



APARTMENT AND OFFICE BUILDING
ASSOCIATION OF
METROPOLITAN WASHINGTON

August 26, 2005

ZONING COMMISSION

CASE No. 04-33

EXHIBIT No. 135

Chairperson Carol J. Mitten
Zoning Commission
One Judiciary Square
441 4th Street, NW
Washington, DC 20001

Re: Case No. 04-33

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Dear Chairperson Mitten:

Per Commissioner Gregory N. Jeffries' request, please find attached a copy of the statutory definition of "substantial rehabilitation." Also attached, are copies of the statutory language and applicable regulations regarding rent ceiling adjustments based on substantial rehabilitation, as well as on affected tenants' essentially absolute right to reoccupy upon completion of renovations. Taken together, these provisions make clear that, under District law, the city's most pervasive affordable housing instrument—the rent control program—continues to apply to an affected building which is to undergo substantial rehabilitation, and that no tenant can be involuntarily permanently displaced from his or her rent-controlled unit as a result of a substantial rehabilitation.

It is for these reasons that AOBA believes substantial rehabilitation of existing rental housing properties should not be subject to mandatory inclusionary zoning (MIZ) requirements. As AOBA has consistently pointed out, the District has a disproportionately aging rental housing stock—seventy percent (70%) of it was built before 1960. District housing policy should be designed to provide incentives, rather than impediments, to its substantial rehabilitation. Proposals to extend MIZ to substantial rehabilitation of existing rental housing (which other jurisdictions have pointedly elected not to do) bely an understanding of the continued applicability of rent control to rehabilitated buildings and, if adopted, will discourage, not promote, preservation of affordable rental housing.

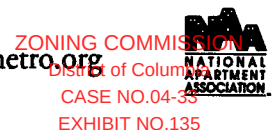
During my testimony on August 1, 2005, I also briefly mentioned that existing restrictions under the Rental Housing Conversion and Sale Act impede or add to the cost of rehabilitation. As you know, the financing mechanisms commonly used for the creation and operation of residential real estate require that investors be able to reposition interests—timely and reliably. Certainly, it is in the city's best interest to maintain that ability. Capital markets, especially in the financing of new construction or major redevelopments, require that debt and equity essentially be interchangeable as a matter of course. The ability to replace original investors, or to reallocate their ownership interests, is a common and essential occurrence in the ownership entities of affordable housing projects. Investors in rental housing have many



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common and valid reasons for making changes in ownership interests — including the need to bring in new capital sources to rehabilitate a building.

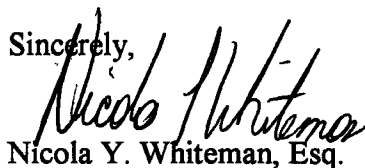
Unfortunately, the repositioning of interests, even for the laudable goal of obtaining financing to rehabilitate a building that will remain affordable, may trigger the tenant right to purchase. Yet, tenants, even after being given formal notice and extensive explanation of their rights under the act, rarely decide to take the first step in exercising those rights, which is the formation and registration of a tenant association. When the council last reauthorized the law in 1994, DCRA data showed that, from 1980 to 1993, over 50,000 “offer of sale notices” were filed, but only resulted in 374 tenant associations being registered— a rate of less than one percent. Agency data for the last five years--in the midst of the “hot” housing market-- show a similar lack of tenant interest in exercising their rights.

<u>YEAR</u>	<u>NUMBER OF OFFER OF SALE NOTICES</u>	<u>NUMBER OF TENANT ORGANIZATIONS REGISTERED</u>	<u>PERCENT</u>
2000	3,445	12	0.34
2001	1,725	26	1.5
2002	2,247	83	3.7
2003	594	25	4.2
2004	821	44	5.3

Second, it's shown us that, even when tenants do form an association to exercise their rights, the right they almost always choose to exercise is the right to “sell” their opportunity to purchase to the highest bidder. Those tenants who comprise a majority of the tenant association at the time—and that often may not even be a majority of the tenants—make a decision to relinquish the tenant right and vacate the building for a cash payment. This decision, in turn, forces all the tenants in the building to be displaced. The “high bidder” developer, in most instances, then redevelops the building as either luxury condominium, or luxury rental. In this scenario, everyone loses. The tenants lose their homes. The city experiences a permanent loss of rental housing stock, and the owner whose only desire was to rehabilitate a building and maintain it as affordable, loses that building.

Please contact me if AOBA can provide any additional information.

Sincerely,



Nicola Y. Whiteman, Esq.

Vice President of Government Affairs, DC

Cc: Vice-Chair Anthony Hood
Commissioner Gregory N. Jeffries
Commissioner Kevin Hildebrand
Commissioner John Parsons

§ 42-3501.01

Note 1

Named Hubris, 1988, 687 F.Supp. 682, dismissed. Wharves ⇨ 9

§ 42-3501.02. Purposes.

In enacting this chapter, the Council of the District of Columbia supports the following statutory purposes:

- (1) To protect low- and moderate-income tenants from the erosion of their income from increased housing costs;
- (2) To provide incentives for the construction of new rental units and the rehabilitation of vacant rental units in the District;
- (3) To continue to improve the administrative machinery for the resolution of disputes and controversies between housing providers and tenants;
- (4) To protect the existing supply of rental housing from conversion to other uses; and
- (5) To prevent the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments.

(July 17, 1985, D.C. Law 6-10, § 102, 32 DCR 3089.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 45-2502.

Legislative History of Laws

For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Miscellaneous Notes

Termination of Law 6-10: See Historical and Statutory Notes following § 42-3501.01.

Library References

Key Numbers

Landlord and Tenant ⇨ 200.10.

Westlaw Key Number Search: 233k200.10.

Encyclopedias

C.J.S. Landlord and Tenant § 551.1.

Notes of Decisions

In general 1

1. In general

Provision for substantial rehabilitation in Rental Housing Act of 1985, which effectively permits landlord to escape proscriptions of Act and substantially raise his rent, ought to be given parsimonious interpretation rather than expansive one. D.C.Code 1981, §§ 45-2501 et seq., 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com'n, 1990, 575 A.2d 1205. Landlord And Tenant ⇨ 200.56

Rental Housing Act should be liberally construed to achieve its purposes. D.C.Code 1981,

§ 45-2501 et seq. Goodman v. District of Columbia Rental Housing Com'n, 1990, 573 A.2d 1293. Landlord And Tenant ⇨ 200.12

Although neither District of Columbia Court of Appeals nor Rental Housing Commission is authorized to overlook jurisdictional requirements of Rental Housing Act in order to vindicate subjective notions of "fairness," it is appropriate for court, in resolving procedural issues with respect to which reasonable people might differ, to keep in mind remedial character of Act and important role which lay litigants play in its enforcement. D.C.Code 1981, § 45-2501 et seq. Goodman v. District of Columbia Rental Housing Com'n, 1990, 573 A.2d 1293. Landlord And Tenant ⇨ 200.12

§ 42-3501.03. Definitions.

For the purposes of this chapter, the term:

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(1) "Annual fair market rents collected for all rental units in the District during the base calculation year, plus a percentage of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) for all items, in the Washington, D.C. Metropolitan Area, during each calendar year, shall be the rents collected in the base calculation year. If the sum equal to the rents which would have been collected in the base calculation year had the housing costs not increased by the Consumer Price Index for All Urban Consumers (CPI-U) for all items, in the Washington, D.C. Metropolitan Area, during each calendar year, shall be the rents collected in the base calculation year." (1985, D.C. Law 6-10, § 102, 32 DCR 3089.)

(2) "Apartment improvement program" means a program administered with grant funds from the District of Columbia Department of Housing and Community Development by the Neighborhood Reinvestment Corporation, which program has been established to improve the economic and physical condition of buildings by joining the tenant and the landlord in a program of improvement of the building operated under the supervision of the District government in a collaborative manner.

(3) "Base calculation year" means the first calendar year in which the amount of rent subject to §§ 42-3502.05(f) is limited by the amount of rent from a tenant.

(4) "Base rent" means the rent for the rental unit which was first leased on or after January 1, 1983, and all rent in excess of the base rent, or any rent control laws or any administrative order, or any rent increases authorized by the District government.

(5) "Building improvement program" means a program administered by the parties of interest, including the District government, at a project level, which is designed to improve the tenant's distress, including, but not limited to, the following:

(A) A schedule of repairs and maintenance, will bring the proper regulations;

(B) A schedule of service and maintenance;

(C) A schedule of rent control, which is monitored by the District government, and all physical improvements

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(1) "Annual fair market rental amount" means the annualized sum of the rents collected for all rental units in the housing accommodation during the base calculation year, plus an amount equal to the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items, in the Washington, D.C. Standard Metropolitan Statistical Area, during each calendar year; provided, however, that if no rents were collected in the base calculation year because the housing accommodation was then under construction, the annual fair market rental amount shall be a sum equal to the rents which would have been collected during the base calculation year had the housing accommodation been 100% occupied during the entire base calculation year, the sum to be determined by appraisal, as increased by the Consumer Price Index increase under this paragraph.

(2) "Apartment improvement program" means the program which is administered with grant funds from title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.), by the District of Columbia Department of Housing and Community Development, developed by the Neighborhood Reinvestment Corporation under the national Neighborhood Reinvestment Corporation Act (42 U.S.C. § 8101 et seq.), and operated under the supervision of the public-private Partnership Committee, which program has been established for the purpose of finding solutions to the economic and physical distress of moderate income rental apartment buildings by joining the tenants, housing provider, noteholder, and the District government in a collective effort.

(3) "Base calculation year" means the calendar year immediately preceding the first calendar year in which a given housing accommodation is made subject to §§ 42-3502.05(f) through 42-3502.19, or any future District law limiting the amount of rent which can lawfully be demanded or received from a tenant.

(4) "Base rent" means that rent legally charged or chargeable on April 30, 1985, for the rental unit which shall be the sum of rent charged on September 1, 1983, and all rent increases authorized for that rental unit by prior rent control laws or any administrative decision issued under those laws, and any rent increases authorized by a court of competent jurisdiction.

(5) "Building improvement plan" means the agreement executed between the parties of interest, including the tenants, housing provider, and the District government, at a property being treated under the apartment improvement program, which agreement sets forth the remedies to the property's distress, including, but not limited to:

(A) A schedule of repairs and capital improvements which, at a minimum, will bring the property into substantial compliance with the housing regulations;

(B) A schedule of services and facilities; and

(C) A schedule of rent ceilings and rent increases; and which agreement is monitored by the District government until it expires upon completion of all physical improvements and other scheduled activities included therein.

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6-10: See Historical and
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Tenant § 551.1.

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de 1981, § 45-2501 et
strict of Columbia Rental
, 573 A.2d 1293. Land-
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(6) "Capital improvement" means an improvement or renovation other than ordinary repair, replacement, or maintenance if the improvement or renovation is deemed depreciable under the Internal Revenue Code (26 U.S.C.).

(7) "Cooperative housing association" means an association incorporated for the purpose of owning and operating residential real property in the District, the shareholders or members of which, by reason of their ownership of stock or membership certificate, a proprietary lease, or evidence of membership, are entitled to occupy a dwelling unit under the terms of a proprietary lease or occupancy agreement.

(8) "Council" means the Council of the District of Columbia.

(9) "Distressed property" means a housing accommodation that:

(A) Is experiencing, and has experienced for at least 2 years, a negative cash flow;

(B) Has been cited by the Department of Consumer and Regulatory Affairs as being in substantial noncompliance with the housing regulations;

(C) Has been subject to deferred maintenance as a result of negative cash flow; and

(D) Has been in arrears on either permanent mortgage loan-payments, property tax payments, fuel and utility payments, or water or sewer fee payments.

(10) "Division" means the Rental Accommodations and Conversion Division as continued by § 42-3502.01.

(11) "Dormitory" means any structure or building owned by an institution of higher education or private boarding school, in which at least 95% of the units are occupied by presently matriculated students of the institution of higher education or private boarding school.

(12) "Elderly tenant" means a person who is 60 years of age or older and, for the purposes of subchapter III of this chapter, a person who meets the requirements of § 42-3503.01(5) for eligible families and § 42-3503.01(8) for lower-income families.

(13) "Equity" means the portion of the assessed value of a housing accommodation that exceeds the total value of all encumbrances on the housing accommodation.

(14) "Housing accommodation" means any structure or building in the District containing 1 or more rental units and the land appurtenant thereto. The term "housing accommodation" does not include any hotel or inn with a valid certificate of occupancy or any structure, including any room in the structure, used primarily for transient occupancy and in which at least 60% of the rooms devoted to living quarters for tenants or guests were used for transient occupancy as of May 20, 1980. For the purposes of this chapter, a rental unit shall be deemed to be used for transient occupancy only if the landlord of the rental unit is subject to and pays the sales tax imposed by § 47-2001(n)(1)(C).

(15) "Housing provider" means a landlord, an owner, lessor, sublessor, assignee, or their agent, or any other person receiving or entitled to receive

rents or benefits for the use accommodation within the I

(16) "Housing regulation: Regulations of the District Order No. 55-1503, effective

(17) "Initial leasing period" means the period during which a rental unit rents the rental unit for the first time. The first tenant is the tenant who first occupies the unit if it is first offered for rent as this chapter.

(18) "Interest payments" means the amount of interest reported during the reporting period on a mortgage.

(19) "Management fee" means any pro rata salaries of officers or employees of the provider, if the duties of the officers or employees of the housing accommodation include the management of the housing accommodation.

(20) "Maximum possible rental units in the housing accommodation" means the number of rental units that could be put over a base period of time preceding the date of any change in the number of rental units.

(21) "Mayor" means the Mayor of the District of Columbia.

(22) "Operating expense" means the total of all expenses of a housing accommodation for the 12 months preceding the date of the provision of this chapter, including the cost of on-site personnel, supplies, utilities, professional fees, on-site of the housing accommodation.

(23) "Other income" means any income, other than rent, from the use of his or her interest in a housing accommodation, including fees, commissions, income from the use of facilities, and income from the use of the housing accommodation.

(24) "Person" means an individual, a partnership, a joint venture, business entity, or any other entity, and its respective successors and assigns.

(25) "Property taxes" means the taxes levied for real property tax or for the use of the housing accommodation.

(26) "Related facility" means a facility that is available to a tenant by a housing provider for the payment of the rent for the use of the kitchen, bath, laundry facilities, common room, yard, or other facilities.

(27) "Related services" means the services required by law or by contract in connection with the use of the housing accommodation.

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rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District.

(16) "Housing regulations" means the most recent edition of the Housing Regulations of the District of Columbia as established by Commissioner's Order No. 55-1503, effective August 11, 1955.

(17) "Initial leasing period" means that period for which the first tenant of a rental unit rents the rental unit. For units described in § 42-3502.19, the first tenant is the tenant who rents the rental unit immediately after the date it is first offered for rent as a rental unit which is not otherwise exempt from this chapter.

(18) "Interest payments" means the amount of interest paid during a reporting period on a mortgage or deed of trust on a housing accommodation.

(19) "Management fee" means the amount paid to a managing agent and any pro rata salaries of off-site administrative personnel paid by the housing provider, if the duties of the personnel are connected with the operation of the housing accommodation.

(20) "Maximum possible rental income" means the sum of the rents for all rental units in the housing accommodation, whether occupied or not, computed over a base period of the 12 consecutive months within the 15 months preceding the date of any filing required or permitted under this chapter.

(21) "Mayor" means the Office of the Mayor of the District of Columbia.

(22) "Operating expenses" means the expenses required for the operation of a housing accommodation for the 12 consecutive months within the 15 months preceding the date of its use in any computation required by any provision of this chapter, including, but not limited to, expenses for salaries of on-site personnel, supplies, painting, maintenance and repairs, utilities, professional fees, on-site offices, and insurance.

(23) "Other income which is derived from the housing accommodation" means any income, other than rents, which a housing provider earns because of his or her interest in a housing accommodation, including, but not limited to, fees, commissions, income from vending machines, income from laundry facilities, and income from parking and recreational facilities.

(24) "Person" means an individual, corporation, partnership, association, joint venture, business entity, or an organized group of individuals, and their respective successors and assignees.

(25) "Property taxes" means the amount levied by the District government for real property tax on a housing accommodation during a tax year.

(26) "Related facility" means any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area.

(27) "Related services" means services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs,

decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.

(28) "Rent" means the entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities.

(29) "Rent ceiling" means that amount defined in or computed under § 42-3502.06.

(30) "Rental Accommodations Act of 1975" means the Rental Accommodations Act of 1975, effective November 1, 1975 (D.C. Law 1-33).

(31) "Rental Housing Act of 1977" means the Rental Housing Act of 1977, effective March 16, 1978 (D.C. Law 2-54).

(32) "Rental Housing Act of 1980" means the Rental Housing Act of 1980, effective March 4, 1981 (D.C. Law 3-131; Chapter 40 of this title).

(33) "Rental unit" means any part of a housing accommodation as defined in paragraph (14) of this section which is rented or offered for rent for residential occupancy and includes any apartment, efficiency apartment, room, single-family house and the land appurtenant thereto, suite of rooms, or duplex.

(33A) "Single-room-occupancy housing" means a rental housing accommodation comprised of rental units, each of which is intended for occupancy and is occupied by a single adult either living alone or living with not more than 1 child of age 6 years or younger, and that may, but is not required to, contain sanitary and food-preparation facilities.

(34) "Substantial rehabilitation" means any improvement to or renovation of a housing accommodation for which:

(A) The building permit was granted after January 31, 1973; and

(B) The total expenditure for the improvement or renovation equals or exceeds 50% of the assessed value of the housing accommodation before the rehabilitation.

(35) "Substantial violation" means the presence of any housing condition, the existence of which violates the housing regulations, or any other statute or regulation relative to the condition of residential premises and may endanger or materially impair the health and safety of any tenant or person occupying the property.

(36) "Tenant" includes a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person.

(37) "Uncollected rent" means the amount of rent and other charges due for at least 30 days but not received from tenants at the time any statement, form, or petition is filed under this chapter.

(38) "Vacancy loss" means the amount of rent not collectable due to vacant units in a housing accommodation. No amount shall be included in

vacancy loss for units occupied or otherwise not offered

(July 17, 1985, D.C. Law 6-1 § 2(a), 41 DCR 4873.)

Prior Codifications

1981 Ed., § 45-2503.

Legislative History of Laws

For legislative history of D.C. Historical and Statutory Notes § 42-3501.01.

For legislative history of D.C. see Historical and Statutory Notes § 42-3508.06.

Editor's Notes

"D.C. Law 3-131; Chapter 40 referred to in (32), expired, except

Emergency overnight shelter definition
Improvement program for distressed

Section References

This section is referred to in §§ 4

Key Numbers

Landlord and Tenant §200.12
Westlaw Key Number Search:

Capital improvements 4
Construction and application 1
Housing accommodation 6
Judicial review 12
Persons or property not covered
Rent 7
Right of possession 11
Small landlord exemption 8
Substantial rehabilitation 9
Subtenants 5
Type of tenancy 3
Vacancy loss 10

1. Construction and application

Rental Housing Act is remedial and must be liberally construed to accomplish its purposes. D.C. Code 1981, § 45-2503. Columbia Road Tenants Ass'n v. Columbia Rental Housing Com'n, 306. Landlord And Tenant § 200.12

2. Persons or property not covered

The District of Columbia Rent Control Act did not apply to furnishing of

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vacancy loss for units occupied by a housing provider or his or her employees or otherwise not offered for rent.

(July 17, 1985, D.C. Law 6-10, § 103, 32 DCR 3089; Aug. 25, 1994, D.C. Law 10-155, § 2(a), 41 DCR 4873.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 45-2503.

Legislative History of Laws

For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

For legislative history of D.C. Law 10-155, see Historical and Statutory Notes following § 42-3508.06.

Editor's Notes

"D.C. Law 3-131; Chapter 40 of this title", referred to in (32), expired, except for subchap-

ter V, April 30, 1985; subchapter V was repealed by § 905 of D.C. Law 6-10, effective July 17, 1985.

Miscellaneous Notes

Short title: See Historical and Statutory Notes following § 42-3501.01.

Termination of Law 6-10: See Historical and Statutory Notes following § 42-3501.01.

Cross References

Emergency overnight shelter defined, see § 4-703.

Improvement program for distressed property, see § 42-3508.04.

Section References

This section is referred to in §§ 42-3502.09, 42-3502.21, and 47-830.

Library References

Key Numbers

Landlord and Tenant ⇨ 200.12.

Westlaw Key Number Search: 233k200.12.

Encyclopedias

C.J.S. Landlord and Tenant § 551.6.

Notes of Decisions

Capital improvements 4
Construction and application 1
Housing accommodation 6
Judicial review 12
Persons or property not covered by Act 2
Rent 7
Right of possession 11
Small landlord exemption 8
Substantial rehabilitation 9
Subtenants 5
Type of tenancy 3
Vacancy loss 10

1. Construction and application

Rental Housing Act is remedial statute which must be liberally construed to achieve its purposes. D.C.Code 1981, § 45-2501 et seq. 1841 Columbia Road Tenants Ass'n v. District of Columbia Rental Housing Com'n, 1990, 575 A.2d 306. Landlord And Tenant ⇨ 200.12

2. Persons or property not covered by Act

The District of Columbia Rental Housing Act did not apply to furnishing of dock space to

houseboat. D.C.Code 1981, §§ 45-2501 et seq., 45-2503(14, 33). Washington Channel Ltd. Partnership v. 56' Carri-Craft Motor Yacht Named Hubris, 1988, 687 F.Supp. 682, dismissed. Wharves ⇨ 9

Residents of shelter for homeless persons operated in federally owned building were not "tenants," entitled to 30 days notice to quit under District of Columbia Code [D.C.Code 1981, §§ 45-1403, 45-1404], because government never sought nor received any rent for use of shelter. D.C.Code 1981, § 45-1503(30). Robbins v. Reagan, 1985, 616 F.Supp. 1259, affirmed 780 F.2d 37, 250 U.S.App.D.C. 375. Asylums ⇨ 2

Apartment building maintenance men who occupied apartment rent-free as partial compensation for their services did not occupy "rental unit" within meaning of Rental Housing Act of 1985, and thus were not "tenants" within meaning of Act; therefore, employer was not obligated to give them 30 days' notice to quit. D.C.Code 1981, §§ 45-2503(33, 36), 45-2551. Anderson v. William J. Davis, Inc., 1989, 553 A.2d 648. Master And Servant ⇨ 76

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Miscellaneous Notes

Termination of Law 6-10: See Historical and Statutory Notes following § 42-3502.01.

Cross References

Section References

This section is referred to in §§ 42-3501.03, 42-3502.05, 42-3502.07, 42-3502.16 and 42-3502.21.

Library References

Key Numbers

Landlord and Tenant Ⓒ200.52 to 200.69.
Westlaw Key Number Searches: 233k200.52
to 233k200.69.

Encyclopedias

C.J.S. Landlord and Tenant § 551.32.

Notes of Decisions

In general 1

1. In general

In view of fact that landlord was discouraged in attempts to have rent ceilings established for units so as to implement authorized increases, landlord could not subsequently be penalized for failure to comply with procedures necessary for implementing rent increases; therefore, remand was required for determination of what automatic or voluntary vacancy increases landlord might be entitled to in base rents of units, starting with first date he made good-faith inquiry into establishing rent ceilings. D.C.Code 1981, §§ 45-1517(b), 45-1524 (Repealed). Temple v. District of Columbia Rental Housing Com'n, 1987, 536 A.2d 1024. Landlord And Tenant Ⓒ200.69

Multibuilding housing complex may be considered "housing accommodation" for purpose of vacancy rent increases. Marshall v. District of Columbia Rental Housing Com'n, 1987, 533 A.2d 1271. Landlord And Tenant Ⓒ200.16

Statute [D.C.Code 1981, § 45-1524(a)] allowing a vacancy increase in rent applies only when there has been some additional costs to landlord that would justify increase. Guerra v. District of Columbia Rental Housing Com'n, 1985, 501 A.2d 786. Landlord And Tenant Ⓒ200.60

Landlord could not implement vacancy increase in rent ceiling for rental unit when there had been a change in tenants but rental unit had never actually become vacant because a subtenant, common to both tenants, had remained in possession of rental unit; consequently, a subsequent increase, calculated on basis of improper increase, was also improper. D.C.Code 1981, § 45-1524(a). Guerra v. District of Columbia Rental Housing Com'n, 1985, 501 A.2d 786. Landlord And Tenant Ⓒ200.52

Statute [D.C.Code 1981, § 45-1524(a)] allowing vacancy increase in rent allows landlord to increase rent ceiling for rental unit only after it has in fact become vacant. Guerra v. District of Columbia Rental Housing Com'n, 1985, 501 A.2d 786. Landlord And Tenant Ⓒ200.52

§ 42-3502.14. Substantial rehabilitation.

(a) If the Rent Administrator determines that (1) a rental unit is to be substantially rehabilitated, and (2) the rehabilitation is in the interest of the tenants of the unit and the housing accommodation in which the unit is located, the Rent Administrator may approve, contingent upon completion of the substantial rehabilitation, an increase in the rent ceiling for the rental unit, if the rent increase is no greater than the equivalent of 125% of the rent ceiling applicable to the rental unit prior to substantial rehabilitation.

(b) In determining whether a housing unit is to be substantially rehabilitated, the Rent Administrator shall examine the plans, specifications, and projected costs for the rehabilitation, which shall be made available to the Rent Administrator by the housing provider of the rental unit or housing accommodation to be rehabilitated.

(c) In determining whether substantial rehabilitation of a housing accommodation is in keeping with the interest of the tenants, the Rent Administrator shall consider, among other relevant factors:

(1) The impact of the rehabilitation on the tenants of the unit or housing accommodation; and

(2) The existing condition of the rental unit or housing accommodation and the degree to which any violations of the housing regulations in the rental unit or housing accommodation constitute an impairment of the health, welfare, and safety of the tenants.

(d) This section shall apply to the following:

(1) Any rental unit with respect to which a housing provider has notified the tenant, after July 17, 1985, of an intent to substantially rehabilitate; and

(2) Any rental unit with respect to which, before July 17, 1985:

(A) The housing provider has notified the tenant of the intended substantial rehabilitation; and

(B) All the tenants have left.

(July 17, 1985, D.C. Law 6-10, § 214, 32 DCR 3089.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 45-2524.

Legislative History of Laws

For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Miscellaneous Notes

Termination of Law 6-10: See Historical and Statutory Notes following § 42-3502.01.

Cross References

Section References

This section is referred to in §§ 42-3501.03, 42-3502.05, 42-3502.07, 42-3502.16, 42-3502.21 and 42-3505.01.

Library References

Key Numbers

Landlord and Tenant ⇨ 200.52 to 200.69.
Westlaw Key Number Searches: 233k200.52 to 233k200.69.

Encyclopedias

C.J.S. Landlord and Tenant § 551.32.

Notes of Decisions

In general 1

Benefit to tenants 3

Construction and application 2

Contractor's fee 6

Cosmetic improvements 4

Recoupment of investment 5

Types of rehabilitation 7

1. In general

Rental Housing Commission must give some explanation to justify its discretionary determinations as to percentage in rent ceiling increase

awarded for proposed repairs in each category. D.C.Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com'n, 1990, 575 A.2d 1205. Landlord And Tenant ⇨ 200.68

To be entitled to substantial rehabilitation rent ceiling increase, it was sufficient for landlord to show that proposed rehabilitation was in tenant's interest in sense that tenants' received benefit, and approval of tenants as such was not required. D.C.Code 1981, §§ 45-1611(a), 45-2525. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing

Com'n, 1990, 575 A.2d 1205. Landlord And Tenant ⇨ 200.57

Large amounts of time and money must be expended in order to fight for a rent ceiling increase, in determining whether substantial rehabilitation rent ceiling increase is in interest of tenants, the Rent Administrator must consider, among other relevant factors, the impact of the rehabilitation on the tenants of the unit or housing accommodation and the degree to which any violations of the housing regulations in the rental unit or housing accommodation constitute an impairment of the health, welfare, and safety of the tenants. D.C.Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com'n, 1990, 575 A.2d 1205. Landlord And Tenant ⇨ 200.6

2. Construction and application

Provision for substantial rehabilitation in Rental Housing Act of 1985, permits landlord to escape prior rent ceiling and substantially raise his rent. Given parsimonious interpretation, it is an expansive one. D.C.Code 1981, §§ 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com'n, 1990, 575 A.2d 1205. Landlord And Tenant ⇨ 200.56

According to plain language of Rental Housing Act of 1985, showing that substantial rehabilitation is in interest of tenants, the Rent Administrator must show that total cost of proposed repairs equals or exceeds assessed market value of property. D.C.Code 1981, §§ 45-2501, 45-2524(a), (a)(2). Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com'n, 1990, 575 A.2d 1205. Landlord And Tenant ⇨ 200.57

3. Benefit to tenants

In order to be entitled to substantial rehabilitation rent ceiling increase, must show that total cost of proposed repairs equals or exceeds assessed market value of property. D.C.Code 1981, §§ 45-2501, 45-2524(a), (a)(2). Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com'n, 1990, 575 A.2d 1205. Landlord And Tenant ⇨ 200.57

Landlord's petition for substantial rehabilitation of rental property could be denied if existing conditions constitute a health, safety and welfare hazard that must be remedied without major rent increase or nonexistence of such hazard. D.C.Code 1981, §§ 45-2503(34), 45-2524, 45-2525. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing

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gations on the purchaser, if tenant had been concerned whether omissions affected material terms of contract she had ample time to make the appropriate inquiries, and tenant did not make inquiries. Coburn v. Heggstad, 2003, 817 A.2d 813. Landlord And Tenant ⇨ 92(3)

ations.

Decisions

nity is not lost because of a surprise sale to another person; once a tenant has seized his or her opportunity to act, the landlord should be able to afford reasonable extensions of time without worrying that the third party will thwart the tenant by suing the landlord. Coburn v. Heggstad, 2003, 817 A.2d 813. Landlord And Tenant ⇨ 92(3)

er 35

g Generally.

Section

12-3505.02. Retaliatory action.

Subchapter VIII. New and Vacant Rental Housing and Distressed Property.

2-3508.02. Tax abatement for new or rehabilitated vacant rental housing.

Subchapter IX. Miscellaneous Provisions.

1-3509.07. Termination.

BILIZATION PROGRAM.

Housing Commission.

sions

appeal, as to the failure of residential landlord his counsel to appear for RHC's scheduled hearing on landlord's appeal of Rent Administrator's decision in favor of tenant as to tenant's complaint alleging housing code violations; landlord proposed a decision by RHC on the briefs but landlord did not submit any briefs, and landlord not ask RHC for a continuance and for a scheduling of the hearing. Stancil v. District of Columbia Rental Housing Com'n, 2002, 806 A.2d Health ⇨ 392

dismissal of residential landlord's appeal to Rental Housing Commission (RHC) was warrant's sanction for the failure of landlord and his counsel to appear at RHC's scheduled hearing on landlord's appeal of Rent Administrator's decision in favor of tenant as to tenant's complaint alleging housing code violations, even if the failure to ap-

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pear was not willful and instead was based on counsel's negligence in failing to note the hearing date on his calendar. Stancil v. District of Colum-

bia Rental Housing Com'n, 2002, 806 A.2d 622. Health ⇨ 392

§ 42-3502.08. Increases above base rent.

Notes of Decisions

6. Compliance with conditions and requirements

Rental Housing Commission (RHC) had authority, under Court of Appeals' rules, to dismiss tenant's appeal from Rent Administrator's decision regarding tenant's challenge to rent increase, where tenant failed to comply with Commission's order to pay the rent increase into an escrow account or provide a supersedeas bond. Mullin v. District of Columbia Rental Housing Com'n, 2004, 844 A.2d 1138. Landlord And Tenant ⇨ 200.69

Rental Housing Commission (RHC) had inherent authority to dismiss tenant's appeal from Rent Administrator's decision regarding tenant's challenge to rent increase, where tenant failed to comply with Commission's order to pay the rent increase into an escrow account or provide a supersedeas bond. Mullin v. District of Columbia Rental Housing Com'n, 2004, 844 A.2d 1138. Landlord And Tenant ⇨ 200.69

§ 42-3502.10. Petitions for capital improvements.

Notes of Decisions

6. Amount and cost of improvements

A residential landlord is entitled to recover, through rent ceiling surcharge, the total interest expense for a capital improvement loan obtained by the landlord, even if the loan term exceeds the

96-month amortization period for the surcharge. Carillon House Tenants' Ass'n v. District of Columbia Rental Housing Com'n, 2002, 793 A.2d 461, clarified. Landlord And Tenant ⇨ 200.7

SUBCHAPTER IV. REVENUE.

§ 42-3504.01. Rental unit fee.

Historical and Statutory Notes

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 1202(a) of the Fiscal Year 2001 Budget

Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

SUBCHAPTER V. EVICTIONS; RETALIATORY ACTION.

§ 42-3505.01. Evictions.

(a) Except as provided in this section, no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant's lease or rental agreement, so long as the tenant continues to pay the rent to which the housing provider is entitled for the rental unit. No tenant shall be evicted from a rental unit for any reason other than for nonpayment of rent unless the tenant has been served with a written notice to vacate which meets the requirements of this section. Notices to vacate for all reasons other than for nonpayment of rent shall be served upon both the tenant and the Rent Administrator. All notices to vacate shall contain a statement detailing the reasons for the eviction, and if the housing accommodation is required to be registered by this chapter, a statement that the housing accommodation is registered with the Rent Administrator.

(b) A housing provider may recover possession of a rental unit where the tenant is violating an obligation of tenancy and fails to correct the violation within 30 days after receiving from the housing provider a notice to correct the violation or vacate.

(c) A housing provider may recover possession of a rental unit where a court of competent jurisdiction has determined that the tenant, or a person occupying the premises with or in addition to the tenant, has performed an illegal act within the rental unit or the housing accommodation. The housing provider shall serve on the tenant a 30-day notice to vacate. The

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tenant may be evicted only if the tenant knew or should have known that an illegal act was taking place.

(d) A natural person with a freehold interest in the rental unit may recover possession of a rental unit where the person seeks in good faith to recover possession of the rental unit for the person's immediate and personal use and occupancy as a dwelling. The housing provider shall serve on the tenant a 90-day notice to vacate in advance of action to recover possession of the rental unit in instances arising under this subsection. No housing provider shall demand or receive rent for any rental unit which the housing provider has repossessed under this subsection during the 12-month period beginning on the date the housing provider recovered possession of the rental unit. A stockholder of a cooperative housing association with a right of possession in a rental unit may exercise the rights of a natural person with a freehold interest under this subsection.

(e) A housing provider may recover possession of a rental unit where the housing provider has in good faith contracted in writing to sell the rental unit or the housing accommodation in which the unit is located for the immediate and personal use and occupancy by another person, so long as the housing provider has notified the tenant in writing of the tenant's right and opportunity to purchase as provided in Chapter 34 of this title. The housing provider shall serve on the tenant a 90-day notice to vacate in advance of the housing provider's action to recover possession of the rental unit. No person shall demand or receive rent for any rental unit which has been repossessed under this subsection during the 12-month period beginning on the date on which the rental unit was originally repossessed by the housing provider.

(f)(1) A housing provider may recover possession of a rental unit for the immediate purpose of making alterations or renovations to the rental unit which cannot safely or reasonably be accomplished while the rental unit is occupied, so long as the plans for the alterations or renovations have been previously filed with and approved by the Rent Administrator and the plans demonstrate that the proposed alterations or renovations cannot safely or reasonably be accomplished while the unit is occupied. The housing provider shall serve on the tenant a 120-day notice to vacate in advance of action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under the provisions of subchapter VII of this chapter.

(2) Immediately upon completion of the proposed alterations or renovations, the tenant shall have the absolute right to rent the rental unit.

(3) Where the renovations or alterations are necessary to bring the rental unit into substantial compliance with the housing regulations, the tenant may rent at the same rent and under the same obligations that were in effect at the time the tenant was dispossessed, if the renovations or alterations were not made necessary by the negligent or malicious conduct of the tenant.

(4) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(g)(1) A housing provider may recover possession of a rental unit for the purpose of immediately demolishing the housing accommodation in which the rental unit is located and replacing it with new construction, if a copy of the demolition permit has been filed with the Rent Administrator, and, if the requirements of subchapter VII of this chapter have been met. The housing provider shall serve on the tenant a 180-day notice to vacate in advance of action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under the provisions of subchapter VII of this chapter.

(2) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(h)(1) A housing provider may recover possession of a rental unit for the purpose of immediate, substantial rehabilitation of the housing accommodation if the requirements of § 42-3502.14 and subchapter VII of this chapter have been met. The housing provider shall serve on the tenant a 120-day notice to vacate in advance of his or her action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under subchapter VII of this chapter.

(2) Any tenant displaced from a rental housing accommodation in which the rental unit immediately upon the completion of

(3) Tenants displaced by actions under relocation assistance as set forth in subchapter eligibility criteria of that subchapter.

(i)(1) A housing provider may recover possession of discontinuing the housing use and occupancy

(A) The housing provider serves on the his or her action to recover possession, comply with and notify the tenant of the provisions of subchapter VII of this chapter

(B) The housing provider shall not cause a part, to be substantially rehabilitated from the date that the use is discontinued

(C) The housing provider shall not rent for a continuous 12-month period beginning under this section;

(D) The housing provider shall not rent rental housing;

(E) Upon resumption of the housing use at a greater rent than would have been paid not been discontinued;

(F) The housing provider shall, on a form the Rent Administrator a statement indicating about the housing accommodation, such as the discontinuance of use, and future plans

(G) If the housing provider desires to housing provider shall notify the Rent Administrator provisions of this paragraph have been satisfied

(H) The housing provider shall not demand the housing provider has repossessed beginning on the date the housing provider

(2) Tenants displaced by actions under relocation assistance as set forth in subchapter eligibility criteria of that subchapter.

(j) In any case where the housing provider housing accommodation to convert the rental unit to a cooperative, notice to vacate shall be given

(k) Notwithstanding any other provision tenant on any day when the National Weather Service temperature at the National Airport weather degrees centigrade within the next 24 hours

(k-1) Subsection (k) shall not apply:

(1) Where, in accordance with and as provided competent jurisdiction has determined that the rental unit or housing accommodation

(2) Where a court of competent jurisdiction actions or presence causes undue hardship tenants or immediate neighbors; or

(3) Where a court of competent jurisdiction has abandoned the premises.

(l) Expired.

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should have known that an illegal act was

the rental unit may recover possession of a to recover possession of the rental unit for company as a dwelling. The housing provider in advance of action to recover possession is subsection. No housing provider shall the housing provider has repossessed under pinning on the date the housing provider holder of a cooperative housing association exercise the rights of a natural person with a

of a rental unit where the housing provider rental unit or the housing accommodation in personal use and occupancy by another i the tenant in writing of the tenant's right 34 of this title. The housing provider shall dvance of the housing provider's action to all demand or receive rent for any rental ion during the 12-month period beginning lly repossessed by the housing provider. of a rental unit for the immediate purpose unit which cannot safely or reasonably be long as the plans for the alterations or roved by the Rent Administrator and the renovations cannot safely or reasonably be ing provider shall serve on the tenant a ecover possession of the rental unit. The tenant of the tenant's right to relocation this chapter.

ed alterations or renovations, the tenant nit.

necessary to bring the rental unit into ns, the tenant may rerent at the same in effect at the time the tenant was not made necessary by the negligent or

subsection shall be entitled to receive l of this chapter, if the tenants meet the

n of a rental unit for the purpose of in which the rental unit is located and emolition permit has been filed with the chapter VII of this chapter have been 180-day notice to vacate in advance of notice to vacate shall comply with and n assistance under the provisions of

subsection shall be entitled to receive of this chapter, if the tenants meet the

of a rental unit for the purpose of accommodation if the requirements of been met. The housing provider shall dvance of his or her action to recover comply with and notify the tenant of oter VII of this chapter.

(2) Any tenant displaced from a rental unit by the substantial rehabilitation of the housing accommodation in which the rental unit is located shall have a right to rerent the rental unit immediately upon the completion of the substantial rehabilitation.

(3) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(i)(1) A housing provider may recover possession of a rental unit for the immediate purpose of discontinuing the housing use and occupancy of the rental unit so long as:

(A) The housing provider serves on the tenant a 180-day notice to vacate in advance of his or her action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under the provisions of subchapter VII of this chapter;

(B) The housing provider shall not cause the housing accommodation, of which the unit is a part, to be substantially rehabilitated for a continuous 12-month period beginning from the date that the use is discontinued under this section;

(C) The housing provider shall not resume any housing or commercial use of the unit for a continuous 12-month period beginning from the date that the use is discontinued under this section;

(D) The housing provider shall not resume any housing use of the unit other than rental housing;

(E) Upon resumption of the housing use, the housing provider shall not rerent the unit at a greater rent than would have been permitted under this chapter had the housing use not been discontinued;

(F) The housing provider shall, on a form devised by the Rent Administrator, file with the Rent Administrator a statement including, but not limited to, general information about the housing accommodation, such as address and number of units, the reason for the discontinuance of use, and future plans for the property;

(G) If the housing provider desires to resume a rental housing use of the unit, the housing provider shall notify the Rent Administrator who shall determine whether the provisions of this paragraph have been satisfied; and

(H) The housing provider shall not demand or receive rent for any rental unit which the housing provider has repossessed under this subsection for a 12-month period beginning on the date the housing provider recovered possession of the rental unit.

(2) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(j) In any case where the housing provider seeks to recover possession of a rental unit or housing accommodation to convert the rental unit or housing accommodation to a condominium or cooperative, notice to vacate shall be given according to § 42-3402.06(c).

(k) Notwithstanding any other provision of this section, no housing provider shall evict a tenant on any day when the National Weather Service predicts at 8:00 a.m. that the temperature at the National Airport weather station will fall below 32 degrees fahrenheit or 0 degrees centigrade within the next 24 hours.

(k-1) Subsection (k) shall not apply:

(1) Where, in accordance with and as provided in subsection (c) of this section, a court of competent jurisdiction has determined that the tenant has performed an illegal act within the rental unit or housing accommodation;

(2) Where a court of competent jurisdiction has made a specific finding that the tenant's actions or presence causes undue hardship on the health, welfare, and safety of other tenants or immediate neighbors; or

(3) Where a court of competent jurisdiction has made a specific finding that the tenant has abandoned the premises.

(l) Expired.

(m) This section shall not apply to privately-owned rental housing or housing owned by the federal or District government with regard to drug-related evictions under subchapter I of Chapter 36 of this title.

(n)(1) If the occupancy of a tenant has been or will be terminated by a placard placed by the District government in accordance with section 103 of Title 14 of the District of Columbia Municipal Regulations for violations of Title 14 of the District of Columbia Municipal Regulations that threaten the life, health, or safety of the tenant, the tenancy shall not be deemed terminated until the unit has been offered for reoccupation to the tenant after the date that physical occupancy ceased.

(2) The Mayor shall maintain a registry of the persons, including their subsequent interim addresses, who were tenants at the time the building was placarded.

(3) At the time of the placarding, the Mayor shall provide a written notice to the tenants of the right to maintain their tenancy and the need to keep the Mayor informed of interim addresses. The notice shall contain the address and telephone number of the office maintaining the registry.

(4) Any notice required under this subchapter shall be effective when sent to the tenant at the address maintained in the registry.

(July 17, 1985, D.C. Law 6-10, § 501, 32 DCR 3089; Feb. 24, 1987, D.C. Law 6-192, § 13(g), 33 DCR 7836; June 13, 1990, D.C. Law 8-139, § 11, 37 DCR 2645; May 14, 1993, D.C. Law 10-2, § 2(a), 40 DCR 2250; Aug. 26, 1994, D.C. Law 10-164, § 2, 41 DCR 4889; Apr. 29, 1998, D.C. Law 12-86, title IX, § 901, 45 DCR 1172; D.C. Law 13-172, § 1312, 47 DCR 6308; Apr. 27, 2001, D.C. Law 13-281, § 301, 48 DCR 1888; Oct. 19, 2002, D.C. Law 14-213, §§ 31, 32(a), 49 DCR 3140.)

Historical and Statutory Notes

Effect of Amendments

D.C. Law 13-281 added subsec. (n).

D.C. Law 14-213, in subsec. (n), validated a previously made technical correction.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 1312 of the Fiscal Year 2001 Budget Support

Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative History of Laws

For Law 13-281, see notes following § 42-3131.05.

For Law 14-213, see notes following § 42-1102.

United States Supreme Court

Drugs

Public housing, termination of tenant's lease for drug-related criminal activity of household members and guests, lack of knowledge of activity, Department of

Housing and Urban Development v. Rucker, 2002, 122 S.Ct. 1230, 535 U.S. 125, 152 L.Ed.2d 258, on remand 293 F.3d 1111, on remand 304 F.3d 904.

Notes of Decisions

Review 16

3. Persons protected by statute

Daughter of deceased tenant would be granted intervention as a matter of right in Housing Authority's in rem action to recover possession of housing unit, as daughter had continued to live in unit since tenant's death and had paid rent and thus had an interest in the transaction which was the subject matter of the suit, eviction of daughter would impede her ability to protect that interest, and there were no other parties to the action which could protect daughter's interest. McPherson v. District of Columbia Housing Authority, 2003, 833 A.2d 991. Federal Courts ⇨ 1052.1

Occupant timely filed a motion to intervene as of right in bank's action for possession of a foreclosed house, where occupant filed motion three months after the complaint for possession was brought,

occupant twice visited the court and spoke with the bank's attorney after learning of the suit, and occupant would have a defense to the action if she was a "tenant" occupying a "rental unit" within the meaning of the Rental Housing Act (RHA). Robinson v. First Nat. Bank of Chicago, 2001, 765 A.2d 543. Federal Courts ⇨ 1052.1; Mortgages ⇨ 544(1)

5. Notice to correct or vacate

Notice to quit, which inaccurately stated that month-to-month rental housing tenants were required to cure their lease violations by August 26, which was 30 days after the notice to quit was received, when in fact the period within which to cure or vacate expired on September 1, which was the first day of the rental period immediately following the lapse of the 30-day notice period, was valid, where landlord did not commence an action for possession before September 1, and tenants did not pay their back rent until September 20; even if

the notice had been accurate, tenants would have corrected the lease violation in time. Gri v. Newsome, 2001, 780 A.2d 1119. Landlord & Tenant ⇨ 297(2)

Service of a notice to quit is, unless waived condition precedent to a landlord's suit for possession of rental housing. Grimes v. Newsome, 2001, 780 A.2d 1119. Landlord And Tenant ⇨ 29

The cure period for a failure to pay rent rental housing on time will expire, not 30 d after the notice to quit is received, but rather the first day of the rental period immediately following the lapse of the 30-day notice period which commences on receipt of the notice. Gri v. Newsome, 2001, 780 A.2d 1119. Landlord & Tenant ⇨ 297(5)

The allegedly inaccurate Spanish translation of the notice to quit did not render the notice to quit invalid, where the rental housing tenants did speak Spanish and therefore did not rely on Spanish translation. Grimes v. Newsome, 2001, 780 A.2d 1119. Landlord And Tenant ⇨ 29

Notice to quit rental housing, which stated tenants had violated their obligations under lease by their "[n]onpayment of rent \$2,400 [and] consistent late payments of rent," satisfies the requirement of specifying what actions need to be taken by tenants to avoid an eviction. Grimes v. Newsome, 2001, 780 A.2d 1119. Landlord And Tenant ⇨ 297(2)

11. Wrongful eviction

Fact question existed as to whether there was a subtenancy relationship between occupants tenant, thus precluding summary judgment in occupants' wrongful eviction action against property owner and District. Wilson v. Hart, 2003, A.2d 511. Federal Courts ⇨ 1055

14. Federal preemption

Automatic stay arising from bankruptcy petition by landlord's shareholder applied to tenant's against shareholder and landlord for wrongful eviction and conversion of tenant's personal property even though the property at issue was not part of bankruptcy estate. Jones v. Cain, 2002, 804 A.2d 322. Bankruptcy ⇨ 2398

Pro se litigant's failure to inform trial court of opponent's bankruptcy petition did not provide equitable basis for exception to automatic stay for suit arising out of landlord-tenant dispute since nothing indicated that the litigant attempted to exploit the stay to obtain an unfair advantage.

§ 42-3505.02. Retaliatory action.

Note

5. Presumptions and burden of proof

Attorney examiner's misallocation of burden of proof to tenant in rejecting retaliation claim which examiner stated "the evidence, when viewed in its totality, does not support by the weight clear and convincing evidence, the [tenant's] allegations of retaliatory actions," did not require

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possession, landlord was re-
t to interrogatories concerning
its and landlord's responses
tenancy, as such would relate
liatory eviction; assertion that
ment for possession precluded
ing counterclaim for overpay-
ed on earlier housing code
t substantial justification for
r such interrogatories. Civil
7(a)(4). *Habib v. Thurston*,
Pretrial Procedure $\Rightarrow$ 301.

not abuse its discretion or
ie process rights in denying
in counsel and contest land-
possession based on 90-day
which was tantamount to re-
ice. U.S.C.A. Const.Amends.
id Tenant Rule 12. *Wahl v.*
A.2d 477. Constitutional
leral Courts $\Rightarrow$ 1052.1

quested continuance of land-
action, trial court did not
n in denying continuance
fficient prior notice of hear-
to consult with counsel if
S.C.A. Const.Amends. 5, 14;
it Rule 12. *Wahl v. Watkins*,
Federal Courts $\Rightarrow$ 1052.1

tion

inion by officials of Depart-
d Urban Development gov-
ceptance of occupied con-
after foreclosure should be
pt state law did not consti-
ds for preemption of Dis-
aw precluding eviction of
usal to sign written HUD
1, § 45-1561(a); National
, as amended, 12 U.S.C.A.
Pierce, 1985, 622 F.Supp.
9

Columbia law, lessor was
eking damages under the
ial lease upon the termi-
nonpayment of rent; the
easement interest did not
dering the damages provi-
erable or limit the unex-
lamages were available to
period. D.C.Code 1981,
b). *Lennon v. U.S. The-*
990, 920 F.2d 996, 287
andlord And Tenant $\Rightarrow$

RENTAL HOUSING GENERALLY

§ 42-3505.02

§ 42-3505.02. Retaliatory action.

(a) No housing provider shall take any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter, by any rule or order issued pursuant to this chapter, or by any other provision of law. Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.

(b) In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to rebut this presumption, if within the 6 months preceding the housing provider's action, the tenant:

(1) Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;

(2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;

(3) Legally withheld all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;

(4) Organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;

(5) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or

(6) Brought legal action against the housing provider.

(July 17, 1985, D.C. Law 6-10, § 502, 32 DCR 3089.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 45-2552.

Legislative History of Laws

For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Cross References

Section References

This section is referred to in § 42-3502.05.

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RENTAL HOUSING GENERALLY

§ 42-3505.03

A suit for retaliation may be brought as an affirmative action, and is not reserved exclusively for affirmative defenses. *Carlton v. Boucher*, 118 WLR 2053 (Super. Ct. 1990).

A lawsuit initiated by a landlord in retaliation for a tenant's exercise of his rights certainly falls under the scope of this section. *Carlton v. Boucher*, 118 WLR 2053 (Super. Ct. 1990).

4. Jurisdiction

The Superior Court has jurisdiction along with the Rental Housing Commission and Rent Administrator to decide retaliation issues. *Carlton v. Boucher*, 118 WLR 2053 (Super. Ct. 1990).

A commercial tenant may not raise the defense of retaliatory eviction to a landlord's action for possession of the premises. D.C.Code 1981, §§ 45-2503(15, 33, 36), 45-2552. *Ontell v. Capitol Hill E.W. Ltd. Partnership*, 1987, 527 A.2d 1292. Landlord And Tenant ⇨ 284(1)

5. Presumptions and burden of proof

Landlord had burden of proving nonretaliatory purpose behind tenants' eviction by clear and

convincing evidence, where tenants were eligible for benefit of statutory presumption that eviction was retaliatory. D.C.Code 1981, § 45-2552. *Youssef v. United Management Co., Inc.*, 1996, 683 A.2d 152. Landlord And Tenant ⇨ 180(3)

If a tenant alleges acts which fall under the retaliatory eviction statute, the statute by definition applies, and landlord is presumed to have taken an "action not otherwise permitted by law" unless it can meet its burden under the statute. D.C.Code 1981, §§ 45-2552, 45-2552(b)(1). *De Szunyogh v. William C. Smith & Co., Inc.*, 1992, 604 A.2d 1. Landlord And Tenant ⇨ 180(3)

Presumption of retaliatory action by landlord in seeking possession of tenant's unit based on 90-day notice to vacate did not arise, even if tenant's remarks about her actions to force former owner to comply with law before selling to landlord could reasonably be interpreted as defense to eviction by new owner, where new owner took action authorized by law. D.C.Code 1981, §§ 45-1561(d), 45-1562. *Wahl v. Watkins*, 1985, 491 A.2d 477. Landlord And Tenant ⇨ 285(4)

§ 42-3505.03. Conciliation and arbitration service.

(a) There is established a conciliation and arbitration service ("service") within the Division.

(b) The service shall provide a voluntary, nonadversarial forum for the resolution of disputes arising between housing providers and tenants in the District.

(c) The staff of the service shall be designated by the Rent Administrator and shall be persons familiar with the problems of the law relating to housing-provider and tenant relations and with knowledge of conciliation and arbitration practices.

(d) Either a housing provider or a tenant may initiate a proceeding before the service.

(e) No person shall be compelled to attend a session of the service or participate in any proceeding before its staff. The results of any proceeding shall not be binding upon any party, except (1) to the extent provided in § 42-3505.04, or (2) with respect to a conciliation agreement, to the extent that a party to the proceeding agrees to be bound by the conciliation agreement. No evidence pertaining to a conciliation or arbitration proceeding shall be admissible in any judicial proceeding under other provisions of law relating to housing-provider and tenant disputes.

(July 17, 1985, D.C. Law 6-10, § 503, 32 DCR 3089.)

§ 42-3505.03

REAL PROPERTY

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 45-2553.

Legislative History of Laws

For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Cross References

Section References

This section is referred to in § 42-3505.04.

§ 42-3505.04. Arbitration.

(a) By mutual consent, the housing provider and tenant may submit for arbitration any dispute not satisfactorily resolved under § 42-3505.03.

(b) A request for arbitration shall be in writing.

(c) The Rent Administrator shall designate 3 members of the Division's staff, other than those who heard the dispute under § 42-3505.03, to serve as a panel of arbitrators.

(d) The arbitration panel shall issue a written recommendation to resolve the dispute within 10 days of the request.

(e) Agreements entered into between the housing provider and tenant under the panel's recommendation shall be approved by the Rent Administrator and shall be binding upon the parties.

(July 17, 1985, D.C. Law 6-10, § 504, 32 DCR 3089.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 45-2554.

Legislative History of Laws

For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Cross References

Section References

This section is referred to in § 42-3505.03.

Library References

Key Numbers

Arbitration Ⓒ1 to 89.

Westlaw Key Number Searches: 33k1 to 33k89.

Encyclopedias

C.J.S. Arbitration §§ 2 to 188.

C.J.S. Architects § 25.

§ 42-3505.05. Prohibition of discrimination against elderly tenants or families with children.

(a) It is unlawful for a housing provider to discriminate against families receiving or eligible to receive Tenant Assistance Program assistance, elderly tenants, or families with children when renting housing accommodations.

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(b) Any protections provided in § 42 of law.

(c) Allegations of violation or eligible to receive Tenant Assistance Program assistance by families with children. Department of Consumer and Regulatory Affairs. Complainant party with a violation.

(July 17, 1985, D.C. Law 6-10, § 504, 32 DCR 3089; Dec. 10, 1987, D.C. Law 11-11, § 504, 34 DCR 5304.)

Prior Codifications

1981 Ed., § 45-2555.

Legislative History of Laws

For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Discriminatory practices in real estate.

Key Numbers

Civil Rights Ⓒ104.1, 106, 131

Westlaw Key Number Searches: 78k106; 78k131.

SUBCHAPTER V HOUSING

§ 42-3506.01. Conversion.

Notwithstanding any other provision of law, the Mayor shall not permit the conversion of a residential unit into a hotel, motel, or other accommodation.

(July 17, 1985, D.C. Law 6-10, § 505, 32 DCR 3089.)

Prior Codifications

1981 Ed., § 45-2561.

Legislative History of Laws

For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

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(b) Any protections provided by subsection (a) of this section and any penalties provided in § 42-3509.01 shall be in addition to any other provision of law.

(c) Allegations of violations of this section that are made by families receiving or eligible to receive Tenant Assistance Program assistance, by elderly tenants, or by families with children shall be promptly investigated and handled by the Department of Consumer and Regulatory Affairs, which shall provide the complaining party with a written report upon the conclusion of the investigation.

(July 17, 1985, D.C. Law 6-10, § 505, 32 DCR 3089; Oct. 2, 1987, D.C. Law 7-30, § 4, 34 DCR 5304; Dec. 10, 1987, D.C. Law 7-48, § 3, 34 DCR 6851.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 45-2555.

For legislative history of D.C. Law 7-30, see Historical and Statutory Notes following § 42-3502.01.

Legislative History of Laws

For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

For legislative history of D.C. Law 7-48, see Historical and Statutory Notes following § 42-3502.02.

Cross References

Discriminatory practices in real estate transactions, see § 2-1402.21.

Library References

Key Numbers

Civil Rights § 104.1, 106, 131.

Westlaw Key Number Searches: 78k104.1; 78k106; 78k131.

Encyclopedias

C.J.S. Civil Rights §§ 18, 20, 23 to 24, 74, 85, 87.

SUBCHAPTER VI. CONVERSION OR DEMOLITION OF RENTAL HOUSING FOR HOTELS, MOTELS, OR INNS.

§ 42-3506.01. Conversion.

Notwithstanding any other provision of law, no person shall convert and the Mayor shall not permit the conversion of any housing accommodation or rental unit into a hotel, motel, inn, or other transient residential occupancy unit or accommodation.

(July 17, 1985, D.C. Law 6-10, § 601, 32 DCR 3089.)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 45-2561.

Legislative History of Laws

For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Miscellaneous Notes

Termination of Law 6-10: Section 907 of D.C. Law 6-10, as amended by § 2(d) of D.C. Law 8-48 and § 818 of D.C. Law 11-52, provided that all subchapters of the act, except III and V, shall terminate on December 31, 2000.

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Rafael J. Williams**Office of the Secretary****DCMR HOME****DOCUMENT**[Previous Chapter](#)[Next Chapter](#)**CONTENTS**[Synchronize Contents](#)**ONLINE SERVICE**[REQUESTS](#)

Title 14 - Housing

Chapter 42 Rent, Base Rent, Rent Ceilings and Adjustments

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4200 GENERAL PROVISIONS

4200.1 The rent ceiling establishes the maximum amount of rent that a housing provider may legally demand or receive for a rental unit covered by the Rent Stabilization Program of the Act.

4200.2 Each rental unit covered by the Rent Stabilization Program shall have an initial rent ceiling established pursuant to § 206(a) of the Act and § 4201; provided, that no rent ceiling shall be established for any rental unit exempt from the program pursuant to § 205(a) of the Act.

4200.3 If a rental unit has a rent ceiling, the rent for that unit may legally be equal to or less than the rent ceiling, but the rent shall not be more than the rent ceiling.

4200.4 The Act regulates rent ceilings by determining which rental units shall have a rent ceiling, and by setting the terms and conditions for every increase or decrease in the rent ceiling of a rental unit.

4200.5 A rent ceiling adjustment is any increase or decrease in a rent ceiling that is authorized by the Act, and taken and perfected by the housing provider in accordance with § 4204.

4200.6 The Act regulates the rent for each rental unit under the Rent Stabilization Program by requiring that the rent shall always be less than, or equal to, the rent ceiling, and by setting terms and conditions for every increase or decrease in rent for a rental unit covered by the Act.

4200.7 A rent adjustment is any increase or decrease in rent required or permitted by the Act and this chapter.

4200.8 An increase in the rent for a rental unit shall be authorized only by an increase in the rent ceiling taken and perfected pursuant to § 4204 and under the following conditions:

- (a) At the election of the housing provider, pursuant to §§ 4206 and 4207;
- (b) Under an order of the Rent Administrator issued pursuant to §§ 4209, 4210, 4211 or 4212;
- (c) Under a voluntary agreement approved by the Rent Administrator

pursuant to § 4213; or

(d) Under any prior rent control law and the regulations, if any, promulgated under that prior law.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the Rental Housing Act of 1985, D.C. Law 6-10, effective July 17, 1985 (codified at D. C. Official Code §§ 42-3501.01 *et seq.* (2001).

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1384 (March 7, 1986); as amended by Notice of Final Rulemaking published at 33 DCR 2656, 2662-2663 (May 2, 1986).

4201 BASE RENT: APRIL 30, 1985 RENT CEILINGS

4201.1 The “base rent” for each rental unit covered by the Rent Stabilization Program on the effective date of the Act shall be the rent ceiling for the unit as of April 30, 1985, pursuant to § 103(4) of the Act.

4201.2 Except as provided in §§ 4201.3 and 4201.4, the base rent for each rental unit shall be established by determining the actual rent charged for the unit on September 1, 1983, adjusted to reflect the amount of each rent ceiling increase properly taken and perfected prior to September 1, 1983, under the Rental Housing Act of 1980 and regulations promulgated thereunder; any prior rent control law and the regulations, if any, promulgated thereunder; or pursuant to the order of a court of competent jurisdiction; provided, that the adjustment called for in this paragraph shall not include any portion of a prior rent ceiling increase which was the basis for a rent increase already included in the actual rent charged on September 1, 1983.

4201.3 If a rental unit was vacant on September 1, 1983, or no rent was actually charged on that date, the base rent of that unit shall be established by applying the adjustments called for in § 4201.2 to the rent actually charged for the unit on the first day of the month immediately preceding September 1, 1983, during which rent was charged.

4201.4 If a rental unit that is subject to the Rent Stabilization Program of the Rental Housing Act of 1980 was first occupied as a rental unit after September 1, 1983 but before May 1, 1985, the base rent for that unit shall be the rent charged or chargeable for the unit during the initial leasing period when the unit was occupied after September 1, 1983.

4201.5 The rent ceiling for each rental unit covered by the Rent Stabilization Program of the Act on the effective date of the Act shall be determined by adding to the base rent for the unit established under §§ 4201.2, 4201.3 or 4201.4 the amount of each rent ceiling adjustment taken and perfected or ordered to be taken after September 1, 1983 but before May 1, 1985, pursuant to any of the following:

- (a) A judicial decision or order of any court of competent jurisdiction;
- (b) An administrative decision of the Rent Administrator or the Commission (including decisions of the Rental Accommodations Commissions) issued in adjudication of a petition to adjust the rent ceiling under §§ 211, 212, 213, 215, or 217 of the Rental Housing Act of 1980 or any prior rent control law;
- (c) A rent ceiling adjustment of general applicability authorized by § 207(b) of the Rental Housing Act of 1980;
- (d) A rent ceiling adjustment for a vacant rental unit authorized by § 214 of the Rental Housing Act of 1980;
- (e) A rent ceiling adjustment established by a voluntary agreement approved by the Rent Administrator under § 216 of the Rental Housing Act of 1980.

4201.6 Regardless of the date of initial registration of a rental unit under the Act, no rent ceiling adjustment taken and perfected or ordered to be taken after April 30, 1985, shall be applied as an adjustment under § 4201.5 for the purpose of establishing the rent ceiling for the unit on April 30, 1985.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1384 (March 7, 1986); as amended by Notice of Final Rulemaking published at 33 DCR 2656, 2663-2664 (May 2, 1986).

4202 RENT CEILING UPON TERMINATION OF EXCLUSION

4202.1 A rent ceiling shall be established for each rental unit excluded on April 30, 1985 from coverage under the Act by § 205(e) upon the occurrence after that date of any event that causes the unit to lose its § 205(e) exclusion and come under the provisions of the Rent Stabilization Program.

4202.2 The rent ceiling for a rental unit described in § 4202.1 shall be the lesser of the following:

- (a) The rent ceiling for that unit authorized under the Act or prior rent control law during the month immediately preceding the date upon which the unit became excluded from coverage under the Act or prior rent control law increased by the amount of each rent ceiling adjustment of general applicability authorized by § 206(b) of the Act or prior rent control law; or

- (b) The rent for that rental unit during the first month of the rent period following the event which caused the rental unit to lose its § 205(e) exemption, as established by the housing provider.

4202.3 The rent ceiling for a rental unit described in § 4202.1 shall be

established on the first to occur of.

(a) The date upon which the housing provider first complies with the registration requirements of § 4101.3; or

(b) The date thirty (30) days following the event that causes the unit to lose its

§ 205(e) exclusion.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1385 (March 7, 1986).

4203 RENT CEILING UPON TERMINATION OF EXEMPTION AND FOR NEWLY COVERED UNITS

4203.1 A rent ceiling shall be established for each rental unit exempt on April 30, 1985 from the Rent Stabilization Program by § 205(a) of the Act upon the occurrence after that date of any event that causes that rental unit to lose its exempt status under §§ 4106 or 4107.

4203.2 For each rental unit in a housing accommodation exempt from the Rent Stabilization Program pursuant to a building improvement plan of the Apartment Improvement Program under § 205(a)(7) of the Act, the rent ceiling, upon termination of that exemption, shall be the rent established in the schedule of rents authorized by the building improvement plan.

4203.3 For each rental unit in a newly constructed housing accommodation for which the building permit was issued after December 31, 1975, and the construction of which required the demolition of a housing accommodation covered by the Rent Stabilization Program of the Act or prior rent control law, the rent ceiling shall be the rent during the first month of residential rental occupancy, as established by the housing provider.

4203.4 For each condominium rental unit being returned to the rental market after April 30, 1985, and for each cooperative rental unit exempt on that date by § 205(a)(5) of the Act, the rent ceiling upon termination of the exemption shall be the rent ceiling authorized by the Act or prior rent control law during the month immediately preceding the date when the unit became exempt, increased by the amount of each rent ceiling adjustment of general applicability authorized during the exemption period by § 206(b) of the Act or by prior rent control law.

4203.5 Notwithstanding the language of § 4203.4, a housing provider may, in addition, petition the Rent Administrator for a rent ceiling increase to recover the cost of capital improvements made to the unit during the exemption period, and the Rent Administrator shall consider and dispose of such petitions pursuant to § 4210.

4203.6 For each rental unit exempt under § 205(a), of the Act, excluding subsections (2), (5) and (7), the rent ceiling for that unit, upon termination of the exemption, shall be the average rent for the unit during the last six (6) months of the exemption period increased by five percent (5%).

4203.7 The rent ceiling for a rental unit established under § 4203 shall be established on the first to occur of:

(a) The date upon which the housing provider first complies with the registration requirements of § 4101.3; or

(b) The date thirty (30) days following the event which causes the unit to lose its § 205(a) exemption.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1385-1386 (March 7, 1986); as amended by Notice of Final Rulemaking published at 33 DCR 2656, 2664 (May 2, 1986).

4204 ADJUSTMENTS IN RENT CEILINGS GENERALLY

4204.1 The rent ceiling for a rental unit established by §§ 4201, 4202 or 4203 may be adjusted from time to time pursuant to the provisions of the Rent Stabilization Program.

4204.2 The rent ceiling may be adjusted by the housing provider without the prior approval of the Rent Administrator as follows:

(a) By adjustment of general applicability authorized by § 206(b) of the Act and implemented pursuant to § 4206; or

(b) By vacancy adjustment authorized by § 213 of the Act and implemented pursuant to § 4207.

4204.3 The rent ceiling may be adjusted by order of the Rent Administrator upon petition filed by the housing provider as to any of the following:

(a) For capital improvement adjustments authorized by § 210 of the Act and petitioned for pursuant to § 4210.

(b) For adjustments of related services and facilities authorized by § 211 of the Act and petitioned for pursuant to § 4211

(c) For hardship adjustments authorized by §§ 206(c) and 212 of the Act and petitioned for pursuant to § 4209.

(d) For substantial rehabilitation adjustments authorized by § 214 of the Act and petitioned for pursuant to § 4212.

4204.4 The rent ceiling may be adjusted pursuant to a seventy percent (70%) Voluntary Agreement authorized by § 215 of the Act, and approved by the Rent Administrator, and filed pursuant to § 4213.

4204.5 The rent ceiling may be adjusted by order of the Rent Administrator, upon petition filed by one (1) or more tenants under § 216 of the Act, for any of the following reasons:

(a) To challenge or contest any base rent or rent ceiling established pursuant to §§ 4201, 4202 or 4203;

(b) To challenge or contest any discretionary rent ceiling adjustment implemented by a housing provider pursuant to § 4204.2;

(c) To challenge or contest any voluntary rent ceiling adjustment sought or implemented pursuant to § 4204.4; or

(d) To seek relief from or compensation for any unlawful or unapproved substantial reduction in related services of facilities, including a substantial reduction for which the housing provider has offered inadequate or no compensatory rent ceiling decrease.

4204.6 The rent ceiling may be adjusted by order of the Commission, pursuant to § 202(a)(2) of the Act.

4204.7 The rent ceiling may be adjusted by or pursuant to an order of any court of competent jurisdiction.

4204.8 In calculating a rent ceiling adjustment, any fraction of a dollar of forty-nine cents (49¢) or less shall be rounded down to the nearest dollar, and any fraction of fifty cents (50¢) or more shall be rounded up to the nearest dollar.

4204.9 Except as provided in § 4204.10, any rent ceiling adjustment authorized by the Act and this chapter shall be taken and perfected within the time provided in this chapter, and shall be considered taken and perfected only if the housing provider has filed with the Rent Administrator a properly executed amended Registration/Claim of Exemption Form as required by § 4103.1, and met the notice requirements of § 4101.6.

4204.10 Notwithstanding § 4204.9, a housing provider shall take and perfect a rent ceiling increase authorized by § 206(b) of the Act (an adjustment of general applicability) by filing with the Rent Administrator and serving on the affected tenant or tenants in the manner prescribed in § 4101.6 a Certificate of Election of Adjustment of General Applicability, which shall:

(a) Identify each rental unit to which the election applies;

(b) Set forth the amount of the adjustment elected to be taken, and the prior and new rent ceiling for each unit; and

(c) Be filed and served within thirty (30) days following the date when the housing provider is first eligible to take the adjustment.

4204.11 A housing provider may take and perfect an upward rent ceiling adjustment pursuant to §§ 4204.9 and 4204.10 without simultaneously implementing a rent increase to the new rent ceiling, and the election not to implement a rent increase to the new ceiling shall not constitute a waiver or forfeiture of the housing provider's right to implement the full rent increase at a later time.

4204.12 Where a housing provider is required to take and perfect a downward rent ceiling adjustment, the housing provider shall simultaneously implement a rent reduction to an amount equal to, or less than, the new ceiling.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1386-88 (March 7, 1986); as amended by Notice of Final Rulemaking published at 33 DCR 2656, 2664 (May 2, 1986).

4205 RENT INCREASES AND DECREASES

4205.1 If the rent for a rental unit on or after the effective date of the Act exceeds the authorized rent ceiling for the rental unit, the housing provider shall promptly implement a rent reduction to an amount equal to, or less than, the authorized rent ceiling

4205.2 If the rent for a rental unit on or after the effective date of the Act is less than the authorized rent ceiling for the rental unit, the housing provider, unless otherwise prohibited by the Act, may implement a rent increase to an amount equal to, or less than, the authorized rent ceiling.

4205.3 A housing provider may charge as rent for a rental unit an amount less than the authorized rent ceiling without waiving or forfeiting the right to later implement a rent increase in compliance with § 4205.5 to an amount equal to, or less than, the authorized rent ceiling; provided, that the housing provider has first taken and perfected all prior rent ceiling adjustments which establish the rent ceiling in accordance with §§ 4204.9 and 4204.10.

4205.4 A housing provider shall implement a rent adjustment by taking the following actions, and no rent adjustment shall be deemed properly implemented unless the following actions have been taken:

(a) The housing provider shall provide the tenant of the rental unit not less than thirty (30) days written notice, pursuant to § 904 of the Act, in which the following items shall be included:

- (1) The amount of the rent adjustment;
- (2) The amount of the adjusted rent;
- (3) The date upon which the adjusted rent shall be due; and

(4) The date and authorization for the rent ceiling adjustment taken and perfected pursuant to § 4204.9;

(b) The housing provider shall certify to the tenant, with the notice of rent adjustment, that the rental unit and the common elements of the housing accommodations are in substantial compliance with the housing regulations or, if not in substantial compliance, that any noncompliance is the result of tenant neglect or misconduct;

(c) The housing provider shall advise the tenant with the notice of rent adjustment by petition filed with the Rent Administrator; and

(d) The housing provider shall simultaneously file with the Rent Administrator a sample copy of the notice of rent adjustment along with an affidavit containing the names, unit numbers, date and type of service provided, certifying that the notice was served on all affected tenants in the housing accommodation.

4205.5 Notwithstanding § 4205.4, a housing provider shall not implement a rent adjustment for a rental unit unless all of the following conditions are met:

(a) The rental unit and the common elements of the housing accommodation are in substantial compliance with the D.C. housing regulations, or any substantial noncompliance is the result of tenant neglect or misconduct;

(b) The housing provider has met the registration requirements of § 4102 with respect to the rental unit; and

(c) At least one hundred eighty (180) days shall have elapsed since the date of implementation of any prior rent increase.

4205.6 The rent that a housing provider may charge for a unit may be decreased by order of the Rent Administrator without at the same time reducing the rent ceiling, upon adjudication of a petition filed by one (1) or more tenants under § 216 of the Act for any of the following reasons:

(a) To seek relief from, or compensation for, any unlawful rent increase; or

(b) To seek relief from, or compensation for, the existence of prolonged housing code violations.

4205.7 Unless otherwise ordered by the Rent Administrator, each adjustment in rent charged may not exceed the amount of one (1) rent ceiling increase perfected but not implemented by the housing provider.

4205.8 If the difference between the rent ceiling and the rent charged for the rental unit consists of all or a portion of one (1) previously unimplemented rent ceiling adjustment, the housing provider may elect to implement all or a portion

of the difference.

4205.9 Nothing in the Act or this chapter shall be construed to prevent a housing provider, at the housing provider's election, from delaying for any period of time the implementation of any rent ceiling adjustment or from implementing less than the full amount of any rent ceiling adjustment.

4205.10 Any rent ceiling adjustment, or portion thereof, which remains unimplemented shall not expire and shall not be deemed forfeited or otherwise diminished.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1388-89 (March 7, 1986); as amended by: Notice of Final Rulemaking published at 33 DCR 2656, 2665 (May 2, 1986); Notice of Final Rulemaking published at 35 DCR 2941 (April 22, 1988); and Notice of Final Rulemaking published at 45 DCR 684, 688 (February 6, 1998).

4206 RENT CEILINGS ADJUSTMENTS OF GENERAL APPLICABILITY

4206.1 A rent ceiling adjustment of general applicability, authorized by § 206(b) of the Act, is an increase in the rent ceiling for a previously registered rental unit that may be taken and perfected at the election of the housing provider.

4206.2 The amount of increase in the rent ceiling that a housing provider may take and perfect under § 206(b) of the Act shall be the lesser of one of the following:

(a) That percent of the previously authorized rent ceiling for the rental unit that is equal to the percent of increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Washington, D.C. Standard Metropolitan Statistical Area (SMSA) during the previous calendar year as certified by the Commission pursuant to § 202(a)(3) of the Act; or

(b) Ten percent (10%) of the previously authorized rent ceiling for the rental unit.

4206.3 A housing provider may take and perfect a rent ceiling adjustment of general applicability only once in any twelve (12) month period, and a housing provider who elects to perfect a rent ceiling adjustment for a rental unit under § 206(b) of the Act shall not be eligible to take and perfect another such adjustment during the twelve (12) month period immediately following the date of perfection of the prior adjustment of general applicability.

4206.4 A housing provider who so elects shall take and perfect a rent ceiling adjustment of general applicability in the manner set forth in § 4204.10, and the date of perfection shall be the date on which the housing provider satisfies the notice requirements of

§ 4101.6.

4206.5 Where a housing provider increases the rent for a rental unit to an amount equal to, or less than, the rent ceiling adjustment permitted by § 4206.1, the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5, and the notices required by §§ 4101.6 and 4205.4(a) may be issued simultaneously to the affected tenant on a form of notice approved by the Rent Administrator.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1389-90 (March 7, 1986); as amended by Notice of Final Rulemaking published at 33 DCR 2656, 2665 (May 2, 1986).

4207 VACANCY RENT CEILING ADJUSTMENTS

4207.1 A vacancy rent ceiling adjustment, authorized by § 213(a) of the Act, is an increase in the rent ceiling for a previously registered rental unit that may be taken and perfected by a housing provider for a rental unit that became vacant under the conditions set forth in § 213(a) of the Act, but subject to the limitation of § 4207.3.

4207.2 The amount of a rent ceiling increase that a housing provider may take and perfect under § 213(a) of the Act shall be one of the following:

(a) Twelve percent (12%) of the previously authorized rent ceiling for the unit; provided, that no other twelve percent (12%) vacancy rent ceiling adjustment has been taken and perfected for the rental unit under this subchapter within the immediately preceding twelve (12) month period; or

(b) The amount required to increase the rent ceiling for the rental unit to equal the rent ceiling of a previously registered, substantially identical rental unit in the same housing accommodation as specified in § 4207.4.

4207.3 Notwithstanding § 4207.1, a housing provider shall not take and perfect a rent ceiling adjustment authorized by § 213(a) of the Act (a vacancy adjustment) within the twelve (12) month period following the date of perfection of any rent ceiling adjustment for the rental unit under § 212 of the Act.

4207.4 For the purposes of § 4207.2(b), a “substantially identical rental unit” is a rental unit that meets the following requirements:

(a) Is subject to the Rent Stabilization Program of the Act (is not exempt under § 205(a) or excluded under § 205(e)),

(b) Has essentially the same floor plan, square footage, comparable amenities and equipment, comparable location with respect to exposure and height (if exposure and height have previously determined rent), and is in

comparable physical condition as the rental unit whose rent ceiling is being adjusted; and

(c) Is located in the same building or in a similar building within the same housing accommodation or multi-building housing complex.

4207.5 A housing provider who so elects shall take and perfect a vacancy rent ceiling adjustment in the manner set forth in § 4204.10, and the date of perfection shall be the date on which the housing provider satisfies the notice requirements of § 4101.6.

4207.6 Where a housing provider increases the rent for a rental unit to an amount equal to or less than the rent ceiling adjustment permitted by § 4207.1, the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5, and the notices required by §§ 4101.6 and 4205.4(a) may be issued simultaneously to the affected tenant on a form of notice approved by the Rent Administrator.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1390 (March 7, 1986), as amended by Notice of Final Rulemaking published at 33 DCR 2656, 2665 (May 2, 1986).

4208 RENT CEILING ADJUSTMENTS BY PETITION

4208.1 The rent ceiling for a rental unit shall not be adjusted under § 210 (capital improvement), § 211 (services and facilities), § 212 (hardship), § 214 (substantial rehabilitation), or § 215 (voluntary agreement) of the Act without the prior written approval of the Rent Administrator.

4208.2 A housing provider or group of tenants who seek a rent ceiling adjustment under any section of the Act referenced in § 4208.1 shall file a petition for rent ceiling adjustment with the Rent Administrator pursuant to § 3901.

4208.3 The Rent Administrator shall administratively consider and dispose of each petition for a rent ceiling adjustment pursuant to § 216 of the Act and chapters 39 and 40.

4208.4 The Rent Administrator shall, by written order served on the housing provider and affected tenants, grant in whole or in part or dismiss each petition for a rent ceiling adjustment.

4208.5 A housing provider may take and perfect a rent ceiling adjustment pursuant to written order of the Rent Administrator in the manner set forth in § 4204.9 and the date of perfection of the rent ceiling adjustment shall be the date on which the housing provider satisfies the notice requirements of § 4101.6.

4208.6 Where a housing provider increases the rent for a rental unit to an

amount equal to, or less than, the rent ceiling adjustments permitted by § 4208.1, the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5, and the notices required by §§ 4101.6 and 4205.4(a) may be issued simultaneously to the affected tenant on a form of notice approved by the Rent Administrator.

4208.7 A housing provider or group of tenants may in one (1) petition request a rent ceiling adjustment for more than one (1) or for all rental units in a housing accommodation; and, with respect to a multi-building housing complex, may in one (1) petition request a rent ceiling adjustment for the entire complex.

4208.8 For purposes of this section, a multi-building housing complex is the aggregate of rental units located in two (2) or more physically contiguous buildings that share common ownership and management, and historically have been operated and treated for management and accounting purposes as a single business entity.

4208.9 The tenant of a rental unit whose rent ceiling is affected by a housing provider's petition filed under §§ 4209, 4210, 4211, or 4212 shall:

(a) Receive from the Rent Administrator adequate and timely notice of the following:

- (1) The filing and pendency of the petition;
 - (2) The hearing or other administrative procedures for deciding the petition; and
 - (3) The tenant's right under the D.C. Administrative Procedure Act and § 216 of the Act to contest the housing provider's petition; and
- (b) Contest or oppose the housing provider's petition in the hearing or other administrative procedure for deciding the petition.

4208.10 The tenant of a rental unit who receives notice of a petition under § 4208.9(a) and who fails to contest the housing provider's petition may not at a later date contest or challenge by tenant petition under § 4214 the order of the Rent Administrator on the housing provider's petition or any rent ceiling adjustment perfected by the housing provider pursuant to that order.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1391 (March 7, 1986); as amended by Notice of Final Rulemaking published at 33 DCR 2656, 2666 (May 2, 1986).

4209 PETITIONS BASED ON CLAIM OF HARDSHIP

4209.1 A housing provider who elects not to take and perfect a rent ceiling

adjustment of general applicability under § 206(a) of the Act may petition the Rent Administrator once during each calendar year for a rent ceiling adjustment authorized by §§ 206(b) and 212 of the Act (a "hardship petition").

4209.2 A housing provider shall be eligible to file a hardship petition if either of the following requirements are met:

(a) Nine (9) months have elapsed since the filing of any prior hardship petition under § 212 of the Act or prior rent control laws; or

(b) Nine (9) months have elapsed since the implementation of any increase of general applicability under subsection 206(b) of the Act or prior rent control laws.

4209.3 A housing provider shall file a hardship petition on a form approved by the Rent Administrator and the financial information required to be submitted with a hardship petition shall be in the same form as the financial information requested on Form FP-308 of the Office of Tax and Revenue.

4209.4 The Hardship Petition Form shall contain instructions for computing the following:

(a) The net income of the housing accommodation;

(b) The housing provider's equity in the housing accommodation;

(c) The rate of return the housing accommodation is yielding on the housing provider's equity;

(d) The dollar amount of the rent increase that will be added to the rent ceiling of each registered rental unit in the housing accommodation; and

(e) The rent ceiling(s) before and after the rent increase.

4209.5 When determining the net income of a housing accommodation, the following standards shall apply:

(a) The maximum possible rental income for the twelve (12) consecutive month period shall be the aggregate of the rent ceilings for each rental unit during each month of the period, whether or not actually rented;

(b) In determining the management fee under operating expenses, whether in an owner-managed building or where management services have been provided under a contract with a management firm, the owner must provide proof of management services provided and expenditures claimed; and

(c) In determining depreciation expenses as reflected in decreased real property tax assessments, a housing provider shall include the decreased assessments that are applicable to both the land and the improvements.

4209.6 When determining the housing provider's equity in a housing accommodation, the following standards shall apply:

(a) Encumbrances that will reduce the assessed value shall include all mortgages, liens, and secured claims, whether incurred or directly related to the purchase, the capital improvement, or the substantial rehabilitation of the rental property; and

(b) The assessed value of a housing accommodation shall be the official assessment of the property by the D.C. Tax Assessor during the twelve (12) month reporting period, or a weighted average of the assessments (if there is more than one).

4209.7 A housing provider shall not include any of the following types of expenses as operating expenses on a hardship petition:

(a) Membership fees in organizations established to influence legislation and regulation;

(b) Contributions to lobbying efforts,

(c) Contributions for legal fees in the prosecution of class action cases;

(d) Political contributions to candidates for office;

(e) Mortgage principal payments;

(f) Maintenance expenses for which the housing provider has been reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments, or any other method;

(g) Attorney's fees charged for services connected with counseling litigation related to actions brought by the District of Columbia government due to the housing provider's repeated failure to comply with this Act or applicable housing regulations as evidenced by violations issued by the Department of Consumer and Regulatory Affairs;

(h) Any expenses for which the tenant has lawfully paid directly; and

(i) Any court judgments relating to the operation of the rental property.

4209.8 The hardship petition form shall require a housing provider to list and value all current encumbrances and certify that the status of the property, as presented, is correct.

4209.9 A hearing examiner may require the housing provider to submit verification of the present status of encumbrances on the property.

4209.10 When adjudicating a hardship petition, the issues to be resolved may include the following:

- (a) The accuracy and verifiability of the income-expense data included on the hardship petition form;
- (b) The determination that the financial data represents the experience of the housing accommodation during a base period of any twelve (12) consecutive months within the fifteen (15) months preceding the date of filing of the petition;
- (c) The accuracy and verifiability of the financial information on the assessed value of the housing accommodation;
- (d) The accuracy of the calculations made by the housing provider in completing the hardship petition form;
- (e) The existence of a valid registration statement for the housing accommodation;
- (f) The determination of whether substantial violations for the housing regulations existed on the date the hardship petition was filed, or whether violations exist on the date of the petition hearing; and
- (g) Whether expenses for maintenance and repairs are ordinary, capital or extraordinary and whether they should be fully charged to the reporting period or depreciated for their useful life.

4209.11 When filing a hardship petition, the following shall apply:

- (a) A housing provider may elect to use either the accrual basis or the cash basis method of accounting;
- (b) The hearing examiner shall accept the housing provider's accounting method in determining the initial rate of return of a housing accommodation;
- (c) Once the election has been made, all subsequent hardship petitions for that housing accommodation shall be filed using the same method of accounting for income and expenses; and
- (d) The housing provider shall specifically petition the Rent Administrator to change the method of accounting for income and expenses used in any subsequent hardship petition. A change shall be allowed upon a finding that the different accounting method used for the petition being filed shall not materially distort, transfer, alter, or otherwise improperly state the income or expense data of the housing accommodation for the reporting period involved.

4209.12 Under the accrual method of accounting, income and expenses shall be recognized in the hardship petition upon the vesting of the unconditional legal right to receive or pay.

4209.13 When a petition is filed using the accrual method of accounting, the

Rent Administrator may require, as proof of accrued income or expense items, evidence of subsequent (after the reporting period) receipt of payment.

4209.14 For purposes of this section, the term “uncollected rents,” as defined in § 103(37) of the Act and § 4502.1 shall not be allowed as an expense under the accrual method of accounting.

4209.15 Under the cash basis method of accounting, only those income items actually received or paid during the reporting period may be included in the petition; provided, that expenses reported shall not exceed expenses for more than a twelve (12) month period.

4209.16 A housing provider shall provide to the hearing examiner, upon filing a hardship petition, underlying documents to substantiate the income and operating expense schedule of the housing accommodation. The documents shall include the following:

- (a) Copies of bills received for the accommodation during the twelve (12) month period;
- (b) Copies of cancelled checks and bank statements for the housing accommodation during the twelve (12) month period; and
- (c) Copies of ledgers, journals, or other internally generated records on the financial transactions of the housing accommodation during the twelve (12) month period.

4209.17 The Rent Administrator shall exclude the following expenses set forth in a hardship petition:

- (a) Expenses, whether accrued or paid, before or after the twelve (12) months,
- (b) Any expense prohibited in § 4209.7;
- (c) Any expense which, while charged to the subject housing accommodation, was actually incurred for another housing accommodation;
- (d) Any expense which cannot be verified by external financial documents listed in § 4209.16; and
- (e) Any expense for which substantial evidence supports a finding that the particular expense does not reflect actual events or experiences in the housing accommodation.

4209.18 At the time the hardship petition is filed, the housing provider shall provide the following:

- (a) One (1) copy of the petition for each rental unit in the housing accommodation, plus two (2) copies of the petition for the Rent Administrator;

- (b) Postage paid envelopes addressed to the tenant by name of each affected rental unit in the housing accommodation;
- (c) Copies of the certificate of occupancy and housing business license (where applicable), and proof of payment of the annual registration fee; and
- (d) A copy of the rent roll.

4209.19 Notwithstanding the provisions of chapters 39 and 40, the Rent Administrator shall administratively consider and dispose of each hardship petition according to the following procedures:

(a) Promptly upon receipt of a properly executed and filed hardship petition, the Rent Administrator shall notify each tenant of a rental unit covered by the petition of the pendency of the petition, and of the procedures for disposing of the petition;

(b) The notice to tenants required by a § 4209.19(a) shall inform the tenants of their right to designate within thirty (30) days a tenant representative pursuant to § 4004 to appear and act on their behalf in all matters regarding the petition, and to form a tenant organization for this purpose if none exists;

EDITOR'S NOTE: The reference to "§ 4005" in the Notice of Final Rulemaking published at 33 DCR at 1398 and the July 1991 edition of Title 14 of the District of Columbia Municipal Regulations was corrected to read "section 4004" in the text of § 4209.19(b).

(c) The notice to tenants shall further inform them of sources of technical assistance, and of the right of each tenant and the designated tenant representative to review or obtain a copy of the hardship petition including all supporting documentation at the office of the Rent Administrator;

(d) The Rent Administrator shall consider and review the hardship petition and supporting documentation and, within twenty (20) days following the filing of the petition, shall issue and serve on the parties an audit report with recommendations regarding the acceptance or denial of expenditures and other financial claims and the final disposition of the hardship petition;

(e) The Rent Administrator's audit report shall contain findings of fact and conclusions of law regarding the calculation of the amount of the rent ceiling adjustment, if any, to be recommended, and shall be based solely upon the hardship petition and the supporting documentation filed by the housing provider, but without a hearing;

(f) Simultaneously with service of the audit report, the Rent Administrator shall notify each party as follows:

(1) That the party shall have thirty (30) days in which to file with the Rent Administrator and serve on all other parties, written exceptions and/or objections to specific findings, conclusions, and calculations of the audit report;

(2) That, in the absence of timely filed exceptions and/or objections, the audit report and recommendations shall become a final order forty-five (45) days after its issuance; and

(3) If exceptions or objections are filed, a hearing limited to the exceptions or objections shall be held within forty-five (45) days after issuance of the audit report;

(g) All notices, petitions, pleadings and other documents are required to be served on the designated tenant representative, if any, and, if none has been designated, on each tenant individually, in pre-addressed, postage paid envelopes supplied by the housing provider;

(h) Any hearing on a hardship petition required to be held by this section shall be held no later than ninety (90) days following the date of filing of the hardship petition, and the Rent Administrator's audit report and recommendation may after the hearing be deemed the "provisional finding" under § 212(c) of the Act for the purposes of authorizing a provisional rent ceiling adjustment; and

(i) Except as modified by this section, the provisions of chapters 39 and 40 shall govern the disposition of hardship petitions.

4209.20 The amount of increase in the rent ceiling that a housing provider may take and perfect under § 212 of the Act shall be the amount required to provide a twelve percent (12%) rate of return computed according to § 212(b) of the Act.

4209.21 A housing provider may take and perfect a rent ceiling adjustment pursuant to a final order of the Rent Administrator on a hardship petition no sooner than twelve (12) months following the date of implementation of any prior rent ceiling adjustment of general applicability or rent ceiling adjustment based on a claim of hardship.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1393-1398 (March 7, 1986); as amended by: Notice of Final Rulemaking published at 33 DCR 2656, 2666-67 (May 2, 1986); and Notice of Final Rulemaking published at 33 DCR 3179 (May 23, 1986).

EDITOR'S NOTE: The District of Columbia Office of the Chief Financial Officer published a Notice of Public Interest at 44 DCR 2345 (April 18, 1997) which advised that "[t]he **OFFICE OF TAX AND REVENUE** will assume all of the duties and functions previously performed by the **DEPARTMENT OF FINANCE AND REVENUE**, as set forth in Commissioner's Order 69-96, dated March 7, 1969." All references to the "Department of Finance and Revenue" in the original text of these regulations have been replaced with the "Office of Tax and Revenue."

4210 PETITIONS BASED ON CAPITAL

IMPROVEMENTS

4210.1 A housing provider may petition the Rent Administrator for a rent ceiling adjustment under § 210 of the Act in an amount sufficient to permit the housing provider to recover in increased rent the cost of a mandated capital improvement or capital improvements approved by the Rent Administrator (a "capital improvement petition").

4210.2 A housing provider shall file a capital improvement petition on a form approved by the Commission. The form shall be accompanied by instructions for completion of the form, which shall include notification to the affected tenants that the petition was filed and notification of the right to claim status as an elderly or disabled tenant.

4210.3 A housing provider shall file a capital improvement petition in advance of beginning the capital improvement, except in the following cases:

- (a) The capital improvement is immediately necessary to maintain the health or safety of the tenants; or
- (b) The capital improvement is required by the provisions of any federal or District law.

4210.4 If capital improvements are made in order to maintain the health and safety of the tenant(s), a housing provider shall file a capital improvement petition with the Rent Administrator within ten (10) calendar days after the installation of the improvement(s).

4210.5 If capital improvements are made as required by federal or District statute(s), the capital improvement petition may be filed as a certificate of calculation for mandated capital improvements on a form supplied by the Rent Administrator. The certificate shall be accepted without a hearing.

4210.6 Receipt and approval of the certificate of calculation by the Rent Administrator shall authorize the housing provider to implement the rent increase calculated on the mandated capital improvement petition form.

4210.7 A certificate of calculation for mandated capital improvements filed in support or in lieu of a capital improvement petition shall establish the following:

- (a) That the improvement is required by the provision(s) of a federal or District of Columbia law that became effective after November 1, 1980;
- (b) The amount of the cost of the improvements;
- (c) That the required governmental permits and approvals have been secured. Copies of these permits or approvals shall be attached to the petition form; and

(d) That the improvements have actually been installed and are in operation.

4210.8 The Rent Administrator shall approve a capital improvement petition only if the Rent Administrator finds the following:

(a) That the capital improvement would protect or enhance the health, safety, and security of the affected tenants, or the habitability of the rental unit (s) or housing accommodation;

(b) That the capital improvement is depreciable under the United States Internal Revenue Code;

(c) If applicable, that the capital improvement will result in a net reduction in the amount of energy used by the rental unit or costs are passed on to the tenants; and

(d) If improvements are being made to one (1) or more units within a housing accommodation, that the interests of the affected tenants are being protected.

4210.9 If a proposed capital improvement requires that the affected tenant vacate the rental unit(s) the housing provider shall serve notice to vacate for alterations or renovations, according to § 501(f) of the Act. No notice shall be served until after the Rent Administrator has approved the capital improvement petition.

4210.10 The Rent Administrator shall render a final decision on each capital improvement petition within sixty (60) days after the petition is filed with the Rent Administrator pursuant to § 210(e)(2) of the Act; provided, that a petition filed as a certificate of calculation for mandated capital improvements, pursuant to § 210(h) of the Act, shall be decided within thirty (30) days after it is filed with the Rent Administrator

4210.11 If the Rent Administrator does not render a final decision on a completed capital improvement petition within sixty (60) days after receipt, the petitioner may proceed with the improvement subject to any rent adjustments subsequently ordered by the Rent Administrator pursuant to § 211(e)(2) of the Act.

4210.12 The amount of a rent ceiling increase that a housing provider may take and perfect pursuant to final order of the Rent Administrator on a capital improvement petition which affects an entire building or housing accommodation shall be the amount computed in the following manner:

(a) By taking the total cost of the capital improvement excluding interest payments and service charges; THEN—

(b) By dividing the total monthly cost of the improvement by seventy-two (72) to obtain the total cost of the improvement to the entire building or

housing accommodation; THEN--

(c) By dividing the total monthly cost of the improvement by the number of units in the building to obtain the dollar amount of the rent increase to each unit in the housing accommodation; provided, that no increase may exceed the current rent ceiling by more than twenty percent (20%)

4210.13 The amount of rent ceiling increase which a housing provider may take and perfect pursuant to final order of the Rent Administrator on a capital improvement petition that affects one or more, but less than all, rental units in a building or housing accommodation shall be the amount computed in the following manner:

(a) By taking the total cost of the capital improvement excluding interest payments and service charges; THEN--

(b) By dividing the total cost of the improvement by forty-eight (48) to obtain the monthly cost of the improvements to all affected rental units; THEN--

(c) By dividing the total monthly cost of the improvement by the number of rental units in the building to obtain the dollar amount of the rent increase to each affected rental unit in the housing accommodation: provided, that no increase may exceed the current rent ceiling by more than fifteen percent (15%).

4210.14 A housing provider shall take and perfect a rent ceiling adjustment to recover the cost of capital improvements in the manner set forth in § 4204.10, and the date of perfection shall be the date on which the housing provider satisfies the notice requirements of § 4101.6.

4210.15 Where a housing provider increases the rent for a rental unit to an amount equal to or less than the rent ceiling adjustment permitted by § 4210.1, the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5, and the notice required by §§ 4104.6 and 4205.4(a) may be issued simultaneously on a form of notice approved by the Rent Administrator.

4210.16 The purpose of §§ 4210.10 through 4210.44 shall be to implement the Rental Housing Act of 1985 Capital Improvements Amendment Act 1989, D.C. Law 8-48, effective Oct. 19, 1989 (the "Amendment Act").

4210.17 Subsections 4210.1 through 4210.11 shall apply to a capital improvement petition, whether or not the Amendment Act applies to the petition.

4210.18 A petition for a rent increase to recover the cost of a capital improvement filed on or before August 18, 1989, shall be decided under the prior law; all other pending petitions shall be decided under the Amendment Act and §§ 4210.16 through 4210.44 of this chapter unless the capital improvements were made before October 19, 1989.

4210.19 The amount of a rent ceiling surcharge which a housing provider may take and perfect pursuant to the final order of the Rent Administrator on a capital improvement petition that affects an entire building or housing accommodation shall be the amount computed as set forth in this subsection. In computing the rent ceiling surcharge the housing provider shall do the following:

(a) Determine the monthly payment required to amortize, over a calculation period of ninety-six (96) months, a loan in an amount equal to the total costs of the capital improvements, including service charges as defined in § 4210.40(b), and interest on the loan at the rate determined in accordance with § 4210.41; and

(b) Divide the amount calculated in paragraph (a) by the number of rental units in the building or housing accommodation to obtain the dollar amount of the rent ceiling surcharge for each rental unit in the housing accommodation; provided, that no rent ceiling surcharge may exceed twenty percent (20%) of the rent ceiling of the rental unit in effect at the time the petition is filed.

4210.20 The ninety-six (96) month period referred to in § 4210.19(a) and the percentage referred to in § 4210.19(b) shall be solely applicable to the calculation of the monthly amount of the rent ceiling surcharge and are not to be factors in determining the permitted duration of a capital improvement rent ceiling surcharge or rent increase, which shall be determined on the basis of the actual recovery by the housing provider of all costs, including interest and service charges, of the capital improvements, in accordance with §§ 4210.23 through 4210.38.

4210.21 The amount of a rent ceiling surcharge that a housing provider may take and perfect pursuant to final order of the Rent Administrator on a capital improvement petition which affects one or more, but less than all, rental units in a building or housing accommodation shall be computed as set forth in this section. In computing the rent ceiling surcharge, the housing provider shall do the following:

(a) Determine the monthly payment required to amortize, over a calculation period of sixty-four (64) months, a loan in an amount equal to the total costs of the capital improvements, including service charges as defined in § 4201.40(b), including interest on the loan at the rate determined in accordance with § 4210.41; and

(b) Divide the amount calculated in paragraph (a) by the number of rental units affected by the capital improvements to obtain the dollar amount of the rent ceiling surcharge for each affected rental unit in the housing accommodation; provided, that no rent ceiling surcharge may exceed fifteen percent (15%) of the rent ceiling of the rental unit in effect at the time the petition is filed.

4210.22 The sixty-four (64) month period referred to in § 4210.21(a) and the percentage referred to in § 4210.21(b) shall be solely applicable to the

calculation of the monthly amount of the rent ceiling surcharge and shall not be factors in determining the permitted duration of a capital improvement rent ceiling surcharge or rent increase, which shall be determined on the basis of the actual recovery by the housing provider of all costs, including interest and service charges, of the capital improvement, in accordance with §§ 4210.23 through 4210.38.

4210.23 A housing provider shall take and perfect a rent ceiling surcharge to recover the costs of capital improvements, including interest and service charges, by filing an amended registration form in accordance with § 4204.9 stating the amount of the surcharge for each rental unit. The date of perfection shall be the date on which the housing provider has filed the amended registration form with the Rent Administrator and posted or mailed it in accordance with § 4101.6.

4210.24 The rent ceiling surcharge that a housing provider may take and perfect pursuant to final order of the Rent Administrator on a capital improvement petition shall be a temporary surcharge only and shall permit the housing provider to increase the rent for a rental unit by a temporary capital improvement surcharge only until the housing provider has actually recovered, in collected rent, all costs, including interest and service charges, of the capital improvement.

4210.25 Capital improvement rent ceiling surcharges granted pursuant to the Amendment Act shall be excluded from the rent ceiling of a rental unit for purposes of calculating percentage increases in the rent ceiling.

4210.26 A capital improvement rent ceiling surcharge, while the surcharge remains in effect, shall be added to the rent ceiling of a rental unit for purposes of determining the maximum legal rent which may be charged for a rental unit.

4210.27 A capital improvement rent ceiling surcharge shall be in effect from the date of its perfection pursuant to § 4210.23 until the date on which the housing provider has actually recovered in collected rent all costs, including interest and service charges, of the capital improvement.

4210.28 Within thirty (30) days after the housing provider has actually recovered in collected rent all costs, including interest and service charges, of the capital improvement, the housing provider shall file with the Rent Administrator an amended registration form reflecting the following:

(a) The abatement of the capital improvement rent ceiling surcharge computed by subtracting the dollar amount of the monthly capital improvement rent ceiling surcharge from the then existing monthly rent ceiling; and

(b) The re-computation and adjustment of the rent charged to reflect the abatement of the capital improvement rent surcharge computed by subtracting the dollar amount of the monthly capital improvement rent surcharge from the then existing rent charged.

4210.29 Failure to timely adjust the rent charged shall be a basis for the tenant or an association of tenants to file a tenant petition as set forth in § 4214.3 notwithstanding the provisions of § 4214.5.

4210.30 If, at the expiration of the ninety-six (96) month period described in § 4210.19(a) or the sixty-four (64) month period described in § 4210.22(a), as applicable, the housing provider has not actually recovered in collected rent all costs of the capital improvements, including interest and service charges, the housing provider shall be permitted to continue to collect the capital improvement rent surcharge.

4210.31 If the housing provider continues to collect the capital improvement surcharge, as provided in § 4210.30, then within thirty (30) days after the expiration of the ninety-six (96) month period or sixty-four (64) month period, as applicable, the housing provider shall file with the Rent Administrator, and post in a conspicuous place in the common areas of the housing accommodation, and mail to each current tenant, on a form approved by the Rent Administrator, a Certificate of Continuation.

4210.32 The Certificate of Continuation shall be executed under oath and shall set forth the following:

(a) The total costs, including interest and service charges of the capital improvements, which shall be based upon such costs, interest and service charges as have been approved by the Rent Administrator (including all interest payable on any loan approved by the Rent Administrator, the terms of such loan, including the interest rate set forth in the decision on the capital improvement petition, and any amendment to such decision);

(b) The total amount of rental income actually received in collected rents by the housing provider as a result of the capital improvement surcharge which shall be equal to the difference between the following:

(1) The rental income actually received by the housing provider since the perfection of the capital improvement rent surcharge pursuant to §§ 4204.10 and 4101.6; and

(2) The maximum amount of the rental income the housing provider would have been entitled to receive under the Amendment Act during that same period if the capital improvement surcharge had not been in effect,

(c) The amount of costs, interest and service charges remaining to be recovered by the housing provider; and

(d) An estimate of the remaining number of months required in order for the housing provider to actually recover in collected rent the total costs, including interest and service charges, of the capital improvement.

4210.33 If the estimated number of months described in § 4210.32(d) and included in the Certificate of Continuation exceeds ten (10) months, the

Certificate of Continuation filed pursuant to §§ 4210.31 through 4210.32 shall be subject to audit by the Rent Administrator in accordance with the procedures set forth in § 4209.18, except that the Rent Administrator shall issue a final decision and Order on the Certificate of Continuation within sixty (60) days from the date on which a completed Certificate of Continuation shall be submitted.

4210.34 Whenever an audit is conducted, the Rent Administrator shall require the housing provider to provide the documentation as shall be necessary to verify the information set forth in the Certificate of Continuation.

4210.35 The capital improvement rent ceiling surcharge and rent surcharge shall continue pending the issuance of a final order on the Certificate of Continuation, subject, however, to the requirements of §§ 4210.28 through 4210.29.

4210.36 Any portion of the rent collected which is based on the capital improvement rent ceiling surcharge during the pendency of an audit of a Certificate of Continuation shall be subject to a full or partial refund to be made in full within sixty days (60) after the issuance of a decision of the Rent Administrator.

4210.37 Only a capital improvement rent ceiling surcharge which has actually been implemented as a capital improvement rent surcharge shall be counted in determining such recovery of costs, interest and service charges.

4210.38 If the housing accommodation is sold to a third party prior to recovery of all costs, interest and service charges, as to the successor owner the capital improvement rent ceiling surcharge and rent surcharge shall continue in effect until the successor has actually recovered in collected rent all costs, including interest and service charges, of the capital improvement incurred by the successor owner and the prior owner to the extent such costs, interest and service charges have not been actually recovered in collected rent.

4210.39 If a housing provider increases the rent for a rental unit to an amount that includes all or part of the capital improvement surcharge, the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5, and the notice required by § 4205.4(a) may be issued on a form of notice approved by the Rent Administrator, which shall state the portion of the rent charge attributable to the capital improvement surcharge separately from the portion of the rent charge attributable to the rent ceiling.

4210.40 For purposes of §§ 4210.16 through 4210.44 the following terms shall have the meaning ascribed:

(a) "Interest" shall mean all compensation paid by the housing provider to a lender for the use, forbearance or detention of money used to perform a capital improvement. A loan of such money used to perform a capital improvement need not be secured by the housing accommodation.

(b) "Service charges" shall include points, loan origination and loan processing fees, trustees fees, escrow set up fees, loan closing fees, charges and costs, title insurance fees, survey fees, lender's counsel fees, borrower's counsel fees, appraisal fees, environmental inspection fees, lender's inspection fees (however any of the foregoing may be designated or described), and such other charges (other than interest) required by a lender in connection with a loan of money used to perform a capital improvement as to which the housing provider shall provide documentary information to the Rent Administrator. All such service charges shall be includable in a capital improvement petition and recoverable in collected rent by the housing provider.

4210.41 The amount of interest which shall be includable by a housing provider in a capital improvement petition for purposes of the calculation under §§ 4210.19(a) or 4210.21(a), as applicable, shall be one of the following:

(a) The amount of interest payable by the housing provider at a fixed rate of interest on a loan of money used to perform the capital improvement or on that portion of a multi-purpose loan of money used to perform the capital improvement as documented by the housing provider by means of the relevant portion of a *bona fide* loan commitment or agreement with a lender, or by such other evidence of interest as shall be satisfactory to the Rent Administrator; or

(b) In the absence of any loan commitment, agreement or other evidence of interest, the amount of interest shall be calculated at the following rate:

(1) A rate for seven (7) year United States Treasury constant maturities as published by the Federal Reserve Board in Publication H.15 (519) during the thirty (30) days immediately preceding the filing of the capital improvement petition; and

(2) Four percentage (4%) points, four hundred (400 basis points).

4210.42 If the term of the loan obtained by the housing provider to pay for the capital improvement exceeds the calculation period for the rent ceiling surcharge in accordance with §§ 4210.19 or 4210.21, the rent ceiling surcharge shall continue until the loan is fully discharged; provided, that the provisions of § 4210.43 shall apply when the housing provider has recovered an amount equal to the sum of the following:

(a) The total costs of the capital improvements;

(b) The allowable service charges; and

(c) The interest payments made up to that time.

4210.43 The amount of the rent ceiling surcharge shall be reduced to equal the average monthly amount of the interest payments on the loan due during the next twelve (12) months; thereafter, the surcharge shall be similarly adjusted at twelve (12) month intervals until the loan is paid in full.

4210.44 The housing provider shall file a Certificate of Continuation within thirty (30) days after the commencement of each twelve (12) month period under §§ 4210.42 through 4210.44.

4210.45 In accordance with the provisions of § 206(f) and (g) of the Act, the provisions of §§ 4210.46 through 4210.55 shall not apply to the following:

(a) Any increase in the rent charged for a rental unit implemented prior to September 26, 1992 (the effective date of the Relief Act) pursuant to a capital improvement petition approved by the Rent Administrator

(b) An increase in the rent ceiling for a rental unit (regardless of when implemented) pursuant to a capital improvement petition for which a hearing was held or a decision was issued prior to the effective date of § 4210.45 through § 4210.55 of these regulations.

4210.46 Except in accordance with the procedures set forth in §§ 4210.51 through 4210.54 of these rules:

(a) A capital improvement increase in the rent charged shall not be assessed against a tenant found by the Rent Administrator to be an elderly tenant or disabled tenant, who leases and occupies a rental unit regulated under Title II of the Act; and

(b) A tenant found to be an elderly or disabled tenant by the Rent Administrator shall not be assessed an increase in the rent charged for an approved capital improvement notwithstanding the income of any other tenant or co-lessee of the unit.

4210.47 The procedures for an elderly or disabled tenant to claim exemption from payment of capital improvement rent ceiling increase shall be as follows:

(a) If the increase in the rent charged is based on an approved capital improvement petition for which the notice of hearing was issued on or after the effective date of §§ 4210.45 through 4210.55 of these rules, the elderly or disabled tenant who claims the benefit of § 4210.46 shall:

(1) File with the Rent Administrator a claim of exemption in writing on a form approved by the Commission, within fifteen (15) days after receipt of the notice of hearing on the capital improvement petition;

(2) State on the form that the tenant is an elderly or disabled tenant, and submit any supporting documents that prove the tenant qualifies as an elderly or disabled tenant, as defined by § 4299.2(a) and (b); and

(3) Serve a copy of the claim and supporting documents on the housing provider named in the petition, or if the housing provider is represented, serve the housing provider's representative in accordance with § 3911.

(b) The claim for status as an elderly or disabled tenant shall be determined as part of the hearing on the capital improvement petition.

4210.48 If the increase in the rent charged is based on a capital improvement petition for which the notice of hearing was issued before the effective date of § 4210.45 through § 4210.55 of these rules, the elderly or disabled tenant must file in writing a claim for the benefit of § 4210.46 with the Rent Administrator stating that the tenant is an elderly or disabled tenant, on a form approved by the Rent Administrator with supporting documents showing that the tenant qualifies as an elderly or disabled tenant, and shall serve a copy of the claim and supporting documents on the housing provider, or if the housing provider is represented, serve the claim and supporting documents on the representative of the housing provider, in accordance with § 3911 of these rules. A claim must be filed within six (6) months after the effective date of § 4210.45 through § 4210.55 of these rules. The procedures for such claims shall be as follows:

(a) The housing provider must file with the Rent Administrator a written objection to the tenant's claim for status as an elderly or disabled tenant within ten (10) days after service of the claim and supporting documents by the tenant on the housing provider or the housing provider's representative.

(b) If the housing provider files an objection, the Rent Administrator shall give notice to the tenant and housing provider of the date, time, and place of the hearing and conduct a hearing to determine whether the tenant is qualified as an elderly or disabled tenant. A claim shall be determined solely on the basis of the record of the hearing and may be adjudicated at the hearing on the capital improvement petition.

(c) If no objection is filed by the housing provider, the Rent Administrator shall determine whether the tenant is qualified as an elderly or disabled tenant without holding a hearing, based solely on the claim and the supporting documents submitted by the tenant with the claim.

(d) If the Rent Administrator denies the tenant's claim for status as an elderly or disabled tenant without a hearing, the tenant may challenge the denial by filing a tenant petition in accordance with § 216(a) of the Act.

4210.49 No tenant shall qualify as an elderly or disabled tenant, unless found to be an elderly or disabled tenant by the Rent Administrator in accordance with § 4210.47 or § 4210.48; provided that:

(a) If a determination that a tenant qualified as an elderly or disabled tenant was made by the Rent Administrator without a hearing before the effective date of § 4210.45 through § 4210.55 of these rules, that determination shall remain in effect, unless the housing provider files an objection to the determination within six (6) months after the effective date of § 4210.45 through § 4210.55 of these rules.

(b) If the housing provider does file an objection, the tenant's claim for status as an elderly or disabled tenant shall be determined in accordance with §

4210.48(b) of these rules.

(c) If a tenant becomes eligible to make a claim for exemption from a capital improvement rent charge increase, after the increase is in effect, the tenant may file a claim in writing with the Rent Administrator stating the change in circumstances and the basis on which the tenant claims eligibility for the exemption. The tenant must serve the housing provider or the housing provider's representative with a copy of the claim of exemption in accordance with § 3911. If the housing provider does not contest the tenant's claim of exemption, the Rent Administrator shall determine whether to grant the exemption. If the housing provider contests the exemption, the Rent Administrator shall schedule a hearing in accordance with the procedures in § 4000 through § 4010.

4210.50 A housing provider shall be entitled to tax credits as follows:

(a) A housing provider, who is not permitted under these rules and the Relief Act, to collect an increase in the rent charged from an elderly or disabled tenant for a capital improvement rent ceiling increase granted by the Rent Administrator, shall receive a tax credit against real property taxes on the housing accommodation, for each rental unit occupied by an elderly or disabled tenant in the rental housing accommodation.

(b) The amount of the tax credit for each rental unit shall be in the amount per month of \$1.00 for each \$1.00 of capital improvement rent ceiling increase per month per unit granted by the Rent Administrator and not implemented as rent charged the elderly or disabled tenant by the housing provider.

(c) The tax credit shall commence on the date the Rent Administrator grants the capital improvement petition and the tax credit shall continue until the first of the following occurs:

(1) The expiration of the capital improvement rent ceiling increase pursuant to § 4210.27 of these rules;

(2) The cessation of occupancy of the rental unit by the elderly or disabled tenant, unless the next occupant of the rental unit is an elderly or disabled tenant, as defined by § 4299.2(a) or (b), and as certified to the Rent Administrator, under oath, by the housing provider and the elderly or disabled tenant, or as found by the Rent Administrator after a hearing; or

(3) The elderly or disabled tenant becomes ineligible for an exemption from a capital improvement increase because of a change of income or improvement in health.

(d) The tenant has the duty to notify the housing provider within fifteen (15) days from the date of the change of income or health. The housing provider shall then serve on the tenant a thirty (30) day notice of rent increase based on the capital improvement.

(e) The tax credit shall be taken against the next and each succeeding installment or installments of real property taxes payable to the District of Columbia for the housing accommodation, including the land on which it is located.

(f) If the finding by the Rent Administrator that a tenant is an elderly or disabled tenant is reversed on appeal, no interest or penalty on the real property tax shall apply to the period prior to that date.

4210.51 As part of the hearing under § 4210.47 or § 4210.48, the housing provider may request the Rent Administrator to permit the housing provider to implement increases in the rents charged for capital improvements to elderly or disabled tenants of the housing accommodation

4210.52 The Rent Administrator shall approve the request made pursuant to § 4210.51 if the housing provider proves to the satisfaction of the Rent Administrator, in a hearing, that the failure to implement the entire capital improvement rent ceiling increase as rents charged on rental units occupied by elderly or disabled tenants would exceed the aggregate amount of the real property taxes, payable for the housing accommodation for the calendar year.

4210.53 For purposes of making the calculation in § 4210.50(b) to determine the aggregate amount that would exceed the amount of real property taxes due in a calendar year, the prohibition in § 4210.46 against imposing increases in the rents charged for capital improvements to elderly or disabled tenants, and the provisions of § 4210.50 providing for a tax credit, shall be disregarded.

4210.54 The Rent Administrator shall render a written decision on the request by the housing provider to implement an approved capital improvement as rent charged on the unit occupied by a qualified elderly or disabled tenant.

4210.55 Any person who knowingly, willfully, and in bad faith makes a false or fraudulent statement to receive a tax credit for not assessing a capital improvement increase to an elderly or disabled tenant shall be subject to a fine of not more than \$5,000 for each violation.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1399-1400 (March 7, 1986); as amended by: Notice of Final Rulemaking published at 33 DCR 2656, 2667-68 (May 2, 1986); Notice of Final Rulemaking published at 37 DCR 2503 (April 20, 1990); and Notice of Final Rulemaking published at 45 DCR 684, 688-94 (February 6, 1998).

EDITOR'S NOTE: The effective date of §§ 4210.51 through 4210.55 of this chapter was February 6, 1998, the date of publication of those subsections in the *D.C. Register*. The provisions of §§ 4210.51 and 4210.52 as originally promulgated in the Notice of Final Rulemaking published in the *D.C. Register* were renumbered to conform with the numbering scheme set forth in the *D.C. REGISTER AND D.C. MUNICIPAL REGULATIONS RULEMAKING HANDBOOK AND PUBLICATIONS STYLE MANUAL* (1983). Consequently, the specific requirements of § 4210.51 have been renumbered §§

4210.51 through 4210.54 and § 4210.52 has been renumbered § 4210.55.

4211 PETITIONS FOR CHANGES IN RELATED SERVICES OR FACILITIES

4211.1 A housing provider who has changed or proposes to change the related services or facilities at a rental unit or housing accommodation may petition the Rent Administrator for a rent ceiling adjustment under § 211 of the Act (a “related services or facilities petition”) to reflect the monetary value of the change.

4211.2 The Rent Administer shall approve a related services or related facilities petition only if the Rent Administrator finds the following:

- (a) The change shall not adversely affect the health, safety, and security of the tenants;
- (b) The change shall not directly result in a substantial violation of the Housing Code;
- (c) The change shall not be retaliatory, as defined in § 502 of the Act; and
- (d) The change shall not be intended to cause displacement of tenants from the housing accommodation.

4211.3 A housing provider shall file a related services or facilities petition on a form approved by the Rent Administrator which shall include the following information:

- (a) The address of the housing accommodation;
- (b) The housing provider’s registration number;
- (c) A brief description of the changes in related services or facilities;
- (d) An estimate of the value of any increase in related services or facilities;
- (e) An estimate of the value to the tenants of any decrease in related services or facilities;
- (f) A statement giving the reason for changing the related services or facilities;
- (g) The rent ceiling(s) at the time the petition is filed; and
- (h) The proposed rent ceiling(s) that would reflect the change in the related services or facilities.

4211.4 A housing provider may increase related services or facilities at a rental unit or housing accommodation, but shall not take and perfect a commensurate rent ceiling adjustment or rent increase without the prior approval of the Rent Administrator.

4211.5 A housing provider shall not change substantially related services or facilities in violation of § 4211.2 or decrease substantially related services or facilities at a rental unit or housing accommodation without the prior approval of the Rent Administrator.

4211.6 If related services or facilities at a rental unit or housing accommodation decrease by accident, inadvertence or neglect by the housing provider and are not promptly restored to the previous level, the housing provider shall promptly reduce the rent for the rental unit or housing accommodation by an amount which reflects the monthly value of the decrease in related services or facilities.

4211.7 The Rent Administrator on his or her own motion or by tenant petition may review and adjust a rent decrease implemented under § 4211.6, and a housing provider who fails to promptly and adequately reduce rent under § 4211.6 may be liable for additional penalties under the Act.

4211.8 The amount of a rent ceiling adjustment which a housing provider may take and implement or may be required to take and implement pursuant to a final order of the Rent Administrator on a related services or facilities petition shall not include or reflect the cost to the housing provider of any capital improvements, but shall include only the monthly value of the change in related services or facilities, as determined by the Rent Administrator.

4211.9 To determine the monthly value of changes in related services or facilities, the Rent Administrator may consider the following:

- (a) The cost to the tenant of obtaining alternate related services or facilities comparable to those reduced by the housing provider;
- (b) The operating cost to the housing provider of the related services or facilities which are changed; or
- (c) The fair market value of comparable related services or facilities.

4211.10 A housing provider shall take and perfect a rent ceiling adjustment pursuant to final order of the Rent Administrator on a related services or facilities petition in the manner set forth in § 4204.10, and the date of perfection shall be the date on which the housing provider satisfies the notice requirements of § 4101.6; provided, that a housing provider shall not take and perfect any rent ceiling increase under this section prior to the date on which the increased related services or facilities are actually provided or available to the tenant or tenants of the rental unit or housing accommodation.

4211.11 Where a housing provider increases the rent for a rental unit to an

amount equal to or less than the rent ceiling adjustment permitted by § 4211.1, the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5, and the notices required by §§ 4101.6 and 4205.4(a) may be issued simultaneously to the affected tenant on a form of notice approved by the Rent Administrator.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1401 (March 7, 1986); as amended by Notice of Final Rulemaking published at 33 DCR 2656, 2668 (May 2, 1986).

4212 PETITIONS FOR SUBSTANTIAL REHABILITATION

4212.1 A housing provider who proposes to substantially rehabilitate a rental unit or housing accommodation may petition the Rent Administrator for an increase in the rent ceiling for the rental unit or housing accommodation under §.214 of the Act (a “substantial rehabilitation petition”).

4212.2 A housing provider shall file a substantial rehabilitation petition on a form prescribed by the Rent Administrator and shall include with the petition the following information:

(a) Detailed plans, specifications and projected cost of the proposed rehabilitation;

(b) Documentation of the assessed value of the housing accommodation as determined by the D.C. Office of Tax and Revenue for real estate taxation purposes for the tax year beginning no later than sixty (60) days after the date on which the petition is filed; and

(c) A schedule showing all rental units in the housing accommodation to be rehabilitated showing whether the rental unit is vacant or occupied and, if vacant, the date and cause of its vacation.

4212.3 A housing provider shall not begin the rehabilitation of any rental unit or housing accommodation or seek to evict a tenant in order to rehabilitate a rental unit without the prior approval of the Rent Administrator.

4212.4 The Rent Administrator shall consider and dispose of each substantial rehabilitation petition within sixty (60) days of the date on which the petition is filed.

4212.5 The Rent Administrator shall grant a substantial rehabilitation petition without a hearing if the Rent Administrator finds the following:

(a) That each rental unit for which a rent ceiling adjustment is sought is vacant;

(b) That no rental unit in subsection (a) was vacated in violation of §§ 501

or 502 of the Act; and

(c) That the cost of the proposed substantial rehabilitation exceeds fifty percent (50%) of the assessed value of the rental unit or housing accommodation; provided, that the assessed value of a rental unit shall be that portion of the assessed value of the housing accommodation calculated by multiplying the assessed value of the housing accommodation calculated by a fraction whose numerator is the square footage of the rental unit and whose denominator is the total square footage of the housing accommodation including all common elements

4212.6 If any rental unit for which a rent ceiling adjustment is requested under this section is occupied, the Rent Administrator shall consider and dispose of the petition pursuant to the hearing provisions of chapters 39 and 40.

4212.7 A housing provider who has filed a petition under this section affecting an occupied rental unit shall promptly serve on the tenant of the occupied unit a notice of intent to substantially rehabilitate the rental unit or housing accommodation in which it is located which shall state at least the following:

(a) That a petition to allow substantial rehabilitation has been filed with the Rent Administrator who will review the petition;

(b) That no work that will displace or inconvenience tenants, and no work in any occupied apartment, without a tenant's permission, will begin for at least one hundred twenty (120) days;

(c) Whether the tenants will be required to vacate in order to perform the work necessary for the substantial rehabilitation, if it is approved;

(d) If the tenants shall be required to vacate for completion of the proposed rehabilitation, that the notice is the one hundred twenty (120) day notice to vacate required by § 501(f) of the Act;

(e) That upon completion of substantial rehabilitation the tenants have the right to re-rent their former rental units at the newly authorized rent ceiling; and

(f) That the tenants are entitled to relocation assistance as provided in title VII of the Act if they are required to vacate in order for the necessary work to be done. Where the tenants shall be required to vacate if the petition is approved, the initial notice shall contain the language set forth in § 501 of the Act.

4212.8 The Rent Administrator shall grant a substantial rehabilitation petition affecting an occupied rental unit only if the Rent Administrator finds the following:

(a) That the proposed rehabilitation is in the interest of the tenant of the rental unit;

(b) That the cost of the proposed rehabilitation equals or exceeds fifty percent (50%) of the assessed value of the rental unit or housing accommodation as determined under § 4212.5(c); and

(c) That the building permit for the proposed rehabilitation was issued after January 31, 1973.

4212.9 To determine whether a proposed substantial rehabilitation is in the interest of the tenant, the Rent Administrator may consider the following:

(a) The existing physical condition of the rental unit or housing accommodation as shown by reports or testimony of D.C. housing inspectors, licensed engineers, architects and contractors, or other qualified experts,

(b) Whether the existing physical condition impairs or tends to impair the health, safety or welfare of any tenant;

(c) Whether the existing physical conditions can be corrected by improved maintenance, repair or capital improvement; and

(d) The impact of the proposed rehabilitation on the tenant or tenants in terms of proposed financial cost, inconvenience or relocation.

4212.10 The amount of a rent ceiling increase that a housing provider may take and implement pursuant to a final order of the Rent Administrator on a substantial rehabilitation petition shall be as follows:

(a) The amount which authorizes rent increases sufficient to repay a loan in the principal amount of the cost of the approved rehabilitation over the amortization period and at the rate of interest documented by the housing provider in a *bona fide* loan commitment agreement with a lender; or

(b) In the absence of a loan commitment agreement, over an amortization period of two hundred forty (240) months at the rate of interest equal to two (2) points above the average monthly bank prime loan rate established by the Federal Reserve Board in Publication H-15, Selected Interest Rates, for the week in which the substantial rehabilitation petition is filed, provided, that the amount of the rent ceiling shall not exceed one hundred twenty-five percent (125%) of the rent ceiling at the time the petition is filed.

4212.11 A housing provider shall take and perfect a rent ceiling adjustment pursuant to final order of the Rent Administrator on a substantial rehabilitation petition in the manner set forth in § 4204.10, and the date of perfection of the rent ceiling adjustment shall be the date on which the housing provider satisfies the notice requirements of § 4101.6; provided, that a housing provider shall not take and implement a rent ceiling increase under this section until the approved substantial rehabilitation has been completed.

4212.12 Where a housing provider increases the rent for a rental unit to an amount equal to or less than the rent ceiling adjustment permitted by § 4212.1,

the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5, and the notices required by §§ 4101.6 and 4205.4(a) may be issued simultaneously on a form of notice approved by the Rent Administrator.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1404 (March 7, 1986); as amended by Final Rulemaking published at 33 DCR 2656, 2668 (May 2, 1986).

EDITOR'S NOTE: The District of Columbia Office of the Chief Financial Officer published a Notice of Public Interest at 44 DCR 2345 (April 18, 1997) which advised that "[t]he **OFFICE OF TAX AND REVENUE** will assume all of the duties and functions previously performed by the **DEPARTMENT OF FINANCE AND REVENUE**, as set forth in Commissioner's Order 69-96, dated March 7, 1969." All references to the "Department of Finance and Revenue" in the original text of these regulations have been replaced with the "Office of Tax and Revenue."

4213 RENT CEILING ADJUSTMENTS BY VOLUNTARY AGREEMENT

4213.1 Tenants and housing providers may enter into voluntary agreements pursuant to § 215 of the Act, for the following purposes:

- (a) To establish rent ceilings;
- (b) To change related services or facilities; or
- (c) To provide for capital improvements and ordinary maintenance and repairs.

4213.2 Either a housing provider or the tenant of a housing accommodation may initiate a voluntary agreement.

4213.3 If a housing provider initiates a voluntary agreement, the housing provider shall distribute a copy of the proposed agreement to each tenant accompanied by a written notice that describes in detail the proposed rent ceilings that would be established, the proposed changes in related services or facilities, and the proposed capital improvements and ordinary maintenance and repairs.

4213.4 Each tenant shall be permitted a minimum of fourteen (14) days to consider the proposal, confer with other tenants, and respond to the housing provider.

4213.5 If the proposed voluntary agreement is initiated by one (1) or more tenants or a tenant association, the tenants shall serve on the housing provider a notice and schedule as required by § 4213.1, and the housing provider shall have a minimum of fourteen (14) days after receipt to consider the proposal and to respond to the tenants.

4213.6 All notices and responses shall be in writing with a copy forwarded to the Rent Administrator. A notice shall contain the name, address, and telephone number of the person(s) to whom the response shall be directed and shall be accompanied by a copy of § 4213.

4213.7 A response may include counter-proposals for proposed rent ceilings, related services or facilities, and any other conditions incident to a voluntary agreement.

4213.8 Housing providers and tenants are encouraged to enter into face-to-face negotiations.

4213.9 If the parties involved in negotiating a voluntary agreement find there are difficulties and obstacles to the negotiations, but are desirous of achieving a successful agreement, any party may seek the assistance of the Conciliation Service of the RACD, as established under § 503 of the Act.

4213.10 Before the execution of a voluntary agreement by a housing provider and at least seventy percent (70%) of the tenants who reside in the housing accommodation, a copy of the final proposed agreement shall be distributed to each tenant eligible to sign.

4213.11 A proposed voluntary agreement shall contain at least the following:

(a) The current and proposed rent ceilings and rent for each rental unit and the amount of the proposed rent change on both;

(b) The current and proposed levels of related services or facilities under the agreement;

(c) All other conditions (including specific repairs to be made) by which the housing provider agrees to be bound;

(d) All other conditions by which the tenants agree to be bound;

(e) A statement that the agreement is voluntary and that no form of coercion was imposed by the housing provider or any tenant in securing the signatures of the tenants; and

(f) A listing of all tenants in the housing accommodation by name and rental unit numbers or identifying letters, a space for each tenant's signature and telephone number, and a space for each tenant to approve or disapprove the agreement.

4213.12 Tenants who are employees of the housing provider shall be identified as employees on the agreement and their signatures shall not be counted in determining whether seventy percent (70%) of the tenants approve the agreement.

4213.13 When a voluntary agreement has been approved by seventy percent

(70%) of the tenants in a housing accommodation and the housing provider, the Rent Administrator shall approve the voluntary agreement within forty-five (45) days of its submission; provided, that the Rent Administrator shall provide a reasonable opportunity for tenants with objections to submit the objections in writing

4213.14 If the Rent Administrator does not approve or disapprove the voluntary agreement within the time limit of § 4213.13, the voluntary agreement shall be deemed approved

4213.15 A written copy of the Rent Administrator's determination shall be mailed to the housing provider and to each tenant of the housing accommodation.

4213.16 If the Rent Administrator certifies approval of a voluntary agreement, the approval shall inform all parties of the following:

- (a) The new rent ceilings;
- (b) Any new levels of related services or facilities; and
- (c) All other terms of the agreement.

4213.17 Voluntary agreements approved by the Rent Administrator shall be binding on the housing provider and on all tenants of the housing accommodation, including those tenants who did not sign the agreement.

4213.18 If the Rent Administrator, pursuant to § 4213 18, determines that there is substantial evidence that credible grounds for disapproval are present, a hearing shall be conducted so that the parties can present testimony and documentary evidence in support of or in response to the grounds determined by the Rent Administrator.

4213.19 The Rent Administrator may disapprove a voluntary agreement that has been approved by seventy percent (70%) of the tenants only in the following circumstances.

- (a) If all or part of the tenant approval has been induced by duress, harassment, intimidation or coercion;
- (b) If all or part of the tenant approval has been induced by fraud, deceit or misrepresentation of material facts; or
- (c) If the voluntary agreement contradicts the provisions of § 102 of the Act or results in inequitable treatment of the tenants.

4213.20 Where a housing provider increases the rent for a rental unit to an amount equal to or less than the rent ceiling adjustment permitted by § 4213.1, the housing provider shall comply with the provisions of §§ 4205.4 and 4205.5, and the notices required by §§ 4101.6 and 4205.4(a) may be issued

simultaneously to the affected tenant on a form of notice approved by the Rent Administrator.

4213.21 A notice of rent increase shall not be served on any tenant of the housing accommodation prior to the receipt of the Rent Administrator's approval of the voluntary agreement or to the expiration of the limit in §§ 4213.13 and 4213.14.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1406 (March 7, 1986); as amended by Notice of Final Rulemaking published at 33 DCR 2656, 2669 (May 2, 1986).

4214 TENANT PETITIONS

4214.1 The tenant of a rental unit or an association of tenants of a housing accommodation may, by petition filed with the Rent Administrator, challenge or contest the following:

(a) The base rent for a rental unit or housing accommodation established under § 4201; provided, that the base rent challenge shall be filed in the manner and within the time set forth in § 4215;

(b) The initial rent ceiling for the rental unit or housing accommodation established under § 4202 upon termination of exclusion from coverage by the Act; or

(c) The initial rent ceiling for the rental unit or housing accommodation established under § 4203 upon termination of exemption from coverage of the Rent Stabilization Program.

4214.2 The tenant of a rental unit or an association of tenants of a housing accommodation may, by a petition filed with the Rent Administrator, challenge or contest any rent ceiling adjustment taken and perfected by a housing provider in the following circumstances:

(a) Under § 206(b) of the Act (adjustment of general applicability);

(b) Under § 213 of the Act (vacancy adjustment);

(1) If the adjustment under § 213(a)(1) of the Act was perfected sooner than twelve (12) months following any prior similar adjustment; or

(2) If the adjustment under § 213(a)(2) of the Act was perfected based upon a comparable rental unit that failed to meet the criteria of § 4207.4;

(c) Under § 215 of the Act (adjustment by voluntary agreement) if the voluntary agreement was coerced or established in violation of § 4213;

(d) Under § 212 of the Act (hardship petition) if the adjustment was

perfected sooner than twelve (12) months following a previous adjustment of general applicability or hardship adjustment; or

(e) Under any section of the Act or pursuant to an order of the Rent Administrator or Commission if the adjustment was greater than permitted by the Act or order.

4214.3 The tenant of a rental unit or an association of tenants of a housing accommodation may, by petition filed with the Rent Administrator, challenge or contest any rent or rent increase that is.

(a) In violation of a lease agreement for the rental unit;

(b) Greater than the rent ceiling for the rental unit authorized by the Act or order of the Rent Administrator or Commission;

(c) Implemented sooner than one hundred eighty (180) days following any previous rent increase for the rental unit;

(d) Implemented sooner than thirty (30) days following written notice of the rent increase, or upon any notice which fails to comply with § 904 of the Act;

(e) Implemented when the rental unit or the common elements of the housing accommodation are not in substantial compliance with the housing regulations, and the absence of such substantial compliance is not caused by the neglect or misconduct of the tenant; or

(f) Implemented when the rental unit or housing accommodation is registered under the Act, or the housing provider does not have a housing business license if required, or if the manager of the rental unit or housing accommodation is not properly registered if registration is required by this title.

4214.4 The tenant of a rental unit or an association of tenants of a housing accommodation may, by petition filed with the Rent Administrator, complain of and request appropriate relief for any other violation of the Act including, but not limited to, the following:

(a) Any violation of the notice requirements of § 501 of the Act including, but not limited to, allegations that:

(1) The notice does not contain a statement detailing the reasons for and the appropriate time period within which the tenant shall either vacate or correct;

(2) The notice is given for a rental unit that is subject to registration and is not properly registered;

(3) The notice fails to state that a claim of exemption is on file with the Rent Administrator, if applicable;

(4) The notice fails to inform the tenant of the right to relocation assistance pursuant to § 701 of the Act, if applicable; and

(5) The notice fails to inform the tenant of the right to re-rent the rental unit, if applicable;

(b) Any proposed retaliatory eviction or other retaliatory act in violation of § 502 of the Act;

(c) Any demand for a security deposit in violation of § 217 of the Act;

(d) Any unauthorized reduction in services or facilities related to the rental unit not permitted by the Act or authorized by order of the Rent Administrator,

(e) Any condition of the rental unit or housing accommodation which constitutes a substantial or prolonged violation of the housing regulations;

(f) Any failure to adequately serve notice on the tenant of a proposed rent ceiling adjustment or hearing on a proposed rent ceiling adjustment for the rental unit or housing accommodation required by the Act, the D.C. Administrative Procedure Act or § 4208.9.

4214.5 Except as set forth in § 4214.2(d) and (e), a tenant of a rental unit may not challenge or contest, by petition filed with the Rent Administrator, any rent ceiling adjustment perfected by a housing provider pursuant to final order of the Rent Administrator for a capital improvement petition, for a related services or facilities petition, for a hardship petition, or for a substantial rehabilitation petition, if the tenant:

(a) Was not a tenant of the affected rental unit prior to the date of perfection of the rent ceiling adjustment; or

(b) Was a tenant of the affected rental unit prior to the date of perfection and received notice of the housing provider's petition but failed to oppose the petition as permitted by § 4208.9.

4214.6 The tenant of a rental unit or association of tenants of a housing accommodation shall file a petition under this section which meets the requirements of § 4208 and shall include the following:

(a) Proof of tenancy by rent receipt, cancelled check, or copy of lease agreement;

(b) A copy of a notice to quit, if applicable; and

(c) A copy of any other notice or document applicable to the petition.

4214.7 In adjudicating a tenant petition which alleges an unauthorized reduction in related services or facilities under § 4214.4(d) or substantial and

prolonged housing code violations under § 4214.4(e), the Rent Administrator shall make a finding of the monetary value to the tenant of the reduction in related services or facilities or of the housing code violations, and may dismiss any such tenant petition if the tenant fails to allege and support with competent evidence the monetary value claimed.

4214.8 Except as provided in § 4215 for base rent challenges, a tenant petition filed under this section shall be filed within three (3) years of the effective date of the adjustment.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1409 (March 7, 1986); as amended by Notice of Final Rulemaking published at 33 DCR 2656, 2669 (May 2, 1986).

4215 TENANT PETITIONS TO CHALLENGE BASE RENT

4215.1 A tenant petition to challenge the base rent for a rental unit established by a housing provider under § 103(4) of the Act and § 4201, which shall be filed by the tenant of the rental unit with the Rent Administrator in duplicate copies on a base rent challenge form approved by the Rent Administrator.

4215.2 The tenant of a rental unit shall file a base rent challenge not later than six (6) months following the date of registration of the unit under § 4101, which shall be the date on which the housing provider meets the notice requirements of § 4101.3.

4215.3 Copies of all documents or other evidence in support of the base rent challenge shall be attached to the form at the time it is filed with the Rent Administrator.

4215.4 Upon receipt of a properly executed and timely filed base rent challenge, the Rent Administrator shall serve a copy on the housing provider of the rental unit in accordance with § 3911.

4215.5 When adjudicating a base rent challenge, the issues to be determined by the Rent Administrator are limited to the following:

(a) Whether the housing provider's registration contains the actual rent charged for the unit on September 1, 1983;

(b) Whether the rent claimed as the September 1, 1983 rent was the rent on that date;

(c) Whether the calculation of base rent complies with § 4201;

(d) Whether the housing provider's registration statement accurately states the related services or facilities provided to the rental unit or housing

accommodation on September 1, 1983; and

(e) Whether the rent for the rental unit on the effective date of the Act was higher than the base rent

4215.6 Notwithstanding the provisions of § 3903 the Rent Administrator may resolve a base rent challenge without a hearing.

4215.7 In arriving at a proposed order disposing of a base rent challenge, the Rent Administrator shall base his or her decision on documentary evidence contained in the records of the RACD and other divisions within the Department of Consumer and Regulatory Affairs.

4215.8 The Rent Administrator shall provide a copy of the proposed determination of a base rent challenge to the tenant(s) and the housing provider in accordance with § 3911.

4215.9 Where parties to a base rent challenge disagree with the proposed order of the Rent Administrator, they may file objections and exceptions with the Rent Administrator within twenty (20) days of the receipt of the proposed order

4215.10 Parties filing objections and exceptions in accordance with subsection 4215.9 shall do the following:

- (a) Describe their reasons for disagreement with the proposed order;
- (b) Describe any typographical, numerical or technical errors on the proposed order; or
- (c) Describe the findings and conclusions which the party believes should have been made and the evidence which supports these findings and conclusions.

4215.11 Upon consideration of objections and exceptions to a proposed order, the Rent Administrator may issue a final order or may direct that a hearing be held to resolve any disputed issues of fact.

4215.12 If no objections and exceptions are received in accordance with § 4215.9, the Rent Administrator shall notify the parties that the proposed order has become final and the final order shall contain notice of the right to appeal pursuant to § 3802.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1409 (March 7, 1986); as amended by Notice of Final Rulemaking published at 33 DCR 2656, 2669 (May 2, 1986).

4216 PETITIONS ALLEGING SUBSTANTIAL HOUSING CODE

VIOLATIONS

4216.1 Each petition for a rent ceiling adjustment under § 207 of the Act and §§ 4209, 4210, 4211, and 4212 shall be considered a petition to increase rent, and the Rent Administrator may consider whether the rental unit and common elements of the housing accommodation are in substantial compliance with the housing code.

4216.2 For purposes of this subtitle, “substantial compliance with the housing code” means the absence of any substantial housing violations as defined in § 103(35) of the Act including, but not limited to, the following:

- (a) Frequent lack of sufficient water supply;
- (b) Frequent lack of hot water;
- (c) Frequent lack of sufficient heat;
- (d) Curtailment of utility service, such as gas or electricity;
- (e) Defective electrical wiring, outlets, or fixtures;
- (f) Exposed electrical wiring or outlets not properly covered;
- (g) Leaks in the roof or walls;
- (h) Defective drains, sewage system, or toilet facilities;
- (i) Infestation of insects or rodents;
- (j) Lead paint on the interior of the dwelling, or on the exterior of the dwelling where the paint is in a location or in a condition which creates a hazard of lead poisoning to children or the occupants;
- (k) Insufficient number of acceptable exits for a dwelling, or from each floor of a rooming house;
 - (l) Obstructed exits;
 - (m) Accumulation of garbage or rubbish in common areas;
 - (n) Plaster falling or in immediate danger of falling;
 - (o) Dangerous porches, stairs, or railings;
 - (p) Floor, wall, or ceilings with substantial holes;
 - (q) Doors or windows insufficiently tight to maintain the required temperature or to prevent excessive heat loss;

- (r) Doors lacking required locks;
- (s) Fire hazards or absence of required fire prevention or fire control;
- (t) Inadequate ventilation of interior bathrooms, and
- (u) Large number of housing code violations, each of which may be either substantial or non-substantial, the aggregate of which is substantial, because of the number of violations.

4216.3 In a hearing on a housing provider's petition for a rent ceiling adjustment, there shall be a rebuttable presumption of substantial compliance with the housing regulations for each rental unit and the common elements of a housing accommodation, if:

- (a) The housing accommodation was last inspected for housing code violations more than thirty (30) days prior to the date of filing of the petition for adjustment, and all substantial violations then cited have been abated within the time set forth in the notice of violations; or
- (b) The housing accommodation shall have been inspected at the housing provider's request within thirty (30) days immediately preceding the date of filing of the petition for adjustment.

4216.4 For the purposes of § 4216.3(a), the Rent Administrator shall find abatement of all substantial housing code violations upon certification of abatement by the housing inspector, or the affected tenant, or the housing provider; provided, that upon that certification of abatement by the housing provider the affected tenant has been given ten (10) days notice of and opportunity to contest the certification.

4216.5 Evidence of substantial violations of the housing code may be presented to a hearing examiner by the testimony of parties, except that no tenant complaints of substantial violations shall be received in evidence in any hearing if the conditions giving rise to the complaint occurred and were abated more than twelve (12) months previously.

4216.6 Tenant testimony may be supported by photographs or other documentary evidence, written Department of Consumer and Regulatory Affairs violation notice(s), or the testimony of a Department of Consumer and Regulatory Affairs official who has personally inspected the rental property.

4216.7 Testimony shall be as detailed as necessary so that the hearing examiner can make findings of fact that will identify the specific violation(s), their location and duration, and whether they have been abated. Based upon such testimony, the examiner shall determine if the violations are substantial.

4216.8 A finding of excessive and prolonged housing code violations pursuant to § 208(a)(2) of the Act shall identify each violation, its location and duration, and whether or not it has been abated.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1415 (March 7, 1986); as amended by Notice of Final Rulemaking published at 33 DCR 2656, 2669 (May 2, 1986).

4217 ENFORCEMENT AND PENALTIES

4217.1 Where it has been determined that a housing provider knowingly demanded or received rent above the rent ceiling for a particular rental unit, or has substantially reduced or eliminated services previously provided, the Rent Administrator or the Commission shall invoke any or all of the following types of relief:

- (a) A rent refund; and
- (b) Treble the amount of the rent refund ordered paid; or
- (c) A rent rollback for a specific period or until specific conditions are complied with.

4217.2 Rent refunds under § 4217.1 shall be trebled only where detailed findings of fact are made that the housing provider acted in bad faith.

4217.3 When the Rent Administrator imposes a rent refund or treble that amount under § 901 of the Act, interest shall be calculated on the rent refund or treble amount accordance with § 3826 of these rules.

4217.4 Where it has been determined that any person has willfully committed any act specified in § 901(b) and (e) of the Act, both the Rent Administrator and the Commission are authorized to refer the matter to the Corporation Counsel of the District of Columbia for criminal prosecution.

4217.5 Where a party has failed to comply with an order in a final decision of the Rent Administrator or the Commission, the Rent Administrator, the Commission, or any adversely affected tenant or housing provider are authorized to refer the matter to the Superior Court of the District of Columbia for civil enforcement under § 218 of the Act.

4217.6 **[RESERVED]**

4217.7 **[RESERVED]**

4217.8 **[RESERVED]**

4217.9 **[RESERVED]**

4217.10 Appeals of fines imposed in accordance with § 901(f) of the Act and § 4217.9 shall be reviewed in accordance with § 301 of the DCRA Civil Infractions Act of 1985 and §§ 202(a)(2) and section 219 of the Rental Housing Act of 1985.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1417 (March 7, 1986); as amended by: Notice of Final Rulemaking published at 33 DCR 2656, 2669 (May 2, 1986); and Notice of Final Rulemaking published at 45 DCR 684, 694 (February 6, 1998).

4218 CERTIFICATE OF ASSURANCE

4218.1 The Mayor shall, at the request of a housing provider, issue a Certificate of Assurance pursuant to § 221 of the Act, for a housing accommodation exempted under §§ 205(a)(2) or 205(a)(4) of the Act, for which any building permit has been issued.

4218.2 A housing provider's request for a Certificate of Assurance shall be in writing and shall be accompanied by the following:

(a) A declaration that the housing accommodation is exempt from the Rent Stabilization Program under either §§ 205(a)(2) or 205(a)(4) of the Act; and

(b) A copy of any building permit issued for the housing accommodation after May 1, 1985.

4218.3 Within twenty (20) days after receipt of a properly filed request for a Certificate of Assurance, the Rent Administrator shall forward to the Mayor a determination of preliminary approval and a recommendation for issuance of a Certificate of Assurance.

4218.4 The Rent Administrator shall recommend denial where the Rent Administrator finds that the housing accommodation is not eligible for exemption under §§ 205(a)(2) and 205(a)(4) of the Act, or that a building permit has not been issued for the subject housing accommodation after May 1, 1985.

SOURCE: Notice of Final Rulemaking published at 33 DCR 1336, 1418 (March 7, 1986).

4299 DEFINITIONS

4299.1 The provisions of § 3899 of chapter 38 of this title and the definitions set forth in that chapter shall be applicable to this chapter.

4299.2 For the purposes of §§ 4210.45 through 4210.55 of these rules, the following terms shall have the meaning set forth below:

Disabled tenant - a tenant who leases and occupies a rental unit, and who proves to the satisfaction of the Rent Administrator that at the time of approval of a petition for capital improvements pursuant to § 210 of the Act, the tenant has the following:

(a) A medically determinable physical impairment, or blindness, which prohibits and incapacitates seventy-five percent (75%) of that tenant's ability to move about, to assist himself or herself, or to engage in an occupation; and

(b) An income of not more than forty thousand dollars (\$40,000) per year.

Elderly tenant - a tenant who leases and occupies a rental unit, and who proves to the satisfaction of the Rent Administrator that at the time of approval of a petition for capital improvements pursuant to § 210 of the Act, the tenant:

(a) Is at least sixty-two (62) years of age; and

(b) Has a gross income of not more than forty thousand dollars (\$40,000) per year.

SOURCE: Notice of Final Rulemaking published at 45 DCR 684, 694 (February 6, 1998).

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