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**REPORT ON LEGISLATION
BY THE HOUSING AND URBAN DEVELOPMENT COMMITTEE**

**COMMENTS ON LEGISLATION PENDING IN THE
NEW YORK CITY COUNCIL COMMITTEE ON HOUSING AND BUILDINGS
RELATED TO HOUSING LOTTERIES**

The Housing and Urban Development Committee of the New York City Bar Association (the “HUD Committee” or the “Committee”) addresses legal and policy issues related to the urban environment with a particular emphasis on affordable housing preservation and development. The Committee is comprised of attorneys from the public and private sector, not-for-profit organizations, and academia. The Committee offers the below comments on a series of bills currently pending in the City Council’s Committee on Housing and Buildings. They were subject to a January 14, 2019 Committee oversight hearing on the topic of housing lotteries.¹ We share these recommendations based upon the collective opinions of the members of the HUD Committee, with the particular goal of seeing laws passed that will encourage the creation of affordable housing and will make housing more affordable and accessible to families and individuals in need.²

I. Intro 0249-2018, a Local Law to amend the administrative code of the city of New York, in relation to marketing of affordable units.

The HUD Committee supports efforts by the City to improve the marketing process and provide pre-marketing seminars for applicants. However, the Committee questions the proposed timing of the two pre-marketing seminars at least six months before the earlier of the commencement of the open housing lottery or the anticipated occupancy of the first unit. First, the lottery will always occur before the anticipated occupancy of the first unit, so the operative date should be before the commencement of the lottery and not the anticipated occupancy of the first unit. Second, the Committee believes it does not make sense to require two pre-marketing seminars so far in advance of the commencement of the lottery. The lottery occurs after the New York City Department of Housing Preservation and Development (“HPD”) approves the developer’s marketing plan, which timeframe for approval is difficult to predict. This means that the bill would require the pre-marketing seminars to occur very early in the process, well before HPD approves the marketing plan, which sets forth the developer’s proposed procedure for pre-

¹ “Oversight – Housing Lotteries” Committee on Housing and Buildings, Jan. 14, 2019; further details and materials available at <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=669071&GUID=A606E1C5-D431-4E07-BFD5-FB0AFFE018AE&Options=info&Search=> (last visited on March 4, 2019.)

² Please note that these recommendations do not reflect the views of the HUD Committee members’ organizations or firms.

marketing, marketing, and application evaluation. The Committee believes it would be premature and not helpful for applicants to conduct pre-marketing seminars before a marketing plan is approved since many questions posed by applicants could not be answered. Further, since HPD already provides biweekly marketing seminars for potential lottery candidates, the Committee questions whether the additional pre-marketing meetings required by this bill would be duplicative of HPD's existing marketing seminars.

II. Intro 0357-2018, a Local Law to amend the New York City charter and the administrative code of the city of New York, in relation to construction conditions in housing development projects.

The Committee questions the need for an additional ombudsman. Recently, the City Council passed another local law creating a new ombudsman at the New York City Department of Buildings ("DOB"), and we believe this was a step in the right direction in averting tenant harassment due to poor conditions in residential buildings. However, it has yet to be determined whether such role is a positive addition to an already over-burdened agency, and we therefore recommend that this bill be tabled until the DOB ombudsman has been in place for at least one year. In addition, the Committee is concerned that a process by which an ombudsman, presumably accountable to no one but him or herself, has the power to recommend preferred contractors will, in the absence of objective criteria applied evenly across the board, result in the unfair exclusion of some contractors. For these reasons, the Committee opposes this bill at this time.

III. Intro 0550-2018, a Local Law in relation to the creation of an affordable housing lottery task force.

The Committee supports improvements to the affordable housing lottery system, but questions the need for an affordable housing task force at this time. HPD is in the process of implementing its new housing portal, in connection with the 2018 Local Law 64 ("LL64"). Therefore, the Committee believes it is premature to create an affordable housing task force, as HPD still has a few years to implement several of the new obligations under LL64. The Committee believes that if a housing lottery task force is created, it should not be done until the new housing portal has been in place for at least one year.

IV. Intro 0564-2018, a Local Law to amend the administrative code of the city of New York, in relation to reporting on housing lottery outcomes.

The Committee agrees that there needs to be transparency in the lottery process. However, the Committee questions whether the additional reporting requirements created by this bill would effectively increase transparency or would merely be duplicative of HPD's reporting requirements already in place.

V. Intro 0716-2018, a Local Law to amend the administrative code of the city of New York, in relation to a report on the waiting lists of Mitchell-Lama housing developments.

The HUD Committee supports a bill to ensure that waiting lists in Mitchell-Lama projects are maintained in a fair and transparent manner, yet we question whether this bill will further that specific purpose. At a minimum, the HUD Committee recommends adding a certification requirement by either the owner or managing agent, certifying that they have complied with applicable laws and agency regulations governing waiting lists for Mitchell-Lama projects.

VI. Intro 1211-2018, a Local Law to amend the administrative code of the city of New York, in relation to requiring developers who receive city financial assistance for housing development projects to set aside a certain number of created or preserved dwelling units for homeless individuals and families.

The Committee supports the creation of affordable housing for homeless individuals and families, but does not support this bill as written. First, the bill fails to clearly identify the types of housing projects that are covered. In the event the bill applies to both rental and homeownership projects, the HUD Committee strongly objects to its applicability to homeownership projects, as homeownership projects require the consideration of additional factors in the approval process, such as verification of household income, eligibility for financing to purchase, and acceptable rental history and credit scores. Second, we are concerned that the project threshold of 15 units or more is too low, and may create a financial burden on landlords of smaller projects. To the extent this bill is amended to clarify applicability to rental projects only, the Committee believes the bill should only apply to projects of a size that would ensure the project is feasible, which discretion should be provided to the City agency providing such financial assistance. Third, this bill must also address how supportive services for some homeless individuals and families in need will be properly provided on site, and to what extent supportive services will be required of such housing development projects. The needs of some homeless families are oftentimes not met unless additional services are provided in conjunction with housing. This is a critical factor that this bill fails to consider and which may be necessary for the success of many individuals and families moving into stable housing.

Housing and Urban Development Committee
Daniel M. Bernstein, Co-Chair

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