

Ask The Administrator

As the *RSA Reporter* has reported over the past several months, the recently-created Tenant Protection Unit (TPU) has been targeting owners to gauge their compliance with rent registration and other regulatory requirements. In particular, TPU has also focused its efforts on owners (over 300!) who have registered significant increases in rent as the result of individual apartment improvements (IAIs). Under current law, owners are allowed, as the result of an IAI performed after a vacancy, to increase the rent by an amount equal to one-fortieth or one-sixtieth of the cost of the improvements, in addition to any other increases allowed by law. Buildings with 35 or fewer units are eligible for the one-fortieth increase, as has long been the case; as the result of the rent legislation enacted in 2011, buildings with 36 or more units are eligible for the one-sixtieth increase. Here are a few helpful hints to keep the TPU off your back when completing IAIs:

- 1. Take photographs of the apartment before you begin any work, during and after demolition, and on a daily basis as the work progresses.** These days, everyone has a smart phone and the pictures or videos can easily be saved to your computer.
- 2. Create a special file for the apartment in question.** Save the information daily in your computer and as a hard copy.
- 3. Assuming there is only one apartment being worked on, make sure each bill, of whatever kind or nature from a vendor, specifies the specific apartment being worked on.** If the materials are to be delivered to another apartment, another location or the basement perhaps, make sure the bill states that, for delivery purposes only, the materials are being delivered to a location other than the apartment being worked on. Bills for dumpsters should likewise indicate the apartment number being used for. Your bills must be apartment specific. Do not combine different projects on any bills.
- 4. If purchasing items on an individual basis from a hardware store or a large supplier, make an immediate notation on the receipt of the apartment for which you are purchasing the item.** If you or an employee are purchasing items for multiple jobs or other apartments (and you cannot get a bill specific only to that one apartment), after installation, take photographs to show where the item was installed. Photograph the work on a regular basis, daily preferably along with time/date stamps on the photograph; if unable to date stamp the photographs, place a current day's newspaper headline in several of the photographs. Whenever possible, use checks to pay for purchases. If you have a company account with a specific vendor, make sure they can indicate the apartment number on each invoice. If you are completing multiple projects and picking up supplies for each, I strongly recommend separate bills for each project; do not combine them onto one bill or invoice.
- 5. When simultaneously completing multiple jobs either in different apartments or even different buildings, make absolutely sure you do not mix up bills or proofs of payment.** Ensure you receive an individual bill for EACH apartment for the work done and make sure you pay each bill with a SEPARATE check along with the appropriate apartment notation on the check. Do not combine invoices or bills onto one check. While this might seem sensible in the ordinary course of business, in case of a TPU audit or review in the future, you will be hurt by the combination of multiple bills and payments.
- 6. File the appropriate rent registration form with DHCR. The RSA can help you do so.** Register the rent including the maximum amount for the improvement to which you are entitled. Do not use only partial bills to produce a specific rent just because you do not think you can charge the rent based upon all of the improvements. Neighborhoods change and market conditions improve, so preserve your rights to a higher rental in the future by establishing the legal regulated rent while charging a preferential rent.
- 7. You may not use a company or entity that you have an interest in to do the work.** If challenged, even if the work was done more cheaply, the amount attributable to that work will be deducted from your IAI.
- 8. Likewise, if you use one of your employees to do the work as part of their regular employment while that employee is being paid a weekly salary, the value of their services cannot be included as part of the IAI.** However, if the employee does the work outside the scope of their regular employment and submits a separate bill and is paid separately from their regular salary, then the value of their services should be accepted.

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9. Store all files in a FIREPROOF safe or storage facility to ensure that the proof will never be damaged or lost.
10. When in doubt or about to take a shortcut, remember that overbilling is considered an overcharge and that the penalty is treble the amount of the overcharge, for every month your numbers are incorrect. While you certainly have the right to rent increases due to IAIs, it is essential that you do so carefully and by paying attention to each and every detail.

Owners should be aware that while major capital improvements are not subject, currently, to the same type of review by the TPU as IAIs, the recommendations and comments (as well as the words of caution) set forth above apply generally to MCIs as well.

If you have a question about whether or not a specific improvement will qualify for an IAI rent increase, you can request an opinion from DHCR. Some examples of items that have qualified are: new kitchen appliances, cabinets, new windows, new doors and new light fixtures. Repairs do not qualify for an IAI rent increase.

IAI rent increases may occur either while a regulated unit is occupied or vacant. However, the tenant's consent is required if you attempt to take the increase while the apartment is occupied and, in reality, this rarely occurs. In those rare circumstances where this does occur, the tenant's consent should be in writing in the event the tenant later claims that there was no consent.

Note: Owners should enforce lease provisions that prohibit tenants from purchasing and installing their own apartment's improvements even if the items require replacement. If the tenant makes the improvement then the owner may not be able to add a rent increase.

Once you have all of the IAI documents in individual files with original proofs of payment, you will be well-prepared and well-armed to do battle when, and if, a tenant or the TPU challenges your rent calculations. ■



Information provided by Howard Stern, Esq., who is solely responsible for its content. Mr. Stern is the Administrator of the RSA Legal Services Plan.



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