



**ANDREW M. CUOMO**  
Governor

**RUTHANNE VISNAUSKAS**  
Commissioner/CEO

**OFFICE OF INTEGRATED HOUSING MANAGEMENT MEMORANDUM #2021 – B – 8**

**To:** All Limited Profit and Limited Dividend Housing Companies  
Owners, Managing Agents & Site Managers

**From:** Cathy Sparks, Co-Director  
Office of Integrated Housing Management

**Date:** July 19, 2021

**Subject:** Primary Residence Requirements During COVID-19 Pandemic Period

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The New York State Division of Housing and Community Renewal has received multiple inquiries as to the interplay of the regulatory requirement that Mitchell-Lama residents use their apartments as their primary residence and absences related to the recent COVID-19 pandemic. Housing companies must consider absences by Mitchell-Lama residents between March 20, 2020 and the July 1, 2021 (“Pandemic Period”) as COVID related and not treat them as a violation of the requirement that such apartments be used as a primary residence.

**BACKGROUND**

DHCR generally requires as part of their approved leases that residents use their Mitchell-Lama apartment as their primary residence.

DHCR regulations further provide that a failure to use the apartment as a primary residence is a ground for eviction. (9 NYCRR § 1727-5.3 (a) (12)) The validity of the ground is then to be determined by a court of competent jurisdiction and the failure to use the apartment as a primary residence has been held to be non-curable.

Although the violation of this regulation is determined by a court of competent jurisdiction, DHCR has generally provided guidance in various contexts for defining primary residence. These often include occupancy for at least 183 days each year. DHCR succession regulations (9 NYCRR § 1727-8.2) do note however, in the context of determining succession claims of family that there may be a period of excused absences. These succession regulations require remaining family members, in order to claim the apartment as their own, (when the tenant of record dies or leaves) to have been in occupancy for a specific period of time as the family member’s primary residence for a set period

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with the former tenant of record. However, that occupancy period may be interrupted for a variety of circumstances in addition to others that DHCR may consider appropriate.

This kind of rule, where there can be excuses for the absence of family members needs to be applied for the Pandemic Period to more than assessments of succession rights and must be applied to tenants of record as well. 9 NYCRR § 1700.5 of the DHCR regulations specifically authorize the implementation of alternative procedures where it is in the interest of the housing company, the public, the lien holders, or the tenants or where the application of requirement may not affect undue hardship.

Therefore, DHCR directs housing companies to recognize as legitimate, periods of absences for the named leaseholder/tenant of record as well as family members. This recognition will be not just for succession purposes, but for also assessing the primary residence to allow continued occupancy of tenants of record and their family members for the Pandemic Period.

Over the course of the pandemic, for medical reasons, care for other family members, or other work, health or family reasons, many tenants have been required or placed in the position of leaving their respective Mitchell-Lama residences for extended periods. These absences may have been the appropriate option based on a series of difficult choices which the pandemic has compelled many to make. Neither DHCR nor any housing company should make these Pandemic Period choices any more difficult by making inquiry to second guess, examine, or request a rationale for absences during this Pandemic Period.

Accordingly, all housing companies shall assess and view periods of utilization of other residences during the Pandemic Period through that lens and consider them as COVID-19 related. Accordingly, any absence during the Pandemic Period should not be considered a failure to use the Mitchell-Lama apartment as a primary residence even if those absences were more than 183 days in any given year. Further, no housing company should make any inquiry as to the reason for these absences.

Very Truly Yours

A handwritten signature in cursive script that reads "Cathy Sparks".

Cathy Sparks

cc: D. Murphy, M. Stratos, S. Melnitsky, V. Ramos