



**Testimony of  
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**Hearings:  
The Future of Mitchell-Lama Housing  
New York Assembly Standing Committee on Housing,  
Subcommittee on Mitchell-Lama  
New York City  
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Good morning, I'm Tom Waters, housing policy analyst with the Community Service Society of New York.

Privately owned, government-subsidized housing plays a vital role in the city's affordable housing stock. It houses hundreds of thousands of low- and middle-income people, and it helps preserve the city's income diversity and vitality by maintaining a supply of affordable housing that stays in place as neighborhoods change.

Today, however, this housing stock is being lost at a very high, still accelerating rate, and the Mitchell-Lama stock is being lost fastest of all. This loss is affecting more and more neighborhoods. For years, the loss of Mitchell-Lama housing was concentrated in relatively high-rent areas of Manhattan south of Harlem. But in 2005, the wave of buy-outs hit Harlem, and now it is hitting the East Bronx and many other parts of the city. One third of the Mitchell-Lama rental units that existed in 1990 were gone by the end of 2005.

This terrible loss has not come as a surprise to tenants and housing advocates who have been warning of it, and seeking policies to prevent it, for many years. But the response of the State of New York up until now has been complete inaction. It is painful to propose policies to respond to the crisis now, when all of these policies could have and should have been enacted years ago, protecting thousands of tenants and protecting the public interest in getting the most of the affordable housing resources that we developed at so much expense.

There are still several policy initiatives that the state could undertake now that would make a tremendous difference. These would create three lines of defense for the tenants and communities that benefit from Mitchell-Lama. First, to preserve Mitchell-Lama housing as Mitchell-Lama. Second, to preserve affordability in the event of a buyout. And third, to protect tenants in the event of a buyout.

### **Preserving Mitchell-Lama housing as Mitchell-Lama**

The main reason for the loss of Mitchell-Lama housing is that landlords are voluntarily removing their buildings from the program in search of higher profits in the unsubsidized market – what is known as a buy-out. This mechanism for the loss of affordable housing is easy to understand. But research conducted by Victor Bach and myself at the Community Service Society has found that in another subsidized housing program, the federal project-based Section 8 program, much less of the stock is being lost for this reason. And the reason is the federal government has an effective incentive program that rewards landlords who keep their buildings in the subsidy program. (I have attached a copy of our report to my submitted testimony.)

The State of New York may not be able to exactly replicate this federal incentive program, but it certainly can learn the lesson that incentive programs work.

An alternative model for a state incentive program can be found in the Mitchell-Lama refinancing program of the New York City Housing Development Corporation, which provides a subsidized refinancing package plus repair loans top landlords who agree to keep their buildings in Mitchell-Lama for 15 years.

This city program has limitations that have kept the number of non-institutional rental buildings preserved to eight so far. It should be strengthened so that it will work for more buildings. But the state Housing Finance Agency could offer a similar, strengthened program for the state-supervised Mitchell-Lama buildings. This would require committing some of the financing resources of the HFA, and perhaps of the State of New York Mortgage Agency, but it would be a very appropriate and effective use of these resources. It is always a better bargain to preserve existing housing than to build new.

The state could also slow the rate of buy-outs with stricter supervision of Mitchell-Lama properties, and by blocking buyouts of buildings with serious unresolved violations such as

inadequate maintenance or failure to distribute apartments properly to households on the waiting list.

### **Preserving affordability in the event of a buyout**

The next line of defense for tenants and communities is to try to preserve some level of affordability in a building even after a buyout. Rather than allow owners to convert to market-rate, for example, tenants or nonprofit organizations could buy the buildings and operate them as affordable rentals or as coops with affordability restrictions.

New York City has helped by passing Local Law 79, the Tenants Empowerment Act, which is currently being litigated. It creates a right of first refusal for tenants and their designated nonprofit partners to buy subsidized buildings at an appraised price rather than let them leave the subsidy programs. New York State could pass right-of-first refusal legislation similar to New York City's Local Law 79.

The state should also provide financial resources to help tenants and nonprofits preserve subsidized buildings as affordable housing. It could do this as part of an affordable housing trust fund with a dedicated income stream. Or HFA or SONYMA could offer favorable financing, as the NYC HDC is starting to do for Mitchell-Lama tenants who form coops after a buyout. The HDC program could be strengthened in several ways, for example by offering deeper subsidies in exchange for stronger affordability protections and clearer regulatory responsibility, by extending the program to other categories of subsidized buildings, and by offering similar assistance for non-profit rental ownership. But again, the city program could provide a model for a strengthened state program.

It may also be possible for the state to provide tax advantages for preservation deals after a buyout, for example by waiving or reducing the real estate transfer tax when a landlord sells to a nonprofit owner.

### **Protecting tenants in place**

This third line of defense for tenants and communities is, unfortunately, likely to be very important unless the first two lines are made extremely strong. It is the extension of rent stabilization to Mitchell-Lama tenants after a buyout. Currently, buildings that leave subsidy programs are covered by rent stabilization only if they were occupied before 1974, and those that

are covered by rent stabilization may be subject to the “unique and peculiar circumstances” loophole allowing large rent increases. This leaves tenants vulnerable to extreme rent burdens, displacement, and eviction in the event of a loss of subsidy.

New York State should legislate an end to the “unique and peculiar circumstances” loophole. (A. 10596 and S. 7120) And New York State should legislate that Mitchell-Lama buildings enter rent stabilization if the owner opts to remove the building from the subsidy program. (A. 2454 and S. 2061)

Enactment of this legislation should be a high priority for the Assembly. Simply passing good bills and waiting for the Senate to act is not enough. Protection for Mitchell-Lama tenants should be part of the Assembly leadership’s agenda in discussions with Senate leadership, resulting in real legislation, not one-house bills.

The inauguration of a new governor in January presents an opportunity to end the state’s long, disastrous inaction on Mitchell-Lama and affordable housing issues generally. But this will require commitment from the Assembly as well, and I hope we can count on you to provide it.