



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

Operational Bulletin No. 2017-1
(Replaces Policy Statement 90-10 for MCIs)

MAJOR CAPITAL IMPROVEMENTS
Confirmation of Costs/Payments

Introduction

This Operational Bulletin serves to provide guidance to owners and tenants of rent stabilized and rent controlled apartments on how DHCR will review an owner's application for Major Capital Improvement (MCI) rent increases relative to the issue of the costs of the qualifying improvement. 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). Rent controlled apartments within New York City are governed by the New York City Rent Control Law and the City Rent and Eviction Regulations and, in certain municipalities outside of New York City, the Local Emergency Housing Rent Control Act and the State Rent and Eviction Regulations govern.

Pursuant to the Rent Laws and Regulations, an owner is allowed to receive a permanent increase in rent for approved major capital improvements with the cost of the improvement being amortized over a 96 month period for buildings with 35 or fewer housing accommodations and over a 108 month period for buildings with more than 35 housing accommodations.

As the cost of the improvement is key to calculation of the permanent apartment rent increase, DHCR performs an audit of all MCI rent increase applications and requires owners to document the costs with contracts, invoices and proof of payment. This Operational Bulletin gives guidance on the type of documentation required to substantiate the actual cost of the improvement. It supersedes DHCR's former Policy Statement 90-10 regarding the criteria which will be used when assessing an owner's substantiation of the costs of the major capital improvement. Costs may not include any grants or insurance proceeds received for the work, from any entity, or any finance charges.

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.

I. PROOF OF PAYMENT

A. Acceptable forms of proof:

Claimed increases for MCIs are required to be supported by adequate and specific documentation, which should include:

1. Cancelled check(s) with related bank statement(s) showing negotiation contemporaneous with the completion of the work or proof of electronic payment,
2. Copies of negotiated bank checks and/or negotiated money orders made payable to the contractor,
3. Invoice receipt(s) marked paid in full contemporaneous with the completion of the work,
4. Signed contract agreement(s), signed change orders, and
5. 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 former 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 listed forms of proof as the owner is able to provide with the initial submission. DHCR's consideration may not be limited to these items as its review of MCIs 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, MCI processing 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 cost of the installation, that it 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 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 explanation suffices and the proof given is sufficient.

B. Lump Sum Costs

An owner must submit evidence of the cost incurred for the particular items constituting the MCI. However, 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 claimed work was done as a coordinated project and was satisfactorily completed; and
2. Each item of work was either an allowable MCI or work done in connection with, and as a necessary component of, an allowable MCI.

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 MCI 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 in the record.

II. USEFUL LIFE

The RSL provides that an owner who receives an increase for an MCI is not entitled to a further increase based upon premature replacement within the useful life of the improvement. MCIs have a useful life schedule in the RSC and DHCR Fact Sheet #33. DHCR's determination of whether the useful life has expired will be based upon the RSC, Fact Sheet #33 and on the facts of each case.

III. IDENTITY OF INTEREST

There are circumstances that will require additional proof. The costs for an MCI 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 relationship (such as 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 MCI increase. These relationships include:

1. When the owner/managing agent appears to have a financial interest in any entity receiving payment for the MCI (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 MCI (either the improvement or labor) which is included in the requested rent increase;
3. When there appears to be side deals, agreements or contracts that have been made or contemplated which may have impacted the costs of the MCI or where there appear to be side deals, agreements or contracts which were entered into in proximity with the MCI;
4. When any other relationship appears to exist between the owner/managing agent and the contractor, subcontractor or any person receiving payment for the MCI (either equipment or labor) included in the requested rent increase, other than the contract for equipment or labor with respect to this MCI, 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 MCI (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 an MCI was completed or partially performed 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 MCI 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 MCIs performed after the date of this bulletin, where there are cash payments for an MCI in an amount that exceeds \$10,000.00, 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.

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