plan for attaining eighty per centum owner occupancy.

3. "Occupancy date." The date defined in the contract between a company and a municipality or the state, as the case may be, as the date upon which the project is to be deemed ready for occupancy, or if such term is not defined in such contract, the date of issuance of the temporary certificate of occupancy.

4. "Plan." A plan or undertaking of an area or areas for providing low rent housing for persons of low income, and for other facilities incidental and appurtenant thereto.

5. "Project." A specific work or improvement, including lands, buildings and improvements acquired, owned, constructed, rehabilitated, improved, managed or operated by a company providing dwelling accommodations, non-housekeeping accommodations, aged care accommodations or accommodations for handicapped persons pursuant to this article, or undertaken, planned, developed, constructed or owned pursuant to section thirty-six-a of this article, and such business, commercial, cultural, recreational, communal, dining, medical and nursing treatment, day care or residential child care facilities or any combination thereof, or other facilities as may be deemed by the commissioner with respect to a project aided by a state loan or New York state housing finance agency loan or by the supervising agency with respect to a municipally-aided project or a project undertaken, planned, developed, constructed or owned pursuant to section thirty-six-a of this article, to be incidental and appurtenant thereto. In the case of a state loan or New York state housing finance agency loan, a project shall effectuate all or part of a plan, provided, however, that such dwelling accommodations, non-housekeeping accommodations, aged care accommodations or accommodations for handicapped persons may be provided in any section of the municipality, whether or not such section has insanitary or substandard housing conditions.

5-a. "State urban development corporation project". A project acquired, owned, constructed, managed or operated by a limited-profit housing company which is a subsidiary of the New York state urban development corporation, as the term "subsidiary" is defined in the New

York state urban development corporation act.

5-b. "Battery Park city project." A project acquired, owned, constructed, managed or operated by a company organized pursuant to this article and located within the Battery Park project area, as defined in the Battery Park city authority act.

6. "Project cost". The sum total of all costs incurred by a company and, as approved by the commissioner in the case of a state-aided project or a project aided by the New York state housing finance agency or by the supervising agency in the case of a municipally-aided project as reasonable and necessary for carrying out all works and undertakings for the development of a project. These shall include but are not necessarily limited to the carrying charges during construction and before physical completion or rehabilitation, working capital not exceeding three per cent of the estimated total cost or three per cent of the actual total final cost, whichever is larger, the cost of all necessary studies, surveys, plans and specifications, architectural, engineering, or other special services, the cost of acquisition of land and any buildings thereon, site preparation and development, construction, reconstruction and equipment; the reasonable cost of financing incurred by the investor in the course of development of the project, up to and including the occupancy date; the fees imposed by the commissioner or by the supervising agency or by both; other fees charged in the course of the development of the project up to and including the occupancy date, pursuant to the provisions of this article; the necessary expenses in connection with the initial occupancy of the project and where applicable, the cost of such training services as will assist the residents of the project to acquire ownership and to operate the project in an efficient and harmonious manner; and the cost of such other items, including tenant relocation, as the commissioner, in the case of a state-aided project or a project aided by the New York state housing finance agency or the supervising agency, in the case of a municipally-aided project shall determine to be reasonable and necessary for the development of the project, less any and all net rents and other net revenues received from the operation of the real or personal property on the project site, or any part thereof, by the company on or after the date on which the contract between the company and the state or the New York state housing finance agency or municipality was entered into and prior to the occupancy date. In the case of any project purchased or leased by a company from a municipality pursuant to the provisions of section thirty-six-a of this article, project cost shall include the value of the lease or the purchase price paid or to be paid by such company to such municipality.

7. "Local and municipal taxes". Taxes levied by a county, city, village, town, school and special district but shall not include assessments for local improvements.

8. "Child Care Institution"--A private, non-profit, resident agency, association, corporation, institution or other organization, which is incorporated or organized under the laws of this state for the care and treatment of children, which actually has its place of business or plant in this state and which submits and consents to the approval, visitation, inspection and supervision of the Department of Social Welfare, or a similar administrative department of the State of New York as to any and all acts in relation to the welfare of children performed or to be performed thereby.

9. "Housing". As used in this article the term includes:

(a) "Dwellings". "Dwelling accommodations". A room or rooms, with or without cooking facilities, arranged for occupancy as a self-contained unit.

(b) "Non-housekeeping accommodations". A room or rooms, without cooking facilities, and with or without board designed for the occupancy of staff members, employees or students of a college, university or hospital.

(c) "Aged care accommodations". Non-housekeeping accommodations for aged persons with board and aged care service as may be provided as an incident to occupancy, provided however, that no such service shall be of such a nature, kind or quality as to require licensing by the state department of health under article twenty-eight of the public health law.

(d) "Accommodations for handicapped persons." Dwelling accommodations designed for the occupancy of handicapped persons or non-housekeeping accommodations designed for the occupancy of handicapped persons with board and such service as may be provided as an incident to occupancy, provided however, that no such service shall be of such a nature, kind or quality as to make the facility subject to the jurisdiction of any other agency of the state.

10. "Persons of low income" and "families of low income". Persons or families who are in the low income groups and who cannot afford to pay enough to cause private enterprise in their municipality to build a sufficient supply of adequate, safe and sanitary dwellings, non-housekeeping accommodations or aged care accommodations.

11. "Preliminary Costs". Project costs approved by the supervising agency as appropriate expenditures which may be incurred prior to commitment and initial advance of the proceeds of a mortgage loan under this article, including but not limited to: (a) payments for options to

purchase properties on the proposed housing project site, deposits on contracts of purchase, or with prior approval of the supervising agency, payments for the purchase of such properties; (b) legal and organizational expenses, including payment of attorneys' fees, project manager and clerical staff salaries, office rent and other incidental expenses; (c) payment of fees for preliminary feasibility studies and advances for planning, engineering and architectural work; (d) expenses for tenant surveys and market analyses; (e) necessary application and other fees; and (f) such other expenses incurred by the limited-profit housing company as the supervising agency may deem appropriate to effectuate the purposes of this article.

12. "Municipally-aided non-profit company." A non-profit housing company duly incorporated pursuant to the not-for-profit corporation law and this article, which is aided by a municipal mortgage loan, a loan by the New York city housing development corporation or tax exemption or both and is not aided by any state mortgage loan or any mortgage loan by the New York state housing finance agency or a mortgage loan insured by the federal government made for the purpose of refinancing a mortgage loan other than a municipal mortgage loan or a mortgage loan made by the New York city housing development corporation.

13. "Municipally-aided mutual company." A mutual company which is aided by a municipal mortgage loan, a loan by the New York city housing development corporation or tax exemption or both and is not aided by any state mortgage loan or any mortgage loan by the New York state housing finance agency or a mortgage loan insured by the federal government made for the purpose of refinancing a mortgage loan other than a municipal mortgage loan or a mortgage loan made by the New York city housing development corporation.

14. "Low income non-profit housing company." A non-profit housing company duly incorporated pursuant to the not-for-profit corporation law and this article, whose principal purpose is to provide housing for persons of low income and families of low income and which is aided by a state mortgage loan or mortgage loan by the New York state housing finance agency or a municipal mortgage loan or municipal tax exemption, or both, or a mortgage loan insured by the federal government.

15. "Residual indebtedness." Where a mortgage loan is refinanced pursuant to section twenty-three-a or subdivision twenty-two-a of section six hundred fifty-four of this chapter, residual indebtedness shall be the indebtedness of a company due on the original mortgage loan, including all unpaid principal and all interest accrued thereon, less an amount equal to the principal amount, when made, of the mortgage insured by the federal government in connection with the refinancing.

Such indebtedness shall be secured by a mortgage which may be subordinate to the lien of any mortgage insured by the federal government and may contain such terms and conditions not inconsistent with this article as may be approved by the supervising agency and as the supervising agency may deem necessary or desirable to secure the repayment of such residual indebtedness. Residual indebtedness shall not be restricted by the provisions of this article relating to project cost.

16. "Residual receipts obligations". Where a mortgage loan is refinanced pursuant to section twenty-three-a or subdivision twenty-two-a of section six hundred fifty-four of this chapter, residual receipts obligations shall mean the amount of any additional loan to a company, and any amounts paid other than by the company, to establish escrow accounts or reserves or to satisfy minimum property standards or to install life safety devices for the issuance of mortgage insurance by the federal government in connection with the refinancing. With the approval of the supervising agency and the consent of the company, residual receipts obligations may be evidenced by non-interest bearing residual receipts notes. Residual receipts obligations shall be payable only after the payment in full of all residual indebtedness. Residual receipts obligations shall not be restricted by the provisions of this article relating to project cost and shall not include any amounts deposited under an agreement with the federal government for the sharing of claims paid by the federal government on account of insurance of mortgages.

S 13. Limited-profit housing companies; how created. A company may be created by three or more persons, approved by the commissioner, by making, subscribing, acknowledging and filing with the secretary of state a certificate which shall be entitled and endorsed "Certificate of Incorporation of (name of company) pursuant to the Limited-Profit Housing Companies Law"; provided that if the company is to be organized to undertake a municipally-aided project the commissioner shall not approve such persons unless they shall have been first approved by the supervising agency; provided further that no company shall be created to provide aged care accommodations or accommodations for handicapped persons under this article, except under this article and the not-for-profit corporation law. The certificate shall state:

1. The name of the proposed company.
2. The purposes for which it is to be formed which shall include among other things a provision that the company is to plan, acquire, construct, own, maintain, and operate projects pursuant to the terms and

provisions of this article.

3. Except in the case of a not-for-profit corporation, the amount of the capital shares, and if any be preferred shares, the preference thereof.

4. Except in the case of a not-for-profit corporation, the number of shares of which capital shall consist, all of which shall have a par value.

5. The municipality, as well as the county within this state, in which its principal business office is to be located, and the address to which the secretary of state shall mail a copy of process in any action or proceeding against the corporation which may be served upon him.

6. Its duration, which shall be: (a) not less than the period for which the loans contracted for under this article and the interest thereon remain unpaid in whole or in part; and (b) not less than the period for which tax exemption is granted pursuant to section thirty-three of this article; and (c) in any event not less than thirty-five years from the date of occupancy of any project, except as may be provided in sections thirty-five and thirty-six of this article.

7. The number of directors, which shall not be less than three nor more than twenty-one, and who shall be elected by the stockholders or members of the corporation. Unless required by the certificate of incorporation or the by-laws, directors need not be stockholders. Directors appointed by the commissioner pursuant to subdivision fifteen of this section or by the supervising agency pursuant to paragraph (c) of subdivision sixteen of this section need not be stockholders or meet other qualifications which may be prescribed by the certificate of incorporation or the by-laws. In a corporation undertaking a state-aided project one additional director may be designated by the commissioner, and, in the case of all state-aided mutual companies, such additional director shall be designated by the commissioner at the creation of the company and shall serve from the time of such designation at least until a board of directors has been elected by the tenants entitled to occupancy in the project by reason of ownership of shares in such company. In a corporation undertaking a municipally-aided project one additional director may be designated by the supervising agency, and, in the case of all municipally-aided mutual companies, such additional director shall be designated by the supervising agency at the creation of the company and shall serve from the time of such designation at least until a board of directors has been elected by the tenants entitled to occupancy in the project by reason of ownership of shares in such company. The director appointed by the commissioner or the supervising agency need not be a stockholder or meet other

qualifications which may be prescribed by the certificate of incorporation or the by-laws. In the absence of fraud or bad faith the director appointed by the commissioner hereunder or the supervising agency or the directors appointed by the commissioner or by the supervising agency pursuant to subdivision fifteen or paragraph (c) of subdivision sixteen respectively of this section shall not be personally liable for the debts, obligations or liabilities of the corporation.

Directors of a mutual housing company are to serve in that capacity without salary but may be reimbursed for expenses incurred directly relating to the duties of the director's office.

8. The names and post-office addresses of the directors until the first annual meeting.

9. The names and post-office addresses of the subscribers to the certificate, and a statement of the number of shares of stock which each agrees to take in the company.

10. That, except in the case of a company to be aided by a loan from the federal government or any agency or instrumentality thereof, or if the mortgage or mortgage bonds which are to be used in financing the company's project are to be insured by the federal government or any agency or instrumentality thereof, the entire amount to be paid in cash or property by the shareholders and income debenture holders shall be at least five per centum of the project cost in the case of an urban rental company and a mutual company. The provisions of this subdivision shall not apply to a non-profit company incorporated pursuant to the provisions of the not-for-profit corporation law and this article for the purpose of providing housing for staff members, employees or students of a college, university, hospital or child care institution and their immediate families, or for aged or handicapped persons of low income, nor to a municipally-aided non-profit company nor to a municipally-aided mutual company, nor to a low income non-profit housing company.

11. That, so long as this article shall remain applicable to any project of the company, its real property shall not be sold, transferred, encumbered or assigned except as permitted by the terms and provisions of this article.

12. That all of the subscribers to the certificate are of full age, that at least two-thirds of them are citizens of the United States, and that at least one of the persons named as director is a citizen of the United States and a resident of the state of New York.

13. That the company has been organized to serve a public purpose and that it shall be and remain subject to the supervision and control of the commissioner, or, if the company is organized to undertake a

municipally aided project, of the supervising agency, except as otherwise provided in this article, so long as this article remains applicable to any project of the company; that all real and personal property acquired by it, and all structures erected or rehabilitated by it, shall be deemed to be acquired, rehabilitated or created for the proper effectuation of the purposes of this article, and that the directors and subscribers of such company shall be deemed to have agreed that they shall at no time receive or accept from such company in repayment of their investment in its stock any sums in excess of the par value of the stock, together with such dividends or other compensation as are prescribed by or permitted under this article, and that, upon dissolution of the company, any surplus remaining after the payment of all its obligations shall be distributed and disposed of and title to the property may be conveyed in fee, only as prescribed by this article.

14. The certificate may provide that in the event that income debentures are issued by the company the owners thereof may be given the same right to vote as they would have if possessed of certificates of stock of the amount and par value of the income debentures held by them. If provision is made for the issuance of income debentures interest shall be paid by the company on income debentures only out of net earnings of the company that would be applicable to payment of dividends if there were no income debentures.

15. That in the event of a violation by a state-aided company of any provision of the certificate of incorporation or of law or of the loan or mortgage contract or any order of the commissioner or of any rules and regulations duly promulgated pursuant to the provisions of this article the commissioner may remove any or all of the existing directors of the company and appoint such person or persons whom the commissioner deems advisable, including officers and employees of the division of housing and community renewal, as new directors to serve in the places of those removed; that directors so appointed by the commissioner who are officers or employees of the division of housing and community renewal shall serve in such capacity without compensation; and that any directors so appointed by the commissioner shall serve only for a period coexistent with the duration of such violation or until the commissioner is assured in a manner satisfactory to him against violations of a similar nature.

16. If the company is organized to undertake a municipally-aided project, such certificate shall contain:

(a) A declaration that the original directors, officers, subscribers and income debenture holders possessing the right to vote, shall be deemed at the time of accepting such offices, or subscribing to the

stock or income debentures to have agreed not to resign from the company and not to sell their stock or income debentures prior to the completion of the project and the certification of the total actual project cost by the supervising agency, except with the consent of the supervising agency.

(b) A declaration that the shares of stock and the income debentures of the company shall be issued only in such amounts and form as may be approved by the supervising agency and that no stock shall be redeemed, purchased or retired and no income debentures shall be redeemed prior to their dates of maturity or purchased or retired by the company during the period in which the loan by the municipality is in force or for which tax exemption is granted pursuant to section thirty-three of this article, except with the consent of the supervising agency.

(c) A provision that in the event of a violation by the company of any provision of the certificate of incorporation or of law or of the loan or mortgage contract or of any rules and regulations duly promulgated pursuant to the provisions of this article, the supervising agency may remove any or all of the existing directors of the company and appoint such person or persons which the supervising agency in its sole discretion deems advisable, including officers or employees of the supervising agency, as new directors to serve in the places of those removed; that directors so appointed by the supervising agency who are officers or employees of the supervising agency shall serve in such capacity without compensation; and that any directors so appointed by the supervising agency shall serve only for a period coexistent with the duration of such violation or until the supervising agency is assured in a manner satisfactory to it against violations of a similar nature.

(d) A provision that the supervising agency or its duly authorized representative shall be notified in writing of and shall have the right to attend all meetings of the board of directors or of the stockholders and income debenture holders of the company.

(e) A provision that the sale of stock by a stockholder or the company or the sale of income debentures, the holders of which possess the right to vote, by any such holder or the company, shall be subject to the consent of the supervising agency.

(f) Such other provisions, not inconsistent with law, as the supervising agency may deem necessary to protect the investment of the municipality and to carry out the purposes of this article.

17. The certificate of incorporation of a non-profit company incorporated pursuant to the provisions of the not for-profit corporation law and this article shall, in addition to all other matters required by law to be stated therein, state:

a. That its purpose is to provide housing and auxiliary facilities for staff members, employees or students of any college, university, hospital, child care institution and their immediate families, for aged or handicapped persons of low income, or for any one of the above purposes, or to provide housing accommodations pursuant to the terms and provisions of this article in the case of a municipally-aided non-profit company, or to provide housing accommodations pursuant to the provisions of this article in the case of a low income non-profit housing company;

b. That the directors or trustees are and at all times shall be officers, directors or trustees of such college, university, hospital or child care institution, or, in the case of a non-profit company providing housing for aged or handicapped persons of low income or of a municipally-aided non-profit company providing housing accommodations pursuant to the terms and provisions of this article, or of a low income non-profit housing company providing housing accommodations pursuant to the provisions of this article, of a corporation organized pursuant to the provisions of the not-for-profit corporation law;

c. That the property of such company shall upon dissolution vest in such college, university, hospital, child care institution, or not-for-profit corporation, and

d. That no part of the net earnings of such college, university, hospital, child care institution or not-for-profit corporation shall inure to the benefit of any private individual.

18. That the secretary of state is designated as the agent of the company upon whom process in any action or proceeding against it may be served.

S 13-a. The applicability of not-for-profit corporation law. 1. The not-for-profit corporation law applies to every company heretofore or hereafter formed under this article and the not-for-profit corporation law, provided that:

(a) If any provision of the not-for-profit corporation law conflicts with any provision of this article, the provision of this article shall prevail and the conflicting provision of the not-for-profit corporation law shall not apply in any such case. If any provision of this article relates to a matter embraced in the not-for-profit corporation law but is not in conflict therewith, both provisions shall apply.

(b) The following provisions of the not-for-profit corporation law shall not apply to companies formed pursuant to this article and the not-for-profit corporation law:

Paragraphs (7) and (8) of subdivision (a) of section one hundred twelve, section one hundred thirteen, section one hundred fourteen,

section two hundred one, section three hundred four, section three hundred seven, section four hundred four, subdivision (3) of paragraph (a) of section five hundred ten, section six hundred nine, section six hundred seventeen, paragraphs (a) and (b) of section eight hundred four, article nine, section ten hundred eleven, section ten hundred twelve, article thirteen, article fourteen.

2. Every corporation to which the not-for-profit corporation law is made applicable by this section is a type B corporation for all purposes of that law.

S 13-b. Verification of papers filed with supervising agency. Any document required to be filed with the supervising agency regarding rental units, either state or municipal, shall be duly verified under oath of the corporation or individual filing the same. The commissioner or head of such supervising agency may restrict the required verification to such documents as relate to financial statements and all other data submitted in support of an application for an increase of rents.

S 14. Consent of commissioner to incorporation. Whenever any such certificate shall be presented to the secretary of state, he shall not file such certificate unless there shall accompany the same a certificate of the commissioner that he consents to the filing of such certificate; nor shall any amendment to the certificate of incorporation be filed unless it is accompanied by a certificate of the commissioner consenting thereto. If a company has entered into a contract with a municipality for the construction of a municipally aided project, the commissioner shall not issue a certificate consenting to an amendment of the certificate of incorporation of such company, unless the supervising agency has given its written consent to such amendment.

S 15. Participation by certain corporations and individuals. 1. (a) One or more banking organizations, foundations, labor unions, employers' associations, veterans' organizations, colleges, universities, educational institutions, child care institutions, hospitals, medical research institutes, insurance companies, trustees, fiduciaries or any combination of the foregoing, shall have the power to organize a company pursuant to the provisions of this article, and to purchase for cash or to receive and hold in exchange for property, and to own the bonds of a company and to invest, singly or jointly, or with the state or a municipality or the New York state housing finance agency or the New York city housing development corporation in a bond or note and single

participating mortgage, or in separate bonds or notes and mortgages, in an amount not greater than ninety-five per centum of the total project cost in the case of a mutual company, urban rental company or a non-profit company incorporated pursuant to the provisions of the not-for-profit corporation law and this article for the purpose of providing housing for staff members, employees or students of a college, university, child care institution, or hospital and their immediate families and in the case of a non-profit company incorporated pursuant to the not-for-profit corporation law and this article for the purpose of providing housing for aged persons of low income or in the case of a low income non-profit housing company such investment shall not be greater than the total project cost. Where one or more banking organizations, foundations, labor unions, employers` associations, veterans` organizations, colleges, universities, educational institutions, child care institutions, hospitals, medical research institutes, insurance companies, trustees, fiduciaries, or the state or a municipality or the New York state housing finance agency or the New York city housing development corporation, shall participate in a loan to a company secured by a single participating mortgage or by separate mortgages, the interest of each shall have equal priority as to lien in proportion to the amount of loan so secured, but need not be equal as to interest rate, time or rate of amortization or otherwise. Banking organizations, foundations, labor unions, employers` associations, veterans` organizations, colleges, universities, educational institutions, child care institutions, hospitals, medical research institutes, insurance companies, trustees, fiduciaries or groups thereof, may exercise any such power on such conditions, however, as to banking organizations, as may be prescribed by the banking board of the state banking department, and as to insurance companies only to the extent and upon such conditions as may be authorized by the state superintendent of insurance. As used in this subdivision, the terms "trustees" and "fiduciaries" shall include any fiduciary or fiduciaries holding funds for investment, and the term "banking organizations" shall have the same meaning as in subdivision eleven of section two of the banking law.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision or of any general, special or local law, for the purpose of completing the financing of project cost, in the event that a municipality has made or contracted to make a loan to a company or to a public benefit corporation to provide moneys to finance the project cost of a project (1) the construction of which commenced prior to December first, nineteen hundred seventy-five, (2) for which a temporary or

permanent certificate of occupancy was not issued prior to January first, nineteen hundred seventy-three, and (3) which is assisted by a contract with the secretary of housing and urban development of the United States pursuant to section two hundred thirty-six of the national housing act, as amended, covering all dwelling units therein, one or more banking organizations as defined in paragraph (a) of this subdivision, foundations, labor unions, credit unions, employers' associations, veterans' organizations, colleges, universities, educational institutions, child care institutions, hospitals, medical research institutes, insurance companies, trustees or fiduciaries as defined in paragraph (a) of this subdivision, trustees of pension and retirement funds and systems, corporations, partnerships, individuals, or other entities or any combination of the foregoing shall have the power to participate in such loan or make or participate in a new loan secured by a bond or note and a single participating mortgage, or by separate bonds or notes and separate mortgages, or to invest, singly or jointly, with the municipality in a bond or note and single participating mortgage or in separate bonds or notes and mortgages, upon such terms and conditions as may be approved by the supervising agency, including but not limited to provisions providing that (i) priority may be given to the payment of the principal of and interest on that portion of the mortgage indebtedness attributable to participation in a loan or an investment made by one or more of such entities or organizations, (ii) the interest of the municipality created as a result of making a mortgage loan may be subordinated to the interest that one or more of such organizations or entities may have upon such participation or investment, (iii) the interest of each upon such participation or investment need not be of equal priority as to lien, nor be equal as to interest rate, time or rate of amortization of principal or time of payment of interest, or otherwise, provided, however, that the aggregate amount of the loan or loans or investment made by one or more of such organizations or entities shall not exceed thirty per centum of total project cost and, further provided that the aggregate amount of the loan or loans to a company does not exceed such amount as is authorized pursuant to paragraph (a) of this subdivision. All or part of the proceeds of such participation or investment pursuant to this paragraph (b) may be applied to reduce or prepay the loan made by the municipality. The provisions of subdivisions one and five of section twenty-six of this article shall not apply to such participation in a loan or investment pursuant to this paragraph (b) if undertaken in connection with a project theretofore approved pursuant to said section twenty-six.

Notwithstanding the provisions of this article or of any general, special or local law, in the event that a municipality has made a loan pursuant to this article prior to any participation pursuant to this paragraph, the supervising agency shall have the power, upon the mortgagor's consent, to modify the terms and conditions of the original bond or bonds or note or notes and mortgage and any other documents executed in connection with such initial loan, as the supervising agency may deem necessary or desirable, to provide for such participation, including but not limited to modification of the rate and time of payment of the interest on the initial loan or rate of amortization of principal thereof, and provision for the additional borrowing cost, if any, with respect to that portion of the mortgage indebtedness attributable to such participation, provided, that except to the extent of any increase in the maximum principal amount of the original mortgage loan, with regard to a company that has obtained a temporary or permanent certificate of occupancy for part or all of a project financed by a loan pursuant to this article before such participation in a loan or investment is made, the sum of the payments of interest and principal on the mortgage loan or loans which the company is obligated to make in any year as a result of such modification and participation in a loan or investment made pursuant to this paragraph, shall not exceed the sum of the payments of interest and principal that such company would have been obligated to make in such year under the original mortgage loan agreement if the project had been fully financed under the original mortgage loan agreement by the municipality at an interest rate equal to the maximum rate per annum prescribed by the banking board pursuant to section fourteen-a of the banking law as of December nineteenth, nineteen hundred seventy-five, or such higher rate of interest as the secretary of housing and urban development of the United States shall approve pursuant to an agreement to make interest reduction payments pursuant to section two hundred thirty-six of the national housing act, as amended, with respect to such project and that the rental or carrying charges in such projects shall not be increased as a result of such participation in a loan or investment and further provided, that the company shall not seek or accept from the municipality any subsidy, direct or indirect, excluding existing tax exemption, to offset any increased borrowing costs, if any.

(c) Where the state or a municipality shall join with one or more organizations of the kind hereinabove mentioned, in making a loan secured by a single participating mortgage or by separate mortgages, the state or a municipality is authorized, through the commissioner of housing, or the supervising agency, as the case may be, to make

provision, either in the mortgage or mortgages or by separate agreement, for the performance of such services as are generally performed by a banking institution or insurance company which itself owns and holds a mortgage or by a trustee under a trust mortgage. The commissioner and the supervising agency are hereby authorized to act as trustee or to consent to the appointment of a banking institution to act in such capacity. Any agreement made by the commissioner under this provision shall be subject to the approval by the state comptroller and the attorney general as to form.

(d) In connection with any participation in a loan or investment pursuant to paragraph (b) of this subdivision the municipality shall have the power to assign or pledge, in whole or in part, to one or more of the organizations or entities participating in such loan its right, title and interest in and to any mortgage held pursuant to this article and any contract or arrangement for the payment of subsidy with respect to such loan and the right to receive and apply to repayment of such loan and the interest thereon any payments made under such mortgage or under such contract or arrangement.

2. Notwithstanding any other provision of law, any banking institution or insurance company or a group thereof operating a company, or owning all of the bonds of a company may exercise all the powers conferred by this section and may enter into contracts contemplated by this article and agree with the commissioner not to sell, assign, or otherwise transfer such project or bonds or bond and mortgage or interest therein of such company provided for pursuant to this article without the consent of the commissioner.

S 16. Limited-profit housing companies; partnership relations.

Notwithstanding any provisions in this article to the contrary, but subject to such regulations as may be prescribed by the commissioner or the supervising agency, as the case may be:

1. (a) Any company may be a partner (general or limited) in a partnership (general or limited) formed for the purpose of providing such company with capital. Any company incorporated pursuant to the provisions of this article may, with the consent of the commissioner or the supervising agency as the case may be, become a partner (general or limited) in a partnership (general or limited) upon the consent of the company to the refinancing of its original mortgage loan by a mortgage loan insured by the Federal government; such a partnership shall have the same powers and duties as provided by this article as a partnership formed for the purpose of providing a company with capital.

(b) Any partner (general or limited) of any partnership (general or

limited) in which a company is a partner (general or limited) may be the owner or holder of any shares, bonds, income debentures, notes or other securities of such company.

(c) Any company which is a partner (general or limited) in any such partnership (general or limited) may exercise all the rights and powers and shall be subject to all the duties and obligations of a company in accordance with this article.

2. The capital structure of a company which is a partner (general or limited) in a partnership (general or limited) formed pursuant to paragraph (a) of subdivision one of section sixteen may include withdrawals from the capital of such a partnership (general or limited).

The provisions of this article relating to shares and income debentures shall be deemed to include withdrawals from the capital of a partnership (general or limited) of which a company is a partner (general or limited).

S 17. Powers. 1. Subject to the limitations of this article, a company heretofore or hereafter organized under this chapter shall have the powers and be subject to the limitations contained in the business corporation law or the not-for-profit corporation law, as the case may be, and shall have the following additional specific powers:

(a) To make and execute contracts and other instruments necessary or convenient in the exercise of its powers;

(b) To acquire or contract to acquire from any person, firm, corporation, municipality, federal or state agency, by grant, purchase, condemnation or otherwise, leaseholds, real, personal or mixed property or any interest therein, and to sell, assign, exchange, transfer, mortgage or encumber the same;

(c) To own, hold, clear and improve, leasehold, real, personal or mixed property or any interest therein;

(d) To construct, reconstruct, rehabilitate, improve, alter or repair or provide for the construction, reconstruction, improvement, alteration or repair of any project;

(e) To lease or rent any of the housing or other accommodations or any of the lands, buildings, structures or facilities embraced in any project and establish and revise the rents or charges therefor; or to purchase or lease a project or a part thereof from an authority, pursuant to the provisions of section fifty-eight or article twelve-b of this chapter.

(f) To arrange or contract with a municipality for the planning, replanning, opening, grading or closing of streets, roads, roadways, alleys or other places or for the furnishing of facilities or for the

acquisition by a municipality of property or property rights or for the furnishing of property or services in connection with a project;

(g) To insure or provide for the insurance of its property or operations as required by law and also against such other risks as it may deem advisable;

(h) To limit by contract the exercise of any of its powers;

(i) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control;

(j) To sue and be sued;

(k) To have a seal and alter the same at pleasure;

(l) To make and from time to time amend and repeal by-laws, rules and regulations not inconsistent with the provisions of this article;

(m) To sell, lease, or otherwise convey all or any part of a project to an authority upon such terms and conditions as shall have the prior approval of the commissioner or the supervising agency, as the case may be;

(n) A non-profit company incorporated pursuant to the not-for-profit corporation law and this article for the purpose of providing housing and auxiliary facilities for staff members, employees or students of any college, university, hospital, child care institution and their immediate families; for aged or handicapped persons of low income or for any one of the above purposes, may, with the prior written consent of the commissioner or the supervising agency, as the case may be, lease its project or any part thereof to any colleges, universities, hospitals, child care institutions or not-for-profit corporations. A lessee of a project may sublease all or any part of the project to institutions and not-for-profit corporations which would be an eligible sponsor pursuant to the provisions of this chapter and to staff members, employees, and students of any college, university, hospital, child care institution, and to aged and handicapped persons of low income. Any property so leased or subleased shall remain subject to the provisions of this article and to the rules and regulations of the commissioner, or supervising agency, as the case may be. A lease or sublease of the entire project may provide for the assumption by the lessee or sublessee of the management and control of the project, and all of the obligations thereof, as well as the right to collect all revenues accruing thereto. In any event, the lessee shall pay rental in an amount at least equal to the interest and amortization due upon the mortgage of the property so leased.

(o) To lease to any authority, or to a municipality in connection with

any federally-aided program to provide dwelling accommodations for persons of low income, one or more dwelling units in a project upon such terms and conditions as shall have the prior written approval of the commissioner or the supervising agency, as the case may be.

(p) To lease, with or without an option to purchase, all or any part of a project to any person, firm, partnership, trust or corporation, subject to the prior written consent of the commissioner or the supervising agency, as the case may be. Any property so leased shall remain subject to the provisions of this article and to the rules and regulations of the commissioner or the supervising agency, as the case may be. Such lease may provide for the assumption by the lessee of the management and control of the project, as well as the right of the lessee to collect all revenues accruing thereto.

To do all other things necessary or convenient to carry out its powers.

2. A company shall file with the commissioner or the supervising agency, as the case may be, a copy of any by-laws, rules, regulations and amendments thereto adopted by it from time to time, which shall become effective upon approval by the commissioner or by the supervising agency; provided, however, that if the commissioner or the supervising agency shall fail to approve or disapprove such proposed by-laws within three months after such filing, such by-laws shall become effective upon the expiration of such three month period. These by-laws, rules, regulations and amendments shall contain such provisions relating to the management of its business, the regulation of its affairs, the calling of meetings, the manner of selection of officers and trustees and such other provisions as may be reasonable and necessary.

S 18. Designation of and service of process on secretary of state and registered agent. The provisions of sections three hundred four, three hundred five and three hundred six of the business corporation law shall apply to companies heretofore or hereafter organized pursuant to the provisions of this article.

S 19. Consideration for issuance of stock, bonds or income debentures. No company shall issue stock, bonds, or income debentures except for money or property actually received for the use and lawful purposes of the company, provided, however, that a mutual company may issue stock for home owners purchase notes if the purchase transaction has received the written endorsement of the commissioner in accordance with supplementary rules and regulations of the commissioner made therefor and if at least two hundred dollars in money or property is received by

such company toward the issuance of such stock. No stock, bonds or income debentures shall be issued for property except upon a valuation approved by the supervising agency or by the commissioner, as the case may be, and such valuations shall be used in computing the estimated or actual project cost.

S 20. Mortgages, mortgage bonds and notes. 1. Any company, subject to the approval of the commissioner or of the supervising agency, as the case may be, may borrow funds and secure the repayment thereof by bond or note and mortgage or by an issue of bonds under a trust indenture.

2. Each loan made to a company shall relate to one or more specified projects and shall be secured by a mortgage upon all of the real property of which the project or projects, to which the loan relates, consists, and upon all fixtures and articles of personal property attached to or used in connection with the operation of such project or projects. Such mortgages may contain such other clauses and provisions as shall be approved by the commissioner, or the supervising agency, as the case may be, including the right to assignment of rents and entry into possession in case of default; but the operation of such project or projects, in the event of such entry by a mortgagee or receiver, except in the case of a mortgage loan insured or held by the federal government, shall be subject to regulations promulgated by the commissioner or the supervising agency. Provisions for the amortization of the mortgage indebtedness and residual indebtedness of companies formed under this article shall be subject to the approval of the commissioner or the supervising agency, as the case may be. In the case of an instrument or instruments evidencing residual indebtedness issued pursuant to section twenty-three-a or section forty-four-b of this chapter, the principal amount of such instrument or instruments and the interest thereon, if any, shall be repaid over a period of time not exceeding the term over which the mortgage loan insured by the federal government is to be repaid, plus ten years, which period of time shall commence at such time as the commissioner or the supervising agency shall approve, provided, however, that such period of time shall not expire more than fifteen years after the mortgage loan insured by the federal government has been satisfied.

S 21. Capital structure. The capital structure of a company undertaking a project and the proportionate amount of the project cost to be represented by mortgages, bonds, notes, income debentures and shares shall be subject to the approval of the commissioner except as otherwise provided in section twenty-three with respect to a

municipally-aided project. The shares and income debentures issued by a mutual company or urban rental company, other than a non-profit company incorporated pursuant to the provisions of the not-for-profit corporation law and this article for the purpose of providing housing for staff members, employees or students of a college, university, hospital or child care institution and their immediate families or for aged or handicapped persons of low income, and other than a municipally-aided non-profit company or a municipally-aided mutual company, and other than a low income non-profit housing company, shall not be less than the total of five per centum of the project cost. The shares, bonds or notes, income debentures and mortgages covering any project shall not exceed the actual project cost.

The provisions of this section with respect to the proportionate amount of the project cost to be represented by mortgages, bonds, notes, income debentures and shares shall not be applicable to any housing company project, if funds made available by the federal government or any agency or instrumentality thereof are used in financing the project, in whole or in part, or if a mortgage or mortgage bonds issued with respect to such project are insured by the federal government or any agency or instrumentality thereof.

S 22. State loans. 1. The commissioner may enter into contracts for loans to a company. All such contracts shall be subject to approval by the state comptroller and by the attorney general as to form.

2. Loans by the state under such a contract shall be secured by a first mortgage lien, and no such loan shall be made in an amount greater than ninety-five per centum of the total project cost in the case of a mutual company, urban rental company or a non-profit company incorporated pursuant to the provisions of the not-for-profit corporation law and this article for the purpose of providing housing for staff members, employees or students of a college, university, hospital or child care institution and their immediate families and in the case of a non-profit company incorporated pursuant to the not-for-profit corporation law and this article for the purpose of providing housing for aged or handicapped persons of low income or in the case of a low income non-profit housing company such loans shall not be made in an amount greater than the total project cost. In case of a loan in an amount greater than ninety-five per centum of the total project cost, the commissioner may in his discretion require satisfactory independent guarantees that the loan will be repaid according to the terms of the company's bond or note and mortgage. Notwithstanding any other provisions of law, if the company proposes to

sell or convey any part or parts of the mortgaged premises prior to the sale by the state of the definitive bonds providing the funds for the state loan, the comptroller, upon the application of the company and with the prior written consent of the commissioner, may release from the first mortgage lien any part or parts of the mortgaged premises not acquired through condemnation and not required for the project, provided that any net proceeds from the sale or conveyance of the said property will be held by the company for the sole purpose of reducing, in accordance with the requirements of the commissioner and comptroller, the principal amount of the state loan outstanding, and provided further that the unpaid principal amount of the state loan then outstanding, as it may be reduced by the net proceeds, if any, derived from the sale or conveyance, would not be in an amount greater than ninety-five per centum of the total project cost and in the case of a non-profit company incorporated pursuant to the provisions of the not-for-profit corporation law and this article for the purpose of providing housing for aged or handicapped persons of low income or in the case of a low income non-profit housing company such amount shall not be greater than the total project cost. The comptroller shall execute such release in the usual form, which, when acknowledged, shall be recorded by the county clerk and a minute thereof made upon a margin of the mortgage. A company may, with the prior written consent of the commissioner, and subject to the approval of the state comptroller and to the provisions of any contract with noteholders and bondholders, lease any property not acquired through condemnation and not required for the project, and may apply the income of such lease to any use authorized for any other rental income. Such lease shall contain restrictions to protect and preserve the project.

3. The commissioner may make temporary loans or advances to a company in anticipation of any permanent loans and no such temporary loans or advances shall be deemed to constitute part of such permanent loans unless such temporary loans or advances have been made out of the proceeds of definitive housing bonds sold by the state pursuant to chapters four hundred seven of the laws of nineteen hundred fifty-five and nine hundred fifty-six of the laws of nineteen hundred fifty-eight.

4. The state shall have the power to invest jointly with the New York state housing finance agency in a bond or note and single participating mortgage, or in separate bonds or notes and mortgages of a company organized pursuant to the provisions of this article. The interest of each shall have equal priority as to lien in proportion to the amount of loan so secured, but need not be equal as to interest rate, time or rate of amortization or otherwise. In such a case the state, through the

commissioner of housing, is authorized to make provision, either in the mortgage or mortgages or by separate agreement, for the performance of such services as are generally performed by the New York state housing finance agency itself owning and holding a mortgage. Any agreement made by the commissioner under this subdivision shall be subject to the approval of the state comptroller and the attorney general as to form.

S 23. Municipal loans and municipally aided projects. 1. A municipality may make or contract to make loans to a company or to a public benefit corporation providing housing for staff members, employees or students of a college, university, hospital or child care institutions and their immediate families in an amount not to exceed, except in the case of a non-profit company incorporated pursuant to the provisions of the not-for-profit corporation law and this article for the purpose of providing housing for aged or handicapped persons of low income, and except in the case of a company or public benefit corporations providing housing for staff members, employees or students of a college, university, hospital or child care institution and their immediate families, and except in the case of a municipally-aided non-profit company or of a municipally-aided mutual company, and except in the case of a low income non-profit housing company, ninety-five per centum of the project cost to be secured, except as provided in section fifteen of this article, by a first mortgage lien and may make temporary loans or advances to a company in anticipation of a permanent municipal loan. In the case of a non-profit company incorporated pursuant to the provisions of the not-for-profit corporation law and this article for the purpose of providing housing for aged or handicapped persons of low income and in the case of a company or public benefit corporations providing housing for staff members, employees or students of a college, university, hospital or child care institution and their immediate families, and in the case of a municipally-aided non-profit company or of a municipally-aided mutual company, and in the case of a low income non-profit housing company, such loans may not exceed the total project cost. Notwithstanding the foregoing, such loans to a municipally-aided mutual company to assist in financing the acquisition of a building by residents thereof may not exceed ninety-five per centum of the project cost. Such mortgage, or bonds or notes secured thereby and such contract may contain such terms and conditions not inconsistent with the provisions of this article as the local legislative body may deem necessary or desirable to secure repayment of its loan, the interest thereon and other charges in connection therewith. In the case of a loan in an amount greater than ninety-five per centum of the total project

cost the supervising agency may in its discretion require satisfactory independent guarantees that the loan will be repaid according to the terms of the company`s bond or note and mortgage.

1-a. Notwithstanding any other provision of this article or any other law, any such loan may be made to a company at such rate of interest, if any, as the local legislative body may deem necessary or desirable to carry out the policy and purposes of this article.

2. The supervising agency shall have exclusive power to promulgate such supplementary rules and regulations with respect to a municipally-aided project and a company formed to undertake or operate any such project, as may be necessary to carry out the provisions of this article. No assignment for collateral or pledge by a municipality of its mortgage interest in a municipally-aided project to the state or to any political subdivision thereof shall either affect the power of the supervising agency granted herein or authorize the commissioner to exercise any powers not otherwise granted in this article.

3. Prior to the date of approval by the local legislative body of the contract between a municipality and a company for a municipally aided project, the total estimated project cost of such project, the estimated capital requirements of the company formed to undertake or operate such project, the initial capital structure of such company and a modification of any of the foregoing items, shall be subject to the approval of the supervising agency and the commissioner. Any modification of any of the foregoing items made after such date of approval of the contract shall be subject solely to the approval of the supervising agency. If after such date of approval of the contract, any change is made in such contract which requires the approval of the local legislative body, such change shall also be subject to the prior approval of the commissioner.

4. The commissioner shall have the power, prior to the date of approval by the local legislative body of a contract between a company and the municipality for a municipally aided project, to approve the proposed maximum average of the rentals to be charged for the dwellings in the project, or any modifications thereof. After such date of approval of the contract, the supervising agency shall have sole power to increase or reduce the rental rate for the dwellings in the project in the manner prescribed by section thirty-one of this article for the variance of the rental rates. However, if a variance in such rental rate is made necessary because of a change in the project which requires the approval of the local legislative body, the prior approval by the commissioner of such variance of the rental rate shall also be obtained.

5. The commissioner and the supervising agency shall each have full

power to investigate into and order a company undertaking or operating a municipally aided project to furnish such reports and information as each may require concerning the planning, construction, acquisition, rehabilitation, management or operation of the project.

6. The commissioner shall have the power to audit the books of a company undertaking or operating a municipally aided project solely as to the legality of the expenditures and to disallow any expenditure which the commissioner shall find has been made in violation of law or any rule or regulation duly issued pursuant to this article. The supervising agency shall have the full power to audit the books of any such company as to the legality, reasonableness or necessity of its expenditures. Any expenditure disallowed by the commissioner or the supervising agency on such audits shall not be included in any construction, management or operating costs in connection with any application to increase or reduce the rents or carrying charges in a project.

7. (a) At the direction of the supervising agency, with the consent and approval of the mayor the municipality shall establish and keep a separate fund known as the limited-profit mortgage reserve fund for the purposes of insuring the municipality against any loss resulting from the making of a mortgage loan, temporary loan or advance to a municipality-aided project and to protect the municipality in the event of delinquency in the repayment of such mortgage loan, temporary loan or advance.

(b) There shall be paid into such fund the portions of fees allocated to and directed to be deposited in such fund by the supervising agency with the consent and approval of the mayor as provided for in subdivision seven of this section. In addition, there shall be credited to and deposited in such fund any portion of the unexpended balance remaining in the housing fund as the supervising agency with the consent and approval of the mayor may determine to be in excess of the amounts needed to meet expenditures required to be paid from the housing fund.

(c) The monies in the limited-profit mortgage reserve fund shall be deposited in one or more of the banks or trust companies designated, in the manner provided by law, as depositories of the funds of such municipal corporation. The comptroller or the chief fiscal officer may invest the monies in such fund in obligations specified in paragraph d of this subdivision. Any interest earned or capital gain realized on the money so deposited or invested shall accrue to and become part of such fund. The separate identity of such fund shall be maintained whether its assets consist of cash or investments or both.

(d) Monies in such fund may be invested (1) in special time deposit

accounts in, or certificates of deposit issued by, a bank or trust company located and authorized to do business in this state, provided, however, that such time deposit account or certificate of deposit shall be payable within such time as the proceeds may be needed to meet expenditures for which such monies were obtained and provided further that such time deposit account or certificate of deposit be secured by a pledge of obligations of the United States of America or obligations of the state of New York or obligations of any municipal corporation, school district or district corporation of the state of New York; or (2) in obligations of the United States of America, obligations of the state of New York or obligations of the municipal corporation which has established such mortgage insurance fund provided: (i) such obligations are not tax exempt; (ii) such obligations shall be payable or redeemable at the option of the owner within such times as the proceeds may be needed to meet expenditures for purposes for which the monies so invested were obtained, and (iii) such obligations, unless registered or inscribed in the name of the municipal corporation for which such investment is made, shall be purchased through, delivered to and held in custody of a bank or trust company in this state and shall be sold or presented for redemption or payment only by such bank or trust company upon written instructions from the comptroller or chief fiscal officer.

(e) An expenditure shall be made from such fund only by an authorization of the supervising agency with the consent and approval of the mayor and only for one or more of the following purposes:

- (i) Payment of expenses of establishing and administering the fund;
- (ii) Payment of a delinquent installment or installments of interest and principal due to the municipality under a mortgage loan, temporary loan or advance to a municipally-aided project;
- (iii) Payment of any loss sustained by the municipality as a result of the making of a loan, temporary loan or advance to a municipally-aided project, whether such loss consists of a deficiency upon a mortgage, foreclosure sale as authorized by sections thirty-four and ninety-four of this chapter or otherwise; except that in the event the municipality acquires title to the project, payment for any loss or deficiency shall be deferred until such time when the municipality shall dispose of title to the project; any such loss or deficiency shall be diminished by the municipality to the extent of the amount derived by the municipality from such disposition plus any net operating income derived by the municipality during its period of ownership or less any net operating loss sustained by the municipality during such period and less any amount of interest paid by the municipality to retire any bonded indebtedness incurred in connection with the loan made to such project.

(iv) Payment of all costs entailed in procuring mortgage insurance in such amounts, and from such insurers as the supervising agency deems desirable to insure the municipality against any loss resulting from the making of a mortgage loan to a municipality-aided project.

The payment from such fund of any delinquent installment or installments due the municipality under a mortgage as provided in subsection (ii) of this paragraph e shall not be deemed either a remission or waiver of the right to such installment or installments and such installment or installments shall continue to be due and payable to the municipality and shall be deposited, together with interest accrued, in the mortgage insurance fund when paid.

(f) The comptroller or chief fiscal officer shall keep a separate account for the mortgage insurance fund. Such account shall show:

- (i) The date and amount of each sum paid into the fund;
- (ii) The interest earned by the fund;
- (iii) The capital gains or losses resulting from the sale of investments of the fund;
- (iv) The interest or capital gains which have accrued to the fund;
- (v) The amount and date of each withdrawal from the fund;
- (vi) The assets of the fund indicating the cash balance therein and a schedule of the amounts invested.

The comptroller or chief fiscal officer shall render a detailed report of the operation and condition of such fund to the supervising agency annually each fiscal year and at such other times as the supervising agency or the mayor may require.

8. Whenever reference is made in this article to a municipal loan, a loan by a municipality, a loan from a municipality, a contract for a loan between a municipality and a company, or any similar term, with respect to the territorial limits of the city of New York such term shall be construed to refer to a loan made or to be made either by such municipality or by the New York city housing development corporation, whichever is applicable.

9. The city of New York shall have the power to invest jointly or participate in a loan with the New York city housing development corporation or with one or more organizations or entities mentioned in section fifteen in a bond or note and single participating mortgage, or in separate bonds or notes and separate mortgages of a company organized pursuant to the provisions of this article upon such terms and conditions as are provided in said section fifteen of this article.

10. A municipality with a population of less than one million may, by action of its local legislative body concurred in by the commissioner, provide for the supervision and regulation of any municipally-aided

project and the company carrying out such project by the commissioner in lieu of the supervising agency. With respect to any such project and company, the commissioner shall have, from and after the effective date of such action, all of the powers and duties of a supervising agency pursuant to this article. The company shall pay to the commissioner fees, as prescribed by the commissioner, to cover the expenses of examination, audit, and supervision of the company and the project. Notwithstanding any other provision of law, funds collected pursuant to such fees shall be deposited to the credit of the general fund.

The provisions of subdivisions one and eight of this section shall apply only to projects financed in whole or in part by a mortgage loan, temporary loan or advance by a municipality. The provisions of subdivisions two, three, four, five, six and seven hereof shall apply to all municipally-aided projects including projects financed in whole or in part by a mortgage loan from the federal government or any agency or instrumentality thereof or by a mortgage or mortgage bonds insured by the federal government or any agency or instrumentality thereof.

S 23-a. Mortgage modifications, evidence of pre-existing indebtedness.

1. Notwithstanding the provision of any law, general or special, the supervising agency shall have the power to:

(i) assign or pledge or contract to assign or pledge any mortgage securing a loan, including any loan to finance the construction of a project, and any note or bond evidencing indebtedness thereon, made by the municipality in accordance with the provisions of this article, and any contract or arrangement, including any subsidy contract or arrangement, relating to such mortgage, and the receipts to be derived from any of the foregoing, and may reacquire or accept and contract to reacquire or accept any such mortgage, note, bond, contract or arrangement, including any mortgage, note, bond, contract or arrangement made in substitution thereof, and the receipts to be derived therefrom, or

(ii) consent to and contract for the modification of any of the terms of a mortgage, and note or bond secured thereby, made pursuant to section twenty-three of this chapter for the purpose of obtaining insurance of such mortgage loan by the federal government in order to refinance all or any part of the indebtedness evidenced by such mortgage and note or bond, or

(iii) satisfy such mortgage in order to enable the company to obtain insurance by the federal government of a mortgage loan made for the purpose of refinancing all or any part of the indebtedness evidenced by such mortgage and note or bond.

2. In the event that the existing mortgage loan is satisfied pursuant to this section, the supervising agency may in consideration of the issuance of such satisfaction accept a new mortgage and note or bond insured by the federal government in an amount equal to the maximum principal amount of a mortgage loan the federal government will insure or accept the proceeds available to the housing company as a result of the refinancing.

3. In the event that there is residual indebtedness, the housing company shall make and the supervising agency shall accept such instruments evidencing such indebtedness as may be required by the supervising agency as are consistent with the provisions of subdivision fifteen of section twelve of this chapter, in such form and upon such terms as the supervising agency may approve. In the event that there are residual receipts obligations, the housing company may make and the supervising agency may accept instruments evidencing such obligations in accordance with the provisions of subdivision sixteen of section twelve of this chapter.

4. Notwithstanding any other provisions of this article or any general, special or local law, where the supervising agency has made the findings required in subdivision one of section twenty-six or section twenty-six-a and where a project has been approved pursuant to subdivision five of section twenty-six of this chapter, the supervising agency may make or contract to make a mortgage loan or exercise other related powers pursuant to this section or section twenty-three-b or subdivision twenty-two-a of section six hundred fifty-four of this chapter without further findings by the supervising agency or further approval by the local legislative body.

4-a. Notwithstanding the provisions of this article or any general, special or local law to the contrary, where an existing mortgage loan is modified or satisfied pursuant to this section and the supervising agency has approved a new or modified mortgage or mortgages, including a mortgage and note or bond insured by the federal government and a mortgage to secure residual indebtedness, the supervising agency may sell, assign, or otherwise dispose of, at public or private sale, on such terms and conditions as shall be deemed appropriate by the supervising agency subject to the approval of the comptroller or chief fiscal officer of the municipality wherein such agency is located, such new or modified mortgage or mortgages and related instruments.

4-b. Notwithstanding the provisions of this article or any general, special or local law to the contrary, where an existing mortgage loan is modified or satisfied pursuant to this section, the supervising agency may pay or incur fees, costs, expenses and other amounts, whether or not

any amounts have been appropriated therefor in order to (1) meet a municipality's obligations under an agreement with the federal government on account of mortgage insurance, provided that a municipality's share of any mortgage insurance claim paid by the federal government shall not exceed fifty percent of the insurance benefits paid by the federal government, and further provided that a municipality's share of such claims under any contract or contracts entered into between a municipality and the federal government shall not exceed five percent of the outstanding principal amount of all mortgages of the municipality at any time insured by the federal government and included within such contract, (2) make loans for, or establish escrow accounts for the issuance of mortgage insurance, (3) absorb discounts associated with any sale, assignment or other disposition of a mortgage note or bond insured by the federal government, (4) pay fees required by the federal government as a condition for the issuance of mortgage insurance, (5) install such life safety devices and satisfy such minimum property standards, as may be required by the federal government which devices or standards are in addition to any requirement imposed by the municipality as mortgagee and to make loans for such purposes, (6) pay closing and other costs related to obtaining mortgage insurance from the federal government, (7) permit the municipality to issue obligations secured by such mortgage or mortgages, (8) meet such other costs as the federal government may from time to time impose, (9) pay any amounts not previously advanced under a mortgage or mortgages modified or satisfied pursuant to this section, and (10) hold an amount not to exceed twenty million dollars at any one time in a revolving account for a period not to exceed eighteen months from the time of the first deposit therein, to pay fees, costs, expenses and other amounts attributable to making and insuring mortgages pursuant to this section or attributable to issuing obligations secured by such mortgages. If the municipality sells any such mortgages insured by the federal government for an amount in excess of the principal amount thereof at the time of such sale, or if the municipality issues obligations secured by any such mortgages and the yield on such mortgages is greater than the yield on such obligations (the yield on such mortgages and obligations having been calculated in accordance with section one hundred three of the internal revenue code of the United States and regulations thereunder), then any such premium and any such differential may be used by the municipality for any lawful purpose, provided, however, that an amount equal to the annual sum of such premium and such differential, to the extent such differential is not paid to or for the benefit of the holders of such obligations, shall be credited annually by the municipality, at such times as determined by

the supervising agency, as a payment by all municipally-aided projects then having residual indebtedness, of the then accrued and unpaid interest on such residual indebtedness. To the extent that any such credit otherwise allocable to a project in any year exceeds unpaid interest on the residual indebtedness of such project in that year, such excess credit shall be allocated among all other eligible projects having accrued and unpaid interest on residual indebtedness in that year. Notwithstanding the provisions of the foregoing sentence of this subdivision, if an eligible project has made cash payments in any year for the sum of (i) interest on and principal of a federally insured mortgage and (ii) interest on and principal of residual indebtedness and (iii) all other payments on account of such insured mortgage, including mortgage insurance premium and reserves, at least equal to the sum of (i) interest and principal which would have been due annually on the original mortgage loan for the project, at the interest rate in effect at the time the project is refinanced, and (ii) all other required annual payments on account of such original mortgage loan, such as reserve requirements, then any excess credit allocable to such eligible project shall be credited in the next succeeding year as a payment of interest on residual indebtedness of such project before any cash payment is required to be made for such interest. Subject to the provisions of the preceding sentence of this subdivision, if the total of such credit in any year available for all eligible projects exceeds the total of all accrued and unpaid interest in that year on residual indebtedness of all eligible projects then having residual indebtedness, an amount equal to such excess credit shall be carried forward and credited in future years as a payment of accrued and unpaid interest on residual indebtedness of eligible projects in future years until such time as no further interest remains unpaid with respect to any residual indebtedness of eligible projects. The supervising agency shall divide such credit among eligible projects on the basis of the respective original principal amounts of the federally insured mortgages on eligible projects; provided, however, that such credit shall be allocated to projects which receive federal subsidies only to the extent that such subsidies are not thereby reduced. When there is a participation, new loan or investment pursuant to section twenty-three-b of this article for which the consent of a company is required and which will be substantially equivalent to a refinancing pursuant to section twenty-three-a or subdivision twenty-two-a of section six hundred fifty-four of this article, then for purposes of this subdivision the interest of the municipality after such participation, new loan or investment which is secured by a mortgage shall be deemed to be the

equivalent of residual indebtedness and the interest of entities or organizations other than the municipality in such participation, new loan or investment shall be deemed to be the equivalent of a federally insured mortgage.

5. No company shall accept a mortgage loan to be insured by the federal government made for the purpose of refinancing the existing mortgage loan of a company which shall exceed the amount which can be supported by the income derived from the operation of the project at the rental rate determined by the supervising agency that would be necessary to meet all necessary payments to be made by the company, of all expenses including fixed charges, sinking funds, reserves and dividends on outstanding stock, as authorized by the supervising agency, if the principal amount of the original mortgage loan of the company were to be fully repaid over the term of such mortgage loan by constant and equal payments of principal and interest and if the interest rate on the company's original mortgage loan was eight and one-half percent per annum or, where the original mortgage loan provides for the payment of interest at a maximum rate of less than eight and one-half percent per annum, such maximum amount.

6. A company shall not accept a mortgage to be insured by the federal government for the purpose of refinancing an existing mortgage loan of a municipally-aided project unless the sum of interest and principal payable in respect of such mortgage to be insured by the federal government and in respect of any residual indebtedness, over the term of such mortgage and residual indebtedness, shall be no more than the sum of interest and principal that would be payable in respect of the existing mortgage loan, over the term of such existing mortgage loan, at an interest rate of eight and one-half percent per annum or where the existing mortgage loan provides for a maximum interest rate of less than eight and one-half percent, at such maximum interest rate.

7. The terms of any mortgage securing residual indebtedness of a municipally-aided project shall include a provision to the effect that so long as the project is subject to a mortgage insured or held by the federal government (a) interest on and principal of such mortgage securing residual indebtedness shall be payable only if and to the extent to which surplus cash, as defined in a regulatory agreement executed by the housing company and the federal government, is available, and (b) the failure to pay interest and principal on such mortgage securing residual indebtedness shall not constitute an event of default unless surplus cash is available and not applied to such payments of interest and principal.

8. Ten days before an initial application is filed with the federal

government to obtain insurance by the federal government of a mortgage for the purpose of refinancing all or any part of a mortgage loan for a municipally-aided project pursuant to section twenty-three-a or subdivision twenty-two-a of section six hundred fifty-four of this chapter, the supervising agency shall (a) mail to the president or other representative of the tenants` association or cooperators` advisory council, recognized by the supervising agency for such municipally-aided project, written notice of the proposed refinancing, including a copy of such initial application, and (b) make a copy of such initial application available at its offices during business hours, for inspection and copying by the residents of such municipally-aided project. Ten days before the closing of a proposed participation, new loan or investment with respect to a municipally-aided project pursuant to section twenty-three-b of this article, the supervising agency shall (a) mail to the president or other representative of the tenants` association or cooperators` advisory council, recognized by the supervising agency for such municipally-aided project, written notice of such proposed participation, new loan or investment, including a summary of the principal terms and conditions thereof, and (b) make a copy of such summary available at its offices during business hours, for inspection and copying by the residents of such municipally-aided project. The unintentional failure of the supervising agency to comply with the foregoing provisions of this subdivision shall not invalidate or otherwise affect any such refinancing of a mortgage loan or any such participation, new loan or investment.

S 23-b. Participation in loan or investment. Notwithstanding any other provisions of this article or of any general, special or local law, where a municipality has made or contracted to make a mortgage loan to a company to finance a project: one or more banking organizations as defined in subdivision eleven of section two of the banking law, educational institutions, hospitals, medical research institutes, insurance companies, trustees or fiduciaries, including fiduciaries holding funds for investment, the New York city housing development corporation, other public corporations, or other entities which purchase, invest, or deal in first mortgage loans in the normal course of their business, or any combination of the foregoing, shall have the power to participate in such loan or make or participate in a new loan secured by a bond or note and a single participating mortgage, or by separate bonds or notes and separate mortgages, or to invest, singly or jointly, with the municipality in a bond or note and single participating mortgage or in separate bonds or notes and mortgages or in

a new mortgage or mortgages with respect to all or a portion of the loan by a municipality to a company; and the supervising agency shall have the power, upon the mortgagor's consent, to modify the terms and conditions of the original bond or bonds or note or notes and mortgage or mortgages and any other documents executed in connection with such original loan, as the supervising agency may deem necessary or desirable to provide for such participation, new loan or investment as provided in this section, including but not limited to (i) modification of the rate and time of payment of interest on the original loan or rate and time of amortization of principal thereof, (ii) providing for priority for payment of the principal of and interest on that portion of the mortgage indebtedness attributable to such participation, new loan or investment by one or more of such entities or organizations, (iii) subordination of the interest of the municipality to the interest of one or more of such organizations or entities in such participation, new loan or investment, and (iv) otherwise providing that the interest of each upon such participation, new loan or investment need not be of equal priority as to lien, or be equal as to interest rate, time or rate of amortization of principal or time of payment of interest or otherwise; provided, however, that the aggregate amount of the loan or loans to a company does not exceed the amount authorized pursuant to section twenty-three of this article. When consent of a company is required for any participation, new loan or investment pursuant to this section and such participation, new loan or investment will be substantially equivalent to a refinancing of indebtedness pursuant to section twenty-three-a or subdivision twenty-two-a of section six hundred fifty-four of this chapter, then; (i) the provisions of this article, including without limitation the provisions of section twenty-three-a, limiting total indebtedness of a company after a refinancing shall apply to total indebtedness of the company after such participation, new loan or investment; (ii) the provisions of this article applicable to a mortgage of a company insured by the federal government in connection with such refinancing shall apply to a mortgage securing the interest of entities or organizations other than the municipality in such participation, new loan or investment; (iii) the provisions of this article concerning residual indebtedness, such residual indebtedness having been calculated as if the mortgage referred to in clause (ii) of this sentence were a federally insured mortgage, shall apply to an interest of the municipality after such participation, new loan or investment which is secured by a mortgage; (iv) the provisions of this article concerning residual receipts obligations shall apply to an interest of the municipality after such participation, new loan or investment which is

unsecured, and (v) the provisions of subdivision four-b of section twenty-three-a of this article concerning the credit referred to therein shall apply in a manner consistent with such subdivision. For purposes of the foregoing sentence of this section, the term surplus cash (referred to in subdivision seven of section twenty-three-a of this article) shall be applied by the supervising agency in a manner consistent with the definition of such term in regulatory agreements with the federal government for the refinancing of indebtedness of municipally-aided projects. The provisions of subdivisions one and five of section twenty-six of this article shall not apply to such participation in a loan or investment pursuant to this section if undertaken in connection with a project theretofore approved pursuant to section twenty-six of this article. Where the municipality shall join with one or more organizations of the kind hereinabove mentioned, in making a loan secured by a single participating mortgage or by separate mortgages, the municipality is authorized, through its supervising agency, to make provision, either in the mortgage or mortgages or by separate agreement, for the performance of such services as are generally performed by a banking institution or insurance company which itself owns and holds a mortgage or by a trustee under a trust mortgage. The supervising agency is hereby authorized to act as trustee or to consent to the appointment of a banking institution to act in such capacity. In connection with any participation in a loan or investment pursuant to this section, the municipality through its supervising agency shall have the power to assign or pledge, in whole or in part, to one or more of the organizations or entities participating in such loan or investment its right, title and interest in and to any mortgage held by it pursuant to this article and any contract or arrangement for the payment of subsidy relating to such mortgage, including the right to receive and apply to repayment of such loan and the interest thereon any receipts to be derived by it from such mortgage or from such contract or arrangement.

S 24. Income debentures. 1. With the approval of the supervising agency or of the commissioner, as the case may be, the certificate of incorporation, or an amended certificate may authorize the issuance of income debentures bearing no greater interest than six per centum per annum except as otherwise provided in this article. After the incorporation of a company, the directors thereof may, with the consent of two-thirds of the holders of the preferred stock issued and outstanding offer to the stockholders of the company, the privilege of exchanging their stock in such quantities and at such times as may be

approved by the supervising agency or the commissioner, as the case may be, for such income debentures. In no event, shall the amount of stock of the company be less than a per centum of the total of stock and income debentures, to be fixed by the supervising agency or by the commissioner, as the case may be.

2. Such income debentures and any instrument under which they are issued may contain such other provisions, including provision for amortization by serial maturities, through the operation of a sinking fund or otherwise, as may be approved by the supervising agency or by the commissioner, as the case may be.

S 25. Working capital. The supervising agency or the commissioner, as the case may be, may permit stock or income debentures to be issued for working capital to be used in connection with such project to an amount not exceeding three per centum of the estimated project cost or the actual project cost, whichever is larger.

S 26. Conditions and security for loans. 1. No loan shall be made by the state, the New York state housing finance agency, a municipality or the New York city housing development corporation unless the commissioner, with respect to a project aided by a state loan or New York state housing finance agency loan, or the supervisory agency, with respect to a municipally-aided project, finds that:

(a) The municipality has approved the project as provided in subdivision five of this section and has enacted or will enact regulations or appropriate restrictions adequately protecting the project against future uses likely to depreciate unduly the value of such project;

(b) The estimated revenues of the project will be sufficient to cover all probable costs of operation and maintenance, of fixed charges and operating reserves and depreciation reserves if any;

(c) The plans and specifications conform to the requirements of all laws applicable thereto, and assure adequate light, air, sanitation and fire protection;

(d) If the project is aided by a state loan, or a New York state housing finance agency loan, the commissioner shall also find that the project is in conformity with a plan or undertaking for providing low rent housing facilities for persons of low income and for the clearance, replanning, reconstruction or rehabilitation of a substandard and insanitary area or areas, and for other facilities incidental or appurtenant thereto as may be approved by the commissioner.

1-a. No company may be aided pursuant to this article by a mortgage

loan or tax exemption or both to finance the acquisition of a building by residents thereof unless the commissioner or the supervising agency, as the case may be, finds that:

(a) the condition of such building is deteriorating and the building is located in a deteriorating area or in an area threatened with deterioration by reason of economic, social or physical changes occurring therein or in nearby areas;

(b) the building is not yielding sufficient revenues to cover costs of operation and maintenance, of fixed charges and of reserves, if any, and also a reasonable profit to the owner;

(c) the making of such loan will prevent further deterioration and abandonment;

(d) at least two-thirds of the present residents consent to such acquisition;

(e) financing for such acquisition is otherwise unavailable because of the neighborhood, the age of the buildings, or other factors indicating an inability of the private sector unaided to cause such acquisition to be effected;

(f) the proceeds of such loan will not be used to refinance existing debt in excess of a reasonable relationship to current value; and

(g) the term for repayment of such loan does not exceed the remaining useful life of the building.

2. The principal of a loan made by the state shall be repaid by the company over a period of not to exceed fifty years except in the case of a loan to rehabilitate an existing building, in which case the period shall not exceed thirty-five years, or the estimated life of the project, whichever is shorter, in annual installments equal to the amount payable by the state on the moneys borrowed for the project. Such annual installment of principal need not be uniform in amount, but may be so varied that the total payment of principal and interest shall be approximately equal and constant during the period of the loan. Each payment of principal and interest shall be made to the state comptroller not later than five days before each payment by the state is required. The loan shall bear the same rate of interest paid or to be paid by the state for the definitive housing bonds issued on account of such loan. The company shall pay to the state comptroller a proportionate share of the cost of borrowing not later than thirty days after the state comptroller has certified the amount of such share.

3. Any bonds or notes issued by the company and any mortgages relating thereto may authorize the company, with the consent of the state comptroller in the case of a state-aided project, or the supervising agency in the case of a municipally-aided project, to prepay the

principal of the loan. Such bonds or notes and mortgages may contain such other clauses and provisions as the commissioner in the case of a state-aided project or the supervising agency in the case of a municipally-aided project, shall require. Notwithstanding the provisions of any general, special or local law, the principal of any loans made pursuant to subdivision one of section fifteen of this article or the principal of a loan made by a municipality pursuant to this article and secured by a mortgage lien subordinate to the lien of a first mortgage made pursuant to paragraph (b) of subdivision one of section fifteen of this article may be amortized at such time or times or at such rate as the supervising agency shall approve.

4. With respect to a state-aided project the commissioner may charge the company reasonable fees for financing, regulation, supervision and audit. Fees collected for such services shall be paid into and disbursed from such fund or funds as may be provided by law.

5. (a) In a municipality where there is a planning commission, the project shall first be submitted to it for approval. Where changes in the city map and zoning amendments or variances are necessitated by such project, such amendments, variances and changes shall be submitted together with such project and considered as a part thereof. Such planning commission, not later than ten weeks from the date of the referral of the project to it, after a public hearing held on due notice, notice of which shall be published at least ten days prior thereto in the official publication of the municipality, or if none exists, in a newspaper circulating in the municipality, shall submit its report to the local legislative body certifying its unqualified approval, its disapproval, or its qualified approval with recommendations for modifications therein.

After public hearing held on due notice and after the report is received or due from the planning commission, the local legislative body may:

(i) if the planning commission shall have certified its unqualified approval, approve the project by a majority vote;

(ii) if the planning commission shall have certified its disapproval or shall have failed to make its report within ten weeks from the date such project was submitted to it, nevertheless approve the project, but only by a three-fourths vote;

(iii) if the planning commission shall have certified its qualified approval together with recommendations for modifications, approve the project together with the modifications recommended by the planning commission by a majority vote, or approve the project without such modifications but only by a three-fourths vote.

(b) In a municipality where there is no planning commission the project shall be submitted to the local legislative body which, after public hearing held on due notice, may either approve or disapprove the project.

(c) Notwithstanding any other provision of law, changes in the city map, zoning amendments, or variances contained in the plan shall be deemed approved by the local legislative body when it approves the project. Any such changes in the city map, zoning amendments, or variances shall become effective on the date on which the supervising agency shall file a resolution with the local legislative body in implementation thereof.

6. The provisions of subdivisions one and five of this section shall not apply to a state urban development corporation project or to any loan made by the state or the state housing finance agency to such project, notwithstanding anything to the contrary contained herein.

7. Notwithstanding anything to the contrary contained therein, the provisions of subdivisions one and five of this section shall not apply to a Battery Park city project or to any loan made by the state or the New York state housing finance agency to such project.

S 26-a. Findings for municipally-aided projects. No municipally-aided project aided solely by tax exemption shall be approved by the supervising agency unless the agency shall have made the findings set forth in subdivision one of section twenty-six.

S 26-b. Special provisions with respect to state urban development corporation projects. 1. No loan shall be made by the state, the New York state housing finance agency, or the state urban development corporation for the acquisition, construction, reconstruction, rehabilitation or improvement of a state urban development corporation project, nor shall any such project be approved by the commissioner, unless the commissioner finds that:

(a) the estimated revenues of the project will be sufficient to cover all probable costs of all operations and maintenance, of fixed charges and operating reserves and depreciation reserves, if any;

(b) the plans and specifications of the project assure adequate light, air, sanitation and fire protection;

(c) the project is in conformity with a plan or undertaking for providing low rent housing facilities for persons of low income and for the clearance, replanning, reconstruction or rehabilitation of a substandard and insanitary area or areas and for other facilities incidental or appurtenant thereto as may be approved by the

commissioner.

2. Any state urban development corporation project shall comply with the requirements of local laws, ordinances, codes, charters or regulations applicable to the construction, reconstruction, rehabilitation, alteration or improvement of such project, except where the state urban development corporation, in its discretion, finds such compliance not feasible or practicable, in which event such project shall comply with the requirements of the state building construction code, formulated by the state building code council pursuant to article eighteen of the executive law, applicable to such construction, reconstruction, rehabilitation, alteration or improvement. No county, city, town or village shall have power to modify or change the drawings, plans or specifications for the construction, reconstruction, rehabilitation, or improvement of any such project or the construction, plumbing, heating, lighting or other mechanical branch of work necessary to complete the work in question, nor to require that any person, firm or corporation employed on any such work shall perform any such work in any other or different manner than that provided by such plans and specifications, nor to require that any such person, firm or corporation obtain any other or additional authority, approval, permit or certificate from such county, city, town or village as a condition of doing such work, nor shall any condition whatever be imposed by any such county, city, town or village in relation to the work being done, and the doing of any such work by any person, firm or corporation in accordance with the terms of such drawings, plans, specifications or contracts shall not subject said person, firm or corporation to any liability or penalty, civil or criminal, other than as may be stated in such contracts or incidental to the proper enforcement thereof; nor shall any county, city, town or village have power to require that any subsidiary of the New York state urban development corporation, or any lessee therefrom or successor in interest thereto, obtain any other or additional authority, approval, permit, certificate or certificate of occupancy from such county, city, town or village as a condition of owning, using, maintaining, operating or occupying any project acquired, constructed, reconstructed, rehabilitated or improved by any such subsidiary of the New York state urban development corporation.

3. Notwithstanding any other provision of this article, in the case of a state urban development corporation project financed or to be financed by a loan from the state urban development corporation, the corporation shall exercise, with respect to such project and with respect to the company carrying out such project, all of the powers and duties exercised by the commissioner pursuant to this article with respect to

projects financed by the New York state housing finance agency until such project, or any part thereof, is ready for initial occupancy as determined by the commissioner, and thereafter, upon the issuance by the commissioner of a certificate of assumption of supervision, such project shall be subject to the supervision and control of the commissioner and the New York state division of housing and community renewal, which shall have the same powers and responsibilities with respect to such project as they would have if such project were aided by a loan from the state or the New York state housing finance agency under this article and which shall assume the additional powers and responsibilities with respect to such project theretofore conferred on the corporation by law or contract. The corporation and the commissioner of housing and community renewal shall take such actions and execute such documents as may be necessary to implement this subdivision.

S 26-c. Special provisions with respect to Battery Park city projects.

1. No loan shall be made by the state or the New York state housing finance agency for the acquisition, construction, reconstruction, rehabilitation or improvement of a Battery Park city project, nor shall any such project be approved by the commissioner, unless the commissioner finds that:

(a) the estimated revenues of the project will be sufficient to cover all probable costs of all operations and maintenance, of fixed charges and operating reserves and depreciation reserves, if any;

(b) the plans and specifications of the project assure adequate light, air, sanitation and fire protection;

(c) the project is in conformity with a plan or undertaking for providing low rent housing facilities for persons of low income.

2. Notwithstanding any other provisions of this article, in the case of a Battery Park city project financed or to be financed by a loan from Battery Park city authority, all approvals, findings and consents which are required to be given or made by the commissioner pursuant to this article shall be given or made instead by Battery Park city authority, and the authority shall exercise, with respect to such project and with respect to the company carrying out such project, all of the powers and duties exercised by the commissioner pursuant to this article with respect to projects financed by the New York state housing finance agency.

S 27. Limitations. No company shall:

1. Acquire any real property or interest therein unless it shall first have obtained from the commissioner or the supervising agency, as the

case may be, a certificate that such acquisition is necessary or convenient for the public purpose defined in this article.

2. Pay interest upon its income debentures at a rate higher than six per centum per annum except as otherwise provided in this article.

3. Issue its stock, income debentures and bonds covering any project in an amount greater in the aggregate than the actual project cost.

4. Without first having obtained the written consent of the commissioner or the supervising agency, as the case may be:

(a) Construct, reconstruct, rehabilitate, improve or alter any project, or enter into any contract therefor.

(b) Sell, transfer or assign any real property, except that no such consent shall be necessary in any sale in foreclosure as herein provided.

(c) Except as otherwise provided in this article, encumber, lease or rent all or any part of its real property.

(d) Enter into contracts for the operation of the project.

(e) Make a guaranty of payment.

(f) Voluntarily dissolve.

(g) Enter into contracts for the payment of salaries to officers or employees.

5. Pay interest on its mortgage indebtedness at a rate higher than six per centum per annum, or at such higher rates as may be approved by the commissioner, or the supervising agency, as the case may be, but in no event shall any such rate exceed the rate of interest prescribed by the banking board pursuant to section fourteen-a of the banking law or, in the case of a mortgage loan insured or held by the federal government, the rate approved by the federal government; provided, however, that in the case of a company carrying out a state urban development corporation project or in the case of an instrument or instruments securing the residual indebtedness of a company, which indebtedness is secured by a mortgage on the real property of a project, such rate shall not exceed the rate of interest prescribed by the banking board pursuant to section fourteen-a of the banking law or nine per centum per annum, whichever is the higher; and further provided, however, that, in the case of a company that is a mortgagor under a mortgage assigned to or acquired by the New York city housing development corporation pursuant to subdivision twenty-one of section six hundred fifty-four of this chapter and whose project is aided by a subsidy from the federal government, such rate shall be the rate of interest approved by the supervising agency. Notwithstanding the foregoing provisions of this section, the rate of interest that a company shall have the power to pay on that portion of its mortgage indebtedness attributable to an investment or

participation in a loan made pursuant to subdivision one of section fifteen by an organization or entity mentioned in such subdivision, shall be the rate of interest approved by the commissioner or the supervising agency, as the case may be.

6. Notwithstanding the provisions of subdivision five of this section twenty-seven, a company, which has obtained a mortgage loan from the New York city housing development corporation or the New York state housing finance agency and where it is necessary for additional bonds or notes to be issued by the New York city housing development corporation or the New York state housing finance agency (i) in order to obtain funds to fulfill the mortgage loan commitment to such company, as such commitment may be amended or (ii) to refund or renew notes issued in fulfillment thereof, for a project partially or temporarily financed by bonds or notes issued, in the case of the New York city housing development corporation, prior to the first day of August, nineteen hundred seventy-five, and in the case of the New York state housing finance agency, prior to the thirty-first day of December, nineteen hundred seventy-five, may pay interest on that portion of its mortgage indebtedness, the funds for which were obtained by the New York city housing development corporation or the New York state housing finance agency through the issuance of such additional or refunding bonds or notes, at a rate not in excess of the cost of financing incurred by the New York city housing development corporation or the New York state housing finance agency, as the case may be, to issue such additional or refunding bonds or notes, provided that, with respect to the New York city housing development corporation, such corporation determines that such cost of financing is reasonable and the commissioner or the supervising agency, as the case may be, shall approve such cost of financing.

S 28. Payments from earnings. 1. There shall be paid annually out of the earnings of the company, after providing for all taxes, assessments and expenses, a sum for interest on and amortization of the mortgage indebtedness of all mortgages of the company, depreciation charges and reserves if, when and to the extent deemed necessary by the commissioner or the supervising agency, as the case may be, plus a dividend of six per centum on outstanding stock and interest not exceeding six per centum on the outstanding income debentures of the company; the obligation in respect of such payments shall be cumulative, and any deficiency in interest, amortization, depreciation, reserves, if any, and dividends in any year shall be paid either from any cash surplus derived from earnings remaining in the treasury of the company in excess

of the amount necessary to provide such cumulative annual sums or from the first available earnings in subsequent years. If, at the end of any three year period, the gross receipts should exceed the payments or charges necessary for the purposes of the project or projects and are not needed for a sinking fund, reserves or other purposes, the balance may be paid in further reduction of any indebtedness to the extent and upon terms and conditions approved by the commissioner and the state comptroller or by the supervising agency, as the case may be. A sinking fund may be authorized by the commissioner or the supervising agency, to purchase and retire bonds, income debentures or stock of the company at a price approved by the commissioner or the supervising agency, as the case may be, not exceeding par value thereof with accrued or unpaid dividends or interest or if it be not practical to purchase such stock or income debentures at a price so approved, the money in such sinking fund may be added to the surplus of such company. Any stock or income debentures purchased out of such sinking fund shall be cancelled and shall not be reissued.

2. Anything contained in this article to the contrary notwithstanding, a company which receives a loan from the state, the New York state housing finance agency or a municipality after July first, nineteen hundred sixty-nine, or a mutual company which has been duly authorized to issue income debentures to finance the modernization or replacement of project improvements or the acquisition and installation of energy saving equipment and which is otherwise authorized to pay dividends upon its shares or interest upon its income debentures, may, with the approval of the commissioner or the supervising agency as the case may be, pay such dividends or interest in excess of six per centum per annum, but in no event shall any such rate exceed the interest rate prescribed by the banking board pursuant to section fourteen-a of the banking law, provided, however, if the voting stock of a mutual company has not been issued and delivered to the stock subscribers, then the additional authorization of such stock subscribers is required to be obtained by a majority vote.

3. No director or officer of a company shall receive, directly or indirectly, any salary, compensation or emolument from such company, as such director or officer or in any other capacity, unless authorized by the commissioner or the supervising agency, as the case may be.

#### S 29. Acquisition of property.

(a) After a project, other than a state urban development corporation project, has been approved by the commissioner or the supervising agency and the local legislative body, the commissioner or the

supervising agency as the case may be, shall issue a certificate declaring that the acquisition of the property is necessary for the public purpose defined in this article and the company may acquire the property needed for the project or the municipality may, with respect to a municipally-aided project or a project aided either by a state loan or a loan from the New York state housing finance agency, take property by condemnation for the company, pursuant to the provisions of article nine of this chapter.

(b) after a state urban development corporation project has been approved by the commissioner, the commissioner shall authorize the company undertaking the project to acquire the property needed for such project.

(c) Notwithstanding the provisions of subdivision (a) of this section, in the case of a Battery Park city project financed or to be financed by a loan from Battery Park city authority, the approval of the project and the certificate declaring that the acquisition of the property is necessary for the public purposes defined in this article shall be issued by Battery Park city authority.

S 30. Transfer of real property. 1. Notwithstanding any requirement of law to the contrary, every executor, administrator, trustee, guardian or other person, holding trust funds or acting in a fiduciary capacity, unless the instrument under which such fiduciary is acting expressly forbids, the state, its subdivisions, municipalities, all other public bodies, all public officers, persons, partnerships and corporations organized under and governed as to investments by or pursuant to the provisions of the banking law or organized under or subject to the provisions of the insurance law, the superintendent of banks or the superintendent of insurance as conservator, liquidator or rehabilitator of any such person, partnership or corporation, owning or holding any real property may grant, sell, lease or otherwise transfer any such real property to a company and receive and hold any cash, stock, bonds, notes, mortgages, or other securities or obligations, secured or unsecured, exchanged therefor by such company and may execute such instruments and do such acts as may be deemed necessary or desirable by them or it and by the company in connection with a project or projects. Notwithstanding the provisions of any general, special or local law, charter or ordinance, such grant, sale, lease or transfer may be made without public auction or bidding.

2. Any banking institution, foundation, labor union, employers' association, veterans' organization or insurance company, or any group thereof, which has undertaken a project through direct ownership or

lease may transfer to the project any real property which it owns or holds within an area. The market value of such property, as approved by the commissioner or the supervising agency, as the case may be, shall be included in the estimated or actual project cost.

3. Notwithstanding the provisions of any general, special or local law, charter or ordinance, the local legislative body of a city having a population of one million or more may, upon the request of or with the approval of the board of education of such city's school district, grant, sell, lease or otherwise transfer any lands or rights or interests therein or thereto, including fee interest, easements, space rights or air rights or other rights or interests owned by such city and occupied or reserved for school purposes and needed therefor, to a company where necessary for the joint development of a project and a school or appurtenant facilities without public auction or bidding, provided that no such sale, lease or transfer of lands or rights therein or thereto is authorized where the development of a project contemplates the erection of housing facilities over an existing school or playground. The term of any such lease shall not be limited by any provision of any general, special or local law or charter applicable to such city limiting the period of time during which a lease or any renewal thereof may run.

S 31. Rentals and selection of tenants. 1. (a) A company may, with the approval of the commissioner or the supervising agency, as the case may be, fix maximum rentals per room to be charged tenants of the dwellings, the average of the rentals for the dwellings in any project not to exceed the maximum average rentals determined by the commissioner or the supervising agency, as the case may be, before any commitments are made by the company for the construction of the project. The commissioner or the supervising agency, upon his or its own motion, or upon application by the company or of a stockholder, lienholder, a creditor, or of holders of at least ten per centum of the bonds of the company, or by the federal government where the mortgage loan of the company is insured or held by the federal government, may vary such rental rate from time to time so as to secure, together with all other income of the company, sufficient income for it to meet within reasonable limits all necessary payments to be made or projected to be made during the term of a lease by the said company, of all expenses including fixed charges, sinking funds, reserves and dividends on outstanding stock as authorized by the commissioner or the supervising agency, as the case may be. Letting, subletting or assignment of leases of apartments at greater rentals than those approved by the commissioner or the supervising agency shall be

unlawful. Where the mortgage loan of a company is insured or held by the federal government or where a project is owned by the federal government, rental rates shall be varied without regard to the provisions of any general, special or local law which would otherwise limit or control such rental rates or the determination or variation thereof for so long as such mortgage loan remains outstanding or the project financed by such a mortgage loan is owned by the federal government. No variation of a rental rate in a project financed by a mortgage loan insured or held by, or owned by the federal government shall be effective unless approved by the federal government.

(b) Unless any applicable regulation of or regulatory agreement with the federal government shall otherwise provide, (i) the tenants in a project financed by a mortgage loan insured or held by the federal government shall be entitled and may elect to enter in a lease for a term of up to three years at such rental rates as may be established by the commissioner or the supervising agency, as the case may be, pursuant to paragraph (a) of subdivision one of this section, (ii) the rental rates to be charged under any such lease shall be established after consideration of the term of such lease and may differ from the rental rates to be charged under any other lease of a different term and (iii) the commissioner or the supervising agency, as the case may be, shall in establishing such rental rates consider the obligations of the company under any instruments evidencing or securing any residual indebtedness. Such leases shall contain a provision authorizing the variation of the rental rates during the term of such leases upon an application made by the federal government pursuant to paragraph (a) of subdivision one of this section.

\* (c) A company may, with the approval of the commissioner or the supervising agency, as the case may be, fix maximum charges to be paid by each occupant for the non-housekeeping accommodations, aged care accommodations or non-housekeeping accommodations for handicapped persons, which charges may include payment for board and such other services as may be provided as an incident to occupancy, the average of such charges for all the non-housekeeping accommodations, aged care accommodations or non-housekeeping accommodations for handicapped persons in any project not to exceed the maximum average charges for all such non-housekeeping accommodations, aged care accommodations or non-housekeeping accommodations for handicapped persons determined by the commissioner or the supervising agency as the case may be, before any commitments are made by the company for the construction of the project. The commissioner or the supervising agency upon his or its own motion, or upon application by the company or of a stockholder, lien

holder, a creditor or of holders of at least ten (10%) per centum of the bonds of the company, may vary such charges from time to time so as to secure, together with all other income of the company, sufficient income for it to meet within reasonable limits all necessary payments to be made by said company, of all expenses including fixed charges, sinking funds, reserves and dividends on outstanding stock as authorized by the commissioner or supervising agency as the case may be. It shall be unlawful to make non-housekeeping accommodations, aged care accommodations or non-housekeeping accommodations for handicapped persons available at greater charges than those approved by the commissioner or the supervising agency.

\* NB (Subdivision 1 has two paragraph c`s)

\* (c) Disclosure of bases. The commissioner, administrator or supervising agency, as the case may be, shall make available for inspection and copying by the residents in any affected development, all items and data and recommendations utilized as the various bases for the decision on increases in rental or carrying charges, upon notification of the decision to the applicant of the action taken.

\* (Subdivision 1 has two paragraph c`s)

2. (a) The dwelling or non-housekeeping accommodations without board in a company project shall be available for persons or families of low income whose probable aggregate annual income at the time of admission and during the period of occupancy does not exceed, the greater of (i) the median income for such persons or families for the metropolitan statistical area in which the project is located, or if a project is located outside a metropolitan statistical area, the median income for such persons or families for the county in which the project is located, as most recently determined by the United States department of housing and urban development, in which case any person or family becoming eligible for admission pursuant to this subparagraph shall pay, from the time of admission, a rental surcharge as provided for in subdivision three of this section, computed on the basis of the income limitations applicable to such persons or families in the absence of this subparagraph, or (ii) seven times the rental, including the value or cost to them of heat, light, water and cooking fuel, of the dwellings that may be furnished to such persons or families, except that in the case of families with three or more dependents, such ratio shall not exceed eight to one. The "probable aggregate annual income" in the case of dwelling accommodations means the annual income of the chief wage earner of the family, plus all other income of other members of the family over the age of twenty-one years, plus a proportion of income of gainfully employed members under the age of twenty-one years, the

proportion to be determined by the company as approved by the commissioner or the supervising agency, as the case may be, excluding therefrom a deduction of fifteen thousand dollars from the income of secondary wage earners of the family or a larger deduction if approved by the commissioner or the supervising agency, as the case may be, except that the company, as approved by the commissioner or the supervising agency, as the case may be, may exclude a proportion of the income of other members of the family over the age of twenty-one years for the purpose of determining eligibility for admission or continued occupancy, or for establishing the rental of such family, or for all such purposes; in the case of such non-housekeeping accommodations it means the annual income of the occupant, provided that the commissioner or supervising agency, as the case may be, may make rules and regulations relative to the allocation of the income of a family among the members thereof for the purpose of determining the income attributable to such occupant.

(b) For the purpose of determining maximum income to establish eligibility for admission or continued occupancy of, or the imposition of surcharges upon, tenant-cooperators in a mutual company project, or for all such purposes, there may be added to the total annual carrying charges an amount equal to six per centum of the investment of a person or family in the equity obligations of such housing company and, where not included in the carrying charges payable to such company, the value or cost to them of heat, light, water and cooking fuel and, to the extent authorized by the commissioner or the supervising agency as the case may be, the value or cost to them of repainting and replacement of fixtures and appliances.

(c) The non-housekeeping accommodations with board in a company project including non-housekeeping accommodations with board designed for the occupancy of handicapped persons shall be available for persons of low income whose probable aggregate annual income at the time of admission and during the period of occupancy does not exceed four times the annual charges to be paid by such persons and in the case of aged care accommodations two times the annual charges to be paid by such persons. The "probable aggregate annual income" means the annual income of the person occupying such non-housekeeping accommodations, aged care accommodations or non-housekeeping accommodations for handicapped persons, provided that the commissioner or supervising agency, as the case may be, may make rules and regulations relating to the allocation of the income of a family among the members thereof for the purpose of determining the income attributable to such occupant.

(d) A company may, with the approval of the commissioner or the

supervising agency, as the case may be, lease dwellings in a project to an authority, at rentals fixed for such dwellings pursuant to the provisions of subdivision one of this section less an appropriate adjustment for the increased tax exemption, if any, attributable to such dwellings pursuant to subdivision three of section thirty-three of this chapter, for occupancy by persons and families of low income who are eligible and pay rents therefor pursuant to the provisions of the public housing law.

(e) Notwithstanding the provisions of this subdivision, families with two or more dependents whose probable aggregate annual income does not exceed one hundred twenty-five percent of the limitations as to income as determined pursuant to paragraphs (a) and (b) of this subdivision, shall also be eligible for admission to the dwelling or non-housekeeping accommodations without board of a project on the understanding that any family becoming eligible for admission by reason hereof shall pay, from the time of admission, a rental surcharge as provided for in subdivision three of this section, computed on the basis of the income limitations applicable to such family in the absence of this subdivision. In applying the provisions of subdivision three to a family becoming eligible by reason of this section, the maximum income prescribed by law for admission or occupancy shall for all purposes be computed without reference to this paragraph.

2-a. Notwithstanding any other provision of law, the commissioner or supervising agency shall authorize and make provision in rules and regulations for an immediate downward adjustment in surcharge upon a showing of substantial decrease in income caused by events including, but not limited to death, disability or illness.

3. In the event that the income of a person or family in occupancy should increase and exceed the maximum prescribed by law for admission or for continued occupancy, based on the latest existing rent, by more than twenty-five per centum, such person or family shall be subject to removal from the dwelling, non-housekeeping, aged care accommodations or non-housekeeping accommodations for handicapped persons provided, however, that such person or family may be permitted to remain in occupancy until such income exceeds the maximum prescribed by law by more than fifty per centum, if the company, with the approval of the commissioner or the supervising agency, shall determine that removal would cause hardship to such person or family. Any person or family in occupancy whose income exceeds the maximum prescribed by law shall pay a rental surcharge in accordance with a schedule of surcharges to be promulgated by the company with the approval of the commissioner or the supervising agency, as the case may be, provided, however, such rental

surcharge shall in no event exceed fifty per centum of the existing rent.

4. Twenty-five per cent of rental surcharges collected pursuant to this section on account of rentals payable prior to July first, nineteen hundred eighty-one shall be paid by the company to the municipality which has granted tax exemption pursuant to section thirty-three of this article as a credit against the grant of tax exemption, the value of such tax exemption and of such credit to be determined on an individual dwelling, non-housekeeping, aged care accommodation or non-housekeeping accommodations for handicapped persons unit basis. In the event that such tax exemption has not been granted, or in the event that a sum equal to the total of all accrued taxes as to individual dwelling, non-housekeeping, aged care accommodation or non-housekeeping accommodations for handicapped persons units where such tax exemption was granted have been paid to the municipality, the excess if any, of surcharges and all surcharges imposed after June thirtieth, nineteen hundred eighty-one shall be applied to the expenses of operation and management as approved by the commissioner or the supervising agency.

5. Notwithstanding the provisions of this section or of any other general, special or local law, persons or families living in a project under a lease for ninety-nine years renewable, or in perpetuity, or by reason of ownership of stock in such company may, with the approval of the commissioner or of the supervising agency, as the case may be, be permitted to remain in occupancy for not more than three years after such increase in income exceeds the maximum prescribed by law by more than fifty per centum unless such occupancy is extended with the approval of the commissioner or of the supervising agency, as the case may be. Any such occupant required to remove from the project because of excessive income as herein provided shall be discharged from liability on any note, bond or other evidence of indebtedness relating thereto and shall be reimbursed for all sums paid by such occupant to the company on account of the purchase of stock or income debentures as a condition of such occupancy.

6. Preference in admission to a project shall be given to families displaced by a limited-profit housing project.

7. Preference in admission to a project shall be given by a mutual company or an urban rental company or by the New York state housing finance agency when subleasing dwellings in projects of such companies pursuant to section forty-four-a of this chapter, to persons or surviving spouses of persons who

(a) have served in the armed forces of the United States for a period of at least six months (or any shorter period which terminated due to

death or injury incurred in such service), provided some portion of the period of service was between the twenty-second day of December, nineteen hundred sixty-one to the seventh day of May, nineteen hundred seventy-five, and

(b) have been thereafter discharged or released therefrom under conditions other than dishonorable, or died in such service, not more than five years prior to the time of application for admission to such project.

8. Preference in admission to any project or to such portion of any project which has been specifically designed for occupancy by aged or handicapped persons, as the case may be, shall be given to such persons.

8-a. A company may rent one or more dwelling units to a social services official or duly authorized agency, as defined in section three hundred seventy-one of the social services law, for the operation of agency boarding homes or group homes or to any public agency as defined in section four hundred sixty-one of the general municipal law which provides residences and social services to dependent aged persons.

9. (a) For the purpose of enabling lower income elderly persons to continue in occupancy without paying rentals in excess of a fair proportion of their income, any municipality having a population of less than one million is authorized to make and to contract to make periodic payments to a company in an amount not exceeding the difference between the rent or carrying charges for the dwellings occupied by such lower income persons and one-third of their net probable aggregate annual income, where such rent or carrying charges exceed such one-third of income; provided that the aggregate amount of periodic payments to be made in accordance with contracts entered into by the municipality during any fiscal year thereof pursuant to this subdivision, subdivision seven of section eighty-five-a, section one hundred twenty-six and section five hundred seventy-seven-a of this chapter shall not exceed the aggregate amount of all real property taxes paid or payable during such fiscal year by all companies organized pursuant to this article, article IV, article V, and article XI of this chapter and the aggregate estimated receipts of all such companies in such fiscal year from rental surcharges collected or to be collected pursuant to this chapter.

(b) Such payments shall be made only on account of a person or family in occupancy where the head of the household is sixty-two years of age or older and is not a recipient of public assistance pursuant to the social services law, and where the net probable aggregate annual income of the person or family in occupancy does not exceed six thousand five hundred dollars a year. Notwithstanding the provisions of subdivision twenty-nine of section two of this chapter, net probable aggregate

annual income as used in this subdivision shall mean annual income of family members from all sources after deduction of federal, state and city income taxes; provided that any municipality may provide that increases in benefits under the social security act which take effect after such person or family has assumed occupancy shall not be taken into account.

(c) A company having a contract with the municipality pursuant to this subdivision may not collect from persons or families in occupancy on whose account such payments are made any rentals in excess of the amounts specified in such contract.

10. A housing company shall accept federal reimbursement under section eight of the Housing and Community Development Act of 1974 in lieu of such amount in rent payment for a person qualifying under such act and residing in a project of such company. A housing company shall not reject an applicant for an apartment solely on the basis that all or part of the rent shall be paid under section eight of the Housing and Community Development Act of 1974.

11. Every company subject to the provisions of this article shall on a form prescribed by the commissioner or supervising agency annually certify to such commissioner or supervising agency that all necessary steps are being undertaken to ensure that all surcharges due pursuant to this section are being properly billed, collected and remitted.

S 31-a. Resale price of shares. Notwithstanding any other provision of this article and subject to any regulation not inconsistent with this section which may be promulgated by the commissioner or supervising agency:

(a) The resale price of shares in a mutual company shall be fixed by the mutual company, subject to the approval of the commissioner or supervising agency and shall be equal to (1) the consideration the selling tenant-cooperator paid for such shares and (2) any capital assessments and voluntary capital contributions approved by the commissioner or supervising agency and paid by the selling tenant-cooperator to the mutual company, to the extent not already included in the consideration paid for such shares, and, if established by the mutual company, (3) a proportionate share of the actual aggregate amortization paid on all existing and prior mortgages on the project in reduction of total outstanding principal indebtedness during such period as shall be fixed by the board of directors of the mutual company, to the extent not already included in the consideration paid for such shares, and (4) reasonable administrative charges.

(b) The aggregate amount to be paid to the selling tenant-cooperator

with respect to the sale of the selling tenant-cooperator's shares shall be fixed by the board of directors of the mutual company, subject to the approval of the commissioner or supervising agency, and shall be equal to (1) the consideration the selling tenant-cooperator paid for such shares, (2) any capital assessments and voluntary capital contributions approved by the commissioner or supervising agency and paid by the selling tenant-cooperator to the mutual company, to the extent not already included in the consideration paid for such shares, and (3) a proportionate share of the actual aggregate amortization paid by the selling tenant-cooperator on all existing and prior mortgages on the project in reduction of total outstanding principal indebtedness during such period as shall be fixed by the board of directors pursuant to subdivision (a) of this section, to the extent not already included in the consideration paid for such shares. To the extent that a selling tenant-cooperator may be entitled to an amount less than the resale price of his shares, the difference shall be retained by the mutual company.

(c) The board of directors may, subject to the approval of the commissioner or supervising agency, establish a general policy pursuant to which a selling tenant-cooperator who had occupied more than one dwelling unit is paid an amount measured by his proportionate share of the actual aggregate amortization paid during his period of occupancy on all existing or prior mortgages on the project. To the extent that a selling tenant-cooperator may be entitled to an amount greater than the resale price of shares, the difference may be paid to the selling tenant-cooperator by the mutual company.

(d) The "proportionate share of the actual aggregate amortization paid on all existing and prior mortgages on the project" referred to in subdivision (a) of this section shall be in the same ratio to such actual aggregate amortization as the number of shares held by the selling tenant-cooperator at the time of sale bears to the total number of shares of issued and outstanding capital stock of the mutual company during such period.

(e) Nothing contained in this section shall prohibit the continued use of any method of calculating resale price adopted by a mutual company and approved by the commissioner or supervising agency prior to the effective date of this section.

#### S 31-b. Assignment or pledge of tenant cooperator's shares.

Notwithstanding any other provision of law, a tenant cooperator's shares in a mutual company may be assigned or pledged as collateral for the purpose of securing a loan for the purchase of such shares. The

commissioner or supervising agency, as the case may be, shall promulgate regulations which provide that in the event of a default of such loan, such shares may be resold, and the dwelling accommodations represented by such shares may be occupied, only in accordance with the provisions of this article.

S 32. Supervision and regulation. The commissioner or the supervising agency as the case may be, may:

1. Examine a company and keep informed as to its general condition, its capitalization and the manner in which its property is constructed, acquired, rehabilitated, leased, operated or managed, and to its compliance with all provisions of law and orders of the commissioner or the supervising agency.

2. Require every company to file with him or it an annual report setting forth such information as the commissioner or the supervising agency may require, verified by the oath of any officer, general manager or other person in control of the company. Such report shall be in a form, cover a period, and be filed at a time as prescribed by the commissioner or the supervising agency.

3. From time to time make, amend and repeal supplementary rules and regulations for carrying into effect the provisions of this article provided, however, that such supplementary rules and regulations shall be strictly limited in their application to the means and methods of compliance with the provisions of this article to which such power relates.

4. Make such agreements with bondholders, mortgagees or creditors of a company to do or refrain from doing any act, not inconsistent with law, to protect the investment rights of the state of New York, the New York state housing finance agency, the New York city housing development corporation or of the municipality.

5 (a) Administer oaths, take affidavits, hear testimony and take proof under oath at public or private hearings; (b) subpoena and require the attendance of witnesses and the production of books and papers pertaining to any investigations and inquiries authorized by this article and examine them in relation to any matter concerning which the power to investigate is granted; (c) issue commissions for the examination of witnesses who are out of the state or unable to attend or are excused from attendance; (d) investigate into the affairs of a company and into the dealings, transactions or relationships of such company with third persons and into the affairs of any person, firm, corporation or other entity having a financial interest, whether direct or indirect, in the design, construction, acquisition, reconstruction,

rehabilitation, improvement, financing or operation of any project undertaken by a company; (e) intervene, as a matter of right, in any action or proceeding of which notice shall be given affecting the project of a company; (f) take such steps in such action or proceeding as may be necessary to protect the public interest.

With regard to duties and liabilities arising out of this article the state, the commissioner or the supervising agency may be sued in the same manner as a private person. No costs shall be awarded against the commissioner, the state, or the supervising agency, as the case may be, in any such litigation.

6. In the event of a violation by a company of a provision of the certificate of incorporation or of law or of the loan or mortgage contract or of any rules and regulations duly promulgated pursuant to the provisions of this article, the commissioner or the supervising agency, as the case may be, may remove any or all of the existing directors of the company and appoint such person or persons who the commissioner or the supervising agency, as the case may be, in his or its sole discretion deems advisable, including officers or employees of the division of housing and community renewal or the supervising agency, as new directors to serve in the places of those removed. Directors so appointed need not be shareholders or meet other qualifications which may be prescribed by the certificate of incorporation or by-laws. In the absence of fraud or bad faith, directors so appointed shall not be personally liable for debts, obligations or liabilities of the corporation. Directors so appointed shall serve only for a period coexistent with the duration of such violation or until the commissioner or the supervising agency, as the case may be, is assured in a manner satisfactory to him or it against violations of a similar nature.

Officers or employees of the division of housing and community renewal or of the supervising agency who are so appointed as directors shall serve in such capacity without compensation. No such removal may take place without written notice and an opportunity for the affected directors to appear and be heard before the agency or commissioner with respect to any alleged violation and the respective parties may be represented by counsel. Notwithstanding any inconsistent provision of any general, special or local law or any limitation contained in the provisions of any city charter, the state or a municipality acting by and through the commissioner or the supervising agency, as the case may be, shall save harmless and indemnify any officer or employee of the division of housing and community renewal or the supervising agency so appointed as a director, from financial loss arising out of any claim, demand, suit or judgment by reason of alleged negligence or other act by

such director, provided that such director was acting in the discharge of his duties and within the scope of his employment and that such loss did not result from the willful and wrongful act or gross negligence of such director and provided further that this save harmless and indemnification provision shall not in any way impair, limit or modify the rights and obligations of any insurer under any policy of insurance and shall inure only to directors so appointed and shall not enlarge or diminish the rights of any other party. No action or special proceeding based on or arising out of alleged negligence or other act by such director may be commenced against such director, municipality or the state unless a notice of claim shall have first been served in a manner consistent with service upon a municipality or the state, as the case may be.

7. Whenever the commissioner, in the case of a company undertaking or otherwise operating a state-aided project, or the supervising agency, in the case of a company undertaking or otherwise operating a municipally-aided project, shall be of the opinion that such company is failing or omitting, or is about to fail or omit to do anything required of it by law or by order of the commissioner or is doing or is about to do anything, or permitting anything, or is about to permit anything to be done, contrary to and in violation of law or of any order, regulation or directive of the commissioner or the supervising agency, as the case may be, or which is improvident or prejudicial to the interest of the public, the lienholders, the stockholders, or the tenants, the commissioner or the supervising agency, as the case may be, may, in addition to such other remedies as may be available, commence an action or proceeding in the supreme court of the state of New York in the name of the commissioner or the supervising agency, as the case may be, for the purpose of having such violations or threatened violations stopped and prevented, and in such action or proceeding the court may appoint a temporary or permanent receiver or both. Such action or proceeding shall be commenced by a petition to the supreme court, alleging the violation complained of and praying for appropriate relief. It shall thereupon be the duty of the court to specify the time, not exceeding twenty days after service of a copy of the petition, within which the company complained of must answer the petition. In case of any default or after answer the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirements. Such other persons or corporations as it shall seem to the court necessary or proper to join as parties in order to make its order or judgment effective, may be joined as parties. The final judgment in any

such action or proceeding shall either dismiss the action or proceeding or direct that an order or an injunction, or both, issue, or provide for the appointment of a receiver as prayed for in the petition, and grant such other relief as the court may deem appropriate.

S 32-a. Additional supervision and regulation. The commissioner or the supervising agency, as the case may be, shall:

1. Promulgate regulations providing for recognition of duly constituted tenants' associations and cooperators' advisory councils by the commissioner or supervising agency, as the case may be, and providing that a housing company shall meet on a regular basis with representatives of such an association or council at the specific project involved to discuss matters relating to the project. A duly constituted cooperators' advisory council shall only be such a council in a mutual company project prior to the election of a board of directors by the tenant-cooperators.
2. Require every company to file with him or it an annual operating budget for each individual project in the manner prescribed by the commissioner or supervising agency.
3. Require every company to file with him or it semi-annual or quarterly financial statements and an annual financial statement. Each annual financial statement shall be accompanied by a certificate of the company's independent certified public accountant. Such financial statements shall be filed at the times and in the manner prescribed by the commissioner or supervising agency.
4. Afford tenants access to and an opportunity to acquire copies of all operating budgets or financial statements respecting the project in which such tenants reside, to the extent that such budgets and statements are required by law to be kept by the commissioner or supervising agency.
5. Permit any tenant, duly constituted tenants' association, duly constituted cooperators' advisory council or his or its duly authorized representative to audit the books of the company and to have access during normal business hours to the financial records upon which the company's financial statements are based.
6. Promulgate regulations relating to managing agents, including criteria for the eligibility for selection and the compensation of managing agents by companies organized pursuant to this article. Such regulations shall provide, among other things, that any contract with a managing agent entered into after September first, nineteen hundred seventy-seven shall be terminable for cause and shall be terminable, with or without cause, at least every twelve months after commencement

of the term thereof, and that promptly upon termination the managing agent shall turn over to the company all project records, rent rolls, bills, cancelled checks, bank statements and other papers owned by such company.

7. Require that every company file with him or it, within six months of the effective date of regulations implementing this subdivision and in such format as shall be prescribed by the commissioner or the supervising agency after consultation with the state energy office, an energy audit report which identifies potential energy-saving building improvements, including alterations, modifications and adjustments to the building structure, heating, cooling, lighting and ventilation systems; their relative costs; potential energy and cost savings; and simple payback periods, which for the purpose of this subdivision shall mean that period of time within which the estimated cost of such improvements, exclusive of the cost of capital, would be recovered from the savings generated by reduced energy consumption resulting from the improvements. The energy audit shall be conducted by a public utility, an engineer or architect licensed by the state, or the managing agent or other representative of the company if such individual has attended an energy audit training workshop sponsored by the commissioner or the state energy office. A copy of the energy audit report, required herein, shall be given to any duly constituted tenant's association or cooperator's advisory council and a copy shall be available for inspection and copying by any individual tenant who requests it. The commissioner or supervising agency shall also require that every company certify by March thirty-first, nineteen hundred eighty-four that all compatible conservation measures identified in the energy audit report which have simple payback periods of one year or less have been implemented; provided, however, if the commissioner or supervising agency determines within sixty days of the date the energy audit report is filed that one or more of such identified conservation measures cannot be implemented by March thirty-first, nineteen hundred eighty-four, given the projected rent revenues and other monies available to the company from reserve funds, loans or grants from the state or federal government or any other source, the implementation of such conservation measures shall be provided for according to a schedule prescribed by the commissioner or supervising agency.

Require that within ten days of the filing of any reports or financial statements with the commissioner or supervising agency, the housing company shall transmit a copy of said report or financial statement to a duly constituted resident board of directors, and if there be none, to a cooperator's advisory council or a duly constituted tenants association

representing the project concerned. Where no such council or association exists in a project, a notice shall be posted informing the residents of the location on the premises of the project where a copy of said report or financial statement is available for inspection. The notice shall be posted within ten days of filing, in a prominent place on the premises of the project concerned.

S 32-b. Annual reports. The commissioner shall, on or before the first day of July in each year, submit a report to the legislature on the implementation of article two of this chapter by the commissioner and the supervising agency and the policy included therein. Such report shall include and not be limited to rent and carrying charge levels, changes therein, operation of the state capital grant program and federal subsidy programs, tax abatement levels, total capital outlay, amortization, mortgage interest rates, income levels served by the housing, surcharge billings and collections and use of surcharge revenues, and vacancy rates. For the purpose of preparing such report, the commissioner may request, and shall receive, from any municipality or supervising agency such data as he deems necessary or desirable and such municipality or supervising agency shall furnish the requested data within sixty days of such request.

S 33. Tax exemptions. 1. (a) Upon the consent of the local legislative body of any municipality in which a project is or is to be located, the real property in a project shall be exempt from local and municipal taxes, other than assessments for local improvements, to the extent of all or part of the value of the property included in such project which represents an increase over the assessed valuation of the real property, both land and improvements, acquired for the project at the time of its acquisition by the limited-profit housing company, provided, however, that the real property in a project acquired for purposes of rehabilitation shall be exempt to the extent of all or part of the value of the property included in such project, and further provided that the amount of such taxes to be paid shall not be less than ten per centum of the annual shelter rent or carrying charges of such project except that for projects located or to be located in a city of a population of one million or more, upon the consent of the local legislative body of the municipality, the amount of such taxes to be paid may be set at not less than (i) the taxes payable with respect to the real property in such project with respect to the year nineteen hundred seventy-three, or, (ii) if such project was not occupied in such year, not less than ten per centum of the annual shelter rent or carrying charges first

established pursuant to subdivision one of section thirty-one of this article. Shelter rent shall mean the total rents received from the occupants of a project less the cost of providing to the occupants electricity, gas, heat and other utilities. Total rents shall include rent supplements and subsidies received from the federal government, the state or a municipality on behalf of such occupants, but shall not include interest reduction payments pursuant to subdivision (a) of section two hundred one of the Federal Housing and Urban Development Act of nineteen hundred sixty-eight. The tax exemption shall operate and continue so long as the mortgage loans of the company, including any additional mortgage loan the proceeds of which are used primarily for the residential portion of the project, which additional loan is approved by the commissioner or the supervising agency, are outstanding.

(b) Where a municipality acts on behalf of another taxing jurisdiction in assessing real property for the purpose of taxation, or in levying taxes therefor, the consent of the local legislative body of such municipality shall have the effect of exempting the real property in a project from local and municipal taxes, other than assessments for local improvements, levied by or in behalf of both such taxing jurisdictions.

As used in this paragraph, the term "taxing jurisdiction" means any municipal corporation or district corporation, including any school district or any special district, having the power to levy or collect taxes and benefit assessments upon real property, or in whose behalf such taxes or benefit assessments may be levied or collected.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subdivision, the real property of a state urban development corporation project acquired, owned, constructed, managed or operated by a company incorporated pursuant to the not-for-profit corporation law and this article shall be entitled to all the benefits provided by section four hundred twenty-two of the real property tax law. The real property of a state urban development corporation project, other than a state urban development corporation project acquired, owned, constructed, managed or operated by a company incorporated pursuant to the not-for-profit corporation law and this article, shall be exempt from all local and municipal taxes, other than assessments for local improvements, to the extent of the value of the property included in such project as represents an increase over the assessed valuation of the real property, both land and improvements, acquired for the project on the date of its acquisition by the limited-profit housing company, provided that the amount of such taxes to be paid shall not be less than ten per centum of the annual shelter rent or carrying charges of such project, as defined in paragraph (a) hereof. The tax exemption shall operate and continue so

long as the mortgage loans of such limited profit housing company, including any additional mortgage loan the proceeds of which are used primarily for the residential portion of the project, which additional loan is approved by the commissioner or the supervising agency, are outstanding and the project is continued to be operated as a limited-profit housing project. If a state urban development corporation project qualifying for tax exemption pursuant to this paragraph is sold, with the approval of the commissioner, to another limited-profit housing company, such successor company shall be entitled to all the benefits of this paragraph. In the event that such sale is to a company incorporated pursuant to the not-for-profit corporation law and this article, such successor company shall be entitled to all the benefits provided by section four hundred twenty-two of the real property tax law.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this subdivision, when a project is financed with a mortgage loan pursuant to this article or article three of this chapter and (i) there is a participation, new loan or investment pursuant to section twenty-three-b of this article or (ii) such mortgage loan is assigned, modified or satisfied pursuant to section twenty-three-a or forty-four-b or subdivision twenty-two-a of section six hundred fifty-four of this chapter, the real property of the project shall be exempt from all local and municipal taxes, other than assessments for local improvements, to the extent of the value of the real property included in such project which represents an increase over the assessed valuation of the real property, both land and improvements, acquired for the project on the date of its original acquisition for the project by the original mortgagor under a mortgage loan pursuant to this article or article three of this chapter, provided that the amount of taxes to be paid on the project shall not be less than ten per centum of the annual shelter rent or carrying charges of such project, as defined in paragraph (a) of this subdivision. Such tax exemption shall commence in each instance from the date when the project becomes subject to a mortgage insured by the federal government and shall operate and continue so long as a mortgage on such project is insured or held by the federal government or so long as the project is thereafter owned by the federal government or so long as any residual indebtedness is outstanding, whichever is longer. When there is a participation, new loan or investment pursuant to section twenty-three-b of this article, such participation, new loan or investment shall be deemed to be the equivalent of a federally insured mortgage for purposes of this paragraph. Nothing contained in this paragraph shall be construed to limit or otherwise impair the benefits available to any company eligible for exemption from taxation

pursuant to section thirty-one or section thirty-six-a of this article, section four hundred twenty-two or section four hundred sixty-seven-c of the real property tax law, or section fifty-eight of the public housing law. The foregoing shall not be deemed to authorize any company to receive the benefits of any exemption from taxation in contravention of the provisions of section two of article eighteen of the constitution.

(e) Notwithstanding the provisions of paragraph (a) of this subdivision, a municipality, with the approval of the local legislative body, may contract to exclude all or part of any rent subsidies received from the federal government pursuant to section eight of the United States Housing Act of nineteen hundred thirty-seven as amended in the computation of total rents received.

(f) Notwithstanding the provisions of paragraph (a) of this subdivision, if the number of units occupied by persons receiving the benefit of rental assistance payments from the federal government pursuant to section eight of the United States Housing Act of nineteen hundred thirty-seven, as amended, with respect to any project increases by more than one hundred percent within any twelve consecutive months prior to nineteen hundred eighty-five over the number of units for which such subsidies were available during the preceding twelve consecutive months or as July first, nineteen hundred eighty, whichever is later, taxes payable for such additional subsidized units and subsequent units subsidized in the same manner shall be based solely upon that portion of total rents received on account of such additional subsidized units that is not funded by such rental assistance payments, provided, however, that no project shall receive such additional tax exemption (i) unless a minimum of seventeen percent of the units in the project receive the benefit of such subsidies, or (ii) if any mortgage on such project is insured or held by the federal government or if the project is owned by the federal government. The amount of exemption to which a project is entitled pursuant to this paragraph shall be certified annually by the commissioner or the supervising agency, as the case may be.

2. Notwithstanding the provisions of subdivision one hereof, whenever a dwelling in a project is leased to the New York state housing finance agency pursuant to the provisions of section forty-four-a of this chapter, so much of the assessed value of such project attributable to such dwelling (including a pro rata portion of the value of the land and common spaces) as represents an increase over the proportionate assessed value of the real property, both land and improvements, acquired for such project at the time of original acquisition therefor, shall be exempt during the period of such lease from taxation for county, city, town, village and school district purposes and special ad valorem

levies; provided that if in any year the aggregate amount of such taxes and levies that would have been attributable to such dwelling but for the exemption provided by this subdivision exceeds the amount payable out of the low rent lease account pursuant to subdivision three of section forty-four-a of this chapter with respect to the agency's rent obligation for such dwelling, the agency shall make proportional payments in lieu of such taxes and levies to the appropriate county, city, town, village, school district or special district, or any combination thereof as the case may be, in an aggregate amount equal to one half of the sum of (a) the amount of such excess and (b) the amount, if any, by which the rent paid to the agency under the sublease for such dwelling exceeds the agency's rent obligation for such dwelling. Nothing contained in this subdivision shall preclude the increase of the taxable assessed value attributable to such dwellings as a result of a net increase in the assessed valuation of the taxable property in the assessing unit as a result of assessing such property at a higher ratio of full value.

3. Notwithstanding the provisions of subdivision one hereof, whenever a dwelling in a project is leased to an authority, pursuant to the provisions of sections seventeen and thirty-one of this chapter, so much of the assessed value of such project attributable to such dwelling (including a pro rata portion of the value of the land and common spaces) as represents an increase over the proportionate assessed value of the real property, both land and improvements, acquired for such project at the time of original acquisition therefor, shall be exempt during the period of such lease from taxation for county, city, town, village and school district purposes and special ad valorem levies. Nothing contained in this subdivision shall preclude the increase of the taxable assessed value attributable to such dwelling as a result of a net increase in the assessed valuation of the taxable property in the assessing unit as a result of assessing such property at a higher ratio of full value.

4. Notwithstanding the provisions of subdivision one hereof, when a mutual company is organized under this article to facilitate the acquisition of a building by residents thereof, the amount of local and municipal taxes, other than assessments for local improvements, to be paid on the real property included in such project, both land and improvements, shall not exceed twenty per centum of the annual shelter rent or carrying charges of such project, as defined in paragraph (a) of subdivision one hereof; provided, however, that where such acquisition of a building by residents thereof involves the financing of rehabilitation or other improvement as well as acquisition, upon the

consent of the local legislative body of the municipality in which the project is located the amount of such taxes may be further reduced provided that such amount shall not be less than ten per centum of the annual shelter rent or carrying charges of the project, as defined in paragraph (a) of subdivision one hereof; or the company may in lieu of requesting such consent apply for the benefits of the local law, if any, enacted pursuant to section four hundred eighty-nine of the real property tax law. Such tax exemption, if any, granted pursuant to this article shall operate and continue so long as a loan made under this article or any subsequent loan approved by the commissioner or the supervising agency to enhance the residential portion of the project and the project is continued to be operated for the purposes set forth in this article is outstanding.

5. Bonds, mortgages, notes, income debentures and obligations of a company are declared to be issued for a public purpose and to be public instrumentalities and together with interest thereon shall be exempt from tax including but not limited to the mortgage recording taxes imposed by article eleven of the tax law.

6. Any project that received a tax exemption under paragraphs (a), (c) and (d) of subdivision one, and subdivision four of this section may, upon the expiration of the tax exemption period, be granted an additional tax exemption period of up to fifty years, or until such time as the project is no longer operated under the restrictions and for the purposes set forth in this article, whichever is sooner.

S 34. Foreclosure and judgments. 1. Any action or proceeding to foreclose a mortgage upon a company project, shall be in accordance with the applicable provisions of section ninety-four of this chapter.

2. In the event of an unsatisfied judgment against a company any action not pertaining to the collection of a mortgage indebtedness, shall be in accordance with the applicable provision of section ninety-five of this chapter.

3. For the purpose of this section, wherever reference is made in sections ninety-four and ninety-five of this chapter to a housing company, it shall be deemed to refer to a company as defined in this article.

S 35. Voluntary dissolution. 1. A company aided by a loan made prior to May first, nineteen hundred fifty-nine, may voluntarily be dissolved, with the consent of the commissioner or of the supervising agency, as the case may be, not less than thirty-five years after the occupancy date upon the payment in full of the remaining balance of principal and

interest due and unpaid upon the mortgage held by the state or a municipality pursuant to this article and payment to the municipality of a sum equal to the total of all accrued taxes for which tax exemption was granted and received pursuant to section thirty-three of this article, provided however that such payment of accrued taxes shall be waived if a company is voluntarily dissolved subsequent to the original maturity date of any mortgage held by the state or a municipality pursuant to this article.

2. A company aided by a loan made after May first, nineteen hundred fifty-nine, may voluntarily be dissolved, without the consent of the commissioner or of the supervising agency, as the case may be, not less than twenty years after the occupancy date upon the payment in full of the remaining balance of principal and interest due and unpaid upon the mortgage or mortgages and of any and all expenses incurred in effecting such voluntary dissolution.

3. Upon such dissolution, title to the project may be conveyed in fee to the owner or owners of its capital stock or to any corporation designated by it or them for the purpose, or the company may be reconstituted pursuant to appropriate laws relating to the formation and conduct of corporations, provided, however, that prior to any such dissolution and conveyance or reconstitution, payment shall be made of all current operating expenses, taxes, indebtedness and all accrued interest thereon and the par value of and accrued dividends on the outstanding stock of such company. If after making such payments, and after conveyance of the project, a surplus remains in the treasury of the company, such surplus, except in the case of a project aided by a state loan made after May first, nineteen hundred fifty-nine, shall upon dissolution, be paid into the general fund of the municipality which granted tax exemption. After such dissolution and conveyance, or such reconstitution, the provisions of this article shall become and be inapplicable to any such project and its owner or owners and any tax exemption granted with respect to such project pursuant to section thirty-three hereof shall cease and terminate.

4. (a) Notwithstanding any contrary provision of subdivision one or three of this section or of any other law or local law, consent to dissolve a company aided by a loan made prior to May first, nineteen hundred fifty-nine shall be given by the commissioner or the supervising agency, as the case may be, thirty-five years or more after the occupancy date, provided that:

- (i) such company's project or projects is or are located in a city of less than one million and more than three hundred thousand persons;
- (ii) the dissolution of such company is part of a refinancing plan to

continue the operation of the existing project or projects under this chapter by a new company organized pursuant to the provisions of this article in corporate, partnership, or individual ownership form as the existing stockholders shall agree;

(iii) if the refinancing is done by a new first mortgage, the new company shall be bound to pay from the proceeds of such refinancing the remaining balance of the principal and interest on the original mortgage and any interest due to debenture holders if such interest cannot first be paid out of the original company's surplus or reserves; or if the refinancing is done by a second mortgage, the new company shall be bound to pay from the proceeds of such refinancing the interest due to debenture holders if such interest cannot first be paid out of the original company's surplus or reserves; and

(iv) the new company shall be bound to use at least fifty percent of the net proceeds, which remain from such refinancing after having paid the legal fees and development costs connected therewith and after having made the payments required by subparagraph (iii) of this paragraph, to finance the costs of refurbishing the existing housing units of the project, or to build and operate under this chapter additional housing units for persons of low or moderate income or for disabled persons, within the same municipality wherein the original project is or projects are located, or to do both such refurbishing of existing units and such building and operating of such additional units; any portion of the net proceeds remaining after utilization of at least fifty percent thereof for the foregoing purposes shall be distributed or used as the stockholders, partners or sole owner (as the case may be) of the new company shall decide.

(b) The New York state housing finance agency and the state of New York mortgage agency are hereby authorized and empowered to finance such first or second mortgages for the foregoing refinancing purposes upon such terms and conditions as each such agency deems appropriate.

(c) A company which is voluntarily dissolved in accordance with this subdivision shall not be required to pay the taxes referred to in subdivision one of this section nor any surplus remaining in its treasury as referred to in subdivision three of this section to the municipality which grants the tax abatement for such project or projects, but instead, such surplus and all reserve accounts and debenture rights, titles, interests, contracts, accounts receivable, accounts payable, and all other assets and liabilities of the dissolved company shall be transferred to the new company organized for such refinancing purposes pursuant to such refinancing plan, and such new company shall be considered for all the purposes of this chapter as a

company aided by a loan made subsequent to May first, nineteen hundred fifty-nine, with the first date of occupancy deemed to be the date of the closing of the new first or the second mortgage entered into as part of the refinancing plan described in subparagraphs (ii), (iii) and (iv) of paragraph (a) of this subdivision; and any tax abatement granted by such municipality for such project or projects shall continue to be applied unless or until such municipality shall act to extend, modify, enlarge or remove such tax abatement.

S 36. Sale of project prior to termination of tax exemption. 1.

Except as otherwise provided in this article and prior to the expiration of thirty-five years from the date of occupancy, a project, other than a project aided by a loan made after May first, nineteen hundred fifty-nine, shall not be sold except to a company organized pursuant to the provisions of this article; prior to the expiration of twenty years from the date of occupancy, a project aided by a loan made after May first, nineteen hundred fifty-nine, shall not be sold except to a company organized pursuant to the provisions of this article. Such successor company shall acquire such project subject to all the provisions of the loan and mortgage contract and the provisions of this article, and shall be entitled to all the benefits provided in such contract or granted under this article, and a company so conveying all its projects may be dissolved with the consent of the commissioner or the supervising agency, as the case may be.

2. In the event of any sale described in this section, the stockholders of the dissolving company shall in no event receive more than the par value of their stock with accrued and unpaid dividends upon such stock.

S 36-a. Additional powers of municipalities. In addition to any other powers granted to a municipality by law, and notwithstanding the provisions of any other law, a municipality acting by its local legislative body shall have power:

1. To undertake, plan, develop, construct or enter into contracts for the planning, development or construction of, or to own one or more projects or any part thereof, or to engage in one or more of such activities in respect to one or more projects or any part thereof. For any of the purposes of this subdivision, a municipality may contract either with a housing company incorporated under this article or with a housing development fund company incorporated pursuant to article eleven of this chapter.

2. (a) Acquire by purchase, gift, devise, lease, condemnation or

otherwise, in accordance with the provisions of the appropriate general, special or local law applicable to the acquisition of real or personal property by such municipality, real or personal property or any interest therein necessary for or incidental to a project, including but not limited to air rights, and easements or other rights of user necessary for the use and development of such air rights, to be developed as air rights sites for a project; provided, however, that the acquisition of any air rights over railroad tracks, rights of way or facilities and easements or other rights of user necessary for the use and development of such air rights are to be subject to the provision of section fifty-one-a of the railroad law. The acquisition of real property pursuant to a plan shall in every case be deemed to be and constitute a continuous rather than separate takings.

(b) Property so acquired by a municipality shall be exempt from taxation until sold, leased for a term not exceeding ninety-nine years or otherwise disposed of in accordance with the provisions of this section; provided however, that any such municipality shall have the power and authority, with respect to such property, to pay or transfer, out of funds available to it for the effectuating of such program or project annual sums in lieu of taxes to any taxing jurisdiction providing services to the project area, or to the part or portion thereof within such taxing jurisdiction, in order that no such taxing jurisdiction shall suffer an inequitable loss of revenue by virtue of such project; provided, further, that the amount so paid or transferred for any year with respect to any such property shall not exceed the lesser of (1) the sum last levied for the benefit of such taxing jurisdiction as an annual tax on such property prior to the time of its acquisition for project purposes or (2) such amount as shall be approved by the commissioner pursuant to such rules, regulations, limitations and conditions as he may prescribe, as an eligible and proper charge against such project. Upon the sale, lease or disposition of such property to any person, firm or corporation, not entitled to an exemption from taxation or entitled to only a partial tax exemption such property shall immediately become subject to taxation in whole or in part, as the case may be, and shall be taxed pro rata for the unexpired portion of the taxable year.

As used in this paragraph, the term "taxing jurisdiction" means any municipal corporation or district corporation, including any school district or any special district, having the power to levy or collect taxes and benefit assessments upon real property, or in whose behalf such taxes or benefit assessments may be levied or collected.

3. To sell or lease for a term not exceeding ninety-nine years any

such project, or part thereof, at any stage before or at the date of or after the physical completion of such project, to a company which will undertake, plan, construct, own, manage or operate such project in accordance with the plan and the provisions of this article. In the event of a sale or lease of any such project prior to the physical completion thereof, the municipality may agree to complete and may complete construction and development of such project or cause the same to be completed. Any such sale or lease may be made without public bidding, public sale or public offering pursuant to such negotiated contract, agreement or lease, containing such provisions, limitations, requirements, terms and conditions, price or rental as the governing body of the municipality may deem necessary or desirable to effectuate the plan and the public policy and public purposes described in sections eleven and eleven-a of this article.

4. Notwithstanding the provisions of section thirty-three of this article the real property in a project sold or leased as provided in this section, when the transfer thereunder becomes effective, shall be exempt from local and municipal taxes, other than assessments for local improvements to such extent as may be granted by the local legislative body of the municipality. The tax exemption shall operate and continue so long as capital loans of the company to which such project shall have been sold or leased or any additional loan the proceeds of which are primarily used for the residential portion of the project, which additional loan is approved by the commissioner or the supervising agency are outstanding.

Notes, bonds, mortgages and other obligations of such a company are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from tax.

5. The provisions of section thirteen of this article requiring the approval by the commissioner of housing of the persons incorporating a limited-profit housing company and the provisions of section fourteen of this article requiring the consent of the commissioner of housing to the filing of the certificate of incorporation of such a company in the office of the secretary of state and the amendment thereof shall not apply to a corporation created pursuant to this article on a cooperative basis for the purchase or lease of a project pursuant to this section; nor shall any of the provisions of this article conferring upon the commissioner of housing any powers in respect of limited-profit housing companies apply to such a corporation. The application of this subdivision shall be limited to corporations undertaking a project with the aid of a municipal loan under this article.

6. A project or part of a project sold or leased to a housing company pursuant to the provisions of this section thirty-six-a shall be owned or operated by such housing company in accordance with the provisions of this article and in accordance with an agreement of sale or lease to be entered into by the municipality and such housing company. Each such agreement shall contain, in addition to such other terms and conditions as may lawfully be agreed upon by the parties, the following provisions, which shall be subject to any approvals which may be required by this article:

(a) Establishing a schedule of maximum rents which may be charged by the housing company.

(b) Prescribing the method by which tenants are to be selected for the project and criteria of tenant eligibility.

(c) Any such agreement of lease may provide for the transfer of title of the real property so leased to the housing company at the end of the term or lease.

7. A housing company shall have the power, in addition to any other powers under this article to enter into and carry out the provisions of any agreement authorized under this section or under section twenty-three-a or twenty-three-b of this article, and to enter into and carry out agreements in order to obtain insurance by the federal government of a mortgage for the purpose of refinancing all or any part of a mortgage loan pursuant to section twenty-three of this article.

8. Any project that received a tax exemption under this section may, upon the expiration of the tax exemption period, be granted an additional tax exemption period of up to fifty years, or until such time as the project is no longer operated under the restrictions and for the purposes set forth in this article, whichever is sooner.

S 37. Separability clause. 1. Except as specifically provided in this article, nothing contained therein shall be deemed to limit or restrict any power or authority granted to banking institutions, foundations, labor unions, veterans` organizations, or insurance companies or to any other corporation or to any fiduciary by any other provision of law heretofore or hereafter enacted.

2. If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

