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**TESTIMONY OF DAVID HERSHEY-WEBB, ESQ. OF HIMMELSTEIN, McCONNELL, GRIBBEN,  
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**COMMENTS ON PROPOSED AMENDMENTS TO RULES GOVERNING CITY-AIDED LIMITED  
PROFIT HOUSING COMPANIES**

**NOVEMBER 6, 2013**

My name is David Hershey-Webb, I am a partner at Himmelstein, McConnell, Gribben, Donoghue & Joseph. We represent tenants, tenants associations, co-op shareholders and condo unit owners. Over the years we have represented numerous Mitchell Lama Tenants Associations and individual tenants. Most recently I argued and won a case at the New York State Court of Appeals, *Murphy v. DHCR*, which upheld the right of succession for Mitchell Lama family members, including non-traditional family members, in DHCR supervised buildings.

Let me say from the outset that the proposed amendments will lead to the eviction of many long-time Mitchell Lama residents from their homes at a time when New York rents are sky-high. That outcome is surely inconsistent with the goal of preserving affordable housing which is HPD's primary mandate. Court of Appeals Judge Robert Smith made this point during oral argument of the *Murphy* case when the attorney for DHCR argued the importance of making apartments available for people on the waiting list. Judge Smith said "but isn't there a difference between waiting to get into an apartment and having the marshal come to your door and throw you out of your home?" HPD should not adopt policies that promote evictions.

The Court of Appeals in *Murphy* recognized the important social value of a long-time family member, including a non-traditional family member, being able to remain in his or her

home after the departure of the tenant or shareholder, regardless of why that tenant or shareholder has vacated.

The Court held that

Regulations providing for succession rights to Mitchell-Lama apartments serve the important remedial purpose of preventing dislocation of long-term residents due to the vacatur of the head of household. Succession is in the spirit of the statutory scheme, whose goal is to facilitate the availability of affordable housing for low-income residents and to temper the harsh consequences of the death or departure of a tenant for their "traditional" and "non-traditional" family members.

For this reason, the Courts, DHCR and HPD have permitted succession in Mitchell Lama buildings for decades.

The proposed regulations curtail the right to succession in three ways: 1) the tenant or cooperator must have either died or gone to a nursing home for a family member to claim succession – a person could not claim succession if the tenant or cooperator moved away; 2) non-traditional family members could no longer claim succession; 3) a succession claim would have to be made within 90-days of the death (or admission to a nursing home) of a tenant or cooperator. The proposed regulations also eliminate aunts, uncles, nieces, nephews and, inexplicably, adopted children as potential successors.

The proposed regulations contradict the holding of *Murphy* and undermine this important social value recognized by the Court of Appeals by severely limiting who can apply for succession. This drastic revision of the succession rules would lead to harsh and absurd results that contravene the spirit of the statutory scheme.

For instance, under the proposed regulations, a family member who resided with a tenant or cooperator for only two years would be entitled to succession if his or her parent died or was admitted to a nursing home while a family member who was born and grew up in the apartment and lived there for decades would have no entitlement to succession if his or her

parents moved away. There is no rational basis to deny succession to a lifelong resident while granting it to a recent resident.

A remaining spouse, or spouse and child, abandoned by a husband or wife or who suffered a painful divorce would no longer be entitled to succession.

The proposed regulations would also discourage some tenants or cooperators from moving out of an apartment, knowing that such a move would result in their children, or spouse, or parents losing their home.

The elimination of any succession for non-traditional family members is contrary to the seminal 1989 Court of Appeals *Braschi* decision which recognized the evolving concept of family in modern society and granted important protections to non-traditional family members. Under the proposed regulations a person not related by blood or marriage who has spent 10-years caring for a tenant in poor health, who has a family-like emotional interdependence, who is listed as the health care proxy, who is listed in the tenant's will, who has a joint bank account with the tenant, and who is listed on every income affidavit, would no longer be entitled to succession.

The elimination of the non-traditional family relationship provision represents a startling and backwards failure to recognize the realities of family life in the 21<sup>st</sup> century. The proposed rule also flies in the face of a long-term statutory, regulatory and case law framework protecting non-traditional family members from eviction.

As recognized in the *Murphy* decision and in numerous court decisions over the last almost 25-years, the fundamental purpose of succession regulations is to avoid the hardship that comes with displacement from one's home when a tenant dies or moves away. One of the reasons that such displacement is a particular hardship in New York City is that we are in the midst of a housing emergency. Given the level of market rents, all but the wealthiest New Yorkers are limited in their ability to find alternative housing at or near a community that is home.

A long-time family member will often have family, social and professional ties to the community, including the Mitchell Lama community.

Finally, the proposed regulation that gives potential successors only 90-days to file a claim is an unnecessarily harsh and stringent rule which, once again, does not recognize the complex realities of people's real lives. For example, when a loved one dies, it often takes family members a considerable time to come to grips with the death and consider next steps.

I urge HPD not to adopt these draconian measures. Increasing evictions is not within the mandate of HPD. There are surely ways to address the issue of the long waiting lists without evicting long-term residents from their homes.