

The New York Attorney General's Office Has Responded to the Cadman Draft Proxy Statement: 124 Deficiencies Found

The Committee to Preserve Cadman Towers (CPCT at CadmanCooperator@gmail.com) has obtained from the Attorney General a copy of the Deficiency Letter, dated March 14, 2022. Under the new Mitchell-Lama Law the Cadman Board is required to post this letter for cooperators to read, but they have not yet done this. We obtained the letter by making a Freedom of Information Law (FOIL) request to the Attorney General's Office.

We have posted a copy of this 14-page document at:

<http://bit.ly/CadmanTowersDeficiency1>

As we mentioned in our previous flyer, most of the crucial information that we will need before we vote on '2 to 11' was missing from the Board's Draft Proxy Statement, including the Regulatory Agreement that will govern us if we vote to convert to a HDFC, and all the budget information we need to see if the plan will work and how it will affect us.

All in all, the Deficiency Letter points out 124 items in the Draft Proxy that are not in accordance with the requirements of the law and regulation or that do not sufficiently describe the risks of the plan. We have printed some of the most substantial deficiencies, as found by the Attorney General, on the reverse side of this flier.

Some of the deficiencies are extremely substantial. Perhaps most critically, as noted in Deficiencies #123 and #124,[†] the draft Proxy was not properly distributed, and Cadman may need to start over again to make sure everyone has the opportunity to read and review it.

Finally, given that the AG's office has found that Cadman has omitted from the Proxy Statement many of the risks associated with Article 11 conversion, and has included speculative statements equating Article 11 with affordability, **it is important that we wait until we have a final, acceptable Proxy Statement before we decide whether or not the plan is financially viable.**

What is a Deficiency Letter?

The Deficiency Letter is an important step in the Attorney General's review of Cadman Towers' proposal to convert from a not-for-profit Mitchell-Lama co-op (Article II) to a for-limited-profit HDFC co-op (Article XI) – the '2 to 11' conversion currently under consideration.

The whole idea behind this review process is to make sure that Cadman shareholders have all the information and details they need in order to decide how to vote on this dramatic change to our cooperative. The Attorney General's Office review of the draft Proxy Statement is not an assessment of whether the Plan is a good one or not. Rather the goal is to make sure all of the substantial risks of this Plan are articulated.

The first step was the Board's submission of the Draft Proxy Statement on December 13, 2021. The second step was the review of this Draft by Assistant Attorney General Carol Stephens, assisted by comments sent in by Cadman cooperators and others.

The third step is this Deficiency Letter. Next will be the correction of all the deficiencies by submitting "redlined/blackline" changes." AAG Carol Stephens has set a 30-day deadline for those corrections, but her letter permits an extension of time for this step. If the corrections made do not satisfy the Attorney General, there will be one or more additional deficiency letters.

After all deficiencies are corrected to the satisfaction of the AAG, the Proxy Statement will be 'accepted for filing'. Remember, regardless of what promises have been made over the last many years, **it is only what is in writing in the final Plan that counts.** We will then have time to read and review this final Proxy Statement, and there will be a vote on whether or not to accept the Board's proposed plan to leave the Mitchell-Lama Program.

Some of the major deficiencies in the Assistant Attorney General's letter:

Deficiency # 2: The Special Risk section omits “the current benefits of the Mitchell-Lama program that will be forfeited upon conversion to an Article XI HDFC, disclosure so germane to enabling ML shareholders to make an informed decision.”

The Attorney General's regulations require that a Proxy emphasizes the Special Risks, the ways in which the Board's proposal creates dangers and risks. The Proxy Statement doesn't contain any discussion of the benefits of Mitchell-Lama that will be lost if we convert.

Deficiency # 3: The first sentence in paragraph 2 of the Proxy is a “subjective observation” by the Board which must be removed. “The shareholders will determine if the proposed reconstitution extends affordability.”

The Attorney General does not permit the Board to make a sales pitch in the Proxy. This is to assure that the shareholders will vote based on facts, not on propaganda.

Deficiency # 48: The Proxy must contain financial forecasts for the operation of Cadman as a HDFC.

The Attorney General requires that shareholders know how the finances of Cadman will change after reconstitution. That information is entirely missing from the Proxy.

Deficiency # 40: “The Physical Needs Assessment was updated two years ago and should be further updated.”

The list of repairs and replacement in the Proxy was misleading in that it includes items such as the garage, third floor repair, and the roofing, which are already underway and have been funded. The Attorney General will not allow the Proxy to be used to mislead shareholders as to the actual status of needed work.

Deficiency # 25: The Proxy must be amended to advise shareholders that one effect of converting to an Article XI HDFC is to “provide the Board with greater discretion to develop policies on issues such as inheritance and succession rights and imposition of capital assessments.”

The Attorney General points out the Board would have more power after conversion, since it will be able to make its own rules, so shareholders must be made aware of this in deciding whether to vote for such a change.

Deficiency # 47: The Draft Proxy states that, after the Proxy is approved by the Attorney General, no other material may be distributed. This is contrary to HPD regulations allowing shareholders to distribute material, and the statement “must be substantiated based on applicable law or removed.”

The Attorney General requires that the Proxy contain a correct statement of the laws and regulations governing the vote on reconstitution. The Proxy cannot add restrictions on shareholders' legal rights.

Deficiency # 57: “State the percentage of the flip tax that will be deposited into the Reserve Account”

The Draft Proxy suggests that the flip taxes will be used only for capital repairs. The Attorney General will not accept such vague assurances in the Proxy.

Deficiency # 75: “Include the Regulatory Agreement.”

The Attorney General recognizes that without the full text of the Regulatory Agreement, shareholders cannot know exactly how the new Article XI cooperative will operate. This makes the entire Proxy deficient.

Deficiency # 78: “State the formula for the sales prices.”

The Proxy contains a list of sales prices for apartments after conversion, but does not provide the formula upon which these prices are based. Without this formula it is impossible for shareholders to understand how this plan will work, especially since the plan indicates that the sales prices will rise or fall according to the Area Median Income (AMI) – a sales formula that is not used by any other Article XI building.

Deficiency # 114 “State the basis on which flip taxes are estimated to exceed 1.2 million per year, which basis must be reasonable.”

The Proxy states, without any grounds for the statement, that flip taxes will provide \$1,200,000 per year. The Attorney General, in order to prevent fraud, does not allow such unsubstantiated figures to appear in a Proxy Statement. This is vital to understand since it appears that there may be no way, as a HDFC, to continue to collect surcharge income while the Mitchell-Lama First Sales/double equity income will be lost. So this lost income must be subtracted from projected flip taxes to understand what might be the net gain.

123. Service: Shareholders have commented that notice regarding the Draft Proxy Statement was distributed only by email with instructions regarding how to obtain copies, likely excluding less technologically-inclined shareholders from a meaningful opportunity to review the statement and make comments to this Office.

124. Service of Notice: Furnish the Notice to Shareholders of Submission of Exemption Application to the DOL, which notice should include reference to the 90-day right afforded to shareholders to submit comments to the Department of Law. Advise how the draft Proxy Statement was served and provide documentation evidencing such service and that service was done in accordance with 28 RCNY § 3-14(15).

Opinion:

It's important to understand "*Inadvertence*" and "*Opportunity*."

There is rarely one or even several person(s) scheming and plotting diabolical strategies to "gain" at their "neighbors' expense."

People are generally good, well-intentioned, and good-hearted, believing their optics and conclusions are for the general good. That is the prevalent world we live in with all forms of politics—from community to government politics.

The devil in the details is revealed when a series of innocent, inadvertent policies (*equations*) add up to *some gain (formula) at others' expense*.

"One man's food is another man's poison." – Titus Lucretius Carus 99 B.C.

We each have to admit when we see any opportunity for "*gain*," our focus alters, maybe even "*fixes*."

Inadvertent, innocent "*equations*," which suddenly promise one-side "*formula gain*," even at the cost of others, become a driving social force. We see this in politics, and we see it in any community.

It's the simple way of the world and how humanity is wired for gain and survival, which is why there are rules and laws.

The problem, therefore, which always occurs is the "*one-siding*" that inadvertently surfaces by mere nature.

What becomes evident here is "*that*" inadvertent opportunity, which pulls the proverbial wool, first over one's own eyes, subsequently *intentionally* over others'. Of course, thinking we've done nothing wrong.

That is the devil in the details.

An opinion in a world of Free Speech, by James Ordonez

(From my book, a satirical-sociopolitical, global-karma treatise and study compiled from great minds across time, "The Magic of Karma Ancient Quantum Science?" by The Angry Buddhist.)