

MEMORANDUM

TO: All Reviewing Attorneys

FROM: Jean E. Gallancy

RE: Major Capital Improvements &
Reserve Fund

DATE: 12/21/83

A number of sponsors have both before, and after closing, embarked upon programs of major capital improvements funded partly by the Local Law 70 reserve fund, and thereafter applied to the Conciliation and Appeals Board or office of Rent Control for rent increases which are applicable to non-purchasing tenants. The sponsor may in some instances also apply for J-51 benefits based upon these capital improvements.

Such a practice has significant impact on tenants and prospective purchasers since the rent for the unit, maintenance charges and building condition are all affected.

Accordingly when the sponsor intends to make such improvements, full disclosure must include the following:

1. Disclosure of the nature of the improvements and the cost of each improvement.
2. Disclosure in the reserve fund section of the amount by which the reserve fund will be reduced to pay for the improvements.
3. Disclosure of the amount of the prospective rent pass along for each tenant and the procedure which must be followed for each tenant before the rent increase may be collected.

Attached are copies of Section 20(C) and 41 of the Rent Stabilization Regulations which govern rent increases for improvements. Note that rent increases due to improvements to a tenant's apartment require the tenant's consent. A monthly rent increase of 1/40 the cost of the improvement is permissible. The cost of building wide improvements is amortized over 60 months.

4. The plan must disclose whether the sponsor intends to apply for J-51 benefits and the potential impact upon purchasers. If the sponsor includes the prospective tax benefits in either Schedule A or Schedule B, the disclosure requested by Section 18.3(g)(xi) must be included and supported by an attorney's real estate tax opinion. Any potential increase in assessed value of the property should also be disclosed, and supported by a qualified expert's appraisal of the potential increase in assessed value.

5. An amendment of this nature is a substantial amendment which gives rise to both a right of rescission and a new exclusive period.

6. Amendments to plans where closings have occurred should be referred to me.

J.E.G.

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er of a registered building purchased from an owner in good standing in the Association.

(b) An owner shall not be required to comply with the above subsection 12(a) where he has applied for membership in the Association as required by Section 421 of the Real Property Tax Law and the regulations promulgated pursuant thereto.

PART II

STABILIZATION RENTS FOR DWELLINGS UNDER RENEWAL AND VACANCY LEASES, AUTHORIZED ESCALATOR CLAUSES AND SUBJECT TO EQUIPMENT AND SERVICE ADJUSTMENTS

Section 20.

Stabilization rents for the following dwelling units shall be:

A. For all dwelling units subject to this Code the stabilization rent shall be the rent charged on May 31, 1968 plus any increase on vacancy lease or lease renewal permitted by the RSL and as established by the Rent Guidelines Board. Such stabilization rents shall not be exceeded by any owner. Nothing herein shall give the right to an owner to increase the rent charged under an existing lease even though such lease is at a lower rate than that permitted by the RSL, except as provided in Section 42 of this Code. However, where a vacancy lease for an initial term of less than three full years was made effective after May 31, 1968 and prior to the acceptance of this Code by the Housing and Development Administration, the owner must extend the term of such lease to a full three year period in order to qualify for the maximum increase permitted by the RSL for vacancy leases at least three years. In the event that an owner shall extend such a lease, the tenant must be given the option to cancel the same at the end of the original initial term thereof.

B. Nothing contained in the Code shall prohibit the owner from inserting a provision in any lease authorizing a payment in excess of the stabi-

lization rent in renewal or vacancy leases based upon an order increasing the stabilization rent based on owner's hardship.

C. For dwelling units for which there has been since May 31, 1968 an increase in rental value beyond required services resulting from:

(1) an increase in dwelling space or the installation of new equipment or improvements in a particular dwelling unit other than a major capital improvement, the monthly stabilization rent for the dwelling unit shall be increased by 1/40th of the total cost of such added dwelling space, equipment or improvements, including the cost of installation thereof; provided, however, that such increase shall not be collectible during the term of a lease then in effect or any renewal thereof except upon written consent of the tenant; or

(2) an increase in services or equipment for which there is a periodic charge made to the owner by an independent contractor may be passed along to the tenant; however, such charge shall not be collectible during the term of a lease then in effect or any renewal thereof except upon the written consent of the tenant; or

(3) an increase in services on a building wide basis on vacancy leases or by agreement with the tenant, the stabilization rent shall be increased by the prorata charge allocable to the dwelling unit.

D. For dwelling units in buildings for which tax exemption has been granted pursuant to Section 421 of the Real Property Tax Law and the regulations of Housing and Development Administration promulgated pursuant thereto, the stabilization rent shall be the rent approved by the agency at the time a Certificate of Eligibility for tax exemption is issued. The initial tenants shall be offered by the owner three year leases at the initial rents approved by the agency. However, this shall not preclude a shorter lease where requested by the tenant and voluntarily agreed to between the tenant and the owner:

Section 37.

The CAB shall determine the dollar amount of the hardship rent adjustment. That dollar amount shall be expressed as a percentage of gross rents and the percentage derived shall be the percentage increase applicable to the rent chargeable to each dwelling unit.

(b) the amount of the cash cost of such improvement exclusive of interest and service charges.

Any order of the CAB pursuant to this section shall determine the adjustment in maximum rents by dividing the cash cost over a sixty (60) month period of amortization. Allocation of such rent increase to each dwelling unit shall be on the formula set forth in Section 37 of this Code.

Section 38. Grounds for adjustment in stabilization rents

The CAB may, upon application of any tenant, adjust the stabilization rent where it determines such rent to be inconsistent with this Code.

Section 42. Lease agreements

(a) Where the owner and tenant have entered into a valid written renewal or vacancy lease with respect to any dwelling unit which provides for the payment of rent in excess of the rent payable under the expiring or prior lease, the stabilization rent shall be automatically increased; provided, however, that the owner shall be required (i) to exhibit to the tenant under a vacancy lease, a copy of the lease in effect May 31, 1968 and any lease or order subsequent thereto and (ii) the leases shall include a rider on a distinctively colored paper (e. g., red or green) which sets forth (a) the tenant's right to examine such prior leases and orders, (b) the rent payable under such prior leases and orders and (c) the name of the tenant in the last prior lease. It shall be the duty of an owner to retain all leases in effect May 31, 1968 or thereafter and produce them on demand of the Association, the CAB, the Housing and Development Administration or a new purchaser for as long as the Rent Stabilization Law or any extension thereof is in effect.

PART IV

RENT ADJUSTMENTS

Section 40. Effective date of orders adjusting stabilization rents

An application for the adjustment of a stabilization rent may be filed on any grounds specified herein. In the event no order is issued within thirty (30) days from the date of filing an application before the CAB, the order adjusting the stabilization rent shall be effective as of such thirtieth day. In the event that an order is issued increasing the stabilization rent because of owner hardship, the tenant may, within thirty (30) days of his receipt of a copy of the order of the CAB, cancel his lease on sixty (60) days' written notice to the owner. During said period the cancelling tenant may continue in occupancy at no increase in rent.

(b) Any lease may contain a clause which provides for an increase in the stabilization rent during the term of said lease on one of the following conditions:

Section 41. Building wide major capital improvements

The CAB shall grant an increase in the stabilization rent where, upon application of the owner, it determines that there has been a building-wide major capital improvement since May 31, 1968; provided, however, that the owner must establish to the satisfaction of the CAB:

(1) pursuant to an order of the CAB; or

(2) that owner and tenant have agreed to be bound by any determination of the CAB affecting the tenancy during the term of said lease; provided, however, that nothing herein shall limit

(a) that such improvement is deemed depreciable under the Internal Revenue Code, other than for ordinary repairs;