

Mitchell-Lama Co-op **Shareholders Training**

A training designed to provide shareholders with information on some key elements of living in a Mitchell-Lama co-op supervised by the NYC Department of Housing Preservation and Development (HPD).

Topics to be Covered:

- Basics of Mitchell-Lama Co-ops
- Admissions and Internal Transfers
- Stock Certificates
- Annual Income Affidavits and the Income Verification Audit Process

Topics to be Covered (continued):

- Apartment Repairs and Renovations
- Carrying Charges
- House Rules and Parking
- Succession Rights

Mitchell-Lama Co-ops: The Basics

The Basics:

What is a Mitchell-Lama Cooperative?

- A housing cooperative or co-op is a corporation that owns residential real estate. The corporation is owned by shareholders who are each granted the right to live in an apartment in the co-op building pursuant to the terms of an occupancy agreement.
- A Mitchell-Lama co-op in NYC operates under the supervision of HPD or the NYS Division of Housing and Community Renewal. This presentation applies to the City-aided Mitchell-Lama co-ops under HPD's supervision.

The Basics: What is a Shareholder?

- Shareholders own shares in the corporation, rather than owning their individual apartments. Shareholders are granted the right to live in their apartments pursuant to the terms of an occupancy agreement which grants them certain rights and details various shareholder obligations.
- Shareholders are entitled to vote at the annual meeting/board election for members of the Board of Directors.
- Shareholders are entitled to be a candidate for and serve on the Board of Directors, subject to any conditions set forth in the applicable law and the corporation's by-laws.
- Shareholders are entitled to receive the annual financial report of the corporation.

The Basics:

Annual Board of Directors Elections

- The Board of Directors is a group of shareholders who have been elected to conduct business on behalf of the cooperative.
- Elections for the co-op's Board of Directors must be held annually, per the NYS Business Corporation Law and the Mitchell-Lama rules.
- Annual board elections ensure that shareholders have a say in the leadership of their development.
- All annual board elections must be supervised by an independent election company.

The Basics: Annual Board of Directors Elections (*continued*)

Getting a Quorum for a Valid Board Election

- A "quorum" is the minimum number of participating shareholders needed to conduct an election, as specified in the co-op's by-laws.
- It's critical for the health of the co-op that shareholders participate in elections:
 - Voting for your preferred candidates in the annual election allows you to impact the co-op's direction and decision-making.
 - Failure to achieve a quorum can result in an extended election that increases the cost (paid by shareholders). It can also potentially end with a "null and void" election, which may lead to unfilled board seats and dysfunctional board governance.
- Voting is easy! If you can't vote in person, absentee ballots are available.

BE SURE TO VOTE AND MAKE YOUR VOICE HEARD!

The Basics:

Primary Residence Requirement

- IT IS A FUNDAMENTAL REQUIREMENT OF THE MITCHELL-LAMA PROGRAM THAT SHAREHOLDERS MUST OCCUPY THEIR APARTMENT AS THEIR PRIMARY RESIDENCE.
- The short-term renting of a Mitchell-Lama apartment (ex., Airbnb) is strictly prohibited. Longer-term subletting of apartments is also forbidden.
- The NYC Department of Investigation and HPD regularly review allegations of a shareholder violating the primary residence requirement. Noncompliance is grounds for eviction through a “non-primary” action.

Admissions & Internal Transfers

Mitchell-Lama Admissions Process

- Applicants must apply to each development separately through housing lotteries.
- Eligibility is based on strict income and household size requirements, as well as position on the applicable waitlist.
- Internal and external applicants must qualify at the time they are placed on the waitlist and at the time they are being offered an apartment, as per the Mitchell-Lama Rules.
- As indicated earlier, subletting is prohibited, and the apartment must be the shareholder's primary residence.

Mitchell-Lama Admissions Process (continued)

- The application review and approval process is completed by HPD, working together with the co-op's management company.
- There are no external priorities, except for military veterans. (But veterans are not eligible for priority on an internal waitlist.)
- A resident living in an apartment with the shareholder may not transfer to another unit through an internal waitlist while the shareholder retains the original apartment.
- Waitlists must be posted in public areas.

Mitchell-Lama Admissions (continued)

- Most City-supervised coops do not accept guarantors. Co-op guarantors and credit score policy must be approved by Board resolution and must be applied equally by the board for all applicants.
- Internal and external applicants are only allowed two apartment offers. After two offers, internal applicants will need to go to the bottom of the waitlist and start again.
- Management must offer one (1) apartment to an external applicant for every three (3) offers to internal applicants to for each bedroom size.
- Occupancy Standards as of 7/19/2023 (*prior occupancy standards apply for applicants on waitlist prior to the July 2023 rule change*):
 - Studio & 1 Bedroom: 1-3 people; 2 Bedroom: 2-4 people;
 - 3 Bedroom: 4-6 people; 4 Bedroom: 5-8 people.

Application of Equity on Internal Transfers

- For any internal transfer, a housing company must give the transferring shareholder a "Paid-in Equity Credit" applied against the purchase price of the new apartment (even if the prior apartment has not been sold at the time of the closing on the new apartment).
- The Paid-in Equity Credit consists of:
 - The consideration paid for the prior apartment; plus
 - Any capital assessments paid in connection with the prior apartment; plus
 - If applicable at the co-op in question, the resident's proportionate share of the paydown of mortgage debt on the co-op.
- Note: The housing company may deduct from the Paid-in Equity Credit:
 - Any back maintenance/surcharges owed with respect to the prior apartment; and
 - The costs to repair the prior apartment.

Stock Certificates

Stock Certificates

Shareholder At Closing and Move-in:

General Rule is Spouses or One Shareholder Only: Under the Mitchell-Lama Rules, the stock certificate and occupancy agreement for an apartment in a Mitchell-Lama co-op are required to name only spouses or the one person who is offered and accepts the apartment, regardless of whether the application for the apartment named more than one applicant, other than a spouse.

7 **Stock Certificates (continued)**

Amending a Stock Certificate After Move-in:

After initial occupancy, subject to HPD's approval, spouses may be added to a stock certificate and occupancy agreement if they meet the requirements of the Mitchell-Lama Rules:

- The spouse must either have been:
 - An initial occupant of the apartment with the shareholder; or
 - Included on the income affidavits filed by the shareholder for the two years immediately preceding the shareholder's request to add the spouse as co-owner.
- The spouse must have occupied the apartment as his or her primary residence for at least two consecutive years and must continue to occupy the apartment as his or her primary residence at the time of the request.
- The spouse and the shareholder must intend in good faith to remain joint occupants of the apartment.

Stock Certificate Issues (continued)

Other Family Members:

Succession: Any other family member of a shareholder may be named on the stock certificate and occupancy agreement for the apartment only after being approved for succession by HPD, after the original shareholder has vacated the apartment.

**Annual Income Affidavits
and
The Income Verification Audit
Process**

Completing the Annual Income Affidavit

- Mitchell-Lama residents must fully complete and submit an Income Affidavit each year. This includes:
 - Reporting all household members occupying the apartment as of December 31st
 - Reporting all household income
 - NOTE: Residents of "HUD 236" developments who pay "HUD Basic" charges and submit a HUD 50059 form and Section 8 recipients who recertify their income with the Section 8 program may not be required to submit an Income Affidavit. (Management can advise you as to whether you must submit an Income Affidavit.)
- The Annual Income Affidavit serves a number of purposes:
 - Identifies who is living in the apartment.
 - Collects income information for management to determine if a household is subject to rent/maintenance surcharges.
 - Determines whether the household meets the occupancy requirements for placement on an internal transfer list for a larger apartment.
 - Helps determine eligibility for succession.
- NOTE: Residents who fail to submit a required Income Affidavit furnish may have the maximum surcharge imposed.

The Income Verification Audit Process

As part of the Income Verification Process, HPD sends income information reported by residents on their Income Affidavit to the NYS Department of Taxation and Finance (NYS DTF).

- NYSDTF compares the income that the resident reported on their Income Affidavit with the income the resident reported on their NYS tax return.
- Based on the comparison, NYSDTF produces an audit report reflecting the results of the comparison. The audit report is sent to the management of the development for follow-up as to any discrepancies.
- NOTE: Residents who fail to furnish requested documentation to management as part of the audit process (ex., certified tax return) may have the maximum surcharge imposed.

Repairs and Renovations in Mitchell-Lama Co-op Apartments

Repairs and Renovations of Apartments

Co-op Responsibilities:

- The co-op, through its management company, is responsible for overseeing necessary repairs to vacant units and preparing them for resale.
- Generally, the co-op is responsible to perform required repairs to the exterior of the building and interior common areas, as well as for repairs needed to areas behind walls, below floors and above ceilings.
 - For example, if a pipe inside an apartment's kitchen wall leaks, the co-op generally will be responsible to repair the leaking pipe and repair the wall.
 - However, the shareholder generally will be responsible for restoring any damage to property inside the apartment resulting from the leak (ex., replacing wall tiles, repairing/replacing kitchen cabinets, etc.)
 - **Note: It is important to consult your Occupancy Agreement for details on co-op and shareholder repair responsibilities in your specific development.**

Repairs and Renovations of Apartments (continued)

Shareholder Responsibilities:

- Generally, shareholders are responsible for necessary repairs within the walls of their apartments, as well as for repairs needed outside of the apartment that are caused by the shareholder's act or neglect.
 - For example, if a shareholder's sink or bathtub overflows and damages their downstairs neighbor's apartment, the shareholder will be responsible for the cost of repairs to the downstairs unit.
 - If repairs that are a shareholder's responsibility are performed by the housing company, the shareholder will be charged for the cost of the repair (through a charge-back).
- Shareholders are responsible for the cost of alterations or upgrades to their unit. (For example, if kitchen countertops or cabinets are showing wear and tear and the shareholder wants them replaced, it would be the shareholder's responsibility to purchase the replacement kitchen fixtures and hire a contractor to perform the work. Please note that management approval is required for any work performed within a shareholder's apartment.)
- Depending on a housing company's move-out policy, a shareholder vacating a unit may be responsible for restoring the apartment to its original state.
- Note: It is important to consult your Occupancy Agreement for details on co-op and shareholder repair responsibilities within your specific development.

Repairs and Renovations of Apartments (continued)

Insurance:

- Shareholder's Insurance: Every shareholder in a co-op is responsible to obtain and maintain liability insurance (to protect against injury to persons in their apartment or damage to property outside the apartment (ex., overflowing tub damaging downstairs ceiling and walls)), as well as property insurance covering personal property and improvements within their apartment (including the unit's floors, wall coverings, appliances, and fixtures).
 - Often, insurance requirements are spelled out in the Occupancy Agreement and/or in the housing company's House Rules.
 - Regardless of the co-op's requirements, given a co-op shareholder's potential responsibility for damages and repairs, it is critical that each shareholder ensure that they maintain adequate insurance coverage.
- Housing Company's Insurance: The co-op is expected to maintain a master policy covering events such as fires, vandalism, and the breakdown of machinery or damage to furnishings in public areas of the building. But note that this protection does not extend to individual apartments.

Repairs and Renovations of Apartments (continued)

311 Calls and Violations:

- Sometimes shareholders in co-ops call 311 to report issues in their apartment or elsewhere in their building. These calls may result in one or more violations being imposed on the housing company. Fees and penalties are commonly associated with these violations.
 - It's important to keep in mind that, as shareholders in the housing company, co-op owners ultimately are financially responsible for the payment of fees and penalties associated with violations issued on the co-op's buildings.
 - Further, if the violation relates to a condition inside an apartment that is the shareholder's responsibility to repair, the managing agent will arrange for the repair but may charge-back the shareholder for the cost of the repair and any associated penalty.
- Generally, co-op shareholders should avoid calling 311 to report building deficiencies, but instead contact the property manager to get the issue addressed. If management is not responsive to the problem, the issue should be brought to the attention of the Board of Directors. Shareholders may also contact the HPD Portfolio Analyst assigned to their development.

Maintenance Payments **(also referred to as** **Carrying Charges)**

Maintenance Payments

- Shareholders are required to pay their monthly maintenance charges timely. Generally, maintenance payments are due on the 1st of each month (although many co-ops provide a "grace period" and will consider payment to be timely if received by the 10th of the month).
- A shareholder's failure to make timely payments of maintenance charges will result in late fees being imposed and could lead to an eviction action by the housing company.
- Shareholders' maintenance charges are used to pay for the housing company's operating expenses. When shareholders fail to pay their maintenance, the housing company may struggle to meet its financial obligations, and this can result in higher maintenance charges for other shareholders.

Maintenance Payments (continued)

Maintenance Increases

- A co-op's board of directors is responsible to ensure the co-op's financial health, and this includes seeking an increase in maintenance charges when needed.
- The board must work with its accountant and managing agent to submit an increase application to HPD when it sees that current maintenance charges will be insufficient to cover rising operating expenses or when circumstances otherwise require it.
- Shareholders are entitled to be fully informed about any request submitted to HPD to increase maintenance charges. The housing company must furnish shareholders with written notice of any increase application (including detailed back-up) and must conduct an informational meeting for shareholders to explain the reasons for the maintenance increase application.
- HPD will conduct a public hearing regarding the increase application. Residents must receive advance written notice of the date and time of the hearing and will be given the opportunity to offer testimony regarding the application.

Maintenance Payments (continued)

Senior Citizen Rent Increase Exemption (SCRIE)

Shareholders who face financial challenges due to increased maintenance charges should keep in mind the availability of the SCRIE program. To qualify for SCRIE benefits, applicants must meet the following requirements:

- Must be at least 62 years old as of the effective date of the maintenance increase; and
- Must be the head of household (named as the shareholder on the co-op stock certificate); and
- Must have a combined income for all household members not exceeding \$50,000; and
- Must spend more than one-third of monthly household income on maintenance (excluding utility charges); and
- Must not receive assistance through any other rent/maintenance assistance program (ex., Section 8, SCHE, DRIE, RAP).

Applications may be emailed to: SCRIE@hpd.nyc.gov

If you have any questions, please call (212) 863-8494

House Rules and Parking

House Rules

- It is very important for all shareholders in a Mitchell-Lama co-op to have a copy of (and be familiar with) the co-op's House Rules, which are established by the board of directors to promote a good quality of life for all shareholders.
- The House Rules are generally applicable to each shareholder and all family members, guests and visitors of shareholders. When a resident breaks a House Rule, it can lead to an administrative charge or, in cases of repeated, serious violations, the housing company may bring an eviction proceeding against the resident.
- House Rules normally cover a wide range of topics to promote the orderly and peaceful enjoyment of the co-op's common facilities and shareholders' individual apartments. House Rules commonly set forth the co-op's policies and rules regarding: Community Room reservation and use; pets; garbage disposal; noise; move-ins and move-outs; alterations; smoking; e-bikes; and other matters.

Parking

- Most Mitchell-Lama co-op developments offer parking as an amenity for shareholders. A shareholder's parking rights are subject to the terms of a revocable license agreement and require the timely payment of a monthly parking fee.
- Parking spaces are often limited, so it is common for co-ops to maintain waiting lists. HPD does not oversee parking waiting lists; rather, parking-related matters are handled by the management company.
- Generally, to be eligible for a parking space, a resident must be listed on the annual income affidavits (although some co-ops allocate parking spaces only for shareholders of record) and must have the following:
 - Valid NYS driver's license showing the Mitchell-Lama development as the licensee's residence.
 - Current NYS non-commercial motor vehicle registration (also showing the Mitchell-Lama development as the registrant's address).
 - Proof of current insurance.

Succession Rights

Succession Rights

There are 3 eligibility criteria for an applicant to qualify for successions rights.

Eligibility Requirement #1: Family Relationship

An applicant must be a “family member” of the shareholder of record. This means that the applicant must be:

- A husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, nephew, niece, uncle, aunt, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of the shareholder; **OR**
- Any other person residing with the shareholder in the apartment as a primary residence who can prove emotional and financial commitment and interdependence between such person and the shareholder.

Succession Rights

Eligibility Requirement #2: Co-residency

The Mitchell-Lama Rules also require co-residency with the shareholder of record for the specified time period. To qualify for succession rights, an applicant must provide documentation demonstrating that he or she and the shareholder of record co-resided in the apartment as their primary residence for the two years immediately prior to the date the shareholder of record permanently vacated.

- Note: The required co-residency period is reduced to one year if the successor applicant is a senior citizen (62 or over) or is a “disabled person” (as that term is defined in the Mitchell-Lama Rules).

Succession Rights

Eligibility Requirement #3: Income Affidavits

- An applicant for succession must appear on the income affidavits submitted for the apartment during the required co-residency period.
- The failure of a family member who is seeking succession to appear on income affidavits for the apartment creates a presumption that he or she did not reside there as a primary residence.
- An applicant may attempt to overcome such presumption by presenting clear documentary proof that the apartment was in fact his or her primary residence during the period in question. However, in such a case, the income affidavits from which an applicant was omitted would be required to be amended to include their income, and the applicant would be liable to pay the housing company any resulting surcharges.

Succession Application Form

- The application form can be found on HPD's Mitchell-Lama Website:
 - [Mitchell-Lama Program - HPD \(nyc.gov\)](https://www.nyc.gov/mitchell-lama-program)

Supplementary Material

- [Mitchell Lama Rules](#)
- [Application for Succession Rights](#) (The Application for Succession Rights and supporting documents must be submitted to the managing agent for your development)
- [Instructions for Succession Right Application](#)
- [2021 Income Affidavit](#) (A fully completed income affidavit must be submitted to the management company of your development by April 30th of each year)
- [Instructions for Income Affidavit](#)
- [Income Affidavit Questions and Answers](#)
- [Article II to Article XI Term Sheet](#)
- [Article II to Article XI Proxy Statement](#)



HPD Contact Information

(212) 863-6500

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