

Cooperators United for Mitchell-Lama (CU4ML)
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Ms. Julie C. Walpert
Assistant Commissioner for Housing Supervision
Department of Housing Preservation and Development
rules@hpd.nyc.gov
<http://rules.cityofnewyork.us>

Dear Ms. Walpert:

Cooperators United for Mitchell-Lama is a grassroots advocacy organization working to protect and preserve Mitchell-Lama cooperatives as deeply affordable, democratic, not-for-profit housing for residents of New York State.

CU4ML was formed in 2008 to oppose privatization of Mitchell-Lama cooperatives. We work on governance and financial issues that confront Mitchell-Lama cooperatives. CU4ML members assist neighbors in other Mitchell-Lama cooperatives and urge them to run for their Boards of Directors and serve their communities. We lobby legislative leaders to change laws and rules to improve the functioning of our developments by making sound financial decisions planning for major rehab and renovation. We reach out to the supervisory agencies and apply our experiences to improve rules that govern our communities.

Thank you for hearing and reading our testimony on the Proposed Changes to the Mitchell-Lama rules (23023).

Testimony from Cooperators United for Mitchell-Lama on proposed changes to Mitchell-Lama Rules, 2023

Governance:

Posting of documents to the cooperative's website that is accessible to all shareholders and residents.

- All documents, contracts with vendors and professionals for building services and repairs must be posted.
- All resolutions and motions of the Board of Directors, including the full names of the Board members and how they voted on the motion, must be included in the minutes.
- **All Agendas** for Board meetings must be posted in advance of the meetings conforming with the four triggers of confidentiality. Confidential issues are listed with a general description to shield individuals. Four points that trigger an executive session: employee personnel issues, matters concerning individual shareholders, advice from the corporate attorney, and contract negotiations (though the results of the final contract must be posted to the website.)
- **All Minutes** must be posted, in a timely fashion, after adoption by the Board of Directors. Confidential issues, and matters discussed in executive session, are mentioned without confidential details thus avoiding the need for redaction of the minutes. Any motions passed in executive session must be posted and the Board meeting must exit executive session for the proper passage of motions. Controversial matters are not necessarily confidential unless the issue is triggered by one of the four points mentioned.
- **Transcripts of Hearing for maintenance or carrying charge increases** must be posted to the website in a timely manner.
- All documents provided in the **application for a maintenance or carrying charge** increase must also be posted to the website as they are forwarded to HPD.

- All candidate biographies as well as all **election and voting documents** must be posted to the website so that shareholders are aware of the best procedures for conducting the vote.
- **ALL documents**, communications, deficiency letters, financial reports, financial offers from supervisory government agencies and even private banks relating to:
 - **Privatization:** dissolution and reconstitution: (Feasibility Study, Red Herring, Offering Plan, Black Book, deficiency letters and communications between the Board of Directors and the Agencies and the NYS Attorney General's office);
 - **Semi-privatization:** conversion from an Article II to Article XI (of the PHFL) to an HDFC. (Feasibility Study and Proxy Statement, deficiency letters, communications between the Board of Directors and the Agencies and the NYS Attorney General's Office) **MUST** be posted at the cooperative's website.
 - All documents involved in **changes in the cooperative's structure** must be fully accessible to all shareholders and posted to the cooperative's website.
 - All **financial records** relating to privatization or semi-privatization must also be posted at the website and available to shareholders.

The goal is transparency and lots of sunshine to encourage shareholder participation. There are too many examples of Boards, and by direction, Managing Agents, procrastinating and refusing to release information to shareholders. Too much time and energy has been spent to overcome Board secrecy. Frequently, it appears the Board is acting out of pique and not to protect vital, confidential information.

Currently, shareholders at Cadman Towers are expected to vote on a Proxy Statement that is missing vital information. How can shareholders be expected to make an informed decision without the Regulatory Agreement? Throughout the Proxy Statement shareholders are reminded to read the Regulatory Agreement even though HOPD has failed to provide the document.

HPD has doubly failed by encouraging an Article II to XI conversion and not protecting Cadman Towers.

HPD must demonstrate its commitment to the Mitchell-Lama program and deeply affordable housing. We need better reporting methods to ensure the Boards are fulfilling their responsibilities to the shareholders by releasing information crucial to individual decision-making.

Our intent is not to penalize or hamstring the Board.

We need to devise ways to avoid poor decision-making by the Boards that lead to disastrous construction and rehab events that damages individual cooperators.

Increasing secrecy does not lead to better decisions but, rather, cynicism and lack of community participation essential to the well being of a not for profit cooperative.

Board Member Training:

Board members, both new members and incumbents, must attend and participate in Board member training. Training is especially important to stay up-to-date on changes in the rules and laws, and the complex requirements of Local Laws. Training is essential so Board members learn to avoid bad decision making. Boards need to seek out good professional experts to guide them.

Privatization and Semi-Privatization Efforts and Frequency:

- All efforts to dissolve the Mitchell-Lama cooperative: dissolution and reconstitution as a market rate cooperative, or conversion from Article II to Article XI HDFC must require a voting threshold of 80% of the total units in the development.
- HPD must not favor one method of altering the governing structure over another. Both dissolution/ and reconstitution or conversion to an HDFC are changing the corporate structure and moving the ML cooperative out of the Mitchell-Lama program. Both methods must require an 80% voting threshold.
- Require an 80% threshold for all votes for authorization of special assessments to fund Feasibility Study and Proxy Statement. Requests for

additional funds to the Article II to Article XI conversion must also require a special assessment vote of 80%

- All documents involved in the dissolution or conversion must be posted in a timely fashion on the cooperative's website. Feasibility Study, Red Herring, Offering Plan, Black Book, deficiency statements from the NYS Attorney General's office, communications from HPD to the Board of Directors or the cooperative's attorney, financial offers from private banks and the NYC HDC and NYS HFA, financial reports from the cooperative's attorney.
- HPD must impose strong financial record keeping and shareholders must have access to these records without procrastination by Management.
- Boards, Management, Attorneys and supervisory Agencies must all be transparent during this period and provide information and documents to the cooperative's website.
- Impose five-year waiting period after each failed attempt to change the cooperative's governing structure before a new attempt. Be it from ML cooperative to a market rate cooperative, ML cooperative to an HDFC cooperative, or failed attempt at dissolution to an attempt to convert to Article XI. All of these scenarios consume much energy and money from the shareholders. This time and money would be better spent on keeping the building in good shape without repeated divisive attempts to leave the Mitchell-Lama program.
- Shareholders that oppose either method of withdrawing from the Mitchell-Lama program must be recognized and information must flow freely by posting at the cooperative's website. These privatization efforts should not be private meetings between the corporation attorney and the supervisory agency.

Elections and Voting:

- Prohibit attorneys and accountants from serving as election monitors on privatization votes, special assessment funding and voting for candidates for the Board of Directors.

- Absentee ballots may be mailed only upon shareholder request. Absentee ballots are then mailed to the shareholder. The election company **shall not** mail absentee ballots to all shareholders.

The recent amendments to the law banned proxy voting. Mailing of absentee ballots to all shareholders is a swap of the name from proxy to absentee ballot and a misunderstanding of the intent of the new amendment to the PHFL. There should be no option of proxy voting. No proxy voting and no wholesale mailing of absentee ballots. HPD must encourage in person voting. Taking the elevator to the lobby or community room is one of our community values. Despite handicaps and frailties, many residents insist on in-person voting and balk at putting their ballot in a box – even a box with a lock and a key. American citizens, especially us New Yorkers, take our voting responsibilities seriously and are distrustful of procedures that do not parallel those of the general elections in our city.

- CU4ML supports the double-envelope method of casting ballots as an excellent method to insure both confidentiality and anonymity.
- All election documents, candidate biographies, procedures and time lines for completion of voting tasks, must be posted in advance on the cooperative's website. Managing agents must allow adequate time and file their plans in advance with HPD to avoid delayed elections.

CU4ML celebrates the success of Mitchell-Lama cooperatives and rentals. We expect the supervisory agencies to be pro-active in defending Mitchell-Lama and support rules and regulations that protect our homes. Neutrality, in the face of poor decisions by the Boards of Directors, is a false option and ends up reducing the affordable housing in NYC.

Submitted on behalf of Cooperators United for Mitchell-Lama

Adele Niederman, President

3/14/2023