

# mitchell-lama basics

what every mitchell-lama shareholder should know

## Contents

<b>Part 1: ML History in Brief</b> . . . . .	1
What is a Mitchell-Lama and why does it exist? . . . . .	1
What does ML look like now? . . . . .	2
<b>Part 2: ML Structure</b> . . . . .	3
<i>LEGAL STRUCTURE</i> . . . . .	3
Housing co-op definition. . . . .	3
Limited equity . . . . .	3
Oversight agencies . . . . .	3
<i>COOPERATIVE STRUCTURE</i> . . . . .	4
<b>Part 3: Governing Documents</b> . . . . .	5
<i>FOR ESTABLISHING A COOPERATIVE</i> . . . . .	5
Certificate of incorporation . . . . .	5
Deed. . . . .	5
<i>FOR PERSONAL OWNERSHIP</i> . . . . .	5
Stock Certificate. . . . .	5
Proprietary Lease/Occupancy Agreement . . . . .	6
<i>FUNCTIONAL/FOR WHOLE CO-OP</i> . . . . .	6
Bylaws. . . . .	6
House Rules . . . . .	7
<i>FINANCIAL</i> . . . . .	8
<i>OTHER</i> . . . . .	8
<b>Part 4: Regulations</b> . . . . .	9
HCR 1700 . . . . .	9
HPD Mitchell-Lama Rules . . . . .	9
<b>Part 5: Laws</b> . . . . .	10
Private Housing Finance Law . . . . .	10
Business Corporation Law. . . . .	10
<b>Index</b> . . . . .	11

## **PART I: MITCHELL-LAMA HISTORY IN BRIEF**

### **What is the Mitchell-Lama program and why does it exist?**

In 1954, in the post-war period, New York Mayor Wagner's office developed a new housing plan to solve two pressing city problems: middle-class flight to the suburbs, and the inadequate and deteriorating housing supply. In 1955, Manhattan State Senator MacNeil Mitchell, a Republican, and Brooklyn Assemblyman Alfred Lama, a Democrat, co-sponsored the legislation that had been formulated to create a program to build affordable housing developments for middle-income

*continued on page 2*

This handbook is a guide to understanding Mitchell-Lama cooperatives; we hope you find it helpful. We are not lawyers, and this booklet is not intended as, nor to be taken as legal advice.

# Part I: Mitchell-Lama History in Brief *(cont'd)*

## What is the Mitchell-Lama program and why does it exist? (cont'd)

residents. These developments **took the form of either rentals or cooperatives—this handout covers only co-ops.** This program became known as Mitchell-Lama (*abbreviated ML in this guide*) housing and has been one of the most successful moderate income housing programs ever created.

Mitchell-Lama housing came about during a time when government—city, state and federal—believed government had a responsibility to invest in its cities and its citizens. Legislators recognized that substandard housing with crowded, unsafe, unsanitary conditions, and the shortage of decent housing contributed to the breakdown of communities and the deterioration of urban living, making urban areas undesirable places to live, work, and raise families. Unwilling to let this happen in New York, they enacted this *Limited Profit Housing Companies Law*, (which later became Article II of the *Private Housing Finance Law*), to encourage developers to construct housing for people of low, moderate, and middle income, understanding that such an investment would allow communities to grow and flourish, thereby expanding social and economic opportunity.

The *Limited Profit Housing Companies Law* had, among many others, three features that made possible such housing:

- State/municipality loans were issued at very low interest rates for very long terms. In the economics of housing, one of the biggest costs is the mortgage. Rates, sometimes as low as 1%, and terms, sometimes as long as 35 or 40 years, can result in greatly reduced charges to shareholders.
- Municipalities granted tax abatements which originally ranged from 40% to 100%. Abatements later became standardized across the State in the form of the “Shelter Rent” tax formula, which sets real estate taxes at 10% of the co-op’s operating expenses (less heat and utilities). This saves the co-op anywhere between and 75% and 90% on their tax bill.
- Many projects were built on federally subsidized urban renewal land, further reducing the costs to the owner.

## ■ What does ML look like now?

More than 50 years ago, when Mitchell-Lama co-ops were first built, they were anchor housing providing quality, affordable housing in less desirable neighborhoods. Now these neighborhoods are gentrified or becoming gentrified and the cost for new or market-rate housing in these neighborhoods is priced beyond what many New Yorkers can afford. However, ML co-ops have not only remained truly affordable but they also developed a community presence that is equitable, diverse, multi-cultural, multiracial, and vibrant. Maintaining ML co-ops both preserves affordable housing stock in New York and stabilizes vital, integrated communities.

Again going back 50 years ago, there were some difficulties in attracting developers to these ML projects, and so the law was amended to allow for a “buy-out” after 20 years. CU4ML’s position is that it was an error to include the co-ops in this amendment since the original co-op developers had long since departed, and the shareholders who would be presented with the option to buy out had not taken any risk for which they were to be compensated; rather they had received many financial benefits already. Furthermore, “buy-out” would mean that these affordable and desirable apartments would not be available to thousands of New Yorkers who were on waiting lists. Over the same time period, the cost of market-rate housing has increased dramatically and persons with moderate incomes often have to spend more than one-third, and sometimes even more than one-half, of their incomes on housing.

Although many of the rental owners have taken their buildings out of the program, only 11 co-ops have voluntarily left ML in the last 14 years. Many of the remaining co-ops have no interest in privatizing, and many have taken advantage of city programs to refinance at low rates and preserve their housing.

Mitchell-Lama Program in NYC	Number created	Number lost	Percentage lost
Rentals	69,673 apts.	36,075 apts.	About 51% of the units
Cooperatives	69,755 apts.	6,345 apts.	About 9% of the units
Rental developments	174 rental developments	96 rental developments privatized	About 55% of the rental developments
Cooperative developments	96 co-op developments	11 co-op developments privatized	About 11% of the co-op developments

# Part 2: Mitchell-Lama Structure

## ■ Legal structure

### Housing co-op definition

In a housing co-op, the cooperative is a corporation, which owns the land and building(s).<sup>\*</sup> Shareholders (cooperators) own 100% of this corporation. The number of shares owned, the purchase price, and the monthly maintenance (or carrying charges) for each shareholder are based on the size and location of the particular apartment they occupy. Each shareholder pays a monthly amount that taken together covers the building's costs of maintenance, operations, property taxes, insurance, and their portion of the repayment schedule on the cooperative's mortgage(s).

### A Cooperator's ownership is established by a combination of two things:

1. The Stock Certificate names the shareholder(s) and states the number of shares that is owned in the cooperation.
2. The Occupancy Agreement gives the shareholder(s) the legal right to occupy an apartment in the building(s) owned by the corporation.

### Limited equity definition

Mitchell-Lama cooperatives are "limited equity" co-operatives. There is no profit (or loss) in limited equity co-ops and that is why ML co-op apartments cost so much less. ML co-ops are about housing and not real estate. For a very low purchase price you are actually buying shares in your co-op, and in exchange receiving a guarantee of low monthly maintenance, security and peace of mind, knowing that the apartment you live in is yours for as long as you abide by the rules of the co-op. The purpose of the program is to provide housing for moderate-income people, so the apartments are kept at these affordable rates.

In return, you are not permitted to sell your shares, except back to the co-op, so that another New Yorker on a waiting list can have this opportunity. When you sell your shares the equity is limited to the price you paid to enter the co-op, plus the money you proportionally pay over time on the cooperative's mortgages, plus assessments.

## Financial benefits of limited equity

- Because of limited equity, ML co-ops are granted greatly reduced real estate taxes and tax abatements.
- Any increases to monthly maintenance have to be justified by actual increased expenses.
- Seniors can apply with the NYC Department of Finance for SCRIE, which stands for Senior Rent Increase Exemption and is an exemption against any future rent increases.
- Disability Rent Increase Exemption (DRIE) is an exemption against future rent increases for eligible disabled persons who apply with the NYC Department of Finance.
- When an apartment is sold, the shares are sold back to the co-op.
- What a cooperator gets back is the equity that has accumulated, which includes:
  - the price paid to enter the co-op,
  - the amount of money representing the cooperator's accumulated repayment for the development's loans and/or mortgages (amortization)
  - any assessments paid for capital projects such as window replacements, etc.

The Shelter Rent tax abatement, low cost financing, and other benefits that ML co-ops enjoy means that, although you cannot make a profit on your equity, you are saving a substantial amount of money every month. This in turn increases your "disposable income" to spend on more of the things that make life in New York City so wonderful.

## Oversight agencies

The *Private Housing Finance Law* placed these co-ops under supervisory agencies. State-sponsored co-ops are supervised by Homes and Community Renewal (HCR), and city-sponsored co-ops are supervised by New York City Housing Preservation and Development (HPD). These agencies are tasked with protecting both shareholders and the public interest. The agencies review corporate decisions (e.g. expenditures on capital projects, budgets, bylaws), keep the waiting lists, and are an avenue of appeal for individual shareholders with grievances.

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<sup>\*</sup>A few ML co-ops, however, don't own the land and instead have a long-term lease.

## Part 2: Mitchell-Lama Structure *(cont'd)*

### ■ Cooperative structure

#### **A cooperative is more than a building: how is being a ML cooperator different from renting?**

Renters have no say over how their building will operate, and no control over the costs of operating and maintaining the building, or over any aspect of how their building is run. The owners of rentals, whether a ML rental or any other rental, own the property and collect rent payments from the residents, but generally are not themselves residents of any of the apartments. But cooperators as a whole own their building collectively and each cooperator owns shares that entitle them to reside in their apartment. Through their active participation in building matters, cooperators can exercise control over the operation and maintenance of the building.

The sense of ownership and responsibility is very different for the two types of occupants of ML developments, the renters vs. the cooperators. For example, privatization of a rental development is a decision made by the *owners*—for the renters, privatization is always *involuntary*. In contrast, privatization of a ML co-op can occur **ONLY** when the shareholders vote to dissolve their own corporation. *It is the cooperators who can preserve or give up their ML development.*

#### **The Cooperative Movement**

The cooperative movement is old and respected. There have been, and still are, cooperative stores, factories, and whole communities. They are united in support of a set of ideas generally expressed in the “Rochdale Principles.” Part of the object of ML developments is to operate in accordance with cooperative principles. CU4ML is one example of an organization that operates according to cooperative principles by facilitating cooperation among co-ops, and advancing the common good of preserving desperately needed affordable housing.

### **The Rochdale Principles**

- ◆ **Open Membership.** A co-op does not discriminate. Anyone can join.
- ◆ **Democratic Control.** The co-op is owned and operated by its members. Each member gets one vote (unlike publicly-traded companies in which those who buy the most shares get the most votes).
- ◆ **Limited Return on Capital.** A co-op is not intended to be a money-making enterprise for its members. Members may thus be paid only a “limited” amount of interest on any money they invest.
- ◆ **Surplus Belongs to Members.** Since the members are the owners, they receive any profit the co-op makes. In many co-ops the profits are reinvested into the business rather than being returned to the members.
- ◆ **Honest Business Practices.** Cooperatives deal openly, honestly, and honorably with their members and the general public.
- ◆ **Ultimate aim is to advance the Common Good.** The ultimate aim of all cooperatives should be to aid in the participatory definition and the advancement of the common good.
- ◆ **Education.** Co-ops are expected to educate their members, officers, and employees and of the general public in the principles and techniques of cooperation, both economic and democratic.
- ◆ **Cooperation among Cooperatives.** Co-ops should actively cooperate in every practical way with other cooperatives.

# Part 3: Governing Documents

## FOR ESTABLISHING A COOPERATIVE

### ■ Certificate of incorporation

#### Purpose

This is the legal document that sets out the basic elements of the new corporation.

#### What does it contain?

- name & purpose of corporation
- developers
- kinds and amounts of stock
- restrictions on corporation
- rights and obligations of corporation
- oversight agencies rights and obligations
- voting procedures
- any amendments

#### How to obtain

The NYS Department of State can provide copies upon written request for a fee.

#### How to change

The document itself will specify which parts may be amended and how.

### ■ Deed

#### Purpose

This conveys the specific parcel of land from the original owner (NYC) to the corporation (the ML development).

#### What does it contain?

A description of the geographic boundaries of the land, the price paid for the land, and restrictions on the use of the land, including in some cases, a restriction on changes to the project (e.g. for properties built on urban renewal land, “that from the date of conveyance for the period of 40 years from the date of completion of the housing project, no change shall be made in the housing project as set forth in the urban renewal plan.”)

#### How to obtain

Through ACRIS (Automated City Register Information System) under the [www.nyc.gov](http://www.nyc.gov) website.

## FOR PERSONAL OWNERSHIP

### ■ Stock Certificate

#### Purpose

A stock certificate is a legal document that certifies ownership of a specific number of shares of stock in your Mitchell-Lama Corporation and the price per share. The stock certificate names the shareholder(s) who can vote on business that requires shareholder approval. Mitchell-Lama shareholders have one vote per apartment; voting is not by the number of shares owned. ***No matter the size of the apartment, each stock certificate provides one vote.***

#### What does it contain?

The stock certificate has the seal of the corporation and signature of two officers. The stock certificate also describes steps for transfer, and, if more than one person is on the stock certificate, it may include an indication of the form of joint ownership (e.g. joint tenancy with right of survivorship, tenants in common, etc.).

#### How to obtain

You should receive it shortly after you move in. It is an important document and should be kept in a safe place. If you have lost your stock certificate, send a written request to the management company for a duplicate stock certificate. Management is entitled to charge a (reasonable) fee for the duplicate.

#### How to change

The name on a stock certificate can not be changed until the shareholder of record has permanently vacated the apartment. For changing a stock certificate oversight agencies have specific conditions, rules and requirements and they can be found in regulations for HCR 1727-8.2 to 8.5 and for HPD 3-02. Shareholders also turn in their certificates when they move out and are then able to recover the value of the shares.

# Part 3: Governing Documents *(cont'd)*

## PERSONAL OWNERSHIP *(cont'd)*

### ■ Proprietary Lease/Occupancy Agreement

#### Purpose

The occupancy agreement or proprietary lease is the contract between the cooperative corporation and the member for a specific apartment. It sets forth the rights and obligations of the member and the cooperative to each other. Legally, it is viewed as a lease by the member with the housing cooperative. The legal bases for resolving disputes are found in the occupancy/lease agreements. Some co-ops call this contract an occupancy agreement; others refer to it as a proprietary lease.

#### What does it contain?

- Apartment and term: identifies which apartment and term of the lease
- Carrying charges, surcharges, fees and expenses
- Cooperator's representation (accuracy of all statements made in application)
- Changes and alterations, repairs and painting
- Duty to obey laws, cooperator's conduct, rules and regulations
- Assignment, subletting (not permitted) and abandonment
- Property loss, damage, entry to apartment and repairs
- Services: elevator service, hot and cold water, heat as required by law.
- At the end of the lease: specifies what needs to be done for surrendering stock, condition of the apartment,
- Clauses related to accountability, e.g. default (when the cooperator fails to abide by the terms of the lease), remedies, fees and expenses, and method of delivery of bills and notices.

HCR provides an attached section called The Rules and Regulations that is made part of the lease in accordance with Section 10. This section describes rules, such as garbage removal; pass keys to apartment retained in office, laundry room, etc. Co-ops should also have House Rules specific to their cooperative (*see House Rules, pg. 7*).

HCR has an official document that is used for the occupancy agreement—HM-78.2 (4-08) (Limited Profit-Mutual Co-op).

#### How to obtain

You will need to sign this before you receive your stock certificate and should receive a copy of the signed document sometime soon after you move in. If you have lost it, you may request a copy from the management office.

## FUNCTIONAL/FOR WHOLE COOP

### ■ Bylaws

#### Purpose

The bylaws are generally the supreme governing document of an organization, superseded only by the charter of an incorporated society. The bylaws contain the most fundamental principles and rules regarding the nature of the organization.

#### What does it contain?

ML bylaws cover the operation of the development, setting out the form, manner or procedure in which the cooperative should be run.

# Part 3: Governing Documents *(cont'd)*

## FUNCTIONAL/FOR WHOLE CO-OP *(cont'd)* Bylaws *(cont'd)*

Some typical articles in bylaws are	
<b>Purpose</b>	Limited Profit Housing for persons of moderate income
<b>Stockholders Meetings</b>	When notice must be sent to shareholders
	How shareholders can call a special meeting
	Quorum and voting (including proxies)
	Order of business
<b>Directors</b>	Number, term of office, qualifications, vacancies, meetings, quorum, committees, duties and powers, nominations
<b>Officers</b>	Number, qualifications, responsibilities
<b>Operation of the project as a cooperative</b>	Monthly charges are based on annual costs for operation determined by the Board with review by agency and its final approval. Monthly charges are divided among cooperators according to their shares
<b>Capital Stock</b>	Issued in consecutive order
	Signed by President or Vice President and Secretary or Treasurer
	Conditions for transfer of stock—only back to corporation
<b>Indemnification</b>	Protection of Board Members by promising to pay for the cost of possible future damage loss or injury. Usually the housing company has Officers and Directors Liability Insurance for this purpose.
<b>Amendments</b>	Specifies the shareholder votes required to amend, repeal, or alter the bylaws in whole or in part. Some require a vote of the majority of shareholders at a duly called annual or special meeting, while others may require a vote of the majority of the total number of apartments, and still others may require a different number. Cannot take effect until approved by supervising agency.
<b>Seal</b>	Specifies that Seal of Corporation shall be circular, bear the name of Corporation and words "Corporate Seal," year of incorporation and the words New York
<b>Financial Statement</b>	Requires corporation to provide annual financial report at reasonable time after the end of fiscal year.

### How to obtain

Every shareholder should receive a copy of the most current bylaws upon moving in. If you never got them or have lost them, you can request a copy from your management office.

### How to change

A shareholder vote is required to pass amendments or revisions to bylaws and the supervising agency must approve the changes. The bylaws will stipulate by what votes revisions must pass (e.g. majority of shareholders, or  $\frac{2}{3}$  of shareholders.) ***Any revision process should be undertaken with the utmost transparency.***

Note: Many cooperatives have never revised their original bylaws. In some cases these may contain clauses or sections that are no longer relevant. However, it is worthwhile to consider carefully the benefit versus harm ratio in revising outdated bylaws (which may be outdated only in language rather than content) against the possibility that terms unfavorable to cooperators may be inserted into the bylaw revisions by pro-privatization, anti-democratic Boards.

## ■ House rules

### Purpose

While the occupancy agreement is about how you live in your own apartment, the house rules concern themselves with how residents live together.

### What does it contain?

These rules cover the use of the building amenities (e.g. laundry room, storage areas), procedures for moving in and out, whether pets are permitted, guest policies, etc.

### How to obtain

Every shareholder should receive a copy of the most current house rules upon moving in. If you never got them or have lost them, you can request a copy from your management office.

### How to change

Board of Directors can change House Rules with approval of the pertinent supervising agency (HPD or HCR). A building vote is not necessary unless specified in the bylaws.

# Part 3: Governing Documents *(cont'd)*

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## FINANCIAL

### ■ Annual audited financial statement

#### **Purpose**

To summarize the financial state of the co-op.

#### **What does it contain?**

Every shareholder is entitled to a copy of the full annual audited financial statement and it should be distributed at time of Annual Shareholders Meeting. The statement of Income and Expenses is not sufficient. Shareholders are entitled to full report that includes:

A full financial report would include:

- Auditor's report
- Financial statements
- Balance sheet
- Statement of income and expense
- Statement of cash flow
- Notes to financial statements
- Supplementary information
- Schedules of stockholders' equity
- Schedule of operating escrow
- Schedules of incomes
- Schedules of expenses

## OTHER

### ■ Parking License Agreement

#### **Purpose**

If your co-op has a garage or parking lot, there is a license agreement governing use of the garage.

#### **What does it contain?**

Specific clauses stating eligibility (car registered to shareholder, New York State registration and driver's license, not in arrears), conduct in the parking area (how to park, if car repair or washing is or is not permitted, etc.), conditions for sub-licensing, guest parking, what remedies are possible for violations, and under what conditions licenses can be terminated.

#### **How to change**

Board has the power to change. May be subject to approval by supervising agencies.



# Part 4: Regulations

## SUPERVISORY AGENCIES MITCHELL-LAMA RULES

### ■ HCR 1700

#### Purpose

HCR 1700 is a part of the New York Code Rules and Regulations (NYCRR) and governs Mitchell-Lama developments. It covers the rights and obligations of all parties involved, including boards, management, shareholders, occupants, and HCR, and sets out procedures to be followed in the operation of the corporation, and sanctions when they are not followed.

#### What does it contain?

Some topics covered (sample points within each):		
1700	Scope and definitions	(e.g. family composition, primary residence, household, etc)
1725	General administration	Management, bylaws, files to be stored, Board of Directors, conflict of interest, automated waiting list. Leasing commercial property, conditions for Tenant Association
1727	Occupancy	Processing applications, annual income affidavits, no warehousing, income limitations, applicant screening, occupancy standards, carrying charges, sale, succession
1728	Budget and fiscal	Preparation of Budget Rent Determination, Contracts for capital work, refinancing, inventory, disposal of equipment and supplies
1729	Operations and maintenance	Employment of managing agent, management company, (including self-managed housing companies), remedies
1732	Energy conservation	Annual energy audit report submitted to HCR.
1750	Voluntary dissolution	Regulations for withdrawing from ML program
1760	Redevelopment and refinance	Standards for loan documents

#### How to obtain

Available online at:

[www.nyshcr.org/Programs/Mitchell-Lama/ML\\_Adopted\\_Regs\\_Complete.pdf](http://www.nyshcr.org/Programs/Mitchell-Lama/ML_Adopted_Regs_Complete.pdf)

#### How to change

Legislation and political pressure/public hearings.

### HPD Mitchell-Lama Rules

#### Purpose

The rules that govern Mitchell-Lama developments supervised by HPD are actually Chapter 3 of the Rules of the City of New York. It covers the rights and obligations of all parties involved, including boards, management, shareholders, occupants, and HPD, and sets out procedures to be followed in the operation of the corporation, and sanctions when they are not followed.

#### What does it contain?

Some topics covered (sample points within each):		
3-02	Sales and succession	Waiting lists (see also Mitchell-Lama Connect: <a href="https://a806-housingconnect.nyc.gov/nyclottery/lottery.html#ml-home">https://a806-housingconnect.nyc.gov/nyclottery/lottery.html#ml-home</a> ) online waiting lists with FAQ on Mitchell-Lama waiting lists
3-03	Income limitations	Surcharges, section 8, succession rights, temporary changes in income
3-10	Carrying charge increases	
3-11	Utility pass through	Submetering, direct metering
3-14	Corporate action	Responsibilities of Board of Directors, capital assessments, annual meetings, voting
3-16	Managing agent agreements	Responsibilities
3-19	SCRIE	Senior Citizen Rent Increase Exemption program

#### How to obtain

The HPD website provides the “Unofficial Version of Current Mitchell-Lama Rules...”

<http://www1.nyc.gov/assets/hpd/downloads/pdf/renters-mitchell-lama/mitchell-lama-rules.pdf>

#### How to change

Legislation and political pressure/public hearings.

# Part 5: Laws

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## ■ Private Housing Finance Law (PHFL)

### Applicability

The *PHFL* is part of the NY State Statutes and is currently made up of 27 Articles (sections). Mitchell-Lama housing is governed by *Article II (Limited Profit Housing Companies)* of the *PHFL*, and it is sometimes referred to as Article II housing. There are other Articles in this law which govern other forms of limited equity housing, including *Article V (Redevelopment Corporations—* an example of this is Penn South) and *Article XI*, which while used with much success in the conversion of poor quality rentals to co-ops, is now being used as a tool to dismantle successful Mitchell-Lama cooperative housing.

### What does it contain?

It contains definitions, statements of purpose, and applicability statements. In addition, this law covers creation of the developments, rules about issuance of stock, tenant (cooperator) selection, resale of shares, supervision and regulation, tax exemptions, and voluntary dissolution, among other provisions.

### How to obtain

Available online at:

<http://codes.findlaw.com/ny/private-housing-finance-law/>

### How to change

This law can be changed by the NYS Legislature whose members are subject to political pressure. Local elected officials always encourage constituents to contact them, and they may be an important source for further assistance and/or guidance regarding Mitchell-Lama issues.

## ■ Business Corporation Law (BCL)

### Applicability

The *BCL* is part of the NY State Statutes and is currently made up of 20 Articles (sections). Mitchell-Lamas, because they are corporations who issue shares in New York State are covered by the *BCL*.

### What does it contain?

These 20 Articles cover formation of corporations, shareholders, boards of directors, and corporate finance, among other provisions.

### How to obtain

Available online at:

<http://codes.findlaw.com/ny/business-corporation-law/>

### How to change

This law can be changed by the NYS Legislature whose members are subject to political pressure. Local elected officials always encourage constituents to contact them, and they may be an important source for further assistance and/or guidance regarding Mitchell-Lama issues.

# Index

ACRIS (Automated City Register Information System), 5  
amortization, 3  
Article II of the Private Housing Finance Law, 2,10  
Article V (Redevelopment Corporations), 10  
Article XI, 10  
assignment, 6  
Board of Directors, 7,9,10,11  
Business Corporation Law (BCL), 10  
buy-out/privatizing, 2  
Bylaws, 3,6,7,9  
capital stock, 3,7  
carrying charges, 3,6,9  
certificate of incorporation, 5  
Chapter 3 of the Rules of the City of New York, 9  
cooperative movement, 4  
deed, 5  
Disability Rent Increase Exemption (DRIE), 3  
Financial statement, annual audit, 7,8  
gentrification, 2  
grievances, 3  
HCR 1700, 9  
HM-78.2 (4-08) (Limited Profit-Mutual Coop), 6  
Homes and Community Renewal (HCR), 3,5,6,7,9  
house rules, 6,7,9  
housing company, 7  
housing co-op definition, 3  
Housing Preservation and Development (HPD), 3,5,7,9  
indemnification, 7  
joint ownership, 5  
Lama, Alfred, 1  
limited equity, 3,4,7,10  
Limited Profit Housing Companies Law, 2,3,6,7,10  
management company, 5,6,7,9  
Mayor Wagner, 1  
Mitchell, MacNeil, 1  
Mitchell-Lama Rules, 9  
New York Code Rules and Regulations (NYCRR), 9  
New York State Homes and Community Renewal (HCR), 3  
NY State Statutes, 10  
NYS Department of State, 5  
NYS Legislature, 10  
occupancy agreement, 3,6,7,8  
Occupants' Annual Affidavit of Household Income For  
Calendar Year, 9  
Officers of the Board, 4,5,7  
oversight agencies, 1,3,5  
parking license agreement, 8  
Private Housing Finance Law (PHFL), 2,3,10  
proprietary lease/occupancy agreement, 6  
proxies, 7  
Quorum, 7  
Repairs and painting, 6  
Rochdale Principles, 4  
SCRIE, 3,9  
shelter rent tax, 2,3  
state/municipality loans, 2  
stock, 7,10  
stock certificate, 3,5,6  
stockholders meetings, 7  
subletting, 6  
succession, 9  
supervising agencies, 6,7,8  
surcharges, 6,9  
tax abatements, 2  
transfer, 6,7  
urban renewal land, 2  
urban renewal plan, 1,5  
voting, 5,7,9

## MISSION STATEMENT OF CU4ML

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.



**Cooperators United for Mitchell-Lama**

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