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# **GETTING REIMBURSEMENT FOR CAPITAL IMPROVEMENTS**

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Berkeley's Rent Stabilization program makes it difficult for owners to get reimbursed for capital improvements – far more difficult than under the rent control programs operating in San Francisco or Oakland, for example. Berkeley sets up roadblocks on two levels. First, the Rent Board has limited capital improvements, by definition, to a short list of "approved" improvements. Everything else is considered a repair, and disallowed. Second, Berkeley's Rent Board has set up an offset policy that uses any funds achieved through vacancy decontrol to offset capital improvements otherwise allowable. It is widely believed that the offset policy is a violation of the legislature's intent in passing Costa-Hawkins (the State of California's Rental Housing Act of 1995). Many of us believe that the offset policy would not survive a competent legal challenge, but no such lawsuit has yet materialized.

The short list of approved improvements (some of which are called "major repairs") includes the following:

- New roof (possibly including gutters)
- New foundation and/or seismic retrofit work
- Exterior siding, waterproofing, and painting
- New heating, plumbing, or electric system (but not repairs to these systems)
- Energy saving improvements (like double pane windows)
- Pest control work pursuant to a "termite report"
- New features that benefit tenants (like a new - not a replacement - deck)

That's about it. Improvements that are not allowed in Berkeley, although they would be allowed in San Francisco and Oakland, include interior remodeling, new cabinets, work on floors, new appliances, major repairs and replacements of all kinds, and so forth.

Now the Offset. The offset policy says that every dollar achieved by way of vacancy increases since 1996 has to be offset by proven capital improvements before any rent increases are allowed. Say you have had several vacancies in your building which have gained you a total of \$2,000 in rent increases. The capital improvements rate being approximately 1%, the first \$200,000 spent on capital improvements will be offset completely! Capital improvement expenditures of \$200,000 or less will result in no rent increases at all. Only expenditures greater

than \$200,000 on qualifying capital improvements will result in rent increases.

Since vacancy decontrol results on average in rent increases of roughly \$800 per month, this means that \$80,000 per unit will have to be spent before any rent increases based on capital improvements will be allowed. For a four-unit building, this means that the first \$320,000 will be offset. For a 12 unit building, just under \$1 million. As a practical matter, this means that capital improvements are all but dead in Berkeley. Improvements that do get made will be paid for by the owner, without reimbursement, with few exceptions, unless the policy changes.

The primary exception would be a building where there have been no vacancy increases since 1998. There are not many buildings where there have been no vacancies since 1998, but there are some. Those buildings may be eligible for capital improvements increases, assuming that an owner who has had no vacancies can afford to undertake capital improvements.

***If you have questions about capital improvements or any other topic involving rent control or rental property management, call St. John & Associates for assistance. Michael St. John, Berkeley's first and long-standing rent control expert, now consults about Oakland rent control, too. He can be reached at 510-845-8928 x101. Or write to [info@stjohnandassociates.net](mailto:info@stjohnandassociates.net) or 2121 West St. Berkeley 94702.***