

A GUIDE FOR SAVING MITCHELL-LAMA COOPERATIVE HOUSING

CU4ML

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The members of Cooperators United for Mitchell-Lama are resident shareholders of Mitchell-Lama/Limited-Equity cooperatives who are committed to preserving quality limited-profit housing cooperatives, in perpetuity, both for themselves and for future generations of New Yorkers.

To further this mission, we will:

INFORM and assist shareholders who oppose conversions to market rate (sometimes referred to as “privatization.”)

ADVOCATE for legislative and regulatory reform that will preserve and strengthen Mitchell-Lama cooperatives.

EDUCATE Mitchell-Lama residents, government officials, and the general public about the stunning success and many advantages of the Mitchell-Lama model for cooperative living.

If you own a Mitchell-Lama cooperative apartment you have one of the very best housing deals in all of New York City!

You own your own apartment for which you paid well below the market-rate, and, each and every month, even if you are paying the maximum surcharge, you are receiving government subsidies that make your monthly charges well below regular co-op costs for your neighborhood.

Your Mitchell-Lama co-op is doing exactly what the Mitchell-Lama Program intended—it is allowing moderate- and middle-income families to afford to live in the City.

Created by the New York State legislature in the 1950's to correct the extreme shortage of housing for middle-income New Yorkers the Mitchell-Lama (ML) Program contained incentives for the development of rental and cooperative housing.

There was NO provision in the original legislation for any of the developments to ever change from subsidized housing for those of moderate and middle-income to market-rate housing for the more well-heeled. 'Privatization'—which has created warfare in our once cooperative developments, was never part of the original intent of this legislation!

This was changed by an amendment to the legislation that was probably intended to further entice developers to put up the money for the building of ML rental housing. The amendment allowed a development to 'buy-out' of the Program and go to market-rate by pre-paying (paying off) its government sponsored mortgages and paying regular real estate taxes after a certain period of time—at least 20 years and sometimes more. This buy-out is often referred to as "going private."

Many of us would argue that ML co-ops should never have been included in this buy-out amendment. The real estate developers who built our buildings have long ago been paid in full. Unlike the developer/owners of rental buildings, ML co-op owners never took an investment risk or put up funds to actually build or develop their housing. Rather, we, ML co-op owners, have only benefited by being able to buy and own an inexpensive, far below market-rate co-op which is continuously government subsidized.

Cooperators United for Mitchell-Lama (CU4ML) formed to bring Mitchell-Lama shareholders together to fight to keep their own and other ML co-ops from buying-out ('going private') and becoming market-rate co-ops. We are working to enact legislation that would not allow ML co-ops to buy-out. In the meantime, we are developing this **Guide for Saving Mitchell-Lama Cooperative Housing** since it is important to understand the particulars of the ML co-op rules and procedures around buy-out in order to fight to keep these developments in the Mitchell-Lama Program.

The goals of this Guide are to help you to:

- 1) Understand the subsidies that ML co-ops enjoy
- 2) Understand the huge increase in costs that would occur if your co-op leaves the Mitchell-Lama Program and no longer receives these subsidies
- 3) Understand the buy-out/privatization process so that you have some idea of what to expect if your co-op is considering buy-out and how to fight this process
- 4) Understand the main myths, misconceptions, deceptions, and outright lies about privatization so that you can counter with truthful information.

Limited Equity/ Limited Profit Co-ops:

To meet the intent of the ML legislation, limited equity cooperative developments were built and rules and regulations were developed that set income and eligibility guidelines for the apartments and for how the buildings would be managed and how the government would provide oversight/supervision of these valuable housing resources.

To buy a ML co-op you had to fit within the income guidelines for the development and you had to have certain specific family compositions for each size apartment. You then paid your “limited equity”, an amount far below the market-rate for the apartment. Your monthly maintenance payments pay your part of the building mortgage(s), operating costs, and the ‘Shelter Rent Tax’—the vastly reduced substitute for regular real estate taxes that ML co-ops enjoy.

If your economic circumstances improve and your income goes above the guidelines, you pay a monthly surcharge which is capped at 50% of the maintenance. This surcharge helps to support the operating costs of the building.

When you move out you get back the original equity you paid and the amortization (the money you paid in your maintenance fees for the building mortgages). If your building had an assessment for repairs, the amount you paid toward that assessment may also be considered equity, so you also get this back when you move. This ‘limited profit’ allows the next generation of moderate- and middle-income New Yorkers to take advantage of the subsidies that you have enjoyed.

When you leave, your apartment is sold to the next qualified moderate- or middle-income person on the waiting list.

So, as you can see, ML co-ops were not intended as a real estate investment in the classic sense. This means that ML shareholders are not beholden to the ups and downs of the real estate market—not able to make profits in the boon times—or to lose large amounts during the times of economic downturn like we are currently experiencing.

Governance of ML Co-ops

ML co-ops are, in fact, already private corporations. There are by-laws for each co-op that lay out the way that the building is governed and the composition and election procedures for the co-op’s governing Board of Directors. These by-laws are very similar to market-rate co-op by-laws but ML co-ops are also responsible for following the rules established by the government agency that supervises the development. Since the government is subsidizing these developments, and since the subsidies are intended to serve the purpose of providing affordable housing for moderate- and middle-income New Yorkers, the government has a vested interest in making sure that the developments are serving their purpose and are properly managed.

Some ML co-ops are supervised by the city agency known as HPD (NYC Department of Housing Preservation and Development) and some are supervised by the state agency known as DHCR (NYS Division of Housing and Community Renewal). The rules set up by these agencies are similar but not always exactly the same, which can create some confusion, particularly around the ‘buy-out’ issue.

What are the Subsidies we enjoy?

First of all, we are the owner of an apartment that we purchased for well below the amount we would have paid for an identical, non-subsidized apartment in the neighborhood. So right from the beginning we save a huge amount of money since we didn't have to take a mortgage to buy the apartment and we don't have to make mortgage payments, each month, for thirty or forty years, like most of our non-subsidized neighbors are paying. For example, if you took a 30-year mortgage for \$400,000 for the purchase of a co-op today, you would have to pay about \$2,000 each month, for 30 years, to pay off your debt!

In addition to being able to purchase a cooperative apartment for far below market rates, ML co-ops are kept affordable by a variety of government subsidies:

- We do not pay regular real estate taxes—but instead pay the “Shelter Rent Tax” –usually amounting to about 10% of regular taxes (about 90% lower)
- Many developments have government subsidized mortgages.
- Some developments have capital repair loans, or are eligible for these loans from lending programs that are not available to regular market-rate co-ops. These include, for example, 8A loans and the Mitchell-Lama Refunding Program and Loan Program of the NYC Housing Development Corporation (HDC) that began to be available to City Mitchell-Lamas in 2004. The HDC programs were developed to further subsidize ML developments to help them stay affordable, make necessary capital repairs, and maintain them as part of the city's affordable housing stock.
- In addition, ML regulations allow the co-op to collect a surcharge on their monthly maintenance to shareholders who make over the income guidelines—but the surcharge is no more than 50% of their regular maintenance. The co-op uses this surcharge to defray its operating costs.

Buy-Out/Privatization

If a ML co-op votes to leave the ML Program (process described below) they must ‘buy-out’ of the ML Program by:

1. paying their ML sponsored mortgage(s) and other debt
2. giving back any building reserve funds (for city not state co-ops)
3. paying city and state Real Property Transfer Taxes (RPTT)

The ML co-op is ‘dissolved’ and then a new co-op corporation is ‘reconstituted’ and, on the day of the closing, the market rate co-op must start paying the much higher regular, market rate, real estate taxes.

The buy-out costs and the regular real estate taxes will mean dramatic increases in the operating costs for the development and for anyone who wants to continue to live in the once-affordable housing.

Options for raising the monies needed for the buy-out include:

- charging each current shareholder a proportionate amount of the buy-out costs
- taking a new building mortgage to cover the costs
- some combination of the first 2 options.

Privatization plans, which are **always** developed by those in the building who favor privatization, generally propose taking a new building mortgage—probably because it hides and postpones the large costs of the buy-out.

Buildings that have paid off their mortgages (like some of the limited-equity co-ops that have privatized) face smaller buy-out costs, but would still face dramatic increases in taxes.

The privatization plans also often include a 'flip tax' or fee to the former ML shareholders who are selling their apartments at market-rate. The **false** claim is that this fee will make up the dramatic increases in costs. More, below, on why these magical flip taxes just won't work.

An Example of the Costs:

A real life example is from Cadman Towers, a 421-unit ML co-op in Brooklyn that is currently considering buy-out.

The development currently has about \$27 million in mortgage debt, pays about \$323,000 a year in shelter rent tax, and collects about \$443,000 a year in surcharge income.

To become market rate, on the day of the closing, the co-op would need somewhere in the neighborhood of \$35+ million dollars for the actual buy-out. This breaks down as follows:

Approximate buy-out costs:

- pay off mortgages \$27,000,000
- pay real property transfer taxes to city and state: \$ 6,350,000
- closing costs and new mortgage fees \$ 1,100,000
- return equity to 20 families who stay as renters \$ 500,000

Approximate total: \$34,950,000

\$35 million divided by 421 apartments is about \$83,000 per apartment—or—a new building mortgage can be taken which would dramatically increase the monthly debt service/mortgage payment costs to each shareholder.

- The reserve fund of about \$1 million would also be surrendered to the city
- Surcharge income would no longer be collected
- The development's real estate taxes would increase by approximately \$2 million a year.

All in all, very expensive for anyone who wants to continue to live there, and too expensive for the moderate- and middle-income people who are already living on tight budgets and cannot afford a doubling or tripling of their maintenance costs.

If you want to figure out what the increases in costs would be for your development, you will need to find out what your regular real estate taxes would be, determine how much debt you would have to pay off in a buy-out, and how much you would lose in surcharges each year. (A later draft of this manual will give you information about how to find these figures.)

So who favors privatization?

- Shareholders who no longer want to live in their ML apartment and don't care about hurting their neighbors who want to stay. Instead of selling to the next middle-income family on the waiting list, they could sell at market-rate since the co-op would no longer be limited by the 'limited profit' provisions of the ML program. However, if there is a magical flip tax provision in the plan, they would forgo a good portion of their profit.
- Shareholders who are wealthy enough to cover the increases in cost with privatization and who, perhaps, object to currently paying the surcharge. Wealthy shareholders would take less of an economic hit, of course, because a doubling of maintenance cost would mean a 100% increase for the moderate-income shareholders and only a 50% increase for those already paying the maximum surcharge. They too, of course, would have to be able to turn a blind eye to the damage to those who could not afford the increased costs.
- Attorneys and accountants who receive considerable fees in carrying out the privatization and real estate brokers and management companies who profit from the sales of apartments and/or realize much greater profits from apartment transfers, etc.
- Shareholders who, although difficult to prove, no longer live in the building and want to profit from the sale of the apartment.
- Shareholders whose children or heirs do not live with them and do not have the right, under ML succession rules, to the apartment, but who could, depending on the conversion plan, be given the apartment or benefit from the sale of the apartment. Of course if the heirs would want to live in the apartment, they would need to be able to afford the costs that are much higher than the costs their parents/benefactors paid as ML shareholders. Whether or not heirs would have to pay the flip tax to inherit the apartment would depend on the privatization plan of the particular co-op.
- Current shareholders who want to buy up their neighbors apartments as investments. Some of the privatization plans would allow current shareholders to give up the ownership of their apartment in exchange for a rental lease. The market price of an occupied apartment is much less than that of a vacant apartment. In addition, these apartments occupied by renters (former M/L shareholders who cannot afford the increased costs and remain as renters) do not, ever, unless the privatization plan specifically states otherwise, have to be owner occupied. The rental apartments are considered 'unsold shares.' Owners of unsold shares are exempted from the co-op rules and, when the former ML owner, now tenant, dies or moves, the owners can rent the apartment to whomever they chose for as much as they can get without board approval.
- People with the mistaken notion that somehow their no-longer subsidized apartments will become 'equity' that they can tap to make all sorts of purchases. The problem with this notion is that taking a home equity loan means assuming debt which you have to pay back—it doesn't mean 'free money'

The privatization process

There has been a great deal of chaos and confusion around this process. A number of factors add to the confusion including:

- HPD and DHCR have somewhat different rules and processes
- The process and rules are not clearly articulated. Some of the rules were made after a co-op already started the process, or in response to an egregious problem in a particular co-op. New rules are generally not applied retroactively.
- DHCR and HPD seem reluctant, at times, to enforce their own rules and/or to 'interfere' with a co-op's 'duly elected board of directors.'

The chart, below, outlines the basic steps and votes in the privatization process—as best we can figure out from reading the rules and regulations.

One consideration of note is that we have seen that in all of the buildings that have moved along in this process, the first step has always been preceded by the privatization proponents (privateers) gaining a majority on the building's board of directors. So, in reality, the real first step is to control the board. And, more often than not, the privateers are not forthcoming about their views on privatization when they run for the board, but hide behind statements like 'I don't know where I stand but I just want professionals to conduct a study to get the facts about our options.'

Please Note that the DHCR Rules are not particularly clear on the steps in the process of privatization and they are also currently being revised.

| | HPD | DHCR |
|--|--|---|
| 1. Vote to spend co-op funds for a feasibility study also called an initial exploration of buy-out or Preliminary Plan. | <ul style="list-style-type: none"> • Vote for a feasibility study is by majority of shareholders (by apartment) who vote at a Special Meeting (as long as there is a quorum). • Vote must specify the dollar amount to be spent. | <ul style="list-style-type: none"> • Vote by a majority of all shareholders to pay for a Preliminary Plan, not to exceed \$100,000 to "explain . . . the ramifications of dissolution." • Vote is one-vote per apartment and not by shares. • No proxies are permitted in this first vote. |
| 2. Vote to spend co-op funds for preparation and submission of the plan for privatization (also known as the Offering Plan or as the Red Herring). Plan is submitted to the NYS Attorney General's office for review | <ul style="list-style-type: none"> • Vote is by 2/3rds of the apartments. • Vote is not required to specify the amount to be spent • Vote is one-vote per apartment and not by shares. • An independent election company approved by HPD must conduct the vote. • No proxies are permitted but absentee ballots, approved by HPD, and mailed by the independent election company conducting the vote are permitted. | <ul style="list-style-type: none"> • Vote by a majority of all shareholders to prepare and submit an Offering Plan and to pay the costs of complying with the regulations on dissolution. There is no limit on how much can be spent. • Vote is one-vote per apartment and not by shares. • Proxies are allowed. |
| 3. Vote to submit "Notice of Intent" to Dissolve to government supervising agency | <ul style="list-style-type: none"> • A one-year Notice of Intent to Dissolve to HPD is required before a HPD supervised co-op can privatize. • Vote occurs simultaneously with the vote on developing the privatization plan (#2) and is therefore by 2/3rds of the apartments. | <ul style="list-style-type: none"> • Evidence of the vote authorizing expenditures to prepare the Preliminary Plan and to prepare and submit the Offering Plan must be submitted with the Notice of Intent to Dissolve. • The Notice must be given at least 365 days prior to the date of dissolution and must be given to residents at the time it is given to DHCR. |
| 4. Vote on the "Black Book" which is the privatization plan that has | <ul style="list-style-type: none"> • Vote is by apartment • Plan must get 2/3rds | <ul style="list-style-type: none"> • After the offering Plan is accepted by the Attorney |

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| <p>been reviewed by the Attorney General's office and has been "accepted for filing"</p> <p>Note: the AG does not judge the quality of the plan—only that the risks are disclosed</p> | <p>affirmative vote which means that non-voters are essentially 'no' voters.</p> <ul style="list-style-type: none"> • An independent election company approved by HPD must conduct the vote. • No proxies are permitted but absentee ballots, approved by HPD, and mailed by the independent election company conducting the vote are permitted. | <p>General's Office (becoming the Black Book) there must be a 2/3 affirmative vote counted on the basis of one vote per apartment.</p> <ul style="list-style-type: none"> • Proxy voting is allowed |
|--|--|--|

Step 1: Shareholder vote on whether or not to spend (a specified amount of) money on a Feasibility Study (also called a Preliminary Plan).

Don't be fooled by notion that this is an innocuous study and that it is just to get information! This is the 'privatization train' leaving the station and, once it leaves it is hard to stop.

This step was likely intended by the government supervising agencies to give shareholders some basic information about what the costs of buy-out might be so that they could determine if they want to look into it further. In reality, it turns into an opportunity for those in favor of privatization to get their hands on the co-op funds to start trying to sell the idea to their neighbors.

Neither HPD nor DHCR have any guidelines regarding what should be included in this 'preliminary exploration' of the privatization issue. There is no requirement that the report include any information about the benefits of staying in the ML program or that the report honestly address the dramatic increase in costs with privatization.

Since these studies are proposed by those who are seeking privatization, and the people hired to write the report are hired by those who favor privatization, these reports can come out very biased toward privatization. In addition, the people hired to write the report have a vested interest in continuing the privatization process since there is money to be made in 'taking a building private.' These studies frequently end up being a sales pitch for privatization.

Step 2: Shareholder vote on whether or not to spend money on the development of a privatization plan—also known as the Offering Plan or as the 'Red Herring' and to pay for the plans submission to the Attorney General.

NOTE: HPD requires that Step 2 and Step 3 (the vote to give the one-year notice of intention to dissolve) occur simultaneously—see below for step 3.

Before a ML co-op can vote on whether or not to leave the ML program, a privatization plan must be developed and the plan must be reviewed and 'accepted for filing' by the New York State Attorney General's (AG) Office.

The proposed Offering Plan, referred to as the Red Herring because of the color of the ink on its cover, is a draft of the plan to dissolve the ML co-op and restructure and 'reconstitute' as a market-rate co-op. The

purpose of this document is to make sure that the ‘Sponsor’ of the plan (the co-op’s board) fully discloses the risks of privatization prior to a vote by shareholders.

IMPORTANT NOTE: The AG does not review or comment on the quality of the plan or whether or not it is a ‘good’ or ‘fair’—only that the risks are disclosed.

After a vote to fund the development of a plan, the co-op board hires a number of professionals to develop the plan including lawyers, appraisers, and engineers. This process has taken 6 months to a year or more at different co-ops. The draft is filed with the New York State Attorney General’s Office whose Real Estate Finance Office reviews it. For ML co-ops, the Attorney General (AG) requires that the sponsor include disclosures that give shareholders an accurate accounting of the government benefits that will be surrendered if privatization occurs.

After the draft is sent to the AG and the filing fee is paid, the draft is distributed to all current co-op shareholders. The AG’s office has at least 4 months but no longer than 6 months to review the draft. During this time, any interested party may correspond with the AG’s office to express concerns or submit comments about the plan.

At the end of the review period, the AG’s office can either:

- Accept the plan for filing, if it is satisfied that all the risks of the plan are fully disclosed;
- Reject the plan and issue a ‘deficiency letter’ outlining the corrections that must be made before the plan will be ‘accepted for filing.’

If a deficiency letter is issued, the ‘Sponsor’ must correct the deficiencies and send the corrections to the AG in what are called “blacklines” because the changes in the draft are underlined. The AG may accept the changes or they may send further deficiency letters or memos until they are satisfied that all of the plan’s risks are disclosed. This back and forth has taken 6 months to years at various co-ops. When the AG regards the corrections as sufficient, they ‘accept the plan for filing’ and it becomes the final version of the privatization plan, called the ‘Black Book’ because the cover now has black (instead of red) ink.

The Black Book is distributed to all shareholders and a vote on privatization can be scheduled in no fewer than 30 days. HPD rule changes in 2009 require that the voting procedures for the Black Book vote get prior approval by HPD.

IMPORTANT NOTE:

- **There is NO requirement that the sponsor (board) provide shareholders with copies of the deficiency letter(s) or any correspondence from the AG.**
- **You can, however, get this information by filing a FOIL (freedom of information law) request. See addendum for how to file a FOIL request.**

The Plan is hundreds of pages with voluminous addendums and attachments. It is important for pro-ML shareholders to read and study the plan and its corrections. Ask CU4ML for help in this process since many of us have studied and analyzed these plans before.

Step 3: Vote to submit the ‘notice of intention’ to dissolve to government supervising agency.

As indicated above, HPD requires that the one-year notice of intent vote be conducted at the same time as the vote on whether or not to prepare the privatization (offering) plan. For HPD supervised developments it

must be approved by 2/3rds of the apartments. DHCR does not require that shareholders vote on whether to submit a Notice of Intent, but it does require the Sponsor to provide the Notice to the shareholders when they submit the submission of the Notice of Intent to DHCR.

This HPD rule, to have Step 2 and Step 3 at the same time, and to have the vote be by 2/3rds of the apartments makes a great deal of sense because:

- Why go to all the time and expense to prepare the plan if there are not enough people interested in going private?
- If the one-year notice vote occurs at the same time as the privatization vote (step 4), and the vote is to go private—then the co-op would need to wait a full year to implement the plan. Much can change in a year and it makes sense to be voting on a plan that is ‘fresh’ and can be implemented right away if it is passed.

However, there are some co-ops that are in the process of developing or have submitted the Red Herring to the Attorney General’ office but have not taken the 2/3 vote on submitting the notice of intention to dissolve in the case of HPD projects—so this sensible rule seems to not be universally enforced.

Step 4: Vote on the Black Book—whether or not to leave the ML Program according to this Plan.

This is the actual vote on privatization. HPD rules changes in 2009 clarify that this vote is to be by one-vote per apartment and NOT by shares. This makes sense since ML shareholder in larger apartment should not have more sway in making this decision than people in smaller apartments. In DHCR co-ops the vote is also by one vote per apartment.

NOTE:

Particularly for Step 4, but on all the votes related to this issue, there is enormous potential for voting problems. Although very hard to prove, there are illegally sublet and warehoused apartments in ML co-op buildings. There are also people who have moved but who are hoping to make a profit by selling the apartment at market-rate. Pressure and intimidation can also be brought to bear on legitimate voters. Strong efforts to minimize voter intimidation and fraud are necessary.

Myths, Misconceptions, Deception and Outright Lies about Privatization

The undeniable facts are that the privatization of ML co-ops means huge increases in cost to anyone who wants to continue to live in their ML home and the loss of affordable housing for moderate and middle-income New Yorkers.

Those who seek privatization try to convince people that these basic facts are not true by perpetrating a number of myths, misconceptions, deceptions, and outright lies about privatization.

The main myths about privatization are that no one will be hurt, that it won’t cost current shareholders a thing, and that we’ll all get rich. Nothing could be further from the truth.

Every single ML shareholder who is living on a tight budget will be hurt by privatization when they cannot afford the dramatically increased taxes and debt service costs. These increases will mean that current shareholders will have to pay more. Rather than making us rich, it will make us all poorer.

Magical Flip Taxes:

Many of the privatization plans call for the imposition of a flip-tax (a.k.a. transfer fee) on the sales of apartment at market rate. Different plans propose different percentages for the flip tax, ranging from around 20-45%—depending on how much of an operating deficit there is after privatization.

The idea perpetrated by the privateers is that this flip-tax will perform magic and pay for all of the increases in cost with privatization and pay for millions and millions of dollars in repairs and capital improvements.

The problem with flip taxes is that they are speculative, and, therefore, no one can guarantee that they will actually be collected.

Flip Tax Magic—an example:

The draft of the Cadman Tower's privatization plan (Red Herring) shows that after privatization the development will have, approximately, a \$3 million dollar a year operating budget deficit primarily because of increased taxes and much higher debt service costs.

The plan budgets a 40% flip tax on the sale of 21 apartments a year (5% of the 421 apartments) at an average price of \$500,000 an apartment in order to overcome this operating deficit—each and every year. The plan also claims that flip taxes will pay for desperately needed capital repairs projects.

If not enough apartments are sold each and every year, and/or, if the sales prices are not high enough—then shareholders will have to make up the operating deficit with increases in maintenance and/or assessments.

Depending on magical flip taxes for the basic operating budget of a co-op is a disaster in the making, especially for the more moderate income shareholders.

- If a co-op needs a certain number of apartments to sell each year to make its budget, but fewer are sold, then maintenance will go up
- If a co-op needs the apartments to sell at a high price, but the real estate market is in a downturn and the sellers can't get that price, then maintenance will go up.

Some of the reasons why flip taxes won't materialize are:

- Not enough people want to leave
- People will hold onto their apartments for a number of years so that they don't have to pay capital gains taxes
- The co-op building is aging and in need of repair and won't command the high prices necessary
- The maintenance costs will be too high compared to other buildings in the neighborhood
- Outside buyers won't want to take the risk of depending on speculative flip taxes
- The economic downturn and the bursting of the housing bubble leave too few buyers for the apartments
- Some plans allow for apartments to be passed to immediate family members without flip taxes so not enough apartments will be sold

- Some plans allow for current shareholders to stay as renters and they will need to be subsidized by the development until they die or move
- Even if everyone moves, eventually the co-op will run out of flip tax income

Privateers often claim that going private and collecting flip taxes are the only ways to afford to pay for the repairs and capital improvements that our aging developments need. Depending on flip taxes to make up the increase in operating costs AND then to pay for repairs is even greater magical thinking.

Paying for capital repairs and improvements as a Mitchell-Lama co-op:

Recognizing that ML buildings are aging and in need of repairs and that some of the City's ML buildings would have problems when they needed to start paying on their second mortgages (around the year 2018), the NYC Housing Development Corporation (HDC), came up with a plan to help. The ML Refunding Program allows City ML developments to restructure and refinance their mortgages to keep their debt service (mortgage payments) very low and to offer a grant to building repairs. For example, at Cadman Towers (development used in previous examples) the co-op could take advantage of HDC's offer, refinance their mortgage for 30 years at an effective interest rate of 2.8% (!) and get a grant for repairs for \$3.5 million. To take advantage of this offer, the development could not consider privatization for 15 years.

HDC also offers loans for repairs to ML developments and there are other loans, like the 8A loan program that would allow developments to pay for repairs in an affordable way. Some of these programs or similar programs are also available to State Mitchell-Lamas.

All in all, privatization of Mitchell-Lama co-ops is just plain wrong as well as a very bad idea for anyone who wants to continue to live in their apartment. The best thing would be to pass legislation that bans privatization.

In the meantime, some tips on fighting privatization efforts in your co-op are:

- Join cu4ml to stay informed about the issues and to work together to fight for affordable housing.
- Organize your building and supporters.
- Collect funds to pay for a pro-ML newsletter and to hold educational forums about the benefits of ML housing and the increases in costs with privatization
- Run for and get elected to your building's board.
- Fight the feasibility study. Don't let the process get started in the first place.
- Understand that the privateers will keep trying. Some buildings have had to organize to defeat the feasibility study a number of times.
- Monitor your waiting list.
- Report warehousing and illegal subletting of apartments.
- Stay informed. Use FOIL requests to get the information that is not being shared with you but that you have a right to.
- Analyze and review the feasibility study, the red herring, and the deficiency letters. Ask for help from CU4ML about what to look for, and keep your neighbors informed

FOIL (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, 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 board, it’s attorney and HPD or DHCR that is not about a specific shareholder

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

| |
|--|
| Your Name |
| Address |
| Phone Number |
| Name of Records Access Officer |
| Name of Agency |
| Address of Agency |
| Date |
| 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.) |
| Dear _____: |
| 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 _____. |

I am most grateful for your assistance in this matter.

Sincerely yours,

Addresses of some of the Agencies:

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| <p><u>HPD</u> Donald Appel, Records Access Officer New York City Department of Housing Preservation and Development 100 Gold Street, Room 5U9 New York, NY 10038</p> | <p><u>DHCR</u> To request documents maintained by DHCR which are unrelated to rent control or rent stabilization, you may either: mail your request to: FOIL Officer, Office of Legal Affairs 25 Beaver Street New York, NY 10004 or email to FOIL@nysdhcr.gov</p> | <p><u>NYC HDC</u> Melissa Barkan, Records Access Officer New York City Housing Development Corporation 110 William Street New York, NY 10038</p> |
| <p><u>HUD</u> Carlton K. Lewis, Freedom of Information Act Liaison U.S. Department of Housing and Urban Development Suite 3541 26 Federal Plaza New York, NY 10278-0068</p> | <p><u>Attorney General</u> Mr. Zack Fisher, Public Information Officer NYS Department of Law Investment Protection Bureau-Real Estate Financing Section 120 Broadway, 23rd Floor New York, NY 10271</p> | |

Examples of FOIL requests: (you must be asking for records or documents).

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| <p>FOIL REQUEST TO HPD:</p> <p>Your Name, Address, Telephone, E-Mail: (if any)</p> <p>Donald Appel, Records Access Officer New York City Department of Housing Preservation and Development 100 Gold Street, Room 5U9 New York, NY 10038</p> <p>May 31, 2008</p> <p>RE: FOIL Request—Records Relating to Whether or Not Cadman Towers, Inc., a New York City Mitchell-Lama Project (101 Clark Street, Brooklyn, NY 11201) Has Filed a Notice of Intent to Dissolve and Withdraw from the Mitchell-Lama Program</p> <p>Dear Mr. Appel:</p> <p>I am requesting records or documents relating to whether or not Cadman Towers, Inc., has filed a one year Notice of Intent to Dissolve and leave the Mitchell-Lama program pursuant to Section 3-14(i)(6) of the HPD Mitchell-Lama Rules.</p> | <p>FOIL REQUEST TO ATTORNEY GENERAL'S OFFICE</p> <p>Your Name, Address, Telephone, E-Mail: (if any)</p> <p>Mr. Zack Fisher, Public Information Officer NYS Department of Law Investment Protection Bureau-Real Estate Financing Section 120 Broadway, 23rd Floor New York, NY 10271</p> <p>Re: File No. C-07-0013 FOIL Request to Review Records Relating to the Offering Plan for Cadman Towers, Inc. ("CT") Red Herring ("A Plan to Convert to Private Cooperative Ownership Cadman Towers, Inc." ("Plan"), submitted on November 21, 2007, File No. C-07-0013.</p> <p>July 14, 2008</p> <p>Dear Mr. Fisher</p> <p>I am writing to ask that I be permitted to review in your Office the Offering Plan for Cadman Towers, Inc., submitted on November 21, 2007, File No. C-07-0013 and any comments on it and recent changes to it, if any.</p> |
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| <p>Please let me know if you have any questions relating to this request. I am most appreciative of your assistance.</p> <p>Sincerely yours,</p> | <p>Please let me know when it would be possible for me to review this material. I appreciate your assistance in the matter.</p> <p>Sincerely yours,</p> |
| <p>FOIL REQUEST TO HUD: October 3, 2008</p> <p>Your Name, address, telephone and email</p> <p>Carlton K. Lewis, Freedom of Information Act Liaison U.S. Department of Housing and Urban Development 26 Federal Plaza, Suite 3541 New York, NY 10278-0068</p> <p>Re: Cadman Towers, Inc.—Records relating to August/September 2008 Request for Maintenance Increase</p> <p>Dear Mr. Lewis:</p> <p>The Board of Directors of Cadman Towers, Inc., said it submitted a request for a maintenance increase to HUD, but was told to resubmit it at a later date.</p> <p>In this connection, I would very much appreciate it if you could send me, if they are still available, any records and supporting documents relating to this request for a maintenance increase.</p> <p>I appreciate your assistance in this matter.</p> | |

Who are Cooperators United for Mitchell-Lama (CU4ML)?

We are an organization made up of shareholders of Mitchell-Lama coops who are fighting to keep our homes affordable and in the Mitchell-Lama program—both for ourselves and for future generations of moderate- and middle-income New Yorkers.

We are **unequivocally against the privatization of Mitchell-Lama cooperative housing**. As shareholders, we have enjoyed so many of the benefits of living in Mitchell-Lama housing. In return, our responsibility to the City has been, and continues to be, to oversee the governance of our buildings in order to preserve them as an affordable housing resource.

CU4ML officially began in March of 2009, though many of the individuals who make up the organization have been working to preserve Mitchell-Lama coops for years. The organization currently includes members from 27 Mitchell-Lama coops around New York City, which provide affordable homes for over 38,000 families.

To join Cooperators United for Mitchell-Lama,, please use the attached CU4ML membership form or send an e-mail with your name, contact information and building name to CU4ML@uhab.org

Please join us!

Name: _____

Mitchell-Lama Development: _____

Address: _____

E-mail address: _____

Phone: _____

Dues enclosed: _____

(Suggested dues for CU4ML are \$20 per year. Checks can be made out to Cooperators United for Mitchell-Lama)

Mail to UHAB, attn: Dan DeSloover CU4ML, 120 Wall St, 20th Floor, New York, NY 10005
or you can e-mail your name, contact information and the name of your development to **CU4ML@uhab.org**. For questions, please call 212.479.3337.