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

Supplement 1 to Operational Bulletin 84-4 (MCI) (January 30, 1986)

Introduction

On November 13, 1984, the State Division of Housing and Community Renewal (DHCR) issued Operational Bulletin No. 84-4 which related to rent adjustments based upon a Major Capital Improvement (MCI). Since the issuance of the Bulletin, the DHCR has decided to implement changes in MCI procedures in accordance with its authority under Section 33 of the State Rent and Eviction Regulations (9NYCRR 2102.3), Section 33 of the Rent and Eviction Regulations for New York City (9NYCRR 2202.3), Section 34(a)(2)(iv) of the Tenant Protection Regulations (9NYCRR 2502.4) (a)(2)(iv), and Section 35A of the Code of the Rent Stabilization Association of New York City, Inc.

These sections of the Regulations and Code require the DHCR to take into consideration all factors bearing on the equities involved when it orders rent adjustments. The changes in MCI procedures are as follows:

A) Application For Prior Opinion of the DHCR

An owner may, at his or her option, apply for the DHCR's prior opinion in all cases where the owner contemplates filing an application for a rent increase based upon the installation of an MCI or a substantial rehabilitation of the premises. Owners are not required to obtain the DHCR's approval of the proposed work prior to applying for an MCI increase.

The prior opinion would permit the owner to know with certainty, prior to making any financial commitment or expenditure, whether the proposed work qualifies for a rent increase as an MCI or substantial rehabilitation. Such factors as the useful life of the existing sub-system, the structural nature of the proposed work and its necessity for the operation, preservation, and maintenance of the building will be considered by the District Rent Administrator or Director of Processing. If an owner files an application for a prior opinion, tenants will be permitted to challenge the proposed cost and propriety of the planned installation. If a Prior Opinion Order is issued, it will be subject to administrative review by any aggrieved party.

Where the MCI installation or substantial rehabilitation will be financed through the proceeds of a government sponsored loan program, such as the Article 8A Program, the Prior Opinion proceeding will be expedited for processing and approval will be based upon certification to the DHCR by the government agency involved that the projected work is in accordance with its standards and qualifications and conforms to code requirements.

Upon obtaining prior approval or upon completing the installation of the MCI or the substantial rehabilitation, the owner will file with the District Rent Administrator or Director of Processing an application to increase the rents based upon the actual cost incurred, and submit the required documentation in order to

substantiate such cost, including a copy of the Prior Opinion Order, if any. Municipal certificates must be submitted where required. An application for a rent increase based upon an MCI or substantial rehabilitation of the premises previously approved in a prior opinion will be examined only as to actual cost expended for the improvement.

B) Permissible Charges for the Installation of an Air Conditioner for Both Rent Controlled and Rent Stabilized Apartments in New York City.

An owner may charge a tenant the following amounts for the installation of an air conditioner between October 1,1985 and September 30,1986:

(1) $222.48[1] per annum per air conditioner ($18.54 per month), where the tenant installs his own air conditioner, and "free" electricity is included in the rent.

This initial charge is subject to adjustment on October 1, 1986 and each subsequent October 1st thereafter. It will be adjusted either upward or downward depending upon whether the "Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City," prepared for the New York City Rent Guidelines Board by the Urban Systems Research and Engineering, Inc., shows an increase or decrease in the cost of electricity for electrical inclusion buildings.

[1]The 1985 charge (estimated average operating cost) per air conditioner of $233.07 per annum ($19.43 per month) reduced to reflect a 4.6% decline in the price of electricity for electrical inclusion buildings. See 1985 *Price Index of Operating Cost for Rent Stabilized Apartment Houses in New York City*, Urban Systems Research and Engineering, Inc., Page 30, May, 1985.

(2) $222.48 per annum per air conditioner ($18.54 per month) plus one-fortieth (1/40) of the cost of the new air conditioner, where "free" electricity is included in the rent and the owner, with the tenant's written consent, installs a new air conditioner for the tenant.

(3) $5.00 per month per air conditioner, where the tenant installs his own air conditioner, which protrudes beyond the window line, and pays for his own electricity, and the installation of the air conditioner will result in damage to the owner's property.

These charges will apply to both Rent Controlled and Rent Stabilized apartments in New York City, for air conditioners installed on and after October 1,1985, regardless of any prior, differing charges and procedures. Neither of these charges shall be part of the base rent for the purpose of computing any guidelines or other increases under the Rent Stabilization Law or Code.

C) Restrictions on the Use of Reserve Funds

Rent increases based on an MCI are made available to owners as an incentive for them to invest in their property. Accordingly, money from the reserve fund of a building converted to cooperative or condominium ownership should not be used as the basis for an MCI rent increase adjustment. To encourage such investment, the adjustment will be allowed only if the funds used for the MCI are contributed previously by the sponsor prior to the conversion or are obtained by a special assessment of the shareholders or the owners of condominium units.

It has, therefore, been determined that where an MCI has been paid for after conversion, out of a cash reserve fund deposited by the owner/sponsor/landlord, such MCI will not be the basis for a rent increase. Likewise, if an MCI is installed subsequent to transfer of title to a cooperative corporation, the corporation will not be eligible for a rent increase unless the MCI is paid for by a special assessment of *all* the shareholders (proprietary lessees), or the sponsor or holder of unsold shares pays for the MCI without removing funds from the cash reserve fund. It should be noted that if a cooperative corporation is eligible to file for an MCI increase, the

application must be filed by the managing agent of the corporation on behalf of the corporation and all proprietary lessees, including the sponsor. This will avoid multiple applications for the same MCI.

D) Individual Apartment Improvements or Installation of New Equipment

Operational Bulletin 84-4 is amended to the extent of no longer requiring the approval of the DHCR for individual apartment improvements, including the installation of new equipment, based upon tenant consent, or completed or installed while the apartment is vacant. However, increased apartment services continue to require DHCR approval, as for example, a master television antenna, or cable TV. Owners will be required to note on the Annual Registration Form that such improvements or equipment were installed and the rent increased as a result. Tenants would then have 4 years to challenge such increase.

E) 6% Limitation On Major Capital Improvements, Substantial Rehabilitation and Hardship Increases For Rent Stabilized Apartments in New York City

It has been determined that the 6% annual limitation contained in Section YY51-6.0.c. of the New York City Administrative Code applies to all increases for MCI's, substantial rehabilitations and hardships, whether alternative or comparative, and must be imposed in the processing of such applications for rent stabilized apartments in New York City.

In addition to the 6% annual limitation, an additional 6% increase will be allowed towards arrears arising from any delay in the processing of applications for such increases.

Any rent increases in the above categories which exceed 6% may be collected in future years in a similar manner as the 15% limitation contained in Operational Bulletin 84-4, which continues to apply to rent controlled apartments statewide and rent stabilized apartments outside New York City.