



**Homes and
Community Renewal**

**Division of Housing
and Community
Renewal**

KATHY HOCHUL
Governor

RUTHANNE VISNAUSKAS
Commissioner/CEO

December 12, 2023

The Honorable Kathy Hochul
Governor of the State of New York
The Capitol, Executive Chamber
Albany, New York 12224

Dear Governor Hochul:

Pursuant to Section 170 of the Executive Law, I am submitting this response to the recommendations for corrective action in the Office of the State Comptroller's Report 2022-S-9, Division of Housing and Community Renewal: Physical and Financial Conditions at Selected Mitchell-Lama Developments in New York City.

Sincerely,

RuthAnne Visnauskas
Commissioner/CEO

cc: Honorable Thomas P. DiNapoli, Comptroller, State of New York
Honorable Antonio Delgado, NYS Senate President
Honorable Andrea Stewart-Cousins, NYS Senate President Pro Tempore and Majority Leader
Honorable Robert G. Ort, NYS Senate Minority Leader
Honorable Liz Krueger, NYS Senate Chair, Finance Committee
Honorable Thomas O'Mara, NYS Senate Ranking Minority Member, Finance Committee
Honorable Carl E. Heastie, NYS Assembly Speaker
Honorable Crystal D. Peoples-Stokes, NYS Assembly Majority Leader
Honorable William A. Barclay, NYS Assembly Minority Leader
Honorable Helene E. Weinstein, NYS Assembly Chair, Ways and Means Committee
Honorable Edward P. Ra, NYS Assembly Ranking Minority Member, Ways and Means Committee

Recommendation 1. “Improve monitoring of developments, including but not limited to:

- **Verifying that Management Representatives responsible for oversight at the sampled developments review all items on the Field and Office Visit Report and prepare and send those reports to the developments’ management promptly, as required**

The Division of Housing and Community Renewal (“DHCR” or “Agency”) agrees that all items on the field and office visit reports should be reviewed and completed. The Agency has reinforced with field unit supervisors and housing management representatives the necessity of reviewing and completing all items on the comprehensive field reports and office visit reports in a timely manner and releasing those reports to the managing agents within reasonable timeframes. In addition, to expedite the delivery of monitoring reports to housing companies and managing agents, field unit supervisors have been empowered to approve and release monitoring reports without additional approvals from senior management.

- **Conducting at least one annual site visit to each development**

DHCR agrees with the importance of conducting annual site visits. During the period covered by the audit, site visits had been suspended due to COVID-19. Now that COVID-19 travel restrictions have been lifted, DHCR management representatives have resumed annual office and site visits. Since 2022, DHCR has performed annual site visits at each of the sampled housing companies consistent with the Agency’s housing assessment rating policy. Under that policy, housing companies that are rated as “excellent” may be eligible for limited DHCR supervision due to maintaining a high-level of performance. Accordingly, these housing companies may have an annual visit waived at the discretion of the field unit supervisor and with the consent of the Director of DHCR’s Mitchell-Lama unit. In those limited instances when an annual site visit could not be performed on a company not rated as “excellent,” that housing company would be prioritized for a site visit in the following year.

- **Ensuring immediate corrective action is taken when unsafe conditions are identified and documenting dates of correction**

DHCR agrees that housing companies, as privately owned and operated entities, must take corrective actions in response to findings documented in the housing management field reports. Management representatives have been directed to request confirmation from the housing companies on when they have corrected exigent health and safety issues. In addition, an added level of supervisory review has been added to further ensure that needed corrective actions have been communicated to housing companies and that the issues are being resolved by the housing company in a timely manner. The Agency has also issued a memorandum to all housing companies reminding them of the requirement that they submit timely responses to field office reports.

In instances when the housing companies cannot immediately address the identified health and safety issues due to insufficient financial resources, DHCR will to the extent possible assist housing companies to identify possible funding sources to address the issues. For example, DHCR has worked successfully to reposition and secure financing for the comprehensive rehabilitation of 753 Classon Avenue, one of the housing companies that was identified as having unsafe conditions that went uncorrected. Also, in August 2023 a Commissioner’s Order was issued appointing a new sponsor for Findlay House, Inc. and removing DHCR staff members from the housing company’s board of directors. The appointment of a new sponsor is a critical milestone in the Agency’s efforts to reposition and secure financing for the rehabilitation of Findlay House.

- **Taking action against managing agents who are non-compliant with Regulations”**

DHCR agrees that appropriate action should be taken with non-compliant managing agents. The New York Codes, Rules, and Regulations (“NYCRR”), specifically 9 NYCRR § 1729-1.5, has several remedies that may be enforced, including but not limited to terminating a managing agent’s agreement immediately or at the end of their current contract term. However, such measures must be balanced with the ongoing needs of the housing companies, the impacts on residents, and in consideration of and in cooperation with an owner or duly elected board of directors. As such, other interim measures, such as issuing letters of non-compliance to agents, are typically the first step undertaken.

The Agency issues letters of non-compliance to housing companies, when warranted, directing their attention to actions that they have taken that are in violation of the Mitchell-Lama regulations. Of the sampled housing companies, the Agency found one, Jamie Towers Housing Company Inc., to be non-compliant with a number of agency regulations. The Agency therefore issued a letter of non-compliance in May 2023 that identified specific areas of non-compliance related to identity of interest transactions, inappropriate use of petty cash and debit cards, performance bonuses, and non-functioning self-closing doors. The letter demanded a response in 30 days which would identify what corrective actions and internal controls have been implemented by the housing company to address the areas of non-compliance. The housing company responded in writing to the letter of non-compliance identifying corrective actions that have been or will be undertaken and certifying that the non-functioning doors are currently functioning properly. In addition, the Agency is considering instituting a process to track the frequency with which letters of non-compliance are issued to particular developments and to consider performance deficiencies when reviewing requests to renew managing agent contracts or increases in management fees.

Recommendation 2: “Develop a formal process to obtain and analyze publicly available violations and complaints data and use the information to enhance monitoring of developments.”

The Agency has incorporated publicly available HPD and DOB building violations data into its field visit report processing platform. Housing companies are directed to correct Class C violations (immediately hazardous violations) of receiving notice in writing and to provide a plan for correcting open Class A and B violations within 30 days.

Recommendation 3: “Review expenditures, including all bonus payments, petty cash transactions and reimbursements, at the sampled developments and take appropriate action, including recouping funds, for transactions that are inappropriate or unusual.”

DHCR understands the importance of monitoring financial conditions and enforces compliance with its regulations that provide for the review of contracts and work exceeding \$100,000. The Mitchell-Lama regulations provide for DHCR review of purchases and contracts only when they exceed \$100,000. Prior DHCR approval is not required for purchases and contracts less than \$100,000. This threshold was established in 2009 after completing an extensive rulemaking process under the State Administrative Procedures Act (“SAPA”) that included the opportunity for all affected parties to provide input. As a result, DHCR regulations were amended so that prior DHCR approval was not required for purchases and contracts less than \$100,000. The amendment followed similar thresholds at that time for federal grant-supported procurement of goods and services and small purchase procedures followed by the United States Department of Housing and Urban Development. The intention of the threshold was to allow goods and services totaling no more than \$100,000 to proceed without publishing a formal request for proposals or invitation for bids.

While the Agency disagreed with this recommendation, the Agency has issued an Integrated Housing Management Bureau memorandum (#2023-B-1) to all housing companies and managing agents reminding them

of applicable policies and requirements related to bonus payments, gratuity payments, petty cash transactions, operating funds, separately held bank accounts, and conflicts of interest.

Also, the Agency issued a letter of non-compliance in May 2023 to Jamie Towers Housing Company, Inc. identifying specific areas of non-compliance related to inappropriate use of petty cash and debit cards, performance bonuses, procurement policies related to competitive bidding, and non-functioning self-closing doors. The letter demanded a response in 30 days identifying corrective actions and internal controls that have been implemented to address the areas of non-compliance. The housing company responded in writing to the letter of non-compliance and identified corrective actions that have been or will be undertaken and certifying that the non-functioning doors are currently functioning properly.

Recommendation 4: “Develop and implement policies and procedures related to bonus payments, requirements such as dollar thresholds for contracts, segregation of duties, and internal controls over purchasing at the developments and monitor compliance with these policies.”

DHCR agrees that appropriate policies and procedures related to bonus payments should be adhered to. The Agency has issued an Office of Integrated Housing Management (“OIHM”) Memorandum to housing companies and managing agents reminding them of applicable policies and requirements related to bonus payments and gratuity payments, as well as petty cash transactions, operating funds, separately held bank accounts, and conflicts of interest. Agency staff will continue to work with housing companies to address these matters.

Recommendation 5: “Improve monitoring of financial conditions at the developments by enforcing compliance with Regulations related to the proper use of the developments’ funds, competitive analysis and bidding, and DHCR’s approval requirements for annual expenditures of \$100,000 or more.”

DHCR understands the importance of monitoring financial conditions and enforces compliance with its regulations that provide for the review of contracts and work exceeding \$100,000. In accordance with the State Administrative Procedures Act (“SAPA”), prior DHCR approval is not required for purchases and contracts less than \$100,000, which is aligned with threshold amounts for purchases of goods and services followed by the United States Department of Housing and Urban Development.

In February 2023, DHCR initiated a monthly newsletter titled “Mitchell-Lama Matters” to housing companies and managing agents to communicate statutory and regulatory compliance reminders and other items of interest such as new processes and procedures, upcoming programmatic deadlines, and changes in statute that impact housing companies. To date, the newsletters have focused on a wide range of topics including but not limited to professional services contracts in excess of \$25,000, identities of interest, the appropriate use of housing company funds, and requirements related to purchases and contracts in excess of \$100,000. DHCR will continue to use the newsletter as a platform to communicate with housing companies about relevant compliance issues.

Recommendation 6: “Mandate regular training for management at the developments and Board members to ensure they are aware of good governance and their fiduciary responsibilities.”

DHCR agrees that properly trained management is an important component in the oversight of a Mitchell-Lama housing company. DHCR has produced two training videos for cooperative board members: one on general responsibilities and duties, and the second focused on fiduciary responsibilities. These trainings are available at <https://www.youtube.com/watch?v=JiFhuDuYq7A> (both videos are also embedded on our public website at <https://hcr.ny.gov/ml>). The Agency will continue to work with housing company management to ensure that its

rules and regulations are met through ongoing memos, a recently established newsletter, and technical guidance from field unit supervisors and housing management representatives.

Board of director trainings were not mandated during the period covered by the audit. Nevertheless, DHCR staff did perform trainings during COVID-19 for board members at cooperative corporations. Topics included board director fiduciary responsibilities, identity of interests, board meetings, and functions of hired professionals (i.e., managing agents, counsel, accountants). Board directors were provided additional resources to maintain proper governance as a board director.

In March 2022, §32-a of the Private Housing Finance Law was amended to require boards of directors to complete a training curriculum focusing on: 1) board director financial oversight, accountability and fiduciary responsibilities; and 2) acquainting board directors with the functions and duties of being a director and to understand the powers and duties of other governing and administrative authorities affecting such housing companies. Board directors will have to certify completion of the training on a form created by DHCR and maintained by the secretary of the cooperative board. Trainings would need to occur for all current board members and every three years thereafter for board directors continuing in their capacity. DHCR has training modules for board directors that touch upon the statutory requirements. In addition, DHCR is creating a more comprehensive curriculum and certification procedure to further satisfy the new statutory obligations.

Recommendation 7: “Monitor residential and commercial rent arrears and work with development management to take appropriate steps in line with Regulations to collect outstanding rent.”

Enforcing collection procedures involves a delicate balancing of the economic needs of the housing company, residents’ housing needs and their ability to pay rent, and the costs to the housing companies related to any necessary legal actions. Residential rent collection is governed by 9 NYCRR § 1727-4.2. It is at the housing company’s discretion and their responsibility to initiate any necessary summary eviction proceedings against non-paying residents and to pursue any money judgments issued by the court in any plenary action. Moreover, DHCR is not a party to the proprietary lease between the cooperation and shareholder in co-op Mitchell-Lama buildings. Lacking such privity of contract, DHCR cannot initiate summary proceedings on behalf of the cooperative. With regard to commercial rent arrears, commercial spaces are outside of the purview of DHCR oversight and supervision. *See* 9 NYCRR § 1727-6.2.

Despite the limitations on DHCR’s ability to enforce collection of arrears, the Agency is implementing an arrears and vacancies reporting requirement under which Mitchell-Lama housing companies will be required to report specified data on their vacancies and rent arrears. Based on the reporting, DHCR will be able to more effectively monitor housing company performance.

Recommendation 8: “Assist management at Cathedral Parkway Towers and Findlay House with filling vacancies.”

DHCR’s role as the supervising agency is limited by the Private Housing Finance Law and the Mitchell-Lama regulations. DHCR makes recommendations to housing companies to develop site-specific marketing plans. These marketing plans are a guide for housing companies on areas that include, but are not limited to, filling vacancies and fair housing compliance. Pursuant to our statute and regulations, DHCR does not assist the housing company with undertaking the actual marketing efforts to fill vacancies. This responsibility lies with the management of the project (i.e., housing companies and their managing agents). Despite these limitations, DHCR will continue to work with management on addressing any outstanding vacancy issues identified through existing housing company reporting.

Recommendation 9: “Ensure Program staff maintain a current and accurate list of the DHCR-supervised developments and communicate reliable data to the Legislature, State Comptroller and Attorney General.”

Due to an oversight, the Mitchell-Lama Annual Reports had continued to refer to all State-regulated Mitchell-Lama developments as being supervised by “DHCR.” The Annual Reports were not updated to reflect dozens of Mitchell-Lama developments that have been successfully restructured and rehabilitated through the efforts of DHCR’s Mitchell-Lama Program staff. As a result, these Mitchell-Lama developments are now being supervised by the New York State Housing Finance Agency, which is part of New York State Homes and Community Renewal and under the same senior management as DHCR. This oversight was corrected in the 2023 Annual Report.