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Testimony Regarding Proposed Rules Governing City-Aided Limited-Profit Housing Companies

September 13, 2011

Thank you for the opportunity to express my opinion on this important matter and to acknowledge my sincere appreciation to the Department of Housing Preservation and Development for taking a close look at the current rules governing the supervision and administration of Mitchell-Lama developments. We all know that Mitchell-Lamas are a critical component of New York City's affordable housing stock, and unless there are clear, strong and enforceable regulations governing the maintenance and preservation of this resource – we are in danger of losing it. I see these amendments as a giant step in the right direction of clarifying practices and ensuring the long-term viability of tens of thousands of units of this precious housing resource. The proposed rules provide clearer and practical guidelines on important matters such as succession rights, primary residency, documentation of resident income, condition assessments, maintenance of capital reserves and veteran preferences, and all of these are positive changes.

To my mind, however, by far the most important element of these modifications involves the strengthening of regulations governing the process by which a Mitchell-Lama may explore and possibly vote to dissolve the original corporation and reconstitute as an unregulated one. I consider this a most serious matter that deserves to be clearly defined, strongly regulated and enforced. I have direct experience in my district with a Mitchell-Lama development that continues to spend hundreds of thousands of dollars on legal fees appealing a court decision which ruled that the shareholder vote to privatize had failed. Cumulatively to date this development has spent over \$2 million of its regular maintenance funds toward a privatization plan that did not have sufficient support to pass. This while the central courtyard of the complex has sunken and where other major repairs and upgrades remain unaddressed.

I am very pleased that the proposed rules would greatly increase the accountability of the process by:

- Requiring a vote of the shareholders to approve the expenditure of a specified amount up to \$100,000 to prepare a feasibility study regarding dissolution/reconstitution. The rules also specify what information must be included in the study and clearly states

- how the votes will be counted. However, the rules do allow for such an expenditure vote to occur more than once, while I believe there should be an upper limit on the total amount that can be spent depending on the size of the development.
- Requiring the shareholders to vote on a specific dollar amount of expenditure for the preparation and submission of an offering plan as a part of final vote to leave the Mitchell-Lama program. The rules again allow for subsequent votes to authorize additional funds for this purpose.

Although these provisions are very positive changes, I believe it should be stronger still. I believe that:

- As previously mentioned, there should be a cap on the expenditures toward privatization and believe it could be set fairly in proportion to the size of any development;
- Additional votes to expend funds for an offering plan should require the same 2/3 vote as the original vote;
- Proxy voting should not be allowed in any vote leading to privatization because the possibility of abuse is so great;
- The proposed regulations should include a clear provision that proxies cannot be counted in elections for Board of Directors of the corporations. (On previous occasions, HPD has assured me that the agency was going to take this position, but I have not seen evidence of it); and
- Lastly, and possibly most importantly, I am very concerned about what appears to be an egregious jurisdictional gap regarding oversight of Mitchell-Lama developments that received federal funding in the 1970s from HUD.

Nearly one quarter of the City's Mitchell-Lamas received federal funding. The development in my district I previously mentioned, which continues to spend huge amounts of maintenance funds in court challenges of the failure of the privatization vote, is one such cooperative. I have met several times with HPD officials who claim that its jurisdiction to regulate federally assisted Mitchell-Lama's is limited, but when asked, HUD insists it does not have any responsibility to ensure compliance with the regulations. Therefore, it appears to me and others who are concerned about this matter, that no agency is providing the level of oversight required in these developments. I believe that I and the residents of the approximately 25 HUD assisted Mitchell-Lamas deserve a clear and definitive answer to the question of whether these rules will be applied across the board to all 97 Mitchell-Lama developments. I ask HPD to provide me that answer immediately.

Again, I thank you for the opportunity to testify and for HPD's efforts to strengthen these critical regulations.