

# **RIGHTS OF MITCHELL-LAMA CO-OP SHAREHOLDERS**

The rights of Mitchell-Lama co-op shareholders arise from a complex set of laws, regulations and the individual co-op's corporate documents.

Mitchell-Lama co-ops are formed under Article 2 of the Private Housing Finance Law ("PHFL").

The PHFL, the Business Corporation Law ("BCL"), the Real Property Law ("RPL"), and NYS Division of Housing and Community Renewal ("DHCR") and NYC Department of Housing Preservation and Development ("HPD") regulations and the court's interpretations of these statutes and rules, together with the Co-ops Certificate of Incorporation, Proprietary Lease, By-Laws and House Rules are the primary sources of shareholder rights and obligations. The Multiple Dwelling Law and the New York City Housing Maintenance Code additionally require cooperative corporations to maintain the premises in good repair.

The rights of shareholders under state and city laws include, among others:

The right to occupy the apartment in accordance with the terms of the proprietary lease;  
The right to a habitable apartment (warranty of habitability under RPL Section 235B);  
The right to "quiet enjoyment" of the apartment and all public areas and facilities;  
The right to expect common areas to be maintained in appropriate condition;  
The right to receive an annual financial statement (BCL Section 624);  
The right to a list of all shareholders (BCL Sections 607 and 624);  
The right to inspect minutes of all shareholder meetings (BCL Section 624);  
The right to receive notice of the annual shareholder meeting and to participate and vote in it (BCL Section 602);  
The right to receive services and use facilities available to all other shareholders in a non-discriminatory manner.

## **RIGHTS UNDER THE DHCR AND HPD REGULATIONS**

The HPD and DHCR regulations create rights in addition to a cooperator's rights under the statutes and case law. Among these rights and/or benefits are the following:

Under both DHCR and HPD rules, you have the right to have a family member succeed to the apartment if you move or die, if your apartment has been their primary residence and they have appeared on your income affidavit for the two prior years (one year in the case of an elderly or disabled person).

The HPD rules provide the following rights and/or benefits:

1. Except in the case of a HUD refinanced project, you have the right to a public hearing before a carrying charge increase—Section 3-10(b)(1);
2. No application for a maintenance increase can be entertained less than two years after the last increase—Section 3-10(b)(2);
3. Board members are required to provide the most economical operation of the project without endangering its long-term interest—Section 3-14(d)(4);
4. Board members are required to "be aware of and responsive to tenant/cooperator grievances" —Section 3-14(d)(5);
5. There must be a shareholder vote to approve any proposed capital assessment—Section 3-14(f);
6. A "tenant/cooperator" is authorized to "audit the books of the housing company . . ." —Section 3-17(b)(3);
7. The operating budget and financial statements must be "be supplied to shareholders" —Section 3-17(b)(4);

8. “The housing company or its managing agent shall not unreasonably withhold permission for use of the development’s community space from its residents” —Section 3-17(d);
9. There is a right to an administrative hearing, except in the case of non-payment of maintenance, before any eviction proceeding is brought—Section 3-18(a).

The DHCR rules provide the following rights and/or benefits:

1. Board members must insure that “the annual operating expenditures are spent effectively and economically”—Section 1725-2.1;
2. “Board members should . . . involve themselves in tenant activities . . . [and explain] the board’s position on matters of mutual interest”—1725-2.3;
3. “A copy of the minutes of each meeting” must be forwarded to DHCR within 10 days—1725-3.5. Presumably, shareholders can make a FOIL request to review these minutes.
4. Tenant files must be maintained and include leases”—1725-5.2;
5. A new rule is “not effective as to such cooperator” until “it actually appears in a lease or occupancy agreement with said . . . cooperator”—Section 1727-3.6 and Leases cannot exceed three years in duration—Section 1727-3.2;
6. There is a rent determination procedure for maintenance increases which involves notice to cooperators, an opportunity to comment, and “access on the part of . . . cooperators or their representatives to the financial records of the company”—Section 1728-1.2.

## **ASSEMBLE AND REVIEW YOUR GOVERNING DOCUMENTS**

Although the PHFL and the DHCR and HPD rules, as well as the BCL, lay out a number of specific requirements, as well as the duties and responsibilities of directors and officers, the first place to look to see if a particular situation is covered is your building’s by-laws, your proprietary lease, and house rules. These are important documents that you should keep in a convenient location and refer to when questions arise.

**BY-LAWS:** The by-laws state when annual shareholder meetings and elections to the board of directors are held, how notice is given, how to call a special meeting, the procedures for amending the by-laws, how to recall directors, and the quorum for voting and holding meetings.

**PROPRIETARY LEASE** (Occupancy Agreement, Agreement of Lease, etc.): The proprietary lease spells out who may occupy the apartment, the co-op’s and shareholder’s repair obligations, maintenance charges and how they are set, amending the Proprietary Lease, etc.

## **RESEARCHING THE LAW**

If you think a question may be covered in the PHFL or BCL, look up the statutory language. You can review these statutes as follows:

1. Do a Google search for NYS Assembly;
2. Click on “Bill Search and Legislative Information”;
3. Click on the right side of page “New York State Laws”;
4. Scroll down the page and click on “PVF” for the Private Housing Finance Law and on “BCL” for the Business Corporation Law;
5. In the Private Housing Finance Law, click on “Article 2” for Mitchell-Lama statutory provisions.

To review the DHCR or HPD rules, go to the CU4ML website ([cu4ml.org](http://cu4ml.org)) and click on the rules for the agency that supervises your development.

# WHAT SHOULD YOU DO WHEN YOU HAVE A PROBLEM?

Always keep a record of all written, in person, and telephone communications and make sure they are dated and, if oral, to whom you spoke.

The first step is to make a polite request, in writing, to ask for the information you need or the resolution of a problem.

If there is no response to your first request, send a second one and include a copy of the first. You can “cc” the supervising agency (HPD or DHCR) on this second request if the matter lies within their jurisdiction. If management or the board does not answer or you think the answer is incorrect, write to the supervising agency and enclose copies of your requests to management or the board.

Be as specific as possible when writing to the supervising agency regarding what you want them to do. For example, ask that they send a letter to management or the board pointing out that they must, for instance, post the waiting list in the Management Office in an HPD supervised project.

In some cases a more political approach might be effective. The by-laws detail how shareholders can petition for a special meeting and propose amendments to the by-laws. Even if you think an attempt to change the by-laws will not succeed on the first try, this effort can lay the groundwork for future success because it helps organize cooperators and induces them to discuss the problems that generated the proposal to change the by-laws.

Try to word the by-law amendment you propose as simply as possible and organize others to help you gather the signatures needed to petition for a Special Meeting of Shareholders. Also, include in the petition a date, at a reasonable time in the future, by which the Special Meeting must be called. Be sure you look up the following in your by-laws:

1. The number of valid signatures you need to call a Special Meeting of Shareholders;
2. The notice requirements for a Special Meeting;
3. The quorum requirements for your co-op (it could be a majority or one-third of all shareholders or some other percentage);
4. Whether you need a majority or some other percentage of the quorum to gain approval of the proposed by-law.

## **FOIL REQUESTS (Freedom of Information Law Requests)**

Public agencies, like HPD, DHCR, HUD, and NYSERDA, etc., are required to provide public records to members of the public upon request.

Some agencies will allow you to view and copy the documents in their offices, while others will send you copies of the documents you request if you pay the cost of reproduction, which is sometimes waived if the document is short. To make such a FOIL (“Freedom of Information Law”) request, look up on-line or phone the Agency and find out the name of the Records Access Officer and the address of the agency.

Write to the Records Access Officer and be as specific as possible about which documents or records you are seeking.

Examples of information that you can get include:

- All comments submitted to the Attorney General in relation to your co-ops Red Herring;
- The budget that your board used to get approval for an increase in maintenance;

- Correspondence between the Sponsor and Attorney General including copies of the deficiencies letters and ‘black lines’;
- Names of people on your buildings waiting list;
- Correspondence between your co-op and HPD or DHCR that is not about a specific shareholder.

An example of a FOIL request format you can use is:

<p>Your Name  Address  Phone Number</p> <p>Name of Records Access Officer  Name of Agency  Address of Agency</p> <p>Date</p> <p>Re: Freedom of Information Law (“FOIL”) Request relating to (whatever records you want—be as specific as you can be, for example, Records or documents relating to a NYSERDA Loan to Name of Development.)</p> <p>Dear _____:</p> <p style="padding-left: 40px;">I am requesting any documentation or records that evidence information relating to the following:  A NYSERDA loan made to XYZ, a Mitchell-Lama housing development located at _____.</p> <p style="padding-left: 40px;">I am most grateful for your assistance in this matter.</p> <p style="text-align: right;">Sincerely yours,</p>
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Addresses of the FOIL Officers at most of the relevant agencies are available on pages 13-15 of the “Guide to Mitchell-Lama Preservation” on the CU4ML website: [www.cu4ml.org](http://www.cu4ml.org)

## ACRIS

ACRIS, the on-line Automatic City Register Information System, has a wealth of information about your building, including deeds, mortgages, liens, etc. Go to CU4ML’s webpage and follow the directions to use this invaluable resource.