

September 20, 2021

*Via email only*

Daniel Mayer, General Counsel  
D.C. Rental Housing Commission  
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Re: Third Proposed Rulemaking, 14 D.C.M.R. Chapters 38 to 44

Dear Mr. Mayer:

We are writing to provide comments on the third proposed rulemaking prepared by the Rental Housing Commission to revise 14 D.C.M.R. Chapters 38 to 44.

As you know, in October 2019, Legal Aid – joined by eight other non-profit organizations that provide technical assistance and legal representation to tenants and advocate for their interests – provided comments on the Commission’s first proposed rulemaking. In February 2021, Legal Aid separately provided comments on the second proposed rulemaking. We appreciate the changes the Commission already has made in response to comments received from us and other stakeholders, including in the current draft on stays pending appeal, the use of the term “maximum lawful rent,” and the applicability of eviction regulations to public housing units. To the extent the Commission did not make changes that we recommended, we stand by our original comments and will not repeat them here. Legal Aid now writes separately to provide two additional comments, one on a new change made in the third draft rulemaking and one spurred by two recent client experiences that highlight a potential gap.

As you know, these regulations are vital to achieving the goals of the Rental Housing Act, and specifically the rent stabilization program – including to preserve affordable housing and protect tenants’ rights. We commend the Commission for the work and time already invested to bring this rulemaking to publication and for allowing an extended period for stakeholders to submit comments on multiple rounds of proposed regulations. We look forward to the Commission completing this process and publishing final regulations.

Required Declaration in Personal Use and Occupancy Eviction Cases

In the third proposed rulemaking, the Commission has deleted a requirement – found at 14 DCMR § 4302.8 in current regulations and at 14 DCMR § 4300.9 in the draft regulations - that the sworn declaration submitted by a housing provider seeking to recover possession of a rental unit for personal use and occupancy must include a statement that the housing provider will not demand or receive rent for the rental unit in the 12-month period following the date of recovery

of possession. Removing this language weakens existing protections for tenants and is in tension with provisions in the Housing Conversion and Eviction Clarification Act of 2019 (DC Law No. 23-72) to impose new penalties on housing providers based on examples of past abuse. Legal Aid recommends restoring and then clarifying the prior draft language instead.

As Legal Aid shared when we testified in support of the Housing Conversion and Eviction Clarification Act,<sup>1</sup> we have encountered cases in which housing providers have abused the personal use and occupancy exception to evict a tenant in order to free up a property, either to bring in a new tenant at a higher rent or to sell. The new law adds penalties to deter these abusive practices and now is in effect. Consistent with the Council intent in adding these new penalties, we oppose weakening the current legal requirements that a housing provider must meet when seeking to invoke the personal use and occupancy exception.

We understand the concerns expressed regarding the wording of draft section 4300.9 in the second proposed rulemaking, but we would recommend the following edits instead:

Any notice that seeks to evict a tenant pursuant to § 501(d) or (e) of the Act (D.C. Official Code § 42-3505.01(d) or (e)) (housing provider’s or purchaser’s personal use and occupancy), when filed with the Rent Administrator, shall be accompanied by an affidavit stating that the housing provider or the purchaser, as applicable, intends in good faith ~~to not demand or receive rent for the repossessed rental unit from any person during the twelve (12) month period beginning on the date the housing provider recovers possession of the rental unit and that possession is sought~~ to take possession only for the immediate and personal use and occupancy of the rental unit by the housing provider or purchaser as his or her primary residence. The affidavit also must state that the housing provider will not demand or receive rent for the repossessed rental unit from any person during the twelve (12) month period beginning on the date the housing provider recovers possession of the rental unit and that possession. Separate affidavits shall be filed containing the statements of both the housing provider and purchaser for any notice filed pursuant to § 501(e) (D.C. Official Code § 42-3505.01(e)). “Personal use and occupancy” may include family or other individuals cohabitating with the housing provider or purchaser but does not include family or other individuals residing in the housing accommodation without the housing provider or purchaser.

The above edits would draw a clearer distinction between the two required averments in the affidavit and better align with the statute. The housing provider’s intent to retake possession for the sole purpose of personal use and occupancy includes a good faith proviso. The statutory prohibition on demanding or receiving rent, however, is absolute. Instead of eliminating the

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<sup>1</sup> Written Testimony of Beth Mellen Harrison, Legal Aid Society of the District of Columbia, Public Hearing Regarding B23-0048, “Housing Conversion and Eviction Clarification Amendment Act of 2019” (June 17, 2019), *available at* <https://www.legalaiddc.org/wp-content/uploads/2019/06/Testimony-on-B23-48-B23-123-FINAL-6.17.19.pdf>.

second requirement from the affidavit, the Commission should separate the two requirements to align with this statutory distinction, while still requiring housing providers to aver to both.

### Sharing Supporting Documentation Filed with Hardship Petitions

Legal Aid and others previously have shared with the Commission, the Rent Administrator, and the Council our concerns about ensuring that tenants have access to the supporting documentation filed by housing providers with hardship petitions. Tenants and any attorneys they retain need to review this documentation to assess the housing provider's claims and prepare exceptions and objections. The draft rulemaking contains a provision at section 4209.29 requiring the Rent Administrator to make this supporting documentation available to tenants or any person acting on behalf of tenants. Based on Legal Aid's recent experience with two pending hardship petitions, we believe the Commission should amend this provision to make clear that supporting documentation must be provided in an unredacted form.

Legal Aid currently represents tenant associations at 3513 13<sup>th</sup> Street, NW and 1455 Park Road, NW, both contesting hardship petitions filed by the owner of their properties in March 2021. In the course of working with the tenant associations to prepare exceptions and objections, Legal Aid recently assisted them in requesting the supporting documentation filed with the Rental Accommodations Division (RAD). RAD staff and the Rent Administrator informed the tenants that they either had to make the request through an attorney or through a FOIA request, given the "sensitive information" involved. At that point, the tenant associations had not yet taken all required steps to retain Legal Aid as counsel, so they submitted FOIA requests. The tenants received back copies of the supporting documentation redacted of nearly all useful information. In order to obtain unredacted copies, the tenants had to finish the process of retaining Legal Aid as counsel, and then we were able to request and receive unredacted documents.

Tenants should not need a lawyer to request documents being used to justify raising their rents by an extraordinary amount. Also, the process as currently implemented by RAD requires that tenants hire a lawyer before the lawyer can review the supporting documentation and evaluate any potential claims. While some attorneys will be willing to take this leap of faith, others may not. When attorneys do get involved, they will lack critical information to advise tenants about negotiation and settlement options. For all of these reasons, RAD's current process only will make litigation more likely.

Legal Aid has two recommendations for the draft regulations to resolve this potential issue. First, section 4209.29 should state explicitly that tenants and their representatives are entitled to an unredacted copy of the supporting documentation filed with a hardship petition:

The Rent Administrator shall promptly and without cost make all supporting documentation for a hardship petition available in electronic format and unredacted to any tenant of the affected housing accommodation or any person acting on behalf of a tenant.

Second, we recommend adding language to address RAD's concern about highly-sensitive information that may be contained in some of these records - such as financial account information or social security numbers - while not unduly restricting tenant access. The Commission should include express language putting the burden on the housing provider to redact highly-sensitive information before filing the supporting documentation with RAD. The following language is patterned on D.C. Superior Court Rule of Civil Procedure 5.2. It could be included in the hardship petition section of the regulations, and we have drafted it narrowly with that option in mind. Alternatively, the Commission may want to consider revising this language in more general terms to apply to any filing with RAD and moving it to another appropriation section of the regulations:

Unless the Rent Administrator orders otherwise, the housing provider must redact any social security number, taxpayer identification number, driver's license or non-driver's license identification card number, birth date of any individual, the name of any individual known to be a minor, and any financial account number from all supporting documentation for a hardship petition before filing with the Rent Administrator.

These suggested changes would ensure tenants have access to the information they need, protect housing providers' legitimate privacy interests in protecting highly-sensitive information (but only this type of information) from disclosure, and avoid putting the burden on RAD and its staff to redact filings before disclosing them.

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Thank you again for this opportunity to provide comments. We look forward to continuing our work with the Commission on this and other projects.

Sincerely yours,

Amanda Korber and Beth Mellen  
*Supervising Attorneys, Housing Unit*