

Select Issues in Representing HPD Supervised Mitchell-Lama Cooperatives

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New York City Mitchell-Lama cooperatives provide heavily publicly subsidized maintenance payments to those lucky enough to call them home.¹ The New York City Mitchell-Lama program provides 54,000 homes to persons whose financial circumstances would otherwise negate such a possibility.² As a result, Mitchell-Lama cooperatives are extremely popular and have decade-long waiting lists. As with many desirable things in life, corruption pervades the Mitchell-Lama process.³ In some buildings, illegal black markets sell apartments for 500 percent higher than maximum legal sales prices. For example, in one building we represent, a one-bedroom apartment is legally sold for \$20,000, but goes for upwards of \$100,000 on the black market. Other unit owners attempt to make money on their units by subletting them or by charging key money upon an illegal sale.⁴

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 title 28, chapter 3 of the Rules of the City of New York (the "Mitchell-Lama Rules").⁵ This can be a daunting task in that these buildings consist of hundreds to thousands of units. Therefore, many Boards of Directors hire attorneys to investigate and prosecute illegality in their cooperatives, including non-payment of maintenance, false claims to succession rights, non-primary residence, illegal sublets, and falsification of documents.

Fraud claims, which include, but are not limited to, forged birth certificates, cooked-up tax returns, false forms of identification, fake nationality papers, and sham bank accounts, are complex to battle. To

prove the fraud, the law firms that the 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.

Non-Payment of Maintenance

The Board of Directors assesses and calculates maintenance based on household composition and income, as reported on Household Income Affidavits.⁶ The Board must verify the accuracy of Household Income Affidavits by comparing income stated on each affidavit with the income stated on each occupant's certified tax return.⁷ If shareholders do not submit their Household Income Affidavits or certified tax returns in a timely manner, the regulations require the Board to apply a rent surcharge. The Board's attorneys verify that the Board is assessing the proper maintenance, and will commence proceedings against shareholders who do not pay their maintenance. In most proceedings involving a New York City Mitchell-Lama cooperative, the Board attorneys must first commence proceedings before the Department of Housing Preservation and Development ("HPD") to obtain a so-called "certificate of eviction" prior to going to court;⁸ however, for non-payment of maintenance cases, attorneys may go directly to civil court by bringing a summary non-payment proceeding.⁹

Succession Rights

To avoid the decade-long Mitchell-Lama waiting lists, many prospective shareholders attempt to establish their right to succeed to the tenancy of a shareholder who is deceased or has permanently vacated the premises.¹⁰ Prospective

shareholders will go to great lengths to prove their right to succeed to a tenancy. The Board's attorneys must know every detail of the Mitchell-Lama rules and must scrutinize each and every document the purported successors submit to make sure they appear truthful and accurate. When such documents reveal a facial anomaly, the Board's attorneys will often contact the applicants to resolve the issue before going to formal administrative proceedings.

According to title 28 of the Rules of the City of New York ("R.C.N.Y."), section 3-02(p), a purported successor must establish the following to prove his or her right to succeed to a tenancy: (1) he or she is a family member of a deceased or vacated shareholder or a person with a financial and emotional interdependence with a shareholder of record;¹¹ (2) he or she resided with a shareholder of record in the premises as their primary residence for at least two years prior to the death of a shareholder of record (or permanent vacating of the apartment), or at least one year if the remaining occupant is a senior or disabled; and (3) he or she appeared on at least the last two Household Income Affidavits the shareholder of record submitted prior to the shareholder's death (or permanent vacating of the apartment).¹² If the years in question are prior to 2003, HPD will view the Household Income Affidavits only as an indicating factor of residence and will not view them as dispositive of residence or lack thereof.¹³

The first requirement of R.C.N.Y. section 3-02(p), requires a minimum familial relationship.¹⁴ Section 3-02(p)(2)(ii) defines "family" as "husband, wife, son, daughter, stepson, stepdaughter, including

any adopted children, father, mother, stepfather, stepmother, brother, sister, nephew, niece, uncle, aunt, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law.”¹⁵

The rules also include a codification of the expanded definition of family from *Braschi v. Stahl Associates Company*.¹⁶ “Family” also includes those people who can prove an “emotional and financial commitment and interdependence” between themselves and a shareholder of record.¹⁷ No single factor is determinative, but HPD will review the following factors: longevity of the relationship, shared payment of expenses or bills, joint ownership of bank accounts or joint credit cards, engaging in family activities together, executed wills in each other’s names, holding themselves out as family members, regularly performing family functions, and engaging in patterns of behavior showing emotional commitment.¹⁸ These criteria require that the parties acted like family, but not necessarily that their relationship was spouse-like or that the parties had any particular sexual orientation.¹⁹

When a Board alerts its attorneys that an occupant’s claim to succession rights may be illegal, attorneys must investigate to confirm or refute the illegality.²⁰ In this regard, it is important to realize that the goal is only the supervising agency’s satisfaction that the Mitchell Lama’s management is making appropriate efforts to limit the governmental benefits it administers to those who are genuinely entitled to them, which keeps those benefits flowing to the entire complex, including those for whom there is no question that they are duly qualified.²¹ HPD will therefore make frequent inquiries to ascertain that the Board and its attorneys are employing appropriate levels of diligence. Therefore, the Board’s attorneys’ single most important job in preserving the Mitchell-Lama development’s

subsidies is to keep HPD satisfied that the Board is acting vigilantly to limit the development’s occupants to those who are legally entitled to be such.

Therefore, in succession cases, attorneys first send a demand letter to the purported successor at the address of the premises requesting that he or she submit documents to prove within a reasonable period from the date of the letter (a two-week period is advisable) his or her right to succeed to the tenancy.²² HPD views the following documents as proof of requisite relationship and residence: certified birth certificates, certified tax returns, and W-2s.²³ HPD views the following documents as merely indicative (but not dispositive) proof of requisite relationship and residence: church or temple records, expired or current driver’s licenses, expired or current passports and passport applications, documents relating to voter registration, past or current library cards, documents relating to health club membership, documents relating to any purchase or lease of a motor vehicle, credit card and bank account statements.²⁴

Attorneys should engage in further due diligence to ensure the legitimacy of documents they receive from purported successors. With regard to foreign birth certificates, attorneys should take special care to ensure that translated birth certificates are legitimate (not forgeries) and that they correspond to certified birth certificates from the corresponding foreign country. Where the attorney doubts the genuineness of the birth certificate, he or she is well advised to consult an independent translator.²⁵ Attorneys should also do a database search for both the shareholders of record and the purported successors to determine a history of residences,²⁶ and verify the death of those allegedly deceased record shareholders. Attorneys will also consider hiring a private investigator to perform a detailed analysis and report on the purported

successor and record shareholders to determine familial relationship and cohabitation.²⁷

Once the attorneys have established that succession does not appear proper under the rules, they must send a Denial of Succession Rights letter to the purported successor and send a copy to HPD.²⁸ Upon receipt, HPD will send a letter to both the purported successor and the attorney requesting that both parties submit the documentary proof of each party’s position. The HPD Hearing Officer will then independently review the documents submitted by both sides and make a decision.²⁹ The Hearing Officer’s decision will either be a denial of succession rights, which will include a Certificate of Eviction, or a decision not to deny succession rights.³⁰ If the Hearing Officer decides to deny succession rights and issues a Certificate of Eviction, the attorneys must then bring an eviction proceeding in Housing Court based on the Certificate of Eviction.³¹ If the Hearing Officer decides not to deny succession rights, the attorney may appeal the decision through a CPLR Article 78 proceeding³² or request that succession rights be granted through HPD’s division of Administrative Services. If HPD’s division of Administrative Services determines that the purported successor has succession rights, the Board may reissue the stock in the successor’s name.³³ If it does not, the attorney is essentially forced to commence an Article 78 proceeding because HPD has simultaneously not denied succession, but has refused to grant it. Fortunately, such events are indeed rare. In actual practice, HPD generally gives the attorneys substantial cooperation in advising what must be done to get all the right pegs into the right holes.

Non-Primary Residence and Illegal Sublet Cases

A shareholder of a Mitchell-Lama cooperative must maintain the cooperative apartment as a pri-

mary residence.³⁴ R.C.N.Y. section 3-02(n)(4) states: "It is required that the apartment of the tenant/cooperator be at initial occupancy and continue to be his or her primary place of residence."³⁵ In addition, R.C.N.Y. section 3-02(n)(3) states: "No tenant/cooperator may accept any consideration or thing of value from a guest, invitee or other occupant in exchange for occupancy, whether temporary or permanent, unless such person is listed on the application, income affidavit or re-certification of the tenant/cooperator and the tenant/cooperator continues to maintain the apartment as his or her primary residence."³⁶

To build a case against a shareholder for non-primary residence or illegal sublet, the attorneys must once again begin with fact-finding. The attorneys should begin by searching investigative databases to confirm identified alternative addresses for the record shareholders and to ascertain or confirm the names of the possible illegal subtenants.³⁷ In addition, to gather further evidence and information to establish their case, attorneys should hire private investigators to engage in undercover investigation.³⁸ Attorneys should also send a letter to the shareholder requesting proof that he or she maintains the cooperative apartment as a primary residence, sending the letter both to any identified alternate addresses and the address of the premises.³⁹ Attorneys should also send a letter to any identified illegal subtenants or to any unidentified occupants because an illegal occupant may respond to the letter with proof of the illegal occupancy without realizing the purpose of the letter, thereby proving the case against the shareholder.

If the shareholder submits documentation in an effort to prove that the premises are a primary residence, attorneys should carefully scrutinize the documents to look for possible fraud on the part of the

shareholder.⁴⁰ Indicators of possible fraud include: (1) the shareholder submits ancillary documents (e.g., magazines or advertisements mailed to the residence in the shareholder's name), but nothing dispositive of residency (i.e., such as certified tax returns or W-2s); or (2) the shareholder submits bank account or credit card statements that have very little activity or low balances.

Once the attorneys have acquired ample proof of non-primary residence or illegal sublet and have given the shareholder at least two weeks to submit documentation, they may bring an action against the shareholder. According to R.C.N.Y. sections 3-18(a)(2) through (3)(i), the attorneys must send the shareholder a Notice of Intention to Terminate Lease and Preliminary Notice of Grounds for Eviction ("Notice of Intention to Terminate") by hand-delivery to the shareholder or to a person of suitable age and discretion at the premises.⁴¹ Pursuant to R.C.N.Y. section 3-18(a)(1), the attorneys must also serve the Notice of Intention to Terminate by either first-class and certified or registered mail, with return receipt requested.⁴²

Once the attorneys have served the Notice of Intention to Terminate, and ten days have passed, the attorneys must provide HPD with proof that justifies eviction, together with an affidavit stating that the attorneys effectuated service of the Notice of Intention to Terminate upon the shareholder, as mandated by R.C.N.Y. section 3-18(a).⁴³ The attorneys may then schedule a Hearing with HPD and, having done so, must serve the Notice of Hearing upon the shareholder at the address of the premises using the same methods of service used for the Notice of Intention to Terminate.⁴⁴ The attorneys should give the shareholder sufficient notice in advance of the Hearing to allow the shareholder to arrange scheduling without an excuse for an adjournment or worse, a default. While the statute does not prescribe

a set amount of time to provide, it is advisable to allow ample time to close out tenant-generated delays.

HPD conducts the initial Hearing in the form of a conference. Officially, the role of the Board's attorney attending the Hearing is to explain the Housing Company's position. However, the Board's attorney should use the Hearing as an opportunity to: (i) establish admissions from the shareholder by asking appropriate questions about the location of the actual residence, and who, if anyone, is residing in the Mitchell-Lama premises; and (ii) settle the case by giving the shareholder a few months to vacate the premises. To encourage settlement, the attorney should inform the shareholder of R.C.N.Y. section 3-06(A)(2), which allows a Board to deduct from a shareholder's equity investment in the cooperative any legal fees incurred on its behalf in bringing a proceeding against a shareholder.⁴⁵ Otherwise, long HPD hearings, followed by Housing Court proceedings, will likely exhaust the equity. Understanding this, a logical shareholder will seriously consider settlement.

If the Board's attorney does not settle the case at the initial Hearing, the Hearing Officer will schedule a formal hearing.⁴⁶ At the hearing, the Board's attorney must establish a *prima facie* case against the shareholder, but the Hearing Officer is not bound by the rules of evidence.⁴⁷ According to R.C.N.Y. section 3-18(b), the Hearing Officer may accept any evidence deemed relevant and material.⁴⁸ This routinely includes hearsay, but rarely third-hand hearsay. If the Hearing Officer decides against the shareholder, the Hearing Officer will include the issuance of a Certificate of Eviction in the decision.⁴⁹ The Board's attorneys may use the Certificate of Eviction as incontrovertible evidence of the illegal occupancy in a summary holdover proceeding in Housing Court. The Housing Court is fairly limited in its determination to whether service of process was

correctly done in its proceeding because the only allowable challenge to or contradiction of a certificate of eviction is an Article 78 proceeding.⁵⁰

Falsification of Documents

Most Mitchell-Lama leases contain a clause that calls for a default if a shareholder submits false documents to the Board or the managing agent. If a shareholder falsifies either Household Income Affidavits (incorrect statements as to household composition or amount of income) or lease applications, the attorneys should immediately send the shareholder a Notice of Intention to Terminate for reason of breach of the lease clause that prohibits falsification of documents.⁵¹ The attorneys should then follow the same procedures for marshalling evidence and scheduling hearings that they use in primary residence and illegal sublet cases.

Conclusion

Representation of a New York City supervised Mitchell-Lama cooperative is a subspecialty all its own. It is governed entirely by a set of rules that are generally clear, except when it comes to figuring out just how those rules interact with the summary proceedings statutes. The great challenge for an attorney undertaking this kind of representation is to get the big picture: the client has relatively little reason to care in its own right whether individual cooperators are abiding by the rules, with the notable exception of nuisance or other things that can harm the complex. However, the client cares a great deal that HPD sees that the Board is diligently enforcing the rules. That, therefore, is the standard: satisfying HPD. While for other landlord clients, attorneys should be keeping an eye on the bottom line, since Mitchell-Lama complexes are designed to operate at a tax subsidized loss, maintaining entitlement to the subsidy is vastly more important than minimizing losses.

Endnotes

1. There are both New York City supervised and New York State supervised Mitchell-Lama projects. This article focuses on those supervised by New York City's Department of Housing Preservation and Development ("HPD"). See generally *State Supervised Middle Income Housing Developments For Families and Senior Citizens*, N.Y. STATE HOMES & COMMUNITY RENEWAL, <http://www.dhcr.state.ny.us/apps/hsgdevls/hsgdevls.asp> (last visited Apr. 18, 2011); *Mitchell-Lama Housing*, N.Y. CITY DEP'T OF HOUSING PRES. AND DEV., <http://www.nyc.gov/html/hpd/html/apartment/mitchell-lama.shtml> (last visited Apr. 18, 2011).
2. *Mitchell-Lama Housing*, N.Y. CITY RENT GUIDELINES BD., <http://www.housingnyc.com/html/resources/mitchell/mitchell.html> (last visited Apr. 18, 2011).
3. See Charles V. Bagli, *Subsidized Housing Plagued by Neglect and Corruption*, N.Y. TIMES, Sept. 20, 2007, at B3, available at <http://query.nytimes.com/gst/fullpage.html?res=940CE6DD163AF933A1575AC0A9619C8B63>.
4. See *An In Depth Review of the Division of Housing and Community Renewal's Oversight of the Mitchell-Lama Program*, N.Y. STATE OFFICE OF THE INSPECTOR GEN. (Sept. 2007), <http://www.ig.state.ny.us/reports/reports-2007.html>; see also OFFICE OF THE N.Y. STATE ATTORNEY GEN., TENANTS' RIGHTS GUIDE, available at http://www.ag.ny.gov/publications/2011/Publications/Tenant_Rights_2011.pdf.
5. See generally 4 WARREN'S WEED NEW YORK REAL PROPERTY § 33.42 ("All aspects concerning a cooperative corporation's board of directors are governed by the corporate law pursuant to which the cooperative corporation is organized.... Additionally in government-assisted cooperatives, various statutes, rules and regulations may affect the workings of a particular board.").
6. See generally N.Y.C.R.R. tit. 9, ch. 4, § 1727-2.3 (LEXIS 2011) ("[T]he housing company shall take such steps as it deems necessary to ascertain and verify that gross income of applicants, tenants or cooperators is within applicable income limits.... As a minimum, verification of aggregate annual income will be based upon information furnished as outlined below. Note that more than one method may be needed to obtain acceptable verification.... (8) Notarized affidavit from person or persons making contributions, in case of contributions by relatives or other persons. Dates and amounts of contributions should be specified."), available at <http://www.metcouncil.net/factsheets/9NYCRR1727.html>.
7. See generally NEW YORK, N.Y., R.C.N.Y. tit. 28, ch. 3, § 3-03 (c)(4) (N.Y. Leg. Publishing Co. 2010) ("The income affidavits will be subject to verification at any time, pursuant to such method as may be determined by HPD, including, but not limited to, spot check audits of certified income tax forms and verification by the New York State Department of Taxation and Finance as set forth in § 60(9) of the Private Housing Finance Law.").
8. See *id.* § 3-18(a) ("Except as otherwise provided in this subdivision, no eviction proceeding based upon a holdover or a breach of the terms of the lease or occupancy agreement shall be initiated by a housing company against a residential tenant/cooperator without the issuance of a certificate of eviction by HPD following an administrative hearing by an HPD designated hearing officer."). New York State Mitchell-Lama cooperatives differ from New York City Mitchell-Lama cooperatives in that the governing regulations do not require State Mitchell-Lama cooperatives to follow the additional agency procedure required for City Mitchell-Lama cooperatives. Instead, under title 9 of the N.Y.C.R.R., section 1727-5.3, attorneys for New York State Mitchell-Lama cooperatives must send a verified petition to the commissioner, who then must certify that he has no objection to the eviction procedure.
9. See R.C.N.Y. tit. 28, ch. 3, § 3-18(a) ("Notwithstanding the foregoing, such hearing and certificate of eviction shall not be required for any eviction proceeding based upon non-payment of rent/carrying charges or any sum which constitutes rent or additional rent pursuant to the applicable lease or occupancy agreement.").
10. See *Villafane v. N.Y. State Div. of Hous. & Cmty. Renewal*, 2009 WL 2208403, at *5 (Sup. Ct. N.Y. County 2009) ("The right to request succession in housing accommodations subject to [Mitchell-Lama] arises when the tenant of record of the subject apartment dies or otherwise permanently vacates the apartment." (citing 9 N.Y.C.R.R. § 1727-8.3(a))).
11. See R.C.N.Y. tit. 28, ch. 3, § 3-02(p)(2)(ii) (B). The criteria for determining such interdependence are identical to those currently prevalent in both rent control and rent stabilization.
12. See *Villafane*, 2009 WL 2208403 at *5 (citing 9 N.Y.C.R.R. §§ 1727-3.6, 1727-8.2(a)(2)(b)).
13. The Mitchell-Lama Rules were amended in 2003, and HPD recognizes claims relating to years prior as grandfathered under the Mitchell-Lama Rules prior to the 2003 revision. See *Kahn v. N.Y. City Dep't of Hous. Pres. & Dev.*, 2010 N.Y. Slip Op 51197U, *3 (Sup. Ct. N.Y. County 2010) ("The regulations implementing the Mitchell-Lama Law which relate to succession rights were amended as of

- February 1, 2003 (discussing title 28 of the R.C.N.Y., section 3-02(p)).
14. See R.C.N.Y. tit. 28, ch. 3, § 3-02 (p)(1).
 15. *Id.* § 3-02 (p)(2)(ii)(A).
 16. 74 N.Y.2d 201, 211, 543 N.E.2d 49, 53–54, 544 N.Y.S.2d 784, 788–89 (1989).
 17. See *id.*; see also R.C.N.Y. tit. 28, ch. 3, § 3-02(p)(2)(ii)(B).
 18. See R.C.N.Y. tit. 28, ch. 3, § 3-02(p)(2)(ii)(B).
 19. See *Braschi* at 211, 543 N.E.2d at 53–54, 544 N.Y.S.2d at 788–89 (1989) (holding that the term “family” was applicable to a homosexual couple); R.C.N.Y. tit. 28, ch. 3, § 3-02 (p)(2)(ii)(B).
 20. See *e.g.*, *Matter of Oehling v. Donovan*, 7 Misc. 3d 1005A, 801 N.Y.S.2d 238, 2005 N.Y. Slip Op. 50464U (Sup. Ct. King’s County 2005) (unreported) (using investigation conducted by the private housing company as proof of an illegal succession claim).
 21. See *Note 2: Statement of Basis and Purpose in City Record* (Nov. 12, 2003), R.C.N.Y. tit. 28, ch. 3, § 3-02.
 22. See R.C.N.Y. tit. 28, ch. 3, § 3-02(p)(3).
 23. See *id.* § 3-02 (n) (“The facts and circumstances to be considered in determining whether a tenant/cooperator occupies a dwelling unit as his or her primary residence include, but are not limited to, whether such tenant/cooperator: (i) specifies an address other than such dwelling unit as his or her place of residence or domicile in any tax return, motor vehicle registration, driver’s license or other document filed with a public agency....”).
 24. See *id.* § 3-02 (p)(2)(ii)(B) (explaining the factors to be considered in determining whether a person residing with the tenant/cooperator can prove an “emotional and financial commitment and interdependence” between that person and the tenant/cooperator to come within the definition of “family member” under the rule).
 25. It has been the experience of the authors’ offices that any one complex will have a surprisingly low number of different foreign countries involved as the homelands of the residents. This means that at most small numbers of independent interpreters will suffice and often the language in question may be known to one or more of the attorneys’ own employees.
 26. See, *e.g.*, *Matter of Oehling v. Donovan*, 7 Misc. 3d 1005A, 801 N.Y.S.2d 238, 2005 N.Y. Slip Op 50464U (Sup. Ct. King’s County 2005) (using an investigation report provided by the housing company as proof of petitioner’s lack of habitation of the subject premises).
 27. See *Santiago v. E. Midtown Plaza Hous. Co., Inc. & N.Y. City Dep’t of Hous. Pres. & Dev.*, 2007 N.Y. Slip Op. 32101(U), 2007 WL 2176927, at *1, (Sup. Ct. N.Y. County 2007) (explaining that the landlord hired a private investigator to prove the apartment was not petitioner’s primary residence).
 28. See *Matter of Hampton v. N.Y. City Div. of Hous. & Cmty. Renewal*, 9 Misc. 3d 1106(A), 2005 N.Y. Slip Op. 51433(U) (Sup. Ct. N.Y. County 2005) available at http://www.nycourts.gov/reporter/3dseries/2005/2005_51433.htm (stating that the documentary evidence included a “three page letter which annexes the landlord’s attorney’s affirmation in opposition to the succession rights request”).
 29. See R.C.N.Y. tit. 28, ch. 3, § 3-02(p)(8) (ii) (“The Commissioner or his or her designee...shall issue the final agency decision with regard to the applicant’s application.”).
 30. See *id.*
 31. See *id.* § 3-18(b) (“In the event the hearing officer finds grounds for the eviction, he or she shall issue a certificate authorizing the housing company to commence summary proceedings for such eviction of the tenant/co-operator.”).
 32. See *e.g.*, *Trump Vill. Section 3, Inc. v. Dashevsky*, 8 Misc. 3d 777, 783, 799 N.Y.S.2d 854, 857 (N.Y. Civ. Ct. N.Y. County 2005) (explaining that the only method of review of the commissioner’s certificate of “Eviction” or “No Objection” is by a CPLR article 78 proceeding in Supreme Court); R.C.N.Y. tit. 28, ch. 3, § 3-02(p)(8)(ii).
 33. See R.C.N.Y. tit. 28, ch. 3, § 3-06(d) (“In no event may the right of occupancy in a Mitchell-Lama mutual housing company development be bequeathed to another. Upon the death of the tenant/co-operator, the shares must be returned to the mutual housing company, which will arrange for a sale pursuant to subdivision (a) of this section. Notwithstanding the foregoing, eligible members of the tenant/cooperator’s immediate family in occupancy may acquire such shares if they meet the requirements of § 3-02(p) of these rules.”).
 34. See R.C.N.Y. tit. 28, ch. 3, § 3-02(m)(1)(vi).
 35. *Id.* § 3-02(n)(4).
 36. *Id.* § 3-02(n)(3).
 37. See *Matter of Hochhauser v. N.Y. City Dep’t of Hous. Pres. & Dev.*, 48 A.D.3d 288, 289, 853 N.Y.S.2d 22, 23 (1st Dep’t 2008) (finding that petitioner did not sustain his burden of establishing his entitlement to succession rights after evidence showed that he provided an address other than the subject apartment as his place or residence on a tax return filed during the relevant time period).
 38. See *Christine Haughney, Using Private Eyes to Keep Track of Tenants*, N.Y. TIMES, Aug. 30, 2010, at A18, available at <http://www.nytimes.com/2010/08/31/nyregion/31appraisal.html?scp=1&sq=8/31/2010,%20TENANT&st=cse>.
 39. See R.C.N.Y. tit. 28, ch. 3, § 3-02(n)(4)(iv).
 40. See *id.* § 3-02(n)(4)(i)-(iv); see generally *Waterside Redevelopment Co. v. N.Y. City Dep’t of Hous. Pres. & Dev.*, 270 A.D.2d 87, 88, 704 N.Y.S.2d 63, 65 (1st Dep’t 2000) (holding that tenant’s subletting a portion of the apartment without the express written approval of petitioner and HPD and her intentional failure to include the other occupants, or their income, on her annual income affidavits constituted acts of fraud and/or illegality that were not curable).
 41. See R.C.N.Y. tit. 28, ch. 3, § 3-18(a)(2).
 42. See *id.*
 43. See *id.* §§ 3-18 (a), (b).
 44. See *id.* § 3-18 (b).
 45. See generally *Greystone Mgmt. v. Conciliation & Appeals Bd. of N.Y.*, 94 A.D.2d 614, 462 N.Y.S.2d (1st Dep’t 1983).
 46. See R.C.N.Y. tit. 28, ch. 3, § 3-18 (b).
 47. See *id.* (“The hearing officer may accept any evidence which he or she deems to be relevant and material.”).
 48. See *id.*
 49. See *id.* § 3-18(a) (“[N]o eviction proceeding based upon a holdover or a breach of the terms of the lease or occupancy agreement shall be initiated by a housing company against a residential tenant/cooperator without the issuance of a certificate of eviction by HPD following an administrative hearing by an HPD designated hearing officer.”).
 50. See R.C.N.Y. tit. 28, ch. 3, § 3-18 (c).
 51. See N.Y. ADMIN. CODE tit. 9, ch. 4, §§ 1727-5.3 (a)(7), (8)(b)(2) (2010) (LEXIS); see generally *Hochhauser v. N.Y. City Dep’t of Hous. Pres. & Dev.*, 48 A.D.3d 288, 288, 853 N.Y.S.2d 22, 23, 2008 N.Y. Slip Op. 1414 (1st Dep’t 2008).

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