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BOARD OPERATIONS

Corruption in Mitchell-Lama Co-ops! How Boards Can Fight Back

By **PART 1** of a series by Adam Leitman Bailey and Leni Morrison Cummins

Jan. 21, 2011 — The New York City Mitchell-Lama program provides 54,000 homes to low-income buyers. And as with many things designed to aid the poor and the helpless — some of them uneducated, sometimes some of them old and frail, some of them optimistically naive -- corruption pervades the process. Like grain shipments to starving Somalia, benefits intended for the masses get diverted by the well-connected, the powerful and the crafty, who steal and then sell them on the black market. In some Mitchell-Lama co-ops, such black markets illegally sell apartments for *500 percent higher* than maximum legal sales prices. In one building we represent, a one-bedroom apartment legally sells for \$20,000 — but goes for upward of \$100,000 on the black market. Some unit owners illegally profit on their units by subletting them or by charging key money upon an illegal sale.

A co-op board can't turn a blind eye. Not ethically, not morally and, if for no other reason, not legally. But what can you do? Plenty.

First, the ground rules: The board of directors of a New York City Mitchell-Lama cooperative is responsible for ensuring that all its shareholders are legitimate and comply with the law. This can be a daunting task, since these buildings consist of hundreds to thousands of units. Therefore, many co-op boards hire attorneys to investigate and prosecute illegality in their cooperatives. These illegalities include

- non-payment of maintenance
- false claims to succession rights
- non-primary residence
- illegal sublets and
- falsification of documents.

Battling fraud claims becomes all the more complex when you find forged birth certificates, cooked-up tax returns, false forms of identification, fake nationality papers and sham bank accounts. To prove fraud, the law firms that board of directors hire need to have the sophistication and expertise to hunt down the truth and to ensure the sanctity of maintaining affordable housing in New York City.

Time for Math Class

In a Mitchell-Lama co-op, the co-op board must assess and calculate maintenance based on household composition and income, as reported on **household income affidavits (HIAs)**. Your board must verify the accuracy of these HIAs by comparing income stated on each affidavit with the income stated on each occupant's certified tax return. If shareholders do not submit their HIAs or certified tax returns in a timely manner, then regulations require the board to apply a rent surcharge. Your co-op's attorney then verifies that the board is assessing the proper maintenance, and will begin proceedings against shareholders who do not pay their maintenance. To do so, your board attorney initiates proceedings with the Department of Housing Preservation and Development (HPD) to obtain a **certificate of eviction** before going to court. However, with non-payment of maintenance cases, attorneys can also go directly to civil court by bringing a **summary nonpayment proceeding**.

Document Fraud

Most Mitchell-Lama leases contain a clause that calls for a default if a shareholder submits false documents to the board or to the managing agent. If a shareholder falsifies either HIAs (incorrect statements as to household composition or amount of income) or lease applications, your attorney should immediately send the shareholder a **notice of intention to terminate for reason of breach of the lease**, based on that proprietary-lease clause. Your attorney should then follow the same procedures for marshaling evidence and scheduling hearings that he or she would use in primary residence and illegal sublet cases.

To Be Continued. Next Time: Going to War



Adam Leitman Bailey, the founder of his namesake firm, practices residential and commercial real estate law in New York and New Jersey. He has been identified among the top five percent of attorneys in the metropolitan area and been named a Super Lawyer by *Law & Politics* magazine.



Leni Morrison Cummins, an associate with the firm, focuses on condominium and cooperative litigation and corporate representation. She earned her J.D. cum laude from New York Law School in 2008., and has written articles for the *New York Law Journal* and the *New York State Bar Association Real Property Law Journal*.