

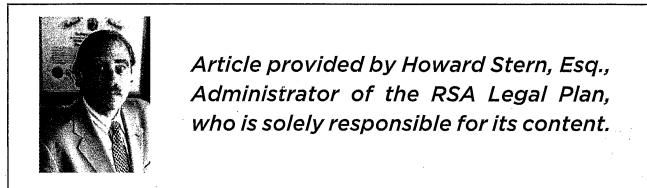
ASK THE ADMINISTRATOR

Major Capital Improvements

In the January issue of the *RSA Reporter*, a list was set forth which outlined the most common reasons why applications for major capital improvement (MCI) rent increases were delayed or rejected by the Office of Rent Administration. Coincidentally, since that time, I spoke to an RSA member whose MCI application was denied because they did not file the application within two years of completion of the work.

I have asked Randi Gilbert, Esq. and Jillian Bittner, Esq. from Horing, Welikson & Rosen (an RSA Legal Plan law firm) for a basic check list for what should be done both before and during the MCI application process. Given the complexities of this process, it is essential that every property owner seek professional guidance regarding

their MCI application. With no rent increases from the Rent Guidelines Board for the past two years, and little expected in that regard in this mayoral election year, and with aging apartment buildings requiring constant upkeep, getting the MCI process right is more important than ever before. *(For information on the MCI Tax Abatement program, see pages 4 and 5.)*



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

An Owner's Guide to the Fundamentals of Major Capital Improvements

By Randi B. Gilbert, Esq. and Jillian N. Bittner, Esq. Horing, Welikson & Rosen, P.C.

An owner of a rent regulated building can permanently increase the legal regulated rents in their building by filing an Owner's Application for Rent Increase Based on Major Capital Improvements ("MCI") with DHCR. In order to constitute an MCI, the improvement or installation must: (a) be depreciable under the International Revenue Code, and is thus not for ordinary repairs; (b) is for the operation, preservation, and maintenance of the building; (c) is an improvement to the building, which directly or indirectly benefits all tenants; and (d) the item being replaced has exceeded its useful life. Rent increases are based upon qualifying costs that are amortized over an 96-month period (for buildings with 35 or fewer units) or 108 months (for buildings with over 35 units).

An owner must file an MCI application within two (2) years of the date of completion of the improvement. DHCR will reject an owner's application if there exists an "immediately hazardous" or "C" Class violation, after which the owner will receive sixty (60) days in which to rectify the violation and re-file the MCI application. Owners should therefore ensure that as of the date the application is filed all required services are being maintained and that there are no outstanding building-wide rent reduction

orders in effect. The eligible apartments must also be registered with DHCR in order for an owner to be eligible to receive an MCI increase.

Along with the actual MCI application, an owner must provide supporting documentation in the form of copies of cancelled checks issued contemporaneously with the completion of the work, invoice receipts marked paid, signed contracts, a contractor's affidavit and government permits (if applicable). An owner should pay for all MCI costs by check in order to expedite the processing of the application. If there is an equity interest between the contractor that performed the work and the owner, then additional proof of cost and payment will typically be requested.

Where adequate proof of the MCI work is not provided, the difference between the claimed cost and the substantiated cost will be disallowed. DHCR will also disallow an MCI rent increase where the work is performed piecemeal. Certain costs are not eligible as part of an MCI increase (i.e. offsets for commercial space that benefits from the MCI). Ancillary work performed in conjunction with the qualifying MCI may be eligible for inclusion (e.g., scaffolding for façade work).

IN THE COURTS

An owner must also provide a rent roll dated within 30 days of the date of the filing of the application setting forth the tenants' names, the rent regulated status of the apartment and the number of rooms in the apartment with its initial application. When determining the number of rooms, an owner should not include bathrooms or closets.

After DHCR assigns a docket number to an MCI application, DHCR provides the tenants the opportunity to comment. Once processing of the application is complete, which can take a minimum of 6 months, DHCR will issue an order (i) granting a rent increase for the total amount requested; (ii) a partial amount; or (iii) denying the request.

For rent stabilized tenants, the rent increase in any one year may not exceed 6% of the tenant's rent at the time the application was filed. For rent controlled tenants, the rent increase in any one year cannot exceed 15% of the tenant's rent as of the issue date of the order.

If an apartment is or becomes vacant while an MCI application is pending, the owner must notify the incoming tenant of the basis for the previously filed

application and that the rent will be increased if the application is approved.

Owners who receive an MCI award are eligible for a one-time tax abatement pursuant to the Real Property Tax Law, which was amended in 2015 to create this benefit. This abatement requires a separate application that needs to be filed with the City's Department of Finance.

The MCI rent increase must be implemented by the owner within 90 days of the issuance date of DHCR's order so as to not constitute a waiver of the increase.

If the owner disagrees with any portion of the DHCR order the owner is entitled to file a Petition for Administrative Review ("PAR"), which must be filed no later than 35 days after the date of the issuance of the order.

Tenants often oppose MCI applications through various means, including hiring an engineer to find alleged defects in the work. They may also raise other technical objections. As the stakes in these matters are generally high, owners should consult with their attorneys early in the process, even if the tenants haven't filed objections since DHCR can, on its own, deny an application in whole or in part. ■

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