

David A. Paterson  
Governor



Deborah VanAmerongen  
Commissioner

**New York State Division of Housing and Community Renewal**  
25 Beaver Street  
New York, NY 10004

**HOUSING MANAGEMENT BUREAU MEMORANDUM # 2009-B-03**

**To:** All Housing Companies  
Owners, Managing Agents and Site Managers

**From:** Robert Damico, Downstate Director  
Housing Management Bureau

**Date:** March 27, 2009

**Subject:** Amendments of Mitchell-Lama Regulations

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Please take note of the attached letter from the Commissioner that summarizes proposed revisions to our regulations under the Private Housing Finance Law. Instructions on how to submit comments and other information will be published in the New York State Register on April 15, 2009.

Very truly yours,

A handwritten signature in black ink, appearing to be "R. Damico", written over a horizontal line.

Robert Damico, Downstate Director  
Housing Management Bureau



**New York State**  
Division of Housing and Community Renewal

**MEMORANDUM**

**To:** All Interested Parties  
**From:** Deborah VanAmerongen, Commissioner  
**Date:** March 26, 2009  
**Subject:** Comprehensive Amendments of Mitchell-Lama Regulations

I am pleased to inform you that the Division's proposed amendments to its regulations governing housing companies organized under Articles II and IV of the Private Housing Finance Law have been submitted to the Department of State and are scheduled for publication in the New York State Register on April 15, 2009. The amendments can be viewed on the Division's website at [www.nysdhcr.gov](http://www.nysdhcr.gov). We are making the proposed amendments widely available in an effort to solicit maximum input during the upcoming comment period.

As you know, the Mitchell-Lama program provides safe, decent and affordable housing for thousands of New Yorkers and the Division considers its obligation to oversee the operations of this portfolio to be one of its core functions. This effort represents the first time that this agency has undertaken a comprehensive review and modification of its "Mitchell-Lama" regulations since their promulgation in 1965.

Following is a brief description of the Mitchell-Lama program, some of the issues and the rationale for updating the regulations and a summary of the main proposals.

**The Mitchell-Lama Law**

The Mitchell-Lama Law was enacted to create housing for persons and families of low- and moderate-income. Private housing companies ("housing companies"), organized to develop and operate such housing, receive publicly-sponsored mortgage loans and/or local property tax abatements in exchange for DHCR supervision of their operation<sup>1</sup> and limitations on profit. Such companies can be either rentals or cooperative developments ("mutual companies" or "cooperatives").

Owners of rental housing companies are limited to a six percent annual return on their initial investment. Similarly, the resale price of a cooperative apartment is limited to an original purchase price (set with DHCR approval), a pro-rated share of the mortgage amortization and capital assessments paid, if any.

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<sup>1</sup> Certain housing companies which are financed by New York City are supervised by the Department of Housing, Preservation and Development.

Admission to all housing companies is limited by various formulas which compare family income with either rent or the area median income. Additionally, tenants in occupancy whose income subsequently exceeds the relevant formula must pay a surcharge in addition to their rent or maintenance fee. With respect to tenant selection, DHCR regulations require comprehensive waiting list procedures to assure a fair allocation of apartments.

DHCR conducts site visits, examines housing company books and records, and has oversight authority with respect to almost all housing company transactions. This oversight includes selection and supervision of housing company management, contracts with vendors, bi-annual budgets, rent increases, tenant selection and commercial leasing.

The statutory remedies for non-compliance with DHCR supervision are limited. The Mitchell-Lama Law provides for removal of the Board of Directors or allows DHCR to seek injunctive relief in a court of law.

Twenty years after initial occupancy, a housing company may “dissolve” and reconstitute as a private for-profit entity resulting in the end of DHCR supervision and the moderate income restrictions of the PHFL.

### **Mitchell-Lama Issues**

There are significant issues facing the Mitchell-Lama housing portfolio. Market forces and overly burdensome regulatory requirements act as incentives to dissolution. For those housing companies that remain in the portfolio, a significant infusion of capital is often necessary to upgrade aging building systems.

However, even for those housing companies that can obtain such capital, the regulations can impede a major redevelopment plan. A typical plan requires the project to participate in multiple funding programs that must be administered in tandem by multiple agencies. Each of these programs has its own regulatory requirements which may duplicate or conflict with the extensive and detailed requirements of the Mitchell-Lama program.

While at its inception the Mitchell-Lama portfolio was relatively homogenous and could be supervised in a uniform manner, this is no longer the case. Some projects are now efficiently run and need minimal supervision, while others require closer monitoring. For example, at some cooperative developments, shareholders have sought additional profit through illicit transfers to new residents irrespective of their income limitations and waiting list procedures. In other developments, cooperative and rental alike, there have been instances of self dealing by managing agents with respect to housing company contracts for services and capital work (“identity of interest” or “IOI” contracts) which, while otherwise necessary for a project’s efficient operation, requires significant monitoring to assure fair prices and the appropriate selection of vendors and contractors.

## **Why Amend the Regulations?**

The regulations were first promulgated in 1965 and since then have not been subject to comprehensive review. Entitled “Management Manual,” they are filled with detail on the minutiae of property management, unrelated and irrelevant to actual regulatory requirements of the Mitchell-Lama program. DHCR has now undertaken such a review and determined that the regulations need to be revised and updated to accomplish the following:

- implement contemporary management and supervisory models, reflect DHCR’s actual best practices, and conform to current statutory amendments and judicial decisions;
- remove provisions that impose unnecessary burdens on owners, which may have served to encourage them to exercise their right to dissolve and leave the Mitchell-Lama program;
- reflect a firmer basis for focusing supervisory resources on developments and items where DHCR, based on its experience, has determined that supervision is most needed; and,
- avoid unnecessary and duplicative supervisory practices in order to accommodate modern preservation and redevelopment plans which involve multiple subsidy programs administered in tandem, thereby encouraging owners to undertake plans to preserve the stock of affordable housing.

## **Amendment Goals**

Based on the above findings, DHCR developed the proposed amendments in order to:

- Eliminate unneeded regulation;
- Streamline procedures;
- Reflect contemporary and best agency practices;
- Conform to recent legislation and judicial decisions;
- Strengthen DHCR’s enforcement capability;
- Lessen the regulatory burden on housing companies while focusing DHCR supervision on problem areas, and
- Encourage preservation of the portfolio as affordable housing.

## **Amendment Highlights**

### **1700 - Scope and Definition Provisions**

- Add more definitive standards governing “waivers” of the regulations. (1700.5)
- Add a provision allowing DHCR to take equitable considerations into account when making its supervisory determinations. (1700.7)

- Allow modifications to eliminate duplicative supervisory functions by other governmental agencies, in accordance with a recent amendment to the Mitchell-Lama Law (1700.6)
- Remove original construction and design standards and delete references to the regulations as a “manual.”

#### 1725 – General Administration

- Clarify regulations governing identity of IOI contracts. (1725-6.1(a) and (b))
- Prohibit a mutual housing company (cooperative) board member from voting on a managing agent’s contract, for two years after the agent has employed a family member of that board member (1725-6.1(c))
- Strengthen prohibitions on unauthorized payments to and from directors, including payments under any contract in which the housing company is a party (1725-6.2)

#### 1727 – Occupancy

- Incorporate references to DHCR’s centralized computerized waiting list system, known as the Automated Waiting List (“AWL”), which enables improved screening and monitoring of applicants. (1727-1.1(a))
- Require applicants to be eligible at both time of application and admission to a development and require that at least one original, adult applicant be a member of the family at the time of admission. (1727-1.1(b))
- Reduce the occupancy preference given to internal transfers from 80% to 75% of admissions. (1727.1.3(a))
- Codify existing policy waiving DHCR pre-approval for new admissions in housing developments where there is less than a one-year waiting list and a history of housing company compliance. (1727-1.3(m))
- Add a new prohibition against warehousing apartments. (1727-1.5)
- Eliminate the need for DHCR pre-approval for the majority of commercial leases. (1727-6.2)
- Increase the partial income exception regarding the calculation of admission and surcharges for “secondary wage earners.” (1727-2.3(d))
- Revise standards for determining permissible household size by removing references to gender, age, and marital status (1727-2.8)
- Permit a housing company to (a) upon proper notice of termination and, if applicable, opportunity to cure, go directly to court to seek eviction of residents not entitled to occupancy, and (b) accept rent when a “succession” appeal is pending before the Division without waiving its objection to the tenant’s possession (1727-5.3)

#### 1728 – Budget and Fiscal

- Reduce the time period for DHCR review of housing company budgets in connection with a rent increase application. (1728-1.2(a)(2))
- Eliminate the need for full budget review where the rent increase requested by a housing company is less than the Consumer Price Index (CPI). (1728-1.2(a)(4))

#### 1728-4 – Purchases and Contracts

- Reduce the number of required bids for purchase contracts while ensuring that minority- and women-owned businesses are included in such bidding process (1728-4.1(a)),
- Raise the minimum contract amount requiring prior DHCR approval from \$15,000 or \$30,000 to \$100,000 (1728-4.1)
- Forestall the requirement for DHCR approval of progress payments on contracts until 75% of the contract has been paid. (1728-4.3(e))
- Require purchases and contracts for occasional repairs and maintenance (plumbing, painting, etc.) which exceed \$100,000/annum to be competitively bid, even if broken up into smaller contracts. (1728-4.4)
- Require all IOI contracts to obtain prior DHCR approval. (1728-4.7)
- Enable DHCR to impose more stringent supervision on any contract, or category of contract, upon a determination that such additional supervision is necessary. (1728-4.8)
- Allow less stringent provisions for approval of contracts arising from preservation agreements or private mortgage refinancings. (1728-4.10)

#### 1729 – Project Management

- Remove the requirement that a managing agent be selected through competitive bidding, if the selection is part of a housing company preservation plan. (1729-1.2(c))
- Allow managing agents to automatically renew their contracts and increments in fee, upon housing company concurrence but without DHCR approval, if certain performance standards have been met. (1729-1.2(k))
- Consolidate existing remedies and add new remedies allowing DHCR to address recalcitrant management. (1729-1.5)

#### 1750 – Dissolution

- Clarified to address the effects of “reconstitution” by housing company (1750.2)
- Require that a housing company give tenants immediate notice of any dissolution application. (1750.3)
- Require housing company to submit a title search with any dissolution application. (1750.3(b)(8))

#### 1760 – Redevelopment and Refinance

- Codify procedures for housing companies to obtain DHCR approval for new financing (1760-2 et. seq.)
- Enable a fast-track exception to obtaining DHCR’s approval for refinancing when the new lender is a governmental source with its own loan underwriting criteria. (1760-1)