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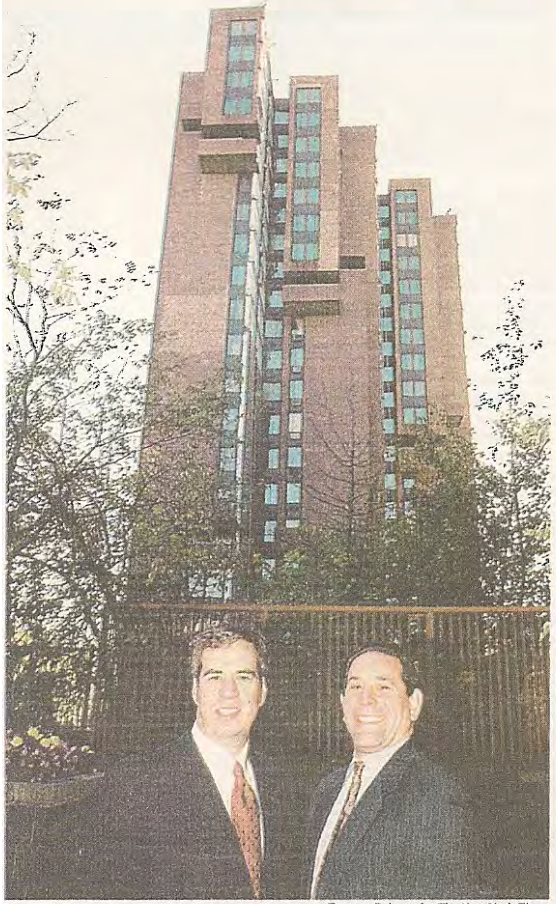
Leaving Mitchell-Lama: Many Paths, All Bumpy



Frances Roberts for The New York Times

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Above, Robert S. Nelson, a developer, and Aury Bennett Stollow, lawyer for tenants at Cathedral Parkway Towers in Manhattan. Right: Karen Zebulon, Anita Karl, Jack Bales and James Sepyo, tenants at 20 Henry Street in Brooklyn.

At three complexes, landlord-tenant conflicts follow different scripts.

By NADINE BROZAN

THE battleground is increasingly familiar: on one side, there is the developer of a Mitchell-Lama building entitled under law to take it out of the low- and moderate-income housing program after 20 years of rent ceilings. On the other, there are the tenants, fearful they will lose their homes to soaring rents or that their buildings will be transformed into luxury condos.

For projects completed before Jan. 1, 1974, the outcome is predictable. If they leave the Mitchell-Lama program, they automatically become subject to rent stabilization, with increases limited by the city's Rent Guidelines Board. But if they are among the 144 Mitchell-Lama projects finished after that date, owners are free to set whatever rents they wish, provided they pay up their mortgages and fulfill other conditions, including proving there were no covenants in the deeds restricting use of the land.

The last of the Mitchell-Lama buildings went up in 1978, and with the 20-year mark past, the pace of landlords leaving the program has been quickening. Buyouts are pending at eight Mitchell-Lama developments in Manhattan, two in Brooklyn and one in Queens, according to the city's Department of Housing Preservation and Development.

The potential effects of the buyouts have drawn the attention of political leaders, with both Mayor Michael R. Bloomberg and the City Council speaker, Gifford Miller, proposing new safeguards for Mitchell-Lama tenants.

How the transition from regulation to free market evolves differs from one case to another. But the experiences of three developments currently in the process of leaving the program illustrate the ways duels between owner and resident can play out.

An unusual resolution has been unfolding at Cathedral Parkway Towers, a 309-unit complex on the Upper West Side near the Cathedral Church of St. John the Divine.

There, thanks to a patchwork quilt of financing from city, state and nonprofit agencies and private sources, the tenants have become the owners, albeit indirectly, through their tenants' association. For the time being at least, they will remain under the Mitchell-Lama umbrella and continue to pay rent.

In Brooklyn Heights at the Middagh Street Studio Apartments, with 42 spaces designed for artists, the tenants' future is more tenuous. The longtime owner of the building, a former candy factory that was converted into studios in 1975, took it out of the Mitchell-Lama program on June 13 and promptly sold it to a new owner, Charles Herzka, who has yet to divulge his plans. The Brooklyn tenants had earlier filed a lawsuit seeking to restore

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rent stabilization practices that were once in effect. They lost their initial case, and that verdict is now on appeal.

At Independence Plaza North, three 39-story towers and 69 two-story low rises in TriBeCa, tenants came face to face with their new landlord, Lawrence Gluck, for the first time last month in a confrontational meeting.

Tenants say they worry that they will be priced out of their apartments and that an influx of more affluent renters will mean the end of economic and ethnic diversity.

But Mr. Gluck has vowed to obtain federal rent subsidies for everyone eligible, a total he estimated at 68 percent of the complex's residents.

Spurred in part by situations such as these, Mayor Bloomberg announced a proposal Wednesday to extend rent regulation to tenants in developments leaving the Mitchell-Lama program. The proposal, which would give new tax breaks to landlords and remove the 6 percent cap on their return on equity under Mitchell-Lama, would require action by the State Legislature.

Mr. Bloomberg's proposal followed the recent introduction of a City Council bill by Mr. Miller that would stiffen the conditions under which Mitchell-Lama proprietors leave the system. Mr. Miller's proposal would compel owners to give 18 months notice of their intentions to buy out, rather than the 12 months now in force, levy an administrative fee of $1,000 for each unit to be removed from the program and require the Department of Housing Preservation and Development to conduct a community impact study.

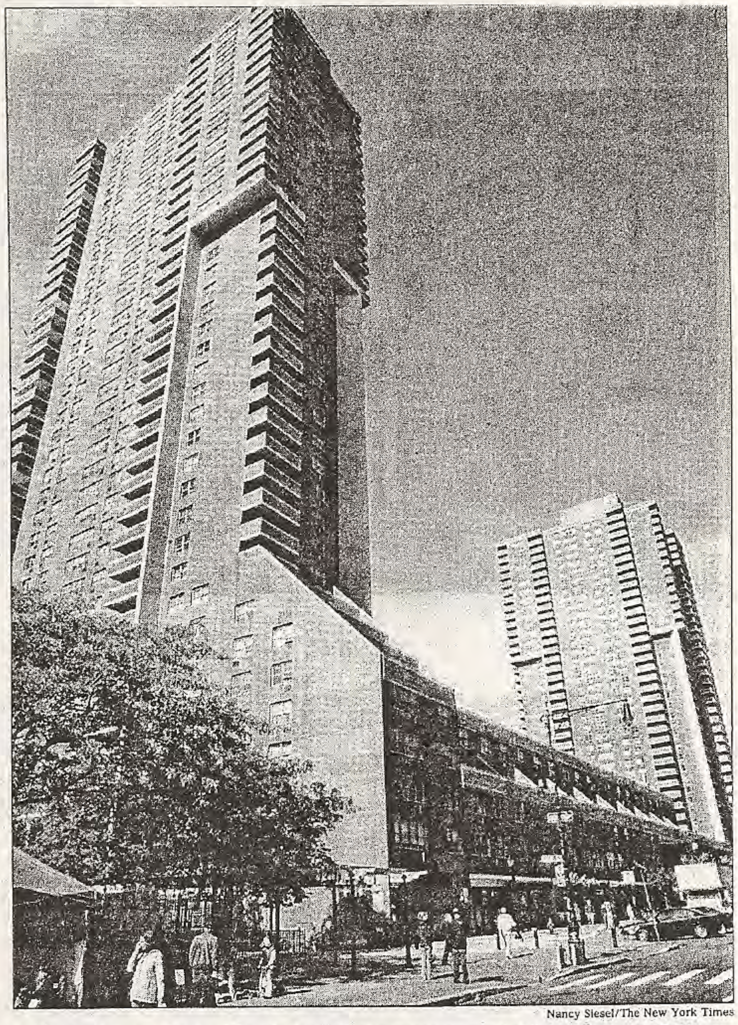
The loss of small single structures like the Middagh Street Studio Apartments, also known as 20 Henry Street, or large enclaves like Independence Plaza diminishes the inventory of moderate income housing at a time when the mayor has proposed a $3 billion, 65,000-unit five-year construction plan at an estimated cost of $300,000 per unit.

All told, more than 400 Mitchell-Lama projects with a total of 165,000 units were built in the 1960's and 70's.

Of those, 135 with 60,000 units were sponsored by the city (70 rentals, 65 co-ops). Twenty of them have been brought out for a loss of 7,000 units.

The state sponsored 269 developments, containing 105,236 units (76,500 of them in the city). Fifty-four owners (22 of them in the city) with 16,800 units have opted out.

As conditions of their federal mortgages, most of the post-1974 city-sponsored Mitchell-Lama projects offer additional protections after they leave the program, according to Carol Abrams, the spokeswoman for the Department of Housing Preservation and Development. Federal vouchers are available to bridge the gap between one-third of income and the market-rate rent for households earning less than 95 percent of area median income — $59,600 for a family of four.



Nancy Siesel/The New York Times

Independence Plaza North has three towers and 69 low-rise buildings.

Cathedral Parkway Towers

Rentals Preserved In a Unique Alliance

A singularly happy resolution to more than 25 years of feuding with their landlord is in sight for the residents of two Mitchell-Lama towers at 424 Cathedral Parkway and 125 West 109th Street. Through their tenants' organization, the United Tenants Association of Cathedral Parkway Towers, in partnership with Robert S. Nelson, a Mitchell-Lama developer, they have taken title to the buildings. Under terms of the transaction, the buildings will be preserved as rentals under the Mitchell-Lama banner, for the time being at least.

The resolution, unique in the annals of the housing program, is the result of collaboration by state, city and federal agencies; three of the city's pension funds; Sonyma, the state mortgage agency; and the Community Development Corporation, a nonprofit consortium of banks, insurance and mortgage companies, which banded together to find ways to finance the project.

The Community Development Corporation financed the purchase for $3.5 million and the renovation for $7.5 million. After construction is complete, the city pension fund will assume the permanent financing for $35 million over a period of 10 years, with that loan to be insured by Sonyma.

Mr. Nelson, who has owned and managed 3,500 units of Mitchell-Lama housing over 18 years and who worked on the Cathedral Towers plan for four years, is continuing to play a key role.

"I am the project developer and acquired the property, refinanced the deal and am doing the construction," he explained. "At the point where we convert from a construction loan to a permanent loan, I will step out of the picture, and the tenants will control the corporation. This deal is as complicated as any I have ever seen and the cooperation it involved is unique. The fact that so many different interests were satisfied is a monumental achievement."

The eventual goal is to convert the apartments to limited equity co-ops, which means residents would be able to buy their apartments for less than market value, but should they sell would not be able to reap any profits.

The transfer brings to a close an exceedingly troubled past. Cathedral Parkway Towers was plagued with problems almost from the day it opened in 1975. Within a year, residents were on rent strike.

"Basically there were leaks, loose bricks, elevators that didn't function properly, an unreliable heating system and other structural problems," said Aury Bennett Stollow, who has been the tenants' lawyer for 20 years.

The state Division of Housing and Community Renewal, which had oversight of the complex, stepped in and persuaded the developer to relinquish day-to-day involvement, letting the tenants assume management responsibilities.

"If new cabinets were needed, they were made by the tenants," Mr. Stollow said. "They hired the employees and ran a day care center and summer camp on the premises."

In 1979, Cathedral Parkway Associates agreed to turn over the complex to the residents after 20 years. "That was their dream — the day the developer would step aside and they would own it," he said. "But they didn't want glitz and glamour; they wanted to continue the style of living they had had under Mitchell-Lama."

That agreement was about to come to fruition in June 1999 when the building's facade to crumble.

"We brought in engineers to determine the scope of the problem and negotiations between the state and the developer ground to a halt," Mr. Stollow said. "Then we discovered that the developer had been trying to sell the property to outsiders. We ran to court to compel them to honor their agreement."

David Katsky, the lawyer for Cathedral Parkway Associates, said the developer had no comment on any aspect of Cathedral Parkway Towers' history. "The party sold its interest in the project, and the transaction is over," he said.

With the renovation under way and the way clear for eventual ownership by the tenants, Judith A. Calogero, commissioner of the State Division of Housing and Community Renewal, considers the outcome a triumph. "The affordable housing world is looking on in interest to see how we're doing this," she said. "We are creating a new model to preserve affordable housing."

20 Henry Street

A New Owner And Fears of Eviction

The outlook is far more uncertain for the residents of the 42-loft building at 20 Henry Street, who have yet to learn what the new owner of their home had in mind when he bought it in June and who await an appeals court ruling on their right to rent stabilization.

"The mood here is very angry," said Jack Bales, an architect and co-chairman of the 20 Henry Street Tenants Association, who has lived there since 1990. "People who set up these programs were not thinking 20 years down the road, and I don't think what they had in mind was a full-scale eviction of a community."

Built in 1870 and formerly the Peaks

Mason Mints candy factory, it was scheduled for demolition in the early 1960's under the Cadman Plaza Title 1 Urban Renewal Plan, when it was discovered by Lee Harris Pomeroy, an architect, who was determined to save it and convert it into live-work studios for artists.

"Artists were not permitted to live in lofts in Lower Manhattan, so this was intended to be an answer to that," he said the other day. "We had to reinvent the definition of 'apartment' to qualify for Mitchell-Lama."

He drew up plans in 1963 that began winning awards long before construction in 1975. The project was beset by numerous stumbling blocks; four sponsors came and went. Ultimately, the Frederick Richmond Foundation, headed by a congressman who was later indicted on a variety of charges, including tax evasion, stepped in.

Mr. Pomeroy preserved the front of the red brick structure emblazoned with the Peaks Mason Mints sign and punctuated by tall arched windows, but installed a ultramodern stucco and steel rear, including a sculpture garden where a Louise Nevelson piece stood for a while.

Even with city aid, though, the rents, initially $325 to $481, were too high for many artists, so although it continued to attract them, that requirement was dropped. Sometime in the mid-1970's, the building was acquired by Edward I. Penson, who announced his intention of leaving the program about four years ago.

That move galvanized the tenants into an effort to negotiate acceptable rents with the landlord or buy the building themselves. "We have a lot of tenants on restricted incomes — senior citizens and artists who don't make a lot," Mr. Bales said. "He initially offered us a 30 percent increase every year, going to market rate after the third year. We rejected that and pursued legal action."

The suit, filed in State Supreme Court in Brooklyn, claimed that because some tenants had been given stabilized leases in the past, they were entitled to them after the buyout.

"They got rent stabilized leases from 1982 to 1983 and renewal forms from 1988 to 1992," said Jacques F. Rose, partner at Hartman, Ule, Rose & Ratner, and a lawyer for the tenants. "We take the position that he entered into an agreement to grant the tenants rent stabilized status even though they did not come under coverage of the statute."

The judge, Gloria C. Aronin, ruled in favor of the owner, and the case is now pending before the appellate division.

Gerald Goldstein, a partner in Davidoff & Malito, who represents the Penson Corporation, conceded that stabilized leases had been in force, but he said: "They were given out in error and did not contain rent increases. It is our position that no one in the building was ever entitled to rent stabilization and they can't gain rights they were not entitled to."

In August, tenants received notices advising: "The premises are not subject to rent stabilization or rent control. Consequently, at the expiration of your lease, you will be expected to vacate your apartment."

Then, in what they claim came as a complete surprise, they received another letter announcing the sale of the building. They say they have yet to hear directly from the new owner, Charles Herzka.

"It is up to the owner to determine what he wants to do, and we are trying to figure that out right now," Mr. Herzka's lawyer, Howard B. Hornstein, a partner at Fischbein Badillo Wagner Harding, said. "We are new in the building, so there are a lot of things to look at, to get our arms around."

Should the appellate court rule against the Penson Corporation, Mr. Hornstein said he would probably go to the Court of Appeals, the state's highest court.

In the meantime, Karen Zebulon, a co-chairwoman of the tenants committee and a 28-year resident of 20 Henry Street, wonders where she will duplicate the $710 monthly rent she pays for a loft that she says is about 800 square feet. Two years ago she opened a gift and crafts shop in Boerum Hill called Gumbo. "The only way I could take a chance and start my own business was because I had affordable rent," she said. "If I didn't live where I do now, I don't know how I could do that."

Some government officials, in particular Marty Markowitz, the Brooklyn borough president, have attempted to help the tenants buy the building themselves by bringing community housing groups and lenders like the Community Development Trust, a private investment firm, together.

"We tried to come up with ways to purchase the building so the tenants' association could own and manage it, but we could never get quite enough financing," said Richard Bearak, deputy director for planning and development in the borough president's office.

But, despite the finality of the building's sale, he is not giving up. "That doesn't mean we will go away," he said. "If we can be in the ballpark of $6.6 million, we will approach the owner and convince him to do good here."

Independence Plaza North

An Owner Proposes Vouchers for Tenants

On a larger scale, the anxiety over the situation at Independence Plaza North, a complex of three 39-story towers and 69 two-story low rises stretching from Duane to North Moore Streets in TriBeCa, shows no signs of abating.

The tenants there tried and failed to forestall its sale and acquire the property themselves when the owner, Duane Street Associates, put it on the market about a year ago. Lawrence Gluck bought it in June for $156 million, according to his broker, William Wagner, and promptly announced his intentions to pull out of Mitchell-Lama after the requisite 12 month wait.

Fear spread among the tenants that they would be driven out by drastically higher rents and that, with an influx of affluent newcomers, they would lose their hallmark economic and ethnic diversity.

At a contentious standing-room-only meeting last month at Intermediate School 89, Mr. Gluck vowed that he would obtain assistance for about 68 percent of the 3,000 tenants, who would qualify for federal subsidies known as enhanced vouchers. The subsidies make up the difference between the market rent of an apartment and 30 percent of a household's income and enable landlords to get what they would on the open market.

"I met with the tenants before we had a concrete plan in place so that we could begin the process of communication," he said the next day. "I am intending to keep the project as a rental, and two-thirds of the people at Independence Plaza are protected from rent increases by the federal enhanced voucher program. For the other third, I am allowed to take the rents directly to fair market value at the termination of the leases, but I would not seek to do that. We envision phasing in those increases. There are many ways to do that which reflect the wealth level of the tenants."

According to a survey conducted by Mr. Gluck's company, Stellar Management, residents of 869 units, who have a median income of $22,200, are eligible for the vouchers. They represent 67.5 percent of the tenant roster.

Neil Fabricant, president of the tenants' association, whose proposal to buy the complex from Mr. Gluck was rejected, said: "With the vouchers, he will get a tremendous cash flow that he will use to make repairs and turn it into a luxury rental. He would not give us a guarantee that two-thirds or even 50 percent of the tenants will get vouchers. So there is no assurance that people will be in their homes a couple of years from now."

Furthermore, Mr. Fabricant, president emeritus of the George Washington University Graduate School of Political Management, continued: "We know the Section 8 voucher program is shaky, and the Bush administration has already made a move to make it part of the state block grant program, which always means reduction. People are terrified." A bill that could reduce the number of vouchers awarded is now moving through Congress.

In his view, going to market rate will only promote further gentrification of the area. "Under the most recent census, Independence Plaza represented more than 20 percent of the population of TriBeCa," he said. "We are the only people of color, the only people of moderate income in TriBeCa. Take us out of TriBeCa and what do you have? An upper class white ghetto with designer restaurants and $2 million lofts."