

# Homes and Community Renewal

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## Division of Housing and Community Renewal: Physical and Financial Conditions at Selected Mitchell-Lama Developments Located Outside New York City

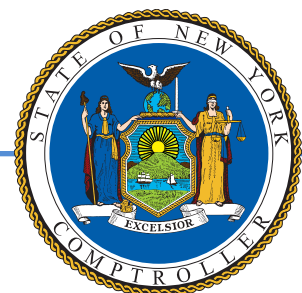
Report 2022-S-46 | December 2023

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

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Division of State Government Accountability



# Audit Highlights

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## Objectives

To determine whether residents of Mitchell-Lama developments, supervised by Homes and Community Renewal's (HCR) Division of Housing and Community Renewal (DHCR), are provided safe and clean living conditions, and whether funds are properly accounted for and used for intended purposes. Our audit covered the period from January 2019 through December 2022.

## About the Program

The Mitchell-Lama Housing program (Program) was created in 1955 by the Limited Profit Housing Act to provide affordable rental and cooperative (co-op) housing to middle-income families. A total of 269 State-supervised developments with over 105,000 apartments were built under the Program. In exchange for low-interest mortgage loans and real property tax exemptions, the Program required limitations on profit, income limits for tenants, and supervision by DHCR. Mitchell-Lama housing is owned by private companies with independent authority to exit the Program under certain conditions. DHCR works with owners as they near the end of their 20-year affordability requirements to provide low-cost financing tools that help maintain developments while also extending their affordability. As part of the State's commitment to increase and preserve the number of affordable housing opportunities for its residents, HCR makes capital available for the preservation and improvement of these properties.

Often, owners employ a managing agent, a person or entity responsible for managing the developments. Pursuant to New York Codes, Rules and Regulations (Regulations), when they do so, owners are required to enter into an annual agreement with the managing agent, which must include a DHCR-approved Management Plan. It is the responsibility of the owners to provide safe and habitable housing and to maintain the financial and physical integrity of the development, and it is the function of the managing agent to effectively and efficiently manage the development to ensure that the owner's responsibilities are carried out. Both the owner and managing agent must agree to manage the development in accordance with local codes and State rules and regulations. Each development has an assigned DHCR Housing Management Representative (management representative), who is responsible for monitoring and evaluating the development's management, as outlined in Title 9 of the Regulations. Management representatives are required to conduct yearly on-site assessments of their assigned development's physical condition as well as fiscal reviews (site and office visits) and to provide the results – including recommendations – in a written report, the DHCR Management Field and Office Visit Report (Field and Office Visit Report), to the development. DHCR requires the development's Board of Directors (Board) or managing agent to respond to the Field and Office Visit Report within 30 days, describing the plan for corrective action.

This audit is based on a sample of five developments located in counties outside of New York City: Barker Terrace (Westchester), Executive House (Albany), Seneca Towers (Monroe), Sunnyside Manor (Westchester), and Tompkins Terrace (Dutchess).

## Key Findings

DHCR does not adequately oversee the financial and physical conditions at the sampled developments. Management at all five sampled developments misspent funds, and management at two of the sampled developments failed to provide a safe and clean living environment for their residents.

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- We took issue with 164 transactions, totaling \$327,363, as follows:
    - 84 transactions, totaling \$105,344, for items unrelated to normal operations, including \$69,285 in bonus payments and \$36,059 for other unrelated expenses such as parties, meals, trips, and gifts.
    - 61 transactions, totaling \$156,289, that were inadequately supported. We therefore could not determine if these expenses were appropriate and related to operations. For example, at one development, management did not provide adequate support for an employee reimbursement totaling \$7,594 for plumbing supplies.
    - 19 apparent conflict-of-interest transactions, totaling \$65,730. At one development, management contracted with a construction company owned by its superintendent for services totaling \$14,159, while the superintendent was authorized to make decisions about purchasing and obtain estimates for work contracted to outside vendors. At another development, management made 15 payments, totaling \$51,571, to its managing agent and had no evidence that competitive analysis or bidding was conducted prior to awarding projects to its own company.
  - We observed hazardous conditions, including water-damaged ceilings and rusty, loose railings, at two of the developments. DHCR officials identified hazardous conditions during their own visits but often did not share their findings with developments in a timely manner. Therefore, many of the unsafe conditions DHCR observed remained uncorrected, sometimes for years.

## Key Recommendations

- 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, and systematically reviewing Board meeting minutes to identify non-compliance with Regulations and acting when necessary.
- 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.



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## Office of the New York State Comptroller Division of State Government Accountability

December 8, 2023

RuthAnne Visnauskas  
Commissioner/Chief Executive Officer  
Homes and Community Renewal  
Hampton Plaza  
38-40 State Street  
Albany, NY 12207

Dear Commissioner Visnauskas:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the 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 entitled *Division of Housing and Community Renewal: Physical and Financial Conditions at Selected Mitchell-Lama Developments Located Outside New York City*. This 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,

*Division of State Government Accountability*

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# Glossary of Terms

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<b>Term</b>	<b>Description</b>	<b>Identifier</b>
HCR	Homes and Community Renewal	<i>Auditee</i>
Barker	Barker Terrace	<i>Mitchell-Lama Development</i>
Board	Mitchell-Lama Board of Directors	<i>Key Term</i>
Development or housing company	Mitchell-Lama development	<i>Key Term</i>
DHCR	Division of Housing and Community Renewal	<i>Division</i>
Executive	Executive House	<i>Mitchell-Lama Development</i>
Field and Office Visit Report	DHCR Management Field and Office Visit Report	<i>Key Term</i>
Management Representative	DHCR Housing Management Representative	<i>Key Term</i>
Managing agent	Agent that manages a Mitchell-Lama development	<i>Key Term</i>
Program	Mitchell-Lama Housing Program	<i>Program</i>
Regulations	New York Codes, Rules and Regulations	<i>Regulations</i>
Seneca	Seneca Towers	<i>Mitchell-Lama Development</i>
Sunnyside	Sunnyside Manor	<i>Mitchell-Lama Development</i>
Tompkins	Tompkins Terrace	<i>Mitchell-Lama Development</i>

# Background

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The Mitchell-Lama Housing program (Program) was created in 1955 by the Limited Profit Housing Act to provide affordable rental and cooperative (co-op) housing to middle-income families. A total of 269 State-supervised Mitchell-Lama developments (developments), with over 105,000 apartments, were built under the Program. Developments are owned and managed by private companies (owners). In exchange for low-interest mortgage loans and real property tax exemptions, the Program required owners to comply with limitations on profit, income limits for tenants, and supervision by Homes and Community Renewal's (HCR) Division of Housing and Community Renewal (DHCR). DHCR works with owners to provide low-cost financing tools that help maintain the developments while also extending their affordability. In addition, as part of the State's commitment to increase and preserve the number of affordable housing opportunities for its residents, HCR makes capital available to owners for the preservation and improvement of their developments.

Often, owners employ a managing agent, a person or entity responsible for managing the developments. Pursuant to New York Codes, Rules and Regulations (Regulations), when they do so, owners are required to enter into an annual agreement with the managing agent, which must include a DHCR-approved Management Plan. It is the responsibility of the owners to provide safe and habitable housing and to maintain the financial and physical integrity of the development, and it is the function of the managing agent to effectively and efficiently manage the development to ensure that the owner's responsibilities are carried out. Both the owner and managing agent must agree to manage the development in accordance with local codes and State rules and regulations. The Management Plan should be developed with the following objectives: an efficiently managed, economically maintained, and financially viable development; a pleasant, healthy, and secure living environment for the residents; a sound relationship between tenants and management; and a harmonious integration of the project into the surrounding community. Each development has an assigned DHCR Housing Management Representative (management representative), who is responsible for monitoring and evaluating the development's management, as outlined in Title 9 of the Regulations. Management representatives are required to conduct yearly on-site assessments of the development's physical condition as well as fiscal reviews (site and office visits) and to provide the results – including recommendations – in a written report, the DHCR Management Field and Office Visit Report (Field and Office Visit Report), to the development. DHCR requires the development's Board of Directors (Board) or managing agent to respond to the Field and Office Visit Report within 30 days, describing the plan for corrective action.

The developments' Boards also have significant oversight responsibilities. According to the Regulations, Board members are entrusted with the custody of assets and the administrative control of expenditures representing hundreds of thousands of dollars. The custody and control of such sums require each member to ensure that buildings, grounds, and other assets are kept up to high standards so that their value is not impaired and that the annual operating expenditures are spent effectively and economically.

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This audit is based on a sample of five developments located outside of New York City: Barker Terrace (Barker), Executive House (Executive), Sunnyside Manor (Sunnyside), and Tompkins Terrace (Tompkins), which are developments for families; and Seneca Towers (Seneca), which is a development for senior citizens (see Table 1).

**Table 1 – Sample of Developments**

<b>Development</b>	<b>Development Location</b>	<b>Managing Agent</b>	<b>No. of Units</b>	<b>Development Type</b>
Barker	Westchester County	Ferrara Management Group	92	Co-op
Executive	Albany County	Self-managed (no agent)	160	Co-op
Seneca	Monroe County	Rochester Management	491	Rental
Sunnyside	Westchester County	Metro Management	121	Co-op
Tompkins	Dutchess County	Related Management Company	193	Rental



# Audit Findings and Recommendations

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DHCR officials have not developed the controls, including monitoring of management representatives, necessary to ensure funds used for the developments' operations are spent efficiently and effectively and that development management is providing a safe and clean living environment for their residents. Management representatives are responsible for overseeing conditions at the developments, and their work, which is documented in Field and Office Visit Reports, is critical to ensuring developments are being managed properly – that is, in good fiscal and physical condition and in compliance with local and State requirements – and that deficiencies are identified and promptly remediated. However, we found management representatives were not following DHCR policies and procedures – namely, the annual site and office visits and follow-up reporting to developments – that would otherwise seek to ensure the developments' compliance.

Management at all five developments did not adhere to Regulations related to the proper use of funds, as evidenced by our findings of misspent funds, uncollected commercial rents, and apparent conflict-of-interest transactions. Notably, all five developments operated at a net loss for at least 1 year during our audit scope. In light of this, it is imperative that DHCR officials take a stronger position in enforcing improved monitoring by the management representatives.

Additionally, of our five sampled developments, two – Barker and Tompkins – were not being maintained in a manner that provides a safe and clean living environment for their residents. At these two developments, we observed several hazardous conditions, including rusty railings and water damage that has gone uncorrected for years.

## Inadequate Oversight of Financial and Physical Conditions

DHCR officials did not adequately oversee financial and physical conditions at the selected developments. Specifically, we found management representatives did not conduct annual site and office visits and did not prepare and/or send reports on visits to development management promptly. Moreover, DHCR officials approved Management Plans that contained allowances that were not related to the ordinary operations of a project – all of which contributed to our findings of fiscal mismanagement and hazardous physical conditions.

### Deficiencies in Required Visits and Reporting

According to DHCR's policies and procedures, management representatives are required to conduct site and office visits to their assigned developments, at least annually, to ensure the developments are being properly managed, both physically and fiscally. However, we found that between 2019 and 2022 management representatives assigned to all five sampled developments did not conduct the required site and/or office visits. As of March 31, 2022, all five developments have not received an annual visit since 2019. In response, DHCR officials explained that they defer the annual visits if a development is rated excellent in DHCR's internal

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annual risk assessment. This is contrary to their written policies and procedures that indicate at least one site visit will be generated per year regardless of the annual rating. Furthermore, without benefit of a regular site or office visit, every subsequent annual rating will be based on years-old, unreliable information.

DHCR officials also stated that, due to pandemic-related federal mandates and New York State executive orders, in-person visits were suspended in 2020, and management representatives were to conduct desk reviews instead. However, we found that management representatives did not conduct such reviews at any of our sampled developments in 2020 and conducted only one in 2021, for Sunnyside. Furthermore, even when site and office visits were conducted, we found management representatives' follow-through with a Field and Office Visit Report to the developments was deficient. The management representative never submitted a report to Barker after two visits in 2019; and for the remaining four developments, the management representative did not send the reports promptly – in one instance, 11 months after their visit – which can create delays in the developments' ability to correct the deficiencies. DHCR officials stated that desk reviews were for internal purposes only and the results of these reviews were not sent to management at the development. Therefore, DHCR officials did not provide development management with the information necessary to ensure that funds used for the developments' operations are spent efficiently and effectively and that they are providing a safe, clean, and secure living environment for the residents.

DHCR officials also did not enforce the developments' compliance with the 30-day requirement for responding to the Field and Office Visit Report. Of the six reports sent to developments, only one (Sunnyside) responded – and not until approximately 1 year after the date of DHCR's report. Furthermore, DHCR officials did not provide evidence of any follow-up with the developments to obtain their response and thus have no assurance that deficiencies were corrected.

Without conducting the annual site and office visits, management representatives cannot properly supervise and evaluate the management of their assigned developments, identify problems efficiently, and recommend corrections and improvements. The absence of this routine oversight increases the risk of misuse of funds and ongoing hazardous conditions and risk to residents.

## **Incorrect and Outdated Management Plans**

According to Section 1729-1.2 of the Regulations, a development's managing agent must enter into an annual agreement with the development pursuant to a contract in the form prescribed by DHCR and shall comply with the terms of the agreement, which will include a DHCR-approved management plan. The Management Plan is an integral part of the managing agent's contract and serves as a continuing standard for services that must be met. It outlines the actions the managing agent proposes to follow in managing the development and includes specified functions related to physical maintenance and fiscal administration (e.g., names and titles of staff assigned to the development, job descriptions).

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At two of our sampled developments – Barker and Seneca – the Management Plans were outdated or incomplete, listing the incorrect names and titles of development staff or missing staff names and titles altogether, which impedes access to the appropriate contact responsible for specified functions related to physical maintenance and fiscal administration. Further, DHCR officials approved a Seneca Management Plan that contained allowances that were unrelated to the ordinary operations of the development. For example, Seneca’s Management Plan allows for the employment of an Activities Director, for up to 32 hours per week, to plan and assist with resident functions, such as trips, parties, bingo, and other entertainment.

DHCR officials did not adequately review the developments’ Management Plans to ensure they were up-to-date and in line with endeavors that were related to the ordinary operations of the development, which leads to a risk of mismanagement at the developments, including improper spending and potentially hazardous conditions. In response to our findings, DHCR officials stated they would consider incorporating the confirmation of up-to-date management plans as part of the overall Field and Office Visit Report.

## Recommendations

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 prepare and send the Field and Office Visit Reports to the developments’ management promptly, as required;
  - Conducting site and office visits to each development at least annually in accordance with DHCR Guidelines; and
  - Utilizing current information when conducting risk assessments.
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.

## Fiscal Mismanagement

Management representatives should review expenditures to identify any that are inappropriate or unusual or that require repayment to the development, and must review items related to the development’s fiscal condition, such as bills and invoices, purchase procedures, contracts, bank accounts, and petty cash transactions. Our review of sampled transactions uncovered numerous instances of non-compliance that could have been mitigated had DHCR officials adequately monitored development management and Board members to ensure they adhered to their fiduciary responsibilities. Imprudent, unnecessary, and wasteful spending by developments may result in financial loss, inability to pay for needed repairs, and rent/maintenance increases. It is incumbent on DHCR to improve its stewardship of the Mitchell-Lama program and ensure developments are using funds appropriately, as the Program intended, and in the best interest of the residents.

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## Apparent Conflict-of-Interest Transactions

According to Section 1729-1.4 of the Regulations, managing agents and their employees must disclose to the Board and to DHCR if they have a direct or indirect interest in any business that proposes to participate in a transaction that may lead to the provision of materials or services to the housing company. The development must also provide an appropriate mechanism to ensure that all bids will be solicited and evaluated fairly. If the transaction does occur, the housing company must have a plan to adequately monitor the performance of the transaction. Further, Section 1725-6.1 of the Regulations requires that Board members make every reasonable effort to avoid contracts or other transactions that may involve a possible conflict of interest, and prior disclosure must be made to DHCR and to the Board by any Board member who has a direct or indirect interest in a business that proposes to participate at any stage of a transaction. In addition, according to Sunnyside's Management Plan, major repairs that cannot be handled by the on-site maintenance staff will be subcontracted, and the property manager will determine proper corrective action after consultation with, and approval by, the owner. Management will solicit bids from minority and other contractors who have proven performance, and the owner and management will use that, as well as cost, as the criteria for approval of bids and then send to DHCR for review and approval.

At two of the sampled developments, we found 19 transactions involving apparent conflicts of interest. These included four payments to a company owned by Sunnyside's superintendent and 15 Seneca payroll transactions, which could lead to biased decision-making and unethical behavior.

- At Sunnyside, development management contracted with a construction company owned by the superintendent, who was employed by the development but supervised by the property manager, for services totaling \$14,159. Sunnyside management did not disclose these transactions to DHCR officials and did not have an appropriate mechanism to ensure that all bids were solicited and evaluated fairly, as required. Furthermore, since Sunnyside is part of a State-aided program, it is a best practice to ensure that all procurements are conducted so as not to cause any concern that special considerations have been shown to a vendor. Actions such as providing a vendor with information that is not available to other vendors or having a meal with a potential vendor could be construed as showing favoritism. According to Board meeting minutes, the superintendent is authorized to make decisions about purchasing and obtain estimates for work contracted to outside vendors. For example, for one of the jobs, the superintendent reviewed two estimates, one from their own company and one from another vendor, for which the superintendent company's bid was lower and therefore selected. Given the superintendent's assigned responsibilities related to the oversight of purchasing, we maintain that hiring the superintendent's company was an apparent conflict of interest, as this individual is in a position to influence the outcome and serve their own interests. DHCR disagreed, stating there was no conflict of interest because the site manager, and not the superintendent, approved the transactions. However,

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we found the Board approved these transactions, and the superintendent was often present at Board meetings when the contracted work was discussed. Hiring the superintendent or their company to perform work at the development can also result in double payment to the superintendent, as the individual may be working on the contracting jobs during normal work hours.

- Other indications of a conflict of interest at Sunnyside include:
  - Sunnyside management hired a Board member as a part-time property manager and paid at least \$3,740 for this work. In response, DHCR stated there is no evidence that the Board member's employment was approved by the Board, and agreed it was against Regulations. DHCR officials stated that this individual did not perform any work in 2022 and DHCR officials will direct the development and the Board to cease employing Board members.
  - Board meeting minutes showed that the Board approved payments to the superintendent for side jobs completed during normal work hours – for example, the superintendent was paid \$200 for completing terrace leveling on company time. DHCR officials, based on the property manager's denial, claimed it was not on company time but did not provide evidence to support this claim.
  - Payments were made to the superintendent's company for repair jobs that closely resembled work completed by the superintendent or their predecessor during normal maintenance operations, as evidenced by work orders for leveling and painting terraces and replacing pipes.
- At Seneca, development management (employees of the managing agent) made 15 payments, totaling \$51,571, to its managing agent company for various capital projects, including boiler replacement, plumbing, bathroom upgrades, and a fitness room remodel. These 15 transactions were payroll expenses for floating staff (employed by the managing agent) to perform work at Seneca. There was no evidence that the development conducted competitive analysis or bidding for these transactions before awarding the projects to its own company.

Section 1725-3.5 of the Regulations requires Boards to submit a copy of the meeting minutes to DHCR within 10 days after each meeting. Meeting minutes are a useful tool for oversight, and in these instances would have valuable information regarding the developments' fiscal decision making. However, DHCR officials asserted that Regulations do not require them to review Board meeting minutes; therefore, they only do so on an "as needed basis" – a strategy that represents missed opportunities to identify possible non-compliance with Regulations, including conflict-of-interest transactions. Regular review of Board meeting minutes could have helped DHCR officials hold developments accountable for their compliance with Regulations related to transactions involving interested parties. Despite these less-than-arm's-length transactions, DHCR officials stated the onus is on the development to comply with Regulations for these types of transactions. This statement exemplifies DHCR's apparent disregard for strong internal controls over the Program. While we understand that development management and Boards have an obligation to

adhere to Regulations, as the oversight agency, DHCR is ultimately responsible for developing the proper controls to monitor development management and Boards and to enforce compliance with Regulations.

## Expenses Unrelated to Operations or Inadequately Supported

According to Section 1728-2.6 of the Regulations, except where DHCR approves otherwise, development funds are to be used only for ordinary operations. We found 84 transactions, totaling \$105,344 at the five developments, that were unrelated to ordinary operations, including \$69,285 in bonus payments and \$36,059 in miscellaneous other expenses not related to operations (see Table 2).

**Table 2 – Expenses Unrelated to Operations**

Development	Bonus Payments		Other		Total Unrelated to Operations	
	Transactions	Amount	Transactions	Amount	Transactions	Amount
Barker	6	\$3,181	5	\$1,968	11	\$5,149
Executive	10	11,512	11	1,701	21	13,213
Seneca	5	3,527	17	11,363	22	14,890
Sunnyside	4	2,050	0	0	4	2,050
Tompkins	4	49,015	22	21,027	26	70,042
<b>Totals</b>	<b>29</b>	<b>\$69,285</b>	<b>55</b>	<b>\$36,059</b>	<b>84</b>	<b>\$105,344</b>

Expenses we classified as “other” include the following:

- At Barker: Employee reimbursements for commuting costs and phone service costs that were billed in the name of individuals not employed by Barker.
- At Executive: Medical co-payments on behalf of a resident; scholarship fund contributions; flowers delivered to a politician’s office; birthday gifts, parties, and meals.
- At Seneca: Holiday dinners; trips to a museum, mobile zoo, and casino; payroll expenses to a social worker and community activity workers, including overtime pay.
- At Tompkins: Gifts, staff lunches, parties; travel expenses, including airfare and hotel, for an employee who attended a conference in Florida.

DHCR officials do not have policies and procedures regarding bonus payments and stated they will consider drafting a memorandum reminding developments that prior DHCR authorization is required by Regulations for bonus payments for site staff, but also stated they do not agree that bonus payments to management and employees is a matter that falls within their purview. According to DHCR officials, bonuses are often traditional at year’s end and customary in this and other industries, and co-op developments “legitimately see themselves in the same position as their non-supervised counterparts.” Regardless of how developments identify themselves,



they are a part of a State-aided Program and are thus beholden to the Regulations. DHCR officials should provide proper monitoring of development management and Boards to ensure they understand this. Moreover, all five developments paid bonuses despite operating at a net loss. Developments that spend funds on unnecessary transactions and operate at a loss will eventually have to pass the cost down to tenants and cooperators through rent and carrying charge increases. We note that Barker and Seneca, which in 2021 operated at net losses of \$141,027 and \$60,043, respectively, both applied for rent or maintenance increases in 2021. Despite concerns from Seneca residents – senior citizens who generally live on a fixed income – a rent increase at the development took effect in February 2023, increasing their financial burden.

According to DHCR’s policies and procedures, management representatives should review developments’ expenditures, including but not limited to petty cash transactions and employee reimbursements, to identify any that are inappropriate or unusual. At four of the five developments, our review of transactions found 61 transactions, totaling \$156,289, for which management did not provide supporting documentation (see Table 3). Therefore, we could not determine if these expenses were appropriate and related to operations or identify the person who requisitioned the expense. For example, Tompkins management did not provide adequate supporting documentation for an employee reimbursement, totaling \$7,594, for plumbing supplies. DHCR officials do not monitor development management to ensure they understand and enforce internal controls over purchasing.

**Table 3 – Inadequately Supported Transactions**

Development	Payroll,* Reimbursements, Petty Cash		Payments to Vendors**		Total Inadequately Supported	
	Transactions	Amount	Transactions	Amount	Transactions	Amount
Barker	6	\$2,086	2	\$1,227	8	\$3,313
Executive	5	5,124	0	0	5	5,124
Seneca	12	36,636	20	20,164	32	56,800
Tompkins	8	9,641	8	81,411	16	91,052
<b>Totals</b>	<b>31</b>	<b>\$53,487</b>	<b>30</b>	<b>\$102,802</b>	<b>61</b>	<b>\$156,289</b>

\*Including overtime at Seneca

\*\*Including managing agent

Some of the sampled transactions we identified as unrelated to operations or unsupported were made during the period last reviewed by the developments’ management representatives. However, in their respective Field and Office Visit Report, the management representative marked their review of inappropriate expenditures as “not applicable” for Seneca, as “not reviewed” for Sunnyside, and as “satisfactory” for Executive. For the remaining two developments, Barker and Tompkins, DHCR officials either did not provide a Field and Office Visit Report or only conducted a site visit and, therefore, this section of the Field and Office Visit Report was incomplete. DHCR officials explained that these transactions were

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not reviewed because they fell below the regulatory threshold of \$100,000, but nevertheless agreed that funds should be used consistent with the developments' approved budgets.

The unsupported transactions at Seneca include three payments to “floating” staff totaling \$13,463 and two overtime payments totaling \$5,683. The Regulations do not address the approval or payment of overtime, and DHCR officials have not established a policy guiding developments' permissible use of or documenting the need for overtime work. According to DHCR officials, prohibiting or limiting overtime will be difficult to enforce based on long-standing collective bargaining agreements of unionized staff or non-exempt employees working over 40 hours in a single week. However, we maintain that DHCR officials should seek to implement policies to ensure overtime is limited to when it is necessary. In addition to these overtime payments, we found that Seneca's managing agent employs “floating” staff, employees who rotate between various developments. Seneca management regularly paid overtime to supervisors and maintenance staff – overtime and floating staff/supervisor payrolls totaled over \$191,000 during our audit scope. We asked Seneca management for an explanation and support to justify the payment of overtime and payments to floating staff; however, Seneca management has not provided an explanation or support.

While Board training is not mandatory, Board members might be unaware of their fiduciary responsibilities and good governance, which could contribute to misspent funds at the five developments. Imprudent, unnecessary, and wasteful spending, as well as the use of petty cash or issuance of reimbursements without adequate support, may result in financial loss, rent/maintenance increases, and the inability to pay for needed repairs. For example, Barker and Seneca both applied for rent or maintenance increases in 2021.

## Uncollected Rent for Commercial Space at Seneca Towers

According to Section 1727-6.2 of the Regulations, stores or other commercial facilities rented by a housing company may be leased. Seneca leases commercial space to a grocery store and, according to the lease, the tenant is required to pay \$150 per month in rent. Despite this minimal charge for rent, Seneca management told us they no longer collect rent from this tenant, resulting in a loss of rental income of at least \$7,200 for our scope period. They indicated that, in previous years, there was a weekly farmers market service at Seneca and the grocery store tenant had complained that this was cutting into the store's profits. Management stated they agreed to stop collecting the rent from this tenant due to concerns the tenant would leave, further explaining that they felt the store's benefit to the residents outweighed the lost revenue. However, we note that the store is conveniently located within the development and open 6 days per week, whereas the farmers market is only a periodic event, which makes it more likely that the senior citizens living in the development would choose the store for convenience. We note that this



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store's prices are comparable to those of similar stores, which plays a factor in its profitability.

DHCR officials do not enforce housing companies' compliance with the collection procedures in Regulations, including for commercial tenants. Seneca's loss of rental income can result in negative working capital and rent increases for residents. In fact, a rent increase took effect at Seneca in February 2023. Tenants, who are senior citizens on a limited income, may have an extra rent burden.

## Recommendations

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.
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.
5. Mandate regular training for development management and Board members to ensure they are aware of good governance and their fiduciary responsibilities.
6. Monitor commercial rent collection at Seneca and work with development management to take appropriate steps to collect outstanding rent.

## Hazardous Physical Conditions

Annual site visits, as stipulated in DHCR's own policies and procedures, are a key monitoring activity to ensure developments are being maintained in a manner that provides a safe, clean, and secure living environment, as the Regulations require. We determined that Executive, Seneca, and Sunnyside were being maintained properly. However, we identified conditions at Barker and Tompkins that pose health and safety hazards and that have gone uncorrected for long periods. The risk to health and safety only increases when lengthy neglect leads to further deterioration of the condition. In the interest of tenants' health and safety, it is imperative that DHCR officials take action to improve oversight of and attention to physical conditions at the developments.

**Barker.** At our site visit to Barker on December 2, 2022, we observed water damage on the ceiling of a storage room (see Figure 1). A review of documents showed that DHCR had been aware of the water damage issue, citing in its 2020 Risk Assessment Report that “frequent rupture of pipes creates water damage in many apartments.” Further, an internal DHCR memorandum documenting a site visit by DHCR architects, whom the management representative and supervisor accompanied, on April 8, 2022 states, “many apartments are subject to flooding due to structural deficiencies” and occupied apartments have “gaping holes in ceilings and walls and signs of water damage.”

**Tompkins.** According to the Field and Office Visit Report for Tompkins’ 2019 site visit, the management representative found the following issues: cracks in the walkways, bulging fences, loose railings on stairways throughout the development, a retaining wall that needs repair, and an uneven floor and bulged-out fence on one of the playgrounds.

We visited Tompkins in November 2022 visit – more than 3 years later – and found several of these hazardous conditions remained uncorrected, including cracks in the walkways throughout the development and railings that were rusty and loose (see Figure 2). Additionally, we observed puddles and uneven ground surface in the playground area.

Had DHCR officials adequately monitored developments by conducting the required visits and ensuring corrective action was taken when necessary, they would have been able to identify and potentially correct hazards that impact the safety of residents.

## 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.



**Figure 1** - Water-damaged ceiling in Barker storage room.



**Figure 2** - Rusty, detached hand railing at Tompkins.

# Audit Scope, Objectives, and Methodology

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The objectives of this audit were to determine whether residents of Mitchell-Lama developments, supervised by DHCR, are provided safe and clean living conditions, and whether funds are properly accounted for and used for intended purposes. Our audit covered the period from January 2019 through December 2022.

To achieve our objectives and evaluate the relevant internal controls, we reviewed the Private Housing Finance Law, Regulations, and DHCR's policies and procedures, including the Housing Management Representative Guidelines, the Field and Office Visit Reports, and the Annual Financial Review Forms. We met with DHCR officials to obtain an understanding of their rules, policies, and procedures and their oversight of the Program. From a list of 86 DHCR-supervised developments provided by DHCR officials, we selected a judgmental sample of five developments (Barker, Executive, Seneca, Sunnyside, and Tompkins) located outside New York City to review during the audit. Our judgment was based on various factors, including development type and location, resident type, DHCR's complaint data, and publicly available information. We visited all five sampled developments to observe physical conditions and met with the developments' management to obtain an understanding of how they oversee conditions.

Although DHCR's 2022 Annual Report on Mitchell Lama Developments notes 121 DHCR-supervised developments, the list officials provided to us included only 86 of them. DHCR officials claimed the 2022 Annual Report is accurate and the reason for the discrepancy was a change in supervision of selected developments. We verified that the five developments we selected for our sample were indeed supervised by DHCR; however, there may have been DHCR-supervised developments that we did not consider for sample selection because DHCR's list of 86 developments may have been incomplete.

For the five developments, we also reviewed DHCR records, including Field and Office Visit Reports, annual financial reviews, risk assessments, budgets, financial statements, contracts, payroll reports, bank statements, and other relevant documents related to the financial and physical conditions. In addition, to determine whether expenses were supported and complied with Program regulations, we selected and reviewed a sample of 470 transactions, totaling approximately \$2.5 million, from the five developments' general ledgers for the period January 2019 through November 2022 (January 2019–November 2022 for Barker, Executive, and Tompkins; January 2019–March 2022 for Seneca; and January 2019–March 2021 for Sunnyside), which consisted of a population of expenditures totaling approximately \$43 million (approximately \$6.5 million from Barker, approximately \$5.8 million from Executive, approximately \$13.2 million from Seneca, approximately \$4.5 million from Sunnyside, and approximately \$13 million from Tompkins). Our judgment was based on various factors including dollar amount, vendor name, and transaction type. The 470 sampled transactions, totaling approximately \$2.5 million, consisted of the following: 85 transactions totaling \$282,956 from Barker, 80 transactions totaling \$328,648 from Executive, 170 transactions totaling \$305,940 from Seneca, 50 transactions totaling \$1.15 million from Sunnyside Manor, and 85 transactions totaling \$441,411 from Tompkins. We conducted office visits at each development

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and reviewed documents such as invoices, contracts, and written approvals related to the sample we selected. We determined that the data used to pull our samples and perform our analyses was sufficiently reliable for use in accomplishing our audit objectives. None of our samples were designed to be projected to the entire population.

# Statutory Requirements

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## 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.

We conducted our performance audit in accordance with generally accepted government auditing standards. These 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 objectives. We believe that the evidence obtained during our audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

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. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of DHCR's supervision of selected Mitchell-Lama developments located outside New York City.

## Reporting Requirements

We provided a draft copy of this report to DHCR officials for their review and formal comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of it. In their response, DHCR officials generally agreed with most of the report's recommendations and indicated actions they have taken or will take to implement them. Our responses to certain DHCR comments are embedded within DHCR's response as State Comptroller's Comments.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Homes 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 if the recommendations were not implemented, the reasons why.

# Agency Comments and State Comptroller's Comments

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KATHY HOCHUL  
Governor

Homes and  
Community Renewal

Division of Housing  
and Community  
Renewal

RUTHANNE VISNAUSKAS  
Commissioner/CEO

November 2, 2023

Mr. Kenrick Sifontes  
Office of the State Comptroller  
Division of State Government Accountability  
59 Maiden Lane - 21<sup>st</sup> Floor  
New York, NY 10038

Re.: 2022-S-46, Division of Housing and Community Renewal: Physical and Financial Conditions at Selected Mitchell-Lama Developments Outside New York City

Mr. Sifontes:

The Division of Housing and Community Renewal (“DHCR” or “Agency”) appreciates the opportunity to respond to the above-referenced audit and thanks the Comptroller’s staff for their professionalism and courtesy throughout the audit process. The Mitchell-Lama Program (“Program”) represents a critical source of affordable housing for New Yorkers across the State and DHCR appreciates the Office of the State Comptroller’s (“OSC”) interest in the program.

DHCR values performance audits conducted by OSC and has gained insights into its supervision of the Mitchell-Lama developments from this audit. DHCR’s highest priority is the safety and welfare of the low-and moderate-income tenants it serves. While DHCR, for the reasons discussed below, takes issue with several of the draft Audit Report’s findings, DHCR will consider many of the Report’s recommendations.

Our response begins by summarizing several overarching concerns about the draft Audit Report’s portrayal of DHCR’s supervision of the Program, including the draft Audit Report’s misunderstanding of DHCR’s regulatory role, its insufficient recognition of DHCR’s commitment to preserving Mitchell Lama housing and its inadequate accounting for the extraordinary impact that the COVID pandemic had on the Program.

**State Comptroller’s Comment** – DHCR’s concerns are not warranted. We are aware of DHCR’s regulatory role and accurately reflected it in our report. However, we disagree with DHCR’s contention that our report inadequately recognized DHCR’s commitment to preserving Mitchell-Lama housing. Our audit report notes DHCR’s efforts and deficiencies in the administration of the Program. Further, although we recognize the impact that the COVID pandemic had on the Program, it is important to note that our audit scope period encompassed a full year pre-pandemic.

This is followed by DHCR’s responses to each of the recommendations made in the draft Audit Report.

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The draft Audit Report fails in several ways to accurately characterize DHCR’s oversight of the Mitchell-Lama Program (“Program”).

**State Comptroller’s Comment** – Our report accurately characterizes DHCR’s oversight, including references to sections of the Regulations and DHCR’s own policies and procedures, which require DHCR supervision over a portfolio of Mitchell-Lama developments.

More specifically, the draft Audit Report:

1. does not sufficiently recognize the limited regulatory role DHCR has in overseeing the day-to-day management of Mitchell-Lama housing;

**State Comptroller’s Comment** – Our report does not state that DHCR should oversee day-to-day management of Mitchell-Lama developments as this role is the responsibility of the development’s owners and management. However, the report references sections of the Regulations and DHCR’s own policies and procedures, which require the DHCR management representative to make detailed reviews as deemed necessary to determine if the assigned project is being operated efficiently and in accordance with applicable laws and Regulations.

2. understates the investment of time and resources DHCR has made to rehabilitate and preserve these and other valuable housing resources in the Mitchell-Lama portfolio;

3. does not adequately appreciate the extraordinary impact that the COVID pandemic had on DHCR’s management of the Program; and

**State Comptroller’s Comment** – We disagree that the audit report understates DHCR’s investment to rehabilitate and preserve housing resources in the Mitchell-Lama portfolio or does not adequately appreciate the impact of the COVID-19 pandemic on DHCR’s management of the Program. Although we recognize the impact the pandemic had on the Program, it is important to point out that our audit scope encompasses a full year (2019) before the onset of the pandemic.

4. does not fully acknowledge the structural challenges posed to DHCR supervision considering the financial and ownership conditions under which Mitchell-Lama developments operate.

**State Comptroller’s Comment** – Our report acknowledges that Mitchell-Lama developments are privately owned. Despite the ownership structure of these developments, the Regulations require DHCR to supervise them.

#### 1. DHCR’s Limited Role

In 1955, legislation sponsored by Senator MacNeil Mitchell and Assemblyman Alfred Lama created what is now known as the Mitchell-Lama housing program. Among its innovations, the legislation created financial incentives to encourage private owners into developing and managing housing for middle income New Yorkers. Prior to then, government investments in affordable housing went primarily to government owned and managed public housing.

This fundamentally different approach to providing affordable housing has created both opportunities and challenges for New York State. While the Program was successful in leveraging substantial private investment



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and management expertise, this type of private ownership and operation conversely limited the State’s role in the day-to-day oversight of these developments. The draft Audit Report appears to misunderstand the limited managerial role of DHCR in the state-supervised Mitchell-Lama portfolio. Private Housing Finance Law (“PHFL”) § 17 broadly tasks DHCR with supervising the entire Mitchell-Lama portfolio, not with directly overseeing the day-to-day management of individual buildings.

**State Comptroller’s Comment** – The audit report does not misunderstand DHCR’s role, nor does it state that DHCR officials should manage the day-to-day operations at developments.

The draft Audit Report acknowledges that it is the responsibility of the Mitchell-Lama owners and managing agents to provide safe and habitable housing and ensure the physical and financial integrity of their projects. Yet, the draft Audit Report contains recommendations that suggest that DHCR should manage even the smallest of financial transactions and minor repairs at the reviewed Mitchell Lama properties.

**State Comptroller’s Comment** – The audit report’s recommendations do not suggest that DHCR should manage even the smallest of financial transactions and minor repairs. Rather, the report contains recommendations to help DHCR improve its supervision of developments and adhere to its own policies, which require DHCR management representatives to supervise the developments’ management and conduct detailed reviews as necessary, including determining if expenditures are proper and reasonable, regardless of dollar amount.

For example, all of the 164 financial transactions described in the draft Audit Report were under \$100,000, but the Mitchell-Lama Regulations require DHCR’s review only of individual purchases when they exceed \$100,000 in a single year.

**State Comptroller’s Comment** – The Regulations require DHCR approval of any purchases, commitments, and contracts that would result in an average annual expenditure of \$100,000 or more, based on the projections of the most recently approved budget. Our sample included transactions at Executive House and Tompkins Terrace, which had average annual expenditures that exceeded \$100,000.

See Agency Management’s Response to Recommendation 3 below for explanation of why the \$100,000 regulatory threshold was adopted and the benefits thereof. The regulations contemplate DHCR approval when the total purchase of a single contract or service exceeds the \$100,000 monetary threshold. However, the clustering of separate and distinct transactions for contracts and purchases exceeding \$100,000 is not envisaged by the regulations.

## 2. DHCR’s Preservation Investment

At this time, all the Mitchell-Lamas that remain under DHCR’s supervision today were constructed over 45 years ago, leaving many with outdated building systems in need of upgrades, repairs, or replacements. The draft Audit Report correctly notes that most of the properties in the audit sample have pressing physical needs. Yet in most cases, the housing companies responsible for the management of these properties lack the financial and development expertise needed to effectively address the extensive structural needs in their developments. As a result, DHCR frequently has undertaken the difficult and time-consuming work of fully restructuring and rehabilitating troubled Mitchell-Lama developments. Instead of taking a band-aid approach to addressing some of the physical needs at these properties, these comprehensive rehabilitations replace entire building systems and preserve the units in such developments as affordable housing for generations to come. Since just 2017, HCR has rehabilitated or extended affordability of over 24,000 units of Mitchell-Lama housing throughout the State and invested more than \$265 million of Agency resources in rehabilitation efforts.



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**State Comptroller’s Comment** – We are not suggesting a “band-aid” approach. Rather, we maintain that DHCR officials should prioritize working with building management to fix hazardous conditions in a timely manner.

Consistent with the Agency’s comprehensive approach to addressing the physical needs of Mitchell-Lama developments, DHCR has approved the repositioning and rehabilitation of Tompkins Terrace, one of the housing companies identified in the Audit Report as having physical deficiencies. 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.

### 3. COVID Pandemic

The draft Audit Report fails to acknowledge that a substantial portion of the period it covers encompasses an unprecedented time of extraordinary conditions and challenges due to the COVID-19 pandemic. As was noted in a prior Comptroller’s report on DHCR’s supervision of Mitchell-Lamas in New York City, “the pandemic caused fundamental changes to DHCR’s management of the Program, with in-person operations suspended due to federal mandates and New York State executive Orders.” However, the conclusions in the draft Audit Report do not appear to take these challenges into account.

**State Comptroller’s Comment** – Our audit’s conclusions took into consideration the challenges DHCR faced before and during the pandemic.

The draft Report states incorrectly that in-person monitoring of the Mitchell-Lama developments was suspended only in 2020. From 2020 to 2022, the Agency was limited in its ability to perform field visits due to the ongoing COVID-19 state of emergency travel restrictions, federal mandates, and New York State Executive Orders. Restrictions that generally prohibited on-site inspections by DHCR staff began in March 2020 and lasted until the expiration of the Governor’s Executive Order 11 in September 2022. Even through such restrictions, DHCR still performed a limited number of field visits in 2021 during the state of emergency and while field work was temporarily halted across the Agency.

**State Comptroller’s Comment** – The audit report statement is accurate: DHCR officials stated that, due to pandemic-related federal mandates and New York State executive orders, in-person visits were suspended in 2020, and management representatives were to conduct desk reviews instead. However, we found that management representatives did not conduct such reviews at any of our sampled developments in 2020 and only conducted one in 2021, for Sunnyside Manor.

In addition, daily operations at Mitchell-Lama developments were significantly affected by the unprecedented economic impact of the COVID-19 pandemic followed by a period of unusually high inflation, both of which added extra stresses and responsibilities on the housing companies, DHCR, and the residents. As a result of these substantial oversight and operational difficulties, the challenges at these properties deepened and the housing management companies and DHCR faced significant obstacles to addressing them. As the state has emerged from the pandemic, DHCR has intensified its efforts to provide support within the bounds of its limited supervisory role to distressed properties.

**State Comptroller’s Comment** – The Regulations task DHCR with supervising its Mitchell-Lama portfolio; we maintain this should be done efficiently and effectively.

### 4. Structural Financial and Ownership Conditions

The Mitchell-Lama Program is designed to provide either limited profit or no profit to the housing companies, with costs often being covered solely by the carrying costs paid by shareholders or residents without other

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sources of subsidy. For rental buildings, the rents are shouldered by a tenant population statutorily restricted to limited income households who generally have limited ability to pay for rent increases. Further, Mitchell-Lama housing is owned by private housing companies with independent authority to exit the Mitchell-Lama program under certain statutory conditions. These unique factors make managing and operating these affordable housing developments challenging even under normal circumstances and forces DHCR to balance the interests of low- and moderate-income tenants with the operational needs of privately owned Mitchell-Lama properties.

It is also important to note that while DHCR has supervisory responsibilities associated with its Mitchell Lama portfolio, as the draft Audit Report notes, “It is the responsibility of the owner to provide safe and habitable housing and to maintain the physical and financial integrity of the development, and it is the function of the managing agent to effectively and efficiently manage the development to ensure that the owner’s responsibilities are carried out. Both the owner and managing agent must agree to manage the development in accordance with local codes and State rules and regulations.”

The following are DHCR’s responses to the draft Audit Report’s recommendations:

**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 prepare and send the Field and Office Visit Reports to the developments’ management promptly, as required;
- Conducting site and office visits to each development at least annually in accordance with DHCR Guidelines; and
- Utilizing current information when conducting risk assessments.

**Agency Management’s Response:** DHCR has reinforced with field unit supervisors and housing management representatives the necessity of completing comprehensive field reports in a timely manner and releasing those reports to the managing agents within reasonable timeframes.

DHCR agrees with the importance of conducting annual site visits. However, the Agency was extremely limited in its ability to perform annual visits due to the ongoing COVID-19 state of emergency travel restrictions, federal mandates, and New York State Executive Orders. Restrictions that generally prohibited on-site inspections by DHCR staff began in March 2020 and lasted until the expiration of the Governor’s Executive Order 11 in September 2022. Even through such restrictions, DHCR still performed a limited number of field visits in 2021 during the state of emergency while field work was temporarily halted across the Agency.

**State Comptroller’s Comment** – DHCR officials did not provide documentation to support that any field visits were conducted in 2021.

Otherwise, all housing companies are scheduled for annual site visits in accordance with established policy as directed by DHCR’s housing assessment rating criteria. The one exception to this requirement is that housing companies that are rated as “may be eligible for limited DHCR supervision due to maintaining excellent performance.” Accordingly, they 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.

**State Comptroller’s Comment** – As noted in DHCR’s response and within our report, DHCR officials did not adhere to their established policy to conduct annual visits. It is worth noting that only one of the sampled developments was rated as “excellent.”

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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.

**Agency Management’s Response:** 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 states 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.

**State Comptroller’s Comment** – While we agree certain activities may benefit residents, we do not consider an Activities Director position to be related to ordinary Program/development operations. It is worth noting that Seneca operated at a loss for 3 of the 4 years in our scope and had a rent increase that took effect in February 2023; prudent fiscal management is crucial to ensure that the financial burden for residents does not continue to increase.

**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.

**Agency Management’s Response:** DHCR disagrees with this recommendation, except as stated below. 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.

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**State Comptroller's Comment** – The Regulations require DHCR approval of any purchases, commitments, and contracts that would result in an average annual expenditure of \$100,000 or more, based on the projections of the most recently approved budget. Our sample included transactions at Executive House and Tompkins Terrace, which had average annual expenditures that exceeded \$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 to allow goods and services totaling no more than \$100,000 to proceed without publishing a formal request for proposals or invitation for bids. The amendment allows for a reduction in administrative costs, promotes efficiency and economy in contracting, avoids unnecessary hurdles in requiring DHCR approval for small contracting amounts, and improves opportunities for minority and women owned business enterprises to obtain a fair proportion of contracts and to make certain that their bids receive full consideration. Furthermore, it allows staff to focus on those transactions which provide highest risk to the portfolio in terms of financial management and stability.

The draft Audit Report appears to suggest that DHCR management representatives should be responsible for reviewing all expenditures bills, invoices, contracts, and bank accounts regardless of the dollar amount. The primary purpose of 9 NYCRR § 1728-2.6 is to advise the housing company of what their accounting and financial obligations are. Its intention is not to require that DHCR management representatives review every invoice and expense no matter the amount. For example, the prior sections of this subpart require the housing company (not DHCR) to take proactive steps with managing their financial and accounting affairs (i.e., keep books and records, file reports, pay salaries etc.). These requirements help ensure the housing company uses its funds for the ordinary operation of the Mitchell Lama development.

**State Comptroller's Comment** – According to DHCR's policies and procedures, management representatives must review fiscal and budget items, including determining if expenditures are proper and reasonable; we encourage DHCR officials to comply with their policies regardless of the dollar amount.

DHCR disagrees with the draft Audit Report's statement that DHCR officials did not adequately oversee financial conditions at selected developments since the PHFL and Program regulations do not make DHCR responsible for the overwhelming percentage of the companies' transactions (those under \$100,000 for the reasons discussed above). All 164 financial transactions described in the draft Audit Report were under \$100,000. DHCR understands the importance of monitoring of financial conditions and enforces its compliance with its regulations that provide for the review of contracts and work exceeding \$100,000.

**State Comptroller's Comment** – The Regulations require DHCR approval of any purchases, commitments, and contracts that would result in an average annual expenditure of \$100,000 or more, based on the projections of the most recently approved budget. Our sample included transactions at Executive House and Tompkins Terrace, which had average annual expenditures that exceeded \$100,000.

In the case of the specific conflicts of interest noted in the draft 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 also recently issued an Office of Integrated Housing Management (“OIHM”) Memorandum addressing conflicts of interests. Specifically, the Memorandum advised housing companies, owners, managing agents, and site managers of the existing

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requirement to notify DHCR of any identity of interest or conflicts of interests prior to engaging in business with affiliated entities. The Agency will consider additional requirements for invoice and expense reviews.

The Agency has also issued an OIHM Memorandum 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.**

**Agency Management’s Response:** The Agency agrees that appropriate policies and procedures related to bonus payments should be adhered to. The Agency agrees that appropriate policies and internal controls are a necessary component to the proper functioning of a Mitchell Lama development. Agency staff will continue to work with housing companies to address this matter. As noted above, the Agency has regulations in place addressing dollar thresholds for contracts that include purchasing. As discussed above these regulations were introduced in order to implement operational efficiencies and developed pursuant to the SAPA process, which allowed ample opportunity for public commentary. The Agency has issued a reminder memo to housing companies on these topics.

**Recommendation 5: Mandate regular training for development management and Board members to ensure they are aware of good governance and their fiduciary responsibilities.**

**Agency Management’s Response:** 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 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 on-going 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.

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In March 2022, PHFL §32-a 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 would 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 for all current board members and every three years thereafter for board directors continuing in their capacity. DHCR has training modules for board directors that touch upon the statutory requirements. In addition, DHCR is creating a more comprehensive curriculum and certification procedure to further satisfy the new statutory obligations.

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

**Agency Management’s Response:** 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.

**State Comptroller’s Comment –** [As DHCR officials acknowledge, timely rent collections from commercial tenants provide a source of revenue that contributes to the financial health and functioning of a development. Therefore, monitoring commercial rent collection and working with development management to take appropriate steps to collect outstanding rent can help maintain a development’s financial integrity.](#)

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.**

**Agency Management’s Response:** DHCR agrees that corrective action must be taken in response to unsafe conditions documented in the housing management field 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. 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.

Also, the Agency has provided additional guidance to field unit supervisors and housing management representatives on ensuring that corrective actions are taken when unsafe conditions have been identified.

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Please contact Sean Fitzgerald, Audit Coordinator, at (518) 473-3112 if you have any questions or require anything further.

Sincerely,



Jason Pearson  
Senior Vice President, Statewide Asset Management

Cc: RuthAnne Visnauskas  
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# Contributors to Report

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## Executive Team

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