



New York State
Division of Housing and Community Renewal
Office of Rent Administration

Operational Bulletin 2016-1(Revised)

INDIVIDUAL APARTMENT IMPROVEMENTS

Introduction

This Operational Bulletin provides guidance to owners and tenants of rent stabilized apartments on how DHCR will review the installation of individual apartment improvements (IAIs) when a complaint of rent overcharge has been filed or there is an investigation with respect to IAI installations. In New York City, rent stabilized apartments are governed by the Rent Stabilization Law (RSL) and by the regulations adopted in the Rent Stabilization Code (RSC) and in certain localities located in Westchester, Nassau and Rockland, rent stabilized apartments are governed by the Emergency Tenant Protection Act of 1974 (ETPA) and the Emergency Tenant Protection Regulations (TPR).

Pursuant to RSC Section 2522.4(a)(1) and TPR Section 2502.4(a)(4), an owner is entitled to a rent increase for an IAI when there has been a substantial increase of dwelling space, an increase in the services provided by the owner, improvements installed in the housing accommodation, or new furniture or furnishings provided by the owner. This Operational Bulletin supersedes DHCR's Policy Statement 90-10 regarding the criteria which will be used when assessing an owner's substantiation for IAI expenditures which is submitted to DHCR in an overcharge proceeding and other investigations.

For IAI rent increases that took effect prior to September 24, 2011, the increase in the legal regulated rent is 1/40 of the total cost incurred by an owner. For IAI rent increases that take effect on or after September 24, 2011, in a building that contains 35 or fewer apartments, the permitted increase in the legal regulated rent is 1/40th of the total cost incurred by an owner. For IAI increases that take effect on or after September 24, 2011, in a building with more than 35 apartments, the permitted increase is 1/60th of the total cost of the improvements. Increases are based on the total substantiated cost of an improvement including installation cost but excluding finance charges.

If there was a tenant in occupancy of the apartment when the improvements were installed, then no rent increase is permitted without the tenant's written consent to the rent increase. When the IAI is done during a vacancy, tenant consent is not required.

Any increase based on an IAI is to be reflected in the next occurring annual registration filing for the subject apartment. When an owner installs an improvement, the item becomes a required service that an owner is required to maintain and to certify annually to DHCR that all required services including the IAI are being maintained. When an owner fails to maintain a required service or discontinues the service without permission from DHCR, a rent reduction may be ordered by DHCR. DHCR will freeze the rent and order a roll back of the rent to the prior guidelines rent adjustment including any intervening rent increases for that period until the agency finds the subject service has been restored upon the owner's application. *See DHCR's Fact Sheet # 35 and Operational Bulletin 2014-2.*

This document is being reissued for informational purposes only.

The original document which contains signatures of authorization is on file at DHCR's Office of Rent Administration.

In addition, IAI items and their total cost are to be included in the rent calculation provided by an owner in the lease rider. Under the RSC, supporting documentation such as invoices and bills may be requested by the tenant. For apartments which are deregulated pursuant to high rent-vacancy, a listing of IAIs and their total cost are to be included in the notice of deregulation served on the tenant.

I. PROOF OF PAYMENT

A. Acceptable forms of proof:

Claimed individual apartment improvements are required to be supported by adequate and specific documentation, which should include:

1. Cancelled check(s) (front and back) contemporaneous with the completion of the work or proof of electronic payment;
2. Invoice receipt marked paid in full contemporaneous with the completion of the work;
3. Signed contract agreement; and
4. Contractor's affidavit indicating that the installation was completed and paid in full.

This documentation requirement calls for a higher standard of proof than that found in Policy Statement 90-10 which provided that only one of the above forms of proof was necessary unless DHCR requested additional proof. However, actual processing has shown that more than one type of proof is the norm rather than the exception. Therefore, an owner should submit as many of the four listed forms of proof as the owner is able to provide with the initial submission/answer. DHCR's consideration may not be limited to these four items as its review of IAIs is fact intensive and an individualized process regardless of whether it is part of an administrative proceeding or the subject of an independent investigation. Additionally, IAI review involves DHCR's assessment of the evidence offered so that there is no guarantee that any particular piece of proof will be dispositive. For example, an invoice or contract with less than complete specificity may not be sufficient. DHCR, in every case, has the authority to request information it believes is necessary to reach a proper determination including requests for additional evidence indicating the installation was completed, paid in full and otherwise appropriate to support a rent increase. Additional documentation should at all times be provided if possible, and it should be provided as requested to avoid a more protracted administrative or investigative proceeding. If an owner is unable to provide these items or any item requested, then an explanation must be provided and DHCR will determine whether the proof given is sufficient.

B. Lump Sum Costs

When challenged about an IAI, such as in an overcharge proceeding, an owner must submit evidence of the cost incurred for that particular item. Therefore, where an owner is seeking a rent increase for more than one item of work, a lump sum bill may not suffice. DHCR has discretion to accept a lump sum bill under certain circumstances where, for example, DHCR concludes that:

1. The evidence submitted establishes that all of the work claimed to have been done as a coordinated project and was satisfactorily completed; and
2. Each item of work was either an "improvement" or an ordinary repair and maintenance that was done in connection with, and as a necessary component, of an allowable IAI.

Even such coordinated projects are best supported by itemized proof and the absence of such itemization, may result in additional scrutiny or denial.

When proof is not adequate in DHCR's view, such IAI increase may be denied in its entirety or the difference between the claimed cost and the substantiated cost will be disallowed depending on the result of DHCR's review of the documentation.

II. USEFUL LIFE

The RSL provides that an owner who receives an increase for an IAI is not entitled to a further increase based upon the installation of similar equipment or furniture within the useful life of such equipment or furniture. Unlike major capital improvements, which have a useful life schedule in the RSC, DHCR's determination of whether an IAI's useful life has been met will be based on the facts of each case.

Where the useful life of an IAI is at issue and the installation was completed during a vacancy or included on a vacancy lease, DHCR may require the owner to submit documentation to prove that the useful life of the old equipment or furniture had been exhausted.

III. IDENTITY OF INTEREST

There are circumstances that will require additional proof. The costs for an IAI paid to a person or organization sharing an identity of interest with the owner or managing agent may require additional evidence relating to cost and payment.

Identity of interest means any other relationship (such as based on family ties or financial interest) between the owner/managing agent and the contractor, supplier or installer(s) who did the installation or supplied the improvement, the cost of which is calculated into the IAI increase. These relationships include:

1. When the owner/managing agent appears to have a financial interest in any entity receiving payment for the IAI (either the improvement or labor) which is included in the requested rent increase;
2. When the owner/managing agent (or one or more of its officers, directors, stockholders, or partners of a corporation or partnership) appears to have a family tie or is an officer, director, stockholder or partner at any entity receiving payment for the IAI (either the improvement or labor) which is included in the requested rent increase;
3. When there appear to be side deals, agreements or contracts that have been made or contemplated which could alter or cancel any of the costs of the IAI (either the improvement or labor) or where there appear to be side deals, agreements or contracts which were entered into in proximity with the IAI;
4. When any other relationship appears to exist between the owner/managing agent and the contractor, subcontractor or any person receiving payment for the IAI (either equipment or labor) included in the requested rent increase other than the contract for equipment or labor with respect to this IAI, which could give the owner/management agent, control or influence over the contractor or installer; and
5. When the person or persons receiving payment for the IAI (either equipment or labor) appear to be employees of the owner/managing agent but such payments to them are in addition to such salary or payments for other work provided to the owner/managing agent.

If it is alleged or found that improvements to an apartment were made by an employee of the owner/managing agent, and/or new equipment was installed by an employee of the owner/managing agent, payroll records including hours worked on the IAI and the schedule of payment for the work will be requested. The owner will be required to prove that the employee was paid for the work separately from, and in addition to his/her normal salary.

IV. CASH PAYMENTS

For IAIs performed after the date of this bulletin, where there are total cash payments for an IAI in an amount that exceeds \$10,000, stricter scrutiny of the evidence supporting a rent increase is warranted. DHCR will request further proof of payment in the form of bank documentation proving the withdrawal of such funds including evidence as to how funds were transferred. Such proof, including documentation required by the Internal Revenue Code, would be in addition to affidavits of receipt by the vendor/contractor where normal receipts issued in the course of business are not available.

V. WHAT QUALIFIES AS AN INDIVIDUAL APARTMENT IMPROVEMENT?

A. The RSC provides generally that apartment improvements, new equipment, or new services are considered improvements eligible for an IAI rent increase. The list provided below is intended to provide examples of qualifying IAIs; this list is not intended to be exclusive and is not determinative in all cases. Please note that items not listed below may also qualify. **Items that may qualify as an IAI:**

1. Complete bathroom modernization or renovation, including fixtures installed as part of such project, and all painting and plastering if part of such modernization or renovation;
2. Complete kitchen modernization or renovation, including fixtures and appliances installed as part of such project;
3. New air conditioner purchased and installed by the owner, including wiring and outlet for the air conditioner where none previously existed;
4. New washing machine;
5. New parquet flooring where none previously existed;
6. New subflooring;
7. New flooring, including linoleum and vinyl tiles, when a new subflooring is installed;
8. New carpeting;
9. New built-in clothing closets;
10. New furniture;
11. New lighting fixtures where none previously existed;
12. New storm door;
13. New storm windows;
14. New windows if not part of a building-wide installation;
15. New full length screens where none previously existed;
16. Balcony enclosure;
17. Security alarm;
18. New dropped and/or soundproof ceilings
19. Painting and plastering if part of a major renovation; and
20. Installation of sheetrock if done throughout the apartment

Other Costs:

The costs associated with the removal or demolition of the item(s) being replaced may be included in the amount eligible for the rent increase when the removal or demolition is necessary and is performed contemporaneously with the completion of the work.

Architectural or engineering services **which are directly related to an IAI** are considered part of the allowable costs eligible to be included in calculating a rent increase when the work requires approval by a Registered Architect (RA) or Professional Engineer (PE), for the issuance of a permit by the New York City Department of Buildings (DOB). More information about permits is available on DOB's website which is currently found at <http://www.nyc.gov/html/dob>.

B. Items that do not qualify as an IAI:

1. Any removal or demolition work performed by the owner or an employee of the owner during the course of assigned duties does not constitute an expenditure that can be included in the calculation of the rent adjustment for an IAI;
2. Used equipment, furnishings or items replaced through normal maintenance or repair;
3. Installations or modifications made while a tenant is in occupancy without such tenant's written consent; and
4. Items that constitute ordinary repairs and maintenance unless such work was done in connection with (and is a necessary component of) an allowable IAI. If done alone, the following items constitute repairs and/or maintenance only, and do not qualify as IAIs unless included above in Section V (A).
 - a. Installing sheetrock in less than the full apartment;
 - b. Plastering, painting or new flooring;
 - c. Scraping, shellacking or coating floors with polyurethane;
 - d. Replacing light fixtures, outlets or switches;
 - e. New ceilings (see #18 above).

Also excluded from calculating an IAI rent increase are charges connected with financing the installation, improvements paid for out of insurance proceeds, and labor charges for work done by the owner, or an owner's employee(s), during the course of assigned duties.

In New York City, physical changes to the interior of an apartment that are reasonable accommodations and/or modifications for a disabled tenant in occupancy, such as installing grab bars in bathrooms, that in other instances might otherwise qualify as an individual apartment improvement increase(s) will not be subject to such rent increase based on the provisions of the New York City Human Rights Law pertaining to the rights of individuals with a disability. *See* N.Y.C. Admin. Code § 8-107(5). If there are any questions please contact the NYC Commission of Human Rights.

VI. RETENTION OF RECORDS

The rent laws generally do not require an owner who has duly registered an apartment with DHCR to maintain or produce records relating to the rental of an apartment for more than four years prior to the most recent rent registration statement. However, because of exceptions to the four year rule, it is recommended that owners keep IAI records for more than four years (RSC Section 2526.1(a) (2)).

VII. TREBLE DAMAGES

Overcharges resulting from the disallowance of claimed IAIs are subject to treble damages unless the owner can prove that the overcharge was not willful. The RSL provides that the burden of proof is on the owner to establish that the overcharge is not willful. The determination of whether to impose treble damages is based on DHCR's review of the facts presented in each case.

Woody Pascal
Deputy Commissioner for Rent Administration
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