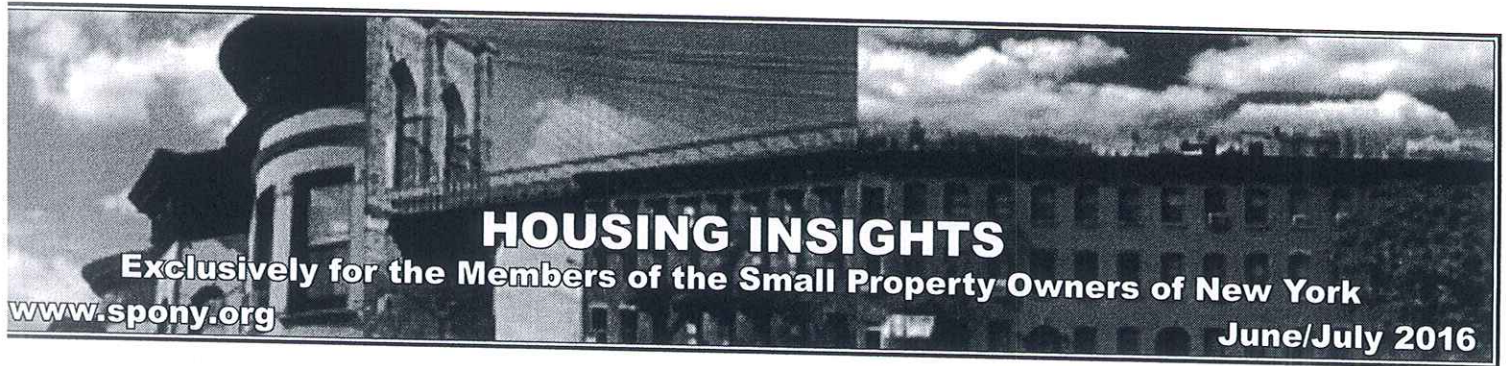




S.P.O.N.Y.

Small Property Owners of New York



MESSAGE FROM THE EDITOR

Summer is upon us! We hope you all have a wonderful season.

In this edition, we highlight the Water and Sewer Service Line Protection Program offered by the City of New York through a public-private partnership with American Water Resources to benefit home and property owners. Many property owners do not realize that you are typically responsible for the repair and maintenance of the water supply and sewer lines which run from your building and the City's main lines under the street. Think of it as a situation similar to your sidewalk, but this case, a problem which can cost you many thousands of dollars of damage and repair costs - and interrupt all water usage in your building. Plus, you are probably like me and do not have a ready list of qualified contractors who are licensed and capable of doing the work, quickly. So read carefully the AWR article in the Managing Your Property section below and see if this service is good for you.

Annual SPONY Membership Dues - Fiscal Year 2017 begins May 2016: Please pay your annual dues promptly. Only paid-up members will be able to attend our group meetings. We are a 100% volunteer-run organization and your dues and support are needed for operations, including the distribution of this newsletter, running meetings, etc. If you set up annual dues payment automatically through PayPal, please adjust the payment date to May 1st of each year.

The SPONY Forum: The SPONY Facebook Forum is a private group only available to SPONY Members and Vendors. All SPONY Members are invited to join the private Facebook Forum. It is set up to allow members to share experiences, network with other SPONY members & vendors and to seek referrals. There are two ways to join: 1) Send a request via e-mail with the subject "Facebook Forum" to tim@spony.org or 2) Go to <https://www.facebook.com/groups/sponymembers/> and click on the link to request to be added to the group. In both instances you will receive a reply once your membership has been approved. Please note you will need to setup a Facebook account in order to join and access the forum. If you have any questions or need assistance to join the forum, please contact Tim Piper at tim@spony.org.

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DEP customers may choose to participate in the Water and Sewer Line Protection Program for a combined price of \$12.96 per month. Customers may also elect to enroll in the Water Line Protection Program for \$4.49 per month or the Sewer Line Protection Program for \$8.47 per month.

To learn more or enroll in the program, you can call 311, or call AWR directly at 1-888-300-3570 or visit <http://awrusa.com/american-water-resources/awr/nyc.html>.

PROPERTY OWNERS' STUMP

[This section was Written by partner David B. Cabrera, Esq. and associate David Napitupulu, Esq., both of Borah, Goldstein, Altschuler, Nahins & Goidel, P.C.]

New York State Homes and Community Renewal (HCR) recently issued a new processing directive allowing applications for a rent increase for installing accessibility ramps as a major capital improvement (MCI), and published a new operational bulletin on proof of individual apartment improvement (IAI) costs that an Owner should provide in the event of a challenge to the IAI rent increase. Owners must consider both of these publications when planning for (and documenting the costs of) both MCI and IAI installations.

The processing directive issued May 6, 2016 allows MCI applications for installing interior and exterior accessibility ramps as long as the following minimum requirements are met: (1) the ramps provide wheelchair access to an entrance of the building and to substantially all public and common areas of the building; (2) wheelchair access is provided to the elevator(s) and the ground floor apartments in the building; (3) the installation complies with building codes for accessibility/handicapped ramps. The prior HCR policy evolved over time to permit rent increases for accessibility ramps where a disabled tenant made a complaint either to the owner or to a governmental agency which deals with accessibility issues. HCR now recognizes that accessibility ramps are a standard feature in modern buildings, and seeks to promote their installation. HCR's new policy is an incentive to install accessibility ramps and increase accessibility within buildings for all tenants.

On May 6, 2016, HCR issued Operational Bulletin 2016-1, which replaced Policy Statement 90-10 for IAIs. The Bulletin states more stringent requirements for Owners when submitting supporting documentation for IAI rent increases in response to a complaint of rent overcharge or an investigation by HCR. The prior rule allowed Owners to submit one form of proof to substantiate the completion of the work and the cost of the work. According to the new Bulletin, an Owner should provide as many of the following as possible: 1) the front and back of cancelled checks paid to the contractor contemporaneous with the completion of the work or proof of electronic payment; 2) an invoice or receipt marked paid in full contemporaneous with the completion of the work; 3) a signed contract agreement; and 4) a contractor's affidavit indicating that the installation was completed and paid in full. The Bulletin further states that HCR reserves the right to request additional documents it believes may be necessary. Under the new rule set forth in the Bulletin, it is prudent that an Owner take "before" and "after" photographs of the IAI work, obtain an affidavit from the contractor that the work was completed and paid in full, ensure that records, receipts, and contracts specify the cost of each IAI, and maintain records of improvements for more than four years.

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The Bulletin states that HCR is no longer accepting just a "lump sum" invoice or contract that includes more than one item of work. HCR now seeks itemized breakdowns of the costs of the work, and the failure to itemize could result in the denial of all of the IAI work. This new requirement does not follow the Court of Appeals decision in *Jemrock Realty Co. v. Krugman*, 13 N.Y.3d 924 (2010), which held that the issue of IAI costs should be resolved by the fact finder based on the persuasive evidence submitted by the parties. Owners should point this out when responding to HCR, especially if not all requested documentation is available.

Where a similar IAI was completed previously in the same apartment, HCR may now require an owner to prove that the useful life of the replaced item had expired. HCR's determination of whether the useful life has been met will be determined based on the facts of each case. Without further clarification, this rule change is sure to be the subject of debate or contention.

The Bulletin states that HCR may require additional evidence of costs and payments when the payments are made to a person or organization that shares an identity of interest with the Owner or managing agent. This is consistent with HCR's prior practice. The identity of interest may be based on a relationship such as a family tie or financial interest. In instances where a building employee performed the work after-hours, an Owner may have to prove that the work was done outside the "scope of employment".

HCR will now exercise a stricter scrutiny for cash payments of \$10,000 or more for IAI work. HCR will request proof of payment in the form of evidence of a withdrawal or deposit in addition to affidavits from vendors and contractors of the receipt of payment.

The Bulletin also provides a useful list of items that may qualify as IAIs to assist Owners. The list includes items typically installed as IAIs, such as a complete bathroom modernization or renovation, and new appliances. Examples of items that do not qualify as IAIs include partial sheet rocking, spackling, plastering and painting. Finally, the Bulletin adds that professional fees, such as architectural or engineering fees, to obtain DOB permits are now an eligible IAI cost.

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