

REBNY Comments | March 14, 2023

## **The Real Estate Board of New York to The Department of Housing Preservation and Development on the proposed Mitchell-Lama Rule Amendments**

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association. Founded in 1896, REBNY represents commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople and other organizations and individuals active in New York City real estate. REBNY thanks the Department of Housing Preservation and Development for the opportunity to submit comments regarding the proposed Mitchell-Lama rule amendments.

New York City is facing a housing crisis and a key driver of this crisis is the lack of housing production and inadequate supply to meet the needs of the City's growing population. According to a study by AKRF, New York City needs to produce 560,000 housing units by 2030 to keep pace with demand, with an immediate need of 277,000 units. Over the past decade, however, NYC only produced 23 units per 1,000 residents.

To address the housing crisis, we need to also preserve the housing units we have today. New York City has a rapidly ageing housing stock, with the latest (2017) Housing Vacancy Survey reporting that four out of five units were constructed prior to 1974. REBNY has advocated for the continuation of the J-51 program, which provided tax abatements in order to support high-quality housing stock and improving the aging building stock in New York City. About half the cooperatives in the city, including Mitchell-Lama co-ops, have benefitted from the program.

The Mitchell-Lama program was created to develop affordable housing, both rental and co-operative owned for working class families. Allowing families to build generational wealth and earn equity in their home to make housing choices on where to live and how as they age is an important goal. This goal is realized when restrictions on re-sale are lifted as part of the privatization option.

Building income-restricted housing requires incentives and investment. Additionally, a significant driver for many Mitchell-Lama developments privatizing and leaving the program was to refinance and fund necessary capital improvements for the long-term viability and safety of the properties. Making these necessary capital improvements while maintaining below market rate rents is a major concern for many Mitchell-Lama properties.

The rules proposed today limit owners' ability to improve the housing stock by privatizing, while imposing increased administrative burdens. The amendments impede the ability of Mitchell-Lamas to efficiently function. The goal appears to ensure that properties never privatize. However, many buildings that are part of the Mitchell-Lama program are in need of additional capital in order to operate efficiently and provide a safe and stable home for tenants. In order to do so, the projects would need to go through Article II-XI conversions. However, the conversion from Article II to Article XI should not be treated as privatization as the goal is to facilitate long term preservation of affordable housing by converting Mitchell-Lama cooperative to an HDFC cooperative.

As proposed, the housing company would need to post every deficiency letter and response required by the AG to building link. This provision is extremely burdensome and is an overreach as current Private Housing Finance Law does not have a requirement to post retainer letters and emails with the AG publicly. To also be required to post retainer agreements is potentially a violation of attorney client privilege and could deter law firms from giving special fee arrangements.

Next, the provision requiring managing agents to notify HPD if a vendor or service provider is paid more than \$100,000 in any twelve-month period will prove to be burdensome for larger projects. This amendment lacks clarity as well regarding the twelve-month timeframe. If the managing agent has to notify HPD if a vendor is paid beyond the threshold over any twelve-month period, then the agents must have constant monitoring each month to look back at the prior twelve months. Rather, it would make more sense to allow the look back period to be any calendar year of the fiscal year as to only require looking back at the current year. This would allow for consistency with the way financial reports are generated each month.

The proposed amendments will impact dissolution and impede the ability of the Mitchell-Lama company to efficiently function. We recommend the rules be pared down to the minimum necessary to effectuate the statute change. Thank you for the consideration of these points.

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