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The Cost of Keeping Mitchell-Lama Housing Affordable

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Owners of thousands of apartments across the city are ending rental or sales restrictions that cover their buildings by repaying loans issued under of the state's Mitchell-Lama affordable housing guidelines. Since 1989, owners of buildings with 6,800 units of housing have opted to repay their city-subsidized mortgages ahead of schedule, and owners of developments with nearly 1,800 more units are poised to do so as well. All of the other 54,000 units of housing built under Mitchell-Lama rules and that received city mortgages also are eligible to "buy out" of the program.

When owners buy out of the Mitchell-Lama program, the apartments are generally no longer part of the city's stock of affordable housing. But for some tenants rent protections remain, either because the buildings were built before 1974 so they are covered by rent regulations or because of federal subsidies for the project. An analysis by IBO finds that 2,130 households are living in city-supervised apartments that could be bought out and who would have no protections against big increases in their rents.

The number of households with no rent protections is smaller than some Mitchell-Lama residents and housing advocates once feared. When coupled with the actual cost to the city of recent agreements to provide subsidies that minimize rent increases after the owners have prepaid their Mitchell-Lama loans, it appears that maintaining affordability for current tenants may not be as costly as previously thought. But keeping entire projects affordable remains expensive.

Program History. A statewide initiative launched in 1955, the Mitchell-Lama program provided low-interest mortgages and property-tax breaks to developers in exchange for building co-op or rental housing affordable to middle-income New Yorkers. Some projects also received federal Section 236 assistance, which effectively reduced the interest on the development loan to 1 percent. There are currently about 143,000 Mitchell-Lama units statewide, including almost 120,000 in New York City. The state supervises about 64,000 of the units here, and the city is responsible for the remaining 56,000 because it provided the initial mortgage subsidy. About 30,000 of these city-supervised apartments are co-ops and 26,000 rentals. Most of the projects were built by for-profit companies, although some hospitals and universities built housing for their employees through the program. The last Mitchell-Lama project opened in 1978.

Under Mitchell-Lama guidelines affordability is generally defined as incomes up to 100 percent of the area median as calculated by the federal Department of Housing and Urban Development. That would amount to an income of $62,800 for a family of four today. After some program modifications, developers were given the right to buy their way out of the program by paying off what were generally 50 year loans just 20 years after initial occupancy. When an owner buys out of

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the Mitchell-Lama program, all outstanding loan amounts are repaid and the affordability provisions are lifted.

Mitchell-Lama Buyouts. The first buyouts of Mitchell-Lama developments under the supervision of the city's Department of Housing Preservation and Development (HPD) were in May of 1989. Since then, a total of 6,823 HPD-supervised Mitchell-Lama units in 18 developments have left the program. Another 1,757 units in seven projects have declared their intent to withdraw. Media reports suggest that there are additional buildings that are considering leaving the program, but which have not formally begun the buyout process with HPD.

HPD-Supervised Mitchell-Lama Rental Units

	Project-Based Section 8	*With 236*	*Without 236*	*Total*
Pre-1974	-	5,386	7,261	12,647
1974 or later	1,685	9,631	2,130	13,446
Total	**1,685**	**15,017**	**9,391**	**26,093**

SOURCE: IBO; New York State Department of Housing and Community Renewal, "2002 Annual Report: Mitchell-Lama Housing Companies in New York State."
NOTE: Excludes buyouts that have already occured.

The developments that have bought out of the program have been located in every borough but Staten Island, although to date only one Brooklyn property has completed the buyout process, with another one pending.

The buyouts have occurred in clusters over time. In general, buyouts occur in a strong real estate market, when owners feel they have the most to gain from leaving the program.

For residents of Mitchell-Lama co-ops, buyouts have a very different meaning than for tenants in rental buildings. The sale prices for Mitchell-Lama co-op units—and hence the profits to owners—were capped to ensure ongoing affordability. If a co-op decides to buy out, owners are allowed to sell their apartments at market rate, and stand to make windfall profits, unless the co-op board has passed by-laws that cap sale prices. No affordability "protection" is needed for co-op owners, although co-op buyouts still pose a problem for the city because they remove units from the stock of affordable housing.

To date, only two co-op developments containing 372 units have opted out of the program. Buying out of Mitchell-Lama almost certainly means that the monthly carrying charges that apartment owners must pay will increase because the cooperative corporation will have to pay market interest rates and lose their property-tax break. It appears that most Mitchell-Lama co-op developments and their owner-occupants have decided that the immediate increase in monthly costs outweighs the profits that could come from buying out.

For residents of Mitchell-Lama rental projects, the effect of a buy out on their rents can vary depending on a number of factors. If the building was constructed before 1974, rent increases will be subject to rent-stabilization rules. For those developments that received federal Section 236 assistance other rental subsidies are available to many tenants.

Preserving Affordability. Nearly half the 26,000 HPD-supervised Mitchell-Lama rental units were built before 1974, so rent-regulations will apply to these apartments. In buildings receiving Section 236 interest subsidies, most households with incomes up to 95 percent of the area median (about $60,000 for a family of four) are eligible for enhanced—so-called "sticky"—Section 8 vouchers. The enhanced vouchers pay the difference between 30 percent of a tenant's income and the market rent, without the usual rent ceiling. Citywide, according to the 1999 Housing and Vacancy Survey, about 84 percent of households in all Mitchell-Lama rental housing have incomes that qualify them for sticky vouchers, although not all of these households live in buildings with Section 236 subsidies.

One HPD-supervised development—Manhattan Plaza—also receives federal Project-Based Section 8 assistance. Income-eligible tenants there would also receive sticky vouchers if the development's owners opted out of Mitchell-Lama.

But not all Mitchell-Lama buildings were built prior to 1974, nor do all buildings receive Section 236 or Section 8 assistance. Tenants in rental buildings that do not fall into either category have no legal protections from rent increases without extraordinary action by the city—although a recent state Assembly bill would place all Mitchell-Lama rental projects that opt out of the program under rent stabilization. Of the 2,130 units currently without voucher or rent stabilization protection, 628 in three buildings, or 30 percent, have buyouts pending.

The Ruppert-Yorkville Deal. The city has stepped in to assist tenants in the past, most affirmatively in the Ruppert-Yorkville buyout in which the owners converted the rental project to a condominium. Ruppert-Yorkville is a 1,257 unit building on the Upper East Side. It was first occupied in 1974, and did not receive Section 236 aid, so there was no protection available to tenants when the building owners sought to leave the Mitchell-Lama program last September. The city, the building's owners, and the tenant association reached an agreement whereby tenants were able to purchase their apartments from the owner at up to a 30 percent discount. For those tenants who opted not to buy their apartment, three programs were created:

- For tenants with incomes below 80 percent of area median income, the New York City Housing Development Corporation (HDC), which held the subsidized mortgage, pays the difference between 30 percent of the household income and a formula driven allowable rent for the apartment (calculated as the HPD-determined vacancy rent for 1982, plus the cumulative compounded Rent Guidelines Board increase for the last 20 years).
- For tenants with incomes between 80 and 100 percent of area median income, rent was set at the greater of the rent paid in the previous year or one-third of household income. When their lease next comes up for renewal, rent cannot rise more than 50 percent above the current level.
- Tenants with incomes above 100 percent of area median income are eligible for the "limited rent increase program," which sets rents at the greater of the HPD-determined allowable rent or one-third of a tenant's income. Again, rent increases are capped.

HPD estimates that the agreement will cost $830,000 for the first year when tenant leases expire, and $2 million annually in the future. Initial estimates of the ongoing costs had been as much as $3 million annually.

HPD reached a different agreement with the Waterside and North Waterside developments, which bought out in October 2001. In this instance, the city will phase in a payment in lieu of taxes in exchange for gradual rent increases. This agreement was possible because the city holds a ground lease on these projects. For developments not located on city-owned land, such an arrangement would require legislation.

Keeping Buildings in the Program. The city also has taken action to keep buildings in the Mitchell-Lama program by providing additional loans to owners on the condition that they preserve affordability. HPD has made more than $31 million in Article 8A preservation loans to Mitchell-Lama buildings. In order to receive a loan, owners must agree to stay in the Mitchell-Lama program for the life of the loan, generally 15 years. Virtually all of the 8A loans—$27.1 million—have gone to cooperative developments.

Mayor Bloomberg's housing plan, released last December, includes $50 million in HDC funds for Mitchell-Lama preservation. According to testimony at a recent City Council hearing, the HDC funds will be used for physical rehabilitation of Mitchell-Lama units, not to provide rental subsidy programs as in the Ruppert-Yorkville agreement. Both rental and cooperative units will likely be eligible for HDC preservation loans. Buildings that receive HDC loans will likely be required to maintain affordability restrictions, although program specifics are still in development.

The $50 million budget for the HDC program probably will reach only a minority of eligible units. The average Mitchell-Lama Article 8A loan is about $3,000 per unit. Assuming the HDC loans are about the same size, the program can serve just under 17,000 units, or 30 percent of all HPD-supervised Mitchell-Lama rental and co-op apartments.

Given the city's experience with Article 8A loans for Mitchell-Lama developments, it is possible that the bulk of the HDC loans will be made to cooperative apartments, which are more willing to accept the requirement that they maintain affordability, because they are already less likely to buy out of the program than rental buildings. If the majority of loans are made to co-ops, it will have little effect on deterring buyouts.

Revenue Impact. The buyout of Mitchell-Lama properties also has a revenue impact for the city since the loans are being repaid and property-tax breaks are being lifted. Although HDC began purchasing many of these loans from the city in the 1970s, some are still held by the city, which receives an influx of cash when the loans are repaid. The city will receive almost $800,000 in fiscal year 2004, and expects another $1.5 million in 2005, from two separate Mitchell-Lama buyouts. Although relatively small, these repayments helped limit cuts to HPD's budget.

City revenue collection also receives a boost because buildings opting out of Mitchell-Lama generally pay full property taxes. The four buildings that left the program in 2002 will pay the city $7 million in property taxes it would not have otherwise received this fiscal year.

There are potential costs to the city whether or not developments buy out of the Mitchell-Lama program. Striving to keep buildings in the program may mean making low-cost loans and forgoing tax revenue. If buildings opt out, the city may continue to choose to subsidize tenants whose incomes are not sufficient to pay increased rents—although this may prove to be less costly than once thought. The city has chosen not to encourage buy outs as a means of generating revenue because of concerns of losing more affordable apartments in a city already strapped for lower cost housing.

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