

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 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 in it (BCL Section 602);
The right to receive services and use facilities available to all other shareholders in a non-discriminatory manner.

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 and By-Laws, 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.

To review the DHCR or HPD rules, go to the CU4ML website (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 call a special meeting and propose amendments to the by-laws. Even if you think the effort to change the by-laws, for example, 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 attempt to change the by-laws.

FOIL REQUESTS

FOIL (Freedom of Information Law) Requests

Public agencies, like HPD, DHCR, HUD, and NYSEDA, 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 the FOIL Officers at some of the Agencies are available on pages 13-15 of the "Guide to Mitchell-Lama Preservation" on the CU4ML website.

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.