CO-OPS AND CONDOS UNITED OF NEW YORK

Testimony Before the New York City Council

Committees on Governmental Operations, State and Federal Legislation, and Finance

Implementation of the Pied-a-Terre Surcharge

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Who We Are

Co-ops and Condos United of NY is an organization founded to represent the interests of cooperative and condominium owners, boards, and managing agents across New York. Our membership includes board members who volunteer their time to govern some of the city's most significant residential buildings, managing agents who operate those buildings day to day, shareholders and unit owners, and the legal and professional advisors who serve them. We do not speak for developers or landlords. We speak for the people who live in these buildings and the professionals responsible for keeping them running.

We come before this Council not to re-litigate whether the pied-a-terre surcharge should exist. It is the law. We come because the way it is currently being implemented is creating serious harm for people who are not its intended targets, and because the Council has both the authority and the obligation to demand better.

Opening Statement: The Law Is Designed to Tax Wealthy Non-Residents. It Is Currently Harming Everyone Else.

The pied-a-terre surcharge was enacted as part of the state budget process. We are not here today to debate its merits. We are here because the way it is being implemented is causing serious harm to people who had no part in the policy debate that produced it. What is not legitimate is an implementation that converts volunteer cooperative boards into municipal tax collection agents, imposes retroactive liability on innocent purchasers, generates a preliminary property roll riddled with errors, and establishes a payment deadline that is physically impossible for cooperative corporations to meet.

Forty-five days into implementation, the evidence is in. The preliminary assessment roll published July 25 contains material errors in numerous building's sampled. The Department of Finance does not have the share allocation data[1] it needs to calculate co-op unit values accurately. The January 1, 2027 payment deadline gives cooperative corporations one day between the final corrected list and the first bill. And the State has confirmed it is using this inaccurate preliminary roll to conduct a tax enforcement dragnet against property owners who have not yet had any opportunity to appeal or correct erroneous determinations.

This is not acceptable. The Council should say so clearly, and should take the specific actions we describe below to protect New Yorkers who are not the intended targets of this law.

DOF has a 6-year statute of limitations to audit and bring claims against the non-primary resident and the co-op, which means that the co-op could be responsible 6 years after a non-primary resident moved out of the building even if the board had not way of knowing that the former shareholder was a nonprimary resident. This would include 18% statutory interest.

DOF has the right to charge the co-op 18% interest on the amount that a non-primary resident owes but pursuant to the Housing Security and Tenant Protection Act, the co-op can only charge its shareholders 8% for nonpayment. This means the innocent co-op will have to absorb 10% interest even if the original primary resident can be found.

If, after 6 years, the non-primary resident cannot be found, how does the co-op defend itself that the DOF is wrong. If DOF has been wrong with regard to the abatement, why should the Council believe they will not be wrong again.

The Mayor and the Governor both said that the Surcharge was directed at billionaires who do not pay NYC and NYS Taxes, but that is not the case. They passed a law that does not include an exemption for anyone filing a NYS and NYC Tax Return and paying NYC and NYS Taxes. Essentially, the Overtaxed, who have made an investment in NYC, are being forced to pay another tax. The City Council should insist that the law be amended to not tax NYC taxpayers.

Issue 1: The Department of Finance Should Bill Shareholders Directly. Not Through the Building.

This is our primary and most fundamental request. The current structure of the surcharge for cooperative properties is wrong in principle and unworkable in practice, and the Council should press the legislature to correct it.

Under the current law, the surcharge for every non-primary co-op unit in a building is added to the cooperative corporation's aggregate property tax account. The corporation is then responsible for collecting the surcharge from each affected shareholder. The City bills the building. The building bills the individual. If the individual does not pay, the building bears the consequences.

This is backwards. The surcharge is a tax on an individual's non-primary use of a specific apartment. The individual who chose to use their apartment as a pied-a-terre owes the tax. The cooperative corporation did not make that choice, does not benefit from that use, and has no special expertise or authority to administer a tax collection function on the City's behalf.

The Main Ask

The Department of Finance has the expertise, investigative authority, subpoena power, and enforcement tools necessary to collect this tax directly from the individual taxpayer. Cooperative corporations do not. DOF should bill shareholders directly, just as it bills condominium owners directly. The cooperative corporation should serve, at most, a ministerial role in forwarding official notices. It should have no responsibility for determining liability, collecting payments, advancing funds, or enforcing compliance.

The argument that this is administratively simpler for DOF because co-ops are not taxed as a single entity does not justify shifting the administrative burden, the financial exposure, and the legal risk onto volunteer boards. DOF should develop the infrastructure to bill individual co-op shareholders directly. Every other aspect of the surcharge regime, valuation, determination, appeal, enforcement is already designed around the individual taxpayer. Billing should be too.

Why the Current Structure Creates Unacceptable Risk for Innocent Shareholders

When the surcharge is billed through the cooperative corporation, the following chain of harm follows from a single non-paying shareholder:

- The aggregate surcharge attaches as a lien on the entire cooperative building, not on the individual shareholder's shares the moment it goes unpaid.
- Interest accrues at 18% per annum against the building's property tax account, not against the individual shareholder's personal account.
- The board must choose between advancing building reserve funds effectively requiring every innocent shareholder to subsidize one person's tax liability or allowing interest and lien exposure to grow against the building. If the building does not have sufficient funds, they may be forced to assess innocent shareholders and/or assume additional date.
- A lien may trigger a default under the building's mortgage, threatening the financial stability of the entire cooperative and the homes of every other shareholder.
- The lien may be sold and enforced against the building, impairing every other shareholder's ability to close a sale, refinancing, or transfer.
- Volunteer board directors may face personal liability from innocent shareholders regardless of whether they attempt to collect or decline -- a no-win governance situation that was never contemplated when these directors agreed to serve.

None of this is the consequence of anything the other shareholders did. They are collateral damage from a tax collection design that places the City's risk on the building rather than on the individual taxpayer who generated it.

Issue 2: The Preliminary Roll Is Inaccurate and Is Being Used as Though It Were Final.

The assessment roll addendum DOF published July 25 is described as a preliminary list of properties that may be subject to the surcharge. It is not a final determination. Yet DOF is already issuing notices from this preliminary data, the State is already using it for income tax enforcement, and boards across the city are receiving it and wondering what to do.

What they should do is **not bill** because the roll may be wrong.

What We Are Seeing in the Field

- **Units below the $1 million Phase 1 threshold appearing on the list.**
- **Units actively receiving the NYC co-op/condo real estate tax abatement which DOF's own final rules identify as a primary residence indicator flagged as non-primary.**
- **Multiple security PINs issued for the same address.**
- **No explanation of the basis for any determination.**
- **The PIN Number not working.**

Why the Roll Is Wrong: The Share Data Problem

The Phase 1 surcharge for a co-op unit is calculated by multiplying the building's DOF market value by the unit's percentage of total shares outstanding. DOF does not maintain this share allocation data for all buildings in its existing systems. It exists exclusively in each cooperative corporation's stock ledger and managing agent's records. DOF had no mandatory mechanism to collect it before issuing the preliminary roll.

The result is that DOF estimated or interpolated share counts from building-level data it already had. Those estimates are wrong for a significant number of units. Every error is either a wrongful surcharge imposed on a shareholder who does not owe it, or a missed surcharge that should have been assessed. Neither is acceptable, and neither serves the law's stated purpose.

Apartment owners who bought a second adjacent apartment and combined the two are being charged the Surcharge on one of the two apartments just because they did not combine the Certificate of Occupancy, even though DOB’s policies do not require that the CO be changed if the Alt 2 Policy was followed.

Most buyers of expensive homes that have not been upgraded in more than a decade will do a gut renovation of the home. This can take up to 12-18 months. Buyers of homes who remain in their original apartment or house until the renovation is completed are being charged the Surcharge on the new apartment or house -- even if their primary residence is in NYC and they file NYC and NYS Tax Returns.

The Council Should Demand

- An explicit public statement from DOF that the preliminary roll is non-actionable for billing purposes and that no co-op corporation should bill individual shareholders until the final corrected report is published.
- A mandatory share allocation data filing requirement, established by rule, that obligates cooperative corporations to submit unit-by-unit share schedules to a DOF secure portal, in a specified format before any Phase 1 determinations for that building are finalized.

- Publication of the per-share value and threshold calculation for every cooperative building so that boards and managing agents can independently verify determinations.
- A downloadable data format for the assessment roll so that managing agents can efficiently cross-reference DOF values against their own stock ledger calculations.
- A commitment that no final Phase 1 determination for a cooperative unit will be issued until DOF has received and verified share allocation data for that building.

Issue 3: The January 1 Payment Deadline Is Physically Impossible for Cooperative Properties.

The Council should state plainly what is obvious to every managing agent in this room: **the January 1, 2027 payment deadline cannot be met by cooperative corporations, and the City should not pretend otherwise.**

The Timeline as It Currently Exists
December 31, 2026 — DOF publishes the final corrected assessment roll.
January 1, 2027 — First surcharge payment due.
That is one day.

In that one day, every cooperative corporation in the city is expected to: receive the final roll, identify which units are included, match each unit to the correct shareholder by cross-referencing the stock ledger, calculate the per-unit surcharge amount, generate individual bills, deliver those bills to shareholders, collect payment, and remit to satisfy the building's aggregate property tax account.

That process takes 60 to 90 days under ideal conditions with little time for an affected shareholder to appeal. These are not ideal conditions. The preliminary roll has errors that will require verification. Managing agents are managing this across entire portfolios of buildings simultaneously. Many affected shareholders will have questions, disputes, or documentation requirements before they pay anything.

Condominiums are billed directly by DOF and do not face this problem. The co-op collection mechanism requires additional steps that take additional time. The legislature set one payment deadline for both property types without accounting for the structural difference between them. That was an error that the Council can and should help correct.

What We Are Asking For

- An administrative extension of the co-op payment deadline to July 1, 2027, a 180-day extension that represents the minimum realistic billing and collection cycle.
- A commitment from DOF to a date certain for the final corrected report that is early enough to allow that 180-day cycle to run before the extended deadline.
- Explicit DOF guidance that no interest, penalty, or enforcement action will be initiated against a cooperative corporation that relies on preliminary data and remits payment within 90 days of the final corrected report.

Issue 4: Innocent Purchasers Are Inheriting Liabilities They Did Not Create and Cannot Cure.

This is the most legally troubling aspect of the entire implementation and the one that has received the least public attention.

The surcharge for fiscal year 2027 was determined as of January 5, 2026 - the taxable status date. That date preceded the law's enactment on May 28, 2026 by more than four months. Thousands of co-ops, condos, and 1-3 family house closings occurred between January 5 and May 28 -- after the taxable status date crystallized liability, but before the law existed. The parties to those closings had no notice that January 5 was legally significant, no final statutory language to review, and no basis to escrow for a surcharge that had not yet been enacted.

The seller received full sale proceeds and left. The new owner who is a primary resident, who owes nothing on a going-forward basis, and who did nothing wrong now lives in a building or unit carrying a tax lien attributable to the prior owner's non-primary use.

It is unfair and unreasonable to use any date prior to the enactment of the Law and/or to make any new owner obligated for a tax based on the prior owner’s use of the residence, particularly if the prior owner died or was institutionalized. Why are people making an investment in NYC being treated like criminals?

DOF's Response Is Not Adequate

When this concern was raised during the rulemaking comment period, DOF's response was to note that parties to real estate transactions may structure their transactional documents to allocate the risk. That advice is meaningless for closings that occurred before the law existed and those without sufficient time for a shareholder or unit owner to appeal. It is also meaningless for cooperative corporations, which have no ongoing contractual relationship with departed shareholders and no practical mechanism to collect from someone who no longer holds shares in the building.

The State confirmed publicly that it is using the preliminary assessment roll for income tax enforcement against property owners it suspects of fraud. Some of those owners may have already sold their apartments. The new primary resident buyers may find themselves associated with an enforcement action for a property they now own but whose prior use they had no part in.

What the Council Should Do

- Support legislation providing that any surcharge liability attributable to a prior owner's non-primary use as of a taxable status date preceding the law's enactment shall not constitute a lien enforceable against the cooperative corporation or against a subsequent good-faith purchaser.
- Support legislation providing that such liability, if collectible at all, shall be pursued directly by DOF from the individual whose non-primary use generated it, not through the cooperative corporation.

- Require DOF to establish a procedure by which a new primary resident purchaser may certify their occupancy status and obtain removal of any surcharge attributable to the prior owner's pre-enactment non-primary use.
- Establish a clear industry-standard closing protocol in coordination with the bar association and the title industry requiring surcharge disclosure, seller certification of January 5 residency status, and escrow for any unit not receiving the co-op/condo tax abatement.

Issue 5: The $1 Million Threshold Is Widely Misunderstood and Largely Ineffective for Co-ops.

The law imposes a Phase 1 surcharge on co-op units with a DOF market value of $1 million or more. What is not widely understood, including by many shareholders who have received notices, is that this threshold has nothing to do with what the apartment is actually worth.

For cooperative units, the Phase 1 value is an imputed figure calculated by multiplying the building's DOF market value by the unit's percentage of total shares outstanding. DOF market values for cooperative buildings are derived from income-capitalization methodology that treats the building as a rental property. This produces building-level values that are typically 4 to 10 times below what the individual units would actually sell for on the open market.

The practical consequence: most co-op units worth $1 million to $4 million at actual market value will not be subject to Phase 1 at all. The screen is not whether an apartment is worth $1 million. The screen is whether the unit's proportional share of the building's assessed value equals or exceeds $450,000. In most Manhattan cooperative buildings, only the very largest apartments, the top 10% to 15% of units by share count cross that threshold. The pied-a-terre tax in Phase 1, as applied to co-ops, largely misses the property type it most prominently advertised as its target.

Phase 2 Is the Real Tax — And It Arrives Without Warning

Beginning July 1, 2028, DOF switches to comparable-sales methodology, the threshold rises to $5 million for all property types, and DOF will value co-op units by benchmarking against comparable condo sales, explicitly stripping the co-op discount. Furthermore, the Phase 2 methodology does not reflect fair market value or any true value, which is heavily based on the condition of the apartment. The use of relative shares and percentages have no basis in determining the true market value.

Many units that escape Phase 1 entirely will be captured in Phase 2. DOF declined to address Phase 2 methodology in its final rules, calling it premature.

It is not premature. The first Phase 2 notices must go out February 15, 2028 - 18 months from now. DOF must build an entirely new comparable-sales valuation system for individual co-op units from scratch. No such system has ever existed in New York City's property tax infrastructure. The Council should require DOF to publish its Phase 2 methodology, timeline, and sample calculations by July 1, 2027 and to conduct stakeholder consultation before that methodology is finalized.

Issue 6: Volunteer Board Director and Managing Agents Are Being Asked to Do the City's Job.

We want the Council to understand clearly what is being asked of the men and women who volunteer to serve on cooperative boards in this city.

They are being asked to receive DOF notices addressed to the corporation, identify which unit is affected, forward those notices to the correct shareholder within a timeframe that protects the shareholder's 30-day appeal window, monitor the appeal process, determine when a final determination has been made, generate a bill for the surcharge amount, collect payment from the shareholder, advance building funds if the shareholder does not pay in time to protect the building's tax account, pursue collection through whatever legal remedies the proprietary lease may or may not provide, maintain records for a six-year DOF audit window, and manage the resulting disputes with shareholders on both sides, representing those who owe and those who are innocent but affected.

These are not administrative inconveniences. They are substantive legal and financial responsibilities that require expertise these volunteers do not have and authority their proprietary leases may not provide. Most proprietary leases predate this law and do not authorize the board to bill the surcharge as additional rent, impose interest or late fees, require escrow at transfer, or treat non-payment as a lease default. A proprietary lease amendment requires a supermajority shareholder vote. That process takes months and provides no protection for the liabilities that are accruing right now.

Specific Protections the Council Should Require

- An explicit statutory safe harbor protecting managing agents who act in good faith, forwarding notices, compiling share data, assisting in administration from personal liability for errors attributable to DOF data inaccuracies, shareholder conduct, or proprietary lease deficiencies.
- An explicit statutory right for the cooperative corporation to recover the surcharge and all associated costs directly from the affected tenant-stockholder, independent of whatever the proprietary lease happens to say.
- Authority for the board to condition transfer consent on satisfaction or escrow of any outstanding surcharge obligation, without requiring a proprietary lease amendment.
- A statutory grace period during which the cooperative building is protected from lien enforcement while a good-faith collection dispute between the board and the affected shareholder is pending.
- Clear DOF guidance, issued immediately, on what managing agents are legally permitted and required to do between now and the December 31 final report, specifically whether they should forward preliminary notices, whether they may bill before a final determination, and what liability they face if they act on preliminary data that is later corrected.

Issue 7: The State's Use of the Preliminary Roll for Income Tax Enforcement Must Stop Until the Roll Is Accurate.

The Governor's office has confirmed publicly that the State's Department of Taxation and Finance is using the City's preliminary assessment roll to identify property owners it suspects of falsely claiming non-resident status for income tax purposes. The State's interest in tax compliance is legitimate. The use of this particular roll for that purpose at this moment is not.

The preliminary roll contains material errors. Units that do not cross the Phase 1 threshold are on it. Units receiving the co-op/condo abatement whose primary residence status DOF's own rules are designed to protect are on it. An owner who appears on the preliminary roll due to a DOF calculation error involving incorrect share data has not committed income tax fraud. They have been caught in a net that was cast too wide, using data that DOF has not yet corrected.

Using that uncorrected data as the basis for State-level income tax audits - audits that the State's own spokesperson says may involve cell phone records, toll data, and credit card transactions — before owners have had any opportunity to appeal or correct the underlying DOF determination, is a due process violation that this Council should call out directly.

What the Council Should Do

- Formally request that the State's Department of Taxation and Finance suspend any income tax enforcement actions predicated on the preliminary assessment roll until the final corrected DOF determinations have been issued and the appeal period has closed.
- Require DOF to issue a public statement clarifying that the preliminary roll is not a final determination of non-primary status and should not be treated as one by any State or City enforcement agency.

Summary of Specific Requests

Require by Legislation

- **Direct billing:** DOF must bill co-op shareholders directly, not through the cooperative corporation. The corporation's role should be limited to forwarding official notices.
- **Lien isolation:** Any surcharge lien must attach to the non-paying shareholder's shares, not to the cooperative building as a whole.
- **Purchaser protection:** Surcharge liabilities attributable to prior owner non-primary use before the law's enactment shall not be enforceable against subsequent good-faith purchasers or the cooperative corporation.
- **Board authority:** Explicit statutory authority for boards to condition transfer consent on surcharge satisfaction and to collect as additional rent, without a proprietary lease amendment.
- **Safe harbor:** Managing agents and board directors acting in good faith shall not be personally liable for errors beyond their control.

Require by Administrative Action

- **Extension:** Co-op payment deadline extended to July 1, 2027, with a date-certain for the final corrected report early enough to allow a 90-day collection cycle.
- **Non-actionable guidance:** DOF must issue immediate public guidance that the preliminary roll is not billable and that no co-op should bill shareholders based on it.
- **Share data collection:** Mandatory share allocation filing requirement before any final Phase 1 co-op determinations are issued.
- **Unit-by-unit detail:** Every co-op tax bill must include a unit-by-unit surcharge breakdown. A single aggregate total cannot be apportioned.
- **Managing agent guidance:** Immediate DOF guidance on managing agent obligations during the interim period before the final roll is published.
- **Phase 2 timeline:** DOF must publish Phase 2 methodology, sample calculations, and a stakeholder consultation plan by July 1, 2027.
- **State enforcement pause:** DOF must request that the State suspend income tax enforcement based on the preliminary roll until final determinations are issued and the appeal period has closed.

Conclusion

The pied-a-terre surcharge is intended to ensure that those who benefit from New York City contribute to it. Co-ops and Condos United of NY does not oppose that goal. We oppose an implementation that requires volunteer boards to do the City's tax collection work, burdens innocent shareholders with liabilities they did not create, generates a property roll with material errors, establishes a billing deadline that cannot be met, and exposes the entire cooperative housing sector to legal and financial risks that far exceed anything the legislature contemplated.

The cooperative housing community has been a cornerstone of middle-class and upper-middle-class homeownership in New York City for generations. The men and women who volunteer to serve on these boards deserve the Council's protection, not another unfunded mandate. We ask the Council to stand with them.

Co-ops and Condos United of NY stands ready to work with the Council, DOF, the legislature, and all relevant stakeholders to make the implementation of this law fair, transparent, and administrable. We ask only that the burden fall where it belongs - on the individual taxpayer who owes the surcharge, administered by the government agency that has the tools to collect it, and not on the cooperative corporation that did nothing to create it.

Notes

[←1]

The number of shares a co-op shareholder owns and the percentage interest in condominium common elements are unrelated to the value of the property. In 1954 when co-ops were included in the Section 216, a Congressional committee specifically said that the shares would not be based on value but the reasonable relationship of the shares to the space and the NYS Condominium Act provides four methods for allocating the percentages and the one traditionally used is relative space or a combination of factors. Shares and Percentages do not take into account the condition of the apartment.