

# Sample Resale Policy/Amendment to Proprietary Lease

\_\_\_\_\_HDFC

***IMPORTANT: This is a sample of a resale policy for an HDFC cooperative. Any amendment to your Proprietary Lease should be reviewed by your attorney before the approval vote by the shareholders.***

1. **Declaration of Policy.** This resale Policy is governed by the principle that limited equity, cooperative ownership is a way to prevent displacement and create and preserve affordable housing for low-income residents. "Low-income" is defined as persons meeting the income guidelines contained in Article XI, Section 576 of the Private Housing Finance Law. These guidelines state that prospective shareholders' total household income may not exceed six times (or, in a family with three or more dependents, seven times) the annual carrying costs of the apartment. Carrying costs include maintenance fee plus the cost for utilities (electric and gas). As a means of monitoring the transfer of shareholder units to insure continued affordability, it shall be a requirement that a departing shareholder must offer his or her shares back to the Corporation in accordance with the following terms and conditions:
2. **Restriction on Transfer.** No shareholder shall have the right to sell or transfer his or her shares without first offering the shares back to the Corporation or its designee at the maximum transfer price defined below.
3. **Offer in Writing.** Such offer shall be made in writing, signed by the shareholder, and mailed to the corporation. The offer shall remain open for acceptance by the Corporation for a period of 60 days from the date of the mailing. The offer shall designate the Corporation as agent for the sale of the shares to the Corporation or to such person(s) as named by the Corporation.
4. **Acceptance of Offer.** If the offer is accepted by the Corporation, the Corporation shall notify the departing shareholder in writing. The shareholder shall then be bound to transfer the shares and surrender his/her proprietary lease within 45 days thereafter upon payment by the Corporation or its designee of the maximum transfer price of the shares (subject to the Distribution of Proceeds under 7 (c) below).
5. **Nonacceptance of Offer.** In the event the Corporation declines in writing the offer or 60 days elapses without acceptance of the offer or the Corporation fails to tender payment within 45 days of the acceptance of the offer, the departing shareholder shall have the right to sell the shares to any person approved by the Corporation in accordance with the procedures and requirements for transferring shares contained in the Proprietary Lease for a price no greater than the maximum transfer price of the shares.
6. **Lapse of Offer.** If no sale takes place within six months after the original notification by the shareholder, then the offer shall be deemed to have lapsed. To renew the offer, the shareholder must begin the process again.
7. **Transfer Price.** The formula for calculating the maximum transfer price of the shares is as follows:
  - a. **Base Transfer Value:** The base transfer value of any apartment shall be twenty-four (24) times the monthly maintenance fee for that apartment.

b. **Capital Improvements:** The amount spent for capital improvements to the individual unit that the selling shareholder has documented to the Corporation's satisfaction, to a maximum of \$2,500. Documentation shall include paid bills, receipts, cancelled checks, and contracts. The Corporation's determination shall be final, conclusive and binding as to what constitutes a capital improvement and the amount to be credited for the improvement. \*\*\*

\*\*\* Please see notes on this section at end of policy.

c. **Maximum Transfer Price:** The sum of (a) and (b) above (Base Transfer Value and Capital Improvements) shall constitute the Maximum Transfer Price.

d. **Distribution of Proceeds:** Upon the re-sale of an apartment, the selling shareholder shall receive

- i. the original purchase price paid by that shareholder
- ii. the value of the capital improvements up to a maximum of \$2,500 (in accordance with the provisions of 7(b) above).
- iii. fifty percent of the balance of the Maximum Transfer Price. The Corporation shall receive the other fifty percent of the balance.

The selling shareholder shall receive the sum of i, ii, and iii above, minus the cost of repairing any damage to the apartment, and any maintenance arrears owed by the shareholder. Apartments must be left in clean condition.

8. **Payment for Shares.** The seller shall receive his/her share of the Maximum Transfer Price in accordance with paragraph 7 above, at a closing in which the Corporation shall receive the transfer price from the new shareholder. There shall be no cost to the Corporation and may charge the buyer and seller for its legal fees and closing costs, if any. The seller shall be entitled to receive payment only when payment has been received by the Corporation from the purchaser. The seller shall be responsible for paying City and State transfer fees and taxes.

In the event that the Corporation elected not to exercise its right to purchase the shares, and the transaction is solely between the buyer and the seller, then the purchase price shall be paid directly from the buyer to the seller. The Corporation shall still receive its share of the inflation increment. The maintenance on the apartment must be current as of the date of sale, and the Corporation may charge the parties for its legal fees.

9. **Order of Priority.** In re-selling the shares purchased by the Corporation, the Corporation shall adhere to the following order of priority in determining who shall be eligible to purchase:

- a. Shareholders who are prime residents and in good standing, who need a larger apartment because their family size has grown.
- b. Adult family members of shareholders in good standing, provided that one or more of the family members has resided in the building at least 18 months.
- c. Applicants from the Corporations waiting list.

- d. Any other purchasers approved by the board of directors.
10. Compliance with Applicable Law. Any transfer of shares must be in compliance with the income restrictions set forth in Section 576 of the Private Housing Finance Law relating to Housing Development Fund Corporations.
  11. Conformance with Proprietary Lease. If this policy conflicts in any way with the Corporation's Proprietary Lease, this policy shall control. Otherwise, the provisions of the Proprietary Lease relating to the assignment of shares shall remain in full force and effect.

## **Notes on the “Capital Improvements” Section of the Resale Policy**

You may want this section to read differently, depending on how you decide to handle the issue of capital improvements. One way would be to define capital improvements in a general way, and leave it up to the discretion of the board to interpret this definition. The definition of a capital improvement used by NY State for sales tax purposes is "an addition of alteration to real property that a) substantially adds to the value of the real property or appreciably prolongs the useful life of the real property, AND b) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself, AND c) is intended to become a permanent installation." If you use this definition of capital improvement, then the board will have to decide on a case by case basis what qualifies as an improvement and what does not.

Another way would be to draw up a detailed list of all possible improvements a shareholder could make that would be considered capital improvements. Unfortunately, you (the board) would have to come up with this list yourselves; there is no list like that in existence as far as I know. The closest thing I could find is a list of improvements eligible for the J-51 tax abatement program; but most of these apply to building-wide systems, rather than individual apartments. A copy of this list is enclosed for your information.

Something else you should consider: Do you want to credit shareholders for improvement (based on receipts and other proof of how much the improvement cost), regardless of how much a particular job cost? For example, if a shareholder spends \$2,000 getting his bathroom tiled with a fancy tile, will you credit him for the whole \$2,000, even though the job could have been done for \$1,000 if plain tile had been used? Or do you want to set some kind of cost limit for each type of improvement a shareholder might do?

Whatever you decide to do, it might be a good idea to add a sentence or two saying that from now on, (i.e. from the date of adoption of the resale policy) shareholders who want credit for an improvement will have to get the Board's approval at the time the work is done. This way, shareholders will know whether something qualifies as an improvement before they spend the money to get the work done. However, even if you add this wording to the policy, you still have to figure out a system for crediting the shareholders who have already made improvements before the adoption of this policy.