



New York State Division of Housing and Community Renewal

Vacancies at Selected Mitchell-Lama Housing Developments

2008-S-122



Thomas P. DiNapoli

Table of Contents

	Page
Authority Letter	5
Executive Summary	7
Introduction.....	9
Background	9
Audit Scope and Methodology	10
Authority.....	11
Reporting Requirements	11
Contributors to the Report	12
Audit Findings and Recommendations.....	13
Vacancies at Selected Developments	13
Recommendations	14
Subletting of Cooperative Apartments.....	15
Recommendation.....	15
Agency Comments	17

State of New York Office of the State Comptroller

Division of State Government Accountability

December 3, 2009

Deborah VanAmerongen
Commissioner
Division of Housing and Community Renewal
Hampton Plaza
38-40 State Street
Albany, NY 12207

Dear Commissioner VanAmerongen:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit on Vacancies at Selected Mitchell-Lama Housing Developments. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objective

The objective of our audit was to determine whether vacant housing units at selected Division of Housing and Community Renewal (DHCR) supervised Mitchell-Lama housing developments were rented or sold in a timely manner.

Audit Results - Summary

DHCR is responsible for the supervision, maintenance and development of affordable low- and moderate-income housing in New York State. In 1955, the Legislature created the Mitchell-Lama Housing Program (Program) to provide affordable housing for moderate-income families throughout New York State.

To obtain an apartment in a DHCR-supervised Mitchell-Lama development, interested parties must submit an application and then their names are entered on the development's waiting list. Available apartments should be offered to prospective tenants from the waiting list in the order in which they applied. The New York Codes, Rules and Regulations (Regulations) set forth criteria for the management of Mitchell-Lama developments; however, they do not provide specific timeframes for filling apartment vacancies. DHCR officials advised us that sufficient effort should be made to rent or sell vacant apartment units within 60 days. We found that housing developments under DHCR's supervision did not always fill vacant apartments in a timely manner.

To determine if housing companies at Mitchell-Lama developments were filling vacant apartments in a timely manner we reviewed documentation for the six largest DHCR Mitchell-Lama developments in Manhattan (three cooperatives and three rental developments). We found that the three cooperative developments resold their vacant units in a timely manner. However, the three developments offering rental units had vacancies for excessive periods of time. Of the 137 rental units that were vacant during our review period, 97 of them (71 percent) remained vacant more than 60 days. Of these, 20 were vacant more than two years.

We found that the reason there were so many vacancies was because the three developments were planning to buy out of the Program. When housing companies plan to buy out, there is an incentive to keep apartments vacant (warehoused) instead of renting them out. DHCR officials stated that

warehousing Mitchell-Lama apartments is not consistent with the intent of the Program and is not allowed.

We also found that one cooperative development in our sample, Rivercross, received DHCR permission to sublease Program apartments despite a DHCR regulation requiring that Program apartments be used as the principal residence of tenants. Rivercross officials report that as of December 1, 2008, seven of their 364 apartments were being subleased. DHCR officials explained that in the late 1970's they approved subletting because apartments were difficult to sell at that time. While we acknowledge that it could have been difficult to get buyers for this development in the early years, there is now a lengthy waiting list for apartments. In fact, as of November 25, 2008, this development reported that there were 377 applicants on its waiting list.

Our report contains three recommendations. DHCR officials generally agree with our recommendations and are taking steps to address our concerns.

This report, dated December 3, 2009, is available on our website at: <http://www.osc.state.ny.us>.
Add or update your mailing list by contacting us at (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Introduction

Background

The New York State Division of Housing and Community Renewal (DHCR) is responsible for the supervision, maintenance and development of affordable low- and moderate-income housing in New York State. In 1955, the Legislature created the Mitchell-Lama Housing Program (Program) in the Private Housing Finance Law (Law) to provide affordable housing for moderate-income families throughout New York State. As of December 2008, there were 176 DHCR-supervised Mitchell-Lama developments in New York State, including 18 in the borough of Manhattan. The New York City Department of Housing Preservation and Development supervises 101 other Mitchell-Lama projects throughout New York City. Those projects were funded by New York City sources.

Housing developments built under this Program are owned and managed by private housing companies. Government agencies such as the New York State Housing Finance Agency, the New York State Urban Development Corporation and the State Loan Fund provided the housing companies with low-interest, long-term mortgage loans for up to 95 percent of total development costs. In addition, local municipalities granted property tax exemptions. The housing developments offer either rental or cooperative units. Those with mortgages from State sources must operate under DHCR supervision and adhere to guidelines that limit their profits and regulate rents. For Mitchell-Lama cooperative developments, DHCR also regulates the equity amount paid by incoming shareholders.

To obtain an apartment in a DHCR-supervised Mitchell-Lama development, interested parties must submit an application and then their names are entered on the development's waiting list. Available apartments are to be offered to prospective tenants from the waiting list in the order in which they applied.

Many DHCR-supervised Mitchell-Lama developments in New York City are extremely desirable because of their affordability; consequently the wait time to get an apartment is lengthy. As of November 2008, 6 of the 18 Manhattan developments closed their waiting lists because they had a sufficient number of applicants on their lists to fill their anticipated vacancies. The other 12 have expected waiting times ranging from one year to over three years.

DHCR assigns Housing Management Representatives (Representatives) to its Mitchell-Lama developments to monitor and supervise operations,

evaluate management and recommend corrections and improvements of any deficiencies identified. Representatives are required to visit their assigned developments at least once a year and report on various areas of operations, including vacancies.

In 1957, the Legislature amended the Law to allow housing companies to buy out of the Program after meeting certain conditions such as having been in the Program for a minimum of 20 years and having repaid the government mortgage. When a housing company buys out, it is no longer subject to DHCR regulations. Shareholders in cooperatives can sell their apartments at market prices and often make substantial profits. Tenants, in rental developments that buy out may continue to rent or they can purchase their unit from the housing company if the development converts to a cooperative or condominium. Those tenants that buy their apartments can sell them at market prices.

With the maturing of government mortgages and the potential to make significant profits, an increasing number of developments are taking steps toward buying out of the Program. As of October 2008, 97 DHCR-supervised developments had already bought out of the Program and an additional 9 had submitted formal notices of their intent to buy out. However, housing companies must continue to adhere to all Program requirements until the buyout process is completed.

In September 2007, the State Inspector General issued a report on DHCR's oversight of the Mitchell-Lama Program covering the period January 2003 to October 2006. That report concluded that DHCR needed to improve its monitoring of Program housing companies as well as the enforcement of its own regulations. The review also addressed the warehousing of apartments at Westview, which is one of the large developments we covered in our report; our audit report focused on a subsequent period.

Audit Scope and Methodology

We audited selected DHCR supervised Mitchell-Lama housing developments to determine whether vacant housing units were rented or sold in a timely manner. Our audit period was from June 1, 2007 through October 31, 2008.

To accomplish our objective, we reviewed the Private Housing Finance Law, the New York Codes, Rules and Regulations, and pertinent policies. We also interviewed DHCR and housing company officials to confirm and enhance our understanding of the procedures to be followed to fill vacant apartments in Mitchell-Lama developments and to determine the reasons for vacant apartments. In addition, we reviewed tenant housing files, vacancy reports, rent rolls, move-in reports, move-out reports, marketing activity reports and site visit reports. We also visited vacant apartments and walked through each development to confirm the number of Program apartments.

We selected the six largest Mitchell-Lama developments in Manhattan for our review, three of which were cooperatives (Southbridge Towers, River View Towers, and Rivercross) and three of which were rental developments (Lakeview Apartments, Island House, and Westview). Southbridge Towers is the largest development with 1,651 units; the other 5 developments have from 361 to 446 units. To determine whether these developments were selling or renting in a timely manner we reviewed their vacancies. At the three cooperatives; Southbridge Towers, River View and Rivercross, we reviewed vacancies from June 1, 2007 to June 30, 2008; October 1, 2008; and October 31, 2008, respectively. At the three rental developments; Lakeview Apartments, Island House and Westview, we reviewed vacancies from June 1, 2007 to June 30, 2008; August 31, 2008; and October 31, 2008, respectively.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

A draft copy of this report was provided to DHCR officials for their review and comment. Their comments were considered in preparing this report and are included at the end of this report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Division of Housing and Community Renewal shall report to the Governor, the State Comptroller,

and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

**Contributors
to the Report**

Major contributors to this report include Frank Houston, Cindi Frieder, Gene Brenenson, Diane Gustard, Michael Sulem, Menard Petit-Phar and Sue Gold.

Audit Findings and Recommendations

Vacancies at Selected Developments

The Regulations set forth the criteria for the management of DHCR-supervised Mitchell-Lama developments. However, the Regulations do not explicitly address the time frame in which apartment vacancies must be filled. DHCR officials advised us that sufficient effort should be made to rent or sell vacant apartment units within a reasonable period of time. DHCR officials defined “a reasonable period of time” as up to 60 days. We reviewed vacancies at selected Mitchell-Lama developments and found that some had vacancies for excessive periods of time. We found that the housing developments did not always take prompt action to ensure that vacant housing units were rented or sold in a timely manner. Some apartments were not filled until years after they became vacant.

To determine if housing companies at Mitchell-Lama developments were filling vacant units in a timely manner, we reviewed documentation for the six largest DHCR Mitchell-Lama developments in Manhattan; three cooperative developments (Southbridge Towers, River View Towers, and Rivercross) and three rental developments (Lakeview Apartments, Island House, and Westview). Island House and Westview have the same owner. We reviewed vacancies at these developments for a period of at least one year starting June 1, 2007.

We found that the three cooperative developments resold their vacant units in a timely manner. However, the three developments offering rental units had vacancies for excessive periods of time. Of the 137 rental units that were vacant during our review period, 97 of them (71 percent) remained vacant more than 60 days, including 20 that were vacant more than 2 years. For example:

- At Lakeview Apartments, a two-bedroom apartment became vacant on June 30, 2007 and was not rented to a new tenant until May 1, 2008.
- At Island House, a three-bedroom unit became vacant on November 5, 2004 and was not rented to a new tenant until September 14, 2007.
- At Westview, a two-bedroom apartment became vacant on July 29, 2004 and was not rented to a new tenant until January 11, 2008.

The following table summarizes the units vacant for more than 60 days:

Development	Total Vacancies	Units vacant more than 60 days	Percentage
Lakeview Apartments	22	14	64 %
Island House	57	43	75 %
Westview	58	40	69 %
Total	137	97	71 %

Information obtained from the housing companies and DHCR officials shows that many of these apartments were vacant for extensive periods because the three developments were planning to buy out of the Program. When housing companies plan to buy out, there is an incentive to keep apartments vacant (warehoused) instead of renting them, because, once the buyout is complete, such units are available for sale at market prices.

Although DHCR regulations do not specifically address the warehousing of Mitchell-Lama apartments, DHCR officials told us that warehousing is not consistent with the intent of the Program and is not permitted. They stated that they would not process a buyout application for a Mitchell-Lama development that had apartments warehoused. While we saw evidence that DHCR officials did communicate their concerns regarding the vacancies to the owners and officials at the three housing developments, they did so only after many of the apartments had already been vacant for some time. Moreover, DHCR has not broadly communicated to development owners that it will not process a buyout application from a development that has been warehousing. To discourage warehousing, DHCR should communicate this policy to all Mitchell-Lama development owners and officials on a regular basis.

We note that the three rental developments are no longer pursuing buyouts. When we visited these developments in August, September and October 2008, we found only one vacant unit at both Island House and Lakeview Apartments and six vacant units at Westview. We confirmed that, as of November 2008, five of the six Westview apartments had been filled; and DHCR had approved an applicant for the sixth unit.

Recommendations

1. Establish a time frame for filling Mitchell-Lama vacancies.
2. Inform Mitchell-Lama development owners and officials that apartments are not to be warehoused and that a buyout application will not be processed if warehousing exists.

**Subletting of
Cooperative
Apartments**

Section 1727-5.3(a)(9) of the Regulations requires that a Mitchell-Lama apartment be in continuous use as the principal residence of tenants and their families. Therefore, tenants and owners cannot sublet their apartments. However, we found that one of the six projects in our sample, Rivercross, a 364-unit cooperative development located on Roosevelt Island, has received DHCR permission to sublease its apartments. Rivercross officials report that, as of December 1, 2008, seven units were being sublet-five with two-year leases and the other two with one year agreements.

DHCR officials explain that it had been difficult to sell these apartments in the early years following the construction of Rivercross (i.e., in the late 1970's). To make the development more attractive and to promote sales, in 1979, DHCR permitted Rivercross to deviate from certain Program requirements, one of which prohibited subletting. Rivercross' policy allows shareholders to sublet their apartment every eight years for a period of up to two years. This policy was continued by the Rivercross Board in subsequent resolutions in 1980, 1981, and 1993.

While it may have been difficult to get buyers for the Rivercross units in the early years, that is not the case in recent years. In fact, as of November 25, 2008, Rivercross reported that there were 377 applicants on its waiting list and officials had closed the list to new applicants. The development's sublet policy may be preventing some of the individuals on the waiting list from obtaining these desirable housing units or may be delaying some apartments' availability.

Recommendation

3. Determine whether Rivercross should be allowed to continue subletting Program apartments.

Agency Comments

David A. Paterson
Governor



Deborah VanAmerongen
Commissioner

New York State Division of Housing and Community Renewal
Hampton Plaza
38-40 State Street
Albany, NY 12207

June 19, 2009

Cindi Frieder
Office of the State Comptroller
Division of State Government Accountability
123 William Street- 21st Floor
New York, NY 10038

Dear Ms Frieder:

Thank you for the opportunity to comment on the draft report 2008-S-122, Vacancies at Selected Mitchell-Lama Housing Developments. Our response is attached.

Please contact me at 518-473-8443, or by email at jbrown@nysdhcr.gov, if you have any questions or concerns regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jon R. Brown', written over a horizontal line.

Jon R Brown
Director Internal Audit

cc: Debra VanAmerongen
Brian Lawlor
Richmond McCurnin

Web Site: www.nysdhcr.gov
Email address: dhcrinfo@nysdhcr.gov

OSC Draft Audit Report 2008-S-122
DHCR Response

Audit Response – Summary

The findings and recommendations in the above referenced report address vacancies, warehousing and subletting in DHCR supervised Mitchell-Lama housing developments. Below are our comments to the recommendations made in the final report.

1. *Establish a time frame for filling Mitchell-Lama vacancies.*

DHCR will track vacancies by having owners complete revised Form HM-59 (5/09) Marketing Activity Report on a monthly basis listing all vacancies for more than 60 days. DHCR will follow up on owners' efforts to rent vacancies after 60 days as identified in Form HM-59.

2. *Inform Mitchell-Lama development owner/officials that apartments are not to be warehoused...*

DHCR agrees with the recommendation. The proposed regulation, NYCRR 1727- 1.5, clearly outlines the housing company's obligation to promptly fill vacant apartments with eligible applicants. Non-compliance with this regulation is a violation of the responsibilities and duties of the housing company. The public comment period for the new regulations is now over and the comments received are currently under review by OLA.

3. *Determine whether Rivercross should be allowed to continue subletting.*

The original Offering Plan – Plan of Cooperative Ownership prepared on behalf of Rivercross in 1976 and the basis upon which shares in the cooperative were initially offered for purchase specifically permitted tenant-shareholders to sublet with the approval of the Urban Development Corporation and the housing company's Board of Directors or at least 65% of the tenant-shareholders. The Board of Directors has developed a proposal to withdraw from Mitchell-Lama Program but with continued affordability restrictions with respect to apartment resale prices and income limits for future purchasers. The issue of the (7) subleases will be discussed with the Board in the context of our negotiations on an extended affordability agreement.