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**Testimony of New York State Senator Thomas K. Duane
Before the New York City Department of Housing Preservation and Development
Regarding Proposed Amendments to Rules
Governing City-Aided Limited-Profit Housing Companies**

September 13, 2011

My name is Thomas K. Duane and I represent New York State's 29th Senate District, which includes the Mitchell-Lama cooperative East Midtown Plaza (EMP) and the Article V limited-equity cooperative Mutual Redevelopment Houses. I strongly support the New York City Department of Housing Preservation and Development's (HPD) proposed amended rules governing such City-aided and supervised limited-profit housing companies.

As a whole, the package of amended rules that HPD has proposed will strengthen the governance of these housing companies to facilitate the preservation of this precious affordable housing stock for current and future generations of moderate- and middle-income New Yorkers.

I am particularly appreciative of HPD's proposed amendments to the regulations governing feasibility studies and offering plans. Under the current system, once shareholders have approved a resolution authorizing an expenditure to "ascertain the desirability of dissolution and/or reconstitution," boards of directors may make unchecked expenditures to advance those ends. At EMP, for example, the Board of Directors, on the basis of a single 2002 vote on a feasibility study, has spent more than \$2 million in operating funds for legal fees alone to promote the housing company's dissolution. These corporate funds have been used not only to explore the feasibility of dissolution and advance an offering plan, but also, since EMP's January 14, 2009 dissolution vote failed to garner the requisite approval of two-thirds of eligible shareholders, to pursue legal challenges to the terms of the vote set forth by HPD, the New York State Attorney General and EMP's own Certificate of Incorporation. It is long past time that such blank checks are prohibited.

It is therefore reasonable that HPD seeks to set a limit on the amount a board of directors may spend on the preparation of a feasibility study without obtaining separate shareholder approval. However, I believe that the approval required should be two-thirds of eligible shareholders rather than a simple majority of shareholders represented at the vote. It is also reasonable that HPD is proposing that a maximum dollar amount be specified in a resolution authorizing the preparation

of an offering plan, which still must be approved by two-thirds of the dwelling units based on one vote per apartment. I likewise appreciate HPD's intention in proposing to require an additional vote to approve "any additional expenditures of funds in furtherance of dissolution and/or reconstitution," however, as above, I believe a two-thirds threshold rather than a simple majority of the dwelling units represented at the meeting should be similarly applied.

At the very least, in both votes on expenditures towards a feasibility study and additional expenditures towards dissolution and/or reconstitution, the requisite majority should be of shareholders "present," rather than simply those "represented." Allowing the votes of those "represented" leads to the abuse of proxies and the undue influence of absentee shareholders.

One other proposal I wish to note is the removal of the current language in Subdivision (e) of Section 3-03 of Chapter 3 of Title 28 of the Rules of the City of New York. I applaud the elimination of the never imposed rule regarding grounds for the removal of shareholders if their income should increase to substantially exceed the maximum prescribed by these rules. As others will no doubt note, the very existence of the rule was used by pro-privatization cooperators to scare others into thinking they were potentially at risk of over-income eviction if they choose to remain in the Mitchell-Lama program. It has been pointed out to me that the elimination of this subdivision also makes obsolete the fourth paragraph of Section 3-02(i)(1), regarding certain circumstances under which a tenant/cooperator "shall not be considered over income for purposes of eviction." As it likewise is misleading and subject to misrepresentation, it too should be removed.

Thank you for promulgating these amended rules and for giving me this opportunity to testify. I greatly appreciate HPD's commitment to preserving affordable housing, and I strongly urge you to approve the proposed amendments after incorporating the suggestions I have put forth.