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Testimony of State Senator Daniel Squadron Regarding the Proposed Amendments to Rules Governing City-Aided Limited-Profit Housing Companies

November 6, 2013

My name is Daniel Squadron and I represent the 26th Senate District in the New York State Senate. My district includes the Brooklyn neighborhoods of Greenpoint, Williamsburg, Vinegar Hill, Fulton Ferry, Brooklyn Heights, Cobble Hill, Carroll Gardens and Gowanus, and the Manhattan neighborhoods of Tribeca, Battery Park City, the Lower East Side, Chinatown, the Financial District, Little Italy, SoHo and the East Village.

I would like to thank you for the opportunity to testify here today on the proposed changes to the rules for City-Aided Limited-Profit Housing Companies.

The Mitchell-Lama Law -- Article II of the Private Housing Finance Law -- was enacted to address the "seriously inadequate" supply of "safe and sanitary" housing for families of low and moderate income. When it was originally signed into law in 1955, the inadequate supply of housing was described as constituting "an emergency and a grave menace to the health, safety, morals, welfare and comfort of citizens of this state." (Private Housing Finance Law, Article 2 Section 11)

Almost sixty years later the challenges created by a lack of quality affordable and middle class housing endure. Now more than at just about any time since the law was enacted, it is crucial we maintain Mitchell-Lama housing stock and ensure the program stays true to its original objectives.

There is little doubt that the rules and regulations that govern Mitchell-Lama housing in our City need to respond to the changing character of the City, the needs of each Mitchell-Lama community and the situation of those who the program was originally intended to help. As such, I have worked to improve the program to make it fairer and more sustainable.

However, the process by which these proposed rule amendments have been communicated to those they will affect, and their substance, are both of great concern to me.

According to the URL of the Notice of Public Hearing the notice was made public on October 4, 2013. This timescale only barely adheres to the NYC rule making requirement for the comment period before a public hearing of this kind. My office has been in contact with a number of Mitchell-Lama building representatives who found out about these changes on different dates in October ranging from the second to the twenty-first. There was no effort to develop these proposals in collaboration with impacted communities, nor even to more actively communicate them when they were made public at the last possible moment.

While there appears to have been a technical adherence to the City rule making process requirements of public notice, these changes will have a huge impact on people's homes. In particular, these changes will affect people that have lived in their homes and communities for decades. Elderly, disabled and recently bereaved family members are the residents most likely impacted by these changes and as such the utmost efforts should have been made to engage with Mitchell-Lama Boards, residents and local elected officials with more advance than the minimum required 30 days.

In contrast, working with Speaker Silver, Assemblymember Millman and others, I was able to pass important changes to the Mitchell-Lama law this year because of close collaboration with residents and board members from across the City.

My legislation will allow families with a broader range of income levels and family compositions than are currently eligible to become part of the Mitchell-Lama community. Existing law made families with two or more dependents whose joint annual net income exceeds 100% but is below 125% of average median income (AMI) eligible for Mitchell-Lama housing with a rental surcharge for those with dependents. My bill takes away the dependent requirement, which will allow more people at different points in their life to become part of these communities, and allow the communities to have a larger pool of residents who pay a surcharge.

By meeting with board members from across the City, communicating with residents and engaging in an open dialogue about the impact of the changes, we were able to successfully pass the bill through the legislature (it was delivered to the Governor last week).

The proposed amendments for which today's hearing are being held make a range of significant changes. In particular, the proposed changes to succession and to dissolving and reconstituting a mutual housing company are problematic for a number of reasons.

In relation to succession, when a cooperator dies or is relocated, the proposed new definition of family member does not include any adopted children and removes "nephew, niece, uncle and aunt." Additionally, the new rules would remove those that can prove "emotional and financial commitment and interdependence" with the cooperator. This does not reflect the current nature of the families in New York City or the reality of many lives. There is no reference to non-married same sex couples or long term non-parent family care-givers. Further by removing the flexibility to evaluate joint resident relationships the changes may well lead to any number of other inflexible and unfair rulings on succession.

The proposed rules also change succession in relation to under-occupancy. Under-occupancy is a challenge that needs to be dealt with sensitively and with an awareness of the human impact of any changes. One size fits all downsizing that occurs in the way proposed, during what will sometimes be a difficult time in the lives of all those involved, raises concerns. By collaborating more closely with residents we are more likely to achieve a solution that improves the under-occupancy rate and doesn't cause undue distress to those impacted.

HPD's Article XI conversion regulation -- allowing Mitchell-Lama cooperatives to convert into

Housing Development Fund Companies (HDFCs) -- was adopted in December 2011. Additional language is now being proposed to establish the procedures for Article XI conversions. I am concerned about the process for these conversions for overall affordable housing stock, the long term sustainability of the Mitchell Lama program and stability for some existing residents. There is also a concern that, in some instances, it could lead to less involvement of tenants in decision making around rent adjustments and maintenance surcharges in the newly established HDFCs. A change of this nature, that could have a significant impact on the permanence of much of the low and middle income affordable housing the program was originally intended to protect, should be implemented as part of a more collaborative process. There must be a more concerted effort than has occurred up until now to engage with residents and the community at large to fully understand the impact of conversion on both individual buildings and the program as a whole.

It is important to note that were a proper engagement process adhered to, in the spirit as well as the letter of the law, there are a number of amendments which might garner real support and attempt to make Mitchell-Lama application requirements and procedures fairer for all those involved. Unfortunately, by failing to arrive at the proposals in the best way, the agency has undermined all of its proposals. I urge a delay in implementing any of these changes to allow for a more resident and community driven process.

It is clear that reform of the Mitchell-Lama program is required and as evidenced by my recently passed legislation I am eager to make common sense changes that ensure the program is more sustainable and to broaden eligibility. However, with any changes to the program, there needs to be appropriate engagement with residents and board members. In the case of the changes being discussed here today this did not occur.

I look forward to working with you on this important issue in the future.