



**Homes and
Community Renewal**

**Division of Housing
and Community
Renewal**

KATHY HOCHUL
Governor

RUTHANNE VISNAUSKAS
Commissioner/CEO

June 5, 2024

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-46, Division of Housing and Community Renewal: Physical and Financial Conditions at Selected Mitchell-Lama Developments Outside 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 financial and physical conditions at sampled 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 site and office visits to each development at least annually in accordance with DHCR Guidelines; and**

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.

- **Utilizing current information when conducting risk assessments.”**

DHCR agrees with the importance of utilizing current information when completing risk assessments. During the period covered by the audit, risk assessments had to rely on older site visit information because 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 field visits. As a result, risk assessments are once again being performed using the most recent and relevant information available to the Agency.

Recommendation 2: “Ensure developments have up-to-date Management Plans that contain allowances that are related to the ordinary operations of a project and enforce adherence to these Management Plans.”

DHCR agrees that up-to-date Management Plans should be collected, maintained on file, and referenced as part of the annual office and field visit review process. The Agency has implemented a process that requires up-to-date management plans be submitted as part of any request for approval of agent extensions. All submitted management plans must contain the names and titles of all current development staff and be signed and dated by an authorized agent on behalf of the housing company.

The Audit Report stated that DHCR approved a management plan for Seneca Towers that contained allowances unrelated to the “ordinary operations” of the development. As an example of an allowance unrelated to ordinary operations, the Report says that Seneca’s management plan allows for the employment of an activities director to

plan and assist with resident functions, such as trips, parties, bingo, and other entertainment. It should be noted that neither the Mitchell-Lama statute nor regulations define what constitutes the “ordinary operations” of developments. However, as the Audit Report states, management plans should seek to provide a pleasant and healthy environment for residents. Consistent with that objective, DHCR believes that an allowance for an activities director for a 491-unit senior citizen project is entirely appropriate and beneficial for Seneca’s residents.

Recommendation 3: “Improve monitoring of financial conditions at the sampled developments including but not limited to:

- **Reviewing expenditures, including all bonus payments and petty cash and reimbursements transactions, and enforcing compliance with Regulations related to the accounting for and proper use of the developments’ funds;**
- **Taking appropriate action, including recouping funds, for transactions that are inappropriate or unusual; and**
- **Enforcing compliance with Regulations related to conflict-of-interest transactions and to the responsibilities of the Board of Directors, and systematically reviewing Board meeting minutes to identify non-compliance with Regulations and act when necessary.**

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 disagrees with this recommendation, DHCR issued Office of Integrated Housing Management (OIHM) Memorandum #2023-B-12 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.

In addition, DHCR’s management and office field report has been updated to require the Agency’s housing representatives to confirm the identity of a housing company’s approver of petty cash transactions. This revision to the field report will enable housing representatives to determine if the requestor and approver for a petty cash transaction are the same person.

In the case of the specific conflicts of interest noted in the Audit Report (Sunnyside, Seneca Towers), the Agency issued letters to the housing companies reminding them of their obligation to provide notice and receive DHCR’s consent to do business with affiliated entities.

The Agency has also issued OIHM Memorandum #2023-B-1 advising housing companies, owners, managing agents, and site managers of the existing requirement for submitting monthly reports and board meeting minutes.

The Memorandum establishes a central email drop box for the submission of meeting minutes and requires that housing management representatives review specific items including, but not limited to:

- Resolutions authorizing increases of carrying charges;
- Resolutions authorizing increases of ancillary charges;
- Resolutions authorizing use of housing company funds; and
- Resolutions authorizing vendor engagements and contract approvals.

Recommendation 4: “Develop and implement policies and procedures related to bonus payments and approval and payment of overtime at 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 OIHM Memorandum #2023-B-12 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: “Mandate regular training for development management 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 within the first year for all newly elected board members, and at least once every three years thereafter. Holdover board members must also complete this training during the initial one-year period and every three years thereafter. DHCR has training modules for board directors to address the statutory requirements.

Recommendation 6: “Monitor commercial rent collection at Seneca and work with development management to take appropriate steps to collect outstanding rent.”

DHCR's role as the supervising agency is limited by the PHFL and the Mitchell Lama regulations. Specifically, the regulations state that commercial facilities within Mitchell-Lama developments may be leased without the approval of DHCR. Within the regulations, housing companies may even lease commercial space for below market value. While DHCR agrees that timely rent collections from commercial tenants provide a source of revenue which contributes to the financial health and functioning of a development, DHCR is not a party to the commercial leases between the housing company and its commercial tenants. The housing companies under DHCR supervision are privately owned and operated.

Despite the limitations on DHCR's ability to enforce collection of arrears, HCR 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 7: "Improve oversight of physical conditions at sampled developments by ensuring immediate corrective action is taken when unsafe conditions are identified, and document 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 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.

DHCR has already taken action to address the physical needs at the two developments noted in the Audit Report. DHCR has approved the repositioning and comprehensive rehabilitation of Tompkins Terrace. The rehabilitation will be financed using low-income housing tax credits allocated by the New York State Housing Finance Agency, which is part of New York State Homes and Community Renewal and under the same management as DHCR, and tax-exempt bonds issued by an industrial development agency.

Also, DHCR is working with the board of directors and managing agent at the Barker Terrace housing company to engage an engineering and architectural firm to assist them with drafting plans and specifications for emergency capital repair work to the aging plumbing system. This process, once completed, is anticipated to create a path for making many of the necessary capital repairs observed as part of this audit.