



**Cooperators United for Mitchell-Lama**  
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## **Preserve Affordable Mitchell-Lama Cooperative Housing** **Recommendations from Cooperators United for Mitchell-Lama**

Cooperators United for Mitchell-Lama (CU4ML) is a membership organization comprised of Mitchell-Lama cooperators (resident-shareholders) from around the City who are committed to preserving quality limited-equity cooperative housing developments, in perpetuity, for both themselves and for future generations of New Yorkers. To this end we urge the immediate enactment of the following policy and legislative agenda:

### **CU4ML'S HOUSING POLICY AND LEGISLATIVE AGENDA FOR 2014**

- 1) **Protect affordable Mitchell-Lama cooperative developments from privatization by enacting legislation to prohibit the dissolution and/or reconstitution of any mutual company organized under Article II (Mitchell-Lama section) of the Private Housing Finance Law (PHFL) ;**
- 2) **Rescind Section 3-14(i)(15) of the NYC Housing Preservation and Development (HPD) rules that allow Mitchell-Lama cooperatives to withdraw from the Mitchell-Lama Program and reconstitute as much less affordable Article XI coops.**
- 3) **Strengthen City and State agency rules that protect current shareholders and those on the waiting lists for these developments from loss of affordability, and strengthen the power of the supervisory agencies to enforce these rules;**
- 4) **Require HPD and NYS Department of Housing and Community Renewal (HCR) to implement Section 31-b of Article II of the PHFL which would allow purchasers of ML coops to get low interest mortgages or secured loans to purchase their apartments;**
- 5) **Provide low-interest loans to Mitchell-Lama cooperatives and other affordable housing developments for infrastructure maintenance and capital repairs, and;**
- 6) **Construct more affordable housing using the successful model that Mitchell-Lama coops embody.**

### **NEW YORK CITY AT A CROSSROADS**

There is an urgent need to examine all of the factors that contribute to rising income inequality and that threaten the health of New York City and New York State. One of the underpinnings of a viable New York is affordable housing which is an essential foundation for stable, thriving, diverse neighborhoods. Today, just as when Mitchell-Lama housing was first conceived in the aftermath of the Great Depression and World War II, there is an acute shortage of decent, affordable housing. This threatens the very character of New York City as a diverse city of opportunity, as a center of innovation and creativity, and as a destination city founded on a hard-working and talented population and a broad middle class.

***More than 4,100 units of Mitchell-Lama cooperative housing have been lost to privatization and the remaining 63,398 units are under threat of going private and/or becoming unaffordable to the moderate-income New Yorker for whom they were intended.***

***Mitchell-Lama cooperatives can and must be preserved for generations to come.***

It is the mission of Cooperators United for Mitchell-Lama to preserve and protect these valuable community assets. Permitting the destruction of existing Mitchell-Lama (ML) cooperative housing developments created and supported over decades by tax dollars so that the already lucky recipients of affordable housing can make a windfall profit when they no longer want or need to live in these developments is terrible public policy and just plain wrong.

### **Background Information: The Mitchell-Lama Coop Success Story:**

Limited-equity cooperative housing – which includes Mitchell-Lama cooperatives -- is the best model of affordable housing for moderate- and middle-income New Yorkers. The program works because:

- 1) Mitchell-Lama cooperators (owners/shareholders) pay well below market-rate (limited-equity) to purchase their coop, thus avoiding high monthly mortgage payments;
- 2) The developments are exempted from paying real estate taxes and instead pay the much lower Shelter Rent Tax, keeping monthly charges low;
- 3) Mitchell-Lama rules allow for the imposition of a surcharge on owners whose income exceeds the ML limits, adding to operating funds and further subsidizing the affordability of these developments;
- 4) In many developments, government-sponsored building mortgages have better terms than regular bank mortgages, and low-cost government loans for repairs and improvements have also been available to help maintain affordability.

Other benefits that ML cooperators enjoy include the ability to easily move within the development as their family composition changes—for example, moving from a one-bedroom to a two-bedroom when a child is born, or to a three-bedroom when more children are born or when an aging parent moves in—then back to a smaller apartment when the children are off on their own and the cooperator wants to save money by downsizing in their retirement. ML coops are protected either through supervision by the State HCR or the City HPD with extensive rules that spell out occupancy standards, income ranges, succession rights, etc.

When the owner leaves -- usually when they die and have no successor to the apartment since very few voluntarily give up this extraordinary deal -- they get their “limited-equity” back and the next moderate-income family is called from the government-supervised waiting list.

**It is important to note that the original Mitchell-Lama legislation in 1955 had *NO PROVISION* for converting affordable Mitchell-Lamas to market-rate housing. Amendments to Mitchell-Lama rules that allowed developments to withdraw from the ML Program under certain circumstances and after a certain number of years were apparently intended to spur the development of Mitchell-Lama *rentals*.**

**These changes/amendments to the law, intended to encourage developers to build rental units, should never have applied to or included Mitchell-Lama cooperatives.**

## **Threats to Affordable Mitchell-Lama Cooperative Housing:**

The main threat to affordable Mitchell-Lama housing is the enticement of a personal windfall profit to current shareholders through a vote to withdraw from the Mitchell Lama program, either by becoming a market-rate coop or, in City supervised developments, by converting to an Article XI coop. As this possibility has lingered over decades, capital repairs required for the upkeep of the now-aging infrastructure as well as current energy saving recommendations have been sorely neglected and day-to-day operating funds have been diverted into privatization campaigns and resulting legal challenges.

### **1) THE THREAT OF WITHDRAWAL FROM THE ML PROGRAM TO CONVERT TO MARKET RATE**

Privatization (withdrawing from/buying out of the ML program) is sold to ML shareholders with the promise that *“we’ll all get rich, no one will be hurt, and rich people will move in to pay for all our needed repairs.”* Nothing could be further from the truth. Although ML rentals have been lost at far greater numbers, so far, by our records, we have lost 8 cooperatives with more than 4,100 units, leaving 88 coops with 63,398 apartments in need of protection. Lost coops are:

Name	Year lost	Borough	# of apartments	
Anthony J Contello	1989	Brooklyn	326	HPD
La Fontaine	2002	Brooklyn	48	HPD
Contello Towers III	2007	Brooklyn	160	HPD
Trump Village III	2007	Brooklyn	1,674	HCR
Trump Village IV	2007	Brooklyn	1,146	HCR
Forest Park Crescent	2008	Queens	240	HPD
Columbus Park Towers	2008	Manhattan	162	HPD
Rivercross	Voted to withdraw in December 2013	Manhattan	364	HCR

To leave the ML Program a cooperative must withdraw from the Program by “buying out” – paying off any government sponsored mortgages and then paying regular real estate taxes. Families on the development’s waiting list are out of luck as the purchase price increases dramatically, and the monthly maintenance costs double or triple because of the much higher taxes and debt service costs. Owners who no longer need or want their affordable housing stand to make a windfall profit. Those of moderate means who want to stay may no longer be able to afford to do so. The families for whom ML coops were intended are priced out.

### **THE FLIP TAX MYTH**

The privatization road map allows for the imposition of a ‘flip tax’ – as much as 45% of the outgoing owner’s windfall profit. This unreliable and highly speculative source of income is touted as the way to offset the dramatic increases in tax and debt service costs, to make up for the loss of surcharge income, and as an illusory promise to fund needed capital repairs.

Most flip tax projections (in those buildings that have considered privatization) are based on transfer rates that have never been the reality in the development before but that, conveniently,

project transfer rates and sale prices that cover the anticipated increases in costs and all of the buildings needed capital repairs. The idea of privatization is sold in this way—that higher income people will move in, current residents will not have to pay more to continue to live in the building, and flip taxes will pay for needed repairs. According to our research this is not the reality. While some privatized buildings have gotten away with significant warehousing of apartments prior to conversion which has delayed increases in costs to current owners, other developments are being hit with big maintenance increases.

Mitchell-Lama cooperatives should never have been included in the legislative amendments to the law that allowed for developments to leave the Program. It is long past time to take back the option to privatize by amending the PHFL to prohibit the dissolution and/or reconstitution of any mutual company organized under Article II. Suggested legislative changes are below:

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

*Section 1. Subdivision 2 of section 35 of the private housing finance law as amended by chapter 229 of the laws of 1989 is amended to read as follows:*

*2. A company, other than a mutual company, aided by a loan made after May first, nineteen hundred fifty-nine, may voluntarily be dissolved, without the consent of the commissioner or of the supervising agency, as the case may be, not less than twenty years after the occupancy date upon the payment in full of the remaining balance of principal and interest due and unpaid upon the mortgage or mortgages and of any and all expenses incurred in effecting such voluntary dissolution. In the case of a mutual company aided by a loan made after May first, nineteen hundred fifty-nine, voluntary dissolution without the consent of the commissioner or of the supervising agency is permitted only after its municipal tax exemption, and any grant of an extension thereof, shall have expired. [which will be in 2055]*

## **2) THE THREAT OF HPD RULE §3-14(i)(15) - CONVERSION OF ML TO ARTICLE XI:**

In 2011 the City HPD, in collaboration with the NYC Housing Development Corporation (HDC), came up with what CU4ML considers a terrible public policy mistake that would significantly reduce the affordability of ML cooperative housing if adopted by a development. Slipped into an HPD rule change, without public comment, was HPD's Article XI conversion regulation §3-14(i)(15) that allows for conversion of ML coops (Private Housing Finance Law Article II coops) to PHFL Article XI coops—also known as HDFC or Housing Development Fund Companies. Apparently the idea was to dissuade ML shareholders from pursuing full market-rate privatization by allowing them to make a windfall profit—albeit not as big of a profit as with market-rate conversions—by withdrawing from the ML program and reconstituting under Article XI.

Prices of the apartments would increase dramatically. The cost for initial purchase, for example for a two-bedroom apartment, would go from about \$29,000 to about \$250,000, with the windfall profits going mostly to the long-subsidized outgoing shareholder and the remaining going into the building repair fund. The ML waiting list would be eliminated and HPD supervision would be lessened as the building Board would assume greater power. While ML coops are governed by

extensive rules and regulations that protect shareholders and those on the waiting list, no such rules exist for Article XI coops.

Although HPD and HDC said that they believed that Article XI coops would still be “affordable” housing—targeted to some of the same families as Mitchell-Lama developments—those on the lower ranges of eligibility for ML coops would be priced out. Those on the higher end would be still be eligible to purchase one of these “affordable” apartments but would likely have to take a mortgage and would have monthly housing costs that are double or triple those of the current ML residents.

It is absurd public policy to take the most affordable ML coops and make them so much less affordable so that people who don’t want to or need to live in these developments anymore can walk away with a great deal more money than their accumulated equity.

In the ultimate irony, the plan is to allow these developments to continue to be exempted from regular real estate taxes. Imagine the chagrin of a family kicked off the waiting list at a former ML coop that converted to Article XI, no longer able to afford their dream but whose tax dollars continue to subsidize those who will get the windfall profit when they sell.

If the City refuses to rescind this rule, then coops that withdraw from ML and convert to Article XI should not be eligible to receive Shelter Rent Tax. **Shareholders should choose—either take a windfall profit or continue to receive the tax abatement—but NOT BOTH.**

Contrary to HPD and HDC’s idea that this would persuade coops to abandon privatization efforts, the *only* coops considering this option are the ones in which *privatization was either defeated or in which the coop could not garner enough interest to pursue it.*

**It is important to note that Article XI has been used extremely successfully in converting abandoned building and rental properties into a range of affordable coops and CU4ML strongly encourages the continuation of these types of Article XI coops.** Some problems have been noted because of the lack of rules and regulations governing Article XI coops and some efforts are underway to correct problems—and ironically—develop better rules and regulations like those that exist for ML coops. These reform efforts should continue and, someday, hopefully, they will lead to a better Article XI structure. In any event, §3-14(i)(15) of the HPD rules should be rescinded to keep Mitchell-Lama coops affordable to moderate-income New Yorkers.

### **3) THE THREAT OF GROWING EQUITY COSTS AND CAPITAL REPAIR NEEDS IN AGING COOPS**

Initial ML shareholders purchased their apartments for a few thousand dollars. Over the years they have paid amortization (funds each month toward the building mortgages) and, in some buildings, assessments for repairs. When a shareholder leaves they get back the original equity, the amortization, and the equity assessments from the next incoming shareholder. In some buildings, a “double equity” assessment is made on the incoming shareholder, with the ‘double’ part going to building repair funds. This “First Sales Capital Assessment” program was developed and promoted by HPD and has been implemented in some City ML buildings.

Instead of being able to purchase a ML coop for \$3,000-\$25,000, new shareholders now pay \$40,000-\$80,000 or more in some buildings. This initial purchase price will continue to rise as developments pay down their building mortgages. It is increasingly difficult for incoming moderate-income New Yorkers to come up with the cash needed for the purchase. Families are stuck when they cannot get a secured loan or mortgage for these higher purchase prices. Although personal loans are theoretically available, in reality they are often too expensive and/or difficult to obtain. Many who finally get called from the waiting list have to decline the apartment because they cannot come up with the cash.

**Section 31(b) of Article II (Mitchell-Lama) of the Private Housing Finance Law mandates the City and State to generate regulations that would allow a purchaser of a ML apartment to get a mortgage or loan using their apartment as collateral. HPD and HCR must generate these rules so that moderate-income families being called off the waiting list for an apartment will be able to afford it.**

In a related area, most ML cooperative developments were constructed in the '60's and 70's and are now in need of capital repairs and improvements. These threaten the affordability of the housing.

Concerns about the cost of repairs in the aging ML developments have sometimes been the impetus for talk of privatization or conversion to Article XI coops. Funding big repair jobs can be a challenge to the budgets of the lower income shareholders and those interested in privatizing use this to sell people on the idea that flip taxes can be used to pay for repairs so that current residents do not have to pay anything. Of course, the numbers don't add up when any collected flip taxes will be needed to offset higher taxes and debt service costs and to replace the lost surcharge income.

A better plan was implemented in 2004 when the Mayor announced an incentive program to encourage both ML rentals and coops to stay in the Program. Refinancing with highly favorable terms and grants for capital repairs were offered if the development agreed to stay in the program for a minimum of 15 years. Repair loans were also made available for those who stayed in the program for the life of the loan. Many took advantage of these incentives and are "safe" until at least 2019. **If privatization and Article XI conversions are taken off the table and long-term, low-cost loans are made available, the governing bodies in these coops can turn their undivided attention to the preservation of this housing for current residents and for future generations.**

#### **4) CITY AND STATE REGULATION CHANGES**

Until legislation is passed in Albany that bans the privatization of Mitchell-Lama cooperatives and until HPD rules allowing conversion to the less affordable Article XI are rescinded, the following rule and regulation changes should be put into place:

- a) Prohibit the use of a coop's operating funds for any expenses related to withdrawal from the ML Program. Require, instead, a **special assessment** approved by a 2/3 shareholder vote for any funding to be used to develop a Feasibility Study or an Offering Plan (Red Herring/Black

Book) to pursue privatization or a Proxy Statement to pursue conversion to Article XI. These expenditures have cost ML coops hundreds of thousands of dollars (or more) and have too often given coop boards favoring privatization a blank check to pursue their agenda while diverting funds from needed repair and improvement projects.

- b) **Prohibit proxy voting** in any cooperator vote related to withdrawal from the Program or funding of the process. The use of proxies has been very problematic in ML coops, allowing intimidation and corruption in collecting proxies and giving an easy way for those who are skirting ML rules (illegal sublet, non-primary residence) to vote to privatize.
- c) Enact regulatory reform **to institute best practices** for State and City supervising agencies (HCR and HPD) to ensure enforcement of uniform rules and regulations across the housing terrain in order to protect current shareholders, those on the wait list (or who would like to be), afford an open and transparent process and guarantee full disclosure of costs and risks of withdrawing from Mitchell-Lama. In particular, HPD has worked to make the process of exploring privatization and developing a privatization plan a more open and transparent one, and these rules need to be adopted by HCR to cover State-supervised ML coops.
- d) Demand more **consistent enforcement** of waiting lists, primary residency requirements, subletting restrictions and succession rights. The agencies should take appropriate action and intervene when a coop Board of Directors is defying ML rules or their building's own by-laws.

## 5) **THE NEED FOR MORE ML COOPS AND RENTALS**

Cooperators United for Mitchell-Lama members know just how lucky we are to have an affordable place to live in New York City. We believe that we should be good stewards of these valuable community resources and work to develop more of them.

ML coops are the most affordable because they do not rely on the faulty HUD formula and standard of 30% of gross income equals "affordable housing". It is interesting to note that under FDR this standard was to pay 20% or less for affordable housing. This was raised to 25% under Nixon and to 30% under Reagan. Unfortunately, most low-, moderate-, and middle-income families, especially in expensive New York City, don't have enough left over to pay for everything else when 30% of their gross income goes to housing. Families in ML coops pay closer to the FDR range—and the beauty of ML coops is that those whose incomes exceed the limits for the building pay a surcharge that helps maintain the affordability of the development.

We believe that the notion that we cannot develop more ML cooperatives because there is no land available is false. It is possible to utilize the current Mitchell-Lama statute—Article II of the Private Housing Finance Law—for new construction and conversion of existing rental properties to Mitchell-Lama co-ops and not-for-profit/limited-profit Mitchell-Lama rentals. These new developments should not have the ability to withdraw from the Program but, rather, should remain affordable in perpetuity. Such new construction of Mitchell-Lama co-ops and not-for-profit/limited-profit sponsored rentals will require:

1. Cheap Land— The identification of sites for new developments, for example, a portion of the Brooklyn Navy Yard, the West Side Rail Yards, Roosevelt Island, etc., should be undertaken

immediately. Likewise, Scott Stringer's 2007 Survey of Underutilized Properties in Manhattan could be a model for all boroughs to identify such properties and tax them at a high rate while they are underutilized.

2. State and City Financing of New Mitchell-Lamas at the State and City's Cost of Borrowing— Long term, low interest rate loans from the state and City to develop new Mitchell-Lama co-ops and not-for-profit/limited-profit sponsored rentals could be made available now that these governments' bond ratings are high and interest rates are low.

**PAYING IT FORWARD:**

CU4ML members know we are some of the luckiest New Yorkers. Because of our the tax breaks and low interest loans from the government, we, unlike so many others, have an affordable place to live in the greatest city in the world. Each month after we pay monthly charges calculated to cover what it actually costs to operate and maintain our cooperatives, we have money in our pockets that we would not have if we were paying market-rate for our apartments. Some of us use every penny of these savings just to survive. Some of us have been able to do and accomplish things that would have been impossible if we did not have an affordable place to live.

We are grateful for our affordable housing.

We want to preserve this housing for the next generation.

We would like to see more Mitchell-Lama cooperative housing developed so that more New Yorkers can have what we have.

We urge those who favor the preservation and development of affordable housing to help us move this affordable housing agenda forward.

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